



LAND REGISTRATION *in Timor-Leste*

Impact Analysis of the
National Cadastral System (SNC)



Rede ba Rai



Rede ba Rai (RbR)

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Rede ba Rai is composed of national, local and international civil society organisations working on land issues in Timor-Leste. Rede ba Rai was established in 2001. The Vision of the Rede ba Rai is that the Timorese people may live with rights and access to land and housing which is just and sustainable. Rede ba Rai's mission is to carry out monitoring of land cases, to monitor governments laws, policies and projects relating to land and housing, to advocate on land and housing rights issues and to support communities to advocate at the local level. Rede ba Rai considers land as a fundamental and complex issue which affects people's lives across social, political, cultural, economic, justice and ecological issues. Kdadalak Sulimutuk Institut (KSI) currently acts as the Secretariat of Rede ba Rai.

This research was a collective effort by many organisations. The organisations which made up the research team included: Asosiasaun Rede Covalima (ARC), FFSO, Fundasaun Mahein (FM), Jurista Advokasia (JA), JSMP, La'ó Hamutuk, Liberta, Oxfam, REINO, Sekretariadu Rede ba Rai and Tahan. The organisations which made up the coordination taskforce included: Belun, HAK, JA, KSI, La'ó Hamutuk, Liberta, Oxfam, Sekretariadu Rede ba Rai and Tahan. This report was originally written in Tetun and then translated to English and Portuguese. Many thanks to the large team of people involved in translation, copy-editing and layout.

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Finally, but most importantly, Rede ba Rai thanks all of the people of Timor-Leste, especially the community members, leaders and other authorities who gave their time to participate in this research process. This research is for them.

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EXECUTIVE SUMMARY

Access and rights to land are essential to guarantee the basic rights of all citizens. However, land issues in Timor-Leste pose major challenges to citizens' rights. Since independence, the Timor-Leste government and international partners have undertaken a range of interventions with the aim of strengthening the land administration system.

This report evaluates a land registration program called the National Cadastral System (SNC, Sistema Nacional de Cadastro), which has been implemented since 2014 and is due to end in December 2019. The Timor-Leste government awarded this project to two private companies (GMN-H and ARM-APPRIZE¹) who started work in 2014. In this report Rede ba Rai (Land Network)² identifies the strengths and weaknesses of the land registration process implemented by the SNC, and its impacts on people's and communities' rights to land. This report is based on qualitative and quantitative research conducted in nine municipalities between February and December 2018, and includes a detailed case study conducted in the municipality of Covalima in August 2018.

When land registration is done properly, it promotes justice across a range of aspects, including gender equality and access to land for all. When it is undertaken with poor processes, land registration can give rise to various forms of injustice because it allows only a few people to have rights to land. If the registration process is badly implemented, instead of removing problems and land injustice, it may exacerbate them so they become more difficult to resolve in the future.

Prior to the SNC program, the Timor-Leste government implemented a land registration project known as Ita Nia Rai (INR, Our Land)³ with support from USAID. The INR project should have been an example for the government to understand what constitutes success and failure. One of the strengths of the INR project was that the registration process was free of charge. While the SNC program continues to implement land registration for free, unfortunately, this report shows there are many problems with SNC activities and many of the lessons learned from the INR project have now been lost.

This report shows that the legal framework is a challenge for the land registration process, however, more importantly it presents convincing evidence that the current implementation of SNC breaks the law in a number of ways. The first problem relates to the sequencing of land legislation.⁴ Land registration began before the approval of the law regulating the land registration and titling process (Special Regime for Determining the Ownership of Land, Law 13/2017). Law 13/2017 brought in new rules and procedures. Since the approval of this law the SNC process has not been modified and as a result, several of the activities the SNC has implemented are in contradiction with the rules set forth in Law 13/2017. For example, Law 13/2017 recognises community property rights and community protection zones but, as the SNC is conducting land registration, it is not explaining these two options to the community, and the current SNC's implementation process does not allow registration of community land claims. The result is that the SNC program is contravening

1. GMN-H is a Timorese company (Grupo Média Nacional-Holdings, National Media Group-Holdings). ARM-APPRIZE is a Portuguese company.

2. The Timor-Leste Land Network is a group of 20 organisations working to protect land rights. Our vision is that everyone in will have fair and sustainable access to land. Since 2001 we have been monitoring, researching and advocating on land issues.

3. Strengthening Property Rights in Timor-Leste

4. Sequencing in this context refers to a number of steps that must be followed, one after the other, according to a procedure - the tail cannot come before the head.

the provisions relating to community property in Law 13/2107. Another example is that the rule regarding the updating of land records is not yet clear. This means that when a person sells land, or receives land through inheritance, the legal process for changing the name of the owner is still unclear. The result is that the SNC's present method of updating land registration is in violation of the law, and the registrations completed have become progressively out of date.

The second problem is that the legislation to regulate land registration has many gaps and contradictions. These faults are causing confusion now and will continue to do so in the future. In order to ensure appropriate land registration that protects individuals' and communities' rights to land, the complementary legislation to Law 13/2017 must be approved and amendments made to the ministerial diplomas that regulate land registration.

Public information is a key feature of the land registration process. If people are unaware that land registration is being conducted in their area or do not understand their related rights and obligations, they are unable to have proper access to the process. If people's access to land registration is reduced, the information collected during the process will not represent the reality of ownership and rights to land. People may lose their land and the risk of conflict may increase. This research shows that the SNC's public information dissemination is very limited and does not meet legal requirements. Poor public information sharing means many people do not yet understand their rights and responsibilities, and do not understand the legal impact of the land registration process. The SNC is failing to comply with its obligation to provide public information specifically for vulnerable groups. Monitoring also shows that during public meetings the SNC shared incomplete and sometimes incorrect information.

In addition to sharing land registration information more broadly, the law also requires that notification of land registration processes and map publication processes be specifically published in the government gazette (*Jornal da Republica*). This requirement is a guarantee of legality and a protection of people's rights. The research reveals several examples where the SNC's land registration fails to comply with the legal requirements regarding notifications in the gazette and the amount of time stipulated for the publication of maps. Failure to comply with the rules regarding notifications means that the land registration process in the areas in question is invalid. In the future people will be able to take these violations to court, and if the courts decide the registration process was invalid, it may weaken faith in the land administration system more broadly and undermine security of tenure.

Access to the process of making claims, verifying these claims through the publication of maps, and the principle of the right to freely submit a claim are key elements in the land registration process. Making a claim to land is fundamental to being granted a right, and thus people who do not participate in the process may lose their rights to land. This research shows that there are several practices which violate these principles. For example, Ministerial Diploma 45/2016 states that two local authorities and neighbours must sign the landowner's claim form before it is submitted. This is not included in Law 13/2017 and contravenes the principle of the right to freely submit a claim in Law 13/2017 (article 32.3) because it places a burden on the claimant, impedes the process of making a claim and does not significantly help the registration process. There are also other practices that impede individuals' access to land registration. For example, the publication of maps occurs in locations that are some distance from the collection areas and this makes it difficult for people to verify their claims.



The research also reveals that flaws in the SNC's public information process have been a huge barrier for some people to submit their claims. For example, in some situations SNC staff did not explain that all persons have a right to submit claims regarding land they think they own, particularly in cases where the state has claimed the same land. In other cases the SNC did not share information regarding options to submit group applications, husband and wife joint claims, or processes to submit claims as a community or other group.

Land registration must have a high level of transparency to prevent corruption, guarantee the quality of the procedure, and ensure that people have faith in the results of the registration process. However, the research shows that the SNC has allowed a culture of secrecy to prevail across the organisation. The SNC prevented researchers from learning more about its work and did not provide access to information gathered through the registration process, even though, according to the law, this information should be made public. The SNC leadership has repeatedly prevented civil society from interviewing its staff. The SNC's behaviour is a problem for the integrity and transparency of land registration and gives rise to questions about whether people will trust its work.

The registration process has a huge impact on the lives of individuals and communities, so it must be of high quality and conducted with an appropriate level of professionalism. Although the SNC has failed to share sufficient information and has not provided access to documents, the research has identified many points that show its work lacks consistency, sustainability and fails to consider the needs of participants. For example, SNC-led community meetings are unstructured, SNC staff sometimes arrive late and many communities still do not understand the process. The electronic tablets used to conduct land registration make it very difficult for participants to identify their land. The maps and lists of claimants published are difficult for people to understand. There is no clear and simple method for updating claims. To date, there has been no independent audit of the SNC's work, and the SNC has shown no commitment to evaluating or improving its work.

Although the SNC has not published its data, there are some indications that the SNC's land registration process has increased the number of land disputes throughout the country. While conducting this study researchers observed that in some areas SNC had not registered land parcels where ownership is disputed. Although this may avoid violence in the short term, it may lead to problems escalating in the future if people involved in land disputes lose their land because it was not registered.

A positive point is that the SNC has mediators in each municipality, although only one person in each municipality is insufficient to respond to all of the disputes. SNC-conducted land registration has a huge potential to increase conflict in the future, because the majority of cases received claims from only one individual, despite a lot of land belonging to families or communities. This means that the land registration conducted does not reflect the reality on the ground.

The majority of land in Timor-Leste is considered to be *rai lisan* (customary land belonging to origin groups).⁵ The land law (13/2017) provides for communities to submit claims to what has been called 'community property'. However, this research demonstrates that of the claims the SNC has facilitated, fewer than 1% are claims regarding *rai lisan* or *rai adat*. The SNC has registered the majority of land parcels as private land with a single owner, though in reality many of these parcels are customary land. The research shows that the SNC does not facilitate the submission of claims for customary land or explain to communities that the law allows claims for customary land.

5. Rod Nixon's research in 2009 defines 90% of land in rural areas as *rai lisan* or land under the system of customary management.

This failure has a huge impact on the security of communities, because it will lead to their loss of rights to land. This negligence is made worse by the fact that Article 8 of Law 13/2017 deems all land without an owner as ‘vacant’ and as such it becomes state land. Therefore, land that is not registered under the SNC process risks being permanently removed from communities. This failure is a major violation of the protections for communities and customary land provided in Law 13/2017.

Where land registration has no specific procedures that promote and protect women’s rights to land, there is a great potential to reduce their land rights. This research reveals that the SNC’s public information process and the way it conducts land registration do not promote the rights of women to own land. Results from our assessment of 10,652 claims in nine municipalities are that 64% of claims were made by men only, in comparison with 22% of claims from women only. Joint husband and wife or spousal claims cannot be properly assessed because the SNC has not shared any clear data, but the researchers saw from the published maps that these are fewer than 2%.⁶ This failure is a violation of the legal obligations set forth in Law 13/2017 (article 32.7), and shows that the SNC’s land registration has had a negative impact on and reduced women’s rights to land.

The research also reveals that the SNC’s land registration does not consider the specific needs of vulnerable groups, such as the aged, widows, people with disabilities, and children without parents. The SNC neither disseminates any specific information for vulnerable groups nor facilitates their participation in the registration process. This failure is a violation of Law 13/2017 (article 5) that provides for the protection of vulnerable groups.

This research demonstrates that the SNC’s implementation of land registration has many obvious flaws which are in violation of the law and have increased conflict, injustice and problems relating to land. The researchers believe that further detailed investigation that includes an evaluation of the SNC’s internal documentation will be able identify other, potentially more serious problems. It is clear that the two companies (GMN-H and ARM-APPRIZE) currently implementing the SNC’s activities have insufficient experience of land registration processes and that this has significantly lowered the quality of the SNC program.

6. Submissions from a man and a woman jointly are 2%. As the SNC has not published any statistics, we do not know if these are joint husband and wife (spousal) claims or from brothers and sisters, or mothers and children, so the number of spousal claims may actually be fewer than 2%.



Key Recommendations

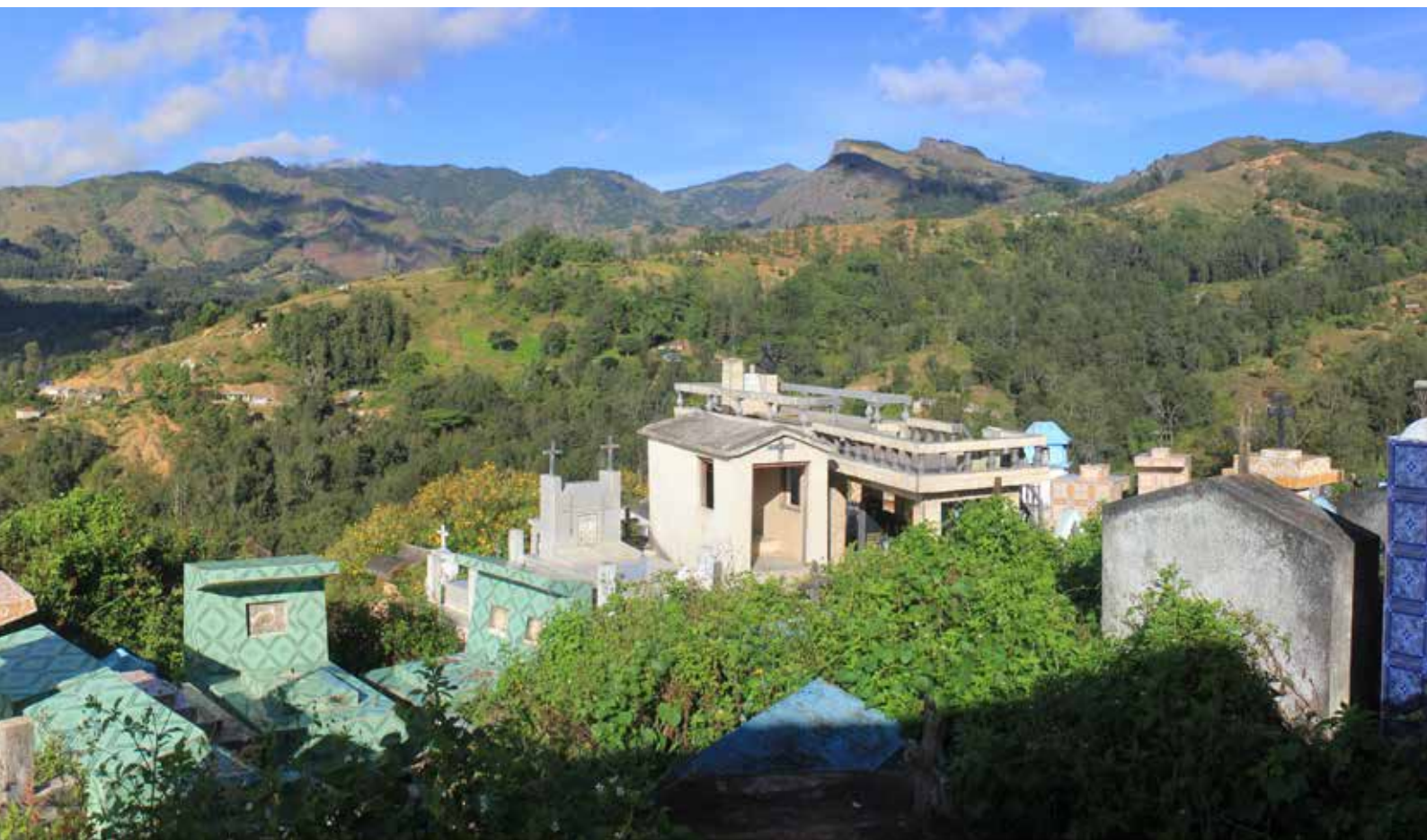
This report demonstrates that there are many deficiencies in the current land registration process in Timor-leste. It also shows the SNC program is in violation of the law. Based on the research outlined above Rede ba Rai has four principal recommendations:

1. Conduct an independent and open evaluation of the entire SNC process in order to establish a sustainable land registration process that is based on the Timor-Leste context, prior to the end of the GMN-H and ARM-Apprize joint venture. The evaluation must be open and independent and must investigate: people's access to the land registration process; its impact on conflict levels across the country; its impacts on vulnerable people; the level of transparency in the process; the impact on customary land; and the sustainability of the process going forwards.
2. Temporarily halt land registration in order to strengthen the legal framework to guarantee that the process is independent, transparent, promotes equality and is accessible to all people, and provides strong protection for customary land. As a minimum the legal foundation must:
 - Outline the minimum requirements for public information dissemination including mechanisms to ensure that information is provided to vulnerable groups.
 - Clarify which information must be provided to the public.
 - Explain the procedures relating to and means of informing the public about legal notification and the publication of maps.
 - Ensure that all people have the right to freely submit claims and end the requirements that place a burden on or serve as barriers for people to submit claims.



- Ensure there is open access to databases.
 - Clarify the mechanisms for how the SNC and DNTOSC conduct their activities and introduce obligations for the preparation and publication of their internal procedures, guidelines for surveying land, mediation procedures, quarterly and annual reporting, and general statistics about the progress of land surveys and registrations.
 - Include rules enforcing transparency and good governance.
3. Land registration should not recommence until strong processes for protecting rai lisan and community property have been put in place.
 4. Institutions tasked with defending the rights of citizens, such as the CAC, PDHJ, SEI must conduct separate investigations into land surveying and registration for communities.

Rede ba Rai believes these four recommendations are extremely important to strengthen the rights of communities and to guarantee land registration is accurate, credible, sustainable, transparent and inclusive. While conducting the research we also received many suggestions and recommendations about how to improve the land registration process. The complete set of recommendations is in Annex 1. We strongly encourage the Ministry of Justice, the SNC, and the DNTOSC to read and implement these recommendations for improving land registration.





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GLOSSARY & ACRONYMS

Aldeia	Hamlet; the smallest administrative unit in Timor-Leste
ARM-APPRIZE	A company from Portugal which, with the Timorese company (GMN-H), is implementing the SNC program. Further information can be found at www.arm-apprize.com .
CAC	Anti-Corruption Commission (Comissão Anti-Corrupção)
Collection Area	A broad area the SNC program identifies before conducting a land survey. A land survey is completed within a collection area before surveyors move on to another location.
Community Property	A concept from Law 13/2017 (article 27) in which the entire community is able to collectively own land. Community property is recognised in the Civil Code (Law 10/2011).
Community Protection Zone	A concept from Law 13/2017 (article 23) which is not an ownership right relating to land but an area that receives special protection because of its importance to a community
DNTPSC	National Directorate of Land, Property and Land Registry Services
FGD	Focus Group Discussion
GMN-H	Grupo Média Nacional–Holdings Lda (National Media Group-Holdings) is a Timorese company that has been implementing the SNC program in conjunction with another company from Portugal (ARM-APPRIZE)..
Inheritor (heir)	Legally defined as a person who receives land or goods as inheritance upon the death of the owner
INR	Ita Nia Rai (Our Land) –Strengthening Property Rights in Timor-Leste–a land registration project conducted in Timor-Leste from 2008–12 with funding from USAID
Land parcel	An area or plot of land
Land register	A system that documents information regarding all land parcels (including individual, group, customary or state-owned land) within a nation and the details about the owner of each (see also the definition of ‘system of landowner registration’ below)
Land transfer	A legal term for when land is given to another person by sale, gift or inheritance
Lulik	Things, places, ceremonies or histories that are sacred or have special spiritual value in Timorese culture
MSSI	Ministry of Social Solidarity and Inclusion
Neighbour	Someone who shares a common land boundary, with regards to land registration
NUIP	Unique Parcel Identification Number, the number that identifies each parcel in the land registration process

Owner's land claim	Individuals or groups complete an ownership claim form during land registration to declare themselves the owners of the land.
PDHJ	Office of the Ombudsman (Human Rights and Justice)
RAEOA	Special Administrative Region of Oé-Cusse and Ambeno
Rai lisan (Customary land)	Land which is managed and used in accordance with a community's customary law or local practices. The majority of land in Timor-Leste is rai lisan or rai adat. People also use the term 'community land' or 'customary land', the term preferred in this report. All of these terms have their uses and challenges. It is important to discuss the meaning of these terms in context.
Rai lulik	Sacred land or land that has spiritual value or roles according to Timorese culture, for example, a sacred spring or forest
Real estate	Land, buildings and other fixtures that are permanent on the land
SEII	Secretary of State for Equality and Inclusion
SNC	Sistema Nacional de Cadastral (National Land Registry System), the Timor-Leste government program implemented by two companies (GMN-H and ARM-APPRIZE)
Suku	Village, made up of several hamlets; the second smallest administrative unit in Timor-Leste
System of landowner registration	A system that documents data about the owners of individual land parcels and that measures the dimensions of the land to issue those people with certificates of landownership. It is sometimes also called a 'land register system' or a 'land survey system'. (See also the definition of Land register above).
Systematic	The way land registration must be conducted according to Timorese law. A team goes once to survey all the land in an area and requires all persons to have their land surveyed at the same time.
Tablet	An electronic apparatus used to collect information
Vulnerable	People with a limited capacity to prepare for disaster (social, environmental or economic). Normally, people see vulnerability as linked with poverty; however it may also be linked with other issues, including people excluded from any process because of their social standing or status, or people who (now or in the past) experience domestic violence or some form of oppression.
Witness	A person who knows and can affirm the history of a land parcel, for example, neighbours can bear witness. Sasin is the Tetun word and sometimes the equivalent Indonesian word saksi is used.



