

Wageningen University - Department of Social Sciences

Rural Development Sociology

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**“Right” people in the “right” place.**

**The land issues and post-disaster response in  
Haiti: The impact of the shelter programs on  
tenure security of the urban poor.**

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## Summary

The response of the shelter sector to Haiti earthquake in 2010 is judged slow and ineffective. Many actors point at Haiti's complex land situation due to the weak land governance in the country as the reason for delays in the earthquake response. The uncertainty over the land rights is presented as the stumbling block for reconstruction.

This thesis deals with the land issues in the shelter projects after the 2010 Haiti earthquake. I analysed the strategies that the shelter organizations designed to deal with the uncertainty over land rights in relation to the available mechanisms of access to land in legally plural environment in Haiti. I also assessed the impact of these strategies on the long-term tenure security of the beneficiaries, most of all the urban poor. From the same angle I looked at the projects concerning change in the land administration that are being proposed as an important part of Haiti's reconstruction. The desk study was completed with a period of field research conducted in October 2011 in Port-au-Prince and Léogâne areas.

Although all the actors agree that the land governance problems in Haiti need to be addressed, the ideas how they should be approached differ. Two schools of thought – the individual property rights and continuum of land rights - are represented in Haiti by different actors. The former calls for the legal cadaster of land and individual land titling, the latter for the range of tenure options not limited to individual property that would allow the use of land by the poor and less powerful groups of the society. In the shelter response the attempts to base the shelter provision strategies on the legal ownership of land failed due to the general lack of land titles among the people affected by the earthquake. Then the second approach was promoted by the shelter cluster.

The legal mechanisms of access to land in Haiti are complicated and costly. Most of the people choose to use customary, informal or illegal access mechanisms that are not recorded by the state land administration. After they had to give up on the state legal access to land, the shelter organizations working in Haiti did not choose from the existing range of mechanisms but rather developed their own in the form of project law. The project law changed existing patterns of gaining, maintaining and controlling access to land. Most of the shelter projects secured tenure of beneficiaries only for three years, however some organizations made successful attempts to assure long term tenure security of their beneficiaries. A good example is the strategy developed by a Dutch development organization Cordaid in their operational area in Villa Rosa in Port-au-Prince.

On the national level, the project of national legal cadaster is promoted by Organization of American States. There are reasons to believe that this project, if implemented, would exclude large groups of Haitian society, mainly squatters and people in informal settlements who do not own land on which they live. At the same time the UN Habitat is supporting various projects of collecting data about the *de facto* land tenure in urban areas, starting with the participatory enumeration project. These projects could result in developing a range of tenure options not excluding the residents of unplanned neighbourhoods. The political decision has to be made about the official recognition and validation of the data from these projects.

There are ways for shelter organizations to support future development towards securing tenure of the Haitian poor through their shelter programs. The shelter organizations can coordinate data collection by using standardized questionnaires and data registration format so that the data could be processed into one central database. They could also facilitate building relations between people in informal settlements and the local authorities, so that the authorities recognize informal settlements as deserving their attention.

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## List of abbreviations

ALNAP	Active Learning Network for Accountability and Performance in Humanitarian Action
CARE	Cooperative for Assistance and Relief Everywhere
CASEC	<i>Conseil d'Administration de la Section Communale</i> / Communal Section's Administrative Board
CIAT	<i>Comité Interministériel d'Aménagement du Territoire</i> / Inter-ministerial Committee for the Land Management
CORDAID	Catholic organisation for Relief and Development Aid
CRUZ ROJA	<i>Cruz Roja Española</i> / Spanish Red Cross
DGI	<i>Direction Générale des Impôts</i> / Central Tax Office of Haiti
HGW	Haiti Grassroots Watch
IFRC	International Federation of Red Cross and Red Crescent Societies
IHSI	Institut Haïtien de Statistique et d'Informatique / Central Statistical Office of Haiti
IOM	International Organization for Migration
NGO	Non-Governmental organisation
OAS	Organization of American States
UN	United Nations
UNFPA	United Nations Population Fund
UN-HABITAT	United Nations Human Settlement Program
USAID	United States Agency for International Development

# 1. Introduction

*It is impossible to overstate the degree to which the land ownership situation in Haiti contributed to the impact of the earthquake and to the complexity of reconstruction.*

Priscilla Phelps, Interim Haiti Recovery Commission (HGW 2011)

## 1.1 Land in disaster response

Land is an important element in the disaster response puzzle. As recognized by the UN-HABITAT (2010b) land issues such as security of tenure, land use, land access and land administration have to be dealt with in the key humanitarian sectors of shelter, protection, livelihoods and early recovery. After a disaster the land is needed to build camps for the displaced and to construct shelters for the people who lost their homes. As a resource for livelihoods and a place to access services and infrastructure land is also important in planning for long-term reconstruction (UN-HABITAT 2010b). The land issues gain extra importance and complexity after urban disasters as in urban environment land is scarce and uncertainty of land rights high. O'Donnell et al (2009) list following land-specific risks related to post disaster response in urban areas:

- difficulty finding appropriate land for temporary living centers and long-term resettlement;
- powerful individuals taking advantage, leading to land-grabbing;
- displaced people unable to return to their former homes (especially renters, squatters and the landless);
- uncertainty of tenure and land rights because of a lack of records and failure to identify heirs in an authoritative manner (for example in the absence of wills).

This research project is focused on land-related issues in the work of one disaster response sector – of transitional shelter – after the 2010 earthquake in Haiti.

On January 12, 2010 an earthquake of the magnitude of 7.0 on the Richter scale hit Haiti. With the 72 per cent of its population living under the poverty line, Haiti carries the title of the poorest country on the western hemisphere. It is also labeled fragile state due to its weak economic, social and political infrastructure, mainly in the domain of governance. The Haitian vulnerability contributed to the devastating consequences of the earthquake. Estimated 230,000 people died, 300,000 were injured and 1,5 million left homeless or displaced. The material damage was assessed at about 120 percent of the country's annual GDP. Twenty-eight of twenty-nine government ministry buildings and approximately 200,000 homes were damaged or destroyed.

The Haiti earthquake enjoyed extensive media coverage and got a huge international response resulting in US 5.3 billion of aid pledged at a donor conference in New York on March 31, 2010. The influx of the international aid organizations in Haiti was massive, more than 1000 NGOs were operating in place a few months after the disaster. Despite the scale of the response in

human and financial resources, a year after the earthquake over a million Haitian people were still living in tents. At the moment when this research was conducted, 22 months after the earthquake, this number was still estimated at 600,000. 1.5 years after the earthquake the shelter actors met only 70% of their targets in transitional shelters, conducted only half of the planned reparations and built only 30% of planned permanent houses. What happened?

The issue that returns in the comments to this situation and its analysis is the land tenure. According to the HGW report (2011) the complications around land tenure in Haiti are recognized by all the humanitarian actors as a major, and perhaps *the major* stumbling block in reconstruction of Haiti.

### **1.2 Problem description and justification for this research**

In the sector of shelter the question to whom belongs the land is basic - the condition for the shelter programs is that the houses (be it temporary, semi-permanent or permanent) are built for the right people in the right places. In Haiti it is not easy to answer this basic yet crucial question. The complications around land tenure in Haiti start with the weak land governance. According to UN-HABITAT (2010b) land governance can be characterized as weak when:

- A significant proportion of the affected population has informal land rights;
- Land records and data are incomplete, inaccurate or out-of-date, or have been destroyed by the hazard;
- Government capacity to enforce property rights and the rule of law is weak;
- Poor and vulnerable groups face disproportionate obstacles to protecting their land through formal institutions; and
- Institutional corruption and legal uncertainty facilitates land-grabbing by socially powerful groups.

Haiti earthquake mainly hit urban areas – the capital Port au Prince and the cities of Léogâne and Gressier. Before the earthquake the majority of the inhabitants of the Haitian cities – estimated 70% - lived in informal settlements. There are almost no data on the different type of land tenure in the country and it is difficult to find reference documents on housing, land and property. Less than 5% of the Haitian territory is subject to a cadaster and the property rights office has no digital records (OAS 2010).

An important factor affecting the response of the shelter actors is legal uncertainty. It remains unclear which rules to follow, where to seek legitimization, how to make sure that the beneficiaries do not lose the right to their shelters. Yet, the shelter actors need to develop solutions to be able to operate in this complex environment and provide shelters to the affected population including those who are not able to present any proof of land ownership. The solutions adapted by the transitional shelter organizations are supposed to support transition from relief to development (IFRC 2011) so their impact on the tenure situation of the beneficiaries should be taken into consideration.

At the same time, the tenure security of the vulnerable groups will also depend on the policy that is adopted to address the problem of the weak land governance.

The focus of this research is on urban poor – the most vulnerable group when it comes to tenure security. The general assumption behind it is that the post-disaster reconstruction, including the shelter programs, should decrease the vulnerability of the affected population.

### **1.3 Research objective**

The objective of this research is to provide insights into how the land-related issues can be addressed in the post-disaster context in the way that would secure a long-term access to housing for the urban poor.

The second objective is to gain a better understanding of how the shelter actors in disaster response can operate effectively and in a way that increases the security of tenure of their beneficiaries in the situation of legal uncertainty.

### **1.4 Research question**

*What intervention strategies in the sector of shelter help to secure long-term tenure security of the urban poor in the post-earthquake Haiti?*

Sub-questions:

- *How is the access to land gained, maintained and controlled in Haiti?*
- *What land tenure-related strategies are implemented by the shelter actors and what is their influence on the tenure security of the beneficiaries of their programs?*
- *What options for change in land tenure policy exist in Haiti and what is the relation between the strategies of the shelter organizations and the potential policy change?*

### **1.5 The scope of the research**

The research is organized around three areas:

- the land system prior to the earthquake and the land access mechanisms;
- the response of the shelter actors and the strategies they apply;
- the possible long-term land policies that are being negotiated at the moment in Haiti.

### **1.6 Outline of this thesis**

This thesis is presented in eight chapters:

**Chapter 1** explains the importance of land-related issues in disaster response. This is followed by the presentation of the research: the problem statement and the justification, the objectives of the research and the research questions.

**Chapter 2** outlines the conceptual framework for the research. It elaborates on the key concepts underlying the research and presents trends in addressing the land issues.

**Chapter 3** describes the methodology adopted in this research. It describes the methods of data collection during both the desktop study and the fieldwork. It introduces the case study and provides explanation for the choice of stakeholders that have been interviewed.

The next three chapters present the research findings in the three areas of the research: the land system in Haiti, the response of the shelter actors to the Haitian context and the directions for development in the domain of land administration that are discussed in post-earthquake Haiti.

**Chapter 4** explores the access to land mechanisms in the Haitian land system. It describes the available state legal mechanisms as well as the everyday practice of access to land.

**Chapter 5** presents the development of the shelter response after the Haitian earthquake in relation to the land issues and the guidelines developed by the Shelter Cluster for the organizations. It is followed by the presentation of the case study – the comparison of the land-related strategies used by a Dutch development organization Cordaid for their shelter programs in rural, semi-urban and urban areas. The chapter also presents the land-related strategies designed by three other organizations working in Haiti in the area of shelter and the impact of the shelter organizations strategies on the access to land mechanism and tenure security of the affected population.

**Chapter 6** presents how the land issue is approached outside agencies' shelter response. It analyses the two approaches to addressing the land issues that are being promoted in Haiti and discussed as possible future policies with different parts of Haitian government by two organizations – The Organization of American States and the United Nations Human Settlements Program. It presents and analyses the projects into which these approaches are translated – the legal cadaster and the participatory enumerations.

**Chapter 7** discusses the results of the research and presents conclusions. It assesses different land-related strategies in terms of their impact on the tenure security of the beneficiaries. It also discusses the possible implications of two competing scenarios of development for the land tenure situation of the vulnerable groups in Haiti.

## 2. Conceptual framework

In this chapter I will present the concepts that I used to analyze the research material. I will start with legal complexity and the theory of access. These two concepts are relevant to analyze the relations between people, land and other people, the topic that is central to my research project. Applying the perspective of legal complexity allows exploring existence and interaction of different (state and non-state) legal orders in one socio-political space (F. von Benda-Beckmann 1997). This is relevant in the case of Haiti framed as a fragile state. The concept of *access*, which encompasses a wide range of social relationships that can constrain or enable people to benefit from resources without focusing on property relations alone (Ribot and Peluso 2003) is a relevant tool to analyze how people in Haiti get to use land (by legal and non-legal means) and how the aid organizations could access land to build shelters in disaster-response. Next I will present some ideas about normative-legal dimensions of development, including the concept of project law, the law created by the development organizations to reach the goals of intervention (F. von Benda-Beckman 1993). An introduction to the concept of focusing event (Birkland 1998) will follow. This concept helps to analyze how the post-disaster circumstances can open-up space for policy change, in this case, the change in land policy. And finally, I present two approaches to addressing the land tenure issues in relation to development – the individual property rights school and the continuum of land rights school.

### 2.1 Legal complexity

The shelter actors in Haiti operate in legally complex environment. A big part of what is hidden behind the term “complications with the land tenure” can be boiled down to this. Not only the basic question about the ownership of the land remains without a clear answer, but also, and more importantly, it is not clear whom to ask. Haiti, after the years of political instability and various foreign influences, is listed as a fragile state as the state apparatus, the governance system and the rule of law are weak (Christoplos and Hilhorst 2009). Thus, the state is not always the first and definitely not the only source of validity. The legal complexity perspective offers the framework to analyze the struggle of the shelter actors to clarify the situation around the land tenure in Haiti through interaction with various actors and institutions who are following different sets of rules.

Legal complexity (or legal pluralism as some authors call it), the perspective originating from the field of legal anthropology, became influential also in other fields, especially in studies of natural resource use and management (Roth 2003:21). Legal complexity can be defined as the coexistence and interaction of multiple legal orders within one social setting or domain of social life (Meinzen-Dick and Pradhan 2002). These multiple orders are “based on different sources of ultimate validity and maintained by forms of organization other than the state, within one political organization” (von Benda-Beckmann 2002:37). Law is understood broadly, not as a single legal order generated and enforced by the state, but as multiple normative and cognitive orders that can be generated and maintained by any social field (Meinzen-Dick and Pradhan 2002). As described by Unruh (2002: 351), separate social fields of “legality” with different loci of authority overlap and interact. Some authors call them semi-autonomous

social fields (Griffiths 1986). Law-in-place is a product of interaction within and between these fields. Maizen-Dick and Pradhan (2002) list various kinds of law that can co-exist in a social space: state (or statutory) law, religious law, customary law, project (or donor) law, organizational law and a range of local norms, which may incorporate elements of other laws, to the extent that distinguishing the constitutive elements of such hybrids is no longer possible (Roth 2003).

Additionally, Spiertz (2000) reminds us that plurality of law is not only the matter of co-existence of different normative systems, but also that one legal rule or institution can mean different things and function in a different way depending on the context, which may seem counter-intuitive. In order to investigate the potential for up-scaling of a certain land tenure solution it is necessary to look at the context-dependency of the rules or institutions that they are based on.

As a derivative of the social organization (Griffiths 1986, Unruh 2002, see also Crook 2001, Houtzager 2001, Woodman 2001 in: Roth 2003), legal pluralism can be seen as a tool to understand “law in society”. Following the suggestion of Spiertz (2000) the legal pluralism perspective can be used to explore the relationships between the various legal orders, the types of interest, and the social relationships and practices involving resources in local contexts of social interaction. The analysis starts from the perspective of people – what are people’s everyday experience with access and control over resources? (Maizen-Dick and Pradhan 2002:2). For example, breaking the rules could be explained in terms of people’s range of options instead of being simply seen as deviance or noncompliance (Spiertz 2000). The legal complexity perspective allows analyzing the power differences between co-existing state and non-state legal orders. Different legal orders can have different impact on social life and human behavior and law can be empowering or disempowering, depending on which of the legal orders dominates (Crook 2001, Houtzager 2001, Merry 1992 in: Roth 2003). This can be used to analyze the impact of different land tenure solutions on the tenure security of vulnerable groups.

According to most of the authors legal pluralism entails the possibility to choose between co-existing normative orders (Maizen-Dick and Pradhan 2002). As Spiertz (2000) suggests, people chose to use the most convenient legal repertoire to rationalize and legitimize their decisions or behavior. The claims can be based on the law that is judged the most relevant. This phenomenon is called “forum shopping” (K. von Benda-Beckmann 1981). Co-existing legal orders are regarded as a kind of menu from which different parties can chose according to their needs. As Roth (2003) notes, social actors can weigh various legal options, even if their capacity to do so is not always the same. As Spiertz (2000: 191) puts it, the choice of a legal framework is “a matter of expediency, local knowledge, perceived contexts of interaction and power relations”. According to Long (1992 in: Roth 2003) differences in power, capacity and ‘knowledgeability’ determine the extent to which law can be used as a resource (compare Roth 2003). Thus, legal pluralism has a potential to provide room for maneuver or negotiation when it comes to formulating claims, for example concerning land property, however the marge of maneuver is different for different actors. The use of the concept of forum shopping for the analysis of the situation in Haiti may be twofold. On the one hand, it may be used to

see how local people support their claims, on the other hand it is interesting to explore if and how the shelter organizations in Haiti exploit the potential of forum shopping to support and legitimize their strategies.

The downside to the legally complex situations is, as noted by Meinzen-Dick and Pradhan (2003), the fact that it generates uncertainty. First, there is the uncertainty about what can be done, as no single actor knows or knows about all of the “pertinent or possibly applicable legal frameworks”. Usually actors know more about the set of rules generated in their social field and less about the rules of different provenance (Meinzen-Dick and Pradhan 2002). Second, there is the uncertainty about what can be expected from others. In the situation where multiple legal frameworks can be applied at the same time the predictability of what the other actors will do is necessarily low. Legal uncertainty is presented as one of the main difficulties surrounding the “land issue” in Haiti, and as such it needs to be explored. It is important to analyze to what extent the legal uncertainty “hinders” the work of the shelter actors and if and how they try to broaden their knowledge about the available and usable legal frameworks.

## **2.2 Theory of access**

In the legally plural situation, the relation between people and land cannot be easily conceptualized in terms of property in its traditional understanding. According to the legal pluralism perspective, the property should be seen as a “negotiated outcome” (Mainzen-Dick and Pradhan 2002). The concept of property as we know it does not allow describing the relation between people and things in the way that would give account of the process of negotiation. This can be done through the concept of access. The theory of access allows analysis of “everyday experience of people with access and control over resources”, as it was suggested by Mainzen-Dick and Pradhan (2002:2). It is a useful tool to investigate what is happening between people and land and other people.

Ribot and Peluso (2003) define access as the *ability* to benefit from things while the property is the *right* to benefit from things. Ribot explains the difference between right and ability in his earlier work (1998). While *right* is a prescriptive concept that refers to a recognized and supported claim, the concept of *ability* describes what is actually happening (whether legal or socially accepted or not). As Ribot and Peluso (2003:157) put it, the property is only one set of factors in a “larger array of institutions, social and political-economic relations, and discursive strategies that shape benefit flows”. The concept of access is wider than this of the property as it encompasses “a wider range of social relationships that can constrain or enable people to benefit from resources without focusing on property relations alone” (Ribot and Peluso 2003: 154). Access includes *de jure*, *de facto* and extra-legal mechanisms governing the use of resource (Ribot 1998). “Extra-legal” refers to the non-rule-based structures, relations and processes (Ribot 1998: 311). The rules made by state or non-state actors may be contested among co-existing legal systems so the extra-legal mechanisms must be included in the analysis. In short, the concept of access can be used to analyze who, how and in what circumstances gets to use the resource of interest. The concept is dynamic, it includes the mechanisms by which different actors gain, control, and maintain the benefit flow and its distribution. It also accounts for the power relations behind these mechanisms (Ribot and Peluso 2003: 159,161).

Ribot (1998) makes a distinction between maintenance and control over access. *Maintenance* is about expending resources or power to keep access open for one's self or others. *Control* is the ability to mediate the access of others. The level of control over access depends on the individual's power and place within society. Both maintenance and control are "social positions that temporarily crystallize around means of access" (Ribot and Peluso 2003:159). Later, Ribot and Peluso add the third category – gaining access - that serves to describe how access is established (2003:159).

Ribot and Peluso (2003) describe different structural and relational access mechanisms. One can benefit from a resource through access to technology, capital, markets, labor and labor opportunities, knowledge and power to produce own categories of knowledge (see also Foucault 1978), authority, social identities, and social relations. It is interesting to investigate what kind of mechanisms play a role in the access to land in Haiti and if they are being mobilized by the shelter actors in their strategies.

