

# The La'o Hamutuk Bulletin

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## Whom Will the Land Laws Empower?

See glossary on page 4 for underlined words.

On 20 March 2012, then President of the Republic, Sr. José Ramos-Horta vetoed the Land Law package, sending it back to the National Parliament for revision. Sr. Ramos-Horta explained that he decided to veto the draft laws because they did not reflect the needs of or protect the rights of the poorest and most vulnerable and didn't resolve unjust systems established in the past. His concerns reflected those that La'o Hamutuk and Rede ba Rai (the Land Rights Network) have expressed for many years.

This Land Law package includes three draft laws: the Special Regime for Determination of Ownership of Immovable Property (hereinafter Land Law), the Expropriation Law, and the Real Estate Fund Law. The Land Law defines who the owner is if more than one person claims ownership of the same property. The Expropriation Law defines how the State can take private or community land and use it for "public interest." The Real Estate Fund Law defines how indemnity and compensation will be paid in cases where the Land Law recognizes that more than one individual or group have rights to the same property. In that situation, people who lose their property rights have the right to compensation. The Real Estate Fund will be used to compensate individuals for land that the Government expropriates from private or community use.



Of these three laws, only the Land Law was taken to public consultation. This consultation was conducted in 2009 by the Government through the Ministry of Justice, in 13 districts and 17 sub-districts. Unfortunately, many people in rural areas who depend heavily on their land for their livelihoods, such as farmers, poor and vulnerable people, didn't participate or share their views and do not understand the purposes of these laws (See *La'o Hamutuk Bulletin*, February 2010).

After President Ramos-Horta vetoed the Land Law package, the Ministry of Justice reworked it and initiated two more rounds of consultation, accepting only written submissions. A first round of consultation was done from November 2012 through February 2013, and a second round on 29 April 2013, before the Ministry of Justice sent the Land Law package to the Council of Ministers in early May. The Council of Ministers approved the Law on the Special Regime for Determination of Ownership of Immovable Property and the Real Estate Fund Law on 25 June and the Expropriation Law on 9 July. Parliament will consider them after it returns from recess in September.

The Ministry of Justice made some positive changes in response to civil society suggestions. For example, the new draft opens the way to recognize the *direitu anterior* (prior rights) holders' claims to own property previously administered by the Portuguese and Indonesian governments. The hierarchy on property rights has been clarified. An important special protection was added for people being evicted. Customary informal rights are protected when there is a dispute between claimants who have been using a land for a long

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time without possessing certificates; the laws clearly explain who is entitled to compensation and refund, and the value of compensation is linked to people's actual lives. There is also a clause allowing the government to expropriate private or even public land to offer to people who occupy the land, particularly when it affects a lot of people, and the role of the Cadastral Commission is clearly stated.

Although some improvements have been made to the drafts, a fundamental question remains that the draft laws do not try to resolve: how to deal with the actions under Portuguese and Indonesian rulers, when the State and its allies stole people's land with no justice, accountability or transparency. The draft Land Law still gives a lot of power to the State, individuals with *propriedade perfeita* (Portuguese era land certificates) or *hak milik* (Indonesian land certificates), and rich people.

The land question in Timor-Leste is very complex and sensitive, because Portuguese colonization and the Indonesian occupation introduced policies and systems to steal the people's land. These draft land laws could cause new conflicts because they legalize past unfair policies.

The following analysis of the draft Land Law is based on Rede ba Rai's submission to the Ministry of Justice in February 2013. The two other land laws will be analyzed in the next *La'o Hamutuk Bulletin*.

### When there is a dispute, the draft Land Law gives the most power to:

#### The State

According to the draft Land Law, "Land previously administered by the Portuguese and Indonesian States will become RDTL State property, and prior rights (*direitu anterior*) holders can get indemnity from the State." The draft law does not, however, offer prior rights holders the opportunity to make a claim or regain their land rights, thus giving the State a lot of power (access to ownership).

From 1975 to 1999, Timorese people lived in a situation of war. The Indonesian occupation introduced a system of forced displacement, with more than 370,000 people moved to concentration camps. From 1978 to 1980, civilians and Falintil members were separated, and people were forced to move and create new villages (*pemukiman baru*) in unoccupied areas or on traditional lands (*rai lisan*). Even if the communities didn't agree, they could not protest and make claims because they feared being killed by Indonesian soldiers. In 1999, almost 250,000 people were forcibly moved to West Timor.

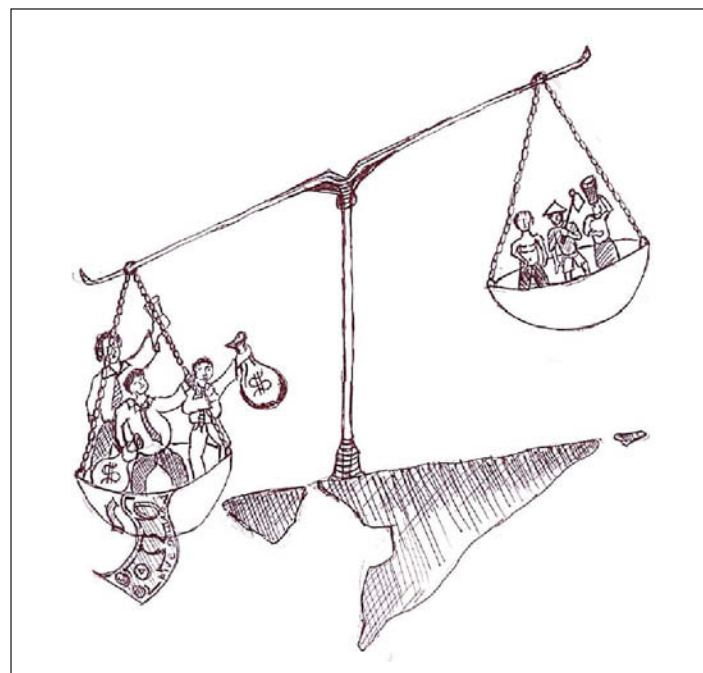
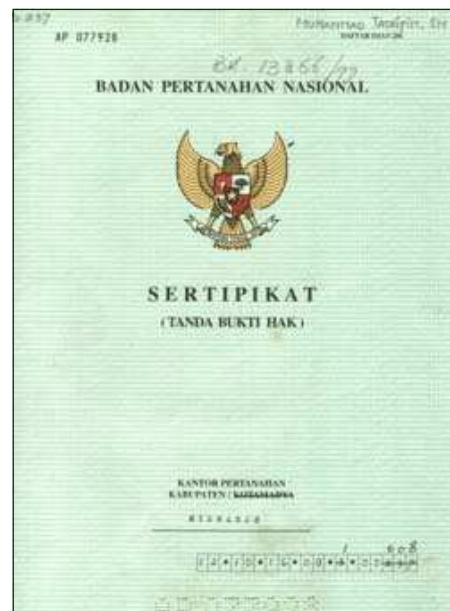
According to research by the Haburas Foundation published in 2011, the Indonesian occupation regime took over the Tulaeduk and Halimea territories in Liquiçá District to create 250 hectares of industrial plantation. When Timor-Leste became independent, the Government further expanded these plantations. Before Portuguese colonization and Indonesian occupation, most local people depended on this land for their livelihood: farming, breeding animals, hunting wild animals. And above all, they valued it for its connection to their cultural life. Communities said, "Cultural lands are important for us because anything we do, we do it according to the land's