INTRODUCTION

Timor-Leste regained its independence just 17 years ago. Like other democracies, the right to land is a fundamentally important part of ensuring basic rights for all citizens. The right to land is protected under the RDTL Constitution, article 54. Timor-Leste's history of colonial rule, invasion and enforced relocations means the issue of land presents a major challenge for the country. Since independence, Timor-Leste's government, and its international partners, have undertaken various interventions in an attempt to resolve land issues and secure land rights for all citizens but a sustainable solution has remained elusive.

In 2013 the Timor-Leste government delegated responsibility for land registration to two companies (GMN-H and ARM-APPRIIZE), allocating a budget of 57.2 million USD.⁷ The program that these two companies are implementing, commenced in 2014 and is called the National Cadastral System (Sistema Nacional de Cadastral, SNC). Although the SNC program has been running for several years and may have a significant impact on people's lives, to date there is very little information available about the SNC's activities. There is no study to assess the quality of the SNC's work, and what impact it is having on people and communities. To provide much needed evaluation, this report focuses on how land registration is currently taking place in Timor-Leste.

This report was carried out by the Rede ba Rai (Land Network).⁸ It identifies the strengths and weaknesses of the SNC's land registration process, and its impacts on people's and communities' rights to land. The research questions guiding this report are:

1. Is the registration of land creating or resolving conflict?
2. Are all members of the community participating equally in the land registration process?
3. How is the registration process impacting community or customary land?

The first part of this report outlines the history of land registration and legislation relevant to land registration in Timor-Leste. The second part presents an analysis of the SNC's work. The analysis is divided into sections which assess the quality of the SNC's public information dissemination, its legal notifications, people's access to the registration process, and the transparency and quality of the SNC's processes. There are also sections about conflict and dispute resolution, and the impact of the SNC program on customary land, on women's rights to land, and on vulnerable groups. The final sections include a conclusion to the report and recommendations for improving the land registration process.

Methodology

Rede ba Rai conducted lengthy and detailed research to provide the necessary data for the report. Research was carried out between the months of February and December 2018, involving eleven field researchers and eight legal researchers. The research used a number of methods as described below. The entire process, from the research design, document review, legal analysis, training of researchers, field-data collection and analysis of results, used a participatory approach. It included many permanent Rede ba Rai members,

7. Government Resolution 28/2013 states the contract has a period of 72 months, starting from the date it was signed (December 3, 2013). See also, Government Resolution 25/2013.

8. The Timor-Leste Land Network is a group of 20 organisations working to protect land rights. Our vision is that everyone will have fair and sustainable access to land. Since 2001 we have been monitoring, researching and advocating on land issues.

9. The national organisation supporting and advocating on behalf of people with disabilities

who formed an ad hoc working group, and the NGO, Ra'es Hadomi Timor Oan (RHTO).⁹ RHTO contributed to the research design and researcher training, particularly regarding the possible impacts of land registration on people with disabilities.

The first part of the methodology involved searching for and analysing public documents and information, including publications in the Official Government Gazette, information from the SNC Facebook and internet pages, and materials, including pamphlets and articles in the national press. The research team also read through some of the documents regarding the SNC at the Ministry of Justice as well as research from the Ita Nia Rai (Our Land) project.¹⁰

To understand the legal basis for land registration, the researchers analysed the relevant laws (including Laws 13/2017 and 27/2011, and Ministerial Diplomas 16/2011, 23/2011, 45/2016 and 46/2011). This research identifies the legal requirements with which land registration has to comply and identified gaps and weaknesses in the legal framework. The relevant points from this legal analysis are included in this report and were combined with the document review to inform other activities.

The research also included a case study in Covalima that provides detailed information about the SNC's work in the field. Eight researchers conducted the case study in Covalima over a two-week period. It involved monitoring the SNC team in the field over two days, as well as interviews with communities in two Suku (village), including with community members, and local and municipal leaders. The team conducted interviews with a total of 40 people in Covalima. The case study also conducted four discussion groups at community level (with three women's groups and one group of people with disabilities) to ensure the research was inclusive and represented a diversity of perspectives on land registration. The case study incorporated interviews with public entities at the municipal level, including the Director of the DNTPSC, SNC Coordinator, Public Defender, Prosecutor's Office and Municipal Police.

The research methodology also included monitoring SNC activities in nine municipalities. The monitoring involved attending 15 SNC-led community meetings in Aldeia and Suku in the municipalities of Dili and the Special Administrative Region of Oé-Cusse and Ambeno (RAEOA), and manually checked 10,652 land claims. In addition, researchers analysed SNC publications on Facebook, media articles and the Official Government Gazette.

The research faced several limitations. As detailed below, the main difficulty was access to information. Rede ba Rai was unable to obtain sufficient access to key documents regarding the SNC process, including contracts with the government, and quarterly and annual reports. Before the new government began its mandate, the Ministry of Justice only gave Rede ba Rai one opportunity to consult these documents and would not allow copies to be made. Once the new minister took office, the Ministry of Justice did not respond to Rede ba Rai's letter requesting further access to the documents, in accordance with Decree-Law 43/2016. This lack of information and culture of secrecy, was a barrier to understanding the real role of the SNC in the land registration process. Rede ba Rai hopes that in the future the Ministry of Justice and SNC will be more open and publish all of this information.

Access to technical information was also a difficulty. The SNC did not publish any detailed information about its procedures and results, and closed access to the national database. The SNC team at

10. See the following section, the History of Land Registration for further details on the Ita Nia Rai (INR) project.

municipal level invited the research team to observe their work in the field but would not allow them to take photographs, record the survey process or to have discussions with SNC staff. The Director of the SNC also refused an interview with Rede ba Rai. These restrictions prevented Rede ba Rai from hearing directly from the SNC regarding its process, the difficulties staff experienced, and the overall results of the program. Despite these limitations, the researchers are grateful to those DNTOSC and SNC staff who did agree to assist the research. The research team is also grateful to the Secretary of State for Land and Property for giving time for an interview with the team.

Other limitations were resources and time. Rede ba Rai was only able to conduct intensive field research in the municipality of Covalima. However, we were able to monitor SNC data collection and related activities in other municipalities, and conduct interviews with the national director of the DNTOSC and directors in the municipalities of Covalima, Liquiça, Oé-Cusse and Ermera. We analysed the legal framework and the map publication process in eight municipalities (Lautem, Baucau, Aileu, Ainaro, Liquiça, Ermera, Manatuto and Covalima) as well as in RAEOA. With this combination of methods and sources, Rede ba Rai was able to extend the analysis of the strengths and weaknesses of the SNC to other municipalities.







LAND ADMINISTRATION IN TIMOR-LESTE

The first part of this report provides a general explanation of the concept of land administration, its legal basis in Timor-Leste and the development of legislation since Timor-Leste gained independence.



The Concept of Land Registration and Land Administration

Throughout the world land has many functions for society, communities and the lives of people. Society needs land to meet collective needs, such as for drains and public roads, public buildings, and protection of the environment. However, people and communities also need land for their livelihoods, their places of residence, fields and rice-paddies, and to conduct business. In many places in Timor-Leste land is also important for community identity and unity. The problem is that land is a limited asset. In Timor-Leste we often hear people saying “the land cannot have children” to illustrate the idea that the area of land is limited, and must be shared between many people and for many functions. Land must be shared between individuals, between individuals and communities, and between individuals and the state. Land administration must regulate people’s rights and responsibilities of access to and use of land. Land administration may derive from the state, through the state’s laws and public entities, but it can also come from the communities’ rules and their own authorities. An enduring example is the local customary system for the management and sharing of land.

There are various ways to administer land. In some countries the state does not intervene directly and trusts in the communities’ system of land management. In other places the state takes direct control and creates a range of laws and institutions to regulate land administration. Other countries choose a middle option – taking control in some areas (for example, in cities or in industrial areas) but without intervening in others (for example, in areas where customary land administration remains strong). It is important that land administration processes are appropriate to the context in which they are applied.

The land administration process is not a neutral one. Land administration is a power-full process which can strengthen or weaken people’s rights. During the colonial period, for example, the land administration system provided benefits to Caucasian foreigners to register land as theirs and did not give strong landownership rights to Timorese people.

Land administration processes cannot be separated from broader injustices and power structures within society. When land registration is done properly, it promotes justice across various aspects, including gender equality, and access to land for all. However, when it is undertaken with poor processes, land registration can lead to inequality because it enables only some people to have rights to land.

Land registration involves representatives of the state going into the field to gather information about who owns individual parcels of land, and to measure the area of each land parcel and its boundaries.¹¹ The information collected defines who owns each parcel of land and is used to issue land certificates or titles to people in accordance with the law. All of the information is stored in a database, and any changes in ownership, such as through buying/selling land or passing it on through inheritance, must be incorporated into the database.

11. Land registration is sometimes referred to as a land survey (sukat rai) or a cadastral survey (cadastro).

Land registration has the advantage of providing certainty about who has which type of rights to land. Once registration has taken place, a well-managed land database should reflect who owns an individual land parcel, what type of rights that person has: for example, whether they have freehold ownership rights or only usage rights.

However, there are disadvantages to registration, and it can cause many problems. Here are several examples:

1. If the process is not transparent and open to all persons, land registration can become a way to formalise and legitimise land rights for the powerful and to weaken the rights of poor people.
2. Sometimes, although a community has used the land for a long time, registration may prevent the land from being registered as belonging to the community, and instead award the land to the state. This means that the state can remove the community.
3. Often families or groups jointly use and share land, but the registration process puts the land in the name of one individual. According to the law, the person in whose name the land has been registered has the right to that land. Ultimately, this can give rise to conflict because other members may not know they have suddenly lost their legal rights to that land.
4. In some places land registration does not encourage wives and husbands to jointly register land, but instead the name of the head of the family is listed automatically as the owner. This usually concentrates power in the hands of husbands. If the couple separates or the husband dies, the woman may lose her rights to the land.
5. In some rural areas land boundaries are unclear, but because the parcels are large, and communities understand each other and have co-existed together for many generations, there is no conflict. Sometimes, the new administration system may provoke confusion and conflict.
6. In some contexts a community manages a large area of land, reserving some areas for future generations. If the registration process is at odds with this system, there is a risk that this land will be individually claimed or lost to the state, resulting in the loss of land for future generations.

In order to reduce the problems associated with registration, some countries have established innovative solutions for land registration. For example, in some places land is registered in the name of a family group or community instead of in the name of an individual. Another example is to allow many names to be registered together. Another example is registering without a definite boundary, so the boundary remains flexible to avoid disputes. A further example is to register only when communities request it for their area. In some countries, communities will not allow the state to conduct land registration because they are afraid they will lose their land in the process.

As registration of land can bring many problems, the state must work with the community to consider whether or not land registration is a good solution. In some countries registration works, but in others alternative solutions may be needed. If there is a decision to undertake land registration, the options must be appropriate to each country context, and registration must be carried out with great care and transparency. The danger is that if land registration is done incorrectly, instead of removing land-related problems, it may exacerbate them, so they are more difficult to resolve in the future.



History of Land Registration in Timor-Leste

In Timor-Leste, since ancestral times, communities have always managed and taken decisions about land in accordance with *lisan* or local custom. Custom is a very effective means for regulating land, sharing and dividing it, resolving conflicts and securing land for future generations.

In Timor-Leste, the process of state land administration started during the Portuguese colonial period. This period saw the first attempts to use land registration to confer the right to own land. Land registration during the Portuguese period was a lengthy and expensive process, was only for individuals and did not consider the needs of Timorese people, or customary land. A small number of people, with links to the colonial government, received title to land following registration while the majority of people and communities did not receive any title at all.¹²

After the 1975 invasion, Indonesia started to apply its land administration and registration system. Although more than 44,000 people received titles to land, the registration system maintained a focus on individuals, and did not adapt to the needs of people and their communities. For example, there was little protection for customary land. Instead of strengthening people's rights to land, the Portuguese and Indonesian land registration systems reinforced the land rights of a few, and the remainder of the people and communities lost under these systems.

Rai Lisan is land that is managed according to the norms and customs of a local community. Most land in Timor-Leste is **rai lisan**. Often people also call *rai lisan* 'community land' or '*rai adat*' (*adat*, custom in Indonesian). Each of these terms has its own challenges. It is important to discuss the meaning of these words in context. This report uses **rai lisan** to indicate all land that is managed or governed by local communities according to their practices and customs. In this report the term 'community property' refers only to the concept from Law 13/2017 (Article 27).

12. Fitzpatrick, 2002, 'Land Claims in East Timor', p. 148

After Timor-Leste regained its independence land issues remained a significant challenge. A new system was needed, one that could resolve the injustices that were perpetrated by the Portuguese colonial administration and the Indonesian military occupation, and could serve the needs of people and communities¹³ into the future. Some basic land registration was carried out by the First Constitutional Government based on Law 1/2003, which recognised previously existing titles, but the process was ultimately unsuccessful.

In 2008 a new project called Strengthening Property Rights in Timor-Leste (locally known as Ita Nia Rai (Our Land) or INR) began. INR was a USAID project with a budget of 10 million USD that started in 2008 and finished in 2012. The INR project worked with the Ministry of Justice to conduct the registration of 50,614 land parcels with a total number of 54,558 claimants.¹⁴ The INR conducted land registration in the municipal capitals, in urban areas, and in peri-urban areas. However, the INR project did not enter areas of customary land as there were assessments that the registration of customary land would create complications. Registration of customary land is difficult and requires a process suitable to the local context.¹⁵ In 2012 Rede ba Rai analysed the impacts of the INR project and a resulting report demonstrated the strengths and weaknesses of the INR project.¹⁶ In 2012 support from USAID ended and the INR project ended. However, there were many problems: titles had not been issued, more than 17,000 claims were incomplete and some people had had no opportunity to have their land surveyed while the project was being implemented.¹⁷ When the project ended there was no clear handover plan and the DNTPSC did not continue land registration for over one and a half years. In 2013 the Council of Ministers and Ministry of Justice established the National Cadastral System (SNC).

13. See a discussion regarding the Indonesian period in Fitzpatrick, 2002, 'Land Claims in East Timor' pp 95–101.

14. INR data from the Rede ba Rai report (2018). 'Land registration and "Ita Nia Rai" (2008–12): Summary of the research results from the land registration project as relevant to the land situation in Timor-Leste in 2018' (April 2018). This difference represents parcels of land under dispute with two or more claimants for the land.

15. Lopes, 2008, 'Technical Framework for a Transitional Land Law for East Timor' USAID Strengthening Property Rights in Timor-Leste Project; Fitzpatrick, Barnes and McWilliam, 2008 'Policy Notes on Customary Land in East Timor'.

16. Rede ba Rai, 2013. 'Culture, Power and Justice: Land registration and land justice in Timor-Leste'.

17. Rede ba Rai 2013. Data for claims incomplete or incorrect based on internal INR documents: 'Ita Nia Rai. Report/Data already entered in claims data/ Summary of claims completeness'. 18 June 2012

The SNC is a government program which was awarded to two companies, Grupo Média Nacional-Holdings (GMN-H) from Timor-Leste and ARM-APPRIZE from Portugal.¹⁸ The government entrusted these two companies to conduct the SNC program and signed a contract¹⁹ with a budget of 57.2 million USD, without a tendering process.²⁰ The SNC began land registration in 2014 in Covalima and Oé-Cusse, and it has since rolled out across all 12 municipalities and the Special Administrative Region of Oé-cusse Ambeno (RAEOA). In October 2018 the director of the project told the media that 218,000 parcels of land had been surveyed.²¹ The SNC plans to have conducted land registration across the entire country by December 2019.

Prior to establishing the SNC, the Timor-Leste government had learnt many lessons from the INR project. These lessons should have helped the government and SNC to apply what had been successful and not to repeat what had failed with the previous land registration processes. Unfortunately, as this report demonstrates, the successful lessons from the INR project have now been lost, and a huge number of new problems have arisen from the SNC's activities.

18. <http://www.snc-timorleste.com>

19. Government Resolution 28/2013 states the contract runs for 72 months, starting from the signing date (3 December 2013). See also, Government Resolution 25/2013.

20. Documents from the procurement portal show that the contract for the SNC program was awarded to the companies ARM-APPRIZE and GMN-Holdings via a single-source mechanism (Reference Number: DNTPSC/XII/2013)

21. The director of GMN-H told the media that the SNC will continue until March 2020, see the interview with Jorge Manuel de Araújo Serrano, GMN TV, 25 September 2018; Daily News "Land disputes represent around 5.55% of land registry records in Timor-Leste" 2 October 2018, including the interview with Sr. João Loução, director of the project and technical staff at SNC. https://www.dn.pt/lusa/interior/disputas-de-terreno-representam-cerca-de-555-dos-registos-cadastrais-em-timor-leste-9937011.html?fbclid=IwAR3jNUT4_mjzq7D5eY5fAQWLVLyCb7HkFn2qX6wSnfDt2Wq3Q06qg_HL5lw

Daily News wrote an article about an interview with Sr. João Loução, director of the project and technical staff at SNC. He told the Daily News that SNC had registered "more than" 218,000 parcels, 2 October 2018.





Legal Foundations and Principles of Land Registration

Land registration, like all administrative processes, must comply with the criteria set forth in the legal framework. This section identifies the legislation that applies to the process of land registration in Timor-Leste.

In accordance with Law 1/2003 the government conducted basic land registration in 2004 and 2005, but registration through this process was unsuccessful and eventually discontinued. The land registration process carried out by INR from 2008-2012 was underpinned by Decree-Law 27/2011, and Ministerial Diplomas 16/2011 and 23/2011. When SNC began registering land their process was still based on Law 27/2011. However, at the end of 2016 Ministerial Diplomas 16/2011 and 23/2011 were replaced by two new Ministerial Diplomas (45/2016 and 46/2016).

In 2017 the National Parliament approved Law 13/2017, entitled the Special Regime for the Definition of Ownership of Real Estate, which some people have called the **Lei Na'in ba Rai** (Law on Landownership) or **Lei de Terras** (Land Law). This law brought some changes to the land registration process, established the legal criteria for dispute resolution and created new concepts, including community ownership (community property) and the community protection zone to protect customary land (some of the key principles of Law 13/2017 are outlined in Table 1 below).

Article 4	Guarantees equal rights for men and women
Article 5	Sets out the special duties of the state to respect and protect the needs of vulnerable groups, particularly ensuring that they have access to adequate information, that they are consulted and are able to participate in all land administration processes
Article 23	Establishes the concept of the Community Protection Zone as an area where the state provides protection for communities with the aim of protecting common community interests in a given location
Article 27	Establishes the concept of community property as a type of land-ownership belonging to a local community and used in accordance with local customs. Land registered as community property is owned by the community and cannot be sold.
Article 29-35	Regulates the land registration process, sometimes called the 'cadastal survey'
Article 32	Requires the provision of incentives for joint husband-wife claims.