The theory of access also recognizes that different political-economic circumstances change the terms of access and influence what set of actors (individuals or groups) will be able to benefit from a set of resources (Ribot and Peluso 2003: 158), which is very relevant when analyzing the post-disaster situation.

### **2.3 Relation between law and development**

Law is generally seen as an instrument of development. It is assumed that certain legal and institutional arrangements have a capacity to generate, enforce or reproduce an intended societal change. For example, the national cadaster, the formalization program or a program including participation will all be rationalized through their supposed positive effect on the community. As noted by Roth (2002), the reforms in law or, more recently, in governance are sometimes regarded as solutions per se and the main objectives of development.

Roth (2002) emphasizes the normative-legal dimensions of development, in the sense that the seemingly abstract policy ideals always have a strong normative dimension and their use may have legal consequences. The conceptions about development become policies and the policies may find their ultimate legitimacy in state law or at least have serious legal, livelihood, equity and security consequences for those involved (Roth 2003: 14). It is therefore important to investigate what kind of ideas, or discourses about development are there and if they have potential to become policies.

Development interventions may also have a more explicit legal basis. Franz von Benda-Beckman (1993) introduces a concept of "project law" – the law created to reach the goals of intervention. Weilenmann (2009) distinguishes two different understandings of project law. Project law can refer to the instrument for planning the development intervention - the regulations defining what development aid is, what the policies' objectives are and what is the rationale behind them. In the same spirit, Gunter and Randeria (2002 in Weilenmann 2009) apply the term to those regulations and procedures that are subject of bilateral or multilateral development agreements. At the same time the term project law also refers to these rules which are shaped in interaction between the development agencies personnel and the target

groups during the implementation of the project. As Roth (2003: 14) describes it, project law “creates a structure of decision making, stipulates dos and don’ts for ‘beneficiaries’, and forms the basis of justification for allocative decisions” (see also von Benda-Beckman 1989). It can be argued that the strategies designed by the shelter actors get the form of the project law in its second meaning – they serve decision making process on allocating shelters to some people - “the right people in the right place” - and not to the others. It is worth investigating what is their position among other normative orders and their potential to become incorporated into the state law.

Whether the development policies find their “ultimate expression in state law” or not, the agencies (through the project law) become important actors in the legally plural situation. Project law enters the menu of normative orders available for forum shopping. Thus the development intervention can “influence existing legal relations and change the conditions under which people are able to use their rights” (Weilenmann 2009: 156). It deserves to be investigated to what extent this is the case of the land-related arrangements designed and implemented by the shelter organizations in Haiti.

#### **2.4 Focusing events**

The post-disaster context provides specific circumstances in which the land issue gets a lot of attention. The idea that specific circumstances can open up space for social change, policy change or change in the political agenda is well described in the social-science literature under different names (Lund 1996, Birkland 1998; see also Kingdon 1984).

For Lund (1996), who analysis negotiations in post-war land tenure conflicts, intense periods of social rearrangement can occur in so-called “open moments”. An open moment is an opportunity where the room for “situational adjustment is great and hence where the capacity to exploit it is crucial for the actors” (Lund 1996 in Unruh 2003: 362). Unruh (2003) argues that in the post-war situations open moments are very likely to occur as in the recovery process land tenure, legitimacy, rules, and authority are typically challenged. This can potentially also go for the post-disaster period and needs to be looked at.

For the purpose of this research the most relevant is the concept of “focusing event”, developed by Birkland (1998). Birkland defines a focusing event as “sudden; relatively uncommon; (one which) can be reasonably defined as harmful or revealing the possibility of potentially greater future harms; has harms that are concentrated in a particular geographical area or community of interest; and that is known to policy makers and the public simultaneously” (1998:54). According to this definition the Haiti earthquake can be labeled a focusing event.

Birkland (1998) notes that a focusing event can reveal policy failures and focus public attention on the problems that used to be dormant. It can also lead to identify new problems that can be addressed through change in policy. He also describes the tensions that typically occur between powerful groups interested to preserve the status-quo (*pro-status quo groups*) and newly empowered groups (their empowerment being a direct consequence of the focusing

event that places them in a more strategic position) who seek to implement change (*pro-change groups*)(Birkland 1998). It seems important to see if any of the land-related problems identified after the Haitian earthquake are formulated in a way that allows addressing them through the new policies and if the pro-change groups, if they exist, agree on the direction of change or is there competition around the issue?

## **2.5 Approaching the land tenure – two visions**

While it is widely recognized that the land tenure in Haiti is a problem demanding an utmost attention the views on how this problem should be addressed differ. The preliminary study of grey literature identified two competing discourses existing in post-earthquake Haiti, which I called the “individual property-rights” discourse and the “continuum of land rights” discourse. The field work confirmed the presence of the two. The basic assumptions behind these two conceptions are different, starting from different conceptualizations of property. The consequences of adopting policies based on one or the other also considerably differs especially for the most vulnerable groups of the society who are at the center of attention of this research. Assessing the directions taken by the shelter sector and the strategies of different organizations against these two land tenure conceptions seems crucial when looking at their impact on the tenure security of the vulnerable groups. Also the extent to which these discourses are used in designing new land policies in Haiti needs to be investigated.

I will present the individual property rights discourse together with its critique and then the continuity of land rights as an alternative conception.

### **2.5.1 The individual property rights discourse**

There exists a body of academic reflection on the relationship between types of property rights and social and economic development. As Benda-Beckman (2001) notes, the most popular assumption is that there is a causal relationship between individual private ownership rights and economic growth. The main supporter of this thesis, Peruvian economist Hernando De Soto and his much acclaimed book *The mysteries of capital* (2000) gave inspiration for many policy reforms in the developing world usually designed and implemented by the Institute for Liberty and Democracy (ILD) of which De Soto is the president.

De Soto calls for the formalization of property rights of the poor. He argues that the lack of formal property rights is the primary cause of the underdevelopment of the Global South. The poor cannot benefit from capitalism because their existing assets are not recognized by the formal legal system. Formal property, De Soto says, allows people to generate the surplus value from their assets. The formal property document connects the assets of the poor with the rest of the economy and makes it possible to easily turn them into capital - rent, sell, and most of all use as collateral for credit. This, in turn, raises the productivity of the society resulting in the overall economic growth (De Soto 2000:180). Formalizing the property of the poor, De Soto claims, should significantly improve their situation.

These claims have many critics. The focus on individual title, formalization and credit as solutions to poverty are often contested by the civil society organizations (Kingwill et al 2006). There are also many critical voices among the academics. The arguments that the many De Soto’s critics raise may be summarized as follows:

### **There is much more to property**

The general critique about De Soto's work is that he focuses solely on the capitalization of property to realize its exchange value in the form of credit (Kingwill et al 2007). The critics point out that property has many important non-market functions such as securing livelihoods and reinforcing social identity, social continuity and social security (Kingwill et al 2007). The formalization programs usually ignore or even disrupt kinship ties and social networks. Moreover, the evidence shows that the poor do not perceive their homes as capital but rather as family asset, and are not willing to "capitalize" them even if they are able to do so (Finmark Trust 2004 in Kingwill et al 2007).

### **Formalization policies make poor even poorer**

Many critics agree that the poor, who are supposed to be the main target of the titling reforms, are in reality victims of these programs while the ones who benefit are elite and middle-income groups. The effect of the formalization programs is concentration of property in the big owners' hands (Mitchell 2004 in Kingwill et al 2006) and forcing the poor into squatting, the situation described by Durand-Lasserre (2005 in Kingwill et al 2006) as "market-driven displacements". As von Benda-Beckman (2001: after Fisiy 1992 and Neef 1999) puts it, "Outsiders, civil servants, politicians, and companies are far better equipped to make use of the possibilities for registration and manage to withdraw resources from the local economy. New ownership rights, licenses and concessions are accumulated by the local and national elites at the expense of local populations" (F. von Benda-Beckman 2001: 50).

Gonzales (2009) lists more specific risks of the policies that the poor have to face, among which:

- subjecting the urban poor to property taxes and utility bills that they can ill afford.
- increasing the vulnerability of the urban poor to predatory lending if these programs facilitate the use of homes for personal and business loans.
- destroying the social capital of the urban poor by undermining the social solidarity and community organizing that enabled informal settlements to develop.
- reinforcing the inferior social status of the urban poor by giving legal imprimatur to double standards for health, safety and environmental quality.

The impact of the titling policies on the poor proves to be far from beneficial.

### **Individual ownership is excluding**

Converting rights through formalization, as von Benda Beckmann (2003) importantly notes, changes the nature of the rights. Weaker rights can become excluded. The form of tenure that is granted through the formalization programs is individual ownership which reduces security of other people who are normally using the resource, the situation that is common in developing countries. As an example from South Africa shows, "whereas previously family members had tenure rights linked to kinship and responsibilities, ownership was now registered in the name of only one member of each household. This reduced security for women and members of the extended family, as the 'owner' could claim new legal rights to use and dispose of the property" (Kingwill et al 2006:9).

### **The key is not in the formal title**

Many critics emphasize that in the case of the poor in developing countries other types of tenure than exclusive private property continuously prove to be more secure. As von Benda-Beckman (2003) reminds us, many local legal systems were able to protect security of property and livelihood better than the centralized state land laws. Gonzales (2009) points out that empirical studies conducted in countries as varied as Columbia, Turkey, Mexico, Argentina, South Africa and Peru conclude that not the formal title but rather tenure security is critical with respect to investments that people make in their dwellings; that formal title makes little difference with respect to the acquisition of loans from private sector lenders; and that the vibrant markets can develop as well for untitled land (see also: Kingwill et al 2006). It has to be noted that the property rights school sees the security of tenure as best secured through private ownership with formalized, government-sanctioned private titling (Lund 2000), thus they rather identify tenure security and private ownership than oppose them. This is different understanding of tenure security than the one presented below.

### **2.5.2 Tenure security – continuum of land rights**

Land tenure denotes certain rights to land. It involves “a complex set of formal and informal rights, ranging from various rights of use, to conditional or full rights to dispose of the land” (UN-HABITAT 2010b). Land tenure encompasses both dimensions of property – a right to use and a right to decide about the use of the resource. Tenure security can describe different degrees of command over the resource (Lund 2000). It does not necessarily mean having formally registered, legally recognized and inheritable ownership (Crawford et al 2011).

Various definitions of tenure security typically comprise the same elements: it is a perceived security – an individual has confidence in his or her right to using the resource and believes that his or her use of the resource as well as of the benefits that flow from it will not be disrupted. Migot-Adholla and Bruce (1994) define tenure security as a situation when ‘an individual perceives that he or she has the right to a piece of land on a continuous basis, free from imposition or interference from outside sources as well as the ability to reap the benefits of labor and capital invested in that land, either in use or upon transfer to another holder’ (1994: 19). UN-HABITAT (2010b) specifies tenure security further:

- The degree of confidence that land users will not be arbitrarily deprived of the rights they enjoy over land and the economic benefits that flow from it;
- The certainty that an individual’s rights to land will be recognized by others and protected in cases of specific challenges; or, more specifically:
- The right of all individuals and groups to effective government protection against forced evictions.

The notions such as “degree” and “range” in conceptualizing land tenure are characteristic for the discourse alternative to the property rights school of thought. At the core of this counter-discourse lays the proposition to put into place a range of tenure-options that the actors promoting this approach call a “continuum of land rights”. The availability of a range of tenure options, they claim, including short-term use rights, can reduce the risk of eviction and promote recovery: “flexible hierarchies of evidence can ensure that people without legal

documentation are not excluded from shelter, livelihoods or other assistance programs” (UN-HABITAT 2010b:19).

Lund (2000) makes a very interesting and useful distinction between two uses of the term tenure security that can best explain the difference between the two approaches. Security, Lund (2000) says, is used as a measure of command over the resource, but also as the opposite of tenure insecurity, i.e. the degree of certainty of the extent and duration of rights. He rightly points out that these meanings are not identical and introduces the concept of “tenure certainty” to describe the latter meaning. This opposition to tenure insecurity is particularly important for the research in post-disaster areas. As Fitzpatrick (2008) notes, in the context of natural disasters, tenure insecurity describes the situation when landholders or reconstruction actors are reluctant to contribute time, capital and money because of uncertainty over ownership or other rights to land. For the two approaches it is crucial how they understand tenure insecurity. For the property rights school insecurity is the lack of sufficient rights that, as Lund further explains, can be remedied by strengthening the rights of some at the detriment of others. For the continuum of land rights school, insecurity equals uncertainty and is to be remedied by providing clarity (over extent and duration of rights). This point is crucial when looking at the process of shaping direction for the shelter sector after the Haiti earthquake as well as at the individual strategies of different shelter actors.

In the next chapter I will discuss how I collected and processed data to be analyzed with the use of the above concepts.

### 3. Research methodology

Aware of the fact that “building back better” after disaster does not necessary mean building back better for everyone, I wanted to take a closer look at the most vulnerable groups of the Haitian society – urban and rural poor - and the effects that the post-disaster intervention may have on them. *The Shock Doctrine. The Rise of Disaster Capitalism*, the 2007 book of Naomi Klein in which she describes how the post-disaster shock is used to introduce policies that hit the poorest parts of the affected population and benefit the powerful few. Klein’s (2007) account of events from post-tsunami Sri-Lanka and Maldives where fishermen villages and poor settlements were replaced with luxurious hotels and resorts or from post-Katrina New Orleans where public housing was replaced with expensive condominiums (Klein 2007) inevitably direct attention to post-disaster land-issues. My focus is on the tenure security of the urban and rural poor in Haiti after the earthquake. How is it influenced by the shelter programs? Is it endangered by post-disaster development? As Hilhorst and Bankoff say, “many people, in fact, are rendered vulnerable by development” (2004:3). This was a qualitative research project, aiming to answer questions about the ‘what’, ‘how’ and ‘why’ of a phenomenon (Green and Thorogood 2009:5). This kind of research was the most relevant to analyze the complex post-disaster situation as it covers contextual conditions - social, environmental and institutional - that influence people’s lives (Yin 2011). In this chapter I will explain how I designed this research, what kind of information I was looking for and how I collected my data.

#### 3.1 Research design

This research consisted of two parts. The desktop study was conducted in July and September 2011. The field research was conducted in October 2011 in Haiti and focused on two geographic areas: Léogâne and Port-au-Prince. This was followed by additional interviews and literature study in November and December 2011.

The research was designed to cover three areas of interest:

**The access to land in the state legal system and the access mechanisms in other normative frameworks in place.** This followed the suggestion of Houtzager (2001 in Roth 2003), who reminds us that empirically the state remains the most important actor, thus the state legal system should be given importance in any socio-legal analysis. After identifying how the access to land is gained, controlled and maintained in the Haitian law, the everyday experience of people was explored in search for other access mechanisms.

**The strategies chosen by the shelter organizations in disaster response in Haiti, their relation to the legally complex Haitian environment and their impact on the land tenure security of the beneficiaries.** How the shelter organizations design their strategies will have influence on the sustainability of their effects and on the future life of the beneficiaries. Roth (2003) points at the importance of the relationship between law and power in legally plural situations – which legal orders are dominating and which should be used so that the law becomes an empowering force.

**The potential for (policy) change and possible impact of this change on the most vulnerable groups.** Following the “building back better” paradigm that sees disaster as opportunity required looking at “what is out there” in terms of outside agencies’ development ideas related to land tenure that can be turned into projects leading to the change in policy. Looking at the potential consequences of these changes for the most vulnerable groups was the next step. To quote von Benda-Beckman (2001:53) “for future policy scenarios, we should ask what the potential of different legal forms would be for certain desired economic and social developments, and through which legal and non-legal measures such potential could be mobilized”.

### **3.2 Methods of data collection**

I combined different research techniques and collected data from diverse sources in order to better explore the topic and increase the validity of the research, the approach known as triangulation (DeWalt and DeWalt 2002; Yin 2011).

The **literature study** allowed context analysis and preparation of the consecutive research phases. It also helped me identifying main paradigms in addressing the land tenure issues.

In order to get information about the work of the shelter actors operating in post-earthquake Haiti I conducted the **documentary analysis** of the working documents of the Haiti Shelter Cluster. The Shelter Cluster is an inter-agency coordinating body for all the actors active in the area of shelter provision, chaired during the first months of intervention in Haiti by the IFRC and UNHCR (Shelter Cluster 2010). The Shelter Cluster was meeting regularly to coordinate work of the shelter agencies and exchange information. I analyzed the minutes of these meetings, together with the documents that have been produced. I could access these materials through the internet platform that was there as a working tool of the cluster. I especially focused on the materials produced by the working group “Housing, Land and Property” which was specifically formed to discuss and share experiences between agencies in dealing with land tenure and agreements in the field, both in urban and rural areas (Shelter Cluster 2010).

I also analyzed project proposals of two organizations: The Organization of American States (OAS) and The United Nations Human Settlements Program (The UN-HABITAT). The project represented two paradigms in addressing the land issues that I identified during literature study.

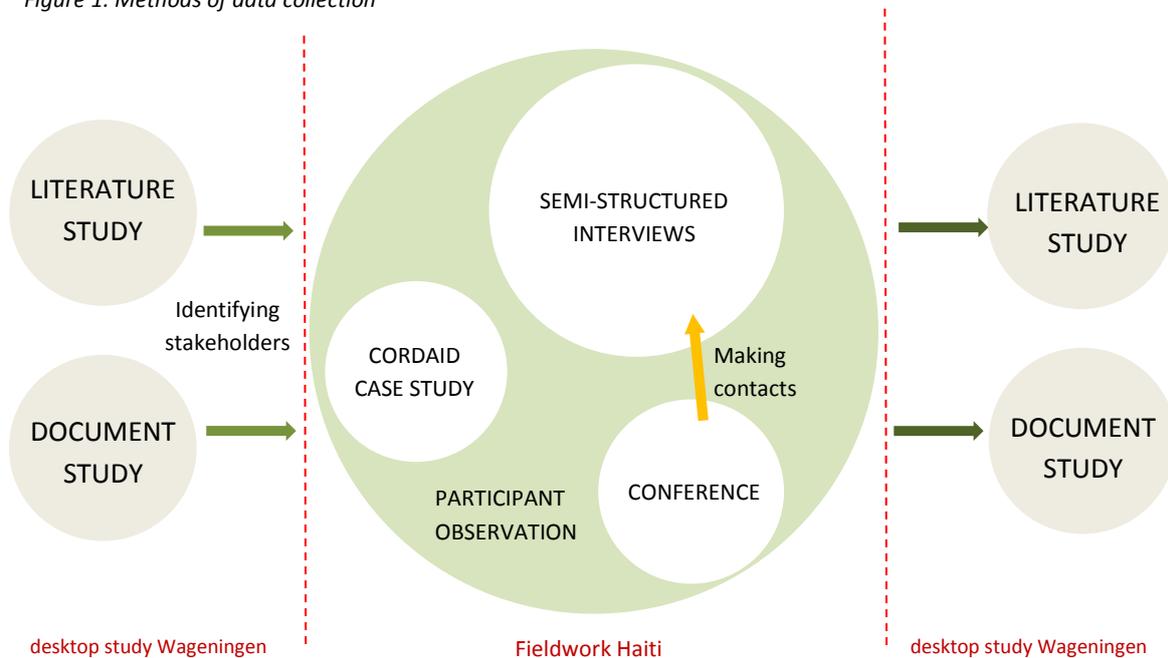
The **participant observation** technique was used during my field work. Participant observation means observing/taking part in daily activities of people in order to understand their culture and life routines (DeWalt and DeWalt 2002: 1-2). I was participating in the everyday activities of Cordaid’s shelter program in Haiti in their two offices, I visited areas and neighbourhoods affected by the earthquake, I visited offices of various international organizations and the UN headquarters in Port-au-Prince, I saw how the life and work of the expat workers in Haiti looks like, I also visited the local people that I was interviewing at their workplaces and I worked at the conference where I was the only non-Haitian in the team. As I was not limited by any security protocol I had various opportunities to use the local transportation and have informal

contacts with local people in my free time. These contacts were facilitated by the fact that I can speak French, one of the local languages.

**Participation in an international colloquium** organized by the *Jen nan Je*<sup>1</sup> platform in collaboration with Action Aid “*Haiti reconstruction: access to land and housing as a fundamental right*” that took place between 17 and 19 October in Port au Prince was an important contribution to my research as the event regrouped the main actors on the Haitian land scene and facilitated access to the local experts on land system that were otherwise difficult to identify or reach. Key stakeholders representing the two land paradigms presented their projects during the colloquium and could be approached as well. I became part of the conference staff and therefore had access to the conference proceedings but also I could participate in the informal conversations behind the scenes, hear the comments and impressions of the conference organizers on the presentations etc., which provided valuable research material.

