BEYOND THE MOUNTAINS, MORE MOUNTAINS

Disaster Response, Mass-Displacement and the Land Tenure Puzzle in Haiti

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ABSTRACT

The 7.0 magnitude earthquake that struck Haiti on the 12th of January 2010 resembles a worst-case scenario turned real. Born out of a slaves-led revolution with no precedent in history, the independent Haiti has ever since been struggling with widespread poverty, chaotic urbanization, environmental degradation, enduring political instability and fragile institutions. As a result, the Caribbean country epitomizes the enormous consequences that can arise when a natural hazard meets man-made patterns of vulnerability. In this regard, increasing emphasis has been placed on the link between Haitian patterns of disaster vulnerability and the country's dysfunctional land administration system and pervasive land tenure insecurity. Drawing on the Haitian case study, the present research will seek to elaborate on the correlation between land governance and a country's capacity to mitigate, respond and recover from a natural disaster. The case study analysis will be predominantly based on a review of the testimonies of humanitarian organizations working in this Caribbean nation. All things considered, it will be suggested that land-related issues can substantially amplify the effects of a disaster and constitute one of the main obstacles in the response and recovery process. Addressing land considerations in a timely manner after a disaster is thus deemed a crucial step for adopting a human rights based approach to disaster response and for promoting a sustainable and disaster-resilient development.

TABLE OF ACRONYMS

ACHPR - African Commission on Human and Peoples' Rights

CEDAW - Convention on the Elimination of Discrimination against Women

CESCR - UN Committee on Economic, Social and Cultural Rights

CRC - Convention on the Rights of the Child

ECtHR - European Court of Human Rights

FAO - Food and Agriculture Organization of the United Nations

GIZ - Deutsche Gesellschaft für Internationale Zusammenarbeit

HLPWG - Housing, Land and Property Working Group

HPLWG - Haiti Property Law Working Group

IACHR - Inter-American Court of Human Rights

IASC - Inter-Agency Standing Committee

IBRD - The International Bank for Reconstruction and Development

ICCPR - International Covenant of Civil and Political Rights

IDB - Inter-American Development Bank

IDMC - International Displacement Monitoring Centre

IFRC - International Federation of the Red Cross and Red Crescent

IHRC - Interim Haiti Recovery Commission

ILC – International Law Commission

IMF - International Monetary Fund

IOM - International Organisation for Migration

MINUSTAH - United Nations Stabilization Mission in Haiti

NRC - Norwegian Refugee Council

OAS - Organization of American States

UN-HABITAT – United Nations Human Settlements Programme

UDHR - Universal Declaration of Human Rights

UNDP - United Nations Development Program

UNGA - United Nations General Assembly

UNHCR - United Nations High Commissioner for Refugees

UNHRC - United Nations Human Rights Council

UNOHCHR - United Nations Office of the High Commissioner for Human Rights

UNISDR - United Nations Office for Disaster Risk Reduction

UNOCHA - United Nations Office for the Coordination of Humanitarian Affairs

USAID - United States Agency for International Development

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INTRODUCTION

Today's world faces a complex interplay of challenges, including climate change, rapid trends of urbanization, increased demand for natural resources and a widespread scenario of protracted and dispersed conflicts worldwide. Each of these challenges has a land-related dimension and reflects a "changing humankind-land relation"[1] that is progressively hard to ignore. Land and land-based natural resources are the foundation of livelihoods for millions of people and are also related to social, cultural and spiritual identity[2]. However, in face of increased global pressures on land and land-related resources, the global "land rush" is triggering a serious number of human rights implications underscoring the nexus between access to land and the protection of a broader "bundle of rights". The alarming consequences of the global land rush are particularly visible in urban areas where hasty urbanization trends have rarely been accompanied by proper land use planning. Currently and at a global level, around 54% of the world's population resides in urban areas. In 1950, 30% of the world's population was urban, and by 2050, 66% of the world's population is projected to be urban[3]. Moreover, according to the UN-HABITAT, the number of people living in slum conditions is now estimated at 863 million, which stands against 760 million in 2000 and 650 million in 1990[4]. These marginal urban areas tend to be located in disaster-prone zones where land use planning and tenure security are the exception rather than the norm. In what has been already dubbed as a "*Peripheralization process*"[5], poverty and chronic underdevelopment scenarios often compound disaster vulnerability. Bearing in mind such framework, Fitzpatrick's argument that "land issues provide a powerful example of the link between human activity and natural disasters"[6] gains particular relevance.

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[1] Williamson, 2000, p.18.
[2] United Nations Development Program (UNDP), 2015, p.VII.
[3] United Nations, Department of Economic and Social Affairs (UN DESA), 2015, p.1.
[4] UN-HABITAT, 2013, p.15.
[5] Bernt and Colini, 2013, p.3.
[6] Fitzpatrick, 2007, p.4.

All things considered, Haiti seems to be a valuable and illustrative case study of how uncontrolled demographic growth, chaotic urbanization trends and an underdevelopment scenario together with a particular disaster vulnerability can have destructive consequences. On January 12, 2010, "it took only about 30 seconds to reduce much of the country's housing stock and infrastructure to piles of rubble"[7]. The famous Haitian popular proverb "Beyond the Mountains, more Mountains", thus, seems a pertinent metaphor showing how the historical economic and social difficulties were substantially amplified by the 2010 massive earthquake. The historically dysfunctional land administration system in the country, by posing further difficulties to the disaster response and recovery equation, compounded an already dire humanitarian scenario and represented another "mountain" in the Haitians' path to sustainable and equitable development.

Drawing on the Haitian case study, the purpose of the present study is two-fold: first, to explore in which ways a complex land tenure puzzle and an unresponsive land governance can exacerbate a country vulnerability to natural disasters; and second, how land-related issues can also constitute one of the main obstacles to relief, recovery and reconstruction of post-disaster societies. Thought there is an extensive general review on the link between land issues and conflicts, the analysis of the correlation between land administration and disaster mitigation, response and recovery remains considerably recent and underdeveloped. Nevertheless, the 2004 Asian Tsunami and the destructive effects that followed this massive disaster have considerably paved the way for an increasing awareness of the importance of land issues in disaster prevention and recovery[8]. In this regard, the present research will seek to contribute to the emerging academic discussion and, through the analysis of the Haitian case study, will attempt to further elaborate on the intersection between land tenure issues and the key analytical concepts of disaster vulnerability and resilience. The practical implications posed by dysfunctional land administration systems to humanitarian responses in disaster settings

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[7] Habitat pour l'Humanité Haïti, 2015, p.2.
[8] Mitchell, 2010. See Tsunami Global Lessons Learned Project, 2015. UN HABITAT, 2010. Fitzpatrick, 2008(b). Mitchell, 2009.

will deserve further analysis. Ultimately, the emphasis is placed on the relevance of timely and appropriate land-related decisions for the protection of the human rights of the disaster-affected population.

In order to comprehensively address the abovementioned research purposes, the present study will be structured into 6 different sections. The first theoretical part will aim at assessing the state-of-art of land-related literature in order to elaborate on how governing the people-to-land relationship is at the heart of the global Human Rights Agenda. The connection between land governance and natural disasters prevention and response will be further explored. Along with the latter point, it was deemed important to further make sense of the importance of land considerations for the protection of the human rights of the displaced population. In this regard, a review of the main international legal documents concerning the protection of displaced persons in areas affected by natural disasters will be conducted.

Throughout the following section, attention will be given to the analysis of the historical importance of land and land-related resources in Haiti. In addition, the enduring institutional fragilities as well as the problems of implementation of the Haitian land administration system will also be put into a historical perspective. Further on and in an attempt to develop a solid main argument, particular consideration will be given to the analysis of how land-related issues have hampered the provision of a timely and appropriate response in the aftermath of the 2010 earthquake. Relying on information provided by different international humanitarian organizations, the core logistical and ethical problems arising from land-related obstacles will be widely considered and the case of Camp Corail-Cesselesse will be used as the main guiding example. Subsequently, the growing practice of unlawful forced evictions carried out in the aftermath of the massive disaster will be taken into account. Particular attention will be devoted to the analysis of the human rights implications of these unlawful practices as well as the consequences brought upon the provision of humanitarian assistance for the already vulnerable displaced population. The last section of this study will seek to shed some light on the attempts of land reform initiated by the Haitian Executive since the devastating disaster of 2010. Along with the latter's analysis, final consideration will be placed on the

critical discussion of how specific reconstruction projects are having a negative impact on the land distribution patterns of this Caribbean country and are, therefore, reproducing patterns of vulnerability based on a dysfunctional land administration system.

All things considered, by underscoring the connection between responsive land governance and the improved capacity to mitigate, respond and recover from disaster consequences, the present research seeks to inform and potentially influence governmental policy responses. It is also intended to provide a rationale for the importance of ensuring effective coordination between governmental agencies, donors and a wide range of humanitarian and development stakeholders whose decisions directly or indirectly affect the land use planning in a given context.

METHODOLOGY

The present research will be based on a qualitative methodology, which was carried out through a case study approach. The choice of this method reflects a conviction that it constitutes the most adequate way to explain the complex dynamics inherent to the land governance process in the aftermath of a serious disruption, such as a natural disaster. The Haitian case study will thus be used in order to provide an in-depth analysis of how land governance can magnify the effects and influence the response to disasters as well as to illustrate the nature and scope of land-related issues arising in the aftermath of a natural catastrophe. The present study will mainly draw on the review and critical analysis of descriptive and evaluation reports developed by several international humanitarian organizations working in Haiti in the aftermath of the devastating 2010 earthquake. This methodological choice reflects an attempt to have a clear and more comprehensive picture of the wide range of land-related problems emerging after the disaster by highlighting practical experiences and providing an interpretation of the events given by actors who directly dealt with them in the field. Furthermore, the wide range of available reports also contributed to the abovementioned methodological choice since it enabled a broader data comparison and, therefore, a better and more precise identification of the main and most

significant land-related problems in Haiti. The appraisal of documents released by the Interim Haiti Recovery Commission and by the Cluster System, specifically by the Housing, Land and Property Working Group (HLPWG), further informed the analysis made in the present study. In order to evaluate the political response to the disaster from a land-governance perspective, a critical review of the main governmental documents released after the 12th of January 2010 was also carried out. Finally, in an attempt to assess the immediate and long-term human rights implications arising from the identified land-related problems, particular attention was ultimately placed on the study of the local population's testimonies provided by local organizations' reports. All in all, although the historical patterns of land governance in the country will be briefly considered in the context section, the present study will only focus on the analysis of the events that followed the earthquake.

I - THEORETICAL FRAMEWORK

1. LAND AND HUMAN RIGHTS

1.1. A RIGHTS-BASED APPROACH TO LAND GOVERNANCE

The access to land is intrinsically connected with millions of livelihoods and is far from being a neutral matter. The relationship between people and land is highly complex and sensitive as it encompasses a number of political, economic, technical, legal and institutional factors. In this sense, it is clear that land is "more than just an economic asset"[9] and "is never just a commodity"[10], being closely linked to both individual and collective historical and cultural ties. Following the German Cooperation position on the multidimensional nature of land, it can be considered that land is homeland, a place of ancestry, an evidence of historical events, a prerequisite to enact individual freedom, an object of investment and speculation, an object to be taxed and also a basis of power, dependency and emancipation[11].

The international land scenario faces a problem of both scarcity and quality degradation. Land is, in this sense, taken to comprise both the physical dimension of land as well as associated natural resources. Given the finitude of land resources and the multiplicity of stakeholders involved in its use and administration, competing and conflicting interests often arise. The peak of the global food crisis in 2007-2008, and the escalation of food prices that came along with it, have worsen the global "land rush". The increasing pressure on land resources reinforced the focus on the political economy of land and on its conception as a source of profit, following the premise that land is not to be used "just to harvest crops but to harvest money"[12]. In this context, the global competition for land

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[9] Palmer *et al*, 2009, p.11.
[10] European Union (EU), 2004, p. 5.
[11] Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ), 2011, p.18.
[12] Orlov *apud* GRAIN, 2008, p. 9.

is rising and, along with it, there is also a growing literature that pays special attention to the relationship between "land and the economic dominant system"[13]. The focus on the political economy of land is triggering a new global wave of widespread land grabs and forced evictions. A growing number of large-scale land acquisitions is being carried out in order to promote the investment in large-scale agricultural production, biofuels industries, mineral extraction or tourism projects. Most of these acquisitions are being carried out, without transparency and due process, at the expense of the rural poor and small-holder farmers' dispossession and displacement. This appalling reality leads to the disruption of rural population's livelihoods and further aggravates the global scenario of unequal land distribution. Moreover, evidence suggests that the dispossession of these small-scale farmers is feeding the unregulated and exclusionary growth of informal settlements in big urban areas[14] where land tenure security is the exception rather than the norm.

Across the world, access to, or control over, land is igniting social and political conflict with serious human rights ramifications and pushing the issue of land increasingly towards the centre of the Human Rights Agenda[15]. However, in legal terms, land rights usually fall within the categories of land laws, land tenure agreements, or planning regulations, but they are rarely associated with human rights law[16]. Internationally, no treaty or declaration specifically refers to a human right to land. In fact, strictly speaking it could be said there is no human right to land under international law[17]. Although formally there is no free-standing right to land codified in the international human rights law, the interface between land and human rights have increasingly attracted attention from scholars and international social movements. There is an emerging recognition that the condition of landlessness threatens the enjoyment of a number of fundamental rights. Reflecting its complex and multi-dimensional nature, land governance is, at an increasing extent, regarded as intimately linked with pressing issues such as food security, gender

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[13] Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ), 2016, p.6.
[14] Bernstorff, 2013, p.1.
[15] Gelbspan and Nagaraj, 2012, p.1.
[16] Gilbert, 2013, p.115.
[17] *Ibidem*

equality, conflict mitigation and resolution, indigenous peoples' rights and environmental protection. Several references to land rights can be found in the General Comment no. 12 of the UN Committee on Economic, Social and Cultural Rights[18] (CESCR) on the Right to Food. In addition, in its General Comment no. 4 on the Right to Adequate Housing[19], the CESCR identified security of tenure as one of seven elements of the right to adequate housing. The Convention on the Elimination of Discrimination against Women[20] (CEDAW) also highlights the importance of women land rights in its article 14 and the issue is also present in several Concluding Observations of the CEDAW Committee. All things considered, as highlighted by the Special Rapporteur on the Right to Food, Olivier de Shutter, the access to land is a crucial condition for development, poverty reduction and for the achievement of a decent standard of living[21]. In such a context, land rights not only have an impact on individual property rights, but are also at the heart of social justice[22].

Although the possibility of legally enforce a human right to land is still target of much criticism, increasing emphasis is been placed on the importance of adopting a rights-based approach to land governance. According to Tapscott, a rights-based approach to land management would "first consider how land policies impact the ability of any individual to claim his or her rights - both civil and political rights (CPR) and economic, social and cultural rights (ESCR) - and second, empower these individuals both a means and an end to achieving sustainable development in a given community"[23].

In addition, Gelbspan and Nagaraj argue that "the global human rights framework has much to offer by way of mediating between apparently competing claims, clarifying obligations and informing policymaking around land issues"[24]. Moreover, the authors contend that there are two realities that make a compelling case for building a

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[18] United Nations Committee on Economic, Social and Cultural Rights (CESCR), 1999.
[19] United Nations Committee on Economic, Social and Cultural Rights, 1991.
[20] United Nations General Assembly, 1979.
[21] Schutter, 2010, p.3.
[22] Gilbert, 2013, p.116.
[23] Tapscott, 2012, p.32.
[24] Gelbspan and Nagaraj, 2012, p.11.

comprehensive human rights agenda on land. The first is the significance of land for the enjoyment of a wide range of internationally recognized human rights such as the right to food and water, adequate housing, adequate standard of living, equal treatment, and the right to enjoy one's own culture. The second dimension is interrelated with the alarming extend of human rights violations arising from situations of land grabbing, landlessness and forced evictions[25]. In such a context, although the right to land is not yet recognized as a free-standing human right, there has been an increasing recognition of the correlation between securing land rights and a broader array of rights and opportunities, or as it has been already dubbed, a "bundle of rights"[26].

1.2.   BEYOND AN UNDERSTANDING OF LAND AS PROPERTY

When framing the relationship between human rights and land, one of the first associations often established is the one of land as property. The emphasis is therefore placed on the "protection of the rights of the landed"[27]. The principle of the inviolability of the private property constitutes "one of the quintessential principles"[28] of the international human rights system as we know it. In this respect, the article 17 of the Universal Declaration of Human Rights (UDHR) states that, *Everyone has the right to own property alone as well as in association with others.* Furthermore *no one shall be arbitrarily deprived of his property[29]*. The inclusion of the right to property formed a particularly contentious discussion in the drafting process of the UDHR as it constituted one of the main subjects that characterized the ideological divide of the Cold War[30]. The debate revolved around the individual or collective nature of this provision and the UDHR ended up emerging as a compromise between the Western and the Eastern positions. However, a true consensus was far from being reached and the failure to explicitly include

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[25] *Ibidem*, p.1.
[26] Palmer *et al*, 2009, p.7.
[27] Gilbert, 2013, p.118.
[28]*Ibidem*.
[29] United Nations General Assembly (UNGA), 1948, art. 17.
[30] Mchangama, 2011.

the right to property in both International Covenants approved in 1966 (International Covenant on Civil and Political Rights and International Covenant on Economic Social and Cultural Rights) is the best evidence[31] of this division.

The divide individual *versus* collective is still an omnipresent feature in the land-related discussions. Land rights understood as property are often associated with the traditional western model of property centred on the idea of a single owner holding rights to property[32] and tend to neglect collective dimensions of land ownership. In this sense, the notion of land as individual property has influenced the emergence of several theoretical approaches. The evolutionary theory of land rights is one of the most prominent and Hernando de Soto's work represents one of the most influential theoretical contributions. According to De Soto's arguments, there is a positive correlation between property rights, land formal titling and economic development. One of the main ideas presented in Soto's "The Mystery of Capital"[33] is that property rights define an economic system and determine the success of an economy so in order to achieve secure property rights, a country must "incorporate the informal, unarticulated rights into a written, formal, legal property rights system"[34]. Additionally, De Soto argues that for instance "without land deeds or titles, poor people all over the world are not able to leverage their property for profit"[35] and, in this sense, living in the informal sector means that property cannot be used to generate capital (dead) capital[36].

De Soto's work has been criticized for presenting a materialistic and oversimplified notion of land as a freely marketable commodity[37]. Such framing often leads to state-driven, top-down land titling programs, which attempt to replace customary forms of land ownership with Western-style property practices such as formal land title registration[38].

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[31] Oraá, 2009, p.195.
[32] Wiersma, 2005, p.1072.
[33] De Soto, 2000.
[34] De Soto *apud* Williamson, Claudia R., 2010, p.95.
[35] De Soto, 2011.
[36] De Soto, *Ibidem.*
[37] Barnes and Child, 2012, p.2.
[38] Blocher, 2006, p.167.

Moreover, it can be argued that the recognition of land property based on an official title neglects historical customary systems, which are embedded in strong networks of informal relations with the land and are still widespread in many societies. As a result, such formalistic understandings exclude a substantial percentage of the global landowners' population and brings along perverse human rights consequences such as land grabs and forced evictions.

Critical views on strict cadastral notions of land gain particular appropriateness when linked with the acknowledgment of the existing gap between the global pervasiveness of customary and informal tenure arrangements and its insufficient legal recognition. As corroborated by the United States Agency for International Development (USAID), "secure tenure is the exception rather than the norm"[39]. The Rights and Resources Initiative estimates that 65 percent of the world's land area is held under customary systems[40]. In this sense, the recognition and protection of security of tenure, as a global phenomenon, can be considered one of the most compelling challenges of today's world[41]. The existing gap—between what is held by communities and what is recognized by governments—is a major driver of conflict, disrupted investments, environmental degradation, climate change, and cultural extinction[42].

