



## Submission on the Draft Transitional Land Law of Timor-Leste

The Centre on Housing Rights and Evictions (COHRE) is a Geneva-based non-governmental international human rights organisation working to promote and protect the human right to adequate housing. COHRE has offices in Switzerland, Brazil, Ghana, Cambodia and Sri Lanka, and staff in over a dozen countries.

COHRE's Asia and Pacific Programme, based in Phnom Penh, Cambodia, has worked in more than 20 countries throughout the region since 2000, with a particular focus on evictions and other forms of displacement. COHRE has worked with national partners around the region, implementing a range of tools to improve the enjoyment of housing rights, adapted to the various situations faced by communities in each country. COHRE now focuses primarily on Cambodia, Burma, Indonesia, the Philippines and Timor-Leste.

COHRE has been carrying out activities in Timor-Leste with government, UN agencies and civil society since 2000. Most recently our work in 2007 and 2008 has been instrumental in the formation of the civil society Housing Rights Network, or Rede Direitu ba Uma.

COHRE recognises the complex and dynamic circumstances in which the government is working to establish and codify a secure system of land rights in Timor-Leste.

COHRE also recognises the essential importance of establishing a clear, secure and fair land and property tenure system for the sustainability of peace and security in the nation. It is essential that the land management and administration system is widely

### Accra

PMB CT 402  
Cantonments Accra  
Ghana

### Colombo

106 1/1 Horton Place  
Colombo 7  
Sri Lanka

### Duluth

8 N. 2nd Avenue East, Suite 208  
Duluth, MN 55802  
USA

### Phnom Penh

PO Box 2061  
Phnom Penh 3  
Cambodia

### Porto Alegre

Rua Jerônimo Coelho 102, Sala  
Porto Alegre, CEP 90010-240  
Brasil

perceived as just, through the enactment of a human rights compliant legislative framework subjected to a thorough consultation process, and the establishment of transparent procedures and institutions to give effect to the legislative regime. In this context COHRE welcomes the publication by the Ministry of Justice of the Draft Special Regime for the Determination of Ownership of Immovable Property (“draft Land Law”) of Timor-Leste as a vital step towards establishing a comprehensive land rights and property regime.

As a further step towards the establishment of such a regime, and in light of the repeal by the draft Land Law of Law No. 1 of 2003, COHRE respectfully urges the Ministry of Justice to, in the near future, enact legislation that regulates the process of evictions in compliance with the Government’s obligations under the International Covenant on Economic Social and Cultural Rights. The United Nations Committee on Economic, Social and Cultural Rights has set out the protections that should apply in all eviction cases in its General Comments 4 and 7 (see below). COHRE would welcome the opportunity to discuss the application of these international law rules in the context of Timor-Leste with the Ministry.

The following is COHRE’s submission to the Ministry of Justice on the Draft Special Regime for the Determination of Ownership of Immovable Property.

## **1. PRIORITY OF RIGHT-HOLDERS**

As understood by COHRE, the draft Land Law establishes the order of priority of right-holders to claim ownership as follows:

1. The State in cases in which the property falls under the definition of Property in the State’s Public Domain
2. Holders of primary previous rights (*Hak Milik/ Propriedade perfeita*)

3. Customary right holders
4. Holders of secondary previous rights who are also current possessors
5. Special adverse (current) possessors (with the criteria of having settled before 31 Dec 1998, and whose occupation has been continuous, public and notorious and peaceful)
6. Secondary previous rights (but not a current possessor)
7. Other current possessors
8. The State when there are no other valid claims or when the State is in current possession (Property in the State's Private Domain) (But abandoned property being administered by the State can be acquired by private parties through special adverse possession.)