I conducted **semi-structured interviews** with the actors identified in the stakeholder analysis. Most of the people were interviewed in Haiti. Those who did not work in this location anymore were reached via Skype or phone. All the local institutional actors were interviewed in Grand Goâve in the Léogâne area. The choice of location was dictated by the accessibility of the actors. They were all interviewed in their offices where at the same time I conducted **observation**, adding an important element to the research.

Figure 1. Methods of data collection



<sup>1</sup> *Je nan Je* is a platform composed of dozen Haitian grassroots organizations advocating for land and housing rights, representing more than 800,000 Haitians

### 3.3 Introduction of the case study – Cordaid shelter program

I did my research in Haiti in October 2011, 21 months after the earthquake. The program *Urban Emergencies*<sup>2</sup>, of which I was a participant, is realized in partnership with Cordaid, a large Dutch development organization based in The Hague. Their mission as stated by the organization itself is to create a sustainable better future for the world's poorest people and most excluded by working in collaboration with partner organisations all over the world (Cordaid 2011). They work with the objective of linking relief with development (Cordaid 2011). The idea behind the 'linking relief with development' concept is that, in the words of Buchanan-Smith and Maxwell (1994:2), "better 'development' can reduce the need for emergency relief; better 'relief' can contribute to development." For Cordaid it means that their emergency programs are expected to leave the communities better prepared for future disasters and that emergency aid should be linked with structural aid (Cordaid 2011). This requires long-term thinking. This long-term thinking is reflected in the design of the shelters that Cordaid is building in Haiti – the semi-permanent structures are hurricane proof and have life expectancy of 15 to 25 years.

After the 2010 Haiti earthquake Cordaid got direct funding from the Dutch donors for the Haiti earthquake response. The organization decided to open two field offices in Haiti: in the capital Port au Prince and in Léogâne, 29 km west from the capital, in the area that was the most hit by the earthquake. In March 2010 Cordaid started a large shelter program with the aim to build 5900 semi-permanent shelters and repair 2200 houses for more than 8000 Haitian families both in rural and urban areas. The program is still running. The Léogâne office is responsible for its implementation in the areas of Lompré, Septième Gerard and Grand Goâve city. The Port au Price office runs the program in Villa Rosa and Sainte Marie in Port au Prince and in two other locations in Carrefour: Tisous and Nan-Cocteau.

My activities in Haiti were divided between two tasks – conducting research for Cordaid and doing my own research. The work for Cordaid consisted of field interviews with the inhabitants of one of their operational areas, Lompré, for the purpose of the risk mapping. This was a part of the Urban Emergencies project. Even though it was not directly related to my research it allowed me to get insights into the life of the Léogâne office and the everyday reality of the shelter program, make useful contacts, pick up some Haitian *creyol* and most of all meet local communities. I was speaking with people about the land issues each time I had a chance, talking to local inhabitants and to the local employees of Cordaid with whom I was travelling to the field every day or meeting them in the office. At the same time other students working on this project were making their own contacts in other areas. Some of their contacts in the city of Grand Goâve proved to be useful for my further research that I officially started in the second week of my stay in Haiti.

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<sup>2</sup> Urban Emergencies is a multi-disciplinary research program initiated by the TU Delft. Urban Emergencies Haiti was organized in collaboration with Wageningen University, University of Tilburg and Cordaid.

For my study I chose three areas: Villa Rosa (urban), Grand Goâve (semi-urban) and Lompré (rural). During the field work I was visiting all the three areas together with the Cordaid teams (in Lompré and Villa Rosa), and individually (Grand-Goâve and Lompré). Cordaid employees were helpful guides, well known and well seen by the communities. They did not intervene in my conversations with local people unless the translation from *creyol* was needed. In Villa Rosa the company of an employee of Cordaid was the guarantee of my security – the Westerners are not as welcome in urban areas of the capital as they are on the countryside. In addition, Villa Rosa reminds a multi-level maze, so the presence of someone who knew his way around has been very helpful.

Although the main focus of this study is on urban land tenure, doing a comparative study had its merits. Rural, semi-urban and urban areas have all their distinctive characteristics while some of the land-related problems remain the same. Assessing solutions against different backgrounds may help to identify key elements in both the solutions and the context by answering the questions such as: Why a solution works better in one environment and not in the other? Which elements are the most context-sensitive? What makes urban situation special?

### **3.4 Research population**

I conducted semi-structured interviews as well as having informal conversations with the actors of Cordaid shelter program: the shelter managers, area managers, team members and local inhabitants in all three areas.

I interviewed employees of three other organizations about the land-related strategies in their shelter programs. I chose CARE and IOM because of their active involvement in the Shelter Cluster and their inputs into the work of Land, Housing and Property group. Furthermore, a shelter manager of the IFRC whom I met at the *Je nan je* conference and talked to about the land tenure issues in the shelter programs referred me to the Spanish Red Cross (Cruz Roja), as the organization who designed their own strategy. The person who was the main author of this strategy was still available in Haiti and I did a semi-structured interview with her. I interviewed a land lawyer in the Site Planning at IOM and had an informal conversation with another employee. I interviewed both my contacts in CARE through Skype – they were both long gone from Haiti.

I interviewed the representatives of professions of notary and surveyor – one of each. Notaries and surveyors were identified as the most important elements of Haitian land system by local land experts during the colloquium that I attended in Port-au-Prince. Due to the time constraints I could only visit one notary and one surveyor. The interviews were arranged in their offices.

I managed to get an interview with the mayor of Grand Goâve and talked to an employee of *Direction Générale des Impôts* (DGI), both important actors in the system.

I also informally talked to a person (a foreigner) who had a history of getting access to both private and state-owned land in Haiti about his first hand experiences.

In all I conducted 20 interviews (including four informal ones), 19 of which in Haiti. I knew that the choice and the number of my research subjects would be limited by the little time that I had to do the research in Haiti. I identified the categories of stakeholders that I judged the most interesting for my research and set the goal to access at least one representative of each category. This goal was almost entirely reached.

The overview of the interviews is presented in a table.

who	Organization	region	number	additional
Shelter manager	Cordaid	Léogâne	1	
Urban shelter manager	Cordaid	PaP	5	Unrecorded (notes)
Area manager Lompré	Cordaid	Léogâne	14	
Area manager Grand Goâve	Cordaid	Léogâne	15	
Area manager Villa Rosa	Cordaid	PaP	4	
Team member Lompré	Cordaid	Léogâne	-	Informal
Team member Grand Goâve	Cordaid	Léogâne	9	
Team member Villa Rosa	Cordaid	PaP	6	
Local inhabitant Lompré		Léogâne	-	Informal
Local inhabitant Grand Goâve		Léogâne	-	Informal
Local inhabitant Villa Rosa		PaP	3	Unrecorded (notes)
Shelter coordinator	CARE	PaP	16	Skype
Shelter program employee	CARE	Wagening en	20	Skype
Shelter strategy designer	Cruz Roja	PaP	17	
Site planning lawyer	IOM	PaP	7	
Shelter program employee	IOM	PaP	-	Informal
Verify exact function	Architects d'Urgence	PaP	8	
Verify exact function	HCHR	PaP	18	
The mayor of Grand Goâve		Léogâne	12	
A surveyor		Léogâne	11	Translated from Creole
A notary		Léogâne	13	
Consultant	OAS	PaP	2	
Verify exact function	UN-HABITAT	PaP	19	
Verify exact function	UN-HABITAT	PaP	19	

The fact that I can fluently speak French, one of the official languages in Haiti, was very convenient during the literature and document study and both arranging and conducting the interviews. I conducted half of them in French. Only one interview was conducted in Haitian Creole with the help of an interpreter – I was together with another student who did not speak French and wanted to use his local translator. Not having to rely on interpreters reduced the bias of interpretation.

### 3.5 Data processing and analysis

The literature and document study fueled the preliminary stakeholder analysis which aimed at identifying:

1. the key stakeholders in the land system in Haiti (I identified them through the literature study);

2. the shelter actors who were the most active in approaching the land tenure issues (through the analysis of the shelter cluster documents I identified the organizations who were active during the meetings where the theme of land tenure was discussed. Those who presented solutions or brought in their own land tenure experts were judged the most relevant);
3. the stakeholders representing the two land tenure paradigms (I identified them through literature and documents study).

The results of this analysis were reviewed and completed during the field work.

I used the Shelter Cluster documents to follow the development of the situation around the land tenure issues in the work of the cluster. First, I identified all documents where the topic of land tenure was mentioned and organized them chronologically. I focused my analysis on what kind of problems related to land tenure were identified and how they got identified, what kind of solutions were proposed and by whom, which of them got implemented and with what result, what external actors were brought into the cluster and what were the relations with the external actors. My approach was loosely inspired by the “flow of action” method developed by Wolf (1995) suggested by Nuijten (2005) for the research on natural resources. Nuijten (2005) invites researchers to “ask what is going on, why it is going on, who engages in it, with whom, when, and how often”. The results of this analysis will be presented in chapter 5.

I was processing data from my interviews both during and after my fieldwork. I encoded this data categorizing it into themes and topics. I did the same with my notes from the conference and all my field notes. The data from interviews is used in all the chapters. It is the main source for chapter 4.

The result of the analysis of the OAS and the UN-HABITAT project proposals and interviews related to them are presented in chapter 6.

## 4. Theory and practice of access to Haitian land

Keeping in mind that the state legal system remains very important for the socio-legal analysis (Houtzager 2001 in Roth 2003), I looked beyond it. I wanted to explore – from a legal pluralism perspective - everyday experience of people with access and control over land, “a wider range of social relationships that can constrain or enable people to benefit from resources” (Ribot and Peluso 2003). In case of Haiti it is difficult to say where legal stops and customary starts, or what other systems can be distinguished, as all these come together in a hybrid form. This is the situation described by Roth (2003) who points out that the co-existing legal orders are mutually constitutive to the extent that their constitutive elements are no longer possible to identify. This is confirmed by Smucker et al (2002) who argue that in rural Haiti “land tenure arrangements are marked by two parallel systems - one legal and the other customary. In practice, the two systems are interactive and constitute a type of legal pluralism rather than two discrete systems” (Smucker et al 2002:7). Even if in Haiti next to the customary system there exist multiple other normative frameworks, the remark of Smucker et al holds true. In this chapter I will present how access to land can be gained, controlled and maintained in Haiti within the multiple existing legal orders.

### 4.1 Access to land in the state legal system

In 1804, after the independence, the new Haitian state confiscated all French colonial land. All unclaimed land was asserted state land (Smucker et al 2002). The former slaves were often settling on land outside of government control. It is estimated that it was the case for 30 percent of the Haiti’s territory (Victor 1993 in Smucker et al 2002). Further land redistribution took place under President Pétion who transferred around 10,000 plots of land (Moral 1961 in Smucker et al 2002).

Any piece of land in Haiti belongs to one of the three categories: private land, land in the *private domain of the state* and land in the *public domain of the state*. These three categories of land differ in terms of access. The land belonging to the public domain of the state cannot be owned as stated in the Haitian constitution in article 36-5: “*The right to own property does not extend to the coasts, springs, rivers, water courses, mines and quarries. They are part of the State's public domain*”. Access to the other two categories of land is regulated by the Haitian Civil Code inherited from the French colonizers, the law that is, as often argued, not well adapted to the local situation (Etheard, personal communication, Coq, personal communication).

#### Gaining access

One can become land owner in Haiti in different ways, described in the articles 572 and 573 of Haiti’s Civil Code (Coq, personal communication). The right to private property is recognized and guaranteed by article 36 of Haiti’s Constitution. In rural Haiti “individual, private property is the rule”, as noted by Smucker et al (2002). In urban Haiti the tendency is opposite; the majority of people are renters or live in informal settlements (UN-HABITAT 2010).

One way of becoming legal owner of a piece of land in Haiti is through a legal transaction. In

other words, land can be sold and bought. Buying land from private hands requires a lengthy procedure with participation of a surveyor and a public notary. First, a dean of the civil court has to authorize the property survey. Then a public surveyor conducts an official survey of the plot. This has to be done with the presence of witnesses – the owners of all the neighboring plots who need to confirm the plot limits and the ownership of land by the seller (interview 13). The document prepared by the surveyor is given to the public notary. The notary confirms identity of all the parties involved and the authenticity of the land title by checking the history of land transactions on the plot twenty years back. Then the notary prepares the sales agreement which will stay in his or her archive. This agreement is also transcribed (by hand) into a register of the Direction Générale des Impôts (DGI). The whole process takes between 4 and 15 months (USAID 2010, interview 13).

It is even more complicated to buy land from the private domain of the state. To be able to do that, one has to first have a lease contract on this land with the state for the period of at least five years during which the payments to the DGI are regularly executed. If this is not the case, one has to start a contract of lease with the state and wait five years before initiating the procedure of purchase. The procedure is completed with the signature of the Ministry of Economy and Finances (CLEED 2002).

The land in the private domain of the state can be as well taken in lease. So-called *fermage de d'état* is more common in urban than in rural areas. Oriol (1993 in Smucker et al 2002) calculates the number of state leased land at roughly five percent of rural households and ten percent of agricultural land. The procedure to take state land in lease is both lengthy and complicated. As calculated by CLED (2002), it involves 16 different actors and takes 64 administrative steps. Private land can also be leased or rented. The relationship between landlords and tenants is defined by a 1947 Law on Regulation of the Rent of Houses, Apartments, Hotels and Shops another law judged outdated (Coq, personal communication, Protection Cluster 2010).

Another way to become the landowner is through inheritance. Under Haitian law all recognized children have equal right to a share of land of their parents (Smucker et al 2002). The legal procedure of transferring the land title to the heirs, as in the case of sale, requires participation of a public notary and a surveyor. The plot of land is divided by a surveyor. Each new plot undergoes the same procedure as in the case of a land transaction. The fee is charged for each plot. The public notary verifies the identity of all the parties, their right to inheritance and the authenticity of the land title on divided parcel. The separate land titles are prepared for each new plot by a notary and registered in the Direction Générale des Impôts (DGI), the tax office. This is so-called *divided inheritance*.

Since 1868 one can become land owner through *don national* – donation by the state of the land belonging to its private domain. Since the category of *don national* entered the Haitian law it was used by the government as a form of compensation to the presidents, ministers, members of the military and civilians for their services to the government (CLEED 2002, Coq, personal communication). In 1948 the regulation on *don national* was restricted. To become

beneficiary of the donation by the state one must have a continuous contract of lease from the state for the period of 20 years and must have a house constructed on this property. The Ministry of Economy and Finances is again involved in the procedure but the final document is signed by the President of the Republic (CLED 2002).

The last mechanism of access is through so-called prescription. Article 573 of Haiti's Civil Code says that a person who occupies private land in a pacific manner and without being interrupted for 20 years becomes the legal owner of this land through the law of prescription (*loi de la prescription*). It does not happen automatically but must be preceded through court who takes the final decision (Coq, personal communication). Prescription applies only to the private land. It is impossible to prescribe land against the state (Dorner 2010).

### **Controlling access – the notaries and the surveyors**

Legal land transactions rely heavily on documents prepared by notaries and on the updated survey (Coq, personal communication, Dorner 2010). Local land experts (Coq, personal communication, Dorner 2010, OAS, personal communication) point at the notaries and the surveyors as two pillars of the Haitian land system and at the same time its weakest points.

A notary is competent to analyze and verify an existing land title against fraud and to prepare land transaction documents. In total around 500 notaries operate in Haiti. Their work is regulated by the 1969 notarial law commonly judged as outdated. Next to that, the notaries are often accused of incompetence or corruption (Etheard, Coq, personal communication, interview 2). The notaries keep records of land transaction filed chronologically, on paper. There is no obligation to use the services of the notary at the proximity of the parcel that is the object of transaction thus tracking down information on a given plot of land is very difficult, also for the notaries themselves when they are to verify the authenticity of the land titles (interview 13). A notary charges a fee for his or her intervention.

A surveyor is a public servant who officially prepares or corroborates spatial information of the land – he delimits the plots. One becomes a surveyor through nomination by the President of the Republic and not through professional selection, which is seen as a reason of the generally low qualifications of the representatives of this profession (Coq, personal communication, interview 2). There is no specialized body that would train and control the quality of performance of the surveyors. When I met a surveyor in Grand Goâve I was surprised by the very basic tools that he was using, as well as by his answer to my question of his role as a surveyor. He presented himself as someone who knows how to use the instruments and make calculations (dividing land between a number of heirs) and not someone whose intervention legitimizes land claims and confirms the ownership (interview 11). A surveyor charges a fee for his or her intervention.

### **Controlling access - Direction Générale des Impôts and the municipalities**

*Direction Générale des Impôts* (DGI), the national tax office under the Ministry of Finances, keeps records of the private land property in Haiti (all legal land transactions are registered in the DGI) and manages the private domain of the State. It is responsible for the official survey

and controls access (by verifying the eligibility of a person) to the state owned land through *don national*, transaction of purchase or lease (CLED 2002).

The 1987 Haiti Constitution gives the right to manage the land belonging to the private domain of the state in the communes to the respective municipalities. The land in the commune cannot be sold or rented without the consent of the municipality. However the scale and the moment of the municipality intervention is not clearly defined by the law. Neither is its role comparing to the role of the central authorities and the DGI (CLED 2002).

### **Maintaining access**

In Haiti there is no ultimate legal guarantee of maintaining access to land. Even the right to private property, protected under Haiti's constitution, is not the ultimate mechanism. The same constitution allows expropriation by the state who may declare land being of "public utility". I've heard about a case of expropriation by the municipality during the reconstruction process. The state compensated the expropriated families with land in different location, but only those who were able to present a legal land title (interview 7).

## **4.2 Access to land in everyday practice**

In legally complex environments like Haiti access to resources is regulated by more than one legal framework. This also concerns land. I found evidence in the literature and collected various examples of extra-legal access mechanisms during my fieldwork. I will present them in this section.

Smucker et al (2002) in their analysis of rural Haiti write about dualism – strong customary system existing in parallel to the state legal system. In rural Haiti it is very common that land is divided between the family members without updating the land title. This is so-called *undivided inheritance*. Customary tenure arrangements among Haitian farmers are self-regulatory. Kinship groups have an obligation to make land available to all family members (Smucker et al 2002). From a legal perspective, such land is still seen as a single block of land with the only one owner while in reality one land title covers many plots with many owners. Sometimes the land is in the hands of someone outside of the generations of heirs as land divided by custom is readily bought and sold informally (Smucker et al 2002). However Barthélémy (1966 in Smucker et al 2002) mentions restrictions against selling inherited land to outsiders. By custom, the members of the family who are not present on the land lose access to their part of the land which is redistributed among those who stay (Smucker et al 2002). This is most often the case of women who usually marry outside their home village or of the family members who migrate abroad. Although legally they are entitled to their part of the land, under customary law they lose access to inherited land. The existence of the undivided inheritance mechanism got confirmed in the field. It was common in the Lompré area and I've been told it was the usual practice (interview 14).

Next to customary there is also an informal system. In general, people more willingly rely on informal than legal arrangements, this was confirmed by all of my interviewees. They pointed at the factors that already have been mentioned – complicated and lengthy procedures and,

above all, the high costs of notaries' and surveyors' services as possible causes. Poor people cannot afford legal procedures (interviews 13 and 17). The 1997 FAO/INARA study quoted by Smucker et al (2002:7) estimated that "95 percent of land sales in rural Haiti avoid the formalities prescribed by Haitian law". Also the tenancy rights are rarely recorded. The rent contracts are based mostly on informal agreements between owners and renters (Protection Cluster 2010, interviews 3, 9, 14). By custom, the rent is paid in advance for the whole year at the beginning of the year (Protection Cluster 2010).

An interesting situation developed around the land leased from the state. Evidence collected by Smucker et al (2002) show that "peasant leaseholders on state lands treat their leases as though they were private property—buying, selling, renting, sharecropping, and inheriting their lease rights by customary agreements". The leaseholders who gained access to the state-owned land started to control it, even though access control was not granted to them by law. This was confirmed in the field (interview 2, Etheard, Coq, personal communication).

This is only one example of the unusual relation between the Haitian state and land. After 1804 all land that has no owner (*sans maître*) belongs potentially to the private domain of the state. This also concerns land of which private ownership cannot be proved. Even though this is clearly stated in the law, the state only partially controls access to its land. In fact, as many point out (Etheard, Coq, personal communication, interviews 2, 7, 12), the state does not know the exact size and location of a big part of its land.

Some of the state land was grabbed by the people close to power during the regime of Duvalier (interview 7). These new land "owners" often sold it or have been renting it. There are numerous cases in Haiti when people buy or rent land from someone who is not really the legal owner. Such land transactions get sometimes registered by an incompetent or corrupted notary (Coq, personal communication, interview 13).

