

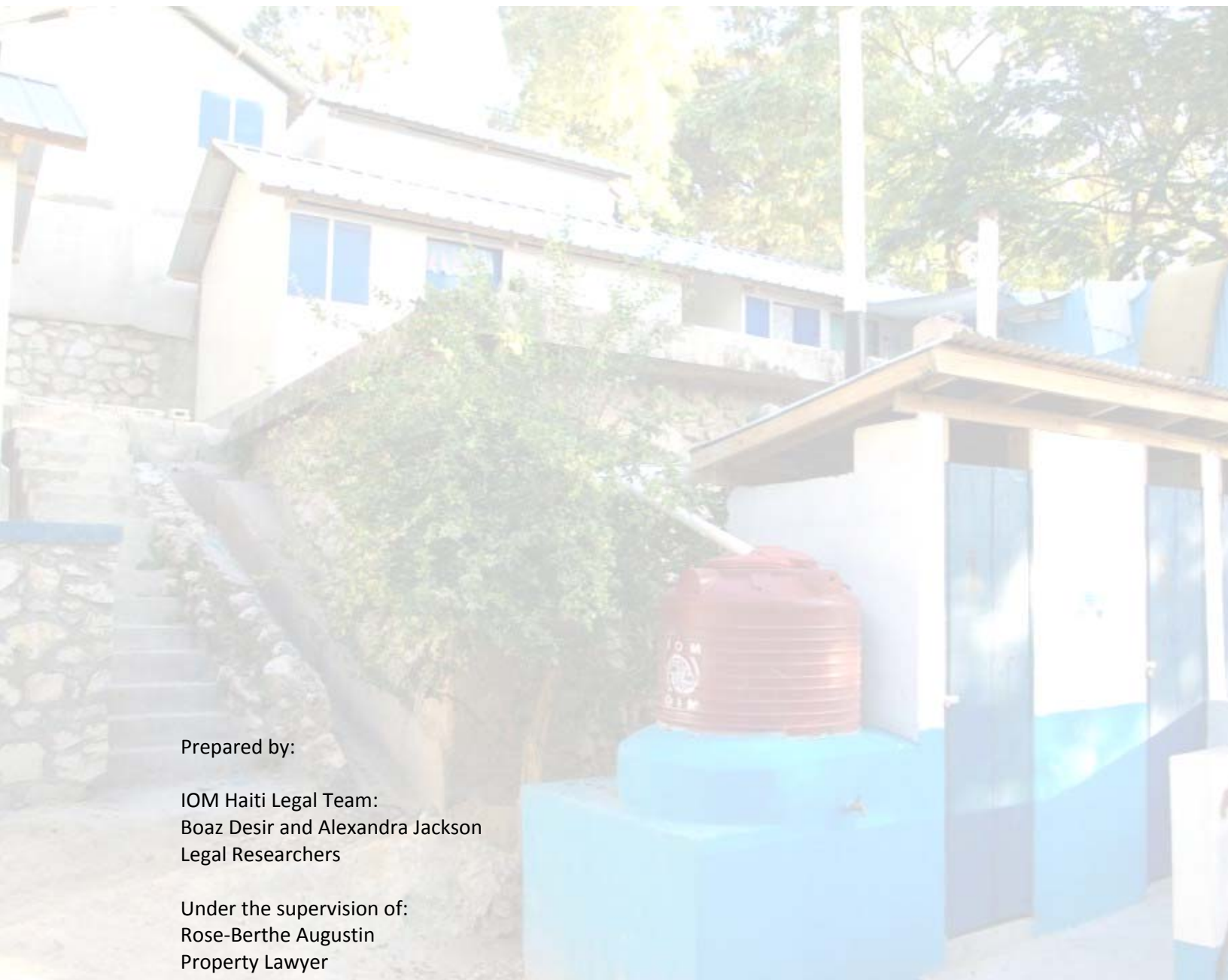


IOM International Organization for Migration

## Dealing with Land Barriers to Shelter Construction in Haiti: The Experience of the IOM Haiti Legal Team

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## I. INTRODUCTION

### *Content and Scope of the Report*

This report sets out the IOM Legal Team’s experience in addressing land barriers related to the construction of shelters in the earthquake affected areas of Haiti since it was established within the IOM Shelter Program in mid 2010. The report highlights the Team’s work in both conflict prevention and conflict resolution, it also sets out the types of land barriers IOM has encountered in its shelter work, including but not limited to land disputes, as well as the solutions the IOM Legal Team has adopted to overcome them where possible. In closing, the report formulates a set of overall conclusions that can be drawn from this work.

