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HAITIAN IMMOVABLE PROPERTY LAW: A MAJOR OBSTACLE TO EARTHQUAKE RECOVERY AND ECONOMIC DEVELOPMENT

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I. The Purpose and Scope of this Article

This symposium encompasses human rights issues in Haiti, the poorest country in the Western hemisphere,¹ after its devastating

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I deeply appreciate and thank the numerous Haitian law professors, attorneys, judges, public officials, bar association officers and members, as well as business people, for the time and patience they took in explaining Haitian law, practices and customs. I especially thank Dr. Aldy Castor, President of the Haitian Resource Development Foundation, Dean Gellin Collar of the University of Haiti Law School and Boniface Alexandre, former Acting President of Haiti and Chief Justice of the Supreme Court of Haiti. Also, Mr. Kertch Conze, a Florida attorney, delivered a paper in French at a May 17, 2007 conference in Port-au-Prince, Haiti for me. Mr. Conze's comments and suggestions from conference participants were greatly appreciated. Their efforts greatly improved the paper.

Also, I would like to express my appreciation to Pat Riddick, my wife and an attorney, who made substantial contributions to this paper including editing, research, and translations from French to English. I would like to thank Southern University Law Center and Chancellor Pitcher for providing financial assistance. Research law students, Sannestine Fortin and Scott C. Stansbury, also provided invaluable assistance for which I want to thank them. None of the people identified herein are responsible for any opinions or errors that I may have made in

earthquake in January 2010 – its problems with governance, human trafficking, dealing with displaced populations, and rebuilding. This article examines an issue that may cut across all of those topics. It is important to reform, stabilize, and enforce property rights in order to provide a basis for protecting individual rights and economic freedom, and to promote government stability and economic development in Haiti's rebuilding efforts.

The right of private ownership of property to be free from unreasonable expropriation and confiscation by rulers was first enunciated in the Magna Carta of 1215.² The United Nations (UN) reinforces the issue of property rights and economic development in Article 55 of its Charter as an important international human rights law. In the Preamble of the Universal Declaration of Human Rights adopted by the United Nations General Assembly, December 10, 1948, the UN proclaimed a common standard of achievement for all peoples and all nations.³ Property rights are contained in Article 17, which states: Everyone has the right to own property alone as well as in association with others. No one shall be arbitrarily deprived of his property.⁴

The principal purpose of this article is to (1) examine the legal rights to private ownership of property and (2) suggest specific

this article.

The most difficult task in preparing this paper was obtaining documents on Haitian law, although Internet access to legal materials has been effectively expanded after the earthquake. Therefore, much of this paper's analysis of Haitian law, the economy, and other issues has been based on personal interviews, observations, and experiences in Haiti. I would also note that there is very little literature that I could find on the Haitian law of immovable property.

¹ U.S. CENTRAL INTELLIGENCE AGENCY, *THE WORLD FACTBOOK: HAITI* 297, 299 (2010), available at <https://www.cia.gov/library/publications/download/download-2010/index.html> (page last updated on Sept. 22, 2010).

² DANNY DANZIGER & JOHN GILLINGHAM, *1215: THE YEAR OF MAGNA CARTA* (Touchtone 2004)(2003); see also *MAGNA CARTA*, art. 52 (1215), available at <http://www.constitution.org/eng/magnacar.htm>.

³ Universal Declaration of Human Rights, G.A. Res. 217 (III) A, at 72, U.N. Doc. A/RES/217(III) (Dec. 10, 1948).

⁴ *Id.* at 74.

steps to modify existing Haitian law and practices to develop a stable, transparent property regime for Haiti.

My underlying premise is that without resolution of the Haitian property issues there is little hope for sustained economic development and growth, and without economic change, there is almost no hope for combating poverty, increasing educational opportunities, or improving health and developing infrastructure. Haiti has many problems that retard and delay economic improvement in addition to property rights, but they are outside the purposes and scope of this article.

II. Overview of Haiti and the January 10, 2010 Earthquake

On January 12, 2010, shortly before 5:00 p.m., a 7.3 magnitude earthquake struck Haiti.⁵ The earthquake's epicenter was about ten miles southwest of Port-au-Prince, the country's capital, and most populous city.⁶ The world watched on television in horror as search and rescue teams from around the world dug live people and bodies out of the rubble. This was the most powerful earthquake to strike Haiti in 200 years.⁷ This is the worst natural disaster recorded in the Western Hemisphere in human and economic terms.⁸

There were 220,000 individuals killed, and over 300,000 injured.⁹ About 15 percent of the country's population was directly affected by the quake.¹⁰ Approximately 1.3 million people are still living in temporary shelters in over 1,000 camps.¹¹ Another 600,000

⁵ GOV'T OF THE REPUBLIC OF HAITI, ACTION PLAN FOR NATION RECOVERY AND DEVELOPMENT OF HAITI 6 (March 2010), *available at* <http://www.cirh.ht/sites/sites/en/HaitiRecoveryPlan/Pages/HaitiActionPlan.aspx> [hereinafter Action Plan].

⁶ *Id.* at 6-7.

⁷ *Id.* at 6.

⁸ FY 2010 HAITI SUPPLEMENTAL DEPARTMENT OF STATE AND USAID, FACT SHEET (Mar. 24, 2010), *available at* http://www.foreignpolicy.com/files/fp_uploaded_documents/20100325_haiti_supp.pdf (last visited Feb. 11, 2011).

⁹ *Id.*

¹⁰ Action Plan, *supra* note 5, at 7.

¹¹ *Id.*

people migrated to other parts of the country, or left Haiti completely.¹²

The physical destruction was widespread.¹³ Inadequate construction standards and practices by a very poor population, government agencies, and commercial establishments contributed to the earthquake's destruction of 105,000 homes, 1,300 schools, more than 50 medical centers, the Presidential Palace, the Palais de Justice, the State University of Haiti (including the School of Law and Business), and almost every major governmental and state university building.¹⁴ Many buildings were severely damaged and declared unsafe for human use or occupancy.¹⁵ For example, over 208,000 homes were severely damaged but were not totally destroyed.¹⁶

The earthquake caused a total of \$7.9 billion in damages and losses –120% of Haiti's 2009 GDP.¹⁷ There is very little property and casualty insurance, so that means over a million people lost all or most of their possessions, and became homeless and impoverished instantly. About 90 percent of the work force quickly became unemployed. Serious housing, food, physical security, and health issues emerged immediately after the earthquake.

III. The Haitian Population

Haiti has approximately 9 million people with two official languages:

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.* Between 2002 and 2007, I had the honor of attending meetings and giving speeches in the Law School and Palais of Justice with Dean Collot and the Haitian Bar Association and met in the Presidential Palace with Acting President Boniface Alexandre and several ministers in other government buildings. The destruction of all of these buildings makes it easy for me to understand why the national government has had so much difficulty functioning effectively since the earthquake.

¹⁵ Action Plan, *supra* note 5, at 7.

¹⁶ *Id.*

¹⁷ *Id.*

(1) Creole, and (2) French.¹⁸ Although Haiti is frequently referred to as a French-speaking nation, approximately 70 percent of the people speak Creole, with French being the language of the educated elites.¹⁹

The population has very low levels of education attainment, with a literacy rate of 52 percent;²⁰ less than 25 percent of Haitians complete the sixth grade.

