

# La'ó Hamutuk

Timor-Leste Institute for Development, Monitoring and Analysis

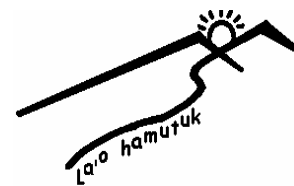
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**Submission on the**

## **Draft Land Law**

**(Special Regimen for Definition of Ownership of Immovable Property)**

**31 October 2009**

### **Introduction:**

*La'ó Hamutuk – The Timor-Leste Institute for Development Monitoring and Analysis* is a Timorese NGO that promotes Timorese people as the authors of their development process. We are grateful for the opportunity to present this submission and welcome any opportunity to discuss our following questions and recommendations.

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A clear, legal structure for land transactions will make land titles more secure, and increase land values and demand. If there is not clear planning for processes to implement a Land Law many of the principles and protections provided to vulnerable people under this law, as well as international human rights laws, cannot be not enacted.

This submission focuses on the legal framework, policy and services that need to be in place to protect the rights of vulnerable groups under the Land Law and the changes that a formal land system will bring to Timor-Leste's people.

Budgeting and planning for such processes need to begin now, and should involve a broad range of Timorese people, particularly vulnerable groups.

This submission is addressed in two parts.

#### **Part 1: Article-by-Article Analysis**

1.1 Additional articles

1.2 Current Draft

1.2.1 Principles

1.2.2 Key Issues

#### **Part 2: Proposed policies/other actions**

# Part 1: Article-by-Article Analysis

## 1.1 Additional articles

LH proposes additional articles to address the following:

### I. Land Information Service

The creation of an independent service to provide impartial information to individuals/communities that helps people to understand their land rights and make informed decisions about land use and transactions (particularly legal and financial dimensions).

### II. Mediation

Everybody has the right to impartial, independent mediation to assist in the resolution of land disputes, at all stages of the dispute.

### III. Avoid Concentration of Land

No single person or legal entity is permitted to control such a large area of land as to inhibit others' fair access to land. A future Land Concentration Law will address this.

### IV. Land Leases

Land leases must meet minimum standards to prevent land speculation and barriers to the enforcement of regulations and laws.

These minimum standards include:

- a. Monthly (not lump sum) payment for leases
- b. Land leases based on proposed land use (to prevent leasees from misrepresenting their plans to landowners)
- c. Evidence of free prior and informed consent, particularly for leases for industrial purposes and where landowners are to compensate leasees for developments to land and property

The existing law on land leases will be revised to incorporate the above measures, as well as explore further measures as minimum standards.

### V. Legal authority for community/customary land

A Community/Customary Land Law will detail the process for who has the right to authorize community/customary land use (including leases), and how this is done.

There should be limitations on transactions in these areas until this law is enacted. This could include a stay on mid- or long-term leases, and large projects.

### VI. Vulnerable Groups

The State has a particular responsibility to support vulnerable people to protect and access their land rights.

## 1.2 Current draft

Below is a summary of key recommendations and questions for the current draft. We also support the recommendations of the civil society Land Network.

### 1.2.1 Principles

We recommend the following principles apply to this law and other related laws.

- Any timelines which relate to formal notification or other documents should be from the date *received* by the recipient. Not the date stamped, signed or sent.
- Laws should stipulate that land related contracts and eviction related notices must be provided in a language that signatories understand.
- Any process dependent on decisions by a government agency should be decided on outcomes, not a date. For example, the denial by a government authority of a claim, not their inability to respond within the designated time period. Safeguards could be put in place to avoid malicious delay.
- Transitional processes for land will take many years. Any bodies developed to deal specifically with transitional land processes (such as the Compensation Fund) should be created by parliamentary law and have a cross-section of society nominate its members to ensure it can endure future changes.
- A policy context for how each law will be implemented is needed to help with legal interpretation.

### 1.2.2 Key issues

- The Law should clearly state that non-Timorese nationals do not have the right to compensation under the Compensation Fund (Article 36).
- Long-term possession should be the primary land right, even in cases where others hold *propriedade perfeita* or *hak milik* titles (Article 28).
- Having a government appointed Cadastral Commission decide cases involving the State as a disputant is a conflict of interest and could lead to unfair processes.
- Communities/Customary land holders need a clear land right. The community/customary land right should encompass safeguards to guarantee the land right of present, and future, generations to their land (see Land Network submission).
- A much greater emphasis on mediation and arbitration is needed (see Land Network submission).
- Provisions regarding “historic value” should be reviewed and expanded to ensure it meet human rights standards and best international practice.

- Does the law need a special recognition of the previous resolution to land disputes agreed through mediation? This should be considered, as well as certain safeguards— for example that agreements were undertaken in good faith and with the primary objective of the long-term resolution of a dispute (rather than a short-term measure until the underlying dispute can be resolved).

## **Part 2: Proposed policies/other action**

1. Initiate a National Land Consultation to agree key principles for the development of Timor-Leste's land structure. This will provide a guide for the development of future laws, policies, services and regulations related to the Land Law.
2. Ensure intra-governmental planning on the implementation of the Land Law.
3. Create a multi-stakeholder body to coordinate between government, civil society, donors and the private sector on land processes, starting with the implementation of the Land Law.
4. Identify measures to overcome barriers to vulnerable people's access to justice, particularly women.

### 5. Financial education, planning and services

Financial education, planning and services are urgently needed to avoid distress sales and to enable people to make informed decisions based on a clear understanding of land markets and rising land prices.

Such measures include:

- pro-poor savings facilities
  - cooling off periods for land sales
  - financial planning and land education
  - deferred payment options for lean periods (for example, some coffee buyers pay farmers partly in cash and partly in food provided during the hungry season)
  - support to community/customary land-holders in land-use planning
6. Plan to train land professionals, and develop local training bodies which understand the specific Timor-Leste context.
  7. All decisions on land sales and leases should be based on Free Prior and Informed Consent (FPIC). Better understanding and documentation of existing land use and resources, particularly in rural areas, is an essential part of FPIC decision-making.

Activities could include:

- Individual government department analysis of land laws and their impacts on their stakeholders/interest areas
- Participatory land use mapping and planning projects

- Collation of existing Timor-Leste land research resources and analysis into a centralized, publicly accessible location.

#### 8. Measures to strengthen and guarantee women's land rights.

This could include:

- Identify and protect women's existing land rights (Land that women use to collect firewood, wild food or medicinal herbs is often the first to be sold or leased).
- Give priority to adopting the Secretary of State on the Promotion of Equality's working group recommendations on land related legislation, such as the draft Civil Code.
- Increase women's understanding of land rights, legal systems and access to legal services.

#### 9. Support for Evictees

The Ministry of Social Solidarity should investigate the support needs of people dependent on land-based livelihoods who will be evicted and move to other housing (such as transitional support while families re-establish kitchen gardens).

10. Long-term planning is also needed to prevent homelessness as housing/rental prices rise and people can no longer freely access unused land.

#### 11. Monitoring

The Land Law should refer to who has responsibility for monitoring land issues, for example the Provedor for Human Rights and Justice, and resources should be allocated accordingly.

#### 12. The Civil Code

LH recommends:

- A review of the areas of the draft Civil Code that do not currently comply with the Land Law.
- A review of the areas of the draft Civil Code inappropriate to the Timor-Leste context. (For example, provisions on management of commercial properties).
- Translation of this revised draft Civil Code into Tetum for a 2<sup>nd</sup> public consultation.