

MAINSTREAMING CHILDREN'S RIGHTS IN POST-DISASTER SETTINGS

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INTRODUCTION

In recent years, major natural disasters—ranging from the 2004 Indian Ocean tsunami to the 2010 Haiti earthquake¹—have challenged the global community to ensure the survival and well-being of millions of individuals under the most difficult circumstances. Each of these natural disasters has created crisis spots with huge numbers of displaced persons, including high numbers of children. The international community has struggled to deliver the resources needed to ensure the prompt and full recovery of the affected populations. In these settings, the challenges confronting children are particularly acute.

Children, due to their young age and developmental status, are typically more vulnerable than adults.² In post-disaster settings, nearly all the rights of children are implicated, ranging from basic survival, to freedom from abuse and exploitation, to access to health care and education.³ It is during this time that crucial decisions are made regarding plans for reconstruction and prioritization of resources. Too often, at this critical juncture following a major natural disaster, children are relegated to the margins.

Children are held up as the face of suffering in disaster settings, yet, despite the progress made in advancing children's rights in the past twenty years, in post-disaster settings children frequently are seen but not heard—an approach

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¹ The 2010 floods in Pakistan affected more than 13 million people, more than the combined total number of people affected by the 2004 Indian Ocean tsunami, the 2005 Kashmir earthquake, and the 2010 Haiti earthquake. *Floods in Pakistan Worse than Tsunami, Haiti*, GULF NEWS, Aug. 10, 2010, <http://gulfnews.com/news/world/pakistan/floods-in-pakistan-worse-than-tsunami-haiti-1.666221>.

² GERALDINE VAN BUEREN, *THE INTERNATIONAL LAW ON THE RIGHTS OF THE CHILD*, at xx (1995).

³ See WORLD VISION, *PROTECTING CHILDREN POST-DISASTERS*, available at http://wvsiapacific.org/downloads/child_protection_v3.pdf; Associated Press, *Kidnap Fears Spark Haiti 'Children's Emergency'*, MSNBC.COM, Feb. 10, 2010, http://www.msnbc.msn.com/id/35325390/ns/world_news-haiti/t/kidnap-fears-spark-haiti-childrens-emergency.

that echoes nineteenth-century thinking.⁴ The result of this approach is that children's rights and needs are frequently under-addressed, with adverse long-term consequences for children, their communities, and their countries. This Article seeks to draw attention to the lack of accounting for children's rights and suggests a framework for overcoming this failure—children's rights mainstreaming.

Securing rights in post-disaster settings is made more difficult by the fact that, in disaster-affected areas, financial, human, and informational resources have been depleted, and the infrastructure needed to deliver services to and protect children has been damaged or destroyed.⁵ At the same time, children's needs are heightened and more immediate. For global efforts aimed at ensuring child well-being and development, the task is made more urgent by the long-term repercussions of relatively short delays in the reconstruction effort. For example, though recovery and reconstruction can take years, even on an expedited basis, for children, unmet health needs or interrupted schooling for any period of time can have life-long consequences.⁶

This Article examines the special circumstances facing children in post-disaster settings and the legal protections in place to ensure their rights and well-being. Part I examines the dominant portrayals of children in post-disaster settings, finding that while children are often highlighted as the face of human suffering in the aftermath of major disasters, they frequently are marginalized

⁴ See, e.g., Daniel Walden & Kelly Hawrylyshyn, *Smart and Just: Involving Children and Young People in Post Disaster Needs Assessment*, 48 HUMANITARIAN EXCH. MAG. 15 (2010) (finding that in post-disaster reconstruction efforts, "it is rare that children and young people—who often comprise more than half of an affected population—are consulted"); BARBARA BENNETT WOODHOUSE, HIDDEN IN PLAIN SIGHT: THE TRAGEDY OF CHILDREN'S RIGHTS FROM BEN FRANKLIN TO LIONEL TATE 114 (2008) ("As a rule, children and youths figure in history as objects of others' actions rather than subjects in their own right, or as passive victims rather than feeling and thinking agents who shape their own and others' lives."); STEVEN MINTZ, HUCK'S RAFT: A HISTORY OF AMERICAN CHILDHOOD 154–60 (2004) (analyzing the nineteenth-century American portrayal of children as victims needing rescue).

⁵ Some estimates suggest that the 2004 tsunami resulted in more than \$6.6 billion in recovery costs in Indonesia and Sri Lanka alone, and the 2010 earthquake in Haiti resulted in between \$7.2 and \$8.1 billion in damage. Eduardo A. Cavallo et al., *Estimating the Direct Economic Damage of the Earthquake in Haiti* 4 (Inter Am. Dev. Bank, Working Paper No. IDB-WP-163, 2010), available at <http://idbdocs.iadb.org/wsdocs/getdocument.aspx?docnum=35074108>. The U.S. government estimates that, assessing property damage only, Hurricane Katrina cost nearly \$100 billion. FRANCES FRAGOS TOWNSEND, THE FEDERAL RESPONSE TO HURRICANE KATRINA: LESSONS LEARNED 7 (2006), available at <http://purl.access.gpo.gov/GPO/LPS67263>.

⁶ See PHILLIP J. LAZARUS ET AL., NAT'L ASS'N OF SCH. PSYCHOLOGISTS, RESPONDING TO NATURAL DISASTERS: HELPING CHILDREN AND FAMILIES 1 (2003), http://www.nasponline.org/resources/crisis_safety/naturaldisaster_teams_ho.pdf; Natl. Ctr. for PTSD, *Effects of Disasters: Risk and Resilience Factors*, U.S. DEP'T OF VETERAN'S AFF., http://www.ptsd.va.gov/public/pages/effects_of_disasters_risk_and_resilience_factors.asp (last updated Dec. 20, 2011).

in reconstruction efforts. In Part II, the Article reviews the existing legal framework to protect children and to ensure their needs are accounted for following a natural disaster. This examination of current law unveils significant gaps in protections for children when they most need assistance: humanitarian law does not apply in the absence of armed conflict, human rights law has important limitations, and international disaster relief law is in a nascent stage. Although these limitations might suggest the need for additional law, more can be done first with existing law. Part II ends by suggesting that human rights law is the best starting point for a more effective response to natural disasters.

Part III proposes a framework for more effectively accounting for and realizing children's rights in post-disaster settings—children's rights mainstreaming. Part III draws upon gender mainstreaming literature and practice, with a view to examining whether mainstreaming principles can help advance the rights and well-being of children in these most difficult circumstances. It concludes that there is much to be learned from prior efforts at gender mainstreaming that can contribute to ensuring the survival, well-being, and development of children following natural disasters.

I. CHILDREN AS THE FACE OF DISASTERS

Media images transported around the world following a major disaster often focus on children. The plight of children in post-disaster settings is heart wrenching, and those images are used frequently to mobilize the international community and civil society to support relief efforts. In these settings, children are portrayed as small, frail, helpless beings in need of rescue and emergency relief.⁷ Rescue and relief are relevant in post-disaster settings; they are the first

⁷ See PLAN INT'L, CHILDREN AND THE TSUNAMI: ENGAGING WITH CHILDREN IN DISASTER RESPONSE, RECOVERY AND RISK REDUCTION: LEARNING FROM CHILDREN'S PARTICIPATION IN THE TSUNAMI RESPONSE 10 (2005), available at <http://plan-international.org/files/global/publications/emergencies/childrentsunami.pdf> ("To the extent children did receive attention [in the wake of the Indian Ocean tsunami], they were identified as defenceless victims of the disaster who deserved external assistance and protection against potential abusers. Many agencies and the media deliberately mobilised children to draw sympathy, attention and humanitarian assistance towards affected communities."); Roger Bennett & Martin Daniel, *Media Reporting of Third World Disasters: The Journalist's Perspective*, 11 DISASTER PREVENTION & MGMT. 33, 34 (2002) ("As regards starving children, etc., much as the charities have official policies to avoid this type of advertisement, it's still what opens the wallets of the public." (internal quotation marks omitted)). These images persist despite international codes of conduct disapproving of such portrayals. Cf. THE CODE OF CONDUCT FOR THE INTERNATIONAL RED CROSS AND RED CRESCENT MOVEMENT AND THE NGOS IN DISASTER RELIEF § 10 (1996), available at <http://www.ifrc.org/Docs/idrl/I259EN.pdf> ("In our information, publicity and advertising activities, we shall recognize disaster victims as dignified humans, not hopeless objects.").

stage of any post-disaster response.⁸ No one questions the urgent need for emergency relief following a major earthquake, flood, or hurricane. However, such an approach can lead to a particular framework for responding to the plight of survivors of a natural disaster that goes well beyond emergency relief programming. Frequently, such a framework reinforces the notion that aid is undertaken as a charitable endeavor, overlooking the rights and agency of survivors, including, but not limited to, children, and failing to acknowledge children and other vulnerable populations in mainstream reconstruction plans.⁹ A narrow construction of “rescue” creates limitations and unintended adverse consequences.

⁸ See FRANCES A. MAURER & CLAUDIA M. SMITH, COMMUNITY/PUBLIC HEALTH NURSING PRACTICE: HEALTH FOR FAMILIES AND POPULATIONS 501 (2005) (recognizing that in any disaster, the first part of the post-impact phase is rescue); Rajib Shaw, *Indian Ocean Tsunami and Aftermath: Need for Environment-Disaster Synergy in the Reconstruction Process*, 15 DISASTER PREVENTION & MGMT. 5, 8–9 (2006) (recognizing that the rescue phase starts immediately after a disaster); Press Release, General Assembly, General Assembly Expresses Solidarity, Support for Haiti After Massive Earthquake; Appeals for Speedy, Sustainable Aid for Relief, Early Recovery, Reconstruction, U.N. Press Release GA/10913 (Jan. 22, 2010), available at <http://www.un.org/News/Press/docs/2010/ga10913.doc.htm> (“[The U.N. Secretary General] said the United Nations had three priorities, the first of which was the humanitarian relief operation The second priority was security, without which there could be no humanitarian relief or basis for reconstruction. Third, there must be a focus on the future, as the coming weeks and months would need to see a shift from emergency response to longer-term relief and recovery.”); *Phases of Disaster*, UNITED METHODIST COMM. ON RELIEF, <http://new.gbgm-umc.org/umcor/work/emergencies/phasesofadisaster> (last visited Oct. 29, 2011) (describing the phases of post-disaster relief starting with planning, rescue, and relief). See generally UNITED NATIONS DEV. PROGRAMME, FROM RELIEF TO RECOVERY: THE GUJARAT EXPERIENCE (2001), available at http://www.undp.org/cpr/disred/documents/regions/asia/gujarat_report.pdf (discussing the important transition between relief and recovery phases).