Haiti's life expectancy is approximately 50 years of age.²¹ In 2009, the per capita annual income was \$667; 80 percent of the population lives in poverty.²² With the highest per capital AIDS infection rate outside of Africa, Haiti has substantial problems with starvation, malnutrition, disease, and non-existent or inadequate medical services.²³

The low health and educational conditions are the result of a failed economy. Haiti is the poorest country in the Western Hemisphere.²⁴ In 2009, the UN Development Index of life expectancy, educational attainment, and adjusted real income ranked Haiti 149th out of 182 countries in the world.²⁵ Haiti ranked lower than Angola, Bangladesh, Congo, Pakistan, and Kenya.²⁶

¹⁸ U.S. DEPT. OF STATE, BACKGROUND NOTE: HAITI, (Dec. 7, 2010), <http://www.state.gov/r/pa/ei/bgn/1982.htm#people>; U.S. CENTRAL INTELLIGENCE AGENCY, *supra* note 1.

¹⁹ U.S. DEPT. OF STATE, *supra* note 18.

²⁰ THE ECONOMIST, POCKET WORLD IN FIGURES 79 (2007).

²¹ *Id.* at 81.

²² U.S. CENTRAL INTELLIGENCE AGENCY, *supra* note 1.

²³ LIBRARY OF CONGRESS – FEDERAL RESEARCH DIVISION, *Country Profile: Haiti, May 2006*, at 11 (2006), available at <http://memory.loc.gov/frd/cs/profiles/Haiti.pdf>.

²⁴ U.S. CENTRAL INTELLIGENCE AGENCY, *supra* note 1.

²⁵ U.N. Dev. Programme, *Overcoming Barriers: Human Mobility and Development*, (2009), available at http://hdr.undp.org/en/media/HDR_2009_EN_Complete.pdf.

²⁶ *Id.*

IV. The Haitian Economy

Haiti's 2009 gross domestic product was \$6,692,678,034, with a 2.89 percent growth rate. Between 2000 and 2009, the GDP almost doubled. Per capita income did not grow nearly as fast during the same period. (See table 1)

TABLE 1. Haitian Gross Domestic Product (GDP) by Total, Annual Growth Percentage, Per Capita Total, and Annual Per Capita Growth Percentage (selected years)

| Year | GDP (current US \$) | GDP growth (annual %) | GDP <i>per</i> <i>capita</i> (current US \$) | GDP <i>per</i> <i>capita</i> growth (annual %) |
|------|------------------------|--------------------------------|---|--|
| 2010 | n/a | n/a | n/a | n/a |
| 2009 | \$6,692,678,034 | 2.89% | \$667.09 | 1.28% |
| 2008 | \$6,407,707,284 | 0.84% | \$648.79 | -0.75% |
| 2007 | \$5,971,284,338 | 3.34% | \$614.32 | 1.69% |
| 2006 | \$4,878,625,009 | 2.25% | \$510.08 | 0.60% |
| 2005 | \$4,154,243,481 | 1.80% | \$441.47 | 0.15% |
| 2000 | \$3,664,503,846 | 0.87% | \$423.75 | -0.96% |

SOURCE: Data from The World Bank, available at <http://data.worldbank.org/country/haiti>.

Also, Haitian imports continue to exceed Haitian exports. In 2008, imports were \$2.6 billion dollars, while exports were only \$800 million dollars. (See table 2). Since 2000, Haitian imports have been 300 percent greater annually than their exports.

TABLE 2. Haitian Imports and Exports of Goods and Services (selected years)

| Year | Imports of goods and services | | | Exports of goods and services | | |
|------|-------------------------------|-----------------|----------|-------------------------------|-----------------|----------|
| | Total current US \$ | Annual % growth | % of GDP | Total current US \$ | Annual % growth | % of GDP |
| 2010 | n/a | n/a | n/a | n/a | n/a | n/a |
| 2009 | n/a | n/a | n/a | n/a | n/a | n/a |
| 2008 | \$2,653,295,577 | 4.18% | 41.41% | \$799,333,292 | 3.22% | 12.47% |
| 2007 | \$2,352,459,776 | 0.87% | 39.40% | \$793,051,452 | 1.95% | 13.28% |
| 2006 | \$2,113,737,574 | 4.60% | 43.33% | \$709,256,423 | 3.09% | 14.54% |
| 2005 | \$1,595,886,126 | 2.57% | 38.42% | \$598,828,135 | 3.38% | 14.41% |
| 2000 | \$1,224,477,097 | 29.26% | 33.41% | \$465,219,108 | 6.32% | 12.70% |

SOURCE: Data from The World Bank, *available at* <http://data.worldbank.org/country/haiti>.

This gross trade imbalance is offset by foreign aid (*see table 3*), remittances from Diaspora Haitians (*see table 4*), and direct foreign investments in Haiti (*see table 5*). In 2009, Haiti's gross domestic product was \$6.69 billion dollars, with foreign aid of \$911 million dollars (*see table 3*) and Diaspora Haitian remittances of \$1.375 billion. Approximately 35 percent of the Haitian economy comes from foreign aid and Diaspora Haitian remittances. The largest single source of funds from outside Haiti is Diaspora Haitian remittances.²⁷

²⁷ U.S. DEPT. OF STATE, *supra* note 18.

TABLE 3. Net Official Development Assistance Received by Haiti (selected years)

| Year | Total amount (US dollars) |
|------|---------------------------|
| 2010 | n/a |
| 2009 | n/a |
| 2008 | \$911,810,000 |
| 2007 | \$701,590,000 |
| 2006 | \$581,600,000 |
| 2005 | \$425,590,000 |
| 2000 | \$207,810,000 |

SOURCE: Data from The World Bank, *available at* <http://data.worldbank.org/country/haiti>.

TABLE 4. Workers' Remittances and Compensation of Employees Received in Haiti (selected years)

| Year | Total current amount (US dollars) | % of GDP |
|------|-----------------------------------|----------|
| 2010 | n/a | n/a |
| 2009 | \$1,375,540,000 | 20.55% |
| 2008 | \$1,369,750,000 | 21.37% |
| 2007 | \$1,222,090,000 | 20.47% |
| 2006 | \$1,062,869,000 | 21.79% |
| 2005 | \$986,155,300 | 23.74% |
| 2000 | \$578,000,000 | 15.77% |

SOURCE: Data from The World Bank, *available at* <http://data.worldbank.org/country/haiti>.

The role of direct foreign investment in Haiti is insignificant (see table 5). With only \$37,950,000 in net direct foreign investments in Haiti in 2009, it is easy to understand why Haitian officials are now calling for more direct foreign investments.

At the present time, foreign investments per capita in Haiti are among the lowest per capita investments of any country. The reasons given for not wanting to invest in Haiti are lack of proper rights, ineffective and corrupt courts, corrupt and inefficient customs and port officials, bureaucratic nightmares, and general corruption. Another major reason is that Haiti's Constitution of 1987 effectively excludes foreign investments in mines, quarries, minerals, property, and numerous other areas.

TABLE 5. Net Direct Foreign Investments in Haiti (selected years)

| Year | Total current amount (US dollars) | % of GDP |
|------|--------------------------------------|-------------|
| 2010 | n/a | n/a |
| 2009 | \$37,950,000 | 0.56% |
| 2008 | \$29,800,000 | 0.47% |
| 2007 | \$74,500,000 | 1.25% |
| 2006 | \$160,600,000 | 3.29% |
| 2005 | \$26,000,000 | 0.63% |
| 2000 | \$13,250,000 | 0.36% |
| 1995 | \$7,400,000 | 0.27% |

SOURCE: Data from The World Bank, *available at* <http://data.worldbank.org/country/haiti>.

