On 20 March 2012, President José Ramos-Horta wrote three letters to Parliament Speaker Fernando La Sama Araújo explaining why he was vetoing land laws and returning them to Parliament. This is La'o Hamutuk's rough translation from Portuguese. For more information, including the originals and texts of the proposed laws, see http://www.laohamutuk.org/Agri/land/12PNpassPRvetoEn.htm .

Land Law

Excellency.

Having received, for promulgation, Decree No. 69/II of the National Parliament approving the special regime for defining ownership of land, I decided to request that it be assessed again, on the following grounds:

[LACK OF CONSENSUS]

1. Although the public consultation was carried out by the Ministry of Justice, there is evidently a lack of consensus in civil society for some solutions foreseen in the present law.

[WIDE DECREE FOR ACQUISITIONS OF PROPERTY BY THE STATE]

2. According to the law "The **State ownership of immovable property in his possession shall prevail over any prior rights** (...)" (Art. 6, No. 1), that is, a citizen may lose his right of property, including property *perfeita*, to the State only because the property is in their possession.
3. The right of the State is acquired regardless of whether its ownership was acquired in a violent way, in the case of an ownership exercised by the State or through others, and regardless also of the State's use of the land.
4. When the possession came through violence, land is leased or is not of any use to the State, mere possession should not confer ownership rights.
5. On the other side, this law provides that: "**The real estate of foreign claimants with prior rights revert to the state,** except if there is adverse possession by national citizens" (Article 8, No. 1).
6. However, existing national claims and other valid previous rights, should prevail in relation to the State.
7. Finally, there is too much discretion for the Minister of Justice in the demonstration of effective claim of ownership of the land titles to which they are entitled. The law should clearly state the criteria for the exercising this power to dispense with and "release" claim goods of the State on the part of the Minister of Justice.

[WEAK DEFINITION OF WHICH LANDS ARE IN THE PUBLIC DOMAIN]

8. The law determines to integrate in the public domain various properties required to satisfy the public interest, for example beaches, waterways, airports, among others (Article 5, No. 3);
9. But this is not an embodiment of the "public interest" which leaves wide discretion for the government to define it;
10. Furthermore, it defines as public domain the "buffer zones" of several of these public properties, not specifying what is meant by these "zones", which can generate uncertainty regarding the ownership of land that are more or less near to these properties;
11. The law should clearly define what is meant by public properties because the weak definition in this law draws in as a result the uncertainty in a sensitive area for economic and social relations such as the right of property ownership.

[LITTLE CLARITY AS TO THE COMPENSATION REGIME]

12. Chapter VII provides for situations in which holders of prior rights (or which comprise *adverse possession* requirements) are entitled to compensation in cases where they have not been granted the right of ownership.

13. The law can be interpreted that the State should always assume the obligation of compensation, with the exception of situations where the land has been acquired by adverse possession, in this case whoever acquired the property is obligated to reimburse the State. It is understood that this question in the reading of the law does not result in a clear, distinct interpretation being admissible as to the responsibility of the State to fully assume the compensation arising from acquisitions, without right to reimbursement, which is not derived from adverse possession, and this important question deserves wording that does not raise any doubts.

14. On the other hand, the following question also arises: given that Article 42 makes no distinction between domestic and foreign claims (speaking only of the claimant, unlike the criterion adopted in other articles which expressly speak of national claimants and foreign claimants), can't this be understood to mean that foreigners are entitled to compensation under this article?

15. Also on the subject of this article: in cases where the State assumes the debt of compensation, which corresponds to an obligation to pay a refund, it is expected that this refund obligation may be forgiven if there are proven circumstances of severe economic hardship (art. 47). It may arise in this case, the question of the discretion of the Government which could lead to some arbitrary action since there is no real obligation to forgive, but only such a possibility. The law should clearly state the circumstances under which the Minister of Justice may forgive the debt.

[CHURCH PROPERTY]

16. It is not clear, in this law, if the Church may own land as it is not registered as a Legal Person in the National Register of Legal Persons or that solution to disputed cases as long as the government has not legislated to register religious denominations.

[CADASTRAL COMMISSION]

17. The Cadastral Commission includes members from the Land and Property Department which has an interest in the dispute, where the State is as claimant, so their independence is not assured. Moreover, its members are appointed by the Prime Minister on proposal of the Minister of Justice and that the entity is dependent on the Minister of Justice.

18. To ensure this independence, their members should be appointed by several entities, including the different sovereign organs.