⁹ For example, in Haiti, a number of significant post-earthquake relief and reconstruction reports and plans made little or no reference to children’s rights. Those that included children in their reports or plans spoke largely of child protection, evidencing little recognition of children as rights holders. See, e.g., HAITI EARTHQUAKE PDNA: ASSESSMENT OF DAMAGE, LOSSES, GENERAL AND SECTORAL NEEDS 5 (2010) [hereinafter HAITI EARTHQUAKE PDNA]; WORLD BANK ET AL., HAITI EARTHQUAKE RECONSTRUCTION: KNOWLEDGE NOTES FROM DRM GLOBAL EXPERT TEAM FOR THE GOVERNMENT OF HAITI (2010), available at http://gfdrr.org/gfdrr/sites/gfdrr.org/files/publication/GFDRR_Haiti_Reconstruction_KnowledgeNotes_0.pdf (devoting only two and a half pages of a forty-six-page report to women and children, whose needs are considered together); U.N. Secretary-General, *Rep. of the Secretary-General on the United Nations Stabilization Mission in Haiti*, U.N. Doc. S/2010/446 (Sept. 1, 2010) (including limited discussion of children, focusing on child protection). But see generally UNICEF, CHILDREN OF HAITI: MILESTONES AND LOOKING FORWARD AT SIX MONTHS (2010), available at http://www.unicef.org/emerg/files/UNICEF_Haiti_-_Six_Months_Report_Final.pdf (examining several sectors and discussing how reconstruction efforts in each are relevant to addressing children’s needs). It is not only children that are marginalized in reconstruction plans. Women and historically vulnerable groups are also left out. See, e.g., EQUALITY NOW ET AL., THE HAITI GENDER SHADOW REPORT ENSURING HAITIAN WOMEN’S PARTICIPATION AND LEADERSHIP IN ALL STAGES OF NATIONAL RELIEF AND RECONSTRUCTION (2010), available at <http://www.generationaction.org/publications/2010/gr.pdf>.

In the most extreme cases, the rescue narrative can have dangerous implications.¹⁰ For example, following the major earthquake in Haiti in January 2010, relief initiatives frequently characterized children as passive victims in need of rescue.¹¹ Although this characterization helped mobilize relief efforts, it also led to some perverse results, most notably the incident in which ten individuals from the United States, purporting to be on a rescue mission, were arrested by Haitian authorities for allegedly engaging in child trafficking.¹² The ten missionaries were apprehended when they tried to take thirty-three Haitian children across the border to the Dominican Republic shortly after the earthquake.¹³ In fact, most of the children were not orphans.¹⁴ The Haitian government charged the missionaries with “criminal association” and “kidnapping.”¹⁵ Though the group leader eventually pled guilty to a lesser charge and charges against the other nine individuals were dropped, those events highlighted the dangers of a narrow rescue-centric narrative regarding children.¹⁶ Putting aside questions regarding ulterior motives, if the group members’ statements are taken at face value, their comments reflect a belief in the idea of the United States (or the West) as “savior” or “rescuer.” That is, the

¹⁰ See Shani King, *Challenging Monohumanism: An Argument for Changing the Way We Think About Intercountry Adoption*, 30 MICH. J. INT’L L. 413, 432–35 (2009) (discussing the dominant “rescue narrative” in intercountry adoption and stating that this narrative “generate[s] a sense of urgency to extract children from their home countries before they grow older and become ruined psychologically or physically by their environments”).

¹¹ MIA DAMBACH & CHRISTINA BAGLIETTO, INT’L SOC. SERV., HAITI: “EXPEDITING” INTERCOUNTRY ADOPTIONS IN THE AFTERMATH OF A NATURAL DISASTER . . . PREVENTING FUTURE HARM 22 (2010), available at <http://www.iss-ssi.org/2009/assets/files/Haiti%20ISS%20final-%20foreword.pdf> (discussing the lack of restraint in post-disaster situations and finding that “[u]nfortunately, the typical emotive response to a catastrophe was as prevalent as ever, ‘children need to be saved and adopted,’ but it is one that flies in the face of well established international norms”); Letter from Robert Menendez, U.S. Senator, et al., to Hillary Clinton, Sec’y of State, U.S. Dep’t of State, & Janet Napolitano, Sec’y of Homeland Sec., U.S. Dep’t of Homeland Sec. (Jan. 22, 2010), http://menendez.senate.gov/imo/media/doc/2010011tr_HaitiAdoptions.pdf (calling for enhanced efforts to “find and rescue” Haiti’s orphans and facilitate expedited adoptions).

¹² Evan Wilson, *North America and the Caribbean: Haiti’s Vulnerable Children After the Earthquake*, HUM. RTS. BRIEF, Winter 2010, at 40, 40.

¹³ *Id.*

¹⁴ Frank Bajac, *Haiti Dismisses Kidnapping Charges Against U.S. Missionaries*, HUFFINGTON POST (Apr. 26, 2010, 10:46 PM), http://www.huffingtonpost.com/2010/04/27/haiti-dismisses-kidnapping_n_552959.html (noting that all of the children had at least one living parent); Wilson, *supra* note 12, at 40.

¹⁵ Wilson, *supra* note 12, at 40.

¹⁶ See *Haiti Drops Charges Against Missionaries*, USA TODAY, Apr. 27, 2010, at 7A (reporting that charges of kidnapping and criminal association against all ten members were dropped, and that the group leader faced only a lesser remaining charge of arranging illegal travel); Associated Press, *Haiti Frees Last of American Missionaries*, USA TODAY, May 18, 2010, at 8A.

group believed that doing “the right thing” meant taking Haitian children away from their home to the United States.¹⁷

Although such cases attract significant media attention, rescue narratives can have more subtle effects that are also significant. In the immediate aftermath of a disaster, rescue narratives often deny the agency and dignity of the very individuals that rescue missions seek to help.¹⁸ Children are seen merely as passive beings in need of protection,¹⁹ rather than individuals with rights. They are viewed by some as desperate and, therefore, willing to accept anything, even if it is inadequate or an affront to dignity. Though many NGOs work tirelessly in partnership with children and their families, major governmental initiatives often overlook the rights and agency of children.²⁰ In short, despite the international community’s adoption of a comprehensive children’s rights treaty (the Convention on the Rights of the Child, or “CRC”)²¹ more than twenty years ago and the fact that the CRC is the most

¹⁷ *Haiti PM Says US Missionaries Knew They Were Doing Wrong*, TELEGRAPH (Feb. 2, 2010, 12:10 AM), <http://www.telegraph.co.uk/news/worldnews/centralamericaandthecaribbean/haiti/7132399/Haiti-PM-says-US-missionaries-knew-they-were-doing-wrong.html> (reporting that the group’s leader “admitted that she had not obtained the correct Haitian documents, but said that they were ‘just trying to do the right thing’ amid the chaos”); see also Paula Bustamante, *Mistrust in the Eyes of Rescued Haitian “Orphans”*, TELEGRAPH (Feb. 1, 2010, 12:36 PM), <http://www.telegraph.co.uk/expat/expatnews/7127824/Mistrust-in-the-eyes-of-rescued-Haitian-orphans.html> (reporting that many foreigners presume children to be orphans, when “[s]ome of the children may simply be out of parental sight, as mothers and fathers spend much of the day rushing from one place or another trying to get a donated tent, or some food and water”); Ginger Thompson, *Case Stokes Haiti’s Fear for Children, and Itself*, N.Y. TIMES, Feb. 2, 2010, at A1 (quoting the missionaries’ leader as saying, “God wanted us to come here to help children, we are convinced of that. . . . Our hearts were in the right place.”). This “rescue” approach is hardly a new phenomenon. See MINTZ, *supra* note 4, at 155 (describing the prevailing approach to children in the United States in the nineteenth century: “Many child-savers were guilty of paternalism, class and racial bias, xenophobia, and double standards regarding gender. . . . [They] proved far too eager to break up the families of the poor, supposedly for the children’s own good, but in reality separating the young from their kin and isolating them in a harsh and repressive environment.”).

¹⁸ See King, *supra* note 10, at 432–35 (discussing the “rescue narrative” of intercountry adoption and stating that this narrative “generate[s] a sense of urgency to extract children from their home countries before they grow older and become ruined psychologically or physically by their environments”).

¹⁹ See WOODHOUSE, *supra* note 4, at 114; *supra* note 7 and accompanying text.

²⁰ After the earthquake that devastated Haiti, many reports gave little attention to children’s needs or rights. See, e.g., HAITI EARTHQUAKE PDNA, *supra* note 9 (omitting discussion of children’s needs and rights from several sections of this needs assessment, and providing limited discussion elsewhere); WORLD BANK ET AL., *supra* note 9 (discussing children in combination with issues affecting women post-earthquake and limiting the discussion to less than three pages of a forty-six-page document); U.N. Secretary-General, *supra* note 9.

²¹ Convention on the Rights of the Child art. 12, *opened for signature* Nov. 20, 1989, 1577 U.N.T.S. 3 [hereinafter CRC].

widely supported human rights treaty in history,²² governments and parts of civil society still frequently fail to see children as rights holders and as potential partners who can, and frequently do, play meaningful roles in the reconstruction effort.²³

Finally, viewing children solely as a charitable exercise has potentially significant medium- and long-term adverse consequences. First, failing to solicit youth participation, particularly when dealing with older children, denies adolescents a voice in the future of their communities.²⁴ This denial of agency conflicts with the reality of youths' experience; many adolescents play integral roles in their families and communities.²⁵ Failure to incorporate youth

²² There are 193 States Parties to the CRC; only two states (the United States and Somalia) have yet to ratify, although both have signed the CRC. United Nations Treaty Collection, Multilateral Treaties Deposited with the Secretary-General, Status of Treaties, ch. IV, no. 11, Convention on the Rights of the Child, available at <http://treaties.un.org/doc/Publication/MTDGS/Volume%20I/Chapter%20IV/IV-11.en.pdf>.

²³ See Comm. on the Rights of the Child, General Comment 12 (2009): The Right of the Child to be Heard, ¶ 4, U.N. Doc. CRC/C/GC/12 (July 20, 2009) (“[I]n most societies around the world, implementation of the child’s right to express her or his view on the wide range of issues that affect her or him, and to have those views duly taken into account, continues to be impeded by many long-standing practices and attitudes, as well as political and economic barriers.”). See generally PLAN INT’L, *supra* note 7, at 10–14 (discussing the difficulty governments, civil society, and the media have in viewing children as individuals with the right to participate in relief-related decisions); Michael Freeman, *Why It Remains Important To Take Children’s Rights Seriously*, 15 INT’L J. CHILD. RTS. 5, 5–6 (2007) (criticizing those who fail to take children’s rights seriously).

