



Impact of the regulatory barriers to providing emergency and transitional shelter after disasters

Country case study: Haiti

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About this report

This report examines the effectiveness of national legal and regulatory frameworks with regard to emergency and transitional shelter following natural disasters in Haiti. It provides an overview of the relevant laws, policies and procedures that have a bearing on different aspects of emergency and transitional shelter response. It identifies potential regulatory barriers to emergency and transitional response efforts, as well as a range of positive developments and initiatives that can enhance the effectiveness of shelter activities. Finally, a number of short and long-term recommendations for strengthening the effectiveness of shelter response in Haiti are proposed.

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The Disaster Law Programme seeks to reduce human vulnerability by promoting legal preparedness for disasters. The Disaster Law Programme works in three key areas: (1) collaborating with National Red Cross and Red Crescent Societies and other partners to offer technical assistance to governments on disaster law issues; (2) building the capacity of National Societies and other stakeholders in disaster law; and (3) dissemination, advocacy and research.

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Cover photo:Terrain Golf – the Petionville sports club that turned into a refugee camp almost overnight after the 12 January earthquake.

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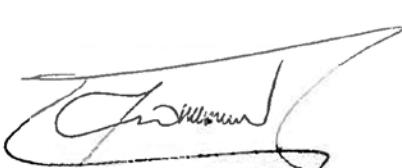
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Preface

In the aftermath of the mega-disaster caused by the earthquake of 12th January 2010, all governmental agencies and humanitarian and developmental organisations able to run emergency shelter and housing programmes for the 1,5 million homeless persons, both in the metropolitan zone of Port-au-Prince and in other affected areas of Haiti, were confronted with **numerous and complex issues regarding land property and land tenure** conflicts inside the affected communities and between them and the owners and tenants of the plots of land on which emergency camps, transitional shelters and permanent houses were to be erected. On top of these multiple problems, the country's relatively extensive legal framework, composed of numerous constitutional, legislative and regulatory provisions, both at national, regional and local levels, on many matters related to the programmes, was seriously affected by **lack of implementation and enforcement**, due to political instability, weak governance and management in both public and private sectors, and insufficient transparency in some cases. These negative factors were aggravated by the prevalence of **complicated and expensive legal procedures** for the application of the formal, written, system of law, and the preference by most of the population, particularly in rural areas, for informal, ancestral, non-written, customary, solutions, largely based on the traditional voodoo culture and religion.

The interest in clarifying those numerous and complex challenges and in identifying or devising appropriate solutions (including the systematisation of those created ad-hoc by the Red-Cross and Red-Crescent institutions and other shelter agencies in consultation with the local authorities) was inscribed in the **plan of action adopted by the IFRC-wide humanitarian diplomacy working group in mid-2011 in Montreal** by the Haitian Red Cross, participating national societies represented in Haiti and the IFRC Secretariat. In August 2013 **consultant Ewan Powrie** was appointed to conduct a study on those key subjects. The consultant carried out, in two periods, a three-month field research, combined with a four-month desk research, and worked in close consultation with Rocío Escauriaza, disaster-law delegate, and Luis Luna, disaster-law consultant for the Hispaniola Island. An extended version of the report, produced by the consultant in December 2014, has been refined by him through an intense dialogue with David Fisher, coordinator of the global DL programme, as well as with experts of the Haitian Civil protection directorate and of other national, international and foreign organisations.

The International Federation of Red Cross and Red Crescent Societies (IFRC) and the Haitian Red Cross are very pleased to present this report to all the national, international and foreign actors in the emergency sheltering and housing activities, and in particular to the Prime Ministry's Housing and Public Buildings Construction Unit ("Unité de construction de logements et de bâtiments publics -UCLBP- de la Primature de la République d'Haïti) as the operating and coordination centre of all sheltering and housing activities in the country in response to the 2010's mega-disaster.



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Executive summary

About this study

This report examines the effectiveness of national legal and regulatory frameworks with regard to emergency and transitional shelter following natural disasters in Haiti, according to key thematic areas closely linked to those identified in the IFRC's Background Report prepared for the 31st International Conference of the Red Cross and Red Crescent.¹ It provides an overview of the relevant laws, policies and procedures that have a bearing on different aspects of emergency and transitional shelter response. Where relevant, it also examines the application of those regulations in practice during previous disaster response operations, notably following the earthquake of 12 January 2010. The findings identify potential regulatory barriers to emergency and transitional response efforts, as well as a range of positive developments and initiatives that can enhance the effectiveness of shelter activities. Each section of this report also summarises the impact of the relevant 'common regulatory barriers' to the provision of emergency and transitional shelter as identified at the 31st International Conference of the Red Cross and Red Crescent in 2011². Finally, a number of short and long-term recommendations for strengthening the effectiveness of shelter response in Haiti are proposed.

Context

The Republic of Haiti is one of the oldest republics in the Western Hemisphere, having gained independence from France in 1804, and achieving full political unity over the formerly separate northern kingdom and southern republic in 1821 under President Jean Pierre Boyer. It has a population of almost 10 million, with the number of citizens being split almost equally between urban and rural areas.³ In terms of socio-economic statistics, an estimated 7.5 million Haitians live in poverty, and the unemployment rate has recently reached 60 per cent⁴.

Haiti occupies the mountainous western-most part of the island of Hispaniola, bordering the Dominican Republic to the east, and possessing a total of 1,771km of coastline. Due to its geographical position, Haiti is one of several states in the Greater Caribbean Region exposed to extreme weather conditions that place the country at risk of disaster. Haiti lies in the middle of the 'hurricane belt' of the region and generally suffers from storms between July and October of each year, and its placement over several major tectonic faults means that it stands at risk from seismic activity, namely earthquakes.

¹ IFRC, 31st International Conference of the Red Cross and Red Crescent, *Addressing regulatory barriers to providing emergency and transitional shelter in a rapid and equitable manner after natural disasters – Background report*, October 2011

² Ibid

³ International Fund for Agricultural Development, Rural Poverty Portal,
<http://www.ruralpovertyportal.org/country/geography/tags/haiti>

⁴ United Nations General Assembly, Human Rights Council, Twenty-fifth session, Agenda Item 10, *Report of the independent expert on the situation of human rights in Haiti (Gustavo Gallón)*, 7 February 2014

No assessment of Haiti is complete without considering the devastating effects of the earthquake of 12 January 2010, and understandably this report draws extensively on the experiences of actors in the months and years following the earthquake. The magnitude 7.0 earthquake that struck Haiti on that day resulted in the loss of some 230,000 lives and the displacement of over two million people. The earthquake compounded the already severe political, social and economic problems that the country was facing. Just prior to the earthquake of 2010, Haiti ranked 145th in the UN's Human Development Index;⁵ in 2013 it ranked 168th.⁶ The earthquake cost the equivalent of 120 per cent of Haiti's GDP and set back decades of development of investments.⁷ Government capacity was dealt a huge blow as between 17 to 20 per cent of central State employees were killed or injured, and 27 out of 28 public buildings were destroyed, with further damage or destruction affecting almost all major infrastructure in Haiti. The international response was huge, with hundreds of organisations arriving in Haiti and dozens of foreign countries providing aid. This wealth of actors presented its own problems of coordination, straining already limited resources, with organisations often acting without coordinating with or receiving direction from central, regional or local authorities, due variously to inexperience or lack of government capacity.

Overall, Haiti possesses a relatively extensive legal framework; through its constitution, codes and laws, basic rights are established and rules and procedures elaborated. However the real problem lies in implementation and enforcement: a long history of weak governance, corruption and regime change has weakened institutions and government capacity, and therefore the effects of natural disasters such as the 2010 earthquake are felt all the more keenly, and regulatory barriers to shelter are intensified. Furthermore, weak institutions and governance combined with the prevalence of complicated and expensive legal procedures meant that most of the population's rights (at least insofar as land is concerned) exist on an informal, customary level.

A summary of the main findings of this report is set out below, highlighting the main regulatory barriers to shelter as well as notable good practices and solutions. A detailed list of recommendations for the government of Haiti to address current regulatory barriers to shelter is set out in section 5 of this report, and divided between short-term recommendations that do not necessarily require legislation (and therefore may be less challenging to implement), and long-term recommendations that consider wider issues of legal reform. A summary of the key recommendations from both sections is set out below.

Main regulatory barriers for shelter assistance in Haiti

- Above all else, **issues surrounding housing, land and property rights** have been the greatest regulatory barriers to shelter faced in Haiti. Land has historically been a hugely contentious issue in Haiti and weak regulation combined with a lack of capacity and enforcement mean that issues of property rights and tenure (and more to the point, the institutional responsibilities and procedures for such) presents a confusing picture for shelter agencies, as well as Haitians themselves. The fact that the **majority of rights exist in the informal/customary sphere** made determining ownership of both private and public land difficult, and laid the way for disputes over ownership of land assigned for shelter provision. More often than not local

¹ UNDP, *Human Development Report*, 2010

² UNDP, *Human Development Report*, 2014

³ *Ibid.*



authorities could not be sure of the ownership of land they were assigning for shelter provision, and there were **no effective procedures to deal with the temporary requisition of land** in place.

- A **lack of effective dispute resolution mechanisms** meant that many potential shelter sites had to be abandoned to avoid the cost and delay of challenging claims to the land, and the **lack of a transparent and effective system of title registration** combined with weak implementation of laws on eviction helped contribute to **forced evictions** from emergency and transitional shelter sites.
- In Haiti, the **failure to establish coordination mechanisms as proposed under the National Risk and Disaster Management Plan and the National Emergency Response Plan** represent a gap in implementation that was, to some extent, covered over with the establishment of the IHRC, and international organisations quickly developed their own solution in the cluster system. However the cluster system was not perfect and **shelter agencies partially failed to engage** with Haitian authorities on longer-term solutions.
- After an initial period of expedited customs clearance, **importation of materials for shelter construction were delayed** by both the government's own procedures as well as a lack of awareness of rules on the part of shelter organisations themselves. **Corruption** also delayed the importation of materials.

Good practices and solutions

A number of good practices, solutions and other positive developments have been identified in this report, which have helped, or may help in the future, to remove regulatory barriers and improve the provision of emergency and transitional shelter after a disaster:

Government-level:

- The National Office of Cadastre (ONACA) is engaged in preparing a draft law clarifying procedures and institutional responsibility around land registration and titling, and improving links with the General Directorate of Taxes (DGI).
- The Inter-Ministerial Committee for Territorial Planning (CIAT) is developing a long-term strategy for land tenure and planning reform in Haiti, including the establishment of a national cadastre, submitting to the legislature laws to modernise land transactions procedures, and commencing the digitisation of the DGI's land registry. CIAT is also working to improve the coordination of land tenure reform across government ministries, as well as coordination between the government and private legal professionals.
- The development of contingency plans at national, departmental, municipal and communal levels represents an opportunity for future integration of shelter issues. Contingency plans at communal levels have been used to address issues of shelter assistance, namely providing for the selection of shelter sites with the local community.
- The use of short guides to construction and repairs to small buildings issued relatively soon after the earthquake of 2010, which set out requirements and standards

in a legible and accessible manner in an attempt to ensure minimum standards were understood and implemented by local builders.

- Haiti's National Building Code, issued in 2012, sets out a detailed series of standards for construction in Haiti that among other things implement minimum requirements for seismic, wind and flood-resistance. Whilst not dealing specifically with standards of shelter construction, the Code could be used as an effective tool for the development of such standards.
- Recent anti-corruption legislation passed in 2014, combined with a clear institutional framework and mandate, could significantly contribute to reducing the impact of corruption provided implementation and enforcement is not neglected.
- The Disabled Persons Integration law of 2012 is an extremely positive step towards reducing exclusionary practice not only in emergency and post-emergency settings, but across Haitian society, and it is hoped that more detailed standards on accessibility and appropriate construction norms will be developed in the near future.

Shelter agencies and other humanitarian actors:

- Shelter agencies developed **simple, standard-form documentation to support construction of shelters** in places where people had previously lived but had no ownership documents. These methods often involved community-based verification of claims, as well as coordination with (and approval from) local authorities.
- Participatory **community-based enumeration techniques** were employed to close gaps evident in Haiti's cadastre and land use planning frameworks.
- The international community's cluster system was able to close gaps in government capacity at the time and provide a **coordination mechanism** for actors in the shelter sector.
- Diligent screening of beneficiaries and engaging of the dispute resolution capabilities of local communities helped **overcome some issues of corruption** in the shelter sector.
- Following the 2010 earthquake some organisations focused specifically on providing shelter for vulnerable groups including the disabled, thereby overcoming the State's understandable inability to prioritise these groups.

Summary of the main recommendations of the study

The recommendations of this report are split into two sections and are set out in detail in the 'Conclusions and Observations' section; this part of the executive summary aims to provide an overview of the key recommendations. Firstly, the **short-term recommendations** are designed specifically to deal (at least on a temporary basis until longer-term reforms are implemented) with existing regulatory barriers to shelter in post-disaster situations. Generally speaking these options could be implemented without the need to develop and pass new or amended legislation or to significantly reorganize institutional frameworks and responsibilities. Secondly, **long-term recommendations**, several of which align with existing government plans for legal and institutional reform (such as those for housing, land tenure and land use planning), and which focus on the possible broad legal and institutional reforms that may be considered necessary



to permanently remove the major regulatory barriers to emergency and transitional shelter in Haiti. A distinction has been made between long-term recommendations that are directly related to the provision of post-disaster shelter ('Direct', for example the adoption of shelter construction standards), versus those that are incidentally related ('Indirect', for example reform of the cadastre system).

Short-term recommendations:

Many of the short-term recommendations set out below would benefit from being integrated into a single, national-level document. At present the most relevant government plan for the purposes of post-disaster shelter is the National Intervention Plan of 2001, which already sets out the basic institutional responsibilities for shelter provision. Therefore a key general recommendation of this report is for the government to **integrate the following short-term recommendations into a revised draft of the National Intervention Plan**; where appropriate, the implementation of short-term recommendations could be achieved through their inclusion in an emergency law (which could potentially link their validity to a defined period of time). Alternatively the government may consider developing a separate national contingency plan for the provision of emergency and transitional shelter in the event of major disasters. Within this document, the following inclusions should be considered:

- The ability to temporarily recognise the validity of rapid community-based mapping and enumeration in a post-disaster setting, to enable faster decision-making in areas where there are gaps in government information.
- Include guidelines that: prohibit grossly disproportionate levels of funding and resources (whether government or external) from being applied to the different categories of tenure status; establish that principles of equality and non-discrimination must be equitably applied in terms of shelter provision; and the most vulnerable groups should be prioritised in shelter provision.
- Setting out guidelines for a rapid dispute resolution system that would be implemented in the event of a disaster.
- Delegating authority for the management of shelter-related land disputes to temporary tribunals, with their members deputised as appropriate by municipal and local authorities.
- Permitting temporary usage rights over (un-occupied) private or state land for emergency shelter. This could be implemented through an emergency law, which would provide time-limited powers to temporarily expropriate land for shelter provision.
- Integrating the analysis and assignment of safe temporary shelter sites into risk management plans and contingency plans at all levels of government and for individual communities.
- A section dealing with shelter construction standards in post-disaster settings. This should seek to adapt any relevant standards from the current National Building Code to a shelter context, and where gaps remain to recommend the use of appropriate international standards (for example, relating to accessible shelter design).

Long-term recommendations:

The following recommendations should be considered as part of further long-term development and planning for emergency and transitional shelter.

- Adopt legislation or guidelines that establish a modern, computerised and centralised national land registration and cadastre system for both private and state land, and prioritise the legislative approval of the draft law of ONACA and the institutional strengthening of ONACA and the DGI.
- Adopt laws and/or guidelines to clarify national property rights, in order to begin the integration of informal property rights into the legal framework, and the expansion of legally accepted forms of property rights to include formal recognition of renters and squatters.
- Prioritise capacity-building for judicial, legal and law enforcement officials, as well as awareness-raising work with local communities, for the management of disputes over land.
- Adopt legislation, or amend suitable existing legislation, in order to set out a clear prohibition on forced evictions, and to clarify and expand on the procedures for the existing evictions available under law, paying particular attention to the need to protect the rights of the evictee, which should conform with international standards including the UN Basic Principles and Guidelines on Development-Based Evictions and Displacement.
- Amend existing legislation, or adopt new legislation or policy, regarding expropriation, to clarify the steps involved and to provide a ‘fast-track’ expropriation procedure in times of emergency, with the aim of making land available for shelter quickly and effectively.
- Prioritise issues of shelter in any future updates to the National Housing Policy and ensure that any statutory plans developed by national, departmental, municipal or local authorities consider, to the extent practical, the assignment of appropriate land for use as emergency shelter.
- Review and harmonise existing legislation, regulations, rules and norms on land use planning.
- Review and rationalise the existing environmental legislation in Haiti: this could involve repealing older laws that are no longer applicable and/or amending older laws, potentially through a framework law or regulations linked to the Environmental Management Decree of 2006.
- Given the high risk of future natural disasters, the formal adoption of guidelines that set out applicable international standards for shelter construction should be prioritised, potentially as part of a revision to the National Building Code.
- Adopt emergency customs procedures to facilitate, among other things, the entry of shelter materials (in the event that materials of reasonable price and quality cannot be quickly procured in the local market), with specific consideration of tax exemptions and expedited entry procedures subject to reasonable conditions.
- The existing anti-corruption law should be expanded to prevent corruption in post-disaster settings.



- Adopt legislation or guidelines that seek to confirm and protect the rights of vulnerable groups (including the disabled, women, children and the elderly) to adequate access to shelter and to equal treatment during times of emergency.

Next steps

It is hoped that the government of Haiti will find the recommendations useful to promote the timely and equitable provision of shelter after disasters. The IFRC and Haitian Red Cross Society remain ready to continue the dialogue with the authorities toward this aim.

The report and the findings highlighted throughout may also serve as a useful reference for other humanitarian actors (e.g. incoming relief agencies) active in Haiti. In addition, the research will be considered as part of a global synthesis study, informing broader global conclusions and recommendations on how to address regulatory barriers to emergency and transitional shelter assistance.

List of abbreviations

ASEC	Assemblée de la Section Communale (Communal Section Assembly)
CASEC	Le Conseil administratif de la section communale (Communal Section Administrative Council)
CIAT	Comité Interministériel d'Aménagement du Territoire (Inter-ministerial Committee for Territorial Planning)
DGI	Direction Générale des Impôts (General Directorate of Taxes)
DPC	Direction de la Protection Civile (Directorate of Civil Protection)
HRC	Haitian Red Cross
IACHR	Inter-American Commission on Human Rights
IASC	Inter-Agency Standing Committee
IFRC	International Federation of Red Cross and Red Crescent Societies
IHRC	Interim Haiti Recovery Commission
IOM	International Organisation for Migration
MICT	Ministère de l'Intérieur et des Collectivités Territoriales (Ministry of the Interior and Regional and Local Administrations)
MDE	Ministère de l'Environnement (Ministry of the Environment)
MPCE	Ministère de Planification et de la Coopération Externe (Ministry of Planning and External Cooperation)
MPTC	Ministère des Travaux Publics, Transports et Communications (Ministry of Public Works, Transport and Communications)
OAS	Organisation of American States
ONACA	Office National du Cadastre (National Office of Cadastre)
SNGRD	National System of Risk and Disaster Management
PNGRD	Plan National de Gestion des Risques et des Désastres (National Risk and Disaster Management Plan), February 2001
PNRU	Plan National de Réponse aux Urgences (Emergency Response Plan), December 2001 (updated September 2009)
UCLBP	Unité de Construction de Logements et de Batiments Publics (Housing and Public Building Construction Unit)
ULCC	Unité de Lutte Contre la Corruption (Anti-Corruption Unit)
UN	United Nations



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Partners

This project is an initiative of the IFRC undertaken in partnership with the Haitian Red Cross Society, who since 2010 has been a committed partner in the disaster-law project in Haiti.

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This report draws extensively on the unpublished "Regional Desk Study on Regulatory Barriers to meeting Emergency and Transitional Shelter Needs in Post-Disaster Contexts in Haiti," 2013, prepared by Dr. Vasiliki Saranti on behalf of the IFRC, which was based on internet and library sources.

**Impact of the regulatory barriers to providing
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Country case study: Haiti

Part A

Introduction, background and project objectives

Project background

In many recent disasters, legal and procedural issues have posed significant challenges to the provision of emergency and transitional shelter solutions to families and individuals whose homes have been damaged or destroyed. National Red Cross/Red Crescent Societies, as first responders to disasters, have repeatedly faced regulatory barriers as major obstacles to meeting the shelter needs of disaster-affected populations. Removing or reducing these barriers as a preparedness measure before a disaster can be critical both to long-term recovery and short-term solutions after a disaster. A new resolution was adopted at the 31st International Conference of the Red Cross and Red Crescent Movement in November 2011 (Resolution 7), which encourages states, with support from their National Societies, the IFRC and other relevant partners, to review their existing regulatory frameworks and procedures relevant to post-disaster shelter.⁸

While most countries have a regulatory framework that applies to housing, land management, urban planning and building codes, for example, these regulations and administrative procedures are often inappropriate or inadequate to effectively deal with the realities that occur after a sudden-onset disaster. It is also the case that some countries have little or no formal title registration system or the system they do have may have lapsed over time or acquired contradictory layers and practices. In many cases, customary or informal land rights systems are used instead of formal processes, particularly at the community level.

Often, the regulations that the humanitarian community is required to conform to in post-disaster settings are not easily adaptable to situations where large numbers of people are displaced. These laws, regulations and procedures may therefore be inappropriate to post-disaster situations and actually be a barrier to recovery. Furthermore, in many countries, there remains for the most part little knowledge of the regulatory framework that the humanitarian community enters into after a disaster.

In response to Resolution 7, and to assist governments and National Societies in addressing these issues, the IFRC Americas zone has commenced a regional project. The first phase of this project is represented by this report, which aims to be an in-depth analysis of the effectiveness of the existing legal framework and its applications in theory and practice, taking into account experiences in previous disasters, chiefly the experiences of stakeholders following the devastating earthquake of 2010. This study is the precursor to the second phase of this project, which will see the development of detailed recommendations to governments and other humanitarian actors (for example, incoming relief agencies) on how to develop regulatory frameworks to ensure the timely and equitable provision of shelter after disasters.

⁸ For further information see IFRC, *Strengthening normative frameworks and addressing regulatory barriers concerning disaster mitigation, response and recovery (Resolution 7)*, http://www.rccconference.org/docs_upl/en/R7_Disaster_Laws_EN.pdf

Project objectives

Through the conduct of in-depth legal research and stakeholder interviews, as further described in the ‘Methodology’ section below, the objective of this study is two-fold:

1. To **assess the practical impact and implementation of the relevant laws**, and regulations, and identify strengths, gaps and weaknesses according to experiences in previous disaster situations and international standards.
2. To **outline any methods or innovative solutions which have been developed by the Government and other organisations to overcome the legal and regulatory barriers** identified in the report, to identify areas for improvement and to propose measures which may be adopted to minimise legal and regulatory barriers in future disaster situations.

Geography and disaster risk profile of Haiti

Haiti occupies about 28,000 square kilometres on the westernmost third of the island of Hispaniola, bordering the Dominican Republic to the east, and with 1,771km of coastline on the Caribbean Sea to the west. The terrain is largely mountainous, with approximately 65 per cent of the land classing as mountainous territory, and more than half of all land is on a slope greater than 40 degrees. Forest covers only 2 per cent of the territory due to enormous deforestation over the last century. Approximately 28 per cent of the land is arable, and agriculture is still the main income-generating activity for the population.

Haiti ranks as one of the countries with the highest exposure to multiple hazards,⁹ and was recently assessed as the 21st most ‘at risk’ country in the World Risk Report for 2014 (as well as being the 2nd highest country in the world in terms of its vulnerability).¹⁰ Although the country has gained notoriety for the extremely severe impact of the earthquake of January 2010, it has been heavily exposed to multiple natural hazards, with the consequences in terms of loss of human life and damage caused set out in Table 1 below.

