



**DEMOCRATIC REPUBLIC OF EAST TIMOR**  
**MINISTRY OF JUSTICE**

Alterations in the first version of the Bill for a Special Regimen for Definition of Ownership of Immovable Property

(Lei de Terras) (Land Law)

The first phase of Public Consultation about the Lei de Terras Bill started on June 12 with the official release of the First Version, in Dili, and ended on September 14, 2009, with the public debate about the Bill, also in the Dili District. The Ministry of Justice organized public debates in the capital cities of each one of the 13 Districts. At the Public Consultation events, the Honorable Minister of Justice was able to personally respond to an average of forty questions asked by participants on various topics.

At each event, the participants were handed copies of the Bill, in both Tetum and Portuguese, as well as support materials with simplified explanations about the main topics included in the Bill. All question and answer sessions were preceded by a presentation by Ministry of Justice technicians with the purpose of transmitting key information about the content of the bill in a manner that is simple and understandable.

During this period of time, the Ministry technicians and their partners conducted district related discussions and participated in 12 events, discussions and workshops regarding the Bill. Up to that date, the National Directorate of Legal Advising and Legislation had received written proposals from the Districts of Lautem, Bobonaro, Baucau and Dili. A complete report about the public consultation will be presented in November.

For the second phase of Public Consultation, the Ministry of Justice decided it was better to publish a second version of the Lei de Terras Bill, already amended with the changes inspired by the discussions, suggestions and concerns raised during the first consultation phase. The goal is to provide the public with the opportunity to offer comments not only about the ideas brought in by the original Bill but also ideas about the amendment proposals intended to address the concerns raised so far.

Some of the changes made in the original text are not shown in this document because they are small wording alterations made for the purpose of compatibility and terminological consistency with the Civil Code.

The following are the main changes proposed for the second version of the Lei de Terras Bill, accompanied by a brief explanation of the reasons and motives leading to the new wording.

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***Article 3***  
***(Previous rights)***

1. *For the purposes of this statute, the following are defined as previous rights:*

- a) *Customary rights over immovable and informal property resulting from long term possession, with the essential features of ownership rights;*
  - b) *Rights over immovable property granted by the Portuguese and Indonesian administrations in the territory of Timor-Leste, namely propriedade perfeita, aforamento, aforamento, hak milik, hak guna bangunan and hak guna usaha.*
2. *Propriedade perfeita, hak milik and the customary property rights are previous rights that have the features of property rights.*
  3. *Aforamento, hak guna bangunan and hak guna usaha are previous rights that are only exercised when there is possession.*
  4. *For the purposes of this statute, primary previous rights are propriedade perfeita, hak milik and the customary property right, while secondary previous rights are aforamento, hak guna bangunan and hak guna usaha.*
  5. *In cases when the title designates a specific purpose for the granting of the secondary previous right, the ownership claimant is entitled to compensation only in those cases when, at the time of the esbulho, the immovable asset had the original purpose stated in the title.*

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#### Commentary

During the first phase of public consultation, several issues were raised in relation to the fact that informal property rights are not mentioned at all in Article 3. In spite of the fact that the first version of the Bill recognizes informal rights by way of "uncontested possession", these rights were not part of the roster described in Article 3, giving the impression that such rights were not recognized.

Article 3 was amended to include line item 'a': (...) 1. *For the purposes of this statute, previous rights are the following: a) Customary rights over immovable and informal rights resulting from long term possession, with the essential features of property rights (...)*

Another very common concern in Public Consultation both in the Districts and in Dili is related to the fear that old holders of previous rights granted to large land parcels could benefit from the law and become owners of latifúndios or receive large scale compensation.

Number 5 of article 3 was added in order to prevent holders of secondary previous rights who have abandoned the enterprises for which the rights were granted - or those who have never initiated them - from receiving compensation. One example is the case of a Hak Guna Bangunan granted to a resident of Dili for a parcel of land located in the Districts on which no construction was ever done. Or an Aforamento granted for cattle raising activities in which the land was left empty or subdivided and transferred to third parties for the purpose of residential or commercial construction.

