

EAST TIMOR LAND LAW PROGRAM



**Centro Nacional de
Investigação Científica**



**Ministério de Justiça
Direcção de Terras e Propriedades**

REPORT ON RESEARCH FINDINGS, POLICY OPTIONS AND RECOMMENDATIONS FOR

A LAW ON LAND RIGHTS AND TITLE RESTITUTION

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Acronyms and Glossary

Acronyms

DNTP (Portuguese)	<i>Direcção Nacional de Terras e Propriedades</i> , or the Directorate of Land and Property
GIS	Geographic Information Systems
GPS	Geographic Positioning Systems
LLP	Land Law Project
UN	United Nations
UNTAET	United Nations Transitional Authority
UNTL (Portuguese/Tetum)	<i>Universidade Nacional Timor-Lorosa'e</i> , or National University

Glossary

<i>Adat</i> (Indonesian)	Traditional customs
<i>Aldeia</i> (Portuguese)	Hamlet, or sub-section of <i>suco</i> (village)
Arbitration	Practice of listening to both parties to a conflict, and then rendering a decision which both parties must respect
<i>Atoni</i>	Ethnic group inhabiting the East Timor enclave district of Oecusse and parts of (Indonesian) West Timor
Decree-Law	Law passed by government through the Council of Ministers
<i>Katuas</i> (Tetum)	Elder(s)
Law	Generally enforceable law passed by Parliament
Mediation	Practice of listening to both parties to a conflict, and assisting the parties to work out a voluntary settlement
<i>Suco</i> (Portuguese)	Village
Waypoint	Set of spatial coordinates indicating a specific place. Used in connection with GPS technology (see above)

Land Rights Terms Used in Text

<i>Hak Adat</i> (Indonesian.)	Traditional, or customary land right.
<i>Hak Adat Pribadi</i> (Ind.)	Freehold tenure in accordance with the traditional, or customary tenure system.
<i>Hak Guna Bungunan</i> (Ind.)	Right to build upon Government land.
<i>Hak Guna Usaha</i> (Ind.)	Right to use for business purposes.
<i>Hak Milik</i> (Ind.)	Freehold tenure.
<i>Hak Pakai</i> (Ind.)	Right to use. Administrative charges may be assessed in exchange for this privilege.
<i>Hak Pengelolaan</i> (Ind.)	Leasing land for agricultural purposes.
<i>Hak Sewa</i> (In.)	Right to lease land.
<i>Pemberian Hak</i> (Ind.)	Process of converting long-held leasing rights to freehold rights

Introduction

The Land Law Program (LLP) for East Timor is a USAID-funded activity of the Ministry of Justice-Directorate of Land and Property (DNTP). The National University of Timor Lorosa'e (UNTL), supported by the ARD, Inc. LLP technical team, has implemented several field research activities with the dual purpose of providing capacity-building experiences to UNTL members and simultaneously collecting information required by policymakers for development of land policy and legislation. Other LLP activities include capacity-building components for the Directorate of Land and Property and rendering technical assistance with the drafting of five main laws regarding Leasing of State Property, Leasing between Private Individuals, Land Dispute Mediation, Land Rights and Title Restitution, and Compliance with the Constitution by Non-national Freehold Claimants.

LLP completed and distributed a first report on *State Property Administration/Lease of State and Private Property* in October 2003.¹ This report supported policy development on those subjects and the drafting of a parliamentary law on Leasing between Private Individuals as well as a decree law on the Leasing of State Property. In June 2004, the Council of Ministers approved the draft parliamentary law and submitted it to the National Parliament for its consideration and promulgation. The Decree Law on Leasing of State Property has been debated within the Council of Ministers and may possibly be promulgated in late July 2004.

A second report on research findings and policy recommendations for the development of a legal framework on *Land Dispute Mediation* was presented by LLP to the East Timorese government in March 2004. The Ministry of Justice and LLP have prepared a draft bill on Land Dispute Mediation, which will soon become the subject of an internal consultation process and debate before being sent to the Council of Ministers for its consideration.

This third LLP report concerns *Land Rights and Title Restitution*. This theme is, without doubt, the centerpiece of the Juridical Regime of Immovable Property of East Timor. The report seeks both to provide initial concepts, research findings, policy options and recommendations for the establishment of an East Timorese land tenure system and to set parameters for the first land registration process under auspices of the East Timorese State. This document addresses key considerations that must be taken into account in the process of validating land claims based on rights acquired throughout previous administrative and political regimes.

A fourth research report on *Compliance with the Constitution by Non-national Claimants of Pre-existing Freehold Rights in East Timor* is to be delivered, jointly with this third one, in July 2004, to the Ministry of Justice. That report provides an analysis of the East Timorese legal framework on the topic, comparative case studies of countries with similar freehold restrictions, policy options and recommendations for the preparation of a draft bill on Compliance with the Constitution by non-national freehold claimants.

¹ Electronic versions of all of LLP reports can be requested at landlawprogram@hotmail.com.

This third report comprises two parts:

Part 1 contains an analysis of policy options and recommendations for the preparation of a law on land rights and title restitution. The recommendations are based on LLP's research findings, its comparative case studies, an analysis of existing legislation and on relevant input of stakeholders that participated in LLP's roundtable on land rights in June 2004.

Part 2 presents LLP's research methodology, results and analysis for the development of land policy concerning land rights and title restitution.

The final conclusions and recommendations are those of the principal authors only.

PART 1

Policy Options and Recommendations for the Regulation of Land Rights and Title Restitution in East Timor

Edwin Urresta

Introduction

The Portuguese colonized and ruled East Timor for over 400 years, until November 1975 when independence was declared. In early December 1975, only two weeks after independence, Indonesia occupied East Timor. The occupation only ended in August 1999, when the people of the nation participated in a United Nations coordinated referendum, rejected special autonomy status within Indonesia and chose independence. In October 1999, the United Nations Transitional Administration in East Timor (UNTAET) was established to support the foundation of the new country.

After having gone through three different political and legal regimes over the last 30 years and the unfortunate events of 1999 surrounding the Indonesian withdrawal, East Timor urgently needs to clarify and establish clear policies and legislation to address many issues related to social and economic development. One of the most pressing challenges is that regarding adoption of a clear, formal land tenure and land registration system.

Great uncertainty persists concerning applicable land laws in East Timor. The country does not yet have a fully developed legal framework authorized by Parliament. Consequently, East Timor has yet to discuss and formally adopt major land policies. This is an extremely challenging task because of the lack of property records, the uncertainty of rights and other difficult aspects of the existing situation.

Of an estimated 200,000 land parcels in East Timor as a whole, less than 25% have ever been formally registered.² The vast majority of parcels have been held by traditional landowners, mostly communities. Among registered parcels, the majority originated during the Indonesian era, and fewer during the Portuguese.

East Timor's formal justice sector faces mounting challenges and suffers significant weaknesses. Constraints include lack of clarity on the rule of law, insufficient numbers of lawyers, untrained judges and costly processes. Though it will take years to build a good judicial system, land tenure uncertainties must be resolved as soon as possible. Without a secure land tenure system in East Timor, national and international investment and economic growth of the country could be seriously hindered.

² Cullen, Grant (2000). *Cadastral Survey and Mapping for Land Registration in East Timor*. UNHABITAT Report. Dili, East Timor. Pg. 4.

Initial Progress

During its first two years as an independent nation, East Timor has achieved significant progress in terms of choosing a practical strategy to develop land policy. Policymakers have opted for development of land legislation crafted to suit the reality of the country, by establishing a juridical regime for immovable property in several segments of legislation. East Timor decided not to attempt to write a single omnibus law on land matters, as there were many different aspects to be considered, much controversy and little information to support the decision-making process. The major potential negative effect of choosing to develop a single all-encompassing law on land was that it might take several years to complete drafting. An effort to shorten the process by importing other countries' land legislation and applying it in East Timor, on the other hand, risked failure because such laws would not necessarily take account of East Timor's unique characteristics. Laws ill-adapted to local realities often prove unsatisfactory because they generate confusion and occasion more conflicts than they solve.

As a result of its decision to pursue a step-by-step, incremental approach, East Timor promulgated, on March 10, 2003, its first land law: 01-2003 *Juridical Regime for Immovable Property: Part 1*. This legislation was designed to serve as an umbrella law for the rest of the land and property regime. The law defined State property of private domain, established DNTP as a legal entity and defined its jurisdiction. Moreover, this law established a one-year period for both nationals and non-nationals to register their land claims, while articulating general rules concerning land tenure and property rights to be further developed by ensuing legislation.

The Government's strategy also shaped LLP's preparation of a land-related legislative agenda. The agenda, approved by the Ministry of Justice in July 2003, fixed a timetable with topics for LLP's research and legislative drafting activities on Leasing of State and Private Property, Land Dispute Mediation, Land Rights and Title Restitution, and Compliance with the Constitution by Non-National Claimants of Pre-Existing Freehold Rights in East Timor. The agenda also included other important research and legislative drafting topics on land registration, land taxation, expropriation, land use and natural resources, among others, to be developed in later stages.

Land Policy Development Process

The land policy development process includes gathering information through field research, comparative case studies of other countries that have experienced similar legal quandries and, at the same time, gradually exploring how best to debate options with stakeholders and address complicated legal, tenure and property rights issues in a way that would secure transparency and participation.

With LLP's technical support, the Government has recently submitted a bill to Parliament on Leasing between Private Individuals. The Council of Ministers will shortly promulgate a Decree Law on Leasing of State Property. LLP has drafted a bill on Land Dispute Mediation that will soon be debated within the Ministry of Justice.

A forthcoming law on land rights and title restitution in East Timor has yet to be developed, but will be designed to address the following two main topics.

First, the law must establish a formal, basic land tenure system. This tenure system should respond to the needs of the modern, urban sectors, where formal land transactions and registration are essential to economic growth and development. But it must also honor the Constitutional requirement that it respect traditional (local) land tenure practices that have persisted for centuries in rural areas of the country, as long as those practices do not infringe on basic human rights or provisions of the general, formal law. Nonetheless, the law should create foundations for and promote gradual incorporation of those local tenure systems into the main formal land registration system.

Second, the law on land rights and title restitution should also establish a transparent process for the recognition, validation, conversion and first East Timorese registration of land rights. This process must address both verification and validation of legitimate land rights formally acquired during the Portuguese and Indonesian regimes as well as recognition and future registration of customary land rights. Consequently, the law should specify types of land rights to be registered, the process by which land rights claimants can prove and validate those rights, and establish processes to resolve competing land claims in a definitive manner. The process will have two forums, an administrative land council for validation of land rights, and the state court system in the event an individual believes his/her legitimate rights have been violated by an unlawful administrative decision. This legal process should cover all land parcels owned by Timorese nationals, whether or not they have lodged land claims.

A land titling system will have to take place in the future. It should be aimed at registering all State property, individually owned private property and collectively owned (community) private property. The Land Rights and Title Restitution Act must provide the basis for such a process.

I. General Considerations to Address in Preparing the Land Rights and Title Restitution Act

As noted, the Government has decided to develop a juridical regime for immovable property in stages, with several separate pieces of legislation prepared serially in a gradual approach. Although the Land Rights and Title Restitution Act will address the main aspects concerning land ownership and validation of pre-existing land rights, it will not cover others such as use of other natural resources, mineral exploitation, concessions, expropriation, spatial planning and land taxation. These topics will be regulated by other pieces of legislation. DNTP may not necessarily administer these latter areas as other government agencies under the Ministries of Agriculture; Development; Transport, Communication and Public Works will have jurisdiction and a major role in defining policy for those sectors. Nonetheless, DNTP and those other agencies should coordinate their efforts in developing land-related policies.

Based on Land Law 01-2003, and input gathered from DNTP and from other government officials, LLP offers the following list of recommended main topics that the Government should address when developing a legal framework on land rights in East Timor.

i. The Subject of the Law on Land Rights and Title Restitution

The first decision to be made concerns the content of the Law on Land Rights and Title Restitution for East Timor. The content will, in turn, determine whether it should be regulated by a decree law or a parliamentary law.

The Land Rights and Title Restitution Act will establish a land tenure regime for the future, as well as define a land rights validation process for land claims based on rights acquired under the previous administrative and political regimes of the country. The first aspect is permanent, while the second is transitional.

When addressing validation of freehold rights, a first point to note is that the Land Rights and Title Restitution Act will mainly address Timorese citizens, as Article 54, paragraph 4 of the Constitution restricts land ownership to nationals. Moreover, the title restitution process, which entails the possible validation of pre-existing land rights, should make provision to implement Article 12 of Land Law 01-2003. That article in turn, initiated a land claim registration process for national ‘citizens.’ Once rights are validated or ‘restituted,’ nationals will be entitled to formal registration of their land.

