

## Managing Land Conflict in Timor-Leste

### I. OVERVIEW

Eight years after independence, Timor-Leste is still without a legal basis for determining ownership of land. In its absence, the challenges of enforcing property rights have grown more complex and increased the potential for conflict. The politically charged task of sifting through overlapping claims inherited from the country's two colonial administrations has been complicated by widespread illegal occupation of property after the displacement of over half the population that followed the 1999 referendum. The legal and social uncertainties this created magnified the effects of the country's 2006 crisis, causing further mass displacement in the capital and beyond. Resolution of these uncertainties through new laws, regulations and policies is necessary to reduce conflict, diminish the risk of further instability and to provide a clear way to resolve past and future disputes.

Land disputes have grown out of a history of displacement that includes forced relocations, military occupation and deadly internal upheavals. Despite this troubled history, few disputes over land ownership lead to violence. Many have been resolved or at least managed through informal mediation, a marker of the strength of customary understandings of land tenure and local communities. Yet some cases remain beyond the capacity of village chiefs, local elders or religious leaders to fix. Others are "pending" in anticipation of long-promised legislation expected to clarify cases that have complex (and undocumented) historical roots. The risk is that this has created expectations that legislation alone will be unable to meet. Many of these issues are more political than technical and will not be resolved by the application of titling laws. Given the weaknesses of the Timorese legal system, support to existing mediation will need to be strengthened alongside new laws to provide a realistic option for those parties ready to settle out of court.

Draft legislation on land titling before parliament will be an important first step towards better management of land disputes and pave the way to enforcement of a new civil code to govern all property rights. It will provide the first legal proof of ownership and provide protections in a growing property market. It will also raise the stakes in ownership disputes and thus the risk of conflict. While the collection of land claims underway in many of the

country's urban areas has shown the level of disputes to be below 10 per cent, it has also brought dormant issues to the surface, such as problems with intra-familial inheritance and tensions over land between communities.

The government has so far been unable to provide alternative housing to the displaced or evicted, an essential element of the constitutional right to housing. A worst-case scenario is for a new land administration system that would legalise dispossession without providing basic protections to those who may be evicted due to either illegal occupation or government expropriation. Land in Dili and other urban areas is already at a premium. Protections in the draft legislation for land held under customary ownership – the vast majority of the nation's land – are very weak, especially in the face of broad powers granted to the state. In many communities, the individual titles offered by the new legislation are unlikely to be appropriate or in demand. It is the government's prerogative to develop the country, but without agreeing to clear and enforceable protections for those who will require resettlement, it risks simply creating discontent and rejection of the state's authority, weakening the very rights it seeks to reinforce. The government's new ambitious plans for development by 2030 make resolution of such questions more urgent.

Strengthening property rights in Timor-Leste will require more than a law. It needs further consultation and agreement on how to manage community land holdings, particularly as the country seeks to encourage new investment. To address these concerns, a medium-term goal should be to develop a comprehensive land use policy that incorporates community priorities. Earlier donor-driven attempts have fallen short. High-level government engagement and improved mediation will also be required to solve many of the political challenges that surround the more intractable land disputes. While a law on titling remains the first step, to date the draft is poorly understood. Broader debate anchored by wider public information on the law and its implications should be a prerequisite for its passage. This needs to be balanced against the risk of creating even more delays.

As the government plans for accelerated development and identifies areas for donor support, its priorities should include:

- ❑ further consultation and explanation of the implications of the land law and associated legislation before passage by parliament;
- ❑ immediate clarification on basic protections and resettlement plans for those who will have to move after being deemed illegal occupants;
- ❑ engagement with local communities on how the government can protect the rights of communities and access to land held under customary tenure;
- ❑ strengthened support to informal mediation processes alongside the formal land titling; and
- ❑ beginning discussion on a comprehensive land and housing policy that would incorporate community needs and government objectives.

## II. THE LAY OF THE LAND

The legacy of Timor-Leste's two foreign administrations has provided one of the challenges to regularising land administration and ownership. It is complicated to sift through competing claims between rights issued under either Portuguese or Indonesian administration and then determine whether the dispossession that characterised these regimes can today be deemed legitimate.<sup>1</sup> A more fundamental challenge is one that lies behind many of the young country's governance challenges: the difficulty for the state of regulating an issue that many see as a community matter, governed by local custom and not the law. Customary modes of ownership remain remarkably strong despite Portuguese and Indonesian influence. This has created a situation in which local understandings of land ownership are often at odds with the law. This confusion has been amplified by a history of internal displacements that have further complicated ownership matters. Eight years after independence, there is no legal means of selling or even determining property ownership. A law on titling currently before parliament seeks to address this problem.

<sup>1</sup> For related Crisis Group reporting on Timor-Leste, see Crisis Group Asia Report N°120, *Resolving Timor-Leste's Crisis*, 10 October 2006; Asia Report N°143, *Timor-Leste: Security Sector Reform*, 17 January 2008; Asia Report N°148, *Timor-Leste's Displacement Crisis*, 31 March 2008; Asia Report N°180, *Handing Back Responsibility to Timor-Leste's Police*, 3 December 2009; and Asia Briefing N°104, *Timor-Leste: Oecusse and the Indonesian Border*, 20 May 2010.

## A. THE DOMINANCE OF CUSTOMARY TENURE

Despite Timor-Leste's often violent turmoil, a system of customary and communal ownership, particularly in rural areas, has been remarkably resilient. The largest part of the country's land is governed by local customary systems of tenure. One comprehensive study estimated the amount to be as high as 97 per cent of all land.<sup>2</sup> Where land is under customary tenure, authority over land ownership and transactions rests with local traditional leaders.<sup>3</sup> Land use is allocated by community leaders and the sale of land to outsiders is generally not permitted. One study of traditional holdings underscores that community members still retain "highly individuated rights to land" within community areas, even if these do not equate to statutory rights. They function like inheritable usage rights.<sup>4</sup>

State practice has often been at odds with this understanding. The Portuguese colonial administration gave very limited recognition of community land rights.<sup>5</sup> In its late stages, it granted preferential rights to the families of *liurai* (or kings, above the level of *suco* (village) leaders)<sup>6</sup> who had generally pledged loyalty to the colonial government, but this could often be at the expense of community holdings. Indonesian law during the occupation included notional recognition of community land (most

<sup>2</sup> Rod Nixon, "Non-Customary Primary Industry Land Survey: Landholdings and Management", published by USAID, June 2005.

<sup>3</sup> The structure, roles and relevance of different customary leaders vary in different parts of the country. The relative power of the elected *suco* (village) chief appears to be greater in urban areas, particularly Dili, where customary systems are heterogeneous and appear weaker.

<sup>4</sup> Daniel Fitzpatrick, Andrew McWilliam and Susana Barnes, "Policy Notes on Customary Land in Timor-Leste", unpublished note, 2008.

<sup>5</sup> One author concludes: "East Timor appears to have been too mountainous, too resistant to outside influences and too firmly based on traditional networks for any program to transform agriculture and develop a plantation system to have the effect that similar programs had on other colonial societies." Daniel Fitzpatrick, *Land Claims in East Timor* (Canberra, 2002), p. 35.

<sup>6</sup> It is difficult to give a universal definition for the *liurai*, whose role and influence varied across time and parts of the country. The Portuguese administration sought to undercut their role in the twentieth century by giving more power to the *suco* level. Some however found their influence increased again after the Indonesian invasion if they were willing to support the new government. Their role today remains undefined and uncontroversial – one *liurai* explained he had raised the subject with the president in January 2010, who promised to give them a formal role. Crisis Group interview, Acacio de Araujo, Ritabou, 23 June 2010.

commonly known as *tanah ulayat*), but very little was ever legally recognised as such.<sup>7</sup>

## B. HISTORIES OF DISPLACEMENT

A history of repeated displacements has further complicated patterns of land ownership and how they are locally understood. Major displacements include:

- *Portuguese colonial administration.* Movement beginning in the early twentieth century included forcible relocation to improve agricultural productivity, as well as to weaken traditional leaders and control the population in the wake of a rebellion launched in Manufahi in 1912.<sup>8</sup> Other displacement was voluntary, including away from the mountainous areas towards more productive plains, where families opened up new land for cultivation.
- *Indonesian invasion, annexation and administration.* The December 1975 invasion by Indonesian forces led a large part of the population to flee Dili and other urban centres for the mountainous interior. As Indonesia worked to establish greater control over the territory during the following three years, many Timorese were forcibly resettled along major coastal roads and away from the interior.<sup>9</sup> Even those who were not resettled were forced to change their way of life. Rather than maintain separate patches of land for living, tending crops and allowing animals to graze, as was customary in some areas, all personal interests had to be within a single 200m area.<sup>10</sup> Transmigration programs that resettled small groups from other Indonesian provinces also confused understandings of land use and ownership.
- *Post-1999 referendum.* Violence following the 30 August referendum displaced over half the population. An estimated 250,000 were driven over the border

into West Timor and some 300,000 fled homes in urban areas, particularly Dili.<sup>11</sup> Following the restoration of order in the capital and elsewhere, but amid the confusion ushered in by the end of what many considered an illegal occupation, many Timorese moved into properties abandoned by the Indonesian state and those who had fled the country.

- *2006 crisis and following.* Insecurity in the capital in April and May 2006 displaced up to 150,000 people.<sup>12</sup> Many took up residence in camps for internally displaced or sought shelter with relatives elsewhere in the city or countryside.<sup>13</sup> They had difficulty returning to properties that had sometimes been occupied in their absence. Tensions between easterners and westerners also led to more limited displacement elsewhere.<sup>14</sup>

This pattern of displacement has had two effects. First, it has placed beside one another different communities with sometimes conflicting understandings of local history and land use, particularly where once temporary displacements have become semi-permanent. Second, when paired with the dispossession described below, it has rendered a large number of people formally landless.<sup>15</sup>

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<sup>7</sup>Fitzpatrick cites one 1996 work that in Indonesian records of land in seven districts outside Dili, only 7.4 per cent of the land was classified as customary. Some 55 per cent was listed as “empty state land”. N. Baisaku, “Pelaksanaan pensertipikatan tanah setelah berlakunya undang undang pokok agraria di propinsi Timor Timur”, unpublished thesis, Sekolah Tinggi Pertanian Nasional, cited in Fitzpatrick, op. cit., p. 95.

<sup>8</sup>See, for example, John G. Taylor, *East Timor: The Price of Freedom* (London, 2000), Chapter 1.

<sup>9</sup>Indonesian military figures cited in *Chega!*, the final report of the Timorese Commission on Reception, Truth and Reconciliation (CAVR), suggested that over 300,000 people were forcibly relocated to military-run camps following the 1978-1979 end of Operation Seroja. See *Chega!*, Chapter 3, “History of the conflict”.

<sup>10</sup>Crisis Group interviews, Tutuala *suco* chief, deputy district administrator, Lautem district, 3-5 July 2010.

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<sup>11</sup>See *Chega!*, op. cit., Chapter 3, “History of the conflict”, para 625.

