

Fordham International Law Journal

Volume 35, Issue 6

2012

Article 5

This Land is My Land- Protecting the Security of Tenure in Post-Earthquake Haiti

Rebecca Iwerks*

*Fordham University School of Law

Copyright ©2012 by the authors. *Fordham International Law Journal* is produced by The Berkeley Electronic Press (bepress). <http://ir.lawnet.fordham.edu/ilj>

THIS LAND IS MY LAND: PROTECTING THE SECURITY OF TENURE IN POST-EARTHQUAKE HAITI

*Rebecca Iwerks**

INTRODUCTION.....	1825
I. THE RIGHT TO TENURE SECURITY.....	1829
A. Protecting the Right to Tenure Security.....	1829
1. The Problem of Tenure Security	1829
2. State Responsibility to Protect Tenure Security...	1832
3. Methods of Protecting Tenure Security	1836
B. Haiti.....	1842
1. International Obligations	1842
2. Existing Formal Laws and Regulations	1844
3. Security of Tenure in Haiti.....	1848
II. HAITI'S FAILURE TO FULFILL INTERNATIONAL OBLIGATIONS.....	1852
A. Haiti's Limited Implementation of Formal Law.....	1853
1. Method to Assert Tenancy: Cadastre System.....	1853
2. Access to Adjudication: Court System.....	1854
3. Weighing Public Good: Executive Orders.....	1856
4. Impact on Human Rights Obligations.....	1857
B. Informal System Confers Tenure with Limited Recognition from the Haitian Government.....	1858
1. Method to Assert Tenancy: Community Agreement and Notaries	1858
2. Access to Fair Adjudication	1859

*J.D. Candidate, May 2013, Fordham University School of Law; B.S. Political Science and Astronomy, 2004, University of Massachusetts, Amherst. The Author worked for many years in the field of international human rights and development and is a consultant to the Housing Law and Property Rights Group in Haiti. The Author would like to thank Professor Joy Chia, Professor Greg Milne, and the editors and staff of the *Fordham International Law Journal* for their editing, guidance, and encouragement. She would also like to thank Justin Iwerks, her constant source of support; Cambria Iwerks, her youngest and most precise editor; and her father, who had her coloring property lines before elementary school.

3. Weighing Public Good.....	1860
4. Implications for Human Rights Obligations	1861
C. The Various Methods for International Actors to Confer Land Tenure.....	1863
1. International Organizations Conferring Tenure: Neocultural Interventionists.....	1865
2. Deference to the Haitian Government: Rule of Law Advocates	1869
3. Haitian People as Central to Tenancy Security: Participatory Approach.....	1872
III. GOING FORWARD: RECOGNIZING AND REINFORCING LEGITIMACY	1874
A. The Haitian Government Must Recognize Claims as They are Understood by Haitians.....	1875
B. The International Community Must Support the Legitimacy of the Haitian Government.....	1878
C. Lessons for the Next Disaster	1881
CONCLUSION	1883

INTRODUCTION

On January 12, 2010, a 7.0 magnitude earthquake struck Haiti, killing approximately 222,570 people and injuring 300,572.¹ Nearly 1.5 million people were displaced from their homes.² As of July 2011, there are still over 594,811 people homeless from the earthquake filling any open space—from parks to golf courses—with makeshift houses of tarpaulin and

1. *See Haiti: One Year Later*, U.N. OFFICE FOR COORDINATION OF HUMANITARIAN AFFAIRS, <http://www.unocha.org/issues-in-depth/haiti-one-year-later> (last updated Jan. 18, 2011) (providing United Nations (“UN”) statistics on the 2010 earthquake); Meena Jagannath et al., *A Rights-Based Approach to Lawyering: Legal Empowerment as an Alternative to Legal Aid in Post-Disaster Haiti*, 10 NW. U. J. INT’L HUM. RTS. 7, 7 (2011) (summarizing the impact of the earthquake).

2. *See* Jagannath et al., *supra* note 1, at 7 (describing the impact of the earthquake on housing); INT’L. CRISIS GRP., *POST-QUAKE HAITI: SECURITY DEPENDS ON RESETTLEMENT AND DEVELOPMENT* 5 (2011) [hereinafter ICG] (listing figures to describe the earthquake aftermath).

scrap wood.³ Making life even more difficult, over forty percent are without jobs.⁴

This persistent devastation leads many humanitarians to contemplate how such a well-funded humanitarian effort could be so slow to create a stable environment for victims to rebuild their lives.⁵ One of the main factors contributing to the slow progress in Haiti is that it is difficult for individuals, businesses, and the government to verify what land is available for reconstruction in and around the capital city, Port-au-Prince.⁶ Aid organizations are hesitant to provide services on land without clear documentation of ownership.⁷ New houses remain

3. See CAMP COORDINATION & CAMP MGMT. CLUSTER, EVICTION SITUATION IN CAMPS HOSTING INTERNALLY DISPLACED PERSONS 7 (2011) [hereinafter EVICTION SITUATION] (providing official figures of displaced people in Haiti); PAUL FARMER, HAITI: AFTER THE EARTHQUAKE 140–42 (Abbey Gardner & Cassia Van Der Hoof Holstein eds., 2011) (describing the public health implications of camps sprouting in an unorganized fashion on public space).

4. *Central America and Caribbean: Haiti*, in THE WORLD FACTBOOK (Apr. 11, 2012), <https://www.cia.gov/library/publications/the-world-factbook/geos/ha.html> (noting that the unemployment rate is 40.6%). However, this unemployment rate is likely a low estimate since over two-thirds of Haitians were not formally employed before the earthquake, and conditions have deteriorated since. See ACTION AID, BUILDING FOR THE FUTURES: HOMES AND SECURITY IN HAITI 2 (2011) (discussing high unemployment rates even prior to the disaster).

5. See, e.g., OFF. OF THE SPECIAL ENVOY FOR HAITI, HAS AID CHANGED?: CHANNELING ASSISTANCE TO HAITI BEFORE AND AFTER THE EARTHQUAKE 4–20 (2011) [hereinafter OSE] (comparing aid delivery before and after the earthquake); OXFAM INT’L., FROM RELIEF TO RECOVERY: SUPPORTING GOOD GOVERNANCE IN POST-EARTHQUAKE HAITI 14–19 (2011) (providing an analysis of the shortfalls of the earthquake response) [hereinafter OXFAM]; MARK SCHULLER, UNSTABLE FOUNDATIONS: IMPACT OF NGOS ON HUMAN RIGHTS FOR PORT-AU-PRINCE’S INTERNALLY DISPLACED PEOPLE 32–33 (2010) (discussing the shortfalls of the nongovernmental organization (“NGO”) response to the earthquake).

6. See, e.g., DEP’T OF STATE MODERNIZATION AND GOVERNANCE, ORG. OF AM. STATES, MODERNIZATION OF CADASTRE AND LAND RIGHTS INFRASTRUCTURE IN HAITI: A RAPID AND INCLUSIVE APPROACH 4 (2010) [hereinafter OAS] (describing the failure of the Haitian title registration system); HERITAGE FOUNDATION, 2012 INDEX OF ECONOMIC FREEDOM: HAITI 216 (2012), available at <http://www.heritage.org/index/pdf/2012/countries/haiti.pdf> (ranking Haiti among the worst in the world for its protection of property rights, awarding it ten out of one hundred points in the category of protecting property rights).

7. See *Human Rights Situation in the Camps for Internally Displaced Persons in Haiti: Hearing at the Inter-American Commission on Human Rights*, 140th Sess. (2010) (Kathleen Bergin, Disaster Law Center) [hereinafter *Human Rights Situation Hearing*] (documenting that human rights organizations received inquiries from Habitat Humanity and others about how to ensure their right to land before building); ASHLEY JONATHAN CLEMENTS ET AL., WORLD VISION INT’L., FUTURES IN THE BALANCE: A WAY

unbuilt for fear that the organizations would be providing shelter without a guarantee of land ownership.⁸ Investors are similarly wary of participating in Haiti's "better" rebuilding without assurances that they will have undisputed title to the land on which they build.⁹ Perhaps more urgently, individuals trying to restore normalcy to their lives are being forced out of their homes, often at night with little protection from—and sometimes by order of—the government.¹⁰

These events are all symptoms of a problem with tenure security. Tenure is the manner by which someone lays claim to a parcel of land.¹¹ If no one challenges that claim or title, then the tenure is deemed secure.¹² If there is no clear way to verify ownership, tenure is deemed insecure.¹³ International law holds

FORWARD FOR HAITI'S CHILDREN 11 (2010) (reporting that lack of adequate land tenure impacts not only housing but also delivery of basic services).

8. See *Human Rights Situation Hearing*, *supra* note 7 (documenting that human rights organizations received inquiries from Habitat Humanity and others about how to ensure their right to land before building); see also CLEMENTS ET AL., *supra* note 7 (noting that long-term transitional shelters cannot be provided with adequate land).

9. See RICHARD G. LUGAR, S. COMM. ON FOREIGN REL., 111TH CONG., WITHOUT REFORM, NO RETURN ON INVESTMENT IN HAITI at v (Comm. Print 2010) (describing the resistance of the business community to engage in a country with unclear tenure); see also Dicudonné Joachim, *Le Cadre Légal Haitien Inapproprié au Développement de L'Immobilier*, LE NOUVELLISTE (Haïti), June 29, 2011, <http://www.lenouvelliste.com/article4.php?newsid=94381> (reporting on how the lack of legal certainty regarding property rights limits Haiti's economic development). "Build back better" is a tagline for reconstruction coined by former US President William Clinton during the reconstruction. See Moun Andeyò, *Persistent Legacies of Exclusion*, in TECTONIC SHIFTS: HAITI SINCE THE EARTHQUAKE 95, 95 (Mark Schuller & Pablo Morales eds., 2012) (noting the limited power of President Clinton's slogan); FARMER, *supra* note 3, at 153 (Abbey Gardner & Cassia Van Der Hoof Holstein eds., 2011) (discussing the "build back better" attitude at early donor conferences).

10. See Jagannath et al., *supra* note 1, at 13 (describing the process of forced evictions); Andeyò, *supra* note 9, at 131–32 (summarizing extensive reports of forced evictions after the earthquake).

11. BALLENTINE'S LAW DICTIONARY 1266 (3d ed. 1969) (defining the term, "tenure").

12. See INGRID WESTENDORP, WOMEN AND HOUSING: GENDER MAKES A DIFFERENCE 174 (2007) (defining the term, "tenure security"); Chris Huggins, *Linking Broad Constellations of Ideas: Transitional Justice, Land Tenure Reform, and Development*, in TRANSITIONAL JUSTICE AND DEVELOPMENT: MAKING CONNECTIONS 332, 337 (Pablo de Greiff & Roger Duthic, eds. 2009) (noting that tenure security lies in the ability to prevent one person's claims from infringing on another person's claims to an unfair degree).

13. See Huggins, *supra* note 12, 338–39 (discussing fundamental tenure security rights and acknowledging that different persons may be able to assert different rights);

national governments responsible for protecting property rights and shielding individual owners from competing claims of ownership.¹⁴ While the state has the ultimate responsibility to protect land tenure, the government, community, and international actors all may have a role in determining the process by which a parcel of land is associated with an owner.¹⁵

Natural disasters that destroy property and land markers, like the earthquake in Haiti, can disrupt the tenure system and make some tenure claims less secure.¹⁶ Using the example of post-earthquake Haiti, this Note explores how a government's ability to protect the property rights of poor landowners is impacted by international organizations, local communities, and government administrators involved in determining land tenure. In asking this question, this Note hopes to show how all actors have made tenure less secure and provides suggestions for how they can instead work to increase tenure security.

Part I explains the concept of tenure security and its construction as an international human right. It examines Haiti's international obligations and national laws pertaining to tenure security, and describes the state of tenure security in Haiti. Part II explores how the Haitian government, informal communities, and international actors in Haiti determine land tenure and the impact that this determination has on the protection of the Haitian right to tenure security. Finally, Part III suggests that for people in Haiti to enjoy tenure security, the Haitian government must recognize the legitimacy of the

WESTENDORP, *supra* note 12, at 174 (describing the requirements for tenure security and noting that strength of security depends on claim to land).

14. See Universal Declaration of Human Rights, G.A. Res. 217 (III) A, U.N. Doc. A/RES/217(III), art. 17(1) (Dec. 10, 1948) [hereinafter UDHR] ("Everyone has the right to own property alone, as well as in association with others."); WESTENDORP, *supra* note 12, at 173–74 (noting that states have both a negative and positive obligation to protect property ownership).

15. See Huggins, *supra* note 12, at 347–58 (discussing the multiple means of asserting and protecting rights to ownership in transitioning countries).

16. See UN-HABITAT, *LAND AND NATURAL DISASTERS: GUIDANCE FOR PRACTITIONERS* 76–77 (2010) (listing the implications of tenure insecurity in post-disaster situations); see also Brian Concannon Jr. & Beatrice Lindstrom, *Cheaper, Better, Longer-Lasting: A Rights-Based Approach to Disaster Response in Haiti*, 25 *EMORY INT'L L. REV.* 1145, 1146 (2011) (noting that a natural disaster can inhibit an already weak state's ability to fulfill its obligations to its citizens and indicating that Haiti became increasingly weak as a result of government's inadequacies during the earthquake response).

informal land claims, and the international community must reinforce the legitimacy of the Haitian government to confer and protect tenure.

I. THE RIGHT TO TENURE SECURITY

Because the slow humanitarian response and lagging economic development are rooted in the problem of tenure security, this Part provides a full description of tenure security in Haiti. Part I.A describes the underlying problem of tenure security and shows how international human rights law creates a state's obligation to protect tenure security. Next, it explains different techniques states use to protect this right after natural disasters. Part I.B explores Haiti's international obligations to protect tenure security and how domestic laws reflect this responsibility. Finally, it discusses the state of tenure security before and after the earthquake and provides an overview of the relief effort orchestrated by international organizations.

A. Protecting the Right to Tenure Security

1. The Problem of Tenure Security

In its most basic form, land ownership is a concept symbolized through a construction, such as a piece of paper or communal agreement.¹⁷ This symbol represents a "bundle" of rights that may include the right to access the land, to exclude others from the land, to derive value from the land, or to sell the land.¹⁸ It is also possible to make a claim to more limited or secondary rights, such as access for a specific period of time, like

17. See Huggins, *supra* note 12, at 341 (asserting that ownership is an idea that only has meaning if it is legitimized); HERNANDO DE SOTO, *THE MYSTERY OF CAPITAL: WHY CAPITALISM TRIUMPHS IN THE WEST AND FAILS EVERYWHERE ELSE* 162-63 (2000) (emphasizing that even social contracts have explicit representations in real world behaviors).

18. See OLI BROWN ET AL., *INT'L INST. FOR SUSTAINABLE DEV., NATURAL DISASTERS AND RESOURCE RIGHTS: BUILDING RESILIENCE, REBUILDING LIVES* 5 (2006) (describing forms of land rights); SCOTT LECKIE & CHRIS HUGGINS, *CONFLICT AND HOUSING, LAND, AND PROPERTY RIGHTS: A HANDBOOK ON ISSUES, FRAMEWORKS, AND SOLUTIONS* 2-3 (2011) (noting that most state property protections are derived from western and European contexts and "do not reflect the complexities of customary tenure systems").

renting, or for a unique purpose, like farming.¹⁹ These property rights, however, are subject to uncertainty if the claim of ownership is not universally recognized.²⁰ Tenure security considers the strength of a claim and its protection from counterclaims. The concept of tenure security applies to all types of claims, including secondary claims, such as renting.²¹

Tenure security has numerous benefits. First, it allows landholders to designate who has current and future rights to the property.²² Moreover, individuals that have confidence in their right to a parcel of land are more likely to physically invest in that land.²³ Second, economists note that tenure security benefits development because it enables individuals to leverage

19. See Kathryn Firmin-Sellers & Patrick Sellers, *Expected Failures and Unexpected Successes of Land Tilling in Africa*, 27 *WORLD DEV.* 1115, 1119 (1999) (noting how different rights can be given to the same parcel of land, such as when women in Kenya had communal title to food crops on a piece of land, while the men had the rights to the tree crops); JAAP ZEVENBERGEN, *A PRO-POOR LAND RECORDATION SYSTEM; TOWARDS A DESIGN* 16 (2011) (explaining that there are often tenure security rights referred to as secondary rights that are of particular importance to women and the most vulnerable).

20. See Joseph Blocher, *Building on Custom: Land Tenure Policy and Economic Development in Ghana*, 9 *YALE HUM. RTS. & DEV. L.J.* 166, 175 (2006) (arguing that without social legitimacy, property rights would be meaningless); Daniel Fitzpatrick, *Evolution and Chaos in Property Rights Systems: The Third World Tragedy of Contested Access*, 115 *YALE L.J.* 996, 996 (2006) (showing that recognizing norms is central to tenure security). A claim on property, called a title, can be undermined by someone that has a more powerful claim to that property. A counterclaim can be overturned if the later claim is not viewed as legitimate. See also Blocher, *supra* note 20, at 175 (explaining that claims will not be valid if they are not viewed as legitimate by others in the community); Fitzpatrick, *supra* note 20, at 996 (emphasizing the role of the community in creating legitimacy of ownership).

21. See WESTENDORP, *supra* note 12, at 174 (noting that tenure claims can include communal or individual rights; cf. LILIANNE FAN, OXFAM GREAT BRITAIN, *SCOPING STUDY ON HOUSING, LAND AND PROPERTY RIGHTS IN POST-EARTHQUAKE HAITI: SECURING TENURE, PREVENTING EVICTIONS, FACILITATING RETURN, AND STRENGTHENING ACCESS TO JUSTICE FOR THE VULNERABLE* 10, 28, 39 (2010) (on file with author) (calling attention to the need for secondary rights to be protected in an urban setting).

22. See KLAUS DEININGER ET AL., *INNOVATIONS IN LAND RIGHTS RECOGNITION, ADMINISTRATION, AND GOVERNANCE*, at xiv (2010) (discussing the benefits of secure tenure promoting land renting).

