

# Whose Land Law?

## Analysis of the Timor-Leste Transitional Land Law

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The Asia Foundation

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Prepared for The Asia Foundation  
by Méabh Cryan

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## Executive Summary

Thirteen years after Independence, Timor-Leste has still not approved policy or legislation regulating land ownership or the resolution of the layers of conflicting land claims that have resulted from colonial injustice, brutal occupation, and multiple waves of conflict and land expropriation. Due to conflicting claims, different perceptions of land in urban and rural areas, and increasing corruption, land policy remains highly contentious. Land administration work has been piecemeal and in many cases has aggravated confusion over land and housing rights.

Definition of basic land ownership remains a crucially important step for Timor-Leste in the establishment of a functioning land administration process. A Transitional Land Law, which would regulate first ownership of land and property in Timor-Leste, was drafted in 2008 and has since gone through a number of consultation and re-drafting processes (see section 2 of this report for more discussion of law-making processes). The latest public version of the law is Version 6, which was approved by the Council of Ministers and sent to Parliament for debate in June 2013. While the sixth version of the Land Law includes a number of positive changes, there are several outstanding contentious issues surrounding, in particular: the prioritization of right holders; state land; the lack of protection for community land; and the lack of protections against eviction (see section 3 of this report for more discussion of these issues).

During the first phase of public consultation and debate (2008-2010), the law was the subject of heated discussion and protest. More recently, Government desire to approve the law seems to have waned. Nonetheless, a revised seventh version of the Transitional Land Law is currently before the Council of Ministers, suggesting that there are at least some forces within the Government who have prioritized its passage. It remains unclear whether a seventh version of the law (in existence but not publicly available) will be pushed through Parliament before the elections in 2017 or whether the legislative lethargy that has existed over the last few years will continue.<sup>1</sup>

Civil society, very active in the past, has been somewhat quieter on the latest versions of the law. This seems to be less an indication of their approval of the law and more a lack of focus on legislative issues. A number of the organizations that previously lobbied and commented on the Land Law have been much occupied with high levels of evictions in Suai and Oecusse. Over the coming months, civil society will need to re-evaluate their positions on the Land Law (as well as on the Expropriation and Compensation Fund Laws). In essence they have three possible positions:

- Firstly, that in its' current format the Transitional Land Law is better than not having any law and that as a result it should be approved as quickly as possible;
- Secondly, that there are a number of outstanding problems in the law and that it should be approved only after further modification;
- Thirdly, that the law is fundamentally flawed in its premise and concept and must therefore be completely redrafted.

Reaching consensus on any of these positions will require time and careful consideration. If the second option (minor modifications) is chosen and Government pushes for a quick approval of the law, civil society groups will have to work hard to put together a strong advocacy strategy in order to convince

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<sup>1</sup> It has been suggested by some sources that the Government and a number of key politicians have no interest in seeing the law passed before parliamentary elections in 2017 and that in fact key politicians involved in large scale infrastructure projects would like to delay the law for as long as possible.

parliamentarians and government officials of the necessary changes. In contrast, if civil society are of the opinion that the law is fundamentally flawed, they must then work twice as hard to think about alternative options or risk being accused of dragging out the process and potentially of adding to land tenure insecurity in Timor-Leste.

In the meantime, it is highly important that some measures are taken to protect land vulnerable individuals, families, and communities from eviction. In the past a number of strategies have been suggested.

- The Government could make it illegal to expropriate land and evict people for any purpose until such time as proper protections are laid down in law and land has been adjudicated and registered.
- An independent authority such as the Provedor for Human Rights and Justice could be required to sign off on or monitor any eviction.

The table below provides a summary of some of the remaining issues in Version 6 of the Transitional Land Law. It should be noted that this report (and table) are made up of the author’s own observations, a review of available media and civil society submissions relating to the Land Law process, and interviews with key civil society organizations. These findings could be further strengthened by feedback and discussion with key stakeholders.

<b>Table 1: Key Improvements and Outstanding issues in Version 6 of the Land Law</b>	
<b>Definition of Rights and Possession</b>	
<p><b>Positive Changes in Version 6</b></p> <ul style="list-style-type: none"> <li>✓ Provides clear definitions of: public and notorious possession (Article 15), peaceful possession (Article 17).</li> <li>✓ Clarifies that only exclusively Timorese owned companies will be able to own land (Article 8).</li> </ul>	<p><b>Outstanding Issues</b></p> <ul style="list-style-type: none"> <li>× Remains unclear whether the concept of ‘peaceful possession’ will take into account the context of oppression and violence during both Portuguese colonialism and the Indonesian occupation.</li> </ul>
<b>Prioritization of Right Holders</b>	
<p><b>Positive Changes in Version 6</b></p> <ul style="list-style-type: none"> <li>✓ Recognizes long-term peaceful possession as a primary right.</li> <li>✓ Strengthens the protection of long-term peaceful possessors by stating that in a dispute between primary right holders without possession, priority will be given to informal long-term peaceful possessors (Article 46.1).</li> <li>✓ Clarifies that the secondary rights, in order to be considered valid, must not have expired before the 28<sup>th</sup> of November 1975 (Article 2.3, Version 6).</li> <li>✓ Where the eviction of occupants will require a large relocation the state <b>may</b> choose instead to expropriate the land from the owner according to provisions laid out in the Expropriation Law in order</li> </ul>	<p><b>Outstanding Issues</b></p> <ul style="list-style-type: none"> <li>× The prioritization of the rights of previous right holders without a clear definition of ‘violent acquisition’ could lead to further entrenchment of past human rights abuses and significant social conflict where it is felt that these provisions are broadly unjust.<sup>2</sup></li> <li>× The 31<sup>st</sup> of December cut off date for special adverse possession (Article 45, 20 and 22 of Version 6) puts all occupants who occupied land in or after 1999 at risk of losing their access to land and housing. This will result in high levels of displacement and evictions with insufficient levels of protection and/or processes for resettlement provided for in the law. The options described in</li> </ul>

<sup>2</sup> While the Civil Code does provide a definition for violent possession (Article 1181 and 246), which includes using physical and moral coercion, it does not resolve the question of whether general intimidation of the population by the Indonesian military will be considered as falling within this definition. It is likely that this issue will be left to the courts to decide.

<p>to give the land to the current possessors (Article 61).</p> <ul style="list-style-type: none"> <li>✓ An occupant of land previously belonging to a foreigner but which has reverted to the state may have an option to buy this land from the state. In these cases the amount of money paid in rent by the occupant to the state will be deducted from the price of the land (Article 85).</li> </ul>	<p>Article 61 and 85 provide a partial option, where occupants can buy back the housing they are occupying from the state, however, these measures are at the discretion of the state. Even with proper resettlement procedures the scale of displacements resulting from this rule would be highly disruptive to the social and economic life of communities.</p>
<p><b>State Land</b></p>	
<p><b>Positive Changes in Version 6</b></p> <ul style="list-style-type: none"> <li>✓ Article 9 strikes a new balance between primary right holders and the state's right to land. According to version 6 of the law the state will be granted all land that it is currently using for public interest and public administration (Article 9.1.c). While in principle it goes on to recognize that all Indonesian era and Portuguese era state land is considered as Timor-Leste state land (Article 9.1.a and 9.1.b) this concept is significantly softened by Article 9.2 which states that the primary right holders (including informal right holders) will be prioritized over state land claims. This is a significant improvement on the concepts of state land enshrined in Law 1/2003 and previous versions of the law.</li> <li>✓ Article 63 improves some of the processes and decision making around the special protection against eviction (see below).</li> </ul>	<p><b>Outstanding Issues</b></p> <p>While Article 9 provides a significant improvement to the definition of state land, there remain a number of areas where the state retains significant power to accumulate land.</p> <ul style="list-style-type: none"> <li>× Article 7.4 of Version 6 states that all land without an owner is considered as state land. This Article, combined with the restricted definitions of community property in Article 28, is likely to apply to vast amounts of land across Timor-Leste.</li> <li>× The definition of 'public interest' in Article 9.1.c remains unclear. Given the state's current approach to land expropriation there is a risk that the state may adopt a broad interpretation of public interest thus including large amounts of state land under this definition.</li> <li>× Despite significant improvements to Article 9 (left) the land law maintains the principle originally established in Law 1/2003 that Portuguese era state land, Indonesian era state land and all abandoned land is the property of the Timor-Leste state. This decision is likely to cause conflict in cases where it is perceived that land was taken through corruption and/or the use of force. It is also likely to cause high levels of evictions in Dili where the vast majority of people living on state land are not primary owners but rather people who occupied land and housing after 1999.</li> <li>× The definition of Public Domain land remains both expansive and unclear in its application (Article 6.3). Public land such as beaches, rivers, and roads, where presumably the public would have rights of access, are included on the same list as airports, ports, and military installations, where public access would necessarily be restricted. While the law states that this issue will be regulated in further legislation, it does not provide any guidance as to how public access will be safeguarded.</li> </ul>
<p><b>Special Protection Against Eviction</b></p>	
<p><b>Positive Changes in Version 6</b></p> <ul style="list-style-type: none"> <li>✓ Article 58.2 broadened the definition of the family home to include land that was being used to generate the basic livelihoods of the family.</li> <li>✓ Article 61 added an option that stated that in cases that would affect large numbers of people, the state</li> </ul>	<p><b>Outstanding Issues</b></p> <ul style="list-style-type: none"> <li>× Does not address the core of the problem that the special protection against eviction provisions provide an extension of 18 months and/or the provision of alternative housing (whichever happens first) for claimants who are considered as living</li> </ul>

<p>could choose to expropriate the property in order to give rights to the large numbers of people living on the land in question. (This is at the discretion of the state and no criteria are laid down for this decision-making process.).</p> <ul style="list-style-type: none"> <li>✓ Article 62 provided two new sub-clauses stating that ‘Administrative eviction cannot violate people’s dignity, human rights or security’ and that ‘the state may not use force during evictions except under exceptional circumstances where the presence and participation of the police is justified, in accordance with the principles of necessity and proportionality.’</li> <li>✓ Article 63 of Version 6 states that eviction notices and clear explanations must be given in person to those affected by the eviction.</li> <li>✓ Eviction notices must be written in both Portuguese and Tetun and they must include information relating to: the property in question, the timeframe of the eviction, legal remedies available to the affected parties, information relating the special protection against eviction and the process of declaring a family home, as well as information relating to legal aid options.</li> <li>✓ The timeframe for eviction was significantly lengthened from 30 to 90 days.</li> </ul>	<p>within the family home. This implies that once the 18 month period is over the state may carry on with the eviction irrespective of whether the family has acquired alternative housing or not.</p> <ul style="list-style-type: none"> <li>× The law does not clearly define the consultation process prior to evictions.</li> <li>× The law does not mandate monitoring of evictions by the state</li> </ul>
<b>Community Property</b>	
<p><b>Positive Changes in Version 6</b></p> <ul style="list-style-type: none"> <li>✓ The law recognizes an inalienable ownership right for community property.</li> </ul>	<p><b>Outstanding Issues</b></p> <ul style="list-style-type: none"> <li>× The law establishes an un-piloted, un-tested legal construct around Community Protection Zones and Community Property. It is at best unclear how these constructs will suit Timorese concepts of customary land. Some civil society submissions suggest that there will be problems with the application of this concept and that the juxtaposition of these two concepts essentially weakens the right of all property that is not considered as ‘community property.’</li> <li>× Until such time as it is registered community land is weakly protected. This is likely to put remote communities with little access to information or legal aid at risk, especially where their land has some potential for economic investment.</li> <li>× Article 28.3 states that separate legislation will be prepared on the demarcation of community boundaries, however, large scale expropriations of community land and systematic registration of all land in the country is going ahead under the Sistema Nacional Cadastrais (SNC) project.</li> </ul>



# Table of Contents

<b>Executive Summary</b> .....	<b>2</b>
Table 1: Key Improvements and Outstanding issues in Version 6 of the Land Law .....	3
<b>Glossary</b> .....	<b>7</b>
<b>Acronyms</b> .....	<b>10</b>
<b>Chronology of the Land Law Drafting Process</b> .....	<b>11</b>
<b>Introduction</b> .....	<b>14</b>
Background .....	14
Donor Funding and Support to the Land Sector .....	15
Table 2: USAID Funding in the Land Sector.....	15
The Transitional Land Law .....	17
Scope and structure of this report.....	19
<b>Section 1: Complex Policy Needs</b> .....	<b>20</b>
Customary Land.....	20
Colonial Land Injustices .....	22
Displacement.....	22
Competing Claims .....	23
<b>Section 2: Land Law Processes Since Independence</b> .....	<b>25</b>
UNTAET Land and Property Unit.....	25
FRETILIN Government 2002 – 2007 .....	26
Table 3: Summary of Land Laws Prepared Since Independence .....	26
The Transitional Land Law .....	29
Drafting Process.....	30
Table 4: Timeline of Key Legislative Processes.....	30
Parliamentary Approval.....	32
Presidential Veto.....	32
<b>Section 3: Key Issues in the Draft Transitional Land Law</b> .....	<b>34</b>
Table 5: Versions of the Special Regime for the Determination of Ownership of Immovable Property .....	35
Prioritization of Right Holders, Special Adverse Possession, and Compensation .....	36
State Land.....	39
Special Protection Against Eviction.....	40
Customary Land and Community Property.....	42
Mediation and Arbitration Mechanisms.....	44
The Legal Definition of Possession.....	46
Table 6: Definitions and Explanations Surrounding Possession .....	47
<b>Conclusion</b> .....	<b>48</b>
Table 7: Key Improvements and Outstanding issues in Version 6 of the Land Law .....	49
<b>Bibliography</b> .....	<b>53</b>
<b>Annex 1: Article by Article Analysis</b> .....	<b>56</b>
<b>Annex 2: List of Civil Society Submissions on the Land Law</b> .....	<b>70</b>

# Glossary

**Abandoned land** – Land that was abandoned by previous Indonesian and Portuguese era owners, but may currently be used and/or occupied by other people.

**Adverse possession** – Under the rules of adverse possession, a person who has openly and continuously possessed land can, after a significant period of time, become the legal owner of that land. Most legal systems recognize some form of adverse possession. In other parts of the world adverse possession is sometimes referred to as ‘squatters rights’. Importantly, adverse possession cannot happen where someone is leasing land from the original owner. In these cases, the payment of rent and the existence of a contract show that the lessee is recognizing the right of the lessor as the owner.

**Aldeia** – Hamlet, the lowest administrative region in Timor-Leste.

**Cadastral Commission** – A decision-making body established by the draft Land Law with powers to make decisions relating to land ownership.

**Cadastre** – An official register of real property, usually indicating boundaries, ownership, and value for tax purposes.

**Community property** – Chapter 4 of the Transitional Land Law establishes a category of land referred to as ‘community property’. This concept is used to create a legal protection for customary land being used by a community. While the term community property is widely used in a range of contexts in this report the term community property will specifically refer to the concepts established in the Land Law whereas the term ‘customary land’ (see below) will be used to denote the existing local use and governance of land. It should be noted that significant debate exists within Timor-Leste and beyond about the appropriate terminology for describing this type of land and that the terms chosen in this law have to a certain extent added to the confusion.

**Customary land** – Land belonging to a particular group or community that is governed, used and ‘owned’ by that group according to their own norms and local mechanisms. In Timor-Leste, this land is usually identified as belonging to a common ancestor and sharing the same origin principles and stories.

**Lia na’in** – Literally ‘holder of the words,’ a leader who has ritual and ‘judicial’ power within the community and makes decisions based on local norms and practices.

**Lisan** – The structures and norms that regulate social relations within an extended family or ‘clan.’ This word can also be used to show affiliation to a specific clan for example ‘ita lisan ida deit’ [we are of one tradition or group].

**Liurai** – A local political authority usually existing at either the kingdom (reino) or Suku level. This role shifted significantly during the Portuguese era. It now usually refers to a local leader at the village or clan level, although the usage of the word varies throughout the country.

**Lulik** – The sacred value of a place, item, house, or ceremony.

**Municipality** – An administrative area that includes several villages (or Suku), formerly referred to as a district. There are 13 municipalities in Timor-Leste.

**Possession** – In its simplest definition, possession is ‘the ownership or control of occupancy of a land by a person,’ however, possession is not the same as ownership. For example, if a person’s car is stolen then they are no longer in possession but they are still considered the owner of the car. Someone who leases a house from the owner is not considered to have met the legal criteria for possession despite the fact that he lives in the house. Possession is a legal construct, which is part of a set of criteria that may add up to or act as proof of ownership. See further discussion in Section 3.

**Rai nain** – Literally ‘holder of the land,’ this usually refers to the first ancestor who opened (or began to use) the land or his descendants. More recently, especially in urban areas and legal documents, this is the Tetun translation for the term ‘owner.’

**State land of public domain** – Public immovable properties are those that are outside the domain of commerce and that, because of their nature, can’t be privately owned.

**Sub-district** – The second largest administrative unit in Timor-Leste (below the municipality level).

**Suku** – Village. The third largest administrative unit in Timor-Leste (below the sub-district level). This and the aldeia levels are the levels that are most closely aligned with local customary structures and house structures. However, given significant shifts to administrative units during Portuguese colonialism, Indonesian occupation, and post-independence, the Suku should not be automatically construed as a ‘traditional’ or ‘customary’ unit. Today, the Xefe Suku (see below) is democratically elected.

**Title** – A document evidencing ownership of property, or a possessory interest in property, or the right to possess or control possession of property.

**Torrens system** – A Torrens system is a system of land registration where the underlying title is guaranteed by the state registration system. Land ownership is transferred through registration of title instead of using deeds, and even in situations where the underlying title is not valid the state guarantees the rights of third parties who register the land.

**Uma Lulik** – Sacred house. A physical construction representing all of the descendants of the Uma Lisan. Together with the Uma Lisan, the Uma Lulik is the fundamental unit of identity.

**Uma Lisan** – Sacred House or Lineage. The Uma Lisan is the social construct of the Uma Lulik. It refers to all of the descendants—past present and future—of a given clan.

**Xefe Suku** – A democratically elected village chief.

**Xefe Aldeia** – A democratically elected hamlet chief.

**Ministry of Justice** - The Ministry bearing primary responsibility for land administration, drafting land legislation, and land policy.

**Rede ba Rai** - A civil society network of over 20 organizations working on land issues at the local,

national, and international level.

**State land** - Land claimed by the state.

**Strengthening Property Rights Timor-Leste (SPRTL)** - A USD \$10 million, five year land administration program funded by the United States Agency for International Development (USAID) from 2008 until 2012. The program was known locally as Ita Nia Rai.

**Land vulnerable groups** – Individuals, households, or communities who typically have less socially- or formally-recognized rights to land (women, displaced communities, people without titles), and people with a high-level of dependency on land for immediate needs such as housing and food (households living below the poverty line, households involved in subsistence agriculture, farmers).

## Acronyms

**ACVTL** – Associação comunidade vítimas de Timor-Leste (The Association of the Victims Community of Timor-Leste)

**AMP** – Parliamentary Majority Alliance

AusAID – Australian Agency for International Development, now absorbed into DFAT (Department of Foreign Affairs and Trade).

**CIDA** – Canadian International Development Agency

**CNRT** – Conselho Nacional da Reconstrucao de Timor-Leste (National Congress for Timorese Reconstruction)

**DNTPSC** – The National Directorate of Land, Property and Cadastral Services. DNTPSC sits within the Ministry of Justice and is responsible for most land administration and policy issues including maintaining land records, collecting rents on state land, managing state properties, overseeing evictions, and organizing mediation in land disputes.

**DTPSC** – District or Municipal level offices of the Directorate of Land, Property and Cadastral Services.

**FONGTIL** – Forum ONG Timor Lorosae (East Timor NGO Forum)

**FREITLIN** – Frente Revolucionaria do Timor-Leste Independente (The Revolutionary Front of Independent East Timor)

**INR** – ‘Ita Nia Rai.’ The local branding for the USAID ‘Strengthening Property Rights Timor-Leste (SPRTL)’ program.

**JSMP** – Judicial System Monitoring Program

**KSI** – Kdadalak Sulimutuk Institutu (Stream Flow Institute)

**LLP** – Land Law Program. Two USAID land law programs: LLP1 which ran from March 2003 until August 2004; and LLP2 which ran from September 2004 - March 2006.

**NGO** – Non-Governmental Organization

**SPRTL** – Strengthening Property Rights in Timor-Leste

**UN** – United Nations

**UNAER** – Uniaun Agrikultura Ermera (The Ermera Agricultural Union)

**UNTAET** – United Nations Administration in East Timor

**USAID** – United States Agency for International Development

## Chronology of the Land Law Drafting Process

Date	Land Legislation Processes
2000	Land and Property Unit is set up within UNTAET under the Ministry of Justice. Funding and technical assistance is provided by a number of donors including AusAID, USAID, and CIDA.
Mar-03	Law 1/2003: 'The Juridical Regime of Real Estate - Part 1: Ownership over real estate' is approved by the Parliament.
2003	National Housing Policy is prepared by UN-Habitat and UNDP in conjunction with the Department of Public Works and Housing within the then Ministry of Public Works.
Aug-03	USAID supports the Ministry of Justice and DNTPSC to prepare a proposal for a systematic land registration program. The proposal estimates that it would cost USD \$8 million to register all of the land of Timor-Leste and that it would take 56 staff approximately five years.
Oct-03	USAID-funded Land Law Program 1 (LLP1) report by Grant Cullen 'Brief Notes on a Land Title Act to regulate and control the Registration of Land' recommends the use of a Torrens system in Timor-Leste and recommends a number of key elements, which are ultimately included in the first draft of the Land Law in 2008. The report focuses almost entirely on technical issues rather than the political challenges of approving a Land Law.
Jul-04	LLP1 prepares policy options for a law on land rights and title restitution.
Sep-04	LLP2 begins, to end March 2006.
2004	Decree law for the regulation of illegal constructions and informal settlements is drafted by LLP2.
Sep-05	Parliament approves Law 12/2005 'The Juridical Regime of Real Estate – Part II: Leasing between Individuals.'
Mar-06	Draft Law on Land Taxation and Expropriation is delivered to the Government by LLP2.
2006	Land tensions contribute to conflict surrounding the 2006 crisis. Discontent over the distribution of housing in the capital between groups associated with eastern (lorosa'e) and western (loromonu) areas of Timor-Leste aggravated the conflict and contributed to extensive property destruction. The haphazard and ad-hoc nature of the return of refugee process post-2006, the failure to deal with urban land ownership issues since independence, as well as a concentration of economic development

and opportunities in the capital city, has further complicated land rights in Dili and across the country.

<b>Early 2007</b>	LLP2 Final Report states that the 'Juridical Regime of Immovable Property - Part III: Property and Transfer Systems, Land Registration, Pre- Existing Rights and Title Restitution' is still pending.
<b>Jun-07</b>	CNRT win the elections and Xanana Gusmao is sworn in as Prime Minister of the AMP Government
<b>Oct-07</b>	The six year, USD \$10 million USAID-funded 'Strengthening Property Rights in Timor-Leste' program begins (branded Ita Nia Rai in Tetun).
<b>Late 2007</b>	Key elements of the Ita Nia Rai program (the establishment of a Land Commission and a Stakeholder Advisory Group) are rejected by the new Minister of Justice, Lucia Lobato.
<b>2008</b>	
<b>Jul-08</b>	Decree 229/2008 of 1 July 2008 authorizes the DNTPSC and the Ita Nia Rai program to undertake a nationwide, systematic data collection.
<b>Sep-08</b>	Ita Nia Rai Legal Advisor Ibere Lopes writes and publishes a paper on options for a Land Law. The paper includes many of the concepts that form the core tenets of the draft Land Law.
<b>Jun-09</b>	Version 1 of the 'Special Regime for the Determination of Ownership of Immovable Property' is released for public consultation.
<b>Sep-09</b>	The Land Law consultation period is extended for a further two months and Version 2 of the Land Law is released.
<b>Nov-09</b>	Version 3 of the Land Law is released.
<b>Dec-10</b>	Government carries out a brief public consultation on the Civil Code over the Christmas holidays. Civil society organizations struggle to comment on the law, which has over 2000 sections and is published only in Portuguese.
<b>Mar-10</b>	Version 4 of the Land Law is approved by the Council of Ministers and sent to Parliament.
<b>Jun-11</b>	Government presents the ambitious Timor-Leste Strategic Development Plan 2011-2030.
<b>Sep-11</b>	Parliament approves the Civil Code (Law 10/2011).