As understood by COHRE, the order of priority of right-holders to claim compensation is established as follows:

1. Compensation rights to secondary previous right holders and previous long term possessors (continued on an interrupted basis for at least 20 years) who cannot claim ownership because of a superior right.
2. A special adverse possessor will get ownership above a secondary previous right holder but the former must pay compensation to the latter (State will pay in cases of financial hardship)

## **2. GENERAL COMMENTS & RECOMMENDATIONS**

COHRE's general comments and recommendations on the draft Land Law are as follows:

- The law recognizes *hak milik* and *propriedade perfeita* rights above all others and thus favours restitution above protection from further displacement. The automatic

primacy of such rights is problematic in situations where the original right has been obtained arbitrarily, violently, in bad faith or through violations of human rights. According to Daniel Fitzpatrick up to thirty percent of land certificates granted by the Indonesian administration were issued corruptly. In order to ensure that the new land rights regime is perceived as just and not further entrenching past human rights violations, we suggest that the law provide that persons affected by the restoration of old rights to property have the opportunity to challenge such restoration on the basis that the right was originally obtained arbitrarily, violently or in bad faith.

- The draft law does not appear to recognise the rights to land of IDPs resettled by the Ministry of Social Solidarity following the conflict of 2006. Any further displacement of such households should be avoided as much as possible. The law should secure the land tenure of such households as a priority in order to avoid further social disruption.
- Provisions to protect right-holders until their ownership is established are not strong enough. Relying on provisions in the Civil Code does not provide adequate security. Express protections should be included in the law. Until the National Property Cadastre is completed interim protections should apply. The simplest way to do this is to make it illegal to expropriate land and evict people for any purpose until that area has been adjudicated and registered. There is, for example, a similar provision in the Land Law of Cambodia.<sup>1</sup> In Cambodia, in situations in which the government requires land for a public interest reason it must first adjudicate and register the area. At this point people's ownership rights are legally recognized and the government can only expropriate the land in the public interest and with the prior payment of fair and just compensation. In the case of non-public interest

---

<sup>1</sup> Land Law 2001, Kingdom of Cambodia, article 248.

projects, private persons or the government can attempt to buy people's rights to the land at any time, whether these are ownership rights or possession rights prior to registration. Private landholders have the right to accept or decline the offer to purchase. (An exception may apply in the case of community land in which case certain limitations on transfer may apply).

- Protections against eviction do not go far enough and fall short of international law obligation, which are integrated into domestic law via section 9 of the Constitution. Evictions should not occur at any time unless the evictee has access to an alternative adequate house. There is the potential for significant displacement as a result of this law, which does not prioritize current possessors. Protections before, during and after evictions should be legally enshrined. The United Nations Committee on Economic, Social and Cultural Rights in its General Comments 4 and 7 sets out these protections as follows:

Evictions are only lawful in very exceptional circumstances and all feasible alternatives to eviction must be explored. If, and only if, such exceptional circumstances exist and there are no feasible alternatives, will an eviction be justified.

In those rare cases where an eviction is considered justified, it must be carried out in accordance with general principles of reasonableness and proportionality and under no circumstances should excessive force be used. The eviction must occur in strict compliance with procedural protections. These protections include, inter alia:

- Genuine consultation with those affected;
- Adequate and reasonable notice for all affected persons prior to the scheduled date of eviction;
- Information on the proposed evictions, and where applicable, on the alternative purpose for which the land or housing is to be used, to be made

available in reasonable time to all those affected;

- evictions not to take place in particularly bad weather or at night unless the affected persons consent otherwise;
- Government officials or their representatives to be present during the eviction;
- The provision of legal remedies; and
- The provision, where possible, of legal aid to persons who are in need of it to seek redress from the courts.

Evictions must not result in rendering individuals homeless or vulnerable to the violation of other human rights. As such, the Government is further obligated to ensure that adequate alternative housing and land is provided in consultation with the affected families. Compensation must be made available to affected persons for any damage to their property during the eviction or as a result of the eviction.<sup>2</sup>

It is a violation of Timor Leste's international law obligations to allow eviction without access to adequate alternative housing after an 18 month period has lapsed. Anyone evicted or made homeless as a result of the implementation of this law, including current and previous occupiers, should have access to alternative adequate housing, including access to livelihood opportunities such as productive land where appropriate. Land in the State's private domain could be used for this purpose. In the event that the state believes it has insufficient resources to provide adequate alternative housing, it has an obligation to request international assistance from development partners. However, given the financial resources available from oil and gas resources and the land resources available in the State's private domain, the need for international assistance is reduced. Evictions should not occur until measures to provide adequate alternative housing are put in place.

---

<sup>2</sup> United Nations, Committee on Economic Social and Cultural Rights, General Comments 4 and 7.