⁹ World Bank, Natural Disaster Hotspots, undated

¹⁰ United Nations University Institute for Environment and Human Security and Alliance Development Works, World Risk Report 2014, 2014

Table 1: Impact of natural disasters in Haiti, 1900 – 2014¹¹

		# of Events	Total Killed	Total Affected	Damage ('000 US\$)
Drought	Drought	7	–	2,305,217	1000
	ave. per event		–	329,316.7	142.9
Earthquake (seismic activity)	Earthquake	2	222576	3,700,000	8,020,000
	ave. per event		111,288	1,850,000	4,010,000
Epidemic	Bacterial Infectious Diseases	3	6,958	519,814	–
	ave. per event		2,319.3	173,271.3	–
	Parasitic Infectious Diseases	1	–	2,724	–
	ave. per event		–	2,724	–
	Viral Infectious Diseases	1	40	200	–
	ave. per event		40	200	–
Flood	Unspecified	21	828	180,434	959
	ave. per event		39.4	85,921	45.7
	Flash flood	5	70	70,717	1000
	ave. per event		14	14,143.4	200
	General flood	22	3,046	451,848	–
	ave. per event		138.5	2,0538.5	–
	Storm surge/ coastal flood	1	–	4,690	–
	ave. per event		–	4,690	–
Mass movement wet	Landslide	2	262	1,060	–
	ave. per event		131	530	–
Storm	Unspecified	3	1,188	1,587,270	50,000
	ave. per event		396	529,090	16,666.7
	Local storm	1	6	73,122	–
	ave. per event		6	73,122	–
	Tropical cyclone	35	1,4137	3,390,620	1,236,906
	ave. per event		403.9	96,874.9	35,340.2

Estimates suggest that 96% of Haiti's population live at risk from natural disasters.¹² It is particularly vulnerable to hydro-meteorological hazards, namely cyclones, and their effects include wind damage, flooding, landslides, torrential debris flows, and coastal surges. Haiti is also located in a seismically active zone, with several major tectonic faults underneath the land. Haiti's vulnerability is compounded by its high urban population density, a large number of informal structures, and relatively weak public and private infrastructure.

¹¹ Source: EM-DAT: The OFDA/CRED International Disaster Database, accessed 30 November 2014, www.emdat.be

¹² GFDRR and the World Bank, *Disaster Risk Management in Latin America and the Caribbean Region: GFDRR Country Notes, 2010*

Governmental and law-making structure of Haiti

The current governmental structure in Haiti was established under the Constitution on 29th March 1987, as amended by a revised version of the Constitution which was approved by Parliament in March 2011, and came into force on 20th June 2012. The constitution establishes a semi-presidential system of government, dividing power between the president (as the chief of state), the prime minister (the head of the government, appointed from the majority party in the National Assembly by the president), the National Assembly (a bicameral legislature), and the regional assemblies. The bicameral National Assembly consists of the Chamber of Deputies (with 99 members serving 4 year terms), and the Senate (with 30 seats, one third of which are elected every three years). Executive power is held by the President and the Prime Minister, through the Council of Ministers and the Council of Government.

Haiti is divided into ten departments¹³, with each department further divided into between three to ten *arrondissements* per department (42 in total), which are further divided into *communes* (140 in total), the *communes* being further sub-divided into the sections *communales* (574 in total). As an example, Delmas in Port-au-Prince is classified as a *commune* within the Port-au-Prince *arrondissement*, which itself sits in the Ouest department.

Haiti's highest court is the Supreme Court (*Cour de Cassation*), followed by the five Appeals Courts. There are 15 Courts of First Instance (*Tribunaux de Premier Instance*) (one for each judicial district), and over 200 Peace Courts (*Tribunaux de Paix*). Judges are appointed by the President based on lists prepared by the Senate (for the Supreme Court), Departmental Assemblies (for the Courts of Appeal and Courts of First Instance) and Communal Assemblies (for the Peace Courts).¹⁴ In practice the judiciary is subordinate to the Executive and the judicial budget and appointments are controlled by the Minister of Justice.¹⁵ The lowest level of the justice system consists of the Justices of the Peace (*Juges de Paix*), who carry out a wide range of functions at the Peace Courts in civil, criminal and extrajudicial matters, including minor adjudications, mediations and so on. More serious matters are tried in the Courts of First Instance; these courts have the ability to refer cases upward to the Courts of Appeal. The Supreme Court deals with questions of procedure and constitutionality.

Following its independence in the early nineteenth century, Haiti adopted the French law system, including the French judicial structure and codification system (which includes the Civil Code, Code of Civil Procedure, Criminal Code, Code of Criminal Procedure, and the Commercial Code). These codes remain authoritative, subject to their various amendments over the last two centuries, but their extreme age means that they often do not reflect current Haitian realities or address contemporary legal issues.¹⁶ Furthermore, even Haitian lawyers, magistrates and judges are often unable to confirm the exact versions of the law that are in force.

¹³ These are Artibonite, Centre, Grand'Anse, Nippes, Nord, Nord-Est, Nord-Ouest, Ouest, Sud-Est, Sud

¹⁴ Article 175, Constitution of Haiti, 1987

¹⁵ World Bank, *Social Resilience and State Fragility in Haiti*, April 27, 2006

¹⁶ Leah Mueller for the Interim Haiti Recovery Commission, *Haitian Law as it applies to Housing and Reconstruction: A Legal Summary*, 3rd June 2011

The Constitution of Haiti (ratified in 1987, and most recently amended in 2012) is the supreme law of the land, superseding all contrary legislation apart from international agreements that have been formally ratified by Haiti.¹⁷ It has been recognised as a modern, democratic and progressive document but the consensus of commentators suggests that many of its provisions remain non-operational.¹⁸ The other sources of legal authority in Haiti are as follows:

- **Statutes:** the main source of law, these must be adopted by Parliament;
- **Decrees:** made by the President and signed by all ministers, but does not require the approval of the Parliament;
- **Decree-Laws:** a Decree that has been approved by the Parliament, and has the same force as a law passed by Parliament; and
- **Orders** (arête): made by the President but does not require the signatures of any Ministers (although some may sign). Orders provide detailed procedures on the operationalisation of existing laws.

¹⁷ Article 276-2, Haiti Constitution: this states that once approved and ratified, international treaties and agreements become part of Haiti's legislation and abrogate any laws in conflict with them.

¹⁸ Jurist Legal Intelligence, Haiti; Constitution, Government, and Legislation, <http://jurist.law.pitt.edu/world/haiti.htm>

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Country case study: Haiti

Part B

Methodology

This study was developed in three phases. First, a literature review based only on online sources was conducted in early 2013. Second, from 29 July to 17 August 2013, a first in-country mission was conducted, resulting in an interim report in August 2013. Finally, in November 2014, the project consultant returned to Haiti to conduct further research and interviews in order to develop some elements of the report. This included further investigation with community focus groups and key stakeholders who were not available in 2013.

This study does not attempt to comprehensively address all the legal and institutional frameworks of relevance to emergency and transitional shelter in Haiti. It aims instead to provide an analysis of the legal framework most relevant to emergency and transitional shelter in Haiti, drawing out where regulatory barriers are caused by the law (or lack of it), and highlighting specific examples of good practice and solutions to the challenges faced, as well as the major gaps and challenges for both legislation and implementation.

During the in-country missions the project consultant met with and interviewed a wide range of stakeholders in Haiti (a full list of which is available at Annex A). These interviews were vital in firstly providing the project consultant with copies of laws, policies and other documents which were not publicly available for the purposes of the Desk Study, and secondly for first-hand information regarding the Haitian legal framework and institutional arrangements. These interviews with stakeholders were the primary means of achieving the objectives for the in-country mission, which were as follows:

- to obtain additional information regarding the practical impact and implementation of the existing legal and regulatory framework on the provision of emergency and transitional shelter in post disaster contexts; and
- to identify any challenges, gaps, best practices and innovative solutions which have been undertaken by different stakeholders.

The project consultant met with government officials at the national and local levels, as well as Red Cross movement representatives, stakeholders from NGOs and UN agencies, and community focus groups and representatives. Given the time-frame and the large amount of development and humanitarian activity in Haiti it was not possible for the project consultant to meet with all major government, national and international actors, and the absence of an organisation from the list in Annex A may simply mean that their representative was not available in Haiti at the relevant time.

The interviews were held as structured discussions, based on the information provided to the project consultant in the project Terms of Reference, and drawing on a list of specific questions developed by the consultant with IFRC assistance. The interviews focused on legal and practical issues surrounding the provision of emergency and transitional shelter in Haiti, the legal framework and its implementation, and any innovative or alternative solutions that have been developed, with special consideration of the post-2010 earthquake period.

The majority of the interviews were held in the capital of Haiti, Port-au-Prince, in order to meet with the relevant government officials and UN, donor, and NGO stakeholders, whose headquarters were generally based there.

Case studies/Community visits

As part of the study the consultant met with community groups in order to gain the views of communities on how their own access to shelter (among other things) may have been impeded by regulatory barriers. Due to time limitations in 2013 the consultant met with only two communities, firstly with 10 community representatives in the commune of Delmas 30, Port-au-Prince and secondly in Tchawa habitation, in the section *communale* of Palmiste-à-Vin, Leogane. However in 2014 the project consultant was able to meet with a much larger number of community representatives and groups, including:

- Representative community members from the commune of Bainet, Bainet *arrondissement*, South-East department;
- Women's group from the *Organisation des Femmes de Bainet*, commune of Bainet, Bainet *arrondissement*, South-East department;
- Community members of the *Equipe d'Intervention Communautaire*, in the section *communale* of Cormier, commune of Leogane, West department;
- Community members of the *Equipe d'Intervention Communautaire*, in the section *communale* of Palmiste-à-Vin, commune of Leogane, West department.

The meeting in Port-au-Prince was facilitated by the Haitian Red Cross. In Leogane in 2013 the consultant was able to meet with different community members at their own residences in Tchawa habitation (mainly transitional shelters built with the aid of the Swiss Red Cross), and this visit was facilitated by Olivier Legallof of the Swiss Red Cross. In 2014, the consultant's visit to Leogane was facilitated by Harald Bier and Luxama Ducarmel of the Swiss Red Cross; in Jacmel the consultant was supported by Ruben Wedel and Pamphil Claudy of the Netherlands Red Cross.

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Part C

Analysis of regulatory barriers

1. Housing, land and property laws and regulations

1.1 Land registration and cadastre

Legal issues surrounding registration and cadastre present perhaps the largest single regulatory barrier to the provision of emergency and transitional shelter in Haiti. According to estimates, less than 5% of property in Haiti has been surveyed for the national cadastre system,¹⁹ and in 2003 Hernando de Soto estimated that around 68% of city dwellers and 97% of rural dwellers in Haiti lived in establishments for which there is no clear title to the land.²⁰ Current estimates in Port-au-Prince suggest that up to 80% of land is informally held.

Legal and institutional framework

A Decree of 10 December 1984²¹ created the *Office National du Cadastre* (National Cadastre Office) (**ONACA**) under the *Ministère des Travaux Publics, Transports et Communications* (Ministry of Public Works, Transportation and Communications) (**MTPTC**). The law tasks ONACA with providing up-to-date cadastral information on all properties and parcels in Haiti.

Whilst ONACA is responsible for cadastre, it is the *Direction Générale des Impôts* (**DGI**) that is responsible for actually titling all public land, and for collecting taxes on real estate transactions. All land titles must be registered with the DGI's Office of Registration and Land Conservation. The DGI is part of the Ministry of Finance and Economy, and it is tax collection that is the office's priority, meaning that the provision of title documentation is incidental (i.e. records cannot be easily used to create a chain of title or establish proof of ownership). In terms of property registration, DGI's responsibility is to register deeds, submitted by individual public notaries. Each deed is based on a formal survey of a plot of land but refers only to neighbouring plots, not to overall maps or cadastre. Deeds are then filed under reference numbers and dates of registration, and it is practically impossible to simply search for ownership information for a piece of land unless one is in possession of these two pieces of information. This created a clear regulatory barrier for agencies hoping to confirm the ownership of land as part of a shelter provision program.

There is no formal legal link between ONACA and DGI. However the gaps in the legal framework for land registration and cadastre are not solely the responsibility of ONACA and DGI, as registration in Haiti is a multi-party process with potential gaps in each step. A notary is fundamental to the process of buying and selling property as well as registering it; the notary will prepare the sales agreements, verify existing title documents, and submit documents and fees to DGI for registration, among other things. However notaries outside of Port-au-Prince will often fail to visit the DGI there in order

¹⁹ Organisation of American States (**OAS**), *Modernisation of Cadastre and Land Rights Infrastructure in Haiti Project Proposal*, March 2010

²⁰ Hernando de Soto, *The Mystery of Capital: why Capitalism triumphs in the West and fails everywhere else*, 2003

²¹ Décret créant un Organisme autonome dénommé: *Office National du cadastre*, Moniteur No. 86, Monday December 10, 1984

²² Articles 1 - 2, *Décret du Enregistrement et Conservation Fonciere*, 30 September 1977

to research and review title, meaning that often no research is undertaken (and therefore creating a potential for future disputes). This presents a great risk considering land is often owned by multiple members of a family (normally those who have inherited the land either under law or informally) and the consent of all members is required to a sale. Notaries have also been known not to send the final bill of sale to be recorded and transcribed at the DGI, which means the sale, and the property, remain un-registered.²³

Impact and Implementation

Both ONACA and DGI suffer from a severe lack of capacity and funding, which greatly impacts on their ability to fulfill their responsibilities under law and therefore exacerbates an existing regulatory barrier. Despite the importance of the two institutions to land registration and cadastre, interviewees confirmed that they have no policies or procedures in place to facilitate information or record sharing between the two entities. The Organisation of American States note that ONACA must work with an annual operating budget of only \$133,333, not including monthly staff expenses of \$47,080²⁴, and interviewees for the project unanimously confirmed that lack of funds prevent ONACA achieving its objectives. For example, ONACA's total budget increased from approximately 41 million Haitian Gourdes in 2013 to 43 million Haitian Gourdes in 2014, but out of this amount 38 million goes directly to salaries, leaving barely enough to cover other important running costs. Since 1984 ONACA has only surveyed some 5% of land in Haiti, with this limited to territory in Port-au-Prince and the Artibonite Valley. Furthermore although the law²⁵ states that ONACA should install 13 district-level cadastral offices throughout Haiti, currently only 3 offices exist (one each in Port-au-Prince, Jacmel, and Artibonite).

Interviewees at ONACA outlined that the office's ambition is ultimately to provide a cadastral register for the entirety of Haiti, but that this is unrealistic at current levels of funding and capacity. Government priorities (arising largely from the office of the President) determine where ONACA representatives and surveyors will work. For example, ONACA recently finalised their work on the île à Vache off the south-western peninsula, as part of the plans for large scale tourism-driven redevelopment (including the building of a new airport and marina among other things). ONACA are currently preparing for the same type of work in Côtes de Fer, another large, tourism-driven development high in the governmental agenda.²⁶ ONACA is unable to work anywhere without an *arrêté présidentiel*, essentially a direct legal authorisation from the President's office permitting ONACA to review and record cadastre in a defined geographic area. Private individuals are not able to simply request that ONACA surveys their own land. ONACA's main problem is that the scarcity and ad-hoc nature of its funding does not allow for the administration to implement a long-term work plan. ONACA is therefore only able to work on partial, often smaller, projects that depend on the interests and objectives of the relevant donors.

²³ For a detailed overview of the process of sale and registration in Haiti, see *Haiti Property Law Working Group, Haiti Land Transaction Manual Vol. 1 (A How-To guide for the legal sale of property in Haiti)*, 26 June 2012

²⁴ OAS, *Modernisation of Cadastre and Land Rights Infrastructure in Haiti Project Proposal*, March 2010

²⁵ Article 28, *Décret créant un Organisme autonome dénommé: Office National du cadastre*, 10 December 1984

²⁶ As noted by several interviewees, whilst this is a valuable use of ONACA's time and resources, it also means that all of ONACA's attention must be focused on these projects, leaving little time to move forward with other plans.

Furthermore there is currently a lack of effective coordination between ONACA and DGI, and the public remains confused as to which entity is responsible for which aspect of land registration. Similarly, the relationship between the private sphere of notaries and surveyors with the government offices of ONACA and DGI is weak; as noted above, it is common for notaries not to properly research title or to properly register transactions, and surveyors rely on archaic surveying methods and often work outside the municipalities they are registered to work in, rendering surveys invalid. The DGI have also suffered from a lack of funding and capacity, their situation made worse by the earthquake of 2010. Since 1824 written records have been kept of land transactions, resulting in a registry of over 2,500 books. None have been digitalised, and it is unclear just how many of these were recovered from under the debris of the collapsed DGI building in Port-au-Prince. ONACA's own collection of cadastre records remains disorganised and, due to their open storage in ONACA's office, entirely vulnerable to future disasters or risks such as fire and flooding; so far ONACA has been unable to raise funds for the digitisation of the records.

The lack of an effective cadastre system means that the formal registration procedure is in practice based on a decentralised system of land administration that depends heavily on notaries and surveyors. However the majority of property transactions in Haiti remain based on customary practices, especially in rural areas, where land transactions 'reflect skepticism of notaries, land surveyors, and virtually all agents of the state including the judiciary', and ownership rights stem primarily from kinship ties and transactions not regulated by law.²⁷ As confirmed through both interviews and community visits, most Haitians are unable to afford the costs and taxes associated with registering properties. Even in the event that a deed is registered at the DGI, this does not necessarily mean that the ownership is legal, as the DGI's primary duty is the collection of tax rather than confirming title.

Commentators and interviewees noted that awareness of the formal system of land cadastre, registration and rights among the majority of Haitians is extremely low, which raises the need for some awareness-raising activities if these issues are to be fully addressed. Community visits, however, revealed that the communities in question were generally aware of the outlines of the system for surveying and registering land, but lacked any detailed knowledge and were unclear on any procedures involved. Their knowledge of the concepts may also be largely due to them being beneficiaries of shelter programs, in areas where land issues are a priority for families and communities. On the whole, community members interviewed for the project indicated that they felt more secure with their own informal systems than with the formal, state system, largely due to perceptions of lack of clarity and corruption within the formal system.

Good practices and solutions

After the initial emergency response period in 2010, international actors moved relatively quickly to address the myriad land rights and tenure issues that they faced in Haiti. One practice that was developed was to require owners and renters to enter into simple, standard-form documentation regulating the provision of transitional shelter. These were developed to overcome a huge lack of the following three key documents, which were generally lost during the earthquake or simply regulated under verbal agreements beforehand:

²⁷ Glenn R. Smucker, T. Anderson White, Michael Bannister, *Land Tenure and the adoption of agricultural technology in Haiti*, October 2000

1. Identity documentation (generally either lost due to the earthquake, or people did not possess such documentation anyway);
2. Ownership documentation; and
3. Land use/rental documentation.²⁸

As such, agencies began implementing a system of determining use rights, that was “semi-formal”, in the sense that, while it did not fully satisfy legal requirements or mechanisms for titling, it did involve explicit approval and oversight from local authorities.

Either as part of or separate to this process, actors also used community-based enumeration methods as an effective tool to overcome the gaps in the existing system, which also worked as a progressive tool, directly involving local communities in understanding and mapping their own land and needs. A participatory enumeration process is well suited to the Haitian context, as it can accommodate a high degree of informality of tenure.²⁹ Some agencies worked with the government of Haiti, specifically CIAT with input from the Interim Haiti Reconstruction Commission, to develop standard enumeration questionnaires to capture information on housing, land and property rights (among other things). To take a specific example, Habitat for Humanity employed a community-led enumeration methodology developed by Shack/Slum Dwellers International.³⁰ The enumeration process comprised of three main activities:

1. Building numbering and mapping;
2. Household surveys for all community households, for information on demographics and economic activity; and
3. Focus groups to create community maps and prioritisation of needs

Community members were trained on how to read maps and use GPS devices, and administer surveys. This approach allows community ownership of the process, building capacities and initiating post-earthquake reconstruction through those who will be there for the long-term changes. In Simon-Pelé in Port-au-Prince, Habitat for Humanity also employed the expertise of local university architecture students, who helped with training, and verifying and compiling data. Whilst not integrated into the formal legal system, and creating no formal legal rights to land, such methods of community-based enumeration are a development of the parallel customary system, and act to fill the gaps in the government’s own system of land analysis and cadastre. It would therefore be appropriate to consider such community-based methodologies as an important reference point for the government’s own efforts on registration and cadastre. The framework in Haiti could benefit from community-based efforts and knowledge, and community-verified landholdings could even help cover shortfalls in government capacity: whilst it may be impractical to rely entirely on community-verified landholdings, ONACA staff, for example, could simply verify community information rather than having to go through an entire survey process themselves.

²⁸ For a more detailed analysis of the types of documentation developed, please see section 1(b) below

²⁹ Housing, Land and Property Working Group, *Key Housing, Land and Property Rights Issues delaying IDP return and reconstruction efforts in post-earthquake Haiti*, 13 October 2010

³⁰ Shack/SlumDwellers International, *How the Kenyans discovered Haiti*, undated

Interviews with ONACA staff revealed that the government is keen to modernise and improve its registration and cadastre systems, but is still held back by funding and capacity issues. However recent initiatives by the Inter-Ministerial Committee for Territorial Planning (*Comité Interministériel pour l'Aménagement du Territoire*) hope to change this. Supported by the French Cooperation and the Inter-American Development Bank, CIAT is in the process of developing a comprehensive long-term strategy for land tenure reform. This strategy sets out a series of short and medium-term goals, including establishing the basis for the establishment of a national cadastre, submitting to the legislature laws to modernise land transactions procedures, and commencing the digitisation of the DGI's land registry. CIAT's approach relies heavily on facilitating the coordination and collaboration of key actors, in two key areas: coordination of land tenure reform across government ministries, and coordination between the government and private legal professionals.³¹ Several interviewees were aware of the coordination initiatives of CIAT but noted that these are still in their early stages, with little implementation so far.

It is also hoped that a new law, currently in draft form,³² will aid the process of cadastre and land tenure reform as well as provide institutional clarity, and therefore encourage greater investment in Haiti. ONACA notes that the greatest problem caused by the current system is that it prevents access to credit for both Haitian citizens and foreign investors due to insecurity of tenure, and the draft law is partly designed to address this. Whilst extending the system of cadastre to all of Haiti remains an overall goal, the draft law refines the obligations of various government authorities (including ONACA and DGI) as well as new procedures. ONACA's ambition is for all relevant title information to be placed into one document, which can be easily requested and searched for by the public, and they hope to establish a partnership system with local surveyors offices, who will be the portal through which the public access such information. Other plans include outsourcing some of ONACA's work to surveyors, recognizing that the capacity for such a huge cadastre project cannot be found, or brought, in-house.

ONACA's draft law is also designed to improve integration between ONACA and the DGI. Importantly, ONACA's 'ownership' will move from the MTPTC to the Ministry of Finance, placing it under the same Ministry as the DGI and thereby enabling closer integration (and reflecting that the system of cadastre has an important place in government revenue collection). Draft Article 38, for example, states explicitly that ONACA's 'approval' is required before the DGI can formally register land. It was unclear to what extent the draft law, if at all, would restructure the DGI and its operations, although it was noted that DGI's role for land registration would continue as a record-keeper, albeit with a modernised digital system and fast links to ONACA. The existence of the draft law, together with capacity-building and technical inputs from organisations such as the Organisation of American States' Cadastre Modernisation Project, are certainly positive developments in an otherwise challenging system.