I collected several examples of access or attempts to access land that could be classified as illegal. Many of them incorporated elements of legal and customary access mechanisms. The notary that I interviewed mentioned few examples – coming from her practice - of how people misuse the inheritance mechanism. These comprised:

- Attempts to register the land of supposedly dead parents under the name of a heir by claiming that the death certificates of the parents were missing, while the parents were still alive.
- Attempts to sell supposedly inherited land by presenting the testament and claiming that the death certificates of parents were missing, while the parents were still alive.
- Attempts to register the land under the name of one heir only by hiding the existence of other legal heirs (interview 13).

Numerous cases of illegal access through forging documents are reported in Haiti. The notary that I talked to mentioned examples of falsification of some elements of the document, like the surface of the plot, or the name of the owner as well as being presented entirely false documents prepared by non-existing notaries that she encountered during her career.

According to my interviewee, amateur forging is relatively easy to distinguish for an experienced notary, usually by the quality or age of paper, however a less experienced notary may not be able to do it. There are also cases of expert forging that are practically unrecognizable and lead to legally registering illegal transactions.

Document falsifications sometimes take humorous forms. During the *Je nan je* conference a local lawyer mentioned a case of false claims to donation by the state (Coq, personal communication). He said he was once presented with a document confirming *don national* by president Pétion. Pétion died in 1818, not only before the category of *don national* existed in Haitian law but also long before the invention of the computer on which someone edited the presented document.

I also personally experienced the illegal control of the land belonging to the public domain of the state. While exploring the coast near Grand Goâve I came across a part of the beach surrounded by a fence, next to an expensive restaurant. I already knew that the coast belongs to the public domain of the state and no private person should have a right to control access to it. Few days later, I had a chance to meet the owner of the restaurant, a foreigner, when he was paying his taxes in the DGI where I was waiting for an interview. I decided to ask him about his experiences with buying land in Haiti and about the beach. He claimed that he had a contract on the part of the beach with the state and that the beach was now, in his words, semi-private. He said he couldn't deny access to the beach to anyone, however me and several other people were denied access to this part of the beach by his staff and told the access to the beach was allowed to the customers of the restaurant only.

Figure 2. Access to land in Haitian state legal system and beyond

Access mechanism	Private land	Land in the PRIVATE domain of the State	Land in the PUBLIC domain of the State
INHERITANCE	● ●	●	✗
TRANSACTION	● ●	● ●	✗
PRESCRIPTION	●	✗	✗
DON NATIONAL	✗	●	✗
RENTING	● ●	●	✗
LEASE	●	●	●

● within the state legal system   ● outside of the state legal system   ✗ access not possible

### Maintaining access to land in everyday practice

Given the weakness of the land registration system, the land title in practice does not give ultimate guarantee against the claims of others. It is common in Haiti that several proofs of property exist on one piece of land (Dorner 2010, interviews 1, 13, Coq, personal

communication). By custom, any document may be considered a “legal” proof of ownership – the act of transaction, the document prepared by a surveyor etc. (Dorner 2010). All these may be used to make land transactions. It also happens that a more ancient title is found after the new transaction was made on the basis of a newer document. The more ancient documents are normally given priority by the courts (Dorner 2010) and the new owner may lose access to land even if he or she legally bought it.

There are also more specific cases when a person may not be able to maintain access to land. Those enjoying land from undivided inheritance may lose it (a part of it) against the heirs who claim their access to legally inherited land after the long absence (by custom they are excluded and their land redistributed among other heirs) (Smucker et al 2002, Dorner 2010). One of my interviewees told me a story of a foreigner who bought a big parcel and built a house on it. After several years another heir, a legal owner of a half of the purchased parcel through inheritance came back to Haiti from abroad after a long absence and found a house partially built on his part of the land (interview 10). Anyone can lose access to land against the state if the state declares the land the part of its private domain (in the absence of the legal proof of ownership) (Dorner 2010).

#### **4.3 Tenure security before the earthquake**

Smucker et al (2002) argue that in rural areas in Haiti despite the general lack of formal land titles perceived stability of access to land is high — via stability of personal and social relationships.

Although it may seem counter intuitive there are reasons to believe that in urban Haiti perceived security of tenure before the earthquake was also high even among the informal settlers or renters. It was very common that the land tenants built permanent houses on the rented land. This situation was a norm in the operational areas of all the shelter organizations that I interviewed. People who had their own houses on a rented land were a special category in the shelter response (Shelter Cluster 2010). This happened despite the fact that according to the Haitian civil code what is on the land belongs to the owner of the land. Also people in informal settlements constructed permanent houses. I found out from local inhabitants that in Villa Rosa evictions seldom happened and if so it was not because the land owner wanted to reclaim the land but because the evicted caused trouble to the community who turned to the land owner for help. As I was told, the land owners would occasionally visit their properties to collect small money from the occupiers and would be satisfied with any amount people could give them (interview 6). Interrogated people would laugh at the idea of being afraid of eviction (personal communications).

#### **4.4 Access to land in Haiti: Concluding remarks**

As we could see, analyzing access to land in Haitian land system gives some interesting results. First, the power of the state in gaining, maintaining and controlling access to land is weak. The state is not aware of its properties and its potential properties (potentially any land “sans maître” may be considered state-owned land. The state land in lease is treated like private land by some of the lease-holders which further weakens the state’s control.

Second, the state legal order is not always dominating. People chose to use the informal order to conduct land transactions or set rent agreements. In the rural areas the customary system often prevails over the state system when it comes to inheritance.

Third, despite the weakness of the state land system and the confusing situation of legal pluralism, people act as if they had a relative security of tenure – renters and squatters with no legal rights invest in their settlements by constructing permanent houses.

The very complex situation around the land tenure in Haiti and the uncertainty that it generates had to be faced by the shelter organizations which came to Haiti after the earthquake. In the next chapter I will explore how the shelter organization addressed these problems in their strategies.

## 5. The land strategies of the shelter organizations

The aim of shelter programs is to build shelters for people who lost their houses in the earthquake, to build them for the right people in the right places and to build back better. “Building back better” is a darling phrase of disaster response repeated by everyone including the former US president Bill Clinton and the UN Secretary General Ban Ki Moon, not to mention very many INGOs. It encourages thinking about the sources of vulnerability to disaster and addressing these vulnerabilities in the disaster response. As one of the propositions of how to build back better says that “good recovery must leave communities safer by reducing risks and building resilience” (Clinton 2006) the shelter organizations aim at constructing shelters that are more resistant to natural hazards. The next thing (after the physical construction of shelters) that comes to mind when thinking about seeking to enhance resilience in the shelter programs is tenure security. There is an assumption behind it that security of tenure has positive influence on post-earthquake scenarios and speeds up reconstruction process. This assumption was made explicit in the guidelines for the shelter organizations working in Haiti (see section 5.2).

In this chapter I will describe how the shelter organizations were addressing the land tenure issue in their programs. I will start with how the general direction was set in the shelter cluster. I will also analyse the guidelines that were produced by the cluster to set direction to address the land tenure issues in Haiti. Then I will take a look on the strategies of different organizations, trying to respond to my second research sub-question: *What land tenure-related strategies are implemented by the shelter actors and what is their influence on the tenure security of the beneficiaries of their programs?*

### 5.1 The flow of action around land issues in the shelter cluster, February-August 2010

The cluster system was introduced during the so-called humanitarian reform in 2005 as a way of addressing gaps and strengthening effectiveness of humanitarian response. The aim of the shelter cluster is to bring all the actors from the sector of shelter together to find a common approach to addressing the shelter needs of the affected population. The cluster is collecting and analysing the information, feeding the results of this analysis back to the members and giving them directions how to proceed. It is also meant to work in collaboration with the local government, serving as a bridge between the national government and the international agencies. During the first months after the earthquake the shelter cluster was meeting every week. All the proceedings from these meetings were available on-line on a special platform, the same one I used to collect the research material, and accessible to all the members who could not participate in the meetings. I was following the ‘flow of action’ around the land issue in the shelter cluster meetings, the method loosely inspired by Nuijten (2005, see chapter 3). In this section I will present the process of setting general direction in addressing the land related issues among the shelter organization working in Haiti. The material is analyzed month by month from February 2010 until August the same year. As confirmed by the cluster member (interview 20), after this period there was stagnation around the land issues in the cluster. The most important doubts were cleared, the general direction to go was set. The next step was expected from the government who was long time not responding. I look at what land-related

problems were formulated and addressed during the shelter cluster meetings in this period, what solutions were proposed as well as what actors were contacted and consulted. All analyzed material unless indicated otherwise comes from the documentation of the cluster's work in the period between February and August 2010 that I accessed through the Shelter Cluster's internet platform.

### **February 2010**

The proposal to form a technical working group to take care of the land tenure issues was first formulated on a meeting of the shelter cluster on February 19, 2010, a month after the earthquake.

### **March 2010**

In March the first informal meeting to share experiences in the domain of land issues was organized by one of the organizations (CARE). The aim of the meeting was to exchange information on the practices and the arrangements that the organizations were implementing in both rural and urban areas. At that time the general guidelines on approaching the land issues after natural disasters were put on-line. The cluster coordinator announced that the specific guidelines for Haiti would be prepared by the Land, Housing and Property working group in collaboration with a local land specialist. It was also suggested that the land issues can be approached at the municipal level and therefore the relation with the municipalities are essential.

### **April 2010**

In April the organizations generally realized that no central land policy exists and that there are no clear procedures to follow. The need for a clear policy on a national level was expressed, especially concerning: the possible arrangements with the renters (1) and the ownership of t-shelters (2). The call for the involvement of the government was repeated. The draft guidelines of the *Land, Housing, Property* group were circulated for comments.

The pressure on solving the land issue was growing. Some agencies expressed their concern and announced that: "They will not implement without land title and clarification on duration of use and T-shelter ownership" (Shelter Cluster, April 19, 2010).

At that time the organizations were still seeking legal solutions (in terms of national law) and asking for official land titles. In case the title deed was lacking, even the authorization of the municipality was judged insufficient. At the same time it was recognized that acquiring property rights is a lengthy procedure: "While authorization to use the land has been given by the mayor, the title deed cannot be found and it will have to be notarized through court to acquire property rights, which then need to be formalized by the Ministry of Interior. Under current conditions, this could take months" (Shelter Cluster, April 19, 2010).

Land issue was named "the key concern" and pointed at as the reason for restricted response of the shelter sector. The uncertainty was emphasized: "continued uncertainty", "the lack of certainty" (Shelter Cluster, April 19, 2010).

By the end of the month the guidelines for Haiti prepared by the *Land, Housing and Property* group were put on the website. The cluster, as well as its several members separately,

announced the expected arrival of the land experts. The idea was that the experts work together on short, medium and long term solutions.

In Jacmel the mayor confirmed that the shelter materials and shelters will belong to the beneficiaries and that the displaced will be allowed land tenure for 36 months. This was presented as an example of good practice.

### **May 2010**

May brought further concerns. Once again, land tenure issues were indicated as the reason for stalling of the t-shelter construction. Both the communication department and donors expressed concern about the slow progress of the shelter programs. Donors expressed explicit concern that the land tenure issue was holding back the agencies. They announced that 10-20% margin of loss was acceptable. "There will be mistakes and failures. Margin of error of ten to twenty percent acceptable, noting the challenges and complexities of building shelters in urban areas" (Shelter Cluster, May 3, 2010). One of the organizations (IOM) presented their approach to deal with the renters. In this approach contacting the landowner was the obligation of the beneficiaries themselves.

At the end of the month the necessity of clarifying the land issues prior to construction was put into discussion. The argument was made that the t-shelter are mobile by definition and can be moved in case the beneficiary loses access to land. As a response, one organization (CRC) shared a story showing dangers of starting work without clarifying the land issues - the case when they had to stop the project the last minute, as the true land owner showed up on their construction site. As a response, the argument about accepted margin of mistake was repeated by the shelter coordinator (Shelter Cluster, May 25, 2010).

One organization proposed the way of assuring that the shelters belonged to the beneficiaries who were renters in case they lose access to land, by issuing "property certificates".

The organizations were reminded that guidelines existed and were available on-line.

### **June 2010**

In June, the solution of using the neighbors' testimonies in case of the lack of documents was mentioned for the first time on a shelter meeting (Shelter Cluster, June 8, 2010).

### **July 2010**

In July the two main issues were raised again: the way in which organizations could identify the owners of land and the contracts they were preparing with the beneficiaries that were renters. The contracts between the owners and the renters signed also by the representatives of the municipality were given as example of good practice. Another topic was the need to make sure that the t-shelters stay easy to move so that the beneficiaries can keep them in case they lose access to land. Organizations shared the technical solutions to this issue. The *Housing, Land and Property* group held a meeting on the July 6. Some characteristics of Haitian land tenure system were discussed during this meeting:

- Dissociation between right to house and right to land
- The persistence of a customary law – land belongs to those who are known to live on it.

The land expert from one of the organizations (IOM) presented their approach. The assumptions that they made were:

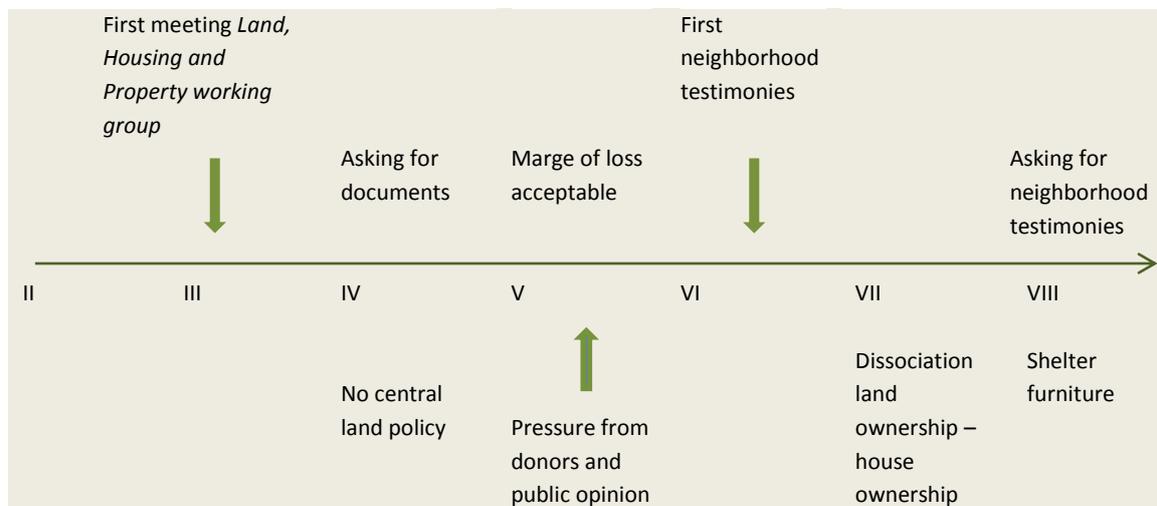
- Identification of the true owner is impossible.
- CASEC<sup>3</sup>s and notaries cannot verify the ownership of the land: the former only stamp documents while the latter only shows the transmission of such right but cannot attest its validity.
- Trying to find western solutions will delay/block shelter activities.

The IOM approach was based on the rule that the responsibility stays with the beneficiary, who claims his or her ownership, it is not up to the shelter organization to verify it.

### August 2010

At the beginning of August another land tenure specialist joined the cluster meeting to announce (among the other things) that T-shelters in Haiti are now officially considered furniture (contrary to the rule saying that in Haiti the owner of the land is the owner of everything that is on this land) so the owners of the shelters can keep them in case they lose access to land. As my interviewee from the UN-HABITAT told me, this decision meant that the organizations could now provide shelters to the owners of destroyed houses regardless of if they were owners of the land or not (interview 19).

Figure 3. The evolution of the situation in the Shelter Cluster February-August 2010



### The flow of action around the land issues: concluding remarks

During the first months after the earthquake the organizations were reporting and seeking advise on three land-related problems. The first one is the common lack of land property documents which leads to the question how to identify the owners of the land? The second is the problem of the renters – how to proceed if a potential beneficiary does not own but rents

<sup>3</sup> CASEC (*Conseil d'Administration de la Section Communale – Administrative Board of the Communal Section. The name is referred to the board members as well*), is a representative of the authorities at the level of communal section, the smallest territorial unit in Haiti.

the land on which the shelter is to be built? And finally the third problem, also related to the land tenants – how to make sure that it is the beneficiary (identified by the organization as the right person to get aid) who owns the shelter if it is put on somebody else’s land?

The short history of approaching the issue shows evolution in approach – from insisting on legal documents to accepting the informal methods of confirming the property. It can be seen as an evolution from the property rights school to continuity of land rights school. The formal methods were judged inefficient (time consuming and costly), while agreeing to use the informal approach allowed continuing work. The pressure on results from both donors and public may have played a role in the transition from legal to other options.

The second and third problem, both connected to renters, required different solutions. The organizations started producing their own rules: the main focus was on conditions that applied to the contracts with land tenants. The question of the ownership of the shelter was also solved with the use of documents that were not in line with Haitian law (certificates of ownership, agreements signed with the mayors), finally the project law altered the state law – t-shelters were officially qualified as furniture and could not be claimed by the owners of land, who normally would have a right to anything that was built on their land.

In the next section I will look at the document produced by the *Land, Housing and Property* group to guide the shelter construction process in Haiti when it comes to dealing with the land issues.

## **5.2 The guidelines for addressing the land issues in Haiti**

The guidelines prepared by the *Land, Housing and Property* working group in April 2010 were meant to clarify land related issues and guide the process of shelter construction in Haiti. The authors of the document distinguish between urban and rural contexts, list important institutional actors in the Haitian land system and map potential solutions.

The document presents and compares two approaches of addressing land issues after the earthquake. One is described as top-down and based on the principle of legality, the other one is called “bottom-up” and based on the principle of legitimacy - legitimized by people themselves as it is basing on the existing social arrangements. The advantages and disadvantages of both approaches are presented in the document in the following table.

The document promotes the non-formal way of addressing the land issues, called here “legitimate” as opposed to “legal”. It is judged by the document’s authors more relevant in the post-earthquake conditions as it allows proceeding faster with the work. It is also presented as more equitable, while the legal way bears risk of supporting only certain groups of the society (see fig. 4, next page).

Figure 4. Presentation of the two approaches to land issues. Source: "Tenure Security after disaster: Principles and their application in Haiti". Shelter Cluster 2010

approach	advantages	disadvantages
<p><b>Top down:</b>                      "from uncertainty towards legality"</p> <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 favor those already with access to legal services
<p><b>Bottom up:</b>                      "from uncertainty towards legitimacy"</p> <ul style="list-style-type: none"> <li>• support peaceful existing and spontaneous agreements but seek help or arbitrate where conflict arises</li> <li>• prioritize those in the most insecure situations</li> <li>• collect local evidence to record and legitimize tenure arrangements (including rental tenure and lease tenure) in collaboration with local authorities and key local individuals with recognized 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 recognized by legal entities or the state later and may not be compatible with national law

The authors of the document formulate recommendations for the organizations working in the shelter sector:

- 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 tripartite agreements (landlord-tenant-committee)
- Track and report evictions/abuses to each other and the cluster system. (Shelter Cluster 2010b)

The tenure security is defined in the document as follows :

*Tenure security does not necessarily mean formally registered, legally recognized, 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 (Shelter Cluster 2010b).*

Tenure security, the shelter actors were reminded in the guidelines for Haiti, has an effect on at least five scenarios after a disaster:

- Level of damage. If a family feels secure to invest in the house they will
- Likelihood of being displaced. People with clear tenure situation are less likely to be displaced
- Possibility of rapid return. If displaced, people with secure tenure may be able to return quickly
- Possibility of accessing and installing a transitional shelter kit. Demonstrating access to space makes it easy.
- Possibility of reconstructing.

The insecurity of tenure, seen as vulnerability itself, is also considered an indicator of other vulnerabilities (Shelter Cluster 2010b).

### **The guidelines for addressing the land issues in Haiti: Concluding remarks**

The guidelines prepared for the shelter organizations working in Haiti recognize tenure security as an important element building resilient communities. On the other hand, in the proposed approach only the short-term tenure security is addressed. It covers only the first period after disaster, when families “plan their next steps”. The main focus is on allowing the affected people to get shelters and preventing eviction from the shelters that the organizations built.

It is admitted in the guidelines that the proposed solutions may not be recognized by the authorities later and delegitimized, but they are seen as the most pragmatic. An important recommendation is made not to impose agreements where no conflict or tension exists.

To see to what extent the organizations followed these guidelines, in the next section I will analyze examples of the real strategies designed by different organizations to address the land issues - how these organizations addressed the common problems and what was the place of tenure security in their programs.

