



## **Economic Development and Private Ownership of Immovable Property: A comparison of Louisiana and Haiti**

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### **I. Introduction**

Hernando DeSoto, head of the Institute for Liberty and Democracy, contends that a substantial amount of the world's individual poverty and the failure of economic development in most of the third world is because poor people lack legal rights to property. Although few people, including Mr. DeSoto, contend that simply establishing property rights will eliminate poverty or develop the third world economies, the idea that the poor remain poor because they do not have legal rights is gaining supporters. In 2006, a U.N.-affiliated initiative, the Commission on Legal Empowerment of the Poor, was established to study this idea. The Co-chairs of this Commission are Mr. DeSoto and former U.S. Secretary of State Madeleine Albright. Mr. DeSoto and Ms. Albright contend that eighty (80%) per cent of the population of former communist countries and the developing nations do not have legal rights over their assets and this impedes economic development.

Many of the underdeveloped nations and their people are in countries with civil law systems. In 2004, a World Bank Report, *Doing Business Abroad*, criticized the civil law as being less favorable to business than the common law. At the center of this report were issues relating to property rights. France, the European Union and the Association of Henri Capitant (see

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The author's Haitian experience and expertise includes serving as a consultant to the Haitian Resource Development Foundation, consultant and advisor to the Dean and faculty of the University of Haiti Law School, keynote speaker on judicial reform to the 2003 Annual Haitian Bar Association meeting, consultant to landowners and business interests on legal issues and economic development, and moderator, Tulane Law School Conference, World Affairs Forum, April 23, 2004, on "The Future of Haiti".

<http://www.henricapitant.org/IMG/pdf/vol.2.pdf>).have responded vigorously with funding and written defenses of civil law.

The purpose of this paper is to do a case study of the role of private immovable property ownership in economic development by comparing the legal rights to private ownership of immovable property in Haiti and Louisiana.<sup>2</sup> This paper will emphasize the role of the state (Haiti and Louisiana), the similarities of legal concepts and the major issues and problems created by the present legal systems. It will conclude with suggestions for:

- (1) implementation and modifications of existing laws,
- (2) enactment of new specific property laws to strengthen private immovable property rights in Haiti; and
- (3) future scholarly research.

A historical review of the legal systems of Haiti and Louisiana helps explain the present day existence of a failed Haitian state and how Louisiana was influenced to adapt its legal system to a new culture, governmental system and economy.

Haiti and Louisiana both began as French colonies in an era of water transportation. The island of Haiti was strategically located in the Caribbean shipping lanes and Louisiana was at the mouth of the Mississippi River which drains two-thirds of the United States.

In colonial times, France called Haiti and Santo Domingo, Saint- Domingue, and it was the world's richest colony. By 1789, the colony provided three-fourths of the world's sugar and was first in world production of coffee, rum, cotton and indigo. At the time of the American Revolution (1776), Saint- Domingue provided France more revenue than all thirteen American colonies provided England.

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<sup>2</sup> The most difficult task in preparing this paper was obtaining documents on Haitian law. Internet access to the legal materials of most countries has been effectively expanded, except for many third world nations with limited budgets and staff. Therefore, my scholarly research, especially on the first presentation of this paper is limited. Hopefully, criticisms, suggestions and comments at the May 17, 2007 conference discussed below will help me strengthen this paper for its final presentation at the Second World Congress of Mixed Jurisdictions in Edinburgh, Scotland. Therefore, much of this paper's analysis of Haitian law has been based on personal interviews, observations and experiences in Haiti. I would also note that there is little or no literature that I could find on the Haitian law of immovable property.

My academic interest in this paper's subject matter began many years ago in graduate school and increased with travel and client representation in third-world countries, teaching civil law property, title examinations, land development, management and investment in civil law and common law jurisdictions. The motivation to focus on Haiti as a case study came from four (4) trips to Haiti between 2002 and 2005. Southern University Law Center, the Haitian Resource Development Foundation and the University of Haiti Law School all provided me with opportunities and a platform to learn more about this subject. 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 to me 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 this paper in French at a May 17, 2007 conference in Port au Prince, Haiti. Mr. Conze's comments and suggestions from conference participants were incorporated in this paper. Their efforts greatly improved this final document. Also, none of the people identified herein are responsible for any opinions or errors that I may have made in this paper.

