

Survey on Access to Land, Tenure Security and Land Conflicts in Timor-Leste



The Asia Foundation



Van Vollenhoven Institute
for Law, Governance & Society

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KEY FINDINGS

This study aimed to pilot an innovative land survey to provide quantitative data regarding land-related issues in Timor-Leste, in order to support the Timorese government and parliament in developing evidence-based land policies and legislation, as well as more informed advocacy of civil society. The results of this pilot in the municipalities of Dili (urban area only), Ainaro, and Ermera provides relevant evidence regarding access to land, land tenure security, and land related conflict, as well as on the specific policy options taken in the current draft Land Law Package.

The most significant findings of this survey are:

1. Most of the respondents consider that they own the land where they live, despite not having a land title. Without a land title (or the 'right' title), the land rights of the majority of households are not recognized under the current Law 1/2003, leaving them without any legal tenure security.
2. Under the current draft Land Law a considerable percentage of the households will not have any land rights recognized by law and will not be entitled to any compensation. The lack of any protection against evictions in the law will leave these households landless, and the difficult access to land will further marginalize them.
3. In the surveyed municipalities women have less access to land than men, starting with access to land within their families. However, there were several cases where the land was claimed to be owned individually, but the house was owned jointly by a couple.
4. The number of land-related disputes in surveyed areas is around 10 percent, which is in line with previous studies. In Dili a considerable number of these disputes are with the state, most of the other disputes are within families. Communities prefer for land disputes to be resolved through village processes and not through the courts. However, they also feel that State representatives should be present during the village resolution process for the dispute to be fully resolved.
5. The majority of households in Dili have low perceived tenure security, fearing to be evicted by the government. In Ermera and Ainaro the perceived tenure security was much higher, but even in these municipalities there are indications that the households don't feel completely safe.
6. The concept of 'ownership' held by the great majority of respondents is very different from western-like definitions of ownership, in which the owner can freely transfer and avail of the property. The results indicate that besides the 'owner' there are others beneficiaries with rights over the same land, and a western-like ownership will be at odds with the current understanding and relation with land of the Timorese.
7. There is no significant land market in Ermera and Ainaro, and people accessed land mostly through inheritance during the Portuguese and the Indonesian administrations. In Dili there are more signs of a land market with people buying land from third parties, and more people settling in Dili from 1999 onwards. However, the legality of many of these

transactions can be questioned. The majority of respondents indicated that it is difficult to obtain more land, and in Dili less than half of the households have access to other parcels of land.

8. A considerable number of respondents insist that the power of the state to expropriate land for public purpose and upon the payment of fair compensation should only be exerted carefully or not used at all.
9. While only a few respondents disagree with expropriation for more obvious purposes such as the construction of public roads and hospitals, the great majority of respondents disagree with expropriations for private enterprises such as hotels and factories, as well as for religious purposes.
10. In case of expropriation the majority of the respondents prefer to receive alternative land and house of the same value instead of monetary compensation.

It is hoped that these findings and recommendations will be used by legal drafters and policymakers to understand better the effects of the currently debated land law package, and to make changes to strengthen the social protections and tenure security for citizens of Timor-Leste.



CHAPTER 1:

INTRODUCTION

Land-related conflict and dispossession are two ‘dormant giants’ threatening security and stability in Timor-Leste. At the time of independence the new Timorese government had to face a multitude of land-related challenges that resulted from the difficult post-colonial and post-conflict history of the country (Fitzpatrick, 2002). The problems to address were many: First, the inequalities in accessing formal land rights caused by centuries of colonial ruling. Second, the problems caused by displacement and forced relocation of communities by the Indonesian military and administration, as well as the grievances caused by the Indonesian transmigration and translocation programs. Third, disputes caused by the massive land occupation that occurred after the 1999 violence. Fourth, the unclear and controversial legal recognition of formal land titles issued during the Portuguese and Indonesian administrations, considering that a number of these rights were obtained through corruption and violence. Finally, the necessity of developing the legal and institutional framework for providing efficient land administration. Despite some attempts, since independence little was achieved in addressing these issues (Almeida, 2016).

This situation raises concerns about security and stability in Timor-Leste. The 2006 political crisis showed how past land grievances can fuel conflict.¹ Since 2009 the Foundation has run a Community Safety program, currently with 130 community police councils in 11 Municipalities. Land disputes are consistently identified as one of the main security issues in villages (TAF, 2008; TAF, 2013; TAF, 2015).² Recently, a government project to cadastre land claims nationally failed to assess the potential for conflict, and has led to violent incidents due to land disputes (Belun 2015; Belun 2016). The growing urban population and informal settlements, especially in the capital, Dili, provokes greater competition for land, with enormous potential for sparking new conflict.

The increase in state dispossessions further augments widespread fears of land-related instability, but also of social and political exclusion. The government is implementing numerous infrastructure projects, and state-driven land clearance is a priority. Most Timorese access and hold land through customary and informal systems, which have no legal recognition, only a minority ever got access to formal land titles issued during the Portuguese or Indonesian administration. The majority of Timorese are at risk of dispossession by the state without any right to compensation, as many already have noted (among others, Hohe & Nixon, 2003; Furusawa & Costa, 2014; Meitzner Yoder, 2016). The risk of dispossession endangers the

1 Protests against the dismissal of 591 soldiers of the Timorese army (F-FDTL) quickly escalated to a series of violent events that lasted for two years, and resulted in the killing of around 200 people, 150.000 displaced, and 6.000 houses destroyed (Scambray, 2015: 292). Disputes over land were identified as one of the fuels of this conflict (Brady & Timberman, 2006).

2 The other main issued raised in all villages is domestic violence.

housing rights of vulnerable people, but also their livelihoods, especially given 70 percent of the population relies on subsistence farming. The fact that women are customarily inhibited from owning land further places them at risk of exclusion and marginalization.

As debated below, this survey intends to contribute with quantitative data to these issues for better evidence-based land policy development.

1.1. OBJECTIVES OF THE STUDY

The Asia Foundation (the Foundation) and the Van Vollenhoven Institute (VVI) of Leiden University (Netherlands) jointly developed a pilot land survey to provide quantitative data regarding land issues that can help the Timorese government and parliament develop evidence-based land policies and legislation, as well as help inform the advocacy of civil society. The survey was designed through local stakeholder engagement including government, civil society and experts to provide critical information currently unavailable to policymakers. It was developed to mimic the information a cadastre would provide, but on a much faster and cheaper timeframe, and allow for draft legislations to be tested against the data to ensure it will have the intended effect.

1.2. METHODOLOGY AND LIMITATIONS

The 2016 Survey on Access to Land, Tenure Security and Land Conflicts in Timor-Leste was conducted between the 3 and 18 of September 2016.³ The survey interviewed a random, representative sample of men and women representing their households aged 17 and above from Ainaro, Ermera, and the urban area of Dili. The Foundation and the VVI designed and coded the survey onto Samsung Galaxy tablets, and the survey was conducted through face-to-face interviews at the household level, by three, 8 person enumerator teams. The Timor-Leste Research and Advocacy Network (TRAIN) deployed the enumerators, and external consultants undertook the data analysis and visualization.

The survey targeted households in three distinct population groups. They were: the municipality of Ainaro, the municipality of Ermera, and the urban area of the municipality of Dili. The Dili urban sample area was determined based on the number of households per *suku* and thus excludes Hera, Atauro, Metinaro and Dare. All respondents were asked the same 126 questions, divided into various thematic areas that include:

- Access to Land and Land Use
- Land Tenure Security
- Land Related Disputes
- Expropriation

3 The survey questionnaire was tested initially in four aldeias and 32 households in Dili and revised based on interview and enumerator feedback.