<sup>12</sup>This is the official estimate cited by the UN-sponsored Commission of Inquiry report and reproduced elsewhere. “Report of the United Nations Independent Special Commission of Inquiry for Timor-Leste”, UN High Commissioner for Human Rights, 2 October 2006. For more on the displacement that followed the 2006 crisis, see Crisis Group Report, *Timor-Leste’s Displacement Crisis*, op. cit.

<sup>13</sup>An early 2008 fact-finding exercise in Dili undertaken by the Ministry of Social Solidarity found that some 30,000 were living in camps, while 70,000 were living with friends or family. See Ibere Lopes, “Land and displacement in Timor-Leste”, Humanitarian Exchange Magazine, Issue 43, June 2009, available at [www.odihpn.org/report.asp?id=3007](http://www.odihpn.org/report.asp?id=3007).

<sup>14</sup>For example, in the western town of Maliana, where some easterners felt unsafe and fled temporarily. Crisis Group interview, Direção Nacional de Terras e Propriedades (DNTP, land and property directorate) official, Maliana, 21 June 2010. For more on east-west tensions and their role in the country’s 2006 crisis, see Crisis Group Report, *Resolving Timor-Leste’s Crisis*, op. cit.

<sup>15</sup>See the findings of the *Chega!* report, op. cit., p. 144. “The Commission finds that repeated displacements, the redrawing of administrative boundaries and the non-recognition of customary land-ownership and land-use practices produced a legacy of landlessness and highly complex land disputes. Although security considerations played an important part in producing this outcome, the unchecked pursuit of economic interests by military and civilian officials and their business associates was also a crucial factor. The disruption of landholding and land-use patterns has had and will continue to have profoundly dam-

### C. CONFLICTING CLAIMS

Efforts at constructing a new land tenure system in Timor-Leste have had to contend with the titles issued by two previous administrations.<sup>16</sup> The Portuguese and the Indonesian governments issued a range of usage and ownership rights that continue to form the basis of many official claims to land ownership. An added challenge is that the bulk of the relevant records were destroyed in the post-referendum violence in 1999, making independent verification and cross-checking of these titles impossible in most instances.<sup>17</sup>

Roughly 3,000 land titles were issued by the Governor of Portuguese Timor; over half were issued in the last 25 years of Portuguese rule and a similar amount concerned land in the capital district of Dili.<sup>18</sup> A large proportion were not full ownership rights (*propriedade perfeita*) but a form of limited-term lease with an option to buy (*aforamento*) that frequently stipulated how the land would be used.<sup>19</sup> Recognition of community land rights were limited, and civil society groups today underscore this as one reason a blanket recognition of Portuguese land rights would be unjust. One division between the opposing parties in the country's 1975 civil war was FRETILIN's support for land redistribution.<sup>20</sup>

A far larger number of titles (some 45,000) were issued by the Indonesian administration. These were roughly evenly split between titles of full ownership (*hak milik*)

and a wider range of usage rights, including several types of leases for state land.<sup>21</sup> A large proportion of companies developing land were closely linked to the military. Until a full-scale conversion process began for Portuguese titles in 1991, decisions on land holdings were based on a decree issued by the armed forces commander that gave the military power to make allocations.<sup>22</sup> Other notable features in this period were a heavy presumption in favour of state ownership, the widespread practice of state expropriation of land in the public interest without proper compensation, and the perception of endemic corruption in the issuance of titles.<sup>23</sup>

Dispossession was a feature of both administrations. Weak recognition of customary rights to land was twinned with strong state rights to appropriate property "in the public interest". Even where owners were offered compensation, it is difficult to determine if it was consensual: a *suco* chief in Lautem told of a request by Indonesian authorities, backed by military force, to expropriate his land for a local health centre (*puskesmas*). They placed 3 million rupiah on the table and on top of the money a pistol, and told him that with or without his permission they were going to take the land.<sup>24</sup> There has been little discussion of formal restitution in cases like this, even though there is a long list of such claims. Since independence, many Indonesian-era village-level administrative buildings have been reoccupied by those who claimed previous rights to the land.<sup>25</sup> Such cases are important to understanding how people may perceive the strength of the state's future claims to what they believe to be their land.

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aging effects on the economic, social and cultural fabric of East Timorese society".

<sup>16</sup> The UNTAET (United Nations Transitional Administration in East Timor) administration did not issue land ownership titles. It did, however, grant temporary use agreements and collected rent on several hundred properties deemed to be government-owned, raising roughly \$1 million each year.

<sup>17</sup> The master *buku tanah* (land book), or province-wide register of land holdings, was reportedly taken by one Indonesian BPN (Badan Pertanahan Nasional, National Land Agency) official leaving Dili in 1999 and never returned. It is now believed to be in Kupang, further potential leverage in asset negotiations between Indonesia and Timor-Leste. Crisis Group interview, Daniel Fitzpatrick, Dili, 29 June 2010.

<sup>18</sup> Figures from Baisaku, *op. cit.*, published in Fitzpatrick, *op. cit.*

<sup>19</sup> For example, Maliana residents today have various opinions on the legitimacy of one local claim to a large tract of land issued under an *aforamento*, as they claim it has been left empty rather than used for grazing animals, as allegedly stipulated in the land title. Crisis Group interviews, Maliana residents, district administrator, Maliana, 24 June 2010.

<sup>20</sup> Fitzpatrick notes that in 1974 "land ownership [as titled by the state] was highly concentrated between five groups: the Catholic Church, [the Portuguese company] SAPT, *liurai* favoured by the Portuguese administration, a *mestizo* elite of mixed Portuguese and indigenous descent, and Chinese-Timorese trading concerns". Fitzpatrick, *op. cit.*, p. 147.

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<sup>21</sup> Indonesian law offered few legal means for companies to directly develop private land, funnelling most of this activity through long-term leases of state land such as the *hak guna bangunan*, *hak usaha*.

<sup>22</sup> The order was known as SKEP-40 (Surat Keputusan Panglima No. 40).

<sup>23</sup> Alleged corruption within BPN is another limiting factor in the perceived "legitimacy" of claims to previous rights today. At district and national level, many of the staff of the current DNTP directorate are holdovers from the Indonesian agency, complicating efforts to build an agency seen as independent and accountable.

<sup>24</sup> Crisis Group interview, Fuiloro *suco* chief, Lospalos, 4 July 2010.

<sup>25</sup> One of many examples is the land at the old Fuiloro *kantor desa* or *suco* office. Crisis Group observation, 4 July 2010.

### III. LIMITED LAWS

The effort to create a legal regime that would govern property ownership has proven both technically and politically challenging. In its absence, Timorese courts have been reluctant to adjudicate cases using Indonesian law.<sup>26</sup> A land and property directorate (Direção Nacional de Terras e Propriedades, DNTP) in the justice ministry (and its predecessor in the UN transitional administration) has never had competence in land disputes beyond supporting local mediation.<sup>27</sup> There is no legal means for buying or selling land, and no way of legally confirming its owner.<sup>28</sup>

The draft civil code now under consideration will establish a native legal framework for the regulation of property rights.<sup>29</sup> What is needed, then, from a land law is some legal basis for determining “original” property rights in the new state to replace the titles issued by earlier regimes. It is an effort to create some kind of “original position” with respect to property ownership and provide a basis for implementation of other laws.

#### A. EARLY LEGISLATIVE EFFORTS

Unsure about what policy a future sovereign government might adopt, the UN administration was forced to take a minimalist approach to resolving the pressing land administration issues that had swelled in the wake of post-referendum displacement. A proposal to create a land commission and begin titling urban properties not in dispute was soon abandoned as politically unfeasible. In 2000, as part of its efforts to “Timorise” the transitional administration, the UN placed the land and property unit under the infrastructure ministry, then led by João Carrascalão. A former land engineer and a founder of the con-

servative União Democrática Timorese party in 1974, Carrascalão was an opponent of any UN-controlled moves on land administration. One UNTAET official recalled that “after demanding and obtaining control of the land and property unit [he] suspended its activities”.<sup>30</sup>

In light of this resistance, the transitional administration’s primary legislative contribution was a regulation blocking the sale or leasing of any property by non-resident Indonesian citizens.<sup>31</sup> This froze land transactions by Indonesians who had left after the referendum. It was also intended to increase Timor-Leste’s leverage in future negotiations over the restitution of state assets.

The country’s first post-independence government developed a package of laws that would establish a property regime for the new country. The package was never completed because of the difficulty of obtaining full cabinet approval of legislation that would govern titling through the establishment of original rights and dispute resolution. But three of its component laws were passed between 2003-2005, which together defined state property, opened a process for registering land claims based on prior ownership and set up a leasing system for state and private property.<sup>32</sup>

The first law, passed in 2003, granted to the state all that which had belonged to the Indonesian or Portuguese administrations, and placed abandoned properties under state administration. Related measures to evict illegal occupants of state or abandoned property have never been implemented due to their huge number. It also created a registration process for entering property claims based on prior ownership. Some 10,700 claims were recorded in the twelve-month period following the law’s promulga-

<sup>26</sup> The Indonesian civil code continues to apply in Timor-Leste pursuant to UNTAET Regulation 1/1999, Section 3. A draft Timorese civil code was passed in generality by parliament on 31 May 2010 but had not been substantively debated as of August 2010. JSMP National Parliamentary Bulletin 2/2010, July 2010.

<sup>27</sup> Hence the full name of the draft law often called “the land law”: *Regime Especial para a definição da titularidade dos bens imóveis* (Special Regime for determination of ownership of immovable property). DNTP is sometimes known by its full name, *Direção Nacional de Terras e Propriedades e Serviços Cadastrais*, or DNTPSC.

<sup>28</sup> DNTP offices are, however, able to issue non-legal documents certifying that they are unaware of any competing claims.

<sup>29</sup> A draft of the Civil Code from November 2008 is available from the justice ministry website at [www.mj.gov.tl/q?node=190.html](http://www.mj.gov.tl/q?node=190.html). See Book III, *Direito das Coisas (The Law of Things)*. The status of a publicly available translation into Tetum or English is unknown.

<sup>30</sup> Anthony Goldstone, “UNTAET With Hindsight: The Peculiarities of Politics in an Incomplete State”, *Global Governance*, Issue 10 (2004), pp. 83-98.

<sup>31</sup> “On the temporary prohibition of transactions in land in East Timor by Indonesian citizens not habitually resident in East Timor and by Indonesian corporations”, UNTAET Regulation No. 2000/27, issued on 14 August 2000. The regulation had retroactive effect to the beginning of UN administration, 25 October 1999 (the date of UN Security Council Resolution 1272, which granted UNTAET its mandate).

<sup>32</sup> The laws are Parliamentary Law 1/2003, “Regime Jurídico dos Bens Imóveis, I Parte: Titularidade de Bens Imóveis”, 10 March 2003; Decree-Law 19/2004, “Regime Jurídico dos Bens Imóveis: Afectação Oficial e Arrendamento de Bens Imóveis do Domínio Privado do Estado”, 17 December 2004; and Parliamentary Law 12/2005, “Regime Jurídico dos Bens Imóveis - II Parte: Arrendamento entre Particulares”, 16 June 2005. Decree laws do not require parliamentary approval.

tion.<sup>33</sup> Planned future legislation was to determine how the claims might be treated.

