

(seal of the Democratic Republic of East Timor)

IV CONSTITUTIONAL GOVERNMENT

BILL No. /2010

Dated

EXPROPRIATION LAW

In countries governed by the rule of law the expropriation of real property for public purposes should only take place when there is no possibility of amicable acquisition of that property. In effect, since the right to private property is a fundamental right of citizens (under section 54 of the Constitution of the Democratic Republic of East Timor), if the State has to acquire for public ownership land needed to undertake works to promote the public interest of all the community, then it should first exhaust all means available to it in law, including all contractual means typical of private law, in order to avoid the outright restriction of the private property rights of citizens.

In the course of the expropriation event, the Administration is the fully aware of the need to establish a set of procedural rules to ensure that its actions are subordinated to the principles of equality and justice.

With regard to the fair compensation to be paid to private individuals as a result of the expropriation of their property for public purposes, the Expropriation Law aims to enshrine rules that are easy to understand but which provide for a rigorous assessment taking account of the fact that the calculation of fair compensation is undeniably one of the most delicate

matters in any legal system governing expropriation for public purposes. In calculating the value of expropriated land, this bill encompasses the right to fair compensation as a fundamental right equivalent in status to other rights, freedoms and guarantees, as provided for in section 54(3) of our Constitution. Consequently, any restrictions herein should be limited to the extent necessary to safeguard other constitutionally protected rights or interests.

Apart from these general considerations, it is also important to emphasise the most innovative features of this legislation. These are the duty on the State referred to above to first try to acquire real property through private endeavour; the requirement to prepare a list of the property to be expropriated; the notice of public purpose and the resulting admissibility of the vesting of the property; the need for substantiation; the wide concept of beneficiary body of the expropriation; the classification of land for the purposes of compensation; the incorporation of a clear appeals process and means to object to both the compensation awarded and to the expropriation decision itself; and the provision of reversionary rights.

As stated at the time, the Government was fully conscious that in accordance with the constitutional principle of legality and equality expropriation for public purposes needs to be avoided if the same outcome can be achieved by other legal means that do not restrict an individual's right to private property. Therefore, except for extremely rare exceptions resulting from catastrophes, natural disasters, and expropriation events in the interest of national defence and domestic security, a member of the Government cannot declare an expropriation for public purposes unless the Administration or beneficiary agency has previously exhausted all possibilities to acquire privately the property it needs to in order to serve the public interest. If the expropriating agency and the owner of the expropriated land agree on a value for it, there is no need to seek the intervention of the courts for the adjudication of the land. Uncontested expropriations can be completed by executing a deed

before a notary, whereby the expropriating body automatically obtains the land. This procedure also means that individuals will not suffer the inevitable delays which happen in the event of a legal adjudication.

If the land cannot be acquired privately, the public body interested in the expropriation must always provide to the agency that has the authority to declare a public purpose documentary evidence that its attempts to acquire the land privately were unsuccessful. Moreover, in order to ensure that private individuals are duly informed that their land is subject to expropriation, pursuant to the transparency that must govern the actions of the Administration it is sought to define rules that allow private individuals to have effective knowledge, through letters and official notices, of the Administration's intention to expropriate their property. This issue is made more relevant given the recent past of Timor East which led to various cases of doubt and dispute over the ownership of land, many of which have remained unresolved. For these reasons, the expropriation procedure is a public process.

Finally, the proposed legislation makes it possible for owners of the expropriated land to exercise their revesting right if the Administration uses the expropriated land for purposes other than the one contemplated in the notice of public purpose or if the land ceases to be applied to that end. The inclusion of revesting rights undoubtedly constitutes one of the most important aspects with respect to individual guarantees. In effect, enshrining these rights in the law of expropriation for public purposes is fully justified since, on the one hand, it thereby unambiguously serves to ensure that the Administration conducts itself in an ethical manner through the effective use of the land expropriated for public purposes as may be set out in the corresponding notice, and on the other, it provides a way of allowing individuals whose land has been expropriated to recover it if it has not been used for the objectives that gave rise to the expropriation.

Pursuant to section 97 1c) and section 115 2a) of the Constitution, the Government presents to the National Parliament, the following bill:

EXPROPRIATION LAW

TITLE I

GENERAL PROVISIONS

Section 1

Admissibility of expropriations

1. Land and any rights arising out of it can be expropriated for the public purposes covered by the powers, aims or objects of the expropriating body through the concurrent payment of fair compensation under this Act.
2. Expropriation comprises any form of legally admissible forfeiture of private land or of any related ownership rights or interest, irrespective of the persons or entities to whom they belong.
3. Expropriation must always occur in exceptional circumstances and only be used when it is not possible to obtain or use another asset for the intended purpose.

Section 2

General principles

The expropriating agencies and other parties involved in the procedure and the expropriation proceedings must observe the principle of public interest with respect for the legally protected rights and interests of the owners and other persons interested and, in particular, adhering to the principles of legality, justice, equality, proportionality, impartiality and good faith.

Section 3

Extent of expropriation

Expropriation will be limited to the extent necessary to achieve its aim but may however take account of future needs in accordance with a phased and duly scheduled programme of execution, which cannot exceed a maximum of four years.

Section 4

Authority to expropriate

1. An expropriation can only be authorised by the State.
2. Subject to a substantiated opinion from the Ministry of Justice, the Council of Ministers is empowered to:
 - a) Issue a notice of public purpose in respect of the expropriation of real land and rights arising out of such land;
 - b) Acknowledge the public interest applied for by publicly and privately owned businesses and issue a notice of public purpose in respect of the expropriation of the land needed to undertake projects in the public interest and provide the corresponding access routes thereto.

Section 5

Interested persons

1. For the purposes of this Act, apart from the owner, interested persons are the owners of any real right in or encumbrance over the land to be expropriated and the tenants of urban or rural land, provided they can present suitable evidence that the existence of the right predates the declaration of public purpose.
2. Expropriation proceedings will be undertaken with the owner of the land or person who has a title to the right to be expropriated and with the other interested persons, subject to the provisions of section 25 4. if there is doubt as to the title to the rights.