customs, like *foho lulik*, and these sacred lands are impossible to move or remove from our lives." At independence, communities in Ermera, Liquiçá and Aileu started to take back plantation lands, because these lands belonged to their ancestors. Under the draft law, they would have no right to such claims.

### Holders of Portuguese and Indonesian Land Titles

The Land Law says that primary prior rights will be considered that are *direitu informal propriedade nian* (informal property right), *propriedade perfeita* (perfect property) from the Portuguese era, and property rights from the Indonesian era (*hak milik*). But if a dispute occurs between a primary rights holder and a special adverse possession rights holder (*uzukapiaun espesial*), the primary rights holder prevails.

Portuguese colonization and Indonesian occupation introduced unfair policies and systems, including paying taxes, making *aforamentu*, giving property land titles (*propriedade perfeita* and *hak milik*), creating new villages, and transmigration. During Portuguese colonization, 2,843 land titles were issued. In 1964, only ten Timorese had university diplomas, which indicates that hardly any people had the legal knowledge necessary to engage in the process to get a perfect property land title. This helps us understand why most of the 2,843 land titles issued benefited foreigners.



The Indonesian administration issued 44,091 titles, including approximately 30% through corruption. Between 1982 and 1999, the transmigration policy which brought Indonesian people to Timor-Leste caused nearly 25,000 transfers of land ownership from Timorese people to foreigners. In addition, according to Daniel Fitzpatrick, Senior Lecturer in Law at Australian National University, only 25% of the 200,000 parcels in Timor-Leste were formally registered by the Portuguese or Indonesian administrations, while 75% remained unregistered. Why should the Land Law legalize a small percentage of cases while ignoring the majority which involve Timorese people?

After independence, several groups were evicted based on court decisions upholding *propriedade perfeita* or *hak milik* (Portuguese or Indonesian land rights certificates). In 2004, in Bairro Pite, five families challenged the land rights of a woman who had an Indonesian land rights certificate obtained using falsified documents. The District Court sided with the woman, as she carried the land title paper, and the process by which she got it was ignored. Other similar cases occurred in 2011 in Bairro Sentral and in Colmera and Taibessi in 2012, where communities were evicted because some people had *propriedade perfeita* and *hak milik* certificates. In 2009 in Comoro and in 2010 in Bidau-Mota-Klaran, Timorese people with Indonesian nationality brought their *hak milik* certificates and electoral cards, selling land before returning to Indonesia.

### The Wealthy and Already Privileged

The draft land law establishes a progressive tax system where land owners must pay taxes depending on the area of their land. We are concerned that this could cause poor farmers and vulnerable people to lose their land, while large amount of lands will be concentrated in the hands of individual plantation owners, one family or one group.

The Timor-Leste Government is perpetuating the unfair personal tax system that the Portuguese Government created in order to steal people's land. This system was introduced by Portuguese colonizers, and every adult citizen had to pay a head tax. When local people couldn't pay the tax, the Portuguese Government seized their land and turned them into government-cultivated fields. As the Portuguese Government did not have enough people to manage these lands, they passed them on to the colonial elites including the mestizos and Chinese through *aforamentu* (land tenure). During that period, plantation owners emerged and community people who had lost their land became forced workers on plantations. The coffee plantations in Ermera, tobacco plantations in Malinamuk-Comoro (Dili), pastoral lands in Delta, and coconut plantations in Coqueiros (Pantai-Kelapa) are examples of these plantations.

After Timor-Leste became independent, many Dili plantation owners expelled community people from their land in order to make economic investments, disregarding that many of these residents had lived there for generations. Some lived there during the Portuguese time because they had been forcefully placed there by the Portuguese Government; others had run for their lives from their villages to Dili, during the Indonesian occupation.

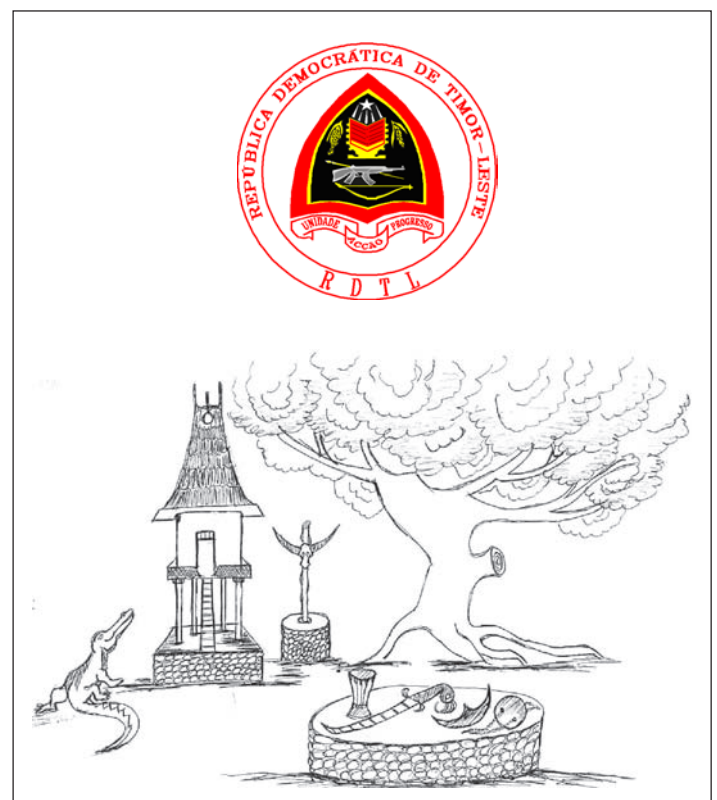
In Makelap, Oecussi, community people said: "Land is the only resource we have, and land gives a security to our lives as well as those of future generations. If the Timor-Leste Government imposes taxes, we will lose our land and our children's future; our land will all go to the Government and rich people."