The other two laws sought to regularise the wide-scale illegal occupation of property that had occurred, particularly in Dili, following the 1999 post-referendum violence. They set up a “special lease” system (*arrendamento especial*) for state property, under which occupants recognised the state’s ownership and paid a nominal monthly rent of \$10.<sup>34</sup> The collection of rent appears to have been enforced irregularly (many people today explain they “just couldn’t afford to pay”).<sup>35</sup> It was cancelled entirely by the incoming Minister of Justice, Lucia Lobato, due to further uncertainties over illegal occupation and ownership introduced by the 2006 crisis, when many properties were taken over by new owners at least temporarily.<sup>36</sup>

One type of housing that was often illegally occupied after the referendum were official housing estates built for civil servants during the Indonesian administration, many of whom had been brought in from other provinces. Such official houses (*rumah dinas*) were owned by the Indonesian state and not the officials living in them. These complexes occupy wide swathes of the suburban periphery of Dili and in each of the twelve district centres.<sup>37</sup> They are now legally property of the Timorese state. Other sites taken over by squatters include military and police barracks that were unused by either the peacekeeping mission or the government after 2002. When officials have tried to assert the state’s right to this property, it has proven difficult to do so. This year the Ministry of Defence and Security has faced resistance from those squatting in a former Indonesian military complex in the Dili suburb of Taibessi. According to one report, in addition to being paid some \$2,000 as compensation (*ganti rugi*), those being evicted believe they are also entitled to empty land elsewhere from the state.<sup>38</sup>

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<sup>33</sup> See Edwin Urresta and Rod Nixon, “Report on Research Findings, Policy Options and Recommendations for a Law on Land Rights and Title Restitution”, East Timor Land Law Program, July 2004, p. 41.

<sup>34</sup> The lease was only offered to Timorese nationals wishing to lease unoccupied property and who could not otherwise afford the lease. See Decree Law 19/2004, op. cit.

<sup>35</sup> Crisis Group interview, DNTP officials, Ermera district, 20 July 2010; Maliana district, 22 June 2010.

<sup>36</sup> A legal order passed by the minister in 2008, reinforcing the need to regularise holdings of state land, has had little effect.

<sup>37</sup> The number of houses built by the Indonesian government across the country has been estimated at 11,400, or roughly 7 per cent of the housing identified by studies in 1999. See “Política Nacional de Habitação” (“National Housing Policy”), approved by the Council of Ministers on 26 July 2007.

<sup>38</sup> “MJ Sei ‘Duni’ Sai Komunitade Bairro-Pite” [“Minister of Justice will ‘really’ evict community members in Bairro Pite”],

## B. CURRENT STATUS OF LAND CLAIMS

Most land claims registered with DNTP remain unresolved.<sup>39</sup> Interviews with district-level offices revealed limited capacity to resolve disputes as they arise: several districts were only able to resolve two or three cases a month.<sup>40</sup> Mediation has proven a popular and relatively effective means of addressing many differences over property, but often only one of the handful of staff at DNTP district offices assists such mediation. Those cases deemed to require arbitration by the courts are often unheard for many years.

Work towards a national cadastral survey began in 2008, carried out chiefly by staff from a USAID-funded program, “Ita Nia Rai” (Our Land).<sup>41</sup> They have now begun a systematic survey of urban land parcels in ten district centres. Those who register a claim are provided confirmation of their claim without prejudice to how the law will ultimately manage them.<sup>42</sup> Once compiled, a record of claims that clearly highlights disputed parcels is posted for 30 days in each area, during which time other parties may enter further claims. These records are planned to be used as the basis for processing titles (in those areas surveyed) once the law is in place. To date, the dispute rate over registered land parcels has been almost uniformly

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*Suara Timor Lorosae*, February 2010. The government has been building one of two new company barracks for the Public Order Battalion (BOP) of the Timorese police. One problem with the \$4,500 IDP returns payments made following the 2006 crisis was that it made it difficult to offer anyone less compensation. Crisis Group interview, Jose Belo, former head of Ministry of Social Solidarity dialogue teams, Dili, 13 July 2010.

<sup>39</sup> Comprehensive statistics on the national caseload registered at DNTP were unavailable. To give an idea of the caseload, 72 disputes were registered in 2009 and of these, 40 remain pending while two have been sent to the courts for future legal arbitration. Crisis Group interview, Ermera DNTP director, 20 July 2010. Of the 132 disputes registered in the national mediation office (most of them in Dili) since 2007, 21 have been resolved through agreement of both parties, 20 have been sent to the courts for future legal arbitration, and 82 remain in process, pending further clarification of the case. Another nine cases have been forwarded to the minister for personal evaluation. Crisis Group interview, dispute registration and mediation department, DNTP, 23 July 2010.

<sup>40</sup> Crisis Group interviews, Lautem district DNTP director, 5 July 2010; Ermera district DNTP director, 20 July 2010; and Liquica district DNTP director, 12 July 2010.

<sup>41</sup> This USAID-funded project has been working alongside DNTP staff. A project description and information regarding claims already registered with the project is available at [www.itaniarai.tl](http://www.itaniarai.tl).

<sup>42</sup> The survey teams do not offer land titles or certificates but simply an official record of the claim being lodged. See Ministry of Justice Despacho 229, 1 July 2008.

around 8 per cent of parcels registering more than one claim.<sup>43</sup>

The survey has also brought to the surface issues that have lain dormant for years, especially regarding disputes between supposed land owners and those who have been dwelling on the land temporarily. In Lospalos town, for example, the people of neighbouring subdistricts forcibly moved to the town during the Indonesian era were granted the use of land by local leaders. Over a period of some twenty years, they made improvements to the land and fields they tilled, but returned to their villages following independence. The Ita Nia Rai process has led them to return to Lospalos to enter claims on the land, much to the annoyance of the original landowners.<sup>44</sup> Disputes with the church, a major land holder in Lospalos and elsewhere, have begun to grow, as the community refuses to let the mission once more extend its back wall.<sup>45</sup> In one inner neighbourhood of Dili, a move by a leading veteran and parliamentarian from Laga to personally claim a large part of the *suco* traditionally provided “on loan” to the people from his district has raised tensions.<sup>46</sup>

These are just some of the examples of the difficulties of converting land once flexibly allocated by local leaders in accordance with community needs to the stringency of freehold title.

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<sup>43</sup> Some exceptions appear so far in Ainaro town and in Dili. The Ita Nia Rai figure fits with data collected by a 2008 World Bank survey, in which 10 per cent of 1,700 national respondents reported a land dispute involving someone in their household within the past year. The number may not reflect land disputes viewed as dormant though long unresolved. “The Lay of the Land: Land Access and Dispute Resolution in Timor-Leste”, World Bank Justice for the Poor Briefing Note, Vol. 5, Issue 3, June 2010. A 2004 study of 40 per cent of land claims entered after Law 1/2003 found a broad range of claims by *suco*: many in which no or very few claims had been entered, and some in which over 100 claims by 1,000 people had been entered. For a full explanation, see “Report on Land Rights and Title Restitution”, op. cit., pp. 44-45.

<sup>44</sup> Crisis Group interviews, Fuiloro *suco* chief, Lospalos, 4 July 2010; Loré I *suco* chief, Loré, 4 July 2010.

<sup>45</sup> Crisis Group interview, Roberto Carlos, Fundasaun Haburas, Baucau, 1 July 2010.

<sup>46</sup> Crisis Group interviews, Bidau Santana *suco* chief, Dili, 13 July 2010; Bidau Santana resident, Dili, 23 July 2010. Land in the *suco* was apparently provided on loan in Portuguese times to colonial army soldiers from Laga subdistrict in Baucau. They needed somewhere to stay in Dili while awaiting orders. In the 1990s, family members from Laga arrived in ever greater numbers and after independence they began to claim ownership.

## IV. LAND DISPUTES IN TIMOR-LESTE

In many communities in Timor-Leste, disagreements over land are cited as a leading trigger of conflict.<sup>47</sup> One reason for this prevalence is the broad range of problems captured under the blanket term of “land disputes”, from the inability to agree over ownership or principles of usage to those more tangentially linked to land, such as animals straying from pastures. While such cases can frequently turn violent,<sup>48</sup> they are not considered here as they are distinct from ownership issues. Some disputes over land are part of longstanding family or community disputes whose roots lie elsewhere, such as in the battle over resources between Naueti and Makassae-speakers in Uatolari, Viqueque district.<sup>49</sup> In these cases, land disputes are best characterised as one expression of the wider conflict and, as such, require broader efforts towards resolution.

Disputes over ownership alone rarely spur violence, but many remain unresolved. They are instead often managed or frozen by local mediation systems, usually overseen by village elders. An initial risk to the system established by new legislation is that after a decade without a proper legal mechanism, there will be a rush to resolve a backlog of claims.

### A. CONFUSION OVER URBAN CLAIMS

One recent court case in Dili captures the risks and uncertainty that have emerged over the last decade. It concerned the sale of a house in an area of Indonesian civil servant housing in western Dili, an area called Delta III.<sup>50</sup> Ms. Imelda Khatriany entered into an intent to sell agreement in July 1999 with the Timorese-born Ms. Norberta Belo

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<sup>47</sup> Crisis Group interviews. See also, for example, “The Crisis in Timor-Leste: Causes, Consequences and Options for Conflict Management and Mitigation”, USAID, November 2006; Belun Early Warning and Response System in Timor-Leste Trimester Reports I and II, February-May 2009 and June-October 2009.

<sup>48</sup> For example, in one community in Lautem district, villagers explained that two murders in recent years had been prompted by buffalo straying from agreed grazing land and damaging property. Crisis Group interview, Mehara *suco* chief, Lautem, 5 August 2009.

<sup>49</sup> For one account of the rivalry between the two communities, see Janet Gunter, “Communal Conflict and the ‘Charged’ History of ‘59’”, *Asia Pacific Journal of Anthropology*, Vol. 8, No. 1 (March 2007), pp. 27-41. Gunter notes that while the conflict maps roughly along ethno-linguistic lines, its history is more complex.

<sup>50</sup> Dili District Court decision in Proc. No. 05/A/Civel/2009/TDD, 21 May 2009, and Appeals Court decision in Processo No.12/2009, 10 March 2010. Citations following are Crisis Group translations of the Portuguese original.

for 50 million rupiah.<sup>51</sup> Both parties appear to have soon after fled to other parts of Indonesia; a confirmation of the sale was later notarised in Kupang in 2001 and title transferred to Ms. Belo.

In October 1999, a couple from Ermera occupied the house (“as everyone did” (*como fez toda a gente*), notes the rehearsal of facts) and have been living there since. Ms. Belo presented them with the intent to sell agreement she held in February 2000 and asked them to vacate the property. They continued living there and in 2004 entered into a special lease agreement with the state, making regular payments over the course of eighteen months.