3. Subject to evidence to the contrary, the expropriating authority deems the owner and interested person to be anyone who is shown as such in public registers or in official documents that prove the presumption of title.
4. If the land is not recorded at a land titles office or similar register or if those registers and records are clearly shown not to be up to date the interested persons will be deemed to be those for whom there is a public and notarial record of their interest or who submit deeds showing they have sufficient title to the rights referred to in subsections 1, 2 and 3.
5. In the cases referred to at the end of subsection 4, the single registering survey provided for under the Land Act must be undertaken.
6. If there is any doubt or dispute as to ownership or rights under the Land Act anyone who makes a claim to such rights must be summoned in accordance with the procedure under section 25 (4).
7. The registering survey shall be undertaken and disputed cases resolved in accordance with the Land Act.

Section 6

Beneficiaries

1. Beneficiary means the body in whom the land to be expropriated has to vest for the execution of the underlying public interest.
2. Apart from the State, the beneficiaries of expropriation for public purposes may be any agencies and concessionaires who may be granted that capacity.
3. In addition to the beneficiaries described under subsection 2, any individual or organisation may, in the public interest which has been duly substantiated, be designated a beneficiary of the expropriation if they have an important role in the development of East Timor, in particular of its social or economic development.

Section 7

Transfers not opposable

1. Transfer of ownership or of any other rights or interests do not prevent the continuation of the proceedings to implement the expropriation.
2. The new holder is deemed to be subrogated to the rights and obligations of the first holder.

Section 8

Encumbrances and charges

1. Expropriated land is acquired free from encumbrances and charges.
2. In exceptional cases a real right in respect of expropriated land may be preserved provided that the right is shown to be compatible with the new purpose to be given to the land and that there is agreement between the expropriating body and the holder of the right.

Section 9

Rights of way for administrative purposes

The rights of way for administrative purposes needed for the purpose of the public interest may be granted over public or private land, with compensation being payable in respect of such rights of way under the general terms of this Act.

Section 10

Right of occupation of neighbouring land

1. A notice of public purpose in respect of the expropriation gives the expropriating body and the beneficiaries of the expropriation the right to temporarily occupy neighbouring land and to carry out on that land works necessary to achieve the objectives of the expropriation.
2. The owners and other interested persons affected by the occupation under subsection 1 are entitled to compensation for damages under the general terms of law.

3. The value of the compensation referred to in subsection 2 is proposed by the State before the start of the occupation or if the parties do not agree, compensation will be determined under general terms of law.

Section 11

Presumption of public purpose

1. Public purpose is presumed to exist if land has to be expropriated to undertake works or to provide infrastructure or services for the State.
2. Public purpose as described in subsection 1 is also presumed to exist if works or services in the public interest have to be undertaken by state-owned companies and which fall within the scope of their legal activities and objects.
3. The presumption of public purpose described in the subsections above will be set out in the Notice of Public Purpose, which will specifically indicate the works to be undertaken and the administrative rule or act which provide for the works to be undertaken.

TITLE II

EXPROPRIATION PROCEDURE

CHAPTER I

PRIOR REQUIREMENTS

Section 12

Requirements prior to the expropriation

1. Unless otherwise circumstances provided for herein in respect of expropriation in special under section 33, the following procedure must be followed, in the stated order, to any expropriation :
 - a) inspection made of the land to be expropriated;
 - b) based on the inspection under subsection a), a report prepared and valuation made of the land to be expropriated that will include the proposed compensation to be paid to the expropriated party;

- c) expropriation decision prepared;
 - d) attempts made to acquire the land privately on the basis of the valuation amount;
 - e) if the expropriating authority and the owner agree, conveyance of the land by means of a public deed;
 - f) in the absence of agreement, application for a notice of public purpose of the expropriation;
 - g) issue and publication of the notice of public purpose;
 - h) vesting;
 - i) initiation of arbitration proceedings to determine the level of fair compensation;
 - j) notice of the outcome of the arbitration served on the interested persons;
 - k) payment of compensation.
2. The provisions of this Act with regard to the right to appeal against the arbitration ruling, to present irregularities and to request judicial review are not restricted by the provisions of subsection 2.

CHAPTER II

VALUATION, INSPECTION ORDER AND REPORT ON THE LAND TO BE EXPROPRIATED

PART I

INSPECTION ORDER AND REPORT ON THE LAND TO BE EXPROPRIATED

Section 13

Inspection

1. The expropriating body or the beneficiary of the expropriation shall set the date, time and place for the start of the inspection needed to prepare the description under section 14 1., serving notice thereof on the interested persons in person or by letter or official notice to

be received no later than seven days before the date set, stating whether the expropriation is total or partial.

2. The interested persons may attend at the inspection and submit the written questions they consider pertinent, the answers to which must be included in the corresponding valuation report on the land.
3. After the inspection under subsection 2., a record must be produced containing at least the following matters:
 - a) A detailed description of the land, with specific reference to existing buildings or areas under cultivation and their characteristics, the state of conservation thereof and, where possible, the total constructed area;
 - b) Specific mention of all the factors likely to impact on the valuation of the land , under section 15 and the following sections;
 - c) Plans, photographs or any other supporting image of the expropriated land and the surrounding area;
 - d) Answers to the possible questions referred to in subsection (2).

Section 14

Report on the land to be expropriated

1. The Government or the beneficiary of the expropriation shall prepare a report containing a specific and separate description of the land to be expropriated and describing in all their material and legal aspects the land or rights it is deemed necessary to expropriate.
2. The information sent to the interested persons must be include a copy of the items under section 24 1. a), b) and e) and, if possible, a summary description from land and building registry records.
3. The report on the land to be expropriated must be completed within fifteen days after the date on which the inspection takes place.

4. The expropriating body may extend by up to 30 days the period required under subsection 3. in duly justified cases and on application by the assessor, specifically because of the number of inspections.
5. Within a period of 7 days after receipt of the report, the expropriating body shall serve notice on the owner and other interested persons either in person or by letter or official notice and including copies of the report and corresponding annexes, that they may, if they desire, give notice of their objection to the content within a period of 15 days.
6. Within 7days after receiving an objection the beneficiary of the expropriation must respond with an additional report and no further appeal is allowed, subject to the provisions of section 50.
7. If the owner or other interested persons are unknown, section 25 4. shall apply.