Copies of the draft law were originally viewed in 2013; unfortunately, one year later, nothing has happened with this project. The draft law was submitted to the Prime

³¹ Frédérique Siegel, *Towards secure tenure in Port-au-Prince – Proposing pathways to incremental tenure formalization and institutional reform*, 2 August 2014

³² *Avant-projet de loi modifiant les décrets du 23 Novembre 1984, du 30 Novembre 1984 et du 28 Août 1986* – government confidentiality meant that a copy of the draft law was not made available to the project consultant, but some key provisions of the law were explained during the interview with ONACA staff

Minister's office by the deadline of October 2013 but ONACA interviewees confirmed that nothing has been heard of the draft since. Whilst this can be attributed at least partly to the current conflict between the Executive and the Parliament (and the impact this has on the day-to-day running of political and legislative affairs), it is hard to also escape the conclusion that institutional enthusiasm for cadastre reform appears extremely low.

Common regulatory barriers relevant to land registration and cadastre

Gaps in documented evidence of ownership rights

As noted above, there are huge gaps in ownership rights in Haiti. Whilst for most of the population this is accepted and instead informal, customary rights are utilised, this presents a major barrier to the provision of shelter. The gaps in rights not only create a confusing situation in a post-disaster setting (as after the 2010 earthquake) but they also leave the ground open for opportunistic (and largely fraudulent) claims of ownership, as it is extremely difficult to prevent such claims in situations where title cannot be verified.

Challenges faced by the land registry or cadastral system

The challenges faced by ONACA, DGI and other relevant actors in the system can be summarised as follows:

- There is a distinct lack of capacity and funding for land registration and cadastre, which has resulted in the current weak system and the lack of clarity over ownership of both private and public land. This lack of clarity created problems and delays for the 2010 earthquake response. No long-term reconstruction can take root without updated cadastral information and a transparent and efficient system.
- At present there are no clear links between the two most important authorities for the system, ONACA and DGI. The surveying and registration functions need to be much more closely integrated.
- The Haitian public is largely unaware of the official cadastre system and is reluctant to formally registering title to property, due to (among other things) complicated procedures, costs for professional fees and taxation.

Conclusion

Haiti faces profound challenges to improve its registration and cadastre system, which go beyond issues of institutional capacity and are rooted in history, culture and customary practice. The lack of clear land and title records has been a major regulatory barrier to the provision of shelter post-2010 and continues to slow the progress of reconstruction.

Recommendations

Short-term:

- Consider including the ability to temporarily recognise the validity of rapid community-based mapping and enumeration in a post-disaster setting, to enable faster decision-making in areas where there are gaps in government information. Such

a mechanism would only activate in defined situations, for example following the declaration of a disaster by the government and/or the issuance of an emergency law. The duration of any such mechanism should be for a short-term, fixed period and could be linked to the duration of a state of emergency law (as were passed in 2008 and 2010).

Long-term:

- Adopt legislation or guidelines that establish a modern, computerised and centralised national land registration and cadastre system for both private and state land, and prioritise the legislative approval of the draft law of ONACA and the institutional strengthening of ONACA and the DGI. This could initially focus on state land (working closely with the DGI, as the manager of all state property) and then expand to private land. Although institutional responsibility for cadastre rests with ONACA, institutional responsibility for managing and providing access to land title records must also be clearly assigned; this is especially important for emergency situations. Consideration should also be given to devolving responsibility for property registration to municipal authorities, where appropriate.
- Consider appropriate means for the integration of customary practice into the formal legal system; this could involve the creation of a legal mechanism whereby customary landholdings can be verified, recorded and integrated into the formal legal cadastre and title system.

1.2 Property rights

Legal framework

Haiti's Constitution guarantees the right to private ownership of property, stating clearly that "Private property is recognised and guaranteed. The law specifies the manner of acquiring and enjoying it, and the limits placed upon it."³³ Land in Haiti is classified into three categories:

1. **private land;**
2. **state public land:** inalienable land that cannot be privately exploited or altered, and includes roads, public places, coasts, rivers, monuments, mines, etc. Such public property is non-transferable and is managed by various state ministries; and
3. **state private land:** land owned by the state and other public institutions, which may be sold or rented by the government, and includes government buildings, default land due to inheritance, etc.³⁴

Both the Constitution and the Civil Code set out how such land may be dealt with, with the Constitution establishing the broad categories and the Civil Code setting out the legal framework required for dealing with land (namely acquisition and transfer)³⁵. This legal framework for land ownership originates from French law and land administration, and has since been developed by practice taken from the agricultural economy,³⁶

³³ Article 36, Haiti Constitution

³⁴ Article 1 Décret adoptant une base plus équitable et plus rationnelle pour la fixation des loyer et fermage des Biens du Domaine Privé de l'Etat, 22 September 1964

³⁵ See Loi no. 12 and Loi no. 15, Haiti Civil Code

³⁶ HPG Working Paper, *Avoiding Reality: Land, institutions and humanitarian action in post-earthquake Haiti*, September 2012

meaning that it is not particularly well-suited to the demands of a rapidly expanding and complicated landholding structure in Port-au-Prince.

As well as private ownership of land, the two other major forms of possession provided for under law are as follows:

- **Lease:** leases are governed by the provisions of the Civil Code³⁷, and can be either verbal or written.³⁸
- **Fermage:** the practice of *fermage* began as a lease from the state of agricultural land, and has grown in popularity. Essentially it is a longer-term lease of land, with the tenant owning the building on the land (i.e. the house that the tenant will generally have built).³⁹ Many more modern *fermages* contain an option to buy the land after a certain time period (often 20 years). Because the lessor must reimburse the tenant for a fair cost of construction in the event that the lessor wishes to discontinue the lease before the *fermage* period ends, this indirectly contributes to security of tenure for the tenant.

Haitian law also regulates the ways in which people may acquire or inherit land. Many Haitians inherit land from relatives, and the legal obligations and procedure for this process is governed by the Loi sur les successions (Succession law) section of the Civil Code.⁴⁰ Under Haitian law a deceased person's property must be divided among all children and the remaining spouse, and the transfer cannot be considered legally complete until the land has been surveyed, divided, notarised and registered. Formal subdivision of land (for rent or sale) is also permitted under Haitian law, and the law sets out detailed specifications and procedures, including a permitting regime.⁴¹ However a large amount of regulation on the procedure has not prevented the fact that most subdivisions in Haiti take place informally.

Acquisitive prescription (also often referred to as adverse possession) is another means in which ownership can be acquired. The requirements are set out in the Civil Code,⁴² which requires a person to have resided on a property continuously, peacefully, publicly, and in the capacity of owner for twenty years or more, in order to become the owner of the land. To confirm this ownership a petitory action must be filed at the local court.

Outside of Port-au-Prince and urban centres, in theory land is governed by the provisions of the Haitian Rural Code of 1962 (as amended in 1986), which adds little to the legal framework in terms of land rights and tenure other than applying the Civil Code to rural property.⁴³ Indeed some commentators have gone so far as to recommend that it be abolished in order to end a history of establishing two classes of citizens (i.e. urban and rural), and to integrate any useful provisions into the Civil Code.⁴⁴ Both

³⁷ Articles 1480 – 1600, Haiti Civil Code

³⁸ Article 1485, Haiti Civil Code

³⁹ See the Decree of 22 September, 1964, which sets out the rules for *fermage*

⁴⁰ Loi. 16 sur les successions (Articles 674 – 700), Haiti Civil Code

⁴¹ Articles 54 – 57, *Loi etabliissant de regles speciales relatives a l'habitation et a l'aménagement des villes et des campagnes*, 29 May 1963 and Articles 10 – 17, *Loi relative a l'adoption d'une politique cohérente d'aménagement du territoire et de développement à partir des entités régionales issues du regroupement des départements géographiques et des arrondissements de la république*, 19 September 1982

⁴² Articles 1996 – 2047 (specifically, Articles 1997 and 2030), Haiti Civil Code

⁴³ Article 20, Haiti Rural Code

⁴⁴ Winston W. Riddick, *Economic Development and Private Ownership of Immovable Property: a comparison of Louisiana and Haiti*, Electronic Journal of Comparative Law vol. 12, May 2008, <http://www.ejcl.org/121/art121-22.pdf>

interviewees and commentators have noted that in rural settings, land ownership is normally governed by customary law and practice as opposed to formal law, even more so than in the urban setting of Port-au-Prince.

Meetings with community focus groups undertaken for this project confirmed the extent to which property rights and transactions are dealt with under customary frameworks. Only a minority of community members interviewed said that they held title documents to their property, and several of these interviewees acknowledged that even having the paperwork is not necessarily a guarantee of security due to both general confusion over who owns what and where, and the risk of opportunistic claims and corruption (which is much higher in urban areas). In general, the community interviewees' rights over land were, in essence, acknowledged and protected by the community as many families have lived on the same land for generations. Whilst some commentators have rightly pointed out that many citizens view formal, state authorities and procedures with skepticism, interviews with community focus groups were notable not so much for skepticism but more for a realistic acceptance that, due to lack of access and enforcement, the formal system simply cannot exist in any useful form outside of an urban setting, and customary land rights are perceived as more secure (and in many cases probably are more secure).

Historians and other cultural commentators of Haiti have also emphasised the importance of the *Lakou* system in ensuring the continued prominence of informal land rights. Under this system, land is shared and passed down through informal inheritance, usually divided equally between all sons and daughters. There was generally no state involvement in this process although occasionally the most senior member of the family (the *chef lakou*) may hold formal title.⁴⁵ Whilst the system is less common today, it nonetheless remains in adapted forms in both rural and urban settings. Patterns and practices of inheritance discussed with community focus groups revealed that they follow the *Lakou* system in form, if not in name – namely with the elders dividing their land equally for their offspring with no recourse to the formal system.

Impact and implementation

It is well noted that problems of land rights and tenure in Haiti are one of the biggest roadblocks to investment and reconstruction, and the 2010 earthquake has only exacerbated this. As described above, Haiti is not lacking in terms of legally codified rights to land and property, and legal procedures for acquiring and transferring, which in itself can be considered good practice and an important foundation to develop the land rights system in the future. However, almost all interviewees for the project made it clear that the system has constantly suffered from a lack of capacity to implement and enforce the law, as resulting in huge costs and lengthy procedures, meaning that the vast majority of Haitian's land rights exist only in the customary sphere.

To take two pertinent examples, firstly, the rules on inheritance under the Civil Code require a deceased person's property to be divided among all children and the remaining spouse, and the transfer cannot be considered legally complete until the land has been surveyed, divided, notarised and registered. However, the time and cost involved in such a process, not to mention the complications involved in coordinating the various family members and official actors, means that the majority of inherited lands remain informally divided, or undivided. Even without any formal registration or

⁴⁵ Duke University Franklin Humanities Institute, *Law & Housing in Haiti*, <http://sites.duke.edu/lawandhousinginhaiti/>, accessed 30 November 2014

documentation, plots of informally divided land are then often sold or rented by heirs and family members, further complicating tenure issues.

Secondly, the need to file a petitory action at the local court in order to make a claim for acquisitive prescription is an expensive legal process and as a number of interviewees noted, it is rarely used, as most persons eligible for acquisitive prescription lack the financial means. Instead, in practice the right of acquisitive prescription is more commonly only exercised as a defence to a claim for the land.

Whilst law exists to clarify property rights and procedures, the rules for formally purchasing property are complex and the process of purchasing is time-consuming and expensive⁴⁶. Given the fact that the majority of Haitians live in poverty it is no surprise that the majority of land is un-registered. Instead Haitians typically turn to informal procedures, or for example rely on private contracts of sale such as an *acte sous-seing privé* ('sale by act of private seal') that has no legal effect as a deed until properly registered and transcribed with the DGI. Whilst use of such an agreement is more commonplace it is rarely registered.

Good practices and solutions

In the aftermath of the 2010 earthquake, it was very difficult for actors to determine where shelter may be erected. Understandably, this was compounded by the confusion following the earthquake and the fact that ONACA and DGI, along with most other government bodies, were heavily affected by the earthquake and therefore not operational. However even dealing directly with local government administrations (such as *mairies*) could often lead to confusion, as local government often has no clear picture of which land it owned, or simply lacks the capacity to confirm ownership of land that is believed suitable for shelter. An example from the Swiss Red Cross experience in Leogane is representative of a much larger number of such experiences in Haiti. In this case, the relevant CASEC was asked to investigate suitable parcels of land for building transitional shelters as well as buildings for local residents to run small businesses from. The communal council and local authorities authorised a suitable plot of land, confirming that permission had been received from the owner, but soon after work started the representatives of a local family claimed that the land was theirs and their permission had not been sought. Several months of delay ensued as negotiations went back and forth, before the family agreed to grant permission to the works in exchange for being given management rights to one of the small business buildings under construction. It was clear that the local authorities were unable to confirm proper ownership of the land, relying instead on informal assurances from local residents, which therefore set the groundwork for the dispute over the land. Many other interviewees noted that shelter sites were often abandoned following disputes over ownership as the delay involved was simply too long.

An enormous number of relief agencies have been engaged in the provision of shelter for Haitian citizens affected by the 2010 earthquake (550 organisations were registered with the shelter cluster alone). Due to the already weak system in place, the actors faced a severe lack of information on who held what rights to what property. Without access to either local or national systems of registration or cadastre, and with residents generally unable to provide their own documentation as they either (a) did not have any or (b) it had been lost in the earthquake, actors faced a difficult challenge. This

⁴⁶ OAS notes that fees and expenses can add up to 25% of the value of a purchase; see OAS, *Modernisation of Cadastre and Land Rights Infrastructure in Haiti Project Proposal*, March 2010

was compounded by an understandable lack of government capacity to help determine property rights at the time.

Actors were, however, able to deploy practical solutions to the challenge. In accordance with the recommendations of the Inter-Agency Standing Committee's (IASC) Shelter Cluster, a two-phased sector response plan was developed, consisting of a three-month emergency phase followed by a twelve-month interim phase top provide transitional shelter.⁴⁷ The emergency phase operations were widely acknowledged as successful, with the rapid distribution of essential items such as plastic sheeting and basic household equipment. For the second phase, the Shelter Cluster recommended focusing on "traditional materials that can be re-used by affected families in the longer term as they move to more durable housing solutions (transitional shelter)".⁴⁸ The use of transitional shelters meant that the materials used in their construction could be re-used in more permanent structures, and the design of a typical transitional shelter was such that it could even be relocated from temporary sites to permanent locations. This addressed concerns over security of tenure by literally building a degree of flexibility into transitional shelters, meaning that the structure could be moved and re-used in the event that, for example, other permanent (i.e. secure tenure) land was found for the beneficiaries. Most programmes transferred ownership of the 'shelter materials' to the beneficiaries to facilitate both possible relocation and the process of transforming the shelter into a permanent construction.

In reality, few transitional shelters have been moved from their original locations and have instead become de facto permanent housing for the beneficiaries – in some cases the shelter beneficiaries have successfully upgraded and personalised the construction,⁴⁹ but in many more no upgrading has taken place and the beneficiaries are increasingly at risk from the degradation of the transitional shelter materials.⁵⁰ The Shelter Cluster's original intention with the shelter sector response plan was to go beyond simply the provision of just the accommodation, and provide displaced populations with, for example, information campaigns about construction techniques, cash, vouchers, and material distributions, and rubble clearance. However, numerous commentators and interviewees, the IFRC included, noted that in reality, most organisations focused on the provision of physical transitional shelters ("deliverable products" as opposed to cash or material transfers) without considering other transitional solutions, and coordination and enforcement of specifications of transitional shelters was difficult to implement.⁵¹

Other good practices were developed by shelter agencies in order to bridge gaps in the formal system of property rights. The International Organisation for Migration (**IOM**) have a well-documented approach to the regulatory barriers they faced,⁵² which involves working in coordination with local government authorities and local

⁴⁷ Center for Economic and Policy Research, *Emergency and transitional shelter provision flawed, new evaluation shows*, <http://www.cepr.net/index.php/blogs/relief-and-reconstruction-watch/emergency-and-transitional-shelter-provision-flawed-new-evaluation-shows>, accessed 18 November 2014

⁴⁸ IASC, *Haiti Shelter Sector Response Plan*, version v6c February 2010

⁴⁹ American Red Cross, *Haitians making transitional shelters their homes*, 12 July 2012, <http://www.redcross.org/news/article/Haitians-Making-Transitional-Shelters-their-Homes>, accessed 3 December 2014

⁵⁰ Avery Doninger, 'Transition to What?' Evaluating the transitional shelter progress in Leogane, Haiti, 2013

⁵¹ IFRC, *An Evaluation of the Haiti Earthquake 2010 – Meeting Shelter Needs: Issues, Achievements and Constraints*, December 2011

⁵² International Organisation for Migration, *Dealing with Land Barriers to Shelter Construction in Haiti: The Experience of the IOM Legal Team*, June 2012

communities to identify their ‘zones for intervention’. Any potential shelter sites are assessed by community mobilisers and engineers, in order to delimitate possible construction sites and identify potential beneficiaries, conducting risk assessments, and so on. Based on a successful survey the IOM legal team would then attempt to obtain information regarding ownership, occupancy, and potential claims. Any available tenure documentation will be requested and if none is provided then verification is undertaken with the DGI. All survey information is then used in a series of consultations with stakeholders (e.g. residents, landowners, potential beneficiaries).

IOM and many other actors developed simple, standard form legal agreements that could be signed by landowners and beneficiaries to increase probable security of tenure, although it is important to note that these agreements could not be legally registered.⁵³ For additional comfort, generally the signature of the *mairie* (town or city council) or a local government representative such as the CASEC was also required for the agreement. Different organisations developed their own documents, but typically they would fall into the following categories:

- **Documents confirming identity:** in the event that the identity of an owner or renter was in question (a common problem post-earthquake as many people had lost all documentation), some organisations developed documents that could be signed by local officials, notables and community leaders to attest to a person’s identity, thereby providing a gateway for that person to enter into further shelter arrangements. In Léogane, for example, the Swiss Red Cross used an *Attestation d’identité du propriétaire*, signed by the CASEC of the communal section as well as one notable and a community witness, for this purpose.
- **Documents confirming ownership:** typically, many people could not provide evidence of their title, therefore organisations developed alternative, community-based approaches to title verification: one interviewee explained that the claim of any owner lacking title documents would have to be validated by at least three community leaders in a community meeting in order for their claim to be recognised. Whilst hardly foolproof (there are many cases of landowner’s claims being falsely validated), in the majority of cases this provided actors with a reasonable level of security in terms of ownership by using a community’s own knowledge.
- **Land Use/Rental Agreements:** many organisations required beneficiaries to enter into agreements with a landowner, and to provide these as proof that they had found a suitable location for the installation of a transitional shelter. In some circumstances, organisations negotiated for beneficiaries to live on the land for free in exchange for construction work on the landowner’s property. The same or additional agreements might also regulate the relationship between the owner and shelter beneficiary, for example clarifying that the beneficiary had the right to use the shelter without claiming rights to the land.

Some commentators and interviewees have questioned the appropriateness of using these documents in a predominantly informal system of property rights and registration. For example, agencies gave less attention to alternative solutions to the provision of shelter such as providing cash to pay rent or supporting the repair of damaged homes, thereby creating something of a ‘perceived’ obstacle to shelter. Whilst these

⁵³ Providing a complete list of all actors who used this process is not possible, however interviewees for this report from IOM, UN-OPS, Habitat for Humanity, IFRC, National Red Cross Societies, and CARE all confirmed that they had followed variants of this approach.

arguments carry some weight, for the purposes of this report, these documents presented a practical solution to regulatory barriers, with the aim of diminishing the risk of potential disputes or challenges and enabling beneficiaries to have at least some validation of their status vis-à-vis property rights, in an uncertain and challenging context. However such an approach is time-consuming and unless barriers can be overcome quickly (often unlikely in post-disaster situations) then it creates delay in the provision of shelters. For example, in Morne Lazar, it took over one month to map the land rights on a single hill with only 26 landowning families;⁵⁴ one interviewee from an international NGO noted the delay caused by requiring the signatures of a town's mayor, who insisted on signing all documents personally, therefore delaying the distribution of transitional shelters by several months.

Common regulatory barriers relevant to property rights

Opportunistic land claims or 'land grabs'

The chaos and confusion in the aftermath of the 2010 earthquake meant that opportunistic land claims did take place. Post-disaster settings are complicated enough, but in Haiti the system of unclearly defined land rights and minimal registration provided a much easier opportunity to illegally appropriate land. Interviewees from international NGOs noted that the most common form of opportunistic land claim encountered was that supposed owners would often claim ownership to a piece of land that had been earmarked for shelter construction, even if local authorities had confirmed that the site was public land. This practice was not limited to the immediate post-earthquake period: in Bainet in Jacmel, for example, construction of a Haitian Red Cross office and depot was delayed by over a year due to claims on a plot of land which was apparently owned by the local government (and legally transferred to the Red Cross). In the end the dispute meant that alternative land had to be found. A more detailed examination of how such issues were resolved is set out in section 1(c) below.

Such opportunistic claims were not restricted to sites where actors had already come to agreements with local authorities. In the Canaan camp in Port-au-Prince, for example, increasing pressure on land following the initial government expropriation meant that some opportunistic groups or individuals were quick to benefit. The absence of State control in the area meant that there were few barriers to these activities, and these groups or individuals would either 'sell' land that they had occupied or act as facilitators for the sale or 'transfer' of land that technically could not be sold due to the Government's restrictions on the area⁵⁵ (and not least the fact that to this day compensation has not been finalised with the official landowners, placing the camps in a legal grey area). Of some concern is the fact that the legal status of the Canaan land remains unclear, and doubts remain about whether or not the expropriation process can be completed.

Another complicating issue in the post-earthquake setting in Haiti (particularly in Port-au-Prince) was that many of those 'grabbing' land were not doing so with fraudulent intent; the lack of available land and delays in organizing shelter meant that a huge number of people were homeless and as such empty areas of public land

⁵⁴ HPG Working Paper, *Avoiding Reality: Land, institutions and humanitarian action in post-earthquake Haiti*, September 2012

⁵⁵ See Groupe URD, *How does one become the owner of a plot of land in Canaan?* <http://www.urd.org/How-does-one-become-the-owner-of-a>,

quickly became filled with informal settlements and camps. This in itself gave rise to further problems such as forced evictions, which can then lead to people being forced to relocate to even higher risk locations.

Insecurity of renters and squatters, and inequitable assistance as between documented owners and others

It is estimated that between 70 – 80% of Port-au-Prince residents were renters or squatters prior to the 2010 earthquake, and this statistic demonstrates the pressing need for them to be effectively considered in shelter programs. Commentators have observed that renters and squatters risk being left behind in shelter assistance programs due to lack of documentation, and may suffer from increased housing costs from landlords due to long time-frames and reconstruction costs.⁵⁶

Several interviews revealed that many shelter agencies faced something of an ‘unavoidable’ bias when implementing shelter programs. In the interests of assessing and assigning land for the provision of shelter, it was necessary to firstly establish the ownership of the land, and secondly to ensure that the owner was amenable to the placement of shelters on the land. Therefore facilitating arrangements with owners, before dealing with renters, was often necessary so that the agency could be confident that suitable land was available. This therefore meant that renters, namely those who could not simply re-occupy their existing property due to earthquake damage and debris, did have to wait longer than owners for shelter accommodation to be organised.

Conclusion

Experience of actors in Haiti following the 2010 earthquake has shown beyond a doubt that weak government capacity and an unclear property rights system created a major regulatory barrier to the provision of shelter, delaying and in some cases preventing shelter programs. Shelter agencies have papered over the issue with the use of transitional shelters and simple, standard form documentation to try to establish some form of security of tenure but this is a short to medium term fix for a long-term problem, with no clear method for integration into the formal legal system.