Other mechanisms foreseen in the Bill limit the establishment of latifúndios. The most important one is the linking of possession to the secondary previous right. These secondary rights are only recognized to the extent that the title claimant is in actual possession of the immovable property. Besides, Article 88 foresees the principle of progressive taxation with the purpose of penalizing the concentration of properties in the hands of a few and creating an environment that allows for better land distribution.

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**Article 7**  
**(Immovable property located in areas of public domain of the State)**

1. *If the immovable asset object of the title claim is located in an area of the public domain of the State, the claimant is not entitled to the property right.*
  2. *Ownership of immovable property in areas of public domain of the State is protected under the terms of the Civil Code.*
  3. *With no detriment to the provisions of the Civil Code, the following, specifically ranked as stated in the law, are areas of public domain of the State:*
    - a) *The coastal areas and the beds of all interior waters;*
    - b) *The lands occupied by public ways, namely streets, roads, bridges and viaducts and their respective exclusion zones.*
  4. *The areas of public domain of the State are established by executive order and identified in the Cadastro Nacional de Propriedades (National Properties Cadastre).*
  5. *The use of immovable assets located in areas of public domain of the State is regulated by executive order.*
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**Commentary**

During public consultation some concerns were raised about the lack of more specificity in the definition of immovable property of public domain of the State provided by Article 7. A frequent question was "how many meters from the sea" was the boundary of the public domain. As a matter of fact, the lack of boundaries leaves the residents of coastal areas in a state of legal insecurity because they do not know whether the lands on which their houses are built are part of the public domain of the State. On the other hand, taking into consideration the variations in geography and human occupation in each section of land along the coast, the establishment of these physical boundaries cannot be done in a generic fashion for the whole territory. The purpose of this article is to ensure public domain over certain assets of common use and to allow the Government, by way of executive orders, to establish physical boundaries of public domain that are compatible with its policy for the use of the soil - a policy which is not yet established.

It needs to be recognized, however, that there is a need to provide security to those whose buildings may be deemed as located within the public domain of the State. For that purpose, a number 2 was added to Article 7 to reiterate the protection provided to possession by the Civil Code.

Line item 'c', which establishes the public domain of the State in "lands occupied by facilities and aerial, surface, underground and underwater conductors for electricity, telecommunications, oil, gas and water" was excluded because the issue can be better handled through the easement regimen.

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**Article 8**  
**(Immovable property of the private domain of the State)**

1. *The State has a legitimate right of ownership of all immovable property under its current possession, to the detriment of all other claimants, with exception of those assets with indeterminate ownership under State administration.*
2. *The ownership of the State over immovable property under its possession prevails over any previous rights, without prejudice to the right of compensation under the terms of this law.*

3. *All immovable property with title holders who cannot be identified during the process of recognition and attribution of first titles will be considered as owned by the State.*
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#### **Commentary**

Number 2 of article 8 was inserted to bring more clarity to the solution found for the cases in which there is one ownership claimant for the immovable asset currently under State possession - State ownership is recognized and the specific claimant may obtain compensation. Number 3 adapts the rule of the Civil Code ("(...) All immovable things with no known owners will be considered State assets(...)") for the regimen of recognition and attribution of first titles.

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#### **Article 10 (Legal Entities)**

1. *Domestic legal entities organized exclusively by nationals of the country may hold titles of ownership rights over immovable property.*
  2. *All other legal entities may obtain surface rights or other rights over immovable property.*
  3. *The surface rights established by the State to favor faith-based entities are free and will be valid for the duration of the possession.*
  4. *Any immovable property with extinct legal entities as holders of previous rights will revert to the State, except in cases of special adverse possession.*
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#### **Commentary**

During public consultation, some objections to this article were raised, claiming that it could give the opportunity to acquisition of land by foreigners, which would be unconstitutional. This article was amended to allow legal entities organized exclusively by nationals to be holders of immovable property. This is to prevent foreigners from organizing companies in domestic soil and to use them to obtain ownership of immovable property.