²⁴ See CRC, *supra* note 21, art. 12 (recognizing that “the child who is capable of forming his or her own views [has] the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child”); GERISON LANSDOWN, UNICEF INNOCENTI RESEARCH CTR., PROMOTING CHILDREN’S PARTICIPATION IN DEMOCRATIC DECISION-MAKING 6 (2001), available at <http://www.unicef-irc.org/publications/pdf/insight6.pdf> (“[Children] need opportunities to participate in democratic decision-making processes within school and within local communities, and learn to abide by subsequent decisions. Only by experiencing respect for their own views and discovering the importance of their respect for the views of others, will they acquire the capacity and willingness to listen to others and so begin to understand the processes and value of democracy.”); ROGER A. HART, UNICEF INT’L CHILD DEV. CTR., CHILDREN’S PARTICIPATION: FROM TOKENISM TO CITIZENSHIP 5 (1992), available at http://www.unicef-irc.org/publications/pdf/childrens_participation.pdf (“Children need to be involved in meaningful projects with adults. It is unrealistic to expect them suddenly to become responsible, participating adult citizens at the age of 16, 18, or 21 without prior exposure to the skills and responsibilities involved.”); Jeremy Roche, *Children: Rights, Participation and Citizenship*, 6 CHILDHOOD 475, 483 (1999) (“The arguments for the increased participation of children in decision-making affecting their lives are both practically and theoretically more compelling the older the child is.”).

²⁵ See SANDY HOBBS ET AL., CHILD LABOR: A WORLD HISTORY COMPANION 89 (1999) (noting that in many poorer countries, where many children work full time, children’s “economic contribution to the family can be essential to the family’s survival”); Annette Ruth Appell, *The Pre-political Child of Child-Centered Jurisprudence*, 46 HOUS. L. REV. 703, 746 & nn.245–46 (“[I]n urban poor and single-mother-headed families, children continue[] to play a crucial role in supporting the family by peddling goods or services in the streets.”); Eloisa Lara Portal et al., *Counseling in Mexico: History, Current Identity, and Future Trends*, 88 J. COUNSELING & DEV. 33, 34 (2010) (“[M]any children and adolescents in Mexico need to work in order to contribute to family earnings.”).

voices is not only significant for adolescents, but also for their communities, as reconstruction efforts fail to draw upon their knowledge and understanding of their own lives and their communities.²⁶ Although the children-as-charity approach particularly affects adolescents, ultimately, the failure to recognize children's agency hurts all children when governments and civil society do not account for or incorporate their views and rights fully in reconstruction efforts.²⁷

In turn, leaving children, especially adolescents, out of the reconstruction process hurts the country in both the short and long term. After all, children constitute a significant percentage of the population. Indonesia has approximately 74 million children, representing approximately one-third of the country's population.²⁸ In Haiti, children are nearly half the population.²⁹ Overall, children constitute approximately thirty-five percent of the world's population.³⁰ When reconstruction plans fail to account fully for the rights of a

²⁶ Mike Dottridge, *Young People's Voices on Child Trafficking: Experiences from South Eastern Europe*, at vi (UNICEF Innocenti Research Ctr., Working Paper No. IWP-2008-05, 2008), available at http://www.unicef-irc.org/publications/pdf/iwp_2008_05.pdf (“[Children] are ‘experts’ on the factors that make children vulnerable, their reasons for leaving home, and their special needs regarding prevention, assistance and protection. Children and young people have an important role to play in helping to identify areas for intervention, design relevant solutions and act as strategic informants of research.”); HART, *supra* note 24, at 15 (“Children do not have the same competence in communicating as adults but this does not mean that information from children is invalid.”).

²⁷ See Muhammad Ahsan Khan, Rural Dev. Project, *Mainstreaming Child Protection in Disaster Risk Reduction 5* (2009), available at <http://www.docstoc.com/docs/15486561/Mainstreaming-Child-Protection-in-Disaster-Risk-Reduction> (examining disaster relief efforts and finding that “very little efforts are made for rescue, relief and rehabilitation of children in a given context”); Udaya Wagle, *The Policy Science of Democracy: The Issues of Methodology and Citizen Participation*, 33 POL’Y SCI. 207, 207 (2000) (“[C]itizen participation is important . . . to improve the quality of information provided to make appropriate policy decisions.”); MIKE DOTTRIDGE, *TERRE DES HOMMES, KIDS AS COMMODITIES?: CHILD TRAFFICKING AND WHAT TO DO ABOUT IT* 83 (2004), available at <http://terredeshommes.org/pdf/commodities.pdf> (“It seems obvious that young people should be consulted and involved in any decisions about their future, whether it concerns the possibility of their returning to their own country or the profession they would like to learn skills for.”). For one example of efforts to provide children a voice in the reconstruction process, see Jill Van den Brule, *In Post-earthquake Haiti, Children's Voices Are Integrated into Reconstruction Effort*, UNICEF, <http://www.educationandtransition.org/resources/in-post-earthquake-haiti-childrens-voices-are-integrated-into-reconstruction-effort> (last updated June 21, 2010).

²⁸ UNICEF, *STATE OF THE WORLD'S CHILDREN* 89, 109 (2011), available at http://www.unicef.org/sowc2011/pdfs/SOWC-2011-Main-Report_EN_02092011.pdf (per data provided in Statistical Tables 1 and 6).

²⁹ Simon Romero, *With Haitian Schools in Ruins, Children in Limbo*, N.Y. TIMES, Mar. 7, 2010, at A6 (“Children make up about 45 percent of Haiti's population.”); see also UNICEF, *Statistical Tables for 2009*, in UNICEF *STATE OF THE WORLD'S CHILDREN: SPECIAL EDITION* 9, 29 (2009), available at http://www.unicef.org/rightsite/sowc/pdfs/statistics/SOWC_Spec_Ed_CRC_Statistical_Tables_EN_111809.pdf (per data provided in Statistical Tables 1 and 6, showing that children make up 43.5 percent of Haiti's population).

³⁰ As of 2009, children represented 2.2 billion people in a world population of 6.7 billion. UNICEF, *supra* note 29.

third of the population, or nearly half the population in Haiti's case, the country will be worse off in the long run.

II. THE LEGAL FRAMEWORK

A. *International Law's Response*

Ensuring the rights of individuals in post-disaster settings is an enormous challenge. Law can help create the framework necessary for protecting rights in difficult circumstances. To address the needs of a population following a natural disaster, one might look to three areas of international law for support: (1) humanitarian law, (2) human rights law, and (3) international disaster relief law.

Historically, humanitarian law applied only in settings where there was an armed conflict.³¹ “[It] aims to protect persons who are not or are no longer taking part in hostilities, the sick and wounded, prisoners and civilians, and to define the rights and obligations of the parties to a conflict in the conduct of hostilities.”³² Because it is limited to armed conflict settings, international humanitarian law can be applied to victims of natural disasters only by analogy.³³ Indeed, the significant ruptures to infrastructure and daily life from a natural disaster parallel in certain respects that which is inflicted by armed conflict, only the latter is a product of human beings' actions.³⁴ For that reason,

³¹ See DAVID FISHER, INT'L FED'N OF RED CROSS & RED CRESCENT SOC'YS, LAW AND LEGAL ISSUES IN INTERNATIONAL DISASTER RESPONSE: A DESK STUDY 36 (2007) [hereinafter IFRC, DESK STUDY], available at <http://reliefweb.int/sites/reliefweb.int/files/resources/32EDCC3689CEC0ECC125738B0046AE7C-ifrc-06nov.pdf> (recognizing that international humanitarian law has historically been limited to addressing armed conflict); INTERNATIONAL HUMAN RIGHTS & HUMANITARIAN LAW: TREATIES, CASES & ANALYSIS 2–6 (Francisco Forrest Martin et al. eds., 2006) (discussing the origins of and distinctions between human rights and humanitarian law); Jean-Marie Henckaerts, *Concurrent Application of International Humanitarian Law and Human Rights Law: A Victim Perspective*, in INTERNATIONAL HUMAN RIGHTS LAW AND HUMANITARIAN LAW 237, 239 (Roberta Arnold & Noelle Quenivet eds., 2008) (“From the outset, humanitarian law has dealt with hostile relations between states.”).

³² *War and International Humanitarian Law*, ICRC (Nov. 29, 2010), <http://www.icrc.org/eng/war-and-law/overview-war-and-law.htm>.

³³ IFRC, DESK STUDY, *supra* note 31, at 36 (suggesting that international humanitarian law can be instructive by analogy).

³⁴ Some argue that the scale of devastation resulting from natural disasters has its roots in problems caused by human beings (e.g., forced relocations, environmental degradation, etc.). See General Assembly, *Note by the Secretary-General, A More Secure World: Our Shared Responsibility*, ¶ 53, U.N. Doc. A/59/565 (Dec. 2, 2004) (“Environmental degradation has enhanced the destructive potential of natural disasters and in some cases hastened their occurrence.”); Lindsay F. Wiley, *Moving Global Health Law Upstream: A Critical Appraisal of Global Health Law as a Tool for Health Adaptation to Climate Change*, 22 GEO. INT'L ENVTL. L. REV. 439, 444 (2010) (recognizing the correlation between environmental degradation and increased exposure

some of the general principles of humanitarian law might offer guidance. For example, humanitarian law might be helpful by analogy to relief agencies seeking access to affected civilian populations.³⁵ Humanitarian law also mandates impartiality and requires that assistance be based solely on need and not on political or other considerations.³⁶ However, absent armed conflict, this body of law does not apply directly and thus does not impose a legally binding mandate on states to address the harms experienced by populations in disaster areas. For that reason, its utility is limited.

In contrast to humanitarian law, there is no question that human rights law applies in post-disaster settings. In numerous countries, human rights law has helped foster positive changes in law, policy, and attitudes toward children and other vulnerable populations, in some instances forging recognition of their rights and personhood for the first time.³⁷ Under human rights law, states commit to ensuring the rights of every individual subject to their jurisdiction.³⁸ Though human rights law applies in post-disaster settings, it comes with certain limitations, most notably with regard to economic, social, and cultural rights. Under international human rights law, states' obligations with respect to economic, social, and cultural rights are tied to available resources.³⁹ For

to natural disasters); Sharon Begley, *Man-Made Mistakes Increase Devastation of 'Natural' Disasters*, WALL ST. J., Sept. 2, 2005, at B1 (noting how human mistakes exacerbate natural disaster devastation). *See generally* TED STEINBERG, *ACTS OF GOD: THE UNNATURAL HISTORY OF NATURAL DISASTER IN AMERICA* (2006) (discussing the role human beings have had in natural disasters). Some have also argued that environmental degradation will lead to increased armed conflicts as people compete for scarce, depleting resources. *See, e.g.*, JOSHUA W. BUSBY, COUNCIL ON FOREIGN RELATIONS, *CLIMATE CHANGE AND NATIONAL SECURITY: AN AGENDA FOR ACTION* (2007), available at http://i.cfr.org/content/publications/attachments/ClimateChange_CSR32.pdf

³⁵ *See* KATE MACKINTOSH, *OVERSEAS DEV. INST., PRINCIPLES OF HUMANITARIAN ACTION IN INTERNATIONAL HUMANITARIAN LAW 4* (2000), available at <http://www.odi.org.uk/resources/download/249.pdf>.