23. See Firmin-Sellers & Sellers, *supra* note 19, at 1116 (explaining that economists view titling as the opportunity to avoid wasting resources with competing claimants); DEININGER ET AL., *supra* note 22, at xiv (describing how individuals with insecure land tenure are unlikely to invest in long-term improvements in their land).

their capital to access credit.²⁴ Hernando de Soto, a leading proponent of tenure security, goes so far as to argue that tenure security is the key to promoting development and eliminating poverty.²⁵

The formal and informal legal systems that protect tenure security face special challenges after a disaster, such as destruction of property markers, massive displacement, and destruction of records.²⁶ Tenure security is particularly relevant in the aftermath of natural disasters because there tend to be large numbers of displaced people coupled with an urgent need to invest in new construction.²⁷ Unless they have assurance of exclusive title to a piece of the land, people are often reluctant to invest in rebuilding.²⁸ Similarly, tenure insecurity impacts many people's access to livelihood because they are hesitant to plant crops or repair shops.²⁹ People with malicious intent can

24. See DE SOTO, *supra* note 17, at 5–6 (explaining that if an individual can represent their ownership of land in a paper symbol that is widely recognized, that symbol can be brought to a formal banking institution and used as collateral); Huggins, *supra* note 12, at 341 (summarizing de Soto's argument for formal tenure systems).

25. See DE SOTO, *supra* note 17, at 6 (noting that tenure security is also likely to increase foreign investment); see also BENJAMIN BARROS, HERNANDO DE SOTO AND PROPERTY IN A MARKET ECONOMY I (2010) (noting De Soto is a Latin American economist famous for his detailed studies on the barriers to participating in the formal land system); Huggins, *supra* note 12, at 340–41 (describing De Soto's contribution to property law).

26. See BROOKINGS-BERN PROJECT ON INT'L DISPLACEMENT, HUMAN RIGHTS AND NATURAL DISASTERS: OPERATIONAL GUIDELINES AND FIELD MANUAL ON HUMAN RIGHTS PROTECTION IN SITUATIONS OF NATURAL DISASTER 45 (2008) (noting that destruction of land markers and property documentation can lead to conflict after disasters); BROWN ET AL., *supra* note 18, at 16 (discussing the impact of destroyed property markers and documentation on reconstruction in Thailand).

27. See UN-HABITAT, *supra* note 16, at 76–77 (highlighting the challenges of tenure insecurity in post-disaster situations); see also BROWN ET AL., *supra* note 18, at 7 (describing how clarity and security of tenure are linked to resilience after natural disasters).

28. See BROWN ET AL., *supra* note 18, at 16 (pointing to the importance of tenure security in reconstruction efforts); Special Rapporteur, *Report on Adequate Housing as a Component of the Right to an Adequate Standard of Living, and on the Right to Non-Discrimination in this Context*, Hum. Rts. Council, ¶¶ 26–28, U.N. Doc. A/HRC/16/42 (Dec. 20, 2010) (by Raquel Rolnik [hereinafter Rolnik] (using the example of Timor Leste to show the potential for prolonged displacement if tenure issues are not addressed adequately).

29. See UN-HABITAT, *supra* note 16, at 77 (discussing the impact of tenure security on livelihoods after disasters); Rolnik, *supra* note 28, ¶¶ 8–9 (noting that the poor tend to be more adversely impacted by disasters).

take advantage of post-disaster confusion and assert ownership while the pre-disaster owner is displaced.³⁰

2. State Responsibility to Protect Tenure Security

The concept of tenure security is formally protected as a fundamental human right by international human rights law. Starting with the Universal Declaration for Human Rights (“UDHR”) in 1948, the international community provided the right to “own” property and the right to protection from being “arbitrarily deprived” of that property.³¹ Though there is no explicit right to property in the subsequent international covenants, both the International Covenant on Civil and Political Rights (“ICCPR”) and the International Covenant on Economic, Social, and Cultural Rights (“ICESCR”) provides some property rights.³² ICESCR guarantees a right to housing and ensures that states will “take appropriate steps to ensure the realization of this right.”³³ Meanwhile, the ICCPR requires states

30. See BROWN ET AL., *supra* note 18, at 15 (recounting fears of disaster victims that their land would be taken while they were displaced); UN-HABITAT, *supra* note 16, at 18 (describing the reasons displaced people fear loss of land and the impact the loss can have).

31. See UDHR, *supra* note 14, art. 17(1) (“Everyone has the right to own property alone as well as in association with others.”); *id.* art. 17(2) (“No one shall be arbitrarily deprived of his property.”); *id.* art. 25(1) (“Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including . . . housing . . . and the right to security in the event of unemployment, sickness, disability, widowhood, old age, or other lack of livelihood in circumstances beyond his control.”); see also CHRISTOPHE GOLAY & IOANA CISMAS, INT’L CTR. FOR HUMAN RTS. & DEMOCRATIC DEV., LEGAL OPINION: THE RIGHT TO PROPERTY FROM A HUMAN RIGHTS PERSPECTIVE 24 (2010) (explaining that the history of international protection of the right to property begins with the Universal Declaration of Human Rights (“UDHR”)).

32. See Elisabeth Wickeri, “*Land is Life, Land is Power*”: *Landlessness, Exclusion, and Deprivation in Nepal*, 34 *FORDHAM INT’L L.J.* 930, 1006–08 (2011) (providing a history of the debate of how property rights were included in the UDHR and subsequent conventions); GOLAY & CISMAS, *supra* note 31, at 3–5 (describing the history of property rights in international law). The loss of an explicit definition of property rights in the covenants is of particular importance because the Universal Declaration of Human Rights (“UDHR”) has less weight in international law than the individual covenants. See Statute of the International Court of Justice art. 38(1), June 26, 1945, 59 Stat. 1031, T.S. No. 993 (declaring that the Court should weigh authorities by giving preference to: 1. international conventions; 2. international customs; 3. general principles and laws recognized by civilized nations; 4. judicial decisions and teachings).

33. International Covenant on Economic, Social and Cultural Rights art. 11, Dec. 16, 1966, 993 U.N.T.S. 3 (“[T]he right . . . to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous

to protect individuals against arbitrary interference of their homes.³⁴ The Committee on Economic, Social and Cultural Rights (“CESCR”), which enforces and informs the ICESCR, expands these rights by specifically addressing the importance of land tenure in General Comment 4.³⁵ CESCR stipulates that the state is responsible for “confer[ing] legal security of tenure” and protecting individuals against forced eviction.³⁶ Further, General Comment 7 explains that states have an obligation to use “all appropriate means” to protect the security of tenure and to stop forced evictions.³⁷

Building on these international treaties, some international conferences adopted special principles for internally displaced people (“IDPs”).³⁸ For example, the United Nations Guiding Principles on Internal Displacement affirm that “no one shall be arbitrarily deprived of property and possessions” and that displaced people should be protected by the state against

improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right . . .”).

34. International Covenant on Civil and Political Rights art. 17, Dec. 16, 1966, 999 U.N.T.S. 171 (“1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, or correspondence. . . . 2. Everyone has the right to the protection of the law against such interference or attacks.”); *see also* GOLAY & CISMAS, *supra* note 31, at 3–4 (noting that many scholars interpret this to include a right for land to be protected from arbitrary interference).

35. *See* Comm. on Econ., Soc. and Cultural Rights, *Gen. Cmt. 4: The Right to Adequate Housing*, 6th Sess., ¶ 8(a), U.N. Doc. E/1992/23, (Dec. 13, 1991); *see also* WESTENDORP, *supra* note 12, at 174 (noting that this is the first of seven aspects necessary for adequate housing to be protected). This commentary is persuasive authority, but not legally binding like the conventions. RESTATEMENT (THIRD) OF THE LAW OF FOREIGN RELATIONS LAW OF THE UNITED STATES § 321, 325 (b) (1986).

36. *See Gen. Cmt. 4, supra* note 35, ¶ 8(a) (“Notwithstanding the type of tenure, all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats. States parties should consequently take immediate measures aimed at conferring legal security of tenure upon those persons and households currently lacking such protection, in genuine consultation with affected persons and groups . . .”).

37. Comm. on Econ., Soc. and Cultural Rights, *Gen. Cmt. 7: The Right to Adequate Housing: Forced Evictions*, 16th Sess., ¶ 9, U.N. Doc. E/1998/22 (May 20, 1997); *see also* Susan Breau, *The International Law Rights to Home and Homeland*, in *THE IDEA OF HOME IN LAW: DISPLACEMENT AND DISPOSSESSION* 165, 169–70 (Lorna Fox O’Mahony & James A. Sweeney eds., 2011) (emphasizing that Comment 7 urges states to protect its citizens from third parties that are conducting forced evictions).

38. *See* Rolnik, *supra* note 28, ¶ 11 (observing that the development of these principles marks a shift from a purely humanitarian response to one based on protecting individual rights); *see also* Wickeri, *supra* note 32, at 1011–12 (describing the provisions for property rights in non-binding documents).

“illegal appropriation, occupation or use” of their property.³⁹ Government authorities also have the duty to assist displaced people in regaining their property or provide them with adequate compensation for their loss.⁴⁰ Similarly, the “Pinheiro Principles” on Housing and Property Restitution for Refugees and Displaced Persons, an additional international agreement concerning displaced people endorsed by the United Nations, discusses a right to have property ownership restored if it was wrongfully removed.⁴¹ It further affirms that states “shall ensure” that men and women have equal rights to “legal security of tenure” and that restoration programs do not disadvantage females.⁴²

In the Americas, the American Convention on Human Rights (“ACHR”) also protects tenure security.⁴³ This

39. Rep. of the Secretary General, *United Nations Guiding Principles on Internal Displacement*, Princ. 21(1), (3) U.N. Doc. E/CN.4/1998/53/Add.2 (Feb. 11, 1998) (by Francis M. Deng) [hereinafter Guiding Princ.]; see also Breau, *supra* note 37, at 181–82 (noting that these principles were drafted in 1998 by Representative of the Secretary-General on Internally Displaced Persons Francis M. Deng and then noted in a resolution by the Commission on Human Rights). These principles have less legal authority than the covenants but are considered persuasive authority. See Statute of the International Court of Justice, art. 38(1), June 26, 1945, 59 Stat. 1031, T.S. No. 993 (declaring that conventions are to be held in higher regard than principles); see also Breau, *supra* note 37, at 181–82 (explaining that the principles are not a UN declaration and do not constitute a binding instrument).

40. See Guiding Princ., *supra* note 39, princ. 29(2).

41. UN SUB-COMM’N ON PROTECTION AND PROMOTION OF HUM. RTS., Principles on Housing and Property Restitution for Refugees and Displaced Persons, Res 2005/21, U.N. Doc. E/CN.4/Sub.2/2005/17, § II 2.1 (Aug 11, 2005) [hereinafter Pinheiro Princ.]; see also Wickeri, *supra* note 32, at 1013 (noting that the principles protect primary and secondary tenure claims). These principles were drafted by international humanitarian actors and then endorsed by the United Nations Sub-Commission on the Promotion and Protection of Human Rights and named after Sub-Commission Special Rapporteur on Housing and Property Restitution, Paulo Sérgio Pinheiro. See *Pinheiro Principles Initiative*, DISPLACEMENT SOLUTIONS, http://www.displacementsolutions.org/?page_id=201 (last visited Aug. 10, 2012) (summarizing the history of the Pinheiro Principles).

42. See Pinheiro Princ., *supra* note 41, §§ III 4.1, 4.3.

43. Organization of American States, American Convention on Human Rights, art. 21, Nov. 22, 1969, O.A.S.T.S. No. 36, 1144 U.N.T.S. 123 [hereinafter ACHR] (“1. Everyone has the right to the use and enjoyment of his property. The law may subordinate such use and enjoyment to the interest of society. 2. No one shall be deprived of his property except upon payment of just compensation, for reasons of public utility or social interest, and in the cases and according to the forms established by law.”). Haiti ratified this treaty on September 14, 1977. *B-32: American Convention on Human Rights*, INTER-AM. COMM’N ON HUMAN RIGHTS, <http://www.cidh.oas.org/Basicos/English/Basic4.Amer.Conv.Ratif.htm> (last visited Feb. 29, 2011).

Convention protects a right to “use and enjoy” property, except when it conflicts with “the interest of society.”⁴⁴ If a government uses eminent domain, the covenant requires that the government give owners “payment of just compensation” for their land.⁴⁵

International law also requires that tenure security be protected without discrimination.⁴⁶ For example, the Convention on the Elimination of All Forms of Discrimination against Women (“CEDAW”) requires men and women to have equal access to property rights.⁴⁷ The Inter-American Court goes on to assert that equality and non-discrimination are protected by a shared international sense of justice.⁴⁸ This includes discrimination based on creed, economic status, social condition, color, and language.⁴⁹

44. See ACHR, *supra* note 43, art. 21(1); *see also* Yakye Axa Indigenous Community v. Paraguay, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 125, ¶ 137 (June 17, 2005) (defining this right to property to include “moveables and immovables, corporeal and incorporeal elements and any other intangible object capable of having value”).

45. See ACHR, *supra* note 43, art. 21(2).

46. See PROTECTION CLUSTER HOUSING, LAND AND PROPERTY WORKING GROUP, ISSUE OF THE RENTERS IN POST-DISASTER SCENARIO: PROPOSAL FOR REDRESSING THEIR POSITION IN THE HAITIAN HOUSING ASSISTANCE 4 (2011), *available at* https://sites.google.com/site/shelterhaiti2010/files/RENTERS_vm_FINAL_6_8.doc?atredirects=0 [hereinafter Renters] (noting that discrimination is prohibited by the International Covenant on Civil and Political Rights); Concannon & Lindstrom, *supra* note 16, at 1188-89 (designating non-discrimination as a fundamental principle of human rights).

47. Convention on the Elimination of All Forms of Discrimination Against Women art. 15(2), 16(1)(h), Dec. 18, 1979, 1249 U.N.T.S. 13, 19 I.L.M. 33 [hereinafter “CEDAW”] (making provisions for the state to ensure equal access to property ownership processes and protecting equal ownership of property in marriage).

48. Juridical Condition and Rights of the Undocumented Migrants, Advisory Opinion OC-18/03, Inter-Am. Ct. H.R. (ser. A) No. 18, ¶ 1-3 (Sept. 17, 2003) (“The international community is unanimous in considering that the prohibition of racial discrimination and of practices directly associated with it is an obligation erga omnes.”). The Inter-American Court was established by the ACHR to apply and interpret the ACHR. See Organization of American States, Statute of the Inter-American Court of Human Rights chp. 1, art. 1, O.A.S. Res. 448 (IX-0/79), O.A.S. Off. Rec. OEA/Ser.P/IX.0.2/80, Vol. 1 at 98 (Oct. 1979).

49. Juridical Condition and Rights of the Undocumented Migrants, Advisory Opinion, ¶ 1-3 (noting that the guarantee of human rights is not dependent on race, religion, economic status, or social condition); *see also* WESTENDORP, *supra* note 12, at 175 (emphasizing that tenure security must be constructed without discriminating against women).

3. Methods of Protecting Tenure Security after Natural Disasters

Domestically, the right to tenure security can be protected through formal, informal, and hybrid legal systems.⁵⁰ Regardless of which system is used, in order to comply with international standards, a tenure system must have a nondiscriminatory, predictable method for asserting tenancy; a transparent, accessible means of adjudicating conflict of tenure; and a fair process for eminent domain.⁵¹ In order to be effective, the system must also be viewed as legitimate.⁵² This Section discusses formal, informal, and hybrid land tenure systems, highlighting the implications of each approach on disaster recovery efforts. Lastly, this Section summarizes the arguments in favor of each system.

Formal Tenancy Systems

In a formal tenure system, an ownership claim is represented in a manner that is recognized and endorsed by the state.⁵³ Whether through a title registry, a cadastre, or a system of notaries, individuals can obtain paper verification of their claim that is recognized throughout the state.⁵⁴

50. See BROWN ET AL., *supra* note 18, at 6 (discussing the options to create tenure security); see also *supra* notes 46–49 and accompanying text (discussing the international requirements for a non-discriminatory tenure system).

51. See BROWN ET AL., *supra* note 18, at 8 (arguing that clear, equitable, and predictable administration of resource rights allows the poor and marginalized to access these rights); UN-HABITAT, *supra* note 16, at 13–14 (noting that weak administration and discriminatory tenure processes tend to decrease resilience to disasters).

52. See Huggins, *supra* note 12, at 341 (stating that when multiple systems exist, the system that is most legitimate prevails); Fitzpatrick, *supra* note 20, at 1013 (claiming that systems will fail if they are not locally accepted).

53. See ZEVENBERGEN, *supra* note 19, at 18–20 (summarizing the usual components of a formal tenure system); DE SOTO, *supra* note 17, at 6 (emphasizing how this endorsement translates into something that is trusted by actors outside of the direct community).

54. See Benito Arrunada, *The Choice of Titling Systems in Land*, 48 J. L. & ECON. 709, 710–13 (2005) (explaining how two formal tenancy systems, recording and registration, give statewide credibility to title claims); DE SOTO, *supra* note 17, at 6 (observing that those who have secure tenure are more able to get mortgages at banks). A cadastre is a government register of the quantity and value of land ownership. *BALLENTINE'S LAW DICTIONARY* 167 (3d ed. 1969).

Counterclaims are resolved by state officials, usually a judge or registrar.⁵⁵

Formal systems can be disrupted after natural disasters when records are destroyed and individuals involved in the administration are killed.⁵⁶ These systems are usually ill-prepared to respond flexibly to mass migrations caused by suddenly unavailable land.⁵⁷ In contrast to other tenancy systems, however, governments' formal systems are often able to maintain the same level of legitimacy after a disaster.⁵⁸

Informal Tenancy Systems

Informal tenancy systems use community acknowledgement, or norms, rather than a deed conferred by the state, to provide legitimacy to a claim.⁵⁹ Norms are commonly accepted rules that communities use to organize and control their interactions.⁶⁰ A group of economic scholars, called New Institutional Economists, explain that "norms guide human conduct and social interactions as much as formal legal

55. See Arrunada, *supra* note 54, at 710 (observing that property rights are enforced by courts); cf. ZEVENBERGEN, *supra* note 19, at 13, 27 (asserting that courts in formal systems often do not recognize claims from informal systems).

56. See UN-HABITAT, *supra* note 16, at 16 (advising that an assessment on the impact of a disaster must include an account of all destroyed documents); BROWN ET AL., *supra* note 18, at 16 (noting that the problems of record destruction include personal identification, insurance papers, and proof of address).

57. See UN-HABITAT, *supra* note 16, at 66 (noting that individuals with expired or destroyed documents are at risk of being excluded from shelter and other assistance programs); Huggins, *supra* note 12, at 349 (describing challenges faced by formal tenure systems dealing with mass migrations).

58. See UN-HABITAT, *supra* note 16, at 10–11 (finding that a government is more likely to have the capacity to respond after a natural disaster than after a prolonged conflict); BROWN ET AL., *supra* note 18, at 12 (observing that the formal system is more likely to be recognized by the external community after a disaster).