Due to the restriction imposed by article 54, number 4, of the Constitution, legal entities that are owners of land parcels cannot sell them, in full or in part, to foreigners. If they wish to effect sales to foreigners, they must first get rid of their real estate assets.

This amendment will allow companies with 100% Timorese control to use the land for enterprise capitalization, besides allowing cooperatives and nonprofit associations to achieve land ownership, in accordance with the executive order/law that establishes the legal regimen of nonprofits valid since 2005. The new wording will also allow community associations to explore community lands for economic gain and benefit from enterprises developed by investors outside the community.

Other legal entities (domestic, under foreign control, and foreign themselves) are entitled to all other rights foreseen in the Civil Code, including surface rights which provide widespread legal security. The granting of surface rights by the State to faith-based entities is restricted to the extent and duration of the possession. Land granted to faith-based entities due to surface rights may be revoked if the land is not used.

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**Article 11  
(Foreigners)**

1. *All immovable property of foreign claimants holders of previous rights will revert to the State, except in cases of special adverse possession by nationals.*
2. *Foreign claimants who are holders of previous rights who maintain current possession of immovable property reverted to private domain of the State have the right to maintain the possession of the immovable property by special arrendamento granted by the State.*

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Article 12 –Excluded

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**Commentary**

This alteration establishes that the State will allow foreigners with current possession of the their owned property to remain in that property and regularize their possession by way of a special arrendamento. Article 12 was replaced with Article 14:

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**Article 14  
(Possession Protection)**

*Until the first ownership rights are recognized or attributed within the scope of the special regimen established by law, the holder of the current and peaceful possession enjoys full legal protection under the terms of the Civil Code.*

**Commentary**

The intention of this new wording is to provide legal security to possessors of immovable property who have not yet been through the process of recognition and attribution of first titles.

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**Article 19  
(Interruption of Possession)**

1. *Esublho (disseisin) is when one individual is unduly restricted from exercising or maintaining possession or fruition of the immovable property under his ownership.*
2. *National claimants who hold a previous right that has been esbulhado (disseisees) after December 31, 1998 and have been restricted from recovering possession are said to enjoy current and peaceable possession.*
3. *For the purposes of special adverse possession, individuals who have been esbulhados (disseisees) after April 26, 2006 and restricted from recovering possession are said to enjoy current and continuing possession.*

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**Commentary**

During the public consultation, especially in Dili, a concern was raised in relation to the status of the displaced. Considering that the special adverse possession only takes place when there is current possession, an issue was raised about those who would be entitled to ownership if they had not been dispossessed during the 2006 Crisis.

Number 3 of Article 19 establishes a legal presumption of current possession when the claimant is dispossessed ("esbulhado") on or after April 26, 2006, the date that establishes the beginning of the Crisis.

Number 2 of this article allows nationals who were dispossessed in 1999 to enjoy the same presumption of current possession.

Thus, if Nicolau had his property occupied arbitrarily in 1999 and was never able to recover possession, he will be considered as current possessor and will be entitled to ownership.

If Afonso occupied land that he found empty in 1995 and was dispossessed in May of 2006, he will be considered as current possessor and will be entitled to ownership.

If Filomena was a proprietor since 1972 and had her property occupied in 1999 but recovered it in 2003, and then was again dispossessed in May 2006 and has still not recovered possession to this day, she will be considered current as possessor and will be entitled to ownership.

If Josefina was a proprietor dispossessed in 1999 but able to recover possession in July of 2006, she will be entitled to ownership.