The situation of non-national (foreign) land claimants, mentioned in Article 13 of Land Law 01-2003, will be the subject of another law entitled *Compliance with the Constitution by Non-National Claimants of Pre-Existing Land Rights*.³ That law will determine the effects of legitimate freehold rights held by non-nationals so as to comply with the Constitutional prohibition on foreigners owning land in East Timor. However, this implies the need to first establish the legitimacy and ‘validity’ of the claims presented by foreigners. This process will be the same implemented by the Land Rights and Title Restitution Act. Therefore, once foreign claimants undergo the ‘restitution process’ as prescribed by the land rights and title restitution act, their claims process will continue with a second phase for the application of the law on Compliance with the Constitution by Non-National Freehold Claimants.

LLP recommends that the Land Rights and Title Restitution Law include provisions specifying:

- ◆ Definition of relevant terms (e.g., “land,” “attachments,” “immovable property”);
- ◆ Types of land rights that will be recognized and registered under the new system;
- ◆ Possible incorporation of customary land tenure systems into the formal structure;
- ◆ Clarification of who can own land as established by the Constitution;
- ◆ Distinction between natural and juridical persons for the application of Article 54, paragraph 4 of the Constitution;

³ See LLP’s third report on *Compliance with the Constitution by Non-National Land Claimants of Pre-Existing Land Rights in East Timor*. July 2004.

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- ◆ Women and children's access to land rights;
 - ◆ Requirements for the validation of pre-existing land rights;
 - ◆ Formal and customary land rights;
 - ◆ Valid and invalid land claims;
 - ◆ Determination of legitimate land transactions;
 - ◆ Situation of juridical entities before May 2002;
 - ◆ Title restitution options;
 - ◆ Criteria enabling determination of which title should prevail in the event of competing claims;
 - ◆ Legitimacy of previous titles;
 - ◆ Means of evidence;
 - ◆ Fora for the resolution of land claims and the validation of land rights; and
 - ◆ All elements of an administrative process to validate/invalidate land claims and reconstitute/refuse to reconstitute claimed land titles with clear delineation of claimants' rights to judicial appeal of administrative determinations that adversely affect their claims.

Each of these topics will be further commented on below in Part 2, followed by discussion of the main policy options and recommendations.

ii. The Form of the Land Rights and Title Restitution Act

A matter of legislative form must be resolved, once again, when proposing a legal framework for land rights and title restitution. Options in this regard include:

Policy Options

- 1) Parliamentary Law to be proposed by Government, through the Council of Ministers, passed by Parliament and promulgated by the President of the Republic. Producing a parliamentary law is a longer and more complex process, but this is the only type of law that can establish generally enforceable rules and determine rights and duties for private individuals. Such laws are subordinate only to the Constitution.
- 2) Decree Law to be approved by the Council of Ministers. This type of regulation is subordinate to law and, in turn, to the Constitution. Decree laws can be promulgated to provide further detail and administrative processes for the implementation of parliamentary laws. The Council of Ministers is entitled to issue decree laws for the establishment of administrative rules and processes for the exercise of the government duties, so long as these do not affect individual rights. For example, the Government is responsible for the administration of State property. Land Law 02-1003 provided general guidelines and specifically mandated that a decree law for State property administration/leasing be developed.

Recommendation

LLP recommends Option 1. The subject of the law on Land Rights and Title Restitution deals with fundamental *private, individual* rights. Not only will this law establish a land tenure system, but land claims will be resolved in accord with processes defined by that law. Certain land rights may be validated, benefiting some individuals, and other claims may be rejected, dispossessing other citizens. The validation or rejection of land claims can only be regulated by a special parliamentary law on the matter. Furthermore, the extreme sensitivity of the topic highlights the need for *wide consultation and agreement* among Government, Parliament, the Presidency and, most importantly, the community, so as to ensure both enactment of effective and clear legislation, and popular support for and commitment to approaches incorporated in that law on Land Rights and Title Restitution.

II. Main Policy Options and Recommendations

This section presents several considerations, policy options and recommendations to policymakers for their analysis and discussion when drafting a law on land rights and title restitution.

i. Definitions of Terms: “Land,” “Attachments,” “Immovable Property”

The common ‘Western’ property system defines “immovable property” to mean: *property that cannot be moved; an object so firmly attached to land that it is regarded as part of the land.*⁴ Therefore, land and its permanent attachments are considered to be one indissoluble ‘whole’ and the landowner has domain over that land and all of its buildings, trees and other permanent attachments.

Article 79 of the Portuguese Civil Code establishes:

“São bens imóveis o solo e tudo quanto se lhe incorporar natural ou artificialmente.” This can be translated as: *Land and everything attached to it, naturally or artificially, constitute immovable property.*

Under most Western land tenure systems, the same person who owns the land, owns the permanent attachments and buildings. This is consistent with the principle of private property, under which the State figures an exceptional landowner.

Within the private property system, it is unusual for one person to own the land, and another to own the buildings on it. What does occur is that the landowner leases his/her land to another party, and allows the second party to build on it. In this case, any new structures would be considered ‘improvements’ for which the landowner may or may not compensate the lessee/builder as provided by law or the contractual agreement between the two parties.

⁴ Black’s Law Dictionary. (1999) Seventh Edition. St. Paul. Minn.

Traditionally, the people of East Timor have made a distinction between ‘land’ and ‘buildings, trees or other attachments.’ That is, ownership of buildings, trees or other attachments to the land has not necessarily been tied to ownership of the land itself. This remained the case under the Indonesian regime, when the general principle was that the State owned all land and individuals could own any buildings or other “attachments” developed on a particular parcel of [state-owned] land.

LLP’s research report on *Research Findings and Policy Recommendations for a Legal Framework for Land Dispute Mediation* included Figure 5 below, which suggests that it is common for different parties to have independent rights over land and attachments found thereon, such as trees.

Figure 5: How common is it for one individual or party (Party A) to own land, and for another party (Party B) to also have rights associated with that land? (Q4)

Question4	Key person Achin- 101 respondents				Emene- 31 respondents				Miradulo- 30 respondents			
	Very Common	Common	Uncommon	Very Uncommon	Very Common	Common	Uncommon	Very Uncommon	Very Common	Common	Uncommon	Very Uncommon
Features Sometimes Associated with Land												
Water bodies (lakes, dams, rivers, streams)	39%	58%	7%	0%	23%	71%	3%	3%	63%	37%	0%	0%
Trees	27%	50%	20%	2%	0%	23%	58%	13%	40%	57%	3%	0%
Crops	19%	50%	28%	2%	0%	28%	58%	13%	47%	40%	10%	3%
Buildings (huts, houses, villages, etc)	18%	44%	27%	10%	0%	18%	68%	13%	57%	23%	13%	7%
Mined rights	18%	30%	39%	13%	3%	13%	58%	29%	30%	57%	10%	3%
Timber rights to build	29%	40%	24%	0%	0%	28%	58%	13%	63%	13%	10%	13%

As the key person data set in Figure 5 (above) indicates, there is broad acceptance nationally of the concept that individuals may have rights to features [attachments] geographically situated upon the land parcels of other individuals. While the figures [survey results] indicate variation with respect to particular features, there is not a single feature in respect to which the legitimacy of separable rights is perceived as ‘very uncommon’ by a majority of the sample. This data indicating the frequency and diversity of separable rights throughout Timor Leste suggests that it may be appropriate (in due course) to consider including provisions for separable rights in the development of land laws.⁵

Furthermore, the Constitution of East Timor, in Article 54, paragraphs 1 and 4, determines that national citizens have a right to private ownership of *land*.

This then poses the following questions:

- ◆ Should the new legal framework for immovable property continue to differentiate between ‘land’ as one item and other types of immovable property, such as buildings, as an independent item? If so, what would the relationship between the landowner and the owner of the buildings be?

⁵ Nixon, Rod (2004). *Research Findings and Policy Recommendations on a Legal Framework for Land Dispute Mediation*. ARD Land Law Program. February 2004. Pg. 29

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- ◆ If the owner of the buildings were to pay the landowner a fee or provide any other type of compensation for the use of the land, wouldn't this then be a lease contract?
 - ◆ If the owner of the buildings does not pay or compensate the landowner for the use of his/her land, then what is the financial benefit of the landholder's 'ownership'?
 - ◆ Would it not be best to unify ownership of land and attachments, especially in the urban sectors of the country? If so, will a distinction be made between urban and rural settings, so as to allow for customary land tenure systems to continue to operate with independent ownership of land and attachments?

Perhaps the scenario where land ownership is claimed by the community and ownership of attachments by private individuals is more likely. This is part of the customary land tenure system and could well continue to operate, if the law authorizes such arrangements in this specific case.

To illustrate this further, LLP's research questionnaire asked interviewees if they believed the unification of separable rights (land and other attachments) could be accomplished through the purchase of the buildings by the land owner, or the purchase of the land by the owner of the buildings, whoever had a greater investment. Figure 27 in Part 2, depicts the responses. As Rod Nixon points out: *A most notable aspect concerning the data outlined in Figure 27 [above], is the high proportion of respondents (over 36%) who provided no answer to this question. This response suggests that, to date, a large proportion of the Timor Leste community may not yet have contemplated the possibility of combining ownership of land with the ownership of buildings constructed upon that land, in accordance with the principles of a private property system. If this policy objective is to be advanced therefore, it may be necessary for it to be supported by a broad public education campaign.*

Stakeholders participating in the LLP Land Rights roundtable held differing views on the matter. Some participants favored unifying land and other property, while other stakeholders suggested maintaining separate rights.

This would suggest the need for open debate and consultation on this matter prior to adoption of one of the following options.

Policy Options⁶

Policy options in this regard are:

- 1) That land and attachments be considered one, in which case, legislation will have to determine the ways to consolidate ownership of the whole in favor of one or another owner. For example, where the individual owns a house and the State owns the land, the latter could eventually sell the land to the owner of the building and, hence, consolidate ownership of the whole. Or, in other cases, where the land value is higher than the attachment's, it could work the other way, e.g., a private

⁶ Urresta, Edwin. *LLP Report on Compliance with the Constitution by Non-National Claimants of Pre-Existing Freehold Rights*. July 2004. Pgs. 20-21.

landholder could consolidate the whole ownership (land and attachments) to his/her benefit.

- 2) To 'unify' land and buildings as a whole in urban areas, where modern legal and commercial systems operate, and to maintain separable land rights in the rural areas of the country, where the State or community often owns land while private individuals own buildings, trees and attachments found thereon.
- 3) To maintain the general principle that ownership of land is always independent from ownership of buildings and permanent attachments thereon throughout East Timor.

Recommendation

LLP recommends Option 2. The 'unification' of ownership of land and attachments is beneficial for land administration and registration, and simplifies land transactions. This can be done, gradually, starting with the urban sectors of the country, where it would currently be easier to implement because it corresponds more closely with existing economic systems and private property ownership patterns. Rural areas, however, where traditional land tenure systems are widely enforced, have rules authorizing separable ownership of land and attachments. Although formal law should attempt to promote gender and overall equality among community members, the main rules of immovable property ownership should not be abruptly disrupted or changed. New norms incorporating unified ownership of land and attachments should be developed in subsequent laws, following more research, consultation and growing social accord on these critical points.

ii. Types of Land Rights That Will Be Recognized and Registered under the New Land Tenure System; Possible Incorporation of Customary Land Tenure Systems into the New Formal Structure

East Timor must develop its new land tenure system. Different land tenure systems exist as Geoffrey Payne (2001) notes:

*A major complication is that there are often different systems of legislation relating to land, and different forms of tenure, co-existing in the same country and, sometimes, even within the same city...*⁷

Payne lists five common types of tenure systems:

1.- **Customary tenure.** *Allocation, use, transfer, etc., are determined by the leaders of the community according to its needs, rather than through payment...*

⁷ Payne Geoffrey. *Urban land tenure policy options: titles or rights?* Habitat International 25. 2001. Pgs. 416-417.

2.- **Private tenure.** *This is largely an imported concept in developing countries and is generally concentrated in urban areas, where it was designed to serve the interests of colonial settlers. As such, it may co-exist with other indigenous tenure systems...*

3.- **Public tenure.** *Virtually all societies acknowledge the concept of public land ownership.*

4.- **Religious land tenure systems.** *...traditional forms of tenure in Islamic countries represent another variation in this range...There are four main categories of land tenure within Islamic societies. 'Waqf' land is land 'held for God', whilst 'mulk' or private lands are also protected in law; 'miri' or state controlled land which carries 'tassruf' or usufruct rights, is increasingly common...*

5.- **Non-formal tenure categories.** *...range of categories with varying degrees of legality or illegality. They include regularized squatting, unregulated squatting...*

This classification of land tenure systems proves useful with regard to the land tenure system in East Timor.