In face of this scenario, it is possible to make sense of the growing literature that supports the replacement of evolutionary and formalistic understandings of land with more nuanced approaches. Calling for a shift from economic-centred approaches and criticizing the growing commodification of land, these approaches emphasize the relevance of social and cultural constructions of land and, therefore, the importance and appropriateness of customary systems in many contexts. Emphasis is placed on how land registration and management systems reflect a nation's culture, history, legal tradition, level of

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[39] United States Agency for International Development (USAID), 2014, p. 2.
[40] Rights and Resources Initiative, 2015, p.9.
[41] United Nations Human Rights Council (UNHRC), 2012, p.21.
[42] Rights and Resources Initiative, *Ibidem*, p.9.

development and policies[43]. Thus, the fact that customary systems have survived many attempts of reform during the last decades can hardly come as a surprise.

Additionally, as emphasized by Törhönen, the real issue at stake is the security of tenure and, therefore, a fundamental distinction needs to be made between "security of tenure" and "to secure ownership" given that a recorded and titled tenure is often not a prerequisite for a secure tenure[44]. Fourie corroborates this argument by stating that systematic individual land titling programmes are neither appropriate nor within the administrative capacity of many countries[45]. As a result, it is important to stress that the formal titling of land property when not properly accompanied by the capacity to secure its enforcement is doomed to fail. Moreover, individual land titling programmes are often regarded as neutral matters but this neutrality is a misleading notion[46] and land titling reforms often favour certain groups of the population and exclude others such as women. As argued by Tapscott, commoditization of land, through the formalization of tenure, can "both entrench social hierarchies, often by failing to account for gender discrimination, as well as facilitate "elite capture," whereby wealthy, influential, or socially empowered groups receive formal control over land, to the detriment of marginalized groups"[47].

In this context, the Special Rapporteur on the Right to Adequate Housing, Raquel Ronik, has argued that a paradigm shift is required in order to move beyond the "correlation of security of tenure with a property rights regime and [move] towards the grounding of security of tenure solidly in the human rights framework"[48]. Reflecting the call for a shift from individualistic to more culturally-sensitive approaches to land, the connection between land rights and cultural heritage is increasingly recognized in international legal instruments and in international jurisprudence[49]. Human rights law has been developing in a way that favours alternative conceptions of land and more particularly that promotes

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[43] Törhönen, 2004, p.15.
[44] Törhönen, *Ibidem.*
[45] Fourie, 2002, p.4.
[46] Fourie, *Ibidem.*
[47] Tapscott, 2012, p.36-37.
[48] United Nations Human Rights Council, 2011(c), p.15.
[49] United Nations Human Rights Council (UNHRC), 2015, pp.13 -14.

a broader interpretation of land rights as cultural and collective rights. The increasing recognition of indigenous populations' rights has functioned as a catalyst for the growing consideration of culturally situated notions of land. The emphasis is often placed on the correlation between the access and control over land as well as its resources and the fundamental right to enjoy one's culture. As a result, today it is generally recognized that the relationship to land forms the basis of an indigenous peoples' identity, and that indigenous peoples' cultures cannot be preserved without a certain degree of control over land and natural resources[50]. Besides forming the basis for economic livelihood, land is also conceived as a source of spiritual, cultural and social identity for many indigenous communities. Some authors have attempted to take a broader interpretative stance by arguing that, given the historic and spiritual meaning that land has for some specific groups, land can be considered a cultural property[51].

The link between land and cultural identity has been recognized in the General Comment no. 23 on the article 27 of the International Covenant of Civil and Political Rights (ICCPR). Article 27 of the ICCPR recognizes the right of minorities to exercise their own culture[52] and in its interpretation provided by the General Comment no. 23, the Human Rights Committee states that:

> *[…] culture manifests itself in many forms, including a particular way of life associated with the use of land resources, especially in the case of indigenous peoples […] The enjoyment of those rights may require positive legal measures of protection and measures to ensure the effective participation of members of minority communities in decisions which affect them.[53]*

The evolving jurisprudence of the American Court of Human Rights has further contributed to the increasing recognition of the link between land and cultural rights. One of the most compelling decisions was presented in the case *Awas Tingni Community v. Nicaragua* in 2001. According to the Court's ruling:

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[50] Göcke, 2013, p.89.
[51] Wiersma, 2005, p.54.
[52] United Nations General Assembly (UNGA), 1966, art.27.
[53] United Nations Human Rights Committee, 1994, p.3.

For indigenous people, relations to land are not merely a matter of possession and production but a material and spiritual element which they must fully enjoy, even to preserve their cultural legacy and transmit it to future generations.[54]

In the case *The Indigenous Community Yakye Axa v. Paraguay*, the Inter-American Court of Human Rights (IACHR) confirms its evolving interpretation on the link between land and cultural integrity, underlining that the close relationship of indigenous peoples with their land must be acknowledged and understood as the fundamental basis for their culture, spiritual life, wholeness, economic survival, and preservation.[55]

The decision of the African Commission on Human and Peoples' Rights (ACHPR) on the *Endorois case* constitutes an additional landmark ruling on the indigenous peoples' land rights. The ACHPR's ruling is considered a milestone decision since, besides the fact that it was the first ruling to define the notion of "indigenous peoples of Africa"[56] and to elaborate on their intrinsic cultural and religious relation with land, it also represents the first ruling of an international court to find a violation of the right to development[57]. In the end and confirming the multidimensional importance of land, the Commission found that, under the African Charter, the forced removal of the Endorois Community constituted a violation of their freedom of religion (article 8), right to culture (article 17), access to natural resources (article 21) and right to development (article 22).

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[54] Inter-American Court of Human Rights (IACHR), 2001, par. 149.
[55] Inter-American Court of Human Rights (IACHR), 2006, par.120 (j).
[56] African Commission on Human and Peoples' Rights (ACHPR), 2003, par. 150.
[57] *Ibidem*, par. 228 and 298.

2. LAND AND NATURAL DISASTERS: BETWEEN VULNERABILITY AND RESILIENCE.

2.1 LAND GOVERNANCE AND NATURAL DISASTERS

Decisions concerning the access, use and control over land and its resources constitute a pressing and sensitive political subject both in developed and developing countries. Reconciling the multiple and competing land-related interests while balancing economic growth, environmental protection and social justice is a key governance challenge. The acknowledgment of the relevance of land administration is not an unprecedented issue, nevertheless, land has been increasingly considered as an important governance issue reflecting the recognition of its correlation with a growing number of current global challenges. As highlighted by the French Cooperation, "much can be learned about a society from the ways in which it defines, distributes, guarantees and administers rights and natural resources among the different actors concerned"[58]. Moreover, it can be argued that the existing land tenure patterns "tend to mirror the distribution of power within a given society or country"[59].

The administration of the access, use and control over land use comprises a multiplicity of different actors with relationships with the land and its resources of varying geometries. Those varying land-to-people relationships constitute the notion of land tenure. According to FAO, land tenure can be summarised as the relationship, whether legally or customarily defined, among people with respect to land and its resources[60]. The different tenure relationships include land rights, restrictions as well as responsibilities that can be associated with the physical land, property or other related natural resources. The existing tenure relationships are always contextualized exercises; they are not static, but have an

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[58] Agence Française de Développement, 2009, p.9.
[59] Palmer *et al*, 2009, p.13.
[60] Palmer *et al*, 2009, p.7.

evolutionary nature showing that "in terms of human story there is no right or wrong tenure"[61].

On the one hand, sound and responsive land governance concerns the processes of how the competing priorities and interests of different groups are managed and reconciled through a set of functional, transparent and accountable institutions. Land administration, on the other hand, is the way in which the rules of land tenure are applied and made operational[62]. Understanding land governance as a process can be worked out through the adoption of a tripartite analysis. Therefore, land governance refers to the process in which authority is conferred to different decision makers, to the processes by which decision makers design these rules, and also to the processes by which those rules are enforced and modified[63].

Additionally, the notion of governance is conceptually broader than the one of government given that "authority and power in a society can be seen as being vested in many institutions and to stem not only from governments"[64] but from a multi-layered group of land stakeholders. In such a context, it is possible to make sense of the widespread existence of solid customary land tenure arrangements, which, regardless of their lack of legal recognitions, are considered legitimate through broad and enduring social acceptance.

The way access, use and control over land and its resources are administered has an impact on a country or a given society's vulnerability to the effects of natural disasters. In this sense, the level of land tenure insecurity constitutes one of the factors that affect the ability to mitigate, respond to and recover from natural disasters[65]. According to the Sendai Framework for Disaster Risk Reduction 2015-2030[66], addressing land-use and

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[61] Wallace *apud* Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ), 2016, p. 19.
[62] Food and Agriculture Organization of the United Nations (FAO), 2007, p.12.
[63] Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ), 2016, p.24.
[64] Food and Agriculture Organization of the United Nations (FAO), 2007, p. 5.
[65] Griffith-Charles *et al*, 2014, p.138.
[66] The Sendai Framework was adopted by UN Member States on 18 March 2015 at the Third UN World Conference on Disaster Risk Reduction in Sendai City, Miyagi Prefecture, Japan.

urban planning are key safety-enhancing provisions central to mitigating the effects of a disaster[67].

After the devastating earthquake and tsunami that struck South East Asia in December 2004, it has been increasingly acknowledged that natural disasters can have a land-related dimension and, as a result, a growing number of studies has been developed[68]. These studies try to elaborate on how the impact of climate change can be significantly reduced through a comprehensive land-use planning and administration. This is a discussion with many angles and the publication of the UN HABITAT Guidelines on Land and Natural Disasters[69] appears as a major illustrative example of the increasing international attention paid to this matter.

The connection between land governance and natural disasters can be considered to have two complementary dimensions, a preventive and a responsive one, or put differently, land considerations are relevant both in pre and post-natural disaster settings as the first dimension strongly influences the latter. The first precautionary and proactive dimension is related to how a functional land governance can be consider an important disaster-risk reduction and mitigation measure and how it can promote the consolidation of "long-term resilience for communities and therefore reduce the land tenure related impacts of future disasters"[70]. The adoption of strict building codes, the delimitation of buffer zones and the prohibition of construction in disaster-prone areas are therefore of utmost importance. Moreover, when land governance is weak, the wealthy and powerful are able to dominate the decisions over land at the expense of the most vulnerable[71]. As a result, those same vulnerable groups (landless people, renters or squatters) are often pushed to slums, shanty towns and informal settlements, where they faced higher vulnerability to natural disasters. In this sense poverty can be considered as a key feature of vulnerability. As underlined by Fisher: "Low-income areas in cities tend to be located in the most seismically dangerous areas, receive little effective supervision of land use and construction

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[67] United Nations Office for Disaster Risk Reduction (UNISDR), 2015, p.13.
[68] See Asian Disaster Preparedness Centre (ADPC) for the Tsunami Global Lessons Learned Project, 2015. Fitzpatrick, 2008(b). Mitchell, 2009.
[69] UN HABITAT, 2010.
[70] United States Agency for International Development (USAID), 2014, p.2
[71] Mitchell, 2011, p.26.

standards, and are usually overcrowded. Similarly, the rural poor tend to occupy marginal lands more greatly subject to floods and droughts due to environmental degradation"[72]. In fact, land distribution patterns often mirror broader social problems of discrimination, political exclusion and/or economic marginalization[73].

In a post-disaster scenario, land can be considered a fundamental resource for recovery after disaster. A responsive pre-disaster land governance can substantially increase the governmental ability to respond rapidly and efficiently to a disaster. As pertinently summarized by Fitzpatrick, land provides a site for shelter, a resource for livelihoods and a place to access services and infrastructure. Secure rights to land are essential to prevent land grabbing, and allow reintegration of displaced persons" [74]. The hypothesis put forward is that poor land administration systems that fail to provide sufficient tenure security increase the vulnerability to a disaster and hamper relief and recovery efforts. Land, if not properly address in the aftermath of a natural disaster, can be a "time-critical barrier to early recovery and to the restoration of livelihoods"[75]. In such a context, it is highly relevant to mainstream land considerations throughout the different phases of post-disaster response including relief, recovery and reconstruction. After a natural disaster it is of utmost importance to recognize the multiplicity of land tenure arrangements that existed in practice before the disaster, while also strengthening the land rights of the most vulnerable groups[76]. These two steps are crucial to avoid many correlated human rights violations (such as land grabs, forced evictions without due compensation, discrimination, coercion to sell) and to considerably reduce the complexity of the recovery and reconstruction process.

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[72] Fisher, 2010, p. 554.
[73] United Nations Framework Team, 2012, p. 8.
[74] Fitzpatrick, 2008(a), p.5.
[75] UN HABITAT, 2010, p.36.
[76] United States Agency for International Development (USAID), 2014, p.1.

2.2 THE BLURRING LINE BETWEEN NATURAL AND MAN-MADE DISASTERS

In the former UN Secretary General Ban Ki-moon's[77]words, "climate change is the defining challenge of our time." Furthermore, it is increasingly accepted that there is a causal effect between climate change and the growing number and severity of natural disasters occurring worldwide. The escalating impacts of climate-related disasters have been exacerbated by the significant global population growth together with rapid and uncontrolled urbanization trends, which have pushed increasing numbers of people to settle in areas where there is a high risk of natural disasters. Taking into the consideration the data provided by the World Meteorological Organization[78], the first decade of the twenty-first century saw 3,496 climate-related natural disasters from floods, storms, droughts to heat waves. This number represents nearly five times as many disasters as the 743 natural catastrophes reported during the 1970s.

Making use of the United Nations Development Program (UNDP) definition, a natural disaster can be understood as "a serious disruption triggered by a natural hazard causing human, material, economic or environmental losses, which exceed the ability of those affected to cope"[79]. Disasters also trigger new patterns of interaction with land as they produce more marginal people[80] and they alter the relations of power and people linkages to institutions. In such circumstances, disasters also tend to exacerbate tenure insecurity for affected populations, in particular displaced persons[81].

There is a growing body of literature emphasizing how the distinction between natural disasters and man-made disasters is becoming increasingly blurred[82]. The main underlying argument is that disasters are a function of vulnerability and vulnerability

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[77] Ki-moon, 2015.
[78] World Meteorological Organization, 2014, p.9.
[79] United Nations Development Programme (UNDP) *apud* Fitzpatrick, 2008(a), p.5.
[80] Mitchell, 2010, p.124.
[81] United Nations Human Rights Council (UNHRC), 2012, p.20.
[82] McQuaid, 2012.

reflects human decisions[83]. Disasters are therefore considered as being intimately linked to particular political choices, which influence how the risks posed by natural hazards are ultimately unequally distributed by the population. These risks and effects are, at an increasing extent, unevenly distributed. According to the analytical contribution of Yasir, natural disasters are also socially constructed and its impacts result from interactions of large-scale natural forces with local political-economic conditions within the context of vulnerability. Human vulnerability is thus what "turns a natural hazard such as rainstorm into a full-fledged disaster such as a flood-provoked displacement crisis"[84]. In this sense, disasters can be regarded as consequences of unresolved development challenges[85]. According to the report *Natural Hazard, Unnatural Disaster: The Economics of Effective Prevention*, a document drafted by the World Bank together with the UNISDR, "unnatural disasters are deaths and damages that result from human acts of omission and commission"[86] and that, therefore, are avoidable.

According to the terminology adopted by the UN International Strategy for Disaster Reduction, the notion of vulnerability includes "the characteristics and circumstances of a community, system or asset that make it susceptible to the damaging effects of a hazard. There are many aspects of vulnerability, arising from various physical, social, economic, and environmental factors"[87]. The notion of resilience can be defined as "the ability of a system, community or society exposed to hazards to resist, absorb, accommodate to and recover from the effects of a hazard in a timely and efficient manner, including through the preservation and restoration of its essential basic structures and functions"[88].

The patterns of vulnerability are far from being homogeneous and are unequally distributed. In fact, land distribution patterns often mirror broader social problems of discrimination, political exclusion and/or economic marginalization[89].The magnitude of

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[83] Cooper, 2013, p.12.
[84] Fisher, 2010, p.552.
[85] Yasir, 2005, p.2.
[86] The International Bank for Reconstruction and Development (IBRD), World Bank Group, 2010, p.1.
[87] United Nations Office on Disaster Risk Reduction (UNISDR), 2007.
[88] *Ibidem.*
[89] United Nations Framework Team, 2012, p. 8.

impacts and distribution of losses from natural hazards are to a large extent interrelated with "man-made disaster preparedness, mitigation and response and therefore are all subject to or conditioned by state action or omission, and may therefore be discriminatory"[90]. In this sense, vulnerability needs to be understood as a "product of deep rooted historical patterns and national and local power relationships"[91] and, consequently, making sense of how and why this vulnerability patterns were developed is a key task to promote a sustainable reconstruction process.

In line with the reconceptualization of the notion of vulnerability presented above, increasing emphasis has been placed on the state's responsibility to protect its population by preventing, or at least mitigating, the potential effects of disasters within its jurisdiction. Together with the acknowledgment that disasters might be considered as unnatural, and go beyond mere episodic events, comes the understanding that the state has a general duty to prevent disaster through the implementation of disaster risk reduction measures. The Sendai Framework for Disaster Risk Reduction corroborates that each State has the primary responsibility to prevent and reduce disaster risk. Moreover, it adds a general "duty to cooperate" by stating that the state's responsibility also includes the establishment of international, regional, subregional, transboundary and bilateral forms of cooperation[92]. The guiding document also calls for a broader and a more people-centred preventive approach to disaster risk by upholding that:

> *More dedicated action needs to be focused on tackling underlying disaster risk drivers, such as the consequences of poverty and inequality, climate change and variability, unplanned and rapid urbanization, poor land management and compounding factors such as demographic change, weak institutional arrangements, non-risk-informed policies [...]*[93]

In the face of the devastating human impact of a growing number of disasters, recent topic-related literature has increasingly placed particular emphasis on the relevance of

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[90] United Nations Human Rights Council (UNHRC), 2011(b), p.7.
[91] UN HABITAT, 2010, p.14.
[92] The United Nations Office for Disaster Risk Reduction (UNISDR), 2015, p.8.
[93] The United Nations Office for Disaster Risk Reduction (UNISDR), 2015, p.4.

international human rights law in the prevention, response and recovery from disasters[94]. While none of the major human rights instruments specifically refers to an obligation of disaster prevention, many have develop an interpretative approach, increasingly underscoring that "disaster risk reduction is not just a set of technical activities intended to limit the impact of disasters but is also a human rights issue"[95]. Following this line of reasoning and taking a human rights perspective, it has been progressively argued that the obligation to prevent and mitigate the effects of disasters can be seen as part of the responsibility issuing from the right to life provisions, which are omnipresent in all international and regional human rights documents.

The International Federation of the Red Cross and Red Crescent (IFRC) has reaffirmed the state's responsibility to prevent disasters, stating that "official indifference, corruption or calculated neglect in the wake of natural or technological disaster may well constitute a de facto death sentence for those in need"[96]. The IFRC further argues that the state's responsibility to reduce the risks associated with specific natural hazards can be understood to arise from article 3 of the Universal Declaration of Human Rights (UDHR), which stipulates that "Everyone has the right to life, liberty and the security of person"[97]; as well as from article 6 of the International Covenant on Civil and Political Rights (ICCPR): "Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life"[98].

Additionally, topic-related literature[99] has also highlighted that states bear an obligation to prevent and mitigate natural disasters as part of the responsibility issuing from article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), which underlines "the right of everyone to an adequate standard of living" and to the "continuous improvement of living conditions"[100]. The discussion around the recognition

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[94] Ferris, 2014, p.1.
[95] *Ibidem*, p.3.
[96] International Federation of the Red Cross and the Red Crescent Societies (IFRC), 2000, p.145.
[97] United Nations General Assembly (UNGA), 1948, art. 3.
[98] United Nations General Assembly (UNGA), 1966, art. 6.
[99] Hand, 2003, p.159. De Guttry *et al*, 2012, p.357.
[100] United Nations General Assembly (UNGA), 1966, art. 11.

of a human right to a healthy environment, both as a component of the right to life or as an independent principle of customary law, has further informed the debate concerning the state's obligations towards the prevention of disasters[101]. Although questions regarding the scope of application and enforcement of such a right have generated much controversy, the recognition of the human right to a healthy environment has been gaining ground in international legal discussions.