<b>Jun-12</b>	Parliamentary elections return CNRT to power in a coalition government and Xanana Gusmao to the position of Prime Minister.
<b>Jan-12</b>	Committee A of Parliament debates the Land Law in Maubara, Liquica and prepares some amendments to the law. This process was monitored by CSOs La'ó Hamutuk and Haburas as members of the Rede ba Rai network.
<b>Feb-12</b>	The Land Law and associated Expropriation Law and Compensation Fund Law are approved by Parliament.
<b>Mar-12</b>	The Land Law, Expropriation Law and Compensation Fund Law are vetoed by President Jose Ramos-Horta.
<b>July-12</b>	Taur Matan Ruak replaces Ramos-Horta as President of Timor-Leste.
<b>Aug-12</b>	Dionisio Babo Soares is appointed Minister for Justice.
<b>Jun-13</b>	Package of Land Laws is sent back to Parliament after substantial revisions (though the Expropriation Law is not mentioned in the Council of Ministers press release, thus it is unclear whether all three laws were re-submitted or just the Transitional Land Law and Compensation Fund Law).
<b>Feb-15</b>	Xanana Gusmao steps down as Prime Minister, appointing Dr. Rui Araujo to take his place. Gusmao is given a position as Minister for Planning and Strategic Investment.



# Introduction

## Background

Thirteen years after the restoration of independence, crucial legislation regulating and guiding land policy in Timor-Leste has still not been passed. Despite significant donor funding and technical support in the sector, consensus on land policy issues remains elusive. Unjust colonial land appropriation, waves of displacement, and competing claims have resulted in highly complex land issues. Land legislation must attempt a difficult balancing act: resolving land disputes while ensuring access to land and housing for all citizens, and protecting customary land owners while also ensuring land for state-driven development. While these issues are often seen as technical in nature, they are in fact highly contentious political issues and are fundamental to achieving inclusive and sustainable development in Timor-Leste. While land legislation is a crucial element in resolving these issues, the focus to date on land title resolution has detracted attention from the more fundamental issues of defining and reaching consensus on the values and principles that should guide land policy at large in Timor-Leste.

*'When we say that land is a complex issue, what we mean is that it is not the Land and Property department who understand everything, because it is us who eat and drink from this land, it is us who go to school and do all things from this land'<sup>3</sup>*

In the aftermath of the brutal Indonesian occupation, perceptions and sentiments surrounding land remain highly divided. Elite families whose title rests on colonial or Indonesian era occupation often advocate for laws that focus almost entirely on legal title and Portuguese or Indonesian era documents. In contrast, the many thousands of families who occupied land and housing in the aftermath of the 1999 violence argue for laws and policies which respect all people's rights to housing and the contribution and sacrifices made by the population at large to the cause of independence. Across much of rural Timor-Leste, the emphasis is placed on customary land rights and traditional forms of access and on the layers of colonial injustice dating back to the Portuguese era. For example, histories of land grabbing by the Portuguese state in Ermera are particularly contentious. Many local discourses focus on these histories of colonial injustice and call for agrarian reform, linking these ideas to the resistance and the anti-colonial sentiments of the early 1970s.

Interestingly, across most of Timor-Leste the majority of the population appeal to the current constitution (approved in 2002), which, they state, guarantees all people right to land. Many people go on to explain in detail how the constitution guarantees each person a right to one or two hectares. In reality, the 2002 constitution provides no such guarantee. Article 54 instead provides only a protection of private property, which is significantly different in character to a broad ranging distributive right to land. These types of discussions evidence the large divide between the expectations of local communities, the expectations of elite policy-makers, and the reality of what is being passed into law. It is significant that almost 14 years after the approval of the constitution the vast majority of the population remain unclear about the nature of these provisions.

Due to the political nature of land policy decisions, and as a result of opposition to 'outsider' involvement in the sector from the Timorese elite, very little was done to regulate land issues during the

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<sup>3</sup> Statement by a consultation participant in Suku Suai Loro, Covalima – Haburas Foundation, 2012, 'Community Voices on Land: Results of the Matadalan ba Rai Consultation Process', Dili, p17.

United Nations Transitional Administration in East Timor (UNTAET) period from 1999 to 2002.<sup>4,5</sup> In the absence of a state-facilitated process, citizens began the slow process of returning and rebuilding homes and communities on their own in an ad-hoc manner. This process resulted in the informal occupation of land and housing throughout much of the country, which to date has little legal protection.

Since Timor-Leste's independence in 2002, land legislation has focused mostly on the definition of state land,<sup>6</sup> and allowing the state to control and dispose of state land<sup>7</sup> and carry out land title registration.<sup>8,9</sup> Since 2003, donor support and much of the state's legislative attention has focused on the need to approve legislation regularizing ownership of property in Timor-Leste. While the Government approved a Civil Code which regulates day to day interactions over land such as sale, lease, and inheritance, the sections of the Civil Code dealing with land and immoveable property will not come into effect until a basic ownership law, which would establish who owns what land in Timor-Leste, has been approved.<sup>10</sup> While successive Timor-Leste governments have made a number of attempts at approving legislation regularizing first ownership,<sup>11</sup> the most significant attempt to resolve basic ownership of land has been the drafting of the Special Regime for the Determination of Ownership of Immovable Property (known locally as the Transitional Land Law).

## Donor Funding and Support to the Land Sector

A range of donors including, AusAid, CIDA, UNDP, and the World Bank have provided piecemeal funding and technical support to the Timor-Leste land sector. Since independence, the single largest donor has been USAID, who funded three consecutive land law programs between 2002 and 2012, costing a total of USD \$14.5 million.

<b>Program</b>	<b>Dates</b>	<b>Funding</b>
Land Law Program I (LLP1)	May 2003 – August 2004	USD \$2 million
Land Law Program II (LLP2)	September 2004 – March 2006	USD \$2.3 million
Strengthening Property Rights in Timor-Leste Program (SPRTL) or the Ita Nia Rai (INR) Program	October 2007 – September 2012	USD \$10 million

Land sector technical support has focused mainly on the need to strengthen property rights in order to reduce conflict and enable investment.<sup>12</sup> Under the first Land Law Program, USAID supported the Ministry of Justice and the National Directorate of Land, Property, and Cadastral Services (DNTPSC) to prepare a proposal for a systematic land registration program. The proposal estimated that it would cost USD \$8 million dollars to register all of the land of Timor-Leste and that it would take 56 staff

4 International Crisis Group, 2010, *Managing Land Conflict in Timor-Leste*, Asia Briefing No110, Dili/Brussels.

5 Meitzner Yoder, L, 2005. *Custom, Codification, Collaboration: Integrating the Legacies of Land and Forest Authorities in Oecusse Enclave, East Timor*, PhD Dissertation, Yale University.

6 Law 1/2003 - *The Juridical Regime of Real Estate - Part 1: Ownership over real estate*

7 Law 19/2004 - *The Juridical Regime of Property: Official Allocation and Leasing of Private Property of the State.*

8 Ministerial Order 229/2008 on the National Cadastre and Ministerial Diploma No 16/2011 on the Cadastral Data Collection Process

9 Delays in the approval of the Transitional Land Law led to the approval of Decree Law 27/2011, which allows the state to issue titles to claimants of undisputed properties.

10 Article 3 of the Civil Code (Law 10/2011)

11 A law was drafted by the second USAID funded Land Law Program and submitted to the Ministry of Justice in 2006 but was never submitted to the Council of Ministers.

12 Rede ba Rai, 2013, *Culture, Power and Justice: Land Registration and Land Justice in Timor-Leste*. Haburas Foundation, Dili. USAID, 2008, *Strengthening Property Rights In Timor-Leste: Programme Factsheet*, USAID, Dili

approximately five years<sup>13</sup>. In 2003, the same program prepared a document entitled 'Brief Notes on a Land Title Act to regulate and control the Registration of Land,' which strongly recommends the use of a Torrens system<sup>14</sup> in Timor-Leste. This document recommends a number of key elements that went on to be included in the first public version of the draft Land Law, disseminated in 2009<sup>15</sup>. These reports focus almost entirely on technical issues and provide very little discussion or analysis of the contentious and political nature of land rights in Timor-Leste.

The second USAID Land Law Program continued to support land research,<sup>16</sup> legal drafting, and capacity building of then Directorate of Land and Property (DTP). LLP2 prepared: a law regulating leasing between private parties, which was approved; a draft decree-law for the regulation of illegal constructions and informal settlements, which was never approved; and a bill on land taxation and expropriation, which was never approved. Most importantly, the program also prepared a first title recognition law, '*The Juridical Regime of Immovable Property - Part III: Property and Transfer Systems, Land Registration, Pre- Existing Rights and Title Restitution.*' This law laid down the provisions for the resolution of land claims and title restitution of pre-existing freehold rights. The law was never approved and work in this area was interrupted by the 2006 crisis.

The largest and final USAID investment in the land sector (branded locally as 'Ita Nia Rai') had a number of key objectives, including: drafting and approving key land laws around land titling; establishing a national land cadastre and issuing the first land titles in Timor-Leste; and establishing a land commission to handle dispute resolution processes. It was under this program that the first draft of the 'Special Regime for the Determination of Ownership of Immovable Property' (often referred to as the Transitional Land Law) was finalized and released for public consultation in June 2009.

While the Ita Nia Rai program was undoubtedly successful in mobilizing local communities, sharing information about land titling, and rolling out a free and systematic titling process, there were nonetheless a number of problems. A 2013 Rede ba Rai evaluation of the program found that it had not met some of its most fundamental requirements. In particular: almost 17,000 claims were incomplete at the time of the evaluation in 2012 and there were significant gaps in the monitoring and evaluation processes surrounding claims collection, and there were large numbers of unresolved disputes with only a handful of these disputes being offered mediation services by the program itself. Perhaps most profoundly, the program failed to draft a coherent land policy and to build any consensus around land issues. With the end of this program, the land sector was left in significant disarray with little follow-up or contingency planning carried out by USAID. In the aftermath, the Government has awarded a USD \$56 million contract to a Portuguese-Timorese joint venture to continue land registration across the whole country, extending registration to include customary land (a process which was strongly advised against by civil society, USAID contractors, and land law advisors alike).<sup>17</sup>

The World Bank Justice for the Poor Unit was involved in examining and providing technical assistance on community land issues (2009 – 2012). At different stages of the Land Law drafting process they

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13 Cullen, G., Proposal for a Systematic Registration Program, 2003, Timor-Leste Directorate of Land and Property, USAID, Dili

14 A Torrens system is a system of land registration where the underlying title is guaranteed by the state registration system. Land ownership is transferred through registration of title instead of using deeds and even in situations where the underlying title is not valid, the state guarantees the rights of third parties who register the land.

15 Cullen, G., Brief Notes on a Cadastral Survey Act to regulate and control Cadastral Survey and Mapping, 2003, Timor-Leste Directorate of Land and Property, USAID.

16 Including: Nixon, 2005, *Non-Customary Primary Industry Land Survey*, Leigh and Nixon, 2005, *Dili Rental and Valuation Report*, research on Land Taxation, Land Expropriation, and Special Economic Zones, and a report on local customary natural resource management, '*When The Ancestors Need Help: Renewable Natural Resources and Institutional Design in Contemporary East Timor.*'

17 Rede ba Rai 2013. *Culture, Power and Justice: Land Registration and Land Justice in Timor-Leste*. Haburas Foundation, Dili.

called on key land rights experts to provide submissions and inputs on Chapter 5 of the law concerning customary land. In 2014, the World Bank designed a new USD \$3 million program aimed at: preparing policy and guidelines for the Administration of Communal Lands and community protection zones; the Decentralization of Land Administration and Management; and the building of Ministry of Justice and DNTPSC capacity to administer communal land. This plan was later abandoned with little explanation.

## **The Transitional Land Law**

The Transitional Land Law was originally released for public consultation in June 2009. The law is most frequently described by the state as a 'first title' land law, which attempts to balance the rights and entitlements of previous Portuguese and Indonesian era land right holders with the rights and needs of the current state and its citizens. As such, it fulfills a number of key technical functions including: defining the concept of possession and the effects and criteria of adverse possession; recognizing the rights of previous land owners and users; regulating the rights of foreigners to own or use land and/or to receive compensation; laying out cadastral mechanisms and the processes for the issuing of land titles; and creating dispute resolution and appeals mechanisms. At the same time, the law also addresses and defines fundamental land issues which go to the heart of Timor-Leste's development paradigm, including the definition and regulation of: public domain; state private land and the rights and duties of the state over this land; customary land and the rights and duties of the state and third parties operating within customary land.

In an attempt to mitigate the effects of some of these decisions on key groups within society, the law provides for: a very limited protection against eviction for those living in the family home; and a compensation mechanism for some land right holders who will lose access to their land. However, an enduring challenge in appraising the impacts of the Land Law is that, to date, there is no reliable statistics that could assist policy-makers and interested others to understand the consequences of any particular approach to the Land Law.

At the local level and amongst civil society, while the need for land legislation is widely recognized, the Transitional Land Law is perceived as a law that prioritizes the needs of wealthy colonial and occupation era elites and the state. Early drafts of the law were hotly disputed<sup>18</sup> by communities and civil society, who identified a number of key problems surrounding the expansive definitions of state land, the lack of protection for customary land, and weak protections against eviction. More fundamentally, many Timorese commentators and civil society groups argue that the law is not based on broad consultation and that it does not reflect local values and principles regarding the social function and spiritual importance of land.<sup>19</sup>

The Land Law was approved by Parliament in February 2012 but was quickly vetoed by then President Jose Ramos-Horta in March 2012, shortly before he left office.<sup>20</sup> The law was revised and re-submitted to Parliament in 2013 but has yet to be scheduled for debate.

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18 At least 12 submissions were sent to government and parliament by civil society groups, with many more press statements and media releases issued (see Annex 3).

19 Haburas Foundation, 2012, *Komunidade nia lian kona-ba rai: Resultadu husi prosesu konsultasaun Matadalan ba Rai*, Dili; Meabh Cryan 2015, *The Long Haul: Citizen Participation in Timor-Leste Land Policy*, SSGM Discussion Paper 2015/13, The Australia National University.

20 While civil society groups such as the Rede ba Rai, La'o Hamutuk, UNAER, and KSI were instrumental in lobbying the President to veto the Land Law, it is likely that President Ramos-Horta was enabled to take this act given Xanana Gusmao's decision to back his opponent Taur Matan Ruak in the Presidential election later that year.

The most recent change of Government in February 2015 means that the law will return to the Government and must be re-approved by the new Council of Ministers before being sent to Parliament for consideration. It is possible that the recent change in Government, and Rui Araujo's appointment as Prime Minister, may offer new opportunities for debate on land policy issues. Prime Minister Araujo's inaugural address spoke of the need for legislation in this area<sup>21</sup> and his commitment to evidence-based policy. In December 2015, steps were taken to appoint a law reform commission, which will hopefully address the issues surrounding land legislation.<sup>22</sup>

On the other hand, high levels of state investment into land-intensive development along the South Coast and in the new Special Administrative Region of Oecusse (RAEO) makes it likely that the key political figures will opt to maintain 'flexibility' in state-community land dealings, in their view making the expropriation of land for these projects faster and less expensive.<sup>23</sup>

Given this political landscape, and the looming 2017 elections, three options are available to politicians, policy-makers, and civil society:

- The fast approval of the law in its current format, based on a rationale that this law is better than no law;
- Further debate and consultation based on this draft of the law in an attempt to refine and improve certain aspects of the law, but importantly maintaining the core principles and tenets of the law, or finally;
- A complete overhaul of the land policy concepts orienting the law and the drafting of a completely new piece of legislation.

In an effort to support decision-making around these issues, this report aims to lay out some of the advantages and disadvantages to the current Transitional Land Law and to provide some analysis of the likely impacts of the law. As such it should be noted that a limitation of this report is that its analysis is focused mostly on Version 6 of the Land Law rather than a broader analysis of all potential land policy options available to Timor-Leste. Given this approach, the report could be interpreted as pushing the reader to consider the first and second of the three options listed above. While it was outside the scope of the report to consider all land policy options, the author has, where possible, attempted to draw out some of these complexities, especially surrounding the contentious issues of protection of community property and housing rights. For a deeper and more complete discussion and analysis of the broader land policy context and the opinions and perceptions of communities, the Haburas Foundation Matadalan ba Rai Land Consultation Report 'Community Voices on Land' should be considered as a foundational source.

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21De Araujo, R.M., 16/2/2015, Speech by his Excelency The Prime Minister Dr. Rui Maria de Araujo on the Occasion of the Swearing in of the Sixth Constitutional Government, Dili.

22 On the 16th of December 2015, Jorge Manuel Ferreira da Graça, Henrique Côte-Real de Araújo, and Melisa Ibela Diliána e Silva Caldas were sworn in as members of the Legislative Reform and Justice Sector Commission whose mandate is to 'recommend law reform, evaluate how laws are being implemented, and to help harmonize legislation' (Timor-Leste Government, 19 December 2015). José Manuel Guterres was sworn in as a non-permanent member appointed by the President of the Court of Appeal.

23 Cryan 2015, Land Politics under Timor-Leste's New Government, SSGM In Brief Series, 2015/25

## Scope and structure of this report

The Asia Foundation commissioned this report in order to develop internal thinking and programming on land policy issues, and in particular the Transitional Land Law. As such the report attempts to cover a broad range of issues relating to the Transitional Land Law, including:

- Summarizing the processes by which the Land Law was drafted and consulted upon;
- **Outlining the contentious issues within the law and how they have changed over time in various drafts of the law; and**
- Outlining the provisions of the current Land Law and providing basic analysis of some of its potential impacts.

The first section of the report briefly describes the complex policy needs within Timor-Leste's land sector and the various interests that have impacted on land policy issues. The second section of the report seeks to outline the processes surrounding the Land Law consultations and debates to date. The third section outlines the key issues provided for in the Land Law, how they have progressed and changed across the various versions of the law, and what the most recent version of the law states.

An Article-by-Article analysis of Version 6 of the Land Law, which is the latest public version of the law,<sup>24</sup> is provided in Annex 2. A list of all civil society submissions on the Land Law is provided in Annex 3. A timeline of key land policy events is provided on page 7 and a glossary of key land policy terms is provided on page 6.

In its current format, the report covers many issues and is almost 25,000 words. Based on discussions with The Asia Foundation it was decided to maintain the detail of information within this version of the report as a base document that could be used by The Asia Foundation internally for a variety of purposes.

In order to more effectively address the needs of civil society organizations and policy makers in Timor-Leste, it is not intended that this report will be published in its current format but rather that a series of more concise and relevant policy briefs or executive summaries be prepared which would be more useful for key target audiences. It is suggested by the author that 2-5 page summaries could be prepared, focusing on a number of issues, including: the Land Law drafting process; the potential impacts of Version 6 of the Land Law; and/or the broader role of this law in relation to land policy in Timor-Leste.

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<sup>24</sup> A seventh version of the law is currently awaiting approval by the Council of Ministers but has not been made public. Sources suggest that there are only minor changes in this new version of the law and that it is relatively similar to Version 6.

## Section 1: Complex Policy Needs

Vibrant customary land systems, waves of displacement, violence, and unjust colonial occupations have resulted in highly contentious land politics in Timor-Leste. Policy challenges include uncertainty and contestation as to ownership of land but also highly differentiated understandings of land between urban and rural areas. While politically powerful urban elites hope to protect their colonial and occupation era titles, victims of expropriation and those with less land and power see land as tightly linked to colonial and distributional justice. Within the government, an Indonesian inspired top-down approach to land administration coupled with large spending on infrastructure is perhaps the most obvious driver of land policy decisions.<sup>25</sup>

Significant policy development and services are needed in a vast array of areas, including: protection of customary land; provision of social housing; additional support to the justice sector to deal with high case loads; and provision of independent legal aid to vulnerable communities – to name but a few.

Perhaps one of the most important issues to note is the fundamental importance of land to so many parts of the community. Land is the most important asset for the vast majority of the population of Timor-Leste who are involved in subsistence agriculture; as such the current land system effectively feeds the country. At the same time, key decisions about land fundamentally affect a huge range of issues within society: environmental issues; urbanization; equality and wealth distribution; employment; and agriculture. The following section provides a brief background to some of the most fundamental issues and interests that the Transitional Land Law and more broadly, land policy in Timor-Leste, must deal with.

### Customary Land

Understanding land issues in Timor-Leste is not only an issue of clarifying disputed individual ownership rights and titles. Over 97 per cent of Timor-Leste's land is managed through local customary mechanisms<sup>26</sup> which conceive of land not only as an economic resource and a private right, but also as a source of spiritual and cultural identity. The complexity of these local structures coupled with the lack of reach of the state means that land access and rights are effectively defined, managed, and negotiated at the local level<sup>27</sup>.

Demetrio Do Amaral de Carvalho writes that in Timor-Leste land has seven dimensions: *'land gives us our identity; it has social and cultural dimensions and is important for sharing resources amongst families. Land is the basis of our local economy and of our ecology, it gives life and shelter to us all.'*<sup>28</sup> A 2010 Haburas Foundation consultation with 47 communities echoes these ideas stating that,

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25 For example, a recent article by the author (Meabh Cryan), argues that the legislative lethargy of the past few years is a result of significant political economy factors relating to the south coast Tasi Mane development project (overseen by Xanana Gusmao) and the Oecusse Special Economy and Social Market Zone (led by Mari Alkatiri).

26 Fitzpatrick, D., 2002, Land Claims in East Timor, Asia Pacific Press; Nixon, R., 'Non-Customary Primary Industry Land Survey: Landholdings and Management Considerations', USAID/ARD Inc. Research Report, Washington DC, USAID 2005 p8.

27 Fitzpatrick, D., 2002, Land Claims in East Timor, Asia Pacific Press

28 Amaral do Carvalho, D., nd, Perspektiva Ema Timor Kona-ba Rai, Haburas Foundation: Dili.

*'Land is a space to live. Land is rice paddies and a place to plant cassava and taro. Land gives us food, and a place to have a kiosk. Land is a place to plant food and raise animals. Land is water, land is firewood, and land is medicine. Land is the basis of our culture and the footsteps of our ancestors. Land is our sacred rocks and spirit houses. Land shows our identity and our family. Land is how we share our resources and support each other.'*<sup>29</sup>

The depth of the importance of land to Timorese social identity means that traditional western land policy approaches may not be appropriate and will have unanticipated impacts on a wide range of social issues. Mechanisms around consulting with and registering customary land are likely to be complicated and contentious. Effective policy must at once protect communities from third parties and the state while at the same time protect individuals within communities from losing access to lands through the monopolization of power by one individual or group.

Protection for customary land was a key topic of concern for both communities and civil society groups during public consultations on the Land Law. In an open letter to Parliament in April 2012, Rede ba Rai observed that,

*'These land laws will result in new conflict in Timor-Leste, in the future many people may lose the social and cultural values and principles which were left to us by our grandfathers because these laws see land more as an economic commodity (to be bought and sold)...It will result in rich people and poor people and a scarcity of land. Land will be concentrated in the hands of the wealthy and the powerful who can afford to pay the taxes, many people will lose their land which will result in slums in Timor-Leste.'*<sup>30</sup>

Despite their widespread popularity at the community level, these debates seem to have gained little traction with national Government and/or political elites.<sup>31,32</sup> At the donor level, there was some limited discussion of community land issues by the Ita Nia Rai program. While the program originally envisaged mapping customary land as part of the systematic registration process, it abandoned this plan relatively early on in response to criticisms from civil society that the process was ill suited to the local context and should be heavily tested and piloted prior to being rolled out. Throughout the registration process (2008-2012), data collection was focused on urban and peri-urban district capitals. A World Bank Justice for the Poor project engaged with customary land issues, carrying out a number of pieces of research and eventually preparing policy options on customary land.<sup>33</sup> The project did little to further debate surrounding customary land issues due to a lack of buy-in from national government and conversely a lack of buy-in from civil society who questioned the objectives and guiding principles of the project. More recently a World Bank project to support the Government to produce implementing regulations for Chapter 5 seems to have been abandoned<sup>34</sup> (see further discussion in Section 3).

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29 Haburas Foundation, 2012, Komunitade nia Lian Kona-ba Rai: Resultadu Prosesu Konsultasaun Matadalan ba Rai, Haburas Foundation: Dili, p36.

30 Rede ba Rai, 2012, Open Letter to the National Parliament, Dili.

31 Chapter 5 of the Land Law providing protections around customary land was largely the subject of debate between civil society groups and international advisors rather than a key concern of the Government and/or Parliament.

32 Interestingly, the RDTL constitution provides little protection for customary land rights other than a vague statement that the norms and customs of Timor-Leste shall be recognised and valued.

33 World Bank, 2010, Policy Options for Regulating Community Property and Community Protection Zones in Timor-Leste

34 In 2014, the World Bank designed an ambitious USD \$3 million dollar program to Build Capacity for Land Administration Services to Communal Lands Project in Timor-Leste.