PART II

VALUATION OF THE LAND TO BE EXPROPRIATED

Section 15

Fair compensation

1. The State guarantees payment of fair compensation as described in this Act.
2. The aim of fair compensation is not to compensate any benefit obtained by the expropriating body but to compensate for the damages suffered by the owner as a result of the expropriation for an amount equal to the market value of the land on the basis of its actual or potential application in normal business use at the date of the notice of public purposes, taking account of the de facto circumstances and conditions prevailing at that date.
3. In determining the value of the land, no account may be taken of any increases in value resulting from:
 - a) The notice of public purpose in respect of the expropriation;
 - b) Public works or initiatives completed within the last 4 years;

- c) Cosmetic or actual improvements that have been made after receiving notice of the application for a declaration of public purpose;
 - d) Feasibility studies, official permits or authorizations applied for after receiving notice of the application for a declaration of public purpose.
4. In determining fair compensation no account may be taken of any factors, circumstances or situations created in order to increase the level of compensation.
 5. Subject to subsections (3) and (4), the value of the land calculated in accordance with the criteria under section 16 and ensuing sections, must be equivalent to the current market value of the land.
 6. After payment of compensation the State maintains a reversionary interest in respect of the beneficiary of the expropriation and may, regardless of any formalities, retain budget allocations up to the value of the debt, including any late payment interest payable from the date of payment of the compensation.

Section 16

Determining amount of compensation

1. The amount of compensation will be calculated taking account of the value of the land, increased by the cost of replacing any buildings.
2. If the declaration of public purpose is renewed or a new one is issued, the amount of the compensation must be recalculated to its current value.

Section 17

Classification of land

1. In calculating the compensation for expropriation, the land shall be classified on the basis of its urban or rural characteristics, its application and the main activity that takes place on it.

2. Urban land means land intended for urban development and construction, and includes built-up land or land subject to imminent development, which together make up the urban perimeter.
3. Rural land means land intended for farming, fisheries, forestry or mineral extraction, as well as open spaces in protected areas or leisure environments, or land that houses infrastructure that does not grant it the status of urban land.
4. Under subsections 1., 2. and 3., economic activity is deemed to exist if urban land contains buildings that are used for residential or rental purposes, and if rural land has areas that are under cultivation or used for fish-farming activities.

Section 18

Determining land values

Land values shall be determined with reference to the table of land values per m² and increases, to be approved by Government legislation.

Section 19

Determining land values in partial expropriations

1. When only part of the land is expropriated, the beneficiary of the expropriation or the arbitrator shall always separately determine both the total value and income from the land and from the areas of it that are included and excluded from the declaration of public purpose.
2. If there is a reduction in the value of a parcel of land arising out of the subdivision of the land or if other losses or charges arise out of the subdivision, including the need to erect equivalent buildings to ones that have been demolished or remain standing, the amount of the depreciation and of the losses or charges, which increases the value of the expropriated land, shall also be specified individually.

Section 20

Compensation of tenants

1. Rental units used for residential, commercial or industrial purposes or for the purposes of a liberal profession and leased land in rural areas are deemed to be separate and independent charges for the calculation of compensation of tenants.
2. A tenant of residential or rural units who must vacate the premises as a result of the termination of the lease arising out of the expropriation may choose to receive a residence or land of equivalent characteristics in terms of its location and rent or a single compensation payment.
3. In determining compensation under subsection 1, account shall be taken of the value of the land, the value of any improvements made by the tenant, the relationship between the rent paid by the tenant and current market rents and, in the case of rural tenants, the value of any standing or unused crops, the value of any improvements to which the tenant has right and any other losses arising out of the termination of the lease, calculated under general terms of the law
4. In determining compensation in respect of leases for business, industrial, professional or agricultural use, account shall be taken of the cost of finding new premises, including the difference in rent to be paid by the tenant, and losses arising out of the period of inactivity necessary whilst services are being transferred, calculated under general terms of the law

Section 21

Compensation for interruption of business activities

If the owner carries on any commercial, industrial, professional or agricultural activity on the land compensation shall be increased by an amount equal to the losses arising out of the inevitable end of the activity, or out of the interruption and transfer of that activity for the necessary period, calculated taking account of the latest income declaration made to the financial authorities or, in the absence of a declaration, amounts for which substantiated evidence can be provided showing that they will no longer be earned.

Section 22

Compensation for expropriation of fee simple interests

Compensation for expropriation of fee simple interests such as usufruct or easements is determined on the basis of the criteria applied to the land to the extent that they are applicable and without exceeding the amount that would be payable for full ownership.

CHAPTER III

DECISION TO EXPROPRIATE

Section 23

Decision to expropriate

1. The declaration of public purpose in respect of the land to be expropriated shall always be preceded by a decision to expropriate.
2. A decision to expropriate is the act whereby the Government formalizes its intention to expropriate and the presumption of public purpose referred to in section 11.
3. If the beneficiary of the expropriation is not the State, the decision to expropriate is the application from the beneficiary of the expropriation for the authorised member of the Government to issue the declaration of public purpose.

Section 24

Content of the expropriation decision

1. The decision to expropriate must be substantiated and must state:
 - a) The underlying public purpose;
 - b) The land to be expropriated, the owners and other person known to have an interest;
 - c) The anticipated value of the charges to be paid on expropriation;

- d) The authorizing regulation, administrative ruling or anticipated ruling for the execution of the infrastructure works, or the services to be undertaken on the land to be expropriated and in the locality in which the land is situated;
 - e) The intended works on or use of the land to be expropriated.
2. The land to be expropriated is identified by reference to the following:
- a) The administrative location of the land;
 - b) Identification of the plot boundaries;
 - c) The geographic coordinates of the edges of the plot;
 - d) The georeferenced geometric outline of the plot;
 - e) The georeferenced location of the plot;
 - f) The nature of the plot with regard to its technical characteristics;
 - g) Current information on the ownership of the land and any other relevant details relevant details;
 - h) Any other current land registry descriptions together with a land registry plan of the land to the same scale as the geometric record of the land or in its absence, to a scale drawing;
 - i) If there are land registry entries, by any descriptions that may be made in the in the archives of the corresponding Land Registry.
3. The owners and any other person known to have an interest in the land shall be identified by their name, signature, title and usual residence or domicile. Section 25 4. applies in respect of any unknown parties.
4. The anticipated charges arising out of the expropriation shall be based on the amount previously determined and recorded in the report on the land to be expropriated referred to in section 14.

5. The expropriation decision shall be served in person or by letter or official notice on the owner and the other interested persons whose address is known.