Furthermore, international jurisprudence has slightly started to move along the reasoning that states bear responsibility to prevent and mitigate disasters. In the *Budayeva and others vs Russia* Case, the European Court of Human Rights (ECtHR) found that Russia had breached its obligations under article 2 of the European Convention of Human Rights (ECHR) by failing to mitigate the consequences of a mudslide as well as by failing to provide effective domestic remedies. The ECtHR reiterated that article 2 "does not solely concern deaths resulting from the use of force by agents of the State but also, in the first sentence of its first paragraph, lays down a positive obligation on States to take appropriate steps to safeguard the lives of those within their jurisdiction"[102]. In addition, the ECtHR ruling acknowledges that the aforementioned positive obligation "entails above all a primary duty on the State to put in place a legislative and administrative framework designed to provide effective deterrence against threats to the right to life"[103]. However, it must be acknowledged that the existence of a causal link between a state's failure to prevent and the magnitude of the impact of a disaster is not always easy to demonstrate and the occurrence of a disaster can be credited to a variety of factors. Moreover, the question of whether and when deaths caused by a "natural" disaster can amount to a human rights violation also constitutes a very debatable issue and still lacks a solid clarification. Nevertheless, the "rights-based approach to disaster management"[104] taken by the ECtHR can be regarded as a very important precedent which is likely to be followed by other jurisdictions of other covenants and conventions containing the same obligation to protect life.

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[101] Hand, 2013, p.160.
[102] European Court of Human Rights (ECtHR), 2008, par. 128.
[103] European Court of Human Rights (ECtHR), 2008, par.129.
[104] Kälin and Dale, 2008, p.39.

2.3. THE PROTECTION OF PERSONS IN THE EVENT OF DISASTERS

Natural disasters are among the greatest causes of internal displacement worldwide. In fact, many more persons are displaced by disasters than by armed conflicts. According to the latest figures from the International Displacement Monitoring Centre (IDMC), more than 19.3 million people were forced to flee from their homes due to disasters in 100 countries in 2014. Hundreds of thousands more are still displaced following disasters in previous years. Furthermore, since 2008, an average of 26.4 million people per year have been displaced from their homes by disasters brought on by natural hazards. This is the equivalent to one person being displaced every second[105].

An additional issue of concern is related to the protracted nature of many displacement crises, which constitutes one of the most complex and difficult humanitarian problems the international community has to deal with today. In fact, a significant percentage of displaced people in the world today "is not in classic emergency situations but is trapped in protracted displacement – situations characterised by long periods of exile and separation from home"[106]. Moreover, the situation of people caught in long-lasting or chronic disaster-induced displacement is still poorly monitored and little reported on[107]. Many of the displaced population left "living in a state of extended limbo"[108] often face appalling living conditions, "warehoused in camps or stuck in shanty towns, exposed to dangers, and with restrictions placed upon their rights and freedoms"[109].

The significance and magnitude of the current scenario of worldwide displacement, particularly in the last few decades, has led to the emergence of a wide number of legal

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[105] The Internal Displacement Monitoring Centre (IDMC), 2015, p.19.
[106] Couldrey and Herson, 2009, p.3.
[107] Internal Displacement Monitoring Centre (IDMC), 2015, p.10.
[108] Couldrey and Herson, 2009, p.3.
[109] Loescher, 2011.

documents and policy mechanisms containing provisions aimed at enhancing the protection of the displaced population. The key driving thought of such documents is to guarantee that people do not lose their rights when disasters strike. According to the Special Rapporteur of the International Law Commission on the topic, Eduardo Valencia Ospina, "the international law governing disaster response has developed into a complex set of rules governing the initiation of relief, questions of access, issues of status and the provision of relief itself"[110]. Furthermore, the humanitarian actors have also sought to increasingly include human rights approaches to displacement in their activities by adopting a wide range of guidelines and codes of conduct. The adoption of the Operational Guidelines for Protection of Persons Affected by Natural Disasters by the Inter-Agency Standing Committee (IASC) in 2006 appears as the major illustration of an attempt to promote a rights-based approach to disaster relief. The IASC Guidelines include a number of provisions that can be related to land: the right, not to be discriminated against on the basis of property, the right to adequate housing (which includes security of tenure), and the right of return and restitution for displaced persons[111].

As mentioned before, there is a constellation of international documents addressing the protection of persons in the event of disaster. Among them, the "Guiding Principles on Internal Displacement" developed by the office of the former Human Rights Commission appears as the major document concerning the protection of Internally Displaced Persons (IDPs). The Principles identify the rights and guarantees relevant to the protection of the internally displaced in all phases of displacement and serve as international standards to guide governments, international organizations and all other relevant actors in providing assistance and protection to IDPs[112].

The United Nations International Law Commission (UN ILC) Drafts Articles on the Protection of Persons in the Event of Disasters[113] deserve further consideration. The document aims to address the various responsibilities and rights of the affected state

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[110] United Nations General Assembly (UNGA), 2007(b), p.2.
[111] Inter-Agency Standing Committee (IASC), 2007.
[112] United Nations Human Rights Commission, 1998.
[113] United Nations International Law Commission (UN ILC), 2014.

responding to a disaster situation, as well as the duties and rights of the providers of international assistance[114]. Furthermore, additional consideration should be placed on the Kampala Convention[115], which came into force in 2012. Despite the controversy on its lack of enforcement by States party to the treaty, the Kampala Convention constitutes the world's first regional instrument that legally binds governments to protect the rights and wellbeing of people forced to flee their homes by conflict, violence, disasters and human rights abuses[116]. Moreover, the Convention goes further and declares that States Parties are liable to make reparations to IDPs for damages when a State Party refrains from protecting and assisting internally displaced persons in the event of natural disasters[117].

Common to the aforementioned documents on the protection of displaced persons are the principles of sovereignty and non-intervention. According to Eduardo Valencia-Ospina, the ILC appointed Special Rapporteur on the topic, the principles of sovereignty and non-intervention contain two important corollaries: "that the State has the primary responsibility for the protection of persons on its territory or subject to its jurisdiction or control during a disaster and that disaster relief carried out by assisting actors is subject to the consent of the receiving State"[118]. Citing principle 3 of the Guiding Principles on Internal Displacement:

1. *National authorities have the primary duty and responsibility to provide protection and humanitarian assistance to internally displaced persons within their jurisdiction.*

2. *Internally displaced persons have the right to request and to receive protection and humanitarian assistance from these authorities. They shall not be persecuted or punished for making such a request[119].*

In the words of the Representative of the Secretary-General on Internally Displaced Persons (IDPs), Francis M. Deng, the IDP population "nearly always (…) suffer from

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[114] International Federation of the Red Cross and Red Crescent Societies (IFRC), n.d.
[115] Formally known as the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa.
[116] Internal Displacement Monitoring Centre (IDMC), 2014, p.1.
[117] Ferris, 2014, p.16.
[118] United Nations General Assembly (UNGA), 2007, p.2.
[119] United Nations Human Rights Commission, 1998, p.8.

severe deprivation, hardship and discrimination"[120]. In such a context, the increasing adoption of documents concerning the protection of displaced population reflects the growing recognition of IDPs as a particularly vulnerable group in need of specific human rights protection. However, and as it argued by Ferris, much more needs to be done, particularly at the national level, to ensure that national laws and policies on disaster management (prevention, response, and recovery) incorporate a human rights perspective[121]. In addition it is deemed important to highlight that, in the aftermath of a disaster, a number of land-related issues can have human rights implications. As a result, problematics such as enforced relocation, unsafe or involuntary return, discrimination based on tenure status and the restitution of property to returnees need to be considered and addressed properly in order to promote the effective protection of disaster-affected persons.

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[120] *Ibidem*, p.5.
[121] Ferris, 2014, p.20.

II - CONTEXT

3. THE PRE-EARTHQUAKE LAND ADMINISTRATION SYSTEM IN HAITI

3.1 LAND AND IDENTITY IN HAITI: A HISTORICAL OVERVIEW

Before focusing on the analysis of the main land-related difficulties faced by the humanitarian and development assistance response in the aftermath of the 2010 earthquake, it is important to place the land administration in Haiti in context. The lack of a responsive land administration is not an unprecedented problem in the Western Hemisphere's poorest country. In Renaud's words, most of the civil disorders and tumults in the country were both a direct or indirect result of the faulty organisation of land ownership[122]. Access to land was deeply rooted in the Haiti's struggle for independence, as it was one of the major demands of the slave rebellion started in 1791 when the slaves themselves defeated the colonial power and took control over the land. However and paradoxically as it may seem it, more than 200 years after the independence, an effective land administration continues to be a dashed hope and one of the major contentious issues in this Caribbean country. Furthermore, it is important to mention that "the land question in Haiti is not a political orphan"[123] and that land ownership is a cross-cutting problem linked to a set of economic, social and environmental problems

The land issue in Haiti is intimately entrenched in the country's history and identity. As highlighted by Beauchamps and Smyth, the Haitian identity has been formed through a long struggle against slavery and colonialism[124] and land distribution considerations were at the centre of this struggle. Since the first revolt in 1791, the "revolutionary ideal was

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[122] Renaud *apud* Ministère d'Environment d'Haïti, 2010, p.5.
[123] Thélusmond, 2012.
[124] Beauchamps and Smyth, 2010, p.10.

to return the land to the ones who used it"[125]. The Haitian identity has therefore been defined by the "relationship between land and liberty" and, in this context, "freedom not only meant the abolition of slavery but also changes in the distribution and possession of land"[126].

Nevertheless, this Caribbean country followed an unfulfilled transformation from plantation to peasant economy[127] and Haiti went from France's richest colony to the poorest country in the Americas. As pertinently stated by Katz, in the aftermath of the colonial independence, "the country's history hinges on the struggle among individual landowners, national leaders seeking centralized control and autonomous peasants defying them both"[128]. After the overthrow of the French colonial rule, the new independent state proclaimed itself the owner of all the lands located within its jurisdiction. However, the subsequent plantations division did not result in a widespread land access for the majority of the population and the elites and rich families with close ties to the state were the most favored.

In this framework, as a local resistance against the return of the plantations' system, communal land tenure arrangements often emerged. The most famous is known as the Lakou model or system. In an "inner egalitarian spirit"[129], the Lakou clusters became "a grassroot opposition"[130] to any state action tending to reinstate a centralized control of the lands. The Lakou system of land ownership still operates today in some areas of rural Haiti and is the major example of the persistence of deep rooted collective relationships with the land, a reality that is paramount to bear in mind when analysing land-related issues in the country.

A series of additional historic events deserve further consideration since they help to make sense of the current land distribution in the country. In a first stance, attention must be

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[125] Beauchamps and Smyth, 2010, p.10.
[126] *Ibidem.*
[127] Manigat, 1996.
[128] Katz, 2014.
[129] *Ibidem.*
[130] Haiti Lab, 2012(a).

given to the United States' occupation of Haiti (1915-1934), during which the francophone elite was often rewarded with big parcels of land. This reality further aggravated the land inequalities in this Caribbean country. Furthermore, the period of the Duvalier ("*Papa Doc*") dictatorship, which lasted from 1957 to 1986, also resulted in substantial changes in the land distribution patterns in the country mostly due to the action of the regime's paramilitary force known as *Tonton Makou* whose authority allowed the expropriation of land without any questions asked[131]. Further on, Duvalier's son and successor Jean Claude Duvalier ("*Baby Doc*") strongly supported the imposition of neoliberal policies that, by allocating great parcels of land to industrial foreign companies, also influenced the land's reality in the country. By changing the land distribution at the expense of the poorest strata of the population, all the previously mentioned periods contributed to exacerbate the social and economic inequalities in Haiti.

As summarized by Lappe-Osthege, modern Haiti is foremost characterised by deep rifts and inequalities between a small elite that has enjoyed a rather continuous foreign, mostly American, backing of its interests, and the poor masses who have been violently suppressed under the Duvalier dictatorship and the military rule, which emerged from the turmoil in the early 1990s and mid-2000s. Lundahl corroborates this position by arguing that, "the plight of Haiti can be understood only in the historical perspective of the forces that shaped the economic and social underdevelopment of the country. History has always been an obstacle to change in the Haitian case"[132]. All in all, the patterns of land distribution have occupied a central place in this division.

Furthermore, historical patterns of land distribution in Haiti have to be framed in a broader analysis of a political enduring neglect of the agricultural sector. The Haitian Constitution of 1987 acknowledges and emphasizes the importance of agriculture by stating it represents the "main source of the Nation's wealth, is a guarantee of the well-being of the people and the socio-economic progress of the Nation"[133]. However, a combination of

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[131] World Business Law Library (WBLL), 2013, p.117.
[132] Lundahl, 2013, p.16.
[133] Republic of Haiti, 1987, art.247.

incoherent donor assistance together with disadvantageous terms of trade and import liberalisation policies enhanced by the Bretton Woods Institutions and the United States had a disastrous impact on Haitian farmers[134] further weakening the already fragile agricultural sector. In this context, agrarian and land reforms were never priorities for the Port-au-Prince Executive. Concerning the perverse impact of US-sponsored trade agreements on the Haitian economy, Bill Clinton has already recognized that "[i]t may have been good for some of my farmers in Arkansas, but it has not worked" and it struck a "devil's bargain"[135].

Land represents a chief subsistence asset given that the main socio-economic unit in Haiti is still the peasant family that has been long considered the backbone of the national economy[136]. Notwithstanding the historical and present relevance of agriculture, which in 2010, at the time of the earthquake, accounted for 51% of the economic activity, the primary sector has been significantly disregard and, at that same moment, only represented 25% of the GDP of the country[137]. About 60% of the Haiti's food requirements need to be imported, which renders the country critically vulnerable to international prices fluctuations.

All in all, understanding the historical importance of land as well as the current land tenure patterns in this Caribbean country allows understanding the historical Haitian struggle for independence and a past haunted by years of slavery, dictatorships, foreign military rule and natural disasters. Land has been at the heart of a history of dispossession and resistance and this is a crosscutting consideration that is important to continuously bear in mind when addressing land-related questions in this Caribbean country.

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[134] Oxfam International, 2011, p.6.
[135] Clinton *apud* O'Connor, 2013.
[136] Ministére d'Environment d'Haïti, 2010, p.15.
[137] *Ibidem.*

3.2. LAND ADMINISTRATION IN HAITI: THE INSTITUTIONAL ARCHITECTURE

Dysfunctional problems in the land administration both predated and followed the January 2010 massive earthquake. The Executive Secretary of the Haitian *Comité Interministériel d'Aménagement du Territoire* (CIAT), Michele Oriol, corroborates this position by arguing the earthquake only put in evidence the historical dysfunctions of the Haitian land ownership structure[138] shedding some light on a long-standing problem. The land tenure situation has been already dubbed as "the big elephant in the room that no one wants to discuss"[139]. In order to subsequently make sense of the biggest problems of land administration in the country, an initial analysis of the current institutional architecture and land tenure reality is of added relevance.

Land ownership in Haiti is classified in three ways: state public land, state private land or private land. State private land may be sold and rented by the government; rent is paid to the General Directorate of Taxation (DGI) or through a procurer. Ownership is formally noted through a legal land title (*Certificat d'Immatriculation Cadastrale*)[140]. As far as the administration of land ownership in Haiti is concerned, a wide range of government institutions and a multiplicity of actors are involved. At the national level, the ONACA (*Office National du Cadastre*), an autonomous agency under the Ministry of Public Works, Transportation and Communications, is tasked with the gradual elaboration and updating of a land cadastre that covers the whole country[141]. This agency was created in 1984 with financial support from the German government[142].

Together with ONACA, the INARA (*Institut National de la Réforme Agraire*), a special organism of the Ministry of Agriculture, is responsible for carrying out an agrarian reform to the benefit of those who farm the land. Its creation was required by Haiti's 1987

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[138] Oriol *apud* Le Nouvellist, 2012.
[139] Coates, 2012.
[140] Barnes *et al,* 2012, p.3.
[141] International Monetary Fund (IMF), 2015, p.15.
[142] Land Alliance, n.d., p.4.

Constitution[143] and became effective by decree in 1995[144]. The CIAT (*Comité Interministériel d'Aménagement du Territoire)* is tasked with the coordination of the different ministries that influence the land administration in the country. Further attention must be given to the DGI (*Direction Générale d'Impôts*), which functions as Tax Directorate for the land titling. Even if it is the ONACA the institutional agency responsible for organizing the cadastre, it is the DGI that is responsible for actually titling all public land, and for collecting taxes on real estate transactions. All land titles must be registered with the DGI's Office of Registration and Land Conservation[145].

At the local level, it is also relevant to mention the role played by surveyors and notaries who administer land transactions in the 140 Haitian Communes[146]. A notary is a key element in the process of buying, selling and registering property given that he/she will be authorized to prepare the sales agreements, to verify existing title documents and to submit documents and fees to DGI for registration[147]. The official surveyors, known as *Arpenteurs,* should survey privately owned land upon the request of private sellers or owners in everyday transactions[148]. Additionally, the Mayors and CASECs *(Conseil D'Administration de la Section Communale)* deserve further consideration. According to the Haitian law, the municipal Council is the primary manager of the land assets belonging to the State's domain that are within the limits of the *commune*. However, in practice this decentralization has not been effective, and there is a legal controversy over the ability of mayors to manage state lands[149].

As far as the tenure arrangements are concerned, there is a multiplicity of land tenure forms with varying time agreements that can range from ownership, renting, long-time occupation, subleasing, sharecropping and so on. Given the scenario of land shortage in the country, sharecropping, or *moitié système*, is very common but has proven to be

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[143] Republic of Haiti, 1987, art.248.
[144] Land Alliance, n.d., p.4.
[145] International Federation of the Red Cross and Red Crescent (IFRC), 2015, p.24.
[146] International Monetary Fund (IMF), 2015, p.14.
[147] International Federation of the Red Cross and Red Crescent (IFRC), 2015, p.24.
[148] Land Alliance, n.d., p.5.
[149] *Ibidem*.

particularly challenging to deal with in the aftermath of the earthquake. Additionally, one of the most common arrangements, the notion of *affermage*, is also the most problematic. According to this arrangement, the landowners, often afraid of their land being occupied, allow the renters to build their own houses on rented land[150].

The complexity of this arrangement in particular, and of the Haitian land administration in its broader sense, is captured by a landowner as it follows:

> "*Where there is a tree, it belongs to the person who planted it, but the fruit can belong to tenants, while the land can belong to another person who has the title deed or his descendants, even if they are unknown, even if they are dead and even if they have no longer been around for generations*"[151].

3.3. ENDURING FRAGILITIES AND PROBLEMS OF IMPLEMENTATION

Despite the existence of an institutional structure entitled to address land ownership issues, the land administration system in Haiti is far from being functional mainly because at the national level there is a lack of strategic vision and at the local administrative level there is a lack of professionalization. According to the Organisation of American States, in 26 years of existence and until the earthquake struck, the underfunded ONACA (*Office National du Cadastre*) only managed to officially register around 5% of Haiti's land[152].

In order to simplify the analysis of the land administration's main dysfunctions in Haiti, the division between the different components part of a land administration system will be used as a guiding structure[153]. The main problems regarding the legal framework, the surveying, registration and record-saving as well as the dispute resolution mechanisms will therefore be briefly considered.

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[150] Levine *et al*, 2012, p.1.
[151] *Ibidem*, p.7.
[152] Organization of American States (OAS), 2010, p.14.
[153] World Business Law Library (WBLL), 2013, p.117.