The roots of the Haitian failed state can be easily traced to these colonial times. As the French colony of Saint-Domingue, Haiti was populated by slaves forcibly taken from Africa. The plantation system used enormous numbers of slaves and killed many through mistreatment and harsh labor. Many slaves (“maroons”) escaped into the mountains and tried to live isolated agrarian lives—free from governmental authority. Also, a mulatto (mixed race) elite emerged and became wealthy living in or near proximity to the wealthy, white plantation owners.<sup>3</sup>

In 1804, a bloody rebellion led to Haiti’s creation and the establishment of the world’s first free black republic. Many whites and some mulattos fled Haiti for the nearest French colony—Louisiana. Several Haitians who settled in New Orleans contributed to development and preservation of the civil law system.

In 1803, Louisiana became part of the United States by virtue of the Louisiana Purchase. The U.S. paid France \$15 million for the Louisiana Territory; a mere eight cents per acre. This new territory more than doubled the land area of the United States and established the U.S. as an emerging world power.

During the 1808 to 1825 period, both Haiti and Louisiana adopted almost verbatim the French civil code as the model for their legal systems. Thus, the commonality of these civil codes provides a useful basis for comparisons of how legal systems change over a two-hundred-year period and determine property rights.

Today, Haiti has almost 8,000,000 people compared to Louisiana’s 4,200,000. Almost all Haitians are of African descent whereas approximately 30% of Louisianians are African-American. Louisiana’s remaining population descends primarily from English, Scottish, French, Italian, Haitian, Honduran, Cuban and Indian immigrants. Haiti is primarily Roman Catholic and Louisiana is the only southern state that is primarily (51%) Roman Catholic. Louisiana even calls its counties parishes.

Haiti has very low levels of education attainment when compared to Louisiana. With a literacy rate of 52%, less than 25% of Haitians complete the sixth grade. Haiti has two official languages—Creole and French. Although Haiti is frequently referred to as a French-speaking nation, the vast majority of its people speak Creole (estimated at 70%) and French is the language of the educated elites. Louisiana was overwhelming French speaking in 1803; in 1940, 1 1/2 million of its 2 1/2 million people spoke French and in 2000, only 250,000 of the 4,250,000 people spoke French. Haiti is primarily a rural country with only 30% of its people living in urban areas. Louisiana is 70% urban.

Louisiana ranks 47th out of 50 states in almost every health index, but is still far healthier than Haiti. Haiti’s life expectancy is 50 years of age, it has the highest per capita AIDS infection rate outside of Africa and has substantial problems with starvation, malnutrition, disease and non-existent or inadequate medical services.

The low health and educational conditions are the result of a failed economy. In 2003, the U.N. ranked Haiti 150th out of 175 nations in its Human Development Index of Life Expectancy, educational attainment and adjusted real income—lower than Bangladesh, The Democratic Republic of Congo, Sudan or Zimbabwe<sup>4</sup> Annual per capita income is less than \$400 and 80% of the Haitian population lives in poverty.

Haiti’s economy is primarily agriculture, with an emerging textile industry. Over 25% of the Haiti GNP comes from overseas remittance by the Diaspora of Haitians living primarily in

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<sup>3</sup> Andrew S. Levin, “Civil Society and Democratization in Haiti”, 9 *Emory Int’l L. Rev.* 389, Fall 1995, at 411.

<sup>4</sup> United Nations Development Program, Human Development Indicators, 2003, [http://www.unpd.org.hrd2003/indicator/ty\\_f\\_HTT.html](http://www.unpd.org.hrd2003/indicator/ty_f_HTT.html).

the U.S. Over a million Haitians left Haiti in recent years and their remittances home to their families constitute the largest single source of funds from outside the country, approximately one billion dollars a year. The second largest source is foreign aid. Diaspora funds and foreign aid provide approximately one-half of Haiti's gross national product.