In 2009, Ms. Belo lodged a civil claim asking the Dili District Court to order the eviction of the couple and the payment of damages equivalent to the estimated lost rental income. The court ruled in her favour and ordered the couple to pay \$105,000 in damages, equivalent to rental payments for the 105 months since she first showed them her ownership papers.<sup>52</sup> An appeal brought by the couple argued that Ms. Belo: i) had no right to the property as an Indonesian citizen, and ii) that she had no right to sue them as they had leased the property from the state. The Appeals Court in March 2010 upheld the findings of the lower court. An eviction order was issued but has not yet been carried out.<sup>53</sup>

Members of the community in Delta III now say that despite the ruling, they are unwilling to accept any seizure of the property by Ms. Belo. They claim that no property transfer should take place without the approval of the local leadership and that the Courts’ findings are particularly unjust given her marriage to an Indonesian military officer they claim was responsible for multiple crimes.<sup>54</sup> They wonder how it could be that their neighbours are being evicted under Indonesian law a decade after the referendum. As the *aldeia* (sub-village) chief explained: “The problem is the Court did not look at the history [of Ms. Belo]. It did not ask what she did in 1975, what she did during the Indonesian period”.<sup>55</sup> In newly independent Timor-Leste in 2000, the couple would have felt secure in ignoring legal documents produced by the Indonesian administration.

The case, the Courts’ findings, and the community’s reaction illustrate the following broader issues:

- ❑ *False documentation.* In the appeal, the couple occupying the house questioned the legitimacy of the “intent to sell” agreement entered into by the parties in July 1999. The court did not address the issue as a matter of substance but as one of procedure and found the appellants to have failed to prove the occurrence of fraud. There is widespread suspicion of fraud in the dealings of land and property officials before and after independence.<sup>56</sup>
- ❑ *Nationality.* In their appeal, the couple occupying the house questioned Ms. Belo’s claim to ownership on two grounds related to her nationality: her ability to own property as a non-Timorese national, and her right to acquire the property under UNTAET regulations freezing Indonesian property transactions. This goes to the heart of the confusing issue of nationality: the community sees her as an Indonesian citizen, a “collaborator” who fled across the border after independence and “chose Indonesia”. The constitution, however, grants citizenship to all born in the country to Timorese parents.<sup>57</sup> The Appeals Court accordingly dismissed the first count. On the second, it found that the UN Convention on Refugees might be invoked to clear up any interruption in her status as a resident of East Timor (on the grounds that fear of return should not cause anyone to lose possession).<sup>58</sup>
- ❑ *Management of state-owned land.* The couple entered into a special lease agreement with the state regarding the property in question but were later afforded no protection because of it. As tenants of the state, the couple in their appeal questioned the capacity of Ms. Belo to bring a claim against them and not the government. The capacity of the land and property directorate to defend lessees, let alone correctly identify and administer state property, remains limited. District of-

<sup>51</sup> Roughly \$7,250 at 1999 exchange rates.

<sup>52</sup> The court argued a monthly rental value of \$1,000 could be assumed given that Delta is “one of the most sought after neighbourhoods in Dili” (*um dos bairros mais procurados na cidade de Dili*).

<sup>53</sup> Crisis Group interview, Delta III *aldeia* (sub-village) chief, Dili, 9 July 2010.

<sup>54</sup> Crisis Group interview, Delta III *aldeia* chief, Dili, 9 July 2010. In court documents, Ms. Belo is simply listed as divorced.

<sup>55</sup> *Ibid.*

<sup>56</sup> The *aldeia* chief, Ernesto da Costa Ximenes, presented an angry interpretation of the case in an op-ed entitled “Justisa 1999: Kazu Krimi Grave Lider Sira Taka Dalan Ba Justisa No Rekonsilia Hodi Salva Kadeira, Kazu sivil Okupa Uma Abandonadu, Lider Sira Fase Liman No Entrega Ba Juiz Malae Sira Ke Rai-Kuak Hakoi Povu Kiik”, [“1999 Justice: Serious crimes Leaders rule out justice and reconcile to save their seats, Civil cases Occupied abandoned houses, leaders wash their hands and hand over case to foreign judges who bury the little people”], *Suara Timor-Lorosae*, 14 July 2010.

<sup>57</sup> The constitution grants Timorese nationality to most people born in the territory of Timor-Leste. See Article 3 of the Constitution of the Democratic Republic of Timor-Leste and the Law on Nationality (Law 9/2002).

<sup>58</sup> Timor-Leste ratified the UN Convention on Refugees on 7 May 2003.



fices have only a handful of staff; in some cases only one is qualified to undertake any substantive work.

- *Land valuation.* The claimant requested \$105,000 in damages and in the absence of a counter-claim by the occupying couple, the Courts found in Ms. Belo's favour as the property in Delta-III is "among the most sought-after in Dili". The land and property director explained that "only a *malae* (foreigner) would pay at such a rate" and suggested the case needed to be reheard.<sup>59</sup> An official land values table exists but is not publicly available and is under revision.<sup>60</sup> Such confusion is widespread: in one case in Lospalos where an elderly man was evicted from state land to build a bus terminal, he had been led to expect more than \$30,000 in compensation.<sup>61</sup>

Beyond the legal confusion pertaining to property matters and the weakness of both the land and property directorate and the judiciary in treating the case, the case underscores the political nature of land disputes. One resident who explained he was among a handful of those in the neighbourhood who had purchased title during the Indonesian era said he feared violence if those illegally occupying homes in the neighbourhood were evicted.<sup>62</sup> An angry full-page op-ed by the *aldeia* chief in July 2010 argued that there was a grave imbalance between the failure to prosecute serious crimes, which he argued benefited the political leadership, and the unjust application of civil law, hurting the poor.<sup>63</sup> Disputes such as this one could be used as triggers for escalating existing concerns over the unfinished business surrounding a variety of "justice" issues – in particular regarding the lot of those deemed to have fought for independence and those viewed (or portrayed) to have been collaborationists.

## B. DISPLACEMENT AND RETURNS FOLLOWING THE 2006 CRISIS

Tens of thousands were displaced amid the violence that erupted in Dili in April-May 2006, and internally displaced person (IDP) camps proliferated in and around the capital. The scale of this crisis, whose roots were politi-

cal, was multiplied by illegal occupation in Dili. Many communities in Dili still refer to land offered temporarily to "friends who came down from the hills in 1999" during the vacuum of authority and housing crunch that followed the referendum violence.<sup>64</sup> Seven years later, these visitors were often regarded more like overstaying guests who took advantage of the hospitality to make themselves at home, often improving the properties they occupied and using them to open small businesses. The absence of authority during the crisis provided an opportunity for some communities to push out those who had become unwelcome for various reasons. Using the cover of the violence, these personal scores were settled by burning houses, stone attacks and verbal threats; others fled simply from fear.<sup>65</sup>

Many did not begin to return from camps scattered across Dili and the homes of friends and family until 2008, when government programs started to resettle the more than 30,000 who remained in camps. By late 2009, the camps were officially closed, although a small number of families remain in transitional housing and refuse to return.<sup>66</sup> One problem in devising a returns strategy was that there was no land law and most of those displaced did not have documents to prove property ownership. Under these circumstances, it was difficult to determine if they had a "right" to return to where they had fled. The government chose to focus on returning IDPs to their original housing, leaving the issue of proper titling to be dealt with afterwards.<sup>67</sup> The returns policy drafted by the government gave those displaced a right to either a cash payment of up to \$4,500 to rebuild damaged housing or the right to government-built housing. The latter option was never realised as no state land in Dili was made available for the project.<sup>68</sup>

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<sup>59</sup> Crisis Group interview, DNTP director Jaime Xavier Lopes, Dili, 15 July 2010.

<sup>60</sup> Ibid. A staff member at one Dili embassy explained that a land swap between his government and the Timorese government had been held up by the lack of any official land valuing scheme in Dili. Crisis Group interview, Dili, 20 January 2010.

<sup>61</sup> "Tinan 2 MJ La Selu Kompensasaun Nain Terminal Lospalos" ["Ministry of Justice has not paid compensation for 2 years to Owner of Lospalos terminal"], *Suara Timor Lorosae*, 28 January 2010.

<sup>62</sup> Crisis Group interview, Delta III resident, Dili, 22 July 2010.

<sup>63</sup> See Ernesto da Costa Ximines, "Justisa 1999", op. cit.

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<sup>64</sup> Crisis Group interviews, Comoro *suco* chief, Dili, 9 July 2010; Bidau Santana *suco* chief, Dili, 13 July 2010; and Becora community policing chief, 8 July 2010.

<sup>65</sup> See Crisis Group Report, *Resolving Timor-Leste's Crisis*, op. cit.

<sup>66</sup> Crisis Group interviews, police officers, Becora station, 8 July 2010; residents, Mercado Becora transitional shelter, 13 July 2010.

<sup>67</sup> This decision was based in part on the recognition that the issue of titling would take many years to solve. See Ibere Lopes, "Land and displacement in Timor-Leste", *Humanitarian Exchange Magazine*, Issue 43, June 2009. It may have also been motivated by an effort to improve perceptions of stability in the country in the wake of the crisis. The 30,000 living in camps in Dili included the main airport and in the area between the port and one of the city's premier hotels.

<sup>68</sup> Crisis Group interview, former adviser to Ministry of Social Solidarity, Dili, 16 June 2010. Another barrier to providing government-built housing was the less than open attitude among community leaders to welcoming perceived trouble makers.

Good data on the returns process is not available, but it seems to have been relatively successful in avoiding sparking conflict in Dili's communities. Mediation teams run by the Ministry of Social Solidarity with UNDP support were able to arrange the return of many IDPs, a sometimes time-consuming process. In some neighbourhoods such as Camea, a *suco* in eastern Dili where divisions remained strong into 2009, four or five mediation sessions were required before resettlement took place.<sup>69</sup> There are few reports of violence related to IDP returns.<sup>70</sup>

In the absence of good data, it is unclear whether everyone went home: particularly among the larger part of the displaced who sheltered with friends and family rather than in the camps. Some have explicitly not been allowed to return. One community in Becora refused to allow a handful of families to return as they were believed to have been involved in the 2006 murder of a child. Another neighbourhood insisted that those who were not related to the original landowners and had not purchased land could not return.<sup>71</sup> Others pocketed the payments for destroyed housing and stayed where they were, unconvinced of the safety of rebuilding in areas where east/west tensions are believed to persist.<sup>72</sup>

The returns process has achieved striking results by clearing Dili's roadside camps and returning almost all the displaced to some sort of regular housing. It allowed individuals the freedom to choose how to spend their money while going some way to fulfilling the constitutional right to housing. It has undoubtedly contributed to a construction boom in Dili and elsewhere.<sup>73</sup> But no progress has yet been made in clarifying the status of property holdings in the city or developing public housing solutions for

the country's growing urban population. Regularising rights to property in the capital could help ensure stability and this perception of normalised neighbourhoods will also be crucial in cementing lasting "returns".