59. See Steven E. Hendrix, *Myths of Property Rights*, 12 ARIZ. J. INT'L. & COMP. L. 183, 188 (1995) (arguing that there are many ways to show ownership aside from state acknowledgement); Blocher, *supra* note 20, at 175 (arguing that without social legitimacy, property rights would be meaningless).

60. See Maggi Carfield, *Participatory Law and Development: Remapping the Locus of Authority*, 82 U. COLO. L. REV. 739, 760–61 (2011) (discussing the interplay between cultural norms and a formal legal system); see also JOHN N. DROBAK, NORMS AND THE LAW 1 (John N. Drobak ed., 2006) (describing the role that norms play in forming and influencing the law).

rules.”⁶¹ The norms of the community, they argue, bring legitimacy to an individual’s claim on a piece of land.⁶²

Informal systems can face great uncertainty after a natural disaster. Mass displacements often result in changes in communal power structures and challenges to the legitimacy of the informal system.⁶³ When these traditional power structures are threatened, there can be period when traditional gender roles are reinforced and reasserted.⁶⁴ Some scholars argue, however, that informal systems are remarkably resilient and are often able to reestablish themselves after disruptions more quickly than government systems can.⁶⁵

These informal systems usually coexist and overlap with the state’s formal system.⁶⁶ Individuals who use the informal system may do so because the costs of participation in the formal system are too high, they do not understand the formal system, or they perceive that the community has longer lasting and more legitimate power than a particular iteration of government.⁶⁷

61. DROBAK, *supra* note 60 (defining New Institutional Economists and describing their view of norms); *see also* Firmin-Sellers & Sellers, *supra* note 19, at 1117–18 (describing African communities that responded negatively to formal tenure systems because individual ownership was contrary to their value of communal ownership).

62. *See* Huggins, *supra* note 12, at 342 (arguing that land tenure cannot be secure without this form of local legitimacy); *see also* WESTENDORP, *supra* note 12, at 175 (discussing the challenges of changing systems when the communal norms are not properly acknowledged).

63. *See* UN-HABITAT, *supra* note 16, at 10–11 (explaining that crisis situations often force individuals and communities to adopt non-traditional roles to support survival); Huggins, *supra* note 12, at 344–45 (providing examples of how informal tenure systems can be impacted by social changes that result from mass displacement).

64. *See* WESTENDORP, *supra* note 12, at 92 (discussing the challenges women face asserting their property rights after natural disasters); Huggins, *supra* note 12, at 345 (explaining that women are more likely to be discriminated against when communal tenancy systems break down).

65. *See* Huggins, *supra* note 12, at 339, 341 (emphasizing that the informal system often has more legitimacy than the government under transition); UN-HABITAT, *supra* note 16, at 21–22 (providing suggestions for how to promote resilience after a disaster, including relying on informal systems).

66. *See* ZEVENBERGEN, *supra* note 19, at 17–18 (noting that in most cases the formal state system was built on top of the pre-existing customary system); Huggins, *supra* note 12, at 341–42 (emphasizing that the informal systems often outlast the formal creations).

67. *See* Hendrix, *supra* note 59, at 183, 185 (discussing the reasons individuals choose not to engage in a formal titling program); Huggins, *supra* note 12, at 342 (contending that the state is often more of a source of tenure insecurity because of corruption and instability).

Hybrid Tenancy Systems

Hybrid tenancy systems are designed on the premise that formal and informal tenancy systems can concurrently provide the legitimacy needed to protect a valid claim.⁶⁸ Scholars argue that property norms must be the basis of a property system that integrates formal and informal rights.⁶⁹ Those who advocate for hybrid systems assert that tenure systems should be motivated by, and be responsive to, the needs of the poor and vulnerable.⁷⁰ As a result, an initial registration for the system is conducted through a participatory process that includes the poor and vulnerable.⁷¹ They differ from formal systems because the state acknowledges the claims as recognized by the community instead of independently asserting the validity of claims.⁷²

These hybrid systems offer the most flexibility and, therefore, resiliency during a natural disaster.⁷³ Reflections after other disasters, such as the tsunami in Aceh, Indonesia, attest to the importance of using a flexible, indigenous system that allows conflicts to be resolved quickly, while also having the endorsement of the state.⁷⁴

68. See Huggins, *supra* note 12, at 342 (discussing the overlapping nature of tenancy legitimacy); ZEVENBERGEN, *supra* note 19, at 17–18 (describing the aspects of a hybrid tenancy system).

69. See Blocher, *supra* note 20, at 166–67, 171 (arguing that land tenure policy in Ghana should incorporate customary practices into the formal land tenure system); UN-HABITAT, *supra* note 16, at 77–79 (arguing that responses after disasters should acknowledge rights confirmed by formal and informal sources).

70. See ZEVENBERGEN, *supra* note 19, at 17 (noting that the actual impacts on the poor are most important to listen to, not those intended by idealistic designers); UN-HABITAT, *supra* note 16, at 19 (instructing practitioners to construct responses that focus on the most vulnerable).

71. See ZEVENBERGEN, *supra* note 19, at 17–18 (noting that the data from a poor enumeration will not be as complete as a survey); UN-HABITAT, *supra* note 16, at 77–79 (suggesting that disaster responses feature a community-led process that recognizes ownership with whatever documentation is available).

72. See ZEVENBERGEN, *supra* note 19, at 17 (noting that a hybrid system is distinct because its registry is committed to the *de facto* situation of land claims).

73. See BROWN ET AL., *supra* note 18, at 12 (emphasizing that the combination of both systems allows for greater resiliency after disasters); UN-HABITAT, *supra* note 16, at 18–19 (highlighting flexibility as key to a successful response).

74. See, e.g., BROWN ET AL., *supra* note 18, at 17 (describing the success of recognizing the local understanding of tenancy in Indonesia); UN-HABITAT, *supra* note 16, at 80 (highlighting the success of community generated tenure documentation in post-tsunami Indonesia and noting the pitfalls of a formal tenure program).

Discussion of Benefits and Challenges of Different Tenure Systems

Academics and practitioners vigorously debate the implications and benefits of formal, informal, and hybrid tenure systems.⁷⁵ Because formal tenure systems are rooted in government administration, many proponents of these systems are also advocates for the rule of law.⁷⁶ They argue that shortfalls of formal systems can be fixed by governance reform.⁷⁷

Many of them, including de Soto, suggest that a cadastre is the only way for poor people to use their land claim to access credit.⁷⁸ They go on to note that though the poor and vulnerable may be more directly involved in informal systems, they may not have the power to change or influence the system if it is biased against them.⁷⁹ These proponents argue that, unlike small communities, a strong, transparent state is more likely to provide a neutral system that is not subject to local gender, ethnic, or power biases.⁸⁰ This can be particularly important in a disaster context when inheritance laws, which are often rooted in gender power dynamics, are likely to come into play.⁸¹

75. See Huggins, *supra* note 12, at 340 (noting that there has yet to be a clear consensus by which tenure systems are best able to protect human rights).

76. See Huggins, *supra* note 12, at 334–35 (arguing that land rights can only be protected if rule of law is enforced); Firmin-Sellers & Sellers, *supra* note 19, at 1116 (summarizing the arguments that inform titling programs).

77. See DE SOTO, *supra* note 17, at 6–7 (arguing that reforming a formal system provides an opportunity to ensure that all people are given equal access to land rights); see also Huggins, *supra* note 12, at 339 (summarizing the views of de Soto and his predecessors in the context of transitioning countries).

78. See generally DE SOTO, *supra* note 17 (arguing that the primary distinction between poor and rich nations is the ability for individuals to translate their property assets into credit through a formal tenure system); see also Huggins, *supra* note 12, at 340–41 (summarizing arguments of proponents of formal tenure systems).

79. See WESTENDORP, *supra* note 12, at 175 (listing challenges women may face in informal systems when female ownership is not acknowledged); UN-HABITAT, *supra* note 16, at 14 (discussing the impacts of a discriminatory system on the most vulnerable people such as women, children, and minority groups).

80. See WESTENDORP, *supra* note 12, at 175 (observing that women benefit from formal systems when they live in sexist communities); UN-HABITAT, *supra* note 16, at 16 (noting that women and children are more vulnerable to denial of land rights in communities with informal tenure).

81. See INTER-AGENCY STANDING COMM., HAITI SHELTER CLUSTER, SUMMARY REPORT BY MUNICIPALITY 45 (2011), available at <https://sites.google.com/site/shelterhaiti2010/files/110831Summaryreportbycommunc.pdf> (explaining that informal systems increase vulnerability for women after disasters); WESTENDORP, *supra*

Opponents of formal systems, however, argue that formal tenure systems fail because they do not recognize underlying community norms.⁸² Proponents of informal systems further warn that formal land titling often inadvertently reinforces discriminatory power structures, as wealthy groups gain formal rights to land from the government, while poor landholders lose their claims.⁸³ They point to studies showing that political elites often have personal incentives to maintain the inefficiency of a property system.⁸⁴ These scholars go on to argue that formal systems are expensive, technically challenging, and inefficient for most governments to properly maintain.⁸⁵ Advocates of hybrid systems argue that these systems are the only way for a claim to maintain legitimacy within a community amidst external actors.⁸⁶ Their critics note, however, that competing forms of tenancy can also be a source of conflict if not carefully managed.⁸⁷

note 12, at 175 (citing challenges that some women in Africa and Asia face when claiming land after their husbands are killed in a disaster).

82. See Jane Regan, *Resettlement Plan Excludes Almost 200,000 Families*, in TECTONIC SHIFTS: HAITI SINCE THE EARTHQUAKE 101 (predicting that a formal government program will fail because it does not recognize the informal secondary tenure rights of nearly 200,000 Haitian families); Glenn R. Smucker et al., *Land Tenure and the Adoption of Agricultural Technology in Haiti* 38 (CAPRI, Working Paper No. 6, 2006) (arguing that an expansion of the cadastre system in rural Haiti is inadvisable until such a system represents local interests).

83. See Fitzpatrick, *supra* note 20, at 1013 (summarizing experiences from several formal land titling projects); see also Firmin-Sellers & Sellers, *supra* note 19, at 1119 (finding that many women lost their tenure claims after titling reform in Cameroon because they did not have resources to register their land).

84. See Blocher, *supra* note 20, at 176 (contending that elite capture slows institutional growth and administrative efficiency); DE SOTO, *supra* note 17, at 194–206 (discussing ways to avoid elite capture when constructing a formal system).

85. See ZEVENBERGEN, *supra* note 19, at 13 (discussing the challenges of most existing formal systems); Fitzpatrick, *supra* note 20, at 1013–18 (arguing that a formal system is limited by its institutional ability to absorb the costs of measuring, marking, valuing, and recording the land).

86. See, e.g., Blocher, *supra* note 20, at 167–68, 171 (arguing that land tenure policy in Ghana should incorporate customary practices into the formal land tenure system); UN-HABITAT, *supra* note 16, at 77–79 (arguing that responses after disasters should acknowledge rights confirmed by formal and informal sources).

87. See UN-HABITAT, *supra* note 16, at 15 (discussing the propensity for elite capture when forum shopping after disasters); Fitzpatrick, *supra* note 20, at 1015 (discussing the challenges of multiple tenure systems operating together that result from formalizing a title system). *But see* BROWN ET AL., *supra* note 18, at 6 (contending that multiple legal systems for land tenure allow flexibility during disaster situations).

B. *Haiti*

Haiti, a fledgling democracy and the poorest nation in the western hemisphere, has a long-standing reputation for failing to provide tenure security.⁸⁸ Some scholars tie the history of tenure insecurity to Haiti's litany of economic challenges—from spending one hundred years paying a “property debt” to France, to falling victim to corrupt leaders, such as former Haitian President Jean Claude Duvalier.⁸⁹ This Section outlines the Haitian government's international obligations to protect tenure security and the national laws that support that goal. The Section proceeds to describe the forms of tenure used and their degree of security before and after the earthquake. The Section also discusses the roles of the multiple actors working in the post-earthquake reconstruction of Haiti.

1. International Obligations

The Government of Haiti is committed to many international conventions and principles that represent a strong obligation to protect tenure security. The Haitian government signed and ratified the ICCPR and CEDAW, but has failed to sign ICESCR.⁹⁰ Haiti also signed and ratified the ACHR.⁹¹

88. See HERITAGE FOUNDATION, *supra* note 6 (awarding Haiti ten out of one hundred points in the category of protecting property rights and noting Haiti's position as the poorest nation in the western hemisphere); see also LUGAR, *supra* note 9, at 2 (describing the economic impact of a failed land tenure system).

89. See generally Jeffrey M. Brown, *Benevolent Assistance or Bureaucratic Burden?: Promoting Effective Haitian Reconstruction, Self-Governance, and Human Rights Under the Right to Development*, 6 *INTERCULTURAL HUM. RTS. L. REV.* 209, 211–13 (2011) [hereinafter *Benevolent Assistance*] (describing Haiti's two hundred year history of development challenges); FARMER, *supra* note 3, at 123–39 (2011) (connecting Haiti's payment for a debt of “slave property” to France with the country's current development dilemmas); Mark V. Vlasic & Gregory Cooper, *Beyond the Duvalier Legacy: What New “Arab Spring” Governments Can Learn from Haiti and the Benefits of Stolen Asset Recovery*, 10 *NW. U.J. INT'L HUM. RTS.* 19, 20 (2011) (reporting that Duvalier stole the equivalent of approximately 1.7% to 4.5% of Haiti's GDP each year he was in office).

90. See International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171; Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 18, 1979, 1249 U.N.T.S. 13; International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966 (1978), 993 U.N.T.S. 3. There are no signatories to the UDHR because it was ratified by the United Nations General Assembly, not created as a treaty document. UDHR, *supra* note 14.

91. Organization of American States, American Convention on Human Rights, Nov. 22, 1969, 1144 U.N.T.S. 123 [hereinafter ACHR].

According to the Haitian Constitution, treaties that are signed and ratified become part of domestic law and override conflicting laws.⁹² As a result, Haiti has an obligation to protect against arbitrary interference in land ownership and ensure that every individual, regardless of gender, has equal access to and security of tenure.⁹³ Though Haiti is not bound to the interpretation of property rights described by the ICESCR, its obligations under the ACHR require similar protection of tenure security.⁹⁴ Thus, Haiti is obligated to protect its citizens' rights to use property unless it is in "the interest of society" to compromise that right.⁹⁵

As a member of the ACHR, Haiti also has an obligation to uphold the Guiding Principles on Internal Displacement.⁹⁶ The Inter-American Court and Inter-American Commission ("Commission") hold states responsible for investigating and preventing human rights violations by outside parties.⁹⁷ The Commission found that "government[s] must prevent and suppress acts of violence, even forcefully, whether committed by

92. CONSTITUTION OF HAITI, Mar. 10, 1987, art. 276-2 ("Once international treaties or agreements are approved and ratified in the manner stipulated by the Constitution, they become part of the legislation of the country and abrogate any laws in conflict with them."); see also Lisa Davis, *Still Trembling: State Obligation Under International Law to End Post-Earthquake Rape in Haiti*, 65 U. MIAMI L. REV. 867, 890 (2011). (emphasizing Haiti's obligation to protect women from gender-based violence because its Constitution mandates adherence to ratified treaties and decisions made by the Inter-American Court on Human Rights).

93. See *supra* notes 31–47 and accompanying text (describing a country's obligations under the ICCPR, the ACHR, and CEDAW).

94. See *supra* notes 43–45 and accompanying text (describing a state's obligation to protect tenure security under the ICESCR); see also *supra* notes 43–49 and accompanying text (outlining the obligations to protect tenure security under the ACHR and CEDAW).

95. See *supra* notes 43–45 and accompanying text (outlining the obligations to protect tenure security under the ACHR).

96. See *Ituango Massacres v. Colombia*, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 148, ¶ 209 (Jul. 1, 2006) (using the Guiding Principles to interpret Article 22 of the Inter-American Convention); see also Annual Report of the Inter-Am. Comm'n on H.R. 2010, OEA/Ser.L/V/II. doc. 5, rev. 1, ch. V, ¶ 73 (March, 7 2011) [hereinafter Annual Report] (noting that the Ituango finding pertains to Haiti in the post-earthquake context).

97. See ANDREW CLAPHAM, HUMAN RIGHTS AND OBLIGATIONS OF NON-STATE ACTORS 424 (2006) (summarizing the means of holding nonstate actors accountable for human rights abuses).

public officials or private individuals”⁹⁸ Further, the Court held that states can have a duty to “ensure” all the rights described in the Convention, regardless of who is responsible for specific violations.⁹⁹ As a signatory to the IACHR, the Haitian government must similarly take steps to prevent anyone in their country from violating its citizens’ rights to tenure security.¹⁰⁰

2. Existing Formal Laws and Regulations

Haiti has also created several formal domestic provisions to protect tenure security. Most prominently, the Haitian Constitution mirrors the priorities of international human rights standards. The Preamble of the Haitian Constitution recognizes rights “to life, liberty, and the pursuit of happiness in . . . conformity with” the UDHR.¹⁰¹ Article 36 of the constitution directly protects the right to own property,¹⁰² and Article 22 protects the right to adequate housing.¹⁰³ Further, Article 36 permits eminent domain, allowing the state to expropriate private property if it provides due compensation for the land.¹⁰⁴

98. Report on the Situation of Human Rights in the Republic of Guatemala, Case 4425, Inter-Am. Comm’n H.R., Report No. 38/81, OEA/Ser.L/V/II.53, doc. 21 rev. 2 ¶ 10 (1981) (declaring that Guatemala failed to meet its ACHR obligations when a union activist was murdered at the behest of a corporation); *see also* Yanomami v. Brazil, Case 7615, Inter-Am. Comm’n H.R., Res. 12/85, OEA/Ser.L/V/II.66, doc. 10 rev. 1 ¶¶ 10–11 (1985) (holding the Brazilian government responsible for violations of the right to life, right to residence and movement, and the right to preservation of health because it failed to protect the Yanomami from the impact of corporate activities).

99. *See* Velasquez Rodriguez v. Honduras, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 4, ¶ 172 (July 29, 1988) (“What is decisive is . . . whether the State has allowed the act to take place without taking measures to prevent it or punish those responsible.”); *The Mayagna (sumo) Awas Tingni Community v. Nicaragua*, Judgement, Inter-Am. Ct. H.R. (ser. C) No. 79, ¶¶ 148–49 (Aug. 31, 2001) (finding that the government of Nicaragua violated the right to property because it failed to prevent a corporate takeover of indigenous land).

100. *See* Davis, *supra* note 92, at 880 (explaining Haiti’s obligation to abide by decisions of the IACHR); *see also supra* notes 94–95 (establishing Haiti’s commitment to the ACHR).