## Colonial Land Injustices

Portuguese colonialism and the brutal 24-year occupation of Timor-Leste by the Indonesian military further complicated land tenure arrangements. Under these regimes, the function of land administration was primarily to legitimize the concentration of 'formal' land rights into the hands of key elite groups – effectively side-stepping and eroding customary land tenure norms. The Portuguese and Indonesian administrations both took land from local owners through the use of force, and through the co-optation of complex local political alliances. According to Daniel Fitzpatrick, by 1975, land was concentrated in the hands of a number of elite groups including: the Portuguese state; the mestizo elite; Timorese liurai who had been co-opted by the Portuguese; the Catholic Church; and Chinese traders.<sup>35</sup> It is estimated that between 10 and 30 per cent of the 44,091 titles issued during the Indonesian era were issued corruptly<sup>36</sup> and that a further 30 per cent were issued to Indonesian citizens moving to Timor-Leste from other provinces of Indonesia under the transmigrasi (transmigration) program.<sup>37</sup>

## Displacement

The complexity of colonial land issues has been added to by the multiple waves of displacement experienced by the Timorese due to: Portuguese pacification campaigns; land expropriation for coffee plantations in the nineteenth century; the Japanese invasion during the Second World War; the civil war of 1975; the Indonesian invasion of 1975 and subsequent occupation; militia violence in 1999; and displacement due to the 2006 crisis.

During the Indonesian invasion of 1975, it is estimated that at least 300,000 people were displaced.<sup>38</sup> The Indonesian era policies of transmigration, which relocated families from other Indonesian provinces to Timor-Leste, and translocation, which forced Timorese families to move to more secure roadside settlements, led to significant change in customary land ownership patterns in key parts of the country.<sup>39</sup>

During the 1999 withdrawal from Timor-Leste, the Indonesia military and militia groups destroyed over 70 per cent of the built infrastructure of the country<sup>40</sup> including over 68,000 homes in the capital city of Dili. It is estimated that over 450,000 people were displaced during the 1999 conflict<sup>41</sup>. Confusion and lack of any functioning state administration in the aftermath of 1999 meant that many people returning

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35 Fitzpatrick, D., 2002, 'Land Claims in East Timor,' Asia Pacific Press, p.147.

36 Ibid page 104.

37 Ibid page 66. Fitzpatrick estimates that there were over 25,000 transmigrants mostly living in settlements in Covalima, Baucau, Bobonaro, and Viqueque.

38 While there are few estimates of the total levels of displacement during the 24 year Indonesian occupation, the Timor-Leste Truth and Reconciliation Commission (CAVR) report suggests that at least 300,000 were displaced in the early years between 1978 and 1979 (Chapter 7, paragraph 64).

39 CAVR Chapter 7 on displacement provides a list of these locations.

40 Timor-Leste Truth and Reconciliation Commission (CAVR) (Chapter 7, section 1, paragraph 27).

41 Wassel, T., 2014, *Timor-Leste: Links between Peacebuilding, Conflict Prevention and Durable Solutions to Displacement*, Project on Internal Displacement, p3.

during this period settled in unoccupied and abandoned properties. A report commissioned by the UNHCR estimates that this resettlement led to over half of the houses in Dili being illegally occupied.<sup>42</sup>

Conflict during the 2006 crisis led to the displacement of over 150,000 people. While the crisis was a complex political conflict, tensions around land and housing occupation in Dili is reported to have exacerbated violence there, particularly later in the year when groups took advantage of conflict and uncertainty to eject rival groups from key neighborhoods.<sup>43</sup> Subsequent occupation of housing within Dili made it difficult for many families to return to the houses that they had inhabited prior to 2006. An expensive resettlement process eventually led to the return and reintegration of most people residing in Internally Displaced People (IDP) camps. In a number of cases, which proved difficult to resolve, families were moved to new locations. The tenure security afforded to those families remains unclear. Despite many examples of successful mediation, the post-2006 reintegration process prioritized getting people back to their pre-2006 home rather than resolving the underlying land and housing conflicts and grievances, which were widespread across much of Dili.

These large waves of displacement in 1999 and 2006 mean that many people are relatively recent occupiers of land. A state decision to claim these lands as state land would lead to the eviction of tens of thousands of families.

## Competing Claims

Land tenure insecurity in Timor-Leste is highly class differentiated, with vulnerable families living in the least secure circumstances due to a toxic combination of multiple layers of competing claims, a lack of legal protection, and the widespread use of coercion, corruption, and persuasion to gain and maintain access to land. In legal terms, land in Timor-Leste is generally claimed based on any one of the following: underlying traditional/origin connections; Portuguese era freehold (*propriedade perfeita*) and use (*aforamento*) rights; Indonesian era freehold rights (*Hak Milik*) or use rights (*Hak Guna Usaha* and *Hak Guna Bangunan*); long-term but undocumented possession; and current occupation.

Portuguese era claimants<sup>44</sup> include: the state, the Catholic Church, and key elite families who have significant amounts of land in Dili and often in the municipalities. For example, it is repeatedly observed by local community members and civil society groups that most of the land in Dili is owned by four key families. Whether statistically accurate or not, these perceptions orient much of the discussion and debate about land and housing justice in the city. In rural areas similar stories exist, with powerful Portuguese and Indonesian era families managing to accumulate large tracts of land.

Of this latter group many of their titles would have been limited use rights (*aforamento*) rather than freehold title (*propriedade perfeita*). While the rights of use right holders have not been clarified, many

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42 Knezevic, Neven, 2005. Timor-Leste: Background Paper on Human Rights, Refugees and Asylum Seekers. Report commissioned by United Nations High Commissioner for Refugees, Protection Information Section (DIP)., p.28.

43 Muggah, Robert, Oliver Jütersonke, Ryan Murray, Edward Rees and James Scambary, 2009, Urban Violence in an Urban Village: A Case Study of Dili, Timor-Leste, Report Commissioned by the World Bank

44 For simplicity these descriptions include only Timorese citizen groups as the constitution clearly states that foreign nationals may not own land. However it should be noted that when the state originally allowed for a period of sporadic claims in 2003, 7,000 of the 11,000 claims collected were from foreign nationals.

of these claimants continue to dispose of their assets as freehold rights.<sup>45</sup> As land prices rise in Dili these claims are likely to become more contentious.

While it is often observed that the Portuguese were a relatively 'benign' or 'laissez faire' colonizer, this began to change towards the end of the nineteenth century where substantial head taxes were imposed on males between the age of 18 and 60. A 1901 Law on Concessions stated that all land not based on Portuguese title belonged to the state and in 1910 the administration approved a law giving district administrators the power to grant Álvaro titles of 'empty land' under 100 hectares. In 1971, the Portuguese administration classified all land as either 'state land,' 'private property,' or 'empty land,' language that is often still heard today amongst government land officials. As a result of these expansive dispossessions, colonial land injustice from the Portuguese era remains a contested and emotive issue. The population at large would find it difficult to accept a law that adopted these expansive interpretations of state land. The case study below provides one small example of the types of debates that surround a number of urban cases.

While slightly less than 3,000 titles were given out during the Portuguese era, it is estimated that 44,091 titles were given out during the Indonesian era<sup>46</sup>. Key claimants basing their claims on titles issued during this era include: the Timorese state (which claims all formerly Indonesian state land); elite families who were allocated land by the Indonesian administration and/or military; businesses linked to the Indonesian administration and/or military who received titles; and ordinary citizens or third parties who bought, sold, and registered land during this era.

The vast majority of the population base their claims to their agricultural land and housing on long-term possession with little or no documentation outside of local customary governance norms.<sup>47</sup> While many of these claimants are living on the customary land of their own origin group, many others include: those who were forcibly displaced during the early years of the Indonesian occupation and/or fled to new locations; claimants who were moved to new villages in the early 80s under Indonesian translocation policies; and workers and laborers who moved to coffee or other plantations during both the Portuguese and Indonesian eras.<sup>48</sup>

More recent possessors include those who settled in abandoned properties after the displacement of 1999 and/or 2006, and those who have migrated to Dili following the concentration of resources and opportunities in the post-independence era—such as for work and education.

The state also has a diverse range of interests in land. On the one hand, the state is tasked with facilitating and supporting land rights for everyone, through the creation of laws and the protection and implementation of those laws, land policies, and human rights more broadly. On the other hand, the state itself is also an interested landholder and land administrator. The state must, for example, guarantee public administration and maintain control of buildings and land used for basic services such

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45 A number of large tracts of land in Dili that would originally have been held under aforeamento have been sold on to third parties as freehold rights.

46 Fitzpatrick, D., 2002, *Land Claims in East Timor*, Asia Pacific Press 2002

47 It is important to note that local customary norms of land ownership, where land is marked by the planting of trees and the placing of other markers alongside the telling of origin stories, are highly resilient and in effect across most of the country. In the vast majority of inter family or community disputes, these processes are highly effective and only come under pressure where outsiders such as the state or other third parties who do not recognise the legitimacy of local norms intervene to claim land. (See Fitzpatrick D., A. McWilliam, & S. Barnes, 2012 *Property and Social Resilience in Times of Conflict: Land Custom and Law in East Timor*, for a discussion of the resilience of customary land tenure arrangements).

48 Even in Dili it is common to hear stories of people who were brought as children or young adults to work for elite families and then later were given housing/land on the family plantation.

as government offices, schools, and hospitals. The state also currently wants to secure land for a range of highly ambitious state-driven development priorities identified in the 2011-2030 Strategic Development Plan.<sup>49</sup> It is crucial that new state institutions be reimagined as democratic and accessible<sup>50</sup> (Rede ba Rai 2013).

While it is clear that legislation that resolves first title<sup>51</sup> and land ownership is among the most important first steps in addressing land issues in Timor-Leste, there is much debate on how to proceed with this issue. Successive governments with the support of donor agencies (most notably USAID, UNDP, and the World Bank) have taken an incremental approach, attempting to draft policy for key pieces of legislation as required while focusing mostly on the issues of state land and the resolution of 'first title.' On the other hand, civil society organizations argue that a cohesive land policy based on solid public consultation is required in order to ensure that land policy and legislation responds in full to the needs of citizens and communities and is appropriately phased. The results of a nationwide consultation process run by civil society in 2010 found that 'to date there is still no Land Policy laying down our overarching objectives in regard to our land, and so the many policy and legislative attempts have been disorganized, undirected, and lacking in a common vision'<sup>52</sup>.

## Section 2: Land Law Processes Since Independence

While a number of key land-related laws have been drafted and approved since independence, the land sector has suffered from a piecemeal approach, which has failed to provide an overarching land policy, and in many cases aggravated confusion and frustration surrounding land issues. The following section goes on to discuss these legislative efforts in more detail, focusing in particular on the '*Special Regime for the Determination of Ownership of Immovable Property*' or Transitional Land Law as it is commonly known.

### UNTAET Land and Property Unit

Prior to independence, full legislative and executive authority was vested in the United Nations Transitional Administration in East Timor (UNTAET). UNTAET executed its power to temporarily allocate properties in order to resume basic state functions but did little else to resolve, and perhaps much to aggravate, land issues in the lead up to full independence in 2002. During this time, little was done to address Dili's serious housing crisis, nothing was done to prevent the large scale land grab that

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49 Yoder, L.M., 2015, The Development Eraser in Oecusse, Timor-Leste, *Journal of Political Ecology*. Vol 22, p299-321; Cryan, M., 2015, Dispossession and Impoverishment in Timor-Leste: Potential Impacts of the Suai Supply Base, SSGM Discussion Paper 2015/15, Australia National University; Cryan, M., 2015, Land Politics under Timor-Leste's New Government, SSGM In Brief 2015/25, Australia National University.

50 Rede ba Rai, 2013, *Culture, Power and Justice: Land Registration and Land Justice in Timor-Leste*, Haburas Foundation, Dili, p15.

51 'First title' refers to the creation of a legal system for recognizing legal ownership for the 'first' time since independence. Theoretically, this law would establish the rules by which previous titles and current occupiers would be recognized as owners and lay out compensation mechanisms for those with legitimate titles who will lose out as a result of the new law.

52 Haburas Foundation, 2012, *Community Voices on Land: The results of the Matadalan ba Rai Consultation Process*, Haburas Foundation: Dili, p. 16.

occurred in Dili and urban areas, and little or no incentives were given to refugees to return to their home districts, resulting in many staying in Dili.

A Land and Property Unit (LPU) was set up within UNTAET under the Ministry of Justice. While funding and technical assistance was provided by a number of donors (AusAID, USAID, and CIDA) little progress was made on legislative or policy issues due to the contentious nature of land issues and a reluctance on the part of Timorese elites to allow outsider influence over decision-making in this sector. The UNTAET Administrator (on advice from the National Cabinet) rejected plans for systematic registration of land claims<sup>53</sup> and the LPU’s mandate was thus largely restricted to mediation and allocation of public and abandoned properties through temporary leases.

UNTAET Regulation Number 1 (Article 3) recognizes the transitional validity of Indonesian law until such time as it is replaced by new legislation. Given the lack of a coherent land legal regime to date, this means that in many cases Indonesian legislation is actually the applicable law.

### **FRETILIN Government 2002 – 2007<sup>54</sup>**

In 2003, the Frente Revolucionária Do Timor-Leste Independente (FRETILIN) Government, supported by the Land Law Program, drafted and approved a package of three basic laws regularizing basic state land administration functions. The most significant of these was Law 1/2003, which defines all previously designated Portuguese state land and all Indonesian state property as the property of the Timor-Leste state (irrespective of how it was acquired). The law also provides that all ‘abandoned property’ (a large proportion of land, particularly in urban centers) should be administered by the Timor-Leste state. There was almost no consultation on this law while it was being drafted, and its implementation has regularly proven contentious<sup>55</sup>. Opposition to the law has centered on the fact that communities in Dili and rural areas feel that their land was wrongly taken from them during the colonial era and that as such they should be provided with some form of compensation if the new state of Timor-Leste wishes to continue using this land.<sup>56</sup> While these laws addressed the most burning issues regarding state land (the identification of state land, eviction of occupiers, and leasing of state land) they did not attempt to resolve the underlying issue of private ownership of land.

The table below provides an overview of the various laws, which have been drafted (draft laws never approved or now revoked are in grey with the laws which are currently in effect appearing on a white background).

<b>Table 3: Summary of Land Laws Prepared Since Independence</b>		
<b>Law</b>	<b>Function of Key Articles</b>	<b>Current Status</b>
Constitution of the	Article 54 of the RDTL Constitution recognizes the right to private	In affect

53 Fitzpatrick, D., & R. Monson, 2009, *Balancing Rights and Norms: Property Programming in East Timor, the Solomon Islands and Bougainville*. In S. Leckie (Ed.), *Housing, Land and Property Rights in Post-Conflict United Nations and other Peace Operations: A Comparative Survey and Proposal for Reform*. Cambridge: Cambridge University Press.

54 The first FRETILIN Government held power from 2002 until 2006 with Mari Alkatiri as Prime Minister. During, and as a result of, the 2006 crisis a new Government was appointed with Jose Ramos-Horta acting as Prime Minister. Parliamentary elections in 2007 returned a FRETILIN majority but resulted in a coalition Government led by former President Xanana Gusmao.

55 Da Silva, A.B. and K. Furusawa 2014. *Land, State and Community Reconstruction*. In S. Takeuchi (ed.) *Confronting Land and Property Problems for Peace*. New York: Routledge.

56 Associação Comunidade de Vítimas de Timor-Leste (ACVTL) 2009 ‘Komentáriu no oferta hanoin ba anteprojetu lei bá rai nu. /2009 husi Associação Comunidade Vítimas de Timor-Leste (ACVTL), Dili; Rede ba Rai, 2012 ‘Karta Aberta kona-ba Lei Rai ba Parliamentu Nasional’, Rede ba Rai, Dili.

Democratic Republic of Timor-Leste (RDTL)	<p>property and right of Timorese citizens only to own land. The limitations on the right to private property are firstly that it may not be used to the detriment of its social purpose, and that it may be acquired by state by a legal process once fair compensation is paid.</p> <p>In addition, Article 58 of the constitution recognizes that all citizens have the right to adequate housing.</p>	
Law 1/2003 - <i>The Juridical Regime of Real Estate - Part 1: Ownership over real estate</i>	<p>Law 1/2003 lays down a number of key provisions regarding state property. It:</p> <ul style="list-style-type: none"> <li>• Defines State Property as all land owned by the Portuguese state until the 7<sup>th</sup> of December 1975 (Article 4.1), and all properties constructed by public entities during the Indonesian regime (Article 16.2);</li> <li>• States that all abandoned property is administered by the state (15.1); and</li> <li>• Lays down mechanisms for administrative evictions from state land (Article 7-11).</li> </ul>	Approved by Parliament in March 2003 and still in effect. This law is the primary mechanism by which evictions from state land are carried out.
Law 19/2004 - <i>The Juridical Regime of Property: Official Allocation and Leasing of Private Property of the State</i>	Establishes rules and procedures around the leasing of state property.	Decree-Law approved by the Council of Ministers on the 27 <sup>th</sup> of October 2004 and promulgated on the 17 <sup>th</sup> of December 2004.
<i>Draft Decree-Law for the Regulation of Illegal Constructions and Informal Settlements</i>	This was prepared by the USAID funded LLP2 in 2004. The first debate of the bill at the Council of Ministers took place in December 2005.	Decree-Law never approved.
Law 12/2005 - <i>The Juridical Regime of Real Estate – Part II: Leasing between Individuals</i>	Regulates private leasing between individuals.	Revoked by the Civil Code that governs all land and property dealings between private entities.
<i>Draft Law: The Juridical Regime of Immovable Property - Part III: Property and Transfer Systems, Land Registration, Pre-Existing Rights and Title Restitution</i>	This law was the first attempt to resolve basic ownership rights of land in Timor-Leste. It was drafted by the LLP2 program and submitted to the Ministry of Justice in 2006. The law was never submitted to the Council of Ministers.	Law never approved.
<i>Draft Law on Land Taxation and Expropriation</i>	Law drafted and prepared by LLP2. Submitted to Government in March 2006 but only to be considered when the juridical regime of immovable property Part III was approved and the land registration system fully functional.	Law never approved and draft was abandoned.
Ministerial Order 229/2008 on the National Cadastre	Authorized the National Directorate for Land, Property and Cadastral Services (DNTPSC) and the Ita Nia Rai program implemented by ARD Inc. to undertake a nationwide, systematic	Approved on the 1 <sup>st</sup> of July 2008.

	data collection process.	
<i>Draft Special Regime for the Determination of Ownership of Immovable Property (The Transitional Land Law)</i>	Originally drafted by the Ita Nia Rai program, it aims to resolve the confusion over land ownership in Timor-Leste by creating a hierarchy to decide who is the rightful owner of land in any given case. The core objective of the law is to lay down clear rules on the recognition of ownership, the issuing of compensation, and the processes by which land disputes will be resolved, as well as mechanisms for evicting people who are living on land that does not belong to them. See further discussion below.	Approved by Parliament in 2012 and vetoed by the President in the same year. Currently awaiting approval by the Council of Ministers.
<i>Draft Expropriation Law</i>	Written in 2009 by a Portuguese law firm based in Timor-Leste that also represented property developers. The Expropriation Law regulates in what circumstances and how the state can take land that it needs for public interest projects. <sup>57</sup> According to Rede ba Rai and La'ó Hamutuk analysis, original versions of this law gave too much power to the state to arbitrarily take land. See further discussion below.	Approved by Parliament in February 2012 but vetoed by the President in March 2013. Currently awaiting approval by the Council of Ministers.
<i>Draft Compensation Fund Law</i>	Establishes a fund to be used to compensate people who will lose their land as a result of the decisions made under the Transitional Land Law. For example, under the hierarchy of claims, the party with the strongest claim would receive the land, the second strongest valid primary or secondary claim would receive compensation, but other claimants are not entitled to compensation. The law is not clear as to whether the fund can be used to pay compensation in case of expropriation; there is also little detail about the fiscal management and accountability structures of the fund. Questions include whether this law and the Transitional Land Law in effect allow individuals and the Indonesian state who took land through corruption and force to claim compensation. See further discussion below.	Approved by Parliament in February 2012 but vetoed by the President in March 2013. Currently awaiting approval by the Council of Ministers.
<i>Law 10/2011 - The Civil Code</i>	The Civil Code, largely copied from the Portuguese Civil Code, is the law that will regulate 'day-to-day' property rights in Timor-Leste, once first ownership rights have been established. This includes provisions relating to inheritance, transference, leasing, etc. Article 3 of Law 10/2011 states that the provisions relating to property rights will only come into affect after the issuance of first property titles. The Civil Code revokes Law 12/2005.	Approved on the 22 <sup>nd</sup> of August 2011 and promulgated on the 13 <sup>th</sup> of September 2011.
<i>Decree-Law 6/2011 - Compensation for Resettlement from State Land</i>	This law lays down discretionary compensation and resettlement mechanisms where the state is carrying out evictions of occupants of state land. The law seems to have little government buy-in, implementing regulations were never drafted, and the law has never been implemented.	Approved but never implemented.
<i>Decree-Law 27/2011 -</i>	This law was prepared and approved in 2011 when the Parliament	Approved in 2011.

<sup>57</sup> Initial drafts of the Expropriation Law allowed for expropriation for both public and private interest. Newer versions of this law fortunately restrict this to public interest reasons only.

<i>Regime for the Regularization of Undisputed Property Titles</i>	was delaying the approval of the Transitional Land Law. The law gives the power to the Minister of Justice to issue certificates of presumption of ownership (not titles) to people who had undisputed claims to land, registered under the Ita Nia Rai program process, and after an additional process to republish maps.	
Ministerial Diploma No. 16/2011 on the Cadastral Data Collection Process	An implementing regulation of the previous Decree Law 27/2011.	Approved 19 July 2011.
Ministerial Diploma No. 23/2011	An implementing regulation of the previous Decree Law 27/2011, it contains annexes with all of the publication forms and the types of certificates and documents that claimants will receive.	Approved 23 November 2011.
Decree Law No. 36/2014 <i>Transmission of Immovable Property Rights for the Suai Supply Base Project</i>	An <i>ad hoc</i> Decree Law transmitting the 1113 hectares of land required for the Suai Supply Base to the state. In the absence of an expropriation law, the state passed a specific and <i>ad hoc</i> piece of legislation approving the transmission of land to the state. This situation shows the very real risks to communities in the absence of a Land Law.	Approved 17 December 2014.

## The Transitional Land Law

At its heart, the Transitional Land Law is a 'first title' land law which attempts to balance the rights and needs of previous Portuguese and Indonesian era land right holders with the rights and needs of the current state and it's citizens. The law fulfills a number of key technical functions including:

- Recognizing the rights of previous land owners and users;
- Defining public domain state land;
- Defining and regulating state private land and the rights and duties of the state over this land;
- Regulating the rights of foreigners to own or use land and/or to receive compensation;
- Defining the concept of possession and the effects and criteria of adverse possession;
- Defining and regulating ownership of customary land and the rights and duties of the state and third parties operating within customary land;
- Laying out cadastral mechanisms and the processes for the issuing of land titles; and
- Creating dispute resolution and appeals mechanisms.

In an attempt to mitigate the effects of some of these decisions on key groups within society, the law also provides for limited protection against eviction for those living in the family home and a compensation mechanism for land right holders who will lose access to their land. The issue of evictions was raised early on in the Ita Nia Rai program by a land law consultant. An enduring challenge in appraising the impacts of the Land Law is that, to date, there are no reliable statistics that could assist policy makers and interested others to understand the consequences of any particular approach to the Land Law.



## Drafting Process

<b>Sep-08</b>	Ita Nia Rai publishes Land Law policy options.
<b>Jun-09</b>	Version 1 of the Transitional Land Law is released for public consultation.
<b>Sep-09</b>	The Land Law consultation period is extended for a further two months and Version 2 of the Land Law is released.
<b>Nov-09</b>	Version 3 of the Land Law is released.
<b>Mar-10</b>	Version 4 of the Land Law is approved by the Council of Ministers and sent to Parliament.
<b>Jun-12</b>	Parliamentary elections return CNRT to a coalition government and Xanana Gusmao as Prime Minister.
<b>Jan-12</b>	Committee A of Parliament debates the Land Law in Maubara, Liquica and prepares some amendments to the law. La'ó Hamutuk and Haburas monitor this process.
<b>Feb-12</b>	The Land Law and associated Expropriation Law and Compensation Fund Law are approved by Parliament.
<b>Mar-12</b>	The Transitional Land Law, Expropriation Law and Compensation Fund Law are vetoed by President Jose Ramos-Horta.
<b>July-12</b>	Taur Matan Ruak replaces Ramos-Horta as President of Timor-Leste.
<b>Aug-12</b>	Dionisio Babo Soares is appointed Minister for Justice.
<b>Jun-13</b>	The package of three laws is sent back to Parliament after substantial revisions.
<b>Feb-15</b>	Xanana Gusmao steps down as Prime Minister, appointing Dr. Rui Araujo to take his place.
<b>Dec-15</b>	Government representative Avelino Coehlo confirms that a seventh version of the Land Law is before the Council of Ministers.

Based on research and policy discussions carried out by LLP1 and LLP2, the Ita Nia Rai program's legal advisor began drafting a Land Law policy document in early 2008. These policy options were presented

to a drafting committee in September 2008<sup>58</sup>. This document covered a number of areas including recommendations around the regulation of:

- Property in the possession of the state;
- First recognition of undisputed ownership rights;
- First recognition of contested ownership rights (including long-term peaceful possessors and previous title holders);
- Foreigners' property rights;
- Abandoned property;
- Community Land;
- Compensation;
- Decision making and dispute resolution; and
- A statutory protection against eviction.