### *The IOM Shelter Program*

The large urban centers in Haiti (Port-au-Prince; Cap Haitien) already suffered from a serious housing shortage prior to the 2010 earthquake. Rapid rural to urban migration of a population looking for livelihood opportunities and access to basic services unavailable in their home communities had led to an explosive urban growth, without either the housing stock or the urban infrastructure growing at the same pace. A high population density, widespread poverty, low-quality and insufficient housing stock and weak governance structures were hence problems that largely preceded the earthquake. Similarly, most land and property relations in those urban centers were already managed informally before the disaster, despite the presence of a plethora of legal rules purportedly governing land tenure in Haiti.

The devastating earthquake that struck Haiti on 12 January 2010 and which resulted in over 200,000 deaths and the displacement of more than 1.5 million people compounded these existing problems. In terms of housing and shelter, it became immediately clear that a massive (re)construction effort would be required to house those that had lost everything in the quake. It is in support of the overall (re)construction effort that followed that IOM established its Shelter Program.

Through the support of Canadian International Development Agency (CIDA,) Community Chest of Korea (CCK), Emergency Relief and Response Fund (ERRF), the Government of Japan, Swedish International Development Agency (SIDA) and United States Agency for International Development (USAID), the IOM shelter program has successfully constructed 11,248 shelters as of March 2012.



IOM Shelter units constructed in Santo 17 in Croix-des-Bouquets



These shelters are distributed across the various earthquake-affected communes in the following way:

Commune	Total Shelters Constructed
Port-au-Prince	1,211 transitional shelters
Petion Ville	587 transitional shelters
Delmas	5 transitional shelters
Croix-des-Bouquets	5,268 transitional shelters
Leogane	739 transitional shelters
Jacmel (including Cayes Jacmel)	474 semi-permanent shelters 338 transitional shelters
Bainet	250 transitional shelters
Petit –Goave	1,502 transitional shelters
Grand- Goave	838 transitional shelter
Les Cayes	36 permanent housing

The IOM Shelter Program is designed to be able to support durable solutions for the displaced through return (in case their original homes were destroyed); relocation; and local integration (in case they cannot or do not want to return to their place of origin). With this purpose in mind, shelters have been constructed on land owned by the displaced; land where landowners granted the displaced permission for construction; and sites provided by the Haitian Government. Where necessary, the building of shelters was complemented by infrastructure repair or construction in the form of access roads, retaining walls and other facilities to improve the overall situation of the earthquake-affected community.

#### *Land as a Barrier to Shelter Construction*

Like the other reconstruction actors working in the earthquake affected areas, IOM faced a number of land-related barriers to the construction of shelters. These challenges included: 1) the lack of information on who had what rights to what land and/or property; 2) the (perceived) prevalence of conflict and competing claims over land and property; 3) the refusal by landowners to allow land use for the construction of shelter; 4) the lack of available public land that could be allocated for the purpose of shelter construction; and 5) the lack of legal security.