Haiti's Constitution expressly guarantees the right to private ownership of property in its article 36 that states that, *"Private property is recognised and guaranteed. The law specifies the manner of acquiring and enjoying it, and the limits placed upon it"*[154]. As far as the land-related legal framework is concerned, the main fragilities stem from the lack of clarity of the land property laws, especially concerning the state's access to land and expropriation powers for public purposes, as well as inheritance provisions for family and dependants. The legal framework concerning the state's right to acquire land by compulsory purchase (expropriation) is particularly confusing given that a 1979 law provides for expropriation only by the head of state, whilst a 2006 Municipal Decree gives local authorities this power[155]. Nevertheless, it can be argued that the land administration frailties are not so much related to the inexistence of a legal framework but to the lack of a duly and timely enforcement mostly arising from the lack of knowledge and capacity of the incumbent authorities[156].

Moving on to the analysis of the surveying, registration and record-saving processes, the main problems are connected with the clear absence of a whole-of-government approach as well as with the inexistence of a functional central land registry. Instead records are kept in rather individually archived titles handled by different, overlapping administrative levels that often fail to coordinate their activities. Therefore, it cannot come as a surprise that frequently more than two people appear, with an official title in hands, claiming the ownership of a particular parcel of land. René Préval, the Haitian President at the time of the earthquake, has illustrated the Haitian confuse land tenure puzzle by stating that "if you put one after another, all of the land titles in Haiti, you will find Haiti bigger than the United States"[157]. Clearly, Haiti lacks a comprehensive land registration cadastre capable of giving a well-defined picture of the land tenure situation in the country. A functional cadastre would be of great importance and would allow the government to "understand

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[154] Republic of Haiti, 1987.
[155] Levine *et al*, 2012, p.7.
[156] International Federation of the Red Cross and Red Crescent Societies (IFRC), 2015, p.24.
[157] Lundahl, 2013, p.241.

land ownership patterns, special relationships between individual properties and national features of land use"[158].

On top of the insufficient coordination between the land administration institutions, the high costs of the titling process often function as major deterrents to land rights' registration and formalization. Titling costs are prohibitively expensive taking into consideration the low financial means of the average Haitian population. In this sense, poverty in itself can be considered an important source of tenure insecurity[159]. In reality, it is not so much a matter of ignorance of the procedures to legally formalize ownership but often a matter of financial means.

Along with the financial constraints, there is also a generalized distrust in most surveyors and notaries as issues of poor supervision, transparency and accountability often arise. Moreover, these professionals frequently have a limited level of education and capacity, possess out-dated equipment, and keep their archives in poor conditions[160]. Most local DGI offices (General Directorate of Taxation) are operating in very precarious conditions with records being kept differently by each office[161]. This situation is contributing to the absence of a reliable centralized registry. Legal registration and transcription tariffs lack updating, and often arbitrarily vary from one commune to another. Another issue that has been time and again keeping the population from formally registering the land is, as Oxfam[162] argues, related to the overconcentration of public administration services in the capital, often too far from rural communities where increasingly land disputes have been arising.

A further issue that outlines the land registration dysfunctions in Haiti is related to the lack of accurate knowledge on the extent of state domain lands. As underlined by Levine *et al,* "the absence of a land registry and the ad hoc way in which the government has acquired and distributed land over the years with a deliberate disregard for orderly

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[158] World Business Law Library (WBLL), 2013, p.52.
[159] *Ibidem*, p.49.
[160] Land Alliance, n.d., p.2.
[161] *Ibidem.*
[162] Oxfam International, 2012(a), p.5.

administration, has created great uncertainty"[163]. The poor documentation of the extent of the state's lands has often made these territories objects of expired and extra-legal leases[164]. Therefore, on top of the interruption of the payment of the rents of the state-owned lands, a widespread practice of sub-renting is taking place in many of the public domain lands. As a result, chaotic and fraudulent rent and selling of state-owned lands add further confusion to the country's land tenure puzzle[165].

Regarding the existing dispute resolution mechanism for land administration, it can be argued that the preference for informal land tenure practices also reflects the structural juridical obstacles in Haiti[166]. In fact, according to the International Monetary Fund (IMF) data, before the earthquake, the average length of a land title dispute resolution in the national court system amounted to 5 years[167]. Moreover, and along with the prohibitive judicial costs, legal procedures are mostly in French, which also becomes a deterrence and increases the Haitian population's lack of confidence in the legal land dispute system. This fact is of added relevance since the language issue has historically functioned as a divide between the francophone elite and the masses.

Overall, questions like "who owns land in Haiti?" and "what is public land and what it is private land?" are historically rooted and are far from constituting unprecedented issues. In this sense, the land tenure puzzle in Haiti can be considered, as Oxfam characterizes it, a two-dimension problem: one of policy framework implementation and one of sociocultural context[168]. The first is related to the faulty management and implementation of the legal framework concerning land. The latter is more an issue at a sociological level and, as will be addressed in the next section, the access to land deeply reflects the substantial social inequalities in the country, the mistrust in the administrative powers and the chronic problems of the national judicial system.

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[163] Levine *et al*, 2012, p.23.
[164] Land Alliance, n.d, p.2.
[165] Sabine, 1996.
[166] Bouquet-Elkaïm, 2013, p.14.
[167] International Monetary Fund (IMF), 2015, p.15.
[168] Etienne, 2012, p.9.

3.4. THE PERVASIVENESS OF LAND TENURE INFORMALITY

Bearing in the mind the description made in the last sections, it should not come as a surprise that informal and extra judicial arrangements are the major feature of Haitian land tenure relations. In order to be more precise, an estimated 95% of land transactions in Haiti occur outside the formal legal system[169]. It is therefore possible to contend that land ownership rights in Haiti are mostly regulated by community ties rather than by the law itself[170]. Consequently, the country was "built by people who just have to come to an agreement with each other"[171]. In face of a widespread mistrust and scepticism regarding the national public authorities, the local populations' primary resort to customary arrangements appears as a practical alternative and social response to the bureaucratic, dysfunctional and often biased administrative institutions. Trapped between rapacious foreign interests and the "incompetence and frivolity of its leaders"[172], Haitian land use practices developed with an eye towards survival and self-sufficiency"[173].

In such circumstances, for most Haitians "the state existed primarily through its mechanisms of predation: the office of taxation (Bureau de Contributions), the army, and the makouts"[174]. Pursuing formal land titles requires interaction with a government that is often perceived as hostile[175]. Given the fragilities of the public administration in the country, "recorded tenure" or "formal titled tenure" are not regarded by most of the population as "secure tenure".

In addition, further emphasis must be placed on the close link between the political instability of the country and the escalation of land property disputes since, as it is stated by Bethell, "every time the government changes hands, fighting over the land begins

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[169] Organization of American States (OAS), 2010, p.14.
[170] Bethell, 2002, p. 8.
[171] Levine *et al*, 2012, p.17.
[172] Jean Mars-Price *apud* Calhan, 2014, p.169.
[173] Calhan, 2014, p.169.
[174] Rencoret *et al*, 2010, p.9. Tonton Makout: name for which the paramilitary force of the Duvalier Dictatorship is commonly known (1957 - 1971).
[175] International Monetary Fund (IMF), 2015, p.13.

again"[176]. In an overpopulated country like Haiti, the land constitutes a scarce and high-value property that has been often misused in the hands of the political elites with intents of rewarding loyalty and exchanging favours in what has been commonly labelled as "pork-barrelling of land"[177].

On the whole, a history of corruption, dictatorships, external influence and dispossession generated a strong mistrust and scepticism among Haitians regarding the national authorities and resulted in a long lasting disconnection between the state apparatus and the nation. A long-lasting rift between a small, urban, francophone, wealthy political elite and a majority of a precarious peasantry that has been historically neglected by political authorities. Consequently, this detachment is strongly reflected in the creation of alternative enduring and resilient social networks of customary arrangements bypassing the "predatory" political institutions. By taking a closer look at the historical inequalities and structural violence problems in the country, it is possible to understand the pervasiveness and resilience of the customary land system.

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[176] Bethell, 2002, p.1.
[177] Etienne, 2012, p.16.

III – ANALYSIS

4. THE 12TH JANUARY EARTHQUAKE

4.1 A SOCIALLY CONSTRUCTED DISASTER

The 7.3 magnitude earthquake that stuck Haiti, just before 17:00, on January 12 of 2010 triggered a massive scale of destruction and a likewise enormous international humanitarian response. It was the most powerful earthquake to hit the country in 200 years of independence. The epicentre was near Léoĝane less than 25 km from the capital Port-au-Prince and one of the most populated areas of the country. The town of Léogâne was reported to be almost 80% destroyed[178].

Taking as reference the Post-Disaster Needs Assessment, approximately 220,000 people died and 300, 000 were injured. Two million people (one in five of the population) were suddenly made homeless[179]. Moreover, by striking at the very heart of the Haitian economy and administration, the earthquake had an acute effect on the human and institutional capacity of both public and private sectors as well as on international technical and financial partners and certain nongovernmental organisations[180]. According to the Report of the United Nations' Secretary General, 60% of Government and administrative buildings, 80% of schools in Port-au-Prince and 60% of schools in the South and West Departments were destroyed or damaged[181]. Total earthquake-related loss is estimated at $7.8 billion, equivalent to more than 120% of Haiti's 2009 gross domestic product[182].

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[178] Government of the Republic of Haiti, 2010(b), p.5.
[179] *Ibidem,* 2010, p.1.
[180] Government of the Republic of Haiti, 2010(b), p.5.
[181] United Nations General Assembly (UNGA), 2011, p.2.
[182] *Ibidem*.

The enormity of the disaster was compounded by the urban context in which the earthquake occurred[183] that gave rise to these depressing figures. As underlined in an evaluation report of the Dutch Cooperation, urban disasters have "distinctive features of scale, density, economic systems and livelihood strategies, resource availability, governance and public expectations, large informal settlements and likelihood for compound and complex disasters"[184]. Moreover, in urban settings, land and housing markets are highly complex[185].

Disasters do not occur in a vacuum[186] and as pointed out earlier in the theoretical section, vulnerability to natural disasters is also socially constructed. In Haiti's case, a set of structural characteristics amplified the effects of this massive disaster and had a major impact on the international relief and recovery efforts. Bearing this in mind, it is possible to make sense of why the severe earthquake in Haiti killed 200,000 people and displaced over 1.3 million when similar scale earthquakes killed only around 100 people in California and 1,000 in Chile[187] or when the 9.0. magnitude earthquake that struck the Japan in March 2011 (the fourth largest in the world since 1900) led to a reported number of victims of around 19,000[188]. In face of this grim scenario, Tulloch argues that "poverty, not geology, was the real reason why so many people died on one of the 21st century worst catastrophes"[189].

Consequently, as pertinently pointed out by Maris and Irimie: "Haiti resembles with a meticulously constructed worst case scenario that brings together regular natural disasters, abject poverty, political violence, corrupted governments, racial hate and discrimination"[190]. Considered the poorest country in the northern hemisphere, Haiti's high rate of poverty is demonstrated by its current 163rd position in the Human Development Index[191]. Prior to the earthquake, around 67% of the population was living

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[183] Ministry of Foreign Affairs of the Netherlands, 2011, p.4.
[184] *Ibidem*, 2011, p.44.
[185] Brown *et al*, 2015, p.26.
[186] Calhan, 2014, p.158.
[187] Marks, 2015.
[188] Lundahl, 2013, p.185.
[189] Tulloch, 2010.
[190] Maris and Irimie, 2011, p.167.
[191] United Nations Development Programme (UNDP), 2014, p.1.

on less than US$ 2 a day. At the political level, Haiti has been internally struggling with decades of political instability and fragile political institutions, a situation that has been further weakened by the earthquake.

In 200 years of independence, the former French colony and the first black republic of the world, saw its population being multiplied by around 20%[192] and currently has the second highest population density in the Western hemisphere[193]. This expressive demographic trend was reflected in a chaotic and rapid urbanization, especially in the country's capital and most affected city, Port-au-Prince. Its urban landscape is characterized by numerous slum constructions or "*bidonvilles*", as they are labelled in French, scattered all over the high decline hills of the city. Prior to the earthquake, 86% of the people in Port-au-Prince were living in slum conditions[194]. The infrastructures' poor state, the widespread neglect of building codes together with an overall inexistence of an appropriate urban planning resulted in the lack of readiness for a disaster of such scale. It is important to mention that experts had been warning the government of the probability of a seismic eruption for years, yet, there was not any early warning system in place, any evacuation plans, and so on and so forth.

An uncontrolled demographic growth and a chaotic urbanization scenario together with a particular environmental vulnerability to recurrent natural disasters, became an explosive cocktail, as confirmed by the destructive effects of the 2010 earthquake. It is important to recall Haiti had suffered nine serious storms over the previous 20 years affecting 3.5 million people and killed over 7,500[195]. In fact, when the earthquake struck, the country was still recovering from the effects of a series of deadly tropical storms in 2008.

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[192] Bidegain, 2013, p.1.
[193] World Vision International, 2011, p.13.
[194] Clermont, 2011, p.2.
[195] Clermont, 2011, p.2.

4.2 THE INTERNATIONAL RESPONSE

The 12th of January earthquake generated an unprecedented global generosity and the international community rapidly mobilized to respond to its devastating impact, triggering one of the largest single-country humanitarian responses ever carried out.

Due to its exposure to recurrent natural disasters, enduring political instability and chronic under-development, Haiti has long captured the attention of the international humanitarian and development community. However, taking the data of Organization for Economic Cooperation and Development (OECD) as a main reference, the net official development assistance (ODA) to Haiti has considerably fluctuated over the past 20 years. Since 2002, it has increased substantially, with very sharp rises in both development aid and peacekeeping expenditure. The peaks in aid to Haiti are mainly a result of humanitarian aid, in particular to help the country recover from tropical storms in 1994, several hurricanes in 2008 and food riots in April 2008[196]. Humanitarian aid as a proportion of total ODA to Haiti has increased from 0.2% in 2002 to over 20% in 2008. As an example, the ODA per capita in 2008 amounted to USD 92[197].

Moreover and due to the high concentration of international agencies, the country has been repeatedly dubbed as "the Republic of NGOs"[198]. Nevertheless, the impact of the historical patterns of assistance in the Northern hemisphere's poorest country remains a highly contentious topic. The external influence in the Caribbean country has long been criticized for bypassing governmental structures, promoting a culture of dependence and fostering "the rise of a quasi-private state in Haiti"[199]. Furthermore, the entrenched connection between the historical fluctuations in ODA (Official Development Aid) and broader political interests in the country has been a target of further criticism[200]. The

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[196] Organization for Economic Cooperation and Development (OECD), 2010.
[197] Rencoret *et al*, 2010, p.11.
[198] Kristoff and Panarelli, 2010, p.1.
[199] Ramachandran and Walz, 2012, p.14.
[200] *Ibidem*, p.2.

"schizophrenic approach" of the United States' different administrations towards the assistance to Haiti has particularly been a target of criticism[201].

The acknowledgment of the tremendous scale of the earthquake and of its appalling economic and social consequences have led to a huge international willingness to help. The large scale disaster was widely regarded as an opportunity for international agencies to make it right this time always following the imperative of "building Haiti back better"[202]. According to data collected by the Office of the Special Envoy for Haiti, between 2010 and 2012, multilateral and bilateral organizations have disbursed approximately $13.34 billion to relief and recovery efforts in Haiti for 2010-2020[203]. Nevertheless, particular emphasis must be placed on the fact that of the total $6.43 billion disbursed from the specific period of 2010-2012, only around 9.1% ($582.3 million) was channelled to the Government of Haiti through its national systems for public financial management and procurement. Furthermore, Haitian non-governmental organizations and companies only received 0.6% ($37.10 million)[204]. This funding allocation and distribution has raised serious concerns regarding the Haitian government ownership of the reconstruction process.

The 12th January earthquake severely affected the main governance structures of the country and significantly undermined both the Haitian government and the MINUSTAH's[205] response capacity. In this context, the very actors who would normally be expected to lead and manage the response were themselves victims of the earthquake[206]. A high number of administrative government buildings were destroyed and many civil servants died, were injured or were absent caring for their own families. National key response institutions such as the National Disaster Risk Management System, the Emergency Operations Centre and the *Direction de la Protection Civile* were

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[201] *Ibidem*, p.2.
[202] Christian Aid *et al*, 2011.
[203] United Nations Office of the Special Envoy for Haiti, n.d.(a).
[204] United Nations Office of the Special Envoy for Haiti, n.d.(b).
[205] The United Nations Stabilization Mission in Haiti (MINUSTAH) was established on the 1st of June, 2004 by Security Council resolution 1542. It is assigned with a mandate to restore a secure and stable environment, to promote the political process, to strengthen Haiti's governmental institutions and rule-of-law-structures, as well as to promote and protect human rights.
[206] Clermont *et al*, 2011, p.5.

either badly damaged or completely destroyed. In face of this scenario and on top of the country's enduring governance fragility, international agencies have found themselves faced with a "conundrum whereby they seek leadership from a government which is struggling itself to cope with a situation of such magnitude"[207].

In the aftermath of the grim disaster, on March 31, 2010, the International Donors Conference "Towards a New Future for Haiti" was held at the United Nations Headquarters in New York. It aimed at rallying the international support, pledging resources and coordinating the international organizations' activities in the country in order to support Haiti's long-term recovery. During the Conference meetings, the Government of Haiti presented the "Action Plan for Recovery and Development of Haiti" which incorporates the results of the Post Disaster Needs Assessment and attempts to lay the foundations for the country's sustainable recovery and reconstruction[208].

The Interim Haiti Recovery Commission (IHRC) was further created with the stated aim of planning and ensuring that the implementation of the recovery efforts are: 1) Haitian-led, 2) involve and coordinate the donor, civil society, and private sector, and 3) to communicate clear outputs desired by the Haitian people[209]. The Interim Haiti Recovery Commission was co-chaired by the then Haitian Prime-Minister, Jean Max Bellerive, and the United Nations Special Envoy to Haiti, former United States President, Bill Clinton. Furthermore, the United Nations Office for the Coordination of Humanitarian Affairs (OCHA) quickly built clusters to coordinate the information gathering and response, but the latter was largely criticized due to a lack of coordination between the government and local communities, an absence of global leadership, and a high turnover rate of inexperienced and unregulated humanitarian actors and staff[210].

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[207] Ibidem, p.5.
[208] Government of the Republic of Haiti, 2010(a).
[209] Interim Haiti Recovery Commission (IHRC), 2011, p.9.
[210] Marks, 2015.

4.3 THE HUMANITARIAN RESPONSE AND LAND OWNERSHIP PROBLEMS

The Haiti earthquake response operation represented one of the largest single country responses ever carried out and was confronted with an overwhelming challenging environment. Due to the urban nature and to the widespread under-development scenario in which it occurred, the disaster presented new challenges of scale and complexity on every level of the relief efforts. As a result, it was often the case that the "humanitarian assistance became bogged down in dealing with chronic problems"[211].

Taking the humanitarian imperative as reference, immediately after a natural disaster the primary focus of the national and international institutions should be to prevent or alleviate human suffering arising out of disaster – a principle that nothing should override[212]. However, it is worth recalling that the scale of the Haitian disaster's human impact was unprecedented, it triggered the displacement of around 1.3 million people to temporary shelters in Port-au-Prince's metropolitan area and led more than 500,000 people to seek refuge in the rest of the country[213].

The primary concern was therefore to save lives and provide medical assistance, shelter, food and water in order to assure that the basic needs of the people affected by disaster were met. In this context, there is often little scope or capacity to begin considering land issues at this critical stage[214]. Nevertheless, humanitarian agencies are more and more expected to consider land issues during the emergency response[215] since it has been increasingly recognized that the way their responses take shape can significantly alter people's land relations[216]. The Humanitarian Response Review has even identified the

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[211] Levine *et al*, 2012, p.1.
[212] The Sphere Project, n.d.
[213] Government of the Republic of Haiti, 2010(a), p.5.
[214] Mitchell, 2010.
[215] United Nations Human Rights Council, 2011(c), p.20.
[216] Pantuliano, 2013, p.201.

consideration and protection of HLP rights as one of the major gaps in the humanitarian response system[217].