TITLE III

UNCONTESTED EXPROPRIATION

Section 25

Private acquisition

1. Before applying for a declaration of public purpose, the expropriating body or the beneficiary of the expropriation must take the necessary steps to obtain the land privately, except in the cases of special expropriation under article 33.
2. The notice of the expropriation decision shall include a private acquisition proposal based on the constant value contained in the land valuation report.
3. For tenants the proposal is presented as an alternative to the relocation under section 20 2.
4. If the owners and other interested persons are unknown, or if the letters or notices under section 24 5. cannot be served, notice of the proposal must be placed at convenient places in the area where the land is located and with the local village chief (*Chefe de Suco*), and must also be published in two consecutive issues of the two newspapers with the biggest circulation in the region, one of which must also have nationwide coverage.
5. The owner and the other interested persons shall have a period of 20 days after receiving the proposal or after the last publication date of the newspapers referred to in subsection 4. to make any claims in respect of the proposal and may apply for total expropriation of the land as provided for under section 72, for explanations or they may submit a counter proposal indicating the duly substantiated value that they attribute to the land to be expropriated.
6. The expropriated persons are entitled to submit any arguments that they consider pertinent, applying the criteria and valuation circumstances that they consider sufficient to justify the value of the land that they consider to be fair, and may also submit whatever evidence they consider adequate to justify such statements.

7. If the expropriated party rejects the proposal or if the expropriating body is not interested in the counterproposal made by the expropriated party the Administration or the body interested in the expropriation is immediately empowered to begin the expropriation proceedings with the publication of the notice of public purpose.
8. The expropriating body and the expropriated party may nevertheless agree to the private acquisition of the land at any point in the proceedings.

Section 26

Agreement

1. If the expropriation is uncontested, the following may be agreed by the expropriating body and expropriated party or other interested persons:
 - a) The level of compensation;
 - b) Payment in kind of all or part of the compensation, the corresponding interest and the corresponding payment period;
 - c) The manner in which payments in kind shall be made;
 - d) Compensation in the form of transfer of land or interests under section 46;
 - e) Full expropriation in cases of partial expropriation.
 - f) Incidental conditions.
2. The agreement shall only be binding on the State after it has been approved by the Ministry of Justice or the delegated representative thereof.

Section 27

Execution of public deed

1. Any agreement between the expropriating body and other interested persons must be recorded in a deed of uncontested expropriation executed before a notary public.

2. A deed that has been executed under subsection 1 in respect of only a portion of a greater area of land, regardless of its size shall be sufficient title for the purposes of its separation and registration.

Section 28

Content and deadline of deed

1. Under the regulations governing notarial practice, the deed must be executed within eight days after the expropriating body has notified the notary of the agreement.
2. The deed must:
 - a) Identify the land.
 - b) State the compensation agreed and the method of payment;
 - c) The date and issue of the *Jornal da República* in which the notice of public of the expropriation was published, if confirmed;
3. The expropriating body must surrender on request to the owner and other interested persons an authenticated copy of the deed of uncontested expropriation.

Section 29

Distribution of compensation

1. The agreed compensation may be determined individually for each of the interested persons or as a global amount.
2. If the interested persons cannot agree on the distribution of the global compensation that has been agreed, the full amount shall be paid to a person designated by the interested persons, or deposited in the locality of the expropriating body by order of the district courts of the locality in which the land or the greater part thereof is situated, and be distributed under the general terms of the law and according to the rules of civil proceedings.

Section 30

Interested persons unknown

Unless there is intent or gross negligence on the part of the expropriating body, when interested persons make themselves known at the date on which the deed is executed, this will only reinstate the situation to the one that would have existed had those parties participated in the agreement and in the terms in which that agreement was made.

TITLE IV

NOTICE OF PUBLIC PURPOSE

CHAPTER I

DECLARATION OF PUBLIC PURPOSE

Section 31

Official application

1. The application for the declaration of public purpose is sent to the Ministry of Justice which must open a file containing the following documents:
 - a) The expropriation decision referred to in section 23 and its corresponding documentation;
 - b) All the items relating to the attempt to acquire the land privately;
 - c) Indication of the budget from which the expropriation charges will be paid and of the corresponding guarantee, or confirmation from the governing body of the *Fundo Financeiro Imobiliário* (Property Finance Fund) that it will pay the corresponding compensation;
 - d) Schedule of urgent works prepared by the expropriating body, together with justification for the urgency.
2. The Ministry of Justice may require the applicant to submit other documents or to provide other explanations that the Ministry considers necessary.

Section 32

Declaration of public purpose

1. The declaration of public purpose to be approved by a resolution of the Council of Ministers, must be duly substantiated and comply with all the other requisites established herein.
2. If a declaration arises generically from law, from a regulation, or from schedule of works or implementation of services authorized by a competent Ministry and does not specify the land to be expropriated, it must be formalized by a resolution of the Council of Ministers detailing the property to be expropriated, and that resolution will constitute the declaration of public purpose required under this law.
3. The declaration of public purpose lapses when section 70 applies.

Section 33

Special cases of expropriation

1. If the need for expropriation arises out of public catastrophe, or for reasons of domestic security or national defence, the State or the public authorities designated by it or authorised by law may without any prior formalities take immediate administrative possession of the land which is to be used for the purpose of the expropriation and the provisions of this Act in respect of the determination of compensation in contested proceedings will apply, other steps being dispensed with.
2. When practical an inspection will be initiated in order to prepare the report on the valuation of the land under sections 13 and 14, and in that case the provisions of those sections apply with all the necessary modifications.

Section 34

Notice of public purpose

1. A summary of the notice of public purpose and any renewal thereof must always be published in the first edition of the *Jornal da República* and served in person or by registered mail or notice on the expropriated party and other interested persons, and must be registered with the *Direcção Nacional de Terras e Propriedades e Serviços Cadastrais*

(National Office for Land and Property Title Registration) as well as in any land registry that there may be.

2. A copy of the declaration of public purpose referred to in subsection 3 must also be posted on the expropriated land, at convenient places in the area where the land is located and with the local village chief.
3. If the identities of the expropriated party or other interested persons are unknown, section 25 4. shall apply.
4. The published extract of the declaration of public purpose must identify the land to be expropriated with reference to the description in any land and building registry records stating the rights, encumbrances or charges affecting the land, the names of the respective title holders and the purpose for which the expropriation is required.
5. Instead of the description referred to in subsection 4, a suitable scale plan that makes it possible to identify the land need for the public purpose need may be used instead.
6. If the expropriation is to be carried out by zones or blocks, the published extract must specify the total area of land to be expropriated, the zoning of the land in accordance with the phases of expropriation, the deadlines and order of acquisition.