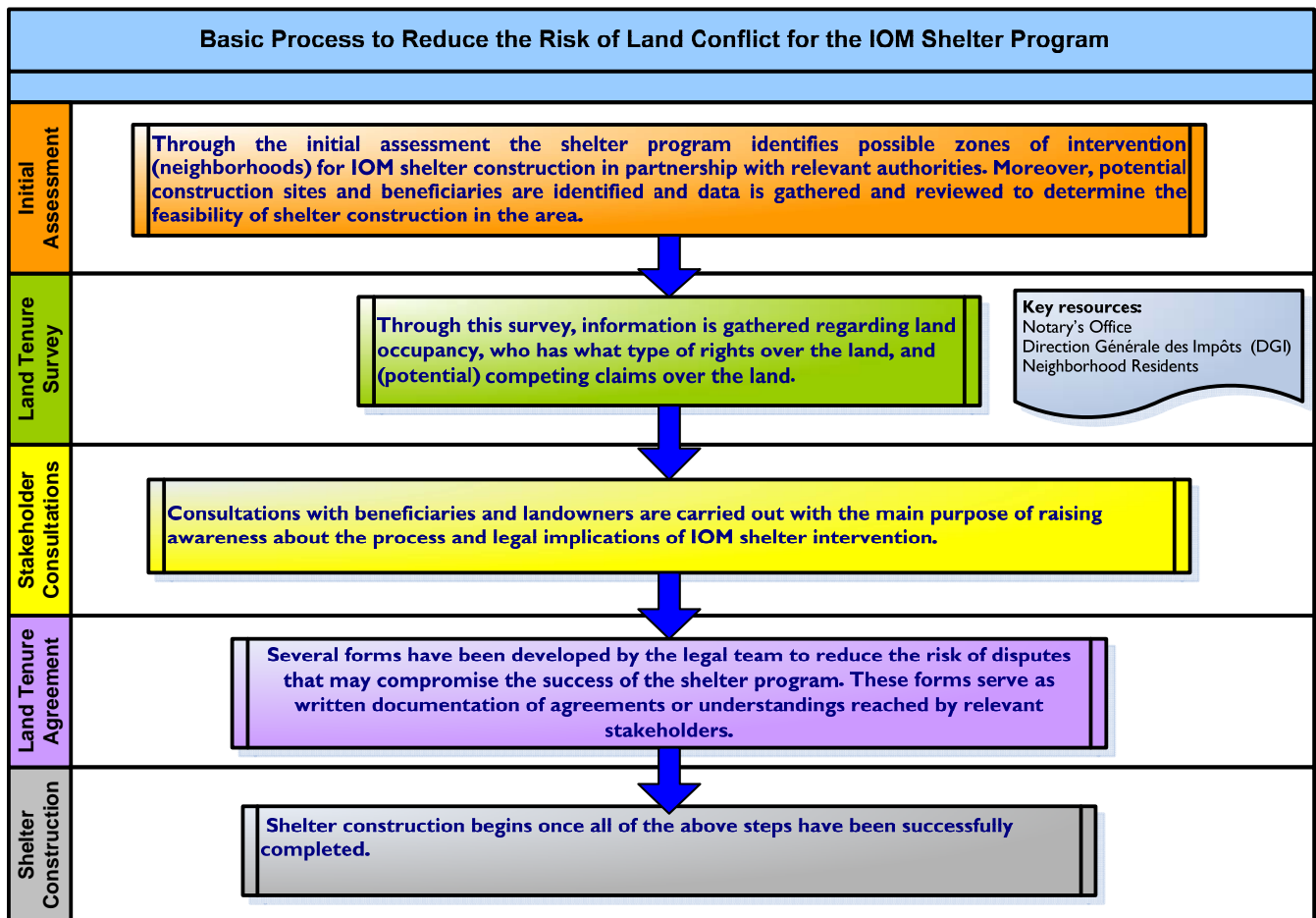
## II. THE SHELTER PROGRAM'S LEGAL TEAM

In light of these land-related challenges, the IOM Shelter Program established a Legal Team<sup>1</sup> that would gather information about the land tenure situation in construction areas and provide technical and legal advice on how to efficiently handle legal and land tenure issues that threatened to impede shelter construction.

In practice, the Legal Team works on (A) the prevention of land conflicts related to the construction of shelter through a number of anticipatory interventions and (B) the mediation of land disputes that do arise in the framework of IOM's shelter program.