Under this set of circumstances, the only sources for capital formation are the Haitian people, government taxation, or land distribution. If there are to be foreign investments, substantial constitutional and legal changes will need to take place, especially concerning property rights.

V. Major Immovable Property Problems

By July 12, 2010, many earthquake recovery assessments

claimed that the humanitarian effort in the relief phase had prevented an even worse human catastrophe,²⁸ however, the United States Senate, Committee on Foreign Relations report on June 22, 2010, concluded, “there are worrisome signs that the rebuilding process in Haiti has stalled.”²⁹ The report continues with, “[a]s the sense of immediate crisis has subsided, so has the sense of urgency to undertake bold action – the ‘reimagination’ of Haiti hoped for months ago – and the commitment to prevent a return to the dysfunctional, unsustainable ways of life past.”³⁰

The American press was even more critical of the Haitian government efforts.³¹ In turn, the Haitian officials criticized the non-government organizations (NGOs) and donor organizations for the manner in which they were controlling their assistance in Haiti. Additionally, on July 12, 2010, the Disaster Accountability Project released a “Report on Transparency of Relief Organizations Responding to the 2010 Haiti Earthquake.”³² They reported that out

²⁸ See STAFF OF S. COMM. ON FOREIGN RELATIONS, 111TH CONG., HAITI AT A CROSSROADS 1 (Comm. Print 2010).

²⁹ *Id.*

³⁰ *Id.*

³¹ See Deborah Sontag, *In Haiti: the Displaced Are Left Clinging to the Edge*, N.Y. TIMES, July 10, 2010, at A1; see also Jonathan M. Katz, *Haiti Recovery Bugged Down 6 Months after Quake*, HOUSTON CHRONICLE, July 11, 2010, at A24; see also Carrie Kahn & Marisa Peñaloza, *Haitians Press on Amid Slow Pace of Quake Recovery*, NPR.ORG (July 14, 2010), available at <http://www.npr.org/templates/story/story.php?storyId=128489779>. Explanatory maps depict the extent and types of earthquake damage sustained. For a highly critical article on the ports, lack of political will, government monopolies, and corruption, see Jacqueline Charles, *Seaport, the engine of Haiti's recovery, is sputtering*, MIAMI HERALD, July 17, 2010, available at <http://www.miamiherald.com/2010/07/17/1735714/seaport-the-engine-of-haitis-recovery.html>.

³² See DISASTER ACCOUNTABILITY PROJECT, THE TRANSPARENCY OF RELIEF ORGANIZATIONS RESPONDING TO THE 2010 HAITI EARTHQUAKE (2010), available at <http://www.scribd.com/doc/34223667>; Press Release, Disaster Accountability Project, Disaster Accountability Project Releases Report On The Transparency of Relief Organizations Responding to the 2010 Haiti Earthquake (July 12, 2010), available at <http://www.disasteraccountability.com/blog/2010/07/12/report-on-transparency-of-relief-organizations-responding-to-the-2010-haiti-earthquake/> [hereinafter Press Release].

of 197 organizations identified as soliciting funds for Haitian relief, only six made publicly available, regularly updated “factual situation reports detailing their activities.”³³ Cable News Network (CNN) and The Chronicle of Philanthropy (according to NPR) reported that American citizens had directly contributed \$1.3 billion for Haitian relief efforts.³⁴

Most of these critical assessments recognized the dysfunctional nature of Haiti’s government, economy, educational, and health systems. In addition to pre-earthquake inadequacies, Haitian government lacked credibility because of four major factors, which are: (1) law and order, (2) the expiration of public officials’ terms, (3) lack of revenue and resources, and (4) the state of the law and records.

A. Law and Order: The UN Protectorate

Haiti has no military forces. In 2004, Haiti requested that the UN send military forces and police to restore law and order and to establish an effective national police force. Territories (states) and communes (cities) have no police officers and no penitentiaries or jails. The centralization of law enforcement functions and their concentration in Port-au-Prince (the center of earthquake devastation) left the UN forces (MINUSTAH) and the National Police ineffective after the earthquake due to two significant events. First, the national police were in charge of the National Penitentiary, which collapsed, effectively freeing over five thousand prisoners. Second, the Brazilian General commanding the MINUSTAH forces in Haiti was killed, as were many key UN and Haitian police officials. The call for foreign troops and police officers met with an immediate response, and helped maintain law and order. Nevertheless, for many months after the earthquake, the law enforcement functions were a major, time-consuming issue.

³³ DISASTER ACCOUNTABILITY PROJECT, *supra* note 32, at 19-23; Press Release, *supra* note 32, at 1-2.

³⁴ Kahn & Peñaloza, *supra* note 31, at 1.

B. Public Officials' Terms Expired

The terms of office for most members of the National Assembly have expired and the February elections were suspended. The question of who has the authority to pass laws and to execute them was further compounded by the delay in scheduling elections to an uncertain future date. The transition in power will be resolved, hopefully, with November 2010 elections.

C. Lack of Revenues and Resources

The lack of national governmental capacity to govern in normal times was greatly diminished with the destruction of most government buildings, the death of key personnel, the collapse of all government revenue collections, and similar problems. It appears that the infamously "failed government" has been turned into little or no government, with government personnel continuing to work without compensation or adequate resources.

An example of this problem is the State University Hospital and its negotiations with the Red Cross. This is the biggest hospital in Port-au-Prince and is government-owned and controlled. Following the earthquake, doctors, nurses, technicians, and others were not paid by the hospital or government. The American Red Cross promised \$3.8 million in March 2010 to pay for hospital repairs, supplies, and salaries. Usually, the Red Cross does *not* support government-owned and controlled institutions. After four months of negotiations, doctors' strikes, neglected patients, and unsanitary conditions, an agreement was finally reached.³⁵

D. The Constitution, Laws, and Records

Two substantial problems for determining property rights are: (1) what is the law of immovable property, and (2) what documents are necessary and available to prove ownership of property? The earthquake caused these problems to become even *greater* obstacles

³⁵ See Jonathan M. Katz, *Haiti Hospital Woes Show Challenge of Recovery*, ASSOCIATED PRESS, July 10, 2010.

to establishing a viable property regime with clarification of legal ownership of property.

Finding copies of Haitian law and its interpretations is very difficult. The present constitution of Haiti is known as the Constitution of 1987.³⁶ It is a very detailed document, but many of its provisions have been ignored by the government, with others simply not implemented.

Originally adopted in August 1983, it was suspended in February of 1986.³⁷ A constitutional draft was approved in March 1987, but suspended in June of 1988.³⁸ The new government installed on February 7, 1991, fully recognized the Constitution of 1987.³⁹ A September 30, 1991, coup again left the status of the Constitution of 1987 unclear.⁴⁰ Currently, it appears to now be accepted as *the* Constitution.⁴¹

Under the Haiti Constitution of 1987, the National Assembly is authorized to amend the Constitution by a two-thirds vote of each house⁴² and to pass most laws by a simple majority of each house.⁴³ Laws become effective upon their promulgation and publication in the Official Journal (Journal Officiel),⁴⁴ sometimes referred to as the "Moniteur." They are also numbered and printed by number in the

³⁶ See Chantal Hudicourt Ewald, *The Legal System of Haiti*, 7 MOD. LEGAL SYS. CYCLOPEDIA, 7.210.34 § 1.9(C) (Kenneth Robert Redden gen. ed., William S. Hein & Co. rev. vol. 7 1989); See also U.S. CENTRAL INTELLIGENCE AGENCY, *supra* note 1.