The government structure and distribution of power differs substantially. Haiti has a failed state, but it is centralized. With a national government with centralized powers, Haiti has territorial collectives (departments and communes) which are essentially controlled by the national government. Even leaders of local communities are appointed by the central government.

Louisiana is part of a federal system, with certain powers delegated to the national government and the remaining power reserved to the states. The U.S. Constitution has provisions that substantially limit what states can do about property rights—especially the Fifth Amendment taking clause and the Fifth and Fourteenth Amendment due process clauses. Most property rights are established by state governments subject to these federal limitations.

Land use limitations and concentrations of ownership are also important to understanding property rights. With 70% of its population living in rural areas, Haiti has a substantial number of small farms. Although some scholars have contended that there is a substantial concentration of agriculture land in a few individual owners, the statistical data, although not very reliable, does not seem to establish such an ownership pattern. Haiti now seems to be a nation of many small farms and very few large corporate agriculture enterprises.

Some have also contended that most Haitian farms are small subsistence farms located primarily on marginal lands. The national government is believed to own two-thirds (2/3rds) of the entire island, which is mostly mountainous and not suited for agricultural purposes. Louisiana, by contrast, has a lot of arable farm land and in all sizes, and a small percentage is held by government.

Another land use pattern shared by Haiti and Louisiana is the loss of land by erosion. Unsustainable agriculture practices (cutting trees to make charcoal for cooking), poverty and inadequate regulation have led to Haiti's deforestation. Since independence, the amount of forest land has been estimated to have declined from 75 percent to less than one percent in 2003. Deforestation has resulted in loss of an estimated 36 million tons of nutrient rich topsoil each year as rains and floods wash the soil into the Caribbean. Damage to mountain ecosystems and habitats, declining food production and a decline in fish production all are consequences of the deforestation and soil erosion. National food production decline also exacerbates the problems of starvation and hunger. Louisiana suffers a similar land problem in coastal erosion. Hurricanes and salt water intrusion kill vegetation in swamp areas resulting in the loss of miles of coastal land each year.

## **II. The State and Private Ownership**

Haiti and Louisiana both have constitutional requirements for recognition of private ownership. Title to private property generally has derived from state authority and transfer. During colonial times the transfer was in the 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. This was an enormous amount and was the equivalent of Haiti's national budget for ten years. Also, Haiti was forced to cut tariffs in half for French vessels entering its ports. President Boyer declared the indemnity payment a national debt to be paid by taxes levied on agriculture produce. These indemnity payments and taxes helped destroy the prosperous Haitian economy.

The indemnity plan was followed immediately by the Rural Code of 1826 which regulated rural life. Most Haitians lived and produced the agriculture products in these rural areas. The Rural Code contained 202 articles distributed among six books (Loi's). 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. A rural police force supervised every aspect of rural life. Peasants were legally obligated to cultivate the land where they resided and could not travel without permission or engage in subsistence farming or small scale commercial activities.

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. Over time, the rural areas became areas of small agriculture land holdings acquired by physical possession and acquisitive prescription (i.e., squatting).<sup>5</sup>

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.

No one knows the amount of land held by the Haitian government. Yet, it appears that much of the land is occupied and cultivated by private parties. Failure to survey and inventory land holdings has continued to complicate the issues of who owns Haitian land, especially in rural areas.

The purchase of Louisiana took a very different approach to land titles. The Louisiana Purchase 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 so far 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

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<sup>5</sup> Mildred T. Aristide, "Haiti: Commemorating 200 Years of Independence and the Fight to End Child Domestic Service", in HeinOnline, 61 *Guild Prac.* 137, 2004, pgs 1142-1144. Aristide is a lawyer and wife of the former President of Haiti, Jean-Bertrand Aristide.

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 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 Constitution of 1987, Title III, is dedicated to the “Basic Rights and Duties of the Citizens”. Section H of Title III deals with property. Unfortunately, much of the Constitution of 1987 has not been implemented because of coups, electoral disputes and deadlock between the President and Parliament.<sup>6</sup>

In 2006, President Preval, in a visit to the Abornite region, announced the transfer of land to the farmers who were in possession of the agricultural land. Apparently, the previous occupants had secured the land by force or Presidential decrees. The Haitian Constitution of 1987 prohibits such practices, but apparently has not been fully implemented.