³⁶ *Id.* at 8, 11.

³⁷ Jonathan Todres, et al., *Overview, in* THE U.N. CONVENTION ON THE RIGHTS OF THE CHILD: AN ANALYSIS OF TREATY PROVISIONS AND IMPLICATIONS OF U.S. RATIFICATION 3 (Jonathan Todres, Mark E. Wojcik & Chris Revaz eds., 2006). *See generally* UNICEF INNOCENTI RESEARCH CTR., *LAW REFORM AND THE IMPLEMENTATION ON THE CONVENTION ON THE RIGHTS OF THE CHILD* (2007); UNICEF INNOCENTI RESEARCH CTR., *THE GENERAL MEASURES OF THE CONVENTION ON THE RIGHTS OF THE CHILD: THE PROCESS IN EUROPE AND CENTRAL ASIA* (2006).

³⁸ *See, e.g.*, International Covenant on Civil and Political Rights art. 2, *opened for signature* Dec. 16, 1966, 999 U.N.T.S. 171 (entered into force Mar. 23, 1976) [hereinafter ICCPR] ("Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant."); CRC, *supra* note 21, art. 2(1) ("States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind.")

³⁹ International Covenant on Economic, Social and Cultural Rights, *opened for signature* Dec. 16, 1966, 993 U.N.T.S. 3 (entered into force Jan. 3, 1976) [hereinafter ICESCR] ("Each State Party to the present

example, the CRC mandates that: "With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation."⁴⁰ Based on available resources, a state's obligation vis-à-vis economic, social, and cultural rights is one of progressive realization.⁴¹

The challenge following a natural disaster is that frequently a country's resources are depleted. Yet to suggest that human rights law's available resources clause reduces the state's obligation to ensure economic, social, and cultural rights in post-disaster settings would undermine the object and purpose of such treaties.⁴² To accept such a reading would be to provide that when children's rights are at greatest risk, states have less of a duty to ensure them. In these settings, two steps are important: first, affected states must prioritize the realization of the individual rights of their populations and ensure that they are using all available resources, even if they are limited.⁴³ Second, states' obligations to use the maximum extent of available resources must be understood "within the framework of international co-operation."⁴⁴ This

Covenant undertakes to take steps . . . to the maximum of its available resources . . . to achiev[e] progressively the full realization of the rights recognized in the present Covenant by all appropriate means."); CRC, *supra* note 21, art. 4 ("With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation."). In contrast, states' obligations with respect to civil and political rights are not qualified by available resources. See CRC, *supra* note 21, art. 4.

⁴⁰ CRC, *supra* note 21, art. 4.

⁴¹ *Id.*

⁴² See Vienna Convention on the Law of Treaties art. 18, *opened for signature* May 23, 1969, 1155 U.N.T.S. 331 ("[O]bliging states to refrain from acts that defeat the object and purpose of a treaty once they have signed the treaty, even if the treaty has not been ratified."). Article 31(1) states, "A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose." *Id.* art. 31(1). Article 26 states, "Every treaty in force is binding upon the parties to it and must be performed by them in good faith." *Id.* art. 26.

⁴³ In recent years, important work has been done on budget analysis to assess whether a state is using its maximum available resources to fulfill its obligations under specific human rights treaties. See, e.g., International Budget Projects, *Applied Budget Analysis and Economic, Social and Cultural Rights*, <http://www.internationalbudget.org/themes/ESC/index.htm> (last visited May 30, 2011); FUNDAR, INT'L HUMAN RIGHTS INTERNSHIP PROGRAM & INT'L BUDGET PROJECT, DIGNITY COUNTS: A GUIDE TO USING BUDGET ANALYSIS TO ADVANCE HUMAN RIGHTS (2004).

⁴⁴ Comm. on Econ., Soc., & Cultural Rights, *General Comment No 3: The Nature of States Parties Obligations*, ¶ 13, U.N. Doc. E/1991/23, Annex III (Dec. 14, 1990) [hereinafter *ECOSOC General Comment No. 3*] ("The Committee notes that the phrase 'to the maximum of its available resources' was intended by the drafters of the Covenant to refer to both the resources existing within a State and those available from the international community through international cooperation and assistance."); see also Comm. on Econ. & Cultural Rights, *General Comment No. 14: The Right to the Highest Attainable Standard of Health (Article 12*

additional clause implies a duty on other countries to assist resource-constrained states hit hard by natural disasters.⁴⁵ Further analysis is needed to develop a clear, internationally agreed upon understanding of the meaning of the international cooperation clause in human rights treaties, so as to ensure that the occurrence of an event that threatens children's rights does not simultaneously reduce states' obligations to respond. Until that work is completed, potential gaps in protections for children under human rights law will remain.

Finally, there is an emerging body of law, international disaster relief law ("IDRL"), which has significant potential for addressing the rights and needs of populations in disaster areas.⁴⁶ IDRL is a matrix of international instruments addressing various aspects of post-disaster humanitarian relief.⁴⁷ It covers a range of issues, including most prominently: rules related to initiation of disaster assistance, including consent; the conditions of disaster assistance, including questions of control over relief operations; access issues, including visas, work permits, and customs-related issues; movement of personnel and materials; status of persons questions; and humanitarian assistance issues.⁴⁸

Although by all accounts IDRL is in a nascent stage,⁴⁹ its potential cannot go unnoticed. In 2007, the International Federation of Red Cross and Red

of the International Covenant on Economic, Social and Cultural Rights), ¶ 40, U.N. Doc. E/C.12/2000/4 (Aug. 11, 2000) [hereinafter *ECOSOC General Comment No. 14*].

States parties have a joint and individual responsibility, in accordance with the Charter of the United Nations and relevant resolutions of the United Nations General Assembly and of the World Health Assembly, to cooperate in providing disaster relief and humanitarian assistance in times of emergency, including assistance to refugees and internally displaced persons. Each State should contribute to this task to the maximum of its capacities.

Id.

⁴⁵ See, e.g., Judith Bueno de Mesquita et al., *The Human Rights Responsibility of International Assistance and Cooperation in Health*, in *UNIVERSAL HUMAN RIGHTS AND EXTRATERRITORIAL OBLIGATIONS* 104, 109–16 (Mark Gibney & Sigrun Skogly eds., 2010) (discussing the legal foundation and scope of an international obligation to cooperation in health).

⁴⁶ See, e.g., Arnold Pronto, *Consideration of the Protection of Persons in the Event of Disasters by the International Law Commission*, 15 *ILSA J. INT'L & COMP. L.* 449 (2009) (discussing the emerging body of law of IDRL).

⁴⁷ IFRC, *DESK STUDY*, *supra* note 31, at 15. One of the clearest articulations of IDRL is found in the IFRC's Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance. INT'L FED'N OF RED CROSS & RED CRESCENT SOC'YS, *GUIDELINES FOR THE DOMESTIC FACILITATION AND REGULATION OF INTERNATIONAL DISASTER RELIEF AND INITIAL RECOVERY ASSISTANCE*, [hereinafter *DISASTER RELIEF GUIDELINES*].

⁴⁸ Pronto, *supra* note 46, at 452.

⁴⁹ See generally IFRC, *DESK STUDY*, *supra* note 31, at 33–79 (discussing the history and context of IDRL).

Crescent Societies unanimously adopted its Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance.⁵⁰ Though non-binding, these guidelines are an important step toward international agreement on how to address key issues specific to disaster settings ranging from preparedness to emergency response measures.⁵¹ The guidelines also help advance efforts to delineate clearly responsibilities of affected states and to assist states in post-disaster settings.⁵²

IDRL, however, is not a comprehensive legal framework. Rather, it is a piecemeal collection of primarily non-binding resolutions, declarations, and protocols.⁵³ Although there are legally binding international agreements addressing international disaster relief procedures, many such treaties are limited in utility because either so few states have ratified them or they are very limited in scope or enforceability.⁵⁴ As one review of IDRL concluded:

⁵⁰ DISASTER RELIEF GUIDELINES, *supra* note 47.

⁵¹ *Id.*

⁵² *Id.* arts. 3–6.

⁵³ IFRC, DESK STUDY, *supra* note 31, at 15; *see also* Pronto, *supra* note 46, at 452 (characterizing IDRL as “still in its infancy”).

⁵⁴ *See, e.g.*, Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency, *adopted* Sept. 26, 1986, 1457 U.N.T.S. 133 (providing protocols for international cooperation after nuclear accidents and signed by fifty-two countries); INT’L ATOMIC ENERGY AGENCY, CONVENTION ON ASSISTANCE IN THE CASE OF A NUCLEAR ACCIDENT OR RADIOLOGICAL EMERGENCY, *available at* http://www.iaea.org/Publications/Documents/Conventions/cacnare_status.pdf (providing the parties and signatories of the convention); Tampere Convention on the Provision of Telecommunication Resources for Disaster Mitigation and Relief Operations, *opened for signature* June 18, 1998, 2296 U.N.T.S. 5 [hereinafter Tampere Convention] (providing ease of restrictions on the trans-border exchange of telecommunication equipment post-disaster for the benefit of humanitarian relief, but binding on only the forty-three states that are parties to this treaty as of Apr. 10, 2011); United Nations Treaty Collection, Multilateral Treaties Deposited with the Secretary-General, Status of Treaties, ch. XXV, no. 4, Tampere Convention on the Provision of Telecommunication Resources for Disaster Mitigation and Relief Operations, *available at* <http://treaties.un.org/doc/Publication/MTDSG/Volume%20II/Chapter%20XXV/XXV-4.en.pdf>; David Fisher, *Fast Food: Regulating Emergency Food Aid in Sudden-Impact Disasters*, 40 VAND. J. TRANSNAT’L L. 1127, 1147–48 (2007) (recognizing that treaties addressing international humanitarian relief “either have few parties, vague language, or do not address non-state actors”). There are select broader agreements that have been adopted regionally in more recent years. *See, e.g.*, ASEAN Agreement on Disaster Management and Emergency Response, ASS’N SOUTHEAST ASIAN NATIONS (July 26, 2005), <http://www.aseansec.org/17579.htm> (limited to the ten ASEAN nations but only entering into effect when all ten ASEAN nations have ratified); BLACK SEA ECON. COOPERATION, AGREEMENT AMONG THE GOVERNMENTS OF THE PARTICIPATING STATES OF THE BLACK SEA ECONOMIC COOPERATION (BSEC) ON COLLABORATION IN EMERGENCY ASSISTANCE AND EMERGENCY RESPONSE IN NATURAL AND MAN-MADE DISASTERS (1998), *available at* <http://www.bsec-organization.org/documents/LegalDocuments/agreementmous/agr4/Documents/Emergencyagreement%20071116.pdf> (establishing principles for humanitarian relief coordination but limited to the eight Black Sea countries who have ratified it). Arnold Pronto suggests, however, that there are benefits to proceeding primarily with soft law in this area. Pronto, *supra* note 46, at 455.