Table 1: Some key articles from Law 13/2017



The following sections of this report demonstrate that the SNC process has run contrary to Law 13/2017 in a number of aspects.

Although Law 13/2017 is a new law, it recognises the validity of data collected prior to its approval (including the INR and SNC data). In 2018 the Ministry of Justice approved Ministerial Diploma 15/2018 which regulates the process for updating previously collected land registration information.²³

Many other pieces of legislation also have an impact on the land registration process. Decree Law 32/2008 that regulates administrative procedures and the Civil Code (Law 10/2011) are two examples of legislation that must be considered in the process of land registration. Table 2 provides a list of relevant legislation and the dates of their entry into force.

Legislation	Title	Date of entry into force
Legislation relating to land registration		
Law 1/2003	The Legal Regime for Real Estate I: Ownership of Real Estate	10/03/2003
Decree-Law 27/2011	Regime to Regulate Ownership of Undisputed Real Estate	07/07/2011
Ministerial Diploma 16/2011	Cadastral Survey Process	28/07/2011
Ministerial Diploma 23/2011	Process for Conversion of Claims	24/11/2011
Ministerial Diploma 45/2016	Cadastral Survey Process	15/09/2016
Ministerial Diploma 46/2016	National Property Cadastre	15/09/2016
Law 13/2017	Special Regime for the Definition of Ownership Rights to Real Estate	02/09/2017
Ministerial Diploma 15/2018	Process for the Updating of the Property Register	24/05/2018
Other relevant legislation		
Decree Law 32/2008	Administrative Procedures	28/08/2008
Law 10/2011	Civil Code	14/03/2012

Table 2: Relevant legislation for the process of land registration and date of entry into force

23. This report does not consider the process of updating information in the INR project because during the research period only a small amount of data was updated. There is a need to look at this matter in more depth.

Although a lot of legislation has already been approved, the legal framework has many gaps and weaknesses. The first problem is the succession or sequence of legislation. The process of land registration started before a complete legal framework had been approved. As a result, several aspects of the land registration process as currently being carried out are contrary to the current legal framework. The most serious example is linked to the matter of customary land and community property. As already explained, Law 13/2017 recognises the concept of community ownership as a type of landownership (article 27). Although the law recognises the concept of community property, the legal requirements and processes for how to register community property have not been clarified. SNC has been surveying all parcels of land in rural areas across Timor-Leste but the process they are using has not been adapted to deal with the issue of community land. While the INR project encountered similar problems it had much less effect on customary land because the INR only carried out registration in urban areas. As the SNC has been undertaking registration in all rural areas, its process has become a major threat to communities' rights to land, in violation of Law 13/2017 and of the Civil Code (Law 10/2011).

Another complication is that while Law 13/2017 has been approved, many of the subsidiary laws and regulations required for land registration, have not. As a result, the regulations that govern the processes of land registration are incomplete. For example, the rules for updating registrations have not yet been clarified and the legal processes for people to sell land, or change names when land has been inherited are also unclear. Thus, the method the SNC is currently using to update registrations is extra-legal, and registrations are quickly becoming out of date. Additionally, although Law 13/2017 refers to community protection zones, this is a new concept which has not yet been clarified, and the legislation for implementing the zones does not exist. As a result, despite the law establishing protections, it is unable to be effectively implemented.

A further difficulty is the many gaps and contradictions in the Ministerial Diplomas that regulate the process of land registration. For example, strong criteria for public information are lacking. The Ministerial Diplomas have no regulations regarding where to submit claims or where to publish maps. The many gaps and contradictions in the regulations mean that communities rights to land and their rights to participate in the land registration process are not sufficiently protected. In order to ensure effective land registration there are many issues that must be regulated in additional ministerial diplomas. The list of recommendations presented in this report calls for further corrections to Ministerial Diplomas 45/2016 and 46/2016 and to the legal framework more broadly.

A Step-by-Step Overview of Land Registration

The land registration process, as determined by law, can be divided into a series of steps. However, before examining each of these steps there are a number of preliminary points that must be considered.

The first point relates to the legal competency to undertake land registration. According to Law 13/2017, the National Directorate for Land, Property and Cadastral Services (DNTPSC) under the Ministry of Justice has the power to conduct land registration, however the field work and organisation of this has been delegated to the SNC.²⁴ The second point is that land registration in Timor-Leste is legally required to be systematic. This means land parcels cannot be registered piecemeal: all the parcels of land in a given collection area must be registered at the same time.

Systematic registration is different to **sporadic registration**. Sporadic registration is where the land registration team waits for a request from claimants before going to survey the land. Today they survey in one location and tomorrow in another. Systematic registration requires going into the field to survey all the land in one area, enabling all the people to have their land surveyed at the same time. Timorese law requires systematic registration and does not allow for sporadic registration.

According to the law the land registration process must adhere to the following sequence of steps:



Figure 1: Land Registration according to Timorese law

24. Article 20 of Decree-Law 35/2017, article 18 of Decree-Law 26/2015, Ministerial Diploma 35/2009, and Ministerial Diplomas 45/2016 and 46/2016

1

Define
collections
areas



**Define the collection
area**

Before going into the field the SNC team must identify collection areas and make a plan for going to each area.

2

Public infor-
mation &
Legal notice



**Public information &
legal notice**

Before going into the field, the SNC must conduct a public information campaign in the media and in the field to disseminate information to the entire population regarding the land registration process and explain what will happen. There is also a legal obligation to place notifications in the Official Government Gazette before the registration process begins.

3

Register Land
& Collect
Claims



**Register the land &
collect claims**

The SNC team goes to an identified collection area to gather information regarding each parcel of land. The team conducts a technical survey to determine the shape and dimension, and the boundaries of each parcel. The SNC team also collects claims from people who think they have a right to the land. According to the law, all people have a right to freely submit claims.²⁵ Once the survey has been completed the claimants receive a document with their Unique Parcel Identification Number (NUIP).

²⁵ Article 32 no 3 of Law 13/2017

4 Public information & Legal notice



Public information & legal notice

Once the technical land survey is complete, the SNC must conduct another information campaign in the media and place another notification in the Office Government Gazette. During this step the SNC needs to explain the preparation and publication of maps.

5 Publication of Maps & Lists of Claims



Publication of Maps & list of claimants

Once data has been collected in the field a verification process must be carried out. During the period for the display of maps the SNC posts the maps in a public place. Each map shows all of the parcels in a given collection area and the list of people who have made claims to the land. The map and list show all persons who submitted claims for each parcel. During the 90-day period people can make changes to their claims or people who did not submit claims during the first step can submit their claims.

6 Convert declarations to titles



Conversion of claims to land titles

Once the publication period has ended, the results form the basis for the issuing of land titles, in accordance with the law. People who have submitted a claim and met the criteria provided in Law 13/2017 receive ownership rights to the land. Cases that are in dispute are only granted titles once the disputes have been resolved through agreement between the disputing parties or according to a decision from the Land Commission, or the courts. People who have not submitted a claim up to this point do not receive title to the land. Law 13/2017 (article 8) states that any land without owners is termed 'vacant' and becomes state land so there is a risk these people will completely lose their land.



Once the process has been concluded, there is sometimes a need to make changes to the information obtained: for example, because of land sales, or inheritance of land. If this occurs, people must go to the DNTPSC office to update the information about their land, however, the legal process for making these alterations is not yet clear. This issue, although important, is not the central focus of this report.

The current section has explained the legal foundation for land registration in Timor-Leste. Based on the results of the field research and monitoring, the next section reflects in greater depth on the behaviour of the SNC in the field.







PART 2: **THE SNC LAND REGISTRATION PROCESS**



Public Information

Land registration has a major impact on people's lives because, through the registration process people can strengthen or weaken people's rights to land. The registration of land is a complicated procedure, which is new for many Timorese, and so public information is important to ensure that everyone fully understands their rights during the registration process.

Sharing information with the public is a fundamental part of the land registration process. If people do not know that land registration is underway in their locality or do not know their related rights and obligations, they will not have proper access to the process. As a result, the information gathered will not represent the reality of land ownership. People may lose their land and this may lead to an increase in conflict.

To ensure the process strengthens people's rights to land, and reduces the potential for conflict, public information about registration must be detailed and disseminated professionally. As a minimum, public information must:

- **Provide correct, clear and complete information adapted to each of the target groups:** The information must be sufficient and appropriate so people can understand the process, their rights and obligations, and how land registration may impact their lives and their rights.
- **Use various dissemination mechanisms, be ongoing, and extend to local, national and international levels:** Various ways of sharing information must be used including television, radio, newspapers, local announcements, community meetings, and other means, so as to reach the entire community at the local and national levels, and to Timorese living overseas. Information cannot only be shared once because this is insufficient for people to understand the land registration process. The dissemination must be continuous throughout the process, and at each step of the process.
- **Use specific information dissemination mechanisms for vulnerable groups:** Specific information dissemination mechanisms must be used for vulnerable groups: Vulnerable groups do not have the same access to information as other people. For example, if a meeting place is a long way from where people reside in the community, older people or people with disabilities will have difficulty attending. Therefore, meetings need to be held in communities or, better still, household visits can provide the necessary explanations. In Timorese culture women do not often attend community meetings, and many women do not have the confidence to ask questions or express their concerns, so the majority of those speaking are men. This means there must be specific meetings for women to give them the opportunity to ask questions and to seek further information.
- **Test and monitor information dissemination mechanisms:** Before and after disseminating information it is necessary to check whether or not the messages shared with the community were appropriate and effective. Testing can assess the level of understanding and identify who is still unclear about land registration so as to adapt the materials to meet the needs of communities.

The law has established several basic criteria regarding which information is publicised in the land registration process. Adequate information must be provided regarding:²⁶

1. Where the process will be conducted and when it will start;
2. The start and finish dates for map publication;
3. The aims of land registration;
4. The legal aspects of the process. This includes the consequences or impacts on people's lives and people's obligations during the land registration process. The consequences for people and communities that do not participate in land registration must also be explained.

In addition, Law 13/2017 also establishes specific requirements for vulnerable groups.²⁷ In accordance with article 5:

Those entities responsible for the application of this law have the obligation to respect the special needs of vulnerable groups, and to this effect, must take all measures to guarantee the provision of adequate information, consultation with and participation from these groups, as a means to promote equality of rights and non-discrimination.

This article emphasises that the entire process of land registration must consider the conditions of vulnerable groups, and guarantee that they have sufficient information during consultation to enable their full participation in the process.

The following section shows that despite the legal requirements for disseminating public information, the SNC's efforts in the field have been insufficient to ensure that communities understand and are able to access land registration.

The SNC's public information dissemination

Rede ba Rai's analysis of the Ita Nia Rai (INR) project (2008-2012) identified its strong public information process as one of its major strengths. INR used a number of different methods, across a range of languages. Materials were accessible to people who could not read well. Community meetings were well organized. The INR project had a team dedicated to sharing information, which organised meetings with communities and visited each household in the area, prior to the land survey. In comparison, SNC has not continued many of these positive systems and its approach to public information dissemination has many failings.

The SNC has produced some pamphlets, posters and videos, and distributed information through community meetings, a Facebook page and a website. However, the quantity and quality of the details shared have been insufficient to inform the public about land registration. This has meant that people participating in the process do not have enough facts about their rights, obligations, and the legal consequences of land registration. This section provides some examples and examines the consequences of inadequate information.

26. Article 2 no 1 of Ministerial Diploma 16/2011, and article 3 no 1 of Ministerial Diploma 45/2016

27. The constitution states that vulnerable groups, including people with disabilities, the elderly and children, must receive special protection, according to their needs (articles 18, 20, 21 of the constitution).

The majority of people receive information about the SNC through community meetings. However, through monitoring 15 community meetings, and interviews with 45 people, the researchers observed that the SNC-led community meetings had a number of problems. The first is that too few people participated in the community meetings. In interviews many people said they had not heard about the meeting, while others said they had only heard about the meeting from the elected head of the suku or aldeia. They did not attend because they had other work or the time of the meeting coincided with other activities. Other people stated that the SNC conducted only one meeting at their suku administration, but it was too far from some communities. During the community meetings the majority of people were men with only a few women participating. Sometimes the SNC team arrived late and the participants had been waiting from one to three hours for the meeting to start.

Secondly, the SNC's meeting agenda, content and presentation were problematic. The meeting started with the SNC team's presentation but it was often of low quality with no clear structure, and at some meetings there were no socialisation materials, so the presenters provided only verbal information. The presenters often used difficult language, which the communities did not understand. In one meeting community members, after closely questioning the capacity and knowledge of the SNC and DNTPSC staff, ordered them to stop the meeting and postpone it for another day.²⁸ Meetings with the community were often too short, leaving little time for people to properly understand the land registration process. Most meetings were only an hour – though some ran for up to two hours – and in Oé-Cusse the team monitored several meetings that were finished after only 30 minutes.

Examples of technical terms used by the SNC during public meetings:

The list of words below are technical Tetum/Portuguese terms and difficult for people in communities to understand. This list is based on the research team's observations at six public meetings the SNC organised in Dili between March and June 2018.

Migrate (migra), systematise (sistematiza), authorisation/power of attorney (prokurasaun), survey (levantamentu), attribute (atribui), digitalisation (digitalizasaun), parcel (pársela), state public domain (domíniu públiku estadu), ministerial diploma (diploma ministerial), reverification (reverifikasaun), reclaim (reklamasau), property (propriedade), regularise (regulariza), legalise (legaliza), appropriation (apropriasaun), leasing (arrendamentu), legal act (atus jurídku), contestation (kontestasaun), justify (justifika).

Thirdly, the content and information disseminated during the meetings was flawed. In general, the SNC provided information about technical matters, such as the documents the community must provide to register their land and explained that they needed agreement and signatures from neighbours. However, the SNC team did not discuss in any depth many important points regarding communities' rights, the procedures, and the legal effects of land registration. For example, during all the SNC meetings that our research team monitored the SNC did not once refer to the possibility of claims for community land.²⁹ When one community raised this issue the SNC team responded that registration was for land owned privately and customary land belonging to many people had to be coordinated with local authorities.³⁰ This is in contradiction with Law 13/2017 and with the Civil Code, both of which recognise community property.

28. Team observation while monitoring in Bairo Masin, Aldeia Sanane, Suco Costa, Oecusse Ambeno, 22 October 2018

29. Research team observations during community meetings

30. Research team observations during the community meeting in Tasi Tolu, Aldeia 12 October, Suco Comoro, Dili, 26 February 2019



In community meetings the SNC also provided information that was incorrect. For example, during one meeting³¹ SNC staff said that the law stated that the community must live 25 metres away from rivers; however, the law does not mention this distance.

In another meeting the SNC provided an explanation about the issue of state land that was unclear, leading the community to think they were not able to submit land claims. According to the law, all entities, meaning private persons or the state, may submit land claims. If there is a dispute, the Land Commission and courts have the power to decide ownership of the contested land. During the meeting the SNC explained that people are not allowed to make false claims because this is a crime. Although it is true people must not falsify documents or facts, many community members misunderstood the statement. They are now worried about submitting land claims where the state is also a claimant, even though they believe they own the land, and Law 13/2017 provides the means for them to become owners of the contested land.

Analysis of the SNC's pamphlets presents further evidence of the problems with information dissemination. The following pamphlet (Figure 2) was received directly from the SNC in the field.

As discussed in part one, the public information phase is legally obliged to disseminate clear information regarding the rights and obligations of people and communities involved in the land registration process, and the legal consequences both for those who do and do not participate. The pamphlet reveals a number of aspects that may prevent people's complete understanding of the registration process. For example, the text describes the SNC's aims but there is no clear explanation of land registration. The pamphlet fails to provide any information about the rights and obligations of people and communities. For example, it does not refer to the principle that anyone is free to submit a claim. The pamphlet does not explain that individuals, groups and communities may be claimants, or outline the consequences of each option. The pamphlet also fails to inform people of the legal consequences for those who do not participate in the process, and there is no reference to the legal basis for land registration. Some information is unclear; for example, do people making claims take their documents to the SNC, or does the SNC collect them from people in the area in which they are claiming land? The pamphlet also does not refer to any assistance available for people if needed. Anyone reading the pamphlet would not gain much understanding of the land registration process.

31. Observations from the team at the community meeting in Aldeia Rai Mean, Suku Lahane Oriental, Postu Na'in Feto, Dili, 16 March 2018

A review of other methods to share information reveals a similar situation. The INR project had a well-constructed website, which included detailed information about people's and communities' rights and obligations. Maps and lists of collection areas were also published on the website. It also showed the publication maps so people with internet access could verify their claims. At present the SNC website has only general information: there is no information about the rights and legal consequences of land registration, or about land that has been registered, and nothing about the activities currently underway in the field. The SNC's video shows lovely images, but, once again, details about land registration, people's rights and the legal consequences are missing.³² When the SNC is about to conduct community meetings or activities they announce the event on Facebook. As many Timorese use Facebook, it is a helpful information-sharing tool, but on its own it is insufficient.³³

The researchers preparing the case study in Covalima saw for themselves the consequences of insufficient public information and the failure to comply with the legal requirements. For example, during the three focus group discussions the participants did not know about the publication of maps so the research team had to explain the process and why it was important for people to review their claims.³⁴ Some people were confused because the SNC said they surveyed the land "three times" – the research team believes this meant once to conduct the technical land survey, once for the map publication and once when issuing certificates. However, the lack of clear communication sows confusion within the community. Many people think that when the technical survey is conducted they can only have one person's name in their claim, and some were surprised to learn that they could register land as a group or family.³⁵ Some people recounted that they

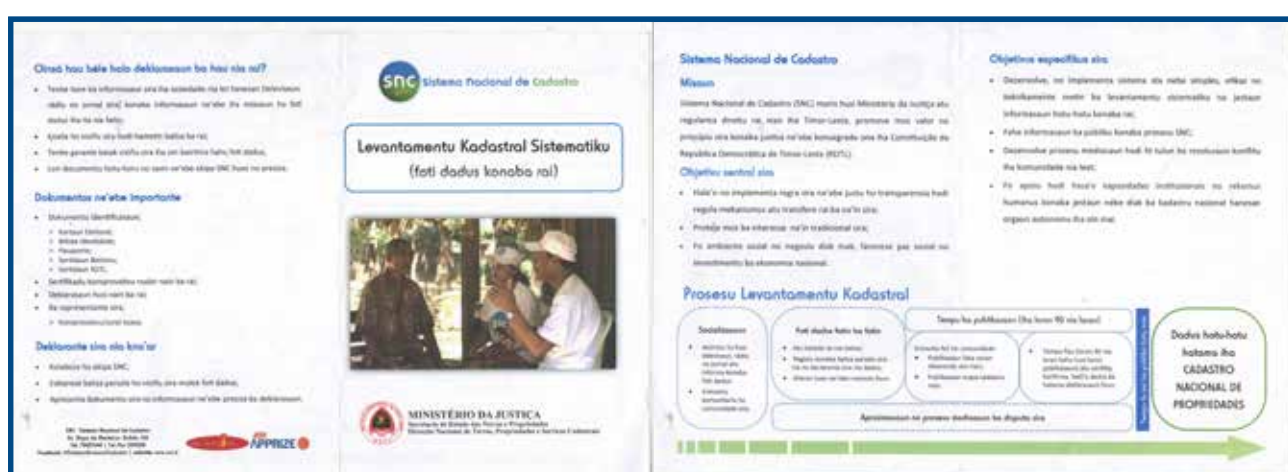


Figure 2: SNC Pamphlet (14/03/2018)

32. https://www.youtube.com/channel/UC9I912p-BiJf-ACtP_NZ_gg

33. https://web.facebook.com/SistemaNacionalCadastro/?ref=br_rs

34. Women's focus group discussion in Kulu-Oan, women's focus group discussion Sukabilaran and people with disabilities in a focus group discussion

35. For example, a women's FGD at Mane Ikun and male youth representative, Suai Loro

“ They came to survey
here, [we] didn’t hear
[about it]. [They came]
unexpectedly.”

