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Institutional Framework for Land Governance in Haiti: overview of the different actors in Haitian land rights administration and the need of reforms

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Land Tenure and Property Rights Issues and Best Practices Workshop

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Countless legislation on land rights administration

- Constitution 1987, revised in 2012
- Rural Code, 1962
- Decree of September 22, 1964 – Private State Domain
- Decree-law of Nov 27 1969 – Notary profession
- Decree of February 26, 1975 – Regulates surveying
- Decree of September 28, 1977 – *Conservation Fonciere* and Registration
- Decree of November 23, 1984 - ONACA's mission, attributions and organization
- Decree of November 30, 1984- Cadastral Process
- Decree Sept 28 1987 organizing the DGI
- Decree of August 22, 1995-Organisation of the Judiciary
- Etc.



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Multiple actors in land administration

• Private professions	• Public institutions	• Ministries
	- DGI-Conservation Fonciere et Enregistrement - DGI-Service du Domaine	- MEF
- Official surveyors - Notaries	- Courts of Peace - Civil Courts	- MJ
	- ONACA	- MTPTC
	- INARA	- MARNDR
	- CIAT	- PM



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Different roles in land rights administration

- ☐ Administration of transfer of land rights
 - Document verification and authorization to survey
 - Surveying of land parcels
 - Authentication of transactions on land/real estate
 - Registration and transcription of transactions on land
 - Resolution of land disputes/conflicts
 - Administration of leases on State land
 - Donation/distribution of State Land
- ☐ Creation of the cadaster and update of tenure information
- ☐ Land tenure reform



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Commissioned Surveyors (*arpenteurs*)

- Ministry of Justice
- Commissioned by President for a particular commune
- Takes oath before Civil Court
- Mandate: delimitation, area calculation, demarcation of private land upon request by private sellers (an obligation)
- + informally, dispute resolution
- Produces: *Plan d'arpentage*, *Proces verbal d'arpentage*.
- Number varies per commune
- Must liaise w/ Courts, (notaries), DGI, ONACA.





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Notaries

- Ministry of Justice
- Commissioned by President for life for a particular commune
- Takes oath before Civil Court
- Mandate: authenticates land transactions (delivers an authentic act), delivers certificate of inheritance (*acte de notoriete*).
- Produces: Notary Act
- Number varies per commune
- Must liaise w/ DGI, (arpenteurs), ONACA.



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DGI - *Conservation Fonciere et Enregistrement*

- Ministry of Economy and Finance
- One DGI office per commune (enregistrement) and one per jurisdiction (conservation).
- Mandate: registers real estate and transcribes documents.
- Produces: registry and transcription books
- Must liaise w/ Surveyors and notaries (enregistrement), notaries (conservation).



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DGI – *Service du Domaine*

- Ministry of Economy and Finance
- Communes, jurisdiction, and central office
- Mandate: processes demands of lease of state land and surveys leased parcels & parcels donated by the President.
- Produces: procès verbal d'arpentage, “cadaster” of leases of private State Domain
- Must liaise w/ surveyors



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Courts

Court of Peace (*Tribunal de Paix*)

- Jurisdiction: commune
- Judges possession cases (*possessoire*); conciliation
- Executes CC decisions, can order expulsions, lease terminations

Civil court (*Tribunal Civil de Premiere Instance*)

- Jurisdiction: communes concerned
- Judges property cases (*petitoire*) and appeals on possession cases
- Controls Authenticity of documents and authorizes surveys (dean assisted by official commissioned by the government)

+ Tribunaux fonciers (attached to CC of Saint Marc & Gonaives)

Judiciary is the only legally competent to intervene in resolution of
land tenure conflicts.



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ONACA

- Autonomous entity
- Ministry Public Works, Transports and Communications
- One office in Port-au-Prince and must have decentralized offices.
- Mandate: establish Haiti's cadaster; execute, supervise & control cadastral operations; update cadaster; keep all documents related to the cadaster
- Delivered Certificates of cadastral Immatriculation
- Must liaise w/ surveyors, notaries, DGI.





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INARA

- Ministry of Agriculture
- Constitution 1987, Created by decree in 1995
- Responsible for carrying out an agrarian reform to the benefit of those who cultivate the land
- But framework law has never been approved.
- Operating in the frame of the 1995 decree, and of a Presidential Order of 1996 authorizing it to take possession of litigious parcel that have belonged to the State





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CIAT

- Presided by Prime Minister
 - MICT
 - MEF
 - MPCE
 - MARNDR
 - MTPTC
 - MDE
- Ensures the revision of the legal and institutional framework for land use planning.