Recommendations

Short-term:

- It is recommended that the National Intervention Plan or separate national contingency plan should
 - include guidelines that prohibit grossly disproportionate levels of funding and resources (whether government or external) from being applied to the different categories of tenure status,
 - establish that principles of equality and non-discrimination must be equitably applied in terms of shelter provision, and
 - that the most vulnerable groups should be prioritised in shelter provision.

⁵⁶ See Housing, Land and Property Working Group, *Key Housing, Land and Property Rights Issues delaying IDP return and reconstruction efforts in post-earthquake Haiti*, 13 October 2010, and 31st International Conference of the Red Cross and Red Crescent, *Addressing Regulatory Barriers to providing emergency and transitional shelter – Background report*, October 2011

Long-term:

- Adopt laws and/or guidelines to clarify national property rights and to achieve the following:
 - Integration of informal property rights into the legal framework, for those in possession of land but without the formal recognition of such, potentially through a system of progressive tenure formalisation based on accrual of property rights over time,
 - Expanding legally accepted forms of property rights to include formal recognition of renters and squatters, and to establish a more detailed system of rights and obligations related to them.
- Amend existing law relating to acquisitive prescription, or issue guidelines on procedure, in order to simplify the process, and to allow disadvantaged citizens to make a claim without fear of costs as a barrier. The state may even consider removing the obligation to make a formal claim for acquisitive prescription, and granting rights over land based on a simple set of criteria that could be verified by a local authority representative or a judge (subject to rival claims over the land).

1.3 Property dispute resolution

Formal mechanisms

Formal dispute resolution for land and property matters in Haiti takes place through the court system, with the primary source of law for disputes arising under the Civil Code, although some criminal offences relating to land do exist under the Penal Code, such as tampering with boundary markers or returning to land that one has been evicted from. If the dispute relates to Civil Code matters, it is heard at the Tribunal Civil; if it relates to Penal Code matters, then the case is heard at the Tribunal de Paix. Justices of the Peace, at the lowest level of the justice system, play a large role in property disputes, and are responsible for, among other things, recording infringements of property rights and ordering evictions. Many land disputes are heard in the Haitian court system, although as noted in several interviews, the system is only available to those who can afford it. As such, generally speaking, those who can afford the costs will often turn to the courts first rather than attempt informal dispute resolution; those who cannot afford it (and costs can end up being higher than the value of the land in question) often turn to alternative mechanisms, and even violence.⁵⁷

Informal mechanisms

Given the prevalence of informal practices for land registration, it is unsurprising that many property-related disputes in Haiti are settled informally. Most conflicts are related to inheritance, with the main cause generally relating to systemic flaws in the documentation of land titles; these flaws are especially acute with regard to land inheritance, where informal verbal agreements are typically used to divide land between heirs.⁵⁸ Conflict often arises when family members are not consulted on decisions to sell land.

⁵⁷ The Earth Institute at Columbia University, *Options for Land Tenure Management in Rural Haiti*, 9 May 2012

⁵⁸ Ibid.

Channels for informal dispute resolutions range from family members, to CASECs and ASECs, unofficial community councils and bodies, NGOs and even voudou priests.

Whilst mediation and resolution of family members is quite successful, any conflicts not resolved this way often end up before the CASEC or ASEC, whose decisions are generally respected in communities due to their standing. All community focus groups interviewed for this project were asked about how disputes over land are generally resolved in their communities. The almost unanimous response was that they would initially approach either local *notables* (literally, ‘notables’, usually the respected elders and other senior figures within the community) and/or the CASEC in the first instance, who would then either determine the dispute or, if necessary, refer it to a local Justice of the Peace. Disputes may also go to the unpaid *aides* CASEC or *aides chef* section: these are individuals who are spread out over the territory, and are often engaged in resolving small rural conflicts. Less commonly, parties may turn to voudou priests for mediation and decision-making, but as noted in a recent study⁵⁹ the prevalence of this practice is debatable, although there is certainly some evidence to suggest that voudou priests are called upon to, for example, determine inheritance disputes or advise on distribution of land.

Parties may also turn to notaries and surveyors for dispute resolution (especially to the latter in regards to boundary disputes) although they have no legal authority for this role. Certain community interviewees also pointed out that if families have strong ties to a local church then their first port of call in the event of disputes will be the local pastor. Based on interviewee feedback, disputes also appear to be settled by informal community committees (usually formed of local *notables* and leaders), a preferred practice as it is a relatively quick and accessible means of resolving a dispute, as well as being free. The senior status of the committee members means that the parties generally respect their decisions.

Impact and implementation

The prevalence of informal dispute resolution is a clear indication that the formal dispute resolution mechanism is inappropriate for many Haitians, for a number of reasons including the cost of proceedings, the length of time involved and negative views of the judiciary and land tenure officials. The average length of time for formal cases involving land property rights is around 5 years;⁶⁰ one interviewee in Jacmel noted that this can often be exceeded, and referred to a recent example of a case of stelionat (fraudulent selling of land, often using forged documentation) which took 8 years. It is evident that the court system is slow and suffers from a lack of capacity; but of even more concern is the evidence that suggests corruption within the system. Interviewees provided examples of judges being bribed or for ruling in favour of parties they had connections with, and commentators have noted that some disputes are started with the tacit consent of land tenure officials (judges, notaries, surveyors), willing to accept bribes and produce false documents.⁶¹ It has also been noted that a widespread lack of land tenure legal training (on the part of both judges and lawyers) creates legal inconsistencies that breed confusion and conflict when ownership is challenged. Both corruption and the fact that formal mechanisms are long and expensive drives parties

⁵⁹ Ibid.

⁶⁰ HPG Working Paper, *Avoiding Reality: Land, institutions and humanitarian action in post-earthquake Haiti*, September 2012

⁶¹ The Earth Institute at Columbia University, *Options for Land Tenure Management in Rural Haiti*, 9 May 2012

to informal mechanisms, and the ‘clash between formal and informal decisions and registrations is a clear driver of conflict.’⁶²

Even in the event that a court ruling has been achieved, problems remain with enforcement, which can create a driver for further conflict. Rulings can often be simply ignored if the party in question feels they have enough money or power to do so,⁶³ and in such cases the court may lack the will to intervene (or the capacity). There is also a lack of capacity in civil and criminal law enforcement to deal with land dispute cases, and fear of retaliation may also stay the hand of the law (as well as alter rulings in favour of the more powerful party). Lastly there is no guarantee that CASECs, ASECs or informal community groups have the necessary ability or will to enforce their own decisions.

Good practices and solutions

The mechanisms for informal dispute resolution noted above can be seen as solutions to the problems with the formal system and the barriers these create, although informal dispute resolution in Haiti also has its roots in strong cultural traditions and practices, especially in rural areas. The number of disputes that arose in the post-earthquake period delayed many shelter programs and were made possible due to a combination of a weak system of property registration and rights (and inability to confirm ownership quickly) combined with a lack of means to mediate and settle disputes quickly and decisively.

Most interviewees from shelter agencies were open about the fact that they tried to avoid being involved in disputes over property, as this could tie up limited time and resources better devoted to the provision of shelter, and could also, despite best intentions, negatively affect community perception of them and thus also hinder shelter programs. However IOM, through its property legal team based in Port-au-Prince, did actively address issues of conflict for areas where it was organizing shelter programs, with a good degree of success. IOM have noted that conflicts usually resulted from a lack of clear information on land tenure status and the shelter intervention, and further identified three common causes of conflict as follows:

1. **End of affermage lease:** whereby a landowner may halt shelter construction on their land at any time if it is discovered the tenant has not honoured debts or has not validly renewed the lease contract;
2. **Boundary issues:** disputes normally arose during construction even if boundaries were agreed with landowners beforehand; and
3. **Ownership claims:** when real or fraudulent owners arrive to claim land (and thereby halt construction).

Whilst most cases encountered by the IOM team were eventually resolved amicably, some did require judicial action and were therefore referred to the courts. Where cases were resolved amicably, this was generally due to the mediation of the IOM team, who would facilitate negotiations between parties, draft new terms for leases etc. In one interesting case in Mayard in Jacmel, an offer to expropriate the land of a disgruntled landowner revealed that the individual lacked sufficient documentation or evidence to uphold their title claim, and as such shelter construction was able to continue on the site in question.

⁶² Ibid.

⁶³ Ibid.

Common regulatory barriers relevant to property dispute resolution

Absence of rapid and effective dispute resolution mechanisms

No Haitian law exists to provide rapid and effective dispute resolution mechanisms. Instead, even in times of emergency dispute resolution, at least in its formal legal incarnation, must be sought through the court system. As noted above, whilst the system is in place and responsibilities are relatively well defined, access to the system is prohibitively expensive and decisions can take years to achieve. Once a decision has been reached, there is no guarantee that there will be sufficient capacity in the system to enforce it.

Many Haitians therefore rely on informal dispute resolution mechanisms, which have the advantage of being quicker and cheaper, but they do not produce legally binding results and decisions are easier to ignore if community enforcement is lacking.

In the shelter context, organisations must be aware that land-related disputes can create cost and delays for shelter projects and that some form of informal dispute resolution mechanism may be appropriate to prevent disputes harming shelter beneficiaries.

Conclusion

Formal dispute resolution mechanisms in Haiti are unsuited to rapid and effective solutions; the main criticisms of the current system are that it is prohibitively expensive, and therefore unavailable to those who may need it most, can take a long time for a resolution, and institutional weaknesses mean that many Haitians view the court system with distrust. Therefore informal dispute resolutions are more popular, and often provide a quicker and cheaper (even free) means of settling a dispute, albeit without a legally binding outcome. Even if a legally binding resolution is achieved through the court system there are serious problems with enforcement that can render decisions hollow. Shelter agencies such as IOM have had some success operating through informal dispute resolution mechanisms in order to achieve quick and effective outcomes and ensure that shelter beneficiaries are not adversely affected, but this type of work needs to be replicated elsewhere in the shelter context.

Recommendations

Short-term:

- Consider setting out guidelines for a rapid dispute resolution system that would be implemented in the event of a disaster. Its initiation could be via an emergency law and its duration should be limited to a specific time period. The system's mandate should be limited to decisions relating to the use of land for shelter, and their powers should only include the ability to grant temporary usage rights for shelter purposes for pre-defined periods, which could be linked to the aforementioned emergency law.
- It is recommended that one entity be assigned overall responsibility for the creation and coordination of the system, for example MICT, UCLBP, or a committee made up of relevant officials from government agencies and civil society. Authority for the management of disputes could be delegated to temporary tribunals, with

their members deputised as appropriate by municipal and local authorities. It is further recommended that any guidelines or plan should emphasise the need to ensure the integration of local leadership structures, customs and groups when selecting the members of these tribunals.

Long-term:

- Law, policy or guidelines should be developed to recognise the dispute resolution capabilities of local authorities and leaders (such as community leaders, CASECs and ASECs), bearing in mind the need to balance the need to empower local leaders and communities against the possible risks of corruption and favouritism.
- Prioritise capacity-building for judicial, legal and law enforcement officials, as well as awareness-raising work with local communities on management of disputes over land

1.4 Eviction

Legal and institutional framework

Haiti's Constitution 'recognises the right of every citizen to decent food, housing, education and social security', whilst the Code of Civil Procedure provides a procedure by which landowners may seek the legal eviction of people occupying their properties.⁶⁵ In the aftermath of the earthquake of 2010 approximately 1.5 million people (338,776 households) were displaced from their homes; the impact of Tropical Storm Isaac in August 2012 and Hurricane Sandy in October 2012 raised this figure to over 2 million. As at the end of 2014 an estimated 22,741 households or 85,432 individuals still reside in 123 internally displaced person (IDP) sites.⁶⁶ Whilst this represents a sizeable decrease of the IDP population, unfortunately the last few years have shown that neither national nor international laws have been able to consistently protect this vulnerable group from eviction. The most recent report of the UN General Assembly's Independent Expert on the situation of human rights in Haiti noted that whilst many people have now left the camps this has not necessarily resolved their housing problem.⁶⁷

Both the law and interviewees were clear that the rights of the persons in occupation change after one year of occupation, insofar as they relate to landowners seeking to assert ownership rights or possession of private property. Before one year, a landowner can bring an *action possessoire*, which can be conducted by a *juge de paix* (Justice of the Peace) in a *tribunal de paix* (Peace Court). Technically this establishes the right of an individual to possess a property, and Justices of the Peace have the power to order the eviction of anyone found to be in illegal occupation of another's land (provided that such occupation has been for less than one year). The *action possessoire* is, relatively speaking, easier and quicker than an *action petitoire*, which must be brought if occupation is over one year. An *action petitoire* must be brought in a Court of First Instance and conducted by a Justice of the Peace, and involves more steps and a formal trial. Technically this establishes and enforces an individual's title to property. The fact that

⁶⁴ Article 22, Haiti Constitution

⁶⁵ Articles 31 to 35, Haiti Civil Procedure Code

⁶⁶ International Office for Migration, Displacement Tracking Matrix (DTM) Haiti, Round 20, September 2014

⁶⁷ United Nations General Assembly, Human Rights Council, Twenty-fifth session, Agenda Item 10, Report of the independent expert on the situation of human rights in Haiti (Gustavo Gallón), 7 February 2014

many landowners in Haiti lack formal legal title to their land, as well as the length and complication of the required legal processes, contributes to the high number of forced evictions that take place in Haiti, especially in the urban setting of Port-au-Prince.⁶⁸

It is important to note that Haiti, in accordance with the Constitution⁶⁹ is obliged under international law to refrain from engaging in, and to prevent, forced evictions.⁷⁰ Furthermore the UN's Committee on Economic, Social and Cultural Rights requires that evictions should only be carried out as a last resort. In the post-2010 setting, however, it is clear that there have been widespread forced evictions of internally displaced persons that continue to this day. Between July 2010 and June 2013, IOM estimates that 16,116 families were forcibly evicted,⁷¹ for reasons varying from the government clearing public spaces, to private landowners seeking to regain possession of their property.

Evidence from interviewees as well as from commentators makes it clear that the legal process of eviction in Haiti, as with many other legal processes, is ill-defined, costly and time-consuming, with no guaranteed enforcement. The need to prove title to land in order to apply for eviction also acts as a barrier to using the formal procedure, as many landowners lack formal legal title. This links directly to the number of forced evictions that have been carried out in Haiti, which have increased due to land issues following the earthquake. Anecdotal evidence from interviewees, including members of the Haitian diaspora, suggests that informal evictions are the 'norm' in the event that a land-owner wishes to evict anyone from their land, regardless of the latter's rights to occupation (examples were given of squatters as well as those with more recognisable (albeit generally informal) rights to occupation). For the UN Human Rights Council, forced evictions in Haiti remain an issue of significant concern;⁷² they prevent access to shelter and can deprive people of basic human rights, as well as forcing people to seek out even more tenuous and risky accommodation options. Haitian law does not explicitly prevent forced evictions; nor does it set out appropriate safeguards to be followed in evictions (of particular concern to those living in informal settlements), provide for consultation with communities, provide for reasonable notice, or prevent evictions during times of emergency, bad weather or at night.⁷³

Amnesty International have identified several examples of forced evictions initiated by both the state and private actors, and their report on forced evictions identified severe shortfalls in the procedures followed for evictions; for example, adequate notice was not given, and any notice that was provided was either given verbally or simply spray-painted on to shelters, as was the case in Camp Mormon and Camp Mozayik in Delmas, Port-au-Prince.⁷⁴ Not all evictions are "forced" in the conventional sense either: the British Red Cross found evidence that in the aftermath of the earthquake of 2010, land-owners in Delmas 19 were simply paying people staying on their land to leave rather than physically ejecting them. Whilst less traumatic than a physically forced eviction

⁶⁹ Article 276-2, Haiti Constitution: this states that once approved and ratified, international treaties and agreements become part of Haiti's legislation and abrogate any laws in conflict with them.

⁷⁰ See, for example, para. of Resolution 1993/77 of the UN Commission on Human Rights, and Principle 5.3 of the United Nations Principles on Housing and Property Restitution for Refugees and Displaced Persons (the 'Pinheiro Principles')

⁷¹ IOM Displacement Tracking Matrix v2.0 Update, 30 June 2013, <http://iomhaitidataportal.info/dtm>

⁷² United Nations General Assembly, Human Rights Council, Twenty-second session, Agenda item 10, Report of the independent expert on the situation of human rights in Haiti, Michael Forst, 7 February 2013

⁷³ Amnesty International, 'Nowhere to Go' – Forced evictions in Haiti's displacement camps, 2013

⁷⁴ Ibid.

this creates the risk of evictees simply transferring to even more unstable situations in other areas around the city.

Good practices and solutions

It is hard to pick out examples of either positive practices or solutions that have been developed in response to the weak legal framework surrounding evictions in Haiti, and the consequent number of forced evictions. Interviewees were relatively silent on the matter, mainly as their work did not involve dealing with evictions. However it is possible to argue that informal dispute resolution mechanisms such as those used by IOM and noted above in section 1(c) have gone some way to resolving issues surrounding disputes over land, which often involve landowners hoping to remove shelters (and their inhabitants) from their land. Attempting to mediate and resolve a dispute before the landowner takes judicial or extra-judicial action to evict represents the best practice, but in reality landowners will often commence informal eviction procedures without referring to any authorities. Even some public authorities to some extent ignored the legal framework and allowed for forced evictions, especially in Port-au-Prince.⁷⁵

Conclusion

Although evictions are covered under the Haitian legal framework, lack of detail in law and procedure means, and failure to apply standard international norms, leaves the ground open for forced evictions and human rights violations. The fact that most evictions occur outside of the legal process means that people are denied basic human rights and creates a severe problem for shelter programs, as the evicted persons must either seek further shelter assistance, or they are forced to seek informal accommodation in even more tenuous locations.

Recommendations

Long-term:

- Adopt legislation, or amend suitable existing legislation, in order to:
 - set out a clear prohibition on forced evictions;
 - clarify and expand on the procedures for the existing evictions available under law, paying particular attention to the need to protect the rights of the evictee, which should conform with international standards including the UN Basic Principles and Guidelines on Development-Based Evictions and Displacement.

1.5 Temporary requisition of land

Legal framework

Haiti, as in many other countries, does have legislation that provides for governmental powers of expropriation of land for public uses in normal times, however there is no specific legislation to provide for expedited or temporary requisition in times of emergency. In order to requisition land the only formal legal procedure available is expropriation. This is enshrined in the Constitution, which states that 'expropriation for a

⁷⁵ Ibid. See for example, the case of forced eviction in Camp Mozayik, Delmas.

public purpose may be effected only by payment or deposit ordered by a court in favour of the person entitled thereto, of fair compensation established in advance by an expert evaluation.⁷⁶ The Prime Minister is vested with the sole authority (via order or decree) to expropriate private property under the Law of 5 September 1979 on Expropriation for Public Utility;⁷⁷ interestingly, a more recent decree in 2006 gave municipal authorities the power to expropriate land for public utility.⁷⁸ However this power is often disregarded as it conflicts with the 1979 law.⁷⁹ Furthermore no interviewees were able to mention any examples of municipal authorities actually using this power.

The actual process for expropriation, technically known as 'expropriation for public utility' involves a multitude of government stakeholders and generally takes a very long time, often due to negotiations over compensation with landowners. Whilst the law states that expropriation can be declared in the case of extreme urgency, or even to establish habitat or social shelter for families in need,⁸⁰ there is no guidance as to what would constitute 'extreme urgency', nor do there appear to be any fast-tracked procedures available for such cases. Expropriation is instead typically used for reasons such as infrastructure development, public monuments, urban planning and so on. All expropriation procedures must start with an Order of Declaration of Public Utility issued by the Prime Minister, to demarcate the land. Any landowners and occupants must be notified via national publication (although government stakeholders noted that in practice, notices will be placed on the land and letters will be sent to those living in the area) to submit their titles and other documents to DGI within a maximum 60 days. Title documents are analyzed by a DGI committee of experts, who pass their findings to the Permanent Committee for Acquisition of Properties for the Implementation of Public Utility Works, who in turn determine the rates for compensation. Landowners are able to contest the rate of compensation (but not, it appears, the actual declaration of public utility itself); in the event of the compensation being contested, the matter must proceed to a judicial hearing.

The above is only a summary of the more detailed procedure that is set out in the Law of 5 September 1979. Whilst not necessarily an overly convoluted process considering the importance of the issues at stake (the forcible purchase of land, albeit with compensation), it is unsuited to the rapid decision-making that would be required in an emergency setting, and does not permit for a temporary use of land as opposed to a permanent purchase. Government interviewees confirmed that most delays to the procedure happen due to disagreements over the level of compensation with the landowner.

Outside of the framework for expropriation, both the central government and the municipalities of Haiti are also able to declare public utility easements, which can be either temporary or permanent.⁸¹ Whilst not commonly used in law, these could be developed as a tool for the government of Haiti to enable rapid temporary requisition of land in the aftermath of a disaster, as there are much fewer administrative steps involved in their declaration (although no evidence has yet suggested that they can

⁷⁶ Article 36, Haiti Constitution

⁷⁷ Loi sur l'expropriation pour cause d'utilite publique, 5 September 1979

⁷⁸ Articles 198 – 201, Décret fixant l'organisation et le fonctionnement de la collectivité municipale dite commune ou municipallité, 1 February 2006

⁷⁹ Leah Mueller for the Interim Haiti Recovery Commission, *Haitian Law as it applies to Housing and Reconstruction: A Legal Summary*, 3rd June 2011

⁸⁰ Article 10, Law of 5 September, 1979

⁸¹ Loi permettant l'occupation temporaire de propriétés privées en vue de faciliter l'exécution de certains travaux d'intérêt général, 5 September 1979; and Loi établissement de servitude d'utilité publique, 3 September 1979

currently be achieved quickly). Out of the three categories of easements under law, those easements that allow the administration to impose a type of control (such as temporary occupation or the establishment of permanent structures) are the most relevant to a post-disaster shelter context. Easements expire after three years (although they can be extended) so are already essentially temporary under Haitian law.

Impact and implementation

Stakeholders from both government and NGOs who were interviewed for this project confirmed that, as far as they were aware, no expedited systems for expropriation have been used in Haiti. Although some mentioned that temporary requisition should have been possible under the emergency laws passed in the months following the earthquake,⁸² no one could point to any examples. In the aftermath of the earthquake of 2010 there was a pressing need for the government to expropriate land and build or authorise camps for the displaced and homeless. However the decimation of government capacity and the lack of clear rules on how the process of expropriation works created delay and confusion, and very few successful expropriations took place.

A notable example of the government of Haiti employing its expropriation powers in a shelter-related context is that of ‘Corail’: on 19 March 2010 an order of public utility was declared over 7,450 hectares of land between Bon Repos and Cabaret in Port-au-Prince, in order to relocate earthquake victims and redevelop metropolitan Port-au-Prince.⁸³ 2,000 families were relocated there in April 2010, whilst outside the planned camp some 43,000 families had settled in the Canaan, Jerusalem and Ona-ville areas of the site by 2011. Although the Order prohibits construction, subdivision or other land use, both temporary and permanent structures have been built. The status of the land remains unclear (as it was not state land but was nonetheless claimed by the Government), with no security of tenure for any families who resettled there having no security of tenure, although families continue to relocate there, due among other things to forced evictions elsewhere or the continuing expectation that the government will formally redistribute land to those living there. Interestingly, one interviewee noted that Canaan has a basic but functioning system of registration and cadastre in place, entirely informal and based on developing customary practices there. However it is clear that this system does not necessarily operate equitably, for example community groups (often claimed to be involved in intimidation and local violence) have been known to prioritise family claims for land, and a number of ‘speculators’ and fraudulent facilitators are in operation, claiming legitimacy for the land transactions they enable, which is not technically possible given the government restrictions on the land.