The U.S. Constitution and the Louisiana Constitution of 1974 provided specific limitations on the taking of private land to be used by the government or to be transferred from one private person to another private person. These legal ownership issues are generally resolved by court proceedings and not by presidential or gubernatorial executive orders or decrees.

### **III. Private Ownership Legal Concepts**

The original basic civil code provisions on private ownership of immovable property are very similar since they are both derived from the French Civil Code. 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,<sup>7</sup> public<sup>8</sup> and private.<sup>9</sup> They also classify property according to whether it is movable or immovable and corporeal or incorporeal.<sup>10</sup> The civil codes also define ownership as the right to use, enjoyment and disposition of property.<sup>11</sup> Ownership of property is dealt with in many ways by both codes, but this paper will limit its examination of private immovable property to:

- (1) Who may own property?
- (2) Modes of ownership (How may they own?)
- (3) Modes for transfer of ownership
- (4) Proof of ownership and real rights

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<sup>6</sup> See Louis Aucoin, “Haiti’s Constitutional Crisis”, 17 *Boston University International Law Journal*, 115-140.

<sup>7</sup> LSA-Civil Code art. 449.

<sup>8</sup> LSA-Civil Code art. 450.

<sup>9</sup> LSA-Civil Code art. 45.

<sup>10</sup> LSA-Civil Code arts. 461-475 and LSA-R.S. 9:3204.

<sup>11</sup> See LSA-Civil Code arts. 453-455; 477-482; 667-679 and 2322.

## **1. Who May Own Property?**

The Haitian Constitution of 1987 deals with the rights of citizens to own property. Although historically non-citizens have owned property in Haiti, it is not clear whether this was meant to restrict who may own property. The 14th Amendment to the U.S. Constitution refers to “persons” and not citizens and generally non-citizens have been fully able to own property in the United States. Both civil codes restrict the right to contract, e.g., by age and capacity. But, still with proper authority, minors and those with legal incapacity can acquire and dispose of property.

## **2. Modes of Ownership (How May They Own?)**

Most property is acquired in the name of one individual or by co-owners individually. Co-ownership or ownership in indivision is carefully regulated in the codes.<sup>12</sup>

Juridical persons can also be created and authorized to hold title to property.

Corporations, trusts, partnerships, partnership in commendam and real estate investment trusts (REITs) are all examples of juridical persons authorized to own property. Most of these entities are regulated by specific statutes.

The three elements of ownership may also be transferred to separate owners. For example, the naked owner of property may retain only the right to dispose of the property and alienate to another person the rights of use and enjoyment (e.g., usufruct and habitation). Owners in full ownership may also burden their property with legal servitudes, rights of passage, dedication of streets and building restrictions. The Civil Code burdens ownership with legal servitudes, e.g., servitudes of drainage, and use of the banks of navigable waters and seashores. Land use is further regulated by zoning ordinances that restrict how the land may be used and wetlands regulations that may prohibit any use of the land.

All of these limitations and restrictions on use are encumbrances on the full ownership of property. Some are imposed by the owner and others compelled by government regulation.

## **3. Modes for Transfer of Ownership**

In most of the developed world, most transfers are by written legal instrument. Louisiana transfers are generally by authentic act (i.e., 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 evidence usually will not be allowed to alter the terms of the instrument.<sup>13</sup> The legal instrument must be an act translative of title in order to be enforceable, meaning the contract must purport to transfer ownership of the property.

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

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. With good faith and a legal instrument translative of ownership, it takes ten (10) years to acquire rights of ownership. Bad faith or no instrument translative of ownership requires thirty (30) years.

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<sup>12</sup> See LSA-Civil Code arts. 797-78; 481 and LSA-R.S. 9:1112 and 1112.1.

<sup>13</sup> Examples are: cash sales, sale with mortgage, sales subject to mortgage, exchanges, donations, voluntary partitions and boundary agreements.

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 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 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.