### A. Prevention of Land Conflict

This part of the work aims to identify any potential conflict that may arise before, during and after shelter construction. It consists of preventative measures to reduce the likelihood of conflict arising throughout the implementation of shelter activities in a specific area. The basic process that was established to carry out this part of the work is illustrated below:



<sup>1</sup> The Legal Team consists of one land tenure expert, one property lawyer, and two legal researchers.

### ***Initial Assessment***

*(This step precedes the Legal Team's intervention)*

The IOM Shelter team works in coordination with the local government authorities and other reconstruction actors to identify possible zones for intervention. As soon as a potential area for shelter construction is identified community mobilizers and engineers carry out an initial assessment of the site to determine the feasibility shelter construction. The community mobilizers work with the community to identify and delimitate the possible construction sites in the neighborhood and meet potential beneficiaries, gathering information on their vulnerability and other relevant information about households and the community as needed. The engineers carry out the **necessary** risk assessments and identify potential hazards related to construction on the identified site. The engineers also provide estimates on the number of shelters that can be built within the identified land.

All data gathered by the community mobilizers and the engineers is then reviewed and if it is determined that it is possible to carry out shelter construction in the area, the legal team is then deployed to carry out research work on land tenure and coordinate the shelter construction process with the local authorities.

### ***Land Tenure Survey***

In order to establish an accurate picture of the land tenure situation of a construction site, it is necessary to obtain information regarding: 1) the current occupancy of the land; 2) who holds what type of rights over the land; and 3) (potential) competing claims over the land.

If the land targeted for shelter construction is public land, the relevant local authorities are asked to provide supporting land tenure documents prior to construction. In the event those authorities are unable to provide the required documentation, the legal team verifies this further with the General Tax Office.<sup>2</sup>

In cases where the land targeted for shelter construction is private, IOM still coordinates and obtains approval or endorsement from the local government prior to construction. In such cases, approval is also sought from the presumed (self-declared) landowners. Once endorsement from the local government and landowners is secured, IOM then initiates the land tenure investigation.

In addition to research regarding the formal evidence of the property rights, the legal team also carries out an investigation in the neighborhood of the construction site in order to assess the possible existence of other owners or potential claimants. The legal team also verifies with the General Tax Office that the land has not been the subject of multiple sales; that it is not the object of a conflict; and that it is not under sequestration.

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<sup>2</sup>*Direction Générale des Impôts (DGI)*

Overall, land surveys carried out from 2010 until today have revealed the following recurring issues:

- Lack of authentic and/or documentary evidence: in many cases where survey participants declared themselves to be landowners, the land survey revealed an absence of authentic proof of ownership rights. In most cases, people who declare to be landowners did not have the complete legal documents to support this claim<sup>3</sup>. Many possessed a *land survey* without a registration number from the General Tax Office, as is required by formal Haitian Law.<sup>4</sup>
- Prevalence of non-authentic documentation: in several instances, survey participants were able to provide non-authentic documents including receipts showing amounts paid in a private sale. It is interesting to note that in many cases land owners present documents such as proof of payment of municipality construction taxes (“*Contribution Foncière des Propriétés Baties*”). Though these documents do not serve as legal proof of ownership, many land owners perceive that they are proof of the land owners property right. Notably, many of the people who had non-authentic documents did perceive themselves as the legal owners of the land parcel in question.
- Ownership through adverse possession (“*possession utile*” under Haitian law): This type of ownership applies in a number of cases where survey participants had no authentic documentation but had inhabited the land for at least 20 years.

### **Consultations with Stakeholders**

Once the land survey is completed, the Legal Team facilitates a series of consultations among stakeholders (e.g. residents of the neighborhood, potential beneficiaries and landowners).

The consultation process provides a venue for the legal team to present their findings from the land survey and further validate the data with the community and other stakeholders involved. Often, the information collected during these meetings is more helpful to program implementation than what is available from the General Tax Office. These meetings allow the beneficiaries and landowners to better understand IOM’s interventions in their neighborhood while promoting a sense of community engagement. This process facilitates willingness to cooperate and often results in establishing agreements that enable beneficiaries to occupy land.