- If there is a rejection of family home status by the Ministry of Social Solidarity (MSS), which will mean that the special protections against eviction will not apply, clear written reasons should be provided and the decision should be subject to judicial review. In cases in which the MSS fails to provide a decision, there should be a presumption that the occupants' have the status as a resident in the family home and thus have the right to be provided with adequate alternative housing. The current formulation violates the occupants' right to an effective remedy, and as such is inconsistent with Timor Leste's human rights obligations.
- Compensation should be granted for loss of property and livelihood disruption as a result of eviction occurring as a consequence of the implementation of the law.
- In order to ensure a fair and lawful process an independent body such as the Office of the Provedor should provide a check on the DNTPSC in the cases of eviction. For example, the Provedor could be required to sign off on an eviction if he is confident that all proper processes to protect evictees rights before an eviction have been followed, that the eviction itself is occurring under proper circumstances and that the evictee has access to adequate alternative housing. A similar process was used in the Philippines under Executive Order 152, giving the Presidential Commission on the Urban Poor sole authority as the sole clearing house for evictions and demolitions.<sup>3</sup>
- Adequate housing should be defined according to the international law definition (Committee on Economic, Social and Cultural Rights, General Comment 4). The right to adequate housing is an international law obligation under ICESCR and is

---

<sup>3</sup> See <http://pcup-national.blogspot.com/2006/02/executive-order-no-152.html>

integrated into domestic law via section 9 of the Constitution. Section 58 of the Constitution also enshrines the right to an adequate house. In any case by case determination made by the Ministry of Social Solidarity or any other State institution of the adequacy of housing, the following aspects must be considered adequate in order to meet international and constitutional law obligations:

- legal security of tenure;
- availability of services, materials, facilities and infrastructure, including water, sanitation and energy;
- affordability;
- habitability in terms of space and protection from the environment;
- location in terms of access to employment options, health-care services, child-care centres and other social facilities, and in terms of environmental safety;
- cultural adequacy; and
- accessibility for all, including disadvantaged groups who may have special housing needs and require prioritisation.<sup>4</sup>

- Adequate location is a fundamental component of the international law definition of adequate housing. This means that people have the right to be relocated to areas which will allow them to maintain or improve their livelihoods, and will also avoid disruption to their lives as much as possible. For example, current access to schools for children and other facilities should be maintained wherever possible.
- The tenure security of households who are provided alternative housing post-eviction should be guaranteed by legislation. Rights to new houses for evictees

---

<sup>4</sup> United Nations, Committee on Economic Social and Cultural Rights, General Comment 4.



should not be limited to lease rights as this could create mass landlessness. Either full ownership rights or some type of social land concession should be conferred. A social land concession mechanism may place temporary conditions on land transfer if appropriate but should result in full ownership rights over time. Again, a similar process has been used successfully in the Philippines in this regard, notably in Naga City. While the details of the forms of tenure may be dealt with in future policy, the Land Law should guarantee tenure security to those relocated as a result of the implementation of this Law.

- Until such time as properties determined to be in the State's public domain are transparently identified in the National Property Cadastre (NPC), no eviction or other interference with households should occur on the types of properties described in Article 7.
- Anyone living on land categorized as property within the State's public domain is vulnerable to eviction. This could potentially be many households. Legal protection against eviction from these areas should be ensured unless it is absolutely necessary in the public interest. An inheritable form of secure tenure such as usufruct or lease rights should be granted as a default to such households and only denied where there is a legitimate public interest reason to evict such households. Easements, rights of way and other rights can be created where necessary. Anyone evicted from State public land should receive compensation for loss of property, land and livelihoods and must have access to alternative adequate housing.
- Provisions regarding Community Land are too vague, and there appear to be insufficient protections of Community Land. The law needs clarification in the following areas:

- The status of land until it is identified by the NPC as community land. There should be broad protections for potential community land until identified as such by NPC. Customary norms and practices should be allowed to continue until such time as the land is registered.
- The process by which the NPC identifies community land and the rights conferred on the community once land is identified by the NPC as community land.
- The consultation process prior to the authorisation of third parties to use the land. Land should not be sold to outsiders unless there is free prior and informed consent. The draft law contains an implicit encouragement for communities to privatise their land. If their land is registered as community land, their rights are limited, ie. certain significant decision-making powers rest with the State. The government is required under the draft law to consult with the community before authorizing third parties to use the land but is not required to obtain the community's approval. Households within the community, and thus the community as a whole, will have stronger rights and decision-making powers if they privatise and claim special adverse possession. Both options could lead to the destruction of communities' customary communal way of life – either households within the community obtain private or the State has the power to allow third parties to use the land without the community's consent. We suggest the draft law be amended to provide stronger rights to communities, including the right to approve or reject third party use of their land. As it stands, these provisions confer power on the State over community land rather than conferring rights on the communities.

COHRE further endorses the submission of *Rede ba Rai* on Community Land.

- Sporadic cadastral surveying is a very important registration mechanism that will work concurrently to systematic registration. However, in order for this process not to be abused and corrupted, a transparent process of sporadic registration should be established to ensure that all households have equal access to the sporadic system, and are assessed according to the rights under the law. Fee structures must also be made transparent and ensure that this process is affordable to all and not just the wealthy.
- In relation to the provisions in the draft law establishing the Cadastral Commission COHRE endorses the submission of *Rede ba Rai* on Arbitration and Mediation. COHRE submits that further research is required to determine the most appropriate form that a land dispute mechanism should take. Existing successful local dispute mechanisms should be recognised by the formal regulatory system. Any land dispute mechanism must ensure access to fair, equal and timely legal remedies and the settlement of disputes. Mediation should be encouraged wherever possible. Legal aid and education about rights and institutions established under the law are essential elements of access to justice and any successful land rights regime.

### 3. ARTICLE BY ARTICLE ANALYSIS

Article	Comments & Recommendation
<b>Chapter II</b>	<b>General Provisions</b>
<p><b>Article 6</b> The right of ownership is assured equally to men and women, and any form of discrimination is prohibited.</p>	<p>Make explicit the mechanism by which the right of ownership is assured equally to men and women. For example, a household will have both household heads (whether male or female) as joint titleholders. Extend the provision to include equal rights to compensation under the Law.</p>
<p><b>Article 7 (from altered version)</b> 1. If the immovable asset object of the title claim is located in an area of the public domain of the State, the claimant is not entitled to the property right. 2. Ownership of immovable property in areas of public domain of the State is protected under the terms of the Civil Code. 3. With no detriment to the provisions of the Civil Code, the following, specifically ranked as stated in the law, are areas of public domain of the State: a) The coastal areas and the beds of all interior waters; b) The lands occupied by public ways, namely streets, roads, bridges and viaducts and their respective exclusion zones. 4. The areas of public domain of the State are</p>	<p>Amend (1) to say: “If the immovable asset object of the title claim is located in an area of the public domain of the State, the claimant is not entitled to <u>ownership</u> of the immovable property.</p> <p>There is an apparent inconsistency between (1) and (2). Clarify (2). Stipulate that the areas of public domain of the State to be established by executive order shall be restricted to what is necessary in the public interest.</p> <p>Stipulate that until such time as properties determined to be in the State’s public domain are transparently identified in the National Property Cadastre, no eviction or other interference with rights of households should occur on the types of properties described in Article 7.</p> <p>An inheritable form of secure tenure such as usufruct or lease rights should be granted as a default to such households and only denied where there is a legitimate public interest reason to evict such households.</p> <p>If eviction is absolute necessary, people living in these areas, should be entitled to fair and just compensation and access to adequate alternative housing. It is only absolutely necessary if there is (1) a genuine public interest reason (which should be an appealable administrative decision) and (2) there are no feasible alternatives to eviction. The State should have to publically demonstrate (1) and (2). The State’s public domain should not be alienable to private interests in the future (ie. State should not be able to sell coastline to a private company). If in the future concessions to such land are allowed by law, such concessions should be limited re time and actual use (eg. should not be able to cause damage to such things as coastlines).</p>