Based on these policy options and debate within the Ministry of Justice, the first public version of the Land Law was released for public consultation on 12 June 2009. The original Ministry of Justice plan for consultation allowed comments and submissions on the law within a two-and-a-half-month period ending on the 31 August 2009. After significant lobbying from civil society groups<sup>59</sup> and opposition party leaders (most notably Fernanda Borges from *Partidu Unidade Nasionál*), the Ministry agreed that they would hold consultations in each of Timor-Leste's 13 districts. After another campaign around the design of this participatory process, further consultations were organized in 27 sub-districts. While notes and video were taken by Ita Nia Rai and the Ministry of Justice at the time, it is not clear if any of these survive. Notes of the consultation process were not submitted by the Ministry of Justice to the National Parliament at the time of debate on the Land Law.

Civil society advocates argued that these policy options did not reflect Timor-Leste cultural understandings of land, that given the importance and fundamental nature of land in Timor-Leste the Transitional Land Law should be based on a broadly consultative land policy, and that the process of drafting laws and policy was vitally important to resolving land issues in Timor-Leste.

As a result of the breadth and number of districts covered, this process became known as one of the most consultative legislative processes since Timor-Leste became independent in 2002.<sup>60</sup> Despite this praise, civil society organizations claim that the process was in fact severely flawed – particularly given the enduring significance of this law on equity and justice outcomes.<sup>61</sup> Rede ba Rai press releases at the time quoted consultation participants stating “the government isn't interested in our opinions, so why would we give our opinions, for this consultation to be effective we would need at least four days,”<sup>62</sup>

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58 Lopes, I. 2008. Technical Framework for a Transitional Land Law for East Timor. USAID/ARD Strengthening Property Rights in Timor-Leste. Dili: Ita Nia Rai Project Report.

59 The Rede ba Rai prepared a list of minimum requirements for consultation on the land law' in a press release in June 2009 (Rede ba Rai, 2009, Minimum Requirements for Public Consultation on the Land Law, Dili). While the Ministry did agree to extend the consultation period they did not take on board all of the recommendations and there remained significant problems with the consultation process (See Haburas Foundation, 2012, *Komunidade nia Lian Kona-Ba Rai: Resultadu husi Prosesu Konsultasaun Matadalan ba Rai*, Dili and Cryan, M., 2015, *The Long Haul: Citizen Participation in Timor-Leste Land Policy*, SSGM Discussion Paper 2015/13, Australia National University).

60 Ministerio Justisa RDTL, 2009, 'Konsulta Publiku Lei ba Rai Datuluk iha Lautem. Press Release: 14 July 2009; Srinivas, S. and C.B. Keith 2015. *Timor-Leste: Securing Communal Land Rights and Enabling Development Investment — Challenges and Opportunities*. Paper presented at Annual World Bank Conference on Land and Poverty, Washington, DC, 23–27 March 2015; UNDP Timor-Leste, 2013, *Revised Version of Land Law Package to Be Presented Following Nationwide Consultation*. Press Release: 26 April 2013.

61 Rede ba Rai, 2009, *Monitorizasaun no Notalensia husi Governu sira nian Konsultasaun Publiku nivel distrital kona-ba Lei Rai*; Rede ba Rai, 2009, *Only Brief Thoughts from Baucau on the New Land Law*, Rede ba Rai Press Release: 27 July 2009; Rede ba Rai 2009, *Los Palos: US Ambassador and the Minister for Justice Bring the Draft Land Law to Lautem*, Rede ba Rai Press Release: 28 June 2009.

62 Paulino Santos, *Consultation Participant in Lautem District*, quoted in - Rede ba Rai, *Los Palos: American Ambassador and Minister for Justice bring the Draft Land Law to Lautem*, Rede ba Rai Press Release, Los Palos: 18 June 2009.

and “we have experienced these types of meeting formats before, what happens is that we do not get to share our ideas.”<sup>63</sup>

A new version of the law, which included a number of improvements around the issue of customary land, was published in September 2009<sup>64</sup>. Follow up consultation meetings were held in 26 sub-districts across the country.

In November 2009, another version of the law was released. Despite popular sentiment expressed to the contrary in consultation meetings, it is at this stage that we begin to see a significant increase in the powers of the state<sup>65</sup>.

## **Parliamentary Approval**

On 6 April 2010, a package of three laws, including not only the Transitional Land Law but also a new Expropriation Law and Compensation Fund Law that had not been part of the public consultation process, were presented to Parliament after approval by the Council of Ministers the previous month. Parliamentary debate on the package of laws began in late December 2011 and continued into the new year, with Committee A of Parliament spending a fortnight debating the laws in Maubara. Civil society maintained strong opposition to both the content and drafting mechanisms of these laws throughout this time and in particular lobbied parliamentarians to separate discussion of the Land Law from that of the Expropriation Law and Compensation Fund Law, neither of which had been subject to public consultation. The laws were finally approved in February 2012.

## **Presidential Veto**

Under significant pressure from civil society, and as one of his last acts as president, then President Jose Ramos-Horta vetoed all three laws in March 2012.<sup>66</sup> The President outlined a number of reasons for vetoing the laws, detailed in three letters sent to the President of Parliament on the 20<sup>th</sup> of March 2012. In relation to the Transitional Land Law he cited in particular: the lack of public consensus surrounding the law; the large discretion given to the state to acquire state land; the lack of clarity surrounding the definition of public domain land; the lack of clarity surrounding compensation mechanisms; the large amount of power given to the Minister of Justice in choosing the members of the Cadastral Commission; the lack of clarity surrounding church land; and the lack of protection given to citizens currently occupying housing.

According to the constitution and due to the change of government in June 2012, the three draft laws had to be re-introduced to Parliament by the Council of Ministers before they could be debated by the

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63 Joaniko Jeronimu Consultation participant in Lautem District quoted in a Rede ba Rai, Los Palos: American Ambassador and Minister for Justice bring the Draft Land Law to Lautem, Rede ba Rai Press Release, Los Palos: 18 June 2009.

64 Ministry of Justice Timor-Leste, 2009a, Special Regime for the Determination of Ownership of Immovable, Chapter 5.

65 Ministry of Justice Timor-Leste, Version 3 of the Special Regime for the Determination of Ownership of Immovable Property, Article 8.

66 Presidencia da Republica, 2012, Letter to His Excellency Fernando La Sama de Araujo, President do Parlamento Nacional Vetoing the Parliamentary Decree No. 69/II Approving the Special Regime for the Determination of Ownership of Immovable Property, 20 March 2012 — Portuguese; Presidencia da Republica, 2012, Letter to His Excellency Fernando La Sama de Araujo, President do Parlamento Nacional Vetoing the Parliamentary Decree No. 71/II Approving the Compensation Fund Law, 20 March 2012; Presidencia da Republica, 2012, Letter to His Excellency Fernando La Sama de Araujo, President do Parlamento Nacional Vetoing the Parliamentary Decree No. 70/II Approving the Expropriation Law, 20 March 2012.

newly elected Parliament. The government took this opportunity to carry out a further minor consultation process at the national level resulting in some changes to the laws. This consultation was confined to a high-level meeting at luxury compound JL Villas and additional time for national level civil society to submit ideas on the law. A sixth version of the Transitional Land Law was approved by the Council of Ministers and finally sent back to the National Parliament in June 2013.<sup>67</sup>

Since this time there has been little movement and no parliamentary debates on the laws. In policy circles it is frequently suggested that the government and in particular then Prime Minister Xanana Gusmao urged Committee A of Parliament not to schedule debate on the laws. Due to the resignation of Prime Minister Gusmao in early 2015 and the subsequent change of government, the draft laws were withdrawn from the parliamentary agenda. Secretary of State for Land and Property, Jaime Lopes, confirmed that a revised version of the Transitional Land Law has been sent to the Council of Ministers but that it would not be approved until a law regarding administrative boundaries was also finalized.<sup>68</sup>

As this report was being finalized in March 2016 a number of media sources are now reporting that the Council of Ministers will finally debate a new version of the land law next month (April). It is not clear whether the law on the table is Version 7 (currently not publicly available) or another version of the law.<sup>69</sup>

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67 Ministry of Justice Timor-Leste 2013, *Fundo Financeiro Imobiliário — Versão para Conselho de Ministros*, 2013, Portuguese (Versaun 6); Ministry of Justice Timor-Leste 2013, *Lei das expropriações, Versão para o Conselho de Ministros*, 2013 (Versaun 6); Ministry of Justice Timor-Leste 2013, *Rejime Espesial kona-ba Definisaun Titularidade de Bens Imóveis — Versaun ba konsellu Ministru*, 2013, Tradusaun ba tetum ne'ebe la'os oficial (Versaun 6). Note that the press release of the minutes of the Council of Ministers mentions only the Transitional Land Law and the Compensation Fund Law. It is not clear that the Expropriation Law was in fact approved by the Council of Ministers.

68 Lopes, J. 21/8/2015. *Seminariu kona-ba Direitu ba Rai no Direitu ba Uma husi Perspektiva Direitus Humanus nian*. Laws regarding local administrative boundaries are important both for local administration and decentralization processes. They may have some impact on the delineation of community land because in many areas Aldeia and Suku boundaries are connected in complex ways with the boundaries of customary land.

69 Soares, O., *KM Sei Diskuti Lei Rai*, *Independente*: 17 March 2016.

## Section 3: Key Issues in the Draft Transitional Land Law

The Transitional Land Law is best interpreted as a series of legal recognitions of property rights and contrasting compromises, which attempt to sweeten the deal for various actors and groups who may be negatively affected by the law. While reaching a balance that has broad acceptance is a difficult task, there are a number of elements in the current law that have proven unpopular at the community level. The most contentious issues within the Land Law include: the recognition of previous colonial and occupation era land owners; the expansive definition of state land; the lack of protection against eviction for current occupiers and in particular for vulnerable group (such as the urban poor, women, children, and farmers); a lack of independence within the Cadastral Commission (a decision making authority which is entirely made up of state-appointed members); and finally, the lack of protection of customary land.

The policy options paper released by Ita Nia Rai in 2008<sup>70</sup> states that the role of the Land Law is to: recognize ownership rights of consensual owners (undisputed cases); establish criteria to resolve disputed cases where overlapping rights exist; convert previous property rights and long-term peaceful possession into ownership rights, according to established legal criteria; and establish the administrative mechanisms and processes that will allow the Timorese state to implement this regularization of property rights in an effective and efficient manner.

In an attempt to mitigate the effects of some of these decisions on key groups within society, the law also provides for: a limited ‘protection against eviction’ for those who will lose their access to housing under the Land Law; and a compensation mechanism for land right holders who will lose access to their land.

The Transitional Land Law does not regulate ‘day-to-day’ land issues such as sale of land, inheritance, surveying, and ‘normal’ adverse possession.<sup>71</sup> These issues are dealt with in the Civil Code approved by Parliament with little public consultation in September 2011.

The remainder of this section will outline and discuss the key issues regulated by the Transitional Land Law. Where possible, reference is made to the latest public version of the Land Law (Version 6), however, in order to aid comparison and to examine where and why certain changes were made to the draft law, the section will occasionally make comparisons between the six public versions of the draft law. The table below clarifies each of these versions and how they will be referred to in the report.

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70 Lopes, I. 2008. Technical Framework for a Transitional Land Law for East Timor. USAID/ARD Strengthening Property Rights in Timor-Leste. Dili: Ita Nia Rai Project Report.

71 Most countries will have provisions around special adverse possession or ‘squatters rights’, whereby after a certain length of time in possession of property a person can gain ownership rights. The Timor-Leste Civil Code (Law 10/2011) lays down the provisions for special adverse possession (Article 1207 – 1221), which will apply in Timor-Leste once first titles have been recognized (not before). The Transitional Land Law creates a ‘special adverse possession’ provision that applies during the recognition of first titles. In order to qualify for special adverse possession, a claimant’s possession must have begun *before* 31 December 1998.

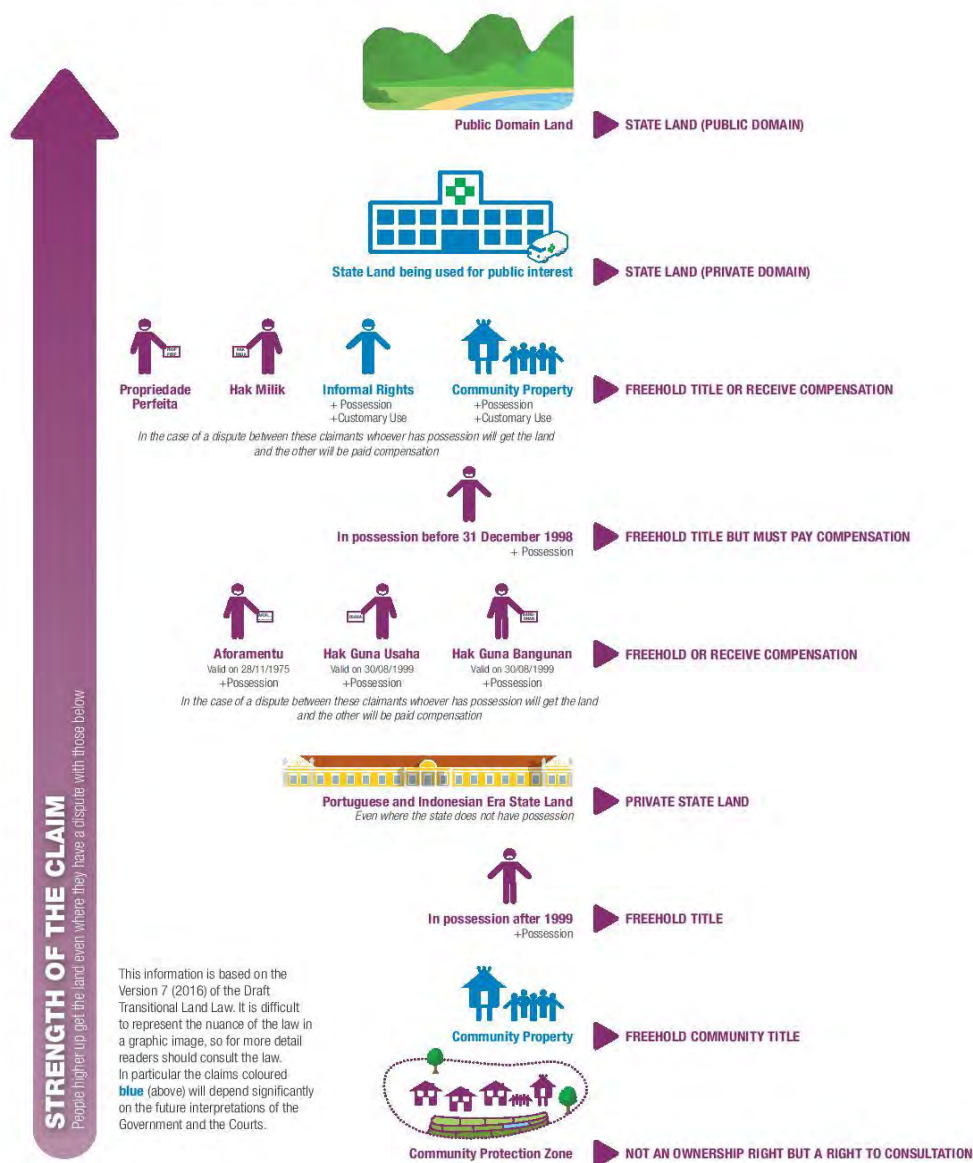
**Table 5: Versions of the Special Regime for the Determination of Ownership of Immovable Property**

<b>Version (as referenced in this report)</b>	<b>Date</b>	<b>Status</b>	<b>Language availability</b>
Version 1 (Ministry of Justice Timor-Leste, 2009b)	Released for consultation: 6 June 2009	Consultation Draft	English, Tetun, Portuguese
Version 2 (Ministry of Justice Timor-Leste, 2009a)	Released for Consultation: 22 September 2009	Consultation Draft	Portuguese, Unofficial Tetun translation
Version 3 (Ministry of Justice Timor-Leste, 2009c)	Released to public: 1 November 2009	Consultation Draft	Portuguese, Unofficial Tetun translation
Version 4 (Ministry of Justice Timor-Leste, 2010)	Approved by Council of Ministers: 10 March 2010	Approved by Council of Ministers and Submitted to Parliament	Tetun, Portuguese, English
Version 5 (Parlamentu Nasionál de Timor-Leste, 2012)	Approved by Parliament: 13 February 2012	Approved by National Parliament	Portuguese, Tetun
Version 6 (Ministry of Justice Timor-Leste, 2013)	Approved by Council of Ministers: 25 June 2013	Approved by Council of Ministers and Submitted to Parliament	Portuguese, Tetun and English
Version 7 (Ministry of Justice Timor-Leste, 2015)	Not yet public	Reportedly awaiting approval by Council of Ministers but there are many different reports as to the current status of the law. Currently not public.	

# Prioritization of Right Holders, Special Adverse Possession, and Compensation

At the heart of the Land Law, and without doubt the most contentious provisions of the law, are those focusing on the resolution of the land rights of previous titleholders. The law essentially provides a hierarchy of rights or prioritization of right holders. A rough understanding of this hierarchy can be seen in the info graphic below; those at the top win land in cases of disputes with those lower down the hierarchy. It should be noted that the law is more complex than is easily presented in an info graphic .

## WHO GETS LAND? ACCORDING TO THE DRAFT TRANSITIONAL LAND LAW



### **Primary Rights (Propriedade Perfeita and Hak Milik)**

In general, the rights of claimants who hold Portuguese era freehold rights (Propriedade Perfeita) or Indonesian era freehold rights (Hak Milik) have been consistently prioritized in all versions of the law.<sup>72</sup> Civil society and other interest groups have raised a number of concerns relating to this hierarchy of rights during Land Law consultations and parliamentary debates. In early versions of the law, some groups felt that there was significant recognition for previous titleholder rights and insufficient protection for customary rights and community property. While Version 6 still prioritizes Indonesian and Portuguese era primary rights, it also recognizes informal property rights based on long-term peaceful possession as a type of primary right. Article 46.1 of Version 6 further states that in a dispute between primary right holders without possession, priority will be given to informal long-term peaceful possessors thus strengthening the protection of long-term peaceful possessors.

Article 28 of Version 6 states that Community Property (once established) will have the same standing as an informal property right (a type of primary right) in the case of a dispute. While the crux of most of these cases will be how to establish that land is in fact community property as defined by Article 28, it is a step in the right direction compared to older versions of the law.

### **Secondary Rights (Aforamento, Hak Guna Usaha, and Hak Guna Bangunan)**

Portuguese era secondary rights (Aforamento) and Indonesian era secondary rights (Hak Guna Bangunan and Hak Guna Usaha) are granted where the holder is in possession of the land (Article 38.1 and 38.2, Version 6) and where that possession is not based on violence (Article 38.2, Version 6).

Originally, rights of Aforamento were granted by the Portuguese state to an individual for a specific purpose (for example, the use of land for agriculture) and for a specific time period. The Transitional Land Law converts these rights to full freehold rights in cases where the titleholder is still in possession of the land.<sup>73</sup> Version 6 of the law also clarifies that, in the case of Aforamento, the secondary right in question must not have expired before the 28 November 1975,<sup>74</sup> and in the case of Hak Guna Usaha and Hak Guna Bangunan, must not have expired before the 30 August 1999.<sup>75</sup>

The interpretation of what constitutes 'violence' as mentioned in Article 38.2 has not been defined in any detail but is likely to be a contentious issue<sup>76</sup> (see discussion above relating to systemic violence).

### **Special Adverse Possession (People who occupy land since before 31<sup>st</sup> December 1998)**

An adaptation of the normal rules of adverse possession allows that in disputed cases between a claimant in possession and a claimant who holds a previous secondary title (per the Secondary Rights discussed above) the right of ownership of the immovable property is awarded to the current possessor

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72 This trend began in Article 27 of Version 1 and generally continues through to Article 37 and 42 of Version 6. Later versions of the law provide some adaptations to this priority, for example, the second and subsequent versions of the law recognise informal property rights based on long-term possession as a type of primary right (Article 46.1, Version 6).

73 There seems to be some debate on this point within Timorese political circles. During Committee A debates, some parliamentarians suggested that an Aforamento right was a right that eventually led to a full freehold right after the relevant period had passed. It is interesting that key land elites were attempting to make this case and might suggest that there will be some resistance to Article 2.3.

74 Article 2.3, Version 6.

75 There is some confusion here as the Tetun version states the 28 November 1975 whereas the Portuguese version states the 7 December 1975. It is to be assumed that this is a translating error and that the 28th of November was intended as this was the date in the Portuguese version of the law that was approved by Parliament in February 2012.

76 For example, the Haburas Foundation nationwide consultation process provided a story of how the Indonesians came to buy land belonging to a man in Fuilorlo. They put a pile of money on the table and put a gun on top of the money as a threat, and so the man had no choice but to sell his land (Haburas Foundation, 2012, p. 48).



if they acquired the property peacefully, before 31 December 1998,<sup>77</sup> and have used the property with the intention of ownership continuously and publicly (Article 20 and 22, Version 6). However, the possessor who is awarded ownership must then pay compensation to the titleholder who has lost their right (Article 48.1 and 48.2, Version 6).

In order to make this requirement more palatable, Article 48.5, Version 6 provides that the state will assume responsibility for the payment of this compensation and that the claimant will owe a mortgage to the state. The state may concede exemption from the payment where the claimant can show financial need.

Article 61 of Version 6 also provides a new clause, which states that in cases where the eviction of occupants will require the resettlement of a large number of people, the state may choose instead to expropriate the land from the owner according to provisions laid out in the Expropriation Law in order to give the land to the current possessors.

### **Civil Society Concerns: What has not changed in Version 6**

A number of concerns were raised by civil society in relation to the Articles establishing the prioritization of rights. Few of these issues were sufficiently addressed in Version 6 of the law. Firstly, given the use of force throughout Timor-Leste's colonial history, and the violent and corrupt military occupation of Timor-Leste by Indonesia, it was felt by many citizens and civil society groups that prioritizing the rights of previous right holders without clearly defining 'violent acquisition' would lead to further entrenching past human rights abuses.<sup>78</sup> Despite Daniel Fitzpatrick's<sup>79</sup> estimates that between 10 – 30 per cent of Indonesian era titles were issued corruptly there is little discussion of how this 'systemic corruption' will be interpreted in the law. A Rede ba Rai letter to President Taur Matan Ruak states:

One of the most contentious issues in the law surrounds the cut off date of the 31<sup>st</sup> of December 1998. What this boils down to is that anyone who occupied private land after this date (i.e. people who occupied empty or abandoned land when they returned after fleeing the 1999 violence) will not be given rights to this land. There are few reliable statistics on how many people are likely to be affected by this situation, however, given the large waves of displacement in 1999 this is likely to be a large proportion of the population. Debate on either side of this issue has been heated. While many civil society submissions<sup>80</sup> have suggested that the cut off date should be later than the large scale displacements of 1999 and also that mediation processes carried out during the 2006 re-integration process should be upheld,<sup>81</sup> many people feel that this would benefit people who used the destruction and chaos of 1999 in order to occupy land. Despite significant civil society advocacy and community level dissent (especially in urban areas) regarding the 31<sup>st</sup> of December cut off date for special adverse possession, we see no changes to this date in subsequent versions of the law.

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77 The original policy document prepared by Ita Nia Rai suggested the 26 April 2006 as the cut off date, which obviously would have resulted in significantly less disturbance to current possessors.

78 Associação Comunidade de Vítimas de Timor-Leste (ACVTL), 'Komentáriu no oferta hanoin ba anteprojetu lei bá rai nu. /2009 husi Associação Comunidade Vítimas de Timor-Leste (ACVTL)', 2009, Dili; Centre on Housing Rights and Evictions (COHRE), Submission on the Draft Transitional Land Law of Timor-Leste, 2009, COHRE, Phom Penh.

79 Daniel Fitzpatrick, *Land Claims in East Timor*, 2002, Asia Pacific Press, p66.

80 *Submission on the Draft Transitional Land Law of Timor-Leste*, 2009, COHRE, Phnom Penh; Rede ba Rai, 'Open Letter to National Parliament on the Transitional Land Law' April 2012, Dili; Rede ba Rai, 'Letter to President Taur Matan Ruak' September 2012, Dili.

81 The first version of the draft law did not recognise the rights of IDPs resettled by the Ministry of Social Solidarity after the 2006 crisis and so runs the risk of undermining this socially accepted mediation process. COHRE, 2009 *Submission on the Draft Transitional Land Law of Timor-Leste*.

It is important to note that this issue should not be conflated with the issue of people living on state land who are in a significantly more vulnerable position. The provisions of special adverse possession do not apply to them at all, and instead the state's claim will trump a private claim in almost all circumstances.