The Haitian earthquake response scenario provided an illustrative case and demonstrated the importance of addressing land considerations in the early relief phase, as a series of land-related issues emerged in the wake of the devastating event. These matters have proven to have long-term consequences representing one of the main obstacles hampering shelter construction as well as the long-term return and resettlement of the affected population. In the immediate aftermath of the disaster, land concerns crosscut several different clusters. Land considerations were, therefore, relevant for the Early Recovery Cluster (for instance, rubble removal and cash-for-work projects), Shelter Cluster (emergency and transitional shelter), Camp Coordination and Management Cluster (establishment and provision of assistance to camps and settlements), Protection Cluster (forcible evictions from settlements) and also inclusively for the WASH Cluster (location and provision of sanitation facilities)[218].

The International Federation of the Red Cross and Red Crescent (IFRC) has identified land-related issues as one of the main long-standing problems complicating return policies and recovery in the aftermath of the earthquake. Haiti's weak land administration system and largely informal land tenure context have resulted in a lack of clarity about regulations and procedures for verifying land ownership and accessing land for reconstruction[219]. A variety of other actors present in Haiti also acknowledged that the lack of a proper land governance and land tenure registers constituted a "time consuming void of complexity"[220] hindering many aspects of the relief response and reconstruction process.

In fact, the confusing land tenure puzzle in the country led to the emergence of a number of pressing matters in the aftermath of the disaster: where will the shelters be built? Which

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[217] *Ibidem*, p.193.
[218] Levine *et al*, 2012, p.13.
[219] International Federation of the Red Cross and Red Crescent Societies (IFRC), 2012, p.13.
[220] Levine *et al,* 2012, p. 10.

land can be used? Is the shelter built now to be temporary or permanent? How much compensation should be paid to people who lost their lands or homes?[221] Further complex dilemmas were linked to the international agencies' capacity to: bolster the security of tenure of disaster-affected populations; address the HLP rights of landless or homeless populations within the context of the shelter programming; best confront land grabbing and illegitimate land sales; avoid sustained homelessness pending the resolution of disputes over land ownership and inheritance[222], so on and so forth.

According to the Housing, Land and Property Working Group, an informal group operating under the Protection Cluster, land issues that had an impact on the disaster response can be summarised into problems: of land availability, of verifying ownership and of providing support to beneficiaries who are renters[223]. This tripartite understanding provides added relevance for a comprehensive analysis of the main land-related problems humanitarian agencies have encountered and, therefore, it will be used for following considerations.

4.3.1 THE LAND AVAILABILITY PROBLEM

One of the very first issues of concern that arose in the aftermath of the massive earthquake that struck Port-au-Prince was related to the need of large-scale allocation of land for emergency resettlement[224]. This represented a highly contentious issue given that the state did not hold sufficient land in its power to cover the needs for the establishment of IDP camps. Moreover and as previously mentioned, the extent of the state's land property is not accurately identified, a situation that further complicated the process. Consequently, the process of expropriation and identification of the IDPs sites, in a first phase, and the posterior identification of resettlement sites were extremely lengthy and gave rise to multiple disputes. Moreover, the huge human capacity losses due to the earthquake and the absence of a clear understanding of expropriation rules further

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[221] Presbyterian World Service & Development (PWSD), 2011, p.4.
[222] Leckie, 2011, p.8.
[223] Housing, Land and Property Working Group (HLPWG), 2010, p.1.
[224] United States Agency for Development (USAID), 2010, p.1.

contributed to the delay of land allocation for public purposes. In such circumstances, the Haitian government stated that, "the reconstruction of highly devastated zones requires the use of land to be re-examined"[225]. Therefore, in early March 2010, the executive of Port-au-Prince issued a first decree declaring certain areas of public interest to respond to the need for a new territorial planning and allowing the use of requested land to relocate families affected by the earthquake[226].

The Haitian constitutional law foresees the legal possibility of land expropriation for public interest. However, it does not present any specific provision regarding expedite or temporary requisition in times of emergency[227]. According to article 36-1 of the 1987 Constitution, the expropriation for a public purpose may be effected only by payment or deposit ordered by a court in favour of the person entitled thereto, of fair compensation established in advance by an expert evaluation[228]. Yet, this was often not the case, as it will be tackled later on this study when analysing the case of the Camp Corail-Cesselesse. In addition, even if the 1979 law is widely accepted and the Prime Minister is thus regarded as the sole authority entitled to expropriate private property, the approval in 2006 of a decree entitling municipal authorities with the power to expropriate land for public utility added further confusion to the legal framework concerning the state's power to allocate land[229].

Furthermore, the question of whether the construction of shelters for individual households could, in some specific cases, be classified as public interest and therefore override individual property rights constituted another target of significant debate[230]. This discussion needs to be framed in the broader challenge brought about by IDP registration system's lack of precision, which led to a subsequent blurred distinction between earthquake affected IDPs and poor households that deliberately decided to go to the camps seeking to enjoy the assistance there delivered. However, given the land ownership

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[225] Government of Haiti, 2010(a), p.12.
[226] *Ibidem.*
[227] International Federation of the Red Cross and Red Crescent Societies (IFRC), 2015, p.44.
[228] Government of Haiti, 2010(a), p.12.
[229] International Federation of the Red Cross and Red Crescent Societies (IFRC), 2015, p.45.
[230] Levine *et al*, 2012, p.23.

confusion in the country, the inexistence or destruction of land titles by the earthquake and the pervasiveness of informal agreements, identifying the earthquake-affected IDPs was everything but an easy task.

As highlighted by the chief of operations for the IADB in Haiti, Gilles Damais, "the process of expropriation took much longer than anticipated", "one person would receive payment one week, and the following week someone else would come and say, 'No, he's not the owner, another person owns this land[231]". Katz further presents a pertinent description of the land expropriation problem: "Since no one really knew whose land was whose, multiple families could demand compensation when the government got around purchasing or expropriating land for IDP sites and resettlement"[232]. The land expropriation process became then a source of profit for many. In fact, multiple actors tried to financially explore the confusion about ownership. The government authorities, on the one hand, by trying to avoid paying the due compensations and, on the other hand, the landowning families would try to take advantage of the land ownership confusion to get more money than they might otherwise be entitled to[233]. The confusion and the difficulties around the land expropriation process also reveal an additional problem concerning the level of disaster preparedness of the country: the lack of contingency plans[234]. The land potentially available or considered appropriate for use in case of disaster was far from being properly identified.

An additional factor that also had a substantial impact on the slow pace of the reconstruction process is associated with the issue of debris removal, which in case of disasters can constitute "a critical precursor of the recovery"[235]. The 12th of January earthquake created an estimated 33 million cubic yards of rubble[236]. A challenge that once more has a land-related dimension. Along with the insufficient financing of the debris management, it is important to mention the lack of a clear decision about the allocation

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[231] Damais *apud* Ferreira, 2013.
[232] Katz, 2014.
[233] *Ibidem*.
[234] International Federation of the Red Cross and Red Crescent Societies (IFRC), 2015, p.47.
[235] IFRC, UNHCR and UN-HABITAT, 2012, p.12.
[236] Katz, 2014.

of land for the dumping and treatment of rubble[237]. As a result, the delay in the rubble removal process effectively decreased the supply of land available for sheltering people and recovering economic, educational, governance, and other activities[238]. There was often a clear difficulty to identify the rightful owners of buildings in need of being demolished and this contentious issue often slowed the rubble removal efforts.

Bearing in mind this framework, the lack of available state land for the location of IDPs sites often contributed to a scenario of overcrowding in the camps, leading to appalling living conditions. Sheltered living space was, therefore, well below the minimum humanitarian standards as set by the Sphere Standards Project. According to these standards, a covered living area of $3.5m$ per person^2 must be ensured. According to an Amnesty International Report developed two years after the earthquake, in some camps, shelters had been built less than a foot apart, considerably reducing the privacy of camps' residents[239]. Moreover and according to data provided by the UN-HABITAT, the living space was estimated in $1,98m^2$ per person[240].

4.3.2 VERIFYING OWNERSHIP

The multiplying disaster-related effects has exacerbated the pre-earthquake land administration problems in the country and has made securing access to land and determining who owned which parcels of land an even more complicated task. The Central Tax Office collapsed in the earthquake swallowing the existing registry books in the rubble[241]. Moreover, it is estimated that the disaster has killed an overall number of around 16.000 government officials[242]. On top of the destruction of existing archives and ownership records, the death of many owners, and the subsequent multiplication of

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[237] Lundahl, 2013, pp. 239 -241.
[238] IFRC, UNHCR and UN-HABITAT, 2012, p.12.
[239] Amnesty International, 2013, p.6.
[240] UN-HABITAT *apud* Crawford *et al*, 2010ª, p.7.
[241] Katz, 2014.
[242] Haïti Libre, 2010.

inheritance claims on a massive scale have further confused the land ownership equation in the country, posing additional challenges to the international response efforts. The erosion of physic boundaries and the loss of physical land itself have also worsened the situation.

Furthermore, opportunity was often seen in the disaster and widespread land grabs started to take place from the outset of the shock. The pervasiveness of land informality together with the disruption of many informal land relations created "a sort of free-for-all atmosphere" in which even those with legitimate customary claims were unable to assert them[243]. One of the most expressive instances of opportunistic land grab and selling happened (and is reportedly continuing to happen) in Camp Corail-Cesselesse and in the surrounding areas of Canaan, a specific example that will be analysed later in this study[244].

The provision of shelter in the initial phases of humanitarian response is critical for the protection and dignity of those affected by the disaster. In accordance with the Sphere Standards, one of the key actions for shelter and settlement planning is the identification of HLP ownership[245]. This assessment and understanding of both *de jure* and *de facto* tenure systems[246] is highly important both for the displaced and non-displaced[247] given that decisions regarding shelter and settlement issues will influence both groups. In this sense, the use of land for temporary settlements should consider the existing use rights of the land. In addition, humanitarian actors must be aware that their options will impact the land ownership equation since they could be perceived as legitimizing certain land claims at the expense of others[248].

As argued by Crawford, "without an accurate understanding – obtained by rapid participatory methods – of habitation patterns, security of tenure issues and the key

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[243] Greger, 2014, p.174.
[244] International Federation of the Red Cross and Red Crescent Societies (IFRC), 2015, p.36.
[245] The Sphere Project, 2011, p.245.
[246] Norwegian Refugee Council (NRC) and International Federation of the Red Cross and Red Crescent (IFRC), 2013, p.13.
[247] The Sphere Project, 2011, p.249.
[248] The Sphere Project, 2011, p.255.

institutional actors involved in developing and formalising urban areas, emergency shelter assistance may do more harm than good"[249]. In Haiti's case, several international NGO's such as the IOM, World Vision, USAID, ICRC, engaged in community enumeration and dispute settlement activities. As an illustrative example, the Spanish Red Cross conducted participatory activities in Léogane, the closest city to the earthquake's epicentre and the most affected. The organization designed a program together with the City Hall to verify land ownership and strengthen security before building incremental shelters[250]. The Canadian Red Cross also conducted an extensive household survey and verification process before starting to build shelters in Jacmel and Léogane[251]. Even if time-consuming, these participatory approaches were crucial to understand the existing complexities in tenure arrangements and to build shelters based on decisions that resulted from local solutions. However, others have failed to consider land tenure issues and, therefore, failed to understand the prevalent informal arrangements between owners and renters, which existed in pre-earthquake Haiti.

One of the most direct consequences arising from the difficulty in proving land ownership was the large provision of transitional shelters also known as T-shelters. The transitional shelter programs were designed to move families displaced by the earthquake out of tent structures into wooden structures capable of providing greater protection from the weather[252]. In face of the absence of a centralized, reliable or exhaustive national land record, the humanitarian agencies, afraid of potential land disputes, often held back from considering permanent housing solutions. However, in the long run, the option of choosing transitional shelters raises some concerns. In fact, the T-shelters compete with permanent ones for space, which is extremely scarce in Haiti as analysed earlier in this dissertation. As pointed out by the Special Representative on the Right on Adequate Housing, "the massive construction of T-shelters might impede durable solutions" and might "unintentionally divert resources"[253]. In Haiti's case, it has already been argued

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[249] Crawford *et al,* 2010[b], p.28.
[250] International Crisis Group, 2011, p.18.
[251] *Ibidem*, p.18.
[252] Hirano, 2012, p.1.
[253] United Nations Human Rights Council (UNHRC), 2011(b), p.21.

that T-shelters face a high risk of becoming "semi-permanent low-standard dwellings"[254] that are unlikely to be appropriate to respond to the environmental challenges in the country.

An expert from the World Bank further argues that T-shelters did little to reduce the population in the Haitian camps for Internally Displaced Persons, since so many were renters with no land on which to situate a T-shelter[255]. As a result, a considerable influx of subsequence maintenance of renters in the camps was motivated by the hope of receiving a T-shelter that would posteriorly turn into a permanent house solution[256]. Structures that were designed to be transitory and, which presented reduced life spans, became often a permanent solution for the displaced population, in particular renters, squatters and those who are landless.

4.3.3 PROVIDING SUPPORT TO RENTERS

The level of tenure security had a direct influence on both how the population was affected by the disaster and also on their capacity to recover. In the pre-earthquake Haiti, around 70% of the people were renters or tenants[257] and were among the most vulnerable and poorest victims of the Haiti earthquake. Furthermore, as it is a characteristic consequence of large-scale disasters, the 2010 earthquake triggered a considerable disruption of social relations often provoking the breakdown of several informal tenure and renting agreements. In this sense, the protection cluster early acknowledged that, "the renters must not be a forgotten category in programs of return or rehousing"[258].

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[254] Lundahl, 2013, p.245.
[255] Phelps, 2015.
[256] United Nations Human Rights Council (UNHRC), 2011(a), p.6.
[257] World Bank Group, 2013.
[258] Housing Land and Property Working Group (HLPWG), n.d. p.2.

The endurance of customary tenure and rental arrangements, increasingly characteristic of dense urban settings, has long presented challenges to humanitarian responses. Nevertheless, the scale and complexity of the problem in Haiti has given rise to a number of outstanding issues regarding the provision of shelter and housing assistance. Different levels of tenure security in Haiti often resulted in the emergence of matters of inclusion and exclusion and of equality and inequality. In such a context, the reality of overlapping ownership patterns and informal tenure relations has posed some challenges to the *ethos in action* of humanitarian agencies, which is based on the principle of humanity, on the universality of the assistance and on upholding human dignity[259].

The humanitarian actors were therefore confronted with two pressing questions: first, how can the humanitarian sector ensure equitable shelter assistance to both recognized property owners and non-owners[260]? Second, how can it strengthen the tenure rights of informal landholders? Comprehensively addressing these questions is of the utmost importance to comply with the "do not harm principle" in order to avoid unintentionally producing more marginal people by exacerbating inequalities in a country where the access to land is closely tied to deep-rooted social grievances. A failure to take the renters into consideration in the recovery "can lead to discrimination against the most vulnerable, the very persons who should always be the primary target of humanitarian action"[261].

Sanderson *et al* offer a pertinent question illustrating the inherent difficulties of the shelter and housing assistance in the post-earthquake Haiti: "if before the earthquake you lived in a four-storey block as a tenant, where, and what, do you return to? Also, if you were a squatter or a renter, then what rights do you have?"[262].

In many cases, the large-scale disaster further led to the breakdown of some informal rental agreements due to the death of one of the parts involved. The earthquake also provoked changes in the rental market and led to substantial rental inflation due to both

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[259] Bernard, 2015, p.16.
[260] Leckie, 2011, p.8.
[261] Norwegian Refugee Council (NRC) and International Federation of the Red Cross and Red Crescent (IFRC), 2013, p.4.
[262] Burnell and Sanderson, 2013, p.2.

the acute housing shortage and to the presence of a plethora of international agencies that needed accommodation and places for offices[263].

The loss of renters' livelihood opportunities constitutes an additional concern. As emphasized by the Protection Cluster HPL Working Group, "renters deprived of their livelihoods cannot afford a rent"[264]. Moreover, the rent must be paid on an annual basis (at the beginning of the year) and only in the exceptional cases is it paid every six months. Since the earthquake struck the country in January, at that time most renters had already paid their annual rent in advance at that time. In such circumstances, and on top of the deprivation of income-generating activities caused by the earthquake, renters often lost the money that had been already paid and could not afford to pay an extra 12-month deposit for rent on a new property [265]. Another problem faced by many renters is related to the legal status of the rental agreements. According once again to the Haitian Civil law, "an agreement can be discharged when the object of an agreement (house) is destroyed through a cause of *vis maior*"[266]. Consequently, it is far from clear if many pre-earthquake contracts still remained valid and enforceable.

According to an assessment conducted by the IFRC, "Several interviews revealed that many shelter agencies faced something of an 'unavoidable' bias when implementing shelter programs"[267]. Further evidence suggests that humanitarian agencies working in Haiti often follow traditional notions of providing shelter solutions based on individual property proof. Those with access to land were, therefore, often favoured over tenants and squatters, which accounted to the majority of the disaster-affected population. Frequently afraid of the long term land-related claims that might have been arisen and pressured by the donors assurance requirements, some NGOs failed to properly support people with limited land rights in a practice of tenure discrimination that often led to inequitable assistance. The Protection Cluster Housing, Land and Property Working Group has identified this problem by stating that "the main activities of the international

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[263] Housing Land and Property Working Group (HLPWG), n.d. p.2.
[264] *Ibidem*, p.2.
[265] Levine *et al*, 2012, p.2.
[266] Housing Land and Property Working Group (HLPWG), n.d. p.3.
[267] International Federation of The Red Cross and Red Crescent Societies (IFRC), 2015, p.37.

agencies are focusing on the camp assistance and future reconstruction of privately owned land and houses"[268]. Overall, Haiti showed the risks of following a strict cadastre-based approach when most of the displaced population do not have ownership over the land.

4.4 THE RETURN –RELOCATION DILEMMA

As time passed from the destructive event of January 12th, a pressing question was ever-present: Why are so many people still in the camps? The very much criticized slow pace of the recovery was deeply connected with the lack of progress in the shelter sector. It was widely acknowledged by the humanitarian community that one of the major challenges in the emergency response was to provide shelter for the hundreds of thousands of Haitians made homeless by the earthquake. Moreover, the progress in the shelter was often closely linked with tenure issues to which there were no easy answers.

The 12th of January earthquake destroyed 97,294 houses and damaged further 188,383 in a city where hundreds of thousands of people already lacked housing[269]. In such circumstances, the UN Emergency Relief Coordinator, John Holmes, confirmed that shelter was the main humanitarian issue in Haiti[270]. It is worth mentioning that the housing crisis in Haiti has constituted a long-standing problem that predated the 2010 earthquake. Even if in the Constitution of 1987, the Haitian state recognizes the right of every citizen to decent housing[271] and several international documents distinguish the right to housing as a necessary component of the right to an adequate standard of living [272], Haiti has long faced a deficit of adequate, affordable housing solutions. This situation was significantly worsened by the devastating disaster, but it is worth mentioning that, prior to the earthquake, Haiti's national housing deficit was estimated at 700,000 units[273].

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[268] Housing Land and Property Working Group (HLPWG), n.d. p.2.
[269] Levine *et al,* 2012, p.23.
[270] Leckie, 2011, p.9.
[271] Government of Haiti, 1987, art.22.
[272] United Nations Committee on Economic Social and Cultural Rights (CESCR)*,* 1991.
[273] Amnesty International, 2015.

Considering this framework, the Haitian Government has repeatedly been a target of criticism for not having clear housing policies.

Months after the earthquake, return and resettlement were widely regarded as a priority given that maintaining the camps was far from a sustainable solution. The camps had deteriorating conditions and could not meet the basic needs of its population, representing high health risks as well as significant disaster risks as the hurricane season approached. Furthermore, the prolonged existence of the displaced camps was also hampering the reconstruction efforts by absorbing precious financial resources for too long. The situation in Haiti was, at an increasing extent, perceived as "a humanitarian crisis in need of a development solution"[274]. However the answer to the question - where do people return to? - has proven to be a highly contentious issue. In a country where before the earthquake around 70% of the people in the camps were renters[275] and only around 5% of the total land ownership was officially registered, the elaboration of a return strategy was a problem with no end in sight.