Three hundred and eighty four households were selected in each of the three target areas using a disproportionate municipality interview quotas, for a total of 1,152 households. At the first sampling stage, *suku* were randomly selected. At the second stage, *aldeias* were then randomly selected from within the preselected *suku*. At the third stage, households were selected using a random systematic method from household lists drawn up by *aldeia* chiefs. At each household a representative was interviewed from the head of the household with 50 percent male/female gender quota and age limits set at 17 and 95 years. Based on the sample size and the target population, the results for all three sample areas are representative and carry a five percent margin of error (MOE) at a 95 percent level of confidence. The full results of the survey will be available at the Foundation's webpage at www.surveys.asiafoundation.org

This survey has, however, limitations. The survey only covers three of the thirteen municipalities of the country, therefore not giving a full picture of land-related issues nationwide. The closed-question interview conducted by enumerators allows a large-scale overview of land-related issues, but also limits the possibility of detecting and analysing the nuances of each respondent's situation. Also, the survey focuses mostly on the land where the households live, not giving a full picture of all land tenure situations. These limitations must be taken into consideration when analysing the results of this survey. Nevertheless, and especially when combined with other existing research, the data provides relevant evidence for land policymaking.

1.3. LAND LAW PACKAGE

During the development of the survey instrument the Timorese parliament started the debate of the Land Law Package. This package of three draft laws includes the Special Regime for Determination of Ownership of Immovable Property, also known as the 'Land Law'; the Expropriation Law; and the Law on Spatial Planning, and will have a strong impact on land rights in Timor-Leste. Considering this impact, some survey questions were developed to help highlight data relevant for the policy options taken on these draft laws. A specific section below addresses this subject in more depth.

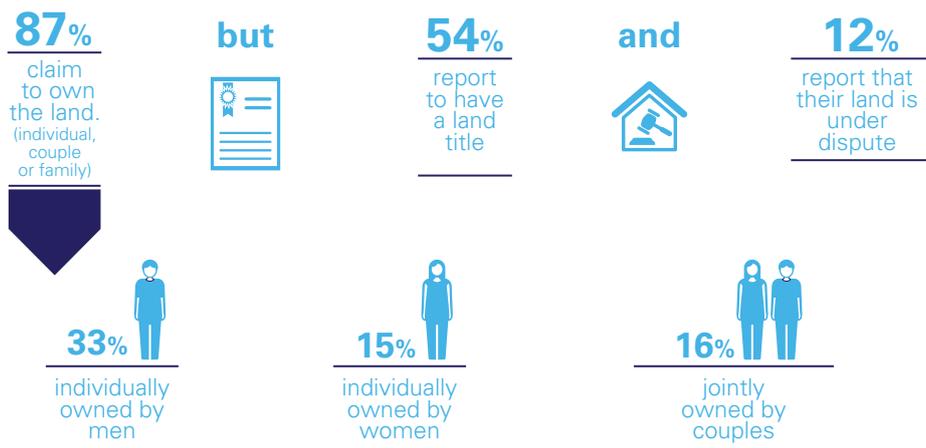
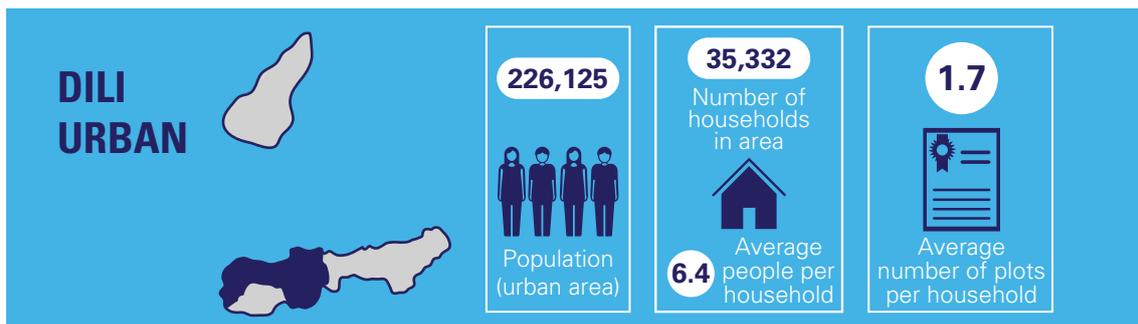


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CHAPTER 2: SURVEY FINDINGS

2.1. OVERVIEW OF THE 3 MUNICIPALITIES COVERED

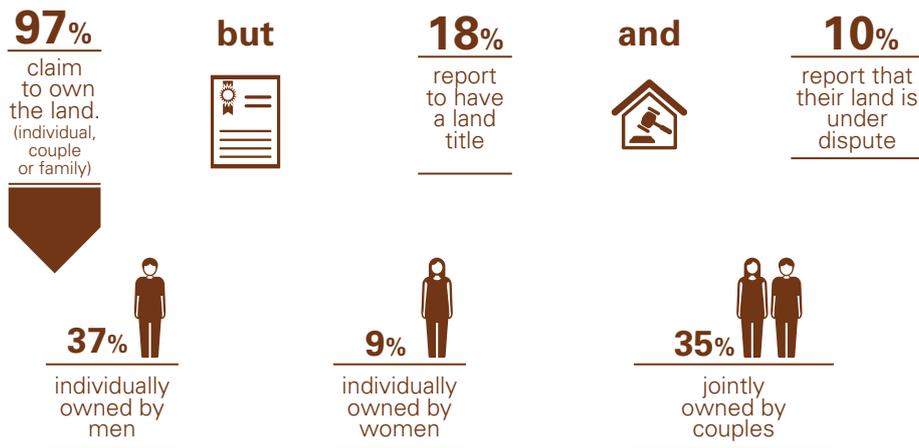
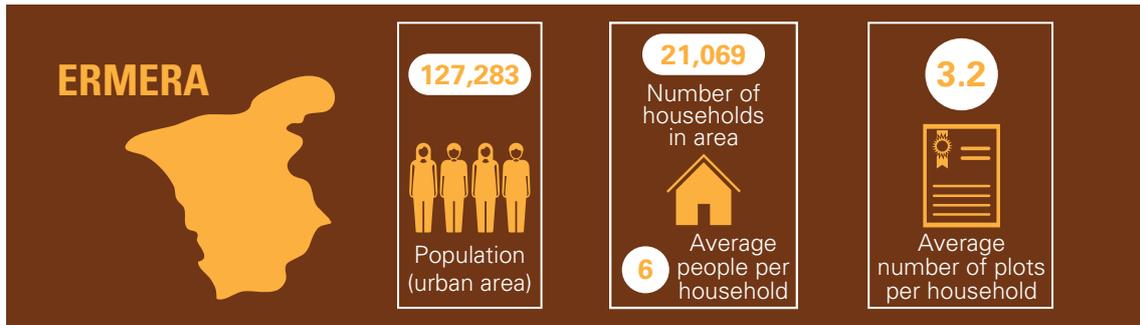
Based on discussion with multiple stakeholders, the target areas of the urban area of municipal Dili, Ainaro, and Ermera were chosen due to various criteria. The urban area of municipal Dili, the capital of Timor-Leste, was selected due to its quick population growth, and because it is the largest and most densely populated area in the country. With the availability of land diminishing, stronger competition for land, and a population that is relatively new in the city compared to rural areas, the urban area of Dili is expected to be the area most affected by the approval of the current draft Land Law or any other land related legislation.



THE HOUSEHOLDS STARTED USING THE LAND:



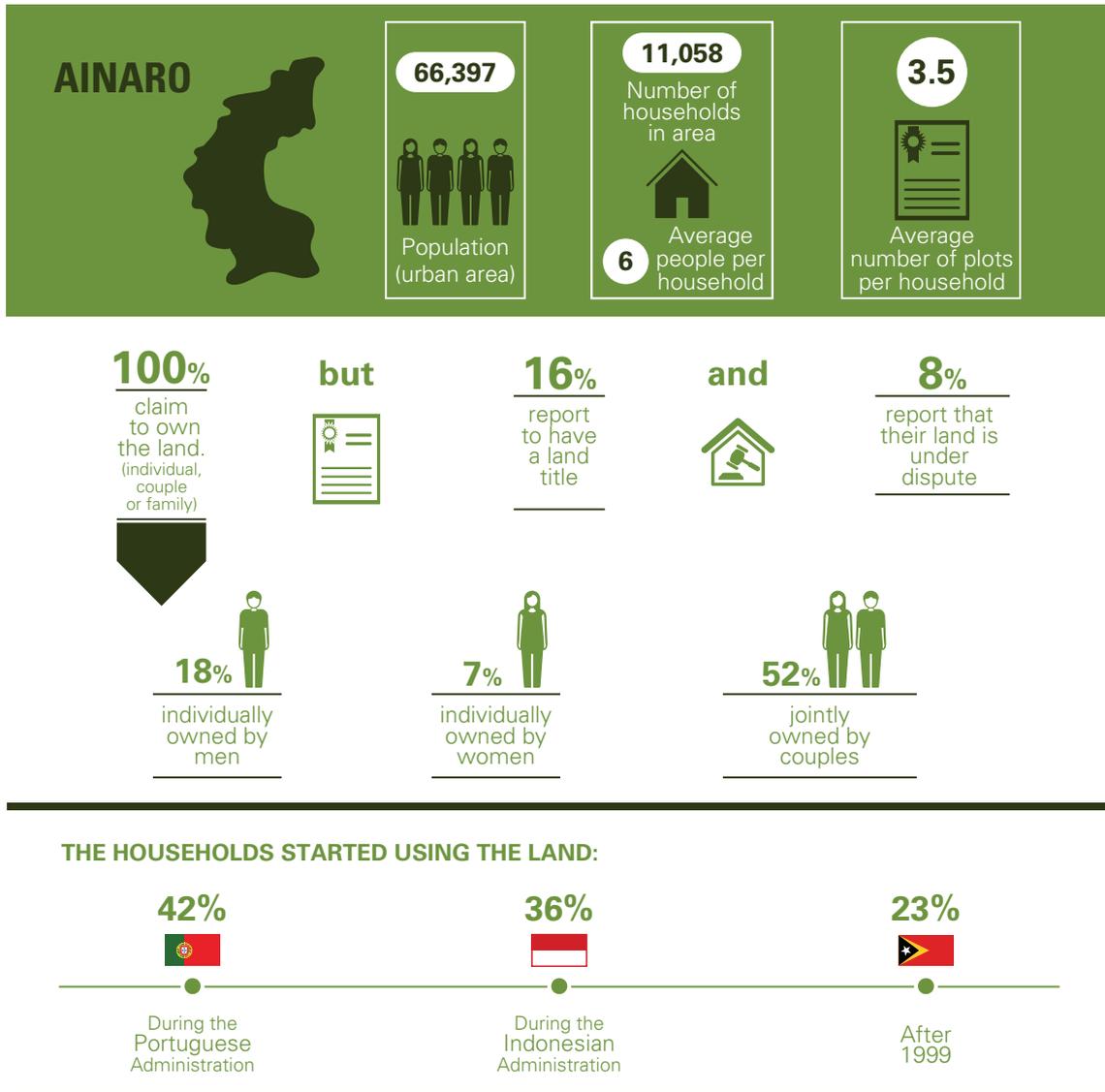
Ermera was chosen as it is the second largest Municipality in terms of population size and has an interesting mix of customary practices as well as economic development through the coffee plantations. Ermera produces the largest coffee crop in Timor-Leste, however, different views over who owns areas where coffee is grown makes it an interesting candidate for research and study.



THE HOUSEHOLDS STARTED USING THE LAND:



Ainaro was chosen due to its customary practices that affect how the communities view land use and ownership. Ainaro was also identified as having a higher rate of land disputes in a previous Foundation survey (TAF, 2015), and was identified as one of the least researched areas by land-related studies. Finally, Ainaro is an interesting area due to its high potential for tourism-related activities and businesses as well as its growing agricultural sector.



It is hoped that in the future the survey instrument will be replicated in all municipalities, allowing researchers to highlight the unique land use patterns in each area and the different policy responses that may be needed.

2.2. ACCESS TO LAND

Understanding when and how households got access to land is one of the key factors for determining the legal validity of their land claims under the current Timorese legal framework, but also under the draft Land Law. Future land policy should also take into consideration if Timorese citizens require access to more land, and how difficult it is to obtain it. Therefore, this survey tried to capture an overview of access to land in the studied municipalities.

The survey asked when people accessed the land they are living on. As can be seen from Table 2.1 a higher percentage of households in Ermera (54 percent) and Ainaro (42 percent) first accessed their land during the Portuguese area, than in Dili (20 percent). In Dili 41 percent of the households got access to land during the Indonesian administration, and 39 percent only from 1999 onwards. Importantly, 21 percent of respondents got access to their land only after 2008, meaning that their current land tenure is relatively new. This is compared to Ainaro and Ermera where only 7 percent of households reported gaining access to land after 2008.

Table 2.1 *When did you gain access to this parcel of land?*

	During the Portuguese administration	During the Indonesian administration	After the year of 1998	After independence (20 May 2002)	During the 2006 crisis	After the 2008
Dili	20%	41%	8%	7%	3%	21%
Ainaro	42%	36%	5%	9%	2%	7%
Ermera	54%	29%	1%	5%	3%	7%

Equally important is to know how households gained access to the land where they are living on. The vast majority of respondents in Ainaro (75 percent) and Ermera (70 percent) inherited their land from family members. In the urban area of Dili, inheritance is significantly lower (32 percent), with access to land also being obtained through sales (34 percent) and donations (23 percent). Both Ainaro (2 percent) and Ermera (5 percent) households reported very few sales, and those sales came almost exclusively from family members. This indicates a non-existent land market in these two rural municipalities. In Dili the scenario is different; despite the legal uncertainty regarding who has which land rights, 51 percent of the respondents who report to have bought their land say they bought it from a third party. However, as discussed below, the legal validity of many of these transactions is challengeable due to lack of formalities and legitimacy of the transferor. Finally there is a relevant number of respondents in Dili (9 percent) and Ainaro (10 percent) reporting that they got access to their land through occupation (2 percent in Ermera).

The survey assessed the perceived ownership of land, by asking the respondents who is the owner of the land.⁴ While the majority of respondents identify the land where they live as privately owned (Dili: 87 percent; Ermera: 97 percent; Ainaro: 100 percent), ownership varies between husbands and wives, joint ownership and other family members. The survey attempted to understand if women were excluded from the ownership of land. Overall, men were reported to individually own more land than women (see Graph 2.1). Joint ownership of couples was at its lowest in Dili (16 percent) compared to Ainaro (52 percent) that reported the highest levels; and while Ainaro had the lowest level of individually female owned land, it was also the closest to equality of the three areas. The majority of the remaining responses regarding ownership indicated that the land was either owned by parents or other family members (Dili: 22 percent; Ainaro: 23 percent; Ermera: 15 percent). Only Dili had a relevant number of respondents reporting that the land where they live belongs to the state (7 percent).

Graph 2.1 Who owns the land?

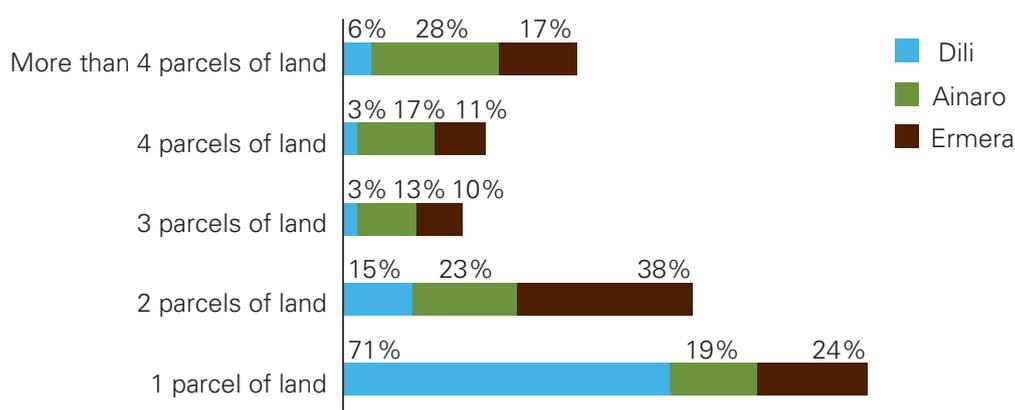


4 The concept of ‘ownership’ can be problematic, considering that is often not perceived in the same way as in western legal systems. As debated below, ownership in Timor-Leste carries a number of restrictions on land use and transfer of land that is not found in western freehold systems.