19. The provisions relating to Cadastral Commission decisions are, on the other hand, opaque with regard to whether the same cause is pending before the commission and the courts, resulting in a broad margin of discretion for judges that may lead to inequality of treatment and should be avoided for the reputation of the judiciary and balance of Justice.

[CONDITIONS FOR ADVERSE POSSESSION *(USUCAPIÃO ESPECIAL)]*

20. The occupation (possession) before 31 December 1998, without violence and by a Timorese citizen, gives rise to adverse possession. That is, it (a) entitles the acquisition of property rights

when in dispute with a prior secondary right, or (b) the compensation when in dispute with a prior primary right.

21. That date chosen to limit the occupation that enables adverse possession is arbitrary, except that it considers that the Indonesian occupation was peaceful and stable - in contrast to the post-99, troubled period - which, as we know, does not correspond to reality. It therefore seems more prudent to accept as relevant, from a legal point of view, the occupation until the date of restoration of independence, since this date initiated, in reality, a State under rule of law and put the law above repression, insecurity and arbitrariness.

22. On the other hand, the concept of peaceful possession for the purpose of adverse possession, must be better defined, not to remove protection from those who, by force of circumstances, in the occupation situation, allowed others to occupy their land, for reasons of simple solidarity with their compatriots.

[UNDEFINED GUARANTEES FOR THE RIGHT OF LOCAL COMMUNITY PROPERTY RELATIVE TO ANOTHER CLAIMANT WITH A VALID RIGHT]

23. The statute provides that "*are considered real estate property of the local community as recognized by its common usage shared by a group of individuals or families, organized according to local usages and customs*" (art. 27, no. 1).

24. However, in determining the prevailing rights in disputed cases, no solution is foreseen for situations that may concern a right of ownership by a local community and another valid right, nor to define who can represent the community as claimant for the purposes of this law.

25. Admittedly it is anticipated that the system of community protected areas and community land is governed by its own legislation, but is not defined as to resolve disputed cases before the approval of this regime. The Law should expressly provide that such disputes cannot be resolved until the adoption of the above-referenced legislation.

26. Reaffirming my faith in a joint effort to find solutions which will best dignify the State, I take this communication to convey to Your Excellency the feeling of my highest consideration and personal esteem.

Jose Ramos-Horta
President of the Republic

HIS EXCELLENCY DR. FERNANDO LA SAMA DE ARAÚJO
PRESIDENT OF NATIONAL PARLIAMENT

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Expropriation law

Excellency.

Having received, for promulgation, Decree 70/II of the National Parliament approving the Expropriation Law, I decided to request that it be assessed again on the following grounds:

1. This decree defines the legal regime of expropriation, stating that expropriation is a unilateral act of the State, and as such subject to the principle of exceptionality and subsidiarity.
2. On the other hand, it defines that expropriation is necessarily under a cause of public interest, understanding the mission, purpose or object of the expropriating authority (Art. 1 no.1 of the proposed law), but **does not specify what is meant by the *public interest*.**
3. This concept should be specified in the law so that it can offer, to individuals, guarantees of legal certainty and effective protection of constitutionally enshrined rights, *in this case* the right to private property under Article 54 of the Constitution.
4. On the other hand, Article 4.2(b) states, the purpose of the expropriation power to be the "(...) competence of the Council of Ministers, (...) the recognition of public interest required by legal persons (...) private business oriented and the declaration of public utility of the expropriation of land needed to implement projects of national interest and their respective access. "
5. **In this way, individuals may request the Council of Ministers to recognize the public interest in activities which they develop and the need to expropriate certain property to carry them out,** which does not seem consistent with the principles on which expropriation should be based, including the exceptional and subsidiary character, especially given that the law does not define what these "projects of national interest" are, leaving to the discretion of the Council of Ministers to decide on the nature and purpose of such projects.
6. Moreover, the Act defines as "the beneficiary of expropriation" (in Article 6) *"the entity to whom the subject of expropriation should be assigned to carry out the underlying public interest."* Adding beneficiaries in addition to the state, **entities and dealers "who are of recognized quality."** It is not defined in law **for what and by whom this is recognized.**
7. The same article also states that "For reasons of public interest, duly substantiated, may still be considered beneficiaries of the expropriation, (...), any natural or legal person who performs a function important for the development of Timor-Leste, in particular social or economic" (art. 6, no.3).
8. In fact **the law allows the state to expropriate in favor of natural or legal persons of private right who perform *functions of importance* for the development of Timor-Leste.** Since by "important functions" indicates only the law, by way of example, they are social or economic functions, leaving the field open to other considerations to be judged, case by case, important or not, by the Council of Ministers.
9. Now if the expropriation by the State is an exceptional measure in most democratic states under rule law, the expropriation by the state in favor of individuals should be a *very exceptional* measure, subject to very strict criteria.
10. This law, by contrast, tells us how criteria for "projects of national interest" and "persons who perform social, economic or other functions, of importance to the development of the country" which is not specific enough.

