

# Towards Tenure Security after disaster: Principles and their application in Haiti <sup>1</sup>

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## 1. Problematic: Land issues after disasters

A family or community's security of tenure before a natural disaster has an effect on at least 5 important scenarios after a disaster:

- **Level of post-disaster damage:** the location and type of housing that families felt secure to invest in before a disaster and the level to which housing was regulated may affect the level and type of damage to their home
- **Possibility of being displaced:** those with priority access to their original plots, with property to protect and a sense of ownership may be less likely to be displaced in the short to medium term
- **Possibility of a rapid return:** even when families are initially displaced because of rubble or safety fears, those with security of tenure may be able to return more quickly.
- **Possibility of accessing and installing a transitional shelter kit:** access to space and a way to demonstrate security of tenure may make it easier to access a transitional shelter kit, especially in dense urban areas or where those unable to access land before the disaster had settled on land considered risky
- **Possibility of reconstructing:** the speed and confidence with which people are able to reconstruct is also affected by tenure security. More generally, insecurity of tenure is likely to be an indicator for other pre-disaster vulnerabilities which will affect a family's access to resources after a disaster.

## 2. Principles of a fair and appropriate response

- Families may do better than NGOs at finding a workable land arrangement for their transitional shelter whether this is with host families or a space available for installing a shelter kit
- Where people wish to return to their original locations, we should support families to seek tenure security to a) facilitate movement back to housing plots and b) secure the home as a viable base for livelihood activities.
- Whatever the tenure situation, where shelters are provided they will be the property of the receiving household.
- Tenure security does not necessarily mean formally registered, legally recognised, inheritable land ownership forever. It means a transitional agreement or arrangement to make sure that people can restart their livelihoods and be confident that they will not face forced or sudden involuntary eviction and loss of livelihood as they recover from the earthquake and plan their next steps. Pathways indicate that this is an iterative process.

## 3. A conceptual framework in the Haitian context

The processes involved in securing tenure are a VERY COMPLICATED function of history, geographic location of political movements and mobilisations, socio-economic status, exclusion and the ability of a national legal apparatus to keep pace with change and build confidence of citizens.

A summary of some characteristics of the context property in Haiti is presented in table form below. (Table 1)

A post-earthquake approach can take two paths summarised below and shown graphically in Table 2.

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<sup>1</sup> This document is based on feedback from Cord Aid, the informal working group on Land and Space issues, GOAL documents on local government structure and Paul Rudenberg's comments on draft papers.

	<b>Advantages</b>	<b>Disadvantages</b>
<b>Top down: de précarité vers légalité</b> <ul style="list-style-type: none"> <li>• use legal documents and contracts</li> <li>• comply with national law</li> </ul>	Legal and longer term	Slow, complicated and may be impossible at any time but especially after an earthquake and may favour those already with access to legal services
<b>Bottom up: de précarité vers légitimité</b> <ul style="list-style-type: none"> <li>• support peaceful existing and spontaneous agreements but seek help or arbitrate where conflict arises</li> <li>• prioritise those in the most insecure situations</li> <li>• collect local evidence to record and legitimise tenure arrangements (including rental tenure and lease tenure) in collaboration with local authorities and key local individuals with recognised local legitimacy</li> </ul>	Supports Haitian systems that may difficult to understand in an emergency, works more quickly, may lay foundation for more security later	May not be formally recognised by legal entities or the state later and may not be compatible with national law

## 4. What should we do now?

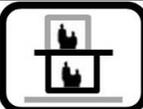
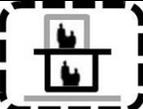
- Adopt a pragmatic bottom-up approach seeking legal advice from independent Haitian specialists and dialogue with appropriate authorities be clear that the post-disaster approach to land will not solve all land issues but should seek to protect tenants and land tenants from the threat of sudden, involuntary removal from their pre-earthquake homes
- Support peaceful existing and spontaneous agreements and do not impose agreements where no conflict/tension exists
- Identify and facilitate the right person to talk to at the level of authority closest to each case, resort to local committees at municipal level and look for their involvement in tri-partite agreements (landlord-tenant-committee)
- Track and report evictions/abuses to each other and the cluster system.