This kind of economic injustice happens all over the world, where land and power are concentrated in the hands of a few. In Brazil, for example, people struggle for their land rights, as large amounts of land are concentrated in the hands of a few plantation owners.

### Recommendations

The cases cited above pose a fundamental policy question that the land laws must resolve. In situations where the Portuguese and Indonesian occupying governments seized traditional lands (*rai lisan*), a comprehensive investigation must be conducted, in order not to sacrifice people's land rights and the cultural values and principles which are crucial for their lives and cannot be valued with money. The Government should protect cultural and traditional lands because they constitute Timorese people's identity. Around the world, people are speaking about and working to restore their pre-colonial identity, lost because of a concept of development oriented more to money and private property than to socio-cultural values.

As a new nation, we have started to design a new system, and we have the opportunity to avoid repeating mistakes that other nations have made. It is critical that our land policy addresses the fact that 75% of Timorese people were denied formal land titles during the Portuguese and Indonesian time; we must put an end to the injustices of the past. Documents such as *propriedade perfeita* and *hak milik* certificates can be considered as administrative evidence, and then a comprehensive verification and identification process should be





undertaken to verify people's ownership and confirm that this right was obtained in a fair, transparent and accountable way.

A "perfect property" system could be applied in the future, when Timorese people will have their "perfect property" certificates delivered by the State of Timor-Leste. But this system should not be used to recognize Portuguese *propriedade perfeita* certificates and *hak milik* when a dispute occurs involving *uzukapiaun* (special adverse possession).

In order to ensure everyone's equal and fair access to land, land must be categorized by its social function based on cultural values and principles, considering a gender perspective. Land must not be seen as a commercial instrument for rich people to build plantations. Ideally, a fair and equal mechanism to promote distribution and guarantee land access for

all would involve agrarian/land reform, through which poor and vulnerable people can have access to land which is redistributed. In Brazil, a large developed nation, the Constitution specifies land reform as a means to guarantee access to land for poor and vulnerable people.

Tax assessments should be applied only to rich people, and not to vulnerable farmers and poor people. A certain size limit should also be set for land used by agribusiness companies, such as no more than two hectares.

Many people, especially in rural areas, do not understand the objectives of the three Land Laws. It is thus very important for the National Parliament to carry out a consulta-

tion process with communities before discussing the Land Laws. Vice-Speaker of the Parliament, Adriano do Nascimento, talking to local leaders (*xefe suku*) from five districts in August 2012 when they visited the Parliament, said: "Before the National Parliament approves the three Land Laws, a consultation will be carried out with communities according to their traditions."

The Government must also open a consultation process about the Decree Law no. 27/2011 on the Regime for Regulation of Ownership of Immovable Property in Undisputed Cases or any regulation related to land. There has, to date, been no consultation on this community land policy. Timor-Leste needs to draft its land laws, but they must reflect the Timorese context and reality and follow Timorese socio-cultural and economic principles and values. ❖

### Land Law Glossary

We kept certain phrases in the languages used in the draft Land Law because they are legal terms. In the draft Land Law, *propriedade perfeita* and *hak milik* are named as primary prior rights, and *aforamento*, *hak guna bangunan* and *hak guna usaha* are named as secondary prior informal property rights.

**Informal property rights:** the rights over immovable property, customary rights and rights resulting from long term possession, which have the basic features of property rights.

**Aforamento:** the right of tenants to use immovable property against the payment of rent and with the right of retrieval recognized as such in the law applied during the Portuguese administration.

**Hak guna-bangunan:** the right to temporarily build or maintain worksites on land owned by a third party, recognized as such in the law applied during the Indonesian administration.

**Hak guna-usaha:** the right to the economic production of State land for an established period of time, recognized as such in the law applied during the Indonesian administration.

**Hak milik (Indonesian land title/certificate of property rights):** the right of full and exclusive enjoyment of the rights to use and dispose of immovable property recognized as such by the law applicable during the Indonesian administration.

**Propriedade perfeita (Portuguese land title/certificate of perfect property):** the right to full and exclusive enjoyment of the rights to use and dispose of immovable property recognized as such by the law applicable during the Portuguese administration.

**Uzukapiaun spesiál (special adverse possession):** the mechanism for acquisition of ownership rights to immovable property in cases where possession has been maintained for a certain period of time and obtained through "ánimus" (active use of the land) peacefully and publicly, until 31 December 1998.

## New Books on Land Consultation

On 24 May 2013, in the HAK Foundation auditorium, Rede ba Rai (Land Rights Network) and Haburas Foundation launched two books related to their research and consultation.

Rede ba Rai conducted a research on the Ita Nia Rai Project (INRP) in October 2011-January 2012 in Dili, Liquiçá, Lautem and Oecusse. The INRP was implemented from 2007 to 2012. Rede ba Rai tried to determine whether, at the end of the project, it had contributed positively to people's lives. The objectives of Rede ba Rai's research were to evaluate the impact of the registration process on the poor and vulnerable groups' rights to land access and use; to test the accuracy of the data; and to assess if the data were sustainable enough to be used by the National Land and Property Directorate (DNTPSC) after INRP closed. According to Rede ba Rai, INRP conducted the registration process focusing on the quantitative aspect only, consisting in registering 50,000 parcels in accordance with the agreement made between INRP and Timor-Leste Government, without taking into account the qualitative aspect, i.e. the impact of the registration process on people's lives, access and use of land.