### **5.3 Cordaid case study**

Cordaid started the shelter program in Haiti in March 2010, first as a temporary shelter program. The program was soon transformed into a semi-permanent shelter program, as the shelters that Cordaid designed and is building have expected life duration of 15-25 years. The aim of the program is to build 5900 semi-permanent shelters and repair 2200 houses for more than 8000 Haitian families both in rural and urban areas. Cordaid opened two offices in Haiti. The Léogâne office is responsible for implementing the program in the areas of Lompré, Septième Gerard and Grand Goâve city. The Port au Prince office runs the program in Villa Rosa and Sainte Marie in Port au Prince and in two other locations in Carrefour: Tisous and Nan-Cocteau.

For my study I chose three areas: Villa Rosa (urban) in Port-au-Prince and Grand Goâve (semi-urban) and Lompré (rural) in Léogâne, so I had a chance to get to know both offices of Cordaid.

The two offices developed different land tenure strategies. I analyze and compare them in the following sections.

### **5.3.1 Strategy for the rural area – Lompré (Léogâne office)**

Lompré, my rural case study, is a rural community 1.5 km south east of Léogâne. The operational area of Cordaid covers approximately nine square kilometers and includes 16 villages. According to Cordaid's assessment 94% of families in the area own land on which they live (1126 out of 1190 assessed houses) (Cordaid 2010a).

#### **Confirming ownership**

At the very beginning Cordaid was collecting and photographing the land ownership documents, but soon the position of the organization regarding the documents changed. It was acknowledged that the land documents cannot be securely relied on. As the Léogâne shelter manager explained to me "It soon became clear that anyone in Haiti can get a title on any piece of land just by going to a notary and having an ownership document drawn up. On the same piece of land you can have an unlimited amount of owners" (interview 1). I was told stories about notaries or even mayors producing ownership documents on the land that had another owner, including the story shared by one organization (CRC) on a shelter cluster meeting. I have heard this story several times from different actors during my research as an example of why the land administration in Haiti cannot be trusted (interviews 1, 2, 16, 17). General distrust in land documents provoked search for other solutions. In the case of Cordaid it was turning towards the "informal". "The only way to get any insurance here is in the non-formal way", as one of my interviewees told me (interview 1).

At the same time, in Lompré many people had no documents at all to confirm the ownership of land. As the local area manager explained it, "in the rural environment it is common that the property is divided between the children without making new papers for everyone" (interview 14). The undivided inheritance was a regular practice in Lompré.

Lompré Cordaid, following an example of another organization (shared by this organization during a cluster meeting), decided to rely on community testimonies to determine the ownership of the land. In a rural community like Lompré people know each other. They usually live there their whole life, the families stay in the same village for many generations. Relying on local knowledge was regarded by Cordaid staff as the only measure to prevent any false land claims. According to the shelter manager false land claims "wouldn't work" in these communities because "everybody knows" who owns which plot of land (interview 1). Cordaid saw this as ensuring the continuity of their shelter program: "when people have been on the land for a long time, the chance that they will be moving is very slim" (interview 1). The strategy was regarded as safe from the point of view of the program implementation, however the accountability was still seen as an issue "The only real burden that remains is to convince the organization back home and the Dutch society that the interventions we are doing will have a durable life"(interview 1).

To verify the land ownership in Lompré Cordaid worked with local committees. These committees are formed by the community members who are perceived by the community as trustworthy and able to represent their interests. The villages were visited with the CASEC and

the committees and the information on the land ownership was verified with the neighbors. Cordaid introduced the system of three testimonies – three witnesses had to confirm that a plot belonged to a given family (Interviews 1, 14).

### **Constructing shelters for renters**

In Lompré there were very few cases of renters. In addition, some of the renters did own a piece of land in another location than the one where they lived before the earthquake. According to my interviewees, the choice to rent land in another location was dictated by reasons such as the proximity to the field or social liaisons (interview 14, Lompré team worker, personal communication). This group of beneficiaries had a choice to either get a shelter on a rented land with the official consent of the owner in place of their old house, or to have the shelter on their own land, as long as it was in the operational area of Cordaid. This was an exemption of the general rule of Cordaid to replace a destroyed house with a shelter. As the shelter manager explained, “following this simple equation you can never get in trouble” (interview 1).

Anyone who wanted to get the shelter on the rented land had to have the permission signed by the owner of the land. The responsibility to assure the right to stay on the land remained with the beneficiaries (Interviews 1, 14).

The document used in Lompré was prepared by Cordaid initially for Grand Goâve city where the cases of renters are much more frequent. This document specifies that the beneficiary is allowed to stay on the land for three years. However, the local area manager told me in the interview that in Lompré the land owners and the tenants usually had an informal agreement that the latter would be allowed to stay on the land as long as the Cordaid shelter exists. As my interviewee explained, “this is noting strange, it is a familiar procedure, it was being done before the earthquake as well” (interview 14). According to him, even when a document is signed, people would rather rely on the customary law.

### **5.3.2 Strategy for the semi-urban area – Grand Goâve (Léogâne office)**

In Grand Goâve, less than 30% of the inhabitants are owners of the land on which they live. Others are land tenants or rent both, the land and the house (Cordaid 2010b).

#### **Confirming ownership**

As the shelter manager admitted, working with community testimonies in Grand Goâve was more difficult than in the rural Lompré. There are not many people in the area who were born and raised there, it is more densely populated and there are more renters. People do not know each other as well as in Lompré, there is more anonymity (interview 1). Cordaid decided to intensify the community involvement and work more on the micro level. They were looking for representation for each block and mapping each house, even these that they knew they would not be helping (interview 1).

There were few cases of minor disputes, when an owner of a parcel came to identify that there are someone else on his or her land. Cordaid would move the people out and consider it a “poor preparation from our side” (interview 1).

### **Constructing shelters for renters**

The area manager realized that the renters may cause a major problem in the area and that a special strategy should be developed to deal with this category of potential beneficiaries. The document was produced to be signed by the beneficiary, the land owner and Cordaid in the presence of witnesses (the local committee). The similar document was used in Lompré (interview 15).

As the area manager told me in Grand Goâve finding the land owners was difficult as they are often abroad. Cordaid was asking the municipality and the civil protection for help with tracing and contacting the owners. If no family member of the owner was available, two closest neighbors were asked to sign the documents on behalf of the owner (interview 15).

Similar to Lompré, some people prior to the earthquake rented a house while they owned a piece of land in another location. However, as I've been told, in Grand Goâve the motivation was different than in Lompré - these people could not afford to build a house (interviews 9, 15). Again, Cordaid gave them the opportunity to get a shelter on their own land as long as it was within the operational area of Cordaid (interview 15). The tenure situation of this small group of beneficiaries got improved. Cordaid shelter program found them as house and land tenants and left them as owners-occupiers.

An additional category of potential beneficiaries was present in Grand Goâve - people who lived on the land of a family member unofficially and free of charge. They were not registered as owners or renters so were invisible to the shelter program. In such cases the primary owner had to act on their behalf (interview 15).

The local partner of Cordaid was not the CASEC, as it was in Lompré, but the mayor and the municipality (interviews 15, 12). The CASEC in Grand Goâve was not perceived as an important figure in the life of the community (interviews 9, 12).

### **5.3.3 Strategy for the urban area – Villa Rosa (Port-au-Prince office)**

Villa Rosa is located in the 6<sup>th</sup> Turgeau Section in the Commune of Port au Prince. It covers an area of approximately 500,000 square meters and includes four neighborhoods: Cite Meriken, Cite Theard, Bas-Lanyen and Morne Rosa. Most of the land in Villa Rosa belongs to three big families. There is evidence of informal land transactions in the area, land was being sold without issuing land titles (Cordaid 2010c, interviews 3, 4).

#### **Confirming the ownership**

According to the survey carried out by Cordaid and the testimony of the CASEC, 90% people living in Villa-Rosa do not have legal land title papers. Despite this fact, 724 out of 1059 families state that they own the land and the house where they live (Cordaid 2010c).

As the area manager explained to me the lack of documents is nothing unusual in Haiti. As he said, it is not a common practice to go to court to start a legal procedure. Traditionally people know who the owner of the land is, where the parcel limits are and this knowledge is passed from generation to generation. The informal and customary laws prevail (interview 4). Cordaid followed this direction when designing their strategy. The urban strategy is also based on the community testimonies, as it was in the case of Lompré and Grand Goâve. Cordaid is asking

neighbors to confirm that a given person owns the indicated plot. Three testimonies are required (interview 4).

### **Constructing shelters for renters**

In Villa Rosa 237 families rent land and 69 both the land and the house. Eight families declared that they have the right of occupancy without payment and 21 declared different arrangements. An informal land rental market exists in Villa Rosa (Cordaid 2010c).

In the case of renters in Villa Rosa Cordaid contacts the owners directly, as there are only a few big owners in the area. The first step is signing a Memorandum of Understanding between the owner and Cordaid in which the owner authorizes Cordaid to act in the whole area where he or she owns the land. The document establishes the rights of Cordaid and the owner. The second step is signing the contracts between each beneficiary and the land owner – the authorization to build a shelter for the beneficiary on the owner’s land. The contract is signed for three years and it specifies that the shelter belongs to the beneficiary so he or she can keep it in case the owner of the land decides to end the contract after the three years (interview 4, 6).

### **Constructing shelters for squatters**

In Villa Rosa many people were staying on the land without the rent contracts or squatting the land. If those of them who were potential beneficiaries of Cordaid wanted to get a shelter, they had to regulate their situation with the owner of the land. Cordaid helped the owners to collect debts in return for the permission to build shelter on the land. Squatters had to become renters to get a shelter. Not all potential beneficiaries agreed to this solutions (interview 6). This did not mean however that they were losing access to land. As a local contact explained to me, evictions seldom happen in Villa Rosa and people are not afraid of them. The land owner would only evict a person in case of the complaints from the community about the person’s inappropriate behavior. I was told that the owners of squatted land occasionally ask squatters for money, but it does not happen regularly and they are satisfied with any sum people can give, even very small and they never threaten them with evictions (interview 3).

### **One step further - maintaining access**

Cordaid in Villa Rosa did not stop their intervention at identifying and confirming the ownership of the beneficiaries to get a green light for the construction of shelters. They made a step further. First, the local team realized that many people in the area occupied the space after departure of Duvallier in 1968, thus are staying there for over 20 years. The area manager had an idea to “play with time” and use *la loi de la prescription* to maintain access to land for the beneficiaries (interview 4). In consultation with the shelter manager, it was decided that if the strategy gets support of the local authorities, the team may proceed (interviews 4, 5). The area manager contacted the CASEC who was active in the area. The CASEC liked the idea and after consulting it with his lawyers he agreed to get involved in the implementation of Cordaid’s strategy (interviews 4,5,6).

The procedure is as follows: the information is spread in the area that Cordaid and the CASEC are looking for people who have been staying on their land for 20 years without being disturbed. The CASEC is collecting the names of the people. Cordaid is asking for testimony.

Two witnesses are needed who live in the community for a long time. They need to be positively identified by the CASEC. The CASEC makes a file for each person who is confirmed as a long-term resident of the area. After he collects a group of files he gives them to his lawyer. The role of the lawyer is to submit the files in court and start the legal procedure. The legal costs are covered by the CASEC. In the meantime, the CASEC is issuing documents for these people stating that the community and the local authority recognize them as entitled to live on the land, *Acte de Reconnaissance Legitime de Droit de Jouissance*, making them formally in possession of land (interviews 4, 6). First documents were handed over to a group of beneficiaries in December 2011 on a ceremony in a presence of the mayor of Port-au-Prince (Cordaid Haiti 2011). This document is not yet a land title. The official title has to be decided by court and this is a long procedure (interview 4). However this is an important step towards long-term tenure security.

Cordaid in Villa Rosa was preparing maps of their operational area.

#### **5.3.4 Cordaid case study: Concluding remarks**

Cordaid is working in different areas with different tenure situation that had to be addressed differently. However, the community testimonies after being successfully implemented in the rural area, were also used to confirm land ownership in other operational areas of Cordaid. Cordaid decided to base their strategy on the informal confirmation of ownership, as it was judged most reliable in Haitian situation. The contracts for beneficiaries who were land tenants were securing their access to land for three years and their ownership of the shelter indefinitely. The general rule was building shelter in the place of the house destroyed by the earthquake, however if a beneficiary had a house on the rented land and an own parcel in another location Cordaid would make an exemption and provide shelter on the land that the beneficiary owned, if that was his or her wish. In certain cases it meant upgrading the beneficiary's tenure situation. In urban Villa Rosa, Cordaid introduced a novel, original strategy based on the legal mechanism of access to land, the prescription. The solution was implemented with the strong support of local authorities (the CASEC). The strategy upgraded the tenure situation of the beneficiaries and may still result in granting them the official land title. In all areas Cordaid was involving the most suitable local authorities (the municipality or the CASEC).

In the next section I will explore the strategies of other shelter organizations, their relation to the shelter cluster guidelines and their impact on the tenure security of the beneficiaries.

#### **5.3 How the others did it: Examples of strategies of other shelter actors**

I interviewed employees of three other organizations. Two of these organizations – CARE and IOM - were very active in the shelter cluster when it comes to the land issues and their approach inspired other organizations, including Cordaid. I was referred to the third organization, Spanish Red Cross (Cruz Roja), by a shelter manager from ICRC whom I met at the conference in Port-au-Prince. He told me that they designed their own strategy that may be interesting (name, personal communication). It is interesting to compare the strategies implemented by these three organizations for two reasons. First, they have been working in different areas in Port-au-Prince and Léogâne, they collected different experiences and

encountered different tenure situations. Second, they are very different organizations. Care International is a major US-based humanitarian organization, a typical example of a big INGO. International Organization for Migration (IOM) is a UN agency, an inter-governmental organization. The work of the Spanish Red Cross (Cruz Roja), a national society of Red Cross, is guided by the humanitarian principles of humanity, impartiality, neutrality, independence, voluntary service, unity and universality.

In the next sections I will present the land-related strategies that they used in their shelter programs.

### **5.3.1 Care**

#### **Collecting information**

CARE started with a very pragmatic way of doing the assessments and collecting information on the communities in their operational areas (Léogâne and Carrefour). One way of doing it is making an assessment of the whole area and choosing the beneficiaries on the basis of this assessment. This is how Cordaid (and many others) proceeded. What CARE did was announcing the project first, explaining the conditions that the person has to fulfill to become the beneficiary and letting people apply (interview 16). Then teams were sent to conduct detailed assessments only of the potential beneficiaries – those who applied. They were going from house to house (interview 16). After the decision was made, the list of beneficiaries was displayed in public where other community members could make corrections (interview 16, 20).

#### **Confirming ownership**

One of the conditions to become a beneficiary of the Care shelter program, as explained to the communities, was to present a document proving the right to stay on the land. As the shelter coordinator told me, very few people had a title but they had ways to put up a document confirming that they are entitled to use the land (interview 16).

The document that CARE was signing with the beneficiaries was saying that in case the beneficiary was not the owner of the land they confirmed that they contacted the owner and received their formal agreement to have the shelter built on the plot and stay on the plot for 36 months. The document recognized the shelter as a mobile good and the property of the beneficiary. It was advised but not required that the land owner sign this contract as well. The beneficiary was confirming with the signature that he or she is taking the responsibility for any potential consequences of the deal and that the contract cannot be in any case used to claim rights to the plot by the beneficiary (Shelter Cluster 2010). The template of this document was available on-line on the Shelter Cluster internet platform as an example.

#### **Rebuilding for renters**

The way CARE dealt with the renters was, as in the case of other organizations, preparing a tri-party agreement between the beneficiary, the landlord and the mayor (the municipality). The beneficiary had to present some kind of proof of the right to use the land, the landlord guaranteed that the beneficiary could stay on the land for three years and recognized that the shelter belonged to the beneficiary, the municipality recognized the situation and was to

intervene in case of conflicts (interviews 16, 20). A memorandum of understanding between CARE and the municipality was signed in advance, recognizing the rules of the contracts with renters.

In preparing this strategy CARE consulted informally a land rights expert who worked for another organization (Oxfam) and gave the document for consultation to their own lawyers.

The shelter coordinator emphasized that what played an important role in their strategy were the good relations with the municipality (interview 16). Establishing collaboration with the municipalities took a long time and a lot of effort. It was seen as strategic, so CARE put extra resources in establishing this relation - they hired enough staff to be able to have special teams responsible for negotiating with the municipalities (interview 16). The other area in which they invested was the community work. The good communication with local communities was also judged important for the program (interview 16).

#### **Leaving the shelter with the 'right' person**

To assure that their shelters stay with their beneficiaries, CARE took some measures at the beginning, at the level of design. The shelter was designed in a way that allowed moving it easily. If people lost the land they could keep the shelter by taking it with them (interview 16). This step, the shelter coordinator emphasized, helped CARE avoid many problems that other NGOs had.

CARE was sharing their experiences on the shelter cluster meetings and initiated the creation of the working group *Land, Housing, Property*.

### **5.3.2 IOM**

#### **Collecting information**

Just as the other organizations, IOM started with identifying who lived on the plots and what was the status of the land (interview 7). Many people who lived in their operational areas were relocated to camps, so IOM had to rely on the information provided by other community members during the community meetings that the organization organized. IOM also identified the oldest community members, whose families were living there since generations. These people were asked to identify the land owners. IOM was collecting the names of families who were staying on the land before the earthquake. The camps where people were relocated were close to the site and it was easy to contact these families. The neighbors usually knew exactly where to find the families from the neighborhood (interview 7).

#### **Confirming the ownership**

IOM was asking the identified families to confirm the ownership of the land. They were asking for land titles, but usually people did not have them (interview 7). In that case IOM, similarly to the other organizations, was using the neighborhood testimonies. A verification document had to be signed by three witnesses (interview 7).

The procedure was different for the alleged landowners who had tenants on their land and were themselves living elsewhere (they were not IOM beneficiaries). If such a person was not able to present the land title, IOM was helping with confirming their claim. They were contacting the notaries in the metropolitan area to find legal evidence of ownership. In case the claim has not been confirmed, IOM did not treat the person as the owner of the land. If any other owner of the land could not be found, IOM considered that the land is state-owned land according to the rule that all land “*sans maître*” belongs to the private domain of the state (interview 7).

### **Rebuilding for renters**

In the case of renters, IOM was asking for the name of the owner and getting in touch with him or her to check the situation of the tenant. If a tenant was paying rent regularly the owner would usually make no problems with this person staying on the land (interview 7). For people who did not pay regularly, getting the land owner consent was more difficult. The land owners got a choice – to accept the person back on the plot for three years or to claim back the land. IOM was always negotiating in favor of the tenant (interview 7). The contract was signed between the land owner and the tenant, with IOM as witness. The local authorities were not involved. If the landowner could not be found or could not prove the ownership, IOM was again asking for the three neighborhood testimonies and if these were positive, they would proceed with the reconstruction.

### **Redistributing land**

In their operational areas IOM had problems with people having their pre-earthquake houses in risky locations or plots situated on the ravines which got destroyed during the earthquake. In both these situations they could not rebuild on the pre-earthquake parcel. They needed to find land (interview 7). The organization was negotiating with the owners of bigger parcels to accept shelters on their land for people who could not get the shelter on their previous location. If this solution did not work, IOM was negotiating with the municipality to find the state land in which the now landless beneficiaries could relocate. The municipality offered land outside of the capital and not all the people accepted to relocate (interview 7).

IOM was preparing maps of their operational areas with the help of cartographers. They also had land experts who were involved in the shelter cluster meetings, preparing presentations on the land tenure issues and drafting templates of contracts.

## **5.3.3 Cruz Roja (Spanish Red Cross)**

### **Collecting information**

Cruz Roja, working in the area of Léogâne, started with a census of the whole population. They early realized that almost no one had documents, not only land documents but also identity documents. Cruz Roja started to work with the community testimonies to confirm the identity of people. During the community meetings the community members were asked to confirm, in the presence of the CASEC, the identity of people who were not able to present a document

with a photograph (presenting a document with a photograph was the usual condition under which Cruz Roja was confirming identity) (interview 17).

### **Confirming ownership**

Community testimonies were also applied to confirm the ownership of land. Cruz Roja started by dividing the area into small, one street, blocks (as it was done by Cordaid in Grand Goâve). The neighbors from the whole street had to confirm that a given person was the owner of the indicated plot. There were around 15 testimonies for each case.

Next, the lists of community-verified owners were taken to the municipality and stamped and signed by the mayor (interview 17).

### **Constructing shelters for renters**

Similarly to Cordaid, Cruz Roja started with the owners and the heirs, as these cases were easier. The situation of renters was much more difficult. As my interviewee told me, “They didn’t have any evidence. What we did was to ask them to contact the owner, sign the private contract and bring it to us. We didn’t check these contracts, we didn’t have the resources to do it. We decided to trust them” (interview 17).