Moreover, these consultations raise awareness of the legal implications of the IOM Shelter Program and how this affects the community residents, landowners and shelter beneficiaries.

In these consultations the shelter construction plan and basic shelter design are presented to the stakeholders. In cases where a plot of land is too small to accommodate the total area of a shelter unit, IOM negotiates with the neighbors of the beneficiary to give up a small portion of land surrounding the beneficiary’s plot to enable construction.

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<sup>3</sup> The authentic proof attesting to the ownership right in a sale contract are a land survey and a notarized bill of sale.

<sup>4</sup> Decree of September 28, 1977 concerning land conservation and registration

In some cases, site visits are facilitated for potential shelter beneficiaries or in some cases for landowners who will be affected by the construction work. If construction requires a modification of the perimeter of the surrounding plots, the visit ensures that the concerned landowners clearly understand the revised limits of the properties.

### ***Land Tenure Agreements***

To reduce the risk of potential disputes or challenges to the construction and occupation of shelters built through the IOM Shelter Program, several forms have been developed and serve as written documentation of agreements or understandings reached by relevant stakeholders.

In general, the following signatories are involved:

- 1) **Land Owner:** Parties who have the necessary legal documents proving their ownership or parties who do not have legal documents but have occupied the land for several years (*possession utile*).
- 2) **Land Tenant:** Parties holding updated lease contracts.

Land tenants include:

- Former owners of houses that were destroyed or damaged during the earthquake
- Persons living in camps or camp-like settlements that have made arrangements with landowners in order to receive IOM shelters

- 3) **Free-lease Beneficiaries (“*bénéficiaires à titre gratuit*”):** Parties who are eligible to receive shelters with the express authorization of the landowners or land tenants without having to pay rent.

*Free-Lease Beneficiaries include:*

- Family members of the landowner who lived in a house on the property that was destroyed by the earthquake.
- Persons who have obtained authorization from the landowner to use the land without payment.
- Persons who were previously tenants but are currently unable to pay related fees<sup>5</sup> but who through IOM’s shelter program, have secured an agreement with the landowner to delay payments for a specific period of time.<sup>6</sup>

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<sup>5</sup> In Haiti, rent is usually paid on a yearly basis.

<sup>6</sup> Usually, the landowner agrees to this arrangement because the owner has benefited from IOM’s construction activities at no cost. E.g. rubble removal was carried out on the land, the shelter unit was constructed for free or access roads, footpaths, or retaining walls were constructed in the area.



Specifically, five standard agreements have been developed by the Legal Team to reduce the risk of disputes to shelter construction and occupation. Given the complexities of the situation in Haiti, these standard documents are often slightly modified on a case by case basis. The standard agreement documents are listed in the table below. Samples of these agreements are available upon request.

Type of Agreement	Stakeholders/Signatories involved	Description
<b>Request for Shelter Construction</b>	<ul style="list-style-type: none"> <li>• Shelter Beneficiary (this could be a land owner, land tenant or free-lease beneficiary)</li> <li>• Partner (organization or institution) requesting shelter assistance from IOM<sup>7</sup>.</li> </ul>	<p>This form includes preliminary information on the identity of the shelter beneficiary and details of the land (plot location and legal information).</p> <p>Note that it is possible to receive a request for shelter construction but not to carry out the work in the event that the Legal Team identifies the area at high risk of potential land-related challenges.</p>
<b>Authorization to Begin Shelter Construction</b>	<ul style="list-style-type: none"> <li>• Land Owner or representative</li> </ul> <p>AND/OR</p> <ul style="list-style-type: none"> <li>• Land Owners of surrounding properties (where applicable).</li> </ul>	<p>This form documents the approval for construction work on a given area. The document is signed by the land owner or by a legal or nominated representative and can be slightly revised to best adapt it to each situation.</p> <p>For instance, the form can be modified to include the construction of retaining walls, access roads and staircases. In cases where construction work may encroach on a neighbors' property signatures/approval from the neighboring land owners are obtained.</p> <p>In cases where the land for shelter construction is large enough to accommodate several shelter units, only one authorization letter is completed for the area.</p>