When respondents were asked why their land was not jointly owned, both men and women responded in equal measure that they obtained the land before marriage (74 percent).⁵ This seems to confirm a bias towards men receiving through donation and inheritance more land inside their families than women.⁶ Also, a significant number of respondents indicated that the land was theirs individually because they bought it (15 percent men, and 10 percent women that own land individually). However, the levels of joint ownership rose in all three municipalities when the same question was asked about who owned the house. Ainaro was the highest at 62 percent of joint ownership of the house, followed by Ermera (38 percent) and Dili (26 percent).⁷

While the survey focused mainly on the history of land where households are located, it did inquire about the number of additional plots owned by households and what they use them for. This allows to understand both the availability of land in Timor-Leste and how people use additional plots of land for their livelihoods. The vast majority of households in Ainaro (93 percent) and Ermera (84 percent) reported that they owned additional parcels of land. In contrast, only 44 percent of Dili households reported owning other land parcels (see Graph 2.2), the vast majority of which is located in other municipalities, presumably their ‘home’ municipality. This goes against a commonly held assumption of government officials and politicians that families in Dili can simply return to their original municipalities as 56 percent indicate they have no other land. This finding is in line with previous research that has suggested that landlessness increased significantly during the Indonesian administration (ICG, 2010).

Graph 2.2 How many additional parcels of land do you ‘have access to’?
(Of those who answered ‘yes, I have access to other parcels of land’)



5 The joint ownership of couples is regulated in the Civil Code. However, many couples cannot benefit from this legal regime because their marriage is not registered, therefore without any legal effects.

6 The survey was not conducted in any of the matrilineal areas of the country. On this topic see Thu et al., 2007; Narciso & Henriques, 2010; Narciso et al., 2012; CEPAD, 2014.

7 It is noteworthy that as pointed by Urresta & Nixon (2004), many Timorese perceive ownership of land as something that is separated from the buildings attached to it.

Responses indicate that these additional plots of land are used for multiple purposes, with the first additional plots often being used for housing by Dili respondents (64 percent), compared to Ainaro (39 percent) and Ermera (21 percent). For all target areas combined, dry crop cultivation, tree plantations, and grazing were the highest overlapping uses for secondary plots (72 percent, 76 percent, and 30 percent respectively). While housing dropped significantly for subsequent plots of land, cultivation, tree plantations and grazing remained around the same levels, showing a heavy reliance on additional plots of land for livelihoods. Very few respondents indicated that they had abandoned their land and it had fallen into disuse (Dili: 4 percent; Ermera: 4 percent; Ainaro: 0 percent). This is an interesting finding as the current legal framework has been interpreted as saying that ‘abandoned’ land belongs to the state.

The survey also attempted to understand if households can access more land if they need to. The majority of respondents indicated that it is difficult to obtain more land (Dili: 80 percent; Ermera: 89 percent; Ainaro: 78 percent). The most common reasons cited was that there was no more land left and that it was too expensive (see Table 2.2).

Table 2.2 Why is it difficult to obtain more land? (multiple response)

	There is no more land available	My family does not have a lot of land	The community does not give me access to more land	Land is very expensive, I cannot afford it	Land owners don't want to give/sell land	The government does not have a good mechanism to give access to land (e.g., lease of state land)
DILI	83%	31%	10%	67%	25%	11%
AINARO	71%	40%	12%	59%	50%	0%
ERMERA	65%	36%	15%	67%	43%	2%

This seems to indicate once more that there is no effective land market, or at least one that is affordable to the majority of respondents. It remains to be seen if a titling law will create a fair land market or will exacerbate inequalities in access to land. What is interesting is that 11 percent of Dili residents declared that the government does not have a good mechanism to give access to land. This might indicate that a number of respondents would consider land use rights schemes such as lease of state land, if this possibility was easily available.

On a positive note, most respondents said that they have enough land to sustain their livelihoods (Dili: 87 percent; Ermera: 86 percent; Ainaro: 84 percent). However, that still leaves 15 percent overall who feel they do not have enough land for their livelihood.

2.3. LAND TENURE SECURITY

Tenure security can be defined as the protection that land holders have against involuntary removal from the land they hold, and/or the loss of benefits they derive from that land, caused by state or other persons' intervention, unless due to legal process and adequate compensation (Kanji *et al.*, 2005: 3; Reerink, 2011: 1). For this analysis tenure security was divided into two different sub-concepts:

1. 'Legal tenure security' refers to the protection that law gives to land holders from being dispossessed against their will (Reerink, 2011: 15).
2. 'Perceived tenure security' refers to the land holders' feeling that their land tenure is secure (Reerink, 2011: 16).

For assessing legal tenure security it is necessary to look at the current Timorese legal framework. Land tenure legislation in Timor-Leste has several gaps and contradictions making its application very difficult and confusing (Almeida, 2016). Under the current legal framework, Law 1/2003 assumes a central role in regulating land rights. Despite there being doubts about its constitutionality, this law has been interpreted by state officials as having two key principles regarding land rights: first, that all land that belonged before to the Portuguese state or is abandoned belongs to the state; second, only formal land titles are acknowledged while it is silent on customary and informal land rights. The combined interpretation of these two principles has been that only holders of formal land titles are protected by law, and all the others are in fact using state land.⁸ Furthermore, there is stricter interpretation of this law that does not recognize any legal validity to Indonesian land titles.⁹ Moreover, Law 1/2003 gives the state the power to quickly evict people, explicitly establishing that they have no right to compensation. While it is known that many Timorese do not have legal land tenure security, there is no idea of how many. The survey tried to provide some data about this question.

It was asked to the respondents if they had a formal land title for the land where their household lives. While 54 percent of the households in Dili reported to have a land title, in Ainaro and Ermera a much smaller percentage of the households reported to have one (16 and 18 percent. See Graph 2.3).¹⁰ This means that around 101,000, 102,000, and 55,700 people in Dili, Ermera, and Ainaro respectively do not have a land title, and consequently no legal protection under Law 1/2003 (see Table 2.3). However the lack of legal protection is even worse if the stricter interpretation of Law 1/2003 that excludes Indonesian land titles is followed, considering that the majority of the respondents reported to have Indonesian land titles (see Graph 2.3).¹¹ If we add these households to the ones that have no formal land title, we can conclude that around 214,000, 116,800, and 65,300 people in Dili, Ermera and Ainaro respectively have no legal land tenure security (Table 2.3).

8 For a more nuanced analysis of this law see Almeida, 2016.

9 It is estimated that the Portuguese administration issued between 2,709 and 2,850 land titles, most of them in Dili (Around 55 percent. Meitzer Yoder, 2005: 301). In 1998 around 44,091 had been issued by the Indonesian administration (Fitzpatrick, 2002: 95).

10 This finding is in line with the findings of the Matadalan ba Rai study (2010), where 77 percent of the respondents report to not have a land title.

11 In all districts around 3 to 6 percent of the people reported to not know if they have a land title, or having a land title but not knowing what type.

Graph 2.3 *Do you have a formal land title for this parcel? What kind of land*

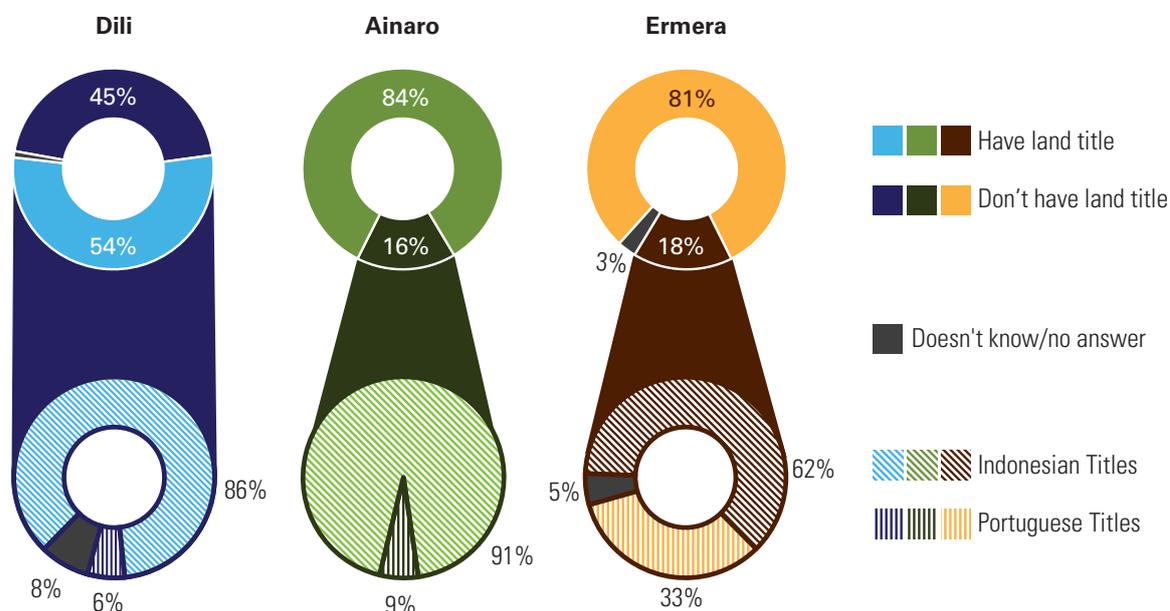


Table 2.3 *Estimated number of people without legal tenure security*

	Loose interpretation of Law 1/2003	Strict interpretation of Law 1/2003
Dili	101,000	214,000
Ainaro	55,700	65,300
Ermera	102,000	116,800