CIAT
Comité Interministériel
d'Aménagement du Territoire

TOWARD A SUSTAINABLE AND CONCERTED PLANNING OF THE HAITIAN TERRITORY

CIAT's mission, Inter-Ministerial Committee For Territorial Development, is to define the government's policy in what regards regional planning, protection and management of watersheds, sanitation, urban planning and equipment. The institution was created as a response to an alarming assessment and to the necessity of coherent and coordinated actions in regional planning sector.

An Alarming assessment

The Haitian territory is deteriorating. Cities as well as the countryside present the aspect of an ongoing deterioration making populations' lives more and more difficult and drawing serious threats on the future.

There are several causes to that degradation :

- Demographic pressure;
- An inadequate land-ownership system;
- Poor spatial organization;
- Poor water resource management;
- Non renewal of soil fertility;
- Agricultural structures not producing sufficient revenues and conducive of soil-eroding farming practices;
- Anarchic development of cities (spontaneous neighborhoods with precarious and even dangerous living conditions without access to basic services) ...

Necessity of coherent and coordinated actions

The rehabilitation of Haiti's environment can only come from concerted and simultaneous actions all over the territory. The multiplicity of actors (national, regional and local-level public agencies, promoters, national and international NGOs ...), the cross-cutting nature of the issues and the need for a shared strategic vision have put in the open the necessity for an organism in charge of conceiving and proposing a strategic, institutional and operational framework. That instance must allow for the restoration of the State's fundamental role and to legitimize its function over the territory, to give a second breath to decentralization and find the paths toward a regional planning adapted to the national realities.

Les Membres membres du CIAT

La PRIMAIRE | MPCE | MICT | MTPTC | MARNDR | MDE | MEF



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CNIGS

- Autonomous entity
- Ministry of Planning and external cooperation
- Office in Port-au-Prince
- Produces and diffuses reliable and up-to-date geographical information on Haiti's territory
- Produce and update geospatial databases of reference
- Manages Continuously Operated Reference Stations network/HaitiPOS