<p>established by executive order and identified in the Cadastro Nacional de Propiedades (National Properties Cadastre). 5. The use of immovable assets located in areas of public domain of the State is regulated by executive order.</p>	
<p><b>Article 9</b> False claims shall be punishable under the terms of the Penal Code.</p>	<p>Define “false claim”</p>
<p><b>Chapter III</b></p>	<p>Possession</p>
<p><b>Article 13</b> 1. For purposes of special adverse possession, possession means the use of a property for purposes of habitation, cultivation, business, construction or any other activity that requires the physical use of the soil. 2. Possession can be exercised either personally or through another party. 3. A landlord exercises possession through the lessee. 4. Construction, planting, fences and enclosures are evidence of possession.</p>	<p>Delete from 13(1) “For the purposes of special adverse possession” (as this is relevant to all possession – see art 28.) Add to 13(1) “including on land left fallow for the purposes of swidden agriculture” Add to 13(4) evidence of possession deriving from customary use of property.</p>
<p><b>Article 14 (from altered version)</b> Until the first ownership</p>	<p>This provision should be strengthened to make it illegal to expropriate land and evict people for any purpose until that area has been adjudicated and registered.</p>

<p>rights are recognized or attributed within the scope of the special regimen established by law, the holder of the current and peaceful possession enjoys full legal protection under the terms of the Civil Code.</p>	
<p><b>Article 17</b> For purposes of this law, long term possession is that which continues on an uninterrupted basis for at least twenty years.</p>	<p>On what basis was 20 years selected for the definition of long term possession? This provision in conjunction with article 33(2) gives compensation rights to previous long term possessors, but no such rights to people who were possessing land for shorter periods. As research been conducted to assess the impact of this definition of long term possession?</p>
<p><b>Chapter IV</b></p>	<p><b>Special adverse possession</b></p>
<p><b>Article 20</b> Properties located within the areas of public domain of the State shall not be the object of special adverse possession.</p>	<p>See comments on Article 7 above. Evictions of possessors should only occur if there is a genuine public interest reason and protections as required by international law should apply.</p>
<p><b>Chapter V</b></p>	<p><b>Community land</b></p>
<p><b>Article 24 (from altered version )</b> 1. Areas where local communities organize the use of the land and other natural resources by means of social and cultural standards are considered as community lands. 2. The existing customary rights of land possession and use of natural resources are protected provided that they are not inconsistent with the Constitution and the laws.</p>	<p>In art 24(4): Define the process and criteria for the NPC to identify community land. The Law should stipulate that local communities are to be consulted in the process of identification . The determination by the NPC as to areas that are considered as community land (including the determination that an area is not community land) should be challengeable. This law should contain broad protections for potential community land until identified as such by NPC. Customary norms and practices should be allowed to continue until such time as the land is registered. Land should not be sold to outsiders if customary norms and practices do not allow it unless there is free prior informed consent.</p>

<p>3. The characterization of an area as community land does not affect the ownership of immovable properties located in it or the rights of its respective title holders.</p> <p>4. The National Property Cadastre identifies the areas to be considered as community land.</p>	
<p><b>Article 27</b></p> <p>1. The State is responsible for protecting community lands and prevent undue appropriations, indiscriminate and non-sustainable use of the natural resources and real estate speculation.</p> <p>2. State plots in community lands can only be leased or granted to third parties after consultation with the local community.</p> <p>3. The legal regimen of community lands shall be regulated by executive order.</p>	<p>In 27(1): Define “undue appropriations.”</p> <p>In 27(2): Change to: No authorization shall be granted to third parties to use land in community land areas without the free prior and informed consent of the local community or communities and without agreement to the conditions set by those communities, unless there is a genuine public interest or national security reason.</p>
<p><b>Chapter VI</b></p>	<p><b>Determination of ownership of property</b></p>
<p><b>Article 28 (from altered version)</b></p> <p>1. Claimants identified as holders of customary property rights are entitled to ownership rights.</p> <p>2. National claimants holding propiedade</p>	<p>Prioritising propiedade perfeita or hak milik rights will lead to eviction of current possessors and thus further instability. This provision would have particularly negative impacts in rural areas where farming families/rural communities live on larger estates - some for generations.</p> <p>Many PP and HM rights are known to have been conferred in a non-bona fides manner. Elevating these rights above those of peaceful current possessors entrenches past human rights violations and as</p>