Customary land tenure systems have operated in East Timor before and during the Portuguese colonial era. Local systems regulated the distribution, transfer and exploitation of land, and continue to do so. Despite the Portuguese rule and the Indonesian occupation, these local systems have persisted, especially in rural areas of the country. In this respect, du Plessie and Leckie (2000) state:

*In formal legal terms, the role of customary law in criminal matters was completely removed during Portuguese rule of East Timor. But its role in civil matters, including allocation and ownership of land, was to some extent left intact. When disputes over land arose, customary law and procedures would hold way in most cases.*⁸

The complexity of customary land rights are analyzed in depth in the Land Law Program's case study researched and written by Meitzner-Yoder's: *Principles and practices of rural landholding in Oecusse, East Timor.*⁹ Table 2 below, reproduced from that paper, depicts ownership patterns and transactions in Oecusse.

⁸ Du Plessis, Jean and Leckie, Scott. Housing, Property and Land Rights in East Timor. UNHABITAT report. May 2000. pg. 22

⁹ Meitzner Yoder, Laura. ARD Consultant. Report on Principles and practices of rural landholding in Oecusse, East Timor. Land Law Program. April 2004. Pg. 15

Table 2. Summary of land ownership and possible transactions by land use categories.

	Level of ownership	Can be sold? If yes, what payment?	Can be rented? If yes, what payment?	Can be lent? If yes, what payment?	Notes	Percent of land in Lekot transect
House yard	Individual	Highlands: No Coast: Yes; cash, labor, or animals	Highlands: No Coast: Yes; cash	No	Highland use implies permanent transfer	4
<i>Naija sona</i>	<i>Suco (naijuf/tobe or suco govt)</i>	No	No	Yes; outsiders may use (free) but not own	Several Oecusse <i>sucos</i> have no <i>naija sona</i>	10 and decreasing
<i>Seimu</i> dryland swidden	Individual, sibling, or sub- <i>kanaf</i>	No	No, <i>suco</i> members; Yes, <i>suco</i> outsiders	Yes; no payment by <i>suco</i> members	Frequently lent; all users must participate in <i>tobe's</i> harvest ritual	74 and increasing
<i>Seimu</i> flooded rice	Individual or sibling	Yes; cash, cattle	Yes; cash or portion of the harvest	Same as rental		6 and increasing
Fruit tree groves	Individual (of trees)	No	No	Yes; no payment	Separate tree/land owners	4 and increasing
Sacred sites	Relevant <i>kanaf</i>	No	No	No		2

The Portuguese regime established land rights including *propriedade perfeita*, *aforamento*, *arrendamento*, *ocupação*, among others. This seems to be consistent with Payne's concept that a formal, private tenure system was mostly introduced in the urban centers of East Timor, during the colonial era. The concept of State property was also established.

The Indonesian regime, on the other hand, fits into the category of religious land tenure systems. State-controlled land is most common and complex usufruct rights are established. As mentioned by Wright,¹⁰ the Indonesian regime registered land rights such as *hak milik* (right of ownership), *hak guna usaha* (right of exploitation), *hak guna bangunan* (right of use of structures), *hak pakai* (right of use), *hank pengelolaan* (right of management), *wakaf land* (religious land), *hak milik atas satuan rumah susun* (apartment right), *hak tanggungan* (mortgage), and *tanahh negara* (State land).

In sum, customary tenure, formal Portuguese and Indonesian land systems have co-existed, in varying degrees, in East Timor. The formal Portuguese and Indonesian land registration systems included many different types of land tenure rights were granted, few of which were freehold and many of which were mostly limited use rights.

In an effort to find out what people knew about the type of land rights in East Timor, the LLP team developed and presented several relevant questions to interviewees throughout

¹⁰ Wright, Warren. (2000) Review of Existing Land Laws for the Purpose of Creating an Equitable Land Administration System. UNHABITAT Report. August 2000. East Timor.

the country.¹¹ Figure 10 below, produced by LLP's field research team and further analyzed in Part 2 of this document, depicts findings on what knowledge people have of various types of land rights in East Timor.

Figure 10: Kinds of land rights known to respondents (Q2)

Please name the kinds of land rights you know of:	Urban (116)		Rural (601)		Whole sample (717)	
	No.	%	No.	%	No.	%
<i>Hak Adat</i> (community <u>or</u> individual)	11	9.48%	267	44.43%	278	38.77%
<i>Alvara Direito de Propriedade Perfeita</i>	1	0.86%	2	0.33%	3	0.42%
<i>Alvara Direito de Aforamento</i>	2	1.72%	1	0.17%	3	0.42%
<i>Alvara Direito de Arrendamento</i>	0	0.00%	2	0.33%	2	0.28%
<i>Alvara Direito de Venda</i>	1	0.86%	0	0.00%	1	0.14%
<i>Alvara Direito de Ocupação</i>	0	0.00%	3	0.50%	3	0.42%
<i>Hak Milik</i>	59	50.86%	355	59.07%	414	57.74%
<i>Hak Guna Usaha</i>	19	16.38%	30	4.99%	49	6.83%
<i>Hak Guna Bangunan</i>	26	22.41%	35	5.82%	61	8.51%
<i>Hak Pakai</i>	53	45.69%	73	12.15%	126	17.57%
<i>Hak Pengelolaan</i>	12	10.34%	64	10.65%	76	10.60%
<i>Hak Sewa</i>	5	4.31%	6	1.00%	11	1.53%
UNTAET Land & Property Temporary Use Agreement	0	0.00%	0	0.00%	0	0.00%
Government Land & Property Lease	0	0.00%	0	0.00%	0	0.00%
Pemberian Hak	6	5.17%	3	0.50%	9	1.26%
Other	0	0.00%	11	1.83%	11	1.53%
None/No answer	11	9.48%	39	6.49%	90	12.55%
Total responses	206		891		1137	

The results show that 1,137 responses were obtained (206 in the urban centers and 891 in the rural areas). The interviewees were not presented with a list of land rights, but instead were asked to mention those of which they were aware.

An interesting finding is that people seem to be more aware of the Indonesian land tenure system, as an overall 57.74% of respondents had heard of *hak milik*, followed by 38.77% that mentioned *hak adat*, and 17.57% listed *hak pakai*. Only 0.42%, of the whole sample, referred to Portuguese land tenure terms such as *propriedade perfeita*, *aforamento*, *ocupação*.

Though there may be several explanations for this result, LLP can only speculate at this stage. One possibility is that, because the Indonesian regime was most recent, those terms come to mind easily. Another explanation could be the recent common use of the Indonesian language. Finally, it could also reflect the more extensive titling process carried out by the Indonesian regime, which issued approximately 46,000 titles, by comparison with the Portuguese regime which issued fewer than 3,000 land titles.

It is also worth mentioning that the Portuguese regime offered land rights similar to those of the Indonesian land regime in the case of freehold, leasehold and certain use rights.

¹¹ See Part 2 of this report, Research Findings, Figures 10, 11, 12.

Figure 11 of Part 2 indicates that 77.41 of the whole interview sample (717 persons) understand *pemberian hak* to mean right of ownership, or in other words, freehold.¹² This reveals a lack of understanding of this concept as it merely denotes the administrative process by which an individual could obtain freehold, but not the right of ownership itself. Therefore, an individual may well have initiated a *pemberian hak* process that never concluded. In such event, a freehold right was not acquired.

Figure 12 of Part 2, also reveals that 72.25% of the whole sample understand ownership (freehold) to mean the right to sell, transfer and freely administer. This concept, consequently, seems to be relatively clear. Nonetheless, in Figure 14, Part 2 of this document, the findings suggest that interviewees were not certain as to the types of land rights to which they were entitled. Some persons believed their land rights amounted to combined rights including freehold, use agreements, leasehold and others, which can lead to confusion.

Policy Options

It is recommended that policymakers choose from one of the following options, for the further development of land laws.

- 1) Maintain a detailed and elaborate system of formal land rights similar to those that existed under the Portuguese and Indonesian regimes, including freehold, leasehold, concessions, right of exploitation, right of management, apartment right, right of use, and others.
- 2) Simplify the system by developing a national land tenure regime based on permanent and unrestricted land rights (freehold) and basic use rights (leasehold, concessions).
- 3) Develop a land tenure system applicable to the urban areas of the country with a simple classification of freehold, leasehold and concession rights, and retain flexibility for the customary land tenure system in the rural areas by stating that ‘customary land rights’ will persist in community-governed areas until further regulated by law. This would require a gradual, ongoing program to elicit and consolidate “constitutionally friendly” changes in rural areas concerning gender equality and equal inheritance rights.

Recommendation

LLP recommends Option 3, which was devised by participants at the land rights and title restitution roundtable held in Dili on June 30, 2004. Option 3 offers a more flexible system that will not contradict customary systems still operating in certain areas of the country, while allowing for further study and the gradual incorporation of those systems into formal law.

¹² *Pemberian hak* is the process of acquiring rights, rather than the actual land right. It is the administrative procedure that is to be followed for the acquisition of land rights.

As mentioned before, of an estimated 200,000 land parcels believed to exist in East Timor, not more than 25% were ever formally registered under the Portuguese and Indonesian regimes. Consequently, while nearly 50,000 land parcels can be theoretically claimed on the basis of formal land titles, approximately 150,000 parcels have never been subject to land registration nor the issuance of formal titles.

Therefore, the Land Rights and Title Restitution Act should facilitate the formal land registration process for all of those land parcels of the country. This includes formally titled land and land held under customary titles. This assertion is supported both legally and practically as follows.

In legal terms, Article 2, paragraph 4 of the Constitution of the Republic of East Timor establishes that the State shall recognize and value the norms and customary practices of East Timor insofar as they do not contradict the Constitution and the law. Hence, the recognition of customary land titles would comply with this constitutional norm.

In practical terms, although the Portuguese regime lasted for over 400 years, and the Indonesian regime was imposed for approximately 25 years, neither of the two were able to implement formal land registration throughout the country. The existence of customary land tenure systems in East Timor has survived formal ‘State’ administration. Such customary or ‘local’ systems continue to provide rules frameworks for the peaceful [and effective] administration of land by the communities. These systems may well not be ideal or completely just, but to deny their existence and to draft a law without recognizing this reality would prove to be inappropriate and inefficient in terms of bringing these systems into compliance with the constitution, fostering greater gender equality and greater equality in inheritance arrangements.

The objective of the law on land rights and title restitution is to establish legal procedures and parameters for the first registration of all land parcels in East Timor. This process should include not only disputed land, and land that has been formally claimed, but also all land parcels that must eventually be included in the formal land registry. Consequently, the following policy considerations and options should be applicable for the determination of land rights throughout all of the country, including a general category for ‘community’ land. Community land will include that land which is not State-owned, but rather privately and collectively owned. There is no intention of establishing individual, state-registered land rights within the communities at this stage, although forms of individual or family land rights exist presently in traditional land tenure systems in many parts of East Timor.

List of Proposed Land Types

LLP, and DNTP specifically, agree with Moss (2000) who, when speaking of land rights that should be registered, maintains:

The land tenures provided under the Basic Agrarian Law can be significantly simplified. Those to be provided by the East Timor system

*should be: Freehold (similar to hak milik), leasehold (hak guna bangunan, hak guna usaha, hak pakai and hak sewa), Mortgage (hak tanggungan).*¹³

Moss goes on to say:

Titles should be collected into the Land Book and contain records of all transactions by inheritance, gift, bankruptcy, liquidation, court order, compulsory acquisition by government or agency of government, changes by adverse possession, notices of impending compulsory acquisition or forfeiture for unpaid government debts, building and planning enforcements and orders.

Nonetheless, it may also make sense to register community land as an independent category, which may be assimilated to ‘freehold’ as it may entail recognizing collective ownership of that land. For the time being, communities would be allowed to continue under their customary land tenure systems, with the gradual incorporation of formal structures pertaining to Constitutional and legal rights of the community members. Further research and legislation will have to determine general, formal rules applicable to communities in terms of representation and internal organization.

State land of private domain should also be registered as freehold belonging to the State.

Consequently, the proposed classification of land rights is:

- a) Freehold (roughly equivalent to *hak adat pribadi, hak milik, propriedade perfeita*);
- b) Leasehold and concessions (*arrendamento*, land use rights, etc.);
- c) Mortgage (to be further defined in the law).
- d) Communal land.

iii. Clarification on who can own land as established by the Constitution.