[IDRL] is hampered by: its dispersed nature; the lack of awareness and implementation of relevant instruments among the key stakeholders; and important gaps in its scope and coverage. The gaps are particularly evident in the areas of quality and accountability, which benefit mainly from ‘soft-law’ regimes emphasizing voluntary compliance.⁵⁵

Reviewing these three areas of law, one might readily draw the conclusion that new law is needed. The limitations in the three bodies of law indicate the need to close certain gaps and more clearly identify the nature and scope of states’ obligations to populations trying to cope with natural disasters. Before the international community commits significant time and resources to developing new law, it must ensure that it gets the most out of existing law.⁵⁶ Much more is needed to ensure full implementation of current law, before setting about drafting new conventions.⁵⁷

As human rights law is the body of law of the three that applies most broadly and imposes legally binding obligations in all post-disaster settings, it represents an important starting point. Moreover, its recognition of, and central focus on, the dignity of every individual irrespective of race, ethnicity, sex, religion, class, disability, or other protected status,⁵⁸ makes it especially relevant in post-disaster settings when so many individuals are vulnerable to

⁵⁵ IFRC, DESK STUDY, *supra* note 31, at 15.

⁵⁶ For a list of treaties and resolutions relevant in the post-disaster context, including relevant human rights law treaties, see U.N. Secretariat, Protection of Persons in the Event of Disasters, Memorandum by the Secretariat, Addendum, Int’l Law Comm’n, U.N. Doc. A/CN.4/590/Add.2 (Mar. 31, 2008).

⁵⁷ Pemmaraju Sreenivasa Rao, *Multiple International Judicial Forums: A Reflection of the Growing Strength of International Law or Its Fragmentation?*, 25 MICH. J. INT’L L. 929, 931 (2004) (noting the absence of enforcement mechanisms accompanying much of international law); Prosper Weil, *Towards Relative Normativity in International Law?*, 77 AM. J. INT’L L. 413, 414 (1983) (explaining that international law has numerous “structural weaknesses” including “not only the inadequacy of its sanction mechanisms, but also the mediocrity of many of its norms”).

⁵⁸ Most major international human rights instruments contain a nondiscrimination clause requiring countries to ensure the rights enumerated in such treaties to all individuals without discrimination of any kind. *See, e.g.*, CRC, *supra* note 21, art. 2; ICESCR, *supra* note 39, art. 2(2); ICCPR, *supra* note 38, art. 2(1). Certain human rights conventions do not contain a nondiscrimination clause, but only because such a provision is inapplicable or superfluous. *See, e.g.*, Convention on the Prevention and Punishment of the Crime of Genocide, *adopted* Dec. 9, 1948, 78 U.N.T.S. 277 (entered into force Jan. 12, 1951). As the prohibition on genocide and other crimes against humanity by definition applies to acts against “national, ethnical, racial or religious group[s],” a nondiscrimination clause is unnecessary. *Id.* Similarly, the International Convention on the Elimination of All Forms of Racial Discrimination (“CERD”) does not need a separate nondiscrimination clause because the subject of CERD is discrimination. *See* International Convention on the Elimination of All Forms of Racial Discrimination, *opened for signature* Mar. 7, 1966, 660 U.N.T.S. 195 (entered into force Jan. 4, 1969).

harm. In that regard, the international community would do well to start by taking children's rights seriously.⁵⁹

B. Taking Children's Rights Seriously

In the aftermath of a natural disaster, children's rights violations are numerous. A "rescue" or child protection approach indirectly addresses some of these rights, but fails to fully account for the rights violations children experience in post-disaster settings. To be clear, this Article does not suggest that child protective measures are wholly inapposite or that the choice is between rights and protection. To the contrary, advancing children's rights and well-being requires recognition of the special circumstances of children and their developmental stages.⁶⁰ Certain protective measures are appropriate and are contemplated by children's rights law.⁶¹ A rights-based approach to children recognizes and seeks to ensure the full panoply of children's rights, and protective measures are incorporated in what is needed to realize children's rights.⁶²

By way of illustration, this Article briefly examines four issues that are fundamental to child survival, well-being, and development in post-disaster settings.⁶³ Though not the only issues relevant to children following a natural disaster, these four areas—safety and security; health and education; child participation; and child (rights) friendly environments—are critical to child survival and well-being. They are also illustrative of the value a rights-based approach adds to post-disaster relief and reconstruction.

Safety and Security. For so many children in post-disaster settings, their right to a safe and secure environment is threatened. Trafficking and severe forms of exploitation are a threat where infrastructure is destroyed and family

⁵⁹ See generally Freeman, *supra* note 23.

⁶⁰ See WOODHOUSE, *supra* note 4, at 8 (recognizing that children have both "needs-based and capacity-based rights").

⁶¹ See, e.g., CRC, *supra* note 21, arts. 32, 34, 35, 36 (protection from economic exploitation, sexual exploitation and abuse, trafficking, and other forms of exploitation).

⁶² WOODHOUSE, *supra* note 4, at 8. See generally COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS, AN EU AGENDA FOR THE RIGHTS OF THE CHILD (2011) (expressing the European Union's progress in incorporating children's rights into its policies and actions).

⁶³ The CRC has forty substantive provisions. A full analysis of every right children possess is beyond the scope of this Article.

members have been separated.⁶⁴ At an even more fundamental level, children are at risk when engaging in the most basic day-to-day activities, such as walking to a latrine or staying at home to care for younger siblings.⁶⁵ Children's right to a safe and secure environment is protected by a combination of provisions in the CRC, including the right to be free from various forms of exploitation⁶⁶ and the right to be free from all forms of physical and mental abuse, violence, and neglect.⁶⁷ A children's rights approach establishes a legal mandate obligating governments to ensure the safety and security of children following a natural disaster.⁶⁸ Moreover, the right to safety and security, unlike economic, social, or cultural rights, is not dependent on a country's resources; states are required to ensure this right of all individuals at all times.⁶⁹

Health and Education. Following a major natural disaster, access to health care and education is frequently disrupted. Many hospitals and schools are

⁶⁴ BROOKINGS-BERN PROJECT ON INTERNAL DISPLACEMENT, HUMAN RIGHTS AND NATURAL DISASTERS: OPERATIONAL GUIDELINES AND FIELD MANUAL ON HUMAN RIGHTS PROTECTION IN SITUATIONS OF NATURAL DISASTER 66-69 (2008), available at http://www.brookings.edu/~media/Files/rc/reports/2008/spring_natural_disasters/spring_natural_disasters.pdf (recognizing that "in the aftermath of a disaster, the breakdown of family support structures, inadequate housing and a lack of community support" may increase the risk of human trafficking for women and children); see also U.S. DEP'T OF STATE, TRAFFICKING IN PERSONS REPORT 35 (2010) [hereinafter TIP REPORT 2010], available at <http://www.state.gov/documents/organization/142979.pdf> (highlighting the potential long-term impact of a natural disaster in terms of leaving gaps that traffickers can later exploit).

⁶⁵ INST. FOR JUSTICE & DEMOCRACY IN HAITI, BUREAU DES AVOCATS INTERNATIONAUX ET AL., OUR BODIES ARE STILL TREMBLING: HAITIAN WOMEN'S FIGHT AGAINST RAPE 4 (2010) [hereinafter INST. FOR JUSTICE] (detailing the high numbers of girls who have been raped in IDP camps in Haiti since the January 2010 earthquake); REFUGEES INT'L, HAITI: STILL TRAPPED IN THE EMERGENCY PHASE I (2010) [hereinafter REFUGEES INT'L, HAITI], available at http://www.refugeesinternational.org/sites/default/files/100710_haiti_still_trapped.pdf (reporting that "[s]exual, domestic, and gang violence in and around the camps is rising" in Haiti); Carol Toms & Heather MacLeod, World Vision Int'l, *Protecting Children in Post Disaster Planning*, 2006 Int'l Conference on Post-disaster Reconstruction: "Meeting Stakeholder Interests," available at http://www.grif.umontreal.ca/pages/TOMS_%20Carol.pdf (detailing the many dangers confronting children in post-disaster settings).

⁶⁶ See CRC, *supra* note 21, arts. 32, 34, 35, 36 (economic exploitation, sexual exploitation, trafficking, and other forms of exploitation).

⁶⁷ CRC, *supra* note 21, art. 19 ("States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse."). The right to a safe and secure environment also is implicated by the child's right to life, survival, and development. *Id.* art. 6.

⁶⁸ The obligation on states is not merely to pass relevant law but also to take the necessary additional steps to ensure effective implementation and protection of children's rights. See CRC, *supra* note 21, art. 4 ("States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention.").

⁶⁹ *Montreal Declaration: People's Right to Safety, 6th World Conference on Injury Prevention and Control: Montreal, Canada, 15 May 2002*, 6 HEALTH & HUM. RTS. 185, 185-91 (2003).

damaged or destroyed.⁷⁰ Health care professionals and teachers have been lost in the natural disaster, exacerbating personnel shortages.⁷¹ Children's health and education needs often go unrealized.⁷² A needs-based approach frequently accounts for health and education in post-disaster settings to some extent. A charitable approach, however, often falls short of reaching all individuals or addressing all health and education impacts.⁷³ Often what is not recognized in those situations is that every child has a *right* to health care and to education.⁷⁴ As with the right to a safe and secure environment, a children's rights-based approach imposes legally binding obligations on states.⁷⁵ Though states' obligations vis-à-vis health and education rights are qualified by available

⁷⁰ See, e.g., HAITI EARTHQUAKE PDNA, *supra* note 9, at 60 ("Within the disaster zone, 30 out of 49 hospitals have been damaged or destroyed."); *Id.* at 63 (reporting the Haiti earthquake destroyed or damaged more than 4,200 schools); JOINT ASIAN DEV. BANK, JAPAN BANK FOR INT'L COOPERATION & WORLD BANK, SRI LANKA 2005 POST-TSUNAMI RECOVERY PROGRAM: PRELIMINARY DAMAGE AND NEEDS ASSESSMENT 16 (2005) [hereinafter 2005 POST-TSUNAMI NEEDS ASSESSMENT], available at <http://siteresources.worldbank.org/INTSRI/RESOURCES/233024-1107313542200/slnafull.1.pdf> ("Following the disaster, 92 local clinics, hospitals and drug stores were either destroyed or damaged, causing disruptions to delivery of health services and patient care."); William P. Quigley, *Thirteen Ways of Looking at Katrina: Human and Civil Rights Left Behind Again*, 81 TUL. L. REV. 955, 978 (2007) ("Katrina drowned most of the New Orleans health care system. More than 2500 hospital patients were evacuated from the city alone. Dialysis centers across the state, with caseloads of over 3000 patients, were destroyed. Charity Hospital was flooded and closed." (footnotes omitted)); *Planning, Preparation Needed To Deal with Disasters*, NATION (Apr. 7, 2009), <http://www.nation.com/pk/pakistan-news-newspaper-daily-english-online/lahore/08-Apr-2009/Planning-preparation-needed-to-deal-with-disasters-Speakers> ("In Pakistan's most-affected areas during the 2005 earthquake, 49 per cent of health facilities were completely destroyed, from sophisticated hospitals to rural clinics and drug dispensaries."); James Palmer, *Pakistan Quake Victims Continue To Suffer; Many Homeless for Third Winter*, WASH. TIMES, Dec. 6, 2008, at A01 ("Of 11,534 primary and secondary schools, an estimated 10,000 were destroyed or heavily damaged.").