### C. LEASING STATE LAND

The state earned \$1.9 million last year in receipts from lease arrangements on state land.<sup>74</sup> This income is likely to grow in coming years as the government seeks to open up more land for investment and development.<sup>75</sup> Many of these recent efforts have been accompanied by lamentably poor public information efforts. Addressing community concerns is important given the strength of customary tenure practices throughout the country.

One of the more high-profile state land leases concerns a 12,000-hectare coffee plantation in Fatubessi, Ermera district. A semi-private company established by the Portuguese colonial governor, SAPT (Sociedade Agrícola Pátria e Trabalho), seized the land in the early twentieth century for coffee cultivation.<sup>76</sup> Villagers in the area today tell of family members forced to hand over land while a nail and hammer were placed on their foreheads.<sup>77</sup> Such violence may not be recorded in the few histories written by outsiders of this period, but such potent oral history explains the strength with which the community now challenges the legitimacy of the appropriation of what they see as their land. During the occupation, the company's land was seized by the Indonesian military under a command order of the armed forces chief which permitted soldiers to seize and administer or allocate all state or

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<sup>69</sup> Crisis Group interview, Ministry of Social Solidarity dialogue teams leader, Dili, 13 July 2010. Mediation ranged from community dialogue regarding the return of groups of people to mediation between individuals, for example in cases where a post-crisis occupant had made improvements to the house and expected some form of compensation.

<sup>70</sup> Returns monitoring by the International Organization for Migration for the period to October 2009. A full compilation of these statistics is expected this year but has not yet been released.

<sup>71</sup> Crisis Group interview, community policing chief, Becora, 8 July 2010.

<sup>72</sup> Crisis Group interview, Sabraka-laran resident, Dili, 13 July 2010.

<sup>73</sup> Cement prices surged (from \$3.50 to as much as \$8 in late 2009 and early 2010), in part a result of reported interruption in supplies from outside the country, but also a reflection of increased demand. See "TL Iha Ona Sindikatu Mafia Merkadu" ["TL has a market mafia"], *Suara Timor Lorosae*, 9 February 2010; and "Folin Sementi Sae Husi Sentral Exportasaun" ["Cement prices risen by exporters"], *Suara Timor Lorosae*, 18 January 2010.

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<sup>74</sup> Figure for 2009 from "Explanatory Statement" submitted to parliament in May 2010 accompanying "Proposed Law on First Amendments to the Law No. 15/2009 of 23 December, approving the State Budget for the Democratic Republic of Timor-Leste for 2010", p. 4.

<sup>75</sup> The finance ministry projects a nearly 50 per cent increase in DNTP revenues in 2010 and then more modest increases of 10-15 per cent in the following three years.

<sup>76</sup> *Chega!* explains the nature of SAPT's takeover of large parts of Ermera's land: "SAPT was founded in 1900 by the then governor, José Celestino Da Silva, who was also responsible for the overhaul of Timorese village society in order to release land and labour for plantations (*repovoamento*). Although founded as a private venture, SAPT behaved as if it were a state company by virtue of its association with the governor. Using the authority and resources of the state, SAPT seized the most productive land in Ermera district for coffee, and instituted a programme of forced cultivation, overseen by the military". *Chega!*, op. cit., Chapter 7.9, "Economic and Social Rights", pp. 11-12.

<sup>77</sup> Crisis Group interviews, Fatubessi villagers, Fatubessi, 3 May 2010.

abandoned assets. The Fatubessi plantation concession was given to a military-aligned company, PT Denok.<sup>78</sup>

After independence, the plantation was deemed state land and a 50-year lease for 3,000 hectares granted in 2005 to Timor Global, a Singaporean-owned coffee export company. The company was given an initial rent-free period of seven years to improve land management and cultivation techniques in the area.<sup>79</sup> It has had trouble exercising this concession as the local community argues that the property is not really state land. The company has begun to cultivate small parcels of this land, while most of it is privately cultivated with coffee or other crops. To protect its assets, the company has a 30-strong security force with links to the former underground resistance. The head of the security force is a former soldier who deserted with the “petitioners”.<sup>80</sup> There are so far no signs of the dispute turning violent, but it is unclear whether this is dependent upon non-enforcement of the contract.

Amid perceptions that plantation land elsewhere in Ermera was unjustly obtained, some local groups began redistributing the land following independence. The Ermera Agricultural Union (UNAER) has, for example, unilaterally (and illegally) distributed parcels of land on a 23-hectare plantation in Ermera to 178 people interested in farming the land.<sup>81</sup> Much of this land is weakly administered by absent owners: either the state, where the Portuguese and Indonesian administrations were previously the owner, or private owners who live abroad.<sup>82</sup> Ermera land and property directorate officials object that redistribution of private land by a non-state group is illegal but cannot stop it.<sup>83</sup> Local veterans of FALINTIL have been em-

ployed by both sides as informal “security groups” to enforce competing interpretations of ownership.<sup>84</sup>

Elsewhere, government efforts to evict those occupying state property have often been half-hearted and unsuccessful. The government has tried for several years to enforce provisions on public land to evict residents and businesses along the Meti-aut beachfront, an attractive area east of Dili lined by several successful restaurants as well as private homes. Many of these were built after 1999.<sup>85</sup> Despite measures in Law 1/2003 that define the entire coastline as public land under state protection, the community has consistently refused to move. Some compensation was reportedly offered but appears to have been ad hoc; no alternative housing or land was offered to those who were to be evicted.<sup>86</sup> Several deadlines for eviction have lapsed, but no one has been moved from the area and the government appears to have put its plans on hold.<sup>87</sup>

In more recent cases, the process of opening up state land for investment remains unclear and the subject of widespread speculation regarding corruption. A 50-year lease signed in June 2010 by the Minister of Economy and Development with Portuguese company Ensul for the former SAPT coffee-grinding headquarters in the central Colmera neighbourhood quickly rose to the level of polemic. There was vocal opposition in parliament over the length and terms of the contract, as some parliamentarians questioned why a foreign company had been granted terms they saw as akin to ownership.<sup>88</sup> There also appeared to be confusion over coordination with the justice ministry, with the minister sending contradictory messages about which ministry was responsible for such contracts.<sup>89</sup>

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<sup>78</sup> For further background on SAPT and the takeover of Timor-Leste’s coffee industry by the military-backed PT Denok, see *Chega!*, op. cit., Chapter 7.9, “Economic and Social Rights”, pp. 12-13.

<sup>79</sup> This appears to be standard practice for private leases of state land granted with the aim of private development. Crisis Group interview, Vitor da Silva Lobo, DNTP district head, Liquica, 12 July 2010.

<sup>80</sup> Crisis Group interview, Germano Marçal da Costa, Fatubessi, 3 May 2010. For more on the “petitioners” and divisions within the F-FDTL see Crisis Group Report, *Resolving Timor-Leste’s Crisis*, op. cit.

<sup>81</sup> Crisis Group interviews, Afonso Salsinha, Ermera DNTP director; and Alberto Guterres, Ermera UNAER Secretary-General, Gleno, 20 July 2010.

<sup>82</sup> A caretaker at a small plantation in Aifu, Ermera subdistrict, where the rebel Alfredo Reinado was briefly based during 2007, said he was looking after it until its owner, a “*malae Timor*” (“Timorese foreigner”, often Timorese of Portuguese descent) returned from abroad. Crisis Group interview, estate caretaker, Aifu, 3 May 2010.

<sup>83</sup> Crisis Group interviews, Ermera DNTP director, 20 July 2010.

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<sup>84</sup> FALINTIL (Forças Armadas de Libertação Nacional de Timor-Leste) was the guerrilla force that emerged from FRETILIN in 1975 and later fought for Timorese independence. Only 650 members were integrated into the country’s new military in 2001; the balance were demobilised.

<sup>85</sup> Crisis Group interview, Meti-aut *suco* chief, Dili, 13 July 2010.

<sup>86</sup> “Okupantes Metiaut Komesa Simu Osan Indimnizasaun” [“Metiaut residents begin to receive compensation”], *Suara Timor Lorosae*, 7 January 2010.

<sup>87</sup> Crisis Group interview, Meti-aut *suco* chief, Dili, 13 July 2010.

<sup>88</sup> See, for example, “*Oknum* Governu Proteze Kontraktor Estranjeirus” [“Government members protect foreign contractors”], *Suara Timor Lorosae*, 17 June 2010; and “MED Kontratu TPP ba Ensul Tinan 99, Lucas: Ne’e Hanesan Fa’an Ona Ba Portugal” [Minister for Economy and Development signs 99-year contract with Ensul, Lucas: This is like selling it to Portugal], *Suara Timor Lorosae*, June 2010.

<sup>89</sup> “Kontratu Rai Ba Ensul, Lucia: Akordu Kontratu Bele Hadia” [“Land contract with Ensul, Lucia: Contract agreement can be improved”], *Timor Post*, 18 June 2010.

## D. LOCAL ADMINISTRATION

A related issue that has caused low-level violence in some parts of the country is disputes over boundaries and ownership between communities at the *sucos* and the *aldeia* level. The leaders of these basic units of local state administration are directly elected for five-year terms. Local customary power may rest with them or with village elders such as the *lia nain* (“owner of words”, often the arbiter of disputes in keeping with traditional practice) or people referred to simply as *katuas* (elders).<sup>90</sup>

In many areas *sucos* and *aldeia* boundaries are unmapped, unclear and disputed. Some have even taken on non-contiguous forms in order to incorporate migrants to other areas. These uncertainties have arisen from at least three sources: i) the history of displacement described above (see Section II.C) that has brought different local power structures into contact with one another, ii) a perception among some communities that formally demarcating boundaries is taboo or forbidden, and iii) given the continued strength of customary power in many areas, a reluctance among even voluntary migrants to leave behind their “home” *aldeia*, for example. Two case studies below provide illustrations of some of the issues.

*Uat aldeia, Ritabou, Bobonaro district.* Ownership and usage rights of an area of roughly 40 hectares of agricultural land known locally as Ai-kiar has been in dispute since the Indonesian invasion.<sup>91</sup> It is claimed by two communities: those from the *aldeia* of Uat and those from a local *liurai* family. The people of Uat are originally from a small community in the hills of Bobonaro sub-district but some of them migrated generations ago to the rich agricultural plains around Maliana town and cleared and began farming the land at Ai-kiar.<sup>92</sup> They now claim that at the time of the Indonesian invasion they fled, as supporters of FRETILIN, to the hills to escape attack by Indonesian forces.<sup>93</sup> The *liurai* and family – supporters of the Indonesian-aligned UDT/Apodeti – stayed behind and

took over the land. After independence, the people of Uat unsuccessfully tried to take back the land. It lies fallow pending resolution of the dispute. Efforts to resolve the issue through mediation in three separate instances by the local DNTP officials failed and both sides have for several years been “waiting for the Court to decide”.<sup>94</sup> No hearing of the case is expected before parliament passes a land titling law.