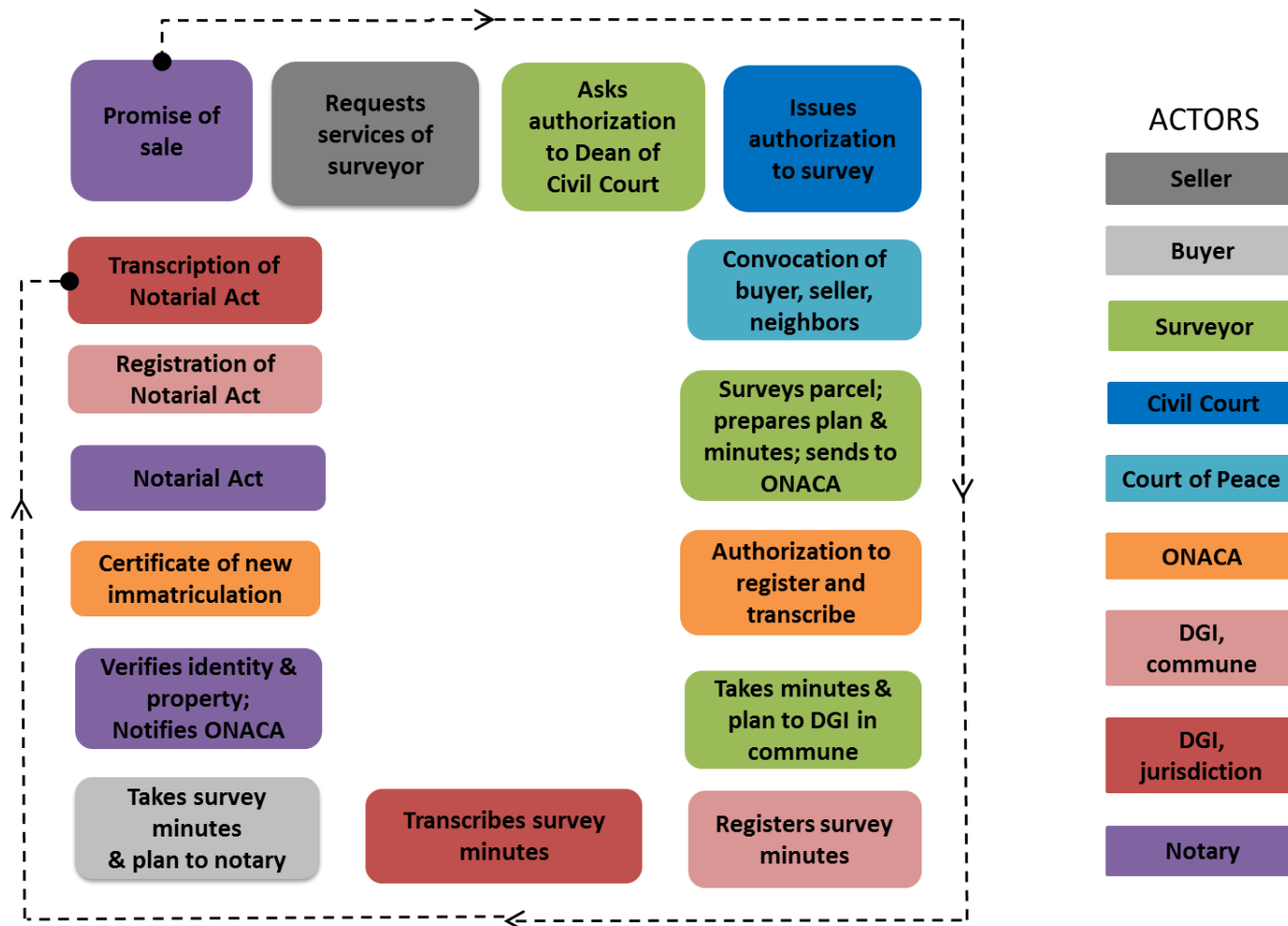




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Main steps to register a “sale by genuine deed” without complications in an area with cadaster





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Leasing of lands of the State Private Domain

- Demand to central office of *Service du Domaine*
- Survey par DGI surveyors
- *Feuille cadastrale*
- Payment of taxes is managed by DGI's communal offices (except in case of leases of very large areas).
- Law in 1995 suspended payment of leases on State Lands



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Level of effort to register a “sale by genuine deed” (Haiti Property Law Working Group – Manual I)

- 17 steps
- 4 to 8 institutions and 2 professionals
- 14 to 16 documents
- 6 months to 2.5 years
- Up to 25% of the purchase value



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Historical Obstacles to full & accurate delimitation & registration (1/2)

- Regulations are outdated
- Real prices are very high/prohibitive (up to 25-40% of purchase price)
- Actors/institutions lack the means to fulfill their mandates
 - Financial resources/budget
 - Human resources
 - Capacity and schools
 - Technology
 - Facilities, equipment, basic materials



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Historical Obstacles to full & accurate delimitation & registration (2/2)

- Lack/absence of institutional coordination; confusion on roles
- Professions are not/poorly organized
- Poor/no supervision/quality control in general
- No registry/lost/poorly kept/disorganized/not backed up archives
- Lack of identification documents
- Lack of clear policy of use/allocation of State Lands



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Implications for tenure insecurity

- Lack of clear rights (juridical status of parcels is unknown)
 - Parcels with no documentation
 - Incomplete or improper documentation
 - Duplicate documentation and risk of competing claims
 - Inaccurate information
- Lack of publicity of rights (juridical status not registered)
 - Parcels not registered
 - Improper or incomplete registration
 - Poor quality of registry
- Irregular documentation
 - Surveys operated by non-commissioned surveyors
 - No authorization
- Encourages use of “actes sous seign prive”, less secure?
- Unresolved land conflicts



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Recent and ongoing progress and efforts

- Draft bill of law on ONACA and the cadaster
- Draft bill of law on the profession of surveyor
- Creation of notaries syndicat
- Dialogue with surveyor and notary professions
- Initial institutional diagnostics/analysis
- Institutional strengthening activities
- Pilot testing clarification of tenure in urban and rural areas
- Training/information dissemination



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Further needs

- Increased efforts but much more needed
- Need to better understand & anticipate social practices to invent adapted/adequate solutions that can be used/implemented
- Need to connect informal and formal systems



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Questions on land rights administration

- **Are there other major obstacles to land rights administration in your sector?**
- **Which obstacles do you think are the largest? which are the easiest to solve? Which may be the more difficult to tackle?**
- **Do you know interesting examples of how these obstacles were tackled? What do you think of the strategy used, was it successful?**
- **Do you think it is more relevant to (i) invent alternative ways to secure tenure, (ii) reform & strengthen the land rights administration system, or (iii) both of the latter? In general or under particular circumstances?**



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Suggested readings

- A How-To Guide for the Legal Sale of Property in Haiti Property Law Working Group, Manual I (June 26, 2012), and Manual II.
- La securite fonciere et ses garants. FAO and IDB, 1998.
- Land Tenure Security Project in Rural Areas. IDB Grant Proposal.