Distinction between natural and juridical persons for the application of Provision 54, paragraph 4 of the Constitution,¹⁴ / Women and children’s access to land rights.

Distinction between natural and juridical persons for the application of Provision 54, paragraph 4 of the Constitution

Article 54, paragraph 4 of the East Timorese Constitution restricts ownership of land to *national citizens* only. The text of this provision, translated from Portuguese, is as follows: *Only national citizens have the right to private ownership of land.*

¹³ Moss, Ian. (2000) Land Registration in East Timor: Plan for the Rehabilitation of the Land Registration System. UNHABITAT report. August 2000. Pg. 16

¹⁴ Based on LLP’s report on Compliance with the Constitution by Non-National Claimants of Pre-Existing Freehold Rights. July 2004. Pgs. 26-27

LLP consulted senior government officials and members of Parliament to seek clarification on the Constitutional provision that restricts land ownership to East Timorese nationals. They indicated that, when drafting the Constitution, the intention was mainly to ban foreigners from owning land. In LLP's opinion, this could well have been achieved through a simple statement such as: *The ownership of land is restricted to East Timorese nationals.*

However, the use of the *national citizens* may cause certain confusion and requires further clarification. The term 'citizen' is normally used to refer to natural persons (human beings) as opposed to juridical persons (legal entities). Below are two definitions of *citizen*:

'A person who, by either birth or naturalization, is a member of a political community, owing allegiance to the community and being entitled to enjoy all its civil rights and protections...'¹⁵

'Person with full exercise of his/her civic and political rights in regard to a free State, and subject to all the obligations inherent to that condition.'¹⁶

If the Constitution of East Timor were to be interpreted to refer to citizens in the sense indicated above, then it would restrict land ownership to natural persons, as it is clear that juridical persons cannot exercise political rights (right to vote or be elected to public office). However, this interpretation would impose an additional, unintentional constraint on land ownership in East Timor as it would exclude:

- ◆ foreign natural persons (intentionally),
- ◆ foreign juridical persons/legal entities (intentionally), and
- ◆ Timorese juridical persons (unintentionally as indicated by senior officials).

Banning all corporations from owning land might well inhibit national and foreign investment in East Timor. Long-term and large investments could be discouraged. Furthermore, incorporation of commercial societies by Timorese citizens could also be discouraged. The following questions emerge: Why would national citizens want to incorporate legal entities which, in many cases, would require secure land tenure to function, if their businesses cannot own land? Is it attractive for national corporations to have to lease real estate? If the land in question belongs to one national shareholder, wouldn't it prove disadvantageous for other shareholders, if they have to lease from him/her?

With regard to the above analysis, Article 54, paragraph 4 of the Constitution would not exclude Timorese juridical persons, or corporations. This view is shared both by those senior government officials and members of Parliament that were consulted by LLP, as well as by the participants in LLP's June 30, 2004 roundtable on Land Rights. Practically

¹⁵ Black's Law Dictionary. Seventh Edition. West Publishing Company. St. Paul, Minn. 1999.

¹⁶ Dicionário da Língua Portuguesa Contemporânea, Academia das Ciências de Lisboa e Editorial Verbo. 2001 (original Portuguese text). Translated to English by the author.

all the working groups at the roundtable agreed that Timorese legal entities should be entitled to freehold. The following suggestions were made in this regard:

- ◆ Timorese corporations and other juridical persons should be entitled to own land.
- ◆ Law should clarify the definition of ‘nationals’ and ‘citizens.’
- ◆ The East Timorese nationality of a corporation should be determined by a minimum (50-60%) capital held by East Timorese persons. This would allow the participation of foreign investors in Timorese corporations.
- ◆ If a corporation declares bankruptcy, any land that is owned by it should revert to the State.

For further clarification of this matter, it may prove helpful to consider the corresponding provisions of other existing Timorese legislation.

Lei 4/2004 Sobre Sociedades Comerciais (Law on Commercial Societies) promulgated on April 5, 2004, in Article 2, provides that the personal status of commercial corporations is determined by the law of the State where the company headquarters is based. Personal status, in this context, refers to the ‘nationality’ of the company. It is important to remember that legal entities, as independent juridical persons, have their own nationality, which may or may not differ from that of their shareholders.

Juridical doctrine and legislation in most countries also determines that a company’s ‘nationality’ is determined by the country where it is legally incorporated.

Consequently, a company that is incorporated in East Timor, with its headquarters in that country, would be considered a ‘national’ company. However, can it also be considered a ‘national citizen’ for the purpose of owning land?

Policy Options

Options for clarifying this issue include the following.

- 1) Restrict ownership of land to East Timorese natural persons only.
- 2) Make a Constitutional amendment to change Article 54, paragraph 4, so as to clarify that land ownership is allowed for all East Timorese natural persons as well as juridical persons, i.e., include a wider range of nationals, regardless of their age and ability to exercise political rights. In such event, minors and national legal entities would be considered ‘citizens’ and, hence, have access to land ownership. This definition of those who can legally hold land in East Timor is widely supported by stakeholders consulted in the LLP process.
- 3) Adopt the broader definition, mentioned in #2 above, in the forthcoming law on land rights and title restitution, as well as in the law on compliance with the Constitution by non-national claimants of freehold rights. This would require that those two laws specifically clarify the application of the Constitutional restriction and allow for East Timorese legal entities to own land.

Recommendations

- a) LLP recommends Option 3 for the following reasons. Article 3, paragraph 2, of the Nationality Law, when speaking of persons who are eligible for original ‘citizenship,’ includes ‘children’ of a Timorese mother or father, as well as children of unknown origin or nationality. The term ‘children’ implies the recognition of citizenship for a minor, which diverges somewhat from the classic civil law definition of “citizen” as a natural person with political rights (obviously an adult). This interpretation is confirmed by Article 47, paragraph 1 of the Constitution, which states that “Every citizen above the age of 17, has the right to vote and be elected.” This clearly implies that citizens can be less than age 17 (minors) as well as 17 years of age and older. The former can neither vote nor be elected, while the latter can.

The term ‘citizen,’ as employed in the Constitution, is far more encompassing than the common definition previously discussed. In the context of the Constitution, *citizen* includes all nationals, minors and adults. If the Constitution has used the term ‘citizen’ as an equivalent of ‘national,’ this implies that not only physical persons can be nationals of East Timor, but also legal corporations and entities. This seems to have been the intention of those who participated in drafting the Constitution.

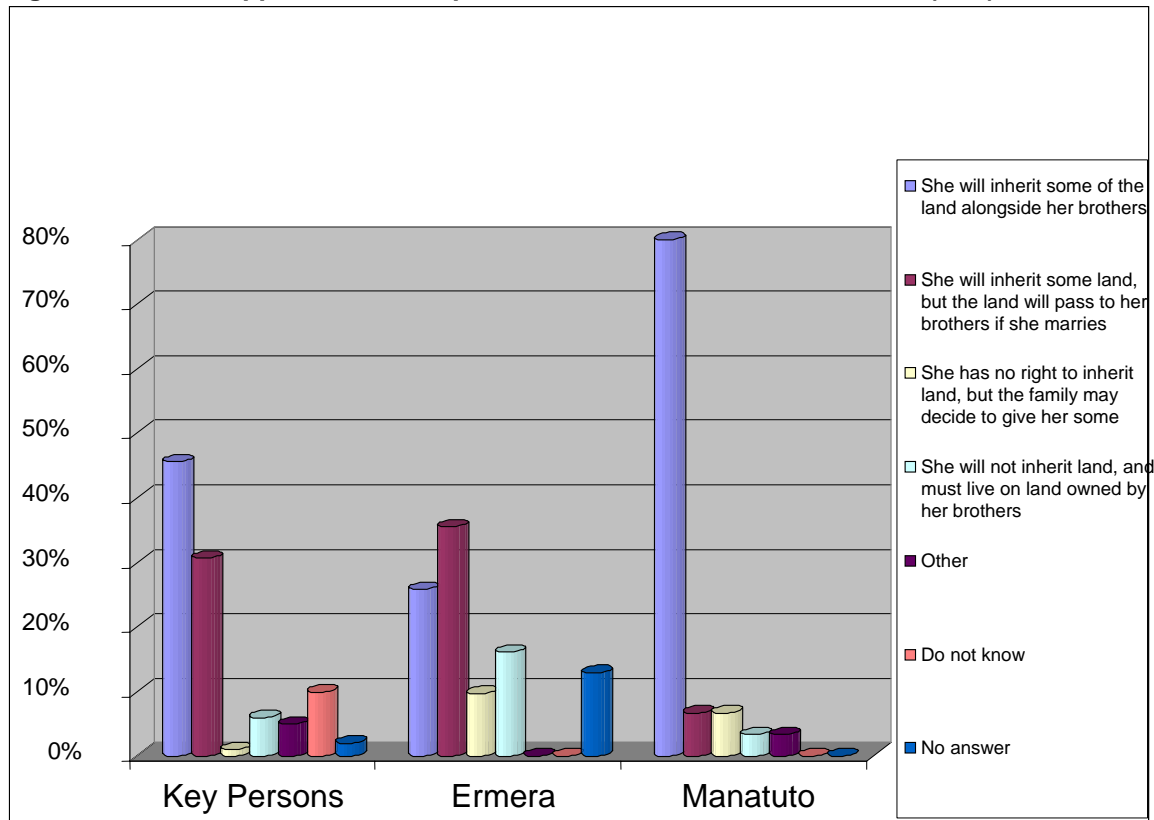
- b) The law on commercial societies/legal entities should determine legal requirements that corporations and other legal entities must meet to qualify as national juridical persons. This entails specifying, e.g., a minimum percentage of national capital, i.e., held by East Timorese citizens, or perhaps a minimum number of East Timorese shareholders.

Women and Children's Access to Land Rights

A matter of much concern is the situation concerning women’s and children’s land rights. LLP’s report on Land Dispute Mediation¹⁷ presented several findings in this regard. Relevant figures (14, 15, and 16) and corresponding comments are reproduced below from the original Land Dispute Mediation report.

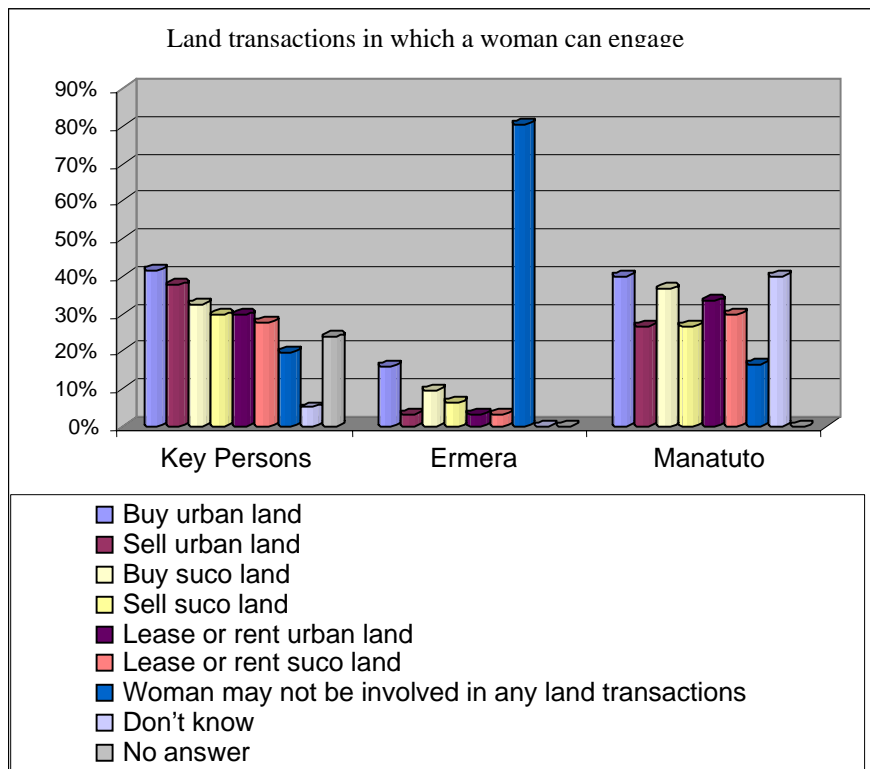
¹⁷ Nixon, Rod and Urresta, Edwin. *LLP Report on Research Findings and Policy Recommendations for A Legal Framework for Land Dispute Mediation*. February 2004. Pgs. 35-37

Figure 14: What happens when the parents of an unmarried woman die? (Q19)



Manatuto sub-district, a dominantly matrilineal area, demonstrates a strong trend toward unconditional inheritance rights for women (around 80% of the sample), with around 45% of the key person sample and around 25% of respondents from Ermera Kota sub-district indicating that unconditional inheritance rights prevail for women. Reflecting a tendency for the inheritance rights of women living in patrilineal systems to be lost upon marriage (similarly, men living in a matrilineal system could expect the same outcome), the key person and Ermera Kota samples both show a significant number of respondents (over 30% in each case) indicating that while an unmarried woman living on her parents land at the time of their death might inherit some land, this land will pass to the ownership of her brothers in the event that she marries.