### Vulnerability

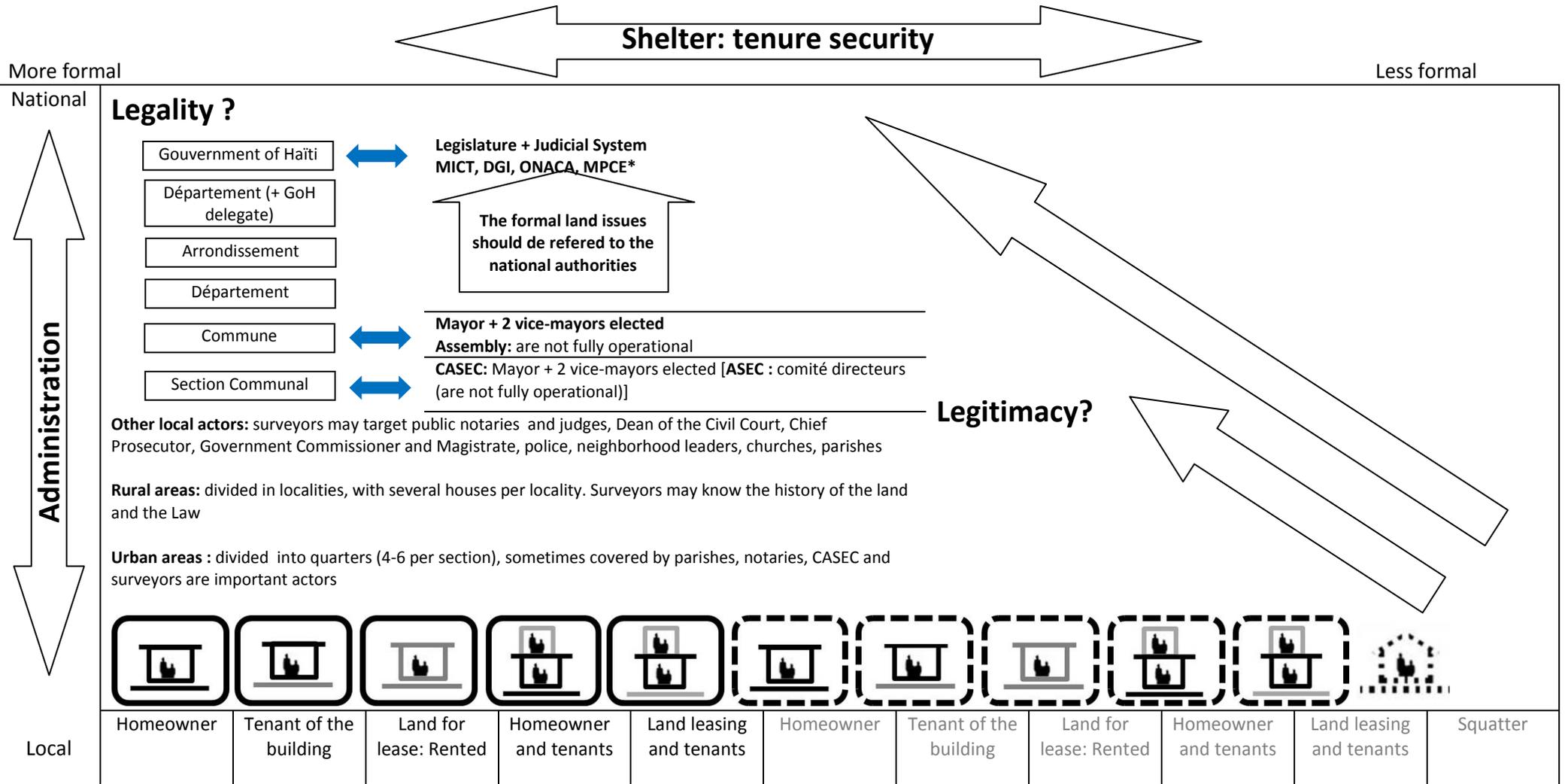
- NGOs may find themselves having to trade-off between supporting the less land-vulnerable (those with land and housing assets pre- and post-earthquake) in order to help the most land-vulnerable (those without land and housing assets pre- and post-earthquake, those in congested camps, squatting or seeking rental accommodation) Head of household – nominal holder of tenure – died in earthquake
- Women' status in relation to land (need more data and specialist advice)
- Non-head of households, youth status in relation to land (need more data and specialist advice),
- Family-less young people as owners of permanent "transitional" houses in new shanty towns renting to, or otherwise profiting from, tenants