Feedback from interviews held with communities and local authorities suggests that formal procedures for expropriation of land were rarely, if ever, used in the context of shelter provision; indeed, no interviewees were aware of the specific procedures or legal framework around them. However in the aftermath of the earthquake of 2010, practical measures were certainly taken – for example, in Bainet and in other communal sections in Jacmel, schools and churches (some in questionable states of repair) were quickly used as shelters for those whose homes had been destroyed; outside of urban centres

⁸² See for example the wide powers available under the *Loi portant amendement de la Loi sur l'Etat d'Urgence du 9 Septembre 2008*, 17 April 2010

⁸³ Arrêté déclarant d'Utilité Publique les propriétés s'étendant de l'angle de la Rivière Bretelle à la Route nationale numéro 1 en passant par Bon Repos et Corail-Cesselesse formant un polygone avec la zone communément appelé Cocombre, 19 March 2010

there was often no shortage of open land where tents could be quickly set up. None of these examples were based on legal procedures; they were simply the immediate reactions of authorities and community members after the earthquake. However the lack of a clear legal framework and procedures can at least partly be blamed for the fact that many temporary sites were occupied without the permission of the owner, and that some of these temporary sites are still occupied, with questions still remaining over the ownership of the land as well as the rights of the occupants.

As noted above, however, procedures do exist under law which allow the Haitian government expropriate private property, which can be employed under grounds which are directly relevant to the provision of shelter. Furthermore the example of legal easements presents a possible interesting legal alternative to the cumbersome method of declaring sites of public utility; however as far as interviewees reported, no examples could be found of the state using easements in order to provide rapid access to land for shelter.

Good practices and solutions

One good practice that has emerged more recently and could at least be considered a medium-term solution to the lack of clearly identifiable and available land for shelter, is the development of Contingency Plans as part of both government and NGO disaster risk management and disaster risk reduction activities. Contingency Plans sit within the general planning framework required under the PNRU, although they are mentioned only briefly.⁸⁴ A national level Contingency Plan for the tropical cyclone season is updated annually and contains relatively detailed provisions regarding the number of temporary shelters available in each department and their capacity.⁸⁵ Departmental contingency plans are also in place that set out in more detail the available temporary shelters and sites available.⁸⁶ The picture is much less clear below this: feedback from interviews and community focus groups suggests that the existence of communal, section and community-level Contingency Plans depends heavily on whether there is an NGO to support the development of the document.

Be that as it may, it is at the local level where they can be most effective. Taking the example of the work of the Haitian Red Cross in Jacmel, a Contingency Plan is developed for each community that the organisation works with; whilst they do not seek to achieve any legal remedies for the temporary requisition of land, the Plans are developed with the support and input of the local authorities, including representatives of the Civil Protection committees (generally the CASEC coordinators), as well as the community to select areas appropriate for shelter in the event of natural disasters and to achieve consent for their use from local authorities or, less commonly, private landowners, and in certain cases to work on making the land or structures (often local schools) more resistant. This means that in the event of a natural disaster such as an earthquake or flood, the community is aware of where to seek temporary shelter, and consent to its use has already been granted (lessening the risk of disputes).

⁸⁴ p. 15, Government of Haiti, PNRU, 2001

⁸⁵ Section 20.3, DPC, *Saison Cyclonique 2013 – Plan de Contingence National*, June 2013

⁸⁶ DPC (Departement du Sud), *Plan de Contingence 2014 – Departement du Sud – Haiti*, 2014

Common regulatory barriers relevant to temporary requisition of land

Conclusion – Absence of effective procedures for temporarily requisitioning land

Haitian law does not provide any procedures for the temporary requisition of land, although interestingly the law on easements does provide a potential avenue to at least allow the government to have the benefit of a temporary use of land, which could be related to the provision of shelter. The government's inability to quickly requisition land in the aftermath of the 2010 earthquake (due in part to the legal framework and in part to the huge capacity losses the government had suffered) was a barrier to the provision of shelter as shelter agencies struggled to find adequate land to meet shelter needs.

Recommendations

Short-term:

- Consider including guidelines that would permit temporary usage rights over (un-occupied) private or state land for emergency shelter. This could be implemented through an emergency law, which would provide time-limited powers to temporarily expropriate land for shelter provision. Such powers could even be modified versions of the laws on expropriation for public utility, or the creation of short-term easements.
- Build on the good practice already evident in some contingency plans, by integrating the analysis and assignment of safe temporary shelter sites into risk management plans and contingency plans at all levels of government and for individual communities. It is recommended that the National Intervention Plan is updated to place a specific requirement on the national, departmental, municipal and local authorities for this purpose.

Long-term:

- Amend existing legislation, or adopt new legislation or policy, regarding expropriation, to clarify the steps involved and to provide a 'fast-track' expropriation procedure in times of emergency, with the aim of making land available for shelter quickly and effectively.
- Investigate the possibility of utilising national legislation on easements as a means to rapidly assign land for shelter in an emergency setting, and consider whether amendment of existing legislation or the adoption of new legislation may be appropriate.

2. Resource and building management laws and regulations

2.1 Land use planning

Legal and institutional framework

Haiti suffers from a lack of adequate land use planning regulations; its laws in this area are both outdated and, more importantly, unenforced. Whilst a surprising amount of law exists that covers land use planning, the law generally only sets out the requirements for the various levels of state administration to put certain plans into place, without venturing into much detail. The legal framework centres on a few key pieces of legislation. Firstly, a law of 1963 establishing special rules regarding housing and planning of towns and countryside areas to develop urban planning requires that every town with more than 2,000 inhabitants must have an Urban Plan (technically a plan for ‘development, beautification and extension’) authorised by the Department of the Interior, which should contain details relating to, among other things, creation and modification of roads, parks, tree conservation, social services, infrastructure, and setting out zoning requirements for residential, industrial, and agricultural areas. The legal and institutional framework can then be divided according to the various territorial levels of state administration:

- At **national level**, the Constitution states clearly “*the law shall set conditions for land division and aggregation in terms of a territorial management plan and the well-being of the communities concerned, within the framework of agrarian reform.*”⁸⁹ A general schema d’aménagement du territoire (land use planning scheme) as well as an over-arching national plan are required under the decree of 1989 creating the Ministère de Planification et de la Coopération Externe (Ministry of Planning and External Cooperation) (**MPCE**).⁹⁰ A national plan for habitat and housing is required under a decree of 2005, which must establish (environmental) planning constraints which will be further elaborated in urban master plans or urban, municipal or departmental development master plans.⁹¹
- At **departmental level**, a schema d’aménagement départemental (departmental land use planning scheme) as well as a general Development Plan are included in the ‘competencies’ of the departmental administration under a decentralisation decree of 2006;⁹² under a different decree of 2006, the Development Plan must also be ratified by the Departmental Assembly.⁹³

⁸⁷ Loi établissant des règles spéciales relatives à l’habitation et à l’aménagement des villes et des campagnes en vue de développer l’urbanisme, 29 May 1963

⁸⁸ Article 65, *Ibid*.

⁸⁹ Article 37, Constitution of the Republic of Haiti, 2012

⁹⁰ Article 20, Loi Portant organisation et fonctionnement du Ministère de Planification et de la Coopération Externe, 10 May 1989

⁹¹ Articles 37-39, Décret sur la gestion de l’environnement, 12 October 2005

⁹² Article 94, Décret fixant le cadre général de la décentralisation ainsi que les principes d’organisation et de fonctionnement des Collectivités Territoriales, 1 February 2006

⁹³ Article 42, Décret fixant l’organisation de fonctionnement de la collectivité départementale, 1 February 2006

- At **communal level**, many obligations regarding planning fall to MTPTC, who (through their Urban Planning Service) are responsible for establishing Master Plans for urban and rural centres, as well as Master Schemes for detailed planning.⁹⁴ Local authorities must also put in place a Land Use Plan and a Physical Layout Plan.⁹⁵
- At **communal section level**, Haitian law requires the establishment of Master Development Plans for Human Settlements, as well as Communal Action Plans for environment and sustainable development,⁹⁶ and the creation of a general development plan for the section.⁹⁷

The Haitian state has also passed relatively detailed laws regarding the subdivision of property; the Law on Subdivision of 1963 requires any subdivision to be approved by the government Public Works department,⁹⁸ and the Urban Planning decree of 1982 expands on this as well as setting out various rules relating traffic control, roads and highways.⁹⁹

Some aspects of land use planning are also delegated to regional levels; most recently, a Decree of 2006 regarding decentralisation vested a certain amount of authority in the municipalities for urban planning.¹⁰⁰ Powers granted to the municipalities include the implementation of municipal zoning, preparing municipal development plans, and issuing building permits and compliance certificates.¹⁰¹ At the Communal Section level, the CASECs have the responsibility of firstly ensuring the rational development and maintenance of structures established by the municipality (for example, highways and forests), and secondly to help prepare and implement the Communal Section's development plan. ASECs, meanwhile, have the ability to promote the establishment of zones reserved for forests, and to ensure compliance with other environmental obligations.¹⁰²

In terms of institutional responsibilities, whilst the law devolves a certain amount of powers to regional level, in practice land use planning is almost wholly directed by the central government.¹⁰³ At central level planning activities are overseen by the *Ministère de la Planification et de la Coopération Externe* (Ministry of Planning and External Cooperation) (**MPCE**), whose mission consists of developing plans for economic and social development, and improving planning systems;¹⁰⁴ however it is important to note that MPCE has no planning department *per se*, instead it coordinates planning efforts and has overseen multiple 'Master Plans' projects for Port-au-Prince. Evidence suggests that none of these Master Plans have been either authorised or implemented through regulations.¹⁰⁵ The Ministry of Public Works, Transport and Communications (**MTPTC**) also possesses a Service de Planification Urbaine (Urban Planning Service)

⁹⁴ Article 27, *Décret Organique du Département Ministériel des Travaux Publics, Transports et Communications*, 18 October 1983

⁹⁵ Article 25, *Décret sur la gestion de l'environnement*, 12 October 2005

⁹⁶ *Ibid.*

⁹⁷ Article 92, *Décret fixant le cadre general de la decentralisation ainsi que les principes d'organisation et de fonctionnement des Collectivités Territoriales*, 1 February 2006

⁹⁸ *Loi etabliissant de regles speciales relatives a l'habitation et a l'aménagement des villes et des campagnes*, 29 May 1963

⁹⁹ *Décret Fixant les regles specifiques relatives a l'habitation et a l'aménagement de nos cites et agglomérations rurales et urbaines*, 6 January 1982

¹⁰⁰ *Décret fixant l'organisation et le fonctionnement de la collectivité municipale dite commune ou municipallite*, 1 February 2006

¹⁰¹ Chapters I – II, *Ibid.*

¹⁰² Articles 11 and 19, *Loi-portant sur l'organisation de la collectivité territoriale de section communale*, 28 March 1996

¹⁰³ UN-Habitat, *A Situational Analysis of Metropolitan Port-au-Prince, Haiti – Summary Report*, 2010

¹⁰⁴ MPCE website, <http://www.mpce.gouv.ht>

¹⁰⁵ Cynthia McCoy, University of Pennsylvania, *Removing barriers to land security in Haiti*, October 2011

under its Directorate of Public Works.¹⁰⁶ Finally, the Comité Interministeriel d'Aménagement du Territoire (Inter-ministerial Committee for Territorial Planning) was created under decree in January 2009,¹⁰⁷ as a coordinating body with responsibility for 'coordinating and harmonizing public intervention in the areas of urban planning and habitat'¹⁰⁸ (among other things), with work related to this responsibility including elaboration of the master plans of large urban centers in Haiti.

Impact and implementation

In the context of shelter provision, effective land use planning is needed to clearly identify land that is suitable for emergency and transitional shelter, and to have accurate information on the ownership of land. Effective land use planning regulations would allow both for reconstruction and redevelopment, and should be able to assign, for example, parcels of land that could be suitable for shelter sites in the event of an emergency. Commentators and interviewees at national, departmental and communal/local levels, however, were relatively unanimous in their assertions that land use planning in Haiti is at present ineffective and in most areas non-existent, therefore meaning that it exacerbates existing barriers to shelter provision. Interviewees from both government and NGOs pointed out that land use planning generally only ever happens in the context of a rebuilding or development project initiated by external actors (i.e. private companies, NGOs and other international organisations), which are not considered in the context to any overall planning framework. A weak institutional history, combined with lack of capacity and the devastating effects of the earthquake of 2010, have hampered the development and implementation of land use plans.

Interviewees noted the potential overlap between government entities responsible for planning, and the fact that in practice it is unclear to what extent the responsibilities of CIAT overlap with MPCE and indeed MTPTC, or whether these have been taken into consideration by the government. Several interviewees recounted experiences of having urban construction and redevelopment projects authorised by UCLBP or MTPTC, and then at a much later stage being informed that they would also have to coordinate with and gain further authorisation from CIAT. Mixed planning agendas and a lack of coordination have contributed to the fact that over the past thirty years or so, twelve master plans for the development of Port-au-Prince have been drawn up, but never formally adopted or implemented.¹⁰⁹ Furthermore, interviewees also commented on how any urban or municipal plans drawn up for Port-au-Prince (notwithstanding whether such plans are ever officially adopted) repeatedly fail to take into account informal settlements, despite a history of long-term (20 years and upwards) occupation of many sites.

Input from shelter agencies, foreign donors and international organisations have had mixed results (although note the good practices described below); organisations like the Prince's Foundation, for example, developed plans for the reconstruction of 50 blocks in downtown Port-au-Prince in early 2011,¹¹⁰ but no evidence exists to suggest that these

¹⁰⁶ Articles 26 – 29, *Décret organique du MTPTC*, 18 October 1983

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¹⁰⁸ CIAT departmental brochure, *Toward a sustainable and concerted planning of the Haitian territory*, available at http://www.ciat.gouv.ht/download/download.php?val=20_misson+ciat

¹⁰⁹ HPG Working Paper, *Avoiding Reality: Land, institutions and humanitarian action in post-earthquake Haiti*, September 2012

¹¹⁰ Prince's Foundation website, <http://www.princes-foundation.org/content/reconstruction-plan-port-au-prince-supported-haitian-president>

plans have moved forward. Indeed interviewees noted that despite the declaration of public utility over much of downtown Port-au-Prince in order to redevelop the area, vested interests based elsewhere in the city (mainly Petion-ville) have prevented any redevelopment in an area that does not suit their interests. Other interviewees noted that the various plans developed by international organisations and NGOs are replacing the government's own planning efforts, and to some extent causing additional confusion in the planning sector.

Good practices and solutions

Papers issued by the government of Haiti suggest a drive to modernise the land use planning system, even if the current capacity to do so remains limited. An official government publication notes that 'Haiti has missed several historic opportunities and squandered many of its assets' and states the intention to use the *Arrondissement* as the territorial base for local land planning and development.¹¹¹ Rehabilitation of urban areas is mentioned as a priority but the publication contains no details regarding issues of housing and shelter. Furthermore the government's 'Neighbourhood Return and Housing Reconstruction Framework' notes that strategic development planning processes for land use must be implemented in consultation with national and local actors, and that efforts are underway to develop strategic plans and land use plans at an accelerated pace.¹¹² However whilst the efforts of organisations such as UN-Habitat and the World Bank are noted in the Framework document, neither interviewees nor research has revealed whether any of the plans mentioned have been adopted or implemented. The Framework also sets the intention to carry out community planning and community risk-mapping in order to inform land use planning efforts and improve the social and economic functioning of neighbourhoods.

External organisations and agencies have also contributed some good practices; UNDP, for example, developed a seismic zoning map of Port-au-Prince to help state actors make informed decisions regarding urban planning and construction of new structures,¹¹³ and other agencies have filled the 'planning void', conducting participatory neighbourhood planning and land rights mapping.¹¹⁴ However the fact remains that these are small-scale efforts (in view of the size of the task at hand) that whilst they may have state support and coordination, on the whole operate outside the formal planning framework.

A potential solution to current issues in the land use-planning sector, and to the lack of the integration of shelter considerations, is apparent in Haiti's draft National Housing Policy.¹¹⁵ The Policy is relatively low on details as it is only a draft for discussion, but importantly it acknowledges the need to integrate shelter considerations into the national housing and planning framework, and it is stated that UCLBP will coordinate with state and non-governmental humanitarian actors to build a more robust system of planning insofar as this relates to emergency response, and to institutionalise strategies developed for housing and settlements. Specifically, future emergency responses should have a shelter strategy that minimises unnecessary displacement

¹¹¹ MTPTC, *Strategic Plan for the Redevelopment of Haiti*, undated

¹¹² Government of Haiti and the Interim Haiti Recovery Commission, Neighbourhood Return and Housing Reconstruction Framework, draft version

¹¹³ UNDP, *Haiti Rebuilds*, December 2011

¹¹⁴ HPG Working Paper, *Avoiding Reality: Land, institutions and humanitarian action in post-earthquake Haiti*, September 2012

¹¹⁵ Government of Haiti, *Politique Nationale du Logement, de l'Habitat et du Développement Urbain*, draft document for commentary and suggestions, 30 April 2012

and accelerates rehabilitation to contribute to earlier development of resilient communities.¹¹⁶ The wording is relatively wide but the intention and statement is to be commended; interviewees pointed out that the lack of direction on housing and planning policy creates major problems for the state, citizens and the international aid community. In October 2013 UCLBP issued a Framework Document (*Document Cadre*),¹¹⁷ and whilst this develops the overall framework through which the government hopes to channel reform of, among other things, the planning system, it adds relatively little of substance to the body of land use planning regulations in Haiti, and unfortunately does not develop any of the shelter-specific considerations that appeared in the draft National Housing Policy of 2012. However, interviews with officials from UCLBP revealed that the government is currently developing more detailed policy documentation as well as laws and regulations that would greatly expand on the Framework Document. Interviewees were open about the fact that this will not be an easy or quick process (especially given the political situation in Haiti as at the end of 2014), and the Framework Document represents only the very beginning of a long-term project of reform. The fact that this process is taking so long has attracted criticism from some quarters – for example, the lack of formal adoption of a National Housing Policy was noted with concern during the visit of the United Nation's Special Rapportuer for the rights of internally displaced persons in mid-2014.¹¹⁸

Common regulatory barriers relevant to land use planning

Conclusion – problems with land planning rules

The major barrier to shelter provision insofar as land use planning is concerned is not perhaps the abundance of legislation on the topic, as it appears in practice this is largely overlooked and unenforced. Instead the real problems lie in discerning true institutional responsibility for planning given the myriad government agencies responsible, and the lack of direction for land use planning in the absence of any overarching and persuasive legislation, policy or guidance. Until these issues are overcome then the provision of shelter will remain beholden to a lack of clarity over suitability and availability of land, and the rules regarding its use.

Recommendations

Long-term:

- Prioritise issues of shelter in any future updates to the National Housing Policy and ensure that any statutory plans developed by national departmental, municipal or local authorities consider, to the extent practical, the assignment of appropriate land for use as emergency shelter.
- Build on the momentum achieved with the current National Housing Policy Framework Document, in order to clearly define institutional responsibilities for land use planning, and the required content of planning documents.
- Review and harmonise existing legislation, regulations, rules and norms on land use planning.

¹¹⁶ See p.62, *Ibid*

¹¹⁷ Government of Haiti, *Politique Nationale du Logement, de l'Habitat – Document Cadre*, October 2013

¹¹⁸ Radio France International, *Haiti: Absence de politique nationale du logement*, <http://www.rfi.fr/emission/20140709-haiti-logement-reconstruction/>

2.2 Environment

Legal and institutional framework

Haiti possesses a relatively long list of laws relevant to the environment,¹¹⁹ but in common with most of the rest of the world, none of its environmental regulations have been drafted with post-disaster settings in mind. The starting point for considering environmental rights in Haiti must be the Constitution, which affirms that the environment is the natural framework of the life of the people, and that ‘any practices that disturb the ecological balance are strictly forbidden’.¹²⁰ The Constitution also requires the state to, among other things, protect natural sites and forests, and encourage the development of alternative energy sources, as well as noting that violations of environmental laws are subject to penalties.¹²¹

The most recent (and indeed the most comprehensive) law on environmental management in Haiti is the Decree of 12 October 2005 on Environmental Management,¹²² which interestingly notes that the constitutional right to private property is subject to obligations of environmental protection.¹²³ The Decree establishes a framework for environmental assessment, required for any ‘policies, plans, programs, projects or activities likely to have an impact on the environment must necessarily be subject to an environmental assessment.’ Said assessment includes an Environmental Impact Study, Environmental Impact Statement, Environmental Permits, and Environmental Audits. Assessments are submitted to the Ministry of the Environment (**MDE**) for approval; however a gap in regulation exists, as the MDE has still not issued regulations that clarify the projects and programs that should be subject to environmental assessments, or the applicable procedures¹²⁴ (although see below regarding the draft law and regulations which cover this area). The Decree also establishes responsibility for environmental monitoring, which lies mainly with the MDE but also assigns responsibilities to the Haitian National Police; evidence from the MDE however suggests that capacity gaps prevent any real monitoring taking place.

Haiti’s Rural Code contains many provisions relevant to the environment, and under the 2005 Decree, the Rural Code applies in all instances where the Decree does not overrule or contradict it. The Rural Code’s length means that a full assessment of its provisions is impractical here, but it does, for example, prohibit the deforestation or clearing of land with slopes greater than 50 degrees in ‘rainy zones’ and 30 degrees in ‘arid zones’,¹²⁵ and prohibits debarking or felling trees without the permission of the Department of Agriculture.¹²⁶ However, consensus suggests that despite its detailed provisions, it is rarely considered or enforced.

¹¹⁹ For a lengthy listing of laws relevant to environmental protection in Haiti, see for example UNDP (annotated and compiled by Jean André Victor), *Code des Lois Haïtiennes de l’Environnement*, 1995, available at <http://www.foproblm.org/Documents/EnvironmentalLawsofHaiti%20pdf.pdf>

¹²⁰ Article 253, Haiti Constitution

¹²¹ Articles 254 – 257, *Ibid*

¹²² Décret portant sur la Gestion de l’Environnement et de Regulation de la Conduite des Citoyens pour un Développement Durable, 12 October 2005

¹²³ Article 9, *Ibid*.

¹²⁴ Leah Mueller for the Interim Haiti Recovery Commission, *Haitian Law as it applies to Housing and Reconstruction: A Legal Summary*, 3rd June 2011

¹²⁵ Article 63, Haiti Rural Code

¹²⁶ Article 202, Haiti Rural Code

Impact and implementation

In general, implementation of environmental legislation in Haiti is severely lacking and suffers from institutional capacity gaps; indeed the government of Haiti has itself noted that environmental management and regulation has traditionally been weak.¹²⁷ The fact that environmental regulation has been weak means that it does not present a strict legal barrier to shelter provision in Haiti per se, but does raise the issue that lack of regulation and enforcement could create environmental problems as a result of shelter provision: for example, inability to prevent excessive deforestation to provide shelter materials, or issues caused by waste from shelter construction. Under the 2005 Decree, a National Program for Territory Management should have been drafted and implemented, but to date no such program is in place. The environmental impact assessment regime is only briefly sketched out in the law¹²⁸ and in practice relies almost solely on companies, government authorities and international agencies to develop and manage their own environmental impact assessments and submit them to MDE for approval. With only minimal funding and three staff available at national level (and none at departmental or communal) for the purposes of environmental impact assessments, essentially the MDE lacks any real oversight or enforcement powers over the assessment process.