Community of Kulu-Oan,
male interview #3

“Just recently [we heard
but] we didn’t know
clearly... People just came
unexpectedly, we don’t
understand...”

Participant, women’s FGD,
Aldeia Mane Ikun

had not heard about the SNC’s community meeting and were surprised when seemingly ‘out of the blue’ the SNC staff arrived to survey the land. Other people heard from local leaders that the SNC were expected, but they did not know the day they would come. During the research team’s observation of the SNC’s work in Suku Raimea, Covalima, some older women said they had waited three or four days for the SNC to arrive. In Aldeia Kulu-Oan, during the group discussion women said they had to wait at home and the men had to wait in their fields because it was not clear when the SNC team would come to survey in their locations. In Raimea, one man said the SNC had telephoned him to say which day they would come to survey the land, however, from the team’s monitoring, this was not normal practice – most communities had no idea when to expect the SNC team.³⁶

The researchers saw for themselves what happened in several places. The SNC team arrived to conduct the land survey, provided no explanation of the process, and did not bring any pamphlets or other means of disseminating information to inform people. Most community members did not realise they are able to submit claims as a community for community land. One or two people knew about communal claims but had doubts because the process is unclear. Some people did not understand their right to submit a claim against the state’s claims. Many women had not heard that claims could be submitted jointly as husband and wife. People who had not heard about maps being published didn’t participate in that part of the process so did not confirm their claims. These problems were not confined to rural areas. When research started in Dili a group of NGO staff also stated that although their land had already been surveyed they did not fully understand the land registration process.³⁷

Unfortunately, the DNTFSC and SNC staff also reveal confusion about the process. For example, one of the DNTFSC directors explained that the SNC’s work is similar to a census to identify the land but is not a process of collecting data for the issuing of certificates. This statement is very problematic because it is incorrect. It gives people the idea that there are no major consequences of not registering their land, however, in reality if someone fails to participate in the process they

36. Interview #43

37. Observations during a civil society workshop, May 2018

may lose rights to their land.

Misleading information provided at community meetings, as mentioned above, has prompted fears from some people about submitting claims for land that challenge the state's claims. There were other examples where people were reluctant to submit claims because of concerns they would have to pay land taxes at some point in the future, not understanding that if they did not submit a claim they would lose their rights to the land. Once the researchers explained Law 13/2017, which states that unclaimed land goes to the state, people were genuinely shocked. If the SNC process fails to address the poor level of community understanding, many people face the very real possibility of losing their land rights.

Conclusions regarding public information dissemination

The legislation relating to the dissemination of public information is inadequate, and clearly fails to present many of the requirements for effective communication. However, the results of this research indicate that the way SNC shares information does not comply with even the basic legal requirements regarding the aims of land registration and its legal consequences. The SNC also fails to fulfill the obligations to guarantee the provision of adequate information to vulnerable groups.

The research results reveal that the SNC's public information dissemination is insufficient both according to the law and to people's needs. The researchers observed that many people had not participated because they did not know about community meetings, the land survey process, and the publication of maps. The researchers also noted that many people were still confused about land registration, their rights and duties, and the legal effects. Some of the information that SNC provided during public information campaigns was incorrect and, in comparison with details shared previously by the INR project, it is clear that the SNC's public information dissemination process is entirely inadequate.





Legal Notice and the Map Publication Process

Before beginning land registration in a particular area the law requires that an official notification be placed in the Government Gazette (Jornal da Republica). This section describes the process of official notifications and the rules for the publication of maps.

During the registration process in a given collection area, two notifications must be placed in the Official Government Gazette. The first notification must appear before the registration process begins in the given area. This notification must provide information about when the registration process is to start, and where it will be conducted. The second notification should appear in the Gazette prior to the publication of maps, detailing where the maps will be displayed, for how many days and the starting date of the publication process.³⁸

These notifications are not just a bureaucratic requirement. Although most people do not monitor the Official Gazette publications, these notifications are the official record of the land registration process. They ensure that there is certainty about where and when the land registrations are carried out, and in accordance with which rules. Notification in the Gazette guarantees the legality of the process and protects people's rights. In the future, if anyone needs to know if their land has been registered, they can search through the Official Gazette.

The law also establishes time periods for the map publication process. However these rules have changed a number of times since 2011. Initially, Ministerial Diploma 16/2011 stated that the period for the display of maps was just 30 days. Ministerial Diploma 45/2016 increased the map publication period to 60 days. Finally, Law 13/2017 extended the period

The Journal of the Republic is an official state publication, which prints all legal information pertaining to legislation, legal notices, government decisions and other relevant material. It is available at: <http://www.mj.gov.tl/jornal/>

Public notices about land registration are in Series II under the title 'Notices'. It is available at: <http://www.mj.gov.tl/jornal/?q=node/2411>

38. Article 3 no 2 and no 3 of Ministerial Diploma 45/2016

to 90 days. In order to know how long a publication period should have lasted in a given location you must consider which law was in application at the time that the maps were being published. Table 3 below, shows the required time periods from 2011 until the present day.

Date	Date Timeframe for public display	Based on:
Prior to 15/09/2016	30 days	Ministerial Diploma 16/2011
From 15/09/2016 to 02/09/2017	60 days	Ministerial Diploma 45/2016
From 02/09/2017 - until now	90 days	Law 13/2017

Table 3: Public display period

The following section evaluates the SNC's work in relation to notifications in the Official Gazette and the time period for the public display of maps, and analyses whether or not the program has complied with legal requirements.

Has the SNC complied with legal requirements for official notification?

The researchers reviewed the relevant sections of the Official RDTL Gazette, both the soft and hard copies, and identified several problems with the SNC's process of legal notification and public display of maps.

One contradiction is that the SNC began land surveys and accepted claims in the field before the official notification appeared in the Gazette (Annex II shows the complete list of these cases). In several cases there was a difference of only one or two days, however, in others there was a difference of more than 15 days.

The same problem occurred regarding notifications for the public display of maps. Annex II provides a list of more than 20 collection areas where map display should have started on 4 October 2018 but the notice was not published in the Official Gazette until 31 October 2018. There was another group of cases where the starting date was 10 October but the notices did not appear until 31 October 2018.

Conclusions regarding public notifications

This research demonstrates that the SNC land registration process does not comply with the legal requirements for publication in the Official RDTL Gazette. In situations where the rules regarding notifications and the timing of map publication have not been complied with, the registration process is invalid. These legal contradictions could have a major impact in the future because the courts may find that the entire registration process for a particular collection area is invalid, giving rise to new uncertainty for land rights.



Access to land registration

Submitting a claim to register land is the only way in which people and communities can secure their land rights. Those who have not submitted claims will not receive title to the land, and the land may be lost. People who submit incorrect claims, or do not verify their claims within the map publication period, may also lose their rights to land. Thus, the capacity to access the process for submitting claims and verifying them through the public display of maps are key elements of the land registration process. As a result, the government has a duty to ensure access to the registration process and should:

- **Apply only the necessary legal requirements that do not place a burden on claimants.** For example, if claimants are required to submit a large number of documents, some of which they may not have, or if the documents are expensive or take a long time to obtain it may be a significant barrier for participation in the land registration process.
- **Consider the logistics for people participating in land registration.** Having to travel long distances, spend a lot of time and face other complications, are barriers to people's participation in the registration process and contrary to the principle of the right to freely submit claims. In particular there must be consideration for vulnerable people who often face greater challenges in these processes.
- **Provide a range of ways for people to participate.** The registration process must allow people several different ways to participate. For example people could submit their claims in another municipality, or via the internet. The public display of maps needs to occur in locations that are accessible to many people, not just at the municipal level.

The right to freely submit a claim³⁸ is central to the process of land registration. Everyone has the right to submit a land claim and there must be no barriers to their submission. Going into the field to survey land and collect claims is part of the administrative process to collect information about people's rights to land. The SNC and DNTDSC do not have the power to make decisions about rights to land. According to Law 13/2017, only the Land Commission and courts can declare who is the owner of a parcel of land. No one should be prevented from submitting a claim for any parcel of land, regardless of the absence of evidence. For example, people should not be prevented from submitting claims to state-owned land, because at present it is not clear which land belongs to the state and which is privately owned. Once all of the information has been gathered the entities with the appropriate legal authority will make decisions about the rights to land: decisions about whether or not people have the right to land cannot be made in the field.

38. Law 13/2017, article 32 no 3. See also article 2 a) from Decree-Law 27/2011.



Not only individuals can submit claims. According to Law 13/2017 (article 32.1) various people and entities may make landownership claims:

1. Individuals on their own or in groups, including joint husband and wife claims;
2. Legal entities such as companies, foundations, religious institutions, etc.;
3. Communities;
4. The state.

When people participate in land registration, they should be facilitated to make informed decisions about the types of claims they wish to submit based on clear information relating to each of these options. They need to know the advantages and disadvantages of each option. The process of registering land must clearly enable people and communities to select the most appropriate option for their circumstances.

Ministerial Diploma 45/2016 contains four articles that violate the principle to freely submit a claim. Firstly, it states in article 6.2 that claimants must also submit identification documents which prove they are Timorese citizens. This requirement relates to article 54.4 of the constitution, which states that only Timorese citizens can own land. However, many Timorese citizens do not yet have identification documents. Even people living in urban areas find it difficult and time consuming to obtain identification documents. For people living in rural areas it is even more complicated. The time allowed for the submission of land claims is very short. If people need identification in order to submit claims, the requirement represents a major barrier for many people, and is a violation of the principle that all people have the right to register claims. While the constitution does not allow ownership rights for foreigners, a person submitting a claim does not necessarily result in them receiving title to the land. So, another option is for people to be allowed to submit claims without this documentation and for the verification of nationality to be completed last. The DNTPSC could retain the landownership title until the claimant presents verification that they are indeed a Timorese citizen, and then can be awarded the title.

Secondly, article 6.3 d) and article 8 of Ministerial Diploma 45/2016 are also in violation of the principle of the right to freely submit a claim. These articles state that people who do not have documentary evidence of the right to land must submit a letter signed by two witnesses and two local authorities (with the option of choosing two people, including the heads of the Aldeia or Suku or the Sub-Municipality Administrator). These articles are in contradiction with the law. Firstly, local authorities do not have the legal power to make decisions about whether a person has the right to land, so they do not have the power to decide which letters to sign and which not to sign. Secondly, although local authorities know a great deal about their own community, they do not know the history of all of the land. This is more problematic in larger Sukus with larger populations. It is not possible for local authorities to understand every case; therefore, in some cases their signature is meaningless. Furthermore, in some cases the local authority might have a conflict of interest and refuse to sign documents. This process is also open to corruption where local authorities might ask for payment in return for signing a claimant's letter. This is prejudicial to the right to participate in land registration free of charge. Letters from local authorities may indeed act as valuable evidence regarding rights to land, however this should not be a mandatory requirement for all claims.

Another requirement states that neighbours must sign a letter regarding the boundaries of a land parcel. However, there is no clear advice for what happens if the neighbour is unwilling to sign. This does not pose a significant problem if the signature from the neighbour is used only as evidence. However, if the signature from neighbours is a condition for accepting claims, this article is a further violation of the right to freely submit a claim.

The most important principle is that land registration must be free of any charges and there must be no requirements for claimants to pay. Law 13/2017 states this very clearly in article 35.

The final point regarding access to land registration relates to representation. There are situations where the landowner is absent—for example, where they are living elsewhere or are sick in hospital—in these cases another person should be able to submit a claim in the name of the landowner. Although the legislation concerning land registration does not mention this issue specifically, the Civil Code, article 406, contains applicable rules for representation. This article allows for a representative to submit a claim on behalf of another person, even without a formal power-of-attorney document, although the landowner must subsequently confirm the claim.

Has the SNC guaranteed the individual's access to land registration?

Research in the field shows that many people and communities have encountered restrictions in their access to the land registration process.

Not allowing people to have land surveyed where the state is also making a claim.

The concept of state-owned land is a major limitation for people's access to land registration. Amongst communities and government there are a variety of sometimes contradictory understandings of state-owned land. According to the law, the state must also abide by the land registration system. If the state thinks it is the owner of a parcel of land it should submit a claim. If there is a dispute between the state and an individual or community, the Land Commission or the court will decide who owns the land. Therefore, anyone who thinks they own a parcel of land is able to submit a claim. However this research shows that people are being impeded from making claims to land which is considered to be state land.

In community meetings SNC explains that no one is allowed to make false declarations to state land. While it is true that no one can falsify documents or submit claims based on false or untrue information, at the community level many people have misunderstood this and believe that they do not have a right to submit a claim to land which

the state is declaring to be state land. This is in violation of the right to freely submit a claim. In accordance with the law the SNC, DNTPSC and local authorities do not have any legal authority to make decisions about the right to own land—only the Land Commission and the courts can do that.

There are many cases where the state will win the right to land even where the individual who has claimed the land also has an ownership right. For example, a person owning land which under the new law (13/2017) is defined as being in the public domain will lose that land to the state, however the claimant has the right to receive compensation if they are able to meet the legal criteria (article 8 no 6). For instance, new laws now stipulate that land within 50 metres of the shoreline is considered part of the state's public domain. However if the person does not submit a claim for this land during the land registration process, they also lose their right to receive compensation. According to the maps on public display for Suku Suai Loro, the SNC did not survey the land all the way to the shoreline (see Figure 3). If there is no registration of land in public domain areas, and people have no means to submit claims, they lose their opportunity to receive compensation in accordance with Law 13/2017. Not conducting surveys in public domain areas is also a major limitation of people's right to access the land registration process.



Figure 3: Collection Area AK050020 in Suai showing beach areas that were not registered

“For example, if we are a family who has one land, can we register as a group? I never heard this information.”

Male youth representative,
Suku Suai Loro, Covalima

Not facilitating joint claims from married couples or groups

The law states that claims can be submitted by individuals, groups of persons, married couples, communities, legal entities (including companies, foundations, religious institutions, etc.) and the state. However, the researchers observed that there were very few claims from groups, married couples and communities, and that there are significant differences in the number of these claims between the municipalities.⁴⁰ There are many reasons for this. Firstly, as mentioned above, there has been an absence of public information regarding all of these options so people do not understand their choices. Secondly, the researchers observed that the SNC team did not disseminate any information about these possibilities. The SNC forms are an example of this situation (Figure 4). The form has a place for just one name, and there is no opportunity to indicate whether the claimant is an individual, a group, a married couple, or a community.

40. In Aileu, compared with other districts there are many claims from couples or small groups.



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Figure 4: SNC Form

The results from the public display of maps provides strong evidence of this problem. Table 4 below indicates the number of claims that Rede ba Rai verified while analysing the SNC maps in the municipalities of Covalima, Ainaro, Aileu, Liquiça, Ermera, Manatuto, Baucau, Lautem and RAEOA. This data includes a total of 10,652 claims from 122 Collection Areas.



Table 4: Analysis of the Claims Lists from 122 Collection Areas ⁴¹

	Type of declaration									Total Declarations analyzed	Incomplete documents	% of documents still incomplete	Total number of Collection Areas
	Indiv. Male		Indiv. Female	1 male and 1 female together	Group	State	Church	Legal entity	Rai Lisan/ Uma adat				
	Municipality	755	157	56	26	35	2	0	0	1,031			
Aileu	719	173	25	2	15	0	1	0	935	530	57%	4	
Ainaro	920	40	4	82	13	2	0	0	1,061	577	54%	7	
Baucau	268	513	0	0	25	1	0	0	807	646	80%	10	
Covalima	606	207	63	6	213	3	0	0	1,098	519	47%	9	
Ermera	1308	435	4	16	143	72	1	4	1,983	1256	63%	33	
Lautem	861	162	6	20	536	1	0	2	1,588	175	11%	16	
Liquica	381	423	11	7	50	0	0	0	872	677	78%	23	
Manatuto	926	288	4	7	48	4	0	0	1,277	744	58%	10	
RAEOA	6744	2398	173	166	1078	85	2	6	10,652	5185		122	
Total	63.3%	23.5%	1.6%	1.6%	10.1%	0.8%	0.02%	0.06%	100%	48.7%	48.7%		
% of all declarations													

Table 4: Analysis of the Claims Lists from 122 Collection Areas ⁴¹

41. The SNC, DNTPSC and the Ministry of Justice did not provide access to the SNC database, and the SNC has not published any statistics. This table is based on the maps that researchers monitored, counting the number of claimants. The data that was published by SNC does not disaggregate between married couple claims and other group claims, but claims made by one man and one woman together were counted by hand and this figure acts as a proxy.



Table 4 shows that 63% of claims were individual claims by men. Group claims were the lowest number (only 1.6%) and in some municipalities there were no group claims at all (Covalima). Although evidence shows that the majority of land in Timor-Leste is customary land, there were only six customary land claims (two in Liquiça and four in Lautem). Previously, the INR project published monthly statistical data regarding claimants: for example, the numbers of claims from men, women and married couples. Unfortunately, the SNC program has not done the same. From monitoring maps on public display we cannot know how many claims are from men and women jointly, and which are claims from married couples. However even if we base our analysis only on men and women joint claims we can see that this number is a tiny proportion of claims (only 1.6%), which means that the numbers of claims from married couples is very low.

To ensure that everyone has access to land registration, it must be free of charge. One positive point is that all of the people interviewed in Covalima said they did not have to pay the SNC staff to submit a claim. The SNC form clearly states there is no charge to register land. This is a strength of the land registration process but there is a need for further analysis to ensure the community understands this.

Not easy for people living remotely to submit a claim

The SNC demands a written declaration of power-of-attorney for people submitting a claim on behalf of another person. This requirement restricts access for people living in other municipalities or overseas. Sending letters granting power-of-attorney is costly and takes time. When the SNC visited people's land these documents were often not available because people had not received clear information about this requirement. Another limitation is that people who did not manage to submit a claim during the first data collection process had to go to the SNC office at the municipal level to submit claims; they were not able to submit them in other municipalities or via the internet.

Legal requirements which impede access to land registration

As mentioned above, Ministerial Diploma 45/2016 requires that claimants submit a letter signed by two local authorities. This requirement is a violation of the land law because it creates an unnecessary barrier for people wanting to submit claims. Many people said that it is difficult to obtain signatures from local authorities, creating further stress for claimants, because the Suku and Administrator's offices are far from where they live.

In addition, if the SNC team had finalised work at the aldeia level and moved to other locations, the claimants needed to submit their documents at the municipal DNTOSC office. For many people obtaining these two signatures and submitting documents involved spending considerable money and time.

People with difficult relationships with local authorities, or those who have a dispute with the state, are afraid that the officials will not sign their documents. Some people used the term "requesting permission" from local authorities, revealing their deference to the authorities, and a sense that they did not feel free to submit a claim without permission. Furthermore, local authorities cannot be expected to know the history of the land and are unable to confirm the information in the claims. Although the head of the Suku may know the area well, they do not know the history of each person's land, even less so the Municipal Administrator. The documents claimants ask them to sign have just the land parcel identification number; there is no map or any other feature to indicate the location, or the history of the land parcel. They might sign but without any certainty that the details are correct. One Suku head informed the team that he signed forms containing no other details except the name of the community to ensure the community did not have to go back and forth many times. Field observations confirm that the requirement for signatures from local authorities acts as an impediment to people's access to land registration and has no value in the process of verifying the history.

Ministerial Diploma 45/2016 also requires neighbours to sign claim forms. In situations where people have ongoing disputes with their neighbours it is difficult to obtain their signatures. In addition, the documents signed do not include maps or other details of the land and its boundaries (Figure 5). This means that neighbours are not clear what they are signing and, if there are any errors – for example, regarding the boundaries – they are impossible to verify.