So where do people return to? A river of other pressing questions followed this unavoidable question: Where do people return to: when there is a long-lasting housing shortage?; when most of the existing houses are either damaged or are located in slum areas and are thus far from meeting basic living conditions and safety codes?; when one lacks or loses the ownership title and cannot prove to be the owner of a land plot or house?; when there are several different titles of ownership for the same land plot?; when the untitled land has been grabbed?; when you can no longer afford to pay the rent because the earthquake provoked a skyrocketing rental inflation?; when the disaster leads to the breakdown of the informal land tenure arrangements and your landowner is no longer alive?; when there is widespread unresolved inheritance questions?

In such circumstances, the support for return presupposed being able to identify people's rights to land and property, dealing with planning and reconstruction, housing repair and

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[274] Norwegian Refugee Council (NRC), 2012, p.1.
[275] World Bank Group, 2013.

defining a 'durable solution', all of which were extremely difficult[276]. In face of this long list of frustrating problems, relocation strategies often appeared as a desirable option. Nevertheless, given the significant delay in the resettlement policies, many displaced people continued to live in unrepaired houses or even in houses that needed demolition. In fact, many of those who left the camps have returned to these unsafe structures[277].

Still, it is important to consider some efforts done by the Haitian Government. One of the examples worthy of reference is the Project 6/16 endorsed by the newly elected president Michel Martelly[278]. The Project 6/16 is a major project that attempted to reduce the post-earthquake displaced population. It can be broadly framed in the "Neighbourhood Return Approach" or "Safe Return Strategy". According to this approach, the execution of projects from rubble clearance, rebuilding, water, sanitation and livelihoods programming should be joined across sectors. In addition, agencies should create a coordinated and efficient response supporting families to move from camps to communities[279]. The Project 6/16 was aimed at easing the integrated reconstruction of 16 neighbourhoods through the rehabilitation of housing, access to basic services prioritized by the community and the creation of income-generating opportunities. At the same time, this project was also aimed at facilitating the voluntary resettlement of 5,239 households – approximately 30,000 people - who were originally from these neighbourhoods and who were spread out among the 6 targeted IDP Camps located across the municipalities of Port-au-Prince, Delmas and Petion-Ville[280].

The 16/6 programme relied heavily on the use of rental support and cash grants and, following this initiative, 60 families were each offered US$500[281]. This money could be allocated either to repair works of a damaged home or be used as a rental subsidy. An additional amount of US$25 was granted for transportation costs and an extra of US$125

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[276] Levine *et al*, 2012, p.21.
[277] International Federation of the Red Cross and Red Crescent Societies (IFRC), 2012, p.12.
[278] Michel Martelly took office on the 20th March 2011 and replaced Réne Preval after a run-off of the highly contested Haitian General elections previously held on November 28, 2010.
[279] IFRC, UNHCR and UN-HABITAT, 2013, p.32.
[280] Baptiste, 2014.
[281] Republic of Haiti, 2016, p.5.

would be provided to the families if they continued to live in their return accommodation[282]. However, the amount of money provided was considered largely insufficient in face of a post-earthquake inflated rental market. The recipients of the $500 reported the money provided was "barely enough to pay the rent of a two-bedroom apartment in a slum community for one year, falling short of a durable solution"[283]. In this regard, an external evaluation of the Rental Support Cash Grant Approach has concluded that: "after having received a year's rental support, 60% of grantees will not generate enough funds to maintain the same quality of accommodation for the next year"[284]. As a result, "program beneficiaries are often forced to find alternative housing at a lower price in slums and other undeveloped areas outside the city"[285]. Further concerns were expressed regarding the program's dimension given that it only target around 5% of the overall IDP population[286].

4.5 THE CASE OF THE CORAIL-CESSELESSE CAMP

The creation of the Corail-Cesselesse Camp is the most famous example of the government of Haiti employing its expropriation powers in a shelter-related context. On March 19, 2010, an order of public utility was declared over 7,450 hectares of land between Bon Repos and Cabaret in Port-au-Prince[287]. The Camp was intended as a temporary site for the relocation of the displaced people living in the areas most at risk. The expropriation of the land also aimed at depopulating Port-au-Prince and redeveloping its metropolitan area[288]. In face of a scenario of deteriorating camp conditions and bearing in mind the risks presented by the upcoming rain and hurricane season, the creation of the Camp, "followed therefore the humanitarian imperative to respond to need" [289].

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[282] IFRC, UNHCR and UN-HABITAT, 2013, p.33.
[283] Republic of Haiti, 2016, p.5.
[284] Mennonite Central Committee Haiti, 2013, p.3.
[285] *Ibidem*, p.3.
[286] Haiti Lab, 2012(b).
[287] International Federation of the Red Cross and Red Crescent, 2015, p.46.
[288] *Ibidem*, p.46.
[289] Clermont, 2010, p.13.

As the dreaded rainy season approached in May and early June 2010, the first families started to arrive to the relocation site. Initially thought out for the relocation of a few thousands families, the camp and surrounding areas' population rapidly multiplied and reached dozens of thousands of people. Most of the new arrivals were motivated by the promise that a South Korean factory would be established in the area and would, therefore, provide income-generation opportunities. Additionally, besides the fast and uncontrolled influx of people, the subsequent establishment of several squatter camps stemmed from the expectations of one day potentially taking full ownership of the land[290]. In such a context, the camp zone, and the increasingly populated surrounding area, were dubbed Canaan after the biblical "promised land"[291]. Currently, the Canaan area represents one of the 10 largest Haitian cities[292].

From the start, the choice of moving people to the expropriated land in Corail was far from being consensual. One of the major opponents was the UN-HABITAT that strongly supported the previously mentioned neighbourhood return approach[293], instead of this hasty relocation process. The major concern presented by the opponents to the Government's decision was related to the fear that a new unregulated and untenured slum could be potentially created in the area[294]. The very first objection made to the government's decision was related to the identification of the camp's site. The selected area was located on a deserted zone recognized as hurricane and eventually flood-prone. As pointed out by Shelley *et al*, the "the Haiti unlikely city born out of the disaster may one day be destroyed by one"[295]. Moreover, the chosen area was also criticized for being located in a remote, undeveloped region without livelihood-generating opportunities.

Furthermore, the way that the expropriation process took place was also very much criticized. Reportedly the government did not compensate many owners, often justifying it with the difficulty of proving the land ownership. One again, the specific case of the

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[290] United Nations Human Rights Council, 2011(a), p.6 and Calhan, 2014, p.196.
[291] Reitman, 2011.
[292] *Ibidem.*
[293] Clermont, 2010, p.2.
[294] Baram, 2011.
[295] Shelley *et al*, 2015.

Corail Camp shows some evidence that, before the 12th of January 2010 earthquake, there was no national plan for responding to a major displacement crisis[296].

The main target of criticism is related to the government's inability to control the unregulated growth in the surrounding areas[297] of the newly created relocation camp. Even if the expropriation order expressly prohibited construction, subdivision or other land use, both temporary and permanent structures have been built[298]. The status of the land remains unclear since the expropriation process was not duly concluded, but the government still claims the land falls within its powers of land expropriation for public purposes. The most noticeable consequence is that the families relocated to the area have no security of tenure and are therefore highly susceptible to evictions. In face of this scenario, the report of new episodes of unlawful forced evictions[299] can hardly come as a surprise.

Further emphasis must be placed on the government's failure to stop a series of opportunistic land grabs and land selling that became a common practice after the relocation camp was created. Such circumstances resulted in the "concentration of land in the hands of those with the ability to take advantage of the disruptive circumstances following a disaster"[300]. Given the proximity to what was perceived as a source of assistance and services as well as of potential future job opportunities, the land in the area was target of a high speculation and widespread fraudulent selling practices. The Canaan area case appears as the most clarifying example of a larger problem emerging in the aftermath of the January 2010 disaster. Taking the description offered by the Independent Expert on the situation of human rights in Haiti, Michel Forst:

> "*Some individuals take advantage of the situation by selling plots of land in the camps that they do not own. The resale of those plots with false title deeds is fuelling a wave of real estate speculation with nothing to support it. As a result, several families find*

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[296] Noël, 2013, p.5.
[297] Mostly the surrounding areas of Jerusalem and Onaville.
[298] International Federation of the Red Cross and Red Crescent (IFRC), 2015, p.46.
[299] Shelley, 2015.
[300] United States Development Agency (USAID), 2010, p.4.

themselves in possession of false title deeds to the same plot of land, which actually belongs to the municipality or private owners"[301].

In such circumstances, it can be argued that the Port-au-Prince executive lacked the institutional capacity to manage the land it acquired or at least claimed it had acquired. Paradoxically as it may seem, the government's inability to properly conclude the expropriation process, to control the fraudulent land transactions practices and to avoid the proliferation of unplanned constructions prevented many companies from investing in the area, like the Préval Administration widely anticipated. Thus, the large influx of squatters has already been considered a major reason for the delay in the Corail area large-scale development plans[302].

A wide range of adjectives and expressions has since then been used to characterize the relocation camp and the surrounding areas making plain the controversy and media attention that this decision brought along. "Spontaneous and overcrowded city of crude dwellings"[303], "shanty town" [304], "the most expensive *bidonville* of the country"[305], "the Corail Experiment" are just some examples among many others. The former Special Rapporteur on adequate housing, Raquel Ronik, has argued Camp Corail demonstrates the land use planning difficulties in post-disaster settings and the risks of "institutionalising camps" at the expense of the adoption of more durable solutions[306]. Already considered a disaster born out the disaster, this transitory shelter with no end in sight reinforced a tendency for reliance on assistance delivery. As underlined by Levine *et al,* the Corail experience shows the dangers of settlement creation in the absence of a coherent framework for addressing issues such as rights, livelihoods and infrastructure[307]. Fieser reiterates this idea by labelling the Corail and Canaan area "a good idea gone

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[301] United Nations Human Rights Council (UNHRC), 2011(a), p.6.
[302] Baram, 2011.
[303] Reitman, 2011.
[304] Norwegian Refugee Council (NRC), 2012.
[305] *Ibidem.*
[306] United Nations Human Rights Council (UNHRC), 2011(b), p.21.
[307] Levine *et al,* 2012, p.24.

wrong"[308.] She further argues that it became a symbol of the government's ineptitude towards the displaced population [309].

Ever since it was created the region of Canaan constitutes "a stumbing block" for Haiti's political decision-makers[310]. As argued by the Sociologist Richener Noël, member of the Groupe URD Haiti (*Urgence, Réhabilitation et Developpement*), the camp Corail case highlights two major problems faced by the Port-au-Prince Executive: first the government has proven itself unable to legitimate those occupying the land because the issue of compensation has not been resolved with those that claimed to be the owners; second, it also demonstrates the government does not have the financial capacity to launch the large-scale projects it announced it would[311]. All in all, the problem of the Corail Camp epitomizes the very pre-earthquake problems that according to the "building back better reasoning" should not be happening again.

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[308] Fieser, 2010.
[309] *Ibidem*.
[310] Noël, 2013, p.3
[311] *Ibidem*.

5. DISASTER RESPONSE AND FORCED EVICTIONS

5.1 THE GROWING PATTERN OF DOCUMENTED OF FORCED EVICTIONS

The January 12 earthquake rendered millions of Haitians homeless and a considerable number of the displaced population had no other option but to spontaneously settle down on private owned land plots. At the peak of the displacement, the International Organization for Migration estimated there were 1.5 million IDPs[312]. However, the accuracy of this number is often contested, as several IDP informal settlements were not officially considered camps since the IDP registration system displayed many flaws[313]. In the aftermath of the grim disaster, a high number of camps thrived occupying all the land found available including public parks, schools, the presidential residency and private owned land. An estimated 60-70% of IDP settlements were located on private land[314].

A wave of forced, illegal and often violent evictions from displacement camps become a growing problem some months after the earthquake struck the Caribbean country. The dimension and severity of these forced evictions from IDP camps attracted the attention of many international agencies and human rights organizations. A situation report issued by the United Nations Office for the Coordination of Humanitarian Affairs (OCHA) in early March 2010 first alerted to the growing pattern of forced evictions. According to this report: the protection cluster received an increasing number of reports detailing tensions between displaced people located on private land and purported landowners. Some cases have resulted in forceful evictions from the land occupied with makeshift camps[315].

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[312] International Organisation for Migration (IOM), 2010.
[313] International Crisis Group, 2011, p.6-7.
[314] Housing Land and Property Working Group (HLPWG), 2010, p.2.
[315] United Nations Office for the Coordination of Humanitarian Affairs (UNOCHA), 2010, p.8.

In addition, the publication of an Amnesty International Report in 2013 captured the main international human rights protection bodies' attention and led the global humanitarian community to publicly condemn and declare the growing pattern of forced evictions in Haiti unacceptable. The document reported that a growing pattern of forced evictions appear to have become an important factor behind the reduction of camp numbers. The same international organization has further documented that the growing practice of involuntary removal of people from the displacement camps was often accompanied by the use of an element of force or coercion and carried out without any appropriate procedural protections being set in place. The report also drew international attention to Haiti's Government failure to protect the IDP population and further revealed the executive of Port-au-Prince's active part or compliance with several documented forced evictions[316].

Multiple forced evictions emerged as a consequence stemming from the failure of the return and relocation policies, as analysed earlier in this dissertation. Furthermore, and due to the pre-earthquake pervasive poverty and underdevelopment structural problems in the country, the camp's population in itself preferred to stay in the overcrowded and deteriorating camps than to return to a life without any livelihood opportunities. Camps offered the prospect of rent-free accommodation and many displaced people believed the camps would become permanent and therefore they will acquire the *de facto* ownership of the land plot they occupied in the camp[317]. In an extended relief phase, the widespread existence of camps became the rule rather than the exception. In such circumstances, landowners, often supported by local state authorities, became concerned that the prolonged emergency situation could last for an indeterminate period of time, depriving them from the full enjoyment of their property rights. As a result, they have started forced evictions of IDPs from their privately owned plots[318]. Besides private owners, there were also reports warning that evictions were also being led or condoned by mayors, police officers and other state authorities[319].

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[316] Amnesty International, 2013.
[317] United Nations Human Rights Council (UNHRC), 2011(a), p.6.
[318] Housing, Land and Property Working Group, n.d.(b).
[319] Amnesty International, 2013.

According to estimates of the International Organization of Migration (IOM), between July 2010 and December 2013, 16,118 families have been evicted from 178 camps. Moreover, until September 2013 4.45% of IDP households have been evicted and 11.38% of IDP camps were closed following a forced eviction[320]. However, the number of affected people is expected to be much higher seeing as there are few reports of isolated cases, which mostly took place in non-registered IDP camps.

5.2 PROHIBITION OF FORCED EVICTIONS: INTERNATIONAL LEGAL FRAMEWORK AND HAITIAN STATE LEGAL OBLIGATIONS

Forced evictions are widely considered illegal under international law. The Committee on Economic Social and Cultural Rights (CESCR) has defined forced evictions as "the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of and access to, appropriate forms of legal or other protection"[321].

By drawing the attention to the interrelationship and interdependence of Human Rights, the Commission of Human Rights has also underlined that "forced evictions constitute a gross violation of Human Rights"[322]. In this sense, "the state itself must refrain from the practice of forced evictions and ensure that the law is enforced against its agents or the parties who carry out forced evictions"[323].

The prohibition of forced evictions should also be framed within the state's obligations to protect internally displaced persons as stated in the UN Guiding Principles on Internal Displacement. According to Principle 6 of the Declaration, displaced populations "have

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[320] International Organization for Migration *apud* Amnesty International, 2014.
[321] United Nations Committee on Economic, Social and Cultural Rights (CESCR), 1997, p.2.
[322] United Nations Office of the High Commissioner for Human Rights (OHCHR), 1996, p.1.
[323] *Ibidem*.

the right to be protected against being arbitrarily displaced from his or her home or place of habitual residence"[324]. Moreover, one of the key elements of the state's obligation to protect IDPs is related to the promotion of their return to their communities when such return is voluntary and can be accomplish in safety and security[325]. Additionally, prior to any decision requiring the displacement of persons, the authorities responsible should ensure that all feasible alternatives are explored in order to avoid displacement altogether. Where no alternatives exist, all measures must be taken to minimize displacement and its adverse effects[326].

According to the General Comment no.7 of the United Nations Committee on Economic, Social and Cultural Rights (CESCR), an eviction might be considered justified, and therefore legal, only if it is carried out as a last resort once all feasible alternatives have been explored. Moreover, an involuntary eviction should always be carried out in accordance with the appropriate procedural protection, due process provisions and in strict compliance with the general principles of reasonableness and proportionality[327]. As far as forced evictions are concerned, appropriate procedural protection include: (a) an opportunity for genuine consultation with those affected; (b) adequate and reasonable notice for all affected persons prior to the scheduled date of eviction; (c) information on the proposed evictions, and, where applicable, on the alternative purpose for which the land or housing is to be used, which should be made available in reasonable time to all those affected; (d) especially where groups of people are involved, government officials or their representatives to be present during an eviction; (e) all persons carrying out the eviction need to be properly identified; (f) evictions not to take place in particularly bad weather or at night unless the affected persons consent otherwise; (g) provision of legal remedies; and (h) provision, where possible, of legal aid to persons who are in need of it to seek redress from the courts[328].

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[324] United Nations Human Rights Commission (UNHRC), 1998, p.6.
[325] *Ibidem*.
[326] United Nations Human Rights Commission (UNHRC), 1998, p.6.
[327] United Nations Committee on Economic, Social and Cultural Rights (CESCR), 1997, p.4.
[328] *Ibidem*, p.4.

The country is obliged under a range of human rights treaties, including ICCPR, the CRC, and under the ACHR, to refrain from and prevent forced evictions[329]. Additionally, since January 31 2012, Haiti is also a state party to the ICESCR, which binds the Haitian government to respect its provisions. Moreover and in accordance with article 276.2 of the Haitian Constitution, "once international treaties or agreements are approved and ratified in the manner stipulated by the Constitution, they become part of the legislation of the country and abrogate any laws in conflict with them"[330].

Furthermore, despite the fact that the Haitian Constitution recognizes and guarantees the right to private property, the constitutional document also acknowledges that "ownership also entails obligations and that the uses of property cannot be contrary to the general interest"[331]. Extra attention must also be paid to article 22 in which the Haitian State recognizes the right of every citizen to decent housing[332].

As a result of the Haitian Government's failure to fulfil its obligations towards the displaced population, in March 2013, the Inter-American Commission on Human Rights granted precautionary measures in favour of IDPs who faced the threat of forced eviction[333]. After receiving a request[334] filled by several affected IDPs, the Commission urged the Government to adopt a moratorium on evictions from the camps until the displaced people had an alternative and safe place to live. By issuing the precautionary measures, the Commission also implicitly recognized that natural disasters cannot be used as an excuse to violate human rights[335]. The reasoning presented in the petitioners claim deserves further reference since it sheds some light on the link between the practice of forced evictions and the violation of several other Human Rights, which are also protected under international treaties that Haiti ratified. In the context of the American Convention

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[329] Amnesty International, 2013, p.16.
[330] Government of Haiti, 1987, artº 276-2.
[331] *Ibidem*, artº 36 and 36-3.
[332] *Ibidem*, artº 22.
[333] Inter-American Commission on Human Rights, 2011. In the context of the Inter-American Commission on Human Rights, a "precautionary measure" constitutes a binding directive to governments that failed to address a grave risk of irreparable harm to individuals within their jurisdiction.
[334] Institute for Justice & Democracy in Haiti (IJDH), 2013.
[335] Phillips *et al*, 2013, p.16.

on Human Rights, the practice of forced evictions must be read in conjunction with other relevant provisions such as the right to life under article 4 (forced evictions can impede the communities from obtaining basic resources such as water, food and medical care); the right to physical integrity (the involuntary removal of IDPs from the camps can amount to inhuman and degrading treatment); the right to privacy and dignity under article 11; the rights of the child under article 19 (due to a failure to develop special protective mechanisms for children)[336].

