

Issue of Compensation for the Land Property Owners Hosting the IDP Camps and the threat of eviction of the IDPs temporarily hosted in these camps

Background

The Haiti 12 January 2010 earthquake provoked a mass displacement of the disaster-affected population towards apparently available “free” plots, in such circumstances a considerable number of displaced population settled down spontaneously on private owned plots.

One of the major trend recently emerged is that the land owners, being concerned that the prolonged emergency situation could last for an indeterminate period, depriving them from the full enjoyment of their property rights, have started forced evictions of the displaced persons from their privately owned plots.

The international human rights standards have to be applied to all humanitarian work in post natural disaster context.

However it should be noted that in the situation of a large scale natural disaster this issue cannot be seen in a narrow sense exclusively as a relation of the opposite interests between two groups (private owners *versus* displaced persons). This derives from the fact that the respect for human rights is an integral part of the post-disaster humanitarian assistance, which requires that human rights protection also needs to be provided in the particular context of the post-disaster recovery.

To assure the respect, protection and fulfilment of the international humanitarian standards is primarily the responsibility of the Haitian State, as the states are directly responsible for such actions on their territory and under their jurisdiction. The obligation to ensure the respect, protection and fulfilment of the human rights is also the duty of the international humanitarian organisations involved in the post-disaster assistance in Haiti. They are obliged to ensure that these rights are protected in the interest of the people directly affected, beyond the strict wording of their institutional mandate. (Inter Agency Standing Committee -IASC Operational Guidelines)

The big dilemma emerges when such human rights rules should be applied in an operational context of humanitarian disaster, deciding on the respective rights and potentially conflicting interests of two groups (owners v. displaced persons on their land).

General Recommendation:

The International Humanitarian Community should actively advocate that the Haitian Authorities declare officially a temporary moratorium on forced evictions of the emergency affected displaced persons hosted on the privately and state owned land.

This measure should at the same time be followed by assurances that the private owners who temporarily host the displaced communities will be compensated for such interference with their rights.

The Haitian authorities should be obliged to draft, adopt and publish the criteria and the scale for such compensation.

This proposal aims to provide legal recommendations to assist both disaster-affected groups by considering these challenges in greater details, within the applicable international human rights standards and principles. These two issues will be analyzed separately.

- 1. Compensation for the land property owners hosting the IDP camps**
- 2. Protecting the displaced persons hosted in the camps on private plots against the forced evictions**

Ad 1) Compensation for the land property owners hosting the IDP camps

The effective protection of private property rights is one of the main requirements of the rule of law and the state legal framework, and such principle enjoys a large protection in each modern society. Haiti in that sense is not an exception, as this principle is expressed by the art. 36 of the 1987 Haitian Constitution:

Constitution of Haiti, Art. 36

“The private property is recognized and guaranteed. The law determines the modality of acquisition, enjoying as well as limitation.

However, this general principle guaranteeing the private property is not an absolute category, the enjoyment of that rights might be limited by public/general interest. Also the Haitian Constitution foresees this principle in its Article 36-3.

Constitution of Haiti, Article: 36-3:

Ownership also entails obligations. Uses of property cannot be contrary to the general interest.

Also the main law deciding of the property related relationships, the Haitian Civil Code¹, is in line with the two above mentioned principles.

Firstly the protection and guaranties for the private property owner is contained in the article 448 saying that: “*The property is the right to enjoy and to dispose of the things in a most absolute manner under condition that such use is not prohibited by laws and regulations*”.

The second requirement that the private property right might be limited by public interest in the modern and democratic society is found in the Art.449 which confirms that “*Nobody could be obliged to cease his/her property if not for one cause of public purpose in return for a just and prior compensation*”

In addition, the necessity to strike the balance between the guaranties for the private ownership and to conciliate this principle with the public interest of society is also expressed by the international human rights standards applicable in Haiti, primarily by the American Charter of Human Rights² (1969), Art. 21

American Charter of Human Rights (1969), Art. 21

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.

¹ Haitian Civil Code promulgated 17 March 1825, amended by Law No.12 on the Property.