<sup>7</sup> In some cases local NGOs or other partners approach IOM with requests to provide shelter support in their geographic areas of intervention. In these situations the partners are asked to secure the needed approval from landowners to enable shelter construction

<p><b>Agreement Letter</b></p>	<ul style="list-style-type: none"> <li>• Land Owner</li> </ul> <p>OR</p> <ul style="list-style-type: none"> <li>• Land Tenant (if land tenant is in good standing)</li> </ul> <p>AND</p> <ul style="list-style-type: none"> <li>• Shelter Beneficiary</li> <li>• IOM</li> </ul>	<p>Through this document IOM negotiates with the land owner or land tenant in good standing<sup>8</sup> to allow shelter beneficiaries to live on the property for free (for a specific period of time) in exchange for construction work (e.g. installation of retaining walls or carrying out rubble removal on the property).</p> <p>In cases where the land for shelter construction is large enough to accommodate several shelter units, only one agreement letter is completed for the entire area.</p> <p><i>Note that throughout implementation of the IOM shelter program, there have been limited cases where this option is applicable (250 cases).</i></p>
<p><b>Land-use Contract</b></p>	<ul style="list-style-type: none"> <li>• Land Owner</li> </ul> <p>OR</p> <ul style="list-style-type: none"> <li>• Land Renter</li> </ul> <p>AND</p> <ul style="list-style-type: none"> <li>• Shelter Beneficiary</li> </ul>	<p>This form has considerable legal value for the owners and the shelter beneficiary as it defines the conditions of cohabitation between the land owner and shelter beneficiaries.</p> <p>Through this contract, the land owner allows the beneficiary to use the shelter on the property for a definite period of time (e.g. up to 3 years), while the beneficiary recognizes his right to use the shelter without claiming to have property rights to the land.</p> <p>This contract also highlights that care and maintenance of the shelter unit are responsibilities of the shelter beneficiary.</p>
<p><b>Letter from the Municipality</b></p>	<ul style="list-style-type: none"> <li>• Mayor or designated representative</li> </ul>	<p>In cases where shelter units are constructed on public land, there is no need to complete a shelter request form or agreement letter.</p> <p>Instead, a letter from the municipality is completed that supports the shelter initiative and clearly states that the shelter beneficiaries occupying the designated area are permitted to do so.</p> <p>In some cases additional documents are developed based on the request of the municipality.</p>

<sup>8</sup> A land tenant is in good standing when all dues and agreements between the land owner and the land tenant are updated, thus enabling the land tenant to authorize construction on the property.

## **B. Land Dispute Management**

Mindful that the mechanisms put in place to prevent land conflict can only reduce the risk of disputes and not eliminate them entirely, IOM has also developed a proactive methodology to address any disputes or other conflict that may arise as a result of shelter construction.

Throughout the implementation of the Shelter Program a total of 138 conflict cases were addressed by the Legal Team. The breakdown of these cases is as follows:

Geographic Area of intervention	Method of Land Dispute Management				N/A**
	Mediation	Negotiation	Agreement	Judicial Action	
Morne Lazare (Pétion Ville)	56	8	1		1
Carrefour-Feuilles (Port-au-Prince)	40	2	17		2
Croix-des-Bouquets	5	1			
Léogâne		1		1	
Jacmel				1	
Petit Goâve				1	
Gressier					1

\*\* In these cases no resolution was achieved and thus shelter construction was discontinued/ not initiated.

*Note: A single intervention may concern more than one shelter unit. For instance, in Jacmel the once case of conflict encountered by the Legal Team involved over 300 shelter units.*

### **Main Sources of Conflict**

Conflict encountered and mitigated by the legal team has usually resulted from a lack of clear information on land tenure status and the shelter intervention.