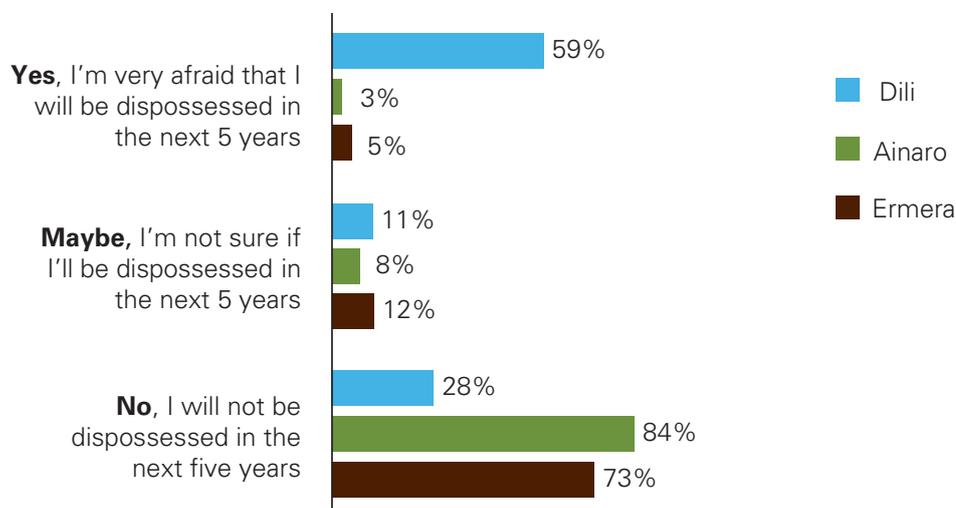
This is however the best case scenario, considering that the legal validity of many reported land titles can be challenged by the state for a number of reasons. First, many of these land titles lack the legal formalities for their transmission. For instance in Dili, 27 percent of the households that report to have a land title got access to their land after 1998, when the administrative institutions responsible for formalizing transactions were not anymore in place, making the validity of these titles easily challengeable (e.g., the holder of the title is not the person named by the title). Second, the transfer of land rights after 25 of October 1999 by foreigners is forbidden by law,¹² and a number of these land titles were acquired in contravention of this law. For instance, in Dili 34 percent of the households got access to land through sale and 5

12 UNTAET Regulation 27/2000 and Law 1/2003.

percent of these households report that they bought the land from a foreigner. In addition, in Dili, 23 percent report that the land was donated to them, and 8 percent of those by a foreigner. In all of these cases the transaction is not valid. Third, experience shows that some people claim to have a land title based on documents that are not land titles. For all of these reasons it is expected that the number of people without legal tenure security is higher than the one provided above.

Interestingly, the perceived land tenure security does not match the results of legal tenure security. Around 70 percent of the households in the three districts think that the government agrees that they reside or own the land where they live. At first glance this could give the idea that in general people feel secure with their tenure, but the results are different once other questions are asked. In Dili 70 percent of the households fear that they will be evicted in the next five years (see Graph 2.4), with 92 percent of these households expecting that the eviction will be conducted by the state. This fear of eviction is further confirmed by 50 percent of the Dili households reporting that being evicted by the state is their main concern regarding land. On the opposite side, in Ainaro and Ermera only few households fear being evicted in the next five years, and fewer report fear of eviction by the government as their main land related concern (3 percent in Ainaro and 5 percent in Ermera).¹³

Graph 2.4 *Are you afraid of being evicted in the next 5 years?*



A number of factors can explain the difference of perceived tenure security between Dili and the other two municipalities. The lack of customary connection with the land in Dili, the much higher competition for land, the stronger presence of state officials, and the past experiences with state-led evictions are the main factors that can explain this difference. However, the higher perceived tenure security in Ainaro and Ermera cannot be extrapolated to the rest of the rural municipalities. It is expected that for instance in Cova-Lima and Oecusse, where

¹³ The survey focused mostly on the land where the household lives, and not on other land such as farm land. This can explain why disputes over coffee plantations that exist in Ermera (Matadalan ba Rai, 2010: 40) are not influencing these numbers.

state-led dispossession for infrastructure projects has been happening in a large-scale in the last years (Cryan, 2015a; Meitzner Yoder, 2016), perceived land tenure security could be lower.

This apparent perceived land tenure security in Ainaro and Ermera does not mean that the respondents fully trust that their land rights are safeguarded under the current legal framework. Almost all households reported that it is important to have a land title (98 percent in all municipalities). Avoiding evictions (94, 63 and 84 percent in Ainaro, Dili and Ermera), and to better protect the household's land rights (90, 68, and 82 percent in Ainaro, Dili and Ermera) were reported as the main reasons why it is important to have a land title.¹⁴ Furthermore, the great majority of the respondents also claimed that a land titling program would reduce land conflict (84 percent). These results follow the findings of a previous World Bank study (Dale *et al.*, 2010: 3), which identified a belief that a formal land title is more valuable than a customary right, and a strong support for land titling programs (see also Haburas Foundation, 2013). However, and also as referred in the mentioned study, the authors recommend caution in extending land titling programs to customary areas for several reasons, such as its potential to initiate conflict in areas where land related conflict is latent, and the potential to further excluding less powerful members of a community and vulnerable groups such as women.¹⁵ In fact, this trust in land titling can come from limited experience with land claims and delimitation processes necessary for titling. Very few households in Ainaro and Ermera had their land registered by the Ita Nia Rai and/or Serviço Nacional de Cadastro projects, the two land registration attempts of the government that mainly targeted individual land (9 percent in Ainaro, and 11 percent in Ermera as reported by the survey).¹⁶

2.4. DISPUTE RESOLUTION

Providing mechanisms for solving land-related disputes is one of the key functions of any land administration system. In Timor-Leste customary systems of land administration and mechanisms for dispute resolution remain prevalent despite decades of displacement and violence, state interference in traditional structures, and increasing pressure on land for resource extraction and infrastructure development. The success of customary mechanisms in preventing and mediating conflict can in part be explained by the existence of areas with vague boundaries and rights to land, allowing a constant (re)negotiation of access to land between and inside communities (see for instance Meitzner Yoder, 2005; Fitzpatrick *et al.*, 2013). It is therefore expected that land legislation such as the Land Law that disturbs these equilibriums could cause a spike in land-related conflict. Policymakers need to understand the role of customary mechanisms of dispute resolution and consider the advantages of their incorporation in legislation regarding resolution of land disputes. To that end this survey asked a series of questions to help inform policymakers when crafting functional and fair dispute resolution mechanisms.

¹⁴ This was a multiple-choice question.

¹⁵ Regarding the possible consequences of land titling programs see among others Kanji *et al.*, 2005: 26; Bruce, 2012.

¹⁶ In Dili around 57 percent of the households report that their land was registered by one of these projects.

The first question aimed to understand the current state of land disputes in the target areas. The survey confirmed similar levels of disputes to those encountered during the Ita Nia Rai program with 12 percent reported in Dili, 8 percent in Ainaro, and 11 percent in Ermera. These figures are also similar to the responses in the Foundation’s previous survey (TAF, 2015), as well as the survey report by Dale *et al.* (2010). In Dili, 40 percent of these disputes were with the state, while the rest of the disputes are almost exclusively with family members. This is not surprising giving the high proportion of land that is gained through inheritance and donation. However, it should be noted that these figures are of current disputes and do not take into account new disputes that may occur with the state or third parties due to the introduction of the Land Law Package.