*Bahú and Tirilolo sucos, Baucau.* In the second largest city of Baucau the boundary between Bahú and Tirilolo *sucos* roughly lies between the Portuguese-era *kota lama* (old town) and the Indonesian-built *kota baru* (new town). Though there has been considerable movement between the two *sucos*, as elsewhere, many families have carried their *suco* “affiliation” with them, leading to a situation in which families from one *suco* living in the other do not recognise the authority of the latter’s leadership.<sup>95</sup> The boundary between the two *sucos* remains undefined, leading to problems when community consent is (at least informally) required for government development projects. Plans to build a new regional hospital in 2008 were delayed as the land intended for development lay near the area often acknowledged as the *suco* “boundary”, marked by the welcome sign along the main road from Dili. Ultimately, the health ministry came to agreement with all six *sucos* around Baucau town after dismissing a series of claims from different communities for compensation on the grounds that the land was once community land (*tanah adat*).<sup>96</sup>

The residents of Tirilolo are known in Baucau for selling land in the less crowded areas of the *kota baru* to newcomers, mostly those who have migrated from rural sub-districts in search of work.<sup>97</sup> This has caused friction with other local leaders in the area, who believe their role is to allot land to new arrivals for free. In one area of the *kota baru*, elders from the *suco* of Uailili, which is usually mapped as being some 30km away in the highlands south of the town, have been distributing land around the old Indonesian-era gymnasium. Resulting tensions with Tirilolo leaders, who see the land as their own, have required

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<sup>90</sup> The country’s primary form of elected local administration are *sucos* and *aldeias*. These units vary in both size and the degree to which they map alongside local traditional power structures. At a higher level are the country’s thirteen districts and 65 sub-districts, which operate as organs of the Ministry of State Administration and Territorial Order and are run by government officials.

<sup>91</sup> For a more detailed summary of the dispute between these two communities, see Daniel Fitzpatrick, “Mediating Land Conflict in East Timor”, from a study published by AusAID entitled “Making Land Work”, Vol. 2, June 2008, pp. 175-196.

<sup>92</sup> Fitzpatrick notes in this case a commonly recognised right to ownership across many parts of the country derived from being the first to clear the land. “Making Land Work”, Vol. 2, op. cit.

<sup>93</sup> Crisis Group interview, former Ritabou *suco* chief, Maliana, 22 June 2010; Uat *aldeia* chief, Bobonaro, 23 June 2010.

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<sup>94</sup> Crisis Group interview, Ritabou *suco* chief, Maliana, 24 June 2010.

<sup>95</sup> See also “Regional Conference Report, Region 1: Manatuto, Baucau, Lauten, Viqueque (Baucau, 16-17 Maiu 2008)”, Interpeace. Residents raised the problem of land disputes in Baucau town with those arriving from the sub-districts as a significant potential trigger of conflict.

<sup>96</sup> Local officials however agreed that the land had always been *fatim ai-bubur mamuk* (an empty eucalyptus grove). Crisis Group interviews, Bahú and Tirilolo *suco* chiefs, Baucau, 1-2 July 2010.

<sup>97</sup> Crisis Group interview, Belun regional coordinator, Baucau, 5 July 2010.

police intervention to stop the parties from fighting.<sup>98</sup> Very little of the land is privately titled and indeed much of it is state land, having been acquired by the Indonesian administration.

Because there is varying overlap between the power vested in local leaders as both agents of state administration and of customary authority, the solution does not simply lie in the state clarifying administrative boundaries. The Bahú *sucu* chief suggested that administrative maps used by the Portuguese showing the old *sucu* boundaries should be found and used to settle the issue. But he also recognised that only local elders would be able to determine a boundary that had any real meaning for the locals.<sup>99</sup> Blurred authority at local level is an issue that extends beyond issues of land administration and will require efforts separate from the land law as the nature of local administration evolves. These disputes reveal the expectations people have for new legislation to resolve such issues, which in fact will have to be catered to through other means.

## V. A NEW LAND LAW

A draft law on assigning original land rights was approved by the Council of Ministers in March 2010 and is now awaiting parliamentary approval. It is intended to guide a first recognition of property ownership rights; after its full application, these rights will be governed by the civil code (a new Timorese code is still in draft) and the law will no longer apply. It is part of a package of three laws that includes a law creating a fund to pay compensation to some claimants who are not awarded titles and a law on state expropriation.<sup>100</sup> There is no clear timetable for parliamentary debate, and the law has yet to be approved by the responsible parliamentary committee.

<sup>98</sup> Crisis Group interview, Baucau DNTP director, Baucau, 1 July 2010.

<sup>99</sup> Crisis Group interview, Bahú *sucu* chief, Baucau, 2 July 2010.

<sup>100</sup> The current law is the fifth version of a draft first presented in June 2009 in a national consultation process led by the justice minister. It was drafted by an adviser to a USAID-sponsored project in accordance with the minister's policy guidance. A working group of ten advisers drawn from the justice ministry and elsewhere provided the minister with policy options on several controversial aspects of the law. The options analysis produced by this working group is available on the justice ministry website at [www.mj.gov.tl/files/Grupo\\_de\\_Trabalho\\_Opcoes\\_Terras.pdf](http://www.mj.gov.tl/files/Grupo_de_Trabalho_Opcoes_Terras.pdf). Although the consultation included a session led by the minister in each district (and Ataúro island), many local groups have criticised the process as inadequate. See, for example, "More time for land law?", Rede ba Rai press release, 3 August 2009.

The justice minister has made passage of the law a priority in order to issue land titles in 2011 and a deputy minister was appointed in September 2010 to step up capacity.<sup>101</sup> The prime minister has recently suggested that parliament will have to consider the bill by the end of 2010.<sup>102</sup> Given a busy parliamentary agenda, confusion over how best to organise debate and consultation, and expected opposition from FRETILIN, there is some risk that approval of the law could slide until after the next election.<sup>103</sup>

### A. GENERAL PRINCIPLES

The current draft land law contains three basic principles for assigning ownership titles: (i) "acceptance of primary previous rights", (ii) "acknowledgement of possession as the basis for assigning ownership rights"; and (iii) "due compensation in cases of duplicity of rights".

- *Acceptance of previous ownership rights.* The law acknowledges the existence of two classes of "previous rights" issued under both Portuguese and Indonesian administrations: primary rights (full ownership) and secondary rights (time-bound usage rights short of full ownership).<sup>104</sup> It recognises as valid, secondary rights that had not lapsed at the end of each administration.<sup>105</sup> In keeping with a constitutional provision that bars

<sup>101</sup> See "Sector da Justiça – Plano Estratégico para Timor-Leste", 12 February 2010. Available at [www.moj.gov.tl](http://www.moj.gov.tl). "Ivo Valente sworn in as Vice-Minister of Justice", Government of Timor-Leste press release, 7 September 2010.

<sup>102</sup> "MP manda karta ba comunidade, Hamamuk Rai Carrascalao Nian" ["Prosecutor orders community to vacate Carrascalao's land"], *Suara Timor Lorosae*, 6 September 2010.

<sup>103</sup> Crisis Group interview, FRETILIN vice president Arsenio Bano, Dili, 22 July 2010. Among FRETILIN's objections to the law are the need for more study on the impact of a land titling regime as well as for restrictions on the size of individual land holdings to limit land speculation. Full debate of the draft by the responsible parliamentary committee was placed on hold before a parliamentary recess in July to make way for the mid-year rectifying budget in May. Following parliament's return from recess in mid-September, priority is expected to be given to consideration of the draft civil code.

<sup>104</sup> Article 2.2 acknowledges as primary previous rights the Portuguese *propriedade perfeita* and the Indonesian *hak milik*, which are interpreted as identical rights to "full and exclusive enjoyment of the rights of use, fruition and disposal of immovable property". It acknowledges as secondary rights the Portuguese right of *aforamento* and the Indonesian rights of *hak guna bangunan* and *hak guna usaha*.

<sup>105</sup> That is, all secondary rights granted by the Portuguese that had not lapsed on or before 7 December 1975 (the date of Indonesia's full-scale invasion of Dili) and secondary rights granted by the Indonesian administration that had not lapsed on or before 30 August 1999 (the date of the referendum on independence). See Article 2.3 and 2.4.

non-Timorese nationals from owning land, it limits land holdings to individual citizens or collectives. The law acknowledges customary and community rights to land but provides little detail on how they will be recognised.

- *Acknowledgement of possession as the basis for assigning ownership rights.* The law grants considerable rights to obtaining ownership through possession alone. In many cases, these are stronger than the claims presented by title-holders.<sup>106</sup> For the purposes of assigning first ownership rights, the law also introduces a separate claim to ownership through means of special adverse possession (*usucapião especial*) where Timorese claimants have held the land since 31 December 1998. Claimants who qualify under this provision are granted ownership rights in all cases except where a primary rights holder exists. This is weaker than what was originally proposed in 2006.
- *Due compensation in cases of duplicity of rights.* Title holders who are not granted ownership rights are awarded compensation. This is paid by the state out of a real estate finance fund set up under separate legislation. This compensation, based on the “historical value” of the land, is only due to the most recent title holder.<sup>107</sup> In cases where ownership was acquired through special adverse possession, the party awarded property is expected to pay into the fund the “historical value” through a form of mortgage.<sup>108</sup>

Beyond these three explicit principles, two others that guide policy choices behind the land law are worth mentioning:

- *State land.* The law uses a broader definition of state land than that of the 2003 law. It includes all land under state possession, all land without an identified owner, all properties identified in 2003 by the state as abandoned and all land once used by the Portuguese or Indonesian administrations. This effectively creates a presumption in favour of state land that trumps all other claims.

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<sup>106</sup> The rights of adverse possession (“squatters’ rights”) are defined in Book III of the civil code. Non-owners possessing the land can acquire ownership over a term of between five and twenty years, depending on whether said possession is public, peaceful and in good faith. See Articles 1213-1217 of the draft civil code, available from the justice ministry website at [www.mj.gov.tl/?q=node/190](http://www.mj.gov.tl/?q=node/190).

<sup>107</sup> That is to say, if one party is deemed to have acquired ownership through possession, and separate parties present an Indonesian property claim and a Portuguese claim, only the Indonesian claim is granted compensation.

<sup>108</sup> The *Fundo Financeiro Imobiliário* is established under another draft law currently under consideration. Its terms of operation are left to future legislation.

- *Community land.* The law sets up a framework of “community protection zones” that would allow self-defined communities to play a role in regulating land use and acquisition in areas deemed to be of communal ownership.<sup>109</sup> Community property holdings are acknowledged and the right to titles based on customary claims established, but the strength of such claims is weak. Private individuals and the state retain the right to claim private property within such zones. The detail of defining and regulating such zones is left to subsidiary legislation.

## B. IMPLICATIONS

Given the limited data regarding land ownership in Timor-Leste, it is difficult to map definitively how people will be affected by the new law and in what way. There are at least six implications worth highlighting:

*For many households, little change.* Because the law, in conjunction with the civil code, grants rights of acquisition through lasting possession, many households may not be affected.<sup>110</sup> Depending on the limits ultimately set for adverse possession, many of those who have peacefully possessed property since before 1999 will retain it. For the large number of people illegally occupying state land, the state is likely to make some provision for leasing or sale in areas it does not otherwise wish to develop.