Jornal da República

ANEXO I



MINISTÉRIO DA JUSTIÇA
SECRETARIA DE ESTADO DAS TERRAS E PROPRIEDADES
DIRECÇÃO NACIONAL DE TERRAS, PROPRIEDADES E SERVIÇOS CADASTRAIS

Viziñu sira husi parsela ho

NUIP:

hatete katak simu liña divizaun ba
parsela hanesan hakerek no hare'e iha tablet
husi kolektor SNC - Sistema Nacional de Cadastro.

Naran Completu _____

Asinatura _____

Naran Completu _____

Asinatura _____

Naran Completu _____

Asinatura _____

Naran Completu _____

Asinatura _____

Naran Completu _____

Asinatura _____

Naran Completu _____

Asinatura _____

Halo ohin Loron _____ Fulan _____ Tinan 20 _____

Ekipa _____ Asinatura _____

Sistema Nacional de Cadastro

Figure 5: Document for neighbours to sign

Not easy for everyone to verify their claims

This research reveals there are two impediments regarding the public display of maps. The first relates to the location for public display, which occurs at the municipal and suku levels. Some people's aldeias are far from the central suku location so travelling involves time and expense. People living in other municipalities or overseas are unable to verify their land claim and new claims must be submitted at the municipal office. Secondly, many people do not realise the importance of the verification phase so they do not go to examine the maps. Although the SNC places a notice in their office, people do not fully understand the purpose of displaying the maps.

Conclusions regarding access to land registration

Having sufficient access to land registration is very important because if people do not submit claims they may lose their rights to land. This research identifies many limitations to people's ability to participate in the process. One cause is poor implementation in the field. Other limitations are the result of cumbersome legal requirements and procedures; for example, requiring neighbours and local authorities to sign forms. These problems are compounded by the SNC's failure to disseminate clear information about land registration, which leaves community members confused or thinking that the process is not important. Some of the information disseminated to communities makes them afraid to submit claims, such as claiming land contested by the state.

The SNC's process fails to promote claims from women, married couples, groups or families, and claims from communities. These weaknesses are contrary to the principles set forth in Law 13/2017.

Transparency of the SNC Process

The land administration sector has a huge potential for corruption. As a result, transparency is an important preventative mechanism. Transparency is also significant for the quality of land registration. It is essential to be able to see what is working well and where the failures are, in order to improve the process where necessary. When transparency is lacking, it increases the risks for the land registration system because it may give the courts a reason to cancel the titles it issued. If this occurs, the process to register land provides no legal certainty. Lastly, transparency is crucial for people to have faith in the process. If people cannot participate freely, they may suspect mismanagement or corruption. Ultimately, it may lead to people not accepting the outcomes of the land registration process.

There are a number of principles necessary to help safeguard transparency during land registration including:

- **Ensuring the public can access information:** Most of the documents relating to land registration should be available to the public through simple procedures, without the need for requests, authorisation or other barriers that prevent people from gaining access to the information. The only exception to this should be information classified as private, such as the personal details of staff; for example, their salaries and other similar information.
- **Providing a written operations manual:** Technical procedures, laws pertaining to the process and work regulations should be set forth in a publicly available operations manual.
- **Complaints mechanism:** The land registration system must have a simple, effective and confidential procedure for people to submit complaints with timely feedback.
- **Independent audit and evaluations:** An independent respected entity must regularly and systematically review the various procedures to ensure they are implemented transparently.
- **Proper identification of the staff who are conducting land registrations:** The people working in the field must identify themselves as land registration staff through ID cards, uniforms, hats, brochures and other information materials.

Although Law 13/2017 makes no mention of public access to land registration documents and files, there is other legislation that applies. First, article 24 of Decree Law 32/2008 establishes the principle of open administration, which states that all persons have the right to freedom of access to all administrative archives, despite not being personally involved in the process. This article places some limitations for the protection of personal information; however, the underlying principle is that people are free to examine the entire archive.⁴² Decree Law 43/2016 regarding access to public documents strengthens the right to retrieve information from archives and other material. These laws apply directly to the land registration process, and allow everyone the right to freely examine documents relating to land registration and the SNC's work. The following section examines in greater depth the level of transparency of the SNC's activities.

42. Personal documents are only those that are of no interest to the public or are confidential, such as medical certificates.

Have the SNC's activities been transparent?

The SNC restricted access to a great deal of information, so much so, that it was difficult to conduct this research. This is a major indication that the SNC's work is not sufficiently transparent.

The first difficulty is access to documents and information. A key point in understanding the role of the SNC and its activities is the contract between the state and the two companies implementing the SNC program. Other important sources include the SNC's quarterly and annual reports. During the Seventh Constitutional Government, the Ministry of Justice provided access to Rede ba Rai to consult these documents once but would not allow copies to be made. Rede ba Rai later sent another request to the Ministry of Justice for further access to these documents without receiving a response.

The team sent a letter asking for an interview with the SNC director but the SNC said interviews were not possible without authorisation from the DNTPSC. The SNC refused to allow the researchers to examine the database and other information relating to land registration, even though, according to the law, these documents are considered to be public.⁴³ The SNC did not allow researchers to interview other SNC staff and refused them permission to take photographs inside the office. At the municipal level several SNC staff told researchers not to record during community meetings, even though these meetings were public. The SNC team in Covalima only shared information verbally with the researchers and would not allow the recording of interviews or photographs.

The SNC staff in Covalima said they did not have any copies of the maps that had been on public display because they had been sent back to Dili. They also refused to give the researchers permission to photograph maps of the collection areas on display or photograph the lists of claimants from older maps or lists of claimants relating to maps in preparation for public display. Most of the information was for public display on established noticeboards while other details were posted inside the office. This culture of secrecy is a problem for transparency, raising the question – why does the SNC not want to share information?

The researchers conclude that the SNC has no specific mechanisms to prevent corruption. For example, there is no clear mechanism for people to submit complaints against SNC staff. Furthermore, there is no public information specifically relating to corruption, no publicly available work manual, and the research team has not received any information regarding auditing or evaluation of the SNC's work.

The researchers observed that sometimes the SNC field team was made up of three people, but at other times just one person went to conduct land surveys and accept claims. Working alone is a problem for corruption. Some team members did not have the full SNC identification, such as a shirt, hat, ID card and bag. In the absence of these identifiers people may have doubts about whether the person is actually working for the SNC.

43. Decree Law 43/2016 of 14 October 2015 'Rules Regarding Access to Official Documents'

Conclusions regarding transparency

The SNC has a culture of secrecy and refuses to allow members of the public to obtain information about its work. The INR project allowed public access to the database, technical manuals, and responded to many questions, but the SNC's behaviour is completely different. Information is concealed even though this is a violation of law. This behaviour presents a problem for the integrity of the land registration process, and prompts some serious questions about whether people can trust the SNC's work.





What is the Quality of the SNC's Registrations?

As the outcome of land registration is so significant, the process must be of high quality, display professionalism and generate accurate data. During this research process the SNC neither shared information about nor allowed access to the registration results. Despite these limitations, the team was able to examine several aspects of the land registration process that have an impact on the quality of the SNC process. If the SNC provides access to the data in the future, further analysis is possible.

Community meetings and information lack depth

As previously discussed, the researchers identified many problems with the SNC's public information dissemination. For example, SNC meetings with communities were not structured and SNC staff sometimes came late. Some communities waited many days for the SNC to survey their land, while others were surprised when the SNC team arrived because they had not received prior notice.

Focus on quantity rather than quality

The researchers observed that the SNC team wanted to conduct the survey as quickly as possible. The municipal director of the DNTSC, reflecting on the government contract, explained that the SNC's aim is to register as many land parcels as possible, so they have to survey every day. Research during the INR project showed that if people perform land surveys too quickly, there is a risk of reducing the quality of the work. It was not possible to access a copy of the SNC contract and so it is not possible to tell whether this issue stems from contractual processes or from SNC's internal mechanisms.

Although the SNC did not provide access to data researchers were able to analyse a total of 10,652 claims from eight municipalities and RAEOA during the map publication process. On the list of claimants there is a column to the far right which indicates the "completedness" of each claim (see fig 6). From our analysis, 48.7% of the total number of claims are "incomplete", which means they lack information, including signatures, documents or other requirements. Some municipalities have a higher rate of unexecuted registrations than others. For example, in Covalima 80% of claims are incomplete, with Lautem at 64% and Manatuto at 78%.






NUP	Naran husi deklarante	Identifikasun		Foto	Disputas		Periudu Publikasun
		Tipe	Nº		Tipe	Nº NUP	
51302700023137001	Isufiana Mendonça Pereira	Cartão Eleitoral	0715028				SEGUAR KOMPLETE
51302700023137002	Isufiana Mendonça Pereira	Cartão Eleitoral	0247267				SEGUAR KOMPLETE
51302700023137003	Milena dos Santos Fátima	Cartão Eleitoral	0715028				SEGUAR KOMPLETE
51302700023137004	Isufiana dos Santos Fátima	Cartão Eleitoral	0715778				SEGUAR KOMPLETE
51302700023137005	Isufiana dos Santos Fátima	Cartão Eleitoral	0745438				SEGUAR KOMPLETE
51302700023137006	Isufiana dos Santos Fátima	Cartão Eleitoral	0503483				SEGUAR KOMPLETE
51302700023137007	Isufiana dos Santos Fátima	Cartão Eleitoral	0203420				SEGUAR KOMPLETE
51302700023137008	Margarida dos Santos	Cartão Eleitoral	0715778				SEGUAR KOMPLETE
51302700023137009	Isufiana Mendonça	Cartão Eleitoral	0513338		Relata	51302700023137009	SEGUAR KOMPLETE
51302700023137010	Isufiana Mendonça	Cartão Eleitoral	0247267		Relata	51302700023137010	SEGUAR KOMPLETE
51302700023137011	Isufiana Mendonça	Cartão Eleitoral	0247267		Relata	51302700023137011	SEGUAR KOMPLETE

Figure 6: List of Claimants from the SNC program showing incomplete claims

As mentioned earlier, the number of claims from married couples is lower than it was for the INR project. Registering land for married couples takes more time because the households require more details about the process. The low number of claims from married couples is perhaps an indicator that the team was focused more on quick registration than on a successful outcome.

“About that we also have some doubts because they didn’t have measuring tapes with them ... these measurements create big problems. Ours is 10 metres, like that. But this was not measured or looked at.

Male community member, Aldeia Loro, Suku Raimea.”

Field techniques used make verification difficult

The researchers observed that some participants experienced difficulties reading maps on the electronic tablets and found it hard to determine the dimensions of land parcels. For example, on the maps it is easy enough to see roads, but fences and trees are not clear. As the SNC teams used mainly tablets and did not travel with a measuring tape, people did not know whether the maps were correct. During the surveys the SNC team failed to check with neighbours to confirm the land boundaries from the GPS image. The survey team asked claimants to tell them the land area in square metres and, if people did not know, the SNC completed that section of the form.



Figure 6: Example of claimant list and claims map from the INR project

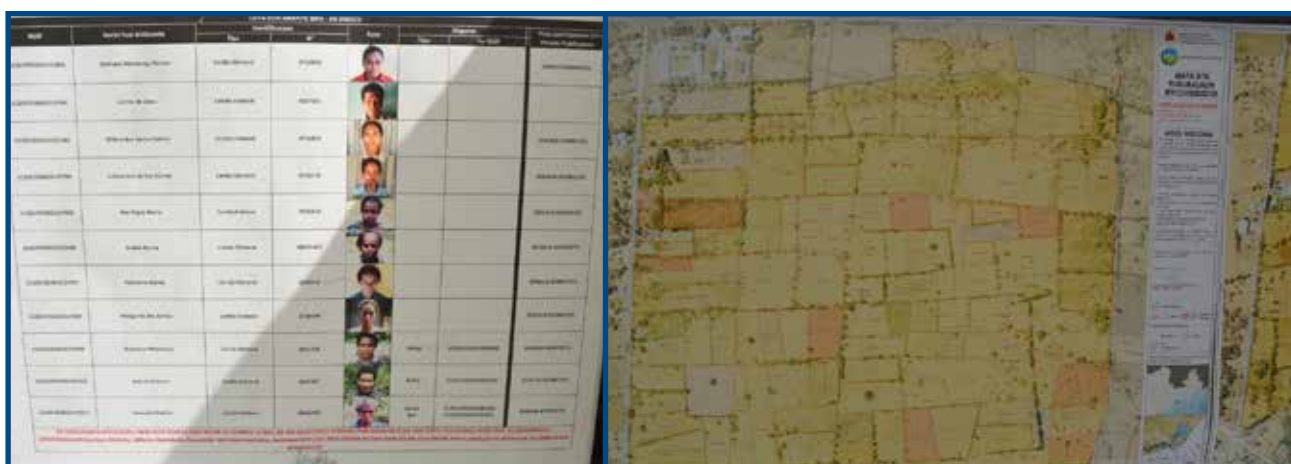


Figure 7: Example of claimant list and claims map from the SNC program

During the period for displaying maps there were several complications. The INR project maps clearly defined the areas in dispute because they were shown in red and there was also a list of claimants (Figure 7). It was easy for people to see if their land was disputed and clear as to the people or entities involved in the dispute. In contrast, the SNC produces only a list of claimants (see Figure 8 below) and a contour map, so it is difficult to know if the land is disputed and, if so, the other claimants are only named in a separate section of the list. The problem is compounded if the claimant is illiterate; s/he can see their photograph but is unable to identify if there is a dispute regarding their land. In addition, the list of claimants does not specify the type of claim, so it is not possible to identify customary land, group claims and other options.

The SNC has not released any data about land registration. The INR project disseminated detailed statistical information from its work on a monthly basis (Figure 9). This data is important in order to analyse the progress and quality of land registration, for example, to examine whether women's participation has decreased or increased and, if so, what steps can be taken to address this problem. If there is no data, or if the data is not appropriately disaggregated then government or other entities are unable to measure progress, and it is difficult to identify problems with the registration process and its results.

Parcela rai ne'ebe deklarato'o 30 Junu 2011								
Distritu	Parcela	Reklaman	Deklarasaun feto mesak	Deklarasaun mane mesak	Deklarasaun Kaben	Deklarasaun Seluk	Deklarasaun Estadu	Dekl. Entidade Seluk
Ainaro	361	401	17.46%	36.66%	18.95%	5.74%	18.95%	2.24%
Aileu	948	1133	8.03%	28.07%	22.95%	11.83%	27.80%	1.32%
Baucau	1975	2081	13.31%	43.97%	20.95%	7.40%	11.39%	2.98%
Bobonaro	3655	3878	29.94%	46.08%	13.455	4.41%	3.97%	2.11%
Covalima	2138	2250	41.02%	43.56%	8/09%	0.76%	5.60%	0.98%
Dili	28389	30017	18.81%	36.96%	11.02%	2.74%	28.96%	1.51%
Ermera	63	63	11.11%	57.14%	30.16%	1.59%		
Liquica	1936	2240	11.88%	34.29%	18.44%	5.13%	20.67%	9.60%
Lautem	1771	1863	26.14%	56.84%	5.69%	1.40%	8.05%	1.88%
Manufahi	69	71	11.27%	29.58%	47.89%	2.82%	7.04%	1.41%
Manatuto	1390	1448	41.16%	31.77%	7.46%	11.33%	6.70%	1.59%
Oecusse	4089	4209	15.85%	50.82%	8.32%	1.78%	21.43%	1.81%
TOTAL	46784	49654	20.545	39.79%	11.71%	3.43%	22.59%	2%

Table published by the INR program showing statistical analysis of the types of claims registered

Absence of a clear process for updating data

An important aspect of land registration is the means for updating the land register. People sell land, gift it or divide it up, and exchange it, so the details change regularly. During monitoring in Raimea, Covalima, the research team noted that a claimant's NUIP documentation states any changes in landownership must be reported to the DNTPSC. The Covalima SNC coordinator said people must submit their new ownership details in a statement to the DNTPSC; however there is no specific form for this process, and to date there is still no law to regulate the process of updating data. This raises questions in terms of the legality of the change, but also the security of claims. If changes made to a claim are disputed in the future there will be no way of clarifying who made the change or if the claimant authorised the change to his/her details or not.

Absence of independent evaluation or auditing of the SNC process

The INR project had several audits by entities which were both independent and had significant knowledge of land registration processes. These audits are very important to identify any failures and to improve aspects that are not working well. Although the program has been operating for five years, the SNC has not had an independent evaluation or audit. The SNC also obstructs civil-society researchers from conducting evaluations or gaining a deeper understanding of its work.

Separation of SNC and DNTPSC

The INR project worked separately from the DNTPSC. This was identified as a significant weakness for the sustainability of the land registration process. Although DNTPSC staff participated in some trainings and meetings with the INR, the work was not integrated. When the project ended it was difficult for the DNTPSC to continue using the INR information and systems. The SNC is replicating this weakness and continues to work separately from the DNTPSC, despite receiving advice to integrate. There is a very real prospect that when the SNC program finishes the same problem will occur – the DNTPSC staff may be unable to use the SNC data and processes because they have not been sufficiently involved in operations. As a result, the government will remain dependent on SNC and the process will be unsustainable.

Conclusions regarding the quality of land registration

Although complete data on claims are unavailable, it is clear that SNC's work lacks professionalism, consistency, sustainability, and proper consideration of the needs of landowners and communities. There has been no independent audit of the SNC's work and, to date, the SNC has shown no indication that it is open to improving its operations, raising major concerns about how it conducts land registration.



Potential for Conflict and Disputes in Land Registration

As land has an important function in people's lives and is highly valued, it is inevitable there will be land disputes. Careful management of land registration involving the appropriate mechanisms can mitigate conflict. Poorly administered land registration, however, has the potential to increase conflict. For example, two people may have resolved their land dispute, but the new method of land registration reawakens the previous conflict.

At each stage of land registration it is essential to avoid an increase in conflict relating to land. In ensuring conflict sensitive land administration government should:

- **Consider land administration mechanisms that provide an alternative to land registration.** Before beginning land registration there must be full consideration of whether or not it is the best mechanism, because there are other options. For example, the state can provide legal protection for customary land without conducting registration in those areas. Even though the land is not surveyed, the law can sufficiently protect people's land rights.
- **Create an appropriate process for land registration.** Consider the options for land registration and choose the system which best suits the context. For example, if registration for individuals is used in areas of customary land it is a potential for conflict.
- **Conduct a conflict assessment before conducting any land registration.** It is necessary to undertake research in each area to understand whether or not the registration of land might increase conflict. Teams need to have reasonable knowledge of each area and create an inclusive plan with the community on how to manage conflict if it arises.
- **Provide incentives, support and options for conflict resolution.** If land registration is already underway, there must be adequate mechanisms to help resolve conflict, such as having a sufficient number of trained mediators to help resolve disputes.

Unfortunately, Law 13/2017 has not established many mechanisms for how to avoid conflict. It states that mediation can be used for managing conflict, and if the disputing parties reach an agreement, this agreement will be considered valid.⁴⁴ Where the mediation process is unable to resolve a dispute, the Land Commission and courts have the power to decide the outcome.

Although an individual land parcel may be contested, each of the parties in the dispute retains the right to submit a claim. After each person in the dispute submits a separate claim, the dispute shall be resolved in accordance with the criteria provided in Law 13/2017. If the land is not surveyed, it is then considered 'vacant' and both parties may lose their rights to the land.

44. Article 32 no 5 and article 39 no 2 of Law 13/2017

How does SNCs work to reduce conflict measure up?

Has the SNC increased the amount of conflict?

