

## Rede ba Rai Statement on the Expropriation Law

27 April 2010

Two weeks ago the government approved and sent to parliament 3 laws that will have a huge impact on the people of Timor-Leste's **land rights**. The first of these laws, the Lei de Terras, was the product of much work and debate and 5 months of public consultation. The other two, The Property Fund Law (Lei Fundo Financeiro Imobiliario) and the Expropriation Law (Lei Expropriacoes) were written by law firms<sup>1</sup> and (unlike the Lei de Terras) were not opened for public consultation by the Minister of Justice. They have not yet been translated to Tetun.

In particular the Expropriation Law (Lei Expropriacoes) which establishes when and how the state can **take peoples' land will have a very significant impact on our rights and access to land.**

What is Expropriation?

Expropriation is the process through which the state takes land in order to undertake developments in the public interest (for example to build roads, ports or hospitals). Almost all countries have some sort of process for doing this, however the act of evicting a person, family or a community from their home and taking their land is huge incursion on their rights and should only be allowed to happen in exceptional circumstances where there are no alternatives, and where the development is necessary **'for the public interest'**.

The definition of **'public interest'** during state expropriation of land is **one of the world's** most contentious land issues. **If we define 'public interest'** very broadly we give the government huge power to take land. Considering this, in order to prevent conflict and create a law that can contribute to creating peace and strengthening development it is important that there is deep consultation. If we give a wide definition to this concept of public interest we give the state strong powers to take land.

In many parts of the world we can see examples of powerful states evicting the population arbitrarily in the name of economic development. Cambodian Law for example states **that 'no person may be deprived of his ownership unless it is in the public interest'** and yet, in Cambodia over 150,000 people live everyday under the threat of eviction for the creation of luxury housing, hotels, shopping malls etc. In a recent case over 4,200 families in Phnom Penh lost their land when they were evicted in order to make way for state sponsored private economic development.

What does the draft Expropriation Law say?

Timor-Leste's **new Expropriation Law** does not give any definition to **this concept of 'public interest'**. It gives the government almost no limitations therefore allowing it to determine cases arbitrarily on a political basis what is in the public interest.

Under this law the government could decide that clearing communities from their lands in order to give large tracts of land to companies like SAPT or P.T. Salazar is *in the public interest*. Or that evicting

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<sup>1</sup>The Expropriation Law was written by Portuguese law firm Miranda.

people from their homes in order to allow foreign companies to come and build hotels is also *within the public interest*.

Expropriation of **land and people's homes** should never happen arbitrarily. We need a law that establishes not only sufficient compensation but also lays down sufficient protections against unjust, arbitrary, corrupt or forced expropriation of land. We need a law which allows the state to expropriate land only in exceptional circumstances and where no other alternatives exist. We need a law that guarantees the role of the people in decisions and consultations about expropriation.

How to ensure fair and just policies on expropriation

A crucial part of writing appropriate expropriation policies and rules is ensuring that marginal communities and those who are likely to be affected by expropriation are involved in their creation. Without their involvement in the process laws will favour the richer and more powerful groups in society.

- This law was written with no consideration of the Timor-Leste context. **It does not look at Timor's** historical complex relationship with expropriation, or how the realities of expropriation might affect the nation. We should not forget that conflict in 1975, 1999 and 2006 was all linked to land and the independence of land.
- It was written undemocratically with no participation from the people on whom it will most impact. Expropriation of land affects most severely those living in poverty. Special efforts should have been made to ensure the participation of these groups in the creation of these laws. The law should look more specifically at providing protection to vulnerable land groups in Timor-Leste.
- It was written in a language that our population cannot understand.
- At no point have we been asked how and when we would feel that it would be justified for the state to take our lands.

Most importantly, we must ask why the Government is trying to sneak in this law as part of a package of transitional land laws? The Expropriation Law was sent to parliament at the same time as the new Lei de Terras. The Lei de Terras aims to resolve uncertainty over land claims in Timor-Leste, it is the product of significant debate and public consultation. It is very important that we consider these two laws as distinctly separate. The Lei de Terras consultation process which was carried out last year (June 2009 – November 2009) at no stage discussed or consulted with communities on the issue of expropriation.

Why no consultation?

Government representatives have said that expropriation is a very technical issue and that the population of Timor-Leste would not have the capacity to give opinions on these types of issues. This is not only inaccurate, but also seeks to justify the dilution of our rights of participation. Asking people when and how they feel it is justified for the state to take their land is not a complicated question.

- If this issue is considered a technical and complicated issue, government, civil society and communities need to re-think their strategies for disseminating information and consulting on land rights and legal issues,
- A lack of capacity to understand the issues does not negate the duty of government to allow participation in governance and legislative issues. In the case of the Expropriation Law the

problem is not that there was insufficient or weak consultation, but that the public was not given any opportunity to access or contribute to the development of this law.

## Recommendations

To S.E. Sra. Fernanda Borges the President of Commission A, the members of Commission A, and the Members of Parliament

We ask you as representatives of the people, to take into account the massive impact that this law will have on the rights of the people of Timor-Leste and to;

1. Consider the Expropriation Law as a law that is completely separate to the Lei de Terras,
2. Send the Expropriation Law back to the Ministry of Justice requesting them to carry out sufficiently deep, democratic and participative public consultation on this important issue

To S.E. Sr. Xanana Gusmão, the Prime Minister of Timor-Leste and S.E. Sra. Lucia Lobato, the Minister of Justice

We congratulate you on the public consultation process and subsequent approval of the Lei de Terras and ask you to look to the constructive experiences of the Lei de Terras consultation process, and to;

1. Acknowledge the important role that the people of Timor-Leste play in the creation and definition of our policies, laws and development path,
2. Guarantee and implement a public consultation process in relation to the Expropriation Law that will allow effective participation from the people of Timor-Leste
3. Guarantee the role of the public in the creation of future Land Policies and Laws, and in particular guarantee that all laws that will have a large impact on our land rights and access to land will undergo sufficient and substantial consultation.

To all partners, donors and actors within the justice sector of Timor-Leste

We ask you to follow the good examples laid down by current land sector actors and to commit to a renewed culture of consultation and participation, and to;

1. Emphasize the need for solutions that are specifically suited to the Timorese context,
2. Ensure that there is widespread co-operation, consultation and co-ordination between government institutions, organizations, civil societies and other stakeholders,
3. Guarantee their commitment to participatory and democratic approaches to legislation and policy creation.

The Timor-Leste land network is a group of 20 organisations working to protect land rights in Timor-Leste. Our vision is a nation where all people have land rights and access to land that is just and sustainable. Since 2001 we have been monitoring, researching and advocating on land issues. To find out more about Rede ba Rai, the Expropriation Law or other land issues please contact the secretariat of Rede ba Rai at Fundasaun Haburas +670 730 7800