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**Article 24**  
**(Definition)**

1. *Areas where local communities organize the use of the land and other natural resources by means of social and cultural standards are considered as community lands.*
  2. *The existing customary rights of land possession and use of natural resources are protected provided that they are not inconsistent with the Constitution and the laws.*
  3. *The characterization of an area as community land does not affect the ownership of immovable properties located in it or the rights of its respective title holders.*
  4. *The National Property Cadastre identifies the areas to be considered as community land.*
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**Commentary**

During public consultation at both the official events and informal discussions with representatives of civil society, concerns were raised in relation to Chapter V of the Bill, dealing with community land.

The second version of the Bill includes changes intended to clarify the legal framework of community land and protecting existing customary rights.

The concept of community land proposed by the Bill is similar to the notion of "protected zone". The characterization of a certain area as "community land" does not alter the ownership of immovable property located within that area. For example, if there is a public school within the area considered as community land, the school remains under State ownership. Likewise, if there is a parcel of land that belongs and has always belonged to Sr. Hipólito and located within the area characterized as community land, the land remains the property of Sr. Hipólito. This is the notion that number 3, added with the new wording, intends to clarify.

The second version also added number 2 to Article 24, in order to expressly ensure that customary rights are recognized inside the areas considered as community lands, provided that these rights are in agreement with the laws and the Constitution.

The new wording of Article 25 also allows communities to organize themselves into cooperatives or associations to claim ownership of community lands. Therefore, within the land considered as community land there will be private lots, State lots and community lots. All immovable property owned by community associations or cooperatives located within the areas considered as community lands cannot be sold (number 3).

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**Article 25**  
**(Local Community)**

1. *Local community is defined as a grouping of families and individuals living within a territorial district or at the Suco or lower level, for the purpose of safeguarding common interests by protecting housing areas, cultivated or uncultivated agricultural areas, forests, culturally significant sites, pastures, sources of water and areas where there are natural resources of shared use.*
2. *Local communities may constitute cooperatives or other forms of association allowed by law with the purpose of managing and engaging in commercial exploitation of community lands over which they may obtain property rights.*
3. *Immovable property under ownership of the legal entities mentioned in the previous number located in community land are inalienable.*

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**Commentary**

During the discussions occurred during the first phase of public consultation, it became evident that there was a need for a larger debate on the issue of community lands. The second version of the Bill allows the Government, by executive order, to deepen the legal framework of the matter (Article 27, number 3). The new version of Article 27 provides more clarity to the notion that State lands located within the areas considered as community lands can only be leased or granted to third parties following consultation with the community (number 2).

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**Article 27**  
**(Protection)**

1. *The State is responsible for protecting community lands and prevent undue appropriations, indiscriminate and non-sustainable use of the natural resources and real estate speculation.*
2. *State plots in community lands can only be leased or granted to third parties after consultation with the local community.*
3. *The legal regimen of community lands shall be regulated by executive order.*

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**Article 28**  
**(Holders of Primary Previous Rights)**

1. *Claimants identified as holders of customary property rights are entitled to ownership rights.*
2. *National claimants holding *propriedade perfeita* or *hak milik*, notwithstanding a claimant in possession, even if the latter fulfills the requirements for special adverse possession, are entitled to ownership rights.*
3. *All immovable property that is subject to *propriedade perfeita* or *hak milik* is subject to ordinary adverse possession under the terms of the Civil Code.*

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### **Commentary**

With the introduction of customary property rights, the need arose to amend Article 28 so as to include the idea expressed in number 1 recognizing said right as a property right. As we will see in Article 33, special adverse possession prevails over this previous right.

Previous rights related to *propriedade perfeita* and *hak milik* still prevail over special adverse possession. However, a number 3 was introduced in this article to state that any immovable property object of these rights is subject to the ordinary adverse possession foreseen in the Civil Code, establishing terms from five to twenty years, depending on the type of possession and other requirements.