101. CONSTITUTION OF HAITI, Mar. 10, 1987, pmbl.

102. *Id.* art. 36 (“[P]rivate property is recognized and guaranteed. The law specifies the manner of acquiring and enjoying it, and the limits placed upon it.”).

103. *Id.* art. 22 (“The State recognizes the right of every citizen to decent housing . . .”).

104. *Id.* art. 36-1 (“Expropriation for a public purpose may be effected only by payment or deposit ordered by a court in favor of the person entitled thereto, of fair compensation established in advance by an expert evaluation.”).

In addition, the constitution states that use of private property cannot be “contrary to the general interest.”¹⁰⁵

The Haitian government aims to consistently protect ownership claims, which it defines as the right to use, enjoy, and dispose of property, through a series of civil laws.¹⁰⁶ Though the government allows for sale of land to be valid once the parties memorialize a price in a promise of sale, Haitian law sets forth a detailed procedure to publicly acknowledge a transfer of ownership called sale by genuine deed.¹⁰⁷

In the process of buying land with a genuine deed, the property claim must be recorded in four separate places.¹⁰⁸ First, a buyer and seller must hire a notary to record the transfer in a preliminary sale agreement and a final bill of sale.¹⁰⁹ A notary, typically a lawyer with additional training, is authorized to verify ownership, draft the document of transfer, and register that

105. *Id.* art. 36-3 (“Ownership also entails obligations. Uses of property cannot be contrary to the general interest.”).

106. Loi 1962-51 du 28 mai 1962 publication séparée et recueil de législation forestière haïtienne [Law 1962-51 of May 28, 1962 Haitian Rural Code] LE MONITEUR, JOURNAL OFFICIEL DE LA REPUBLIQUE D’HAÏTI [THE MONITOR, THE OFFICIAL JOURNAL OF THE REPUBLIC OF HAITI], July 1974, p. 71–74, art. 21; *see also* Winston W. Riddick, *Haitian Immovable Property Law: A Major Obstacle to Earthquake Recovery and Economic Development*, 6 INTERCULTURAL HUM. RTS. L. REV. 241, 255 (2011) (providing an overview of how property rights are addressed in the Haitian Constitution and civil code).

107. Code civil d’Haïti annoté d’après la doctrine et la jurisprudence haïtiennes et françaises et références aux auteurs, précédé de la Constitution de 1918, amendée en 1928 [Annotated Civil Code with Haitian and French jurisprudence and references to others, preceded by the Constitution of 1918, amended in 1928] Impr. de “La Presse,” 1931, art. 1367-68 [hereinafter Civil Code] (declaring that both sales are valid by authentic deed and private seal); *see* HAITI PROP. LAW WORKING GRP., A HOW-TO GUIDE FOR THE LEGAL SALE OF PROPERTY IN HAITI 2, 5 (2012) [hereinafter HPLWG] (noting that though both forms are valid, a *genuine deed* can only be contested by another *genuine deed*).

108. *See* OAS, *supra* note 6, at 10–12 (describing the land taxation, cadastre, and notary systems); US AGENCY FOR INT’L DEV., COUNTRY PROFILE: PROPERTY RIGHTS AND RESOURCE GOVERNANCE: HAITI at 6–7 (2010) [hereinafter USAID] (summarizing the process of registering land in Haiti).

109. *See* Décret 1974-81 du 27 novembre 1969 régime du notariat [Decree 2974-82-51 of November 27, 1969 System of Notaries] LE MONITEUR, JOURNAL OFFICIEL DE LA REPUBLIQUE D’HAÏTI [THE MONITOR, THE OFFICIAL JOURNAL OF THE REPUBLIC OF HAITI], octobre 10, 1974, art. 1, 13, 30-32; *see also* HPLWG, *supra* note 107, at 4-10 (observing that even at the preliminary sale agreement stage the notaries serve to review the description of the property and terms of the agreement).

document within his personal library.¹¹⁰ Before the agreement is finalized, the parties must also hire a surveyor to officially record the boundaries of the land.¹¹¹ The notary and the surveyor are required to retain the documentation in case there is a later dispute.¹¹²

Next, in order to authenticate the transfer of property, the purchasers must also report the land transfer and changes to the development on the land, to the Direction Generals des Impots "DGI."¹¹³ This is often done by the notary and allows for the government to levy taxes on the sale.¹¹⁴ Lastly, Haiti also requires landowners to report their property holdings to the national registry, managed by the National Office of the Cadastre ("ONACA").¹¹⁵ The process of recording property transfers with

110. Décret 1974-81 regime du notariat [Decree 2974-82-51 System of Notaries], art. 7, 12-13 (noting the credentials required for a notary and information a notary must include in a contract of sales); MARTINE DEVERSON, *TRANSFERTS DE BIENS IMMOBILIERS EN HAÏTI* 4 (2011) (on file with author) (summarizing the legal obligations of notaries).

111. Décret du 26 février 1975 réglementant la profession d'arpenteur [Decree Regulating the Profession of Surveyors] *LE MONITEUR, JOURNAL OFFICIEL DE LA REPUBLIQUE D'HAÏTI* [THE MONITOR, THE OFFICIAL JOURNAL OF THE REPUBLIC OF HAÏTI] 17 mars 1975, no 21, art. 22-23 (noting that a surveyor is required to do a formal title search and ask the neighbors about land rights); HPLGW, *supra* note 107, at 6-8 (noting that surveyors must be authorized by the municipality where they are working).

112. Décret 1974-81 regime du notariat [Decree 2974-82-51 System of Notaries], art. 27 (specifying the format of records a notary must maintain); HPLGW, *supra* note 107, at 6-8 (describing the role of notaries and surveyors in transferring land in Haiti).

113. *See* Décret 1979-32-A du 5 avril 1979 décret abrogeant les décrets des 14 septembre 1964 et 4 novembre 1974 en vue d'adopter une nouvelle imposition plus rationnelle à la contribution foncière de la propriété bâtie [April 5, 1979, Order Repealing Decrees of 14 September 1964 and November 4, 1974 to Adopt a New Tax More Rational Contribution to the Land Tenure and Property Development] *LE MONITEUR, JOURNAL OFFICIEL DE LA REPUBLIQUE D'HAÏTI* [THE MONITOR, THE OFFICIAL JOURNAL OF THE REPUBLIC OF HAÏTI] 19 avril 1979, p. 279-81, ch. vi, art. 31 [hereinafter Decree of Land Tenure and Property Development]; *see also* HPLGW, *supra* note 107, at 15-17 (noting that if the bill of sale is not registered with the DGI, it will not be valid in a dispute against third parties).

114. *See* HPLGW, *supra* note 107, at 15-17 (explaining that the buyer is to pay at least five percent of the sale price to the DGI).

115. *See* Décret 1985-87 du le 16 decembre, 1985 décret transférant le contrôle de tutelle de l'Office National du Cadastre ONACA au Ministère du Plan [Decree 1985-87 of December 16, 1985 on Transferring Control of the Trusteeship of the National Office of Cadastre ONACA the Ministry of Planning]. *See generally* Loi 1807- 004 du le 9 fevrier 1807 loi concernant l'agriculture et les mises en possession [law 1807- 004 February 9, 1807 Law on Agriculture and Property] *Le Moniteur, Journal Officiel de la*

surveyors, notaries, the DGI, and the ONACA, can cost buyers more than eight percent of the sale price and take more than a decade.¹¹⁶

To purchase land from the government, an inhabitant must lease the land for five years and then purchase the property by completing a process of 111 bureaucratic steps.¹¹⁷ Beginning this process requires verifying from the DGI, who is responsible for holding title to all public lands, that the government in fact owns the land.¹¹⁸ Alternatively, property can be acquired through adverse possession after twenty years of open, apparent, and continuous possession.¹¹⁹

Secondary forms of tenancy, such as renting, are rarely recorded with the government. Instead, they are usually governed by an informal contract between the renter and the owner.¹²⁰ When there is a dispute regarding a tenure claim, Haitian law allows for a judicial hearing.¹²¹ The individual who feels their land is being unjustly occupied must file an “action of eviction.”¹²² The Haitian national court will have a hearing to

Republique d’Haïti [The Monitor, the Official Journal of the Republic of Haiti] le 9 fevriere 1807, pp. 206-207 (requiring land registration for all owners).

116. See USAID, *supra* note 107, at 6–7 (describing the costs to legally transfer property); DE SOTO, *supra* note 17, at 21, 26–27 (estimating that it can take nineteen years to legally gain ownership of land in Haïti).

117. See FAN, *supra* note 21, at 26 (observing that the government of Haiti owns 11.1% of arable land); UN-HABITAT, STRATEGIC CITYWIDE SPATIAL PLANNING: A SITUATIONAL ANALYSIS OF METROPOLITAN PORT-AU-PRINCE 32 (2009) (noting that approximately forty-five percent of the informal housing in Port-au-Prince before the earthquake was on state owned land and that buying land through this process could take up to nineteen years).

118. See OAS, *supra* note 6, at 11 (outlining the responsibilities of the DGI); MORA, CURRENT LAND RIGHTS AND INFRASTRUCTURE 1 (2011) (on file with author) (reporting on the DGI’s functions after the earthquake).

119. Civil Code, art. 1997, 2039; Riddick, *supra* note 106, at 267 (citing civil code generally).

120. See Renters, *supra* note 46, at 2 (describing Haitian property laws relevant to the reconstruction); Regan, *supra* note 82, at 100, 101 (noting that most Haitian families pay for rent in twelve or twenty-four month increments). Such an agreement can be legally dissolved if the house is destroyed by an Act of God. Civil Code, art. 1087. See also Renters, *supra* note 82, at 3 (noting that the dissolution of the contract after an act of God applies to rental relationships).

121. Decree 2974-81 regime du notariat [Decree 2974-82-51 System of Notaries], art. 32.

122. Civil Code, art. 115, 124; see also Paucice Florvilus, *Workshop on the Right to Housing*, in TECTONIC SHIFTS: HAITI SINCE THE EARTHQUAKE, *supra* note 9, at 136 (emphasizing the formal legal process available to prevent forced evictions).

consider evidence of ownership and make a determination of whether the eviction order should be executed.¹²³

3. Security of Tenure in Haiti

Despite the numerous means of formalizing a tenure claim, the majority of land claims in Haiti, especially in urban areas, are informal.¹²⁴ Even before the earthquake, the formal land tenure system was so bureaucratic and under-resourced that it was not used to protect tenure security.¹²⁵ Less than five percent of the land in Haiti was officially accounted for in public land records, and men owned the majority of all land.¹²⁶

Even though few families used the formal tenure system, before the earthquake, forced evictions were rare, and families felt secure enough in their claims to invest in permanent buildings.¹²⁷ During the last ten years, a large urban migration produced a shift in Haiti's economy from dependence on agriculture to a manufacturing and service-oriented economy.¹²⁸ By the end of 2009, despite the persistence of the informal

123. Civil Code, art. 115, 124; *see also* Florvilus, *supra* note 122, at 136 (noting that purported land owners often lack the necessary documentation).

124. *See* UN-HABITAT, *supra* note 117, at 5 (noting that over 2.7 million Haitians live in informal settlements); FAN, *supra* note 21, at 27–28 (reporting that the majority of city dwellers are renters or squatters).

125. *See* DE SOTO, *supra* note 17, at 21, 26–27 (estimating that it could take nineteen years to legally buy land); USAID, *supra* note 108, at 3, 6 (recognizing that approximately only forty percent of land owners had any documentation of their land ownership before the earthquake).

126. *See* OAS, *supra* note 6, at 10 (noting that the majority of land managed by ONACA was in greater Port-au-Prince and the Artibonite Valley); *see also* MORA, *supra* note 118, at 2 (reporting that most Haitians are not aware of the existence of the cadastre); FAN, *supra* note 21, at 32 (outlining the challenges women face to obtain formal ownership of their land in Haiti).

127. *See* UN-HABITAT, *supra* note 117, at 32–34 (noting that many families in informal settlements use bricks, corrugated iron, and concrete flooring in their houses); ICG, *supra* note 2, at 17 (commenting on the degree of tenure security before the earthquake).

128. *See* UN-HABITAT, *supra* note 117 at 27–28 (noting that Haiti is only at the beginning of its urbanization process); Meena Jagannath et al., *supra* note 1, at 12 (discussing the implications of this migration on the housing sector). Individuals in a non-agrarian economy are more likely to need to prove their land claim beyond an intimate community. *See* DE SOTO, *supra* note 17, at 5–6 (noting the role of credit in a modern economy).

system, many signs showed that Haiti's economy was stabilizing and that new foreign investments were at hand.¹²⁹

The earthquake in January 2010 dramatically exacerbated the complexity of land claims in Haiti. The earthquake simultaneously destroyed most formal land documents and scattered communities throughout the city.¹³⁰ During the reconstruction that followed, security of tenure decreased dramatically as it became difficult to differentiate between legitimate owners and opportunistic possessors.¹³¹

Many of the people displaced by the earthquake settled in the 1,000 camps that spontaneously emerged in Port-au-Prince and throughout the country.¹³² As late as July 2011, 594,811 people still lived in these camps.¹³³ Figures from the International Organization for Migration demonstrate the magnitude of the problem: sixty percent of the IDP camps were located on private property; seventy-eight percent of the people living in the camps were in rented accommodation prior to the earthquake; and just ten percent had homes that they could repair or rebuild.¹³⁴ Post-earthquake surveys show that building

129. See FARMER, *supra* note 3, at 51 (attesting that the new investors made it difficult to find a hotel room); Kathie Klarreich, *Haiti's Working Better*, MIAMI HERALD, Dec. 8, 2009 (observing infrastructure innovations were motivating increased investments).

130. See OAS, *supra* note 6, at 4 (noting that most land owners kept their documents in their houses that were destroyed); ICG, *supra* note 2, at 17 (describing the scattering of communities throughout the city).

131. See Jagannath, *supra* note 1, at 13–14 (discussing the challenges of defending rights to land when ownership is unclear); ICG, *supra* note 2, at 17 (highlighting that this lack of clarity exists both in areas where international actors are heavily involved and where they are not).

132. See ICG, *supra* note 2, at 5 (describing the aftermath of the earthquake); Memorandum from Walter Kaclin, Representative of the Secretary-General on the Human Rights of Internally Displaced Persons, to the U.N. Secretary-General (Oct. 12–16, 2010) [hereinafter Kaclin] (reporting on the situation in the camps after the earthquake).

133. See EVICTION SITUATION, *supra* note 3, at 1 (providing official figures of displaced individuals in Haiti); see generally ACTED, PRESENTATION AT SHELTER CLUSTER MEETING: SURVEY OF THE INTENTIONS OF THE DISPLACED (2011), available at https://sites.google.com/site/shelterhaiti2010/minutes/Intentionsurvey_Pr%C3%A9s-entationShelterCluster.pdf?attredirects=0 (providing survey results of camp populations).

134. INT'L ORG. FOR MIGRATION, HAITI CAMP COORDINATION CAMP MANAGEMENT CLUSTER, REGISTRATION UPDATE: PHASE 2 12 (2011) (describing the impact of international non-governmental organizations ("INGOs") on displacement); ACTED, *supra* note 133 (providing survey results of camp populations).

tenants are least able to obtain secure shelter because landowners were more likely to have access to their pre-earthquake land and building materials.¹³⁵ As of August 2011, a total of 4,596 permanent houses had been constructed and 94,879 temporary shelters were built.¹³⁶ Meanwhile, rent hikes and low employment rates had priced many pre-earthquake renters out of the market.¹³⁷

The IDP camps attracted the majority of humanitarian attention, and until recently the international community put less emphasis on rebuilding the pre-earthquake neighborhoods.¹³⁸ International non-governmental organizations (“INGOs”) allege that the response emphasized building shelters in the camps instead of repairing houses in neighborhoods because there was a lack of international expertise for home repair.¹³⁹ In August 2011, nearly a year and a half after the quake, Haitian President Michel Martelly presented a plan to focus efforts on six camps, and to return the

135. See Kate Crawford et al., *Coordination and the Tenure Puzzle in Haiti*, HUMANITARIAN EXCH. MAG., Oct. 2010, available at <http://www.odihpn.org/report.asp?id=3148> (speaking to the challenges of land tenure after the quake); Renters, *supra* note 46, at 1 (noting that the initial focus on transitional shelter or reconstruction of houses favored land owners).

136. See INTER-AGENCY STANDING COMM., *supra* note 81, at 45 (summarizing a survey of shelter inhabitants by municipality); ICG, *supra* note 2, at 17–18 (noting the challenges of creating long-term tenure security are not going to be found by focusing on internally displaced people (“IDP”) camps).

137. See Renters, *supra* note 46, at 2 (noting that most renters paid their entire year’s rent before the 2010 earthquake); ACTION AID, *supra* note 4, at 6 (reporting on the high rent increases).

138. See Kaclin, *supra* note 132, ¶ 25 (contending INGOs prefer camps because the needs are most visible and the beneficiaries can be easily reached); Interview by author with member of sub-cluster Working Grp. on Hous., Land, and Prop. Rights (Nov. 2011) [hereinafter Working Group Interview II] (stating that evictions were not the business of humanitarian organizations because they were not related to the earthquake).

139. See OXFAM, *supra* note 5, at 15 (claiming that if housing repairs were prioritized earlier, hundreds of thousands of IDPs would have been able to return home); Kaclin, *supra* note 131, ¶¶ 15-16 (stating that slow reconstruction is linked to disagreement among international organizations on standards for reconstruction). *But see Getting Haitians out of Camps, Into Shelter and Into Their Communities*, COOP. HOUS. FOUND (July 9, 2010), <http://www.chfinternational.org/node/34398> (describing CHF’s work, focusing on early return to neighborhoods and dealing with tenure issues through community dialogue).

population of those camps to their original sixteen neighborhoods.¹⁴⁰

Tenure security and transparency of title has been a challenge from the beginning of the humanitarian response and continues to cause problems during reconstruction.¹⁴¹ The scarcity of land after the earthquake magnifies the impact of tenure insecurity.¹⁴² Thousands of internally displaced people have been forcibly evicted from their temporary homes and only a week after the earthquake, state officials and those claiming to be property owners were driving informal camp inhabitants off the land.¹⁴³ In addition, the seemingly endless rubble has reduced space for reconstruction.¹⁴⁴ This tenure insecurity has impacted physical security and economic innovation.¹⁴⁵

140. See Government of Haiti, Presentation at Shelter Cluster Meeting: 16/6 (Aug. 16, 2011), available at <https://sites.google.com/site/shelterhaiti2010/minutes/Pr%C3%A9sentationpowerpointfrançaisCIRH22juillet2011.pdf?attredirects=0> (describing the president's neighborhood plan to return IDPs to their pre-earthquake neighborhoods); Regan, *supra* note 82, at 101 (emphasizing that the government plan does not offer housing options for those who were renters before the earthquake).