Section 35

Effect of the notice of public purpose

After notice of public purpose has been published the expropriated land shall immediately vest in the expropriating body, as set out in section 37 and subsequent sections.

Section 36

Duty to notify

1. After notice of public purpose has been given, the expropriated party and other interested persons must give the expropriating body written notice of any change of address.

2. Failure by the expropriated party or by the other interested persons to communicate a change of address under subsection 1 does not constitute grounds to extend or repeat any of the terms or steps in the expropriation proceedings.

CHAPTER II

OCCUPATION OF THE LAND OR ACQUISITION OF RIGHTS

Section 37

Vesting

Subject to section 38 below, after the declaration of public purpose has been published the land to be expropriated may be vested in the competent body.

Section 38

Requisites prior to vesting

1. The land cannot be vested before the following has occurred:
 - a) Publication of the notice of public purpose and notice served on the owner that the land vests in the Administration;
 - b) Completion of the list of the land to be expropriated in order to establish the elements that are likely to disappear and if such information is of interest with regard to the ruling on the procedure;
 - c) Payment of fair compensation into a bank to the order of the expropriated party and other interested persons , if their identities are known and there is no doubt as to the title to the rights affected.
2. The notice served on the owner under subsection a) must indicate the day and time that the vesting comes into effect.
3. The expropriated parties must be given a reasonable period in which to vacate the expropriated land, a period that, in any event must not be more than 30 days from the publication of the notice of public purpose unless the Administration believes there are grounds for allowing a longer period.

4. The Administration may seek the assistance of the police force to take possession if the expropriated land is not free and unoccupied at the end of the period that has been provided to vacate it.
5. The deposit referred to in section 1c) may be replaced by a guarantee given in any form allowed by law.
6. Prior deposit referred is waived:
 - a) In the special cases of expropriation referred to in section 33 when the deposit must be made in the shortest time possible;
 - b) If the owners and other interested persons are unknown or if there is doubt as to the title to the rights affected, in which case the deposit must be made no later than 30 days from the date that their identities are definitively known.

TITLE V

CONTESTED EXPROPRIATION

CHAPTER I

Introductory Provisions

Section 39

Arbitration

1. If the amount of the compensation is not agreed it will be determined by arbitration on appeal to the ordinary courts.
2. The purpose of arbitration is only to determine the amount of fair compensation payable in respect of the expropriation.
3. An appeal can be made against the arbitration ruling decision will simply be referred back to the district courts of the locality in which the land or the greater part thereof is located.

CHAPTER II

Procedures

Section 40

Overseeing arbitration

Following publication of the notice of public purpose, the Ministry of Justice must oversee the initiation and operation of the arbitration process, which is the responsibility of a sole arbitrator appointed by the President of the Court of Appeal.

Section 41

Appointment of arbitrator

1. For the purposes of the arbitration under section 40, the Ministry of Justice shall request the President of the Court of Appeal to appoint an arbitrator, sending him all the records of the procedure.
2. The appointment of an arbitrator shall be announced in 10 days.

Section 42

Proceedings

1. An expropriation procedure file shall be opened in respect of each of the properties affected by the declaration of public purpose.
2. If two or more of the properties belong to the same owner or group of co-owners and they cannot agree on the amount of compensation, the corresponding procedures must be attached to each other.

Section 43

Powers of the sole arbitrator

If the level of fair compensation cannot be agreed it must be determined by the arbitrator who may order the repetition of steps needed to make an informed decision on the level of compensation.

CHAPTER III

Arbitration ruling

Section 44

Arbitration ruling

1. The arbitration ruling shall determine the level of compensation payable, and also provide answers to any questions raised by the expropriated parties and by the expropriating body; the ruling must be duly substantiated, indicating the basic formula used to calculate the proposed compensation, as well as the grounds on which the calculation criteria were adopted.
2. The arbitration ruling and the expropriation file must be submitted to the Ministry of Justice no later than 30 days after the arbitrator has been appointed and the arbitrator must, within seven days, send a copy of the ruling to the expropriated party and any other interested persons.
3. The time limit for the ruling under subsection 2 may be extended to 60 days at the request of the arbitrator to the Ministry of Justice if there are grounds to do so, specifically as a result of the number of arbitrations to be undertaken.
4. If no appeal has been made against the arbitration ruling as permitted under section 51, the Ministry of Justice shall submit the ruling to the *Fundo Financeiro e Imobiliário* (Finance and Real Estate Fund) or to the beneficiary of the expropriation so that they may proceed to deposit the compensation awarded as described in section 47.

TITLE VI

PAYMENT OF COMPENSATION

Section 45

Methods of payment

1. The compensation payable in respect of the expropriations on public purpose must be settled in cash or in kind through the transfer of equivalent property as a single transaction, except as provided for in the following subsections.

2. If the expropriation is uncontested, the expropriating body, the expropriated party and the other interested persons may agree to the compensation in instalments or to the grant of land or interests as described in the following section.
3. A deposit under subsection 2 applies to an in court or out of court settlement made while expropriation proceedings are pending.
4. Compensation payable in respect of expropriations made under this Act may be settled by the *Fundo Financeiro e Imobiliário* (Finance and Real Estate Fund).

Section 46

Transfer of land or interests

1. The parties may agree that in complete or partial satisfaction of the compensation payable, the owner or other interested persons may be granted land or interests.
2. If compensation is settled with the transfer of land, the *Direcção Nacional de Terras e Propriedades e Serviços Cadastrais* (National Office for Land and Property Title Registration) is responsible for identifying from Government owned land, a parcel of land that is of an equivalent nature to the expropriated land.
3. The grant of interests in land is governed by legislation applicable to the use of Government ownership.

Section 47

Method of payment of the compensation

1. After the level of compensation has been agreed, the Ministry of Justice must serve notice on the *Fundo Financeiro e Imobiliário* (Finance and Real Estate Fund) or the beneficiary of the expropriation to pay the amounts due within a period of 15 days and submit the corresponding payment advice.
2. The Ministry of Justice shall serve notice on the owner and other interested persons that payment has been made in their name at a financial institution.