<p>perfeita or hak milik, notwithstanding a claimant in possession, even if the latter fulfills the requirements for special adverse possession, are entitled to ownership rights.</p> <p>3. All immovable property that is subject to <i>propriedade perfeita</i> or <i>hak milik</i> is subject to ordinary adverse possession under the terms of the Civil Code.</p>	<p>such prevents this law from having transformative value.</p> <p>The law should provide that persons affected by the restoration of old rights to property have the opportunity to challenge such restoration on the basis that the right was originally obtained arbitrarily, violently or in bad faith.</p>
<p><b>Article 29</b></p> <p>1. The right of ownership shall be awarded to the Timorese claimant who holds the secondary previous right, and who is the current and peaceful possessor of the property in question.</p> <p>2. If the possession was based upon violence, the right of ownership shall not be awarded, and the State retains ownership.</p> <p>3. The claimant shall acquire the right of ownership only of that part of the property he/she possesses.</p>	<p>29(2) Change to: If the possession was based upon violence, the previous possessor can claim ownership within a given time period. After that the State can retain ownership.</p>
<p><b>Article 31</b></p> <p>1. In cases disputed by a Timorese claimant in possession and a claimant who holds a previous secondary right, the right of ownership of the</p>	<p>This means that only people who commenced their possession before 1999 and remained there continuously will have a superior right than someone who has previous secondary rights.</p> <p>Why should previous secondary right holders, who were explicitly not granted full ownership rights, have a higher level of rights than current possessors?</p>



<p>immovable property is awarded to the claimant who meets the requirements for special adverse possession.</p> <p>2. If the current possessor does not meet the requirements for special adverse possession, the right is awarded to the holder of the previous secondary right.</p> <p>3. The claimant in possession shall acquire the right of ownership only of that part of the property he/she possesses.</p>	
<p><b>Article 33</b></p> <p>1. In cases disputed by claimants whose claim is based only on the exercise of possession, the right of ownership is awarded to the claimant in possession who meets the requirements for special adverse possession.</p> <p>2. Claimants who have exercised a previous peaceful and long term possession and having proven their dispossession based upon violence or threat, have the right to compensation borne by the State.</p>	<p>This gives superior rights to current possessors who have been there since before 1999 above older possessors (ie. who were there before 31st Dec 1998).</p> <p>Even if previous possessors were dispossessed by the current possessor through violence they only have a right to compensation – and only if they lived there for at least 20 years.</p> <p>This makes sense if there was a violent possessor in between the current possessor and the previous possessor who lost the land through violence and if the current possessor was a bona fides peaceful possessor.</p> <p>If the current possessor was there since before 1999 but used violence to possess the property, he/she cannot be a special adverse possessor (article 21(1)(b)). Presumably in this situation, the State retains ownership as per Article 29(2).</p> <p>As per comments on Article 29(2), if the possession was based upon violence, shouldn't the property be returned to the previous possessor who lost the land through that violence wherever possible?</p> <p>What about disputed cases in which both parties have been in possession since 1999 ie. a current possessor vs a possessor between eg. 2000 and 2006? The draft law does not appear to address this situation.</p>
<p><b>Chapter VII</b></p>	<p><b>Compensation &amp; reimbursement</b></p>
<p><b>Article 36</b></p> <p>1. The right to compensation financed</p>	<p>The right to compensation should be extended anyone who loses property or whose livelihood is disrupted as a result of the implementation of this law.</p>

<p>by the Property Fund goes, in a disputed case, to the claimant who holds the secondary previous right or to the previous possessor with a peaceful and long term possession who does not have a right of ownership awarded under the special regime for the determination of property ownership.</p> <p>2. If there is more than one claimant that is the holder of a previous right, or a claimant in previous, long term peaceful possession, the compensation is owed to the holder of the most recent title or to the most recent previous possessor.</p>	
<p><b>Article 37</b> The compensation shall correspond to the updated fair value of the property at the time that the claimant was dispossessed.</p>	<p>Compensation should restore people who have been displaced to their previous position. Assessing market value at the time the claimant was possessed may not allow this to happen.</p>
<p><b>Article 40</b> The government may grant property in the private domain of the State to a claimant who is entitled to compensation under the special regime for the determination of immovable property ownership, under the terms of this law.</p>	<p>Art 40(3) should be amended allow ownership rights to be granted over the land to be transferred to evictees. (Consider social land concession mechanism.) (See Art 48.)</p>