In June 2010-January 2011, Haburas Foundation consulted on Communities' Voice regarding Land in Dili, Ermera, Baucau, Lospalos, Covalima, Manufahi and Oecusse, with the objectives that politicians, donors and civil society could use information coming from communities; the consultation process should not be expensive but require extended time working with communities; all parts including Government, politicians and civil society must strengthen communities' rights to land; the consultation would enable more knowledge about communities' requirements and needs regarding to land use.

On 29 April 2013, Minister of Justice Dionisio Babo opened a last consultation process about the Land Laws Package before submitting it to the Council of Ministers at the beginning of May. After this consultation, the Minister declared that the Ministry of Justice had already improved the Laws, clarifying and harmonizing the wordings, and that the political aspects would be left to the National Parliament as the relevant institution. La'o Hamutuk and Rede ba Rai regret that, although the Ministry of Justice has the capacity and legal ability to legal analyze the policy and propose it to the National Parliament and the Council of Ministers, it did not try to consider the issues raised by local people, especially the poor and vulnerable since Timor-Leste restored its independence. When La'o Hamutuk and Rede ba Rai observed the Parliamentary plenary debate in February 2012, only 19 Members were actively discussing the land issue.



# Food Sovereignty and Food Security

In Timor-Leste, the agricultural sector is an important base from which to strengthen the nation's economy, health, culture and stability. Approximately 80% of our people live in rural areas and depend on agriculture, forests and fishing. The majority of agricultural activity is subsistence-based, small scale production to meet immediate needs, with small amounts being sold in order to purchase goods which cannot be grown or made directly.

The Timor-Leste Government, through the Ministry of Agriculture and Fisheries, together with the Australian program Seeds of Life (SoL) have been campaigning hard about the importance of establishing food security in Timor-Leste. According to the Timor-Leste Strategic Development Plan 2011-2030, "Many of the proposed strategies in relation to food security and rural poverty reduction are modeled on the 'green revolution' in India where the introduction of high yielding seed varieties and the increased use of fertilizers and irrigation from 1965 onwards resulted in India becoming self-sufficient in grains and dramatically reduced the risk of famine."

With this article, La'o Hamutuk seeks to contribute to the discussion of the important issue of food security. We all want to avoid hunger and malnutrition; food is fundamental. To ensure that the nation's plans and policies reach our collective goals, it is important to understand well the terms we are using and to learn from the experiences of other countries, such as India. There is much evidence that the 'green revolution' in India was not the success many international agencies and our own government claim. We must study well to avoid the problems confronting India and many other nations.

## Food Security and Food Sovereignty

What is food security? The first formal definition at the global level came out of the United Nations Global Food Conference in 1974. In 1996, this definition was refined to consider food security "when all people at all times have access to sufficient, safe, nutritious food to maintain a healthy and active life." This definition includes three key aspects: 1) *Availability* of enough food at all times with stability; 2) *Access* to nutritious food; and 3) The *Use* of the food is healthy and helps to maximize nutrition.

This definition of food security is fine, but La'o Hamutuk adds the principle of food sovereignty. According to the International Planning Committee for Food Sovereignty, a global network of movements and organizations, "Food sovereignty is the right of peoples to healthy and culturally appropriate food produced through ecologically sound and sustainable methods, and their right to define their own food and agriculture systems. It puts the aspirations and needs of those who produce, distribute and consume food at the heart of food systems and policies rather than the demands of markets and corporations."

When the concept of 'food security' was being introduced in 1974, the focus was on supply and how to use global trade and technology to solve the problem of hunger and famine in the world. The idea of "diversification" at that time focused on accelerating the free market, especially increasing the



importation and exportation of food and agricultural products between nations. Until today, there is an orientation to neo-liberal politics, to focusing on the global food economy, free market and how the market can facilitate food for the whole world, without much consideration for where the food comes from or the perspectives of small farmers.

The concept of food sovereignty uses the term "diversification" to refer to respecting and protecting seeds, food and living things that are local and unique: the biodiversity that exists naturally. The concept of food sovereignty refers to communities and farmers having the right to decide the systems they want to use to increase production based on principles of sustainable agriculture. The objective of food sovereignty is to strengthen food availability within the nation -- to build national self-sufficiency without needing to depend on imported food unless there is a clearly identified need. The concept of food sovereignty views national identity as including the strong ties between people, their environment and culture; and the goal of sustainability means avoiding a heavy dependence on imports. The movement for food sovereignty grew strong partly in response to the devastating impact of the 'green revolution' in many countries where it has been implemented.

## Learning from the 'Green Revolution'

The term 'green revolution' started being used around 1970 to describe what was happening in many developing nations. International companies and institutions such as the Ford Foundation, the World Bank, UN Food and Agriculture Or-

ganization (FAO), and USAID took the lead in implementing a program to introduce chemical fertilizers, pesticides, new 'high-yield' grain seeds, and mechanization to farmers in poor countries such as Mexico and India, in the name of ending world hunger.

Two key methods of the green revolution are agricultural intensification and agricultural expansion. Agricultural intensification refers to: using new high yield seeds, chemical fertilizers and pesticides, highly developed irrigation systems and agricultural machines such as the tractor. It also involves using fertile land and modifying the land to focus on grain production. Agricultural expansion refers to: expanding the area of land being used for farming by modifying land being used for other purposes and cutting forests to plant crops.

When Timor-Leste's government, in the National Strategic Plan, refers to the green revolution in India as a model, they are measuring success with limited data and ignoring real and serious negative impacts. India (specifically the Punjab region) is often cited as a success of the green revolution because grain harvests increased nearly ten-fold in a short time and high yields continued over many years. But other impacts included diminished genetic diversity, increased vulnerability to pests, land stripped of natural fertility, polluted water and local ecology, and a loss of control by small farmers.