Figure 15: In which land transactions can a woman engage? (Q20)



The key person sample resembles the Manatuto sub-district sample in indicating that between 20% and 40% of respondents' state that women may be involved in a range of transactions concerning land. Again, the results from Ermera Kota sub-district, the only dominantly patrilineal sample included, present a stark contrast to both the key persons sample and the Manatuto sub-district sample, with around 80% of Ermera respondents indicating that women may not be involved in any land transactions.

Figure 16: Are women demanding more rights concerning land? (Q210)

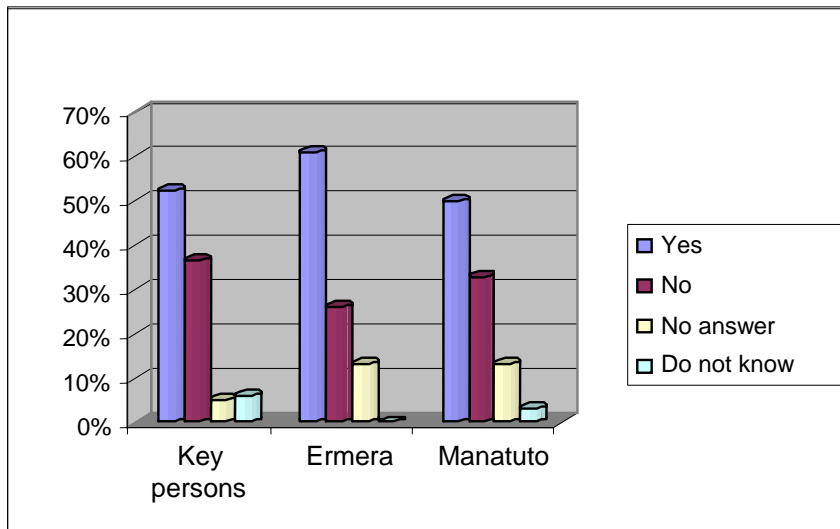


Figure 16 suggests that women as a group do aspire to access a greater range of land-related options than is presently open to them.

Local systems seem to be mostly patrilineal throughout East Timor. There are few matrilineal systems. Consequently, women generally have limited and conditional access to land rights. Conversely, where matrilineal systems operate, men have limited and conditional access to land.

Furthermore, in the LLP's *Land Dispute Mediation Report*, Rod Nixon states 'Land-related aspects are an important component of the value exchange process associated with marriage. Policymakers may be tempted to consider the loss of a woman's inheritance rights at marriage an injustice, yet to ignore existential components of Timorese life in the course of the policy development process could be counter-productive in terms of overall well-being for the population of Timor Leste, and could compromise popular support for state-formulated policies, laws, and rules.'

The clarification and regulation of these practices is challenging for policymakers and legislators. Customary law has a very complex bride-wealth system, involving the transfer of land rights, among other aspects. Those local systems do not base access to land rights on the formal and constitutional principle of gender equality, complicating matters even further.

Article 17 of the Constitution of East Timor establishes that both men and women have the same rights and duties in every area of family, cultural, social, economic and political life. As all law (formal and customary) must abide by the Constitution, land laws should incorporate provisions to encourage, support and consolidate gender equality in terms of accessing land. This is also supported by LLP's findings¹⁸ that indicate that approximately

¹⁸ See Figure 18, pg. 34 of this report.

83% of the research sample strongly agreed or agreed with the statement that women should have the same right to claim land as the men.

A further complicated matter when drafting the Civil Code, is the issue of inheritance rights. Under local systems, inheritance does not necessarily reflect the formal juridical concept of equality established by Articles 16 and 17 of the Constitution that determine that all persons have equal rights and no discrimination can be made.

LLP's research team consulted interviewees on their support for equal rights of male and female children to inherit land. Their responses and LLP's comments are depicted in Figure 23 below, reproduced from Part 2 of this report.

Figure 23: Perceptions concerning land transfer scenarios (Q16)

Please indicate your level agreement or disagreement with the following statements						
Statement, and level of agreement/disagreement	Urban		Rural		Whole Sample	
	No.	%	No.	%	No.	%
a). Male and female children should have equal rights to inherit land.						
Strongly Agree	27	23.28%	169	28.12%	196	27.34%
Agree	73	62.93%	317	52.75%	390	54.39%
Disagree	8	6.90%	93	15.47%	101	14.09%
Strongly Disagree	2	1.72%	10	1.66%	12	1.67%
Don't know	6	5.17%	12	2.00%	18	2.51%
Total	116		601		717	

Nixon¹⁹ states that ‘Responses to 23a indicate strong support (with 82% of the overall sample agreeing or strongly agreeing) for the statement that male and female children should have equal rights to inherit land. In assessing the meaning of this data, it should also be taken into account that matrilineal land tenure systems exist in two of the five sub-districts included in the sample. It would be difficult, therefore, to conclude that the data solely supports inheritance rights for female children in patrilineal land tenure systems.’

These findings encourage Government efforts to promote an egalitarian system of land rights for men, women and children.

Policy Options

Law must abide by the Constitution and protect juridical equality. Hence, policy options in this respect include:

- The Civil Code should define, in detail, women's and children's rights to property, land, inheritance and other such assets.
- East Timor's land laws should define women's and children's rights specific to land.
- A combination of rules included both in the Civil Code and land laws should specify women's and children's rights to land.

¹⁹ See pg. 69 of this report.

Recommendation

LLP suggests the adoption of Policy Option 3. Gender equality and children's rights, as well as inheritance rights should be the general norm applicable to different juridical situations. Therefore, it should be addressed in the Civil Code, which is still in the process of being drafted.

Nonetheless, even though the Civil Code has not yet been promulgated, the Constitutional mandate of equality will guide development of such regulations. Consequently, it may be appropriate for the law on land rights and title restitution to include provisions to facilitate and promote women and children's access to land.

Such provisions, in terms of freehold, could include:

- a) Women and men can legally acquire and register land under their names;
- b) Freehold should be registered jointly under the name of husband and wife;
- c) Freehold rights inherited by women should be registered under their name;
- d) Freehold, inherited by children, should be registered under their name and cannot be transferred, without judicial approval, until they become adults; and
- e) Transfer of land belonging to husband and wife must be done with the approval and signature of both.

iii. Comparative Case Study on Land Title Restitution

In an effort to inform the development of land policy in East Timor and provide useful input based on experiences in other countries, LLP conducted a comparative case study of other countries' experiences. Based on Land Law 01-2003 and previous LLP reports, relevant topics were listed for analysis, including supporting evidence of claims, exclusion of certain claims, ways to determine cutoff dates for claims, and subject matter of claims; adjudication body and appeal mechanisms; good faith and bad faith transactions; and title restitution options.

ARD's consultant, Daniel Fitzpatrick prepared the paper *Comparative Desk Study of Land Title and Restitution Experiences, Strategies and Options*.²⁰ The charts below summarize several main aspects of that case study which covered Kosovo, Czechoslovakia, South Africa, Cambodia, Vanuatu, and Albania.²¹

²⁰ Fitzpatrick, Daniel. *Comparative Desk Study of Land Title Restitution Experiences, Strategies and Options*. ARD East Timor Land Law Program. May, 2004. Electronic copies can be requested at landlawprogram@hotmail.com

²¹ Synopsis prepared by Edwin Urresta.

Supporting evidence required

KOSOVO	Original or certified copies of titles; Housing & Property Directorate can provide certified copies.
CZECHOSLOVAKIA	Evidence that property was nationalized or confiscated by state between February 25, 1948 and January 1, 1990.
SOUTH AFRICA	Description of land, nature of right being claimed. Any appropriate document or resolution.
CAMBODIA	No express requirement.
VANUATU	Claimant (alienator) must prove to be registered as such. Number of land title or plot, where possible. No specific evidence required.
ALBANIA	No formal requirement. Official documents where possible. Without documents, court resolves in presence of opposing parties.

Exclusion of certain claims

KOSOVO	Only natural persons claiming residential properties have right to administrative restitution process. Legal entities are not entitled to administrative process and must go to court.
CZECHOSLOVAKIA	Only natural citizens can claim. Legal entities with foreign participation cannot. Single claimants of more than 150/250 hectares of agriculture and forest land, respectively, are excluded.
SOUTH AFRICA	No express exclusion.
CAMBODIA	Claims based on titles issued prior to 1979. Claims of State land
VANUATU	Claims of public land.
ALBANIA	Certain persons, e.g. Fascist collaborators, etc.

Cutoff dates for claims

KOSOVO	No claims based on dispossession before March 23, 1989.
CZECHOSLOVAKIA	No claims related to nationalization before February 25, 1948 and after January 1, 1990.
SOUTH AFRICA	No claims allowed concerning dispossession before promulgation of Native Land Act (June 19, 1913)
CAMBODIA	Not relevant.
VANUATU	All land is returned to customary owners.
ALBANIA	No claims before nationalization or expropriation prior to Nov. 29, 1944. There is some confusion.

Subject matter of claims

KOSOVO	Residential property only.
CZECHOSLOVAKIA	Movable and immovable property.
SOUTH AFRICA	Any right of land (customary law interest, labor tenant, sharecropper, etc.)
CAMBODIA	Only land and attached objects that cannot be removed without damage.
VANUATU	Land including improvements...land under water...
ALBANIA	Land, buildings and 'everything that is permanently joined to it...'

Adjudication body/appeal systems

KOSOVO	Housing and Property Claims Commission. Right to request reconsideration by HPCC (another panel or the plenary)
CZECHOSLOVAKIA	Court system. No prior administrative process. Judicial appeal system applies.
SOUTH AFRICA	Courts have jurisdiction. Any administrative decision may be reviewed by courts. Judicial appeal system applies.
CAMBODIA	Local land dispute commission. Decisions may be appealed to courts.
VANUATU	Customary Land Tribunal. (Village, sub-area, custom area and Island tribunals). Island Tribunal's decision is final, but subject to Supreme Court supervision, in terms of process.
ALBANIA	Local restitution commissions. Appeal may be made to State Committee for Restitution and Compensation.

Good faith transactions/occupation

KOSOVO	No specific provision.
CZECHOSLOVAKIA	No special provision for good faith claimants. Some 'third-party' interests are protected.
SOUTH AFRICA	No fixed principle protecting the rights of current owners or occupants.
CAMBODIA	Ownership not to be granted to fraudulent, forceful, speculative or hidden possessors.
VANUATU	Not addressed in the report.
ALBANIA	No special provision for bona fide rightholders.

iv. Legal Process and Requirements for the Validation and Registration of Pre-existing Land Rights in East Timor

The most complex aspect of land rights and title restitution is to develop legislation that will determine what kinds of pre-existing land rights (prior to Independence) can eventually be validated and which land titles override others, in case there are competing claims for the same property.

Following a similar pattern of topics identified for LLP's comparative case studies on land rights and title restitution, policy options and recommendations for East Timorese policymakers are included in this report. Options are presented for the legal definition of subject matter of land claims, valid and invalid claims, legitimate transactions, cutoff dates, acquisition by adverse possession, the situation of juridical entities with claims based on titles prior to May 2002, and title restitution options.

i. Means of Evidence

A central aspect of the land rights adjudication or restitution process is the 'means of evidence' to be provided for the corresponding resolution.

LLP's *Comparative Desk Study of Land Title and Restitution Experiences, Strategies and Options* indicated different approaches when requiring that land claims have supporting evidence. In the case of Kosovo and Czechoslovakia, documentary evidence is required

by law. Furthermore, claimants must present original or certified copies of titles, or proof of nationalization or confiscation of private property by the State. This, however, presupposes the possibility of obtaining such documents from an official source. In the case of Kosovo, the Housing and Property Directorate has jurisdiction for the provision of certified copies.

In the case of Cambodia, Vanuatu, and Albania, there is no formal requirement of supporting evidence. In South Africa, moreover, the claimants are requested to present a description of the land, and any other appropriate document, where possible. This denotes the lack of reliable, official land records.