<p>2. The inventory of immovable properties in the private domain of the State that are destined for compensation shall indicate the value of the property in accordance with an official table of market values.</p> <p>3. A special lease of immovable properties in the State's private domain may be issued to occupants protected against eviction in the cases covered by this law.</p> <p>4. The granting of immovable properties in the State's private domain shall be regulated by decree-law.</p>	
<p><b>Chapter VIII</b></p>	<p><b>Process of administrative eviction</b></p>
<p><b>Article 45</b> The process of administrative eviction from immovable properties of the State and from private properties falls to the National Directorate of Land, Property and Cadastral Services, under the terms of, and in accordance with, what is provided for in the present chapter.</p>	<p>In order to ensure a fair and lawful process the Law should stipulate that an independent body such as the Office of the Provedor will provide a check on the DNTPSC in the cases of eviction. For example, the Provedor could be required to sign off on an eviction if he is confident that all proper processes to protect evictees rights before an eviction have been followed, that the eviction itself is occurring under proper circumstances and that the evictee has access to adequate alternative housing. As this process has serious human rights implications, the Office of the Provedor is the appropriate body for this role.</p>
<p><b>Article 48</b> 1. A resident in a family home, occupying a property the ownership of which is recognized or awarded to a third</p>	<p>Amend art 48(1) to: "A resident in a family home, occupying a property the ownership of which is recognized or awarded to a third party, can be evicted only after an alternative adequate residence is made available to him/her." (Delete remainder.) A time limit (eighteen months) can be placed on the State to make an alternative adequate residence available, however if no alternative</p>

<p>party, can be evicted only after an alternative residence has been provided to him/her, or after a period of eighteen months has elapsed following the recognition or award of the right of ownership, whichever occurs first.</p> <p>2. No special protection against eviction is provided for anyone who has occupied a property after the recognition or award of the right of ownership of the property to another party.</p>	<p>residence is made available in that time the resident cannot be evicted. Adequate housing should be defined as per international law definition in UN CESCR General Comment 4 (including legal security of tenure).</p> <p>A notice, information and consultation process on relocation should be codified.</p> <p>Read in conjunction with Article 40 evictees would only have lease rights over their new houses. This could lead to significant landlessness. (What payment structure would there be for the lease? What would be the length of the lease?) Evictees should be able to own their new homes and tenure must be secure.</p>
<p><b>Article 50</b></p> <p>For purposes of the special protection against eviction, a family home is considered to be a property used for the housing of the occupant's family unit, if the occupant has no other adequate alternative residence, or the means to obtain one.</p>	<p>Make explicit that a "family unit" should be read widely to include a single person and a couple, etc.</p> <p>A means test should be codified in relation to the ability to obtain an alternative residence near to the family home.</p> <p>An alternative adequate residence should be defined to include the location of the residence ie. someone living in Dili should not be forced to move a family home in the districts, if their lives and livelihoods are Dili based.</p>
<p><b>Article 51</b></p> <p>1. The status of resident in a family home shall be determined by the Ministry of Social Solidarity.</p> <p>2. The Ministry of Social Solidarity may demand information from other administrative entities regarding the financial situation of the</p>	<p>Such determinations must be challengeable.</p>

petitioner.	
<p><b>Article 52</b></p> <p>1. The DNTPSC shall inform the occupant regarding the definitive administrative decision that recognizes or awards the right of ownership to another party.</p> <p>2. The occupant has 30 days to vacate the property, counting from the date of reception of the notice.</p>	<p>Extend notice period to 90 days and not before access to alternative housing is ensured.</p>
<p><b>Article 53</b></p> <p>1. For purposes of special protection against eviction, an occupant may request from the Ministry of Social Solidarity the issuance of the statement attesting to his/her status as a resident in the family home.</p> <p>2. The submission of the request referred to above interrupts the time period referred to in the previous article.</p> <p>3. The Ministry of Social Solidarity has 30 days to issue the statement attesting to the occupant's status as a resident in the family home.</p> <p>4. When the time period referred to above has elapsed without a response from the Ministry of Social</p>	<p>Occupants should not be required to request the issuance of a statement attesting family home status from the MSS. DNTPSC should have the responsibility of coordinating with the MSS to determine whether the residence in question is a family home, in consultation with the occupants. If fair procedure should then be instated as per comments to article 48.</p> <p>53(4) is especially problematic. If there is a rejection of family home status which will mean that the special protections against eviction will not apply, clear written reasons should be provided and the decision should be judicially challengeable. In cases in which the MSS fails to provide a decision, there should be a presumption that the occupants' have the status as a resident in the family home</p>