141. See OXFAM, *supra* note 5, at 15 (describing the impact of poor tenure security on reconstruction); ICG, *supra* note 2, at 17–18 (noting the challenges of creating long-term tenure security will not be found by focusing on IDP camps).

142. See Camp Benediction, et al., *Republic of Haiti Submission to the United Nations Universal Periodic Review of Human Rights Council: Right to Housing*, ¶¶ 3–5, 12th Sess. (2011) [hereinafter Benediction] (claiming that evictions are in part a result of tenure problems before the quake); Kaelin, *supra* note 132, ¶ 45 (describing the beginning of forced evictions).

143. See Annual Report, *supra* note 96, ch. 5, ¶ 42 (emphasizing that evictions were by force, without notice, and without following the procedure of Haitian law); Kaelin, *supra* note 132, ¶ 45 (noting that the initial evictions were as early as March 2010).

144. See OXFAM, *supra* at 5, at 14 (noting if all the rubble were loaded into trucks and the trucks were placed end to end the line of trucks would extend halfway around the world); Mario Joseph & Jecna Shah, *Combating Forced Evictions in Haiti's IDP Camps*, in *TECTONIC SHIFTS: HAITI SINCE THE EARTHQUAKE*, *supra* note 9, at 138–39 (noting their surprise that communities were not quicker to mobilize against the physical and economic insecurity they faced).

145. See Jagannath et al., *supra* note 1, at 15–16 (linking “shocking” levels of gender-based violence to “insecurity” of those living in IDP camps); see also Memoranda from Enterprise Fund Delegation to Senator Richard Lugar, Haiti Trip Report 3–4 (May 5, 2011) (reporting that investment foreign levels have been abysmal in Haiti due to actual and perceived barriers to investment). In an interesting parallel to the issue of tenure security, the international response to the rapes in camps was criticized for ignoring the work of grassroots organizations and not consulting beneficiaries while crafting a response. See, e.g., Amanda Klasing, *Haiti: After the Shock, Building a Rights-Respecting Future*, JURIST (Jan. 9, 2011), <http://www.hrw.org/news/2011/01/09/haiti-after-shock-building-rights-respecting-future> (highlighting that the voices of victims

The lack of tenure security has attracted local, national, and international attention. The Representative of the Secretary-General on the Human Rights of Internally Displaced Persons, Walter Kaelin, wrote a memorandum in October 2010 describing how the Haitian people were displaced and evicted without consideration for their property rights.¹⁴⁶ In November 2010, the IACHR requested that the Haitian government issue a moratorium on evictions and take steps to ensure a secure living environment.¹⁴⁷ Further, the local and international media continue to cover the forced evictions and the impact of tenure insecurity on the speed of reconstruction.¹⁴⁸

II. HAITI'S FAILURE TO FULFILL INTERNATIONAL OBLIGATIONS

Part I showed that since the January 2010 earthquake, the Haitian government has not fulfilled its obligation to provide tenure security for many of the earthquake victims. This Part investigates how three actors influence the Haitian government's ability to fulfill these human rights obligations. Part II.A discusses how the Haitian government's implementation of the formal legal system impacts the right to tenure security. Next, Part II.B explores how tenure security is created by community norms in Haiti and how this affects the right to tenure security. Lastly, Part II.C looks at how international actors impact tenure security. For each actor, the Section considers the method used to access tenancy, the

were not including in reconstruction planning); Davis, *supra* note 92, at 879 (describing an exemplary failure when noting that international organizations gave women battery powered flashlights when the women could not afford batteries).

146. See Kaelin, *supra* note 132, ¶ 22 (providing official witness to the evictions).

147. See Letter from Elizabeth Abi-Mershed, Assistant Exec. Sec'y, Inter-Am. Comm'n H.R., to Bureau des Advocates Internationaux (Nov. 16, 2010), *available at* <http://ijdh.org/archives/17716>; see also Annual Report, *supra* note 96, ch. V, ¶ 49 (calling on the Government of Haiti to prevent additional forced evictions).

148. See generally Tim Padgett & Jessica Desvarieux, *Evicting Haiti's Homeless: How Land Tenure Hampers Recovery*, TIME (Sept. 23, 2010), <http://www.time.com/time/world/article/0,8599,2021206,00.html> (reporting on the impact of evictions on reconstruction). See also Janet Reitman, *How the World Failed Haiti*, ROLLING STONE, Aug. 4, 2011, at 58-71 (reporting on the failure of the international community to provide secure land for displaced people).

mechanism used to arbitrate disputes, and the means of balancing overriding public interest.¹⁴⁹

A. Haiti's Limited Implementation of Formal Law

1. Method to Assert Tenancy: Cadastre System

There is a systematic failure of all three of Haiti's formal recording systems due to inconsistent funding, low capacity, and weak political will.¹⁵⁰ The National Office of the Cadastre ("ONACA") is poorly staffed and insufficiently funded.¹⁵¹ The Direction Generales des Impot ("DGI"), which has a sparse record of land transactions, keeps most of its records on handwritten documents and electronic spreadsheets without an index by party name.¹⁵²

The limited and irregular recording by these offices means that the majority of Haitians do not have access to secure tenure through the formal registration systems.¹⁵³ Some argue that the high cost and information barriers to participation result in a formal system that discriminates against the poor.¹⁵⁴ For example, the long process of registration is impractical, if not impossible, for a residential applicant to complete on their own.¹⁵⁵ Further, this registration system fails to account for

149. See *supra* notes 50–52 and accompanying text (summarizing the basic elements necessary to protect tenure security).

150. See, e.g., OAS, *supra* note 6, at 4 (observing the lack of records and lack of consistent methods for recording information in all of Haiti's land registry systems); USAID, *supra* note 108, at 7 (noting that Haiti "lacks a comprehensive, functional system for recording land ownership").

151. See OAS, *supra* note 6, at 10 (noting that the national cadastre had an operating budget of just over US\$100,000 annually); MORA, *supra* note 118, at 1–2 (reporting the ONACA is unable to attract well trained staff).

152. See OAS, *supra* note 6, at 11 (describing the DGI's antiquated system); see also Riddick, *supra* note 106, at 260 (describing the limitations of DGI's system).

153. See FAN, *supra* note 21, at 29–30 (recognizing the lack of participation of the majority of Haitians also means that the program has less legitimacy in the eyes of the majority of Haitians).

154. See *supra* notes 82–85 and accompanying text (discussing the propensity for formal tenure to disfavor the poor).

155. See WORLD BANK & INT'L FINANCE CORP., DOING BUSINESS IN HAITI 20 (2010), available at http://www.businessinhaiti.com/images/stories/pdf_files/doing_business_2010_haiti.pdf (noting that on average, it takes more than 400 days to register land); DE SOTO, *supra* note 17, at 21 (contending that it can take as long as nineteen years to buy land from the government).

derivative rights to land, such as renting.¹⁵⁶ Consequently, the registry excludes almost everyone except business owners and elites.¹⁵⁷

2. Access to Adjudication: Court System

As discussed above, for tenure to be secure it must be possible to resolve disputes in a just and transparent manner.¹⁵⁸ If a Haitian citizen has a land dispute, she has a right to access the Haitian court system.¹⁵⁹ In practice, however, the wait to have a land dispute before a judge can take as long as five years.¹⁶⁰ In addition, entry to the court is limited to those who possess formal identification and understand French.¹⁶¹ Further, most Haitians lack the funds necessary to hire legal representation, and are also unable to pay the bribes often necessary to see their case progress.¹⁶² Though the Haitian Bar Association provides legal aid services in all of the courts, it has been overwhelmed since the earthquake with cases of lost

156. See FAN, *supra* note 21, at 4–5, 27–28 (noting that sixty-five to seventy-five percent of the displaced people were renters before the earthquake and were not registered in the cadastre system); Renters, *supra* note 46, at 2 (contending that tenure reform would be ineffective if it did not take into account the rights of renters).

157. See Mora, *supra* note 118, at 2 (observing that the majority of poor Haitians are not even familiar with the existence of a cadastre); see also UN-HABITAT, *supra* note 117, at 33–34 (observing that the preponderance of informal ownership in Port-au-Prince is in part due to the barriers that exist for poor and less-educated people to participate).

158. See *supra* notes 50–52 and accompanying text (outlining the fundamentals for a system to realize the international obligations of tenure security).

159. See *supra* note 123 and accompanying text (describing the Haitian law related to court procedures); Jagannath et al., *supra* note 1, at 11–14 (detailing cases authors brought on behalf of internally displaced people in Haitian courts); USAID, *supra* note 108, at 8 (noting that this is often an option of last resort).

160. See OAS, *supra* note 6, at 12 (noting that before the earthquake, the average land property disagreement took five years to resolve by the courts); see also USAID, *supra* note 108, at 8 (noting that the destruction of court buildings in recent years contributes to the delays).

161. See INT'L CRISIS GROUP, KEEPING HAITI SAFE: JUSTICE REFORM 7 (2011) [hereinafter ICG II] (noting that since ninety percent of the population speaks Haitian Creole, courts operating only in French deny access to a majority of the population); see also FAN, *supra* note 21, at 30 (reporting that forty percent of Haitians lack identification).

162. See ICG II, *supra* note 161, at 7 (discussing the practical barriers that limit access to justice in Haiti); see also Jagannath et al., *supra* note 1, at 11–12 (outlining the barriers most Haitians face interfacing with the judicial process).

documents and inheritance.¹⁶³ Finally, some Haitians have such a strong lack of trust in the government's ability to rule against powerful landowners that they avoid the courts.¹⁶⁴ While access to the courts is generally exclusive, there are some recent cases where the courts have protected earthquake victims from displacement.¹⁶⁵

Although officially condemned by the government, many forced evictions of informal camps are by local police and other public officials, but without consultation with the courts.¹⁶⁶ In at least one case, a city mayor has ordered the destruction of a camp.¹⁶⁷ There are also many instances when the police has failed to protect people from being forcibly displaced.¹⁶⁸ There is no evidence that the government officials verified the tenure of the land they were clearing.¹⁶⁹ Those following the evictions

163. See FAN, *supra* note 21, at 20 (reporting that the head of the Bar Association of Port-au-Prince thinks there is greater need to inform the population about their rights in the court process); ICG II, *supra* note 161, at 7–8 (discussing the limited legal aid structure in Haiti).

164. See Jagannath et al., *supra* note 1, at 13–14 (noting that many IDPs were reluctant to join in court cases because they did not think the court was powerful enough to stop the land owners); see also ICG II, *supra* note 161, at 9 (emphasizing that lack of judicial independence is central to mistrust of the judicial system).

165. See Jagannath et al., *supra* note 1, at 14–15 (describing recent successes in the court process); see also Interview with legal clerk of Inst. for Justice & Democracy (“IJD”) (October 2011) [hereinafter Legal Clerk I] (on file with author) (emphasizing that by law, evictions can only be enforced with a court order).

166. See Kaclin, *supra* note 132, ¶ 22 (emphasizing that police officials were involved in some of the evictions); Annual Report, *supra* note 96, ch. V, ¶ 44 (reporting that government officials were involved in some of the earliest evictions). The President of Haiti issued a decree in 2011 putting a moratorium on all forced evictions and in April 2010 requiring private citizens to allow IDPs to live on their land during the humanitarian crisis. See ICG, *supra* note 2, at 8 (noting that many land owners did not heed the government's decree).

167. See generally Beverly Bell, *Haitian Mayor's Office Vows to Destroy All Refugee Camps, Launches Violent Campaign*, OTHER WORLDS (May 27, 2011), <http://www.otherworldsarepossible.org/another-haiti-possible/haitian-mayors-office-vows-destroy-all-refugee-camps-launches-violent-campaig> (describing forced evictions in Delmas). See also *Relocation, Relocation, Relocation-Haitian Style: Victims Become Victims Again*, IJDH (July 12, 2011), <http://ijdh.org/archives/20019> (reporting on forced evictions in Delmas).

168. See Annual Report, *supra* note 96, ch. V, ¶¶ 42–43 (chronicling incidents when police were informed of forced evictions but did nothing to intervene); Legal Clerk I, *supra* note 165 (describing the lack of police intervention during evictions).

169. See Working Group Interview II, *supra* note 138 (noting the lack of government investigations); Florvilus, *supra* note 122, at 136 (reporting that most evictors choose to hire bandits to forcibly remove people rather than use the court process). But see Jagannath et al., *supra* note 1, at 14 (reporting that some prosecutors have threatened to bring charges against mayors involved in these forced evictions).

note that these public officials discriminated against the temporary tenure holders, calling them squatters, in favor of the purported long-term tenure holders without actually verifying tenancy.¹⁷⁰

3. Weighing Public Good: Executive Orders

Another element of how government administration impacts tenure security is how the government has used the power of eminent domain after the earthquake. The ACHR allows the government to seize land if it is necessary for the public good and the government provides just compensation.¹⁷¹ There were several instances of the Haitian government using eminent domain after the earthquake in Haiti, but there does not appear to be a consistent means of assessing public benefit or conferring compensation.¹⁷² The most prominent use of eminent domain took place on March 22, 2010 when Haitian President Rene Preval issued a decree allocating a large plot of unoccupied land on the outskirts of Croix des Bouquets for emergency shelter.¹⁷³ Approximately 30,000 families moved with the assistance of international aid agencies to this plot.¹⁷⁴ The government, however, did not compensate the original land owners for taking their land.¹⁷⁵ The government also failed to

170. See Annual Report, *supra* note 96, ch. V, ¶ 47 (noting that evictions against temporary tenure holders were often carried out with Haitian authorities but without verifying ownership through the Haitian legal system); see also Florvilus, *supra* note 122, at 136 (urging those with land disputes to utilize the court system); *supra* notes 18–19 and accompanying text (noting that tenure security can include claims to partial and full access).

171. See *supra* notes 44–45 and accompanying text (explaining the legal basis for eminent domain in the ACHR).

172. See *Expropriation de terrains*, SOSHAÏTI (Mar. 31, 2010, 1:37 PM), <http://www.soshaiti.info/gouvernement-haitien/haiti-expropriation-de-terrains.html> [hereinafter *Expropriation*] (decreeing plots of land defined by GPS coordinates for government use); Reitman, *supra* note 148, at 58 (describing the eminent domain use at Corail).

173. See generally *Expropriation*, *supra* note 172 (outlining the government decree); see also Annual Report, *supra* note 96, ch. V, ¶ 45 (describing the official actions related to the plot of land).

174. See Annual Report, *supra* note 96, ch. V, ¶¶ 45–46 (explaining the developments at Corrail); *Human Rights Situation Hearing*, *supra* note 7 (noting that because so little land was registered before the earthquake, it is often unclear whether those pressuring the government actually have valid legal title or property rights).

175. See ICG, *supra* note 2, at 10 n.83 (explaining that the lack of compensation is in part due to a disagreement between the government and the landowners on how to

protect those who moved into the area when the original landowners complained about their lack of compensation.¹⁷⁶

4. Impact on Human Rights Obligations

The Haitian government's administration of land laws impacts how Haitians are able to access tenure, resolve disputes, and anticipate eminent domain. In reviewing the Haitian government's performance of tenure administration, it becomes clear that the Haitian government has not been able to fulfill its obligation to provide tenure security through its formal system.¹⁷⁷ The cadastre's limited coverage means that numerous Haitians do not have their claim on property reinforced by the legitimacy of the state.¹⁷⁸ The bureaucratic hurdles of registration further discriminate against the poor and secondary tenure holders.¹⁷⁹ The general inaccessibility of the court process also decreases tenure security and limits Haiti's ability to protect its citizens from arbitrarily having their property removed.¹⁸⁰ Further, by allowing state actors to participate in forced evictions, the Haitian government is violating its obligation to uphold individual rights to claims on property.¹⁸¹ This use of executive power undermines tenure security because it fails to offer proper compensation to the titleholder that is being asked to forgo their claim on the land.¹⁸² In so doing, the

value the land); Reitman, *supra* note 148 (noting that the land was far from meaningful access to livelihood, water, or markets).

176. See Annual Report, *supra* note 96, ch. V, ¶ 46 (reporting that after the land owners voiced discontent, the Ministry of the Economy and Finance issued a decree that buildings erected in the area without approval could be torn down without notice).

177. See generally Annual Report, *supra* note 96, ch. V (assessing the ability of Haiti's formal system to provide tenure security); Kaelin, *supra* note 131 (noting the limitations of the formal system).

178. See *supra* notes 150–57 and accompanying text (describing the limited coverage of the formal system).

179. See *supra* notes 153–56 and accompanying text (noting how it is more difficult for poor people to complete the formal process).

180. See *supra* notes 158–65 and accompanying text (highlighting the barriers to accessing the courts); see also *supra* notes 46–49 and accompanying text (describing the international right to nondiscriminatory access to tenure security).

181. See *supra* notes 46–49 and accompanying text (noting that protection of tenure security must be non-discriminatory).

182. See *supra* notes 171–76 and accompanying text (documenting that Haiti's use of eminent domain did not include adequate compensation); see also *supra* notes 44–45

Haitian government is falling short of its obligation in the AHCR to provide just compensation.¹⁸³

B. Informal System Confers Tenure with Limited Recognition from the Haitian Government

1. Method to Assert Tenancy: Community Agreement and Notaries

The majority of Haitians, particularly residents of Port-au-Prince, transfer land through a customary law process using notaries or oral agreements.¹⁸⁴ Customary ownership usually represents land that was bought or inherited without updating a title in the formal system.¹⁸⁵ As a result, the majority of customary ownership before the earthquake was based on a communal memory of who owned which property.¹⁸⁶ In some cases, before buying land, individuals consult notaries from their neighborhood to provide verification of the previous owner's claim.¹⁸⁷ Because there are so few formal titles registered, the notaries, when not able to provide certification of title, would instead provide verification from their knowledge of the land and personal records.¹⁸⁸ Notaries are extremely powerful but do not have to answer to a higher authority. As a result, there can

and accompanying text (documenting Haiti's international obligation to provide adequate compensation).

183. See *supra* notes 44–45 and accompanying text (outlining the Haitian government's obligations under the AHRC).

184. See USAID, *supra* note 108, at 5–6 (noting that customary ownership is usually based on individualized ownership); Smucker et al., *supra* note 82, at 11 (describing the forms of land tenure in Haiti).

185. See Smucker et al., *supra* note 82, at 9 (summarizing the forms of land ownership in Haiti); FAN, *supra* note 21, at 32 (noting that courts usually give half of inherited property to the surviving spouse and the other half is partitioned among the children).