³⁷ See Ewald, *supra* note 36, at 7.210.34. § 1.9(C).

³⁸ *Id.*

³⁹ *Id.*; see also U.S. CENTRAL INTELLIGENCE AGENCY, *supra* note 1.

⁴⁰ See Ewald, *supra* note 36, at 7.210.34. § 1.9(C); KCWD/Kaleidoscope, *Haiti*, 1994, available in LEXIS, World Library, ALLWLD File.

⁴¹ See Ewald, *supra* note 36, at 7.210.34. § 1.9(C); see also U.S. CENTRAL INTELLIGENCE AGENCY, *supra* note 1.

⁴² See CONSTITUTION DE LA RÉPUBLIQUE D'HAÏTI art. 281-1 (1987), available at <http://pdba.georgetown.edu/constitutions/haiti/haiti1987.html>.

⁴³ See *id.* at art. 102.

⁴⁴ See *id.* at art. 125.

Bulletin of Laws and Acts (Bulletin des Lois et Actes).⁴⁵

The official gazette is published twice a week on Mondays and Thursdays by the government.⁴⁶ Anyone can subscribe to *Le Moniteur* or buy a single issue.⁴⁷ The problem is the acts are published by number, not by subject matter.⁴⁸ The Bulletin of Laws and Acts was a yearly publication with a table of contents and acts classified by subject matter.⁴⁹ The Bulletin was published from 1804 until 1957 when the Ministry of Justice discontinued its publications.⁵⁰ Therefore, the availability of current laws by subject matter is almost impossible to find. Individuals and the Haitian Bar Association sometimes publish subject matter indices to the *Moniteur* and compilations of the laws.⁵¹

Generally, in the area of property law, it is very difficult to know what the law is or how it is interpreted. Article 128 of the 1987 Constitution of Haiti provides, “[o]nly the Legislature [sic] Branch has the authority to interpret laws, which it does by passing a law.”

The Ministry of Justice, until it was discontinued in 1957, also published a monthly bulletin of Supreme Court decisions, the “Bulletin des Arrêts de la Cour de Cassation.”⁵² Now you can only obtain these decisions by requesting them directly from the Clerk of the Supreme Court.⁵³

⁴⁵ See *id.* at art. 125-1.

⁴⁶ See Ewald, *supra* note 36, at 7.210.28, at 1.5(A).

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

E. Public Property

1. History and Culture of Property Rights

Haitian history and political culture give some insight into the difficulties of establishing property rights and instituting change. The Haitian Constitution of 1987 and the Haitian Civil Code of 1825 recognize the rights of public and private property ownership.

Original civil code provisions of Louisiana and Haiti on ownership of immovable property are very similar since they are both derived from the French Civil Codes of 1806 and 1825. Louisiana's civil code has changed somewhat over the years, while Haiti's civil code has not experienced any substantial revision.

The division and classification of things provides the basic framework for both codes. The Haitian and Louisiana civil codes divide property into common, public, and private.⁵⁴ They also classify property according to whether it is movable or immovable and corporeal or incorporeal.⁵⁵ The civil codes also define ownership as the rights of acquisition, use, enjoyment, and disposition of property.⁵⁶

Public land issues are very important for Haitian earthquake recovery and economic development. Although no one knows how much land is still owned by government, many have speculated that the amount of public land could be as much as two-thirds of the entire country. There are two principal reasons that no one knows the amount of public land. First, from the beginning of the country, there was no proper accounting of public land. Second, a substantial amount of public land was occupied by possessors without titles or deeds. These appear to be "de facto" transfers to private parties by government inaction. No one seems to be able to determine the amount or location of the land or the names of possessors.

Title to private property generally begins by transfer from the state to private parties. During colonial times, the transfer was in the

⁵⁴ LA. CIV. CODE ANN. art. 448 (1978).

⁵⁵ See *id.* arts. 461-475; LA. REV. STAT. ANN. § 9:3204 (1932).

⁵⁶ La. Civ. Code Ann. arts. 453-455, 477-482, 667-679, and 2322 (1978).

form of land grants or a territorial franchise from the king of France.

When Haiti separated from France in 1804, it did not secure a treaty of peace. In 1825, however, under the threat of re-colonization and re-enslavement, President Boyer of Haiti agreed to an indemnity payment of 150 million francs to France in exchange for official recognition.⁵⁷ This was an enormous amount and was the equivalent of Haiti's national budget for ten years.⁵⁸ Also, Haiti was forced to cut tariffs in half for French vessels entering its ports.⁵⁹ President Boyer declared the indemnity payment a national debt to be paid by taxes levied on agriculture produce.⁶⁰ These indemnity payments and taxes helped destroy the prosperous Haitian economy.⁶¹

The indemnity plan was followed immediately by the Rural Code of 1826, which regulated rural life.⁶² Most Haitians lived and produced the agriculture products in these rural areas.⁶³ The Rural Code contained 202 articles distributed among six books (*lois*). It dealt with: (1) general administration of various establishments of agriculture, (2) contracts between proprietors and cultivators, (3) the protection of animals, and (4) rural police.

The Haitian Civil Code of 1825 was apparently supplanted in rural areas by the Rural Code of 1836.⁶⁴ A rural police force

⁵⁷ Mildred T. Aristide, *Haiti: Commemorating 200 Years of Independence and the Fight to End Child Domestic Service*, 61 GUILD PRAC. 137, 142 (2004). Aristide is a lawyer and wife of the former President of Haiti, Jean-Bertrand Aristide. I have not been able to find an agreement between France and Haiti that confirmed the land titles held by landowners before the Haitian Revolution. Additionally, I have not found any commentary on whether the Haitian governments "confirmed" titles or ever transferred land to these occupants and cultivators.

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.* at 142-43.

⁶¹ *Id.* at 142.

⁶² *Id.* at 142-43.

⁶³ *See id.* at 143.

⁶⁴ *Id.* at 142-43.

supervised every aspect of rural life.⁶⁵ Peasants were legally obligated to cultivate the land where they resided and could not without permission, travel or engage in subsistence farming or small-scale commercial activities.⁶⁶

Although slavery had been abolished, it was apparently replaced with a system similar to the serfdom of the Middle Ages and 19th Century Russia. With no schools, no economic activities, or property rights, the rural population was essentially relegated to a form of “legal apartheid” between rural (The Rural Code) and urban dwellers (The Civil Code of 1825).

Rural Haitians identified this system with slavery and resisted working on large land holdings.⁶⁷ Over time, the rural areas became areas of small agriculture land holdings acquired by physical possession and acquisitive prescription (e.g., squatting).⁶⁸

Land title history in Louisiana, a former French colony, provides an interesting contrast with Haiti. The Louisiana Purchase treaty by which the U.S. acquired Louisiana from France expressly recognized and confirmed the titles to land, which had been previously transferred to private citizens by France and Spain. It also incorporated the provisions of treaties between France and Spain into the treaty between the U.S. and France insofar as they related to land titles. The Louisiana Purchase Treaty also provided that all land not previously transferred by France or Spain was to be transferred to the U.S. government.

Immediately after the treaty was signed, the U.S. began steps to survey and inventory those new lands and set up a “land patent” system to be used to record transfer of titles to immovable property to private persons. To this date, these land patents are essential for proving “good title” because they are the proof of the transfer from the government. In the U.S. and Louisiana, private persons may not

⁶⁵ *Id.* at 143.