However, the Haitian Government has not taken sufficient steps to implement the Commission's recommendations[337]. The widespread multiplication of unlawful forced evictions shows the Haiti's State failure to simultaneously respect, protect and fulfil the rights of the internally displaced population. It has failed to respect by taking an active part or condoning some of the unlawful evictions; it has failed to protect by not holding those responsible accountable; and it has failed to fulfil by not providing alternative solutions, and by failing to provide people who have been illegally evicted with a decent and safe place to live. In sum, this failure to prevent an on-going series of extrajudicial forced evictions presented a series of long-term consequences for the most vulnerable population and impaired the success of the reconstruction process as it will be discussed hereinafter.

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[336] Phillips *et al*, 2013, p.16.
[337] *Ibidem*, p.15.

5.3 STATE-BACKED EVICTIONS AND THE INVOLVEMENT OF THE HAITIAN GOVERNMENT

The pattern of forced eviction started to be carried out months after the earthquake but persisted as a common practice throughout the following years of reconstruction. The evictions were motivated by different reasons although often had in common the lack of respect for the appropriate procedural protection and due process that are required by international and Haitian Law.

Even if at the beginning the evictions' problem was thought to be related only to isolated cases of private owners independently claiming the restitution of their property, the situation has gained alarming proportions and successive reports started to denounce the involvement of the Haitian state authorities in these illegal practices. Taking the OHCHR's words as a guiding basis, states have both an obligation to refrain from and protect against forced evictions[338]. In order to promote a comprehensive understanding of the Haitian State influence on the forced evictions' scenario, two helpful examples were selected: the cases of the Camp Mozaik in the Delmas Commune and Camp Immaculeé in the Cité Soleil Commune. The choice of the two cases reflects an attempt to present both an instance in which the Haitian government was involved in the practice of forced evictions by action (the first) and a case in which it can be considered to be involved due to the government's inaction (the second).

One of the most publicized evictions took place in January 2012 in Camp Mozaik located in the Delmas Community (the most evictions-affected region). Camp Mozaik collective eviction was the most reported case since it revealed a different angle of the forced evictions' situation: the problem of state complicity, particularly the involvement of local municipal authorities. According to the Amnesty International's report on the situation, the land was claimed and set aside for commercial purposes[339]. Authorities from the

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[338] United Nations High Commissioner for Human Rights (UNHCHR), n.d.
[339] Amnesty International, 2013, p.22.

mayor's office of Delmas arrived on the 25th of January 2012, walked through the camp and sprayed the residents' tents with red ink with the words "MD" (Mayor of Delmas) and "eliminate"[340]. Around 126 families were affected and did not receive any compensation or alternative accommodation. As a result, the 126 families were left homeless, and without having any other option, many worsened the chaotic growth scenario of Canaan and surrounding areas. The forced evictions taking place in the Mokaiz Camp adds the element of state-backed violence to the already complex reconstruction equation. The then mayor, Wilson Jeudy, confirmed his authorization of the eviction and has reportedly justified the action by saying criminals had infiltrated the camp and constituted security threats to the Delmas' population. However, none was reportedly arrested[341].

Camp Immaculée's case, in the Cité Soleil Commune, demonstrates the Haitian State's involvement by inaction, more specifically, by failing to respond to successive reports of threats and several acts of intimidation conducted towards the camp's population. The camp hosted around 250 families and it was located in a road near the entrance to Cité Soleil[342]. According to the information provided by the Haitian Organization International Action Ties, camp residents reported that attacks always took place during the night and the group of attackers repeatedly threw rocks at the tents. The aggressors were often armed carrying machetes and guns trying to force them off the camp's land. During the successive attacks, repeated phone calls were made both to the Haitian national police authorities and to the United Nations Stabilization Mission in Haiti (MINUSTAH), but they were likewise repeatedly ignored. In response to the continued threats and violent attacks, camp residents had no other option but to move out of the camp without any alternative locations being offered. The camp location was later used for profit nigh time events[343].

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[340] Happel, 2012.
[341] International Crisis Group (ICG), 2011, p.8.
[342] International Action Ties, 2010, p.9.
[343] *Ibidem*, p.9. Refugees International, 2010, p.3.

Additional attention must be given to the consequences of the lack of genuine consultation as well as the state´s failure to achieve durable solutions for the eviction-affected population, which led to bigger problems. The state failure to solve the problem fed the unplanned and unregulated creation of new makeshift camps and informal settlement that, as previously considered, faced a high probability of becoming new "*bidonvilles*" and where the IDP population continues to face successive threats of eviction. The international Crisis Group has analysed this correlation and argued that the Haitian State's failure to provide housing solutions and, in a broader sense, to protect the displaced population, "would prolong hardships for the homeless while protracting the capital's overcrowding and susceptibility to major disasters and ultimately putting at risk hope for a transformative reconstruction process"[344].

At a great extent, the occurrence of several documented evictions, which were supported or condoned by state authorities, reflects how land ownership patterns in Haiti are intimately related to the power relations and social inequalities in the country. In a broader sense, land and property rights "are not isolated from wider patterns of authority"[345]. The Haitian organization International Action Ties corroborates this argument by stating that the documented eviction cases "are only a small sample of a pervasive pattern of land and relocation problems" that reflect "the historic neglect and systematic prejudice against the most vulnerable"[346].

Thus, it is notorious from the state authorities' complicity that there is a close and reassuring relationship between the state apparatus and the elite, which in Haiti is historically intertwined with the major landowners. Bearing this in mind, it is possible to understand the Haitian executive's lack of commitment towards the fight against forced evictions since that would imply a "clash with its traditional allies – the major landowners"[347]. Reitman goes further and argues that "some of the (most) influential Haitians owned much of the land now needed to house displaced — and with national

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[344] International Crisis Group, 2011, p.4.
[345] Sandra Joireman *apud* Spichiger *et al*, 2013, p.21.
[346] International Action Ties, 2010, p.9.
[347] Oxfam International, 2012.

elections coming up that November (2010), government officials were not going to alienate their major benefactors"[348]. The Haitian government's lack of political will to tackle the practice of forced evictions can, therefore, be framed within wider patterns of social marginalisation based on tenure insecurity.

In face of Haiti's government failure to protect the displaced population, Kaussen further argues that the IDP camps in the country increasingly operate as "states of exception" in which the already vulnerable population sees the protection of their human rights being systematically neglected and suspended[349]. The previously mentioned positions suggest that Haiti's state inaction regarding the multiplication of evictions not only constituted an issue of state inability to prevent forced evictions but also a matter of unwillingness to sanction its complicit elite of landowners.

5.4 A PROLONGED HUMANITARIAN CRISIS

The increase in the number of unlawful forced evictions resulted in a second crisis of displacement and, therefore, signals the "start of yet another phase of uncertainty, disruption and distress" for the most vulnerable Haitian population[350]. The forced removal from the displaced camps considerably worsened an already unprecedented *displacement crisis* and brought along a significant number of human rights challenges and long-term negative consequences hindering the logic of "building back Haiti better". The metaphor "more salt in the wound"[351] used by the international organization OXFAM International pertinently underlines the negative effects of the growing practice of unlawful forced evictions taking place in an already sensitive situation.

Several waves of evictions did reduce the number of people officially registered in IDP camps. However, this reduction was rarely translated into the restoration of the livelihoods of those affected and the negative consequences for the eviction-affected

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[348] Reitman, 2011.
[349] Kaussen, 2011.
[350] Amnesty International, 2013, 26.
[351] Oxfam International, 2012(b), p.1.

population lasted far beyond the moment they were forced off the camps' land. Being victimized a second time[352], left homeless and destitute, with nowhere to go and without any livelihood opportunities, the victims often ended up living on the streets or settling in other camps with appalling conditions where they likewise faced risks of imminent eviction. Moreover, the next locations were often unsafe, set in high-risk areas prone to natural hazards and had no access to basic services such as water and latrines. This situation had a major impact on the displaced population and exacerbated its vulnerability to the spreading of an unexpected, high severity cholera outbreak that struck the country in October 2010[353]. An additional problem of major concern is related to the risks of gender-based violence. Episodes of sexual violence against women and girls have already been reported to occur "at shocking levels" in several IDP camps[354]. Facing successive evictions, the IDP affected population further lost the protection (even if largely insufficient) that the camps usually granted and were therefore more vulnerable to such human rights violations.

An additional point concerning this situation is related to the fact that threats of forced evictions were in some cases accompanied by a further pressure technique in the form of "blockage of aid"[355]. Through a merciless deprivation strategy, the landowners claiming the properties tried to force the IDPs off their land by blocking or diverting the aid assistance directed to the camps. Together with the human impact it provoked, this blockage of aid also brought along the increasingly alarming problem of diverted aid resources.

The multiple episodes of forced evictions also led to the growing number of small-scale unofficial camps that further complicated aid provision by humanitarian agencies that could barely target and cover the needs of a significant percentage of the displaced

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[352] Quigley and Carasik, 2011.
[353] Reportedly caused by UN peacekeeping forces returning from Nepal, the outbreak was first registered in October 2010 and rapidly spread, mostly in the rural areas of the country. According to the information provided by the UN Mission in Haiti, until March of 2015, the cholera outbreak resulted in approximately 736, 376 suspected cholera cases and 8,768 related deaths. MINUSTAH, 2015.
[354] MADRE, 2011.
[355] International Action Ties, 2010, p.2.

population. Moreover, eviction-induced homelessness fostered the growth of new slums. Evidence suggests that the widespread practice of unlawful forced evictions fed the unregulated growth of the Corail Camp and Canaan area[356]. Thus, there is a clear vicious cyclical logic inherent to the forced evictions practice. Forced evictions, often undertaken to clear locations and promote the rebuilding of infrastructures, substantially contributed to the creation of a protracted humanitarian crisis given that they often led to the victims return to informal settlements, untenured slums or to the creation of new camps. In these new camps, the once evicted population often faced continuous risks of additional eviction. In-between repeated evictions, the displacement crisis went on and the reconstruction process was successively delayed.

In such circumstances, camps supposed to be transitional, became an omnipresent feature in a Haiti that became "trapped in the emergency phase"[357]. On this matter, Grimm has reasoned that the concept of temporary in Haiti's IDP camps "has morphed into a dismal variation of forever"[358]. Refugees International has also stated that, "nearly ten months after the January 12 earthquake, the people of Haiti are still living in a state of emergency, with a humanitarian response that appears paralyzed"[359].

The extended existence of IDP camps has raised many concerns as they foster a culture of aid dependence and impede the restoration of the Haitians' livelihoods. The Independent Expert on the situation of human rights in Haiti, Michel Forst, has expressed his concerns regarding the prolonged existence of displacement camps in the country, stating that: "Although the camps were an appropriate response to an emergency situation, one can only wonder whether they have now contributed to the emergence of a new kind of social organization that might create more problems than it solves"[360].

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[356] Amnesty International, 2013, p.27.
[357] Refugees International, 2010, p.1.
[358] Grimm, 2010.
[359] Refugees International, 2010, p.1.
[360] United Nations Human Rights Council, 2011(a), p.5.

All in all, the widespread practice of unlawful forced evictions and the social impact this practice entails have posed additional challenges to the humanitarian agencies operating in the country. In-between successive waves of displacement, the transition from relief to recovery and reconstruction became a more demanding question that generally already is. Once again, the land ownership patterns in the country and its close link with broader patterns of inequality and discrimination are key features in the problem.

6. THE SLOW ROAD TO RECONSTRUCTION AND LAND-RELATED CONSIDERATIONS

6.1 ATTEMPTS OF LAND REFORMS

In face of what has been characterised as one of the main sources of disaster vulnerability in Haiti as well as one of the main obstacles hindering the recovery and reconstruction process, several organizations operating in the country gradually realized that decisions affecting the land use patterns in the country were far from representing mere regulatory issues and could have far-reaching and long-lasting consequences. Moreover, the particularly challenging response environment in post-earthquake Haiti showed how addressing land ownership promptly after a disaster is an important step in the transition from short-term humanitarian relief to the long-term reconstruction process and restoration of livelihoods. In such a context and as briefly discussed in section 4.3.1, many agencies tried to overcome land ownership problems by carrying out *ad hoc* activities aimed at identifying land tenure patterns through community validation.

While community-based approaches proved to be valuable, emphasis was recurrently placed on the importance of government-led land reforms. Furthermore and interwoven with the concept of "building back better", the notion of "disaster as an opportunity"[361] has emerged throughout recent topic-related literature. Disasters are thus regarded as

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[361] Fan, 2013. International Federation of the Red Cross and Red Crescent Societies (IFRC), 2010, p.5. World Bank Group, 2010.

disruptions that can become drivers for structural changes. Opportunity was therefore seen in the adversity to take the country's land administration system into a new direction. All things considered, the then director of the Technical Division of the National Institute for the Application of the Agrarian Reform (INARA), Ronel Thelusmond, has characterized land reform as one of the most pressing issues in the country and a key "pillar of the reconstruction process"[362]. As the politically sensitive matter it is, a sustainable reform of the land tenure system is widely regarded as going hand in hand with strong political institutions and functional public administration services. However, Haiti's political situation is far from meeting these criteria. In this context, taking the land administration reform as a major key governance issue, the Port-au-Prince executive started to work with different international actors in a number of projects aiming at reforming the archaic land administration system in the country.

As the importance of achieving durable solutions for the displacement crisis occupied a central place in the Haitian national discussions, the need for an update in land register was increasingly regarded as a priority. In this regard, the Organization of American States has underlined that "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 and a transparent and efficient system that offers and generates trust and security for development"[363]. In fact, significant delays in the construction of large infrastructural projects due to land issues became a recurring situation. For instance, particular attention was given to the reported difficulties posed by unclear land ownership patterns to the construction of both the National Road no.7 (which so far remains unfinished) and a Spanish-funded water treatment facility[364] (inaugurated in May 2012).

Considering this framework, the Haitian government gradually responded to the numerous calls for reform and the Project *Foncier Haïti – Modernization of Cadastre and Land Rights Infrastructure* appeared as the first attempt to reorganize the land

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[362] Thelusmond *apud* Bell, 2011.
[363] Organization of American States and Republic of Haiti, 2010, p.3.
[364] Ferreira, 2013.

administration in the country. The land reform project was designed by the Haitian National Cadastre Office (ONACA) and was sponsored by the Organization of American States (OAS) that worked together with the Haitian Government in a series of technical missions aiming at supporting the update of the land cadastre[365]. It is important to mention that, before the 2010 earthquake, the Organization of American States had already been trying to push a land reform forward[366].

In addition, the creation of the Haiti Property Law Working Group (HPLWG) deserves further consideration. Initiated in June 2011, by Habitat for Humanity International and Architecture for Humanity Haiti in close cooperation with the Haitian Government, this working group was intended as a forum to discuss property law and land tenure, in order to identify short and medium-term solutions to the many challenges that have arisen in Haiti following the January 2010 earthquake[367]. The HPLWG was composed of roughly 100 experts, practitioners, donors and government officials working to clarify Haiti's land law in an inclusive and transparent manner[368]. The most visible outcome of this group was the publishing of the "Haiti Land Transaction Manual" that documents how to buy and sell land in Haiti. This handbook is intended to represent a highly useful resource that Haitians, NGOs and international investors can use to "navigate the complex bureaucratic legal system and secure property", which is considered a "critical first step to permanent reconstruction" in Haiti[369].

Furthermore, in April 2012, the Inter-American Bank of Development (IBD) also allocated around US$ 27 million dollars to the development of a pilot program to improve land tenure security in rural areas in northern and southern Haiti[370]. The project addressed the land issue as a two-fold problem: one related to land registration and another to institutional capacity. Based upon estimates, which show that nearly two-thirds of the 1.5 million rural parcels have no property title, the program intends to finance the registration

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[365] Organization of American States (OAS), 2010.
[366] Organization of American States, n.d.
[367] Haiti Property Law Working Group (HPLWG), n.d.
[368] Haiti Property Law Working Group (HPLWG), 2012, p.VI.
[369] Habitat for the Humanity, n.d.
[370] Inter-American Development Bank (IDB), 2012(a).

of deeds of 1,000 parcels, in order to measure the incremental impact of formal land titling on rural productivity[371]. At the same time, the program meant to finance activities to improve the quality and efficiency of the land administration services provided by various government agencies.

Along with the aforementioned project, the Haitian executive established a partnership with the French Government in 2014. This partnership aimed at boosting the creation of a cadastral methodology, reorganizing land administrative services and supporting the legal reform of the Haitian land tenure system, placing particular emphasis on the training and qualification of the land-related administrative jobs, an issue that has been long considered one of the main priorities for the land administration system in the country[372].

Overall, the tragic event of January 12, 2010 has accelerated the reform of what constituted an enduring problem in Haiti. The importance of these reforms is even more noticeable as they constitute an attempt to address what has long been considered a "non-go area" for many Haitian administrations, the land issue. Nevertheless, it is deemed important to critically analyse these attempts of land tenure reform as well as the role played by the sponsor international organizations. The *rationale* of the previously mentioned projects was mainly grounded on the importance of the modernization and formalization of the land register for "attracting foreign investment"[373], "boosting investment in Haiti[374]" and "fostering economic activity"[375]. Particular emphasis was, therefore, placed on the prominence of "improving the efficiency and predictability of land transactions, to stimulate investment and economic growth in Haiti"[376]. As a result, goals such strengthening the land rights of the most vulnerable population, particularly the farmers' population, or promoting more equitable land access patterns in the country, even if referred to in the projects reports, received secondary attention. This question will be analysed in more detail throughout the next section.

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[371] *Ibidem*
[372] Ambassade de France à Port-au-Prince, 2014.
[373] Organization of American States and Republic of Haiti, 2010(a).
[374] *Ibidem*, p.2.
[375] *Ibidem,* p.7
[376] Haiti Property Law Working Group (HPLWG), 2012, p.23.

Bearing this reality in mind, while the wide range of economic and social benefits associated with improved land-related formal procedures, regulations and standards cannot be overlooked; the long-awaited land reform in the country needs an approach that goes beyond a technical perspective. In fact, changing land tenure patterns, which have been constituted and reinforced throughout centuries is far from being an easy task and reform initiatives must be rooted in an open dialogue and a permanent debate with all sectors of society[377]. For a land reform process to be successful, it needs to strengthen a culture of dialogue, to build trust and confidence[378]. As it was remarked in the historical contextualization section of this study, the pervasiveness of informal land tenure practices in Haiti mainly reflects a high level of mistrust in most public authorities. Moreover, most of the land problems in this Caribbean country reflect the persistence of a perverse land administration that concentrated the land on the hands of a small elite and failed to promote a widespread access to land for the poorest population. At an increasing extent, it is highly debatable if the way the government is addressing land issues in the reconstruction process is helping to develop a higher level of trust towards state institutions and reducing land tenure-based inequalities. In such a context, the following analytical part of this study will shed some light into the main criticism directed at the Port-au-Prince executive.

6.2 BUILDING BACK BETTER?

While the Haitian executive's effort to enhance land-related reforms needs to be recognized, the way the country's long-term development is being projected has increasingly been a target of criticism[379] by failing, once again, to put the needs of the most vulnerable first. In effect, as far as land administration is concerned, the Haitian Government is somehow adopting a paradoxical approach. On the one hand, it attempts to formally foster the modernization of the cadastre and land administration institutions

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[377] Comité Interministériel d'Aménagement du Territoire la République d'Haïti (CIAT), n.d.
[378] Organization of American States (OAS), n.d.
[379] OXFAM America, 2015, p.13.

but, on the other hand, in practice, continues to neglect the land rights of its population favouring foreign-investment-centred development approaches.