However it was not the case at the beginning. The contracts with the renters were at first taken to a *juge de paix* (magistrate) who would validate them. However this procedure proved to be both lengthy and expensive and was aborted by the decision of the Cruz Roja headquarters (interview 17). From that moment the *juge de paix* was asked for intervention only in case of problems.

And Cruz Roja did encounter problems. Some of the owners after they saw the house instead of following the contract would rather keep the house for themselves (interview 17). There were also cases of raising the rent, the situation that was not prevented by the contract (interview 17), as it was in the case of other organizations.

Also the local CASEC started to “validate” the rent contracts for money, according to my interviewee, regardless of their true validity (interview 17). People would turn to the CASEC rather than to the *juge de paix* as he was cheaper and less busy (interview 17). From the legal point of view, the CASEC did not have mandate to legitimize the rent contracts.

### **Leaving the shelter with the ‘right’ person**

Cruz Roja did something opposite to what the other agencies were doing – they decided to allow the possibility that a land owner takes over the house after three years if the landowner was not eager to accept the tenant back on the land (interview 17). As my interviewee explained to me, at first they wanted the beneficiaries to keep the houses, but they understood that it should be a win-win situation, that also the situation of land owners should be taken into consideration (interview 17).

Due to uncertainty regarding the landlords, Cruz Roja developed a strategy to facilitate the eventual moving of the house to another location in case of problems. They offered their beneficiaries a choice to get permanent or temporary walls in their shelters. If their relation with the land owner was not clear they could ask for temporary walls and get all the material

to close the walls permanently themselves when their land situation becomes clear. Many used this opportunity (interview 17).

Cruz Roja encountered also different kind of problem: the in-family evictions. The shelter documents were signed with only one member of the household (usually the man) which left the other people living in the house (for example the wife) without any base for claims. After a case of a beneficiary throwing his wife and children out of the shelter (his big family was the reason why he got the status of beneficiary at the first place) and moving into a shelter with a new woman, Cruz Roja adapted their program to protect women. They would now make both husband and wife sign the shelter document and in case of a deceased husband, they would insist on signing the shelter contract with the widow even though the sons were often pushing for acting as signatories (interview 17).

### **Rebuilding for squatters**

In the operational area of Cruz Roja, there was a big community of squatters who have been occupying land for many years. Cruz Roja negotiated with the municipality that they granted these people the right to occupy the land indefinitely (interview 17). My interviewee was personally involved in negotiating another plot of land from the municipality to build shelters for all the renters who did not get the permission from their landlords to get shelters on their land. Unfortunately, after my interviewee changed jobs, her follower did not continue these negotiations (interview 17).

Cruz Roja did not share their solution officially with the cluster, however some other organizations did know about it informally (mainly other Red Cross agencies).

Cruz Roja did not make maps of their operational areas with the limits of the plots, they only indicated the position of houses.

### **5.3.4 How the others did it: Concluding remarks**

The concerns of different shelter organizations were similar and this is reflected in their strategies. First, they needed to collect information about the community and identify people who occupied destroyed houses before the earthquake. Then they were ought to confirm that each beneficiary had right to the land where the shelter was about to be built. If the beneficiary was an owner of the land, they had to confirm the ownership. If the beneficiary was a renter, they needed to get consent of the land owner to build on his or her land and the guarantee that the beneficiary could use the shelter for the period of three years, the usual duration of a temporary shelter project. The strategies of different organizations differ in terms of who was involved, especially who legitimized the organizations' activities, and thus indirectly controlled the access (municipality, the CASEC, a local committee). Also data produced by different organizations differ – data on the whole population of the area or as in the case of CARE, only on the beneficiaries of the program; maps indicating only the location of the houses (Cruz Roja) up to full maps (IOM). In terms of improving tenure security of the beneficiaries, there is not much long-term thinking in these strategies. The documents

produced by the project are not a long-term guarantee for the beneficiaries that they can stay on the land. A case of Cruz Roja successfully negotiating land for squatters is an exemption rather than a rule. The intervention of IOM may have in some cases (the landlords who could not legally prove their ownership and were taken away the control over access to their land) worsened the tenure situation of people involved (these people were not beneficiaries of the program).

#### **5.4 Legal uncertainty in the land strategies**

The situation around the land tenure in Haiti in the first months after the earthquake can be well described as insecurity of tenure in the understanding of Fitzpatrick (2008), the situation when the reconstruction actors are reluctant to contribute resources because of uncertainty over ownership or other rights to land (Fitzpatrick 2008:4). In Haiti, this concerned the shelter organizations and the donors.

The uncertainty was twofold – about what can be done and what can be expected from others (Meinzen-Dick and Pradhan 2003, see chapter 2). First, nobody really knew what was possible within the Haitian legal system. Not only nobody had a full knowledge about “all the pertinent or possibly applicable legal frameworks” (Meinzen-Dick and Pradhan 2003: 13), but also there was major uncertainty about what is legal in Haiti. As one of the members of the working group *House, Land and Property* explained to me, “people who joined the group had no expertise on the issue. They were coming there to get answers themselves, very few of them could provide any input. Very few NGOs had anyone in the team who knew anything about the land issues” (interview 16). This is reflected in the *Guidelines* prepared by the group, full of question marks in the form of “to be verified” notes, regarding the legal mandate of different actors, who has right to sign documents and allocate rights (Shelter Cluster 2010).

The organizations dealt with the uncertainty by consulting land experts, both international and local. IOM had their own land experts, CARE, Cordaid and Cruz Roja were consulting experts from other organizations, Cruz Roja additionally consulted local Haitian experts. Cordaid hired an area manager with a degree in law. On the other hand, I did not come across any efforts on the side of the organizations to systematically explore other legal frameworks than the state law.

Some of the organizations that I talked to, expressed the need to be guided through Haiti’s complex land tenure universe and emphasized the uncertainty that they experienced (interviews 1, 5, 17). “We don’t know how to do it. We would love to go along another big actor, someone who knows”, said one of my interviewee (interview 5). Often the only “someone who knows” was another organization who has already dealt with a certain problem. The experiences shared by other organizations were helpful, in the sense that they shown that a given solution was possible to apply. This was the case of community testimonies and Cordaid. They started to implement this solution after another organization shared their experience on a cluster meeting. “We didn’t know if we could do it, we were not sure. But another organization did it, so we went for it” (interview 1).

And there was the second kind of uncertainty – about what the others may and will do (Meinzen-Dick and Pradhan 2003). The organizations were signing documents with other

actors present in their operational areas which were specifying the scope of activities and responsibilities of everyone involved and gave some kind of guarantee that the co-signatories will follow. These were mainly Memoranda of Understanding, with the municipalities and the big land owners specifying who can undertake what kind of action in the area (interviews 1, 4, 5, 16).

Many questions arose when providing shelters to the renters on somebody else's land. What will the land owner do? The contracts were specifying the possible limits of action of both the landowner and the land tenant. As argued by Lund the certainty of the extent and duration of rights is a form of tenure security (Lund 2000). Following this suggestion, the best documents were those which clearly specified the extent and duration of rights. In other words, the more elements a contract specified, the better it protected the beneficiaries. Cruz Roja who did not specify in their contracts that the rent couldn't be raised had problems with beneficiaries forced to leave the rented land because the land owner raised the rent (interview 16).

Reducing uncertainty allowed to proceed with the shelter programs. The uncertainty surrounding building shelters for people who were not owners of the land which they occupied was at the beginning very high. The organizations were asking for legal land titles and would not proceed without them (Shelter Cluster 2010). Once it was decided to dissociate the two questions: ownership of a piece of land and ownership of a house, the people who had destroyed houses but no land ownership became eligible for the programs (interview 19). The shelters were now qualified as mobile goods, and not as a part of the land on which they were built and so they could stay in the hands of those who were meant to get them – the beneficiaries of the programs. Dissociation of the land and the house was a political decision on the national level (interview 19). It was now legitimate to build a shelter for someone on the land belonging to someone else. As von Benda-Beckmann reminds us, state law is the primary source of legitimacy (1989:134).

### **5.5 Project law in the shelter intervention**

While the project law is a concept that is not yet popular or well described in the literature (see chapter 2), the NGOs are “increasingly regarded as an important legal pluralistic actor in the cumulatively fragmented field of competing normative systems”, as Weilenmann (2009: 157) reminds us. All the organizations that I interviewed set and implemented their own rules regulating the allocation of resources (shelter) and the interaction between stakeholders (as in the case of renters and landlords). They also introduced new structures of decision making (verification and validation). All of them prepared their own documents – signed between them and local authorities (the memoranda of understanding) or between them and their beneficiaries or between their beneficiaries, the land owners and a third party, be it the municipality, the CASEC or the local committee. All these mentioned elements are a form of law.

Also what is the very basic principle ruling the shelter programs, their conditionality – to become beneficiary a person has to fulfill a set of conditions - is also a part of project law (compare F. von Benda-Beckmann 2005, 2009).

## 5.6 New architecture of access in the shelter intervention

The shelter programs through the project law changed the access mechanisms, redistributed access control and put time framework on the access maintenance.

The strongest intervention was in the situation between the land owners and their tenants. The earthquake in Haiti happened on January 12 when many people have already paid the rent for the whole year. According to article 1087 of the Haitian Civil Code an agreement can be discharged when the object of an agreement is destroyed through a cause of *vis maior* (Shelter Cluster 2010) thus even the renters with formal contracts had no basis to claim back the land after the earthquake. Even though before the earthquake the land owners were rarely claiming their land and people felt safe enough to construct houses on the rented land, after the earthquake there were serious concerns about the possible claims of the land owners. Some of the land owners got affected by the earthquake themselves and selling the land could facilitate their recovery (Shelter Cluster 2010, interview 17). There was another incentive to do that – the prices of land increased significantly after the earthquake (Shelter Cluster 2010). The rental market changed as well, high demand for land and housing allowed raising the prices. There were cases of land owners claiming back land after the shelter was built if the organization did not secure the ownership of shelter by the beneficiaries (interview 17). These claims had to be prevented by the shelter organizations. The contracts that they designed limited the control of the land owners over the duration and cost of access to their land. For three years they could not claim their land and had no control on the benefits that they could derive from allowing access to their land to others.

The shelter organizations defined the categories of beneficiaries. Ribot and Peluso (2002) put social category on the list of access mechanisms. In the shelter program one could get access to land through belonging to a right category. After the earthquake people who had access to land through non-formalized gift could not become beneficiaries of the shelter program as they were “invisible”, not belonging to any category recognized by the program.

During the reconstruction process after the earthquake, in case of land claims by private owners who couldn't prove the ownership, some organizations were acting as if the land belonged to the private domain of the state and were no longer negotiating access with the alleged owner whose claims were dismissed (IOM interview). The municipality gained control over access to land that it did not have before. In general the organizations were turning to the municipalities for land or permission to construct on the land. Some mayors claimed the access control by issuing permissions or even selling land of which the owner was unknown (interviews 1, 2). In some cases the private owners appeared with the land titles, causing trouble to shelter organizations (interviews 1, 2, 17).

CASECs were also a group who gained control over access comparing to the period before the earthquake. The CASEC was often a counterpart for the shelter organization working in his area. CASECs were the ones to validate documents, confirm identity or land ownership etc. Following the role of the CASEC in the strategy of Cordaid in Villa Rosa and comparing it to the role of public notary in the legal transaction gives interesting results - the CASEC follows

exactly the same steps as a public notary – he confirms the applicant’s identity, then prepares and files documents and finally passes documents to higher instance to finalize the deal. By doing this the CASEC gets to control the access in the way that was not open to him before.

Cruz Roja had a case of a CASEC who offered validation of documents to the members of his community who would otherwise have to bring the documents to a *juge de paix*, which was advised by the shelter organization. As the CASEC was charging less than the *juge de paix*, many people chose to use his service, ignoring the fact that CASEC had no mandate to validate this type of document (interview 17).

The group that lost control over access to land in the intervention were public notaries. The organizations were not using their services due to the costs and the length of the procedure. The notaries did make attempts to defend their position of control. The *Land, Housing and Property* group was for a while asking the high chamber of notaries for advice and they were advising to process all documents through public notaries offices and convincing the cluster that documents without the signature of a public notary cannot be valid (interview 16). The shelter organizations did not follow this advice due to the financial reasons – no one had budget for it (interviews 16, 17).

Some points of access control were overlooked, especially connected to producing information. Cordaid used a local organization to collect information on the communities – to make mapping of their operational area and prepare social-spatial information. The results raised suspicions –some areas where people were known to live were left out of the map. Cordaid visited the area to verify what happened and found out that the local organization responsible for the mapping was asking money from people for putting them on the map. Those who did not pay were omitted and potentially excluded from the program (interview 1). The local organization used the access control for their financial profit.

In the state land system the second most important function is delimiting and locating the plots. After the earthquake not all organizations were delimiting plots and making maps. Some were satisfied with locating houses. Cordaid and IOM pointed at the limits of the plots as potential future source of conflicts. What is interesting, the two organizations had different view on the moment when the plots should be delimited in relation to rubble clearing. One of them saw rubble as the support to recreate the limits of the plots - rubble as points of reference (interview 5), the other one as an obstacle - rubble covering the plot limits (interview 7). Both talked about the potential for powerful individuals claiming more space at the expense of their neighbors (interviews 5,7).

In some cases the plots (on the ravines) partially or completely disappeared after the earthquake due to the land slides. The shelter organizations were supporting claims for land of the owners of these plots from other community members and if that failed from the municipality, and were negotiating on their behalf.

### **5.7 Overall concluding remarks**

The shelter intervention changed the terms of access in a significant way. Some actors of the land system lost control over access others gained it. The new mechanisms of access were developed by the organizations in the form of project law while the pre-earthquake mechanisms were blocked by the intervention. The organizations moved away from the state legal mechanisms of access as they were judged costly and time-consuming. They did not however move towards informal or customary, even if using community testimonies may suggest so. In the contrary, they were pushing for formalizing previously informal agreements, as in the case of renters and they were involving local authorities wherever possible. They were also producing their own documents. The shelter organizations became a powerful actor of the legal pluralistic environment. Powerful in the sense that those who could not or chose not to enter their normative framework lost either access to land or benefits that they derived from the access to land (a chance to get a shelter).

## 6. Land tenure and post-disaster development in Haiti

In my inquiry into “what is out there” in terms of development policies for Haiti related to land I came across two projects representing different ideas about the relation between land, people and development, the two land paradigms that I presented in chapter 2 – individual property rights school and continuum of land rights school. Actors representing/proposing different ways of addressing the land issue in Haiti are the Organization of American States (OAS) and the United Nations Human Settlement Program (UN-HABITAT). In this chapter I will critically look at these projects.

### 6.1 Land and development in Haiti

Both projects I investigated are development projects, in the sense evoked by Crush that they are “about mapping, about the spatial reach of power and the control and management of other peoples, territories, environments, and places” (1995:7). They both aim at normalizing the land tenure situation in Haiti, proposing tools to collect information about the citizens and to order space. Both speak of participation and empowerment, but as Henkel and Stirrat (2001) remind us, when it comes to empowerment, one question should always be asked: what are people empowered for? As they state further, the participants in the participatory development projects are usually empowered “to take part in the modern sector of developing societies (...) to be elements in the great project of the modern: as citizens of the institutions of the modern state” (Henkel and Stirrat 2001:181). Both these projects “produce” governable subjects, using the Foucauldian concept (compare Crush 1995, Burchell 1991), the citizens who (through the proposed tenure arrangements) can participate in the capitalist markets and who can be disciplined into paying taxes. The difference between the two is that the OAS project makes it its objective while in the case of the UN-HABITAT project, the production of governable subject is a by-product of the project, and definitely not its main rationale (OAS 2011, UN-HABITAT 2010).

Both projects diagnose the current land situation in Haiti, but only the OAS project explicitly blames it for the Haiti’s underdevelopment. As Franz von Benda-Beckmann (1993) points out, in development as a form of ‘socio-legal engineering’, where desired situations are projected into the future, the existing conditions are negatively labeled as ‘hindrances’ (1993 in Roth 2003). The current Haitian land administration is presented as such a hindrance. The OAS project approaches law instrumentally. As Roth (2003) puts it, it ascribes to the proposed legal and institutional arrangements “the capacity to generate, enforce and reproduce the kind of intended societal changes called ‘development’” (Roth 2003: 13).

As Crush (1995) reminds us, “the texts of development have always been avowedly strategic and tactical – promoting, licensing and justifying certain interventions and practices, delegitimizing and excluding others (Crush 1995:5), it is therefore very important to ask “what do texts of development not say”? (Crush 1995:5). In the next sections I will attempt to analyze these two projects in terms of what ideas about development they promote and what interests they represent.

## **6.2 Ideas turned into project – OAS and *Foncier Haiti***

I first came across the Organization of American States' (OAS) project for Haiti when doing the preliminary literature study for my research. I was looking at different ways of collecting information about the population and land. The national cadaster – this is what the OAS project is about - was one of them. The document that I found was the project proposal from March 2010. It did not have its present name yet, it went under the title *Modernization of cadaster and land rights infrastructure in Haiti. A rapid and inclusive approach*. The project mentioned Hernando de Soto as a source of inspiration so I classified it as belonging to the individual property rights school. It also spoke the language of transforming crisis into opportunity and proposed a major policy change (OAS 2010). It was clear to me that I should take a closer look at this project and look for the signs of its implementation in Haiti.

When I came to Haiti, I found out that the project had a new, improved version and a new name - *Foncier Haiti* - and that the OAS was looking for funding for its implementation. I attended the presentation of the project on the international conference "*Haiti reconstruction: access to land and housing as a fundamental right*" organized in Port au Prince by the Haitian platform *Je nan Je* and Action Aid (see chapter 3). I also got in touch with the OAS and interviewed one of their consultants. In this section I will present the project, its assumptions and its position on the political scene in Haiti.

### **Predecessors, partners and supporters**

In the current, improved version of the OAS project the relation with Hernando de Soto and his Institute for Liberty and Democracy (ILD) is made explicit – *Foncier Haiti* is based on the long work of the ILD in Haiti and uses their data. In their own words "the *Foncier Haiti* project strategically embeds the ILD experience in Haiti" (OAS 2011:7). The project also gained a new official strategic partner, The Government of Haiti through the Ministry of Public Works, Transportation and Telecommunication and is now presented as a joint initiative of OAS and the Haitian government. The links with and the support of the government are emphasized (as well in the previous version of the project) – the OAS pre-earthquake encouraging talks with the President, René Prével, and the continuous support of the Prime Minister, Jean Max Bellerive formally expressed in his letter from May 2010 attached to the project in the form of appendix. The project mentions as well the gratitude expressed by the Minister of Public Works, Transportation and Telecommunication, Jacques Gabriel (OAS 2011:9). Various international actors are listed as being notified about the OAS mission in Haiti (listing their names in the project document suggests that they are supporting it): the World Bank, the USAID, the Inter-American Development Bank (IDB), U.S. State Department and U.S. Mission to the OAS, the Mission of France to the OAS and technical representatives from the French Ministry of Foreign Affairs (OAS 2011:9-10). It is also emphasized that the rationale of the project, the importance of the cadaster and land rights infrastructure, was recognized by "a variety of important public figures after the devastating earthquake, including President René Prével, Former President Clinton, Secretary General of the Organization of American states (OAS) José Miguel Insulza, economist Hernando de Soto, and others" (OAS 2011:6).

### **Property rights as the remedy for underdevelopment**

The key-words of this 7-year and 70 million-dollar project are “foreign investment”, “loans”, “credit”, and “mortgage”. But also “democratic governance” as well as “empowerment” and “inclusion”, that found their place mainly in the newly added chapter on “community and social considerations” (OAS 2011). “Building local capacities” also appeared as a new project’s objective.

A very strong assumption is made about the relation between the particular solution *Foncier Haiti* promotes and development. It is worth to go back for a while to the texts of Hernando de Soto, as they are the base for this assumption. For De Soto the line dividing the world into developed and undeveloped is the border separating the ordered West where the law rules from the chaotic, unstandardized, unmapped and legally pluralistic rest (Third World and former Soviet Union nations, as he says, 2003:179). “Imagine a country – de Soto encourages his readers - where nobody can identify who owns what, people cannot be made to pay their debts, resources cannot conveniently be turned into money, ownership cannot be divided through documents, description of assets are not standardized and cannot be easily compared, and the rules that govern property vary from neighborhood to neighborhood or even from street to street” (2003:179). Haiti, whose pre-earthquake situation could be well described with the very same words, could be a perfect target for De Soto. De Soto does not appreciate the informal legal orders “assets cannot be turned into capital and traded outside of narrow local circles where people know and trust each other and cannot be used as collateral for a loan (2003:180). What he appreciates and what he sees as the reason why the Westerners “achieved a huge advantage over the rest of humanity” (De Soto 2003:181) is the fact that “in the West, by contrast, every parcel of land, every building, every piece of equipment is represented in a property document that is the visible sign of a vast hidden process that connects all these assets to the rest of the economy (De Soto: 180). The crucial moment for development was when the Westerners “were able to focus on the title of a house and not just the house itself” (De Soto 2003:181). According to De Soto, titling, recording and mapping assets and the rule of property law are the remedy for underdevelopment.