*Some evictions, particularly in urban areas, of those illegally occupying private land.* Those who are not found to have met the requirements regulating possession, and are living on land to which other Timorese nationals can make valid claim, will not be awarded ownership rights, and likely be evicted. This includes those who took possession of properties during or after 1999, as in the Delta-III case above. The law provides protection: they will receive either alternative housing or eighteen months from the date of property award in which to make their own arrangements.<sup>111</sup> Given the widespread nature of illegal occupation in 1999 and thereafter, it is unlikely that the government will be ready to provide alternative housing at present.

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<sup>109</sup> See Regime Especial, chapter V, op. cit., “Protection Zones and Community Property”.

<sup>110</sup> The provisions of the Indonesian civil code will apply to possession initiated before the passage of a new civil code. Crisis Group interview, adviser to the justice minister, Dili, 3 September 2010.

<sup>111</sup> This protection is only afforded to inhabitants who can prove that the property in question is a “family home”. See Regime Especial, Article 53.

*Loss of ownership for some former large landholders.* An oft-repeated refrain among many Dili residents is that the city's land is divided up among three politically influential families: the Alkatiris, the Carrascalões and the Albanos.<sup>112</sup> It is unlikely that this is true – particularly in the city centre where the bulk of land holdings are state property (having once been holdings of the Portuguese or Indonesian administration). In the absence of clear information, land use and acquisition is nonetheless informally guided by these perceptions: residents of the Delta neighbourhood point out all the surrounding land that belongs to the Albano family and efforts by the family to ward off squatters.<sup>113</sup> The Comoro *sucu* chief presents a copy of the notice in the old colonial bulletin of the granting of an *aforamento* that he says members of the Carrascalão family have used to try to block him from distributing “free” land to *sucu* residents (he says they have a civil case against him).<sup>114</sup>

Given the highly concentrated nature of land holdings in Dili, even the recognition of previous titles by the state is controversial for some Timorese. One leading Timorese businessman explained he was certain the final version of the law would throw out all previous rights in favour of “original rights” (*sertifikadu original*), unwritten rights in keeping with Timorese custom and known to all locals.<sup>115</sup> In a March 2010 article on land claims by former anti-independence families, he is quoted sharing a viewpoint held by many: “I do not accept [certificates issued by] Portugal and Indonesia, because at that time many Timorese had no access to the Portuguese administration. How could they obtain land titles if many of them did not know how to write or read? Same with the Indonesian occupation: it was those who were closest to Kopassus [Indonesian special forces] and the military that were given access to obtain titles. Those who became victims [under Indonesia and Portugal] were the pure Timorese, particularly the [poor and uneducated], so why continue to recognise Portuguese and Indonesian [titles] as applicable here?”<sup>116</sup>

Once implemented, the new law will provide legal clarity on the status of much of the land in Dili, protecting residents and owners alike from dispossession based simply on unclear title. Many of the ownership rights claimed by the big land-owning families are said to be *aforamento* rights (leases of up to 40 years granted by the Portuguese administration often on condition of fulfilling an explicit use, such as grazing for animals).<sup>117</sup> Where claimants can prove peaceful and public possession since before 1999, they will be granted ownership rights (with a responsibility to pay back the value of compensation).

*Claims to land by Timorese nationals resident abroad.* A thornier issue is the right of Timorese who fled to Indonesia in or around 1999 to reclaim properties to which they may have previously held rights. This is a sensitive topic for many in Timor-Leste, particularly those who view the issue of land as intimately linked to the independence struggle. Many believe those who “became” Indonesian citizens have lost their right to land ownership.<sup>118</sup> This is not true under the Timor-Leste constitution that recognises anyone born in the territory to Timorese parents as a citizen.<sup>119</sup> One such case that is under consideration before the Dili District Court and has raised real concerns over injustice is the estate of the former provincial governor of East Timor Abílio Osório Soares.<sup>120</sup> Some communities may be also unwilling to accept back those accused (rightfully or wrongfully) of collaboration with the Indonesian military.

*Compensation to foreign nationals.* The version before parliament does not rule out the payment of compensation to foreigners. This was a provocative issue in early discussions of the law; the great majority of such payments would be to Indonesian nationals.<sup>121</sup> Asset negotiations

<sup>112</sup> Crisis Group interviews, Dili residents, Dili, July 2010.

<sup>113</sup> Crisis Group interviews, Delta residents, Dili, 9 July 2010.

<sup>114</sup> Crisis Group was unable to verify the record held by the *sucu* chief through cross-checking records of land titles published in the *Boletim Oficial* (Official Bulletin) of Portuguese Timor. Archived facsimiles of the Bulletin for the years 1883-1975 are available at <http://btimor.iict.pt>. Crisis Group interviews, Eurico da Costa de Jesus, Comoro *sucu* chief, Dili, 9 July 2010.

<sup>115</sup> Crisis Group interview, Rui Castro, Dili, 21 July 2010.

<sup>116</sup> Castro uses the word *alvará* to refer to all titles. “Eis Anti Independensia Fila, Manuel Lakon Rai” [“Those formerly against independence return, Manuel loses his land”], *Tempo Semanal*, 31 March 2010.

<sup>117</sup> Crisis Group interview, former DNTP official, Dili, 25 June 2010. It is rumoured that some of these old *aforamento* titles were converted into freehold titles through non-transparent means, perhaps in the conversion of Portuguese titles to Indonesian titles that began in 1991. See Rod Nixon, “Integrating Indigenous Approaches into a ‘New Subsistence State’: The Case of Justice and Conflict Resolution in East Timor”, Ph.D thesis, Charles Darwin University, February 2008, p. 288.

<sup>118</sup> Crisis Group interviews, June-July 2010. The verb used here by many current Timorese residents is of course incorrect as residents of Indonesian-administered East Timor were already Indonesian citizens under Indonesian law. However, they may only hold one nationality so claims to land ownership in Timor-Leste could have implications for their citizenship.

<sup>119</sup> Constitution, op. cit, Article 3.

<sup>120</sup> See “Eis Anti Independensia Fila, Manuel Lakon Rai” [“Those formerly against independence return, Manuel loses his land”], *Tempo Semanal*, 31 March 2010.

<sup>121</sup> An estimated 90 per cent of land claims registered in the one-year period following the passage of Law 1/2003 were entered by Indonesian citizens. See “Report on Research Find-

were an early priority for Jakarta in its relations with Dili – a team that included current Foreign Minister Marty Natalegawa was in Dili to broach the subject as early as June 2000 – but there has since been little movement.<sup>122</sup> The law leaves open the question of how the two countries will settle the issue. In a visit to Atambua, West Timor on 18 August, Prime Minister Xanana Gusmão explained that 11,000 claims by Indonesians were “still being processed”.<sup>123</sup> One option is for Indonesia to fund compensation to its citizens (and for the other two principal affected countries, Portugal and Australia, to do the same).

*Creation of financial obligations.* When the state entered into special lease agreements before the crisis, even the nominal lease value of \$10 a month was deemed a hardship by many, and full compliance with the payments was weak before Minister Lobato cancelled the arrangements.<sup>124</sup> It will take some effort to put teeth into lease agreements.

## VI. LOOKING FORWARD

Alongside the proposed land law, government plans to accelerate development of state land, including through resettlement of families and expropriation, could have a major impact on possible land conflict. This is likely to cause friction between communities and the government if clear policies on community protections are not in place.

### A. GOVERNMENT-LED DEVELOPMENT

The prime minister’s draft National Strategic Development Plan (PEDN) is the latest and most comprehensive attempt to quicken the pace of development through increased government expenditure.<sup>125</sup> The plan includes

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ings, Policy Options and Recommendations for a Law on Land Rights and Title Restitution”, East Timor Land Law Program, July 2004.

<sup>122</sup> Crisis Group interview, Timor-Leste embassy staff, Jakarta, 29 July 2010. Indonesian Foreign Minister Natalegawa was in Dili in July 2010 and raised the subject of individual assets. See “Natalegawa: Aset WNI Eks Timor Leste Diangkat”, Antara, 29 July 2010.

<sup>123</sup> “Timor Leste Sedang Proses Klaim 11.000 Asset Indonesia”, NTT Online, 18 August 2010. At least one Timorese press outlet reported the speech as a promise to pay ex-Timorese refugees compensation in relation to land. “Xanana Promete Sei Selu Propriedade Povu Indonezia” [“Xanana promises Indonesian property claims will be paid”], CJITL, 19 August 2010.

<sup>124</sup> Crisis Group interviews, DNTP officials, Ermera, 22 July 2010; Maliana residents, Maliana, 24 June 2010; and DNTP director Jaime Lopes, Dili, 15 July 2010.

<sup>125</sup> Timor-Leste’s Strategic Development Plan (PEDN), 2011–2030. A full copy was scanned by local advocacy group Lao Hamutuk and is available at [www.laohamutuk.org/econ/SDP/](http://www.laohamutuk.org/econ/SDP/)

measures to resettle hundreds of families to free up valuable agricultural land for plantation-style development, and to concentrate settlement in population centres where basic services can be more efficiently provided.<sup>126</sup> The PEDN is not yet government policy and it may never be implemented in full.<sup>127</sup> But viewed alongside the government’s prioritisation of a law on expropriation, it seems likely that the state will be more active in developing land. Questions of expropriation and state land titling are thus urgent.

Given that the largest part of the country’s land is under customary or community tenure, definition of the protections afforded to community land holdings and the state’s obligations should be a priority. Even where communities are aware that they are living on state land (for example, in Indonesian-era housing projects outside Dili), one district administrator noted, this does not always equate to an understanding that the state is free to choose how to use it.<sup>128</sup>

Draft legislation currently leaves many of these protections undefined. It will be the subject of subsidiary legislation, much of which is likely to be passed by decree. While the state’s interests are protected by a broad definition of state land and the expropriation law, the community protections are opt-in and require their members to take the initiative of registering “community protection zones” before protections are afforded.<sup>129</sup> One earlier policy option was to leave land outside urban and peri-urban areas untouched for several years until lessons had been

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SDPDraft.htm. Other programs by the AMP government include the 2009 “Referendum Package” and the 2010 “Decentralised Development Project” (PDD). By distributing small-scale infrastructure funding without a formal tender process, the government has prioritised cash transfers to local-level business over the quality of construction or safeguards against corruption. In the absence of a formal decentralisation program, this provides funds at district level and gives local officials and business figures a role in allocating public spending.

<sup>126</sup> See PEDN, pp. 4.38–4.39, pp. 4.197–4.201.

<sup>127</sup> The plan will also require the passage later this year of amendments to the 2005 Petroleum Fund Law in order to finance the increased spending. (The 2005 law limits transfers from oil revenues in the fund to 3 per cent of the lifetime Estimated Sustainable Income from petroleum revenues). The PEDN would see planned spending grow to \$2.2 billion by 2020 (compare to the 2010 budget of \$838 million after mid-year rectification).

<sup>128</sup> Crisis Group interview, Maliana district administrator, Maliana, 24 June 2010.