In a positive development however, the MDE together with UNDP is planning to implement a more detailed legal framework for the national environmental impact assessment regime, which involves the creation of a new *Bureau National des Evaluations Environnemental* and accompanying framework law and regulations. Importantly, this also includes detailed technical sectoral guidance on the content of the impact assessment documentation as well as the procedures and decisions involved. The final draft documents are, as of December 2014, awaiting the authorisation of the Minister for the Environment before the necessary legislative process can begin. The 15-year *Plan d'Action pour l'Environnement en Haïti*¹²⁹ has only seen minimal implementation, although a more recent *Plan d'Action pour la Relèvement et Développement d'Haïti* in 2010 shows more promise and environmental protection is mainstreamed into several key areas of the plan. Furthermore, some commentators have noted that following the 2010 earthquake the MDE is increasing its visibility and prominence; for example, it appointed regional directors to observe and oversee reconstruction efforts and actively engage with the cluster system used by aid organisations.¹³⁰

Good practices and solutions

The body of legislation that exists in Haiti regarding environmental protection can at least be considered a good practice in itself, although the law requires some form of streamlining in order to make the correct legal rights and obligations clear. Furthermore the focus on the environment in the government's draft Housing Policy is a positive step, and to some extent the proposed requirements for agencies to draft and submit environmental management plans and assessments are already being followed by larger multilateral organisations, albeit according to their own internal procedures

¹²⁷ Government of Haiti, *Politique Nationale du Logement, de l'Habitat et du Développement Urbain*, draft document for commentary and suggestions, 30 April 2012

¹²⁸ Chapter IV, Law of Oct. 12, 2005

¹²⁹ MDE, *Plan d'Action pour l'Environnement en Haïti*, 1999, available at <ftp://ftp.fao.org/docrep/fao/012/ak491f/ak491f.pdf>

¹³⁰ Inter-Agency Standing Committee Shelter Cluster, *Shelter and Environment* Haiti 2010, 2010

rather than based on the requirements of the Haitian government. The draft law and regulations regarding environmental impact assessments are to be welcomed as a necessary strengthening of both the legal and, hopefully, the institutional framework. It should be noted, however, that over-extensive environmental assessment and reporting requirements may hinder rapid shelter provision in emergency settings; whether a balance is eventually struck between accountability and rapidity of action remains to be seen.

Common regulatory barriers relevant to land use planning

Conclusion – Problems with environmental protection legislation

Environmental protection regulations (or their absence) have often posed problems for shelter agencies. Haiti's environmental framework benefits from relatively prescriptive legislation but suffers in implementation. Also the legislation does not at any point contemplate the interaction of environmental law and shelter, for example setting out specific areas of environmental concern and preventing the provision of shelter on these areas. At present it is not clear that environmental laws have presented a specific barrier to shelter provision in Haiti, for example in the aftermath of the 2010 earthquake, but if one considers that weak enforcement leads to environmental damage, and such damage exacerbates the impact of natural disasters, then this would place increased demands on a shelter response.

Recommendations

Short-term:

- As part of the development of risk management and contingency plans, consider the involvement of environmental experts from government, civil society, international organisations and the private and academic sectors on relevant matters, including but not limited to:
 - minimum standards for determining land allocated for shelter, and
 - ensuring environmental protections can be built into shelter programs and emergency response without compromising the need for providing assistance in a timely manner.
- Guidelines could be included in the PNGRD, PNRU and the National Intervention Plan to recommend that appropriate international environmental standards are prioritised and adhered to until the national system for environmental management has established norms and procedures in place.

Long-term:

- Review and rationalise the existing environmental legislation in Haiti: this could involve repealing older laws that are no longer applicable and/or amending older laws, potentially through a framework law or regulations linked to the Environmental Management Decree of 2006.
- Prioritise the creation of the Bureau National des Evaluations Environnemental, as well as the adoption of the current draft environmental impact assessment regulations and sectoral guidance.

2.3 Construction

Legal and institutional framework

Appropriately drafted and enforced building codes and regulations can have an important positive impact on the scale of structural damage and loss of life resulting from natural disasters, and can be used to establish robust standards applicable to emergency and transitional shelters. However, building codes and regulations can also create barriers to the provision of shelter, whether through a lack of content or gaps in enforcement, or by imposing overly stringent materials and construction requirements, and lengthy bureaucratic processes for approvals. In Haiti, MTPTC holds the responsibility for building codes and the permitting regime, and under the decree creating the Ministry, it is authorised to establish planning regulations and technical standards of construction.

The laws in place governing construction are generally considered out of date and are rarely consulted. Furthermore a certain amount of confusion exists over what laws are in force. A decree of 5 August 1937 regulates external appearances and dimensions of buildings, repairs, demolitions, interior requirements etc.¹³¹ It also sets out the permitting regime for construction, nominating MTPTC as the relevant authority for the review of building permit applications. Inspections are handled at the municipal level and are permitted before, during and upon completion of building.¹³² However this decree was at least partly superseded by the law of 29 May 1963 establishing special rules regarding housing and planning of towns and countryside areas to develop urban planning.¹³³ UCLBP, MTPTC and CIAT all consider this to be the most authoritative, and prescriptive, law for the construction sector.¹³⁴ The law of 1963 establishes a relatively comprehensive system of construction permits, organised under the general provision that all new construction must fulfill certain specific conditions to guarantee the health and security of the inhabitants, neighbours and users of public highways/thoroughfares.¹³⁵ Plans must be submitted to the Directorate General of Public Works (i.e. MTPTC), which has the ability to reject or modify plans, and no new construction or modifications of existing buildings may take place without their authorisation.¹³⁶ Importantly, the law gives the local authorities or MTPTC the right to shut down any works found to be in violation of the law, with the assistance of the police if necessary.¹³⁷ In terms of technical content, the law of 1963 is relatively light, setting only certain basic provisions for interior and exterior construction.¹³⁸ Other construction provisions are spread across separate laws; for example, a decree of 6 January 1982 prohibits construction on slopes greater than 50 degrees, whilst an Order of 8 October 1992 prohibits construction in zones declared to be of public utility.

¹³¹ Décret-loi établissant des règles spéciales relatives à l'habitation et à l'aménagement des villes et des campagnes, 22 July 1937

¹³² Articles 29 – 33, *Ibid.*

¹³³ Loi établissant des règles spéciales relatives à l'habitation et à l'aménagement des villes et des campagnes en vue de développer l'urbanisme, 29 May 1963

¹³⁴ CIAT, MTPTC and UCLBP, *Lois et Règlements d'Urbanisme*, July 2013

¹³⁵ Article 12, Law of 29 May 1963.

¹³⁶ Articles 30-32, *Ibid.*

¹³⁷ Article 33, *Ibid.*

¹³⁸ Articles 1-3, 13-14, 18-29, *Ibid.*

The Haitian government approved a national Building Code in 2012; prior to this point the government formally authorised the use of certain international standards as an interim measure.¹³⁹ While the new national Building Code is to be commended for its scope and detailed content, and the fact that it promotes construction quality standards which will help to prevent damage to buildings and loss of life in the event of future disasters, in the context of shelter a gap remains in that it does not directly deal with construction standards or considerations for shelters.

Impact and implementation

Lack of building code provision and enforcement in Haiti has been noted as one of the major reasons why the earthquake of 2010 had such a devastating impact compared to similarly powerful earthquakes in other states.¹⁴⁰ Interviews also revealed that construction standards enforcement was minimal prior to the earthquake, and the permitting regime rarely used. Outside of Port-au-Prince and other larger urban centres the system of regulation is all but non-existent; community interviewees referred to the need for the *mairie* to authorise construction in towns, but in practice no standards are enforced and it is simply a case of paying the correct (usually minimal) amount to receive formal authorisation from the local authorities. Many interviewees also noted that this is a common opportunity for corruption on the part of local officials, who can withhold authorisation until a bribe has been paid. In villages and rural areas, as noted in several community focus groups, authorisation for construction is not an issue, and any construction may just simply be notified to the CASEC, if he or she is not too far away.

Generally speaking, it is only large businesses and wealthy private individuals who are concerned with building to a suitable standard, and the majority of Haitians simply use local builders and local materials (e.g. locally-produced breezeblocks which may or may not conform to acceptable standards), and whilst community visits suggested that Haitians are aware of requirements to seek permission for construction, and community interviewees claimed that this process was followed, interviewees from government and NGOs indicated that this only occurs in the minority of cases. The permitting regime for construction reflects, or is a parallel to, the land registration regime: whilst the formal procedures exist, the majority fall outside of this system.

However the publication of a national Building Code, and significant capacity building efforts between international organisations and the Haitian government, do seem to have created increased institutional capacity and will to reform the current practices of the construction standards and permitting regime. The Directorate of Public Works within the MTPTC, for example, has benefitted from technical assistance from organisations like the World Bank and ECHO, which has greatly improved its capacity to manage major public works projects.

¹³⁹ MTPTC, *Règles de calcul intérimaires pour les bâtiments en Haïti*, 15 February 2011; the MTPTC authorised the use of the Code National du Bâtiment – Canada 2005 (CNBC-05), American Concrete Institute ACI-318-95, the International Code Council's International Building Code 2009, Comité Européen de Normalisation's Eurocode 8 (1998), and the Caribbean Uniform Building Code Parts 1-3 1985 (CUBiC 1985).

¹⁴⁰ See, for example, reports in Online Building Safety Journal, *Performance of Buildings in the Haiti Earthquake*, 2010, available at <http://bsj.iccsafe.org/april/features/haiti.html>, Le Nouvelliste, Logement: la Faiblesse de l'Etat reste patente, 13 July 2012, available at <http://lenouvelliste.com/article4.php?newsid=107134>, and Melissa Lafsky, *The Power of Building Codes: Chile Death Toll Less than 1% That of Haiti*, Infrastructurist, 1 March 2010 <http://www.infrastructurist.com/2010/03/01/the-power-of-building-codes-chile-death-toll-less-than-1-that-of-haiti>

Good practices and solutions

The lack of applicable national standards, combined with understandable shortfalls in capacity following the 2010 earthquake, meant that shelter agencies had to effectively self-regulate the quality of shelter construction. Shelter agencies coordinated their efforts through the cluster system, and relatively soon after the earthquake, when operations had moved from an emergency phase to a recovery phase, the cluster group for shelter set about agreeing on appropriate standards for transitional shelters (which in this case meant structures that could be used for up to 3 years) and agreed to apply the relevant Sphere Standards to transitional shelter construction in Haiti.¹⁴¹ Interviewees noted that there was Haitian government input on this process. Whilst the standards set could only be considered persuasively binding, and there was no ability to enforce them, the majority of shelter agencies adhered to them, allowing for amendments to design largely due to funding resources (for example, donors often set the amount they were willing to provide per single shelter, which determined materials to use, method of construction etc.).

The Haitian government also demonstrated good practice, as MTPTC issued several guides in 2010, with separate documents covering the construction of,¹⁴² and repairs to,¹⁴³ small buildings, and issuing a guide to reinforcements for seismic and cyclonic events in 2012.¹⁴⁴ The guides to construction and reinforcements of small buildings were particularly useful as they set out requirements and standards in a legible and accessible manner, making great use of drawings and colour, so as to make them accessible to local builders. It is not known exactly what impact these guides had but their development and existence represents a good practice and solution to the lack of regulatory oversight that was otherwise available, and was a pragmatic approach that attempted to encourage self-regulation (as a solution to overstretched government capacity). Shelter agencies also engaged in similar activities (and in some cases actively contributed to and distributed the government guides); the IFRC for example developed short, accessible leaflets covering basic construction and rebuilding standards for distribution among local communities and masons.

It is also arguable that the capacity-building efforts of some NGOs can be considered good practices or solutions to the existence of regulatory barriers, as in the absence of government oversight or capacity to ensure that Haiti is ‘built back better’, relatively small-scale, local training programs have equipped masons with much-needed training on building standards, including basic earthquake and hurricane resistance measures. One such example is the NGO Build Change, who in parallel with the distribution of guidance notes and simplified technical resources,¹⁴⁵ offer training programs for local engineers and builders, as well as workshops for homeowners to share knowledge on earthquake-resistant housing (thereby allowing them to supervise appropriate construction standards for their own home).

¹⁴¹ See Inter-Agency Standing Committee (Haiti Shelter Cluster), *Transitional Shelter Technical Guidance*, 19 February 2010, and The Sphere Project, *Humanitarian Charter and Minimum Standards in Humanitarian Response*, 2011

¹⁴² MTPTC and MICT, *Guide de bonnes pratiques pour la construction de petits bâtiments en maçonnerie chainée en Haïti*, September 2010

¹⁴³ MTPTC, *Guide pratique de réparation de petits bâtiments en Haïti*, October 2010

¹⁴⁴ MTPTC, *Guide de renforcement parasismique et paracyclonique des bâtiments*, 2012

¹⁴⁵ See resources available at Build Change – earthquake-resistant houses for Haiti, <http://www.buildchange.org/resources.php#haiti>

Common regulatory barriers relevant to land use planning

Conclusion – Problems with building standards

Whilst one common regulatory barrier is that compliance with existing national building codes can delay construction of shelter, in Haiti it was the lack of national codes that presented a barrier. Following the publication of the national Building Code in 2012, Haiti is no longer lacking in terms of its legal framework for construction. The government also took a proactive approach prior to 2012 by authorizing the use of appropriate international construction standards. However, institutional capacity to regulate and enforce construction has been weak, although capacity building within the government and an increased political willpower has resulted in some positive changes. The absence of national codes or guidelines appropriate to shelter meant that shelter agencies employed their own applicable standards following the 2010 earthquake; other solutions involved developing accessible guidance materials and building the capacity of masons and engineers at local level.

Recommendations

Short-term:

- It is recommended that the National Intervention Plan or separate national contingency plan include a section dealing with shelter construction standards in post-disaster settings. This should seek to adapt any relevant standards from the current National Building Code to a shelter context, and where gaps remain to recommend the use of appropriate international standards (for example, relating to accessible shelter design). It is important that these provisions also establish institutional responsibility for the oversight of shelter construction; this could also include guidelines on how the relevant government bodies would coordinate with shelter agencies (for example, based on experience with the shelter cluster system used after the 2010 earthquake). It is recommended that any such guidelines be developed in collaboration with the involvement of Haitian civil society and relevant aspects of the private sector, as well as local and international shelter agencies.

Long-term:

- Given the high risk of future natural disasters, the formal adoption of guidelines that set out applicable international standards for shelter construction should be prioritised. Such guidelines could, for example, be incorporated into the current National Building Code or be developed as a ‘stand-alone’ plan or framework document, and should consider the following:
 - authorisation of appropriate derogations from ‘normal’ construction standards in times of emergency, subject to meeting certain minimum standards;
 - incorporation of international guidelines and best practice such as the Sphere Standards; and
 - application of the aforementioned guidelines and standards to all entities engaged in shelter construction.

- Continue to focus efforts on building the capacity of government staff involved in construction regulation and enforcement, as well as ensuring that sensitisation activities take place to inform the public, masons, engineers and other actors about the provisions of the new National Building Code, and to highlight issues of construction in emergency settings.

3. Cross-cutting laws and regulations

3.1 Facilitation of international shelter assistance

Legal and institutional framework

A previous IFRC report has already dealt with an assessment of the legal framework for the facilitation and regulation of international disaster response in Haiti, and an analysis of the multitude of issues that surround facilitation is outside the scope of this report. Instead this section will analyse two key areas of facilitation that interviews highlighted as strategically important for shelter assistance: coordination mechanisms for shelter actors, and the importation of shelter materials.

Whilst oversight of NGOs operating in Haiti is regulated by MPCE under the Decree of 14 September 1989,¹⁴⁶ issues of facilitation and coordination of international shelter assistance are considered under Haiti's National Risk and Disaster Management Plan (2001) (**PNGRD**),¹⁴⁷ and Emergency Response Plan (2009) (**PNRU**).¹⁴⁸ Whilst only existing as plans, both are referred to in Haiti's State of Emergency Law of 15 April 2010.¹⁴⁹ The PNGRD provides for the activation of an Emergency Operations Centre when a disaster occurs (or when there is imminent threat of a disaster occurring), and the creation of an International Cooperation Support Group to coordinate offers of foreign aid. The PNRU provides for the implementation of a national system to manage and control donations of goods and services under the Ministry of Foreign Affairs (**MAE**), as well as the development and implementation of an emergency management unit under the MAE.

In terms of the import of materials used in shelter construction, goods brought into Haiti are provided for in the Customs Code of 1987.¹⁵⁰ However no provision is made here for the importation of shelter materials in the event of a disaster; instead the Ministry of Economy and Finance (**MEF**) issued its procedures to facilitate customs clearance for items intended for the victims of the 2010 earthquake; it had previously declared a moratorium suspending certain customs regulations for three months following the impact of a hurricane in September 2008), and the 2010 procedures were also for an initial three month period.

Impact and implementation

Whilst Haiti's national level plans contain useful mechanisms and authorities that should be used in times of emergency, these were not created before, nor were made operational during, the 2010 earthquake response. However under the authority of the Emergency Law of April 2010, the Haitian government created the Interim Haiti Recovery Commission (**IHRC**),¹⁵¹ to ensure the effective allocation of resources

¹⁴⁶ Décret modifiant la loi du 13 Decembre 1982 régissant les ONG, 14 September 1989

¹⁴⁷ Ministry of the Interior and Regional and Local Development,

¹⁴⁸ Government of Haiti, Emergency Response Plan establishing the National System for Risks and Disasters, 2001 (updated September 2009)

¹⁴⁹ State of Emergency Law of 15 April 2010 repealing the State of Emergency Law of September 2008, Le Moniteur No. 83, 10 September 2008

¹⁵⁰ Décret relatif au Code Douanier, 13 July 1987

¹⁵¹ Article 14, Loi portant amendment de la loi sur l'état d'urgence du 9 septembre 2008, 19 April 2010

and support. The IHRC was active for a period of 18 months following its creation; many of its functions have now passed to the *Cadre de Coopération de l'Aide Externe au Développement (CAED)*.¹⁵² The IHRC was granted a wide range of powers, and its purpose, among other things, was to provide coordination on the behalf of the government of Haiti of donors, NGOs, private sector and other actors seeking to provide support to Haiti's redevelopment.

Standard customs practices were suspended in the month following the earthquake of 2010; a skeleton border staff did not require goods declarations and permitted all supplies to enter Haiti subject to an oral request for clearance. As noted above the procedures on customs clearance issued by the MEF allowed for expedited customs clearance, and included tax and duty exemptions on lists of items needed for aid beneficiaries. The procedures established a specialised customs unit drawing officials from the MPCE, MEF and the customs department which significantly speeded up the customs process. However after the initial three month period has expired customs procedures returned to normal requirements under law, which caused serious complications, delays and blockages in importing humanitarian aid.¹⁵³

Many interviewees from NGOs raised the issue of customs clearances as a barrier to shelter provision. Whilst major international organisations such as the UN had fewer issues due to their legal status with the government, smaller organisations (even those legally registered in Haiti) suffered from months of delay waiting for goods to be cleared at the port in Port-au-Prince. Several interviewees noted the specific example of importing timber for use in transitional shelter construction; many organisations required a type of timber unavailable in Haiti, that had to be imported in bulk. Massive shipments of timber were held at customs for six months or longer, therefore delaying the construction of shelters. The fault cannot be laid entirely with Haitian customs procedures, however; some organisations importing timber were not properly registered as NGOs in Haiti and were therefore liable to taxation on the timber, and negotiations over payment added delay to the process. Also, failure to engage Haitian businesses in the purchase and importation process may have resulted in the creation of deliberate delays at the port, according to one interviewee; corruption is another issue, which is described more fully in section 3(b) below. What this example reveals is the pressing need for clear and transparent customs regulations that facilitate the entry of specific goods related to shelter construction.

Good practices and solutions

The establishment of the IHRC can be considered a good practice on the part of the government, in order to provide a central authority with wide powers and remit able to coordinate and control foreign assistance; however it is noteworthy that the government created an entity to take over the types of responsibilities already assigned under national plans. Another good practice was the government's adoption of procedures to facilitate customs clearance for humanitarian aid in the initial months following the 2010 earthquake, however the lack of a transitory period after the procedures expired, and the failure to consider the issue of the continuing need for shelter materials to be imported, created confusion and delays.

¹⁵² Haiti Reconstruction Fund website, *A new framework for the coordination of external assistance in support of Haiti's development*, <http://www.haitireconstructionfund.org/node/175>

¹⁵³ IFRC, IDRL in Haiti, 2012

One other example of good practice is the Haitian government's ongoing efforts to implement laws that seek to improve the legal framework related to international disaster relief operations in Haiti. Together with the support of the Haitian Red Cross and the IFRC towards official efforts to modernise legislation (particularly the recent construction code), legislation has been drafted and in some cases adopted for the following areas:

- registration of international and foreign humanitarian and developmental organisations;
- customs clearance for relief goods and equipment, including the importation of medicines;
- facilitation of telecommunications (including the draft ratification of the Tampere convention)
- update of the draft law on the national system for disaster risk management (including the legal strengthening and structuring of the Directorate of Civil Protection); and
- with UNDP, revisions of the PNGRD and PNRU

The cluster system established by the international community in response to the 2010 earthquake was designed to ensure organisation of actors' efforts in a number of strategic areas (notably shelter but groups also covered areas such as early recovery, food, health, and logistics), and can be considered a solution used in response to the lack of government coordination. Arguably, however, given the scale of the humanitarian response it is unlikely that even if the earthquake had not affected Haitian government capacity, it would not have been able to effectively coordinate the huge number of organisations that arrived after the earthquake (550 organisations registered with the cluster system alone). Also, the benefits of the cluster system have to be weighed against the weaknesses, as evidenced by interviewees and commentators. The sheer number of organisations in Haiti, many of whom lacked the technical expertise necessary for their contribution, presented a logistical and coordination challenge, straining already limited resources and reducing the effectiveness of coordination mechanisms due to inexperience.¹⁵⁴ Furthermore critiques of the cluster system have pointed to the lack of strategic cohesion on issues such as land and tenure, the fact that the cluster system fragmented affected people's needs and the lack of dialogue between humanitarian and reconstruction sectors.¹⁵⁵ This was compounded by the obstacles facing the Haitian state in the first few years of operations, which resulted in a lack of institutional leadership on emergency relief, reconstruction or land issues.

¹⁵⁴ See for example, IFRC, IDRL in Haiti, 2012, and HPG Working Paper, *Avoiding Reality: Land, institutions and humanitarian action in post-earthquake Haiti*, September 2012

¹⁵⁵ HPG Working Paper, *Avoiding Reality: Land, institutions and humanitarian action in post-earthquake Haiti*, September 2012

Common regulatory barriers relevant to the facilitation of international shelter assistance

Conclusion – Problems specific to international shelter assistance

The provision of shelter assistance throws up a range of specific potential problems, from the difficulties faced in importing shelter materials to a lack of direction from national governments. Importantly problems can also arise within the shelter agency community, who sometimes fail to engage sufficiently with local authorities and NGOs. In Haiti, the failure to establish coordination mechanisms as proposed under the PNGRDPNGRD and the PNRU represent a gap in implementation that was, to some extent, covered over with the establishment of the IHRC, and international organisations quickly developed their own solution in the cluster system. However the cluster system was not perfect and shelter agencies were often guilty of failing to engage with Haitian authorities and longer-term issues.

After an initial period of expedited customs clearance, importation of materials for shelter construction was delayed by both the government's own procedures as well as a lack of awareness of rules by organisations themselves.

Recommendations

Short-term:

- It is recommended that the government review the PNGRD and the PNRU and consider appropriate amendments that seek to ensure improved regulation and oversight of the international community in emergency settings. Consideration should be given to provisions that seek to improve coordination mechanisms, and ensure that actors do not jeopardise relief efforts through inexperience, lack of technical capacity or refusal to coordinate with the state and other actors. It is recommended that particular attention is given to the IFRC's 'IDRL Guidelines' as a basis for, among other things, integrating minimal quality standards for humanitarian assistance and the development of legal facilities needed for actors to work effectively.

Long-term:

- Adopt emergency customs procedures to facilitate, among other things, the entry of shelter materials (in the event that materials of reasonable price and quality cannot be quickly procured in the local market), with specific consideration of tax exemptions and expedited entry procedures subject to reasonable conditions. The IDRL Guidelines could be considered as a starting point for the development of effective and appropriate legal facilities and accommodations.
- Review the Customs Code with a view to the development of a guidance document setting out detailed descriptions of customs procedures and practices, in order to enable actors to familiarise themselves with requirements.