## 5. What to do for the future?

- Track and register the land vulnerable
- Support families to collect and record the evidence they have accumulated for their occupancy
- Pay attention to the governance and planning for disbursement of reconstruction funding and any possible government/Development bank sponsored compensation schemes and the differential impacts on the tenure insecure and the strategy of the Commission Intérimaire pour la Reconstruction d'Haïti (CIRH), L'Autorité pour le Développement d'Haïti (ADH)
- Continue to work closely with existing or post-earthquake local level committees building a more nuanced picture of their priorities, biases and attitudes to the land-vulnerable

TABLE 1 Before disaster		After disaster
	Homeowner	<p><b>Ownership agreements:</b> documentation exists but may not be up to date. The DGI, the notary's big written register, and the landowner, are – in provinces - all likely to have some sort of official paper on the land sale.</p> <p><b>Rural agreements:</b> CordAid found that in some areas families occupied land for free because it was family land. A nominal fee may be paid to government to lease land for 10 years and land then moves from government ownership to the lease (VERIFY).</p> <p><b>Rental agreements:</b> tenancy period in law is 1 year (VERIFY) and agreements signed by the CASEC are legally valid (VERIFY)</p> <p><b>Lease agreements (prescription):</b> buildings built on leased land can revert to landowner at any time within first 10 or 20 years (VERIFY). ACTED in Jacmel met with the Doyenne du Tribunal Civil, Chef du Parquet, Commissaires du Gouvernement et Juge d'instruction and concluded that : <i>"le propriétaire du dessous est aussi celui du dessus »</i> ("The owner of the below is also the owner of the top")</p>
	Tenant of the building	
	Land for lease: Rented	
	Homeowner and tenants	
	Land leasing and tenants	
	Homeowner	<p><b>Urban owner-occupiers:</b> CARE found in Carrefour and Leogane that owners were:</p> <ul style="list-style-type: none"> <li>• more likely to be on their original plots</li> <li>• able to reclaim materials (more landlords than tenants were in CGI shelters (en tôle))</li> <li>• more landlords than tenants seem to be hosting</li> <li>• some tenants paid 1 year of rent in advance on 1 January 2010, now investment lost</li> </ul> <p><b>Provincial owner-occupiers:</b> when papers are lost in the earthquake and can't be found in the official registers, a surveyor can legally recreate the land paper using the neighbor's papers, if such exist.</p> <p><b>Uncertainty over lease:</b> land tenants may have lost their house (main asset) and may want to/have to relocate while they wait</p> <p><b>Multiple occupancy buildings:</b></p> <ul style="list-style-type: none"> <li>• in some cases the top floor is damaged but the bottom floor is intact so tenants are displaced</li> <li>• where site is full of rubble the owner or leaser on the ground floor has first access to space</li> <li>• "vertical" living spaces are lost so more people must be accommodated on less space</li> </ul>
	Tenant of the building	
	Land for lease: Rented	
	Homeowner and tenants	
	Land leasing and tenants	
	Squatter	<p><b>Lack of documentation:</b></p> <ul style="list-style-type: none"> <li>• in some cases the signatory head of household was killed in the earthquake</li> <li>• in some cases documents have been lost in the earthquake</li> </ul> <p><b>Community acceptance, legitimacy or legality:</b></p> <ul style="list-style-type: none"> <li>• rural context: community recognition of informal ownership, people know each other, resolution of disputes possible at community level and there is more latitude</li> <li>• urban context: no record or clear picture of land tenure, less easy to resolve through community mechanisms and more complexity with a need to work with an authoritative person or institution</li> </ul>
	Squatter	<p><b>People with no legal status:</b> commonly referred to as squatters, for example, ACTED identified "beach-dwellers" with no legal status but with long term occupancy in the zone. In reality, the majority of people may have no official legal status BUT we can consider squatters as those with the least evidence to show tenure security. <b>Not much information on the impact of the earthquake on this group.</b></p>