3. The owner and other interested persons may withdraw the amounts deposited, without prejudice to their right to contest those amounts under section 48 and section 52 2.

Section 48

Objections to payments

1. If the payment under section 47 is not made or if the payment is of an insufficient amount, the owner and other interested persons may contest the payments received, specifying the amounts outstanding and presenting and requesting all evidence.
2. If the objections are accepted, the *Fundo Financeiro e Imobiliário* (Finance and Real Estate Fund) or the beneficiary of the expropriation shall be advised to respond within 15 days and to present and request all evidence.
3. After the judge has received all the evidence he considers necessary, the judge shall issue a ruling on the amounts owed and order that the additional payments be deposited within 15 days.
4. If the payments are not made within the period of time allowed, the judge shall order that guarantees be paid or that the necessary steps are taken, specifically to serve notice on the agency responsible for Government guarantees to credit the amount owing in the place of the *Fundo Financeiro e Imobiliário* (Finance and Real Estate Fund) or of the beneficiary of the expropriation.
5. After payment has been made or ensured, the judge shall authorise the recovery of any amounts in excess of requirements, payment of any reimbursements or the cancellation of any unnecessary guarantees.
6. If the expropriation is uncontested but no instalments have been paid within 60 days following the date agreed for payment thereof the interested party may apply for initiation of the steps described in the subsections above, submitting a copy of the executed deed.

Section 49

Payment of compensation

An order for the distribution of compensation to the interested persons must include a written discharge signed by the owner.

TITLE VII

GUARANTEES

CHAPTER I

Presentation of errors

Section 50

Claims

1. The owner or the expropriating body provided no liability can be attributed to it or the other interested persons may lodge a claim against any errors that have occurred during the administrative proceedings, particularly in respect of the summons or preparation of the report on the land, and of the initiation or operation of the arbitration procedure or the arbitration ruling, specifically the failure to meet statutory deadlines, no later than 15 days after they have knowledge of them, presenting the evidence they consider relevant and which is not already contained in the file.
2. The claim must be lodged with the court of the locality where the land is situated, and the court shall then order the expropriating body to add a copy of the expropriation proceedings to the records within 10 days.
3. After receiving the claim and the proceedings file on the expropriation, the judge must prepare information on the timeliness, the grounds and the evidence provided, and shall serve notice on the opposing party who may, within 15 days add an answer to the records.
4. The judge's ruling shall be based on the evidence provided that the judge deems useful in making a decision and on the matters arising out of the proceedings, requesting explanations or additional evidence to that end.

5. If the judge considers that there are no grounds for the claim, the judge shall immediately return the expropriation proceedings file to the expropriating body so that the expropriation proceedings can continue.
6. In resolving on the claim in the way that the judge deems pertinent, the judge shall determine the acts or steps that must be repeated or reformulated.
7. An appeal against the judge's ruling will only be referred back, and is converted into an appeal against the final ruling.

CHAPTER II

Arbitration appeal

Section 51

Appeal

1. An appeal against an arbitration ruling must be lodged no later than 30 days after the notice of the ruling has been issued, and will simply have the effect of referring back the expropriation proceedings to the previous stage.
2. If an appeal is made against arbitration ruling the judge shall immediately make an award to the interested persons of the amount on which there is agreement, and shall order that the *Fundo Financeiro Imobiliário* (Finance and Real Estate Fund) deposits that amount at a bank and the judge shall serve notice thereof on the expropriating body, the owner and other interested persons.
3. Within 15 days after the receipt of the notice received under subsection 2, any of the parties entitled to compensation may apply to be paid their share of the amount on which there is no agreement, subject to providing a bank guarantee or surety bond for an equivalent amount.
4. In order for the appeal to be admissible under civil procedure rules, the value of the proceedings shall be the greater of the amounts offered by the expropriating body or requested by the owner and the other interested persons.

Section 52

Doubt as to title to rights

1. If receipt of the amount to be deposited under 51 2. depends on the outcome of a preliminary issue or first ruling in respect of the right to compensation, then this right shall be decided in accordance with Land Act.
2. If right to compensation has not been definitively resolved, unless a guarantee is given no payment shall be made in respect of which the resolution of that matter depends.
3. The guarantee given also guarantees that compensation will be paid to the party definitively acknowledged to have right to that compensation in the corresponding action.

Section 53

Application

In the notice of an appeal against the arbitration ruling or in respect of errors in the expropriation proceedings, the petitioner must immediately state the grounds on which the objection is based, submit all documents, request other evidence, including witness evidence and, if they desire a new expert opinion, they must apply to the courts for a request to be made to the President of the Court of Appeal to appoint a new expert, stating the purpose of the expert opinion and the questions of fact that the step is intended to clarify, otherwise the application may be rejected.

Section 54

Acceptance of appeal and submission of expropriation proceedings

1. After the appeal has been lodged, the procedure is ready for the judge to rule on its admissibility and, if the appeal is to continue, to order that notice be served on the opposing party to respond.
2. The expropriating body must submit to the court within 15 days all the documents and reports that may have been produced during the expropriation procedure.

Section 55

Response

1. The response referred to in section 54 1. shall be submitted within 30 days after receipt of the notice of the decision to admit the appeal.
2. If the respondent desires to file a subordinate appeal, the response must also contain the corresponding application and the grounds on which the objection is based, to which the opposing party must respond within 30 days of the notice of the decision to accept this appeal and to extend the scope of the expert opinion.
3. The subordinate appeal or the response to it must include all documents, having requested further evidence, including witness evidence and stating the issues to be clarified by the expert.

Section 56

Deposit of amounts agreed

After the respondent has replied, the judge must notify the Finance and Real Estate Fund or the beneficiary of the expropriation to deposit the amount referred to in section 51 (2).

Section 57

Procedural steps

1. At the end of the period allowed for submitting a response, the court must forthwith conduct the procedural steps that it considers expedient to decide on the case.
2. If any of the parties apply for a new valuation the court shall preside over it and shall establish the corresponding deadline, which must not exceed 30 days, and resolve on questions of law raised by the expert or by the parties involved in the valuation.
3. The provisions of the rules of civil proceedings apply to the determination of the scope of the expert opinion.
4. Even if the appellant is exempt from costs, it shall be solely responsible for drawing up a statement of the costs of the valuation and of any judicial review.