⁷¹ UNICEF, CHILDREN OF HAITI: MILESTONES AND LOOKING FORWARD AT SIX MONTHS 22 (2010), http://www.unicef.org/media/files/UNICEF_Haiti_-_Six_Months_Report_Final.pdf [hereinafter UNICEF SIX MONTH REPORT] ("The earthquake [in Haiti] literally flattened the Ministry of Health, decimated an already weak health infrastructure, and heavily burdened health professionals in a country [where] there were only four doctors for 10,000 people."); Paul Waldie, *'I Was in Secondary School . . . Now We Live on the Street': Children of Haiti Have Long Found Little Hope in the Future, and Now the Earthquake Has Put . . . Even That at Risk*, GLOBE & MAIL, Jan. 23, 2010, at A17 (reporting that since the Haitian earthquake "thousands of teachers are either dead, missing or long gone from the city"); Robin Rudowitz et al., *Health Care in New Orleans Before and After Hurricane Katrina*, 25 HEALTH AFF. 393, 400-01 (2006) (recognizing the dislocation of 4,500 active physicians and the return of only about twenty-five percent of them by March of 2006); 2005 POST-TSUNAMI NEEDS ASSESSMENT, *supra* note 70 at 16 ("Several health sector personnel were killed by the tsunami, which created gaps in service provision following the disaster.").

⁷² See generally EDUCATION SECTORAL ASSESSMENT GUIDANCE FOR POST DISASTER NEEDS ASSESSMENTS (2009), available at <http://onerresponse.info/GlobalClusters/Education/publicdocuments/PDNA%20Guide%20-%20Assessment%20Guidance%20for%20Education.pdf>.

⁷³ See Palmer, *supra* note 70 (discussing how many survivors of the Pakistani earthquake continue to go without schools and health care facilities three years after the earthquake).

⁷⁴ See CRC, *supra* note 21, arts. 24, 28.

⁷⁵ For example, Haiti is a party to the CRC without reservations. See source cited *supra* note 22.

resources,⁷⁶ the extent to which children have been deprived of access to health care and education following recent major natural disasters suggests that orientation matters. Governments must recognize that every child has a right to health care and education and must prioritize responses to fulfill their obligations.

Participation. As noted in Part I, children are often the passive face of disasters and are rarely incorporated in meaningful ways into the design and implementation of reconstruction initiatives. That must change. Children's rights law mandates that states "assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child."⁷⁷ For the most part, this is not happening and is not generally contemplated in charitable, child protective rescue efforts. A rights-based framework reorients our approach to children, seeing them instead as partners and drawing upon their valuable experience and views to help foster the most effective plans for post-disaster reconstruction.⁷⁸

Child (rights) friendly environments. Finally, children's rights typically are not viewed as group rights. However, children constitute a significant percentage of the population and their needs as a group need to be recognized, especially given that their lack of voting rights and developmental limitations mean their voices often go unheard. In addition to contemplating the needs of children individually, a step which might lead to health and education programs, a child rights framework would also call upon states to consider the needs of children as a group. For example, how must the built environment be reconstructed to ensure the rights and well-being of children?⁷⁹ In other words,

⁷⁶ See *supra* notes 39–45 and accompanying text.

⁷⁷ CRC, *supra* note 21, art. 12.

⁷⁸ See P. Alderson et al., *Children as Partners with Adults in Their Medical Care*, 91 ARCHIVES DISEASE CHILDHOOD 300, 303 (2006) (finding young children often have more advanced understanding of their medical conditions); Roche, *supra* note 24, at 475 (proposing a re-definition of citizenship to include children in order to reduce the marginalization of children and suggesting such a step would benefit both adults and children); M. Aryah Somers et al., *Constructions of Childhood and Unaccompanied Children in the Immigration System in the United States*, 14 U.C. DAVIS J. JUV. L. & POL'Y 311 (2010) (arguing for the inclusion of children in the development of immigration policies); *infra* notes 106–07 and accompanying text (discussing how children are experts in their own lives). See generally HART, *supra* note 22 (describing the importance of adults partnering with children and models of child participation).

⁷⁹ See generally UNICEF, CHILD FRIENDLY SPACES/ENVIRONMENTS (CFS/E): AN INTEGRATED SERVICES RESPONSE FOR EMERGENCIES AND THEIR AFTERMATH (2004), available at http://reliefweb.int/sites/reliefweb.int/files/resources/FA1830A25B25810BC125757F0037FA8E-UNICEF_dec04.pdf (discussing strategies for

recognizing children's collective rights might press governments to consider the impact on children of policies and programs related to infrastructure, regional development, and other areas, rather than contemplating such impact only in sectors traditionally viewed as relevant to children (e.g., health, education, and social services).

All four of these areas highlight the need for a robust rights-based approach to reconstruction. In particular, the last issue—child (rights) friendly environments—emphasizes the importance of considering children's collective needs and rights. Contemplation of children's collective or group rights, in turn, suggests that children's rights need to be mainstreamed.

III. MAINSTREAMING CHILDREN'S RIGHTS

Mainstreaming offers the hope of thinking about children's rights in a fundamentally different way from how they are often considered today. It presents an opportunity to fully integrate children's rights into considerations and plans for communities and countries, rather than continuing to leave them on the sidelines. This Part explores gender mainstreaming discourse and practice and then draws upon that experience to suggest the importance of children's rights mainstreaming as a vehicle to full realization of the rights of all children. It begins by briefly examining gender mainstreaming, both its theoretical underpinnings and select initiatives. It then explores the value of applying mainstreaming principles to advance children's rights. Finally, this Part highlights several important differences that policymakers and child advocates must account for when seeking to mainstream children's rights.

A. *Mainstreaming*

The most widely accepted definition of gender mainstreaming explains mainstreaming as:

[T]he process of assessing the implications for women and men of any planned action, including legislation, policies or programmes, in all areas and at all levels. It is a strategy for making women's as well as men's concerns and experiences an integral dimension of the

building child-friendly spaces and detailing case studies from around the world where UNICEF took part in such development); SAVE THE CHILDREN, CHILD FRIENDLY SPACES IN EMERGENCIES: A HANDBOOK FOR SAVE THE CHILDREN STAFF (2008), available at http://www.ineesite.org/toolkit/INEEcms/uploads/1040/Child_Friendly_Spaces_in_Emergencies_EN.PDF (providing a handbook for humanitarian workers addressing how to establish child-friendly spaces in a post-disaster setting).

design, implementation, monitoring and evaluation of policies and programmes in all political, economic and societal spheres so that women and men benefit equally and inequality is not perpetuated. The ultimate goal is to achieve gender equality.⁸⁰

Although gender mainstreaming can be traced back at least to the First World Conference on Women, held in Mexico City in 1975,⁸¹ it gained significant prominence at the 1995 United Nations Conference on Women in Beijing.⁸² Gender mainstreaming was enshrined in the final outcome document, the Beijing Platform for Action, which called on governments to “promote an active and visible policy of mainstreaming a gender perspective in all policies and programmes so that before decisions are taken, an analysis is made of the effects on women and men, respectively.”⁸³ As a general matter, mainstreaming can help move toward human-centered policies and programs, and away from an economics-driven agenda.⁸⁴

Over time, a range of perspectives has emerged on gender mainstreaming.⁸⁵ “Definitions of gender mainstreaming range from liberal conceptions (such as targeting women for increased participation) to alternative notions of transformative change involving structural and institutional change.”⁸⁶ This Symposium Article does not seek to engage the debates on how gender mainstreaming should be understood or pursued. Rather, the Article’s goal is to learn from gender mainstreaming initiatives and explore the applicability of such an approach to children’s rights programming. As discussed below, although there are important differences between gender mainstreaming and potential initiatives aimed at children’s rights mainstreaming, the core principles of mainstreaming can help elevate the rights and needs of children in meaningful ways.

⁸⁰ Econ. & Soc. Council, *Rep. of the Econ. & Soc. Council for 1997*, at 27, U.N. Doc. A/52/3 (Sept. 18, 1997); see also REBECCA TIESSEN, EVERYWHERE/NOWHERE: GENDER MAINSTREAMING IN DEVELOPMENT AGENCIES 12 (2007) (“Gender mainstreaming is widely understood as a strategy for institutionalizing and integrating gender concerns into the mainstream.”).

⁸¹ TIESSEN, *supra* note 80, at 13.

⁸² *Id.*

⁸³ U.N. Fourth World Conference on Women, Beijing, China, Sept. 4–15, 1995, *Report of the Fourth World Conference on Women*, ¶ 189, U.N. Doc. A/CONF.177/20 (Oct. 17, 1995).

⁸⁴ TIESSEN, *supra* note 80, at 15.

⁸⁵ *Id.* at 13–14.

⁸⁶ *Id.* at 15. “For transformative feminists, gender mainstreaming is meant to address gender inequality at a structural level whereby gender biases in policies and practices are identified and addressed.” *Id.*

Gender mainstreaming efforts have had varying degrees of success.⁸⁷ As Rebecca Tiessen explains, “mainstreaming does not always (or easily) translate from principles into practice.”⁸⁸ In many countries, it has not yet advanced much beyond rhetoric within governments.⁸⁹ However, there has been a number of successful gender mainstreaming programs providing useful models for developing initiatives to advance children’s rights.