After winning the run-off in the controversial elections of March 2011, the Haitian President Michel Martelly soon turned into known for his expression "Haiti is open for business"[380], which rapidly became one of the main slogans of the his administration and simultaneously a flagship of the reconstruction process. The Haitian government has tenaciously supported a development strategy towards the attraction of foreign investment and the creation of jobs. This strategy has been anchored in two main goals: promoting free trade zones and investing in the touristic sector, both of which have been carried out with significant negative consequences in the country's patterns of land distribution and use. In this respect, two examples have been recurrently mentioned throughout the topic-related literature: the construction the Caracol Industrial Park in the northern region of the country and the development of a touristic complex in Île-à-Vache, an island located in the southwestern area of Haiti.

6.2.1 THE CARACOL INDUSTRIAL PARK

The Caracol Industrial Park (*Parc Industriel de Caracol*) opened in October 2012 and was envisaged as an "engine of growth for the Northern corridor" of Haiti"[381]. The exports-oriented industrial park was constructed with the financial support of the United States Agency for International Development (USAID), the Inter-American Development Bank (IDB) and soon became the leading project under the reconstruction slogan "building back better". The Park is located in an area of approximately 250 hectares between Chambert and Caracol[382] and its construction was firmly supported by a South Korean clothing manufacturer, Sae-A Trading Co. Ltd.

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[380] On the 22nd of October 2012, during the Caracol Industrial Park Opening Speech, the then Prime Minister Michel Martelly stated that: "Caracol is evidence that Haiti is irreversibly open for business". Inter-American Development Bank (IDB), 2012(c).
[381] Inter-American Development Bank, 2012(c), p.9.
[382] Gender Action, 2013, p.5.

According to the project's official webpage, the complex could provide up to 65,000 jobs[383] while the United States Agency for International Development (USAID) stated it would constitute the "key to poverty reduction in the country"[384]. However, to date (2015 data), only 4,500 low-paying jobs[385] have been created. A report published by the international organization ActionAid reveals that a quarter of the United States Agency for International Development (USAID) post-earthquake relief funds was channelled to the construction of the industrial complex in an area "way outside of the disaster zone"[386]. Evidence suggests that while in the earthquake-affected areas surrounding Port-au-Prince, more than half-a-million of IDPs[387] were living in tents in makeshift camps without prospects for durable solutions, a US$ 300 million[388] project was being inaugurated more than 200 km away from the area affected by the disaster. ActionAid's report further states that 336 families and 720 agricultural workers lost their source of livelihoods only with few days of notice to make way for the park's construction[389]. Although most of the land allocated to the Industrial Complex construction was owned by the Haitian state, most of the concerned land had been rented and used by farmers for decades[390].

The construction of the Caracol Industrial Park has been controversial from the very beginning. The selected location of the flagship project soon gave rise to environmental concerns given that the Industrial Complex was built in an area that, before the earthquake, was intended to be included by the Haitian Ministry of Environment in a National Plan of Protected Areas (*Système National d'Aires Protégees*)[391]. Furthermore, the Caracol Bay area has been long considered the "breadbasket of the Northern Region"[392]. As highlighted by Katz and Shelley, it constituted a "good, productive

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[383] Republic of Haiti, 2011(a), p.3.
[384] United Stated Agency for International Development (USAID), 2016.
[385] A study conducted by the Haiti Grassroots Watch (colligation of Haitian organizations and social movements) found that, at the end of the day, Caracol workers only have 57 gourdes, or US$1.36, in hand after paying for transportation and food out of their minimum wage 200-gourde (US$4.75) salary. Haiti Grassroots Watch, 2013.
[386] ActionAid USA, 2015(b).
[387] International Organization of Migration (IOM), 2012.
[388] Republic of Haiti, 2011(a), p.4.
[389] ActionAid, 2015(a), p.3.
[390] Shamsie, 2014, p.86.
[391] Haiti Grassroots Watch, n.d.
[392] Haiti Grassroots Watch, 2013.

farmland in a deforested and hungry country"[393]. Along with environmental concerns, there is a widespread sceptical atmosphere regarding the "public utility" of the promotion of free trade zones. Sceptical voices emerged against what has been already dubbed as a "sweatshop-led development model"[394]. In fact, the Caracol Industrial Park "represents the continuation and the expansion of an existing, failed development model"[395] that has already been supported for decades, but has barely succeeded in pulling the country out of a situation of chronic poverty. As a result, the Caracol Industrial Park's contribution to any substantial social change can be pertinently called into question. Moreover, further doubts can be casted about the eventual economic and social benefits arising from the massive investment and if they would compensate the farmers' land dispossession[396].

Even though the Government established an Action Plan for the Compensation of the People-impacted by the Caracol Industrial[397], the issue is far from being solved. According to a study conducted by the international organization Gender Action, the due compensation of the affected farmers stands out as one of the major unfulfilled promises of the Port-au-Prince executive[398]. Most farmers chose land as a primary form of compensation (except one), yet, according to the international organization's report, as September 2013, thought the 336 households had received funds for several lost harvests, they had not received the lands they were entitled to[399]. This situation happened mostly because the government lacked available land to resettle the affected farmers. As a result, the farmers' livelihoods have been put in a limbo and, with no other sources of revenue in sight[400]. According to data provided by the Inter-American Development Bank (IDB), the 366 people who used to farm the land on which the industrial park is being developed have received a total $1,2 million in compensation (about $3,500 per household, or five times the Haitian per capita income)[401]. Nevertheless, and as pertinently stated by an

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[393] Katz and Shelley, 2015.
[394] The Haitian Times, 2016.
[395] ActionAid USA, 2015(a), p.19.
[396] Gender Action, 2013, p.23. Haiti Support Group, 2013, p.2-3.
[397] Republic of Haiti, 2011(b).
[398] Gender Action, 2013, p.22.
[399] *Ibidem*, p.22.
[400] Haiti Grassroots Watch, 2013.
[401] Inter-American Development Bank, 2012(b).

affected farmer from the Caracol area, "they cannot really put a number on what the land was able to produce and provide to us"[402].

6.2.2. THE ÎLE-À-VACHE TURISTIC COMPLEX

The case Île-à-Vache constitutes an additional example of the Haitian Government's failure to respect the land rights of its population as the picturesque island of around 20,000 habitants, located in the Southern Haiti, was declared as a zone of public utility for tourism development by a presidential decree in 10 May of 2014. This tourism project led to the seizure of prime agricultural land from hundreds of poor and vulnerable smallholders who lost the source of food and livelihood in which they had relied on for decades. The plan to develop Île-à-Vache into the next Caribbean tourist destination included the construction of an airport, hotels, golf camps, villas and restaurants. Nevertheless, approximately two years after its initiation, the complex construction has been reportedly stymied by a conflict between the government and local residents over the ownership of the island's land[403].

According to a report drawn up by a coalition of Haitian Civil Society organizations, the land expropriation process was not carried out in accordance with the Haitian Law and internationally established best practices. The local communities were neither informed with adequate notice nor invited to participate in the expropriation planning process[404]. The government's refusal to seek a dialogue the population in advance and the overall lack of communication between Haitian authorities and the residents of Île-à-Vache have resulted in several waves of protests, which have been reportedly responded with violent repression by the Haitian authorities[405]. The foundation of the Organization of Île-à-Vache Farmers (*Konbit Peyizan Ilavach* - KOPI) appears as the major proof of the local population's resistance to be pushed off their lands. While it is not yet clear how the Île-à-Vache large-scale touristic plans will unfold, the early phases of the project already

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[402] ActionAid USA, 2015(a), p.14.
[403] Kushner, 2015.
[404] DESAFRODH *et al*, 2014, p.2 and 4.
[405] OXFAM America, 2015, p.13. See also Freedom House, 2015.

show how the Haitian government is failing to confer with and properly include the Haitian population in its development ambitions.

Furthermore, the way expropriation process was conducted reflects the Haitian Government's failure to acknowledge that forced evictions potentially influences every aspect of the lives of the affected population. When a family is pushed off its land without proper consultation and without a durable solution being provided, that family often loses its source of livelihood and. therefore, also risks losing the "bundle of rights" associated with that plot of land: the right to shelter, food, health, education and the right to live in dignity. Besides not being consistent with the Haitian National Law[406], the government's actions also failed to respect international best practices, as recognised in the United Nations Food and Agriculture Organization (FAO) *Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries, and Forests in the Context of National Food Security*[407]. States should ensure that both the planning and process for expropriation are transparent and participatory as agreed upon in the international framework of 2012[408]. Anyone likely to be affected should be identified, properly informed and consulted at all stages. Additionally, prompt compensation should be provided and strategies should be considered to minimize the disruption of livelihoods in a manner consistent with the state's relevant obligations to respect, protect, and fulfil human rights[409]. As argued before, this was not the case in the examples of the Caracol Industrial Park and of the attempt to create a Touristic Complex in Île-à-Vache. Moreover, both examples also demonstrate a failure to comply with *The Basic principles and guidelines* on *development*-based *evictions*[410] developed by the United Nations Special Rapporteur on Adequate Housing as well as with the *Core Principles for Land Acquisition and Leases*[411], which were developed by the UN Special Rapporteur on the Right to Food.

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[406] Republic of Haiti, 1987, article 36.1.
[407] Food and Agriculture Organization of the United Nations (FAO), 2012, p.VI.
[408] *Ibidem*.
[409] *Ibidem*, p.27 - 28.
[410] United Nations Special Rapporteur on Adequate Housing, 2007.
[411] De Schutter, 2009.

6.3. DEVELOPMENT FOR WHOM?

Both instances provide a valuable sample of Haiti's government's refusal to understand that land is not only a commodity, but is at the heart of the country's social justice, particularly when bearing in mind the deep-rooted historical significance of land in this Caribbean nation. Furthermore, the Haitian government's neglect of the peasant's land rights is also hindering an eventual "nation-to-state reconciliation" and is consolidating the historical image of a predatory state that uses its powers arbitrarily to take land from the peasants. In a country where around 60% of the population still directly depends on agriculture for survival[412], long-term development cannot be envisaged at the expense of the rural population's dispossession.

There is a noticeable nexus between an economic development model, already adopted in the past, that is substantially "predicted on the erosion of land rights for the vast agrarian majority" and the "expansion of shantytowns and impoverished inner city neighbourhoods around Port-au-Prince"[413] where tenure security is the exception rather the rule. The several reported cases of development-induced displacement supported by the Haitian government and carried out without the provision of alternative and durable solutions are creating a new marginal segment of the population that, deprived of its land, is likely to feed the unregulated growth of the Haitian *bidonvilles*[414]. In such circumstances, the opportunity of "building back better" is somehow missed. Hastedt *et al* corroborate this position by stating that there is a "sense of déjà vu"[415] in the development orientation favoured by the Haitian executive given that former export-oriented development policies implemented since the Duvalier era resulted in a massive influx of vulnerable population who came to populate slums, like the one in Cité Soleil, one of the most populous slums of the country On the whole, some conclusions can be drawn from this session. While the Haitian Government is making some efforts to put the

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[412] Inter-American Development Bank (IDB), 2012ᵃ.
[413] ActionAid USA, 2015(a), p.11.
[414] See also Hsu and Aristil, 2014.
[415] Hastedt *et al*, 2015.

land reform issue in the political agenda, in practice, the indiscriminate use of its expropriation powers at the expense of the most vulnerable population is further confusing the land tenure puzzle in the country. As underlined by an OXFAM International report, Caracol and Île-à-Vache cases suggest "the Haitian development aspirations and large–scale infrastructure projects supported by the Government fail to include the voices and needs of the majority of Haitians"[416].

Bearing a human rights perspective in mind, the value of having an updated formal land register can be called into question if it still reflects a widespread lack of access to land by the poorest population; if the long existing ties to the land are not respected; if land grabs are not controlled; if expropriation processes are conducted without respecting the due procedures; if the emphasis is placed on industrial and touristic development while the peasant population, which accounts for the largest percentage in the country, is left out of the development equation. In such a context, an updated cadastre will only contribute to further formalize land ownership inequalities. As underlined by Bouquet-Elkaim, whereas the main orientations of the international reforms in the country are focused on formal validation of tenure security to attract and secure foreign investment, there is not a tangible response to the land tenure precariousness of the peasant world[417]. Even if the Action Plan for National Recovery and Development in Haiti approved in the aftermath of the devastating earthquake, states that agriculture is a "pillar of the country's stability" and "an essential axis of its development", the government's intervention priorities do not explicitly include goals regarding equity and securing the land access for the most vulnerable[418]. In sum, understanding the vital importance of land and of the "bundle of rights" that is intrinsically connected to this resource constitutes an essential pillar of the building back better logic. In this sense, a failure to secure the access and use of land by the most vulnerable population will continue to undermine the achievement of a long-term equitable development for this Caribbean nation.

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[416] OXFAM America, 2015, p.13.
[417] Bouquet-Elkaim, 2013, p.16.
[418] *Ibidem*, p.17.

IV - GENERAL CONCLUSION

The "land question" in Haiti is far from being a mere regulatory barrier and, in the aftermath of the devastating 12th of January earthquake, humanitarian organizations working in the country soon realized that the confusing land tenure puzzle posed an enormous time and resource-consuming challenge, hindering the timely consolidation of durable solutions for the displacement crisis and the subsequent restoration of livelihoods. Historically, land constitutes a "symbol of hard-won freedom"[419] but also a symbol of an enduring nation-to-state division arising from a history defined by fragile, biased political institutions and foreign influence. Given this background, the "land question" in Haiti underscores broader patterns of social marginalisation and along with it, a long-standing failure of the Haitian political authorities to address deep-rooted historical inequalities and patterns of discrimination. Moreover, the Haitian State's inability to understand the parallel between land tenure insecurity and social vulnerability further demonstrates a political failure to prevent the massive effects of the 2010 earthquake and, therefore, to protect the most vulnerable strata of the population within its jurisdiction.

Overall, the most striking conclusion to be drawn from this study analysis is that the enduring dysfunctional land governance in Haiti has both amplified the impacts of the 7.0 magnitude earthquake that struck the country in 2010 and has proven to be one of the main obstacles in the response and recovery process. The provided case study analysis has also made it possible to conclude that the historical fragilities of the land administration system in Haiti have not only posed logistical problems but have also posed huge challenges to the *ethos in action* of the humanitarian agencies. The provision of a fair and appropriate humanitarian response respecting the principle of universality of assistance together with the "do not harm" approach has proven to be an arduous task. The widespread absence of an updated land cadastre along with the pervasiveness of informal and often overlapping tenure agreements have: contributed to a displacement crisis of enormous scale and duration; added to the difficulty of a rapid and safe return to

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[419] ActionAid USA, 2015(a), p.9.

the affected population's original locations; and augmented the complexity of providing transitional shelter, in a first stance, and durable, long term housing solutions. Without neglecting the chronic poverty situation in the country as well as the multiple variables that influence a disaster-response, it is possible to acknowledge that the transition from the relief phase to the long-term recovery and reconstruction process has been substantially hampered due to land-related issues.

The complexity of the recovery process was compounded by the Haitian State's failure to take the lead by appropriately addressing land problems in the aftermath of the disaster. The creation of the Camp Corail-Cesselesse, through a confused and still unresolved land expropriation process, exemplifies how the Haitian Government overlooked the long-term effects of unthought-of decisions could have on the land tenure puzzle in the country. Initially thought as a temporary camp for displaced population, the unregulated growth of the camp and surrounding areas epitomizes the recreation of the very pre-earthquake problems that rendered the population so vulnerable to the disaster's effects. Additionally, the increase of unlawful forced evictions from the Haitian IDP camps, often backed or condoned by Haitian political authorities, further allows us to conclude that the Haitian State is privileging the interests of its landowning elite at the expense of its most vulnerable population. By failing to understand that landlessness goes hand in hand with the violation of a "bundle of human rights", the Haitian State has not complied with its international legal obligations under human rights treaties, such as the ICCPR, ICESCR, ACHR, CRC or established international best-practices like the ones included in the United Nations Guiding Principles on Internal Displacement and in the International Law Commission Drafts Articles on the Protection of Persons in the Event of Disasters. In a nutshell, widespread pre-disaster land-based vulnerabilities together with the Haitian State's failure to properly address the situation in the aftermath of the devastating earthquake have considerably contributed to the creation of a prolonged humanitarian crisis. Final emphasis should be placed on the fact that whilst after the earthquake land considerations were included in the political agenda and land reforms have since been pushed forward, the development strategy followed so far by the Port-au-Prince executive is contributing to a further land-dispossession of its population. The cases of the Caracol Industrial Park and Île-à-Vache both underscore how the Haitian State has kept

discriminatory patterns of land administration alive, a reality that reinforces, rather than fights, patterns of vulnerability based on land tenure insecurity. As a result, the opportunity to "build back better" and to promote a transformative reconstruction process is somehow missed.

As far as humanitarian organizations are concerned, they have revealed an increasing awareness to the importance of land-related considerations when responding and recovering from the effects of a natural disaster. In addition, even if displaying some coordination problems, they have pertinently alerted Haitian political institutions to the immediate and long-term human rights implications arising from land-related problems. They have also promoted important advocacy efforts towards the adoption of reforms connected to land management and have provided their technical knowledge and expertise to enhance land administrative reforms. However, land reforms entail more than a technical approach aimed at formalizing a land cadastre. A sustainable land reform, in its broader sense, needs to be anchored in a strong political will to address deep rooted land-related problems, such as the poor population's lack of access to land as well as patterns of discrimination and several other human rights violations arising from land tenure insecurity (lack of access to basic services, forced evictions, land grabs, and so on). However, this much needed political will so far has not been shown by the Haitian executive. Moreover, the negative impact that projects supported by international development organizations are having a on the poor population's access to land must be analysed in detail in future discussions.

While this Caribbean country constitutes a very particular case where a natural hazard meets serious man-made patterns of vulnerability such as widespread poverty, chaotic urbanization, environmental degradation, enduring political instability and fragile institutions, Haiti is not an isolated case. Unregulated urban growth together with the absence of land-use planning and pervasive land tenure insecurity are a global phenomenon. In this sense, understanding the importance of a responsive land governance for the mitigation, response and recovery from natural disasters is deemed particularly relevant for the analysis of other examples both in developing and developed

countries. Moreover, if the Sustainable Development Agenda[420] is to be fulfilled and if, as envisaged in the Sustainable Development Goal (SDG) number 11, cities and human settlements are to be made inclusive, safe, resilient and sustainable, land-related considerations cannot be overlooked. In fact, a responsive land governance constitutes a key element to achieve the SDG target 11.b which aims at "substantially increase, by 2020, the number of cities and human settlements adopting and implementing integrated policies and plans towards inclusion, resource efficiency, mitigation and adaptation to climate change and resilience to disasters […]"[421].

In broader terms, the Haitian case study allows multiple considerations. In face of a global scenario of rapid urban growth, increased demand for natural resources, climate-related challenges and a growing problem of land degradation, these observations gain particular relevance. As argued by the United Nations Special Rapporteur on the Right to Adequate Housing, "increased global demand for land implies an increased need for land policies that ensure tenure rights and equal access to land"[422]. In such a context, the findings of this research suggest that there is a correlation between dysfunctional land administration systems and an increased level of disaster vulnerability. Moreover, if land considerations are not addressed in a timely manner, they might complicate the transition from relief to recovery and reconstruction. A suitable and appropriated deliberation about land-related issues as well as about the long-term consequences associated with them can lead to faster restoration of livelihoods and sustainable reconstruction processes in post-disaster scenarios. Moreover, given the nexus between land issues and the protection and enjoyment of a broader "bundle of rights", addressing land considerations in a timely manner after a disaster constitutes a crucial step for adopting a human rights based approach to disaster response. All things considered, instead of privileging purely technical understandings of land, approaching land distribution and use patterns from a human rights' perspective is an exercise deemed essential to promote a just, equitable and disaster-resilient development.

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[420] Framework adopted by world leaders at the United Nations Sustainable Development Summit on the 25th of September 2015.
[421] United Nations Division for Sustainable Development, 2015.
[422] United Nations Human Rights Council, 2011(c), p.16.

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