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### ***Article 62 (Term)***

*The claimant in disputed cases or the State may, within 30 days counting from the communication of the administrative decision, file for appeal with the Cadastral Commission.*

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### **Commentary**

During the public consultation a request was made to extend the term from 15 to 30 days for administrative appeal against the decision that establishes ownership in disputed cases. This request was accepted and incorporated into the new wording.

Discussions with representatives of civil society and international organizations revealed a concern with the fact that an agency of the Executive Power (Cadastral Commission) would be in charge of deciding disputed cases in the appeal venue. As a result, Articles 71, 72 and 73 were altered for the purposes of turning the Cadastral Commission into a second ordinary administrative court and leaving independent control and the final word about the disputed cases for the Judiciary. The Cadastral Commission becomes an internal agency of the Ministry of Justice, as second administrative court, with the support of a Technical Secretariat and subject to independent jurisdictional control. The Ministry of Justice, by way of the Public Defender's Office and partnerships with civil society entities, will reinforce judiciary assistance services to ease the access to Justice on the part of claimants wishing to appeal in court.

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### ***Article 71 (Creation)***

*A Cadastral Commission is hereby created at the facilities of the Ministry of Justice to appreciate the appeals filed against the administrative decisions under the terms of this chapter.*

### ***Article 72 (Composition)***

1. *The Cadastral Commission includes the following:*



- a) *two jurists of recognized moral and ethic integrity appointed by the Prime Minister following a proposal from the Justice Minister;*
- b) *a technician specialized in land and property issues and of recognized moral and ethic integrity, appointed by the Directorate of Land, Property and Cadastral Services.*
2. *Each one of the authorities mentioned in the previous item shall appoint a substitute member to replace the effective member during his absences or impediment.*
3. *The Justice Minister shall appoint a president from among the Commission members.*
4. *The Cadastral Commission has the support of a Technical Secretariat to fulfill its responsibilities.*

***Article 73  
(Operations)***

1. *The Cadastral Commission is governed by this law, by the executive order regulating it, and by the internal rules approved by its members within the scope of its roles and competences.*
  2. *All deliberations are conducted by a majority of votes of present members and approved by the Justice Minister.*
  3. *The operations of the Cadastral Commission are regulated by executive order.*
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**Commentary**

The public consultation revealed that the wording of article 87 was difficult to comprehend, although its content, when explained, was well accepted. The new wording has the purpose of providing more clarity to the solution proposed by the Bill for cases of immovable property which is abandoned by foreigners.

The immovable property previously but no longer owned by a foreigner reverts to the State. If a Timorese citizen is currently inhabiting the property, this citizen may acquire it from the State by way of a procedure to be regulated (number 1). Until this acquisition procedure is regulated, the occupant and his family members may remain in the property (number 4). Number 2 refers to the assumption established by Article 19, according to which those individuals who were dispossessed in 2006 (displaced) are taken into consideration in the current possession, having the right of preference, therefore, for the acquisition of the property, as well as the right to recover possession.

Number 3 refers to cases in which the occupant of the property previously owned by a foreigner has regularized his status by way of an arrendamento contract with the State. In these cases, if the occupant wishes to acquire the property, the amounts paid as income will be deducted from the price of the real estate.

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***Article 87  
(Possession of immovable property of foreigners)***

1. *Any immovable property of foreigners reverted to the State and occupied peacefully by a national citizen under the terms of articles 12, 13 and 18 may be acquired by the national by following a procedure to be regulated by executive order.*
2. *This article is subject to the assumption of current possession as provided in number 3 of article 19 of this law.*
3. *In the acquisition of the immovable property, the amount of revenues paid to the State by the occupant within the scope of the arrendamento contract is deducted from the price.*

4. *Until the effective date of the executive order regulating the procedure of acquisition referred to in this article, the residential occupant of the immovable property reverted to the State has the right of habitation, which is renewed tacitly to his or her heirs and legatees.*
5. *The non-residential use of the immovable property reverted to the State shall be regularized by way of a arrendamento contract.*

Unofficial Translation