Much of the land currently held by elite families in Dili is in fact held under Aforamento, or other secondary rights. It was also suggested by a number of civil society organizations that the law does not provide sufficient protection to right holders before the law is implemented and their rights are secured<sup>82</sup> and that this may lead to a rush to evict possessors from land prior to a decision being taken as to their right. More recently, civil society groups have suggested that the current escalation in evictions is in part because large landholders realize that their claims are stronger if they remove long-term possessors before the Land Law is passed.

## State Land

Since Independence the definition of state land and the power of the state to expropriate land for development have been two of the most contentious land issues. In Law 1/2003 the state established a harsh rule, stating that: all Portuguese era state land; all Indonesian era state land; and all abandoned land becomes Timorese state land.

As a result of influence from various legal drafters, changes in Government, and repeated advocacy from civil society groups and citizens, the concept of state land has waxed and waned<sup>83</sup> throughout subsequent versions of the Transitional Land Law. In the first version of the law, state land included: all land without a title,<sup>84</sup> all land within the public domain of the state (as defined by a future decree law),<sup>85</sup> all land currently within the possession of the state;<sup>86</sup> property formerly owned by foreign claimants and not subject to adverse possession;<sup>87</sup> and property formerly owned by a legal entity which no longer exists and which is not subject to adverse possession.<sup>88</sup> In contrast Version 6 of the Transitional Land Law provides significant improvements in two key areas relating to state land.

Firstly there is a significant rebalancing of the definition of state land in Article 9.2 which allows that claims based on: primary rights (including informal rights); secondary rights who also have possession; and claims based on adverse possession, will trump state claims to land where the land in question is not being used by the state for administration of public interest-related activities. This change will be very significant for coffee farmers in the highlands who were at risk of losing their lands under previous

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82 COHRE, 2009 *Submission on the Draft Transitional Land Law of Timor-Leste*; La'o Hamutuk. (2010). Who will get land under the draft transitional Land Law? Webpage available at: <http://www.laohamutuk.org/Agri/land/10WhoGetsLandEn.htm> (Accessed 02 February 2015)

83 By 2012, the Land Law, which was finally approved by the National Parliament, maintained these categories but also included: a significantly expanded definition of public domain land (Article 5.3, Version 5), which provides a long list of the types of infrastructure that is considered as being part of the public domain of the state as well as an Article which allows the state to identify further areas of public domain in decree legislation (Article 5.1, Version 5); a provision echoing Law 1/2003 that the Timorese state is entitled to any land used by the Portuguese state until the 7th of December 1975, and Indonesian administration until the 19th of October 1999, *even where the state does not currently have possession of this land* (Article 6.5, Version 5); a blanket provision that the state is entitled to all property in its possession, *no matter the status of other claimants* (Article 6.1, Version 5); a blanket provision stating that *no 'arbitrary occupant' of state land is considered as having possession* (Article 91.3, Version 5); and an Article stating that all abandoned land as identified by Law 1/2003 is considered as being within the possession of the state (Article 6.3, Version 5).

84 Article 8.2, Version 1

85 Article 7, Version 1

86 Article 8.1, Version 1

87 Article 11.1, Version 1

88 Article 10.3, Version 1

versions but will be protected under Version 6. The outstanding issue relates to the definition of public interest in Article 9.2. At the moment the law provides no definition of public interest and the breadth with which the state chooses to interpret this article will have significant implications on the implementation of the law and the protection against eviction. If the state was to take a broad interpretation of public interest (for example including private development which benefits the economy) this could still allow the eviction of large numbers of people.

Secondly, Version 6 of the law goes some way to strengthening the special protection against eviction (Article 58-61, Version 6). While early versions of the Law provided a limited protection against eviction Version 6 improves the decision making processes in a number of ways. See further discussion below. Article 44 provides that the state may lease state property to occupiers of state land but this decision is left at the discretion of DNTPSC and the law does not provide any clear criteria on how this decision should be made. The Presidential veto of the law in March 2012 specifically took issue with the discretionary powers given to the state and the large amounts of land being classified as state land.

In terms of making decisions relating to land disputes the Ministry of Justice retains a high level of influence over the Cadastral Commission (Article 65-76 of Version 6), established by the law as an administrative appeals body. Fortunately, this administrative appeals process does not impact on citizens' access to judicial appeal, and despite a negative decision from the Cadastral Commission, cases may still be appealed to the Courts (Article 77-81).

## **Special Protection Against Eviction**

The Land Law establishes a special protection against eviction which provides that:

*A resident in a family home, occupying a property the ownership of which is recognized or awarded to a third party, can be evicted only after an alternative residence has been provided to him/her, or after a period of eighteen months has elapsed following the recognition or award of the right of ownership, whichever occurs first. (Article 60, Version 6).*

The Ministry of Social Solidarity (MSS) is responsible for declaring a property a 'family home,' and in the event that an eviction notice is issued, the recipient may submit a request to MSS.

A number of civil society submissions made during the 2009 consultation process, and subsequently during parliamentary debates, argued that the protections fell far short of international law and Article 58 of the constitution which guarantees the right to housing to all citizens. Specifically they stated that:

- Evictions should not occur at any stage unless the evictee had access to alternative adequate housing;
- That evictions are only lawful in exceptional circumstances, where it is established that there is no feasible alternative;
- Where evictions were absolutely necessary, there should be significantly more detail in the law around eviction procedures and compliance with basic human rights.<sup>89</sup>

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<sup>89</sup> Since Independence, Timor-Leste has not had a particularly good track record of following basic human rights standards during evictions. The Special Rapporteur on Extreme Poverty, Magdalena Sepulveda Carmona, who visited Timor-Leste in 2011 stated that 'the use of such

The Centre on Housing Rights and Evictions specifically noted that eviction procedures laid out in the law should include requirements for:

- Genuine consultation with those affected;
- Adequate and reasonable notice for all affected persons prior to the scheduled date of eviction;
- Information on the proposed evictions and the alternative use of the land to be shared with all affected families;
- Evictions not to take place in particularly bad weather, at night, or at times which are likely to cause significant distress or hardship to affected persons;
- That government officials be present to monitor all evictions;
- That legal remedies and legal aid be provided.

### **What has changed in Version 6?**

In terms of the special protection against eviction, Version 6 includes a number of improvements in comparison to previous versions of the law. Article 58.2 broadened the definition of the family home to include land that is being used to generate the basic livelihoods of the family and where the family does not have the means to acquire alternative land. Article 61 added an option which stated that in cases that would affect large numbers of people, the state could choose to expropriate the property in order to give rights to the large numbers of people living on the land in question. Unfortunately, this option remains at the discretion of the state and no criteria was laid down for this decision making process. Article 62 provided two new articles stating that 'Administrative eviction cannot violate peoples dignity, human rights, or security' (Article 62.1, Version 6) and that 'the state may not use force during evictions except under exceptional circumstances where the presence and participation of the police is justified, in accordance with the principles of necessity and proportionality' (Article 62.2).

Article 63 of Version 6 lays down significantly more detail in relation to eviction procedures, including that:

- Eviction notices and clear explanations must be given in person to those affected by the eviction;
- That eviction notices must be written in both Portuguese and Tetun and that they must include information relating to: the property in question, the timeframe of the eviction, legal remedies available to the affected parties, information relating the special protection against eviction and the process of declaring a family home, as well as information relating to legal aid options;
- That the timeframe for eviction be significantly lengthened from 30 to 90 days.

Earlier versions of the law<sup>90</sup> stated that MSS must issue this declaration within 30 days and that 'when the time period referred to above has elapsed without a response from the Ministry of Social Solidarity, it is considered that the petitioner is *not* a resident in the family home.' La'ó Hamutuk and Rede ba Rai specifically lobbied that the responsibilities of MSS be clarified and that burden of Article 53.4 (Version 1) be reversed so that a lack of response from MSS does not automatically indicate that the residence is not considered to be a family home. A significant success of Version 6 is that it has reversed this

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eviction practices is in clear violation of its [Timor-Leste's] human rights obligations.'

90 Article 53.4, Version 1

position and that Article 65.4 now states that where MSS does not respond it is assumed that the home is a family home.

### **What has not changed in Version 6?**

While Version 6 does improve some of the procedural requirements surrounding eviction processes, it does not address the core of the problem. Article 66 (Version 6) states that where the residence in question is declared to be a family home, the occupants are given an extension of 18 months and/or the provision of alternative housing, whichever happens first. This implies that once the 18 month period is over the state may carry on with the eviction irrespective of whether the family has acquired alternative housing or not. It presumes that it will be possible for all families to obtain alternative housing within 18 months and does not place the burden of providing that alternative housing on the state.

## **Customary Land and Community Property**

The Land Law includes a chapter on 'community land' (Articles 24-29, Version 6). Land (and the various social structures governing land) in Timor-Leste is core to the identity and very existence of the local way of life. Any legislation regulating this land is therefore in fact regulating not only the physical land but also the range of social structures and norms that are bound up in land. As such this section of the Land Law is of fundamental importance and where insufficiently thought out, could prove highly destructive to local communities and rural society at large.

Version 6 of the law essentially creates two social constructs: that of 'community property' and that of the 'community protection zone (CPZ).' Community property (Article 28) is land that a local community considers as belonging to them and that they use together according to local traditional customs (*lisan*). Once land is recognized as community property, it has the same legal standing as an informal property right<sup>91</sup> and it cannot be alienated.<sup>92</sup>

By contrast, a CPZ is not an ownership right but recognition that in customary areas, the community plays a role in governing land. Within a CPZ, the state must play a protective role. Article 27 of Version 6 clearly states that the classification of land as a CPZ does not affect the rights of individuals, collective entities, or the state within this area, but does qualify<sup>93</sup> that economic activities carried out in the special economic zone must be based on consultation with the community.

The community land issue is one area where we do see progressive changes across the various drafts of the Land Law. Version 1 of the law recognized the concept of community land and defined it as 'land in areas where a local community organizes the use of the land and other natural resources by means of norms of a social and cultural nature' (Article 23, Version 1). Crucially Version 1 of the law *did not recognize the community as having an ownership right to this land, but rather gives the state certain duties to protect community land.*

The explanation notes that accompanied the second version of the draft law referred to the concept of community land as being similar to the notion of 'protected zone.' Version 2 introduced:

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91 Article 28.4, Version 6

92 Article 28.2, Version 6

93 Article 26.3, Version 6

- A still unclear but slightly stronger protection of community land (Article 24.2);
- A slightly broader definition of community land (Article 25.1);
- A mechanism by which communities could establish cooperatives or other entities by which to register their land (Article 25.2); and
- A prohibition on the sale of community land.

Civil society groups argued that while the recognition of customary land was a significant improvement on the original draft, the language and definition of the concepts remained hazy. A Rede ba Rai submission on community land called for:

- A clear community property right;
- A moratorium on any large-scale outsider dealings in community land until the state has passed appropriate legislation governing the use and protection of customary land, in order to protect customary lands;
- More consultation on the definition of community land (in particular its definition as a local entity and how this will interact with administrative boundaries such as the Aldeia and Suku)
- A presumption of the right of the community to the land in rural and peri-urban areas, with the burden placed on the third party or outsider to show that this is not the case;
- A clearer definition of consultation mechanisms and a responsibility for the state to adhere to principles of free, prior, and informed consent.

A submission by academic Daniel Fitzpatrick suggested that individual "customary" landholders should have a *prima facie* right to claim statutory ownership on the basis of special adverse possession after consultation within communities, and that experiences from Mozambique and Papua New Guinea suggest that using locally-existing mechanisms was more effective than creating cumbersome cooperative structures that may require significant levels of outsider facilitation.

Version 3 provided a thorough re-working of the community land chapter that is maintained throughout subsequent drafts. The new chapter established two distinct legal concepts, that of community property and that of a CPZ, which we now find in Version 6 of the law.

*'Any immovable property acknowledged by the community as being of their common and shared use, by a group of individuals or families, organized in accordance with local practices and customs shall be considered as **community property**.'* (Article 28, Version 3)

*'**Community Protection Zones** are areas protected by the State for the purpose of safeguarding common interests of local communities through the protection of residential areas, agricultural areas, either cultivated or fallow ground, forests, culturally relevant sites, pastures, water springs or areas with natural resources that are shared by the population and necessary for its subsistence.'* (Article 24, Version 3)

Community property may be granted an ownership title in the name of the local community and is defined as inalienable and unseizable. Whereas a CPZ is just an area within which consultation must be carried out with communities prior to carrying out any activity or investment.. Within a CPZ, the state has the responsibility to ensure that economic activities by third parties: benefit the local community as a whole in an inclusive and non discriminatory fashion; are performed in a sustainable way from environmental and socio-cultural points of view; and respect the ways of life of each local community and its access to natural resources (Article 26.2, Version 3).

While these changes mark a significant shift in state thinking around community property and a much stronger recognition of the concept of property that can be owned by a community, there are a number of problems. Customary land arrangements in Timor-Leste do not fit neatly into the legal constructions that are 'community property' and 'CPZ.' It is likely that there will be large amounts of land that does not fit into either of these categories but is perceived by communities as under their ownership. In these cases there is a risk that the state will attempt to designate this land as 'empty land' under Article 9.4.

During debates and lobbying on the law, civil society groups argued that by establishing and juxtaposing the concept of community property with that of CPZ, there was an automatic weakening of the core notion of customary land.<sup>94</sup> Other groups suggested that there should be further consultation and piloting of these concepts before Chapter 5 could be approved.<sup>95</sup>

In May 2010, the World Bank Justice for the Poor Unit put some work into establishing draft policy options for the implementation of Chapter 5 of the Land Law. The policy options were finally released in October 2010 and were presented to civil society and the Ministry of Justice. It was argued by civil society during consultation meetings that these policy options did not seek to remedy the underlying conceptual problems within Chapter 5 of the law.<sup>96</sup> Civil society groups felt that the processes surrounding the production of the policy options did not follow best practice and did not sufficiently involve local communities.

Given the status of the Land Law, these policy options have not been a key focus of government work and a new USD \$3 million World Bank project in this area seems to have stalled. Despite the lack of protection and legislation on this issue, large-scale expropriations of community land<sup>97</sup> and systematic registration of all land in the country is going ahead under the Sistema Nacional Cadastrais (SNC)<sup>98</sup> project.

## Mediation and Arbitration Mechanisms

Due to the contentious nature of land claims, it is crucial that decisions and decision making processes are seen as fair and legitimate. While the core goal of the Land Law is to resolve confusion and conflict over land ownership, the law is relatively minimalist when it comes to the structures and support for adjudication and mediation processes. While the law has focused on laying out a hierarchy of claims, civil society has argued that 'the laying down of just, effective, expedient and legitimate dispute resolution **mechanisms** should be at the core of the current land law' (emphasis added)<sup>99</sup> and that 'existing successful local dispute mechanisms should be recognized by the formal regulatory system.'<sup>100</sup>

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94 Personal observations of land donor meetings. Civil Society discussions with World Bank, July 2010.

95 Notes from World Bank Consultation Meeting on the Policy Options for Community Land, July 2010.

96 World Bank Notes of Community Land Policy Options Consultation Meeting, July 2010.

97 Well in excess of 1,000 hectares of community land have been expropriated by the government for the Suai Supply Base project in Covalima.

98 The SNC project is a new systematic land-titling project funded directly by the government and implemented as a Portuguese/Timorese joint venture by ARM-Apprise and Grupo Media Nacional Lda. The group is very reluctant to share information with civil society and to date little information is known about the program other than the fact that it is registering all land in Timor-Leste and that there have been reports of increased violence and land conflict within mapping areas.

99 Rede ba Rai, *Rede ba Rai Submission on Arbitration and Mediation Mechanisms within the Land Law*, 2009, Dili (emphasis added).

100 *Submission on the Draft Transitional Land Law of Timor-Leste*, November 2009, COHRE, Phnom Penh.

Secondly, the implementation of the law and resolution of land claims will be hampered by a number of structural factors. The courts in Timor-Leste are overburdened and relatively remote from the majority of citizens. Taking a case to court is a costly and time-consuming affair. Courts are currently prioritizing criminal cases with many civil cases facing waiting times of years. At the same time district level land and property offices (DTPSC) are under resourced with some offices having only one mediator who is often also the district level director. No official, land-specific mediation structures exist below the district level, however the vast majority of intra-community and family disputes are likely to be resolved at the local level by a combination of customary and state authorities.

A Rede ba Rai submission on the law argues for a number of key principles relating to arbitration and mediation, which include:

- Prevention of both long-term and short-term conflict;
- Guaranteeing equal access to dispute resolution structures, and in particular supporting land vulnerable groups to access much needed legal aid;
- Ensuring expedient and effective solutions which do not flood the already struggling court system;
- Establishing independent and fair decision making institutions that minimize corruption at both the local and national levels.

While the Land Law does not undermine mediation and negotiation processes (Article 40.2, Version 6), it does little to specifically encourage or properly resource mediation and does not offer any legal protection to mediations that have been carried out either before or after the approval of the Land Law. This potentially risks re-opening many of the cases that were mediated as part of the post-2006 IDP returns process. A stronger option might have been to state that mediation of cases was mandatory prior to going to court.

The law establishes a Cadastral Commission made up of six jurists appointed by the Prime Minister (on the recommendation of the Minister for Justice) and three land and property technicians recommended by the National Director of Land and Property<sup>101</sup> whose job it will be to evaluate cases and make a first instance decision on the allocation of title.<sup>102</sup> The Commission will also have a technical secretariat to support its work.

Once claims have been collected and verified, disputed claims will be sent to the Cadastral Commission to apply the law and make a decision as to who is awarded ownership of the land and, where appropriate, who is awarded compensation.<sup>103</sup> The Commission will also make a determination as to the amount of compensation to be paid and whether or not the claimant who is awarded the land will have to reimburse the state the value of the compensation paid to the other claimant (in the first instance, the state will pay the compensation from the Fund established under the Compensation Fund Law).

The structure of the Cadastral Commission went through several iterations in various drafts of the Land Law. One of the criticisms raised against it by civil society was that it lacked independence (as its members are appointed entirely by the sitting government). This concern is further amplified when one considers that the Commission will have to deal with many cases where one party to the dispute is the state itself. Version 6 does provide a process whereby a member of the Commission can recuse herself from a particular case that involves a conflict of interest, and that the parties to a dispute may petition

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101 Article 68.1, Version 6

102 Article 67, Version 6

103 Article 72, Version 6



the President of the Commission in order to remove a particular member from their case where they feel there is a conflict of interest.<sup>104</sup>

Claimants have the right to lodge an appeal to the decision of the Commission within 60 day of being notified<sup>105</sup> and the regular courts will hear this appeal.<sup>106</sup>

In establishing these structures, the law does little to decentralize decision making over land and, as such, puts a significant burden on claimants to be aware of national decision making processes and pay the costs associated with taking their cases to the district and national level. The law also does little to address the already heavy caseload resting on the judiciary, and in fact adds to this burden as the Cadastral Commission is for the most part made up of jurists.

Some significant improvements in Version 6 include the clarification of the rights of claimants during the administrative process. Unlike previous versions of the law, which stated that the Cadastral Commission would make decisions in law only and not be able to review the facts of a case or interview claimants and witnesses,<sup>107</sup> Version 6 allows the Commission to: call claimants to clarify certain issues; hear the testimony of key witnesses; consult with local authorities; and request additional documentation.<sup>108</sup>

Another key drawback is that the Cadastral Commission is established at the national level, thus making it much removed from the majority of claimants. Options that would allow a mobile commission, or for commissions to be established at a more local level, appear not to have been considered by the government.

## The Legal Definition of Possession

The law also provides a number of key articles defining the rules of possession for Timor-Leste (Article 10-19, Version 6). The concept of possession is often highly confusing. In its simplest definition possession is 'the ownership, control of occupancy of a land by a person,' however, possession is not the same as ownership. For example, if a person's car is stolen, then they are no longer in possession, but they are still considered the owner of the car. Someone who leases a house from the owner is not considered to have met the legal criteria for possession, despite the fact that he lives in the house. Possession is a legal construct, which is part of the criteria that may add up to or act as proof of ownership. There are various types of possession:

- **Actual possession:** This is the definition that most people understand: having physical control of a thing or object.
- **Constructive possession:** This is when people who are legally considered to have possession, even though they may not be in physical contact with the object. For example, a person is considered to be in possession of the money in his or her bank account even though they are not physically holding it.
- **Adverse possession:** In most legal systems, there is some form of adverse possession (sometimes referred to as squatter's rights). Under the rules of adverse possession, a person who has openly and continuously possessed land can, after a significant period of time, become the

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104 Article 75, Version 6

105 Article 77, Version 6

106 Article 78, Version 6

107 Article 70, Version 2

108 Article 71, Version 6

legal owner of the land. Importantly, adverse possession cannot happen where someone is leasing land from the original owner. In these cases, the payment of rent and the existence of a contract show that the lessee is recognizing the right of the lessor as the owner.

Early versions of the Land Law provided a basic definition of possession stating that ‘for purposes of special adverse possession, possession means the use of a property for purposes of habitation, cultivation, business, construction or any other activity that requires the physical use of the soil.’<sup>109</sup> Comments from Rede ba Rai members and the international NGO Center on Housing Rights and Evictions (COHRE) stated that possession should also include other customary land uses such as swidden agricultural land, land with burial sites or other cultural markings<sup>110</sup> and that this definition should not be limited only to cases of adverse possession, but should instead be a general definition of possession. While the final definition in Version 6 has been slightly improved, it does not accommodate these broader concepts reflected in customary land use practices across Timor-Leste.

The definition of possession includes a number of general provisions, many of which are echoed by the Civil Code:

<b>Table 6: Definitions and Explanations Surrounding Possession</b>	
<b>Legal definition in the law</b>	<b>Explanation</b>
That possession can be exercised either personally or through another party (Article 10.2, Version 6).	This means that a situation where a family member is living in someone’s house or a lessee is living in a rented property are considered sufficient for possession to be granted to the owner.
That a landlord exercises possession through his lessee (Article 10.3, Version 6).	This article specifically explains that where a lessee rents land or housing from a lessor the lessor or owner is still considered to be in possession of the land or house.
Public and notorious possession is that which is exercised in such a way that it is made known to interested parties (Article 15, Version 6)	This means that in order to be recognized, possession must be public and visible. For example, where someone occupies land or housing in a way that makes it impossible for the owner to see him or her, they will not be able to gain ‘adverse possession.’
That in order to calculate the date of the beginning of possession, a possessor may add to his own possession the possession of his antecedents where their possession was continuous, peaceful, and where the rights were not transmitted as regulated in the Civil Code (Article 19, Version 6).	Where an individual inherits land from a parent, his or her possession can be counted from when his or her parent first possessed the land.
Peaceful possession is defined as that which is obtained without violence or threat (Article 17.1, Version 6). Possession is deemed to be violent if, in order to obtain possession, the owner uses physical or moral coercion, under the terms defined in the Civil Code (Article 17.2, Version 6).	This Article ensures that people who use physical or other violence will not be able to benefit from it. However, it is unclear how this Article will be defined in terms of Timor-Leste’s colonial history. Given the use of force and general oppression during previous administrations, the interpretation of this Article is likely to be particularly contentious.

<sup>109</sup> Article 13.1, Version 1

<sup>110</sup> COHRE, 2009 *Submission on the Draft Transitional Land Law of Timor-Leste*

For the purposes of this law, long-term possession is defined as possession that continues on an uninterrupted basis for at least twenty years (Article 16, Version 6).<sup>111</sup>

The constitution of Timor-Leste states that only Timorese citizens can own land. Article 4.1 (Version 6) clarifies that collective or singular persons (male or female) and local communities are all able to own land. While earlier versions of the law defined 'national legal entities' as entities whose main office was within Timor-Leste, Article 8.1 (Version 6) takes a much stronger line stating that collective national entities must be formed exclusively of Timorese citizens in order to obtain land rights. This means that a legal entity such as a company must be owned entirely by Timorese citizens in order to own land. However, Article 8.2 (Version 6) allows the state discretion to pass further decree legislation authorizing other types of entities to own property. It is possible, for example, for the state to pass *ad hoc* legislation protecting the rights of certain institutions such as the Catholic Church or particular companies where it deems fit. Article 9 (Version 6) allows foreign claimants who had title to properties to continue using these properties based on a lease from the state.

## Conclusion

The definition of basic land ownership remains a crucially important step for Timor-Leste in the establishment of a functioning land administration process. While the sixth version of the Land Law includes a number of positive changes, there are several outstanding contentious issues surrounding, in particular: the prioritization of right holders; state land; the lack of protection for community land; and the protections against eviction.

In the early phase of its public consultation and debate (2008-2010), the law was highly contentious and the subject of heated debate and protest. More recently, government desire to approve the laws seems to have waned. Nonetheless, a revised seventh version of the Land Law is currently before the Council of Ministers, suggesting that there are at least some forces within the government who have prioritized the passage of the Transitional Land Law. It is currently unclear what the approach of government will be and whether the seventh version of the law (in existence but not publicly available) will be pushed through Parliament before the elections in 2017 or whether the legislative lethargy that has existed over the last few years will continue.