Respondents were also asked about who they thought could fairly solve a land dispute. The majority of respondents indicate that the most capable actors were those in the community such as *suku* and *aldeia* chiefs, and customary leaders (see Table 2.4). Formal State actors were trusted at a much lower basis with the exception of the police in Ainaro.

Table 2.4 In case of dispute over your land parcel, who do you think is able to solve it fairly?

	Family	Aldeia chief	Suku chief	Customary Leader	Community members	DNTP	PNTL	Lawyer	Courts
DILI	42%	83%	83%	35%	13%	30%	18%	6%	26%
AINARO	75%	92%	91%	94%	24%	20%	46%	10%	19%
ERMERA	73%	94%	87%	79%	15%	10%	16%	1%	14%

Respondents were also asked about their preferred method of resolving disputes. Overall each target area agreed that negotiation (44 percent) followed by mediation (30 percent) were the best methods to resolve land disputes. Very few people indicated that a court case was the best way (Dili: 10 percent; Ermera: 8 percent, Ainaro: 1 percent). There were no significant differences between men and women in terms of preferences. However, despite the low percentage of respondents indicating a court case as a good method to address land disputes, 82 percent of them said that a state representative needs to be involved in the resolution process to completely resolve a land dispute.

While these results may seem contradictory at first, they are in line with the Foundation’s previous research into community dispute resolution, which concluded that while communities prefer local dispute-resolution methods, the agreements are honoured more consistently when a state official is present to provide confidence in the result (see TAF, 2015). This conclusion advises that any future land conflict-resolution mechanisms are based at community level, but also incorporate state oversight, participation and documentation of the results by state officials for legal recognition.



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Av. Rua Jacinto Candi

CHAPTER 3:

SURVEY FINDINGS ON THE LAND LAW PACKAGE

3.1. THE LAND LAW

The Land Law Package is a set of laws that address different needs of the Timorese formal land tenure system. This package was initially drafted in 2009 and approved by parliament in 2012, but vetoed by the President (see Fitzpatrick *et al.*, 2013; Cryan, 2015). Since then the package was revised a number of times and has been going back and forth between government and parliament. In 2016 the Land Law Package was received by parliament and an in-depth debate of the three laws was started by Parliament's Commission A. In its current format the package is composed by three laws: the Special Regime for Determination of Ownership of Immovable Property, also known as the 'Land Law'; the Expropriation Law; and the law on Spatial Planning. The survey focused on the first two draft laws.

The Land Law intends to clarify the current unclear situation regarding land rights by establishing a criteria to determine the initial ownership of land. For such, the law acknowledges different types of land rights and establishes a hierarchy of rights. Land claimants can obtain ownership of land, compensation for loss of rights, or receive no protection under the law, depending on the rights they can prove to have and the possession of land. The Land Law acknowledges the following types of rights:

- Primary land rights – formal ownership rights issued by the Portuguese and Indonesian administrations (*propriedade perfeita* and *hak milik*), and informal property rights (individual or communal rights, with customary nature and long-term possession, that have characteristics similar to ownership).¹⁷
- Secondary land rights – formal land usage rights issued by the Portuguese and Indonesian administrations (*aforamento*, *hak guna bangunan*, *hak guna usaha*), in which the state kept the ownership of the land.
- Special adverse possession – right to obtain ownership of land or compensation that comes from peaceful and public possession of land, when the possession started before 31 of December 1998. The current version of the law excludes from this right those groups that were forcedly relocated by the Indonesian administration.
- Uncontested possession of land.

¹⁷ The law encompasses a short chapter about community land and community protection zones, but does not regulate these topics in depth, leaving these regulations to subsequent legislation.

These individual and communal land rights compete against state land. The Land Law establishes two types of state land:

- Public domain of the state – specific parcels of land that due to its importance trump any individual or collective land right (e.g., the coast line).
- Private domain of the state – land that belongs to the state, but does not fit the category of public domain. Nevertheless, this type of land also trumps individual or collective rights if the land is being used for public administration activities (e.g., land used for a ministry building).

The process for recognition of land rights established by the law is dependent on a systematic cadastral survey that collects claims over the parcels of land. Uncontested land claims collected in the cadastral survey are recognized as ownership by the claimant. To all the disputed cases is applied the hierarchy criteria established in the law; depending on the right invoked and proved by the parties, they can obtain the ownership of the land, financial compensation, or nothing.

Initial versions of the law established a chapter on protections against eviction that aimed to safeguard those households that do not fulfil the criteria established by the law for the recognition of ownership rights or compensation, and do not have the economic means to provide for their own resettlement. This protection was removed from the current draft of the law and left to be regulated later at a lower level by a ministerial decree, which raises fears that the law is going to be implemented without these protections in place.

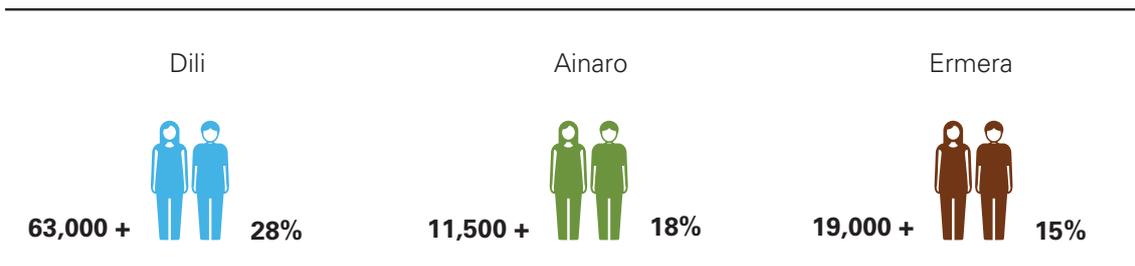
Despite the debate around the Land Law, its potential impacts are yet unknown by the policymakers. There is no study regarding the number of people that would meet the criteria of the Land Law, and how many would be left without land and compensation. Determining the number of impacted people is now even more relevant, considering that the protections against eviction were removed from the draft law. However, estimating these values is a difficult task, because it involves several variables:

- The number of pre-independence formal land rights that are validly held by Timorese.
- The number of people which could claim to have an ‘informal ownership right’.
- The number of people in possession of land (by opposition to ‘mere occupant’).
- The number of possessors that initiated their possession before 31 of December 1998.
- The number of possessors that were forcibly relocated during the Indonesian administration, therefore excluded of the special adverse possession.¹⁸

18 While there were certainly many families that were affected by this practice, including those under the transmigration and translocation programs that brought 300,000 Indonesians into Timor-Leste and resettled thousands of Timorese within Timor-Leste (IOM, 2003: 56; Nixon, 2005), in the three Municipalities surveyed this appears to not be a significant mechanism for accessing land. Less than 1 percent of people in all areas claimed they fell into this category (Dili: 0.1 percent; Ermera: 0.4 percent; Ainaro: 0.4 percent). Different results are expected in other municipalities.

Based on the survey, and acknowledging that the estimation is not exact, it is estimated that at least 28 percent of the Dili population will not be protected by the Land Law if the current draft is approved. In Ermera, the number of unprotected people would be at least 15 percent, and in Ainaro 18 percent (see Graph 3.1). These estimates are the most conservative projects and can increase significantly depending on several elements such as the strictness in assessing the legal validity of land titles, and the means of proof accepted.

Graph 3.1 Number of people who may face eviction under the draft land law 2016



The survey also tried to anticipate what will be the reaction of the Timorese if they eventually lose their land with the application of the Land Law. It was first asked how the respondents would react if the law gave the ownership of their land to another person, and no right to compensation to them. Few respondents said they would voluntarily leave the property (3, 7, and 8 percent in Ainaro, Dili and Ermera). The great majority said they would refuse to leave the property (69, 52, and 77 percent in Ainaro, Dili and Ermera), and the second biggest group of respondents said that they would refuse to leave until compensation was paid (25, 39, and 10 percent in Ainaro, Dili and Ermera). It was then asked what would be the respondents' reaction if the law gave their land to another person, but they were entitled to compensation. In this case the results were quite different in Dili and the other municipalities. While the majority of the Dili households would take the compensation and leave the property (57 percent), the majority of the Ainaro and Ermera households would refuse compensation and refuse to leave the property (84 and 75 percent). These results are in line with the findings presented above that Dili households are less sure of their rights and the family and customary connection with the land is less strong, making them more willing to accept compensation and leave the land. Interestingly, in both questions very few households reported that they would take revenge on the people that the law considers the owner of the land.