² The 1969 American Charter of Human Rights, “San Hose Pact” is ratified by the Haitian Law of 18 August 1979.

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.
3. Usury and any other form of exploitation of man by man shall be prohibited by law.

Both principles are also widely accepted by international human rights standards which refer to a certain extent to the property-related issues in the emergencies.

The first consolidated global standard on the housing, land and property rights of the displaced persons “United Nations Principles on Housing and Property Restitution for Refugees and Displaced persons”, the so called Pinheiro Principles, are not limited only to guaranteeing the private property but such guarantee is seen in a wider sense, being enlarged to different categories of tenure such as occupancy, lawful possessions and other forms of tenure.

The Pinheiro principles stressed also the importance of another detail i.e. that the second requirement of the “interest of society” cannot be applied largely in order to avoid possible misuse that the state organs may use formally the public interest as a possible pretext for uncontrolled interference with the private property owners.

Pinheiro Principle 7

1. *Everyone has the right to the peaceful enjoyment of his or her possessions.*
2. *States shall only subordinate the use and enjoyment of possessions in the public interest and subject to the conditions provided for by law and by the general Principles of international law. Whenever possible, the “interest of society” should be read restrictively, so as to mean only a temporary interference with the right to peaceful enjoyment of possessions.*

The duty to compensate owners in post-natural disaster emergency is also foreseen by IASC Operational Guidelines on Human Rights and Natural Disasters:

Unused private property and possessions may be temporarily, but no longer than absolutely necessary, allocated to those displaced by the natural disaster. Competent authorities should be requested to ensure that owners of affected property are adequately compensated for such use.

Conclusions/Recommendations

The Haitian authorities may limit the private property rights allowing the disaster affected people to be hosted temporary on the privately owned land. Such limitation is justified taking into account the public interest to tackle the effects of the devastating natural disaster and to provide an emergency shelter to the displaced persons.

The private owner of the plots hosting the displaced persons should be entitled to compensation for temporary interferences with their property rights.

The Haitian authorities should draft, adopt and publish as a matter of priority the official scale containing standards and coefficients for calculating the damages of the property plots hosting the displaced persons, in an unequivocal manner in order to guarantee the transparency of the whole process and avoiding possible misinterpretation.

In formulating the scale for calculating the temporary damage, the following criteria should be taken into account:

- 1) The original price of the immovable property declared by the owner and the public notary at the moment of the real-estate transactions of the given plot (to be checked by the property owner real estate contract). However, these criteria should be only indicative since in Haiti, it is a widespread practice to diminish the established price in order to pay less property tax.
- 2) The purpose of use, i.e. agricultural, commercial, plot for development etc. If the plot was used for a purpose different from what it was originally zoned for (“informal use”) and this was tolerated by the responsible authorities, its “real” use should be considered rather than the official use.
- 3) Improvements and transformations of the original plot made by the owner from the moment of buying to the emergency.
- 4) The market value of the plot from the time just before the disaster.
- 5) The level of the temporary physical damage of the plot caused by providing the temporary shelter. Besides damage, the financial losses caused by foregone livelihood and/or income opportunities (agricultural yield; livestock rearing; fishing; on-site manufacturing and maintenance shops, shops, etc.) should be taken into consideration.

Ad 2) Protecting the displaced persons hosted in the camps on private plots against the forced evictions

Background:

As said before, the practical difficulties arise when the international community, in a context of post-disaster emergency should provide adequate guarantees and conciliate the opposite interest rights of legitimate owners whose property is occupied and those of displaced persons temporarily hosted on the private land.

In general terms, the international human rights standards recognise fully the legitimate owners to repossess their temporarily abandoned property, not disregarding the specific position of the displaced occupants. While the land owners are entitled to compensation there is also an urgent need to protect the displaced disaster-affected population against forced/arbitrary evictions.

The requirement is that the process of the repossession of the plot by original owners cannot render the displaced occupants homeless or vulnerable to the violation of other human rights.