186. See Smucker et al., *supra* note 82, at 11–12 (noting that the informal title is not necessarily viewed as less secure than the formal title by community members); *supra* notes 59–62 and accompanying text (discussing the importance of community norms in giving legitimacy to land claims in informal tenure systems).

187. See UN-HABITAT, *supra* note 117, at 32 (noting that the use of notaries is more common in wealthier areas of the city); Riddick, *supra* note 106, at 264–65 (discussing the importance of the notary system in Haiti).

188. See OAS *supra* note 6, at 11 (stating that it is difficult to have consistency between the 500 notaries in the country).

be corruption, or at least extreme inconsistency of record keeping.¹⁸⁹

The earthquake largely disrupted this system as more than a million people were displaced, thousands of buildings collapsed, and many land markers were destroyed.¹⁹⁰ Though little information exists documenting the extent of the problem, the disruption in the community memory has increased the tenure insecurity and the opportunity for forceful capture.¹⁹¹ This is particularly challenging for those who had secondary tenure rights before the earthquake, such as renters.¹⁹² Some scholars suggest, however, that the informal tenancy system in Haiti has always been very reactive and flexible.¹⁹³

2. Access to Fair Adjudication

The majority of informal property conflicts are first mediated within the neighborhood.¹⁹⁴ If that is not successful,

189. See FAN, *supra* note 21, at 30 (noting that the notaries are given more power after the earthquake because there are fewer who can balance their authority); OAS, *supra* note 6, at 11 (describing notaries as ad hoc record keepers often plagued by fraud).

190. See FAN, *supra* note 21, at 4–5 (providing a list of how the large number of informal land holders complicates the rebuilding process); see also INTER-AGENCY STANDING COMM., *supra* note 81, at 45 (emphasizing that informal tenure systems may have more challenges determining ownership after a disaster than formal systems).

191. See UN-HABITAT, *supra* note 16, at 99 (noting that one of the benefits of the participatory enumeration exercise would be a better understanding of how informal tenure systems are working after the earthquake); *supra* notes 63–65 (describing the challenges of re-establishing communal memory after mass displacement and death).

192. See Renters, *supra* note 46, at 2 (noting that most renters paid their annual rent in advance of the January 2010 earthquake); ACTION AID, *supra* note 4, at 6 (reporting that many land owners have taken advantage of this situation and rental prices have soared since the earthquake).

193. See Smucker et al., *supra* note 82, at 37 (summarizing his research on land tenancy in rural Haiti); UN-HABITAT, *supra* note 117, at 33–34 (noting that before the earthquake, even though most tenure was informal, there was not a strong sense of insecurity).

194. See Jagannath et al., *supra* note 1, at 12–14 (emphasizing that most IDPs do not consider using the formal justice system because they have only resolved these disputes informally in the past); Interview with Darlens Hyppolite, Land and Prop. Rights Consultant, in Haiti (Dec. 13, 2011) (on file with author) [hereinafter Hyppolite] (noting that informal negotiations are usually mediated by parents).

individuals can appeal to the formal court system.¹⁹⁵ It is unlikely, however, that either party will have all of the documents necessary to be officially recognized by the courts.¹⁹⁶

The potential for discrimination with inheritance claims is particularly important in the informal system.¹⁹⁷ Though in the formal system inheritance is gender neutral, in customary practice, women may find it difficult to access the land that they believe they own.¹⁹⁸ Inheritance issues, which are numerous because of the loss of life in the earthquake, leave women and children particularly vulnerable when no clear means of adjudication exists.¹⁹⁹

3. Weighing Public Good

Haitian communities assert their view on eminent domain in two very different ways. The first is through forced evictions spurred by individuals claiming to own land where IDPs have settled.²⁰⁰ These actions are often carried out by well-paid former policemen and thugs.²⁰¹

195. See Hyppolite, *supra* note 194 (describing the usual steps towards dispute resolution); see also Florvilus, *supra* note 122, at 136 (imploping IDPs to use the formal court system for their protection even if their claim to land is informal).

196. See *supra* notes 158–65 and accompanying text (discussing necessary documentation for the court process).

197. See *supra* notes 79–81 and accompanying text (discussing the challenges women and minorities face when informal tenancy is used in communities that do not recognize their rights).

198. See FAN, *supra* note 21, at 32–33 (noting that while a “legal” wife may be able to recover her share of inherited land, an unregistered wife, or *placée*, is unlikely to receive anything); see also WESTENDORP, *supra* note 12, at 172–73 (citing challenges some women face claiming land if their husbands are killed in a disaster).

199. See FAN *supra* note 21, at 19–20 (discussing the challenges of resolving land disputes after the earthquake); see also Huggins, *supra* note 15, at 351 (noting that there is often a tension in weak states between the state’s responsibility to protect tenure security and the state’s limited legitimacy when addressing community held claims).

200. See Florvilus, *supra* note 122, at 136 (noting that purported land owners often lack actual documentation); Joseph & Shah, *supra* note 144, at 142 (reporting that in one case when a would-be evictor was confronted with the law, he stopped his forced pursuit).

201. See Annual Report, *supra* note 96, ch. V, ¶¶ 46–48 (reporting that the brutality of the evictions included destroying property and killing children); Legal Clerk I, *supra* note 165 (describing the use of thugs and retired police).

In contrast, there are also popular movements demanding recognition for housing and property rights.²⁰² A forum with representatives from thirty-five temporary camps called for parliament to pass legislation supporting their constitutional right to housing and to sign and ratify the CDESCR.²⁰³ In addition to filling the streets with protests, some leaders from this movement have also appealed to the Haitian Senate to protect housing rights and better manage resources spent on housing.²⁰⁴

4. Implications for Human Rights Obligations

Proponents of the informal system in Haiti argue that it allows a greater number of Haitians to have some form of tenure rights because the formal system is too slow and costly to be utilized.²⁰⁵ They also suggest that the flexibility of the informal system helps prevent total exclusion of individuals who lost their documentation during the earthquake.²⁰⁶ Though the informal system has been the most prominent system in Haiti for decades, practitioners and scholars note that its ability to provide tenure

202. See, e.g., ACTION AID, THE 'JE NAN JE' HAITI LAND AND HOUSING RIGHTS CAMPAIGN OVERVIEW 1-2 (2011), available at <http://www.actionaid.org/haiti/publications/je-nan-je-campaign-overview-0> (outlining a popular platform for land rights); Joseph & Shah, *supra* note 144, at 139-42 (describing the organizing and training of an emerging housing movement).

203. See *Final Resolution, Int'l Forum on the Crisis of Housing in Haiti*, INT'L ALLIANCE OF INHABITANTS (May 30, 2011), http://www.habitants.org/news/inhabitants_of_americas/final_resolution_international_forum_on_the_crisis_of_housing_in_haiti (reporting on the effort to lobby Parliament); see also Alexis Erkert, *We are Tired of Living Under Tents*, OTHER WORLDS (Oct. 6, 2011), <http://www.otherworldsarepossible.org/another-haiti-possible/we-are-tired-living-under-tents> (chronicling an ongoing demand for housing rights from those in IDP camps).

204. See Letter from Chavannes Charles, President, Management Committee, GARR, and Reyneld Sanon, General Co-ordinator, FRAKKA, to the Haitian Senate Committee on Education, Youth, and Sports, *The Condition of People in Camps and the Housing Situation in Haiti After the Earthquake from Collective of Organisations Defending Housing Rights* (Sept. 15, 2011), available at http://www.haitisupportgroup.org/index.php?option=com_content&view=article&id=534:housing-coalition-submits-seven-clear-demands-to-senate&catid=1:latest-news&Itemid=141 (describing the lobby for housing rights at the senate).

205. See DE SOTO, *supra* note 17, at 21, 26-27 (explaining the long period of time and finances required to utilize the current formal system); Smucker et al., *supra* note 82, at 36 (suggesting that the informal system in Haiti did not require the bureaucratic delays seen in the formal system).

206. See Smucker et al., *supra* note 82, at 36 (arguing that informal tenancy in Haiti tends to pragmatically prioritize food security and basic access over proprietary concerns).

security has severely declined since the earthquake.²⁰⁷ Because customary norms rewarded those who remained on the land, those who were displaced after the earthquake could not claim their informal right to property as easily.²⁰⁸

The amorphous nature of the informal system also makes it difficult for the Haitian government to fulfill its human rights obligation to protect tenure security within the informal process.²⁰⁹ Because the community, not the government, has legitimacy within the system, an informal system can undermine the government's ability to protect citizens' rights.²¹⁰ Further, it is difficult for the government to confirm tenure status to institutions outside of the community, such as banks, when the community has been displaced.²¹¹ For example, if a neighbor witnessed a transfer of land from an uncle to his nephew ten years before the earthquake, and then all of the parties involved were displaced to different camps, it would be very difficult for even the government to verify that the nephew was the true owner of the land. Though the Haitian government has an obligation to prevent arbitrary evictions, it may be difficult to enforce this responsibility for communities that have chosen to opt out of the formal system completely.²¹²

207. See *supra* notes 127–31 and accompanying text (discussing the state of tenure security before and after the earthquake).

208. See Smucker et al., *supra* note 82, at 12 (noting that individuals who migrate or marry outside of the area might have less validity making a claim on land); cf. Renters, *supra* note 46 (emphasizing the lack of tenure security for renters); see also *supra* notes 142–43 (discussing the significant number of evictions).

209. See UN-HABITAT, PARTICIPATORY ENUMERATION EXERCISE: PROJECT PROPOSAL 2 (2010) (noting the limitations of the formal government protecting land claims that have not been formally registered); see also Regan, *supra* note 82, at 101 (noting how the government's formal plan for resettlement struggled to take into account those who did not have formal tenure rights before the earthquake).

210. See Regan, *supra* note 82, at 101–02 (reporting that government attempts to assert tenancy are occasionally thwarted by individuals who claim informal rights to the land); cf. Huggins, *supra* note 12, at 342 (noting the challenges of a government giving legitimacy to the informal system).

211. See, e.g., DE SOTO, *supra* note 17, at 5 (discussing the pitfalls of an informal system and the challenges of the government interacting with that system).

212. See *supra* notes 92–93 and accompanying text (outlining the government's obligation to protect citizens from forced evictions); see also *supra* notes 209–11 and accompanying text (explaining some of the challenges the government faces in trying to protect rights in the midst of the informal system).

C. The Various Methods for International Actors to Confer Land Tenure

International actors have such strong power within Haiti that they can record, verify, and assert tenure.²¹³ There are over 10,000 international humanitarian organizations currently operating in Haiti.²¹⁴ The United Nation attempts to coordinate these efforts through a “cluster” system.²¹⁵ In addition, the government of Haiti monitors the recovery and reconstruction through the Interim Haiti Recovery Commission (“IHRC”).²¹⁶ The IHRC was intended to cede control of the reconstruction after eighteen months.²¹⁷

Though there is widespread acknowledgement of the tireless efforts by international actors, the seemingly slow

213. See FARMER, *supra* note 3, at 214–15 (discussing some of the criticisms weighed against international organizations operating in Haiti after the earthquake); Kevin Edmonds, *NGOs and the Business of Poverty in Haiti*, in *TECTONIC SHIFTS: HAITI SINCE THE EARTHQUAKE*, *supra* note 9, at 63, 63–64 (suggesting that the power of NGOs is such that it has supplanted Haitian citizens’ rights to self-determination).

214. See Concannon & Lindstrom, *supra* note 16, at 1156 n.59 (describing international actors working in Haiti); Mark Schuller, *Invasion or Infusion? Understanding the Role of NGOs in Contemporary Haiti*, 13 J. HAITIAN STUDS. 96, 98–99 (2007) (describing a long history of international NGOs operating in Haiti with mixed results). This Note refers to international non-governmental organizations operating in Haiti, including UN agencies, as INGOs. Donor agencies that usually represent governments are referred to as such. The term “international organizations” is used to encapsulate both NGOs and donor agencies.

215. See ANDREA BINDER & FRANCOIS GRUNEWALD, *IASC CLUSTER APPROACH EVALUATION 2ND PHASE, COUNTRY STUDY: HAITI* 7, 19–20 (2010) (explaining that the cluster approach divided organizations into topical designations, and finding that the system “was weak on ownership and connectedness, demonstrated only a low level of accountability”); Interview with Lilianne Fan, former sub-cluster coordinator, Working Group on Housing, Land, and Prop. Rights in Haiti (Oct. 15, 2011) (contending that the fractionalization of topical groups led to a breakdown of the rights-based approach because those with a stronger background in human rights separated from humanitarian direct service).

216. See *Frequently Asked Questions*, INTERIM HAITI RECOVERY COMM’N, <http://en.cirh.ht/about-us/frequently-asked-questions.html> (last visited Mar. 23, 2012) [hereinafter IHRC] (explaining that the Interim Haiti Recovery Commission, “IHRC” is a board of donors and government representatives who was charged with coordinating overall planning through approving individual humanitarian project proposals); see also Concannon & Lindstrom, *supra* note 16, at 1175 (noting that the success of this coordination has been limited by staff capacity and lack of compliance by international actors).

217. See FAN, *supra* note 21, at 35 (describing Haitian institutions involved in land rights); IHRC, *supra* note 216 (describing the role of the IHRC).

progress in Haiti engenders strong criticism.²¹⁸ The accusations do not just come from the international media: driving through Port-au-Prince one can see the words “down with NGO thieves,” spray-painted in Creole across a nearby wall.²¹⁹ Local civil society groups also voice their frustration with the international NGOs and their exclusionary processes.²²⁰ Whether asserting tenure themselves or lending credibility to other tenure systems, international actors have impacted tenure security and the government’s ability to protect tenure security.²²¹

The tens of thousands of international actors in Haiti are not all working with the same approach. In order to investigate the impact of some of these approaches on Haiti’s human rights obligations for tenure security, this Note divides the international organizations into three groups: organizations that assert their own authority to provide legitimate tenure, organizations that defer to the Haitian government as the most legitimate source of tenure security, and organizations that view the Haitian people as central to legitimate tenancy.

218. See generally Concannon & Lindstrom, *supra* note 16, at 1145–46 (compiling sources of criticism); Schuller, *supra* note 5, at 32 (describing Haitian reactions to the INGO response).

219. See Evelyne Trouillot, *Abse Sou Klou: Reconstructing Exclusion*, in *TECTONIC SHIFTS: HAITI SINCE THE EARTHQUAKE*, *supra* note 9, at 103, 103–05 (describing the frustration of Haitians who felt ignored by NGOs during the reconstruction); see generally Concannon & Lindstrom, *supra* note 16 (highlighting domestic criticism to the international response);

220. See, e.g., Davis, *supra* note 92, at 879 (reporting on criticisms from Haitian civil society of the international response to the earthquake); FARMER, *supra* note 3, at 93 (recounting the frustration of the local civil society trying to be heard in donor meetings).

221. See Concannon & Lindstrom, *supra* note 16, at 1145–46 (discussing how the actions of international actors after the earthquake generally inhibited the government’s ability to protect human rights); see also *supra* notes 97–100 and accompanying text (describing the Haitian government’s responsibility to protect its citizens from actions by their parties that violate their human rights). It is possible to argue that many of the state governments involved in the recovery have an international legal obligation to be involved under the Declaration on the Right to Development. See Declaration on the Right to Development, G.A. Res. 41/128, Annex, UN. GAOR, 97th Sess., Supp. No. 53, U.N. Doc. A/RES/41/128, at 186 (Dec. 9, 1986) [hereinafter Development Declaration]. This Note focuses on how these international actors are pursuing their engagement and the obligation of the Haitian government to monitor that engagement, not whether or not they have a legal obligation to be engaged.

1. International Organizations Conferring Tenure: Neocultural Interventionists

Approach

Several international organizations working in Haiti avoid the formal and informal systems and instead assert and support their own claims for tenure. Many of these organizations claim that they cannot fulfill their humanitarian mission while waiting for the Haitian government to act on a tenure decision.²²² They generally believe that the Haitian government is too institutionally weak or inconsistent to be trusted to effectively deliver aid.²²³ Many of these organizations report that when they do try to follow the official guidelines, they face blatant government corruption.²²⁴ These scholars and practitioners, termed “neocultural interventionists,” argue that in order to be effective, legal reform efforts should include initiatives that aim to change the culture of the government.²²⁵

One example of international organizations serving as a source of tenancy is how some organizations find land for shelter construction.²²⁶ As spontaneous camp settlements emerged immediately after the earthquake, INGOs established camp management agencies (“CMAs”) to assess the needs of the residents, coordinate aid, and ensure governance within the

222. See OXFAM, *supra* note 5, at 12 (discussing the challenges of providing humanitarian aid with insecure tenure).

223. See, e.g., Benevolent Assistance *supra* note 89, at 218 n.30 (discussing how a weak Haitian government leads to donor fatigue and in turn tighter donor management of reconstruction activities); see also Rosa Ehrenreich Brooks, *The New Imperialism: Violence, Norms, and the “Rule of Law,”* 101 MICH. L. REV. 2275, 2322 (2003) (identifying the limitations of the rule of law initiatives).

224. See NANCY ROC, HAITI: THE BITTER GRAPES OF CORRUPTION 8 (2008) (documenting hesitancy of international actors to engage in Haiti because of the rampant corruption before the earthquake); see also U.N. OFFICE ON DRUGS & CRIME, STOLEN ASSET RECOVERY (STAR) INITIATIVE: CHALLENGES, OPPORTUNITIES, AND ACTION PLAN 10 (2007) (reporting that Duvalier stole the equivalent of approximately 1.7% to 4.5% of Haiti’s GDP each year he was in office).

225. See Carfield, *supra* note 60, at 767–68 (summarizing and then criticizing the position of neocultural interventionists); Edmonds, *supra* note 213, at 64 (asserting that the Haitian state and the Haitian people are circumvented with NGOs’ “neoliberal transformation”).

226. See *infra* notes 227–30 and accompanying text (discussing how some organizations found land for shelter construction).

camps.²²⁷ Some INGOs attempted to negotiate with local authorities for security of tenure to build temporary shelters and formalize these negotiations with memoranda of understanding (MOUs).²²⁸ The MOUs, signed by the government official and the INGOs, outline what land the INGOs may use. These documents have little formal authority, as notaries were not used, and the mayors signing them are not authorized to appropriate land.²²⁹ The non-government organizations allocated plots of land from these agreements for temporary shelters.²³⁰ In these situations, the symbols of tenure, even the written ones, are based on the legitimacy of the organization.²³¹

International organizations also impact tenure security when they serve as negotiators between the supposed owners and those living in the camps.²³² Often this took place without any verification of ownership or consultation with those living in the camps.²³³ Critics of this approach claim that it has distanced

227. See Margaret Satterthwaite, *Indicators in Crisis: Rights-Based Humanitarian Indicators in Post-Earthquake Haiti*, 43 N.Y.U. J. INT'L L. & POL. 865, 940 (2011) (noting that because so many camps developed, the aid agencies were not able to establish CMAs in every camp facility); Andeyò, *supra* note 9, at 8 (describing forms of management in resettlement camps).