⁶⁶ *Id.* at 143.

⁶⁷ *Id.*

⁶⁸ *Id.* at 142-44.

acquire title to government property by acquisitive possession. All of these land patents are available for public examination in the U.S. and Louisiana government offices, where they are recorded.

The Haitian Civil Code of 1825 attempted to implement a land ownership regime similar to the Louisiana system.⁶⁹

⁶⁹ CODE CIVIL [C.CIV.] ART. 15-22 (HAITI), *available at* http://www.archive.org/stream/ruralcodeofhaiti00haitiala/ruralcodeofhaiti00haitiala_djvu.txt.

“Sect. 1. Of Limits, Boundaries, and Establishments.

ART. 15. All lands situated in the country, which have been granted by the State to be holden as national, or as individual property, which have not yet been surveyed, shall be surveyed within one year from the publication of this Code, under a penalty of one dollar for every three acres of land, to be paid by the prietor.

To ensure the due execution of the above enactment, the Justice of Peace of the commune, upon a declaration being made to him after the expiration of the delay allowed, shall call in a Surveyor duly appointed, to survey and lay down plans of the grants not surveyed, at the expense of the grantee, the Justice shall thereupon adjudge and levy the fine and expenses.

ART. 16. From, and after the date of the publication aforesaid, no sales of property situated in the country, shall be made before a Notary, unless the lands have previously been surveyed, or the boundaries be distinctly laid down in the title deeds. In no case shall any partial sale take place, unless the ground has previously been surveyed. Notaries who neglect to observe these formalities, shall be subject to the penalties imposed by law.

ART. 17. Every grant of land dated before the publication of this Code, which shall not be begun to be cultivated within one year from its publication; and every grant which may be made hereafter, and which shall not be begun to be cultivated within one year after the date of such grant, shall be re-united to the domains of the State, the title shall be withdrawn, and returned to the Government.

ART. 18. To carry into effect the provision of the preceding article, the Officer commanding the Rural Police, in conjunction with the Council of Agriculture, shall make a report of the state of abandonment of the grant to the Justice of Peace, and to the Military Commandant of the commune, who, after having enquired into the correctness of the report, shall sign it, and address it to the Commandant of the [sic] who, after having duly verified it, shall withdraw the title, and send it to the Government.

ART. 19. An establishment shall be held to be commenced, as soon as a garden shall be planted according to the rules established by law, and the extent of which shall be proportioned to the number of labourers attached to the property.

ART. 20. Proprietors of cultivated lands bordering upon each other, shall enclose their lands at their joint expense. The proprietor, who may refuse to do so,

Unfortunately, the lack of financial resources and opposition from large landowners prevented the full implementation of these code provisions. Additionally, the institutionalization of the notaire (notary) system, instead of a public recordation system, also added to this problem. *Notaires* and *arpenteurs* (surveyors) were not well educated in the early years of the new democracy and are still found to need substantial improvements today.

2. Formal Procedures for Transfer of Public Land to Private Parties

Hernando de Soto, in *The Mystery of Capital*,⁷⁰ estimated that in Haiti 68 percent of city dwellers and 97 percent of rural dwellers live in housing for which there is no clear title to the land.⁷¹ Most of the dwellings were built by the inhabitants or their ancestors without loans or evidence of ownership, frequently with money received from the Haitian Diaspora. A substantial amount of this appears to be land not transferred from the government.

Eventually legal procedures were established to provide for transfer of public properties to private parties. Haitians found the procedures impractical due to cost, time, and illiteracy.

To settle legally on government land, a party first had to lease the land from the government for five years. The lease required 65 bureaucratic steps, taking an average of two years to completely execute the lease. Purchase of the property required 111 bureaucratic steps, taking an average of twelve years to complete.

shall be compelled, by proceedings at law.

ART. 21. Proprietors are bound, when their grants are surveyed, to cause proper landmarks to be erected, either in iron, in masonry, or in durable wood, under penalty of a fine of five dollars for each landmark which may be wanting.

ART. 22. Proprietors who may have neglected to obey the preceding enactment, shall, after having paid the fine, be compelled to pay the workman employed by the Justice to erect the landmark.”

Id.

⁷⁰ See HERNANDO DE SOTO, *THE MYSTERY OF CAPITAL: WHY CAPITALISM TRIUMPHS IN THE WEST AND FAILS EVERYWHERE ELSE* 33 (Basic Books 2000). Professor de Soto is the president of Peru’s Institute for Liberty and Democracy.

⁷¹ *Id.*

With the average life expectancy in Haiti being 50 years of age, the process from beginning to end takes 19 years, almost 35 percent of one's lifetime to complete the entire transaction.

The government agencies responsible for keeping records related to real estate transactions are: (1) the "Direction Générale des Impôts" (DGI), which is in the Ministry of Finance and Economy and (2) the Office National du Cadastre (ONACA), also known as "Bureau du Cadastre" (or Land Registry), an autonomous agency created in 1984 within the Ministry of Public Works, Transportation, and Communications.

DGI is "responsible for titling all public land" and collecting taxes on private real estate transactions. Since 1804, the DGI has accumulated more than 2,500 books, which are handwritten, chronological listings of real estate transactions with notations on the amount of taxes paid. The entries are handwritten as required by the 1890 Law of Cadastre. There are no indices by name of parties or property description. Presently, they are inaccessible because they are in the basement under tons of debris following the collapse of the DGI building. Custom and practice allowed a copy of the real estate transaction to be filed with the tax return. The transaction was transcribed by hand writing and placed in the record.

The DGI function is tax collection, with record keeping of real estate transactions only incidental. These records are not used to create a chain of title or to establish proof of ownership before property is transferred.

ONACA was created in 1984 to serve as a recording place for real estate transactions. Less than 5 percent of the land parcels have been registered with this office. Notaires continue to hold the records privately in their unpublished and inaccessible files.

ONACA and DGI have no official legal link and apparently do not share records or standardize record keeping systems.

3. Expropriation and Eminent Domain

Haiti's national government has limited constitutional power

to expropriate property for a public purpose.⁷² The expropriation article appears to require payment or deposit as ordered by a court in *advance* of the deprivation of property rights.⁷³ Article 36-2 seems to clarify the ambiguity of Article 36-1 with the provision that, “[n]o one may be deprived of his legitimate right of ownership other than by a final judgment by a court of ordinary law, except under an agrarian reform.”⁷⁴

The problems with the constitutional provisions became apparent when Prime Minister Jean-Max Bellerive announced that the government would expropriate land to build temporary camps for the earthquake victims who were left homeless.⁷⁵ Of the 1.2 million homeless victims, 600,000 to 800,000 were in the Port-au-Prince area.⁷⁶ Since a small elite owns “most of the land in and around the capital,” property valuation quickly became a central issue.⁷⁷

The Prime Minister conceded that the government owned land, but not enough land to meet relocation needs.⁷⁸ Oxfam International warned that “[t]he government . . . needs to confiscate private land instead. These decisions need to be taken quickly.”⁷⁹

What land and where it is located either is unknown or a “state secret.” Based on conversations since 2002 with government officials, academics, attorneys, and business leaders, I suspect that no one knows what land the government owns.

The result of inadequate expropriation laws (no quick taking provisions for emergencies) and the failure to maintain public

⁷² See CONSTITUTION DE LA RÉPUBLIQUE D’HAÏTI, art. 36-1, 36-2 (1987), available at <http://pdba.georgetown.edu/constitutions/haiti/haiti1987.html>.