The position of the Haitian displaced settlers on the private land might be similar to those of the “secondary occupants” i.e to the displaced persons who settled down on land after the legitimate owners or users have fled following a natural disaster.

The general principle is that when the original owners wish to take up residence again and to repossess their property, the eviction of a secondary occupant may become necessary. Such evictions are not prohibited under international human rights law, provided that legal and procedural safeguards to protect the rights of the secondary occupant are met.

IASC principle C.2.10 contains a set of certain procedural guarantees, which should be fulfilled if evictions do take place, they are the following :

- An opportunity for genuine consultation with those affected;
- Adequate and reasonable notice prior to the scheduled date of eviction;
- Timely provision of information on the eviction and future use of the land;

- The presence of government officials during the eviction;
- Proper identification of all persons carrying out the eviction;
- Prohibition of evictions during bad weather or at night;
- Provision of legal remedies; and
- provision of legal aid, where needed, to seek redress from the courts

The need to consider both disaster-affected parties and to provide sufficient guaranties for legitimate owners considering also the specific position of spontaneous settlers on the private plots is expressed by the *Pinheiro Principles 17 and 20.5* saying that:

States should ensure that the safeguards of due process extended to secondary occupants do not prejudice the rights of legitimate owners, tenants and other rights holders to repossess the housing, land and property in question in a just and timely manner.

States should ensure that secondary occupants are protected against arbitrary or unlawful forced eviction. States shall ensure, in cases where evictions of such occupants are deemed justifiable and unavoidable for the purposes of housing, land and property restitution, that evictions are carried out in a manner that is compatible with international human rights law and standards, such that secondary occupants are afforded safeguards of due process, including an opportunity for genuine consultation, adequate and reasonable notice, and the provision of legal remedies, including opportunities for legal redress.

States should implement public information campaigns aimed at informing secondary occupants and other relevant parties of their rights and of the legal consequences of non-compliance with housing, land and property restitution decisions and judgments, including failing to vacate occupied housing, land and property voluntarily and damaging and/or looting of occupied housing, land and property.

In addition, the international human right standards provide a basic guide for humanitarian and early recovery actors in developing land programs for informal or illegal occupiers after a natural disaster.

The International Covenant on Civil and Political Rights prohibits discrimination against *inter alia* informal or illegal occupiers on the basis of their property status. In addition, ICCPR prohibits arbitrary or unlawful interference with his home (Article 17.1).

The UN Guiding Principles on Internal Displacement confirms that all displaced persons - including tenants and informal or illegal occupiers - have a basic right of return to their place of origin. They also have a right to assistance in recovering their tenure left behind after displacement.

It should be stressed, also that the settlers on the private land, the future evictees are a specific group of the internally displaced persons and therefore beneficiaries of the standards contained in the *UN Guiding Principles on Internal Displacement*³ which foresee that:

- 1) Every human being shall be protected against arbitrary displacement
- 2) Alternatives must be explored to avoid and minimise displacement.
- 3) Proper accommodation is provided to the displaced persons so that the displacement leaves them with satisfactory health, safety, nutrition and hygiene conditions, also family members are not to be separated.

³ The Guiding Principles on Internal Displacement (UN Doc E/CN.4/1998/53/Add.2).

Conclusion/Recommendations

The international community should advocate that the Haitian authorities proclaim short-term moratorium-suspension of evictions.

In no case must the repossession of the plot by original owners render the displaced occupants homeless or vulnerable to the violation of other human rights.

The displaced persons without alternative accommodation should be allowed to stay for a pre-defined period on the plots where the camps are located. This measure aims to prevent the disaster-affected persons from being unfairly evicted.

During the period of the moratorium, the international community should assist the Haitian authorities to draft a strategic plan based on the above mentioned standards aiming at the gradual closure of the IDP camps.

The durable solutions for the displaced persons hosted in those camps should be elaborated by prioritising the safe and sustainable return when possible and feasible.

If the displaced persons are not willing to return, they shall not be forced to return against their will.

In deciding on the possible alternatives a lieu of return, the participatory approach with the affected community through consultation and dialogue should be assured.