Indian scientist and activist Vandana Shiva has written a great deal about the failure of the green revolution in India and in other places. She describes international companies appropriating local seeds and taking ownership of them via patenting laws; and government policies forbidding farmers from using seeds without formal labels or certification. Thus, local seeds have been lost. She explains how farmers followed complicated rules which made them powerless against legal and political domination and threats; and some cases of resistance. The example from Punjab, India also demonstrates the huge impact — social and economic inequality. The gap between the rich and poor increased dramatically because those with money could buy imported agricultural products and certified seeds; those without money, the small farmers, lost their land and their power, becoming mere laborers on their own farms. A great deal of local knowledge was lost. Today, on average, one farmer commits suicide every 30 minutes in India, a poor model for Timor-Leste to follow.

### Why is Seed Policy Important to Food Security?

A seed policy is a legal framework to regulate the seed sector, and includes both the government regulated 'formal' system and the system which some term 'informal' but we prefer to call 'farmer-based' that has existed for millennia that involves small farmers. To date, Timor-Leste's Seed Policy has focused on facilitating the development of the 'formal' seed sec-

tor, while at best only allowing the traditional farmer-based seed system to continue to exist. As we saw in reviewing the history of the 'green revolution', seed policies and laws in other countries sometimes undermine food security by ignoring food sovereignty and not respecting the farmers' rights and beliefs. It is critical that Timor-Leste's Seed Policy clearly acknowledge, respect, and strengthen the farmer-based system and give value to local existing seed varieties.

Timor-Leste has many different varieties of seeds. Until now, farmers continue to use these seeds because they are well adapted to the local climate and farmers know how to use them, including how to prevent plant diseases and save seeds. It is from seeds that farmers produce food. Some varieties of seeds have been developed by farmers with characteristics that relate to their location (micro-climate). The traditions of planting, harvesting, and conserving seeds also follow the farmers' locations. Before the modernization and industrialization of agriculture, new varieties of seeds entered an area carried by people, wind, water or animals. In each nation, seeds have a strong connection to the people, land and ecology of the place, and seeds have their own story to tell from one generation to the next.

Unfortunately, the Ministry of Agriculture and Fisheries and Seeds of Life (SoL) have focused on the introduction and adaptation of a few new varieties of seeds. New 'superior quality' varieties have been introduced here such as rice from the International Rice Research Institute (IRRI); sweet potatoes from the International Potato Center (CIP); corn from International Maize and Wheat Improvement Centre (CIMMYT); cassava and peanuts from the International Center for Tropical Agriculture (CIAT), and peanuts from the International Center for Research in the Semi-Arid Tropics (ICRISAT). These seeds come to Timor with international codes such as corn P07, cassava Ca-026 and peanuts PT05-ICGV88438. All these research centers are part of the Consultative Group on International Agriculture Research (CGIAR), an umbrella group for international research organizations and a green revolution founder and champion. Despite being a public institution, CGIAR has close links with



large multi-national companies, which can influence its research program. The CGIAR's influence on SoL's program is visible in their shared goal of "increasing the yields of staple food crops by selecting and distributing improved varieties of 'superior' genetic quality".

When farmers lose control of their seeds, it can have a major impact on the local community because it cuts the relationship between the seeds, the people and the land, and this is very dangerous for food security. When farmers lose their seeds, it damages people's daily traditions and the socio-cultural life of a community because farmers must start anew to learn about new seeds which can take a long time. Introducing new seeds to an area requires time for climate adaptation and the farmers must depend on experts to teach them how to plant and conserve the new seeds. The introduction of new seeds can also contribute to genetic pollution due to wind and insect cross pollination with the traditionally devel-

oped seeds of an area. Many countries have implemented policies and laws that privatize seeds which has a huge impact on small farmers. Clearly, companies with large capital have a certain power over small farmers, but farmers must be the guardians of seeds, not companies. We must ensure that small farmers are protected and our laws and policies must recognize and strengthen their knowledge and not simply have faith in outside 'experts.'

To achieve genuine food security, the focus should not be only on using improved seeds but on promoting more diversified diet, improved farming techniques and rural infrastructure. And beyond food security, any real long-term sustainable development strategy should be rooted in the concept of food sovereignty. ❖

*Please see La'o Hamutuk's Submission to Parliament regarding the draft Seed Policy on the next page.*

## Seed Policy Glossary

**Formal or Governmental Seed System** – is a seed system which includes laboratory-based scientific study (plant breeding and selection) and government certification of seeds. A formal seed system prioritizes the development of "optimal quality" seeds and the protection of the purity of these varieties. Certified seed marketing and distribution take place through a limited number of officially recognized seed outlets, usually for financial sale. The central premise of the formal systems is there is a clear distinction between "seed" and "grain."

**GMO (Genetically Modified Organism)** - refers to organisms whose genetic characteristics have been altered in a laboratory by the insertion of a modified gene or a gene from another organism, usually to achieve a trait not normally held by it such as disease resistance or different colors or flavors. Genetic modification is currently allowed in most countries and many studies estimate that possibly 70% or more of all industrially processed foods contain GMOs.

**Genetic pollution** – refers to the uncontrolled spread of genetic information (hybridization) into wild or natural populations in ways that are considered undesirable. The term is controversial in that pollution and undesirability are subjective terms.

**Intellectual Property Rights** – refers to the agreements in international organizations like the World Trade Organization (WTO) supporting the provision of patents, copyrights and trademarks on plans, ideas, or other non-material things. These property rights allow the holder to exercise a monopoly on the use of the item for a specified period. The reasoning for intellectual property is to encourage creativity without fear that a competitor will steal or take credit for the idea.

**Local or Farmer-based (Informal) Seed System** – refers to the way seed systems have functioned for most of human history with farmers serving as scientists (plant breeding and selection) not as an isolated activity but as an integral part of the overall farming production system. While some farmers treat "seed" specially, there is not always a distinction between "seed" and "grain." It is estimated that between 80-90% of the seed farmers access comes from the local seed system. We prefer not to use the term "informal seed" because it implies that it is haphazard and in a secondary status to "formal seed."

**Seed System** – refers to the breeding, gathering, management, replacement and distribution of seeds. Seed systems are complex and dynamic and there are no clear divides between the formal and local seed systems. Seeds and varieties can flow between them; farmers may choose to draw on one or the other.