For example, resource allocation is a pivotal issue in post-disaster reconstruction plans. Gender-Responsive Budgeting (“GRB”) initiatives provide one valuable illustration of the potential benefits of mainstreaming. GRB “aims to raise awareness of the gendered impacts of budgets and to make governments accountable for ensuring their government budgets promote the achievement of gender equality and women’s rights, especially among the poor.”⁹⁰

The U.N. Development Fund for Women has collaborated with other organizations to ensure the development and implementation of GRB programs in a number of countries.⁹¹ The results show the potential impact of gender mainstreaming on fiscal policy. In Mozambique, for example, GRB programs helped create specific budget allocations for gender equality initiatives in pilot sectors of government (Health and Interior), enhanced input of women’s organizations in policy decisions, and successfully incorporated gender

⁸⁷ See REKHA MEHRA & GEETA RAO GUPTA, INT’L CTR. FOR RESEARCH ON WOMEN, GENDER MAINSTREAMING: MAKING IT HAPPEN 2–13 (2006), available at <http://siteresources.worldbank.org/INTGENDER/Resources/MehraGuptaGenderMainstreamingMakingItHappen.pdf> (summarizing the major successes and challenges in the gender mainstreaming movement).

⁸⁸ TIESSEN, *supra* note 80, at 18.

⁸⁹ See MEHRA & GUPTA, *supra* note 87, at 6 (arguing that gender mainstreaming has not been implemented fully or systematically in many countries and international organizations); MANDY MACDONALD, GENDER EQUALITY AND MAINSTREAMING IN THE POLICY AND PRACTICE OF THE UK DEPARTMENT FOR INTERNATIONAL DEVELOPMENT: A BRIEFING FROM THE UK GENDER & DEVELOPMENT NETWORK 17–18, 20 (2003), available at http://www.siyanda.org/docs/gadn_dfidgenderpolicy.pdf (recognizing the disconnect between gender mainstreaming articulations and implementation or institutionalization in the United Kingdom); Caroline Moser & Annalise Moser, *Gender Mainstreaming Since Beijing: A Review of Successes and Limitations in International Institutions*, 13 GENDER & DEV. 11, 15–20 (2005) (recognizing that many international institutions have adopted policies of gender mainstreaming but struggle with the implementation).

⁹⁰ U.N. DEV. FUND FOR WOMEN, EVALUATION REPORT: UNIFEM’S WORK ON GENDER-RESPONSIVE BUDGETING: OVERVIEW 28 (2009), available at http://www.unifem.org/attachments/products/UNIFEM_Work_grb_overview.pdf.

⁹¹ *Id.* at 23–26. In July 2010, the U.N. General Assembly created a new agency, U.N. Women, formally known as the U.N. Entity for Gender Equality and the Empowerment of Women, which is comprised of four existing U.N. bodies, including the United Nations Development Fund for Women (UNIFEM). See *UN Celebrates Birth of Powerful New Agency for Women and Girls*, UN NEWS CENT. (Feb. 24, 2011), <http://www.un.org/apps/news/story.asp?NewsID=37612>.

considerations into the government's new poverty reduction strategy.⁹² Meanwhile, in Ecuador, similar initiatives helped to train staff in several government sectors to develop budgets responsive to gender issues.⁹³ In Ecuador, the Ministry of Finance has institutionalized a Gender Unit, and GRB tools have been incorporated into other governmental budgetary processes.⁹⁴ Similar efforts have been undertaken in other Latin American countries, India, Egypt, and elsewhere.⁹⁵ Although further work is needed in all of these countries to realize the full benefits of gender mainstreaming, particularly in the areas of monitoring and evaluation,⁹⁶ GRB programs have led to important advances.

Budget issues are just one component of gender mainstreaming. Other initiatives show the promise of gender mainstreaming in addressing issues such as the built environment. The City of Vienna has become an exemplar of gender mainstreaming efforts, developing at least fifty pilot projects covering a range of issues, including: "traffic measures, gender sensitive park-design, social housing, urban development [and] public purpose buildings."⁹⁷ Vienna's experience has demonstrated that gender mainstreaming principles can draw attention to and contribute positively to many issues, including seemingly minor issues that actually have significant day-to-day implications for women and girls. For example, women's input on safety concerns now informs Vienna's decisions regarding public lighting, and a gender-sensitive approach guides its provision of child care services and design of public parks.⁹⁸ Vienna now has a department devoted to assessing gender-related aspects of city services.⁹⁹

⁹² U.N. DEV. FUND FOR WOMEN, EVALUATION REPORT: UNIFEM'S WORK ON GENDER-RESPONSIVE BUDGETING, GENDER-RESPONSIVE BUDGETING PROGRAMME: MOZAMBIQUE 8-9, 25-27 (2009), available at http://www.unifem.org/attachments/products/Evaluation_GRB_Programme_Mozambique_en.pdf.

⁹³ U.N. DEV. FUND FOR WOMEN, EVALUATION REPORT: UNIFEM'S WORK ON GENDER-RESPONSIVE BUDGETING, GENDER-RESPONSIVE BUDGETING PROGRAMME: ECUADOR 8-9 (2009) [hereinafter UNIFEM, ECUADOR] http://www.unifem.org/attachments/products/Evaluation_GRB_Programme_Ecuador_en.pdf.

⁹⁴ *Id.*

⁹⁵ *Id.* at 23-26.

⁹⁶ *Id.* at 8-10 (discussing GRB initiatives in Ecuador).

⁹⁷ *Fair Shared City: Gender Mainstreaming Planning Strategy in Vienna*, UN HABITAT, <http://www.unhabitat.org/bestpractices/2008/mainview.asp?BPID=1806> (last visited Sept. 20, 2011) [hereinafter UN-HABITAT]; see also *Gender Mainstreaming in Vienna*, VIENNA CITY ADMIN., <http://www.wien.gv.at/english/administration/gendermainstreaming/index> (last visited Oct. 29, 2011).

⁹⁸ *Examples of Gender Mainstreaming in Vienna*, VIENNA CITY ADMIN., <http://www.wien.gv.at/english/administration/gendermainstreaming/example.html> (last visited Oct. 29, 2011).

⁹⁹ UN-HABITAT, *supra* note 97.

As the above examples indicate, mainstreaming can be a valuable tool. This Article suggests that its value can be extended to help ensure the rights and well-being of children.

B. Applied to Children's Rights

As noted above, gender mainstreaming entails accounting for gender equality issues at the design, implementation, and monitoring and evaluation stages of all policies and programs across all political, economic, and social spheres of society.¹⁰⁰ Taking a similar approach and accounting for children's rights at every stage in the design, implementation, and ongoing monitoring and evaluation of law, policy, and programs in all sectors of society would help demarginalize children and advance their rights.

Typically, in post-disaster settings, there is little or no input from children in the design phase of reconstruction.¹⁰¹ Indeed, in many ministries, it is unclear that there is even a child "representative" at the table. Children's rights are considered by children's organizations, while other ministries and agencies leave children issues to those children's agencies and organizations. As gender-mainstreaming discourse identifies, that approach is flawed and destined to fail to adequately serve children or the population as a whole. Every agency or organization must incorporate consideration of children's rights into their regular procedures for planning and programming.

Similarly, there is little evidence of children's participation and voice in the implementation of reconstruction plans.¹⁰² In post-disaster reconstruction plans, some sectors make little or no mention of children, even though programs and policies in that sector affect children's well-being.¹⁰³

¹⁰⁰ See *Econ. & Soc. Council for 2007*, *supra* note 80 and accompanying text.

¹⁰¹ See PLAN INT'L, *supra* note 7, at 9–14 (discussing why governments and international relief organizations have failed to consult with children during all phases of post-disaster recovery). However, Plan International does highlight instances where it consulted with children in the design phase of reconstruction. See *id.* at 27–28 ("In India, Indonesia and Sri Lanka, for example, Plan consulted children in designing new houses and settlement schemes for displaced families."). It also recognized Indonesia's government for limited inclusion of children in its development of child centers during its reconstruction phase following the Indian Ocean tsunami. *Id.* at 12.

¹⁰² See PLAN INT'L, *supra* note 7, at 16 (noting that each of the four governments in the study—India, Indonesia, Sri Lanka, and Thailand—"has different institutional arrangements for disaster preparedness and response, but in emergency situations, child participation is not explicitly addressed"). But see Walden & Hawrylyshyn, *supra* note 4 (discussing Plan International's use of youth focus groups to engage children in the post-earthquake Haitian recovery).

¹⁰³ See *supra* note 9 and accompanying text.

Incorporating children and their interests is not easy,¹⁰⁴ but as noted earlier, children have important insights on their own lives and with guidance can contribute meaningfully to reconstruction efforts. Yet there is little evidence of any systematic effort to include children in the implementation of post-disaster reconstruction planning and programming.¹⁰⁵

Finally, at the monitoring and evaluation stages, governments and civil society frequently overlook children and the value they offer. Children are experts on their own lives,¹⁰⁶ yet we still regularly fail to seek their input. As a UNICEF Innocenti Report on child trafficking explains, children “are ‘experts’ on the factors that make children vulnerable . . . and their special needs regarding prevention, assistance and protection. Children and young people have an important role to play in helping to identify areas for intervention, design relevant solutions and act as strategic informants of research.”¹⁰⁷ In one study on child trafficking, most of the trafficked children interviewed reported that they had received little information about trafficking and ways to avoid being trafficked before they were trafficked.¹⁰⁸ This study demonstrates the value that children can add in assessing whether appropriate protections and programs are in place to ensure their rights and well-being.

That same study found that many children could identify a “changing point”—an event or crisis that left them more vulnerable to exploitation.¹⁰⁹ “The types of changes that appear to have had the greatest impact include a change of residence or of family composition, or in the child’s own interaction and relationship with friends and peers.”¹¹⁰ This insight provides an important reminder why it is essential to ensure children have a voice: peer relationships have a significant impact on children, and much of what happens to children in peer relationships occurs when they are away from adults.¹¹¹ Frequently, children can more readily identify when their peers are vulnerable. Giving

¹⁰⁴ On the challenges of involving youth in reconstruction planning, see HART, *supra* note 24, at 9–14, 31–33, and PLAN INT’L, *supra* note 7, at 9–14. See also Jonathan Todres, *Taking Prevention Seriously: Developing a Comprehensive Response to Child Trafficking and Sexual Exploitation*, 43 VAND. J. TRANSNAT’L L. 1, 24–28 (2010) (discussing the value and challenges of involving youth in anti-trafficking efforts).

¹⁰⁵ See *supra* note 101.

¹⁰⁶ Dottridge, *supra* note 26, at vi.

¹⁰⁷ *Id.*

¹⁰⁸ *Id.* at 13 (“All children indicated that schools did little to provide relevant information to protect them from trafficking.”).

¹⁰⁹ *Id.* at 16–17.

¹¹⁰ *Id.* at 16.

¹¹¹ *Id.* at 16–17.

children a voice in the design, implementation, and monitoring and evaluation of policies and programs will enhance the capacity of governments and civil society to identify and develop more effective means of ensuring children's rights and well-being.