11. Finally, the law does not specify who gets the land after carrying out an expropriation. Being sure that by way of interpretation one can conclude that, through expropriation, the property may be integrated into the private domain of the state, this issue is unclear.

12. And **in the case of an expropriation in favor of a particular beneficiary, does the land remain in the sphere of the State, if it is leased or sold to a private entity? And being sold, can the State sell it at market value, when the compensation paid was fixed by other criteria that determined below-market value? None of this is set by law, so this question also remains open and requires better definition.**

Believing that a joint effort to find the best solutions is essential to dignify the State, I also take this communication to convey the feeling of my highest consideration and personal esteem.

Jose Ramos-Horta
President of the Republic

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Real Estate Financing Fund

Excellency.

Having received, for promulgation Decree no. 71/II of the National Parliament approving the real estate financing fund, I decided to request that it be assessed again on the following grounds:

The Real Estate Fund follows the special regime for defining the ownership of real property (Land Law) and the Expropriation Law. Under these two laws, the State has the obligation to make payments to various individuals, the present law providing that such payments are made by the Fund.

1. The existence of an Autonomous Fund finds its justification in the Law no. 13/2009 of 21 October (Budget and Financial Management Law), which allows for the management of certain funds , created with financial and administrative autonomy, with a more agile and more specialized structure, therefore, better able to pursue particular goals of public administration.
2. Now the fund which is now being created is limited to authorize payments resulting from the implementation of the Land Law and the Expropriation Law, having no power of decision (which is good) on the underlying issue.
3. In fact, in essence, nothing manages the Fund, and has nothing to manage (although one of its sources of revenue is the product of land reverted to the State and which may be leased or otherwise disposed of, this Fund will not be managing the State's real estate).
4. Although it clearly can make investments with its revenues, the truth also is that this is just a consequence of the fact that the possession of huge amounts of money, and not an end in itself for more efficient management of State funds (indeed, it should be noted that these funds, which mostly come from the General State Budget, are not really state receipts to be managed, but rather a responsibility to compensate and indemnify individuals).
5. Thus, it is seen that the ends of the state (in this case, the payment of indemnification and compensation) can be pursued more effectively through the creation of an autonomous fund, which will do no more than process payments.
6. Rather, its constitution as an autonomous structure is likely to generate more inefficiency in the process of compensation or indemnification, since the implementation (and only the implementation) of decisions that determine them depend on a third party.
7. On the other hand, its creation requires the State to form one more structure, the allocation of more resources and greater dispersion of state funds, with the risks that entails, without resulting in any visible added value in terms of efficiency or improving the quality of State services.
8. Finally, concerning the composition of the Board of Directors (*Conselho de Administração*), provides that "Members of the Board of Directors may also be designated outside the Public Administration, under contract to provide services" (Art. 12, No. 2). However, given the powers of this body, the appointment of individuals from outside the Public Administration can lead to situations of conflict of interest if we consider, for example, that a member may be the majority shareholder of a construction company that has interest in developing a social housing project and that it is the Board of Directors which can "Authorize payments related to the acquisition, development and implementation of social housing projects (...)".

9. It is true that the Fund has no power to acquire, develop or implement social housing projects, taking no relevant decision in this process, but merely to pay what is deemed necessary in this context. But if so, the question is, firstly, what is the Fund for, and also, what is the need to engage third parties in public functions through the provision of services.

10. From the foregoing, I conclude that the creation of a paying agency such as the proposed Real Estate Fund only duplicates State agencies, adding unnecessary inefficiencies from a new administrative structure and the corresponding waste of public resources which could usefully be saved for investment in our national priorities.

Believing in the importance of joint efforts to find the best solutions to dignify the State, I also take this communication to convey the feeling of my highest consideration and personal esteem.

Jose Ramos-Horta
President of the Republic

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PRESIDENT OF NATIONAL PARLIAMENT