**TABLE 2**



## 6. \* Partners of the land planning sector <sup>2</sup>

- **Ministère de l'Intérieure et des Collectivités Territoriales (in charge of municipalities)**
- **Direction Générale des Impôts, DGI** : manages the state-owned properties and is responsible for property tax collection. The property registers are not computerised and the manual registers are in many cases not updated. The interface with the municipalities is not clear. E.g., the DGI is supposed to collect the property tax and deliver to the municipalities, but when this fails, many municipalities take over the tax collection.
- Business Promotion and Production of Social Housing, EPPL: responsible for social housing but no funding.
- **Ministère des Travaux Public, Transport et Communication, MTPTC** : mandate for planning but low interest and capacity pre-earthquake
- Ministry of Interior and Local Authorities, MICT: responsible for the decentralisation process and the administrative division into selectivity territorial, the MICT is also in charge of the municipalities, which report to MICT.
- **Office National du Cadastre, ONACA**: actually no national cadastre for Haiti and agency has few resources to put splintered cadastre data together
- **Public notaries**: responsible for verifying the process of transfer of ownership. They inspect the surveying that has been done, control the previous chain of title owners and attest that the individuals exchanging title and resources are the persons they claim they are. The notaries also attest that the whole process of transfer is legal. The verification can take a long time, as the notaries have to look up titles for the last 20 years in the register at DGI.
- **Ministère de la Planification et Coopération Externe, MPCE**: mandate on regional planning and land use planning but not urban or metropolitan planning. MPCE proposed a new law before earthquake, which is not yet endorsed, involving a decentralisation of urban planning to the level of boroughs (*arrondissements*).

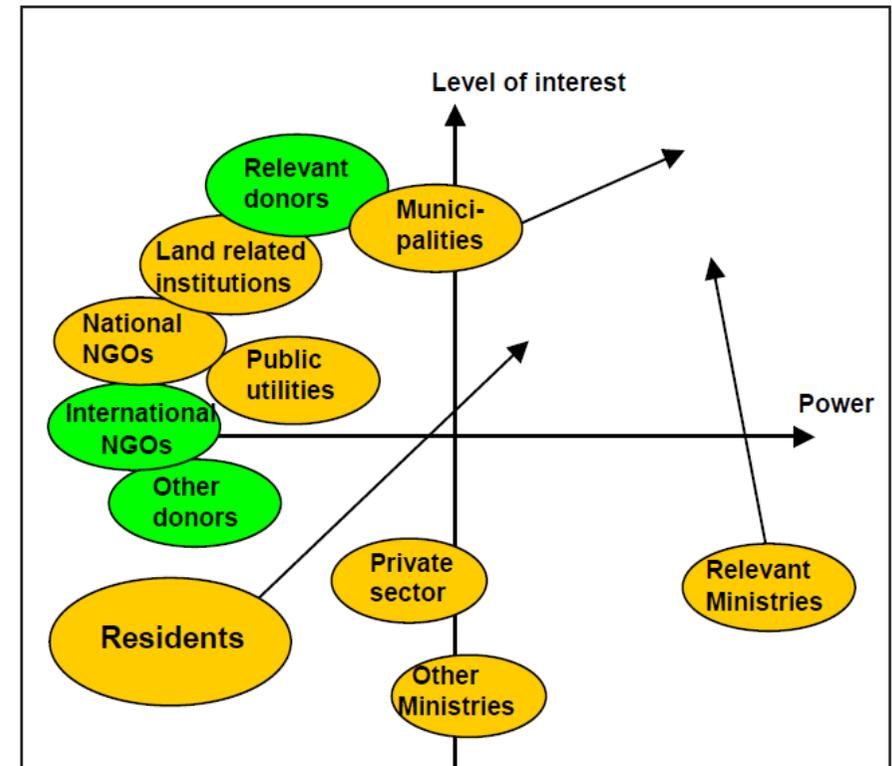


Figure 12. Level of institutional interest and power. The positions of the different groups show where they are today and the arrows for some of them show where they should ideally be. The light/yellow circles represent national stakeholders, dark/green circles = international stakeholders.

<sup>2</sup> UN-HABITAT, "Strategic citywide spatial planning: A situational analysis of metropolitan Port-au-Prince, Haiti" (United Nations Human Settlements Programme, 2009), <http://www.glt.net/en/home/land-use-planning/strategic-citywide-spatial-planning/details.html>.