<sup>129</sup> Indonesia has struggled with laws that allow landowners to negotiate the price for land that is the subject of expropriation efforts, which can often delay government projects. See Daniel Ten Kate and Achmad Sukarsono, “Indonesia growth curbed by rice paddies as China builds roads”, Bloomberg, 20 January 2010.



learned from the titling process in cities and towns.<sup>130</sup> By granting a still weak state great powers and prerogative over land, the draft laws may actually be introducing tenure insecurity into areas where customary tenure has generally worked well. A first step would be policy guidance from the justice ministry on how it intends to proceed beyond what is in the draft law.

It will also be important to ensure that the titling process and its appeals procedures are seen as transparent and fair. Recent land transfers in Dili have been suspected of corruption, including leases on high-profile properties such as the iconic Hotel Turismo.<sup>131</sup> The justice minister retains a great degree of control over the process and has in recent years been the subject of corruption allegations, though she has denied any wrongdoing.<sup>132</sup> The minister's appointment last year of Jaime Xavier Lopes as director of DNTP was also controversial: he has served as head of a leading martial arts group.<sup>133</sup> The draft law provides two mechanisms for appeal of decisions by the Cadastral Commission, the administrative body charged with making titling decisions: the first involves direct appeal to the minister, and the second is appeal to the courts.<sup>134</sup>

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<sup>130</sup> See Daniel Fitzpatrick, Andrew McWilliam and Susana Barnes, "Policy notes on customary land in Timor-Leste", op. cit.

<sup>131</sup> As proof of the seriousness of such concerns, a July 2010 report by Timorese security sector NGO Fundasaun Mahein called for DNTP to be converted into an independent institution (and not a dependent body of the justice ministry) given concerns over corruption, political interference and repeated changes in the directorate's leadership. See "Disputa Rai ho Estabilidade Nasional Iha Timor-Leste" ["Land Disputes and National Stability in Timor-Leste"], Mahein Nia Lian, No. 8, (fundasaun-mahein.blogspot.com), 12 July 2010.

<sup>132</sup> In 2008, a Timorese newspaper published a series of text messages allegedly sent by the justice minister to potential bidders for justice ministry tenders before the tenders were officially made public, accusing the minister of nepotism. The article also alleged improper dealings by the minister's husband, a businessman. See "Minister for Justice gives herself and friends projects", Tempo Semanal Online, 12 October 2008. The minister has denied any wrongdoing and no official investigation was ever launched. She later filed a criminal defamation case against the newspaper editor. See "East Timor journalist faces jail time" (transcript), The 7:30 Report, ABC News, 5 March 2009. The case was dropped after a new Timorese criminal code promulgated in April 2009 decriminalised defamation.

<sup>133</sup> See UNMIT press release, "UN Police making sweeping arrests of 47", 1 February 2007, available at <http://unmit.unmissions.org/Default.aspx?tabid=214&ctl=Details&mid=627&ItemID=162>.

<sup>134</sup> See "Regime Especial", op. cit., Section II, "Appeal".

## B. INCREASED PRESSURE ON LOCAL CONFLICT RESOLUTION SYSTEMS

Local mediation has to date proven a relatively successful means for either resolving or freezing disputes over land. In the absence of a titling system, it has also created a backlog of issues awaiting resolution once the law is in place. The stakes of land ownership will also be raised once a law is in place. This is likely to increase strain on local mediation resources – a role executed chiefly by community leaders. The Ita Nia Rai cadastral survey process has already brought to the surface dormant disputes between and within families and increased demands on local leaders in the urban areas being surveyed.<sup>135</sup> A preference among many Timorese for leaving boundaries unmapped and avoiding confrontation means that problems could arise with the future arrival of a cadastral survey in other areas.<sup>136</sup> Many cases will require non-legal solutions: most notably inheritance or divisions of family lands, as well as minor boundary disputes between neighbours.

The impact of the new laws on housing patterns in Dili could become an important political issue; improved monitoring could be useful. Four years after the 2006 crisis, there is no public reference to east-west tensions and most neighbourhoods have taken on a mixed composition, particularly after the push to complete official IDP returns in 2009. The impact of evictions and granting of ownership through adverse possession will have the greatest impact upon the fortunes of easterners, who represented a greater proportion of those moving to Dili following the referendum.<sup>137</sup>

## C. MANAGING EXPECTATIONS

Current and proposed legislation over land policy remain a subject of great confusion and misinformation among many in Timor-Leste. Among common misperceptions are that the new land law will abolish all Indonesian and Portuguese-era titles in favour of customary title, and that it would grant every family in the country two acres of

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<sup>135</sup> Crisis Group interviews, Holsa *suco* chief, Maliana, 24 June 2010; Fuiloro *suco* chief, Lospalos, 4 July 2010; Bahú *suco* chief, Baucau, 2 July 2010; and Comoro *suco* chief, Dili, 9 July 2010.

<sup>136</sup> For example, in one rural area in Lautem district, the *suco* chief explained that the community would reject any attempt to title local land, as the concept of private land ownership over the land itself (as opposed to the crops it yields) simply did not exist. Crisis Group interview, Tutuala, July 2010.

<sup>137</sup> See Ibere Lopes, "Land and displacement in Timor-Leste", op. cit. Many easterners were viewed as having migrated to Dili after independence and then obtained a disproportionate amount of land.

land.<sup>138</sup> The proposed legislation is remarkably complex and despite some efforts by the justice ministry to develop consultations on the draft law, the understanding of and input from the public has been very low. This is true of much of the vast legislative framework Timor-Leste has been building since independence; it is difficult to design processes that allow communities to provide input to complex legal developments. This law will be of fundamental importance to the future progress of the country. The parliamentary committee charged with reviewing the law has plans to do a further round of district-based consultations – there will be great demand for information from these consultations and more resources may be required.

Two other broad confusions bear special mention:

- ❑ A persistent confusion is over the perception of a constitutional right to land where none exists. There is a constitutional right to housing.<sup>139</sup> It is not yet clear what the government plans to do to protect this right.<sup>140</sup> Given that at least some evictions will occur as a result of any titling effort, a better housing policy is needed to smooth this process. Considering the lack of undisputed and unoccupied land in Dili, even a government effort to hand out cash to those evicted would be insufficient as it risks creating a group of residents that move from one illegally occupied property to another.
- ❑ A further issue that has received very little attention but remains important for many is land reform (*reforma agraria*). Redistribution of land holdings was an explicit aim of the nascent FRETILIN party prior to the country's civil war in 1975.<sup>141</sup> It has received little public discussion by government leaders since inde-

<sup>138</sup> Crisis Group interviews, June-July 2010; and Crisis Group interview, Meabh Cryan, Rede ba Rai (Land Network) mentor, Dili, 21 July 2010.

<sup>139</sup> See Constitution, *op. cit.*, Article 58 (“Housing”): “Everyone has the right to a house, both for himself or herself and for his or her family, of adequate size that meets satisfactory standards of hygiene and comfort and preserves personal intimacy and family privacy”.

<sup>140</sup> A housing policy was approved by former Prime Minister Estanislau da Silva (FRETILIN), who served as acting PM for three months after the previous Prime Minister Jose Ramos-Horta assumed the presidency in June 2007. Given that the government installed in August 2007 saw FRETILIN move into opposition, the policy, written by UNDP, quickly looked dated.

<sup>141</sup> For more on FRETILIN's early thinking on land reform, see Antero B. da Silva, Arsenio Perreira, David de Oliveira, Lucio J. Savio, Adilsonio da C. Junio and Natalicio Nunes, “Reforma Agraria no Modelu Dezenvolvimentu: Agenda IFIs ho Donor sira iha Pos-Okupasaun Timor-Leste” [“Agrarian Reform and Development Models: the Agenda of IFIs and Donors in Post-Occupation Timor-Leste”], conference paper delivered at “Understanding Timor-Leste”, 2-3 July 2009, and available at [http://tlstudies.org/tlsa\\_confpro.html](http://tlstudies.org/tlsa_confpro.html).

pendence.<sup>142</sup> Yet many see it as a political and economic imperative with strong roots in the country's independence struggle.<sup>143</sup> A recent report on resolving land conflict by Timorese security sector NGO Fundasaun Mahein called on the state to undertake land reform “so that all people of Timor-Leste have the right to own land as ordered by the Constitution”.<sup>144</sup> As seen above, groups such as the Ermera Farmers' Union (UNAER) are proceeding with small-scale land redistribution as though a political imperative exists, even as it looks unlikely viewed from Dili. One of its leaders explained they expect that the government will some day come on board.<sup>145</sup>

## VII. CONCLUSION

Establishing real property rights in Timor-Leste will inevitably bring to the fore a range of issues that have lain dormant since independence. These include the politically charged question of who stands to gain most from the country's freedom. The strength of local understandings of land ownership and management, and the government's fears of creating further unrest, mean any policy on titling that could lead to large numbers of disaffected citizens is unlikely to be pursued. The draft legislation on titling before parliament takes a pragmatic approach, through granting ownership in many cases based upon possession, and offering compensation to holders of previous rights. There is a great deal of misinformation regarding the law and its implications, underscoring the need for more public debate and information before its passage. A priority will be to ensure there is adequate housing available to those who are found to be illegal occupants without any claim to their land.

Legislation will require complementary efforts by government and civil society in order to render this inaugural effort to strengthen property rights enforceable. By raising the stakes of land ownership and opening the door to a greater volume of land transactions, it is likely to place further strain on the courts and local mediation sys-

<sup>142</sup> Since its 1999 withdrawal from Timor-Leste, Indonesia has also maintained uncertainty regarding the issue of land reform despite political pledges by Presidents Megawati and Yudhoyono. For one account of efforts to revise the 1960 Basic Agrarian Law, see Anton Lucas and Carol Warren, “The State, the People, and their Mediators: The Struggle over Agrarian Law Reform in Post-New Order Indonesia”, *Indonesia*, Vol. 76 (October 2003).

<sup>143</sup> Expectations for land reform were cited by many of those interviewed by Crisis Group outside Dili, though without clear agreement on what this would entail.

<sup>144</sup> See Fundasaun Mahein, “Disputa rai ...”, *op. cit.*

<sup>145</sup> Crisis Group interview, Alberto Gutierrez, Gleno, 20 July 2010.

tems. Even with continued donor support, a full cadastral survey and the issuance of titling decisions will take many years. Associated legislation on expropriation and ambitious new plans for government-driven development could increase insecurity of tenure in many areas. The government must move quickly to issue policy on how it plans to give substance to protections for community land holdings, left undefined by the framework legislation.

Timor-Leste cannot afford to wait much longer in establishing a legally enforceable mechanism for resolving disputes over property, a building block of the rule of law. The deepest issue surrounding land rights may lie in how the government balances its need to use occupied land for developing infrastructure and public services with its responsibility to provide housing and livelihoods to the population. Failing to address this question could plant the seeds of wider disputes in the future.

**Dili/Brussels, 9 September 2010**

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## **Regional Offices and Field Representation**

Crisis Group also operates out of over 25 different locations in Africa, Asia, Europe, the Middle East and Latin America.

See [www.crisisgroup.org](http://www.crisisgroup.org) for details.

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