LLP's findings (see Part 2, Figure 24, pg. 73) indicate that East Timorese citizens perceive that freehold titles issued by the Indonesian (82.5%) and Portuguese (76.5%) regimes, in that order, are perhaps the most important means of proof of freehold rights, especially for urban areas. This also suggests the perceived high value of formal, state land titles.

Other major means of proof are crops, trees and buildings (69.6%), witness accounts (66.5%) and written documents (on average 60%).

Policy Options

As LLP's comparative case study reveals, two options exist concerning means of proof:

- 1) Make no reference to means of proof in the Land Rights and Title Restitution Act, and stipulate application of general law (Civil Code) on this matter.
- 2) Include a provision in the Land Rights and Title Restitution Act with an illustrative listing of acceptable forms of evidence.

Recommendation

LLP recommends Option 2. The more transparent and inclusive the Law on Land Rights and Title Restitution is, the better. The provision could include an illustrative list of acceptable evidence such as the following.

- ◆ Original freehold titles issued under the Indonesian and Portuguese regimes;
- ◆ Copies of titles that can be acceptable with other supporting evidence;
- ◆ Copies of Indonesian or Portuguese official gazettes listing freehold rights granted to the claimants;
- ◆ Documents, contracts or other written evidence, proving transactions and land transfers;
- ◆ Witness accounts;
- ◆ Sworn statements by the claimants;
- ◆ Crops, trees and buildings proven to belong to the claimants; and/or
- ◆ DNTP reports and references.

ii. Subject Matter of Land Claims

As the comparative studies above reveal, several matters could eventually be subject of the claims and land rights validation process. These include immovable property, movable property, freehold rights and other land use rights (leases, concessions).

Other studies on the East Timorese situation of land claims and land rights offer differing views on what types of legal relationships should be processed as land claims and what types of rights should be validated and registered. In this regard, two different views are those of Moss (2000) and Wright (2000). While Moss suggests simplifying the land registration system to freehold, leasehold and mortgages,²² Wright²³ adheres to the Indonesian land system including ‘right of ownership, right of exploitation, right of use of structures, right of use, right of management, religious land, apartment right, mortgage and state land.’ Wright, does, however, state that individualized *adat* rights and religious land are not relevant, at this stage. These considerations must be addressed when resolving the subject matter of land claims.

Policy Options

Based on these two arguments, we can conclude that two options exist in terms of types of pre-existing land rights, which may be subject to claim and validation.

- 1) Only pre-existing freehold rights can be claimed and validated.
- 2) Both pre-existing freehold rights and land use rights can be claimed and validated.

Recommendation

LLP recommends Option 1—that only legitimate *freehold* (*propriedade perfeita/hak milik*) rights be validated as long as certain requirements are met. The Law on Land Rights and Title Restitution will have to determine required conditions, such as continued occupation of the property, no outstanding claims registered by another individual, and others.

As mandated by Land Law 01-2003, Articles 4 and 16, State property has reverted to the State of East Timor. Consequently, use rights such as concessions and leasehold, granted under previous regimes, have legally ended. Occupants wishing to renew them will have to file a request at DNTP, as allowed by Article 5, paragraph 5 and Article 6, paragraph 5 of Land Law 01. Those provisions establish the option for occupants to request regularization of their occupation. This option is further expanded in the Decree Law project on Leasing of State Property, currently being debated by the Council of Ministers,

²² Moss, Ian. (2000) *Land Registration in East Timor: Plan for the Rehabilitation of the Land Registration System*. UNHABITAT report. August 2000. Pg. 16

²³ Wright, Warren (2000). *On the Reconstruction of the Record of Land Ownership in East Timor*. UNHABITAT report. 2000. pg 11.

which foresees a special, ‘swift’ process for the regularization process, through a leasing mechanism.

iii. Deadlines and Cutoff Dates

The Law on Land Rights and Title Restitution should also determine a deadline for registration of land claims and a cutoff date in the past. It is important to determine how far back land claims can go, as well as the last date for the presentation of land claims. Below is an analysis of possible deadlines for the placement of land claims, and a cutoff date for the dispossession of land rights.

Deadline for Placement of Land Claims

Land Law 01, in Article 12, establishes that East Timorese nationals, whose properties had been illegally appropriated or occupied, had a one-year period to lodge claims at DNTP. This period expired on March 10, 2004. In all cases where the properties were not claimed and were abandoned, they would revert to the State of East Timor. Nonetheless, the reversion of those properties can be contested in court until December 31, 2008.

This provision applies only to East Timorese citizens. The intention is to register land disputes for the mediation of conflicts and administrative title restitution. Conflicts imply that such properties are the subject of competing claims or one party disputes another’s occupation.

It is not however, the same for abandoned properties. Abandoned properties that do not belong to any known person are presumed to belong to the State after March 10, 2004. This is also the case for land belonging to unidentified non-nationals, as stipulated by Article 13 of the same land law.

However, nothing has been formally established for East Timorese nationals who occupy land and property without disputes. They would not be covered by the provisions of Land Law 01-2003. This outcome was not unintended. Having participated in drafting Land Law 01, the author can affirm that policymakers intended to leave that matter to be resolved by the Land Rights and Title Restitution Act. A formal systematic land titling process was expected to be established by a certain time, and undisputed land rights and properties claimed by nationals would then be eligible for land registration.

LLP’s findings suggest that East Timorese nationals may not have been aware of the option to lodge claims for disputed land. An analysis of the land claims database at DNTP (see page 43) by LLP’s research team indicates that approximately 75% of claims included in the database were lodged by non-national citizens. As there are a great number of claims yet to be included, once they are delivered by the East Timorese embassy in Jakarta, it is likely that approximately 90% of the claims will have been initiated by foreign citizens. Does this mean that nationals are engaged in few land disputes and conflicts and so feel little need to lodge claims?

This can be further clarified by LLP's findings on the extent to which people were aware of the possibility of lodging land claims at DNTP. Apparently, only 33% of the urban respondents and 15% of the rural sample were aware that there was an official land claims process (refer to Part 2, Figure 15, page 61).

Policy Options

Options for the determination of a deadline for the submission of land claims by non-nationals include:

- 1) Maintain the deadline established by land law 01-2003, that is, March 10, 2004 for disputed land parcels. Those who registered disputed land claims in a timely fashion would have the option of invoking an administrative land title restitution process. Those who failed to lodge their disputed claims before the deadline would be allowed to resolve their disputes only in the court system.
- 2) Extend the deadline for registering of land claims by national citizens in the land rights and title restitution act.

Recommendation

In light of the small number of claims lodged by national citizens and LLP's research findings concerning low levels of public awareness about the need to register claims, LLP strongly recommends extending the period of time for land claims by Timorese nationals for a further one year, with this period to commence only after completion of a public information campaign to be organized by DNTP.

Cutoff Date for the Dispossession of Land Rights

The majority of the case study countries stipulated a cutoff date so as to limit how far back land rights can be claimed. This is most important, as not resolving this issue could lead to potential land claims based on customary or even formal titles that dates back several decades or even longer.

The elements of time and occupation of land is fundamental when considering land title restitution.

Policy Options

Options in this regard include:

- 1) Not fixing a cutoff date and entertaining claims based on land rights that may have originated at any time in the past.
- 2) Setting a cutoff date that will invalidate any claim that is based on titles asserted to exist prior to that time. This, of course, would not affect those that have remained in permanent possession of the land and whose rights originated prior to the cutoff

date. The cutoff date would primarily exclude claimants not in possession of the land they claim.

Recommendation

LLP and DNTP have analyzed this aspect in detail. Their recommendation is to set January 1, 1975 as the cutoff date for land claims. This has the purpose of recognizing freehold that had been clearly established by the end of the Portuguese regime and, at the same time, any legitimate transactions that may have occurred since then, thus including good faith transactions that may have taken place during the Indonesian regime.

iv. Legitimate Titles / Good Faith Transactions

An important element to be considered when resolving land claims is that pertaining to legitimacy and good faith transactions. This concept has been incorporated into the immovable property regime in Article 16 of Land Law 01-2003. When referring to State property of private domain, Land Law 01 establishes that all those properties that belonged to the Portuguese State and were acquired or developed by the Indonesian regime have reverted to the State. In paragraph 3 of Article 16, the law nonetheless specifies that all rights acquired in *good faith*, with actual payment of a sales price, will be protected.

Although the requirements of legitimacy and good faith are inherent in all legal transactions, and are usually defined in the Civil Code, it is worth considering the possible inclusion of these requirements in the Land Rights and Title Restitution Act.

LLP's comparative case study showed that, of six countries covered by the analysis, only one made express reference to the element of 'good faith' in its land act. Cambodia legislated that ownership of land is not to be 'granted to fraudulent, forceful, speculative or hidden possessors.'

There have been general comments about how land transactions under the Portuguese and Indonesian regimes were considered to be, in most cases, illegitimate. However, no research exists on this subject. LLP decided to enquire about perceptions of legitimacy of land claims. As depicted in LLP's research findings, Figure 18 partially reproduced below and further analyzed in Part 2 of this report, the majority of interviewees (60% and 68%, respectively) perceived that titles issued under the Portuguese and Indonesian regimes were generally legitimate.

Figure 18: Perceptions and confidence levels concerning land claims (Q11)

Please indicate your level agreement or disagreement with the following statements						
Statement, and level of agreement/disagreement	Urban		Rural		Whole Sample	
	No.	%	No.	%	No.	%
c). Most land title certificates issued during Portuguese times are legitimate.						
Strongly Agree	18	15.52%	59	9.82%	77	10.74%
Agree	57	49.14%	298	49.58%	355	49.51%
Disagree	17	14.66%	108	17.97%	125	17.43%
Strongly Disagree	6	5.17%	32	5.32%	38	5.30%
Don't know	18	15.52%	104	17.30%	122	17.02%
Total	116		601		717	
d). Most land title certificates issued during Indonesian times are legitimate.						
Strongly Agree	15	12.93%	75	12.48%	90	12.55%
Agree	54	46.55%	351	58.40%	405	56.49%
Disagree	20	17.24%	95	15.81%	115	16.04%
Strongly Disagree	6	5.17%	18	3.00%	24	3.35%
Don't know	21	18.10%	62	10.32%	83	11.58%
Total	116		601		717	

Consequently, given that an extraordinary majority of people (typically 60% +) perceive that formal land titles issued under both the Portuguese and Indonesian regimes are legitimate, the law should establish how to determine such legitimacy.

Policy Options

Options include:

- 1) The Land Rights and Title Restitution Act should not define concepts of 'legitimacy' and 'good faith,' referred to in Land Law 02-1003. In this case, the Civil Code will provide further regulations on the matter.
- 2) The Land Rights and Title Restitution Act should further define the concepts of legitimacy and good faith, for the purpose of facilitating the land claims and land rights restitution process.

Recommendation

LLP recommends Option 2. The concepts of 'good faith' and "legitimacy" may well be defined to include all acquisitions of freehold rights in East Timor, where all parties involved voluntarily transferred their rights, received just payment or compensation, and were not, in any way, forcefully dispossessed or threatened to obtain the transference of their land.

However, the general principle is that all land transactions, unless proven otherwise, would be considered legitimate. Those arguing illegitimacy would have to prove their case.

V. Forums for Resolution of Land Claims and Validation of Land Rights; Administrative Process with Judicial Appeal

Another element to consider is how to establish the legal process for resolution of land claims and creation of a legal institution that can resolve land claims and order first land registrations. The forthcoming Law on Land Rights and Title Restitution will not only determine *what land rights* can be validated, but also *what process* must be followed and *who* is responsible for the validation of those rights. This section attempts to consider options for the land claims process and the institution with jurisdiction for the resolution of such claims.

When the first democratic government of East Timor took office in May 2002, there was a general understanding that land claims were to be resolved directly by the judiciary (courts) with no prior administrative process. This made sense, at the time, as there were no specific laws on the matter. However, LLP now strongly advises against this approach for the following reasons. As mentioned before, best estimates indicate that approximately 200,000 land parcels exist in East Timor. If the judicial process were to resolve land claims and to order first land registration, this would mean that the landholders of all those parcels, at one point or another, would have to go to court for the recognition and validation of their rights. This is *absolutely impractical* for many reasons. First, because of the costly nature of judicial processes;²⁴ second, the courts lack administrative capacity to handle so many cases, as well as technical expertise on land matters; third, land registration not only implies the juridical registration of parcels but also their technical registration.