## Who is La'o Hamutuk?

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# La'o Hamutuk's Second Submission on Seed Policy

In July 2012, RDTL's Ministry of Agriculture and Fisheries (MAF) and Seeds of Life (SoL) program asked La'o Hamutuk to take part in a National Seed Policy Working Group (NSPWG) with MAF and SoL staff, an international consultant and international NGOs Care International and USC Canada. The Working Group was intended to lead the drafting of Timor-Leste's Seed Policy. We suggested that the Network for Sustainable Agriculture in Timor-Leste (Hasatil) would better represent local NGOs working towards sustainable agriculture, and La'o Hamutuk agreed to participate as an observer. La'o Hamutuk had tried unsuccessfully to access the Timor-Leste draft Seed Law mentioned in SoL Annual Reports since 2008, so we were pleased to be involved in the development of the Seed Policy that MAF-SoL presented as a necessary step prior to drafting a Seed Law.

Despite our regular participation at NSPWG meetings and written submissions by Hasatil and La'o Hamutuk, few suggestions of local NGOs were included in the successive drafts of the policy. Instead, the core structure and content remained as initially designed by the international consultant. We also regret that the drafting and consultation processes were rushed, leaving little time to deepen the concepts used in the Seed Policy or to prepare adequate materials to communicate with the public, especially farmers. As a result, during the "consultation" workshops, the majority of the participants ignored and/or misunderstood the content of the Seed Policy, seriously limiting their ability to give an informed opinion.

The following is excerpted from our most recent submission regarding Timor-Leste's Seed Policy. It was submitted to MAF-SoL on 6 March 2013, at the end of the consultation process. Prepared by La'o Hamutuk and approved by HASATIL, it represents views of numerous local and international NGOs, as well as concerned citizens who expressed their views during the consultation workshops. A slightly modified version of the Seed Policy has been written since then, but no Tetum version is yet available.

We believe this draft seed policy is unbalanced, putting an over-emphasis on the formal seed sector at the expense of the informal, traditional one; on modern or new varieties issued from research at the expense of the local, existing ones; and on seed trade at the expense of food sovereignty. We hope our suggestions will help develop alternatives to improve this draft in terms of a better respect for economic, social and cultural rights, as well as biodiversity preservation.

## Clarify terminology and use appropriate terms.

To begin with, it is fundamental to clarify the terminology employed for example by creating a lexicon (glossary of terms). The wording should be more neutral, more adapted to reality. For example, the supply of "high quality seeds" is not "*vital*" for the seed security and food security, as many other important factors are involved. It is also crucial to use more accurate and specific terms, avoiding words which open the door to diverse legal interpretations of the policy .

## Approach seeds and seeds systems more broadly.

This policy should adopt a holistic approach to the seed system, including all its socio-economic and cultural implications. Unfortunately, this draft seed policy stresses the ends, i.e. the ultimate goal to produce seeds, without considering the means or processes, the traditional system supporting this activity. In the draft, seeds are described as a technological component of the seed business, to be optimized through research and produced for market. In Timor-Leste's context, as in other traditional societies, seeds are not a commodity produced industrially; instead, spiritual and social values are associated with seed production, exchange and planting. Seeds are related to food, culture, beliefs and local traditions.

## Don't reduce food security to seeds alone.

While seeds are the foundation of the food cycle, they are just one component among numerous others involved in food production and consumption. Soil preparation and restoration, farm planning, labour supply, harvest management, diet and cultural habits, access to markets and purchasing power



Corn seeds from Lahane, Aileu

are other important factors to consider in the food security debate. The debate should not be reduced to seeds, at the risk of exaggerating our expectations from the seeds' characteristics and getting lost in endless research, overlooking simple and cheap alternatives.

## Don't give the formal seed sector more importance than the farmer-based informal one.

In Timor-Leste "more than 80% of the seeds used by farmers come from the informal seed systems which consist of farmers producing, saving, exchanging and selling their farm-saved seeds within and outside their community." Timor-Leste's Seed Policy must not be biased towards the needs of the formal sector producing the remaining 20% of the seeds used by farmers. The informal seed sector is the main component of the national seed system, feeding people and contributing to their socio-economic and cultural life, and it should be strengthened. The draft Seed Policy mentions that "the informal and formal seed sectors are seen as complementary, not competing, components of the national seed system." It is not, however, enough to simply allow the informal

sector to exist besides the formal one without recognizing that the actors in the formal seed sector are much more powerful than the subsistence farmers using seeds from the informal seed system.

In reality, Timorese traditional seeds and agricultural systems are not driven by profit making and do not aim at the production of standardized seeds that fit the global market's requirements. The process of seed selection, production, use, storage, multiplication, and exchange is part of Timor-Leste's traditional social system. It creates and strengthens social relations, and responds to local needs. Timor-Leste's Seed Policy must respect and facilitate the continuation of Timorese farmers' way of life, culture, tradition, and beliefs.

### **Prioritize existing seeds and biodiversity instead of biological engineering and “improved” varieties.**

Timor-Leste should take advantage of existing knowledge and capitalize on the experiences of farmers to make the best choices in terms of policy. Local seeds, wild varieties, traditional varieties that are considered inferior to the modern, improved ones, are actually fundamental for food and for biodiversity. As the FAO points out,<sup>1</sup> one of the most important reasons for the loss of seeds, and thereby the loss of genetic diversity, is the replacement of genetically diverse farmers' varieties (traditional varieties) with modern “improved” varieties, products of formal plant breeding systems.

Timor-Leste's Seed Policy should not promote standardization and homogeneity. Instead it must recognize that while uniform crops are suitable for mechanized, industrial agriculture and respond to quality-standardized global market needs, they also contribute to biodiversity erosion.

### **Define what “good” and “high quality” seeds are.**

“Good quality” or “high quality” seeds should not be defined as only the “high yielding varieties.” This policy puts stress on the importance of the availability of “high quality seeds” whereas this term is not clearly defined. As the main argument of seed companies is to sell seeds which are allegedly “improved,” or of a superior quality, in opposition to traditional local seeds, it is fundamental to define this term. Considering the fact that this policy must give priority to Timor-Leste farmers, “quality” should be defined in accordance with their preferences. For Timorese farmers, different factors give value to the seed: the ability to store it, the ability to cultivate it without using chemical inputs or large amounts of water, the ability to be grown alongside other crops (intercrop), the availability of the seed in the traditional seed system (farmer-to-farmer exchange and sale), the taste and nutritive quality of the crop, etc. Farmer-developed varieties must not be considered poor quality merely because they are not homogeneous, stable, or standardized. This diversity and variability is natural and contributes to biodiversity.