Rede ba Rai's assessment of the INR project considered the percentage of land disputes that arose, the types of claimants involved in these disputes, and so forth. It helped the INR project to improve the land registration process. As SNC data is unavailable to the public or to civil society, detailed analysis of the percentage of disputes has not been possible. However, researchers conducted a general analysis based on the public maps, observations from the community and from other NGOs, and have found that the SNC process has indeed led to conflict within communities. In the field, several communities stated there had been no previous disputes but conflict occurred when the SNC came. NGOs investigating conflict provided indications that the SNC's work was implicated in an increase in land disputes.⁴⁵

The SNC has avoided areas of conflict and has no sufficient dispute resolution mechanism

According to SNC in Covalima they have three strategies for preventing and resolving conflict. Before going to registration areas, they speak to the local authorities to find out about conflict in the area. They then exclude places from registration if there is a risk of conflict. In Raimea, the SNC stopped work when they encountered a major conflict. Rather than attempting to resolve disputes, the tactic is simply avoidance.⁴⁶ The SNC does not have a clear strategy for how to prevent conflict. Interactions with local leaders do not involve discussing dispute management but are more to ascertain which areas to avoid and when to stop if they do encounter major conflict. If there is no strategy to prevent conflict, disputes related to land registration will only increase in the future. In Covalima, the SNC has only one mediator for the entire municipality to provide assistance in disputed cases.⁴⁷

There are also other practices which risk provoking significant future conflict. As discussed above, the SNC process prioritises claims from individuals without providing proper processes for group claims or claims to community land. Claims for family or community land often have only one name on the form. According to the law the person whose name appears on the form will have ownership rights to the land. While people may have rights in accordance with local custom, the national law gives them no rights to the land. At present people trust each other, however, there is a risk that future generations, or heirs of those whose names have been placed on the title, will forget the current agreements and defend their individual ownership of the land. If this happens other community members will have no recourse to maintain legal access to that land. The title holders will have legal standing and will be able to make all the decisions concerning that land, including whether or not to sell it. These problems have a huge potential to provoke significant levels of conflict in the future.

"For example... we all have the same land, so can we register as a group? I haven't heard this information. I just heard that only a family, with two or three people [who all own] the one parcel of land [can therefore] register the land together. I never heard about group claims".

Male youth representative, Suai Loro

45. Belun, 2015; Belun, 2016

46. From the SNC staff's explanation to the research team and informal discussions with community members

47. Women's FGD Aldeia Kulu-Oan; Aldeia Chief, Sukabilaran



The researchers observed that when the SNC team encountered a dispute they often did not survey the land. Instead they asked people to resolve the dispute before any survey could take place. This was confirmed by people the research team met: SNC did not conduct surveys or accept claims if the land was subject to any dispute.⁴⁸ Although this strategy may avoid on-site violence while the team conducts surveys, the researchers see this as having the potential to create a range of problems.

“The SNC said we are not willing to survey if there is conflict.”

Participant, women’s FGD,
Suku Suai Loro

In Raimea, the research team observed community members preventing one man with title documents from the Indonesian period from having land surveyed. They said the land was under dispute and he had not participated in the community meetings for conflict resolution. The SNC team did not intervene, even though the man was stopped from registering the land.⁴⁹ According to Law 13/2017 he has a right to submit his claim and related documentation and, ultimately, the Land Commission or courts will decide. The research team witnessed another man with Indonesian title documents register his land even though it was still subject to dispute. As he had participated in community meetings to resolve the dispute, there was a decision allowing him to have his land surveyed, even though it was contested. In the Kulu-Oan women’s group discussion, many of the participants said the SNC would not allow households to register as landowners because the state had also submitted a claim for that land. They had to “register” under the state and when the SNC surveyed the land the team took photographs of people’s documents but did not take photographs of the people living on that land.

“Some had purchased (the land). No photo was taken (of us). They [SNC] said we just occupied (the land).”

Participant, women’s FGD, Kulu-Oan

48. Participant, women’s FGD, Suco Suai Loro; Community Sukabilaran female interview #5; Male youth representative, Suai Loro

49. 16 August 2018

Overall, the researchers recorded several cases where the SNC did not survey the land or accept claims because of land disputes. Although the survey team said they would return to do the survey, at the time of field research they had not yet returned. It is also possible to see this issue by analysing the maps published by SNC. For example, in Aileu (Collection Area AK010006 and AK 010009) and Ainaro (AK020016 and AK020017) there is a lot of unregistered land (see figure 10, 11, 12 and 13), even though some of the land has houses and farms.⁵⁰ None of these collection areas has any major disputes. It is possible that the SNC team left so many land parcels in those collection areas unsurveyed because they were disputed. The concern is that if these communities' land parcels have not been surveyed by the time the maps are published, people may lose their land because it will be registered as 'vacant land'.

50. Collection Areas AK010006 and AK 010009 in Aileu ,and AK020016 and AK020017 in Ainaro



Figure 10: Collection Area AK070025, Munisipiu Ermera

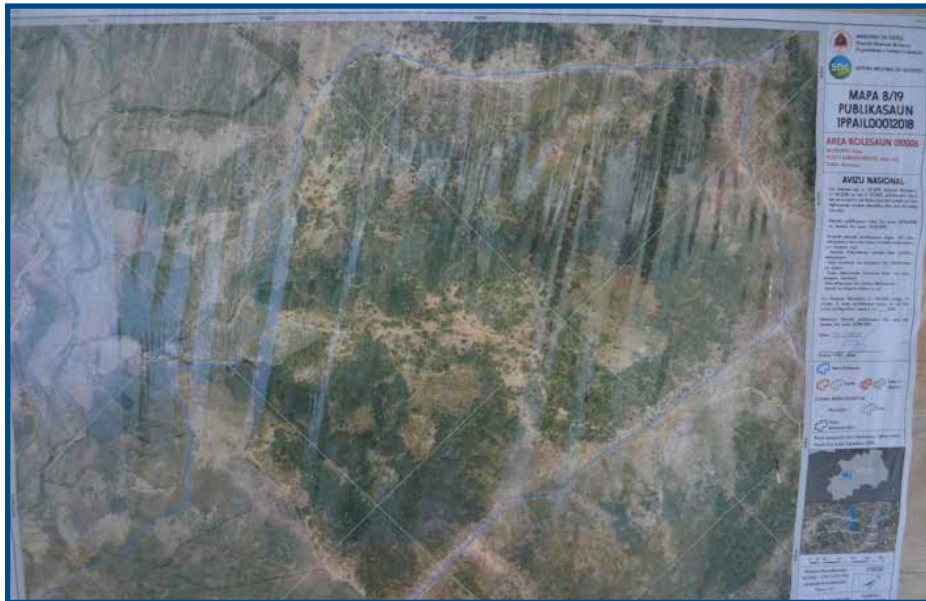


Figure 11: Collection Area AK010006, Munisipiu Aileu



Figure 12: Collection Area Map AK020016, Munisipiu Ainaro



Figura 13: Mapa Area Kolesaun AK020017, Munisipiu Ainaro

“There are many people whose land was not surveyed. If there were problems, they would not survey. They survey undisputed land. They sent a message, ‘no, you resolve the disputes. Once they are resolved, we will come and survey’.”

Participant, women’s FGD, Aldeia Mane Ikun

The researchers have not had clarification from the SNC regarding these cases, however, they are very problematic. Firstly, it is a serious violation of the principle of the right to freely submit a claim. Even if there is a dispute, people have the right to submit a claim. If they cannot claim, they may lose their rights to own the land. Secondly, not surveying land, under dispute or otherwise, is a violation of the principle of systematic registration, leaving parcels of unsurveyed land randomly scattered across many collection areas. Even if the parcels are surveyed in the future, it is no longer in accordance with a systematic process. Thirdly, as a result of these failures, implementing Law 13/2017 becomes difficult because the information is incomplete.

If the SNC is not surveying land that is subject to dispute, it may explain why the SNC data on contested land parcels is lower than that recorded during the INR project. In October 2018 the SNC told the media that nationally only 5.5% of land parcels were disputed.⁵¹ However, our data raises serious questions about this statistic. If the SNC program has not been surveying disputed parcels, the actual percentage must be much higher than 5.5%. This also means that the SNC has

51. Diário,, 2 October 2018. ‘Disputas de terreno representam cerca de 5.5% dos registos cadastrais em Timor-Leste’

not resolved or registered these disputes and has just left the problem to the DNTPSC to settle in the future.

Conclusions regarding conflict and dispute resolution

There are a number of signs that the registration process has increased the number of land disputes. The SNC has no clear system on how to prevent or manage conflict. In the field the researchers observed that the SNC did not allow registrations in some cases where land was disputed. Although the SNC has a mediator in each municipality,⁵² one person cannot manage all the disputes, especially when land registration is occurring in many locations simultaneously. The way in which the SNC is registering land throughout the country risks creating conflict in the future, because it has registered many individual claims to land which actually belongs to families, communities and uma lisan (clan groups).

52. Interview with DNTPSC in Liquiça and Covalima: It is not yet clear whether this also applies in the Municipality of Dili.









Rai Lisan (Customary Land)

In Timor-Leste the majority of people live on customary land.⁵³ Although Timor-Leste has many different cultures, with their own distinct languages, the concept of customary land exists in all parts of the country. The definition of customary land needs clarification. It is important to differentiate between two Tetun terms: rai lisan and rai lulik. Rai lulik (literally, sacred land or land subject to cultural and spiritual taboos) is a specific area or parcel of land with its own sacred or spiritual value: for example, land where the uma lulik (sacred clan house) stands, burial sites, sacred springs, rock formations, banyan trees, and so forth. Customary land – rai lisan – refers to entire systems and areas of land belonging to a particular group, which are governed through customary systems and practices. Within areas of rai lisan there can be land that belongs to one household or extended family, more collective areas, such as locations for animal husbandry or firewood collection, as well as particular sacred sites. Rai lisan often also includes some areas of land left vacant for future generations of the ownership group. Customary land is a generalised categorisation for that entire interconnected system of land governance.

It is essential to protect customary land as it is very important for communities' livelihoods and the local economy. Customary land provides a system for mutually agreed management and the sharing of land resources. Some land is in shared common usage and some areas are set aside for future generations. Customary land is also significant for the identity of a community. Timorese identify themselves on the basis of their lisan – their clan groups and associated customs. Customary land is also very important for spirituality and culture.

Land registration presents significant risks for customary land. If the process does not protect customary land, much of the land will be lost. When land registration enables only individuals to claim or hold title to land, often individuals make claims for all of the areas of customary land and this land can quickly become completely individualised or privatised. Sometimes communities agree to nominate one person as the representative of customary land, however, according to the law, the person whose name is put forward is subsequently recognised as the owner of private land. While this may not result in complications where communities have reached an agreement and common understanding relating to this land claim, once the representative dies, legally the land passes to that individual claimant's heirs, who may not understand or acknowledge their

53. Rod Nixon's research in 2009 determined that 97% of land in rural areas is considered rai lisan (customary land), governed and managed under customary practices.

predecessor's role in the customary system. This may provoke major difficulties. Land registration may also be problematic for customary land when it precipitates concepts that are contrary to the context of customary land.

For all of these reasons it is essential to ask whether it is appropriate to register customary land or not? Rede ba Rai's research in 2011–12 showed that the INR project's land registration was a major threat, because its processes and systems failed to respect and were contrary to the notion of customary land. The INR project made the decision that it was not advisable to survey customary land. According to their report:

We received advice from legal and anthropological experts from the Australian National University last year (after the completion of a 3 year research project) that they believed that attempts to demarcate these areas would likely create problems especially when there was no clear evidence of land tenure insecurity. More recently (in October), the World Bank developed a Concept Note on fostering investment in rural/community areas and peer review from across the world has emphasized the need for community demarcation to be demand-driven or run the risk of failure and continuing disputes. In any event, once the Land Law is passed and sufficient clarity arises in relation to the nature of the rights granted and the identity of the rights holders, ARD feels that any form of community demarcation needs to be demand-driven from communities...⁵⁴

During the development of Law 13/2017 civil society suggested that it would be better not to undertake registration in customary land areas, recommending it was preferable for the state to provide general protections for all customary land.

54. USAID 2009 'Year Three First Quarter Report 2009/2010 (Year ending 30 September 2010)', USAID Strengthening Property Rights in Timor-Leste (SPRTL), the Ita Nia Rai (INR, Our Land) project



There are ways to protect customary land without conducting land registration. However, if the state decides to proceed with the registration of customary land regardless, as a minimum it has a duty to:

- Facilitate thorough consultations to develop a land registration model appropriate to the context of customary land.
- Choose a mechanism that is suitable for customary land and conduct a pilot study with multiple sites to ensure that the mechanism is acceptable in context.
- Evaluate the situation regularly to determine that there are no negative impacts on communities or on customary land.

There are arguments for and against registering customary land, and a wide range of opinions. However, Law 13/2017 is very clear and establishes two concepts relating to customary land: Community Property and Community Protection Zones (CPZ).

Community Property:

*Real estate recognised by the local community as belonging to the entire community, which is used in common, by groups, individuals or families, in accordance with local customs of land use is considered to be the property of the local community.
(Article 27, Law 13/2017)*

Community Protection Zone:

*Community Protection Zones are areas where the state provides protection, with the aim of safeguarding the common interests of a local community, through special protection conferred upon residential areas, farming land, whether cultivated or fallow, forests, cultural sites, sacred sites, or places that have a relationship to custom, places where animal husbandry is practised, springs or places where there are shared natural resources necessary to sustain the lives of communities.
(Article 23, Law 13/2017)*



Although Law 13/2017 has not clarified how these two concepts are regulated, it clearly states that these two rights exist. This means land registration must protect and respect these two concepts and there must be a clear process to explain them to communities. If this is absent, land registration is in contradiction with the law.

Law 13/2017 states that the land registration system in Timor-Leste has a systematic approach. As a result, it is not possible to begin registration for private land and leave the surveying of community land for a future date. The following section examines in more detail the SNC program's approach as it relates to customary land.

What is the SNC's approach to customary land?

This research shows that the SNC's process does not comply with Law 13/2017 because it fails to have any consistent process regarding customary land, community property or community protection zones (CPZ). This section demonstrates there is no clear system for registration of community property, the information provided to the community is not yet clear and, for these reasons, there has been very little registration of customary land.

The SNC has no system for the registration of land in customary land areas

The SNC in Covalima informed the research team that they have no consistent registration process for customary land. They explained that in some cases people are not able to register the land, in some cases people put the name of their *uma lisan* (customary group) and the name of just one person as their representative, and in other cases one person may submit a claim as an individual if the community so authorises. When Rede ba Rai analysed the maps on public display they showed that of 10,652 claims there were only six cases (0.06%)⁵⁵ that were registered under the category of *rai adat* or *rai lisan*.⁵⁶

When examining the SNC's land registration process, it soon becomes apparent why people have not submitted claims for customary land as part of a community. In Covalima, the research team examined many examples that showed the SNC's process for surveying customary land is very weak and creates considerable confusion. Several examples are in the following box.

Confusion regarding customary land in Covalima



In Suai Loro in several locations the community claimed their *uma lisan* as land owned by an individual: for example, two *uma lisan* in Aldeia Sukabilaran and two **uma lisan** in Aldeia Mane Ikun. However, there were other *uma lisan* that the SNC did not survey. During the women's discussion group in Aldeia Mane Ikun, there was an argument because there was no agreement as to whether people had a right to survey the land of the smaller **uma lisan** or not. The **lia-na'in** (traditional keeper of history and customs) for Suai Loro stated that there were several land parcels in Aldeia Sukabilaran that could not be surveyed because there was no one with the right to represent them. The **lia-na'in** for Tashilin said people were not allowed to survey **rai lulik** and people could only survey the fields and rice-paddies which belonged to the **rai lisan**. The same **lia-na'in** also said he had had no prior notice of the SNC team's visit or the community meeting, and they did not contact him.

55. Two cases in Liquiça and four cases in Lautem

56. This does not include claims from individuals putting their names forward as the representatives of customary land; such cases cannot be distinguished on the public display maps because they appear in the same category as claims from private individuals.

The SNC's land registration process, the mechanisms involved and forms are neither appropriate to the customary land context nor do they conform with Law 13/2017, which states that there is a land right known as 'community property'. The 'Landowner Claim' form does not provide an option to indicate that land is being registered as customary land or as community property (the form published in Ministerial Diploma 45/2016, can be seen in Figure 14 below).

Jornal da República

ANEXO IV

MINISTÉRIO DA JUSTIÇA

SECRETARIA DE ESTADO DAS TERRAS E PROPRIEDADES

DIRECÇÃO NACIONAL DE TERRAS, PROPRIEDADES E SERVIÇOS CADASTRAIS

LASELU

ESTE DOCUMENTO É PARA USO EXCLUSIVE DO SNC
DOKUMENTO IDA NE'E SNC NIAN

DECLARAÇÃO DO PROPRIETÁRIO / DEKLARASAUN HUSI NAIN BA RAI

NUIP: | | | | | | | | | | | | | | | | | | | | | |

Eu abaixo assinado / Hau nebe asina iha karaik:

Nome / Naran : _____

Data Nascimento / Loron Moris : _____

Profissão / Profisaun : _____

Nacionalidade / Nasionalidade : _____

Doc. de Identificação / Dok. de Identifikasaun : _____ Número / Numeru : _____

Declaro, sinceramente e de boa-fé, que possuo um terreno com uma área aproximada de \pm _____ m², obtido através de _____, desde o ano de _____ (extenso: _____), localizado na: _____

Hau deklara, ho laran luak no hanoin diak, katak hau iha rai ida ho medida \pm _____ m², hetan husi _____, desde tinan _____ (extensu: _____), lokaliza iha: _____

Aldeia / Aldeia : _____ Suco / Suku : _____

Posto Administrativo / Postu Administrativu : _____ Município / Munisípiu : _____

Com balizas confrontadas / Baliza hasoru:

Norte : _____ Este : _____

Oeste : _____ Sul : _____

Esta declaração foi efectuada para constituir um documento de justificação. Caso toda ou parte da informação prestada não corresponder à verdade, assumo todas as responsabilidades de acordo com as leis estabelecidas em Timor-Leste.

Deklarasaun ida halo atu konstitui dokumentu justifikasaun. Karik kasu tomak ou parte husi informasaun nebe iha la koresponde tuir lia los, hau prontu atu asumi responsabilidade tomak kona ba akordu ho lei sira nebe mak estabesele iha Timor-Leste.

_____, _____ 20____

O declarante / Deklarante,

Figure 14: Land Ownership Declaration Form, Ministerial Diploma 45/2016



Ministerial Diploma 46/2016 states that once the period for publicly displaying maps is over, the claimants receive registration certificates. These certificates have space for the names of six claimants and their photographs (see Figure 16 below). From what the researchers saw on the SNC team's data-entry tablets, 'rai adat' (adat is the Indonesian word for custom) is an option in the section for 'type of land', but it is not clear what the legal aspects of this option are, and at no point did the researchers hear this concept being explained to communities. Neither of the Ministerial Diplomas 45/2016 or 46/2016 has clarified this option.

ANEXO IV

Ministério da Justiça
Secretaria de Estado das Terras e Propriedades
Direção Nacional de Terras, Propriedades e Serviços Cadastrais

SNC Sistema Nacional de Cadastro

FOTOGRAFIAS DOS DECLARANTES

Nome Completo	Nome Completo	Nome Completo	Nome Completo	Nome Completo	Nome Completo
FOTOGRAFIA	FOTOGRAFIA	FOTOGRAFIA	FOTOGRAFIA	FOTOGRAFIA	FOTOGRAFIA

AVISO

- A informação do presente certificado constava da base de dados no dia ____/____/____.
- Se pretende comprar, arrendar ou realizar qualquer outro negócio relativo a este prédio deve obter informação junto da DNTPS (Direção Nacional Terras, Propriedades e Serviços Cadastrais) e seguir os procedimentos legalmente estabelecidos.
- O registo do prédio constitui presunção da veracidade dos factos registados, que podem ser impugnados a todo o tempo em Tribunal.
- O presente registo presunção a nacionalidade timorense do titular inscrito, conforme documento comparativo por ele apresentado.
- Informamos aqui certificado do nº ____ do tal hasi das dadas da laran ____/____/____.
- Klarik ita do'it hakerek sosa, elaga ka halo negosiu rekuk se'ebé relaksion ho prédio ido ne'e, ita ho'it presunção heko informasoun ho DNTPS (Direção Nacional Terras, Propriedades e Serviços Cadastrais) no mas tur procedimentos legal ne'ebé estabeles.
- Registe do prédio ido ne'e estabeles presunção ida kask fiktus ne'ebé registe ho ka ho'os, masé bele hetan impugnassoun/fiktura ho hasi Tribunal.
- Registe ida ne'e halo ana tamba hetan fur ba nacionalidade timorense ita hasi dokumentu se'ebé otugar hakerek ita hetan hatud/timorenson prova.