<p>Solidarity, it is considered that the petitioner is not a resident in the family home, and the time period in No. 2 of the above article is reinitiated.</p>	
<p><b>Article 54</b>  1. Upon the cessation of the occupant's status as a resident in the family home, or following a time period of 18 months, whichever happens first, the National Directorate of Land, Property and Cadastral Services shall notify the arbitrary occupant of a State property or a restituted private property, requiring that he/she vacates the property within 30 days following the date of notification.  2. A hierarchical appeal process is available for appealing such eviction, under the terms of decree-law 32/2008, which regulates the administrative proceedings.</p>	<p>Delete: "or following a time period of 18 months, whichever happens first"   Extend notice period.</p>
<p><b>Chapter IX</b></p>	<p>Process of the recognition and award of title</p>
<p><b>Article 57</b>  The process for the recognition of or award of the right of ownership of property starts from the end of the period for the</p>	<p>Add provision to make it illegal to expropriate land and evict people for any purpose until that area has been adjudicated and registered.</p>

<p>publication of the cadastral map, within the scope of the systematic cadastral survey.</p>	
<p><b>Article 63</b> The appeal may have as its object the award or recognition of the right to ownership, the existence of obligations for compensation and reimbursement or the amounts to be compensated or reimbursed.</p>	<p>The determination by the MSS as to the status of a resident in a family home (article 51-53) and the issuance of administrative eviction orders or other notice that has the same effect (article 54 and 52) should also be appealable.</p>
<p><b>Article 65</b> 1. The appeal is submitted by application in which the applicant should present the entire foundation for his/her appeal, and he/she may attach any documents he/she regards as being appropriate. Draft for Public Consultation / Unofficial translation 2. The appeal is addressed to the President of the Cadastral Commission, and it must be filed with the National Directorate of Land, Property and Cadastral Services, which then sends it to the Cadastral Commission.</p>	<p>There should be a legislative obligation on the State to ensure access to legal assistance in such cases.</p>
<p><b>Article 68</b> The Cadastral Commission may</p>	<p>Add “The Cadastral Commission must provide written reasons for its decision.”</p>

confirm, revoke, modify or replace the appealed decision.	
<b>Article 69</b>	
<b>Chapter X</b>	<b>Cadastral survey</b>
<p><b>Article 84</b></p> <p>1. A sporadic cadastral survey is a collection of data on immovable properties carried out individually by the National Directorate of Land, Properties and Cadastral Services, at the request of an interested party, outside of the areas of collection, in conformity with a specific procedural approach, for the purpose of creating the National Property Cadastre.</p> <p>2. The individual cadastral map of the property and the information collected shall be published at the local and national level for a time period of no less than 60 days.</p> <p>3. The rules of Articles 81 to 83 shall otherwise apply to the sporadic cadastral survey.</p>	<p>Fee structures and the process for systematic titling, including case by case decision-making, must be transparent.</p>
<b>Chapter XI</b>	<b>Final provisions</b>
<p><b>Article 88</b></p> <p>The taxation on properties shall be progressive so as to discourage land concentration.</p>	<p>Consider adding tax disincentive for land warehousing and speculation eg. unused property tax/ capital gains tax (with a residential home exception).</p>
<p><b>Article 89</b></p> <p>1. Law No. 1 of 2003 is</p>	<p>A new law is required to govern evictions in all situations. This must accord to international law and determine when evictions are legal (eg.</p>



<p>repealed.</p> <p>2. The Regulation of the UNTAET No. 2000/27, of 14 August, is repealed.</p> <p>3. Also repealed are documents or norms the provisions of which are contrary to the provisions of this law.</p>	<p>genuine public interest reasons and other exceptional circumstances) and the process for evictions which respects people's rights before during and after evictions.</p>
--	---