The survey also tried to assess the respondents' reactions to the special adverse possession solution, considering that adverse possession is a fairly new concept in Timor-Leste.¹⁹ Pre-existing data indicated that few people considered that by abandoning property the owner would lose rights to it (Urresta & Nixon, 2004: 66),²⁰ but there was no clear information

19 The Timorese Civil Code regulates a 'normal' adverse possession, but it is debated if the adverse possession articles are in force, and if so when should the terms for adverse possession start to be counted (see Almeida, 2016: 36).

20 In Urresta and Nixon's study the urban respondents were more in favour of people not losing their rights due to abandonment (62 percent) than the rural respondents (52 percent).

regarding the views of the Timorese about the possibility of a third party acquiring property through long-term possession. To assess respondents' receptivity to adverse possession solutions two questions were asked. First, it was asked if in their opinion, when someone uses for a long period of time an empty parcel of land, should they become the owner of that land. More than half of the respondents said that the possessor should become the owner of the abandoned land (47, 65, and 58 percent in Ainaro, Dili and Ermera). In the second question, instead of an empty parcel of land the question mentioned a parcel of land that has been abandoned by a third party long time ago. Interestingly, while the results remained similar to the previous question in Dili and Ermera and the majority of respondents said that the possessor should become the owner of the land (60, and 53 percent), few respondents in Ainaro agreed with this solution (22 percent).

Adverse possession can be a cheap and practical mechanism to provide some legal tenure security to land users (Williams, 2009), but these results indicate that while accepted by part of the population, adverse possession solutions can find resistance among others. To attenuate the reaction against the special adverse possession in the draft Land Law, the government should provide clear public information about the special adverse possession criteria and the reasons of why is it going to be applied.

Finally the survey assessed if the land ownership claimed by the respondents corresponds to a western-like concept of ownership, in which the owner can freely transfer and avail of the owned property. This is especially relevant because the Land Law intends to recognize ownership rights to those that individually claim the ownership of land parcels and fulfil the criteria established in the law, both in urban and rural areas, without assessing the full scope of land rights that exist in the surveyed area. However, the recognition and titling of western-like ownership rights brings the risk strengthening the position of land claimants, ignoring and weakening other customary rights that exist over the same land.

To assess how the Timorese understand the concept of ownership the survey asked a series of questions regarding what they were allowed to do. Despite claiming the ownership of land (see above), the majority of respondents said that they are not allowed to sell, give, and rent their land to family members, other members of their community, people from other district and foreigners (see Table 3.1). However, the great majority of respondents said that they were allowed to give their land as inheritance, build a house, and farm the land. These results show that the concept of ownership of the respondents is very different from the western-like concept, where the owner can freely transfer the owned property. It shows that there is a more complex network of rights and beneficiaries connected to that land, and the ownership claimed by the respondent resemble more a usufruct right. The implementation of a western-like concept of ownership that empowers the land claimant in detriment of others also connected with that land will be at odds with the current understanding and relation with land of a great percentage of Timorese. The social changes and potential conflict that can derive from this shift of land tenure paradigm are unpredictable, and can endanger central social links of communities and families.²¹

21 See here the Indonesian example described by Tanya Li (Li, 2014).

Table 3.1 What are the respondents NOT allowed to do with their land?

	Sell/give their land to members of their family	Sell/give their land to members of their community	Sell/give their land to people from other municipality	Sell/give their land to foreigners	Rent their land to people of other municipality	Transfer the land as inheritance	Build a house in their land
Dili	81%	87%	92%	95%	78%	26%	17%
Ainaro	81%	87%	89%	89	74%	8%	6%
Ermera	61%	72%	75%	76%	65%	15%	8%

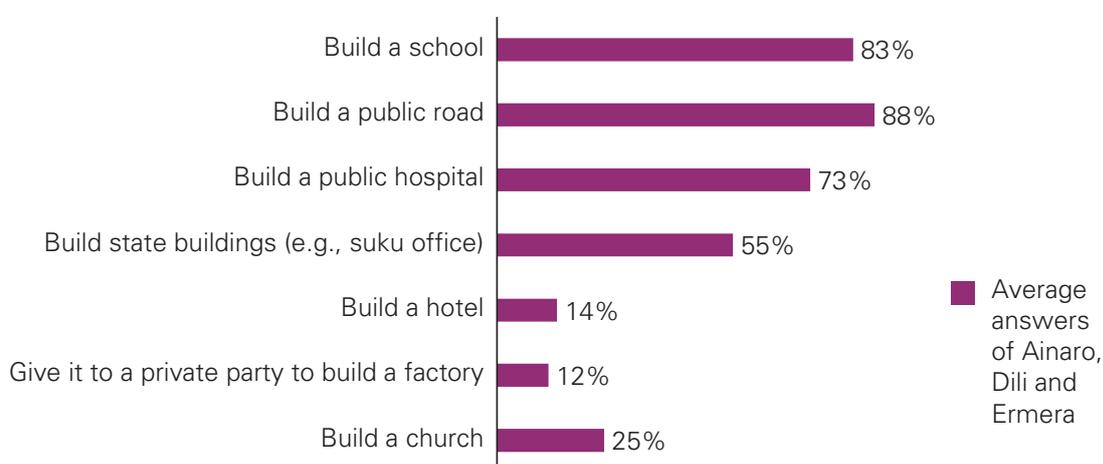
3.2. EXPROPRIATION LAW

The other key law of the draft Land Law Package is the Expropriation Law. The Timorese Constitution establishes that the state can expropriate private property, for public purposes, upon the payment of fair compensation, and according to a process established by law. The draft of the Expropriation Law details the process to be followed for an expropriation. The survey explored some of the key points related to this draft.

The first question assessed the views of the population regarding the right of the state to expropriate land. Around half of the households said that the state could, in all situations, expropriate land for public purposes upon the payment of fair compensation (55, 46 and 24 percent in Ainaro, Dili and Ermera). However, a considerable number of households was more cautious, saying that the right to expropriate would depend on the situation (33, 38 and 59 percent in Ainaro, Dili and Ermera). Finally, some respondents believed that the government does not have the right to expropriate land (12, 14, and 11 percent in Ainaro, Dili and Ermera). This shows that at least half of the households see the power of the state to expropriate with some or many restrictions beyond just the public purpose and compensation.

The survey also asked in which specific situations the respondents consider that the state can expropriate land from individuals and communities (see Graph 3.2). This question is particularly relevant when establishing the criteria for the definition of public purpose. If not well defined, the concept of public purpose can lead to abuses of the power to expropriate by politicians and powerful elites. While the great majority of respondents agreed that the state could expropriate land for more obvious purposes (e.g., building a public school, road and hospital), only around half agreed with expropriation for public administration buildings, such as a *suku* office. Maybe more relevant, only a small minority agreed with expropriations for private economic activities such as the construction of a hotel or a factory. Few also agreed with expropriations for the construction of a church. These results give a clear guide to the government for the definition of public purpose: very few agree that expropriation can happen in cases where the main beneficiary is a private entity.

Graph 3.2 In which situations can the government take land from individuals and communities?



Finally, the survey asked if in case of expropriation the respondents would prefer to receive a fair monetary compensation or, alternatively, replacement land and house of equivalent value to the one expropriated. Replacement land as total or partial compensation is often used as an alternative or a complement to compensation (Keith *et al.*, 2008: 38). While this kind of compensation also has its drawbacks (e.g., the alternative land is too far from the original place), it is a solution in cases where monetary compensation cannot easily restore the livelihoods of people affected by an expropriation (e.g., access to land it is very difficult).