### **Recognize farmers' rights and communities' rights over their biological resources.**

Timor-Leste's Seed Policy must above all recognize and promote farmers' rights. The concept of seed sovereignty used in the draft (and more broadly of food sovereignty) must be clearly defined. Hasatil and La'o Hamutuk don't talk about “national” seed sovereignty but specifically about farmers'



Bean seeds from Daisoli, Aileu

rights to sovereignty over food, including seeds. According to the concept of food sovereignty, empowered farmers define their own agricultural and food policies, which are ecologically, socially, economically and culturally appropriate to their unique circumstances. This concept also includes the right to food and the right to produce food respecting agroecology principles, i.e. respect of environmental cycles, sustainable use of natural resources, etc. Contrary to a widespread misconception, sustainable agriculture is not less productive than industrial agriculture. The international community even came to the conclusion that the future of agriculture is in small scale farming that respects ecosystems and which is able to produce as much as the intensive industrial agricultural development model<sup>2</sup>.

Following the food sovereignty concept, farmers are not transformed into consumers depending on industrial inputs or on the food industry, nor into suppliers of the global market. From a human rights perspective, any policy which makes farmers depend on the commercial seed market or on the needs of the global market is regressive.

Timorese farmers account for the poorest of Timor-Leste's population. Their vulnerability to external shocks and inability to compete with actors on the international market must be recognized and instruments of protection must be created. The State should play the role of regulator, controlling prices to ensure farmers' access to basic needs. As market principles are totally different from human rights principles, Timor-Leste should not blindly adopt neoliberal dogma as the basis of its development. Instead, we should explore the means to maintain our tradition of working together collectively and providing mutual support which is still strong in the country.

In addition to the reference to the Convention on Biological Diversity, the International Covenant on Economic, Social and Cultural Rights should also be cited, as this Seed Policy is directly linked to the right to food, the right to live as a farmer, and the right to maintain cultural practices and traditional knowledge.

### **Share, don't privatize, the commons.**

Timor-Leste's Seed Policy must favor an approach which gives priority to sharing biological resources and knowledge between people instead of appropriation of knowledge via

intellectual property rights (IPR), which don't respond to socio-economic concerns like food sovereignty. Seeds and planting materials are the basis of food security and should not be managed through monopoly systems. More specifically, this policy should reject any attempt to establish a monopoly on life and nature (living organisms, biological processes) through IPR, and explore real alternatives, as the western concept of property is not suitable to Timor-Leste's context. Farmers in Timor-Leste are not familiar with the concept of ownership of plant varieties. What they own is the crop they raise on their land and not the variety. These varieties are left in the public domain for free use by other farmers. In addition, ownership conflicts may arise when farmers from different regions cultivating the same variety make simultaneous claims for their right over that variety.

### **Establish a clear ban on Genetically Modified Organisms (GMO) and promote a GMO-free Timor-Leste.**

Although the draft seed policy recognizes the dangers of GMO, it does not strongly protect against them. In fact, it allows for research and academic investigations relating to GMOs. Considering the available evidence of health and en-

vironmental risks posed by GMOs, the high cost and technology required for GMO research, and the rich biodiversity still to be discovered in the country, Timor-Leste should adopt a firm position against GMOs.

### **Respond to current needs.**

The main objective of this Seed Policy must be to improve Timorese people's living conditions, not to respond to global market needs. The mention of the "export seed market", in a context of a supposed food and seeds shortage, seems premature and irrelevant. For a measure or policy to be successful, timing is a factor as important as content. This seed policy must reflect Timor-Leste's current situation and respond to real needs, and make clear that Timor-Leste's domestic seed sector "competitiveness in the international market" is not a priority.

### **Consider the whole seed sector.**

This Seed Policy is focused on seeds produced for food and agriculture, but in coherence with the broad definition adopted for seeds, this Seed Policy should respond to the entire seed sector, including horticulture and forestry. ❖

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### **Footnotes**

<sup>1</sup> FAO, *The Second Report on the State of the World's Plant Genetic Resources for Food and Agriculture*, 2010, available at <http://www.fao.org/docrep/013/i1500e/i1500e.pdf>

<sup>2</sup> International Assessment of Agricultural Knowledge, Science and Technology for Development, *Agriculture at a Crossroads*, available at: [http://www.agassessment.org/reports/IAASTD/EN/Agriculture%20at%20a%20Crossroads\\_Global%20Report%20\(English\).pdf](http://www.agassessment.org/reports/IAASTD/EN/Agriculture%20at%20a%20Crossroads_Global%20Report%20(English).pdf)

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## **Editorial: Ending Impunity** *(continued from page 12)*

Today major criminals live free, receiving protection from the Indonesian government; Ex-Generals Wiranto and Prabowo, both heavily implicated for crimes against humanity in Timor-Leste, are currently candidates in the upcoming Indonesian Presidential election. These two men can rise to be candidates for national leadership because there is no legal process to hold them accountable, and they continue to receive privileges and impunity from the State.

Furthermore, the majority of Indonesian people are not yet aware of their own past and these crimes against humanity committed in their names.

*La'o Hamutuk* strongly believes that we must not wait for either national or international leaders to take a lead in ensuring a genuine process of justice. A tremendous amount of power lies in the collective hands of ordinary people of both Indonesia and Timor-Leste who understand the truth and care about building a strong foundation based on genuine human rights and democracy in both countries. In order to break the cycle of crimes, the movements for justice in Indonesia and in Timor-Leste must learn from one another and work closely together in solidarity, sharing information, strategies, and campaigns.

We must also learn and gain strength from the struggles for justice in other countries. While Argentina's history of a

national dictatorial regime during what is referred to as "the dirty war" is quite different from Timor-Leste's experience under the external Indonesian regime, we can learn from their example. Though it took more than 30 years after the violence ended, justice activists and the people of Argentina have achieved what many considered only a dream: accountability and justice for many of the major criminals.