Others advocate making DNTP responsible for the administrative resolution of land claims and first land registration. LLP also advises against this approach. Although it may make sense from the technical side, it also poses a major problem in terms of transparency. If DNTP is responsible for land registration, should it also have jurisdiction in determining who is entitled to land rights? DNTP will best play its role of contributing to the creation of clear, stable and secure land tenure relations in East Timor if it is perceived as a reliable, technical entity, capable of providing technical support and information on land registration. DNTP should be kept out of the claim validation process to establish firmly in the public consciousness that it is a technical agency with no role in the adjudication of land claims, and therefore above any suspicion of conflict of interest. Consequently, it should not be burdened with the validation process of land rights. An independent body should have jurisdiction over such matters. This solution offers the added advantage of building checks and balances into the process.

Senior government officials have stated their desire to create a transparent mechanism to be implemented by an administrative entity (land council) with members representing diverse areas of government and the justice sector. Ideally, the Directorate of Land and

²⁴ Note that if judges and court personnel devote most of their time to processing land claims, they will be less able to process other types of disputes in a timely manner. To these official costs must be added the transaction costs (travel time and expenses, lodging, lawyers' fees, etc.) that land claimants will have to support if they want to register their holdings and gain validated legal title to same.

Property should have a representative on this decision-making body for the resolution of land claims. However, there is a crucial need to specify, by law, which other actors should participate in such a sensitive process. This administrative council would be a first stage of the validation process. Its decisions, if not appealed by the parties, would become final and open the way to the first registration of the land parcels in question. However, if any party to a land claim believes the administrative process has been improperly applied or is unlawful, that party could contest the decision of the administrative land council in court. The judicial decision of such disputes, based on the East Timor's land laws, would then be final. This process would be highly transparent, and could be expected to create incentives for members of the administrative land council to perform to the best of their ability and to resolve land disputes expeditiously and fairly, as the parties to any claim could subject their decisions to probing scrutiny in the context of a public legal process.

Jurisdiction for the Resolution of Land Claims

Based on the arguments above, options for the process and jurisdiction are the following.

Policy Options

- 1) A judicial process where courts would implement civil law procedures and make a final decision and adjudicate land rights between/among the relevant parties. Courts would consequently be responsible for the application of the Land Rights and Title Restitution Act and, once a final decision is made, would order land registration by DNTP. There would be no prior administrative process.
- 2) An administrative process would be established, empowering the Directorate of Land and Property (DNTP), as the technical entity responsible for land administration and registration, to resolve land claims based on rules and procedures incorporated in the Land Rights and Title Restitution Act. DNTP's administrative decisions could be appealed to the Ministry of Justice. The administrative decision of the Ministry of Justice could then be contested in court, if any of the parties felt that they were unlawfully dispossessed of their land rights. The court's ruling would be final.
- 3) An administrative process through an independent, interdisciplinary, land council would be established with the participation of pre-determined government representatives, and other members of the community. This body would be responsible for an administrative decision that could, eventually, be contested in court by the parties if they felt the law had not been correctly applied in their case. The uncontested administrative decision would be final. In case of being contested, the court's ruling would be final.

Recommendation

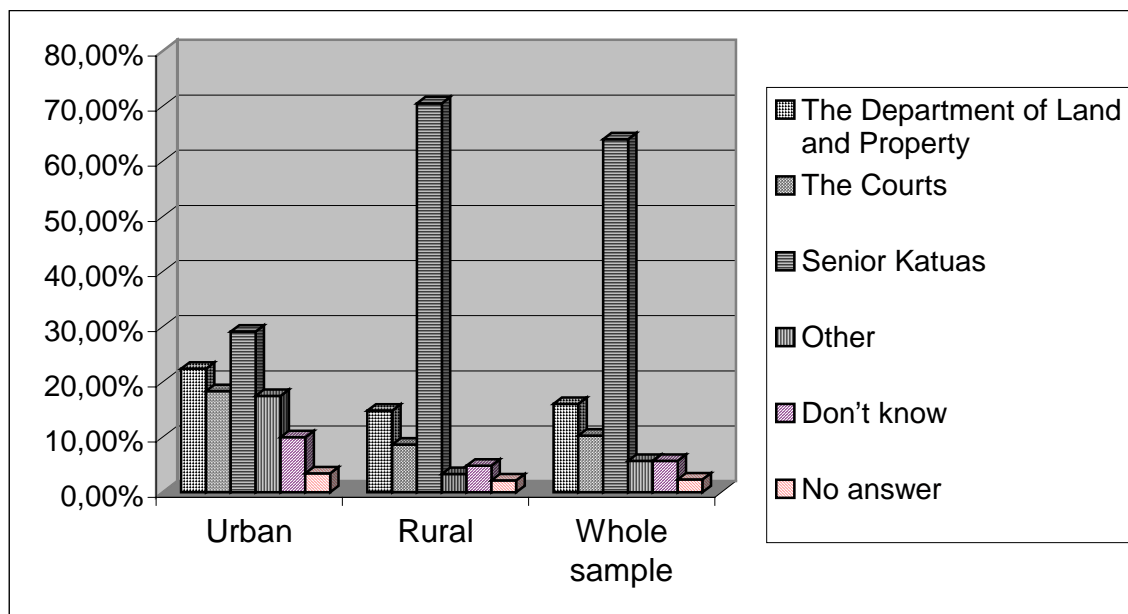
LLP recommends Option 3 as the most efficient and transparent approach for the restitution of land rights.

Participants at the June 30, 2004 roundtable on Land Rights and Title Restitution, unanimously supported the option of creating an administrative land council responsible for the resolution of land claims, provided its decisions could be subsequently contested in court. Participants expressed great interest in DNTP's technical role in such a process, assuming that officials of other government agencies (e.g., the Ministries of Agriculture, Transport, Communications and Public Works), and other members of the community such as *Chefes de Suco*, *Conselho de Katuas*, NGOs, women's organizations and the Church would likewise play a role in the administrative land council.

LLP shares the view that a transparent title restitution process, with DNTP's technical participation and the transparent participation of community members will resolve most land claims at the administrative level. In all likelihood, few cases will be contested in court if the administrative process is open and just. Such an outcome would represent significant economies for both the Government and land claimants. It would also imply that contested cases would receive the full judicial attention they deserve, consolidating the role of East Timor's courts as a check and balance on administrative decision making. This, in turn, would contribute to institutionalization of rule of law norms in adjudication of land tenure claims, heightening security and clarity in the area of land tenure and property relations and so contributing to creation of a framework attractive for both domestic and foreign investors.

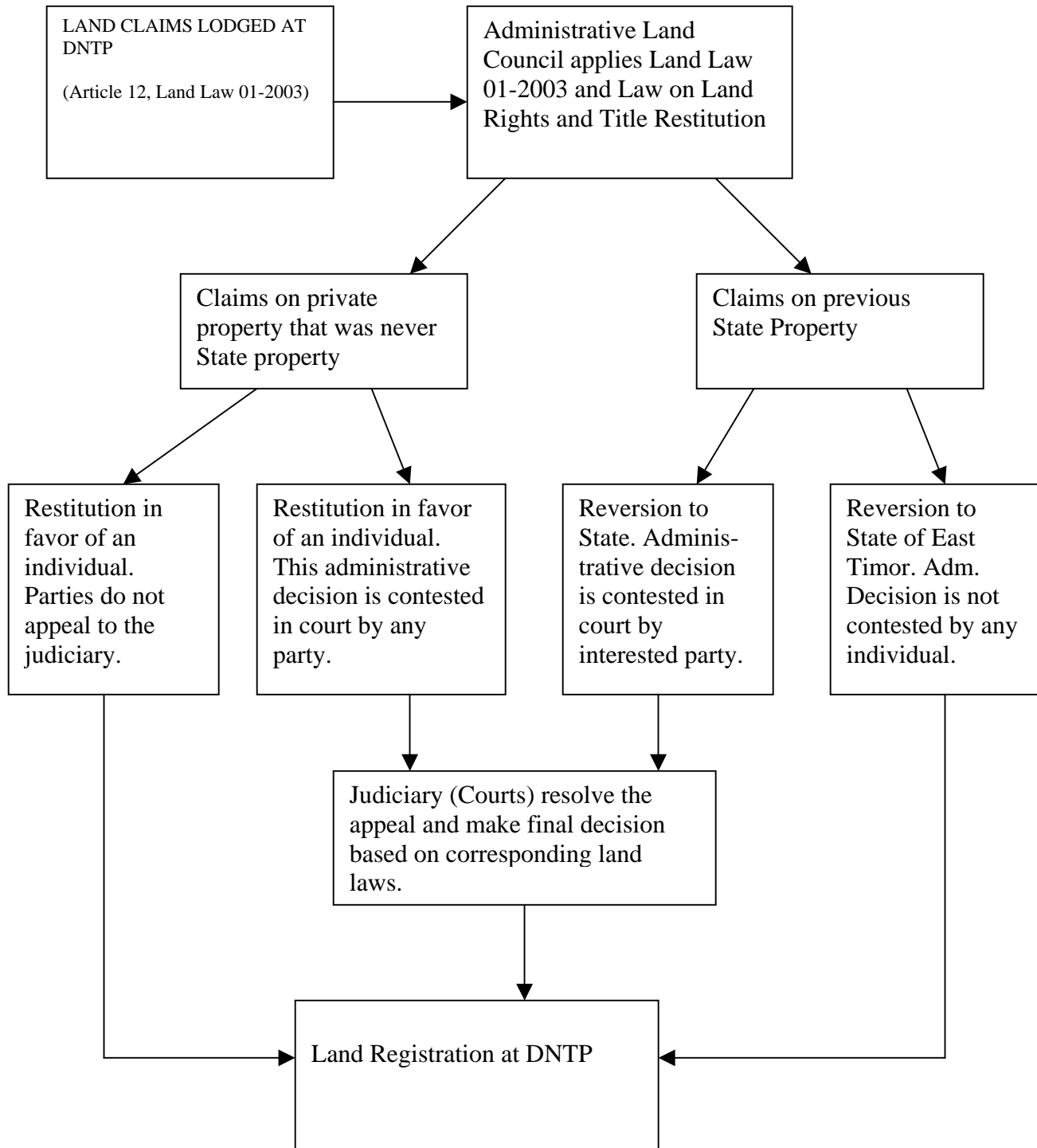
This approach is also supported by LLP's research findings depicted in Figure 17 below.

Figure 17: Respondents' views concerning who should make a compulsory decision concerning the resolution of a land dispute or claim, in the event a compulsory decision must be made (Q10)



Rod Nixon, in Chapter Two of that report, page 49, states: *Whereas the proportions differ between the rural and urban samples, the results are the same in terms of the overall ranking of the authorities whom respondents believe should be responsible for making compulsory decisions concerning land disputes and claims. In this respect, senior katuas (elders) are the most favored arbitrators (Dili urban: 29.2%; Rural 70.5%), followed by DNTP (Dili urban: 22.5%; Rural: 14.8%) and the Courts (Dili urban: 18.3%; Rural 8.6%).* The justification for a broad-based administrative land council with DNTP's and senior *katuas*' participation is clear. Below is a flowchart of the proposed process.

FLOWCHART OF THE LAND TITLE RESTITUTION PROCESS



VI. Final Recommendations for the Restitution of Land Rights and Titles

Further study and discussion must take place to inform development of specific guidelines to identify authentic titles and land rights. This, again, is a very complex topic. LLP and DNTP present general recommendations below. These reflect LLP's research findings, comparative studies and input from relevant stakeholders and government officials.

- ⇒ Considerations included in this report must be addressed first as part of a gradual policy development process. Once these issues have been settled, GOET officials can develop more detailed policy and legal frameworks.
- ⇒ LLP and DNTP have proposed a Land Dispute Mediation process, as a forum for conflicting parties to resolve their disputes. Such agreements can become legally binding, once they are registered at DNTP. However, it is recommended that the Land Rights and Title Restitution Act include specific reference to the process of validation of those agreements.
- ⇒ LLP and DNTP are confident, based on information provided so far by the land claims database and DTP district officials, that land disputes affect no more than 10% of all land parcels in the country. Preparation of a Land Rights and Title Restitution Act will facilitate the validation and registration of the great majority of land parcels that do not have conflicts.

PART 2

Research Results and Analysis Concerning Policy Development in Support of a Law on Land Rights and Title Restitution

Rod Nixon

I. Introduction

Land rights are fundamental to human societies, and land rights regimes that are fair, easily understood and broadly respected are fundamental to human prosperity. A land rights regime that is comprehensible to community members and consistent with shared needs, aspirations and expectations can minimize uncertainty surrounding land transactions, promote investment and encourage the reconstruction and improvement of domestic and business infrastructure. Positive effects of stable property regimes can include increased borrowing ability and thus availability of capital, increased productivity and health improvements.