3.2 Corruption

Legal and institutional framework

Corruption is dealt with in the Haitian Penal Code,¹⁵⁶ although the relevant eight articles are a relatively brief legal provision for a problem that is considered endemic in Haiti (and focus only on the financial gain from corruption). In summary the Penal Code provides for penalties applicable to public officials who have gained illicit enrichment through their duties. However the legal framework for anti-corruption has been recently expanded, as the Haitian Parliament passed a law for the prevention and suppression of corruption on 12 March 2014.¹⁵⁷ This law creates 14 specific crimes of corruption (including bribery, embezzlement of public property, money laundering, and nepotism) for which there are corresponding punishments of between three to fifteen years' imprisonment, and fines.¹⁵⁸ The law also makes some important amendments to the aforementioned sections of the Penal Code, extending their application to a wider range of public officials and amending the relevant penalties.¹⁵⁹ No specific rules exist in the relevant laws that prevent or penalise corruption related to shelter or in emergency settings.

Institutional responsibility for dealing with issues of corruption rests with the *Unité de Lutte contre la corruption (ULCC)*, created by decree in 2004,¹⁶⁰ under the overall supervision of the Ministry of the Economy and Finance. Its mission is to work to combat corruption in "all its forms".¹⁶¹

Impact and implementation

"Corruption in the land sector in Haiti is rife, especially in Port-au-Prince, where land values are higher, as is the competition for land. Corruption is more widespread when there is lack of transparency, when there is a monopoly situation, when rules and regulations are complicated and when the public cannot easily control the distribution of the good in question. All of this is true for the land sector in Port-au-Prince."¹⁶²

The inability of Haiti's current legal framework to deal with issues of corruption can be seen in the fact that Transparency International ranked Haiti 161st out of a total of 175 countries in its most recent Corruption Perception Index in 2014, with an Index score of only 19/100 for the last three years in a row.¹⁶³ Countless reports and commentators have noted the endemic corruption in Haitian public life, to the extent that little else needs to be added here. The lack of legal implementation and enforcement was keenly felt among shelter agencies in the post-earthquake setting. Several interviewees noted pointed out that shelter materials were held at the port in Port-au-Prince for no other reason than bribery. Demands for payment generally either presented themselves directly from officials concerned or, more commonly, were thinly disguised as, for example, additional demurrage charges. Most interviewees acknowledged such

¹⁵⁶ Articles 137 – 144, Haiti Penal Code 1985

¹⁵⁷ Loi portant prévention et répression de la corruption, 12 March 2014

¹⁵⁸ Articles 5 to 10, *Ibid.*

¹⁵⁹ Chapter IV, *Ibid.*

¹⁶⁰ Arrêté créant un organisme à caractère administrative dénommé: Unité de Lutte Contre la Corruption, 8 September 2004

¹⁶¹ Article 2, *Ibid.*

¹⁶² UN-Habitat, A Situational Analysis of Metropolitan Port-au-Prince, Haiti – Summary Report, 2010

¹⁶³ Transparency International, Corruption Perception Index, 2014

practices as a ‘fact of life’, noting that most organisations’ policies prevent them paying bribes or aiding corruption in any way, resulting in unavoidable delays. Often these situations are resolved by employing (and paying) middle-men and negotiators who simply provide a convenient means of negotiating and paying a bribe, without falling foul of anti-bribery and corruption procedures.

Local building contractors engaged in another form of corruption highlighted by interviewees, although it is important to note that these were the actions of a small minority of unreliable businesses or individuals. Examples included materials routinely going missing in transit (and occasionally attempted sale of materials back to shelter agencies), theft of construction materials, and unauthorised demands for payment for the construction of shelters.

Corruption related to dealings with land was also noted in interviews. One NGO had good reason to believe that a local judge had been paid to pass a court ruling against their claim to use a piece of land to build a large number of shelters (which had initially been provided by the *mairie*, on the basis that this was public land). Another interviewee explained how a CASEC had been paid to arrange for the authorisation of use of land for shelter with the DGI and local authorities, but had simply placed a fraudulent signature on the documentation. Problems also emerged with shelter beneficiaries: several examples of people using false documents to gain a transitional shelter were noted, with the result that the shelter (meaning its constituent construction materials) were simply stolen. Note also the example mentioned in section 3(a) above regarding the possible collusion of local business interests with customs officials to prevent the entry of goods into Haiti.

Good practices and solutions

One interviewee from an international organisation explained that issues of theft and corruption among transitional shelter beneficiaries were prevented through extremely careful beneficiary screening, relying not only on documentation but also community verification. However this process took longer and therefore meant delays for beneficiaries to access shelter. Organisations adopted different techniques to deal with corruption amongst local contractors. One successful method built on the depth of community knowledge and information-sharing, and the fact that those responsible for theft and corruption are generally known to the community they are working in (due to them often being residents of the same area). Once theft of materials had been identified, community representatives were asked to intervene and speak to those they believed were responsible. In many cases, giving community representatives the ability to face those responsible, and to explain the need for shelter materials and their knowledge of those responsible, resulted in a successful outcome.

The fact that modern anti-corruption legislation is in place, and there is a clear institutional framework and mandate to tackle the issue, is in itself a good practice that will hopefully reduce the impact of corruption on the shelter sector and in post-disaster situations in general. The main anti-corruption legislation is extremely new and therefore it is too soon to judge its impact; the ULCC already has a National Anti-Corruption Strategy in place¹⁶⁴ as required under its decree of 2004 but this requires updating in order to harmonise it with the anti-corruption law of 2014.

¹⁶⁴ ULCC, *Strategie Nationale de Lutte contre la Corruption*, undated

Common regulatory barriers relevant to corruption

Conclusion – The impact of corruption in emergency shelter

Haiti serves as an example of the risks of corruption that face the shelter sector in post-disaster contexts. A weak institutional background tackling corruption, as well as the sheer prevalence of corruption in public as well as private life, meant that shelter agencies faced significant challenges. These ranged from demands for bribes for the importation of shelter construction materials, to theft of materials by local contractors and supposed shelter beneficiaries.

Recommendations

Long-term:

- The existing anti-corruption law should be expanded to prevent corruption in post-disaster settings. Particular attention should be paid to the need to balance protection against the risk of causing undue delay of operations.

3.3 Parallel legal systems

Legal and institutional framework

The term “parallel legal systems” is interpreted for the purposes of this report in two main ways: firstly, the existence of separate legal regimes for urban and rural settings, and secondly, the existence of separate formal and informal (also referred to as customary or traditional) systems of law. Interestingly, in Haiti these two spheres are closely inter-linked: the formal legal system is much more prevalent in urban settings, whereas in rural areas the informal or customary system predominates. Of course, this is a generalisation as informal systems exist in urban settings and the formal system occasionally encroaches on rural life, but it still holds as a general observation. Several notable commentators have referred to this division, placing it in the context of the historical separation between Haiti’s mulatto elite and the peasantry resulting in stark contrasts between the highly bureaucratised (and predominantly urban) Haitian legal tradition and an oral, custom-based tradition in rural areas loosely inherited from West African tradition and adapted to local Haitian values.¹⁶⁵ Haiti possesses no laws or regulations that recognise parallel or customary legal systems in the formal legal framework. However stakeholder interviews, especially at community level, revealed their high importance in the day-to-day lives of many, if not most, Haitians. Outside of urban centres, the presence of the state is minimal and local officials such as those of the CASEC and ASEC are generally members of the community themselves and not perceived as primarily ‘state’ actors; in practice they are just as much part of the informal system as they are also part of the formal system. This means that issues such as ownership of and access to land, and use of natural resources, are generally governed by local customs and practice.

¹⁶⁵ See, for example, Gérard Barthélémy, *L’Univers Rural Haïtien: le Pays en Dehors*, L’Harmattan 1990, and Glenn R. Smucker, T. Anderson White, Michael Bannister, *Land Tenure and the adoption of agricultural technology in Haiti*, October 2000

Impact and implementation

Haiti is, under the terms of its Constitution, a decentralised country with a decentralised form of government, which theoretically means that administrative and financial autonomy extends to the decentralised forms of government (i.e. the departments, communes and communal sections). In reality, little has been done to implement the decentralisation structure prescribed by law, and in any event Haitian law may only be passed at the national level – no system of departmental or communal law exists. However the fact that outside of Port-au-Prince and other urban centres, land is in theory governed by the provisions of the Haitian Rural Code of 1962 (as amended in 1986) means that some form of de facto parallel legal system exists that distinguishes between the rights of the rural and urban populations. Both interviewees and commentators have noted that in rural settings, land ownership for one is generally governed by customary law and practice as opposed to formal law. This parallel legal system extends well beyond property rights; as one commentator has observed, “no branch of law has escaped”,¹⁶⁸ and customary laws are known to cover matters as diverse as the treatment of women, marriage, an informal penal system, and business transactions.¹⁶⁹ Although interviews with community focus groups concentrated largely on issues relating to land and shelter, some community members also noted traditional practices relating to the use of natural resources (such as how fishing ‘rights’ in local rivers are assigned between families) and grazing rights for goats and cows, suggesting a vibrant parallel system that operates almost entirely without state involvement. As already discussed in detail in section 1(c) above, communities also rely heavily on informal forms of dispute resolution, often referring to the decision-making powers of the local CASEC or ASEC coordinators, or turning to committees of family members, village elders, voudou priests or church pastors.

Meetings with community focus groups undertaken for this project also confirmed the extent to which property rights and transactions are dealt with under customary frameworks. Only a minority of community members interviewed said that they held title documents to their property, and several of these interviewees acknowledged that even having the paperwork is not necessarily a guarantee of security due to both general confusion over who owns what and where, and the risk of opportunistic claims and corruption (which is much higher in urban areas). In general the community interviewees’ rights over land were, in essence, acknowledged and protected by the community as many families have lived on the same land for generations. Whilst some commentators have rightly pointed out that many citizens view formal, state authorities and procedures with skepticism, interviews with community focus groups were notable not so much for skepticism but more for a realistic acceptance that, due to lack of access and enforcement, the formal system simply cannot exist in any useful form outside of an urban setting, and customary land rights are perceived as more secure (and in many cases probably are more secure).

¹⁶⁸ Marie Goré, review of Gilles Paisant, ‘De la place de la coutume dans l’ordre juridique haïtien. Bilan et perspectives à la lumière du droit comparé’, 2002 in *Revue internationale de droit comparé*, Volume 55, Issue 4, 2003

¹⁶⁹ University of Toronto Faculty of Law International Human Rights Program, *Law and Armed Conflict Working Group Report: Children’s Legal Rights in Haiti*, December 2008

Common regulatory barriers relevant to parallel legal systems

Conclusion

Haiti's laws and regulations do not recognise the customary laws or practices followed by the majority of Haitian citizens. Shelter efforts could benefit in future from the incorporation of informal tools into the formal framework in order to for example provide greater certainty over land rights, or provide effective and fast mechanisms for dispute resolution.

Recommendations

Long-term:

- Consider developing legislation that recognises the existence of customary laws and practices, and balances the need for respect of the Constitution and fundamental legal rights on the one hand, with respect for traditional and customary laws on the other. Importantly, legislation should allow for informal and customary rights to form a basis for formal rights.
- In the context of shelter provision, particular attention should be paid to customary laws or practices that help to remove barriers to shelter provision. This could involve adoption of policies or guidelines that authorise and promote the use of informal practices in post-disaster settings.

3.4 Inclusionary practice (anti-discrimination)

Legal and institutional framework

Under the Constitution of Haiti, the state has the absolute obligation to guarantee the right to life, health and respect of the human person for all citizens without distinction,¹⁷⁰ and it recognises that all Haitians shall be equal before the law.¹⁷¹ Interestingly, Haiti's recently amended Constitution also requires that 30% of public sector employees must be women.¹⁷² No legislation, regulations or guidelines exist to cover the issue of discrimination in shelter provision.

However an important law was passed in May 2012 concerning the integration of people with disabilities into "all spheres of Haitian society"¹⁷³ and is an extremely positive step towards identifying and protecting the rights of the disabled. The law contains a number of commendable provisions that creates a series of basic rights of access and services for the disabled, as well as placing obligations on the state and where necessary other actors. Of relevance to the shelter context is Chapter XII, concerning obligatory measures in the event of natural disasters.¹⁷⁴ The state has a duty to ensure that in the event of a natural disaster, priority attention must be given to the disabled in the distribution of relief, humanitarian aid, medical assistance and relocation.¹⁷⁵ Draft

¹⁷⁰ Article 19, Haiti Constitution

¹⁷¹ Article 18, Haiti Constitution

¹⁷² Article 17.1, Haiti Constitution

¹⁷³ Loi Portant sur l'intégration des personnes handicapées, Le Moniteur 169ème année No. 79, 21 May 2012

¹⁷⁴ Chapter XII, Ibid, "Mesures obligatoires en cas de Catastrophes Naturelles"

¹⁷⁵ Article 72, Ibid.

regulations providing more detail on the basic provisions set out in the law of 2012 were also developed but political momentum behind their adoption has faltered and it remains unclear when, if at all, they may be issued.

Impact and implementation

Numerous sources have established that problems of gender inequality exist in Haiti, and a wealth of statistics exist to corroborate this; for example, households headed by women are 11% more likely to be poor than those headed by men, and wage discrimination is commonplace.¹⁷⁶ As a consequence, women are much more at risk of discrimination in terms of the provision of shelter assistance.

In 2009, the UN's Committee on the Elimination of Discrimination Against Women noted the existence of a high number of female-headed households in Haiti but that overall the rights and status of women was poorly recognised by both Haitian law and society. Furthermore, customary laws offer no safeguard to ensure the protection of the rights of women,¹⁷⁷ since customary laws prevalent in rural areas generally exclude women from land ownership. Many couples have customary arranged marriages that are not registered, and these informal forms of cohabitation create insecurity for women as the law does not recognise their inheritance rights to their husbands' land. In general, women's property rights derive from their status as wives, mothers, or wards, and thus women often lose their land rights when their status within the household changes.¹⁷⁸ Feedback from community interviews, particularly with the women's group in Bainet, revealed interesting information regarding women's perception of their roles in the community and their status *viz-a-viz* men. The interviewees were unanimous in their views that as women they had much poorer access to basic services and employment opportunities in general, and that after the earthquake of 2010 they generally did not get access to emergency or transitional shelters as quickly as male-headed households. When asked why this was, answers ranged from the issue of basic discrimination on the part of local authorities to the fact that more women than men lacked the necessary documentation confirming their rights to property. Women also pointed out that they faced increased risk of violence and rape after the earthquake, due to the low security of the shelters they were assigned and the lack of local law enforcement. Community interviewees, both women and men, also noted the relative lack of representation of women in almost all local structures – very few female CASEC or ASEC coordinators exist, and Civil Protection committees in many cases consisted entirely of men.

The tendency of the rural population to avoid legal and church marriages often creates problems as far as inheritance is concerned. In general, all children from all the different conjugal unions/households have equal rights but in practice personal relationships are crucial to determine who inherits. Both formal and customary law recognise equal rights to all recognised children to the land of their deceased parents. However, female heirs tend to receive smaller shares and customary law generally favours the possessor of the land. Thus, the heir who remains on the land takes control over the absentee shares and consolidates adjoining shares, which can deprive

¹⁷⁶ World Bank, Social Resilience and State Fragility in Haiti, April 27, 2006

¹⁷⁷ The World Bank, Social resilience and state fragility in Haiti, op.cit.

¹⁷⁸ USAID, Country Profile, Property Rights & Resource Governance, Haiti, p. 7.

daughters who have moved away (generally due to marriage) to access their portion of inherited land.¹⁷⁹

A lack of legislation and government direction regarding vulnerable groups such as women and the disabled meant that their needs were not effectively prioritised during the 2010 earthquake response, and it was left to aid organisations and shelter agencies to attempt to ensure inclusion in shelter programs. Whilst there is presently a Secretary of State for the integration of persons with disabilities this is a relatively recent development. Haiti also has a *Ministère à la Condition Féminine et aux Droits des Femmes* (Ministry of Gender and Women's Rights) (**MCFDF**) which is mandated to promote and defend women's rights in keeping with international human rights obligations and to facilitate gender mainstreaming within the State, however it was not possible to find information relating to their activities during and after the earthquake.

Good practices and solutions

Interviewees from international organisations and NGOs noted that during the shelter beneficiary selection process they sought to prioritise female-headed households, as well as the disabled and elderly. National societies of the Red Cross, for example, adhered to the Movement's commonly agreed criteria, that prioritises children (child-headed households), elderly persons living alone, the disabled and female-head households. This is certainly a good practice in the context of shelter programs, but a practical stumbling block was also noted: many agencies relied on community/neighbourhood-based beneficiary selection, and whilst they exerted control over the criteria for selection, agencies generally did not want to be seen to be influencing community committees in decision-making. This therefore allowed some room for communities to uphold the status quo, by prioritizing male-headed households for example, and traditional power structures sometimes meant that even if vulnerable groups had voices on committees their voices were not heard. The Shelter Cluster issued guidance on gender considerations for cluster members to incorporate into their shelter programs.¹⁸⁰

Some organisations also focused specifically on shelter provision for the disabled, notably Handicap International, who constructed shelters in Petit Goâve and Grand Goâve for beneficiaries from vulnerable groups. Many of the shelters incorporated wheelchair ramps to ensure access for disabled persons. Handicap International has also developed a useful Disability Checklist for Emergency Response that includes considerations on reconstruction and shelter.¹⁸¹

Haiti's moves towards a more inclusive framework for the disabled are also positive, and the existence of the Disabled Persons Integration law of 2012 are an extremely positive step towards reducing exclusionary practice not only in emergency and post-emergency settings, but across Haitian society. Plans are in place for MTPTC to work together with the Secretary of State for the Integration of Persons with Disabilities and the Organisation of American States, to develop a standard on accessibility and/or put in place construction norms that fully consider universal design principles, as required by the law of 13 March 2012.¹⁸² Events such as training seminars for government officials and relief agencies to consider the needs of the disabled in emergency response have also been organised.

¹⁷⁹ Ibid.

¹⁸⁰ Shelter Cluster Technical Working Group, *Gender considerations in Shelter interventions*, 15 May 2010

¹⁸¹ Handicap International, *Disability Checklist for Emergency Response*, undated

¹⁸² Caribbean Journal, *Moving Forward on Disability in Haiti*, 7 November 2012, <http://www.carib-journal.com/2012/11/07/moving-forward-on-disability-in-haiti/>

Common regulatory barriers relevant to inclusionary practice

Conclusion –

- **Cross-cutting issues: inclusionary practice**
- **Other common areas of bias in shelter assistance**

Haiti's legal framework on inclusionary practice and anti-discrimination is developing, and the passing of an inclusionary law for the disabled in 2012 is to be commended. However in practice much remains to be done to address the inequalities evident in Haitian society, which are reflected in access to shelter provision. Part of the responsibility must also lie with the shelter agencies, who may need to take more oversight of the beneficiary selection process to ensure vulnerable groups are not marginalised.

Recommendations

Long-term:

- Prioritise the legislative passage of the draft regulations to be issued under the Disabled Persons Integration law of 2012, and consider the inclusion of more detailed guidance, roles and responsibilities that seek to ensure the equitable treatment of the disabled in emergencies as well as in post-emergency and shelter settings.
- For other vulnerable groups, notably women, adopt legislation or guidelines that seek to confirm and protect their rights to equal treatment during times of emergency.
- Include members of vulnerable groups and their representative civil society organisations on Civil Protection committees at all levels.

**Impact of the regulatory barriers to providing
emergency and transitional shelter after disasters**
Country case study: Haiti

Conclusions and recommendations

Evidence from the 2010 earthquake response in Haiti highlights a number of regulatory barriers that affected the provision of emergency and transitional shelter. As has been demonstrated in this report, Haiti is not lacking in terms of legislation, although generally speaking most sectors suffer from the fact that many of the laws, orders and decrees are spread out over several decades and establishing the correct authority can be a confusing task. Almost all the barriers identified in Haiti have their roots in an under-utilised and under-enforced legal framework, therefore this report has provided recommendations according to specific legal areas, which are detailed below. However whilst the barriers have roots in law and practice existing well before the 2010 earthquake, other contributing factors, such as lack of government capacity and direction, corruption, and insufficient or inappropriate coordination of shelter actors, must also be seen as aggravating regulatory barriers.

The scope of this report is to analyse the legal framework and solutions to barriers rather than to consider whether the shelter responses in the aftermath of the 2010 earthquake were appropriate or not, however some interviews and commentators have raised extremely valid points regarding whether the imposition of, for example, paper documentation on a predominantly paperless and informal property system was always the most appropriate solution, for the risk that this is simply creating new (albeit informal) categories of land rights and ownership with little thought of long-term impact. Furthermore, the sheer number of temporary and transitional shelters built in Haiti was not necessarily appropriate to needs, and shelter agencies may have benefitted from employing alternative measures, such as focusing on livelihoods and rental support, rather than assuming transitional shelter was always the solution. Decisions made as to shelter can often impinge upon the rights and aspirations of affected persons over the longer-term; this needs to be balanced against the undoubtedly vital part that rapid and equitable provision of shelter plays in early recovery and the immediate health, livelihood and well-being of displaced persons.

The major regulatory barriers identified, and the good practices and solutions that have helped to overcome them, are as follows:

Gaps in documented evidence of ownership rights: major gaps exist in the land registration and cadastral system in Haiti, resulting in gaps in ownership rights. The entities responsible for the system are over-stretched and under-funded. Thus informal, customary-based practice is the rule rather than the exception. Combined with the loss of documents in the earthquake, as well as the deaths of owners, this therefore created a challenging shelter situation for shelter provision, where it is important to be able to quickly determine land ownership. However use of simple documents, combined with participatory community validation of title and status as well as community-based enumeration techniques, was used effectively to overcome the lack of an available titling system.

Challenges faced by the land registry or cadastral system: there is a distinct lack of capacity and funding for the land registration and cadastre system that has resulted in the current weak system today and the lack of clarity over ownership of both private and public land. This lack of clarity created problems and delays for the 2010 earthquake response. The majority of the Haitian public is largely unaware of the official cadastre system and is reluctant to formally registering title to property, due to complicated procedures, costs for professional fees and taxation, meaning that the vast majority of property rights remain in the informal or customary sphere. This greatly complicated and slowed the work of shelter agencies. As with the regulatory barriers

faced in terms of lack of clear property rights, good practices were observed in the use of simple documentation and participatory validation of title, together with techniques such as community-based enumeration. It is also hoped that the reform and coordination efforts of CIAT, as well as the proposed draft law for ONACA, will lead to legal and institutional changes that will remove current regulatory barriers in this area.

Opportunistic land claims or 'land grabs': the chaos and confusion in the aftermath of the 2010 earthquake meant that opportunistic land claims did take place. Post-disaster settings are complicated enough, but in Haiti the system of unclearly defined land rights and minimal registration provided a much easier opportunity to illegally appropriate land. The most common form of opportunistic land claim encountered was that supposed owners would often claim ownership to a piece of land that had been earmarked for shelter construction, even if local authorities had confirmed that the site was public land, therefore delaying the provision of shelter.

Insecurity of renters and squatters, and inequitable assistance as between documented owners and others: renters in Haiti generally possess weaker rights to property than owners, whilst those living in informal settlements (squatters) possess, in legal terms, the weakest property rights of all. Part of the problem in Haiti after the earthquake of 2010 was that many people were in similar situations: regardless of previous status, their homes had been lost along with documentation (if they had documentation in the first place). Shelter agencies found they were either unconsciously or somewhat unavoidably prioritizing owners; in the absence of government-assigned land they had to turn to private land and first and foremost the consent of owners was needed.