⁷³ See CONSTITUTION DE LA RÉPUBLIQUE D’HAÏTI art. 36-1 (1987), available at <http://pdba.georgetown.edu/constitutions/haiti/haiti1987.html>.

⁷⁴ *Id.*

⁷⁵ Michelle Faul, *Haitian Government Plans Land Seizures*, THE ADVOCATE (Baton Rouge), Feb. 21, 2010, at A15.

⁷⁶ *See id.*

⁷⁷ *See id.*

⁷⁸ *See id.*

⁷⁹ *See id.*

records of ownership of public land is that six months after the earthquake, no land has been expropriated and very little progress has been made in relocating the earthquake victims living in over one thousand camps.

F. Private Property

Private property is recognized and guaranteed in Article 36.⁸⁰ The article states that the law will define “[t]he manner of acquiring and enjoying it [property], and the limits placed upon it.”⁸¹ Missing from this Constitution is any property right to dispose of or to transfer your property. The right to dispose of property has, of course, been recognized in the Louisiana and French civil codes as one of the three elements of ownership.⁸² I assume it is in the Haitian Civil Code of 1825, but have been unable to locate that language.

In addition to the Haiti Constitution of 1987 and the Civil Code of 1825, the most significant statute affecting immovable property is probably the “Loi Sur L’Arpentage” of 1890.⁸³

This book appears to be the definitive work on the Haitian law of surveying (arpentage) and surveyors (arpenteurs).⁸⁴ It illustrates the historical role and significance of surveys and surveyors in immovable property transactions.⁸⁵ The book provides for selection and qualifications of arpenteurs, survey procedures, and methods of handling property disputes.⁸⁶

⁸⁰ See CONSTITUTION DE LA RÉPUNLIQUE D’HAÏTI art. 36-1 (1987), available at <http://pdba.georgetown.edu/constitutions/haiti/haiti1987.html>.

⁸¹ *Id.*

⁸² La. Civ. Code Ann. arts. 453-455, 477-482, 667-679, and 2322 (1978).

⁸³ DUCIS VIARD, LOI SUR L’ARPENTAGE SUIVIE DE COMMENTAIRES (Deuxieme ed., Imprimerie H. Amblard, Rue de Miracles, 1890).

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Id.*

1. Modes for Transfer of Ownership

In most of the developed world, land transfers are by written legal instrument. Louisiana transfers are generally by authentic act (e.g., signed and witnessed by a notary public and two witnesses) and signed by the vendor and vendee. Being in authentic form makes the instrument self-proving as to the parties' signatures, property transferred, and the consideration. Parol (verbal) evidence usually will not be allowed to alter the terms of the instrument.⁸⁷ The legal instrument must be an act translatif of title in order to be enforceable, meaning the contract must purport to transfer ownership of the property.

Usually, an attorney or title insurance agency examines the chain of title and the attorney renders a title opinion on whether the title is merchantable. Also, the attorney supervises the disbursement of funds and records the transferring legal instruments and maps.

2. Haitian Private Property Transactions

The Haitian transactional process is very different from Louisiana and most developed countries. The Haiti process is as follows:⁸⁸

Buyer and seller enter into an agreement to transfer property,

Selection of notary,

Mortgage financing—lender selects notary,

⁸⁷ Examples are: cash sales, sale with mortgage, sales subject to mortgage, exchanges, donations, voluntary partitions and boundary agreements.

⁸⁸ THE WORLD BANK AND THE INTERNATIONAL FINANCE CORPORATION, *DOING BUSINESS 2010 – HAITI*, at 19-23, 62-64 (2010) [hereinafter *DOING BUSINESS*], available at <http://www.doingbusiness.org/~//MEDIA/FPDKM/DOING%20BUSINESS/DOCUMENTS/PROFILES/COUNTRY/HTI.PDF>; Email from Dr. Aldy Castor, President, Haitian Resource Development Foundation, (based on his interviews with lawyers and public officials), to Winston Riddick, Professor of Law, Southern University Law Center. (M/D/Y, 00:00:00 EST) (on file with author).

Buyer pays cash—buyer selects notary,
Surveyor/surveys.

If the last survey of the property is five years or older, then a new survey is required.

Most buyers choose to have a new survey because of issues related to possession and ownership of property.

If a new survey is requested, authorization of the dean of the civil tribunal of the commune where the property is located and the “Commissaire du gouvernement” both are required. To obtain the authorizations a complete file must be presented to the authorities. The file must include the previous survey and the proposed bill of sale. The seller may also be required to present evidence of payment of property taxes and six months of paid utility bills. No chain of title is required and hearsay evidence by the arpenteur as to who owns the property is allowed.

The authorized survey must be done by a public surveyor for a specific commune (in which the land is located).

All persons whose properties share a common border with the property will be invited to witness the survey.

Any person present when the survey is conducted may request a “Référé.” This is a quick procedure before a special judge of the civil tribunal to consider all matters considered urgent. A request for a référé suspends the survey until the judge decides.

The *notaire*:

1) Prepares the sales agreement from “the titles deposited with the notary public.”

2) The buyer and seller sign the deed of transfer in the notary’s office.

3) The notary collects from the buyer the fees and taxes and sends the sales agreement and moneys for registration to the DGI. The buyer pays a value added tax and fees for registration, transcription, and other matters.

The Direction Générale des Impôts (DGI) prepares an “avis

de cotisation” and writes manually on the side of the act of sale the amount to be paid. The sales act is handwritten and the avis de cotisation is typed. After the funds are deposited, the transfer is recorded by hand in a book, “Repertoire de entrée.” The acte de vente (Sales act) is then handwritten into books at DGI. Then the sales act is returned to the notary.⁸⁹

The World Bank Group estimates that the time from authorization of a survey through DGI registration will be 71 to 181 days.⁹⁰

Interestingly, attorneys play no role in this process. Also, the records of the transaction are held by surveyors, notaries, and the tax collecting agency (DGI). The buyer and seller also may receive copies. There is no central recording process open to the public, no abstract of title, no attorney opinion on the merchantability of the title, and no title insurance.

3. Proof of Ownership and Real Rights

Louisiana and Haiti have both used the notarial system of recordation. Under that system, a notary public prepares the document, which transfers or encumbers property and keeps the original copy in his office. Notary publics are public officials in Haiti and Louisiana and provide more extensive functions than notaries in most common law jurisdictions. Haiti has continued to use the notarial system. Without central recordation of property, ownership and sales of property must be determined by contacting each notary individually.

Louisiana abandoned the notarial system after it became a

⁸⁹ DOING BUSINESS, *supra* note 88; Email from Dr. Aldy Castor, President, Haitian Resource Development Foundation, (based on his interviews with lawyers and public officials), to Winston Riddick, Professor of Law, Southern University Law Center. (M/D/Y, 00:00:00 EST) (on file with author).

⁹⁰ DOING BUSINESS, *supra* note 88; Email from Dr. Aldy Castor, President, Haitian Resource Development Foundation, (based on his interviews with lawyers and public officials), to Winston Riddick, Professor of Law, Southern University Law Center. (M/D/Y, 00:00:00 EST) (on file with author).

state of the United States, except for the Parish of Orleans, which continued the system until the 1970's. Louisiana now has the same recording system used throughout the United States. One parish (county) official receives all public records that relate to the conveyance of immovable property in the parish. The original documents are stamped received, given recording numbers, and bound into books. All of these documents are indexed by the parties' names and some times by property description. The records are accessible and in many areas now may be obtained over the internet. Citizens may purchase stamped or certified copies. Public access to this information helps make the real estate markets more transparent and competitive.