Causes for conflict encountered included:

#### **➤ End of Farm Lease**

Construction may be interrupted at any time by the landowner if it is discovered that the land tenant has not honored debts or has not renewed the lease contract in the allotted timeframe.

In Haiti, a farm lease gives a land tenant the authority to construct structures on the land. The lease is usually established for an extended period of time (e.g. five years). The legal team encountered several cases where tenants had built houses on land at a time when they were in good standing with the land owner (farm lease was up-to-date). However, once the house was built, some land tenants neglected to continue to make the necessary payments to land owners for legal occupation of the property. Once their houses were

destroyed by the earthquake, land owners reasserted their rights to prohibit (re)construction until past debts were paid.

➤ **Land Boundary Problems**

Neighboring landowners may initially agree to the construction work proposed by IOM, including work that may encroach on their land. However, during construction, disputes about the land boundaries may arise. These issues can cause significant delays in shelter construction or can prevent construction all together. This type of conflict was common in the denser, urban areas within the Port-au-Prince Metropolitan area.

➤ **Claim to Right of Ownership**

This occurs when the land representative (e.g. reported owner, representative of owner or land tenant) that approved shelter construction is not the legal owner and the real owner comes to claim his right. This situation is possible in the context of Haiti where official documentation is often incomplete and there are cases where shelter construction is initiated taking into consideration only documentation available (including results from neighborhood investigations). These cases are rare and are the most difficult to address. Where possible the Shelter Program avoids shelter construction under these circumstances.

**Dispute Resolution Methods**

Most cases of conflict encountered during the implementation of the IOM Shelter Program were resolved amicably this was the most common and more efficient method of mitigating conflicts related to the Shelter Program. However, there were some cases that merited judicial action and thus were addressed accordingly.

**Examples of amicable resolutions reached by the Legal Team include:**

➤ **Case of Morne Lazare**

**Source of conflict:** Violations of pre-earthquake agreements between the landowner and the tenants (*End of Farm Lease*).

In the neighborhood of Morne Lazare many tenants' lease contracts had been expired for more than ten years<sup>9</sup>. As a result, the land owner refused to allow shelter construction in the area. To address this, the Legal Team successfully updated the terms of



IOM Shelters constructed in Morne Lazare

<sup>9</sup> It is interesting to note that the prices of the older, expired leases often did not exceed USD 10 per year.

payment between tenants and land owners in a manner acceptable to both parties thereby supporting the rights of the owner without encroaching on the rights of the tenant. The team facilitated about 50 such cases.

➤ **Case of Baillergeau**

**Source of conflict:** Neighboring land owner retracting approval for work on surrounding property (*Land Boundary Problems*).



Staircase in Baillergeau

In a construction site in Baillergeau, the shelter program had planned to construct a staircase leading to the shelter site to improve access to the area. The staircase construction entailed encroaching on 30 cm of a neighbors' property. The neighbor originally agreed to the construction but then later retracted his approval. This led to considerable delays in construction, though the legal team was able to facilitate negotiations and gain approval from the neighbor leading to the construction of the staircase.

➤ **Case of Mangeoire**

**Source of conflict:** Inaccurate information provided by shelter beneficiaries and neighborhood (*Claim to Right of Ownership*).

In this case, the landowner of property where 12 shelters were planned for construction was reportedly out of the country. This was reported by the shelter beneficiaries and validated by surrounding community members. A representative of the landowner was identified and reported that the landowner would not have any objections to the shelter construction. Further investigations by the legal team with the community supported these claims.

However, after completion of shelter construction, the land owner identified himself to IOM providing sufficient documentation. The owner informed the team that he did not support the construction activity and threatened the population with an eviction notice. The IOM Legal Team negotiated with the landowner to extend the length of stay on the property while IOM identified alternative areas to relocate the families and dismantle the shelter units. The case was resolved once all beneficiaries had been relocated to other areas and the shelters dismantled from the site.



**Examples of judicial action addressed by the Legal Team include:**

When an amicable resolution cannot be achieved, disputes are brought to the attention of the courts for judicial action. Alleged owners initiate the action by demanding that IOM suspend construction work or demolish shelters. There have been few cases that have been resolved through this process though they have involved a significant number of shelters.