Absence of rapid and effective dispute resolution mechanisms: the dispute resolution mechanisms available in Haiti under law are relatively complicated, expensive and time-consuming, and therefore beyond the means of most Haitians. Furthermore many view the court system with distrust, meaning that customary, informal resolutions are more commonplace. Whilst many shelter agencies were unwilling to involve themselves in disputes, others such as IOM took an active role in mediating disputes, negotiating for the parties and drafting new contracts as necessary, only turning to the court system as a last resort.

Absence of effective procedures for temporarily requisitioning land: the inability of the government and shelter agencies to quickly select and use land appropriate for shelter in the aftermath of the 2010 earthquake presented a serious problem. This was largely due to a lack of clear legal rules for requisition; Haitian law does not provide any procedures for the temporary requisition of land, although interestingly the law on easements does provide a potential avenue to at least allow the government to have the benefit of a temporary use of land, which could be applied to the provision of shelter. The normal procedure of expropriation was too complicated and lengthy to provide instant results, and more suited to much larger scale projects (for example in Corail, although note that issues related to that land are ongoing). Local government often had no clear picture of what land it owned (and therefore could legitimately assign for shelter use), and even when land was so assigned it often became the subject of disputes over ownership and payment for use. However, the ongoing development of contingency plans at national, departmental, municipal and communal levels represents an opportunity for the integration of shelter issues, and contingency plans at communal levels have already been used to pre-select appropriate shelter sites with the local community.

Problems with land planning rules, building standards and environmental protection regulations:

lack of effective **land use planning and zoning** in Haiti meant that shelter provision was necessarily haphazard, with pressure on land meaning that agencies simply took what was available, with no government guidance on appropriate siting. Some agencies contributed by facilitating neighbourhood-based planning and mapping, whilst current efforts by the government, notably through CIAT's efforts towards land tenure and land use planning reform, indicate a zeal to reform the sector and to institute lasting change. **Environmental legislation** is poorly applied and enforced in Haiti and represents a risk that the shelter effort could contribute to environmental damage in the absence of binding (and enforced) environmental protection requirements. **Building codes** were only used in a small minority of cases prior to the earthquake, and in the absence of legislation or government guidance shelter agencies developed and agreed on appropriate (but non-binding) shelter standards at the cluster level. However the use of short guides to construction and repairs to small buildings (issued relatively soon after the earthquake of 2010) set out requirements and standards in a legible and accessible manner in an attempt to ensure minimum standards were understood and implemented by local builders, and Haiti's relatively new National Building Code sets out a detailed series of standards for construction in Haiti that among other things implement minimum requirements for seismic, wind and flood-resistance. Whilst not dealing specifically with standards of shelter construction, the Code could be used as an effective vehicle for the future development of such standards.

Corruption: this presented a de facto barrier for many agencies attempting to import shelter materials, especially through the capital's port, and Haiti serves as an example of the risks of corruption that face the shelter sector in post-disaster contexts. A weak institutional background tackling corruption, as well as the sheer prevalence of corruption in public as well as private life, meant that shelter agencies faced significant challenges. These ranged from demands for bribes for the importation of shelter construction materials, to theft of materials by local contractors and supposed shelter beneficiaries. Corruption also hindered shelter efforts on a local level through fraud and theft. Whilst in practical terms it was hard to develop a solution, community involvement to prevent corruption 'on-site' was one good practice developed to overcome this barrier. Recent anti-corruption legislation passed in 2014, combined with a clear institutional framework and mandate, could significantly contribute to reducing the impact of corruption provided implementation and enforcement is prioritised.

Problems specific to international shelter assistance: customs delays after the end of the initial emergency period (roughly three months after the earthquake of 2010) meant that many shelter agencies were delayed in building shelters. Whilst some of the blame should lie with agencies who were not duly registered in Haiti, and unaware of taxation and importation requirements, the fact remains that customs procedures took a long time due to the lengthy procedures and low capacity of customs staff as well as physical capacity in the airport and port, sometimes exacerbated by corruption. Coordination of the international organisations present in Haiti through the cluster system effectively replaced government direction and coordination; whilst this enabled faster shelter provision and was somewhat unavoidable given the damage done to government capacity, agencies' coordination mechanisms were not necessarily efficient and did demonstrate sufficient inclusion of, or accountability to, Haitian government actors when their capacity improved.

Cross-cutting issues: inclusionary practice and other common areas of bias in shelter assistance: Haiti's legal framework on inclusionary practice and anti-discrimination is developing, and the passing of an inclusionary law for the disabled in 2012 is to be commended. However in practice much remains to be done to address the inequalities evident in Haitian society and the risks faced by the most vulnerable groups, which are reflected in access to shelter provision. Part of the responsibility must also lie with the shelter agencies, who may need to take better oversight of the beneficiary selection process to ensure vulnerable groups are not marginalised.

Recommendations

The good practices and solutions that have been identified in this report have served as important steps towards addressing the regulatory barriers and gaps, and where workable these have been used as a basis to develop the specific recommendations below. The following recommendations are split into two sections:

Short-term recommendations that are designed specifically to deal, at least on a temporary basis until longer term reforms are implemented, with existing regulatory barriers to shelter in post-disaster situations. Generally speaking these options could be implemented without the need to develop and pass new or amended legislation or to significantly reorganize institutional frameworks and responsibilities.

Long-term recommendations, several of which align with existing government plans for legal and institutional reform (such as those for housing, land tenure and land use planning). These focus on the possible broad legal and institutional reforms that may be considered necessary to permanently remove the major regulatory barriers to emergency and transitional shelter in Haiti. A distinction has been made between recommendations that are directly related to the provision of post-disaster shelter ('Direct', for example the adoption of shelter construction standards), versus those that are incidentally related ('Indirect', for example reform of the cadastre system).

Short-term recommendations

Many of the short-term recommendations set out below would benefit from being integrated into a single, national-level document. At present the most relevant government plan for the purposes of post-disaster shelter is the National Intervention Plan of 2001, which already sets out the basic institutional responsibilities for shelter provision.¹⁸³ Therefore a key general recommendation of this report is for the government to **integrate the following short-term recommendations into a revised draft of the National Intervention Plan**. Alternatively the government may consider developing a separate national contingency plan for the provision of emergency and transitional shelter in the event of major disasters.

- **Land registration and cadastre:** consider including the ability to temporarily recognise the validity of rapid community-based mapping and enumeration in a post-disaster setting, to enable faster decision-making in areas where there are gaps in government information. Such a mechanism would only activate in defined situations, for example following the declaration of a disaster by the government and/or the issuance of an emergency law. The duration of any such mechanism should be for a short-term, fixed period and could be linked to the duration of a state of emergency law (as were passed in 2008 and 2010).

¹⁸³ MICT, DPC, National Intervention Plan (Working Document), December 2001

■ **Property rights**

- It is recommended that the National Intervention Plan or separate national contingency plan should
 - include guidelines that prohibit grossly disproportionate levels of funding and resources (whether government or external) from being applied to the different categories of tenure status,
 - establish that principles of equality and non-discrimination must be equitably applied in terms of shelter provision, and
 - that the most vulnerable groups should be prioritised in shelter provision.

■ **Property dispute resolution**

- Consider setting out guidelines for a rapid dispute resolution system that would be implemented in the event of a disaster. Its initiation could be via an emergency law and its duration should be limited to a specific time period. The system's mandate should be limited to decisions relating to the use of land for shelter, and their powers should only include the ability to grant temporary usage rights for shelter purposes for pre-defined periods, which could be linked to the aforementioned emergency law.
- It is recommended that one entity be assigned overall responsibility for the creation and coordination of the system, for example MICT, UCLBP, or a committee made up of relevant officials from government agencies and civil society. Authority for the management of disputes could be delegated to temporary tribunals, with their members deputised as appropriate by municipal and local authorities. It is further recommended that any guidelines or plan should emphasise the need to ensure the integration of local leadership structures, customs and groups when selecting the members of these tribunals.

■ **Temporary requisition of land**

- Consider including guidelines that would permit temporary usage rights over (un-occupied) private or state land for emergency shelter. This could be implemented through an emergency law, which would provide time-limited powers to temporarily requisition land for shelter provision. Such powers could even be modified versions of the laws on expropriation for public utility, or the creation of short-term easements.
- Build on the good practice already evident in some contingency plans, by integrating the analysis and assignment of safe temporary shelter sites into risk management plans and contingency plans at all levels of government and for individual communities. It is recommended that the National Intervention Plan is updated to place a specific requirement on the national, departmental, municipal and local authorities for this purpose.

- **Environment:** as part of the development of risk management and contingency plans, consider the involvement of environmental experts from government, civil society,

international organisations and the private and academic sectors on relevant matters, including but not limited to:

- minimum standards for determining land allocated for shelter, and
- ensuring environmental protections can be built into shelter programs and emergency response without compromising the need for providing assistance in a timely manner.

Guidelines could be included in the PNGRD, PNRU and the National Intervention Plan to recommend that appropriate international environmental standards are prioritised and adhered to until the national system for environmental management has established norms and procedures in place.

- **Construction:** it is recommended that the National Intervention Plan or separate national contingency plan include a section dealing with shelter construction standards in post-disaster settings. This should seek to adapt any relevant standards from the current National Building Code to a shelter context, and where gaps remain to recommend the use of appropriate international standards (for example, relating to accessible shelter design). It is important that these provisions also establish institutional responsibility for the oversight of shelter construction; this could also include guidelines on how the relevant government bodies would coordinate with shelter agencies (for example, based on experience with the shelter cluster system used after the 2010 earthquake). It is recommended that any such guidelines be developed in collaboration with the involvement of Haitian civil society and relevant aspects of the private sector, as well as local and international shelter agencies.
- **Facilitation of international shelter assistance:** it is recommended that the government review the PNGRD and the PNRU and consider appropriate amendments that seek to ensure improved regulation and oversight of the international community in emergency settings. Consideration should be given to provisions that seek to improve coordination mechanisms, and ensure that actors do not jeopardise relief efforts through inexperience, lack of technical capacity or refusal to coordinate with the state and other actors. It is recommended that particular attention is given to the IFRC's 'IDRL Guidelines' as a basis for, among other things, integrating minimal quality standards for humanitarian assistance and the development of legal facilities needed for actors to work effectively.

Long-term recommendations

The above section focuses on recommendations that may be considered workable in the short-term without the need for major legal or institutional reform. Therefore not all areas analysed for the purposes of this report have been assigned a corresponding short-term recommendation, due to the need to balance what is achievable in the immediate future with the realities of institutional capacity and priorities in Haiti. However, the following recommendations should be considered as part of further long-term development and planning for emergency and transitional shelter.

- **Land registration and cadastre**

Indirect:

- **Adopt legislation or guidelines that establish a modern, computerised and centralised national land registration and cadastre system** for both private

and state land, and prioritise the legislative approval of the draft law of ONACA and the institutional strengthening of ONACA and the DGI. This could initially focus on state land (working closely with the DGI, as the manager of all state property) and then expand to private land. Although institutional responsibility for cadastre rests with ONACA, institutional responsibility for managing and providing access to land title records must also be clearly assigned; this is especially important for emergency situations. Consideration should also be given to devolving responsibility for property registration to municipal authorities, where appropriate.

- **Consider appropriate means for the integration of customary practice into the formal legal system;** this could involve the creation of a legal mechanism whereby customary landholdings can be verified, recorded and integrated into the formal legal cadastre and title system.

■ **Property rights**

Indirect:

- **Adopt laws and/or guidelines to clarify national property rights** and to achieve the following:
 - integration of informal property rights into the legal framework, for those in possession of land but without the formal recognition of such, potentially through a system of progressive tenure formalisation based on accrual of property rights over time;
 - expanding legally accepted forms of property rights to include formal recognition of renters and squatters, and to establish a more detailed system of rights and obligations related to them.
- **Amend existing law relating to acquisitive prescription, or issue guidelines on procedure,** in order to simplify the process, and to allow disadvantaged citizens to make a claim without fear of costs as a barrier. The state may even consider removing the obligation to make a formal claim for acquisitive prescription, and granting rights over land based on a simple set of criteria that could be verified by a local authority representative or a judge (subject to rival claims over the land).

■ **Property dispute resolution**

Indirect:

- Law, policy or guidelines should be developed to **recognise the dispute resolution capabilities of local authorities and leaders** (such as community leaders, CASECs and ASECs), bearing in mind the need to balance the need to empower local leaders and communities against the possible risks of corruption and favouritism.
- **Prioritise capacity-building** for judicial, legal and law enforcement officials, as well as awareness-raising work with local communities on management of disputes over land

■ **Eviction:**

Indirect:

- Adopt legislation, or amend suitable existing legislation, in order to:
 - **set out a clear prohibition on forced evictions;**
 - **clarify and expand on the procedures for the existing evictions available under law**, paying particular attention to the need to protect the rights of the evictee, which should conform with international standards including the UN Basic Principles and Guidelines on Development-Based Evictions and Displacement.

■ **Temporary requisition of land**

Direct:

- **Amend existing legislation, or adopt new legislation or policy, regarding expropriation**, to clarify the steps involved and to provide a ‘fast-track’ requisition procedure in times of emergency, with the aim of making land available for shelter quickly and effectively.
- **Investigate the possibility of utilising national legislation on easements** as a means to rapidly assign land for shelter in an emergency setting, and consider whether amendment of existing legislation or the adoption of new legislation may be appropriate.

■ **Land use planning**

Direct:

- **Prioritise issues of shelter in any future updates to the National Housing Policy** and ensure that any statutory plans developed by national departmental, municipal or local authorities consider, to the extent practical, the assignment of appropriate land for use as emergency shelter.

Indirect:

- **Build on the momentum achieved with the current National Housing Policy Framework Document**, in order to clearly define institutional responsibilities for land use planning, and the required content of planning documents.
- **Review and harmonise existing legislation, regulations, rules and norms on land use planning.**

■ **Environment**

Indirect:

- **Review and rationalise the existing environmental legislation in Haiti**: this could involve repealing older laws that are no longer applicable and/or amending older laws, potentially through a framework law or regulations linked to the Environmental Management Decree of 2006.
- **Prioritise the creation of the Bureau National des Evaluations Environnemental**, as well as the adoption of the current draft environmental impact assessment regulations and sectoral guidance.

■ Construction

Direct:

- Given the high risk of future natural disasters, the **formal adoption of guidelines that set out applicable international standards for shelter construction should be prioritised**. Such guidelines could, for example, be incorporated into the current National Building Code or be developed as a ‘stand-alone’ plan or framework document, and should consider the following:
 - authorisation of appropriate derogations from ‘normal’ construction standards in times of emergency, subject to meeting certain minimum standards;
 - incorporation of international guidelines and best practice such as the Sphere Standards; and
 - application of the aforementioned guidelines and standards to all entities engaged in shelter construction.

Indirect:

- **Continue to focus efforts on building the capacity of government staff involved in construction regulation and enforcement**, as well as ensuring that sensitisation activities take place to inform the public, masons, engineers and other actors about the provisions of the new National Building Code, and to highlight issues of construction in emergency settings.

■ Facilitation of international shelter assistance

Direct:

- **Adopt emergency customs procedures to facilitate**, among other things, the entry of shelter materials (in the event that materials of reasonable price and quality cannot be quickly procured in the local market), with specific consideration of tax exemptions and expedited entry procedures subject to reasonable conditions. The IDRL Guidelines could be considered as a starting point for the development of effective and appropriate legal facilities and accommodations.¹⁸⁴

Indirect:

- **Review the Customs Code with a view to the development of a guidance document** setting out detailed descriptions of customs procedures and practices, in order to enable actors to familiarise themselves with requirements.

■ Corruption

Direct:

- The existing anti-corruption law **should be expanded to prevent corruption in post-disaster settings**. Particular attention should be paid to the need to balance protection against the risk of causing undue delay of operations.

¹⁸⁴ See, for example, Article 17, *Ibid*

■ **Parallel legal systems**

Indirect:

- Consider **developing legislation that recognises the existence of customary laws and practices**, and balances the need for respect of the Constitution and fundamental legal rights on the one hand, with respect for traditional and customary laws on the other. Importantly, legislation should allow for informal and customary rights to form a basis for formal rights.
- In the context of shelter provision, **particular attention should be paid to customary laws or practices that help to remove barriers to shelter provision**. This could involve adoption of policies or guidelines that authorise and promote the use of informal practices in post-disaster settings

■ **Inclusionary practice (anti-discrimination)**

Indirect:

- Prioritise **the legislative passage of the draft regulations to be issued under the Disabled Persons Integration law of 2012**, and consider the inclusion of more detailed guidance, roles and responsibilities that seek to ensure the equitable treatment of the disabled in emergencies as well as in post-emergency and shelter settings.
- For other vulnerable groups, notably women, adopt legislation or guidelines that seek to confirm and protect their rights to equal treatment during times of emergency.
- **Include members of vulnerable groups and their representative civil society organisations on Civil Protection committees at all levels.**

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Annex A

List of persons and groups consulted

Government

MICT

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- Rose-Luce Cadot-Prévot, OFDA/DPC legal adviser

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UCLBP

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- Gedeon Charles, Engineer-Urban Planner

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- Achab Duval, Head of Legal Service

Leogane

- Pierre-Louis Joseph Voltaire, CASEC Coordinator, Cormier
- Augustin Johny, CASEC Coordinator, Palmiste à Vin

Jacmel

- Tatiana Bernadel, Substitute Commissioner, Court of First Instance
- Jacques Andrénor, CASEC Coordinator, Bainet
- Clive McCalla, Communal Civil Protection Committee

Red Cross Red Crescent Movement

IFRC

- Ascension Martinez, Acting Head of Integrated Neighbourhoods Approach
- Colin Price, Construction Project Manager
- Rocío Escauriaza, Disaster Law Delegate
- Kenneth Chulley, Settlement Movement Coordinator
- Luis Luna, disaster-law consultant for Hispaniola Island

British Red Cross

- Melvin Tubbett, Head of Delegation
- Wendy McCance, Programme Manager

Canadian Red Cross

- Betisa Egea, Shelter Delegate

Finnish Red Cross

- Kristiina Kangas, Project Support Delegate

Haitian Red Cross

- Roland Palme, Secretary General

Netherlands Red Cross

- Ruben Wedel, DRR and Livelihoods Delegate
- Pamphil Claudy, Liaison Officer

Spanish Red Cross

- Blanca Sancho, Shelter Delegate

Swiss Red Cross

- Olivier Legall, Reconstruction Delegate
- Harald Bier, DRR and Livelihoods Delegate



International Organisations and NGOs

Build Change

- Noll Tufani, Director of Programs

UNOPS

- Adriana Navarro-Sertich, Housing Advisor
- Claude-Andre Nadon, 16/6 Housing and Urban Rehabilitation Program Manager
- Johnson Nazaire, Juriste en Chef

World Bank

- Ali Alwahti, Urban Specialist, LAC Sustainable Development

CARE

- Rodrigo Melo, Neighbourhoods Coordinator

Architecture for Humanity

- Frédérique Siegel, former Coordinator of the Haiti Property Law Working Group
- James Darbouze, Land Tenure Fellow

Habitat for Humanity

- Barthelemy Leon, Associate Director of Programs

UN-Habitat

- Maggie Stephenson, Senior Technical Adviser
- Ben Noble, Communications Adviser (Internews)

- Rose Berthe-Augustin, Property Lawyer
- Takura Ono, former Head of Durable Housing Solutions

- Alberto Preato, Head of Durable Housing Solutions

Others

- Ericarme Joaissant, Independent Legal Counsel (former Agent for Land Affairs with the Canadian Red Cross, Jacmel)
- Bernithe George, former Assistant for Land Affairs with the Canadian Red Cross
- Archange Agella, Public Notary, Jacmel
- Alex Fischer, Associate Director, Haiti Program, The Earth Institute, Columbia University
- Paola Kim-Blanco, Senior Research Associate, Haiti Program, The Earth Institute, Columbia University
- Jane Charles-Voltaire, Lawyer (Cabinet Leblanc et Associés), and Steering Committee Member of Haitian Property Law Working Group
- Marie-Claude Jean-Baptiste, Program Director, Vance Center for International Justice

Community Focus Groups

- Representative community members from the commune of Bainet, Bainet arondissement, South-East department;
- Women's group from the Organisation des Femmes de Bainet, commune of Bainet, Bainet arondissement, South-East department;
- Community members of the Equipe d'Intervention Communautaire, in the section communale of Cormier, commune of Leogane, West department;
- Community members of the Equipe d'Intervention Communautaire, in the section communale of Palmiste-à-Vin, commune of Leogane, West department.

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Annex B

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Annex C

Meaning of key terms

The following are working definitions of certain terms used in this report. They are meant to clarify how the author has understood and used them in this text rather than to assert any “official” meaning.

Legal and regulatory barriers: incorporates barriers which may be caused by legislation, laws, regulations, decrees, codes, standards and the like, as well as their implementing policies and guidelines. The consultant should also consider any relevant informal, customary or community-based processes.

Law and regulation: this includes laws, regulations, decrees or similar, as well as their implementing policies and guidelines.

Emergency shelter: refers to the immediate provision of shelter after a disaster, which would include tents and emergency accommodation in public buildings. The establishment of emergency shelter would require the use of any available land for a short period of time, whether public or private, to respond to the shelter needs during the recovery phase of the emergency.

Transitional shelter: rapid, post-disaster household shelters made from materials that can be upgraded or re-used in more permanent structures, or that can be relocated from temporary sites to permanent locations. They are designed to facilitate the transition by affected populations to more durable shelter. Transitional shelters respond to the fact that post-disaster shelter is often undertaken by the affected population themselves, and that this resourcefulness and self-management should be supported.¹⁸⁵ This definition is adapted from the Sphere Shelter and Settlements Standards.¹⁸⁶

Shelter: when used in this report, ‘shelter’ refers to both emergency and transitional shelter, unless the context clearly provides otherwise.

The project consultant has undertaken **translations from French to English** where relevant or necessary. Whilst every effort has been made to align the translations to the original meaning in French, these cannot be considered to be authoritative or official translations.

¹⁸⁵ IFRC, Transitional Shelters – Eight Designs, <http://www.ifrc.org/PageFiles/95186/900300-Transitional%20Shelters-Eight%20designs-EN-LR.pdf>

¹⁸⁶ Sphere Project, Sphere Shelter and Settlement Standard 1: Strategic Planning, Guidance Note 6, Humanitarian charter and minimum standards in humanitarian response, 2011, available at <http://www.spherehandbook.org/en/shelter-and-settlement-standard-1-strategic-planning/>

The Fundamental Principles of the International Red Cross and Red Crescent Movement

Humanity / The International Red Cross and Red Crescent Movement, born of a desire to bring assistance without discrimination to the wounded on the battlefield, endeavours, in its international and national capacity, to prevent and alleviate human suffering wherever it may be found. Its purpose is to protect life and health and to ensure respect for the human being. It promotes mutual understanding, friendship, cooperation and lasting peace amongst all peoples.

Impartiality / It makes no discrimination as to nationality, race, religious beliefs, class or political opinions. It endeavours to relieve the suffering of individuals, being guided solely by their needs, and to give priority to the most urgent cases of distress.

Neutrality / In order to enjoy the confidence of all, the Movement may not take sides in hostilities or engage at any time in controversies of a political, racial, religious or ideological nature.

Independence / The Movement is independent. The National Societies, while auxiliaries in the humanitarian services of their governments and subject to the laws of their respective countries, must always maintain their autonomy so that they may be able at all times to act in accordance with the principles of the Movement.

Voluntary service / It is a voluntary relief movement not prompted in any manner by desire for gain.

Unity / There can be only one Red Cross or Red Crescent Society in any one country. It must be open to all. It must carry on its humanitarian work throughout its territory.

Universality / The International Red Cross and Red Crescent Movement, in which all societies have equal status and share equal responsibilities and duties in helping each other, is worldwide.