228. See Crawford et al., *supra* note 135 (describing the multiple layers of tenure problems in post-earthquake Haiti); see also OXFAM, *supra* note 5, at 16 (reporting the ways that humanitarian organizations were able to avoid bureaucracy to deliver needed aid).

229. See Crawford et al., *supra* note 135 (observing that the lack of legal authority for these negotiations could create risk of eviction); Interview with Legal Clerk II, Inst. for Justice & Democracy, Haiti (Oct. 15, 2011) [hereinafter Legal Clerk II] (reporting on the tactics used by some NGOs to negotiate land access).

230. See Legal Clerk II, *supra* note 229 (reporting that residents were given pieces of paper conferring the right to use the shelter and absolving the organization of responsibility for upkeep).

231. See *supra* note 52 and accompanying text (emphasizing that legitimacy is the foundation of tenure security).

232. EVICTION SITUATION, *supra* note 3, at 2 (noting that nearly half of cases of threatened evictions that have been successfully resolved have been resolved through mediation); UN-HABITAT, *supra* note 16, at 65 (advising humanitarian actors to “emphasize negotiated solutions” when there is conflict for land in a communal post-disaster system). A number of reports indicate that many INGOs made no effort to verify the ownership of the evictors or assert the tenure rights of IDPs, even when evictions were taking place in camps they managed. See Satterthwaite, *supra* note 227, at 959–60 (observing the reluctance of NGOs to verify ownership based on from interviews with INGO practitioners).

233. Legal Clerk II, *supra* note 229 (describing the interaction, or lack thereof, between INGOs and those living in their camps); INT'L ACTION TIES, WE BECAME GARBAGE TO THEM: INACTION AND COMPLICITY IN IDP EXPULSIONS 5 (2010)

the groups from the Haitian Government and international human rights law.²³⁴ Moreover, they argue that an emphasis on humanitarian need will not create lasting solutions nor will it create the infrastructure to protect rights in the future.²³⁵

Implications on the Haitian Government's Obligations to Protect the Right to Tenure Security

International organizations operate in a limited area, over a limited period of time, and in doing so the security of the tenure they provide may also be limited.²³⁶ Moreover, because the system is only recognized where the organization is working, individuals could be denied the benefits of tenure, such as access to credit, because they happened to enter a camp directed by certain international actors.²³⁷ There is also little protection from counterclaims through the formal legal process.²³⁸ This is further complicated because there are so few long-term housing options that these “temporary” negotiations are in reality a long-term agreement.²³⁹

(estimating that seventy percent of purported landowners involved in evictions do not have proper title).

234. See Annual Report, *supra* note 96, ch. V, ¶ 69–75 (concluding that the approach thus far in Haiti has neglected the protection of some human rights); Concannon & Lindstrom, *supra* note 16, at 1186 (arguing that international NGOs operating independently in Haiti place themselves outside the paradigm of rights-based accountability).

235. See Annual Report, *supra* note 96, ch. V, ¶¶ 75–77 (emphasizing that the Haitian government and international actors had an opportunity after the earthquake to impact institutional reforms); see also Kaclin, *supra* note 132, at ¶ 26 (“Nine months into the response, this has become practically and morally unsustainable. Populations in need are shaping their own coping mechanisms to address the imbalance between services and needs, by gravitating towards the camps instead of spontaneously working towards their own recovery.”).

236. See *supra* notes 19–21 and accompanying text (emphasizing that the legitimacy of tenure is limited to the power and recognition of the provider of tenure).

237. See *supra* notes 22–25 and accompanying text (emphasizing the benefits of tenancy that are recognized beyond the provider of tenancy); see also Concannon & Lindstrom, *supra* note 16, at 1185 (noting that studies in camps find that individuals within camps often have very limited information about the services available within their own camp, much less services available at other camps).

238. See *supra* notes 158–70 and accompanying text (describing the process for dealing with counterclaims in Haitian courts).

239. See *UN Human Rights Expert Urges Putting Housing at Core of Post-Disaster Recovery*, UN NEWS CENTRE (Oct. 21, 2011), <http://www.un.org/apps/news/story.asp?NewsID=40141> [hereinafter UN NEWS CENTRE] (quoting the Special Rapporteur on

The Haitian government is responsible for monitoring and preventing third parties from violating the human rights of its citizens, including the right to tenure security.²⁴⁰ Since international organizations are allowed to create tenancy agreements under the auspice of a temporary solution without a permanent replacement, the government is not able to fulfill its obligation to provide tenure security to its people.²⁴¹ In addition, the actions by the international organizations make it more difficult for the government to have the legitimacy to protect tenure security.²⁴²

Even if NGOs were acting on each of these interventions in a fair and transparent manner, many scholars and practitioners argue that this form of intervention does not provide long-term tenure security.²⁴³ Mediation and housing titles are subject to the limitations of the international organizations' jurisdictional power.²⁴⁴ Should the international organization leave Haiti or

the Right to Adequate housing: "It is evident that in many contexts marked by a lack of appropriate housing for all, 'transitional' shelter will never be transitional and in many cases will even undermine the efforts of permanent and progressive reconstruction and divert funds from what is needed most."); see Valerie Kaussen, *Do It Yourself: International Aid and the Neoliberal Ethos in the Tent Camps of Port-au-Prince*, in *TECTONIC SHIFTS: HAITI SINCE THE EARTHQUAKE*, *supra* note 9, at 125, 127 (noting that there is still no plan to build permanent public housing for the homeless or renters).

240. See *supra* notes 97–100 and accompanying text (outlining Haiti's obligation to protect its citizens from outside actors violating their rights).

241. See *supra* notes 226–35 and accompanying text (citing the government's failure to stop INGOs from creating alternative sources of tenure); *supra* notes 97–100 and accompanying text (outlining Haiti's obligation to protect its citizens from outside actors violating their rights).

242. See generally Concannon & Lindstrom, *supra* note 16, at 1175–79 (arguing that the work of international organizations makes it more difficult for the Haitian government to fulfill its human rights obligations); Edmonds, *supra* note 213, at 64 (emphasizing that INGOs undermine the government's legitimacy).

243. See ICG, *supra* note 2, at 17 (characterizing the approach as "unsustainable" because after the negotiations the individuals move to another camp with similarly tenuous tenure); Andeyò, *supra* note 9, at 25 (noting concern of international organizations that the demand of land owners will change over time to try to get the most possible out of negotiations).

244. See Amilic Gauthier, *Haiti in the Face of Forced Evictions*, FOCAL, <http://www.focal.ca/publications/focalpoint/435-april-2011-amelie-gauthier-en> (last visited Mar. 21, 2011) (quoting NGO workers who note the temporal limitations of the impact of these negotiations); see UN NEWS CENTRE, *supra* note 239 (noting that INGO interventions are not designed to be able to protect rights over the long term).

move its attention to another camp, the validity of the agreement and security of tenure come into question.²⁴⁵

In addition, critics raise concerns about the impact on the authority of the Haitian government to act as an arbiter of tenure disputes as a result of these interventions. Because of the large number of NGOs directly delivering basic services, some international observers note that Haitians view the Haitian government as increasingly weak.²⁴⁶ The danger is that as a result of these temporary tenure options, the Haitian government will be too weak to have the legitimacy to fulfill its human rights obligation to promote tenure security.²⁴⁷ Some scholars note that political distractions, such as focusing on IDP shelter instead of longer-term shelter solutions, tend to make solving post-earthquake tenancy issues more challenging.²⁴⁸

2. Deference to the Haitian Government: Rule of Law Advocates

Approach

Some international organizations are strongly critical of INGOs directly providing tenure and assert that for long-term success, the Haitian government must be at the center of all

245. See Gauthier, *supra* note 244 (“It’s very frustrating because even if you successfully negotiate an extension, in a few weeks or months, there will still be no places or lasting solutions for them.”); Legal Clerk II, *supra* note 229 (noting that there is no process for the documents given by INGOs to be protected or formalized).

246. See OSE *supra* note 5, at 4 (noting that only twenty-three percent of the US\$3.27 billion in aid money that was spent in Haiti in 2010 was channeled through the government and the amount spent by donors in Haiti is 400 percent of the Haitian government’s internal revenue in 2010); ACTED, *supra* note 133 (reporting that when people living in informal camps were asked what sources they trusted most with information about the reconstruction, sixty-two percent said they trusted NGOs and humanitarian agencies, while only fifteen percent said that they trust the local government).

247. See generally Concannon & Lindstrom, *supra* note 16 (arguing that the work of international organizations makes it more difficult for the Haitian government to fulfill its human rights obligations); see also Huggins, *supra* note 12, at 352 (discussing a downward cycle of tenancy problems that can occur in transitioning countries).

248. See Annual Report, *supra* note 96, ¶ 22 (observing that people living outside the camps are “less visible but not less serious.”); Huggins, *supra* note 12, at 346–47 (outlining the challenges for international actors engaged in post-conflict land rights work).

interventions.²⁴⁹ Often referred to as rule of law advocates, these groups suggest that it is illogical to assume that all state interventions are flawed just because some aspects of the government system are flawed.²⁵⁰ These scholars and practitioners believe that development is more likely to proceed when a government enacts a universal set of policies through formal legal reform.²⁵¹ Moreover, they believe that for long-term tenure security to be successful, it must be upheld by the state systems.²⁵²

One example of an organization trying to reinforce the government's role in tenure security is a proposed initiative by the OAS supporting the Haitian government to create a new cadastre system.²⁵³ The proposal, funded by the private sector, was discussed at the highest ranks of government during a presentation by the Secretary General of the Organization of American States to Haitian President Michel Martelly in July 2011.²⁵⁴ Another effort to reinforce the government's authority is to provide legal representation for victims of forced eviction in

249. See Benevolent Assistance, *supra* note 89, at 217 (claiming that a weak Haitian government makes effective aid impossible); see, e.g., Elizabeth Whitman, *Haiti: Haphazard Aid Hindering Long-Term Recovery*, INTER PRESS SERV., Jan. 10, 2010, available at <http://www.globalissues.org/news/2011/01/10/8130> ("It doesn't matter how much money you pour in unless you build up a government that is strong enough to take decisions What is necessary is for the government itself to take responsibility.").

250. See Firmin-Sellers & Sellers, *supra* note 19, at 1115 (arguing that the state can have an important role in providing title security based on responses from rural farmers); FARMER, *supra* note 3 (emphasizing through the book that the Haitian government and consultation with Haitian actors are central to long term recovery and development).

251. See, e.g., Carfield, *supra* note 60, at 749–50 (noting that this theory relies on the premise that the state has the power and authority to enforce its laws).

252. See, e.g., Concannon & Lindstrom, *supra* note 16, at 1146 (arguing that for rights to be protected, the capacity of the Haitian government must be supported); OXFAM, *supra* note 5 at 4 ("Whatever the weaknesses of the Haitian government, it remains the sovereign authority whose engagement is essential if relief, reconstruction, and development in Haiti are to be successful.").

253. See generally OAS, *supra* note 6 (noting that many government-run foreign aid organizations are involved in advising to create a formal cadastre system).

254. See Press Release, Org. of Am. States, Secretary General of the OAS, Jose Miguel Insulaza, discussed in Port-au-Prince with Haitian President Michele Martelly, plans for the modernization of cadastre and land rights infrastructures (July 2011), available at <http://www.oas.org/cn/spa/docs/Press%20release%20on%20SG%20and%20Martelly%20on%20cadastre%20-%20July%202011.pdf>.

court.²⁵⁵ In the face of the forced evictions, some organizations, including the sub-cluster Working Group on Housing, Land, and Property Rights, have advocated for the Haitian government to use eminent domain in the areas where camps exist or to use a moratorium on evictions coupled with promoting return and compensating the land owners.²⁵⁶ Another ad hoc working group of local and international actors, called the Haiti Property Law Working Group, is also in the process of creating a manual to make it easier to understand the formal registration process.

Implications on the Haitian Government's Obligations to Protect the Right to Tenure Security

The work of these international actors has an impact on whether Haitians have the right to tenure security. Some argue that by focusing on the government programs, the international organizations are reinforcing a system that is known to fail at providing equal access to tenure security.²⁵⁷ They contend that the system is too expensive and inefficient to realistically provide and protect Haitian people's rights.²⁵⁸ Further, these critics warn that because there is not a significant capital market in Haiti, tenure security will not promote access to capital.²⁵⁹

Proponents emphasize that employing rule of law has the potential to bring legitimacy to the Haitian government, which is necessary in order to protect human rights in Haiti

255. See Legal Clerk II, *supra* note 229 (noting that these programs are rare); Jagannath et al., *supra* note 1, at 13 (describing the challenges of legal aid programs).

256. See PROT. CLUSTER HOUS., LAND, & PROP. WORKING GRP., POLICY OPTIONS AND RECOMMENDED APPROACH TO ADDRESS FORCED EVICTIONS IN POST-EARTHQUAKE HAITI (2010), available at https://sites.google.com/site/shelterhaiti2010/files/EVICTION_VM_02_08_final.doc (compiling contributions from numerous INGOs and cluster groups that are pointing towards the need for the state to protect the right to tenure security).

257. See *supra* notes 158–64 and accompanying text (noting that elites tend to have easier access to documentation and legal representation); see also Regan, *supra* note 82, at 100–02 (emphasizing that renters and vulnerable populations are not provided solutions during the reconstruction).

258. See *supra* notes 82–85 and accompanying text (contending that the formal programs are inefficient).

259. See Firmin-Sellers & Sellers, *supra* note 19, at 1116 (suggesting that formal systems by themselves will not provide access to capital); see also Trouillot, *supra* note 219, at 103–07 (emphasizing that the utilization of the formal system during reconstruction has reinforced disparities and inequalities).

generally.²⁶⁰ These groups emphasize that the Haitian government is the only actor to provide legitimacy for a claim recognized throughout the country and over an indefinite period of time.²⁶¹ By supporting the Haitian government's legitimacy, these groups feel they are improving the ability of the Haitian government to have the legitimacy to fulfill its obligation to protect tenure security.

3. Haitian People as Central to Tenancy Security: Participatory Approach

Approach

Unlike the rule of law advocates and the neocultural interventionists, a third group of INGOs operate with the assumption that the participation of the Haitian people is crucial for a successful a land tenancy system.²⁶² They argue that international rule of law efforts have realized limited success, because they fail to take into account the power of norms.²⁶³ A variant of the rights-based approach, this group asserts that the protection of rights comes not only from strengthening the capacity of the "duty-bearers to meet their obligations," but also for the "rights-holders to make their claims."²⁶⁴ That is, the Haitian people are those who are best situated to determine tenure and construct mechanisms for tenure security.²⁶⁵ In this

260. See *supra* notes 249–52 and accompanying text (describing how supporting the Haitian government makes it more likely for rights to be protected over the long term).

261. See *supra* notes 78–79 and accompanying text (describing the power of state legitimacy for tenure to allow access to capital).

262. See LUGAR, *supra* note 9, at 7 (observing that the Haitian people and government of Haiti must be involved in efforts to spur economic growth in Haiti); INT'L ACTION TIES, *supra* note 233, at 26 (emphasizing that without participation even the most technically sound approach will fail).

263. See, e.g., Brooks, *supra* note 223, at 2322 (identifying the limitations of the rule of law initiatives); Ryan S. Lincoln, *Rule of Law for Whom?: Strengthening the Rule of Law as a Solution to Sexual Violence in the Democratic Republic of Congo*, 26 BERKELEY J. GENDER L. & JUST. 139, 166 (2011) (contending that rule of law efforts in the Congo can only be successful if they take local norms into account).

264. See Concannon & Lindstrom, *supra* note 16, at 1147 (discussing the legal argument for a rights-based approach to assistance in Haiti); see also Satterthwaite, *supra* note 227, at 957 (discussing the underpinnings of a rights-based approach).

265. See Concannon & Lindstrom, *supra* note 16, at 1176–77 (decrying the lack of participation from the Haitian people during the implementation of rescue and

paradigm, the international organizations each determine on an ad hoc basis whether the formal or informal tenure mechanism is more appropriate at a given intervention.²⁶⁶

Many organizations in this group are attempting to clarify tenancy with community participation. One pilot program run by UN-HABITAT is called a Participatory Enumeration Exercise.²⁶⁷ This project, endorsed by the Haitian government, will utilize Haitian citizens to survey self-reported and locally verified tenure in a single neighborhood.²⁶⁸ Similarly, Habitat for Humanity is running a small project training community leaders and local officials in Carrefour-feuilles to clear rubble, create job opportunities, and register land as it was owned before the earthquake.²⁶⁹

Implications on the Haitian Government's Obligations to Protect the Right to Tenure Security

Proponents of these programs claim that this methodology has the greatest likelihood to protect tenure security.²⁷⁰ They argue that a tenure system based on participation is less likely to discriminate against tenure rights because it is grounded in pluralistic agreement of tenure claims.²⁷¹ In addition, they claim

recovery); ABHIJIT BHATTACHARJEE & ROBERTA LOSSIO, EVALUATION OF THE OCHA RESPONSE TO THE HAITI EARTHQUAKE 32 (2011) (quoting one staff member as saying “we do not interact with local NGOs or government, forget about interacting with communities”); Satterthwaite, *supra* note 227, at 957 (“Haiti is a country with a very strong democratic popular movement but no one in the international agencies dared to look at this as an asset.”).

266. See HLPWG, TOWARDS TENURE SECURITY AFTER DISASTER: PRINCIPLES AND THEIR APPLICATION IN HAITI (2010), available at <https://sites.google.com/site/shelterhaiti2010/files/100420TowardstenureSecurityafterEQHaiti.pdf>.

267. See UN-HABITAT, PARTICIPATORY ENUMERATION EXERCISE: PROJECT PROPOSAL (2010) [hereinafter ENUMERATION] (outlining the project goals).

268. See ENUMERATION, *supra* note 267, at 2–3 (anticipating that this enumeration will be particularly beneficial for renters); UN-HABITAT, COUNT ME IN: SURVEYING FOR TENURE SECURITY AND URBAN AND LAND MANAGEMENT 6 (2010) [hereinafter COUNT ME IN] (noting that this project is in line with emerging ‘best practices’).