Also, recordation affects the ranking of rights, with the earliest recorded document creating superior rights to documents recorded later.

Transfer of ownership takes place between the parties by the effect of the agreement, but does not affect third persons until the contract is filed for registry in the conveyance records in the parish where the immovable is located.⁹¹

Also, the civil codes establish real rights in procedural devices by which persons may assert their ownership interest in property.⁹² Possessory actions,⁹³ petitory actions,⁹⁴ and boundary actions⁹⁵ are the principal procedural means of asserting one's interest in property.

The Haitian recordation system, as described previously, does not support ownership rights because it is incomplete, fragmented, inaccessible, and not used for exhaustive analysis before transfers of property are consummated. Property records are held by vendors,

⁹¹ LA. CIV. CODE ANN. arts. 517, 1839, 2440, 2441 (1978).

⁹² LA. CIV. CODE ANN. arts. 526-532, 784-796, 3421-3444, 3691-3693 (1978); LA. CODE CIV. PROC. ANN. arts. 3651-3654 (1978).

⁹³ LA. CIV. CODE ANN. arts. 3421-3444 (1978).

⁹⁴ *Id.* at arts. 526-532; LA. CODE CIV. PROC. ANN. arts. 3651-3654 (1978).

⁹⁵ LA. CIV. CODE ANN. arts. 784-796 (1978); LA. CIV. CODE PROC. ANN. arts. 3691-3693 (1978).

vendees, notaries, and arpenteurs. The notaries and parties have seen little need to record at the Office National du Cadastre (ONACA). Filing with the tax office (DGI) in Port-au-Prince does not put the public on notice. Also, tax records are frequently declared to be non-public records.

The only time ownership records are assembled in one place is when civil litigation is filed over possessory, petitory, or foreclosure types of actions.

The ability to mortgage property is generally dependent on the creditor's belief that they will be repaid with interest and that the debtor owns the property mortgaged. With no comprehensive public recordation system, no attorney's title opinion to insure that the title is merchantable (e.g., without defects, encumbrances, or potential litigation) and, therefore, without title insurance, Haiti's property system is basically not creditworthy. Without the ability to borrow on immovable property, most owners have great difficulty developing or using their property for production of income or decent housing.

In addition to voluntary transfers of ownership, acquisitive prescription and successions are the most frequent modes for transfer of ownership.

4. Acquisitive Prescription and Heirship Property

Given the lack of written documents evidencing ownership in rural Haiti, the doctrine of acquisitive prescription is very important. Adverse possessors of land must be in open, apparent, and continuous possession to acquire ownership of property. In Haiti, it takes 20 years to acquire rights of ownership. These "squatter" rights have long been recognized in civil codes and have produced a parallel system for transfer of ownership outside of the formal legal procedures.

To confirm ownership, a petitory action must be filed by a person in possession of the property with a court of competent jurisdiction where the immovable property is located. Since this is an expensive legal process, many poor possessors do not take the

necessary legal steps to confirm their possession and ownership. The economic consequence of this failure to confirm title is that the property may not be used as collateral for loans and transfer of ownership is usually at less than the fair market value, if it can be sold at any price. When the possessor dies, the question is whether their heirs can “tack” (add) the decedent’s possession on to their possession in order to meet the time requirements.

Heirship property is created when the decedent’s heirs or legatees at the time of death acquire all rights and interests in the decedent’s estate. Confirmation of these rights is achieved by opening the decedent’s succession and obtaining a judgment of possession. This is another expensive legal process, which discourages poor persons from taking the formal steps to establish ownership.

In 2005, after Hurricanes Katrina and Rita destroyed 80 percent of New Orleans and large areas of South Louisiana with wind and flood waters, the U.S. government provided billions of dollars to demolish, repair, and build new structures. For the first time, the issues of defective titles based on failure to open successions became a major issue for heirs, especially poor people, who learned that they could not receive funds without a judgment of possession or other evidence of merchantable title.⁹⁶

The remedy in Louisiana was to modify the definition of small successions to allow use of an affidavit instead of a succession judgment to help establish evidence of ownership. The use of the affidavit was limited to certain types of properties with limits on the dollar value of the property. The Louisiana Appleseed group and Senator Ed Murray, who sponsored the legislation, have written a proposal to assist Haiti with its expertise in dealing with heirship property.⁹⁷

Heirship property exists in Haiti, but has not received much attention. Several factors can increase the number of owners and the

⁹⁶ See Malcolm A. Meyer, *Louisiana Heirship Property: Solutions for Establishing Record Title*, 55 LA. BAR J. 5, Feb-March 2008, at 329, available at <http://www.lsba.org/documentindex/publications/Journal-Feature1-February2008.pdf>.

⁹⁷ See *id.* at 328-31.

uncertainty of how many owners exist on a specific parcel of land.⁹⁸ The average rural plot of land is one-third of a hectare.⁹⁹ Farmers will frequently own several non-contiguous parcels.¹⁰⁰ Also, rural couples seldom enter into formal marriages,¹⁰¹ and therefore marital property regimes are not established. Heirs may inherit separately from mothers and fathers.¹⁰² With multiple siblings, they frequently end up inheriting a very small interest in several plots.¹⁰³ Even funeral customs contribute to an incredible fragmentation of land.¹⁰⁴

The remedy for this fragmentation of land is opening successions, voluntary partitions or partition by licitation (court-supervised property division). Unfortunately, poor people cannot afford these expensive legal remedies, and there does not seem to be any less expensive remedy.

Heirship property presents a special problem for Diaspora Haitians who have moved abroad and became citizens of other countries, e.g., the United States. These Diaspora Haitians may be one of the best sources of investment capital for Haiti's recovery and development. Unfortunately, Article 13 of the 1987 Constitution states that Haitian nationality is lost by naturalization in a foreign country.¹⁰⁵ Article 15 states, "[d]ual Haitian and foreign nationality is in no case permitted."¹⁰⁶

The Constitution of 1987 severely limits the property and

⁹⁸ See Kenneth Kidd, *Rebuilding Haiti*, THESTAR.COM, Mar. 28, 2010, available at <http://www.thestar.com/news/world/haiti/article/786458--rebuilding-haiti> (referencing University of Florida anthropologist Gerald Murray's description of how local Haitian cultural customs affect property rights and transactions in Haiti).

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ Kenneth Kidd, *supra* note 98.

¹⁰⁴ *Id.*

¹⁰⁵ See CONSTITUTION DE LA RÉPUBLIQUE D'HAÏTI art. 13 (1987), available at <http://pdba.georgetown.edu/constitutions/haiti/haiti1987.html>.