Civil society, very active in the past, has been somewhat quieter on the latest versions of the law. This seems to be less an indication of their approval of the law and more of a lack of focus on legislative issues. Many organizations previously active on commenting on the Land Law have been much occupied with high levels of evictions in Suai and Oecusse. Over the coming months, civil society will need to re-evaluate their positions on the Land Law (as well as on the Expropriation and Compensation Fund Laws). In essence they have three possible positions:

- Firstly that this law is better than no law and that as a result it should be approved as quickly as possible;

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<sup>111</sup> The Civil Code allows for adverse possession after a minimum of 10 years, where possession is registered and of good faith (Article 1214). Where possession is not registered and of bad faith, special adverse possession can apply after 25 years (Article 1216).

- Secondly, that there remains a number of problems with this law and that it should be approved with some modifications;
- Thirdly, that the law is fundamentally flawed in its premise and concept and must therefore be scrapped and completely renormalized.

Reaching consensus on any of these positions will require time and careful consideration. If the second option (minor modifications) is chosen, civil society groups will have to work hard to put together a strong advocacy strategy in order to convince parliamentarians and government officials of the necessary changes. In contrast, if civil society is of the opinion that the law is fundamentally flawed they must work twice to think about alternative options or risk being accused of dragging out and worsening tenure insecurity.

In the meantime, it is highly important that some measures are taken to protect individuals, families, and communities with vulnerable land rights from eviction. In the past, a number of strategies have been suggested. The government could approve a basic moratorium on the expropriation and sale of community land until such time as proper protections are laid down in law.

The table below provides a summary of some of some of the remaining issues in Version 6 of the Land Law. It should be noted that this report (and table) are made up of the author’s own observations, a review of available media and civil society submissions relating to the law’s process, and interviews with key civil society organizations. These findings could be further strengthened by feedback and discussion with key stakeholders.

<b>Table 7: Key Improvements and Outstanding issues in Version 6 of the Land Law</b>	
<b>Definition of Rights and Possession</b>	
<p><b>Positive Changes in Version 6</b></p> <ul style="list-style-type: none"> <li>✓ Provides clear definitions of: public and notorious possession (Article 15), peaceful possession (Article 17).</li> <li>✓ Clarifies that only exclusively Timorese owned companies will be able to own land (Article 8).</li> </ul>	<p><b>Outstanding Issues</b></p> <ul style="list-style-type: none"> <li>× Remains unclear whether the concept of ‘peaceful possession’ will take into account the context of oppression and violence during both Portuguese colonialism and the Indonesian occupation.</li> </ul>
<b>Prioritization of Right Holders</b>	
<p><b>Positive Changes in Version 6</b></p> <ul style="list-style-type: none"> <li>✓ Recognizes long-term peaceful possession as a primary right.</li> <li>✓ Strengthens the protection of long-term peaceful possessors by stating that in a dispute between primary right holders without possession, priority will be given to informal long-term peaceful possessors (Article 46.1).</li> <li>✓ Clarifies that the secondary rights, in order to be considered valid, must not have</li> </ul>	<p><b>Outstanding Issues</b></p> <ul style="list-style-type: none"> <li>× The of the rights of previous right holders without a clear definition of ‘violent acquisition’ could lead to further entrenchment of past human rights abuses and significant social conflict where it is felt that these provisions are broadly unjust.<sup>112</sup></li> <li>× The 31<sup>st</sup> of December cut off date for special adverse possession (Article 45, 20 and 22 of Version 6) puts all occupants who occupied land in or after 1999 at risk of losing their</li> </ul>

<sup>112</sup> While the Civil Code does provide a definition for violent possession (Article 1181 and 246), which includes using physical and moral coercion, it does not resolve the question of whether general intimidation of the population by the Indonesian military will be considered as falling within this definition. It is likely that this issue will be left to the courts to decide.

<p>expired before the 28<sup>th</sup> of November 1975 (Article 2.3, Version 6).</p> <ul style="list-style-type: none"> <li>✓ Where the eviction of occupants will require a large relocation the state <b>may</b> choose instead to expropriate the land from the owner according to provisions laid out in the Expropriation Law in order to give the land to the current possessors (Article 61).</li> <li>✓ An occupant of land previously belonging to a foreigner but which has reverted to the state may have an option to buy this land from the state. In these cases the amount of money paid in rent by the occupant to the state will be deducted from the price of the land (Article 85).</li> </ul>	<p>access to land and housing. This will result in high levels of displacement and evictions with insufficient levels of protection and/or processes for resettlement provided for in the law. The options described in Article 61 and 85 provide a partial option, where occupants can buy back the housing they are occupying from the state, however, these measures are at the discretion of the state. Even with proper resettlement procedures the scale of displacements resulting from this rule would be highly disruptive to the social and economic life of communities.</p>
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<b>State Land</b>
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<p><b>Positive Changes in Version 6</b></p> <ul style="list-style-type: none"> <li>✓ Article 9 strikes a new balance between primary right holders and the state's right to land. According to version 6 of the law the state will be granted all land that it is currently using for public interest and public administration (Article 9.1.c). While in principle it goes on to recognize that all Indonesian era and Portuguese era state land is considered as Timor-Leste state land (Article 9.1.a and 9.1.b) this concept is significantly softened by Article 9.2 which states that the primary right holders (including informal right holders) will be prioritized over state land claims. This is a significant improvement on the concepts of state land enshrined in Law 1/2003 and previous versions of the law.</li> <li>✓ Article 63 improves some of the processes and decision making around the special protection against eviction (see below).</li> </ul>	<p><b>Outstanding Issues</b></p> <p>While Article 9 provides a significant improvement to the definition of state land, there remain a number of areas where the state retains significant power to accumulate land.</p> <ul style="list-style-type: none"> <li>× Article 7.4 of Version 6 states that all land without an owner is considered as state land. This Article, combined with the restricted definitions of community property in Article 28, is likely to apply to vast amounts of land across Timor-Leste.</li> <li>× The definition of 'public interest' in Article 9.1.c remains unclear. Given the state's current approach to land expropriation there is a risk that the state may adopt a broad interpretation of public interest thus including large amounts of state land under this definition.</li> <li>× Despite significant improvements to Article 9 (left) the land law maintains the principle originally established in Law 1/2003 that Portuguese era state land, Indonesian era state land and all abandoned land is the property of the Timor-Leste state. This decision is likely to cause conflict in cases where it is perceived that land was taken through corruption and/or the use of force. It is also likely to cause high levels of evictions in Dili where the vast majority of people living on state land are not primary owners</li> </ul>
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	<p>but rather people who occupied land and housing after 1999.</p> <ul style="list-style-type: none"> <li>× The definition of Public Domain land remains both expansive and unclear in its application (Article 6.3). Public land such as beaches, rivers, and roads, where presumably the public would have rights of access, are included on the same list as airports, ports, and military installations, where public access would necessarily be restricted. While the law states that this issue will be regulated in further legislation, it does not provide any guidance as to how public access will be safeguarded.</li> </ul>
<b>Special Protection Against Eviction</b>	
<p><b>Positive Changes in Version 6</b></p> <ul style="list-style-type: none"> <li>✓ Article 58.2 broadened the definition of the family home to include land that was being used to generate the basic livelihoods of the family.</li> <li>✓ Article 61 added an option that stated that in cases that would affect large numbers of people, the state could choose to expropriate the property in order to give rights to the large numbers of people living on the land in question. (This is at the discretion of the state and no criteria are laid down for this decision-making process.).</li> <li>✓ Article 62 provided two new sub-clauses stating that 'Administrative eviction cannot violate people's dignity, human rights or security' and that 'the state may not use force during evictions except under exceptional circumstances where the presence and participation of the police is justified, in accordance with the principles of necessity and proportionality.'</li> <li>✓ Article 63 of Version 6 states that eviction notices and clear explanations must be given in person to those affected by the eviction.</li> <li>✓ Eviction notices must be written in both Portuguese and Tetun and they must include information relating to: the property in question, the timeframe of the eviction, legal remedies available to the affected parties, information relating the special protection against eviction and the process of declaring a family home, as well as information</li> </ul>	<p><b>Outstanding Issues</b></p> <ul style="list-style-type: none"> <li>× Does not address the core of the problem that the special protection against eviction provisions provide an extension of 18 months and/or the provision of alternative housing (whichever happens first) for claimants who are considered as living within the family home. This implies that once the 18 month period is over the state may carry on with the eviction irrespective of whether the family has acquired alternative housing or not.</li> <li>× The law does not clearly define the consultation process prior to evictions.</li> <li>× The law does not mandate monitoring of evictions by the state</li> </ul>

<p>relating to legal aid options.</p> <p>✓ The timeframe for eviction was significantly lengthened from 30 to 90 days.</p>	
<b>Community Property</b>	
<p><b>Positive Changes in Version 6</b></p> <p>✓ The law recognizes an inalienable ownership right for community property.</p>	<p><b>Outstanding Issues</b></p> <p>× The law establishes an un-piloted, un-tested legal construct around Community Protection Zones and Community Property. It is at best unclear how these constructs will suit Timorese concepts of customary land. Some civil society submissions suggest that there will be problems with the application of this concept and that the juxtaposition of these two concepts essentially weakens the right of all property that is not considered as 'community property.'</p> <p>× Until such time as it is registered, community land is weakly protected. This is likely to put remote communities with little access to information or legal aid at risk, especially where their land has some potential for economic investment.</p> <p>× Article 28.3 states that separate legislation will be prepared on the demarcation of community boundaries, however, large scale expropriations of community land and systematic registration of all land in the country is going ahead under the Sistema Nacional Cadastrais (SNC) project.</p>

Debates surrounding land policy issues and the Transitional Land Law would benefit significantly from further research and piloting relating to key issues. In particular, more information is needed relating to:

- The numbers and types of households affected by the various options in the law. In particular, data surrounding how many households might face eviction from state land in urban areas would be highly beneficial.
- How the various customary land options may be perceived at the local level and the types of tensions and obstacles that would be met in trying to map and register customary land (as the law currently suggests).
- The various types of mediation options that might be used in order to deal with land disputes. In particular it would be appropriate to carry out a 'lessons learnt' process examining the range of conflict reduction and mediation tools that are currently being implemented in Timor-Leste by both government and civil society and to think about how these models might be used and adapted to address land conflicts

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## Annex 1: Article by Article Analysis

The following table provides an article by article analysis of the latest public version of the Land Law (Version 6). Articles marked in red are those which have been changed since the previous version of the law. Articles that are struck out are articles that have been removed since the previous version of the law.

Preamble	
	<p>Lei ne'ê buka klarifika diak liu tan situsaun jurídika iha Timor-Leste kona ba nain ba rai, no torna efektivu dimensaun oin-oin direitu propriedade privada nian, ne'ebé previstu iha artigu 54.o no 1 iha Konstituisaun Repúblika Demokrática Timor-Leste. Lei ne'ê fundamental ba paz, desenvolvimentu sosial no ekonomia nasional, haree ba istória no konesimentu akumuladu tinan barak halao estudu no konsulta públika relativa kestaun nain ba imóveis, no buka atu kria equilibriu entre posizaun sira la hanesan ne'ebé iha iha sociedade Timor-Leste nia laran.</p> <p>Ho sentidu ida ne'ê, no ho base situsaun istória no jurídika Timor-Leste nian, estabelese hanesan objetivu tolu prinsipal ba lei ne'ê: klarifika situasaun jurídika propriedade nian, nomos promosaun ba distribuisaun no asesu ba rai.</p> <p>Klarifikaun direitu propriedade sira halo liu husi rekonesimentu direitu propriedade uluk. Tuir lolos Konstituisaun no legislasaun sira seluk exige atu salvaguarda direitu formais uluk, pertense ba timor oan ne'ebé hetan validamente durante administrasaun uluk nian. Iha artigu 54.o no 165.o Konstituisaun nian no Lei 2/2002, husi lora 7, fulan Agostu, ne'ebé simu lejislasaun uluk, no mós Lei 1/2003, husi lora 10, fulan Marsu, kona-bá bens imóveis Estadu nian, obriga rekonesimentu ba direitu ne'ê. Rekoñesimentu ida ne'ê iha limite ne'ebé konstituisaun hatete, iha artigu 54.o no 1, ne'ebé fó proibisaun ba ema estrangeiru atu sai nain ba rai iha Timor-Leste.</p> <p>Além rekonesimentu ba direitu formalizados uluk nian, lei ne'ê mos kria figura direitu informais propriedade sira, ho objetivu atu kuriji pratika injustisa antes Timor-Leste nia independensia, tamba falta formalizasaun ba direitu sira. Direitu ne'ê korespondente ba direitu tradisional no individual ba rai, no fó dalan ba ba ema katak uluk liu laiha dokumentu relevante ba direitu propriedade sira agora bele husu, ho termu hanesan ema ne'ebé uluk hetan sira nia direitu formalizadu. Iha area ne'ê, lei halo formalizasaun direitu sira liu husi registu.</p> <p>Promove distribuisaun ba rai halo liu husi rekonesimentu nain ba ema ne'ebé kaer rai deit ka iha direitu seluk uluk nian maibe laos direitu ba propriedade, hatuir kriteriu ne'ebé estabelese iha lei. Hadooq administrasaun rai centralizada, tamba fó oportunidade ba ema privadu atu sai nain ba bens imóveis, no bele halo administrasaun independente ba sasan sira nian.</p> <p>Asesu ba rai garante ho forma rua tuir mai ne'ê: liu husi kriaun Kadastru Nasional Propriedade nian, fó dalan ba merkadu bens imóveis nian ne'ebé seguru no transparente; parte seluk fali, liu husi klarifikaun sasan sira pertense ba domínio Estado, fó dalan hatu Estadu bele halo jestaun ninia patrimoniu diak liu, no mos fó oportunidade hatu halo distribuisaun ba rai, hanesan forma seluk atu fó asesu ba rai.</p> <p>Importa mos refere kriteriu sira ba resolusaun kona ba disputa no Indemnizasaun kuandu iha duplicidade direitu. Existe situsaun ruma ne'ebé, tamba atribuisaun direitu sira husi administrasaun seluk (Portugal no Indonezia), ka tuir kriteriu lei nian, iha deklarante validu rua ba bem imóvel ida. Kazu sira ne'ê, lei estabelese kriteriu resolusaun disputa nian, ne'ebé determina pagamentu indemnizasaun ba ema ne'ebé la simu dieitu propriedade, hanesan forma hatu konpensa direitu ne'ebé lakon.</p> <p>Lei rekonese propriedade komunitaria no kria figura zonas protesau komunitaria. Maski aspetu ruma iha figura ne'ê presija definisaun liu tan legislasaun tuir mai, asegura kedan direitu komunidadade sira nian, hanesan direitu ba sasan imóveis no hare ba propriedade komunitaria rekonesida, no mos estabelese prinsipiu sira ne'ebé orienta regulamentasaun ba zonas protesau komunitaria.</p>

	<p>Fo atensaun tan ba kriasaun mekanismus, ne'ebé to'o agora seidak iha lei seluk, atu fó protesau kontra despeju uma familia ka fatin ne'ebé presija duni atu hetan rendimentu ba ema sira ne'ebé laiha kbit ekonomia. Protesau ida ne'ebé garante katak prosesu regularizasaun propriedade imobiliária la sai nudar kauza ba kiak. Iha sorin seluk, estabelese prinsipiu no mekanismu sira ba realizasaun despeju administrativu, tuir ona diploma sira direitu internasional nian, nuné'kuandu buat ruma akontese halo tuir forma menus instrusiva possivel.</p> <p>Iha mos kuidadu especial konforme lei ho instrumentu direitu internasional ne'ebé timor-leste leste hola parte, hanesan deklarasaun Universal Direitu Umanu Nian, Paktu Internasional Direitu Ekonomiku, Sosial no Kultural ka Konvensaun ba Eliminasau Forma Diskriminasaun Hotu Asoru Feto (CEDAW) ne'ebé, tuir artigu 9.o Konstituisaun Repúblika Demokrátika Timor-Leste, halo parte integrante husi ordenamentu jurídiku timorens.</p> <p>Parlamentu Nasionál dekreta, tuir artigu 95.o n. 2 alinea a) Konstituisaun Repúblika nian, atu vale nu'udar lei, hanesan tuir mai ne'ebé:</p>
<b>Chapter I - Object and Definitions</b>	
<b>Article 1.1</b>	Lei ida ne'ebé estabelese rejime especial ba definisaun propriedade (na'in) ba bens imóveis liu husi rekoñesimentu no atribuisaun ba título ba propriedade ba bens imóveis iha Repúblika Demokrátika Timor-Leste nian.
<b>Article 1.2</b>	Rejime especial ba definisaun propriedade ba bens imóveis iha objektivo atu klarifika situasaun juridika ba bens imóveis iha Timor-Leste, promove distribuisaun rai nian ba cidadaun hotu-hotu no mos garante ba ema hotu-hotu asesu ba rai.
<b>Article 1.3</b>	Rekoñesimentu no mos atribuisaun ba direitu propriedade ba bens imóveis iha prinsipiu orientasaun hanesan respeito ba direitus uluk nian, rekoñesimentu ba pose hanesan baze ba atribuisaun direitu propriedade ba bens imóveis no mos compensasaun ba caso ne'ebé hasoru direitus liu ema ida.
<b>Article 2.1</b>	Iha lei ne'ebé nia laran, sei konsidera direitu uluk nian mak: a) direitu sira kona-bá bens imóveis, ne'ebé mosu husi kostume no pose kleur, no iha karakteristika hanesan direitu propriedade nian, ne'ebé sei refere iha lei ne'ebé hanesan direitu informal propriedade nian. b) Direitu ne'ebé administrasaun portugeza no indonézia iha rai Timor-Leste uluk fó, hanesan propriedade perfeita, aforamentu, hak milik, hak guna bangunan no hak guna usaha.
<b>Article 2.2</b>	Iha diploma ida ne'ebé nia laran, sei konsidera direitu uluk nian ne'ebé primáriu mak direitu informal propriedade nian, propriedade perfeita, hak milik, no direitu uluk nian ne'ebé sekundáriu mak aforamentu, hak guna bangunan no hak guna usaha.
<b>Article 2.3</b>	Direitu uluk nian ne'ebé sekundáriu mak aforamentu, karik prazu kadusidade depois de 7 Dezembro 1975, sei konsidera validu.
<b>Article 2.4</b>	Direitu uluk nian ne'ebé sekundáriu mak hak guna bangunan no hak guna usaha, karik prazu kadusidade depois de 30 de Agosto 1999, sei konsidera validu.

Article 3	<p>Ba efeitu sira ne'ebe previstu iha lei ne'e, lian fuan sira ne'ebe tuir mai nia signifika mak:</p> <p>a) Deklarasaun ba titularidade mak asaun ne'ebe ema ida ka ema balun, singular ka kolektiva, halo deklarasaun katak sira iha <a href="#">ligasaun ba bem imovel ida, no hakarak rekoñesimentu ba diretu propriedade nian</a>. Deklarasaun ne'e halo ba <a href="#">Diresaun Nasionál</a> ba Rai, Propriedade no Servisu Kadastral (DNTPSC) iha prosesu levantamentu kadastral nia laran;</p> <p>b) Deklarante mak ema singular ka kolektiva ne'ebe submete tiha ona deklarasaun ba na'in, ne'ebe valida no tuir prazu, individual ka grupo nian, no hakarak sai titular ka hetan indemnizasaun;</p> <p>c) Deklarante posuidor mak deklarante ne'ebe iha pose ba bem imovel kona-ba nia hatama deklarasaun;</p> <p>d) Deklarante ne'ebe la hetan kontestasaun mak deklarante ne'ebe nia mesak, ka ninia grupu hatama deklarasaun ba bem imovel, no ema seluk la hatama deklarasaun;</p> <p>e) Bens imoveis mak rai no mos uma no edifikasaun seluk ne'ebe harii permanente iha rai, tuir regra ne'ebe iha iha Kodigu Sivil.</p> <p>f) Direitu informal propriedade nian, direitu kona-ba bens imoveis, kostumeiru no dekorrente ba posse kleur, ne'ebe iha karakteristika esensial hanesan direitu propriedade nian;</p> <p>g) Propriedade perfeita mak direitu kompletu kona-ba direitu uzu no dispozisaun ba bens imoveis, ne'ebe refere iha lei ne'ebe vale durante administrasaun portuguesa.</p> <p>h) Aforamento mak direitu ba foreiro atu uza bem imovel, liu husi selu renda no mos ho posivel direitu ba remicão, ne'ebe refere iha lei ne'ebe vale durante administrasaun portuguesa.</p>
Article 4.1	<p>Ema nasional, colectiva no singular, mane ka feto, no mos comunidade lokal bele hetan direitu ba propriedade.</p>
Article 4.2	<p>Direitu propriedade bens imoveis sei aseguradu ho kondisaun igualdade mane ho feto, no probidu kualker forma atu halo diskriminasaun kona-ba na'in, asesu, jestaun, administrasaun, gozu, transferensia ka dispozisaun.</p>
Article 5	<p>Aplikasaun lei ne'e tenke fo konsiderasaun ba nesesidades espesiais diferentes ne'ebe minorias no grupu vulneraveis iha, no entidade sira ne'ebe aplika lei ida ne'e tenke hola medidas hodi garante informasaun adekuada, konsulta no partisipasaun grupu sira ne'e, hanesan forma hodi promove direitu igualdade no laiha diskriminasaun.</p>
Article 6.1	<p>Bens imoveis iha area dominiu publiku Estadu nian mak bens imoveis ne'ebe determina iha lei, ida-idak ka liu husi identifikasaun ba grupu nian.</p>
Article 6.2	<p>Atu inklui no mos mantein bens imoveis hanesan area dominiu publiku Estadu nian, bem imovel ida ne'e tenke sai base fundamental ba interesse publiku no mos nesesariu ba nesesidade kolektiva nian.</p>

Article 6.3	<p>Mesmoke iha lei espesial ne'ebe klassifika bens imoveis iha dominiu publiku seluk, bens imoveis iha dominiu publiku inklui mos:</p> <p>a) Tasi ninin, mota ninin, be'e iha rai okos, mota laran, no mos plataforma continental;</p> <p>b) Kalohan leten no mos lalehan leten ses husi dominio superficie husi nain ba rai;</p> <p>c) Fatin ne'be transmisaun radioelektronik lao;</p> <p>d) Tasi ibun, tasi ninin, rai ninin, ilhas, ilha ki'ik, tasi oan, mota ain, linha bainhira tasi sa'e, inklui area protesaun <b>50 metru</b> ba rai laran;</p> <p>e) Be mota nian, debo boot, debo kiik, no mos rai ne'ebe iha besik hanesan deskreve iha Kodigo Sivil;</p> <p>f) Reserva mina rai no gas natural;</p> <p>g) Fatin ne'ebe riku soin iha rai laran, rekursos hidrominerais, rekursos geotermicos, no rai okos ne'ebe halo explorasaun riku soin, no mos riku soin iha rai laran, hanesan fatuk, rai ne'ebe comum no mos material ne'be usa atu halo konstrusaun;</p> <p>h) Dalan ba komboio, no mos ninia fatin protesaun;</p> <p>i) Aeroporto no mos kampo aviasaun ba interesse publiku nian, no mos sira nian fatin protesaun;</p> <p>j) Pontekais ne'ebe halo ba interesse publiko, no mos sira nian fatin protesaun;</p> <p>k) Barragens ba uso publiko, no mos sira nian fatin protesaun;</p> <p>l) Rai ne'ebé uza hanesan via publiko, dalan, estrada, ponte no viadutu no sira nia area protesaun;</p> <p>m) Cemiterios publiko;</p> <p>n) Monumentos no mos bens imoveis ho interesse nacional ne'ebe hetan klassifikasaun hanesan dominio publiko;</p> <p>o) Quartel militar, infra-estruturas relevante ba seguransa interna nian, no mos fatin reserva ba protesaun civil ka defesa militar;</p> <p>p) Area rai ketan (fronteira terrestre) nian ninin;</p>
Article 6.4	Kadastru Nasionál ba Propriedade identifika areas ne'ebe Dominio Publiko Estado nian.
Article 6.5	Identifikasaun, determinasaun faixa sira no rejime utilizausaun ba dominiu publiku Estadu nian sei regula iha lei ketak.
Article 6.6	Deklarante titular ba direitu anterior ka deklarante ne'ebé preense requisitus uzukapiaun espesial, ne'ebé tuir termu lei ne'é bele rekonese direitu propriedade kona ba sasan imovel, maibe sei lakon direitu tamba rai tama publiku Estadu nian, iha atu simu indemnizasaun.
Article 6.7	Indemnizasaun refere iha numeru uluk sei sura tuir termu lei ne'é nian.
Article 7.1	<p>Sasan imoveis Estadu nian mak:</p> <p>a) Bens imoveis ne'ebé uluk administrasaun publiko portuguesa iha ka uza to'o lora 7 fulan Dezembru tinan 1975;</p> <p>b) Bens imoveis ne'ebé administrasaun indonesia iha ka uza to'o lora 19 fulan Outubru tinan 1999;</p> <p>c) Bens imoveis ne'ebé iha pose atual estadu nian no halo atividade relasionada ho administrasaun publiko ka atividade interesse publiko;</p> <p>d) Bens imoveis kona ba direitus primarius uluk nian ka direitu sekundarios uluk nian, ne'ebé pertense ba sidadaun estrangeiru sira, no tuir termu lei ne'é fó fali ba Estadu;</p>
article 7.2	Iha dispostu alinea a) e b) do no 1 la prezudika buat ne'ebé hakerek iha lei ne'é relativa ho direitu informais ba propriedade, propriedade komunitaria, no direitu atu simu indemnizasaun.
Article 7.3	Relasiona ho ne'ebé temi iha alinea c) husi no 1, pose estadu mak prevalese konaba direitu anterior, maibe la prejudika direitu indemnizasaun titular ba direitu anterior, iha termu ne'ebé presvistu iha lei ne'é.
Article 7.4	Bem imovel sira ne'ebé la iha na'in konsidera Estadu nian.
Article 7.5	Regime ba utilizausaun no dispozisaun Sasan ba dominio Estadu reguladu tuir lei.
Article 8.1	Entidade koletiva nasional, ne'ebé forma ekkluzivu ho cidadaun Timor oan sira, mak bele hetan direitu propriedade ba bens imoveis.
Article 8.2	Entidade koletiva seluk mos bele hetan propriedade ba bens imoveis se karik simu autorizasaun iha