Under the doctrine of seizin, 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 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 as decedents, especially poor people, learned that they could not receive funds without a judgment of possession or other evidence of merchantable title.

#### **4. 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 state of the United States. It uses 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 his parish. The original documents are stamped received, given recording numbers, and bound into books. All of these documents 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.<sup>14</sup>

Also, the civil codes establish real rights in procedural devices by which persons may assert their ownership interest in property. Possessory actions,<sup>15</sup> petitory actions<sup>16</sup> and boundary actions<sup>17</sup> are the principal procedural means of asserting one’s interest in property.

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<sup>14</sup> See LSA-Civil Code art. 517, 1839, 2440, and 2441.

<sup>15</sup> See LSA-Civil Code art. 3421-3444.

<sup>16</sup> See LSA-Civil Code arts 526-532; LSA-Code of Civil Procedure arts. 3651-3654.

#### **IV. Conclusions**

Examination of civil code articles on private ownership of immovable property indicates that the Haitian and Louisiana civil law systems are basically the same. However, Haiti remains a “pure” civil system with very little codal change, whereas Louisiana has become a mixed jurisdiction system.

Louisiana’s mixed jurisdiction system incorporated many common law property legal concepts, such as trusts and bonds for deed which are contrary to basic civil law concepts. Also, the Louisiana Mineral Code adapted civilian concepts and methodologies to the common law concepts for the exploration, production and development of oil and natural gas fields. The Louisiana mineral code created concepts of mineral servitudes, royalties and leases which supplemented and expanded these civil code concepts.

The issue for economic development should *not* be whether civil law or common law systems are the most beneficial for economic development and reduction of poverty. Rather the issues should be what revisions in legal systems do we need to make in order to facilitate economic growth and economic freedom for individuals.

Private ownership of property increases a person’s physical security and increases the chances to create financial security. Political stability is essential for reduction in poverty and economic development. In failed states like Haiti the lack of an independent judiciary and the rule of law (*lex rex*) are probably more detrimental to economic development than any deficiencies of the civil code or any other legal concepts.

There is merit to the World Bank’s economic development criticism of civil law systems, especially in the Caribbean and African nations. Civil codes and mixed jurisdiction systems work best in developed economies where an educated population lives under the rule of law with independent judiciaries protecting their private ownership rights.

Although legal systems are not the determining factor in economic development, they nevertheless have a substantial effect on property rights and the development of capitalism. A major challenge is to adapt and to revise the present law to resolve the legal uncertainties of ownership arising in failed states where our present laws of successions and acquisitive prescription do not provide an adequate remedy for poor and illiterate citizens.

#### **V. Recommendations for Haitian Economic Development and Private Ownership of Immovable Property**

##### **1. Abolish the Rural Code**

Although the Rural Code does not deal extensively with immovable property, it’s long history of creating two classes of citizens (rural and urban) should end. Any constructive or beneficial provisions of the Rural Code should be integrated into the Haitian Civil Code. Other provisions should be repealed.

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<sup>17</sup> See LSA-Civil Code arts. 784-796; LSA-Civil Code arts. 3691-93.

## **2. Private Property Disputes**

Resolution of property issues should be in courts or by mediation under the supervision of the courts. The Haitian Constitution of 1987 limited presidential decrees, but apparently has not eliminated their use in land disputes. *Lex rex* (the rule of law) and an independent judiciary will never be legitimated as the preferred method for dispute resolution until presidential powers are curbed.

## **3. Public Lands**

An inventory of public lands and a program to effectively utilize those lands is essential since two-thirds (2/3rds) of this small island is believed to be owned by the government. Vast areas in this densely populated mountainous island have not been used. Records of land transfers from the state to private parties should be established, indexed by name and description and made available for public inspection and copying.

Eco-tourism has been very successful as an economic development tool in many countries. Haiti has vast, beautiful mountain areas less than 600 miles from the U.S. that could be developed into public parks and scenic areas. Reforestation and environmental protection of these lands should be incorporated into any land use plan.

Also, there are “squatters” who reside on and use these public lands. A land grant program or some other means of distributing public lands to private parties should be considered as long as environmental protections and safeguards are instituted and the transferred lands can be used for agriculture purposes.