¹⁰⁶ *Id.* at art. 15.

political rights of aliens in Title IV, articles 53 through 57.¹⁰⁷ Although aliens “shall enjoy the same protection accorded to Haitians, under the law”¹⁰⁸ and “enjoy civil, economic, and social rights subject to legal provisions on the right to own real property, . . .¹⁰⁹ they may not engage in the business of renting real estate”¹¹⁰ and “. . . may not own more than one dwelling in the name Arrondissement.” [sic]¹¹¹ The right of aliens to engage in economic activities or to own foreign companies that own real property terminates five years after the alien ceases to reside in the country or the company’s operations terminate. These rights are not constitutionally protected, but are regulated by law.¹¹²

When Diaspora citizens of the U.S. inherit Haitian property, they simply present their birth certificate or some other “official” document to the notaire, who apparently prepares documents to recognize the heir.¹¹³

VI. Implementation of a Land Title System Designed to Establish Merchantable Titles

The January 12, 2010, earthquake created substantial loss of life, physical injuries, destruction of homes, government and university buildings, medical facilities, schools, orphanages, and infrastructure.¹¹⁴ It also focused international institutions (the United Nations, the Organization of American States, the Inter American Development Bank, the World Bank, and many others) and numerous non-governmental organizations on Haiti’s recovery and

¹⁰⁷ See *id.* at arts. 53-57.

¹⁰⁸ See *id.* at art. 54,

¹⁰⁹ See *id.* at art. 54-1.

¹¹⁰ See *id.* at art. 55-1.

¹¹¹ See *id.* at art. 55-1.

¹¹² See *id.* at art. 53.

¹¹³ Interview with Sannestine Fortin, SULC research assistant (assisted with this article, and whose father is a first generation U.S. citizen with inherited land in Haiti).

¹¹⁴ Action Plan, *supra* note 5, at 7.

economic development needs. Numerous studies, position papers, and conferences resulted in *An Action Plan for National Recovery and Development of Haiti*¹¹⁵ and a Multi-Donor Trust Fund to be administered by the Haiti Interim Reconstruction Commission (HICR). The Co-chairs are Haitian Prime Minister Jean-Max Bellerive and former U.S. President Bill Clinton, who also serves as the U.N. Envoy for Haiti.

The authority and trust fund has over 25 voting members. The *Action Plan* states, “[i]n order to be executed, HICR decisions must be confirmed by the President of the Republic” [of Haiti].¹¹⁶ At the March 2010 Donors Conference, over \$5.3 billion dollars was pledged. Six months after the earthquake, less than 10 percent of the money pledged had been received and disbursed.

One of the many consultative documents produced was the *Forum Economique Secteur Privé: Vision and Roadmap for Haiti*, prepared by the Private Sector Economic Forum, final draft version presented to Government of Haiti, March 23, 2010.¹¹⁷

¹¹⁵ HATICONFERENCE.ORG (March 2010), http://www.haiticonference.org/Haiti_Action_Plan_ENG.

¹¹⁶ *Action Plan*, *supra* note 5, at 54.

¹¹⁷ See PRIVATE SECTOR ECONOMIC FORUM, PRIVATE SECTOR ECONOMIC FORUM, VISION AND ROADMAP FOR HAITI (March 23, 2010), *available at* http://www.cirh.ht/resources/Private_Sector_Plan.pdf; (“This document is a Consultative Draft to be used for discussion purposes only. It represents planning efforts led by the private Sector Economic Forum, with support from Dalberg Global Development Advisors. It includes a broad consultation with more than 150 representatives from the business community, industry associations, regional chambers of commerce, and think tanks, as well as, government, donor agencies and multilateral institutions. The recommendations here within are aligned and consistent with those of the Presidential Commission on Competitiveness. Further information on the Forum members and the consultations can be found in the Annex.”)

The intent of this Vision and Roadmap is to contribute a representative perspective from the private sector on the Government of Haiti’s plan for the reconstruction and development of the country. More broadly, this is an affirmation and commitment of the private sector to contribute to building a new social compact between government, civil society and the private sector.”)

Id. at ii.

The document is *unique* among *all* the voluminous studies in that it specifically addresses the *fundamental* recovery and economic development need—clear and undisputed land ownership. Since it is the *only* report that recognizes the significance of property *and* gives specific recommendations (which are not adopted or mentioned in the Haitian government *Action Plan*), it is worth quoting in its entirety. Therefore, the *Vision and Roadmap for Haiti* provides:

4.1.5. Establish clear and undisputed land ownership.

The lack of clarity in land ownership has long been a barrier to private sector investment in Haiti and currently discourages banks from making mortgages available. While multiple plans have been developed to address land ownership issues in Haiti, the political will has been lacking to execute on these plans. While the first obvious step is to salvage existing records, the reconstruction effort creates an unparalleled opportunity to once and for all provide clarity on land ownership and adjudication procedures, and to implement a special adjudication process with enforcement under the aegis of MINUSTAH.

More specifically, we outline the following initiatives:

1. Establish a Special Land Adjudication Court in partnership with the GOH and Haiti Development Authority.
2. Establish land cadastre and simplify title registration procedures.
3. For dispute-free government land:
 - (a) Immediately award and register land titles to individual owners who have maintained and improved the land; and
 - (b) Award concessions or long-term leases for commercial use in the reconstruction effort and for productive improvement, including for industrial Parks and Commercial Farms (to support out-grower schemes)

4. For disputed land, adjudicate claims, with a focus on special fast-track procedures for new economic development zones outside of Port-au-Prince. Establish clear deadlines for claims to be filed, as well as either minimum fees or community involvement to discourage frivolous claims.

5. Establish strong penalties for land title fraud going forward.

Target indicators:

Adjudication court and land titling procedures established in three months

Land titles awarded

Percent of land titled and undisputed¹¹⁸

I agree with the general conclusions and recommendations, and I am very disappointed that the Action Report did not acknowledge these specific recommendations or request funding for the implementation of a land title program. Unfortunately, without official adoption of some *specific* policy statement or funding request, the land ownership programs will not be implemented. Additionally, many of the failures of the six months post-earthquake can be traced to land ownership disputes and title problems. Failure to adequately address land ownership issues, to make substantial changes in how they are handled, and to fund an implementation of changes will slow the earthquake recovery and economic development.

In the text below, I have tried to incorporate the *ideas* of the *Forum*, numerous Haitians, and experts on real estate that I have interviewed on these issues over the past seven or eight years.

Implementation of a Haitian land title system will involve at least six stages or steps. They are:

1. The Haitian law of immovable property must be compiled, reviewed, supplemented, changed, and published.

¹¹⁸ See *id.* at 14.

2. A public record system must be designed and implemented.

3. Special land courts must be established with improved, new procedures to expedite the adjudication of claims and the enforcement of court orders.

4. An expedited public land grant program must be designed and implemented immediately.

5. Coercive government laws—both civil and criminal—need to be adopted to ensure enforcement of court decisions and agreements by private parties.

6. A specific territory (state) or region should be selected immediately to begin the implementation of a model program that can be replicated throughout the country. My suggestion is the southern department (state) and the western area of the island. This area adopted an economic development plan in 2004 that included a seaport, airport, agricultural development, job creation and exports. The *Action Plan* re-adopted the essence of that earlier plan.¹¹⁹ These projects will be almost impossible to implement without reforming the Haitian immovable property regime.

There are numerous people with substantial expertise in Louisiana, Canada, and France who have offered to assist their Haitian friends and colleagues in trying to accomplish this task. The question remains: Will Haiti change?

¹¹⁹ HAITIAN CHAMBER OF COMMERCE, INDUSTRY, AND THE PROFESSIONS OF THE GREATER SOUTH OF HAITI, ESTABLISHING BASIC INFRASTRUCTURE FOR THE GREATER SOUTH OF HAITI (2004) (The “Greater South of Haiti” includes most of the Southern Peninsula, particularly the Departments of the South, South-East and Grande Anse, and part of the West -- home to two million people or 25 percent of Haiti’s population in the most recent census).