5. If there is a review, the records of the examination of evidence shall show all the items considered pertinent to the case.
6. A second valuation is not permitted.

Section 58

Appointment of expert

1. The valuation is undertaken by an expert appointed by the President of the Court of Appeal from an official list and if no such list exists, the person appointed must be one deemed best suited for the purpose, or an organisation which has recognised experience in the field of land valuation.
2. If an expert fails to appear they shall be replaced forthwith by the tribunal as described subsection 1.
3. The rules on recruitment of experts, their inclusion on official lists and the manner of publication therefore are regulated by decree published by the Government.

Section 59

Notice of valuation

1. The parties shall be served notice of the valuation in order that may attend.
2. The expert shall be given copies of the appeals, of the responses thereto, and of the ruling to order the steps that may have been decided upon under the rules of civil proceedings.

Section 60

Submissions

Once all evidence has been gathered notice shall be simultaneously served on the parties to make written submissions within 30 days.

Section 61

Time limit

Rulings on appeals against arbitration rulings must be made no later than 30 days after the deadline for the written submissions.

Section 62

Ruling

1. The judge shall determine the amount of the compensation payable by the expropriating body and issue a duly substantiated ruling thereon, in accordance with rules of civil procedure.
2. Notice of the ruling shall be served on the parties, who may lodge an appeal against it which will only have the effect of referring it back.
3. Section 51 2 applies with all the necessary modifications and the judge shall serve notice on the Finance and Real Estate Fund or on the beneficiary of the expropriation to deposit the amount of the compensation outstanding within 15 days.

CHAPTER III

Contesting expropriation decisions

Section 63

Judicial review of expropriation decisions

1. Objections to the existence and objectives of public purpose cited by the expropriating body as the reason for the expropriation shall be lodged directly with the district courts of the locality in which the land to be expropriated are situated.
2. If an expropriation decision is contested under subsection 1, the claim must be filed no later than 90 days after the notice of public purpose is published in the *Jornal da República*.
3. The objection will only have the effect of referring back the case.

4. For the continuation of the proceedings the provisions of Chapter II apply with all the necessary modifications, and, subsidiarily, the rules of civil procedure.

TITLE VIII

REVESTING OF EXPROPRIATED PROPERTY

Section 64

Revesting and pre-emption right

1. A revesting right is the legal power granted to the owner to re-acquire the expropriated land if it has not been used for the objectives set out in the notice of public purpose, subject to reimbursement of the expropriating body or the beneficiary of the expropriation of the current value of the compensation allocated to the owner.
2. Subject to section 5, the right to re-vest exists if:
 - a) within 2 years after the vesting date, the land is not used for the objectives of the expropriation;
 - b) in the meantime, the objectives of the expropriation have ceased to exist.
3. If the undertaking of linear work determines the expropriation of various plots of land, the start of works at any point on the plan extinguishes the right to re-vest in respect of all the expropriated land except if after the works have commenced at any point of the plan, those works subsequently remain stopped for a period of 2 years.
4. In subsection 3, linear works means works which are geometrically straight and whose characteristics are such that they have to be undertaken in stages and form part of a structured, global and coherent project.
5. The right to re-vest shall cease if:
 - a) a period of 10 years has elapsed since the date of vesting;
 - b) the expropriated land is assigned another objective by a new notice of public purpose;

- c) the owner waives the right;
 - d) on renewal of the declaration of public purpose within one year after confirmation of the situation described in subsection 1., based on the grounds that there is danger to the public interest to the public interest
6. If there is a right to revest under subsection 2, the beneficiary of the expropriation must no later than 3 months after the date of confirmation of that right serve notice on the owners that they may apply for the land to be revested in them.
 7. The revesting application must be submitted within a period of 2 years after the notice is sent by the beneficiary of the expropriation under subsection 6., or, in its absence, after the end of the period allowed for issuing the notice, after which time the right shall extinguish.
 8. Once this period has elapsed and until the end of the period described in subsection 5a), the owner has a pre-emption right in respect of the first disposal of the land.

Section 65

Waiver of revesting right

1. If the expropriating body and the owner or other interested persons agree on another use for the expropriated land then the owner and the other interested persons are deemed to have waived their revesting and pre-emption rights.
2. An expropriating body that intends to dispose of spare parcels of land must serve on the owner and other interested persons whose rights have not definitively expired notice thereof by letter or official notice at least 60 days before the disposal takes place and if at the end of that period no revesting right or, if applicable, right of pre-emption has been exercised, the owner and other interested persons are deemed to have waived those rights.

Section 66

Application

1. The revesting referred to in section 65 must be requested before the district courts of the locality in which the land to be expropriated is located.

2. If the right to reversioning can only usefully be exercised jointly with one or more of the interested persons, the applicant can apply for a legal notice be served on the other parties to submit, within 60 days of receiving the legal notice, an application for the reversioning of the corresponding land as described in subsection 1, under warning that failure by any one them to do so means that the land is only reversioned in the parties who make the application.
3. If an application is made under subsection 2, all other time limits are thereby suspended all other deadlines.
4. The preliminary examination of the reversioning includes other necessary documents to be assessed by the court following the procedure described in sections 67 and 68 if the reversioning right is recognised.

Section 67

Hearings

1. After receipt of the reversioning application, the appropriate court must serve notice on the expropriating body and the holders of the real rights over the land to be reversioned or over any portions of land segregated from it, whose addresses are known, to make their submissions in respect of the application within 60 days.
2. Within the period of time allowed for its response, the expropriating body must submit the expropriation file to the court with jurisdiction to decide on the reversioning application or identify the court where the file is pending or was closed.
3. If the statements made by the applicant for reversioning are not contested by the expropriating body it will be assumed that they are true, unless proved otherwise.

Section 68

Publication of notice

1. The decision on the reversioning application must be served on the expropriating body and the interested persons whose addresses are known.