Mainstreaming children's rights and voices at every stage in the development, implementation, and monitoring and evaluation of law, policy, and programs for reconstruction following a natural disaster is essential. It is particularly important that such an approach extend to all political, economic, and social spheres, and not be limited to education and other areas traditionally thought of as constituting the entire domain of children's issues. In Haiti, key reconstruction plans failed to account for children and their rights across various sectors of society that significantly affect children.¹¹² For example, the Haiti Earthquake Post-Disaster Needs Assessment ("PDNA") developed by the Haitian government with technical support from the United Nations, World Bank, and other international institutions, neglected children and their rights in reconstruction plans focused on regional development and the environment,¹¹³ even though action in these areas can have an enormous impact on children's lives.

¹¹² For example, the Haitian government released a post-disaster needs assessment in March 2010. HAITI EARTHQUAKE PDNA, *supra* note 9, at 5. The PDNA suggests major areas of action in seven sectors, and then across sectors. *Id.* at 9. For three of the seven sectors, the PDNA suggests no action item specifically geared to children. *Id.* at 9–17. Possibly most surprising is that there is no specific action item in risk and disaster management focusing on children's rights. *Id.* at 12. *But see id.* at 12 (making passing reference to girls: recommending the country "strengthen the country-wide network of [Risk & Disaster Management] committees . . . including among other things the special protection measures for women and girls in a post-disaster situation developed in 2008 by the [Ministry for the Female Condition and Women's Rights]").

In the governance sector, the PDNA makes twenty separate recommendations for action, but only directly addresses children's rights twice: once, when recommending an overhaul of several aspects of law, one of which is legislation for child protection, and again by recommending "support [for] . . . young people's associations." *Id.* at 10. There is no other mention of bringing children's voices into the polity. *Id.* at 9–11. The social sector provides an entire section devoted to education, but many of the other subsections of the social sector make only passing mention of children's rights or no mention at all. *See id.* at 13, 14.

Finally, of the twenty-one action items in the infrastructure sector, only one mentions children, and only in passing. *Id.* at 15–16. The PDNA provides a cross-sector set of recommendations, only one of which is specifically geared to children. *Id.* at 17.

In its section on cross-cutting themes, the PDNA does acknowledge that the "reconstruction strategy aims to . . . [d]evelop and implement sector reform including a global policy for youth, to promote their wellbeing, with particular reference to international instruments relating to children's rights." *Id.* at 38. Despite this well-intentioned, aspirational statement, as noted above, the PDNA fails to operationalize this idea by including children and their rights in the various sector plans. In a country in which children make up forty-four percent of the population, their rights, needs, and voices must be a more central part of the reconstruction.

¹¹³ *Id.* at 11–12.

In contrast, a children's rights mainstreaming approach can help ensure that children are accounted for in issues ranging from the traditional sectors, such as health and education, to other less obvious sectors that affect children's lives, such as infrastructure, transportation, and regional development. Just as policymakers in Vienna have developed a process for accounting for gender issues across a range of city sectors, so too must policymakers at the national, regional, and local levels of government account for children's rights in every sector. UNICEF's Child Friendly Cities initiative offers one possible starting point. It establishes nine essential building blocks for a child-friendly city:

- Child participation: promoting children's active involvement in issues that affect them; listening to their views and taking them into consideration in decision-making processes
- A child-friendly legal framework: ensuring legislation, regulatory frameworks, and procedures that consistently promote and protect the rights of all children
- A city-wide children's rights strategy: developing a detailed, comprehensive strategy or agenda for building a Child Friendly City, based on the [CRC]
- A children's rights unit or coordinating mechanism: developing permanent structures in local government to ensure priority consideration of children's perspective
- Child impact assessment and evaluation: ensuring that there is a systematic process to assess the impact of law, policy, and practice on children—in advance of, during, and after implementation
- A children's budget: ensuring adequate resource commitment and budget analysis for children
- A regular state of the city's children report: ensuring sufficient monitoring and data collection on the state of children and their rights
- Making children's rights known: ensuring awareness of children's rights among adults and children
- Independent advocacy for children: supporting nongovernmental organizations and developing independent human rights institutions—children's ombudspersons or commissioners for children—to promote children's rights.¹¹⁴

¹¹⁴ UNICEF INNOCENTI CTR., BUILDING CHILD FRIENDLY CITIES: A FRAMEWORK FOR ACTION 8–17 (2004), available at <http://www.childfriendlycities.org/documents/view/id/66/lang/en>.

Each of these steps would facilitate the mainstreaming of children's rights. Children's rights mainstreaming offers benefits at all times¹¹⁵ but will be particularly important in post-disaster settings, when vulnerability is heightened and children's needs are especially time-sensitive. Promoting a children's rights mainstreaming approach can strengthen preparedness for natural disasters as well as facilitate more effective and inclusive post-disaster emergency responses and reconstruction plans.

C. Special Considerations

Although the principles of mainstreaming offer important potential benefits to children and their families, certain key issues merit attention in the development and implementation of children's rights mainstreaming initiatives. Specifically, work is needed to define clearly the aims of children's rights mainstreaming initiatives and the processes for achieving those aims, as child rights mainstreaming differs in important ways from gender mainstreaming.

First, gender mainstreaming addresses a different population resulting in fundamentally different aims. Gender mainstreaming seeks to achieve gender equality. That is, the goal is equal treatment, opportunities, and respect for two adult populations—women and men.¹¹⁶ Children's rights mainstreaming would seek to advance the rights and well-being of children. Unlike gender mainstreaming, the ultimate goal of children's rights mainstreaming would not be full equality between children and adults, or that children's rights should be coextensive with adults' rights. The developmental nature of childhood makes efforts to advance children's rights fundamentally different from advancing the rights of adults.¹¹⁷ Thus, successful application of gender mainstreaming concepts to the children's rights arena would require appropriate modifications. However, accounting for children's rights is essential and there is little evidence that governments are on the verge of focusing too much on children's rights or doing too much to ensure the rights of children. To the contrary, children remain at the margins. Appropriately modified to account

¹¹⁵ See, e.g., Rebecca O'Donnell, Asylum & Migration Policy Advocacy Officer, Save the Children Brussels, Mainstreaming Children's Rights in the Field of Asylum and Migration, Presentation at Mainstreaming Children's Rights in EU Policy, European Parliament, Brussels (Oct. 9, 2007), available at http://www.crin.org/docs/Mainstreaming_Asylum_Paper_ROdonnell.pdf (proposing a mainstreaming of children's rights in the asylum law context).

¹¹⁶ See sources cited *supra* note 80.

¹¹⁷ WOODHOUSE, *supra* note 4, at 34–43.

for the evolving nature of children, mainstreaming principles can help address that problem.

Second, the process by which gender mainstreaming and children's rights mainstreaming would be undertaken necessarily mandates a distinct approach. Among its various components, gender mainstreaming seeks to engage women representatives because "[m]ale representatives normally do not automatically represent women's interests."¹¹⁸ Children's rights mainstreaming raises complex challenges in this context. Youth need more of a voice in decisions affecting their lives; human rights law mandates it (consistent with the age and maturity of the child),¹¹⁹ and it has been shown to offer important benefits.¹²⁰ As a practical matter, the process of mainstreaming children's rights will require not only youth input, but adults who represent children's interests. It means achieving a balance between ensuring youth input and advancing policies deemed by adults to be in the best interests of children. This challenge is not new and has been confronted in numerous areas of the law when children are involved.¹²¹ Similarly, it must be addressed here.

Finally, just as gender mainstreaming initiatives make clear that "in empowering women and making them visible, gender mainstreaming is not aimed at excluding men, and certainly not at disempowering them[,],"¹²² children's rights mainstreaming is not intended to diminish the importance of pursuing women's rights or the rights of other groups. Indeed, rights are interrelated and interdependent, and thus advancing children's rights requires respect for women's rights and the rights of other members of the family.¹²³ In

¹¹⁸ WOMEN FEEDING CITIES: MAINSTREAMING GENDER IN URBAN AGRICULTURE AND FOOD SECURITY 26 (Alice Hovorka et al. eds., 2009).

¹¹⁹ See *supra* note 77 and accompanying text.

¹²⁰ See sources cited *supra* notes 78, 106–07, and accompanying text.

¹²¹ See, e.g., MÁLFRID GRUDE FLEKKØY & NATALIE HEVENER KAUFMAN, *THE PARTICIPATION RIGHTS OF THE CHILD: RIGHTS AND RESPONSIBILITIES IN FAMILY AND SOCIETY* 46 (1997) (acknowledging that differences can arise between what a child sees as his best interests and how an adult perceives the child's best interests). Legal scholars have grappled with the issue of balancing the desire to pursue a "best interests of the child" strategy with respect for the views of the child. See, e.g., Emily Buss, *Confronting Developmental Barriers to the Empowerment of Child Clients*, 84 CORNELL L. REV. 895 (1999); Martin Guggenheim, *The Right To Be Represented but Not Heard: Reflections on Legal Representation for Children*, 59 N.Y.U. L. REV. 76 (1984).

¹²² See WOMEN FEEDING CITIES, *supra* note 118.

¹²³ See generally Gillian MacNaughton & Diane Frey, *Decent Work for All: A Holistic Human Rights Approach*, 26 AM. U. INT'L L. REV. 441, 457 (2011) ("Human rights are interdependent in two senses, reflecting (1) the relationships between rights, and (2) the relationships between persons."); Jonathan Todres, *Women's Rights and Children's Rights: A Partnership with Benefits for Both*, 10 CARDOZO WOMEN'S L.J. 603 (2004) (discussing the interrelated and interdependent nature of women's rights and children's rights).

other words, it is important to ensure a holistic approach to rights, not a zero-sum game mentality.

Advancing children's rights mainstreaming will be challenging. However, gender mainstreaming shows us just how important it is that we undertake mainstreaming efforts. Gender inequality causes inefficiencies and other harms, including "lower output, lower development of people's capacities, lower leisure and lower well-being."¹²⁴ Similarly, failure to ensure the safety, well-being, health, and educational development of children will hurt significantly the long-term prospects of children, their families, their communities, and their countries.

CONCLUSION

Children are at heightened risk of harm in post-disaster settings. Despite that, it would be misguided to continue to understand children's vulnerability as a lack of agency and perceive children as merely charitable exercises. Children are rights holders. Governments and civil society must greatly strengthen efforts to ensure children's rights. In seeking to advance the rights and well-being of children, policymakers and child advocates would do well to draw upon and pursue mainstreaming initiatives. By mainstreaming children's rights, the international community can help advance children's rights in post-disaster settings, one of the most challenging environments and biggest threats to child well-being.

¹²⁴ Diane Elson, *Integrating Gender Issues into National Budgetary Policies and Procedures Within the Context of Economic Reform: Some Policy Options*, in GENDER MAINSTREAMING: COMMONWEALTH STRATEGIES ON POLITICS, MACROECONOMICS AND HUMAN RIGHTS 28 (Commonwealth Secretariat ed., London 1998).