## **4. Policy Preference for Keeping Property in Commerce and Meeting Economic Goals**

A comprehensive land use study of Haiti has not been done. Visual observations indicate that substantial land is idle, abandoned and probably owned by absentees. In a small island nation with limited land and substantial starvation and poverty, it is important to examine whether all of the resources within the country are being used.

Tax policy, financial incentives and other policy choices should encourage keeping private property in commerce. For example, once private property is in commerce, Louisiana laws encourage that it remain in commerce. Louisiana timber lands and personal residential dwellings are taxed at substantially lower ad valorem tax rates. Abandoned homes and subdivided cutover timber land is taxed at much higher rates to encourage occupancy and reforestation.

## **5. Decentralized Government**

The 1987 Haitian Constitution provided for establishment of new local governmental entities. Unfortunately, these provisions have not been implemented. Legislative bodies for each department were to be established, but were not. The most apparent characteristic of a failed state is that it cannot govern. For example, the central government is supposed to appoint local mayors, but failed to do so during the approximately 18-month interim period between elected presidents, leaving local entities with a leadership vacuum. Property issues are usually local in nature. The absence of any local government participation relegates property issues to a national concern with very low levels of interest. Inadequate national capabilities results in little or no

recordation of documents, maps and transactions and a low priority for resolution of property disputes.

## **6. An Adequate Formal Recordation and Record Keeping System**

With global positioning satellites (GPS) systems, the mapping, survey and development of land use data systems, has been quicker, more comprehensive and less costly in the United States. Updating maps and data is obviously easier than creating it.

Unfortunately, Haiti has never implemented a comprehensive basic system. Inadequate financial resources, undertrained surveyors and non-existent governmental computer systems have all played a role in this failure to develop a basic property recordation and recording system.

To encourage foreign and domestic investment and to increase the ability of property owners to borrow funds using their property as collateral, it is imperative that such a system be implemented. It should be secure, transparent and comprehensive.

## **7. Extra Legal Property Arrangements**

Hernando DeSoto<sup>18</sup> describes the problem of extra legal property as:

- (1) When it is difficult if not impossible to determine:
  - (a) who owns what;
  - (b) the addresses and exact property descriptions (cannot be found or standardized);
  - (c) if documents transfer or divide ownership; and
- (2) What the informal rules that govern property are from neighborhood to neighborhood or from street to street.

Nevertheless, when Mr. DeSoto's group did an intensive survey of Haiti's urban areas, he concluded that: ". . . we did not find a single extralegal plot of land, shack or building whose owner did not have at least one document to defend his right—even his 'squatting rights'."<sup>19</sup>

With widespread "extra legal property arrangements" throughout Haiti, it would appear that a systematic legal regime might be developed and implemented to establish a property title system that enables the poor possessors to secure public recognition and legal sanction for their ownership interest. Mr. DeSoto essentially recommends a "custom and usage" approach to the establishment of ownership norms to reduce the cost and procedural difficulties presented by civil code possessory and petitory actions. Simplifying the title conformation process will enable the poor possessor to establish ownership rights. Title conformation by poor possessors may accelerate economic growth by providing the poor with:

- (1) physical stability and security;
- (2) the ability to transfer property to their heirs and third parties; and
- (3) the ability to borrow funds to invest by using their property as collateral.

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<sup>18</sup> Hernando DeSoto, "Law and Property Outside the West: A Few New Ideas About Fighting Poverty", NUPI, December, 2002, pp. 349-361, esp. p. 349.

<sup>19</sup> *Ivis*, R P. 254.

A means, whether Mr. DeSoto's idea or another one, is necessary to resolve these ownership issues.

## **VI. Future Scholarly Research**

Legal systems in the underdeveloped nations are the subject of increasing academic research and scrutiny by multi-national organizations such as the United Nations and the World Bank. The central issue is what research and writing is needed to aid in the understanding of how laws and legal systems aid or deter the economic development in underdeveloped nations. Much has been written about the rights of man, the rule of law and independent judiciaries. Unfortunately, little has been written about how to implement these concepts in failed states.

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