2. A summary of the decision must be published in the first edition of the *Jornal da República*.

Section 69

Revesting agreement

1. After revesting has been authorised, the courts must ensure that the expropriating body, or whoever has obtained recent possession of the land, and the interested party agree on the terms, conditions and value of the compensation relating to the revesting payable to the expropriating body.
2. An agreement under subsection 1. adopts the modality of revesting proceedings or of such other modality established by law and the procedure under sections 27 and 28 applies, with the necessary modifications.
3. A revesting agreement under subsection 2 must always be backed by such guarantee of payment as the State may consider sufficient.
4. The revesting agreement made in accordance with subsection 3 gives sufficient title for all legal effects, including registration in land and property title offices.
5. The agreed amount of compensation in respect of revesting is paid directly either to the expropriating body or whoever has taken recent possession of the land.
6. The revesting agreement must be filed within 90 days after the date of the revesting notice.

Section 70

Distribution by the judge

1. In the absence of agreement between the owner and the expropriating body or beneficiary of expropriation, as applicable, the judge shall determine the value of the compensation and the conditions of the disposition of the land, subject to the preliminary steps the judge considers necessary, which must include a valuation.

2. An appeal may be made against the judge's ruling which will simply be referred to the Appeal Court.
3. On payment of the deposits or reimbursements the judge shall grant possession of the land to the interested person or persons, with all the charges and encumbrances that subsisted at the date of the notice of public purpose of the expropriation and that have not yet lapsed and which must be clearly specified.
4. The deposits may be withdrawn by the expropriating body or by whoever has recently acquired possession of the land, as applicable.
5. The court shall serve notice of the award of the land on the land title office so that it can be officially registered.

TITLE IX

EXPIRY

Section 71

Expiry of the Declaration of Public Purpose

1. Subject to section 4, the declaration of public purpose shall expire if arbitration is not initiated within one year after the date of the notice of public purpose.
2. The owner or any other interested party may apply to the tribunals of the locality in which the land is situated or to the Ministry of Justice for a notice of expiry and the resulting ruling must be served on all the interested persons.
3. A declaration of public purpose that has expired may be renewed within one year after the expiry date provided that the application is duly substantiated, and any of the steps and procedures that have already taken place shall be valid.
4. In the case of linear works under section 64 4., an expiry notice may not be issued after work has started along any point of its development unless the work has suspended or stopped for a period of more than 2 years.

TITLE X

FULL EXPROPRIATION APPLICATIONS

Section 72

Admissibility

If only part of the land of an owner needs to be expropriated, the owner may apply for all the land to be expropriated if:

- a) The remaining land does not offer proportionally the same benefit as all of the land;
- b) The benefits offered by the remaining land do not have any objectively determined economic advantage to the owner.

Section 73

Application

1. The application for full expropriation must be made within 15 days after receipt of the private acquisition proposal referred to in section 25.
2. The expropriating body must respond to the application for full expropriation within 15 days.
3. If the expropriating body and the owner or other interested persons cannot agree on full expropriation, the owner may file an appeal with the district courts of the locality where the land is situated.
4. If a full expropriation order is made, the expropriating body must be served notice to deposit the additional compensation under the applicable terms of section 51 2 .
5. The appeal referred to in subsection 3 will only have the effect of referring back the expropriation proceedings.

TITLE XI

ABANDONMENT

Section 74

Abandonment

1. An expropriating body may abandon all or part of an expropriation for public purposes.
2. If an abandonment occurs, the owner and other interested persons shall be compensated under general terms of the law and to this effect expropriation shall be deemed to have started as of the date of publication of the notice of public purpose in the *Jornal da República*.

TITLE XII

FINAL PROVISIONS

Section 75

List of experts

1. The expert appointed by the President of the Court of Appeal must be chosen from the official list of experts compiled by the Government and which consists of individuals with specific skills required for real estate valuation.
2. If the list referred to in subsection 1 has not been published, potential candidates must be subject to careful assessment of their curriculum so that to the extent possible the appointed expert shall have specific expertise in the fields of engineering and architecture.
3. An appointment under subsection 2 may also be of an individual or organisation with documented experience in real estate valuation.

Section 76

Expropriation by zones or blocks

1. If the purpose of the works or project is to provide services or infrastructure in the public interest, the areas needed to undertake the work or projects may be expropriated in a single act or by zones or blocks.
2. If expropriation is by zones or blocks, the notice of public purpose must specify not only the total area, but also the zoning thereof and the phases and time periods for the start of expropriation, which cannot exceed a maximum of four years.
3. Subject to the provisions of section 38, the land included in the second and subsequent zones or blocks remain in the ownership and possession of their owners until such time as they are subject to uncontested expropriation or a judicial award.
4. The calculation of compensation for land not included in the first zone defined in subsection 2 will take account of necessary improvements made to the land in the period between the date of the declaration of public purpose and the date on which the expropriating body takes possession of the corresponding zone or block.
5. The declaration of public purpose referred to in this section expires in respect land for which the expropriating body does not initiate arbitration proceedings within one year after the period fixed in which the respective zone or block must be acquired.
6. The owner and other interested persons are entitled to compensation for losses directly and necessarily attributable to the expropriation of the land.

Section 77

Support of the Ministry of Justice

Subject to the specific authority and powers allocated to it herein, particularly in respect of the initiation and operation of expropriation proceedings, the Ministry of Justice must render the beneficiaries of the expropriation all the technical support necessary at the various stages of the expropriation.

Section 78

Expropriation planning and corresponding charges

1. For the purposes of planning annual expropriation proceedings and the related charges, all Ministries must submit to the Ministry of Justice no later than 60 days before the date on which the Draft Budget is submitted to the Council of Ministers for discussion a list of intended expropriation events for the year to which the Budget refers, and the estimated value of the corresponding compensation payments.
2. Based on the information provided by the Ministries under subsection 1, the Ministry of Justice must prepare a list of the intended expropriation procedures for the year for approval by Resolution of the Council of Ministers.
3. The information provided under subsection 1 and comprising the list referred to in subsection 2 shall be used to approve the funds made available to the *Fundo Financeiro Imobiliário* (Finance and Real Estate Fund) for the compensation payments or to acquire land privately.
4. The Ministry of Justice may only make expropriations not covered by the list referred to in subsection 2 if those expropriations are first approved by the Council of Ministers.

Section 79

Expropriating Body

The Ministry of Justice is the expropriating body for the purposes of this Law.

Section 80

Repeal

All regulations and statute contrary to these provisions cease to have effect.

Section 81

Commencement

This Law comes into force on the day after the date of publication.

Approved by the Council of Ministers on 10th March 2010.

The Prime Minister

Kay Rala Xanana Gusmão

The Minister of Justice

Lúcia Lobato