NÃO REALIZE QUALQUER NEGÓCIO JURÍDICO (VENDA, DOAÇÃO, HERANÇA) SEM SE INFORMAR JUNTO DA DNTPS DOS PROCEDIMENTOS LEGAIS OBRIGATORIOS.

LA BELI WALD NEGOSU JURIDIKU (FAAN, DOASALU, HERANSA) MOLOK HETAN INFORMASALU NO TUR PROSESU LEGAL OBRIGATORIO IMA DNTPS.

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Quarta-Feira, 14 de Setembro de 2016

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Figure 16: Certificate of Property Registration Format, Ministerial Diploma 46/2016

As the processes for registering land as a community or customary group are so unclear, many communities have chosen instead to submit their claims in the name of one individual. To understand the effects that this will have in the future, it is important to consider the legal aspects of the claims process. The person, or representative, whose name is put forward, by law becomes the owner of that land, not the community. When that person dies their legal heirs become the new landowners and, if there is no heir, the land goes to the state, not the community. If, at a future date, the representative wants to sell that land, they can because the law only prohibits the sale of community property. The land in this case is registered as the privately owned land of the individual in question, not as community property. The legal protection for customary land provided in Law 13/2017 has not been implemented because the SNC has not enabled the registration of customary land.

The SNC has not explained these issues to the community

Of even more concern is the fact that SNC has not informed communities about the legal consequences of their choices to register community land as individual or community property. Although the community spoke of their concerns about customary land or land that belongs to the community, the majority do not know that Law 13/2017 provides some protections. The research team observed that there is a lack of information and much confusion about this issue, see the following box as one example.

Rai lisan Talobu

In Suku Suai Loro, Covalima there is a small village named Talutu. The village has a central **uma lisan** (**Uma Lisan** Talobu) and ten smaller **uma lisan**, which form part of the larger **uma lisan** Talobu. Several older women explained that when the SNC team surveyed the land the community decided that all of the land should be registered as **rai lisan** and that the elderly woman who attends the **uma lisan** Talobu was the representative for that land. While the land includes many houses the plan was to register it all under the name of one **uma lisan**. However, when the maps went on display, the list of claimants presented only the names of individuals – there were no names placed in the category of community land or **rai lisan**. The research team contacted the SNC coordinator to seek clarification about this case, but he did not want to provide any information. The research team observed that on the map the land for Talobu was shaded in the colour red (meaning it was disputed land). However, when the team reviewed the list of claimants they were unable to see the opposing parties in the dispute. The SNC team did not publish the list of all claimants on the noticeboard outside but put lists up inside the office, and did not allow the researchers to photograph this list. When the research team spoke to the elderly woman who was identified on the list as the landowner, she said she had not yet seen the public display maps and, as she understood it, there was no dispute regarding that land.

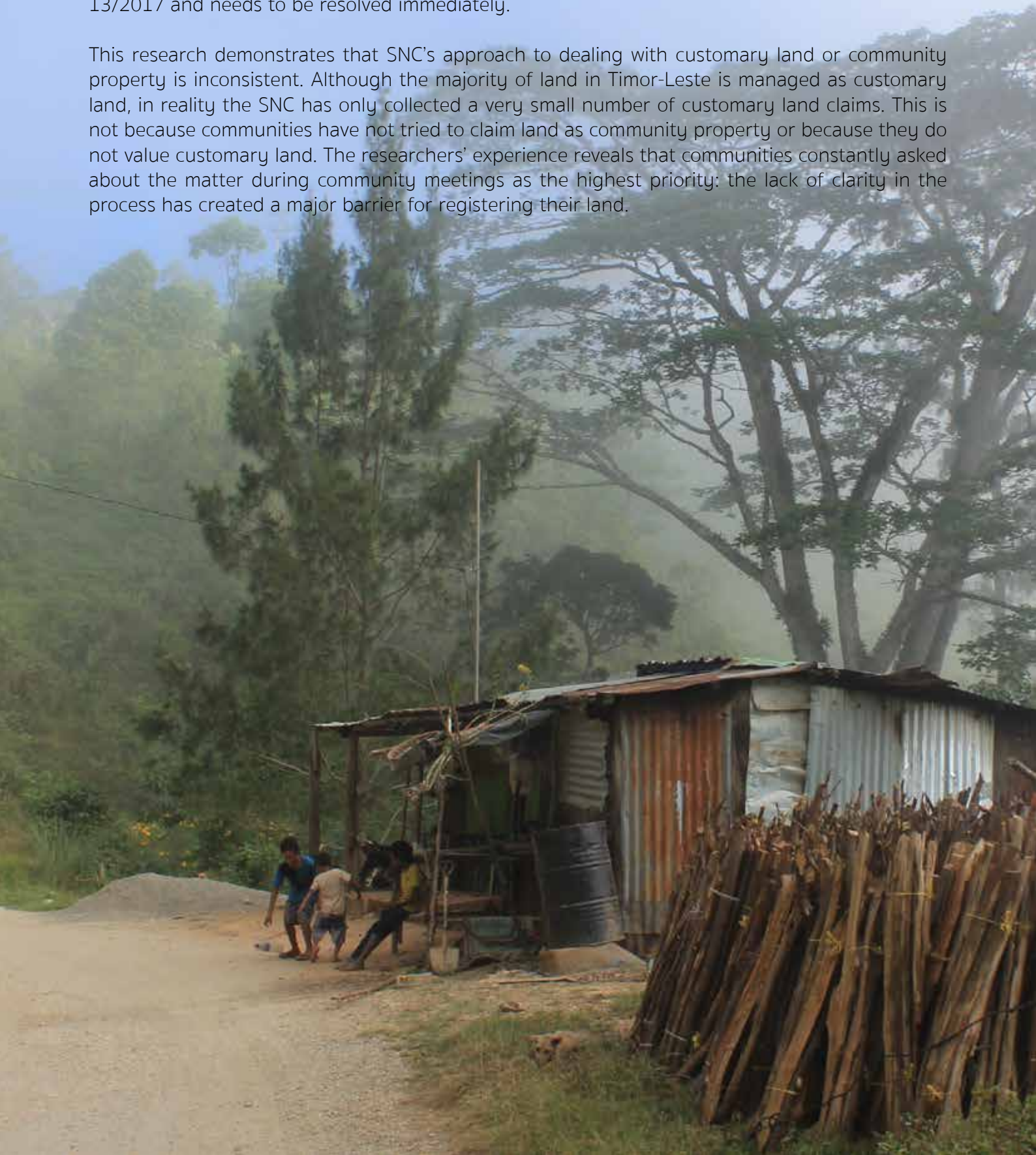
Communities risk losing their land to the state

The weaknesses outlined above threaten customary land over both the long and short terms. In the long term the concept of customary land may be lost because people have privatised the land, so it becomes private property. In the short term, there are concerns that land may be lost to the state. For example, if one part of a customary land area is surveyed and registered but another part is not, then the unsurveyed portion is considered “vacant land”. Vacant land without an owner passes to the state (article 8, Law 13/2017). So, unsurveyed customary land may all end up as state property. This issue has the potential to provoke huge conflict in the future, particularly because communities do not understand the legal ramifications.

Conclusions regarding the registration of customary land

This research shows that SNC's work is in complete contradiction to Law 13/2017 on issues relating to rai lisan and community property. Although Law 13/2017 and the Civil Code recognise the concept of community property as a type of landownership, the SNC has not explained the concept to communities, and land registration continues without the means for communities to register land as community property or as customary land. This is a major violation of the principles of Law 13/2017 and needs to be resolved immediately.

This research demonstrates that SNC's approach to dealing with customary land or community property is inconsistent. Although the majority of land in Timor-Leste is managed as customary land, in reality the SNC has only collected a very small number of customary land claims. This is not because communities have not tried to claim land as community property or because they do not value customary land. The researchers' experience reveals that communities constantly asked about the matter during community meetings as the highest priority: the lack of clarity in the process has created a major barrier for registering their land.





Women's Rights to Land and Access to Land Registration

Women's land rights are often weaker than those of men. This inequality occurs for a range of complicated reasons and has a negative impact on women's lives. It is in violation of the RDTL Constitution, which promotes equality between men and women.

The registration process has a huge potential to weaken women's rights to land. For example, when only one name is recorded during land registration, most often it is the man's name. This weakens a woman's right to own land and to be involved in decision making. It is not easy for people to sell land but, in the future, once title for landownership has been issued, it will be much easier. If only the husband's name is on the title, according to the law he can sell the land without consulting his wife.

To prevent land registration from further weakening women's rights to land, a number of measures must be implemented:

- **Land registration must involve specialists in women's rights.** A specialist in women's rights can identify points that impede women's access to land and help to ensure that land registration protects women's rights.
- **Public information processes must consider the needs of women.** Dissemination materials on land registration must include a discussion of women's rights to land. Specific measures must also be taken to ensure that women are able to access information.
- **There must be monitoring and evaluation of women's participation.** To ensure that the program appropriately responds to women's needs, a system of monitoring women's participation in all aspects of the process is necessary. Evaluation identifies when women's engagement falls, so measures can be taken to improve it.
- **A range of mechanisms are needed to encourage women to become land claimants.** Land registration must provide a range of means and incentives for women to be claimants in the process, as individuals in their own right, and jointly with their siblings or their husband as a married couple.



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The constitution states that women and men have equal rights and duties in all areas of life (article 17). This principle also applies to land rights and requires the government to implement measures to ensure gender equality in access to land. Law 13/2017 establishes the same principle, stated in article 4, as follows:

Ownership rights to real estate will ensure the same conditions for men and women, and any form of discrimination relating to the right of ownership, access, management, administration, enjoyment, transfer or sale of land and fixed assets is prohibited.

Law 13/2017 (article 5) also mentions the requirement to respect and provide protection to vulnerable groups, which includes women:

Entities responsible for the application of this law have an obligation to respect the special needs of vulnerable groups and, to this effect, must take all necessary measures to guarantee adequate information, consultation and participation for these groups, as a means to promote the equality of rights and non-discrimination.

These principles make clear the legal obligation on SNC to consider the issue of gender, and guarantee that women receive information, are consulted, and provide pathways so they can participate in the registration process.

Law 13/2017 also includes provisions that specifically determine women's participation in land registration. Article 32 no 7 states:

Incentives must provide for joint ownership claims from husbands and wives.

This means the process must promote and encourage joint claims from married couples. It does not mean that it is obligatory for husbands and wives to make claims together but they must be given opportunities and incentives to make joint declarations.



What work has the SNC done to promote and protect women's land rights?

As described in previous sections, the SNC's public information dissemination is very problematic, particularly so when examining it in relation to women's access to land.

The SNC'S public information materials contain no reference to women's land rights and do not present the possibility for a woman to submit a claim as part of a married couple.⁵⁷ SNC's public information mechanism does not involve any special measures to guarantee that adequate information is available for vulnerable groups such as women. The researchers were unable to find any specific initiatives to protect women's rights to land, evidence that the SNC program is in contradiction with article 4 and article 5 of Law 13/2017.

The researchers monitoring community meetings noted that the majority of participants were men and the few women who did attend did not speak much. The research team conducted discussion groups in Covalima with women in Suku Suai Loro in Aldeia Sukabilaran and Aldeia Mane Ikun, and in Aldeia Kulu-Oan, Suku Tashilin. During these discussions it was evident that many women do not fully understand the land registration process. They did not go to verify the details in the maps on public display because, as a result of the SNC's inadequate information sharing, they did not recognise the importance of taking part in the verification process or did not have the means to get there. Women in the focus group discussions also revealed they felt uncomfortable when the team surveying their land was all male. The SNC survey team in Covalima included one woman, however in some places it was a man on his own doing the work and this created limitations for women to submit claims.

"Like the meeting in Tashilin - we women didn't go there. Only the men went. We women didn't hear anything... The mothers were at home with their children ...The head of the suku just gave us a notice.."

Participant, women's FGD in Aldeia Kulu-Oan

The limitations of the SNC process create a burden for all people, but the effects of these issues are more pronounced for women. For example, if men find it difficult and time-consuming to obtain signatures from local authorities, or to attend publication meetings that are far from their homes, this is even more of a burden on women as they are often involved in farming activities, looking after children and preparing meals for the family and so often they will not attend meetings outside the home.

The researchers observed that the SNC does not comply with the legal obligation to provide incentives for married couples to submit claims. The analysis of 10,652 claims in nine municipalities (see Table 5 below) shows the impact of this failure. The majority of the claims have been made by men alone (64%) and women alone represent only 22% of claims. There is no means to analyse joint claims from married couples because the SNC has not published the data. However, the researchers were able to analyse the declarations made by individual men and individual women, as a result, we know that the number of joint claims from married couples is under 2%.

57. For example, see Figure 2, the pamphlet, above.

This is a huge difference between the SNC data and the INR project's statistics. Table 5 below presents a comparison between claims from married couples during the INR project and during the SNC program. This comparison shows the SNC program has not encouraged married couples to submit joint claims.

Municipality	Total INR Declarations	Joint claims from married couples during the INR project ⁵⁸		SNC Total Claims analyzed by this report	Joint claims made by one man and one woman during the SNC program (based on our analysis of 10,562 claims)	
	Total	Total	%	Total	Feto-Mane	%
Aileu	401	76	18.95%	1,031	56	5.4%
Ainaro	1133	260	22.95%	935	25	2.7%
Baucau	2081	436	20.95%	1,061	4	0.4%
Ermera	63	19	30.16%	1,098	63	5.7%
Lautem	2240	413	18.44%	1,983	4	0.2%
Liquica	1863	106	5.69%	1,588	6	0.4%
Manatuto	1448	108	7.46%	872	11	1.3%
RAEOA	4209	350	8.32%	1,277	4	0.3%
Total	14311	1,876	13.11%	10652.00	173	1.6%

Table 5: Data Comparison between the INR Project and SNC Program for Couples' Claims

58. Data from the INR project taken from the table published in the Ita Nia Lian brochure Edition 19, 2011, page 1. The total number of joint claims from married couples during the INR project was 11.71%, though in this table we only show the results of the nine municipalities where we were able to undertake monitoring.

Conclusions regarding women's land rights and the SNC registration process

This research demonstrates the failure of SNC's public information processes, the failure of the SNC land registration to consider women's landownership rights, and SNC's failure to provide incentives for joint married-couple claims. These failures are serious violations of the legal obligations set out in Law 13/2017 (articles 4, 5 and 32). The results of this weak process are apparent in the registration results because there is a reduction in the number of claims from women as individuals and claims from married couples.





Participation by vulnerable groups in Land Registration

As mentioned earlier Law 13/2017 provides special protection for vulnerable groups (article 5):

Entities responsible for the application of this law have an obligation to respect the special needs of vulnerable groups and, to this effect, must take all necessary measures to guarantee adequate information, consultation and participation from these groups, as a means to promote the equality of rights and non-discrimination.

Therefore, the SNC has a legal duty to look after vulnerable groups and to ensure they participate in the land registration process. Vulnerable groups include all people at risk of losing their rights and people who have specific limitations in their access to the process. For example, elderly women and men, women, people with disabilities and children have special needs, which must be considered in the registration process.

What protections has the SNC provided for vulnerable groups?

Our research identifies that the SNC's public information processes do not consider vulnerable groups and poorly informs them about the land registration process. For example, older women and men, and people with disabilities were unable to travel to community meetings because the SNC gave no transport assistance and did not share any information with them when they came to conduct land surveys in their areas. The SNC did not prevent people with mobility impairments from participating in land registration, but neither did the SNC facilitate their involvement.

"If (people) feel they can no longer walk, they hand it on to their grandchildren. Put it in the name of the grandchild..."

(The SNC team) came without explaining to them.

Participant, women's FCD, Aldeia Mane Ikun

When researchers arranged a discussion group for people with disabilities one participant said they sometimes experience discrimination around land surveying because they may not have the ability to measure the dimensions of their land without assistance. In other situations, people with difficulty walking or who were unable to enter the Suku office could not attend public meetings. They also complained that the SNC video did not represent people with disabilities participating in land registration and provided no examples of how they would be assisted. The SNC staff in Covalima told the research team that people with vision problems are unable to verify their land claims because they have difficulty seeing the public maps, however, the SNC did not offer any alternative means to ensure their participation.

During the INR project the teams went from house to house to disseminate information. This mechanism is the most effective way to ensure vulnerable groups have access to information.

The SNC in Covalima said children also have the right to have land surveyed and to put their names on land claims, but they must be represented by a person of at least 18 years of age. During the female group discussions in Aldeia Kulu-Oan, Suku Tashilin, several women explained that they share their land with their children. However, they said if their children are 18 years and older, they can become landowners but children under the age of 18 do not have the right to have land surveyed or to hold land. This shows there has also been discrimination and limitations for children.

Conclusions regarding vulnerable groups' participation

The research shows there is no consideration of vulnerable groups' specific needs in the SNC's land registration process. This failure is in violation of Law 13/2017.





CONCLUSION

Land issues in Timor-Leste pose major challenges to citizens' rights and require careful, inclusive and effective management. This research establishes that there are many defects in the SNC's system of land registration and that it has violated several aspects of the law.

The report concludes that:

1. The SNC's public information dissemination is very weak and violates Law 13/2017 in various ways. Many communities do not understand land registration or the legal effects of the process.
2. The SNC fails to comply with the legal requirements for public notifications because sometimes information was published after land surveys had started.
3. The existing legal framework and the SNC implementation failures have prevented people from making claims to land and are in violation of the principle of freedom to submit claims.
4. The SNC has promoted a culture of secrecy, lack of transparency and shows no commitment to learning or improving the way it conducts its activities.
5. There are numerous indications that the quality of the land registration process has been compromised and that the SNC's data does not reflect the reality of landownership in Timor-Leste.
6. The SNC has failed to comply with Law 13/2017 which recognises the right to community property. This poses a major risk to stability and security in communities, and could precipitate their loss of land, diminish their culture, and give rise to future conflict.
7. The SNC fails to promote or protect women's rights to land and their access to land registration.
8. The SNC has not considered or facilitated vulnerable peoples' access to the land registration process.

These results demonstrate that the two companies implementing the SNC program lack sufficient experience in land registration processes and shows that the RDTL government, particularly the Ministry of Justice, has failed to monitor and conduct any evaluation of this program.

The SNC blocked researchers' work throughout the period of their 2018 evaluation. The SNC's apparent culture of secrecy limited the research team's work and raises the question: why is the SNC hiding its results? The research team is concerned that further detailed research could potentially uncover even more serious problems.