In the survey, the great majority of the households said that in case of expropriation they would prefer the replacement land and house instead of a monetary compensation (69, 96 and 69 percent in Ainaro, Dili and Ermera). It is noteworthy that in Dili almost all households report to prefer the replacement land and house instead of the monetary compensation. At least two factors can explain these results: first, as detailed above, access to land is difficult and uncertain, so the respondents prefer to leave to the state the burden of looking for land for resettlement. Second, the track record of fair compensation in Timor-Leste is not exemplary, there are several cases before and after independence where compensations did not cover all the costs of resettlement. Based on these experiences the households might find it safer to obtain land and a house from the state than to receive a monetary compensation that does not cover all the resettlement costs. The current draft of the Expropriation Law includes the possibility of the compensation paid total or partially through replacement land and buildings, dependent on the will of the public administration and the affected people. This possibility is in line with the preferences of the Timorese that were found in this survey.



CHAPTER 4:

FINDINGS AND

RECOMMENDATIONS

Continued stability and future development in Timor-Leste are dependent on establishing the necessary legal and administrative mechanisms for providing access to land, land tenure security, as well as preventing and addressing land-related conflict. This survey provides new and relevant evidence for policymakers to ground their decisions to address these issues, both with the current draft of Land Law Package, and/or other land-related legislation. Information such as the very high number of people that currently live without tenure security, the difficulty of households in accessing land, the structural discrimination against women in accessing land were not new findings, but are now better quantified, giving policymakers more guidance about what problems need to be addressed and how. The key findings of the survey are the following:

4.1. FINDINGS ON ACCESS TO LAND

Finding 1

There is no significant land market in Ermera and Ainaro, where people accessed land mostly through inheritance, during the Portuguese and the Indonesian administrations. In Dili there are more signs of a land market with people buying land from third parties, and more people settling in Dili from 1999 onwards. However, the legality of these transactions can be questioned by the government (e.g., un-notarized sales). The survey also attempted to understand if households can access more land if they need to. The majority of respondents indicated that it is difficult to obtain more land, and in Dili less than half of the households have access to other parcels of land.

Recommendation

Conduct a study on land transactions to understand better the issues a new law will have to take into account.

Finding 2

In the researched municipalities men have greater access to, and ownership of, land and housing. However, there are several cases where the land is claimed to be owned individually by men, but the house is jointly owned by the couple. Any process of land registration or titling that does not incorporate clear measures to mitigate gender discrimination will most likely reinforce these inequalities and create another structural barrier for women to gain equal access to, and control of, land.

Recommendation

Ensure that all legislation and cadastral survey activities incorporate measures to reduce gender discrimination, such as promotion of joint titling, and legal regimes that promote joint ownership. Administrative barriers such as the registration of marriages that make it more difficult for couples to claim joint ownership should be addressed.

4.2. FINDINGS ON DISPUTE RESOLUTION

Finding 3

The number of current disputes is around 10 percent, which is in line with previous studies. Communities prefer for land disputes to be resolved through village processes and not through the courts. However, they also feel that state representatives should be present for the dispute to be fully resolved.

Recommendation

Develop clear dispute resolution mechanisms that prioritize village level processes with empowered state representation. Resolution of disputes that meet the established criteria should be considered legally binding and entered into the land registry record. Clear dispute resolution processes should be socialized at the beginning of any titling work so that disputants understand their options and are less likely to resort to violent and/or illegal measures.

4.3. FINDINGS ON LAND TENURE SECURITY

Finding 4

Most of the respondents consider that they own the land where they live, despite not having a land title. However, because the majority of the households don't have a land title (or the 'right' title), their land rights are not recognized under the current Law 1/2003, leaving them without any legal tenure security. In the three surveyed municipalities the great majority of households does not have their land tenure protected by law, and is under the legal possibility of being dispossessed by the state.

Recommendation

It is urgent to approve legislation that reduce the legal tenure insecurity of the Timorese. This objective can be achieved with a combination of several measures, such as legal recognition of customary land rights, provide legal rights to long-term possession, and better regulate and limit the possibilities of state-led eviction.

Finding 5

The majority of households in Dili have low perceived tenure security, fearing to be evicted by the government. In the other surveyed municipalities the perceived tenure security was much higher, but even in these municipalities there are a few hints that the households don't feel completely safe. Most of the households saw land titling as a way of strengthening their rights.

Recommendation

The regulation, clarification, and limitation of the conditions in which evictions of land can happen will improve the tenure security perception. The dangers of land titling related to conflict and cumbersome procedures should be considered before considering this option.

Finding 6

Most of the interviewees see land titling as a solution for strengthening their land rights. However, few of the interviewees of the rural areas experienced the land registration initiatives promoted by the Timorese government.

Recommendation

Despite the public support, experience in other countries alerts for the risks of land titling initiatives in rural areas, especially when focused on individualized land rights, which can cause conflict in areas where land related conflict is latent, and weakening less powerful members of a community and vulnerable groups such as women, as well as endangering central social links of communities and families. Alternatives to individualized land rights in these areas should be studied and considered as a preferential solution to provide legal tenure security.

4.4. FINDINGS RELEVANT FOR THE LAND LAW

Finding 7

Under the current draft Land Law a considerable percentage of the households will not have any land rights recognized by law and will not be entitled to any compensation. The lack of any protection against evictions in the law will leave these households without any social protection and the difficult access to land will further marginalize them.

Recommendation

The Land Law must establish strong protections against eviction or other measures that effectively protect the housing rights and avoid the marginalization of households. Documents such as the General Comment No. 4 and No. 7 of the United Nations Committee on Economic, Social, and Cultural Rights provide clear guidance for the level of protections that should be established. Alternative housing options should be considered for those not protected by new laws, including leasing options and pro-poor housing options in the city.

Finding 8

The majority of households would react negatively to any loss of their land through the Land Law, even if compensation is paid to them.

Recommendation

The criteria established in the Land Law for the hierarchy of rights should, as much as possible, avoid displacement of those in peaceful possession of land. While the conflict with other rights needs to be considered, it is possible for instance to obtain this result by restricting the possibilities of state claims to land.

Finding 9

The principles behind adverse possession are not well received by a considerable part of the respondents, especially in cases where the previous owner of the land is identifiable. Nevertheless the mechanism of adverse possession can be an important tool for providing legal tenure security. Despite resisted by many respondents, adverse possession provides a simple and cheap alternative to provide some legal tenure security to land users.

Recommendation

Measures to attenuate reactions against the special adverse possession in the draft Land Law should be provided, such as clear public information about its criteria and the reasons of why is it going to be applied.

Finding 10

The concept of 'ownership' perceived by the great majority of respondents is very different from western-like definitions of ownership, in which the owner can freely transfer and avail of the property. Despite claiming to be the owners of the land, the great majority of the respondents reported not to be allowed to transact or somehow burden the property (e.g., by renting it). These results indicate that besides the 'owner' there are other rights and beneficiaries of the land, and a western-like ownership will be at odds with the current understanding and relation with land of the Timorese.

Recommendation

The social changes and potential conflict that can derive from this shift of land tenure paradigm are unpredictable, and can endanger central social links of communities and families. Policymakers should be aware of these possibilities and better justify this shift of paradigm if they decide to move forward with this solution, and consider as much as possible to incorporate into law the local and customary mechanisms of land administration.

4.5. FINDINGS RELEVANT FOR THE EXPROPRIATION LAW

Finding 11

A considerable number of respondents defend that the power of the state to expropriate land for public purpose and upon the payment of fair compensation should only be exerted carefully or not used at all.

Recommendation

The Expropriation Law should establish principles that further limit the power of the state to expropriate, such as the principle of proportionality.

Finding 12

While only a few respondents disagree with expropriation for more obvious purposes such as the construction of public roads and hospitals, the great majority of respondents disagree with expropriations for private enterprises such as hotels and factories, as well as religious purposes.

Recommendation

The expropriation law should establish a clear definition of public purpose that does not include these type of projects.

Finding 13

In case of expropriation the majority of the respondents prefer to receive alternative land and house of the same value instead of monetary compensation.

Recommendation

The payment of part or the total value of compensation through alternative land and housing dependent on the option of the affected parties should be kept on the draft of the Expropriation Law. The law should provide the entities responsible for negotiating compensation with enough resources and powers to be able to provide attractive compensation packages to the affected people.



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