	Lei espesifiku.
<b>Article 8.3</b>	Entidade sira seluk ne'ebé iha direitu huluk, no mantein nafatin pose ba bem imóvel ne'ebé fila ba Estadu, bele nafatin uza bem imóvel liu husi kontratu arrendamentu ho Estadu.
<b>Article 8.4</b>	Bens imóveis ne'ebé nia na'in hanesan entidade kolektiva ne'ebé mate ona, sei fila ba Estadu, bainhira la iha situasaun uzukapiaun normal no espesial husi deklarante ne'ebé identifika liu husi prosesu Lei ida ne'é.
<b>Article 8.5</b>	Rejime atu identifika ema kolektiva ne'ebé temi iha no 1 no 2, sei defini iha Diploma Ministerial Ministériu Justisa nian.
<b>Article 9.1</b>	Direitu primarius no sekudarius uluk nian pertense husi deklarante sidadaun estrangeiru hato fali ba Estadu, esepu se iha uzucapiaun espesial husi sidadaun nasional.
<b>Article 9.2</b>	Deklarantes sidadaun estrangeiru titular ba direitu anterior manten nafatin pose sasan imóvel hato'o fali ba domínio privadu do Estadu bele continua a utiliza sasan imóvel, liu husi meu arrendamentu, tuir termu gerais lei nian ne'ebé regula arrendamentu sasan imóveis Estadu nian.
<b>Chapter 3 - Possession</b>	
<b>Article 10.1</b>	Pose, tuir Lei ida ne'é, mak uzu, ka kbiit efektivu atu uza bens imóveis hodi hela, kuda sasan, halo negósio, halo konstrusaun, ka ba atividade sira seluk ne'ebé presiza uzu fiziku husi rai, <a href="#">ho hahalok hanesan direitu propriedade nian</a> ;
<b>Article 10.2</b>	Posse bele ema rasik mak halo ka liu husi ema seluk.
<b>Article 10.3</b>	'Señoriu' haktuir nia pose liu husi ema ne'ebé aluga nia rai.
<b>Article 10.4</b>	Sai hanesan indisiu ba pose mak konstrusaun sira, to'os, muru ka vedasaun.
<b>Article 11</b>	Konsidera posuidór ema ne'ebé hela, harii ona konstrusaun ka halo plantasaun iha bem imóvel ne'ebé ema seluk reivindika ho baze ba costume anestral, maske selu renda.
<b>Article 12.1</b>	Konsidera katak hanesan "ema hela deit" ba bens imóveis: a) Sira ne'ebé uza bens imóveis no la iha intensaun atu sai benefisiáriu ba direitu, hanesan arendatáriu sira; b) Sira ne'ebé aproveita deit boa vontade husi sé mak lolos iha pose; c) Sé mak hanesan representante ka mandatáriu posuidor nian, no sira ne'ebé mak iha pose lori ema seluk nia naran.
<b>Article 12.2</b>	"Ema hela deit" labele hola ba sira rasik, direitu propriedade husi bens imóveis ne'ebé iha pose liu husi uzukapiaun espesial.
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<b>Article 13</b>	To'o primeiru direitu na'in hetan rekoñesimentu liu husi rejime juridiku ida ne'e, possuído aktual no pasífiku hetan protesaun legal tuir Códigu Civil.
<b>Article 14</b>	Atua ho animus proprietario nian, ema ne'ebé iha hahalok pose nian, no la eksklui implísita ka eksplisitamente konvisaun sai nu'udár na'in ba direitu propriedade nian
<b>Article 15</b>	Pose pública no notória (ema bele hatene) mak pose ne'ebé hala'o hodi interesadu sira bele hatene
<b>Article 16</b>	Iha diploma ida ne'e nia laran, konsidera katak pose kleur mak pose ne'ebé nafatin no la pára iha tinan ruanulu nia laran.
<b>Article 17.1</b>	Pose pasífika mak pose ne'ebé akontese la liu husi violénsia ka ameasa.
<b>Article 17.2</b>	Konsidera katak pose violenta bainhira posuídor hodi hetan pose liu husi ameasa física ka morál, tuir saida mak estabesele iha Kódigu Sivil.
<b>Article 18.1</b>	Iha esbullo wainhira ema ida hetan <a href="#">impedimentu</a> ilegal husi ema seluk atu uza ninia bem imóvel, ka nia la bele continua nia pose.
<b>Article 18.2</b>	Bainhira ema iha direitu anterior hetan esbullo depois de 31 dezembro 1998 no seidak bele fila fali ba nia bem imóvel, konsidera katak nia sei iha pose nafatin.
<b>Article 19</b>	Atu sura data inísiu pose nian, ema posuidor bele aumenta ba ninia tempu posse nian tempu ne'ebé nia antesesor sira iha, maibé pose ne'é tenke sei nafatin (kontinua) no pasífika, independentemente ba forma transmisaun nian, tuir regra ne'ebé defini iha Kodigu Sivil
<b>Chapter 4 - Special Adverse Possession</b>	

Article 20	Uzukapiaun espesial hanesan mekanizmu hodi hetan direitu ba na'in ba bens imoveis, tuir rejime espesial ba definisaun titularidade ba bens imoveis, liu husi pose, iha tempu ruma nia laran, tuir rekizitu ne'ebe define iha kapitulu ne'e.
Article 21	Bens imoveis ne'ebe iha area dominiu publiku Estadu nia labele hetan direitu liu husi uzukapiaun espesial.
Article 22	Direitu ba propriedade, liu husi uzukapiaun espesial, fo ba deklarante posuidor aktual ne'ebe tuir rekizitu sira hotu ne'ebe tuir mai: a) Iha nasionalidade nu'udar Timor oan, no iha pose ba bens imoveis ho animus proprietarii nian, nafatin (kontinua), no pose ne'e publika no notoria (ema seluk bele hatene); b) Hahu pose pasifika, to'o lora 31 fulan Dezembru tinan 1998, no la uza violensia fizika ka ameasa moral.
Article 23.1	Ema hotu ne'ebe bele, tuir lei, sai na'in ba bens imoveis, mos bele aproveita uzukapiaun espesial.
Article 23.2	Ema inkapaz bele sai na'in ba bens imoveis, liu husi uzukapiaun espesial, rasik ka liu husi ema ne'ebe sai hanesan sira nia representante legal.
<b>Chapter 5 - Zona Protesaun no Bens Imoveis Komunitarios</b>	
Article 24	Zonas Protesaun Komunitaria mak area ne'ebe Estadu fo protesau, ho objektivo atu salva interesse ne'ebe komum husi comunidade lokal ida, liu husi protesau ba area uma nian, area to'os/natar, area ne'ebe kuda ka seidak kuda, ai laran, fatin cultural (adat) fatin sagradu (lulik), fatin ne'ebe relasiona ho lisan, fatin hakiak animal, be matan ka fatin ne'ebe iha rekursu natural. Fatin sira ne'e ne' uza fahe malu no sai rekursu nesesarii ba comunidade nia moris.
Article 25	Iha zona protesau komunitaria, Estado teinki: a) Garante ba pratika tradisional tuir konstituisaun, ho ka ne'ebe halo parte, la'os diskriminatorio, no kaer metin igualidade ba kestaun genero; b) Promove sustentabilidade ambiental no socio-kultura atu uza rekursos naturais ba moris comunidade lokal nian; no c) Protege bens imoveis comunidade nian ba espekulasaun husi merkado;
Article 26.1	Bens imoveis ne'ebe ema individuo, familia ka grupo usa iha zona protesau komunitaria teinki hetan respeito husi comunidade no protesau husi Estadu.
Article 26.2	Estadu mak tenke garante katak actividades ekonomikas ne'ebe ema seluk hala'o iha zona protesau komunitaria sei: a) fo benefisiu ba comunidade lokal hanesan grupu, no la iha diskriminasaun; b) Aktividade ekonomika tenke hala'o ho halalok sustentavel ba ambiente no mos socio-kultura; c)Respeito ba comunidade lokal nia buka moris no mos aseso ba rekursu natural.
Article 26.3	Aktividades ekonomikas ne'ebe hala'o husi ema seluk iha Zona Protesaun Komunitaria teinki hetan konsultasaun husi comunidade lokal molok hala'o, <b>tuir lei espesial</b>
Article 27	Wainhira fo klasifikasaun area ida nu'udar Zona Protesaun Komunitaria, la afeta titularidade ba bens imoveis, ema individual, entidade kolektiva no Estadu nian ne'ebe lolalizadu iha zona ida ne'e, maibe bele hetan limitasaun ruma tuir rejime protesau nian.
Article 28.1	Sai rai comunidade bens imoveis ne'ebe, tuir comunidade lokal ida, konsidera katak pertense ba comunidade tomak, ne'ebe sira uza hamutuk, ka liu husi grupu individu balu ka familia, no organiza uzu ba rai tuir kostume tradisional (lisan).
Article 28.2	Bens imoveis komunitaria la bele halo transmisaun ba entidade ka ema seluk, no la bele halo pehor.
Article 28.3	Prosesu atu halo demarkasaun ba bens imoveis komunitaria tenke halo tuir regra ne'ebe hakerek iha lei ne'e, no regra ne'ebe sei defini iha diploma katak.
Article 28.4	Propriedade comunidade sei konsidera hanesan direitu informal propriedade nian, wainhira hetan prosesu disputa.
Article 29	Rejime ba zona protesau komunitaria no bem imovel komunitaria sei regula ho lei.
<b>Chapter 6 - Cadastral Survey</b>	



Article 30.1	Kadastru nasional propriedade nian mak sistema ba registu predial, ne'ebé iha informasaun konaba situasaun juridika bens imóveis, ne'ebé foti liu husi prosesu levantamentu kadastral nian.
Article 30.2	Kadastru nasional propriedade mak kompostu husi informasaun kadastral no husi registu predial.
Article 30.3	Bele tama iha Kadastru Nasional Propriedades Nian informasaun ne'ebé foti tuir prosesu levantamentu kadastral ne'ebé hakerek iha lei ne'é.
Article 30.4	DNTPSC mak implementa, halo administrasaun no atualizasaun ba Kadastru Nasional Propriedade Nian.
Article 31.1	Levantamentu Kadastrál Sistemátiku hanesan prosesu foti dadus kona ba bens imóveis ne'ebé hala'o iha área ne'ebé kontinua no predeterminada (tuir planu), tuir enkuadramentu prosesu spesífiku no sistemátiku, ho objetivu hodi harii Kadastru Nasional ba Propriedade.
Article 31.2	Servisu DNTPSC mak responsável hatu halo levantamentu kadastral.
Article 32.1	Liu husi prosesu levantamentu kadastrál, iha área kolesaun ida-idak, mak foti informasaun sira ne'ebé nesasária hodi prepara Kadastru Nasionál ba Propriedade, inklui mós: a) Lokalizaun administrativa bens imóveis nian; b) Dezeñu jeométriku ba parcela, jeoreferensiadu; c) Lokalizaun ho jeoreferénsia husi parcela; d) Karakteristika ba parcela tuir spesifikasaun téknika; e) Deklarasaun titularidade nian tuir artigu ema individual, koletivu no Estadu nian, ba bem imóveis, tuir artigu 33o; f) Informasaun seluk ne'ebé konsidera nesasáriu.
Article 32.2	Parsela rai ida idak hetan Númeru Uniku ba Identifikasaun.
Article 33.1	Durante prosesu levantamentu kadastral DNTPSC foti deklarasaun ba titularidade husi ema individual, entidade koletiva no comunidade kona ba bens imóveis ne'ebé tama iha área kolesaun nian.
Article 33.2	Hamutuk ho deklarasaun ba titularidade ne'ebé temi iha no 1, DNTPSC mos foti kópia ba prova sira ne'ebé deklarante sira bele hatudu.
Article 33.3	La bele bandu ema hatu hatama deklarasaun ba titularidade.
Article 33.4	Ba deklarasaun ida-idak sei fó número identifikasaun úniku.
Article 33.5	Akordu sira ne'ebé hetan liu husi mediasaun ka negosiasaun, iha ne'ebé partes sira konkorda kona-bá transmite direitu nain ba bem imóvel, sei konsidera validu.
Article 33.6	DNTPSC, no subsidiariamente entidade pública seluk, mak iha kbiit atu hatama deklarasaun titularidade ba bens imóveis Estadu nian.
Article 33.7	Tenke fo insentivu ba deklarasaun tutularidade hamutuk feen-laen
Article 34.1	Informasaun ne'ebé foti iha área kolesaun nian, sei hatama ba mapa kadastrál no hetan publikasaun pelumenus iha loron <a href="#">tolu nulu</a> nia laran.
Article 34.2	Iha kazu sira ne'ebé karakterístika física husi kolesaun fo justifikasaun, Diresaun Nasionál Rai, Propriedade no Servisu Kadastrál bele determina katak mapa kadastral tenke hetan publikasaun liu tiha loron <a href="#">tolu nulu</a> .
Article 34.3	Tempu ne'ebé sei halu publikasaun tenke ser determina no fo hatene antes de inisiu, no labele hanaruk depois divulgasaun.
Article 34.4	Iha período publikasaun nia laran, Diresaun Nasionál Rai, Propriedade no Servisu Kadastrál foti deklarasaun ba na'in ba bens imóveis ne'ebé identifica iha mapa kadastrál, <a href="#">no seidak simu deklarasaun tuir artigu 32 no 33</a>
Article 34.5	Labele simu deklarasaun titularidade ne'ebé hatama bainhira prazu hotu ona..
Article 35.1	Levantamentu Kadastrál ba bem imóvel iha Zona Protesaun Komunitária tenke halo uluk konsulta ba comunidade lokál no rekezitu seluk ne'ebé estabelese iha lejislasaun ketak.
Article 36	Levantamento kadastral sei gratuito (la selu).
<b>Chapter 7 - Determination of Ownership of Property</b>	
<b>Section I - Right of ownership and undisputed cases</b>	

Article 37	Rekoñese katak iha direito propriedade ba deklarante nasional ne'ebé titular ba direito nao formal propriedade, direito propriedade perfeita ka hak milik, kuando la iha disputa.
Article 38.1	Rekoñese katak iha direito propriedade ba deklarante nasional ne'ebé titular ba direito uluk ninan sekundáriu, no ne'ebé iha pose atual no pasífika husi bens imóveis ne'ebé declara.
Article 38.2	Deklarante bele hetan deit direito propriedade ba parte bem imóvel nian ne'ebé nia iha pose.
Article 39.1	Rekoñese katak iha direito propriedade ba deklarante nasional ne'ebé la hetan kontestasaun iha kazu ne'ebé la iha disputa, no ninia pose pasífika,
Article 39.2	La aplika numeru uluk ba bens imóveis ne'ebé tama iha área dominiu públiku Estadu nian.
Article 39.3	Deklarante hetan direito ba propriedade husi parte husi bens imóveis ne'ebé nia iha pose ba.
<b>Section II - Disputed Cases</b>	
Article 40.1	Konsidera katak kazu ne'ebé hetan disputa hanesan kozu ne'ebé iha liu deklarasaun válida ida ba pose ka direito sekundáriu oin oin ba bens imóveis ida deit.
Article 40.2	Karik kazu ne'ebé hetan disputa la consegue resolve liu husi negosiasaun, mediasaun ka akordu seluk tan entre partes, sei resolve liu husi prosesu administrativo ne'ebé hakerek iha lei ne'é, <a href="#">ka ho dezisaun judicial</a> .
Article 41.1	Iha kazu disputado entre deklarante nasional titular ba direito anterior primáriu sira, karik deklarante ida mak iha pose ba bem imóvel tomak ka parte ida, sei rekoñese nia direito propriedade ba parte bem imóvel ne'ebé nia posui.
Article 41.2	Direito propriedade ba parte ne'ebé la iha ema ida mak posui, sei rezolve tuir numero 1 artigu 46.
Article 42	Iha kazu disputado entre deklarante nasional titular ba direito anterior primáriu no deklarante nasional titular ba direito anterior sekundáriu, sei atribui direito propriedade ba titular direito primáriu, la importa sé mak iha pose.
Article 43.1	Iha kazu disputado entre deklarante nasional titular ba direito uluk nian sekundáriu, sei rekoñese nia direito propriedade ba parte bem imóvel ne'ebé nia posui.
Article 43.2	Direito propriedade ba parte ne'ebé la iha ema ida mak posui, sei rezolve tuir numero 2 artigu 46
Article 44	Sei rekoñese direito de propriedade ba deklarante nasional titular ba direito primáriu, la'os ba deklarante posuidor, maske posuidor ne'é kumpre rekizitu ba uzukapiaun espesiál.
Article 45.1	Iha kazu sira ne'ebé hetan disputa entre deklarante nasional ne'ebé iha pose no deklarante titular husi direito sekundáriu uluk nian, direito propriedade ba bens imóveis sei fo ba posuidór ne'ebé kumpre rekizitu ba uzukapiaun espesiál.
Article 45.2	Bainhira posuidór atual la tuir rekizitu ba uzukapiaun espesiál, direito sei fo ba titular husi direito sekundáriu uluk nian.
Article 45.3	Deklarante posuidór so bele hetan direito propriedade ba parte husi bem imóvel ne'ebé nia iha pose ba.
Article 45.4	Situasaun ne'ebé temi iha no 2, ba ema ne'ebé titular direito uluk sekundáriu, simu direito propriedade deit ba luan ne'ebé uluk iha pose.
Article 46.1	Iha kazu sira ne'ebé iha disputa entre deklarante sira, ne'ebé titular ba direito primáriu, bainhira sira la iha pose ba bem imóvel, direito propriedade sei fó ba deklarante titular ba direito ne'ebé ikus liu. <a href="#">Maibe, se karik deklarante ida iha direito informal propriedade nian, nia mak simu direito propriedade.</a>
Article 46.2	Iha kazu sira ne'ebé iha disputa entre deklarante sira, ne'ebé titular ba direito uluk sekundáriu, bainhira sira la iha pose ba bens imóveis <a href="#">tamba ema seluk halo esbullo</a> , direito propriedade sei fó ba deklarante titular ba direito ne'ebé ikus liu.
Article 47.1	Demarkasaun halo tuir titulu ne'ebé iha, maibe bainhira titulu la to'o, tuir pose ba se mak iha fronteira sorin-sorin, ka tuir saida mak hetan husi evidénsia seluk.
Article 47.2	Bainhira titulu sira la determina limite sira ba prédiu sira ka ba área ne'ebé pertense ba na'in ida idak, no problema ne'e labele rezolve liu husi pose ka evidénsia seluk,

	demarkasaun sei halo ho fahe hanesan rai ne'ebé mak litijiu. <a href="#">Fahe rai ba pedasuk rua ho valor hanesan.</a>
Article 47.3	Bainhira titulu sira hatudu área boot liu ka kiik liu kompara ho rai tomak, área ne'ebé liu, ba leten ka ba kraik, sei fahe proporsionál ba ida idak nia parte.
<b>Chapter 8 - Compensation and Reimbursement</b>	
<b>Section I - Compensation</b>	
Article 48.1	Iha direitu atu simu indemnizasaun: a) deklarante nasional iha kazu ne'ebé hetan disputa, ne'ebé la simu direitu propriedade iha regime especial ba definisaun nain ba rai no mos iha direitu uluk nian; b) deklarante nasional ne'ebé iha pose aktual no mos kumpre rekizitu ba uzukapiaun espesiál, maibé la simu direitu propriedade tuir lei ida ne'é.
Article 48.2	Ba kazu sira ne'ebé refere iha alinea a) no 1, bainhira direitu uluk sekundáriu ba rai estabese fim espesifiko ida, deklarante hetan Indemnizasaun de'it bainhira nia utiliza rai ida ne'é ho fim ne'ebé determina iha tempo ne'ebé nia husik bem imóvel ida ne'é.
Article 48.3	Ba kazu ne'ebé refere iha alinea b) no 1, se iha posuidor rua ka liu tan ba bem imóvel, indemnizasaun sei fahe ba sira.
Article 48.4	La inklui iha kazu ne'ebé temi iha no 1 se karik ema ida simu direitu propriedade tuir usucapiaun ordinariu.
Article 48.5	Estadu mak selu Indemnizasaun, maibé bele simu reembolsu tuir artigu sira tuir mai.
Article 48.6	Kompensasaun ne'ebé refere iha n.1 sei selu de'it depois de disputa rezolve definitivu.
Article 49	Indemnizasaun tenke koresponde ba valor boot liu husi aproveitamentu eficiente imóvel nian, iha momentu ne'ebé deklarante lakon pose ba bem imóvel. Valor ne'é sei atualiza ba data dezisaun ne'ebé rekoñese direitu propriedade ba ema seluk.
Article 49.2	Aproveitamentu eficiente ba bem imóvel mak uzu ne'ebé provável liu ba imóvel iha data determinada, aproveitamentu ne'é fizikamente tenke sai possível, justifikadu, legalmente permitidu, finanseiramente possível no produtivu liu tan.
Article 49.3	Se karik la iha prova kontráriu, valor aproveitamente eficiente ba bem imóvel sei sura ho baze iha uzu legal ne'ebé deklarante fó efetivamente ba bem imóvel, iha momentu ne'ebé nia lakon pose ba bem imóvel.
Article 49.4	Valor indemnizasaun ba titular direitu anterior sekundáriu ka posuidór ho uzukapiaun espesiál sei sukat ho baze valor indemnizasaun ne'ebé sei fó ba titular direitu anteriór primeiru ida.
Article 49.5	Iha prosesu avaliasaun imóvel, Komisaun Kadastrál fó oportunidade ba deklarante sira atu kolia kona-bá buat ne'ebé temi iha n.o 3.
Article 50.1	Deklarante sira ho Estadu bele konkorda indemnizasaun sei selu, hotu ka balu, liu husi transfere bens imovel estadu nian ida ho valor ne'ebé hanesan.
Article 50.2	Fo direitu konaba bens imóveis sei regula ho lejislasaun ne'ebé mak aplikavel ba utilizasaun dominiu privadu estadu nian.
Article 51.1	Bens imóveis husi dominiu privadu Estadu nian bele hetan arrendamentu espesiál <a href="#">ka forma seluk ne'ebe lei determina</a> ba ema okupante sira ne'ebé hetan protesaus hasoru despeju iha kazu sira ne'ebé diploma ne'e refere
Article 51.2	Rejime arrendamentu no fa'an dominiu privadu Estadu nian sei hetan regulamentasaun liu husi lei.
<b>Section II - Reimbursement</b>	
Article 52.1	Iha kazu disputa sira, kuandu deklarante posuidór hetan direitu propriedade liu husi uzukapiaun espesiál, nia tenke selu reembolsu ba Estadu. Reembolsu hanesan valor indemnizasaun ne'ebé Estadu selu ba deklarante seluk iha kazu disputadu nia laran.
Article 52.2	Valor reembolsu ne'ebé temi iha no 1, sei sura ho baze limitasaun bem imóvel nian kona-bá atribuisaun direitu propriedade nian.
Article 53.1	Estadu bele fó izensaun (la selu) ba pagamentu ne'ebé refere iha artigu ne'ebé mai antes artigu ida ne'é, bainhira iha sirkunstánsia ekonómika ne'ebé la dí'ak. Izensaun bele halo tomak ka parsial.