KEY RECOMMENDATIONS

This report demonstrates that there are many deficiencies in the current land registration process in Timor-Leste. It also shows the SNC program is in violation of the law. Based on the research outlined above Rede ba Rai has four principal recommendations:

1. Conduct an independent and open evaluation of the entire SNC process in order to establish a sustainable land registration process that is based on the Timor-Leste context, prior to the end of the GMN-H and ARM-Apprise joint venture. The evaluation must be open and independent and must investigate: people's access to the land registration process; its impact on conflict levels across the country; its impacts on vulnerable people; the level of transparency in the process; the impact on customary land; and the sustainability of the process going forwards.
2. Temporarily halt land registration in order to strengthen the legal framework to guarantee that the process is independent, transparent, promotes equality and is accessible to all people, and provides strong protection for customary land. As a minimum the legal foundation must:
 - Outline the minimum requirements for public information dissemination including mechanisms to ensure that information is provided to vulnerable groups.
 - Clarify which information must be provided to the public.
 - Explain the procedures relating to and means of informing the public about legal notification and the publication of maps.
 - Ensure that all people have the right to freely submit claims and end the requirements that place a burden on or serve as barriers for people to submit claims.
 - Ensure there is open access to databases.
 - Clarify the mechanisms for how the SNC and DNTOSC conduct their activities and introduce obligations for the preparation and publication of their internal procedures, guidelines for surveying land, mediation procedures, quarterly and annual reporting, and general statistics about the progress of land surveys and registrations.
 - Include rules enforcing transparency and good governance.
3. Land registration should not recommence until strong processes for protecting rai lisan and community property have been put in place.
4. Institutions tasked with defending the rights of citizens, such as the CAC, PDHJ, SEI must conduct separate investigations into land surveying and registration for communities.

Rede ba Rai believes these four recommendations are extremely important to strengthen the rights of communities and to guarantee land registration is accurate, credible, sustainable, transparent and inclusive. While conducting the research we also received many suggestions and recommendations about how to improve the land registration process. The complete set of recommendations is in Annex 1. We strongly encourage the Ministry of Justice, the SNC, and the DNTOSC to read and implement these recommendations for improving land registration.



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2013		
1	4/12/2013	Government Resolution No: 28/2013 Approving the contract for the creation of the National Cadastre Jornal da República, Serie 1, No. 43.
2	11/12/2013	Timor-Leste Procurement Portal: Basic information regarding the date of the Ministry of Justice's contract with the companies GMN-H and ARM-APPRIZE to conduct land registration
2014		
3	30/9/2014	Aviso no: 30/SETP/XI /2014 and Aviso No: 31/SETP/XI/2014 about the land registration process in Covalima, Suai: Debos, Suai Loro, Camenaca, Labari and Oecusse, PanteMacassar: Costa, Lalisuc, Cunha.
2016		
4	27/8/2016	"Sistema Kadastrais, Fasilita Povu atu Hetan Sertifikadu ba Rai" Timor Post. Media Article
5	14/9/2016	Diploma Ministerial No. 45/2016: Sobre O Levantamento Cadastral no Diploma Ministerial No. 46/2016: Sobre O Cadastro Nacional de Propriedades Jornal de Republica, Serie 1, No. 36. These two diplomas explain the SNC process.
6	15/9/2016	"Rai privadu la iha problema, SETP Sei Sertifika". Ligia/Artur. Independente. Media Article
7	17/9/2016	"KM Analiza Progresu Levantamentu Kadastrál" Timor Post. Media Article
8	31/10/2016	"SETP Taka Formasaun Mapamentu" Timor Post. Media Article
9	2/12/2016	"SETP Hala'o Senseblizasaun iha Umaberloik". Independente. Media Article

LAND REGISTRATION IN TIMOR-LESTE

2017		
10	28/4/2017	"SETP Sensibiliza rai ba comunidade iha Balibo". Independente. Media Article
11	4/5/2017	"Sertifikadu Rai, Alkatiri: Labele Uza Hodi Garantia ba Kreditu". STL. Media Article
12	9/5/2017	"Maske Problema Rai Seidauk Rezolve Maibé Emprezaia Atha Sagrañ ba-rani Investe" Rosa Garcia. Timor Post. Media Article
13	20/9/2017	"Terras Propriedade Hamosu Duvida ba Komunitade". Timor Post. Media Article
14	4/12/2017	"Ekipa DNPKK Fasilita Mediasaun Komunitade Hadau Malu Rai". Independente. Media Article

2018		
15	7/2/2018	"Prosesu Levantamentu Dadus ba Rai, Igreja nia Rai privadu barak liu". Christina Ximenes. Independente. Media Article
16	10/2/2018	"Vigararia Dili Apresenta Dokumentu ba SNC" Timor Post. Media Article
17	13/2/2018	"Komunitade iha direitu lori DRTP ba Tribunal". Abilio Elo Nini. STL. Media Article
18	20/3/2018	"Governo timorense pede auditorias a petrolífera e sistema de cadastro timorenses". Timor Agora. Bele hetan iha: https://timoragora.blogspot.de Media Article
19	2/10/2018	"Disputas de terreno representam cerca de 5.55% dos registos cadastrais em Timor-Leste." Media Article

SNC Materials			
Video	National Land Register System (general)	1:15 sec	
Video	SNC – Socialisation (1)	30 sec	
Video	SNC – Socialisation (2)	33 sec	
Video	SNC – Socialisation (3)	33 sec	
Video	SNC – Socialisation (4)	33 sec	
	Pamphlet		Found in Liquiça
	Notification (document)		Found in Liquiça



ANNEX I:

COMPLETE RECOMMENDATIONS

Based on the research, Rede ba Rai has compiled the following recommendations:

RECOMMENDATIONS TO THE MINISTRY OF JUSTICE:

1. Amend the legal framework to guarantee that land registration is sustainable, transparent, inclusive, and appropriate for the Timor-Leste context

- a) The legal basis for land registration needs to be amended to guarantee the principles established in Law 13/2017. Ministerial Diplomas 45/2016 and 46/2016 must be replaced.
- b) As a minimum the legal basis must:
 - Clarify what information is required and how it is to be disseminated to the public with reference to the following areas:
 - Conducting community meetings
 - Distributing written information to each household
 - Sharing electronic information via the internet
 - Publishing detailed information in the Official RDTL Gazette (and the local media) about the land registration process as required by law
 - Require the DNTPSC/SNC to fulfil its legal obligations to notify the public in the Official RDTL Gazette (and via the internet) before opening a new collection area and before displaying maps.
 - Enforce the requirement for the DNTPSC/SNC to use specific information dissemination mechanisms for vulnerable groups (as per Law 13/2017 and other legislation), so as to ensure that they have access to land registration.
 - Define the process for making changes to claims and the duties for updating claims when land changes owners.
- c) Seek the appropriate mechanisms to ensure and provide full protection for customary land and conduct a consultation to create a draft law for community land and community protections zones as provided in Law 13/2017.
- d) While there is no existing law for community land and community protection zones there is a need to uphold the principle that all unsurveyed land in rural areas should be considered customary land.

2. Ensure transparency in the land registration process by:

- a) Publishing the contract between the government and the SNC companies
- b) Disseminating to the public the quarterly and annual reports, and all statistics relating to land registration.
- c) Conducting an independent audit of the land registration process by an entity with extensive knowledge of and experience in land issues.
- d) Ensure that the statistical results from land registration are published every month. Statistical information needs to provide details of the types of claims (male, female, married couple, group, legal entity, state), the number and type of disputes, and the dimensions of the land parcels surveyed.

RECOMMENDATIONS TO THE DNTPSC AND SNC

3. Improve the public information dissemination and legal notification processes in reference to the following:

- a) Clarify and correct the information which needs to be shared with the public:
 - End the erroneous messaging that people are not able to claim land that is also being claimed by the state.
 - Stop stating that submitting incorrect claims is a crime.
 - Emphasise that all persons have the right to freely submit claims and to lodge complaints.
 - Clarify the entire process of land registration from beginning to end.
 - Explain how the land registration process will impact on people's rights to land.
 - Detail clearly the various claim options including for individuals, married couples, groups, customary land, etc.
 - Ensure that vulnerable people, including people with disabilities, know their rights and that assistance is available for them from the SNC team.
 - Promote women's rights to land and encourage married couples to make joint claims.
 - Outline the mediation process and how communities can access legal assistance: for example from NGOs, the police, lawyers, social and other services.
- b) Improve the ways in which information is disseminated, including:
 - Pamphlets, presentations and posters with clear and simple messages, which are also relevant to people with disabilities
 - Appropriate information is available via the internet, radio, television, Facebook and websites
 - Socialisation meetings, repeated at a number of different times during the day, held at the aldeia level, as many people are unable to participate at the suku level because of the distance involved or the time of day
 - Socialisation meetings must use accessible terms and language so all members of the community can understand.
 - Separate meetings must be available for women's groups, for people with disabilities, and for youth.
- c). Field teams must have the skills and commitment to disseminate sufficient information to people.
- d) Establish a mechanism to monitor public information dissemination and publish the results of the monitoring.
- e) The SNC and DNTPSC must ensure that published information is not contradictory.
- f) The SNC must comply with the criteria for legal notifications set forth in Law 13/2017 and other Ministerial Diplomas. Land surveys and the public display of maps must not commence if notifications have not first been published in the Official RDTL Gazette.
- g) The SNC must post the results from the public display of maps in the Official RDTL Gazette, share them on the internet, and post them at the municipal and suku offices, and in Dili.

4. Improve procedures for ensuring that all persons have access to the land registration process in reference to the following:

- a) There must be clear lines of coordination between the SNC and the Public Defender's Office, the PNTL VPU, Community Police (OPS), prosecutors, suku councils, including lia-na'in, aldeia and suku chiefs, youth and women's representatives, etc..
- b) People whose land is subject to a dispute must also have the right to have their land surveyed.
- c) Maps need to be published for a period of 90 days at the suco office, the DNTPSC building at the municipal level, in Dili, and via the internet.
- d) It must be clearly stated that if there is no definite owner, the SNC must return to survey the land.
- e) The numbers on the display maps must be larger or easier to read (Community Police Officer, Suai Loro).
- f) The SNC must not survey land, houses, fields and rice paddies at the same time. Land and residences must be surveyed first, and then the fields and rice-paddies (Women's FGD Kulu-Oan).
- g) Registration in areas considered to be in the public domain must also take place. Law 13/2017 states that people living on land within the public domain also have the right to make claims, which the Land Commission and the courts will decide upon.
- h) Provide specific guarantees for women's access to the land registration process, which include:
 - SNC teams must have a gender specialist.
 - Prepare and implement a strategy regarding gender issues in land registration (to be made public), which also addresses the public information dissemination.
 - Field teams must include at least one woman and should not be split up.
 - Provide specific information regarding the option to register land as a married couple.
- i) There is a need for policies, procedures and training for SNC staff to consider how to enable people with disabilities to understand their rights and have their land surveyed.
 - There is a need for policies, procedures and training for SNC staff to consider how to enable people with disabilities to understand their rights and have their land surveyed.
 - SNC staff needs to assist in the completion of forms to ensure that people with low literacy skills have entered the correct data (Women's FGD, Mane Ikun).
 - The SNC team must request the head of the suco to provide a list of people with disabilities and visit their homes prior to beginning land surveys to explain the process (FGD for people with disabilities).
 - Prepare and implement a strategy for people with disabilities in the registration process (to be made public), which addresses the issue of public information dissemination.
- j) Guarantee special protection for orphans under the age of 18 years to participate in the land registration process.

5. Land registration must be of high quality and transparent, as follows:

- a) Publish monthly statistical results regarding land registration, providing details of claim types (male, female, married couples, groups, legal entities, the state), the numbers and types of disputes, and the dimensions of the land surveyed.
- b) Male SNC staff on their own must not survey land and teams must have a minimum of one man and one woman. A single SNC staff member must not survey land on their own.

- c) Prepare and implement an effective anti-corruption strategy.
- d) SNC staff working in the field must have clear identification, including an ID card, hat, uniform and a complete set of equipment, etc.
- e) Record information about which teams (and members) surveyed each parcel of land to make it easy to analyse the quality of work and to be accountable for any public complaint.
- f) An independent team needs to monitor the work of the SNC teams in the field, at a pre-determined time.
- g) The SNC teams must provide copies of forms to claimants together with information that has been collected about their land, such as its dimensions and other details.
- h) Conduct a detailed field analysis regarding the steps in the registration process that people find difficult: for example, viewing maps on tablets, not going to see the boundaries of a land parcel. Implement a set of strategies to overcome these difficulties.
- i) Improve the format and details of the list of claimants so it is easier for people to verify their claims (and any disputes relating to them) during the period for the public display of maps.
- j) Involve the DNTPSC staff in all aspects of the SNC's work, and ensure they have sufficient understanding of and capacity to conduct all the activities before the end of the SNP program.
- k) The SNC teams should not reduce the amount of time for and information they provide to claimants in order to survey land more quickly to achieve targets, because this lowers the quality of results.

6. Improve the mechanisms for reducing the potential for conflict as follows:

- a) Do not prevent people from submitting claims because their land is under dispute. The SNC must assist both parties to resolve their conflict and guarantee security for all persons who submit a claim, particularly people who are facing disputes. Where it is not possible to resolve disagreements, ensure that both parties understand they have a right to submit a claim. *asegura katak parte rua hotu komprende katak sira iha direitu atu halo deklarasaun.*
- b) The SNC must not prevent people living on state-owned land (or land claimed by the state) from submitting a claim or from having their land surveyed.
- c) Conduct a conflict risk assessment in each collection area prior to commencing land registration and work with local entities to prevent or manage conflict.
- d) Public information dissemination must include information about conflicts, disputes and dispute resolution mechanisms.

7. Stop all registration of customary land than is not in compliance with Law 13/2017 and consider the following points:

- a) Land registration must not occur in areas of customary land before the approval of a law for community land and community protections zones.
- a) Land registration should not privatise customary land. Therefore, prior to visiting a new collection area, the SNC must consult with communities to identify the types of landownership. If a collection area includes any customary land, land registration should not begin while there is no law for community land and community protections zones.

RECOMMENDATIONS TO CIVIL SOCIETY

8. Create strong lines of coordination and relationships between the DNTPSC, MOJ, SNC and other institutions that work on land registration.
9. Conduct an analysis of the means to protect customary lands.
10. Ensure that land registration is accountable through a system of lodging complaints to the relevant authorities where the process is in violation of the laws.
11. Organisations that work on land issues and with vulnerable groups must coordinate to ensure their partners have access to the land registration process.
12. Civil society needs to develop a strategy for gender inclusivity to ensure there is equal participation from women and men in the land registration process.
13. Civil society must continue its work of monitoring land registration.

RECOMMENDATIONS TO MSSI, PDHJ, AND SEII

14. Conduct a detailed investigation and monitor the impacts of land registration on vulnerable people. Provide clear recommendations to the Ministry of Justice on how to mitigate or manage any negative impacts on vulnerable groups.
15. Ensure there is adequate protection and assistance to vulnerable groups (particularly women, people with disabilities, and orphaned children) in the land registration process.

RECOMMENDATIONS TO CAC

16. Conduct an investigation into the procedure that tendered and awarded contracts to the companies implementing the SNC program, and examine the process of land surveying and registration as being presently conducted in Timor-Leste.

RECOMMENDATIONS TO THE NATIONAL PARLIAMENT

17. Ensure that the government conducts an external evaluation of the SNC program before approving any further payments to the SNC program and the implementing companies.
18. Accelerate and prioritise the process of improving the legal framework for the land registration process.

ANNEX 2: LEGAL NOTIFICATIONS IN THE OFFICIAL RDTL GAZETTE

Before starting the land surveys the SNC must publish legal notifications in the Official RDTL Gazette to announce the start date. The following table provides some examples of publications in the Gazette made after field surveys had commenced.

No	Publication in the Gazette	Survey start date	Municipality
1	Published in the Gazette: Friday, 10 April 2015	6 April 2015	Aileu
2	Published in the Gazette: Friday, 10 April 2015	10 April 2015	Manatuto
3	Published in the Gazette: Friday, 15 May 2015	11 May 2015	Oecusse
4	Published in the Gazette: Friday, 15 May 2015	13 May 2015	Viqueque
5	Published in the Gazette: Friday, 14 August 2015	10 August 2015	Baucau
6	Published in the Gazette: Friday, 28 August 2015	24 August 2015	Lautém
7	Published in the Gazette: Friday, 4 September 2015	31 August 2015	Dili
8	Published in the Gazette: Friday, 4 September 2015	31 August 2015	Liquiça
9	Published in the Gazette: Friday, 2 October 2015	28 September 2015	Ainaro
10	Published in the Gazette: Friday, 2 October 2015	28 September 2015	Viqueque
11	Published in the Gazette: Friday, 2 October 2015	28 September 2015	Covalima
12	Published in the Gazette: Friday, 20 April 2018	3 April 2018	Lautem
13	Published in the Gazette: Friday, 8 June 2018	4 June 2018	Liquiça
14	Published in the Gazette: Friday, 18 May 2018	30 April 2018	Liquiça
15	Published in the Gazette: Friday, 4 May 2018	26 March 2018	Bobonaro
16	Published in the Gazette: Friday, 8 June 2018	16 May 2018	Lautem
17	Published in the Gazette: Friday, 8 April 2016	4 April 2016	Manatuto
18	Published in the Gazette: Friday, 16 September 2016	13 September 2016	Lautem
19	Published in the Gazette: Friday, 20 January 2017	16 January 2017	Baucau
20	Published in the Gazette: Wednesday, 6 December 2017	4 December 2017	Manufahi
21	Published in the Gazette: Wednesday, 2 March 2018	26 February 2018	Manatuto
22	Published in the Gazette: Friday, 2 March 2018	26 February 2018	Viqueque
23	Published in the Gazette: Friday, 31 August 2018	17 August 2018	Covalima

Once the land surveys and submission of claims are completed, the SNC must publish notifications in the Gazette to announce the start and end dates for displaying maps and lists of claimants. The following table provides the examples that were not in compliance with the legal requirements.

No	Publication in the Gazette	Public Display Period at the Municipality	Period for public display of maps	Notes
1	Published in the Gazette: Friday, 7 November 2014	05/11/2014 11/12/2014 Liquiça	30 days	Public display of maps in the field started prior to notification in the Gazette

The following table identifies several cases where displays of maps were closed to the public in the field, though the SNC had not yet published notifications in the Gazette.

No	Municipality Collection Area, Administrative Post and Suku	Public Display Period	Notes
1	Municipality of Oé-Cusse Collection Areas: (120014, 120015, 120016, 120017, 120018, 120019, 120020, 120021, 120022 and 120023) Administrative Post: Pante Macassar Suku: Cunha	10/10/2018 07/01/2019	Published in the Gazette on 31/10/2018
2	Municipality of Aileu Collection Areas: (010001, 010002, 010004, 010005, 010006, 010007, 010008, 010009, 010010 and 010018) Administrative Post: Aileu Vila Suku: Aisirimou, Sabaria and Fahiria	04/10/2018 01/01/2019	Published in the Gazette on 31/10/2018
3	Municipality of Ainaro Collection Areas: (020016, 020017, 020019 and 020020) Administrative Post: Hatu Bulico Suku: Mulo	24/10/2018 21/01/2019	Published in the Gazette on 31/10/2018



4	<p>Municipality of Ermera</p> <p>Collection Areas: (070025, 070026, 070027, 070028, 070036, 070037, 070111, 070112 and 070113)</p> <p>Administrative Post: Railaco</p> <p>Suku: Fatuquero</p>	<p>17/10/2018</p> <p>14/01/2019</p>	<p>Published in the Gazette on 31/10/2018</p>
5	<p>Municipality of Liquiça</p> <p>Collection Areas: (090030, 090031, 090032, 090033, 090034, 090036, 090049, 090050, 090051, 090052, 090053, 090054, 090055, 090056, 090057 and 090058)</p> <p>Administrative Post: Bazartete</p> <p>Suku: Lauhata</p>	<p>10/10/2018</p> <p>07/01/2019</p>	<p>Published in the Gazette on 31/10/2018</p>
6	<p>Municipality of Covalima</p> <p>Collection Areas: (050012, 050013, 050020, 050021, 050022, 050023, 050024, 050025, 050026 and 050027)</p> <p>Administrative Post: Suai</p> <p>Suku: Camenasa, Debos and Suai Loro</p>	<p>04/10/2018</p> <p>01/01/2019</p>	<p>Published in the Gazette on 31/10/2018</p>