The OAS project document uses the very same language. Introducing the legal cadaster based on individual property rights is presented as the necessary step to attain development goals. Without the cadaster “the revived, empowered, and prosperous Haiti that is in the minds and hearts of all Haitians and Haiti supporters will be impossible to materialize” (OAS 2011:7). To quote the project further, “no population relocation, urban planning, transportation planning, infrastructure design, agricultural or tourism development, environmental recovery, or investment attraction will be possible without updated cadastral information” (OAS 2011:5). Modernizing the cadaster and land rights infrastructure in Haiti will bring Haiti to prosperity (OAS 2011:7) and is the key “in the Caribbean nation’s future growth and development” (OAS 2011:5), what is more, it will have “crosscutting positive effect on all socio-economic development aspects” (OAS 2011:7).

It is not only assumed that the implementation of the project will foster development, but also where this development should lead. In other words, it is clear what future for Haiti the authors of the project desire. In the future envisioned in the project, the “prosperous Haiti” is

the one where entrepreneurial activity is created, small owners mortgage their properties, foreign companies set up their shop and the typical market scenario can occur where financial institution guarantee loans and creditors grant them at affordable rates (OAS 2011). The alternative to this desired scenario is the vast array of lost opportunities. The foreign investors will go elsewhere in the region, just as a big Korean textile company followed by a large Martinique-based banana company already did (both examples mentioned in the project to illustrate what can happen if the land issue is not regulated). Without the cadaster “thousands of jobs” and “millions in capital influx” will never come to Haiti (OAS 2011).

#### **Focusing event: the 2010 earthquake**

“In the midst of a comprehensive reconstruction coordination and given the complexity and recognized difficulties to advance quickly with the reconstruction mechanisms even ten months after the devastating earthquake hit Haiti, the international community and the affected population have made clear the need to take land regularization into serious consideration” (OAS 2011:18).

The OAS project dates from before the earthquake. The first OAS mission in Haiti took place in 2009 with the aim “to explore the different areas in which the OAS’ Department for Effective Public Management could support Haiti” (OAS 2011:8) and resulted in a request from President Préval to support ONACA, the Haitian cadaster office, in developing the cadaster. The earthquake speeded up the process and widened the scope of the project: “The third OAS mission evaluated the possibility of proposing not only the modernization of ONACA and its processes (cadastre), but to develop a comprehensive plan that lays the ground for development, planning, and progress in Haiti based on a modern and inclusive cadastral system that secures a land rights infrastructure. Cadastral information should serve as the base for decision making, planning, development, and democratic governance” (OAS 2011:9). As we saw in the chapter 2, the focusing event such as an earthquake can reveal policy failures and focus public attention on the problems that used to be dormant or can lead to identify new problems that can be addressed through change in policy (Birkland 1998). The OAS project clearly evokes the uniqueness of the situation: “Haitian citizens and government leaders, as well as the international community think that Haiti has to transform this enormous crisis into a historic opportunity for development”(OAS 2011:21) and “These essential planning and development necessities will be more relevant today than ever” (OAS 2011:18). OAS is a pro-change group in the terms used by Birkland (1998, see chapter 2).

#### **Project law**

Another interesting feature of the project is the way in which project law is explicitly meant to alter the national law. After all, change in the legislation is one of the project’s objectives (OAS 2011:20). The rationale given is that any institutional transformation must be regulated by law (OAS 2011:24). There is, they claim, a need for a new legislation that would reflect the needs of the project. According to OAS, changes in the legislation should be complex: “New legislation should reflect the new vision of the cadastre and land registration infrastructure, and clearly address critical matters such as the land tax role of the cadastre and the relationship with municipal governments in this regard, the publicity of rights, the coordination with other government entities and the integration with the property registry; but most

importantly, a Land Rights Infrastructure based on the empowering people through community participation. It will also be important to redefine the role and the relationship with Notaries and Surveyors, in the context of a more transparent, secure and efficient lands rights infrastructure supported by information and communication technologies” (OAS 2011:24). The OAS representative that I spoke with gave me another example. The modernization of the national cadaster includes introducing new technologies. The ONACA has already recently got access to new technologies, but Haitian law does not recognize digitalized documents. As my interviewee said, “technology evolves while law stays the same. In Haiti law is static and it should be dynamic” (interview 2).

### **What the OAS project is about - Haiti and the national cadaster**

The expected outcome of the *Foncier Haiti* is a solid cadastre and land rights infrastructure. The activities of the project include intensive training of human resources, the review of the legal framework, the modernization of the information and communications technology infrastructure and communication of the importance and value of the cadastre to all relevant communities. OAS proposes the integrated land information system that will contain legal, physical and cultural (e.g. land use, demographics) information “in a common and accurate reference framework that will provide the essential information to address the issues linked to property rights” (OAS 2011:17).

What exactly is a cadaster? As defined by the International Federation of Surveyors (1995 in Lamba 2005) it is a parcel-based and up- to-date land information system containing a record of interests in land (e.g. rights, restrictions and responsibilities). It usually includes different layers of information – the geometric description of land parcels linked to records of ownership status, information about land use etc. (Lamba 2005). According to Steudler (2004 in Lamba 2005) the cadaster is the core of a land administration system. A national cadaster means that the system covers the whole territory of the country.

One of the cadastral processes is land adjudication. Adjudication is “the authoritative ascertainment of existing rights in land. Adjudication is usually the first component of the land delivery process before first registration. Adjudication does not alter existing rights nor create new rights” (Lamba 2005). OAS recognizes the need to set up a mechanism to conduct a “clear and fair” adjudication process (OAS 2011:25). It is not mentioned what kind of mechanism it would be. What is stated is that this mechanism “will address in a fast and reliable manner aspects such as: owner identification, proof of ownership, conflict resolution and adjudication” and that the experts on the topic will “work with all stakeholders to assure a participatory process that fits into the local culture” (both quotes OAS 2011:25). I asked my interviewee at OAS what kind of mechanisms they had in mind. He answered that they had no solutions yet. He expected contestations and hence, problems. At the same time he stated the cadaster would “solve the problem” of people who live in informal settlements and illegally occupy land “that does not belong to them but to someone else”. “Why someone who doesn’t have a real title would live there?” he asked me, rhetorically (interview 2).

Another argument that OAS provides for registering ownership of land is that knowing the legal owners would facilitate necessary expropriations (necessary to free land for big investments in infrastructure in the post-disaster reconstruction process) (OAS 2011:5).

These aspects were not mentioned during the project presentation at the conference “*Haiti reconstruction: access to land and housing as a fundamental right*” where access to land and housing was in general discussed in the language of human rights (personal contact). What was mentioned and emphasized by the OAS representative in his presentation was the inclusiveness of the project and the broad community engagement and recognition of local customs (OAS, personal contact). Cadaster was advertised as “a system for Haitians” (OAS, personal contact). However, the presentation was given in English by an American and the ONACA, the main local partner of the project, was hardly mentioned (OAS, personal contact).

### **ONACA – National office of cadastral information**

The National Office of Cadastral Information ONACA was created in 1986 as the outcome of the project financed by the German Agency for Development Cooperation GTZ. Its role is to provide up-to-date cadastral information of all property and parcels in the rural and urban Haiti. Since 1986 ONACA prepared cadastral information on only 5% of the country and even this information is not often referred to during the land transactions (OAS 2010). ONACA works under the Ministry of Public Works, Transportation and Telecommunication. According to my interviewee from OAS, it creates problems with the budget as “the main occupation of this ministry is building roads and that’s where all the money goes” (interview 2). If the cadaster office was under the ministry of finance as DGI, my interviewee went on, its financial situation would be much better. It is an interesting remark given that the Ministry of Public Works is the strategic partner of the *Foncier Haiti* (OAS 2011).

While we were talking about the institutional landscape around the land projects in Haiti, my interviewee expressed a lack of trust towards the activities of another governmental body, the Inter-ministerial Committee for the Land Management (CIAT). He called it a “political problem” (interview 2). According to him, CIAT wants to take over land in Haiti (interview 2). Interesting enough, CIAT is a partner of another international actor who is working around the land tenure issue in Haiti – UN-HABITAT, responsible for the project that I will look at in the next section.

### **6.3 Ideas turned into project – UN-HABITAT and Participatory Enumerations**

The participatory enumeration project was presented by the UN-HABITAT at the same conference as *Foncier Haiti: “Haiti reconstruction: access to land and housing as a fundamental right”*. The project proposal was available on-line on the Haiti Shelter Cluster internet platform. But Haiti is not the first country where UN-HABITAT promotes participatory enumerations and the post-disaster situation is not the context in which this tool is usually implemented. The participatory enumerations are thoroughly explained in a UN-HABITAT 2010 publication, *Count me in. Surveying for tenure security and urban land management*. The publication explains that developing participatory enumeration methodology is a part of “living practices”, a wider UN-HABITAT’s project “to develop pro-poor approaches, tools and methods that contribute to improving tenure security in urban areas”. Participatory enumerations are mainly used in the slum-upgrading projects, in urban informal settlements all over the world.

The method, as presented in *Count me in* publication, has multiple purposes – to protect informal communities from evictions, to empower them and prepare them for negotiations with local authorities, to build a base for service provision. Participatory enumerations can “contribute to increased security of tenure, more inclusive urban management, more sustainable land management and more transparent land information systems”. It is again about ordering space and people.

### **The same starting point, different conclusions**

*Count me in* is co-authored by UN-HABITAT and The Global Land Tool Network (GLTN). The network was formed by UN-HABITAT and partners in 2006 with the overall goal of “poverty alleviation through land reform, improved land management and security of tenure” (GLTN 2009 in: UN-HABITAT 2010a:4) which represents another idea about the relation between people, land and development. The GLTN is strongly promoting the continuum of land rights discourse, the discourse staying in opposition to the one used by the OAS, as it states clearly that “land rights are not restricted solely to registered rights, and especially not to individual property rights. Land tenure involves a complex set of formal and informal rights, ranging from various rights of use, to conditional or full rights to dispose of the land. This is what the Global Land Tool Network calls a “continuum of land rights”.” (UN-HABITAT 2010a:5). If we compare it with the OAS project, in terms of means the individual property rights are replaced with tenure security and economic growth gives way to poverty alleviation as an expected outcome.

The participatory enumeration project for Haiti however avoids making direct assumptions about development. The project proposal prepared in Fort Mercredi was published in August 2010.

The starting point is the same as for the cadaster project – the weak land governance in Haiti. The project describes the situation in the following points:

- nearly inexistent precise and feasible data on land tenure and tenancy rights;
- the dominant informal form of tenure in urban areas (informal settlements);
- several different forms of tenancy;
- without functional land registration system with corresponding low level of formalized titles (UN-HABITAT 2010: 2).

The rationale of the UN-HABITAT project, however, is different. “Considering all above – the project says - there is a particular demand to consider informal (unregistered) rights in condition of natural disasters and displacement when the displaced persons face a real risk to be deprived from their non-formalized tenure rights” (UN-HABITAT:2). The project does not present the situation in Haiti as a hindrance to development that needs to be corrected. It just recognizes the fact that the land governance in Haiti is weak and therefore a suitable tool is needed to collect information about tenure situation of the population, different that the official cadaster of the property rights. In that sense, the project is directly competing with the cadaster project.

### **What does participatory enumeration come with?**

What exactly is participatory enumeration? As we can read in the document, it is “the process of gathering statistical information about a community” (UN-HABITAT 2010:2). The adjective “participatory” comes from the fact that the data gathering process involves the people who are being enumerated and the outcome is validated by the community.

The data that is gathered are similar as in the cadaster – spatial information combined with social data on the households. Its aims are identifying the needs of the community, including the special needs, so it gathers information on vulnerable community members – the elder, the disabled, the female-headed households, the pregnant women etc. It does not focus on identifying the property owners but on mapping the existing tenure arrangements.

Participatory enumeration is named “the essential tool for securing and improving the non-formalized tenure rights of disaster affected persons in Haiti” (UN-HABITAT 2010:2), it is supposed to give the initial evidence of the tenure rights of the disaster-affected population.

### **The benefits of participatory enumerations**

The first benefit listed is that participatory enumeration can be a “useful tool for facilitating the sustainable return to disaster affected persons to their place of origin”. This is the immediate use of the enumeration, adequate in the post-earthquake Haiti, especially in the urban areas with the high number of people with no formal rights to their pre-earthquake dwellings. Participatory enumeration serves to re-create, in a legitimate way, the settlement situation from before the earthquake. As the document reminds us the “safe return” is the declared priority of both the Haitian authorities and the international community (UN-HABITAT 2010:3).

The second benefit is determination of the “dominant status and main patterns of tenure” and, as a consequence, identification of “the feasible forms of tenure security that are most likely to guarantee accessibility to housing and land to all earthquake-affected persons, especially the urban poor” (UN-HABITAT 2010:3). The document recognizes that the majority of people affected by the earthquake in the urban areas were tenants, lease holders or squatters, the fact that is not taken into account in the *Foncier Haiti* project, which speaks only about “informal owners” whose rights should be formalized.

Further, the document states that “the enumeration exercise will produce multiple benefits for both, tenants and the state” (UN-HABITAT 2010:3). Let’s take a look at these benefits. First one is upgrading the tenants’ rights. It is claimed that, “once the available data are collected and mapped, it will be easy to upgrade the tenants’ rights and to grant intermediate forms of tenure that provide short-term security of tenure to earthquake-affected populations” (UN-HABITAT 2010:3). Elsewhere in the document, this benefit is described as “upgrading/formalising the tenants’ rights” (UN-HABITAT 2010:11). When I talked to UN-HABITAT representatives, this assumption was already verified. In fact, the upgrading of tenants’ rights is challenging and when it comes to regularization, UN-HABITAT is very careful using the word (interview 19). They realize it would require both political will and huge resources. At present they may introduce intermediate forms of tenure security, such as administrative occupancy permits (interview 19).

The next benefit listed in the project document is the improvement in urban planning. This improvement will be possible as “the local government, thanks to the enumeration exercise, will have, for the first time, a clear picture of the community needs” (UN-HABITAT 2010:3). The assumption behind this point is quite strong – that the local government would want to take informal settlers’ needs into account and that the unplanned neighbourhoods will get under the radars of urban planners. However, the new President of Haiti, Michel Martelly did launch a program of integrated reconstruction of sixteen Port-au-Prince neighbourhoods in order to resettle people from the six camps in the capital. The 6/16 project, as it is called, has a budget planned for 78 million US dollars and among its objectives the rehabilitation of housing and access to basic services prioritized by the community. For the authorities to invest in basic services and infrastructure it must be clear that the unplanned neighborhoods are there to stay. This is the objective of the UN-HABITAT to which they are strongly committed (interview 19). At the same time, as they admitted in the interview, some representatives of the local authorities are “reactionary”, reluctant to take definite decision to keep the informal settlers in their area of influence.

Another benefit for the authorities is facilitating the property tax collection. This appears as an argument in the property rights discourse and is criticized by its opponents. In the UN-HABITAT project it is assumed that the tax revenue will be spent by the authorities on the basic services and infrastructure for the poor communities.

Next, it is said that “enumeration exercise can help improve the understanding between communities and municipalities”. It is further explained that “in the Haitian urban scenario dominated by a high informality of tenure the relations between community and municipality are often difficult and tense. The community accuses the municipality of not providing the services to them while the local government sees the informal settlers as invaders who illegally occupy the municipal land disturbing the normal municipality development”. Although I did not personally noted any evidence of such tensions, the findings of another Wageningen University student, Loukie Molenaar, who did her research in Haiti few months earlier than me<sup>4</sup>, seem to confirm that the attitude of the communities towards local authorities can be characterised as general distrust (Molenaar 2011, in preparation). The UN-HABITAT project makes an assumption not only that “the community members will understand that paying taxes is a duty and not a constraint if they can receive in exchange an adequate service for the paid amount”, but also that the services will indeed be provided by the municipality. That means that the far result of participatory enumeration will be a kind of social contract. It is argued that state institutions in fragile states derive at least part of their legitimacy from service delivery (Brinkerhoff, 2005 in: Douma and Van der Haar 2010). However, as Douma and Van der Haar state, there is almost no evidence of programs in which improvements in service provision contributed to the legitimacy of the state (2010:24).

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<sup>4</sup> Both research projects were part of Haiti Field School of Wageningen University Disaster Studies.

### **The purposes of participatory enumerations**

The first element listed in the project for Haiti as a purpose of participatory enumeration is community empowerment. It means it is an intended effect of the project. The quite abstract idea of empowerment is one of the buzz-words of development. The participatory enumeration empowers the communities through providing them with information about themselves and their needs, the information that could be used in negotiation with the government. Narayan (2002) defines empowerment as expanding the capacity and capability of the poor to participate in, negotiate with, influence, control, and hold accountable institutions that affect their lives. As the research on the Multi-stakeholder Platforms shows, those stakeholders who cannot produce their own data sets have less power to negotiate their interests (Moreyra and Wegerich 2006). In the participatory enumeration the communities are only partly involved in the production of data, in the sense that they do not have influence on the questions that are asked during enumeration. It is important to remember that mapping is never a neutral technology. Maps – through their content and style of representation – structure the human world in a way that is both influenced by and influencing a particular set of social relations (Harley 1998 in Henkel and Sirrat 2001: 181). In other words, maps not just represent the world; they represent chosen elements of the world in a chosen way. In the case of participatory enumeration people who are being enumerated do not chose the elements of their world that will be represented in the produced data. Another important thing is that the results may be contested and there may be conflicts. The project is to certain extent addresses these two issues by introducing validation of date by the community. The data is displayed in public for a certain amount of time for complaints and suggestions of change. This is an important element in the UN-HABITAT approach (interview 19). According to UN-HABITAT, both data generated during participatory enumeration and process itself have very positive characteristics – data is more relevant and reliable as well as more inclusive, and the process due to its transparency and legitimacy and trust building capacity can become basis for longer term multi-institutional partnerships and even co-governance arrangements between organized communities, support institutions and the relevant government (UN-HABITAT 2010a).

The next purpose is to support finding the alternative to eviction. The project document states that the threat of eviction is a widespread practice in informal urban settlements. However, some evidence from Haiti, including my own findings, suggests that this was not really the case before the earthquake. The disaster however brings a thread that people will not be able to come back to their pre-disaster dwellings, as it was seen after tsunami and hurricane Katrina (Klein 2007). In Haiti, a threat of private investors interested in taking over land, was mentioned by both the UN-HABITAT and the OAS in the interviews, although the OAS did not frame it as a thread, but as opportunity. My interviewee from UN-HABITAT said that some of the areas with unplanned neighbourhoods in Port-au-Prince are attractive to the private investors in residential housing (due to the view, for example) and reclaiming the land and selling it on the private market may be attractive to the local authorities (interview 19). This was confirmed by the OAS consultant: “Why not private investments”, he said, “why not high buildings, residential complexes?” (interview 2). The idea expressed in the participatory enumeration project is that the enumeration process could help the dwellers to get better

organised for pressing for their rights by demonstrating the scale and extent of the loss that an eviction could cause (UN-HABITAT 2010). Again, it is an assumption that evicting 20,000 of people is more difficult than evicting some undefined number of people, however some evidence to support this assumption may be found in the literature (Bradlow 2011). The cadaster would not address this problem. My UN-HABITAT interviewee gave me an example of one of the neighbourhood where they work, Bristou Bobin. The land there belongs to four owners; it is four large stretches of land. The cadaster would show four large parcels with four owners, while in reality, there are 22,000 people living on this four stretches of land (interview 19).

If the authorities decide about resettlement, participatory enumeration can serve its other purpose, assuring just resettlement. If the resettlement is unavoidable the data from enumeration will help residents to “as their need for shelter is much easier to quantify”. It is also said that “the exercise could also ensure that displaced could return to their homes or receive appropriate compensation for their property”. However, as an example of an expropriation by the government given by the IOM (interview 7) shows, the government is not always willing to compensate people without official property titles. In this example, only those who could present an official document confirming their ownership were granted land as compensation. The others “had to leave” (interview 7).