The justice process takes time and we must be extremely patient. The struggle for justice is a long road, and people in both Indonesia and Timor-Leste, especially those who work for human rights, must continue to strengthen our mutual solidarity to break the criminal cycle and hold the authors of crimes against humanity accountable in a court of law.

We must remind ourselves and our leaders that the process of genuine accountability will help bring greater democracy to Indonesia and justice and peace to the people of Timor-Leste and Indonesia. We must always have courage and not forget the important message from Patricia Isasa, justice activist from Argentina, who said, "**The only struggle that we lose is the struggle we abandon.**" From her experience, we can see that a long struggle can start with a small group and still change the political will to challenge impunity and break the cycle of serious crimes in the future. ❖

# Editorial: Together We Can End Impunity

The problem of social and economic injustice faced by the Timorese people today is a symptom of the continuing impunity and cycle of crimes against humanity that continue without resolution at either the international or national level. Civil society and the Timorese people continue to demand a formal and credible system to hold accountable the authors of crimes committed during the illegal occupation of Timor-Leste from 1975-1999. The question of how this will be achieved remains.

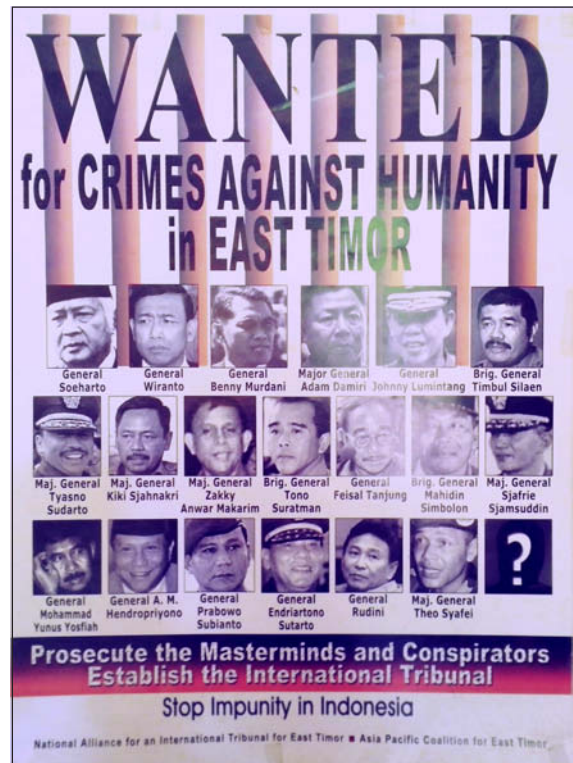
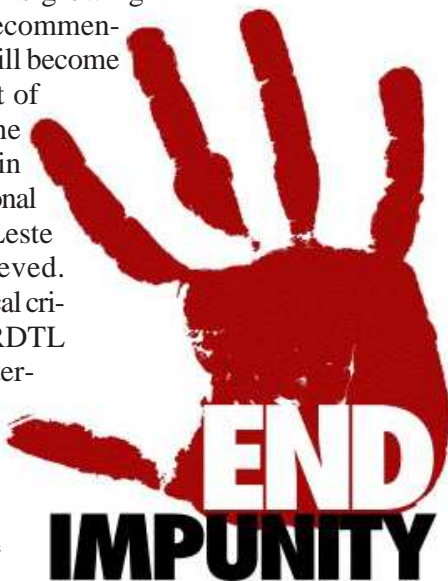
Practically speaking, we acknowledge that the official Timorese State position doesn't show the political will to respond to the people's demands for an international tribunal. Our officials often emphasize the need for good relations with Indonesia and the fact that an international tribunal takes time and depends on the democratization process in Indonesia. If not for the continuing demands of civil society, the issue could easily have fallen off the political agenda. From this, we know that civil society and grassroots people have an important role to play in helping the government of Timor-Leste to find a just solution and public accountability for past crimes.

The people of Timor-Leste and the International Community acknowledge that justice processes to date have failed. In 2004, the governments of Indonesia and Timor-Leste tried to focus on local processes for accountability for 1999 crimes, with no result. Because of their failures, the UN's International Commission of Experts recommended that there needs to be another international mechanism.

The CAVR (National Truth, Reception, and Reconciliation Commission) 2004 *Chega!* report recommends that the UN Security Council must continue to monitor justice processes in Timor-Leste as needed and "be prepared to institute an International Tribunal pursuant to Chapter VII of the UN Charter should other measures be deemed to have failed to deliver a sufficient measure of justice and Indonesia persists in the obstruction of justice."

With the end of the UN mandate in Timor-Leste in December 2012, there is growing concern that past recommendations and hopes will become no more than a part of Timor's history; the great popular hope in realizing an international tribunal for Timor-Leste has not been achieved. Since the 2006 political crisis distracted the RDTL government and international entities in Timor-Leste, cases of crimes against humanity between 1975 and 1999 have gotten little attention.

(Continued on page 11)



## What is La'o Hamutuk?

*La'o Hamutuk* (*Walking Together* in English) is a Timor-Leste non-governmental organization that monitors, analyzes, and reports on the principal international institutions present in Timor-Leste as they relate to the physical, economic, and social reconstruction and development of the country. *La'o Hamutuk* believes that the people of Timor-Leste must be the ultimate decision-makers in this process and that this process should be democratic and transparent. *La'o Hamutuk* is an independent organization and works to facilitate effective Timorese participation. In addition, *La'o Hamutuk* works to improve communication between the international community and Timor-Leste society. *La'o Hamutuk's* Timorese and international staff have equal responsibilities, and receive equal pay. Finally, *La'o Hamutuk* is a resource center, providing literature on development models, experiences, and practices, as well as facilitating solidarity links between Timorese groups and groups abroad with the aim of creating alternative development models.

*La'o Hamutuk* welcomes reprinting articles or graphics from our *Bulletin* without charge, but we would like to be notified and given credit for our work.

In the spirit of encouraging greater transparency, *La'o Hamutuk* would like you to contact us if you have documents and/or information that should be brought to the attention of the Timorese people and the international community.