269. See OXFAM, *supra* note 5, at 15 (arguing that just solving the formal tenancy challenges is not enough for people to feel secure moving home).

270. See FAN, *supra* note 21, at 38–41 (providing recommendations for areas of work for Oxfam Great Britain); COUNT ME IN, *supra* note 268 (suggesting that participatory enumeration has the best likelihood of serving the needs of the poor in a tenure system).

271. See *supra* notes 68–72 and accompanying text (summarizing views of proponents of hybrid tenancy systems).

that the system's flexibility will allow it to maintain protection of the right to tenancy in changing the post-disaster environment.²⁷² Critics contend that because these programs are being done on an ad hoc basis, they will not have the universal legitimacy that would come from a larger government program.²⁷³ They also question whether the programs will be able to provide protection of rights beyond the connection with the international organizations and withstand contentious disputes with powerful actors.²⁷⁴

III. *GOING FORWARD: RECOGNIZING AND REINFORCING LEGITIMACY*

Tenure security is necessary to enable the people and businesses in Haiti to rebuild the country.²⁷⁵ Though this Note outlines the international human rights documents that hold the Haitian government responsible for providing tenure security, it is clear from the above that there are many factors and actors contributing to the deterioration of tenure security in Haiti.²⁷⁶ A bureaucratic government system with haphazard implementation laid the foundation for a property system that favors those with access to lawyers and money.²⁷⁷ The government's poor administrative infrastructure has only made it more difficult to protect tenure security after the earthquake.²⁷⁸

International actors have done little to improve tenure security. Often ignoring the formal system in their response, the

272. See *supra* note 73–74 and accompanying text (noting the critical importance of a flexible tenure system after disasters).

273. See OXFAM, *supra* note 5, at 16–17 (suggesting that this must be a collaboration between the national government and local communities); see also *supra* note 78 and accompanying text (arguing only the government can provide universally recognized tenure security).

274. See *supra* note 78 and accompanying text (noting that only the state would have the credibility to defend a tenure claim to banks).

275. See *supra* notes 6–10 and accompanying text (providing examples of the impact of tenure insecurity on reconstruction).

276. See *supra* Part I.B (outlining Haiti's international obligations to protect tenure security).

277. See *supra* notes 177–83 and accompanying text (decrying the human rights implications of the implementation of the formal tenure system).

278. See *supra* notes 151–52 (noting the impact of the earthquake on Haiti's weak administration).

options offered by INGOs to protect tenure security rarely remain in effect after the INGO withdraws from Haiti.²⁷⁹ At the same time, the most legitimate source of tenure security before the earthquake—informal, community based ownership claims—have been weakened on account of mass displacement and document destruction.²⁸⁰ Unfortunately, the implication of this failure to protect human rights is plain: businesses are wary of investing, and Haitians are hesitant to rebuild.²⁸¹

This Part focuses on the premise, shared by scholars supporting many tenure systems, that legitimacy is a foundational to tenure security in the future.²⁸² A Haitian trying to rebuild after the earthquake cannot access the benefits of the right to tenure security unless they have a means to legitimately assert their claim on a piece of land and protect that claim from counterclaims.²⁸³ This Part argues that for a tenure system to be considered legitimate in Haiti, it must acknowledge norms and claims as they are understood by Haitians. It argues that for the system to be able to protect counterclaims over a long period of time, all actors must work to reinforce the legitimacy of the Haitian government as the ultimate source of tenancy in Haiti. Finally, it provides lessons from the shortcomings of the response in Haiti for international actors to consider during their next disaster response.

A. The Haitian Government Must Recognize Claims as They are Understood by Haitians

Scholars promoting different forms of tenancy agree that legitimacy is a central and foundational element to tenure

279. See *supra* notes 226–35 and accompanying text (providing examples of INGOs offering limited tenure).

280. See *supra* notes 207–08 and accompanying text (describing the shortcomings of the informal system after the earthquake).

281. See *supra* notes 6–10 and accompanying text (providing examples of the impact of tenure insecurity on reconstruction).

282. See *supra* notes 11–13 and accompanying text (explaining the fundamentals of tenure security); *supra* note 52 and accompanying text (noting that legitimacy is necessary for effectiveness).

283. See *supra* notes 11–13 and accompanying text (defining tenure security); *supra* note 52 and accompanying text (noting that tenure systems will not be effective if they are not viewed as legitimate).

security.²⁸⁴ It is also clear that the Haitian government, in part because of poor implementation and in part because of a legacy of corruption, does not have the legitimacy to confer tenure.²⁸⁵ In addition, the mismanaged recovery effort and ad hoc housing response has undermined INGO's legitimacy to protect tenure security.²⁸⁶ The people of Haiti, as the primary users of the system, must decide whether they deem such a system to be legitimate.²⁸⁷ Outside organizations, such as banks, will be more likely to trust a claim of ownership if the community itself agrees to that claim of ownership. Therefore, in order to ensure tenure security the Haitian government has the responsibility to acknowledge the legitimacy of their voice and recognize their views of land claims.

Practically, this requires the Haitian government to recognize the tenure claims for the majority of Haitians that never participated in the formal land registration process.²⁸⁸ In order for the majority of Haitian's claims to be recognized, the government must offer a means of making and transferring a claim that involves fewer bureaucratic steps.²⁸⁹ To encourage participation, the process for registering a claim should be made inclusive and transparent. A first step could include participatory enumeration processes like those designed by UN-HABITAT and Oxfam.²⁹⁰ The process must be flexible enough to recognize claims that may have been abandoned since the earthquake as well as those that were merely dormant during

284. See *supra* note 52 and accompanying text (describing the points of consensus between scholars that advocate formal, informal, and hybrid systems).

285. See *supra* notes 177–83 and accompanying text (summarizing the failure of the formal tenure system).

286. See *supra* notes 236–39, 243–45 and accompanying text (describing how some INGOs are offering insecure tenure options); *supra* notes 218–21 and accompanying text (summarizing some of the criticisms of INGOs' roles in the Haitian reconstruction effort).

287. See *supra* notes 263–69 and accompanying text (explaining the hybrid tenure approach's focus on deriving legitimacy from the individual users of a tenure system).

288. See *supra* notes 124–26 and accompanying text (explaining how the majority of Haitians do not participate in the formal tenure system).

289. See *supra* notes 153–57 and accompanying text (noting that the current registration process is limited to elites).

290. See *supra* notes 267–69 and accompanying text (describing INGO efforts at enumeration).

that time.²⁹¹ Because the majority of displaced people are renters, the enumeration process should be flexible enough to include primary and secondary claims.²⁹² Trained notaries could be a valuable asset to this as they already serve as a bridge between the formal and informal systems.²⁹³

In order to recognize a popular understanding of claims, the courts also need to improve how they receive and weigh evidence.²⁹⁴ First, they need to accept unofficial documentation of claims as evidence. Second, courts should also increase access by conducting proceedings in Creole and French and loosening the formal identification requirement.²⁹⁵ Finally, creating a special land court with pro se friendly procedures would help to fast-track land conflict cases and make it easier for more Haitians to participate in the process.²⁹⁶

In order to recognize popular claims to land, the government must consider its role in the IDP camps. As many national and international actors have requested, the government must put a stop to all forced evictions, as they undermine the legitimacy of formal judicial and police processes.²⁹⁷ Where the government has already used eminent domain, such as in Carrefour, it should pay the previous land owners just compensation in a public, transparent manner.²⁹⁸ Doing so will provide the people living there for the past two years the opportunity to have their claim on the land legitimized. Further, the government should create an opportunity for compensation for the owners of land that is

291. See *supra* notes 73–74 and accompanying text (noting the importance of flexibility in tenure systems after the earthquake).

292. See *supra* notes 134–35 and accompanying text (finding that most IDPs were renters before the earthquake).

293. See *supra* notes 110–12 and accompanying text (discussing the legal foundation for notaries); see also *supra* notes 187–89 and accompanying text (discussing the impact of notaries on the informal tenure system).

294. See *supra* notes 159–65 and accompanying text (summarizing the shortfalls of the judicial process).

295. See *supra* note 161 and accompanying text (emphasizing the barriers of language to participating in the court system).

296. See *supra* note 160 and accompanying text (citing the impact of the long queue of court cases on access to tenure clarity).

297. See *supra* notes 166–70 (summarizing the role of government actors in forced evictions).

298. See *supra* notes 171–76 (detailing the government's use of eminent domain after the earthquake).

used as IDP camps. This could result in the public good of the IDPs being able to focus on rebuilding instead of constant uncertainty. By taking these steps, the Haitian government will have the opportunity to realize its obligation to protect tenure security without discriminating against the poor and vulnerable. It will also have the benefits of this versatile population group potentially having a wider connection with the economy.²⁹⁹

International actors can also play an important role supporting the government's recognition of informal land claims. Groups experienced with informal enumerations should provide information sessions and trainings for government officials in the key ministries.³⁰⁰ Such groups can also help the government identify populations that are usually easily missed in registering claims. Further, they can create tools to help citizens understand how to make their claims, such as manuals, know-your-rights brochures, and cartoons. This would serve to build the capacity of more Haitians to interact with the formal tenure system.³⁰¹

B. The International Community Must Support the Legitimacy of the Government to Provide and Protect Tenure Security

While international actors and the government can work to recognize the informal land claims of Haitians, only the Haitian government can provide protection from counterclaims over an indefinite period of time.³⁰² The UDHR, ICCPR, CEDAW, and ACHR all hold the state as the actor responsible for protecting the right to tenure security.³⁰³ The influence and protection of other actors only lasts as long as their intervention.³⁰⁴ In order to

299. *See supra* notes 22–25 and accompanying text (describing the benefits of a secure tenure system).

300. *See supra* notes 267–69 and accompanying text (describing some of the early enumeration programs in Haiti).

301. *See supra* note 264 and accompanying text (focusing on the opportunity to build the capacity of “rights-holders to make their claims”).

302. *See supra* notes 77–81 (describing the strength of a formal tenure system upheld by a state government).

303. *See supra* notes 31–34 and accompanying text (describing the international law pertaining to tenure security).

304. *See supra* notes 231–34 (explaining the failure of INGO tenure efforts that only last as long as their intervention); *see also supra* notes 63–64, 207–08 (describing how informal systems can break down once the community is dispersed).

be successful upholding the right of tenure security, the state must be viewed as a legitimate actor, legitimate enough to bring credibility to claims and finality to disputes.³⁰⁵ The state's legitimacy, therefore, is key to successful protection of the right to land tenure.

The Haitian government's lack of legitimacy stems in part from their mismanagement of the tenure system, but also in large part from international actors' pervasive and consistent undermining of their authority.³⁰⁶ Some of the actions by international actors, such as creating their own ad hoc tenancy systems and negotiating ad hoc agreements with would-be evictors directly undermine the Haitian government's ability to protect tenure.³⁰⁷ The long-term presence of these actors and their ability to provide citizens with daily service indirectly re-enforced a view that the Haitian government is not a legitimate source of authority within its own country.³⁰⁸ While these actions might have been necessary in the immediacy of disaster response, two years after the earthquake, they no longer fill that role.³⁰⁹

In order to reinforce the legitimacy of the state, and give the Haitian government the opportunity to realize its human rights obligations, international organizations must commit to only conferring tenancy rights in cooperation with the Haitian government. One positive example can be found in the forthcoming manual created by the Housing Land and Property Rights Working Group ("HLPRWG").³¹⁰ By creating tools for NGOs, business people, and Haitian citizens to see the legal steps required to register land in one place, the HLPRWG is

305. See *supra* notes 51–52 and accompanying text (emphasizing the importance of legitimacy to a successful tenure system).

306. See *supra* notes 177–83 and accompanying text (discussing the impact of government mismanagement of the tenure system); see also *supra* notes 246–48 and accompanying text (describing how some INGOs undermined the legitimacy of the Haitian government).

307. See *supra* notes 240–45 and accompanying text (describing how some INGOs impact tenure security).

308. See *supra* note 243 and accompanying text (discussing the impact of prolonged direct service delivery by INGOs).

309. See *supra* note 243 and accompanying text (noting the impact of prolonged direct service delivery by INGOs).

310. See *supra* note 257 and accompanying text (describing the HLPRWG project to create a manual on the land laws).

reinforcing the legitimacy of the government's process and making it easier for more actors to engage in this process. Similar manuals that cover rental agreements, inheritance, eminent domain, and forced displacement would help actors be able to engage with the formal system in more instances.

In addition, international organizations must stop making ad hoc MOUs for land and negotiating their own resolution to displacement challenges.³¹¹ Instead, they should aim to register all of their land holdings, or at least verify the ownership of the land on which they work. They should also strive to provide tools for people living on their land in temporary or formal shelters to formally register their land claims. This could be as simple as having notaries and officials from the DGI provide formal documentation of primary and secondary ownership, when shelters are awarded, instead of a document created by the INGO.³¹² When there are threats of IDP camp displacement, INGOs should provide advocacy and representation for individuals to bring their would-be displacers to the court.³¹³ INGOs should also continue to call on the national government to protect displacement victims as part of their responsibility to uphold human rights.³¹⁴

The Haitian government can also enhance its legitimacy by taking on its responsibility to protect its citizen from rights violations by third parties and reigning in the actions of the international community.³¹⁵ This can be accomplished by publicly discussing the impact that international organizations have on the state's ability to fulfill human rights obligations. More forcefully, the state could also advise donors to refuse giving financial support to any programs that are not in line with the land tenure system foreseen by the government. This type of action may curtail some short-term benefits of aid but will

311. *See supra* notes 226–30 and accompanying text (describing the practice of ad hoc Memorandum of Understanding (“MOUs”) and negotiations).

312. *See supra* notes 230–31 (reporting that currently some INGOs merely provide shelter tenants with a document with their logo).

313. *See supra* note 165 (noting that there have been some instances of success with this tactic).

314. *See supra* notes 146–48 (showing that international actors can be involved in calling for a government response to displacement).

315. *See supra* notes 97–100 and accompanying text (outlining Haiti's obligation to protect its citizens from rights violations by third parties).

enhance the ability of the Haitian government to better provide care for its citizens in the future.

International organizations can also make a stronger effort to assess each other's compliance with human rights standards. While many organizations were quick to call on the Haitian government to protect tenure security only a very few were able to discuss how the work of the international organizations themselves impacted tenure security.³¹⁶ More transparency and accountability, especially to the Haitian people, in aid delivery could help protect international organizations from falling in the trap of short term gains over long term protection of human rights.³¹⁷ Institutional donors should encourage programs that utilize cell phone technology and enable disaster survivors to report on the aid they are receiving in real time, as well as list their needs. This information could be aggregated concisely so that the Haitian government, partner organizations, and individual donors can hold the response organizations accountable.

C. Lessons for the Next Disaster

To be clear, the insecure tenure situation in Haiti was not completely the fault of the international community. Tenancy was mostly informal before the earthquake, and was made increasingly insecure by the land scarcity after the earthquake.³¹⁸ Though the international community did not cause the tenure insecurity, they did contribute to its intransigence.³¹⁹ There is an opportunity to apply lessons learned from the failed intervention in Haiti so that future disaster responses can better support tenure security.

First, it is apparent two years after the earthquake that the international community could have provided more tenure security if they had stronger means to listen directly to the needs

316. See *supra* notes 146–48 (summarizing calls by international actors for the Haitian government to prevent forced displacement).

317. See *supra* note 265 (explaining how INGOs failed to comply with their own expectations for accountability).

318. See *supra* notes 124–21 and accompanying text (comparing the security of tenure before and after the earthquake).

319. See *supra* notes 236–48 and accompanying text (discussing how the actions of INGOs contribute to tenure insecurity).

of the Haitian people. Haitian community groups and international actors have strongly criticized the international response for failing to take into account needs as expressed by the Haitian community.³²⁰ One example of this shortcoming is the consistent focus on providing humanitarian aid in IDP camps while Haitian communities said that they would prefer to leave the camps but did not have other viable housing options.³²¹ If more of the international response provided tools for rebuilding, instead of entrenching the camps, it is possible that they could have provided a secure tenure option more quickly for their customers.³²² Before the next disaster INGOs should work on tools to quickly gauge the needs of the populations they serve. Mobile technology, as mentioned above, can be used to gather and mobilize responses in real-time. Community meetings with genuine opportunities for feedback in a native language can also foster a sense of trust.

Second, the example of the focus on IDP camps bemoans another general criticism of the international response in Haiti. While there continues to be great humanitarian need, a general failure to consider long-term implications even two years into the response undermine the formal legal system and the authority of the state to confer tenure security.³²³ During future interventions, INGOs should take care to consider how their actions will impact the legitimacy of the state from the beginning of their intervention. Donors can encourage this by refusing to support organizations who do not comply with disaster priorities identified by the national government and the citizens of the country.

Finally, international organizations can prepare now by helping governments create contingencies for tenure systems in

320. *See supra* note 218–20, 265 and accompanying text (summarizing some of the criticism of the international community's exclusion of Haitian actors); *see also supra* notes 202–04 and accompanying text (describing popular movements asking for housing rights led by Haitian communities that were largely independent of international influence).

321. *See supra* notes 138–40, 247 and accompanying text (noting that the focus on IDP camps was a distraction from rebuilding in neighborhoods).

322. *See supra* notes 138–40 and accompanying text (discussing some of the practical reasons that INGOs were slow to work in neighborhood reconstruction).

323. *See supra* notes 246–48 and accompanying text (noting that continuous delivery of basic services by some INGOs undermines the Haitian government's legitimacy).

their disaster preparedness plans before a disaster strikes. Ideally, these plans can be created in consultation with local communities so that their opinions are incorporated at the outset. In this process, the international organization will also have staff that are more familiar with the local tenure process and may even be able to suggest changes that would increase resiliency during a disaster. The INGOs will also have the opportunity to provide training to national government officials and community leaders about the role of human rights in disasters, especially related to tenure security. This would increase the ability of disaster survivors to provide INGOs with accurate information about how their response would best serve the current needs.

CONCLUSION

The people of Haiti have a right to tenure security. They have a right to make a claim on a parcel of land and to have that claim maintained against other illegitimate counter-claims. That right is supposed to be protected by the Haitian government. Since the earthquake, tenure security in Haiti has become increasingly perilous. The confluence of international organizations has only served to further the confusion surrounding tenancy.

In order to clarify and stabilize primary and secondary claims on land, the government must recognize the validity of claims that have not been registered through defunct formal system. At the same time, international organizations must reinforce the Haitian government's legitimacy to confer tenure by stopping programs that run parallel government processes. In so doing, the government will have a stronger opportunity to protect the right to tenure security for all its people.