➤ **Case of Mayard**

**Source of the conflict:** Absence of evidence of land ownership (*Claim to Right of Ownership*).

With the authorization of the Mayor of Jacmel, IOM began the construction of 330 shelters on public land. Once construction had started, a summons was sent from an alleged owner of the property to IOM demanding that all construction cease and that the land be returned to its original state.

Based on this claim, the Mayor's office offered to expropriate the land for public purposes if the alleged owner was able to prove ownership. However, the alleged owner was unable to provide the needed legal documentation. The legal team also could not identify sufficient evidence to support the claim. With the Mayor's approval IOM continued shelter construction on the site.



IOM Shelters in Mayard site, Jacmel

### III. CONCLUSION

#### *Land tenure barriers in Haiti can be overcome with the establishment of appropriate mechanisms*

Effective implementation of a shelter program in Haiti, in spite of the existing land tenure barriers, is possible if the appropriate mechanisms are in place to help address these issues. For the IOM, the legal team served as this mechanism and as a result over 11,000 shelters were constructed within a two year time frame.

It is important to highlight that most cases of conflict encountered by the IOM Shelter Program occurred prior to the formal establishment of the Legal Team. Having the team in place has proved highly effective in reducing delays and other obstacles related to land tenure. Investing resources in preventive measures, working closely with the community and working with all potential, actual and “self-perceived” right holders is also essential in reducing the difficulties encountered during and after the shelter construction.

Examples of measures that can be put in place to reduce the potential of disputes during the process of shelter construction include: extensive research and validation of land tenure situation in the area; strong community engagement and information sharing about the program and its effect on the community; and securing the necessary agreements with all relevant stakeholders.

#### *The Land Tenure Situation Varies from Neighborhood to Neighborhood*

Both the experience of the Legal Team working in the context of the IOM shelter program, and the team implementing the IOM Overcoming Land Tenure Barriers to Reconstruction (OLTB) project<sup>10</sup> have shown that the land tenure situation in Port-au-Prince can vary considerably from one neighborhood to another.

While this has important implications for any policy development in this area, in terms of the practice of shelter construction it requires the Legal Team to be flexible and avoid assuming that what worked in one area will also work in another. Though the creation and the establishment of general tools and methodologies are important, obtaining local knowledge about the land tenure situation in a particular neighborhood is equally important to ensure success in preventing or resolving land barriers to shelter construction

#### *Amicable Settlements are the Best Way to Resolve Disputes*

In the experience of the Legal Team, both land tenants and land owners prefer to settle their disputes outside of the courts, through mediation with the help of IOM. This appears to be the predominant way in which land disputes are settled in Port-au-Prince, also outside the context of shelter construction. A number of factors can explain this including the high cost associated with the courts; the long time it takes to settle disputes through the courts; the difficulties (and

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<sup>10</sup> OLTB is a program established by IOM targeted that aims to gather and disseminate land tenure and occupancy information to facilitate overall reconstruction efforts in Haiti. More information about this program is available upon request. |

undesirability) of enforcing judgments against unwilling parties; but also the lack for formal documentation on both sides.

Two caveats, however, need to be kept in mind. Firstly, the presence of a legal team dedicated to overcoming land barriers does not eliminate the risk of land conflict, it simply reduces it, in the experience of IOM Haiti quite significantly. Thus, shelter actors need to continue being prepared to deal with actual conflicts. Secondly, the fact that there are no conflicts today – or that people agree to settle their difference amicably at this moment in time- does not mean that in the medium- to long-term, no conflicts will arise. While, at the time of writing, the Legal Team has not encountered cases of recidivism for any conflict addressed by the team, this cannot be excluded for the future.

That being said, this should not prevent shelter actors from construction – some degree of “legal insecurity” is unavoidable in the current context of Haiti – but it may point towards the need for continuous monitoring in areas where shelters have been constructed.