The next purpose for which the participatory enumeration can be used is the adjudication process. It could help to “determine who has what rights to registered parcels”, to gather data about the community.

The last purpose of participatory enumeration that is listed is the support for saving and credit. “The enumeration process allows the informal tenants to get a formalised title over their parcels; in this sense the formal title of their tenure can enable disadvantaged and poor people to get access to credit which they may use for many different purposes to improve their position”. The assumption behind it is that the enumeration will lead to obtain formalize titles.

At the same time, what is importantly said is that “informal records, such as those emanating from enumerations, lead to tenure security vis-à-vis outsiders only if the government, the courts or other outside stakeholders acknowledge the local records as evidence” (UN-HABITAT 2002:page).

### **The next step**

As the UN-HABITAT admitted in the interview, “we are not there yet” (interview 19). The ideal would be, as they say, to get the outcome of the enumeration validated by the municipality. That was the original objective of the project. So far the UN-HABITAT is doing it indirectly, by implicating municipalities in different projects based on the data from participatory enumerations: the inauguration of the Community Resource Center, a community planning exercise done with the mayor, the debris management project jointly implemented with the municipality. As my interviewee told me, “it is inherent in these projects that they recognize the results of participatory enumeration. They know that part of the project funds goes to the enumeration activity” (interview 19). According to my interviewee, it is a matter of time that the mayors recognize these data as legitimate (interview 19). Even though the data generated

through the participatory enumeration is already very useful as it informs the reconstruction process, the UN-HABITAT does not want to stop there. They see more potential in this data (interview 19). They also see the disaster as the opportunity, “one in a lifetime opportunity for Port-au-Prince to create security of tenure for the people who live in all these unplanned neighborhoods” (interview 19).

For UN-HABITAT the next step of the government is very important. Next to the OAS cadaster project there are other projects currently discussed with Haitian government.

One project is prepared by BID for the rural areas of Haiti; the pilot project is being implemented on the North of the country (interviews 2, 9). This project focuses on formalization of rights on the agricultural land. Its considerations are environmental –awarding people working on the land with a formal title is expected to increase their sense of responsibility for the land (interview 9).

Another strategy is developed by CIAT, who is working with French advisors - the project of pre-cadaster policy of tenure security improvement (*pre-cadastre sécurisation foncière*). From the technical point of view, it will be a base map showing what is on the land (buildings). In contrast to the legal cadaster, it will not show what is the legal status of the land, who is the legal owner. The project is already being tested.

One more project is coming: the census. The project is funded by the Haiti Reconstruction Fund under the 30 million dollar support program for reconstruction and return to neighborhoods. The whole program has four components lead by different governmental bodies and supported by different UN agencies. The UN-HABITAT plays a coordinating role in the program; they have a function of its secretariat. The census is the program’s first component with 10 million dollars budget. It is the Central Statistical Office of Haiti (IHIS) who is responsible for this component, together with IOM and United Nations Population Fund (UNFPA), who has a long history of supporting the census office. The census will cover all the areas not covered by the participatory enumerations. It will not contain many questions about social-economic situation, but the question of the land ownership will be there. It will be based on the self-declaration; there will be no community validation (interview 19). The lack of validation by the community is the most important difference between the census and the participatory enumeration project. When I was doing my research, the census questionnaires were already being tested.

What will further happen with the data generated in these projects is a political decision. According to UN-HABITAT, the government of Haiti is not ready to make this decision yet (interview 19).

## 7. Discussion and conclusions

Haiti appears to be on the eve of transition to another land administration system. All the parties recognize that the current system needs to be changed. The choice is between a full legal cadaster based on individual property rights that would address the problem of tenure insecurity by strengthening the rights of some at the detriment of others (see Lund 2000) and the solution that would be based on recognizing data from participatory enumerations and setting up a system of incremental land rights that would secure tenure of the de-facto land users providing clarity over extent and duration of their rights (Lund 2000).

### 7.1 The shelter programs and access to land in Haiti

The main concern of the shelter organizations is to provide shelters to people affected by the earthquake and not their tenure security. In Haiti, the need to address the land issues became urgent due to the overall uncertainty of land ownership. The general rule is that to provide shelter, the aid organizations need to have the consent of the landowner to access land. In Haiti identifying the legal owners of the land was problematic and thus this access mechanism could not be used.

When I first thought of using the theory of access as analytical tool for this research project, I had in mind the access to land of the earthquake-affected population. However, when I look at it now, the real problem was the access to land of the shelter organizations. When the only mechanism that the organizations knew and expected to use turned out to be impossible to use, they found themselves in need of new access mechanisms.

If we look at the situation from before the earthquake (I refer here to my first sub-question, that was answered in chapter 4) we see that despite Haiti's weak land governance, most of the people did have access to land and - if we consider building a permanent house a good enough evidence - they perceived this access as secure. They did not have access through a legal title, but Haiti's legal pluralism offered many other access mechanisms developed within different normative frameworks. I would also argue that weak land governance was in fact the reason why all these alternative mechanisms could develop. With weak state control, weak protection of private property and the uncertainty over the ownership of large parts of the land even the poorest could find a piece of land to build own house, situation impossible to imagine in the Western world.

The earthquake changed this situation – people lost their houses and the means to rebuild them. But they did not lose access to land as such. The arrival of the shelter organizations with both the houses (often in pre-fabricated t-shelter kits) and the means to build them did not mean however that the things would get back to normal. The pre-earthquake access to land mechanisms were now in many cases not good enough – they were not recognized by the organizations.

This almost did not concern rural areas where the shelter programs did take into account the existing local system of resource rights (compare Barry and Meinzen-Dick 2008) – the customary system of undivided inheritance (Smucker et al 2002). Despite the fact that people did not have legal titles to land, they could go back to where they used to live before the earthquake. They were landowners by custom and this was recognized by the shelter programs. Even though they potentially could formalize their rights to land they were not asked to do so. The shelter organizations were satisfied with the community testimonies. They recognized that “people knew” and decided to base shelter provision on this knowledge. The only interference in the customary system were contracts with renters – very rare in rural areas – which were typically signed for a specified period of three years, while according to the custom people stayed on the rented land as long as they wanted.

The reason why the shelter organizations at the end quite willingly accepted the customary system in their rural programs may be the fact that the rural areas of Haiti are dominated by private property (Smucker et al 2002), the system well established, understood and respected in the Western World. In the semi-urban and urban areas this was unfortunately not the case and thus the response of the shelter organizations was different. Dominated by various forms of informal arrangements, unplanned and uncontrolled urban Haiti could not be easily embraced by the shelter programs. In order to get shelters people needed to adjust to the new standards set by the organizations. As Franz von Benda-Beckmann reminds us, all development projects ask of people to change their behavior (1989:133). The shelter organizations in urban areas of Haiti asked renters to pay debts to their landlords, squatters to pay rent, informal settlers to find the land owners, land owners to prove they were land owners etc. They introduced sets of new rules regulating access to land. Shelter organizations in urban areas did not recognize the existing normative frameworks with their access to land mechanisms but changed them. To use von Benda-Beckmann’s distinction, they did it in a double manner: by introducing new law (the project law) and by affecting the existing normative ordering in the domain of land and housing (F. von Benda-Beckmann 1989:134).

Another interesting and overlooked effect of the shelter programs was their intervention in the rental market. The contracts that the landowners had to sign with the tenants can be regarded in these terms. In some cases the rental prices were frozen for the three coming years as the land owners were not allowed to raise the rent (while the rest of the rental market profited from the post-earthquake boom in prices). At the same time they lost control over access to their land for the same period – they were not allowed to change the tenant or sell the land. Despite the inconvenient conditions of the contracts proposed by the shelter organizations many landowners did sign them and allowed tenants back on their land. This may mean that the post-earthquake concerns about Haitian renters were too far reached (see Shelter Cluster 2010) although there were some cases of landowners not accepting the tenants back. In many cases the changes have been imposed, despite the advice from the Shelter Cluster not to impose solutions where no tensions existed. As some insights from the field showed the situation between the squatters or informal renters and the land owners was, at least in some areas, free of tensions and could be described as peaceful coexistence.

## **7.2 The impact of the shelter programs on tenure security of the beneficiaries**

First, it has to be repeated that the long term tenure security of the beneficiaries is not a primary concern of the shelter organizations and not their expertise. As the ALNAP case study states while discussing the land tenure in transitional shelter approach, “the aid community has very little understanding of how to support tenants and the landless in achieving durable housing solutions” (2010:2).

Still, to refer to my second sub-question (addressed in detail in chapter 5), there have been some positive effects of the shelter programs on the long term tenure security. A small group of Cordaid’s beneficiaries saw an important change in their tenure status. People who did own land, but could not afford to build a house and thus were renting a house somewhere else now got a new house on their own land. According to the Shelter Cluster’s categories from house and land tenants they became owners-occupiers, the highest category possible. In these terms this was an example of “building back better”. As the Cordaid shelter has a lifespan of 15 (guaranteed) and 25 (expected) years it is a durable change.

But the potentially most remarkable example of improving tenure security through a shelter program is the strategy of Cordaid in Villa Rosa directed to the informal residents with the long history of staying in the area. Some of these people have already got administrative documents formally recognizing them as residents on the land and certifying their right to use it. In addition to that, the legal procedure is initiated which may result in granting them land titles, making them legal owners of the land. The strategy has its drawbacks, first being its application to the one category of people only – those who stay on land for twenty years or more, second – the uncertainty of its final outcome, as it is impossible to predict what would be decided in court. But already the intermediary titles that people got improve their tenure security. The strong involvement of local authorities (the CASEC had a leading role in the project and the mayor was present at the ceremony of granting people these documents) gives an extra legitimization to this strategy. What was the key to its success? First, the support of the local authority – the CASEC. His financial involvement is very important – he offered to bare the legal and administrative costs, which were the ‘no-factor’ for other organizations to get involve in legal procedures of formalizing the beneficiaries’ land rights. The involvement of the CASEC may have a political explanation – as the Cordaid staff informally found out, the CASEC of Villa Rosa is planning to stand in the next elections for the mayor of Port-au-Prince. Taking a leading role in Cordaid’s project may be an attempt from his side to build his political capital. Another element which may have played a role in the success of Cordaid’s strategy is the fact that the area manager of Villa Rosa has a background in law (although he is not a licensed lawyer). He was the one who came up with the idea to use the law of prescription to improve tenure security of the inhabitants of Villa Rosa – his knowledge of Haitian law allowed him to identify this option. The fact that the strategy is based on the state law (next to the involvement of local authorities) is of course also an important factor that helped to gain support for the strategy from the part of Cordaid itself. As the area manager of Villa Rosa told me, “Cordaid would not get involved in something that was not legal”.

Cordaid’s long-term thinking about the residents in Villa Rosa may be related to the fact that the organization is planning more projects in this neighborhood. They are at the moment

testing an integrated approach in one part of Villa Rosa – a project of integrated development of the neighborhood implemented in partnership with organizations from different sectors (sanitation, health, education etc.). In this context their concern about long-term tenure security is understandable. A part of Cordaid’s mission is “linking relief to development” and that should mean exactly this – the long term thinking. It can be said that in Villa Rosa Cordaid followed their mission.

Cruz Roja’s shelter project was another case of improving tenure security of one category of beneficiaries. In their operational area the organization had 230 families squatting the state-owned land. Cruz Roja successfully negotiated with the municipality the authorization for these families to remain on the land indefinitely.

### **7.3 Transition to what?**

It is important to remind that the programs addressed by this research project are all transitional shelter programs. What does it mean for their relation to tenure security issues? Transitional shelters are intended to support disaster affected people between the emergency and the time when they are able to rebuild longer term housing (IFRC 2011). “Transitional shelter is a process rather than a product” (ALNAP 2010:1). Ideally a transitional shelter should have at least one of the following characteristics: be upgradable, reusable, salable or recyclable, so that it can be used to construct a permanent house or become one. The transitional shelter approach acknowledges that reconstruction takes usually between two and five years (ALNAP 2010).

It can be argued that a transitional shelter is a link between relief and development. It belongs to the “in-between” phase when it is impossible to make a division between when relief ends and reconstruction begins. This is reflected in the shelter organizations’ land-tenure related strategies. They do not provide shelters to everyone regardless their land status as in the emergency phase, but they also do not strive for the permanent tenure security solutions to support the sustainable development. The required period of three years of tenure security was satisfactory for these transitional programs.

Each transition is a transition *to*. In this case, it is supposed to be a transition from relief to development. To give the first answer to my research question, the shelter organizations while designing their strategies should have it clear and keep it in mind what kind of development they want to support the transition to. What kind of development (in relation to land issues) they envision cannot be concluded from their strategies in Haiti. They started with the attempts of strictly legal approach and moved towards informal evidence of land rights, while still pushing for identifying the legal owners of the plots. The Shelter Cluster was promoting the ‘continuum of land rights’ approach, but the organizations were not so eager to recognize existing mechanisms of access to land and introduced many forms of project law. It does not place them definitely on the side of any of the two approaches to addressing the land issues. I will further discuss these approaches in the next two sections referring to my third research sub-question (the projects representing these two approaches in Haiti were presented in detail in chapter 6).

#### **7.4 Individual property - a system for Haitians?**

The OAS cadaster project promises to recognize and formalize the informal property of the Haitians which would have positive result on Haiti's development and prosperity. The problem is that the vast majority of people in urban Haiti have no property rights to formalize. Under the legal cadaster project, if the owner of the land on which these people live is found, him and not them will be granted the property document. If the owner cannot be found, the land will be declared state land. In any case the people in informal settlements will not profit from what the project promises – they will have no title to use as collateral for credit and their tenure situation will not improve. It can be argued that this system is clearly not for them. As the evidence from many formalization programs shows, the tenure situation of the poor after the programs are implemented may in fact get worse. Durand-Lasserve (2005 in Kingwill et al 2006) describes how titling programs in urban informal settlements become 'market-driven displacements', forcing the poor even more towards squatting. Formalization leads to more inequalities, the property is concentrated into "larger and larger hands" (Mitchell 2004 in Kingwill et al 2006) and the elites get even richer by selling land for development (Durand-Lasserve 2005 in Kingwill et al 2006) or speculating on poor housing (Mitchell 2004 in Kingwill et al 2006).

The individual ownership may not be the solution best suited for Haitians also for another reason. It is common in Haiti that members of extended family share a house and/or a plot. I have seen many of such cases during my field visits. If only one of the family members gets the formalized title it may reduce the security of the others. An interesting observation in this context is made by Kingwill et al. 2006 in their account of the Joe Slovo park housing project in Cape Town: "Whereas previously family members had tenure rights linked to kinship and responsibilities, ownership was now registered in the name of only one member of each household. This reduced security for women and members of the extended family, as the 'owner' could claim new legal rights to use and dispose of the property" (2006:9). There are reasons to believe that a similar situation may be at issue in Haiti, as it has already been happening during the implementation of the shelter programs. The documents produced by the shelter organizations were also signed by only one member of a household and in some cases it resulted in in-family evictions. Even though the conclusion that the individual property rights turn people into selfish individuals and break the social ties would be perhaps too far reached, it has to be recognized that the individual property document, exclusive in its essence, may become an instrument of exclusion. This is very much against the claim of the OAS that their project represents an "inclusive approach".

The question who would be a real winner of this project should be taken under serious consideration. While, as we could see, the gains of the poor part of the Haiti population, mainly in urban areas (so, in fact, the majority of all Haitians) may not be as evident as the project states, the profit for the implementing organization and its sub-contractors is clear. Expressed in money terms, it is 70 million US dollars. In addition to this there is the security of contracts for the whole 7-year project duration. The project already lists some private

companies who will become the sub-contractors<sup>5</sup>. This is to say that the project may represent also other interests than the ones it declares.

### **7.5 Continuum of land rights – a solution better suited for the poor**

The participatory enumeration is advertised as a pro-poor approach and the UN-HABITAT declares its commitment to improving the tenure security of the urban poor. The focus of this research was on the impact of the land-related post-earthquake intervention on the Haiti's urban poor. Haiti is famous for its poverty, the vast majority of its population living under the poverty line. The poor concentrated in the capital and the urban areas of Léogâne and Gressier were the ones the strongest hit by the earthquake. These are good arguments to make the poor the priority target of the post-disaster response and future policies. Thus the new land administration system should support first and foremost the poor. This is why I would argue that the continuum of land rights approach is better suited for Haiti.

However, the crucial question – how the data generated through participatory enumeration will be used - remains to be answered by the Haitian government. To quote the *Count me in* report, “informal records, such as those emanating from enumerations, lead to tenure security vis-à-vis outsiders only if the government, the courts or other outside stakeholders acknowledge the local records as evidence” (UN-HABITAT 2010a: 71). UN-HABITAT is now discussing with CIAT how it could be done and if UN-HABITAT could provide guidance to the government (interview 19). According to UN-HABITAT, both the government and CIAT are interested in participatory enumeration methodology and in the working group on this topic that UN-HABITAT is facilitating (interview 19).

Participatory enumerations have one more important advantage – they are cost-effective. For the country that needs to recover after a major disaster this may be an important argument. Also a lot of data has already been produced for the purpose of the shelter programs and this data could potentially be used. Unfortunately, some opportunities that the presence of the shelter organizations in the informal areas provided have been overlooked, but some are still open. In the next section I will present all these opportunities as the answer to my research question. It can also be read as an attempt to provide recommendations for the future urban disaster responses.

### **7.6 How the shelter organizations through their programs could support transition to a system providing better tenure security to the urban poor.**

There are several things that the shelter organizations may (or may have done) do to support the future development of a pro-poor land system. The large number of NGOs working in the post-disaster area, their human and financial resources could be used to support this process in several ways:

- **Mapping the operational areas.** Preparing maps, including the plot limits or at least the location of houses, and collecting information on inhabitants including their tenure situation in the WHOLE operational area may be a step to support building of the

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<sup>5</sup> For more on the issue of private sub-contractors in post-disaster development projects see Naomi Klein's *The Shock Doctrine* (2007).

future land administration system. Many organizations have been doing it (for the needs of the shelter programs), however some of them collected information on their beneficiaries only. This may be due to the time limits and costs, but collecting information on the whole area all over again would require far more additional resources.

- **Collecting standardized data and storing them in a standardized format.** The attempts to standardize the enumeration questionnaire have been made by UN-Habitat, IOM and CIAT. It is not clear to me if and how the questionnaire has been distributed and how many organizations it has reached as informations about it were confusing. Standardizing questions to the beneficiaries for all shelter programs and the format of collecting and storing the data would facilitate the future creation of a central data base covering all the areas of shelter intervention. Integrating unstandardized data into one data base would mean extra work and resources necessary to transform all data into one format.
- **Involving the state actors, linking communities and local authorities.** This was done by all the organizations that I interviewed. My interviewee from the Cruz Roja was visiting the municipality at least once a day. Cordaid was working with the mayors and the CASECs. CARE had special resources for establishing good connection with the municipality. It is very important that the local authorities recognize the informal settlements and their inhabitants as part of the community that they are responsible for. The idea behind participatory enumeration is that the generated data may serve to negotiate better service provision to these communities. In that sense, the good relation and trust between the communities and the local authorities is crucial.
- **Sharing experiences.** Although one of the main objectives of the shelter cluster was to share experiences from the field, this potential was not fully used. In general, during my interviews, I was surprised by how little the organizations knew about what the others were doing. Cordaid did not share their novel approach, and UN-HABITAT who was looking for examples of possible solutions of this kind did not know about it.

### 7.7 Concluding remarks

Tenure security is commonly defined as the state in which people are not afraid of eviction and are therefore willing to invest in land (Migot-Adholla and Bruce 1994, UN-HABITAT 2010b). I disagree with this definition. Tenure security is a social construct. Tenure security in everyday practice, as this research project made me realize, is the situation in which *the external actors* decide that people are the “right” people in the “right” place and will not be evicted and therefore are willing to invest in *their* land – just as the governments decide to invest in infrastructure and basic services in informal settlements and the shelter organizations in disaster response decide to invest in building shelters. It is these decisions that make tenure security.

It was a decision of the shelter organizations to provide or not provide shelters to people affected by the earthquake according to certain conditions that the organizations themselves constructed. In most of the cases the land was there, the people were there (affected by the earthquake), only the mechanism that would qualify the connection between people and land

as “right” according to the shelter organizations was missing while the pre-earthquake access mechanisms were judged insufficient. People themselves felt secure enough to ask to have shelters built on the land to which they had no legal rights. After all, that was where they had their houses before the earthquake. As one of my interviewees told me, replacing a destroyed house with a shelter is a simple equation from which you will never get in trouble. Too bad, that this simple equation, without additional conditions, was not referred to in the shelter programs in post-earthquake Haiti more often.

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