Article 53.2	Rejime izensaun reembolso total no parsial tenke fó garantia katak la hamenus kondisaun moris ba deklarante ne'ebé tenke selu reembolsu.
Article 54.1	Obrigasaun atu reembolsu sei garante liu husi ipoteka ba bem imóvel. Iha ipoteka ne'é Estadu mak benefisiáriu.
Article 54.2	Ipoteka ne'e sei rejista iha kadastro bem imóvel, iha futuru sei rejista iha Rejisto Predial.
Article 55	La prejuizu ba dispostu iha seksaun ida ne'é, rejime indemnizasaun no reembolsu sei regulamenta iha lei ketak.
<b>Chapter 9 - Process of Administrative Eviction</b>	
Article 56.1	Okupante arbitráriu ba sasan imóvel Estadu nian sei hamosu despeju administrativu tuir iha lei ida ne'é.
Article 56.2	Okupante arbitráriu mak ema ne'ebé okupa imóvel sem autorizasaun husi entidade competente, ho kontratu arendamentu ne'ebé válidu ka aktu sira seluk ne'ebé autoriza usa sasan imóvel.
Article 56.3	DNTPSC mak iha kbiit atu hala'o despeju administrativu ba ocupante arbitráriu iha bens imóveis Estadu nian.
Article 56.4	DNTPSC bele halo akordo ho ocupante arbitráriu atu promove hasai husi bens imóveis Estadu nian.
Article 57.1	DNTPSC mak iha kbiit atu hala'o despeju administrativu ba ocupante arbitráriu iha bens imóveis ne'ebé direitu propriedade hetan rekoñesimentu tuir prosesu ne'ebé estabelese iha lei ne'é, wainhira ema seluk ukupa bem imóvel. <a href="#">Despeju ida ne'é bele halo deit wainhira prosesu remata.</a>
Article 57.2	Buat ne'ebé temi iha no 1 la aplika wainhira desizaun mai husi tribunal.
<b>Section II - Special protection against eviction</b>	
Article 58.1	Kona ba protesaun espesial hasoru despeju, sei konsidera uma hela fatin ba família bens imóveis ne'ebé posuidór uza hanesan hela fatin ba família no la iha fatin seluk atu hela ka la iha osan atu hetan fatin seluk atu hela.
Article 58.2	Konsidera mos hela fatin ba família bens imóveis ne'ebé posuidor uza atu manan moris ba nia no ninia família, no la iha osan atu hetan fatin seluk.
Article 59.1	Governu fasilita rezidénsia alternativa adekuada ida ba rezidente iha uma hela fatin família nian ka meiu seluk hodi hetan rezidénsia alternativa.
Article 59.2	Atribuisaun rezidénsia alternativa ka ajuda finanseira ba nia akizisaun iha número uluk sei regula ho lei ketak.
Article 60.1	Bainhira bens imóveis ne'ebé titularidade fó ba ema seluk sai hanesan fatin uniku ne'ebé família ocupante iha atu hela, entaun despeju akontese deit bainhira simu hela fatin alternativu ka bainhira liu tiha fulan sanulu resin ualu husi rekoñesimentu ka atribuisaun ba direitu propriedade, tuir ida ne'ebé akontese uluk.
Article 60.2	Sei la fó protesaun espesial hasoru despeju ba sé mak okupa bens imóveis depois rekoñesimentu ba direitu propriedade fó ona ba ema seluk.
Article 61	Kunadu iha ema sira afektadu barak, tamba atribuisaun direitu propriedade ba deklarante ida, no atribuisaun ida ne'é levanta problema grave realojamentu nian, Estadu bele hili halo ekspropriausaun ba imóvel, tuir Lei Ekspropriausaun nian.
<b>Section III - Procedure</b>	
Article 62.1	Labele halo despeju administrativu ho kondisaun ne'ebé viola dignidade, dereitu umanus, no seguransa ba ema despejadu sira.
Article 62.2	Labele uja forsa iha prosesu despeju, exseptu wainhira iha kondisaun espesial ne'ebé tenke ho justifikasaun hatu entidade polisia hola parte, maibé sempre respeita prinsipiu nesetidade no proporsionalidade.
Article 63.1	DNTPSC halo notifikasaun ba ocupante sira kona ba orden despeju nian, no akompanha ho kópia ba desizaun administrativa defenitiva ida ne'ebé rekonese ka atribui direitu ba propriedade kona ba sasan ne'ebé okupa ba ema seluk.
Article 63.2	Notifikasaun ba despeju halao pesoalmente ba ema ne'ebé okupa bem imovel, tenke reforsa mos ho explikasaun ba konteudu no explikasaun kona ba mekanismu sira no prazu atu hasoru notifikasaun.

Article 63.3	Orden ba despeju tenke hakerek ho lian oficial rua, intrega ba okupante iha momentu notifikasaun ne'ebé tenke iha elementu sira tuir mai; a) identifika nain ba sasan imóvel nian; b) Prazu despeju; c) Meius legal ba opozisaun despeju no prazu; d) Informasaun kona ba protesaun especial kontra despeju ba kazu ne'ebé trata uma no hela fatin familia, no prosedimentu atu hetan; e) Informasaun kona ba possibilidade atu iha representasaun husi advogadu no mekanismu fo apoio judisiáriu ne'ebé iha.
Article 64	Tenke fo prazu ida ne'ebé razoável atu hamamuk sasan imóvel, prazu labele menus liu lora 90.
Article 65.1	Okupante arbitráriu bele husu ba Ministériu Solidariedade Sosial hodi hakerek deklarasaun ne'ebé deklarata katak nia hanesan rezidente iha uma hela fatin ba família, hodi hetan protesaun especial hasoru despeju.
Article 65.2	Rekerimentu ne'ebé temi iha número uluk intrompe prazu ba hamamuk imóvel, ne'ebé hakerek iha notifikasaun.
Article 65.3	Ministériu Solidariedade Sosial iha prazu lora 30 deit hasai deklarasaun kona ba kondisaun rezidente uma ne'ebé família hela ba hanesan prevista iha no 1.
Article 65.4	Bainhira prazu ne'ebé temi iha no 3 liu tiha ona no la hetan resposta husi Ministériu Solidariedade Sosial, entaun konsidera katak rekerente rezidente duni iha uma hela fatin ba família.
Article 65.5	Kritériu sira atu simu estatutu rezidente iha hela fatin ba família sei hakerek iha Diploma Ministerial husi Ministériu Solidariedade Sosial.
Article 66.1	Bainhira hakotu kondisaun hanesan rezidente iha uma hela fatin ba família, ka bainhira liu ona prazu fulan 18, ida ne'ebé mak mai uluk, DNTPSC sei fo notifikasaun ba okupante arbitráriu ba bens imóveis Estadu nian ka bens imóveis privadu nian ne'ebé hetan restituisaun, hodi okupante sai husi bens imóveis ne'ebé iha <a href="#">loron 90 nia laran</a> , konta husi lora ne'ebé halo notifikasaun.
Article 66.2	Bele halo rekursu ierárkiku hasoru despeju, tuir dekretu lei 32/2008, ne'ebé regula ba prosedimentu administrativu.
Article 66.3	Dezisaun iha rekursu ierarkiku, bele hetan impugnasaun judicial, hato'o iha prazu lora hat nolu resin lima nia laran, konta husi nia notifikasaun.
Article 66.4	Buat ne'ebé hakerek iha no 1 no artigu 60.o no 61.o mos aplika ba dezisaun tribunal nian, ho adaptasaun ne'ebé tenke halo.
<b>Chapter 10 - Process of the Recognition and award of Title</b>	
<b>Section I - Administrative Processes</b>	
<b>Sub-Section I - Cadastral Commission</b>	
Article 67	Lei ida ne'e hari'i Komisaun Kadastral, ne'ebé depende husi Ministério da Justisa, ho funsaun atu avalia kazu disputadu tuir prosesu ba rekoñesimentu no ba atribuisaun ba primeiro direito propriedade.
Article 68.1	Hola parte iha Komisaun Kadastral: a) Jurista na'in ne'én ne'ebé hetan nomeasaun husi Primeiru Ministru, tuir proposta husi Ministru Justisa; b) Tekniku nain tolu husi rai no propriedade, ne'ebé sei hetan nomeasaun husi Diretor Nasionál DNTPSC.
Article 68.2	Autoridade ida idak sira ne'ebé refere iha nº 1 sei hatudu membru suplente ida ne'ebé substitui membru efetivu bainhira nia labele marka prezensa iha enkontru ka iha impedimento
Article 68.3	Membru sira husi komisaun kadastral tenke iha integridade moral no étika ema hotu rekoñese.
Article 68.4	Ministra da Justisa hili presidente komisaun entre nia membros.
Article 68.5	Komisaun Kadastral bele organiza iha painel arbitral ho autonomia atu decide, kompostu husi, mínimu jurista nain rua, tékniku rai no propriedade nian nain ida;
Article 68.6	Atu kumpre ninia funsaun, Komisaun Kadastral iha apoio husi Sekretariado Tekniku ida.

Article 69.1	Deliberasaun sira foti ho votu maioria, husi membru ne'ebé prezente, no Presidente Komisaun Kadastral iha votu kualidade;
Article 69.2	Komisaun Kadastral la'ó tuir lei ida ne'é, Dekretu-Lei ne'ebé regula Komisaun Kadastral no rejimentu internu ne'ebé aprovalu husi nia membru sira, tuir nia funsaun no nia kompeténsia.
<b>Sub-Section II - Administrative Decisions</b>	
Article 70	Wainhira liu tiha ona períodu atu hatama deklarasaun iha prosesu levantamentu kadastral ne'ebé hakerek iha artigu 33.o no 1 no no 2, DNTPSC sei haruka kazu sira ne'ebé iha disputa ba Komisaun Kadastral.
Article 71	Iha prosesu atu atribui direitu propriedade ba bens imóveis, atu kria fiar ba faktos ne'ebé lo'os iha deklarasaun sira, Komisaun Kadastral rasik, no liu husi DNTPSC nia direisaun distrital sira, bele: a) Bolu deklarante sira, ida-idak ka hamutuk atu fó klarifikasaun; b) Rona testemunha sira, ne'ebé deklarante sira sei apresenta; c) Konsulta ho autoridades lokais no komunitarias; d) Husu deklarante atu hatudu dokumentu liu tan; e) Halo inspeksaun seluk ne'ebé precisa atu konfirma informasaun ne'ebé to'ó husi deklarasaun sira.
Article 72	Iha kazu sira ne'ebé iha disputa, Komisaun Kadastral sei: a) Rekoñese ka atribui direitu propriedade ba deklarante nasional sira, tuir kritériu sira ne'ebé define iha lei ne'é, no mos fiar ba faktos ne'ebé apresenta. Fiar ida ne'é sei forma durante prosesu levantamentu kadastral, no liu husi inspeksaun seluk ne'ebé hala'ó; b) Determina katak obligasaun ba indemnizasaun no mos reembolsu iha ka lae, <b>no define sira nia valór tuir artigu 48.o.</b>
Article 73	Desizaun administrativa tenke fundamenta husi faktu no direitu, no inklui elementu sira tuir mai ne'é: a) Identifikasaun titular parsela sira no identifikasaun parsela; b) Iha ka lae obligasaun atu selu indemnizasaun c) Iha ka lae obligasaun atu selu reembolsu; no d) Valór sira kona ba indemnizasaun no reembolsu.
Article 74.1	Aplika ba membru Komisaun Kadastral impedimentu hanesan previstu iha artigu 87.o husi Kódigu Prosesu Sivil, ho adaptasaun nesessaria.
Article 74.2	Karik membro Komisaun Kadastral impedidu tuir no 1, membru suplente mak substitui nia iha votasaun ba kazu.
Article 74.3	Se Membru Komisaun Kadastral ne'ebe impedidu vota ka hola desizaun iha kazu ida, parte ne'ebé prejudikada bele husu para anula desizaun.
Article 75.1	Deklarante sira bele hato'ó suspeisaun membru Komisaun Kadastral se halao razaun ruma ne'ebé koalia iha artigu 92.o husi Kódigu Prosesu Sivil ho adaptasaun nesessaria.
Article 75.2	Deklarantes husi kazu disputados bele hato'ó suspeisaun kontra membru komisaun kadastral liu husi rekerimento ne'ebe hato'ó ba presidente komisaun kadastral nian. Rekerimento ida ne'e bele hato'ó to'ó lonon ida antes ke desizaun administrativa sai.
Article 75.3	Insidente suspeisaun sira instruidu no deside husi Presidente Komisaun Kadastral, aplika husi artigu 94.o e 95.o husi Kódigu Prosesu Sivil ho adaptasaun nesessaria.
Article 75.4	Karik deklarante hato'ó suspeisaun kontra Prezidente Komisaun Kadastral, nia suplente mak foti desizaun konabá suspeisaun ida ne'e.
Article 75.5	Karik suspeisaun hetan suporta, kazu disputado ne'ebe refere bele haruka ba grupo Komisaun kadastral seluk atu hetan desizaun ka membro komisaun kadastral nian ne'ebe hetan suspeisaun bele substitui ba ninia suplente durante votasaun ba kazu disputado.
Article 76.1	Desizaun administrativa konaba kazu disputado refere iha artigu 72 hetan efeitus de'it depois de prazu atu hato'ó rekursu ba Ministro da Justisa liu tiha.
Article 76.2	Bainhira prazu ne'ebé temi iha no 1 hotu ona, no la iha impugnasun judicial, desizaun administrativa hetan efikásia imediatu.
<b>Section II - Judicial Appeal</b>	

Article 77	Dezisaun administrativa iha kazu disputadu sira abele hetan impugnaun judicial, ho efeitu suspensivu, bele rekere iha prazu loron 60 nia laran, sura husi nia notifikasaun.
Article 78.1	Tribunal judicial sira iha kompetensia atu desidi impugnaun judicial tuir artigu anterior;
Article 78.2	Impugnaun judicial sei halo ho forma komum, ho especialidade sira ne'ebe hakerek iha artigu 79.o no 80.o no 81.o.
Article 79	Iha lejitimidade atu halo impugnaun ba dezisaun administrativa mak deklarante sira ne'ebe titular ba direitu subjektivu sira ka interese ne'ebe legalmente protejido ho konsidera hanesan lezadu.
Article 80	Simu tiha impugnaun judicial, tribunal notifika entidade competente ba atribuisaun titulu propriedade nian ba nia interpozisaun, atu suspende imediatu prosesu atribuisaun no hasai titulu nian.
Article 81	Maske laos parte husi prosesu, Estadu mos bele intervene iha kazu tuir artigu 276.o tuir Kodigo Prosesu Sivil, iha kazu hotu-hotu ne'ebe Estadu bele simu obrigasaun atu selu indemnizasaun ne'ebe la halo parte ba dezisaun Komissaun Cadastral ka husu parte ruma hakarak aumenta valor indemnizasaun estabelese husi Komissaun Cadastral.
<b>Chapter 11 - Cadastral Survey</b>	
<b>Section III - Registering and Issuing of Titles</b>	
Article 82	Rejistu iha Kadastru Nasional Propriedade no prosesu fo titulu sei hetan regulasaun iha Diploma Ministerial husi Ministeriu Justisa.
Article 83.1	Atribuisaun titulu ida kona-ba bem imovel ida ne'ebe fo ba titular direitu atu hahalok hanesan proprietariu ba bem imovel.
Article 83.2	Uzukapiaun iha fatin tinan lima depois ema simu titulu ba bem imovel tuir lei ida ne'e, tuir mai sei aplika prazu sira ne'ebe previstu iha Kodigo Sivil.
Article 83.3	Rekonosimentu ba direitu propriedade ida iha kazu disputadu sira, konstitui ho kazu julgadu entre parte sira deit.
<b>Chapter 12 - Final Provisions</b>	
Article 84	Korupsaun aktiva no pasiva, falsifikasaun dokumentu, hato'o deklarasaun falsa no krime sira seluk tan, ne'ebe pratika iha prosesu aplikasaun lei ida ne'e, sei hetan pena tuir Kodigu Penal no lejislasaun sira seluk.
Article 85.1	Sidadaun nasional ne'ebe okupa ho hahalok dame bem imovel sira sidadaun estranjeiru nian, ne'ebe fila tiha ona ba Estadu, bele hetan direitu atu sosa bem imovel liu husi prosesu ida ne'ebe sei regula liu husi dekreto-lei ketak.
Article 85.2	Sidadaun nasional ne'ebe refere iha ponto uluk hetan benefisio hanesan pose aktual, ne'ebe refere iha no 2 husi artigu 18.o.
Article 85.3	Karik Estado halo tiha ona kontrato fo aluga ba bem imovel ida ne'ebe sidadaun nasional hakarak hetan direitu atu sosa, osan ne'ebe cidadaun nasional selu tiha ona ba Estado liu husi renda sei hamenus husi valor total ne'ebe nia tenke selu atu sosa.
Article 85.4	To'o dekreto lei ne'ebe regula prosesu hola ne'ebe refere iha artigu ne'e tama iha vigor, sei fo ba okupante bens imoveis ne'ebe fila ba Estadu, direitu atu hela ne'ebe renova automatiku ba erdeiru no legatariu sira
Article 85.5	Kona-ba uzu la'os atu hela ba bens imoveis ne'ebe fila ba Estadu sei hetan regularizasaun liu husi kontratu fo aluga ka akordo seluk tuir lei.
Article 86.1	Kontratu arendamentu ne'ebe halo tuir Lei n. 1/2003, de 10 de Março, ne'ebe relaciona ho bens imoveis abandonados, sei continua to'o prazo remata. Ema ne'ebe hetan direitu propriedade sei asume posisaun hanesan ema ne'ebe fo aluga (señorio).
Article 86.2	Osan renda nian ne'ebe Estadu simu tiha ona to'o tempo ne'ebe halo rekonosimento ka atribuisaun direitu propriedade kona-ba bem imovel abandonado, halo parte receita Estadu nian no la bele simu reklamasan husi nain;
Article 86.3	Tuir diploma ida ne'e, ema ne'ebe aluga ka okupante arbitrario la iha pose kona ba bem imovel abandonado.

Article 86.4	Diploma ida ne' é konsidera bens imóveis abandonados mak bens imóveis ne' ébé DNTPSC identifika tiha ona liu husi Lei n. 1/2003.
Article 87	Tributasaun kona-ba bem imóvel ne' ébé sei aprova ho lei, <a href="#">tenke sai boot liu ba rai boot liu.</a>
Article 88.1	Lei ida ne' é sei la afekta prosesu judisial transita julgadu tiha ona (remata definitivu).
Article 88.2	Lei ida ne' é aplika imediatu ba prosesu judisial ne' ébé seidak remata.
Article 88.3	uiz bele suspende prosesu judisial sei hala' o hela hodi hein remata prosesu definisaun direitu propriedade, bainhira nia hanoin ida ne' é adekudo liu hodi rezolve disputa.
Article 89.1	Reklamasau sira ne' ébé submete tuir Lei no 1/2003, sei konsidera hanesan deklarasaun titularidade, se karik téknikamente viável;
Article 89.2	Tekinikamente viável mak reklamasau sira ne' ébé identifika inekuivokamente reklamante, no bem imóvel ne' ébé hetan hetan reklamasau.
Article 89.3	Dekarante sira ne' ébé apresenta deklarasaun tuir n.o 1 iha responsabilidade atu verifica katak nia reklamasau hatama ona iha mapa kadastral durante periodu publikasaun, tuir artigu 33.o, no tenke apresenta reklamasau foun kuandu la iha.
Article 90	Levantamentu kadastral, deklarasaun titularidade nian ne' ébé rekolla no faktu sira ba rekoñesimentu direitu no propriedade ba efeitu rejistu emitidu sira, tuir Dekretu-Lei n.o 27/2011, sei konsidera válido
Article 91	Sei la efeitu prezunsaun sira iha artigu 12.o husi Lei n.o 1/2003, lora 10 fulan Marsu
Article 92	Sei revoga diploma ka norma hotu-hotu ne' ébé iha sentidu kontráriu ho dispostu lei ida ne' é nian.
Article 93	Lei ida ne' e tama iha vigór lora sianulu tuir nia lora publikasaun.



## Annex 2: List of Civil Society Submissions on the Land Law

Institution	Title	Prepared by	Based on (Version of the Law)	Date Submitted:	Submitted to:
<b>Associação comunidade vítimas de Timor-Leste (ACVTL)</b>	Victims Association of Timor-Leste (ACVTL) Comments and Thoughts on the Land Law 2009	ASSOCIAÇÃO COMUNIDADE VÍTIMAS DE TIMOR LESTE ACVTL	Version I	13-Aug-09	Ministry of Justice
<b>KSI no UNAER</b>	Kadadalak Sulimutuk Institute (KSI) and Uniaun Agrikultor Ermera (UNAER) Joint Submission to the Ministry of Justice on the Draft Land Law	KSI no UNAER	Version II	16-Oct-09	Ministry of Justice
<b>Joint Civil Society Statement (facilitated by FONGTIL)</b>	Joint Civil Society Submission to the Ministry of Justice on the Draft Land Law (Version 2)	FORUM TAU MATAN, Rede ba Rai, FONGTIL, BELUN, Comisaun Justisa e Pas, KSI no Lao Hamutuk,	Version II	19-Oct-09	Ministry of Justice
<b>La'o Hamutuk</b>	La'o Hamutuk Submission to the Ministry of Justice of the Democratic Republic of Timor-Leste on the Draft Land Law, 23 October 2009		Version II	23-Oct-09	Ministry of Justice
<b>Rede ba Rai</b>	Rede ba Rai Submission on Community Land	Members of Rede ba Rai	Version II	31-Oct-09	Ministry of Justice
<b>Rede ba Rai</b>	Rede ba Rai Submission on Mediation and Arbitration		Version II	31-Oct-09	Ministry of Justice
<b>Centre on Housing Rights and Evictions (COHRE)</b>	COHRE Submission on the Draft Transitional Land Law of Timor-Leste	Natalie Bugalski	Version I and II	1-Nov-09	Ministry of Justice
<b>Daniel Fitzpatrick (ANU)</b>	Submission to the Timor-Leste Ministry of Justice on Chapter V of the Draft Land Law	Daniel Fitzpatrick	Version II	Nov-09	Ministry of Justice

<b>La'o Hamutuk</b>	La'o Hamutuk Submission to Committee A of the National Parliament on the Draft Land Law (Special Regime for the Determination of Ownership of Immovable Property) 19 September 2011	Ines Martins		19-Sep-11	Committee A of National Parliament
<b>Rede ba Rai</b>	Rede ba Rai Open Letter to Parliament	Members of Rede ba Rai	Version V	Apr-12	National Parliament
<b>Rede ba Rai</b>	Letter to President Taur Matan Ruak	Members of Rede ba Rai	Version V	Sep-12	President Taur Matan Ruak
<b>Rede ba Rai</b>	Second Submission to the Minister of Justice of the Democratic Republic of Timor-Leste relating to the Special Regime for the Definition of Ownership of Immoveable Property, 15 February 2013			15-Feb-13	Ministry of Justice
<b>António da Costa Castro e Frederico Ximenes</b>	Recommendations on the Land Law		Version 5	10-Feb-13	Ministry of Justice
<b>Saturnino Timan, Xefe Suku Betano</b>	Submission on the Land Law		Version 5	10-Feb-13	Ministry of Justice
<b>Jose Andrade</b>	Comments on the Draft Law on Land		Version 5	11-Feb-13	Director of DNTPSC
<b>Luisa da Costa</b>	Comment on the Draft Land on Land		Version 5	11-Feb-13	Director of DNTPSC
<b>Marcelina Alves</b>	Comments on the Draft Law on Land		Version 5	12-Feb-13	Director of DNTPSC
<b>Ana maria Quintao Xavier</b>	Comments on the Draft Law on Land		Version 4	13-Feb-13	DNTPSC
<b>Benjamim Cardoso</b>	Submission on the Land Law		Version 5	13-Feb-13	Secretary of State for Justice
<b>Zulmira Rosa Correia</b>	Comments on the Package of three Land Laws		Version 5	13-Feb-13	Director of DNTPSC
<b>SEPI</b>	Submission from the Secretary of State for the Promotion of Equality on the Land Law		Version 5	14-Feb-13	Ministry of Justice
<b>Sidonio M T santos</b>	Submission on the package of three draft		Version 5	14-Feb-13	Director of DNTPSC

	land laws				
<b>Institusi Juridico de Timor-Leste (IJTL)</b>	Submission on the Land Law		Version 5	15-Feb-13	Director of DNTPSC and Ministry of Justice
<b>JSMP</b>	Submission on the Package of Land Laws: Special Regime for the Determination of Ownership of Immovable Property, the Expropriation Law and the Compensation Fund Law		Version 5	15-Feb-13	Ministry of Justice
<b>Rede ba Rai</b>	Second Submission to the Ministry of Justice of Timor-Leste on the Transitional Land Law		Version 5	15-Feb-13	Ministry of Justice
<b>Rede ba Rai</b>	Segundu Submisaun ba Ministeriu Justisa Republika Demokratika Timor-Leste		Version 5	15-Feb-13	Ministry of Justice
<b>Rede Feto</b>	Rekomendasaun Ba Draft Lei Ba Rai Timor Leste: Haforsa Direitu Feto Ba Rai Husi Rede Feto Timor-Leste		Version 5	2013	Ministry of Justice
<b>Rede ba Rai</b>	Submisaun Kona-ba Lei Fundu Imobiliáriu ba Ministerio Justisa		Version 5	2013	Ministry of Justice



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