A transparent and systematic process for resolving competing land titles is central to a successful land rights regime; this factor is of particular importance to East Timor. Since the end of the Portuguese colonial administration in 1975, East Timor has endured a succession of political transitions.²⁵ The range of land and property systems that have prevailed throughout this period, combined with irregular property transfers during the various regime changes, present East Timor with complex challenges. These challenges concern the resolution of land claims and the preparation of a law on Land Rights and Title Restitution that will incorporate land rights originating during different eras into one cohesive framework.

With respect to land claims alone, LLP database development work during 2004 has already seen the DNTP land claim database grow to include 4,269 entries (as addressed in more detail later in this report). To this figure can be added at least 6,000 additional claims not yet delivered from Jakarta, indicating that total land claims for properties in East Timor exceed 10,000.

The difficulty in resolving land restitution issues in East Timor is exacerbated by the destruction of property records that occurred in the course of the violent Indonesian

²⁵ Independence from Portugal was first proclaimed on November 28, 1975, at which time Indonesian forces were already launching incursions into the West of the country. Less than two weeks later on December 7, 1975, Indonesian forces took Dili. In July 1976, the Republic of Indonesia formalized its annexation of East Timor by declaring it the 27th Province. The referendum on independence that preceded the widespread violence and looting associated with the Indonesian withdrawal, took place on August 30, 1999, and was followed by a period of United Nations administration lasting until independence on May 20, 2002. Accordingly, East Timor has endured four major transitions of governance since 1975. On top of these, the CNRT (National Council of Timorese Resistance) de facto national administration, which sprang to life in the vacuum left by the Indonesians after September 1999 and played an important role during the transitional era – represents yet a further dimension of the complex administrative history of East Timor.

withdrawal in September 1999. The loss of this documentation requires that the Land Rights and Title Restitution legislation specify principles to guide the assessment of evidence presented in support of land claims to facilitate the determination of binding decisions concerning authentic titles and land tenure arrangements.

Moreover, because formal titling was largely limited to urban areas—for historical reasons relating to the agricultural nature of the East Timor economy—the widespread observance of customary titling in rural areas must also be respected in the course of the legal development process.

A number of the issues examined in this report have already received consideration by other commentators, including Fitzpatrick (2001), Elderton (2002), Thomson (2002) and du Plessis (2003). The objective of this LLP research report is to advance the investigation of these issues through the analysis of primary data relating to land tenure and land claim issues in East Timor, so as to inform the development of a law on Land Rights and Title Restitution.

Structure of the Research Section of This Report

Activities associated with research for the land rights and title restitution component of the LLP legislative agenda took place from February 2004 to June 2004. In the early stages of developing the methodology, it was decided that information revealing the distribution and basis of land claims would be valuable in its own right, and would also be useful in subsequent development of the fieldwork phase of the research.

In summary, two main research activities have contributed to this report:

- ◆ The development of the DNTP Land Claim database, in cooperation with DNTP staff and students from the National University (UNTL), and a subsequent Geographic Information System (GIS) exercise mapping concentrations of land claims throughout East Timor.
- ◆ A field research component in which 717 randomly selected respondents from 11 sub-districts throughout East Timor were interviewed.

Because the preparation of the second stage of the research was partially informed by data that became available in the course of the Land Claim database development and analysis stage, the two components of the research are presented sequentially in this report in separate sections that discuss methodological aspects, results and observations. A final section presents an assessment of the research findings, and consideration of their implications for policy development.

II. Stage 1: Development of the DNTP Land Claims Database

By early 2004, DNTP staff had entered some 1,974 entries into the land claim database, with several thousand more claims awaiting entry. To generate information concerning the geographic spread of claims throughout East Timor, it was decided to dedicate resources to entering as many claims as possible, and thus use the database itself as a research tool. The exercise also had the advantage, in the face of severe staff and resource limitations at DNTP, of moving the land claim administration process forward and creating a resource tool useful for future LLP work. LLP provided training to staff from UNTL in the areas of data entry and backup, filing, and good public administration practice.

i. Process

Beginning on March 3, 2004, teams of seven students²⁶ from UNTL began the process of entering data into a bank of computers that was installed at DNTP for this purpose. Claims were also sorted along district, sub-district and *suco* lines to facilitate eventual processing. The process of entering data continued until April 21, 2004, when the flow of new claims to DNTP began to dry up. At that point, the database contained 4,269 claims. At this point, a decision was made to halt the data-entry exercise, and analyze the data available, since the number of new claims arriving was now minimal and the need to commence analysis had become pressing.

Soon after the data-entry process was closed, approximately 500 additional claims arrived from Kupang, Indonesia. A further 6,000 (approximate figure) were known by that time to have been lodged at the East Timor Embassy in Jakarta, but had yet to be transferred to Dili. These 6,000 claims filed in Jakarta are likely to represent the final large batch of foreign claims, since the official closing date for foreign land claims was March 10, 2004, in accordance with the provisions of Land Law 1/2003 (Democratic Republic of East Timor 2003). It is believed, therefore, that the total number of land claims exceeds 10,000, and that the DNTP database presently contains approximately 40% of these.

Once the database development component was completed, using Excel and Access programs, it was possible to generate profiles of the claim database and, using GIS technology, to produce maps showing the concentrations of land claims.

ii. Land Claim Information

The extent to which the 4,269 claims already in the database can be considered a representative sample of all claims is a point worthy of comment. It is possible that these claims may differ in some respects from the wider population of claims. These claims are, of course, among the first claims to be lodged, indicating perhaps that those who lodged

²⁶ Teams of seven proved best in terms of the space available and provision of adequate supervision. The 21 UNTL students available at that time rotated through these database development activities in three groups. At any one time, one group was working on the DNTP Land Claim database, a second group was working on the development of the DNTP Dili-district government property leasing database, and a third group had no activity scheduled.

them are more eager, better connected, or better resourced than the broader population of claimants. What this might indicate about the location of the properties that are the subject of these first 40% of registered claims, or the land rights on which they are based, however, is difficult to say. If it is true that these early claimants have higher socioeconomic backgrounds and educational levels, then it may be that their claims are concentrated more in urban areas than the broader range of claims. Only analysis of the complete claim database, in due course, will indicate if this is really the case. At present, it is only possible for the first 4,269 claims to be examined because this is the only information currently available. It is explicitly recognized, however, that this is a potentially imperfect (non-representative) sample of the full set of cases.

1. An Overview of the Land Claim Database

Figure 1: Claims by district and by nationality (including companies²⁷)

District	Claimant by Nationality (Including Companies)									
	Unknown		Company		Foreign		Timorese		Total	
	No.	%	No.	%	No.	%	No.	%	No.	%
Aileu			1		27	.8	39	3.6	67	1.5
Ainaro					32	1.0	3	.3	35	.8
Baucau					41	1.3	2	.2	43	1
Bobonaro					286	9.1	91	8.5	377	8.8
Covalima					276	8.8	11	1	287	6.7
Dili	1		42		2016	64	571	53.4	2630	61.6
Ermera			1		74	2.3	113	10.6	188	4.4
Lautem					51	1.6	25	2.3	76	1.8
Liquica			14		108	3.4	133	12.4	255	6
Manatuto					46	1.5	28	2.6	74	1.7
Manufahi					38	1.2	9	.8	47	1.1
Oecusse					122	3.9	1	.1	123	2.9
Viqueque					24	.1	43	4	67	1.6
Total Claims by Nationality					3141	100	1069	100	4269	100

Perhaps the most notable feature of the claim database profile as presented in Figure 1 above, is that Timorese claims number 1,069 (25% of all claims), whereas foreign claims number 3,141 (or 73% of all claims). Given that the 6,500 claims not yet entered into the database are expected to be mainly Indonesian claims, the proportion of Timorese claims is likely to approximate 10%. The information included in the land claim applications is unclear concerning the specific nationality of some foreign land claimants. Accordingly, 2,580 foreign land claimants are of unspecified foreign nationality, five land claimants identify themselves as of Portuguese nationality, and two land claimants identify themselves as of Australian nationality. While 554 land claimants identify themselves as of Indonesian nationality, this is also likely to be the nationality of the great majority of claimants of unspecified foreign nationality.²⁸

²⁷ Unfortunately, specific information concerning the national origin of companies that have lodged land claims is not available.

²⁸ Note that some applicants indicated they were of multiple nationality, with some claiming to hold up to three passports. A name check, although not a scientifically rigorous method, was also used in this case to help formulate an initial hypothesis concerning the origin of foreign land claimants. This check indicates that only 53 of the 3,141 claimants appear to have Timorese names.

In terms of crude numbers of claims, it is not surprising that there is a concentration of claims in Dili district, with 2,630 of the 4,269 claims (or almost 62% of all claims filed) targeting properties in this district. As might also be expected, a slightly higher proportion of the foreign claims than of the Timorese claims concern properties in Dili district (64% of foreign claims versus 53.4% of East Timorese claims).

A number of other districts merit attention for the crude number of claims to which they are subject (see also Point 3 of this section titled *Concentrations of Claims Relative to Population Density*).²⁹ The border districts of Bobonaro and Covalima, for example, have attracted substantial numbers of foreign claims (9.1% and 8.8%, respectively). This probably reflects the status of these two districts as major transmigration areas during Indonesian times. Whereas in Bobonaro, the proportion of Timorese claims that have been lodged (8.5%) is similar to the proportion of foreign claims, only one percent of the total number of Timorese claims have been lodged in Covalima. This could be due to a greater number of Timorese internal migrants resettling to transmigration areas in Bobanaro than in Covalima during Indonesian times, or a reduced degree of displacement among Timorese living in Covalima than in Bobonaro during 1999, or some other reason(s).

A similar discrepancy prevails with respect to Oecusse, where 122 foreign claims were filed (mainly in Pante Makasar), but only one Timorese claim. This overwhelming proportion of foreign versus Timorese claims in Oecusse is believed to be due to the large numbers of West Timorese who lived in Oecusse during Indonesian times, reflecting the social and economic links among the *Atoni* people in the western part of the island.

Ermera and Liquica are notable for the high proportions of Timorese claims they have each attracted (each in excess of 10%). A possible explanation for this is that local residents are taking the opportunity to claim coffee plantation land abandoned by Portuguese and/or Indonesian coffee cultivators. It is also of note, however, that population concentrations in this part of East Timor, are relatively high.

2. Basis of Claims

Many of the land claims filed lack complete documentation. In total, about 30% of the applications are based on claims categorized as ‘unknown,’ due to incomplete documentation. This represents the largest single category in the Basis of Claim/Evidence/Original Right table (Figure 2) presented below:

²⁹ The author wishes to acknowledge the assistance provided by Pedro de Souza Xavier, Director of DNTP, in ‘eyeballing’ and offering working hypotheses concerning the land claim data.

Figure 2: Basis of Claim/Evidence/Original Right Indicated on Land Claim Applications Submitted to DNTP (Major Claim Categories Only)³⁰

Basis of Claim/Evidence/Original Right	Number
Unknown	1,308
Certificate/Land Title issued by government (<i>Sertificate Tanah</i>)	704
Process of Acquiring Right (<i>Pemberian Hak</i>) ³¹	478
Document evidencing land ownership signed by Chefe Aldeia, Chefe Suco, Sub-District Administrator, District Administrator and two witnesses (<i>Surat Pernyataan</i>). This document is used in place of evidence that has been lost or destroyed, and is considered to have high credibility.	248
Document certifying transaction, witnessed and signed by Notary (<i>Akta Jual Beli</i>)	238
Receipt documenting sale of property from former owner to new owner (<i>Kwitansi Pembayaran</i>)	200
Subdivision right issued by DNTP (<i>Permisahan Hak</i>)	190
Receipt of property tax payment (<i>Surat Pembayaran Pajak Bumi dan Bangunan</i>)	119
Inheritance	103
Official announcement of a concession ³² to land dating from Portuguese times (<i>Buletin Oficial</i>)	90
Standard letter (<i>Surat Keterangan</i>) issued by <i>Bupati</i> (District Administrator), <i>Camat</i> (sub-district administrator) or <i>Kepala Desa</i> (village chief) authorizing ownership of property	78
Total of Major Categories	3,756

It is important to note that the data entry teams observed that many of the applications contained invalid supplementary documentation, such as government receipts missing appropriate stamps and seals. This situation may present serious challenges for claim authentication during the processing stage, and benefits may be obtained from developing systematic procedures for determining which applications are suitable for processing and which are not.

3. Concentrations of Claims Relative to Population Density

Using figures from the 2001 *Suco Survey* (East Timor Transitional Authority 2001), the concentration of land claims proportional to population density was determined for every *suco* in East Timor. The range of concentrations of land claims throughout all *sucos* (in numerical terms) is presented in Figure 3 below.³³

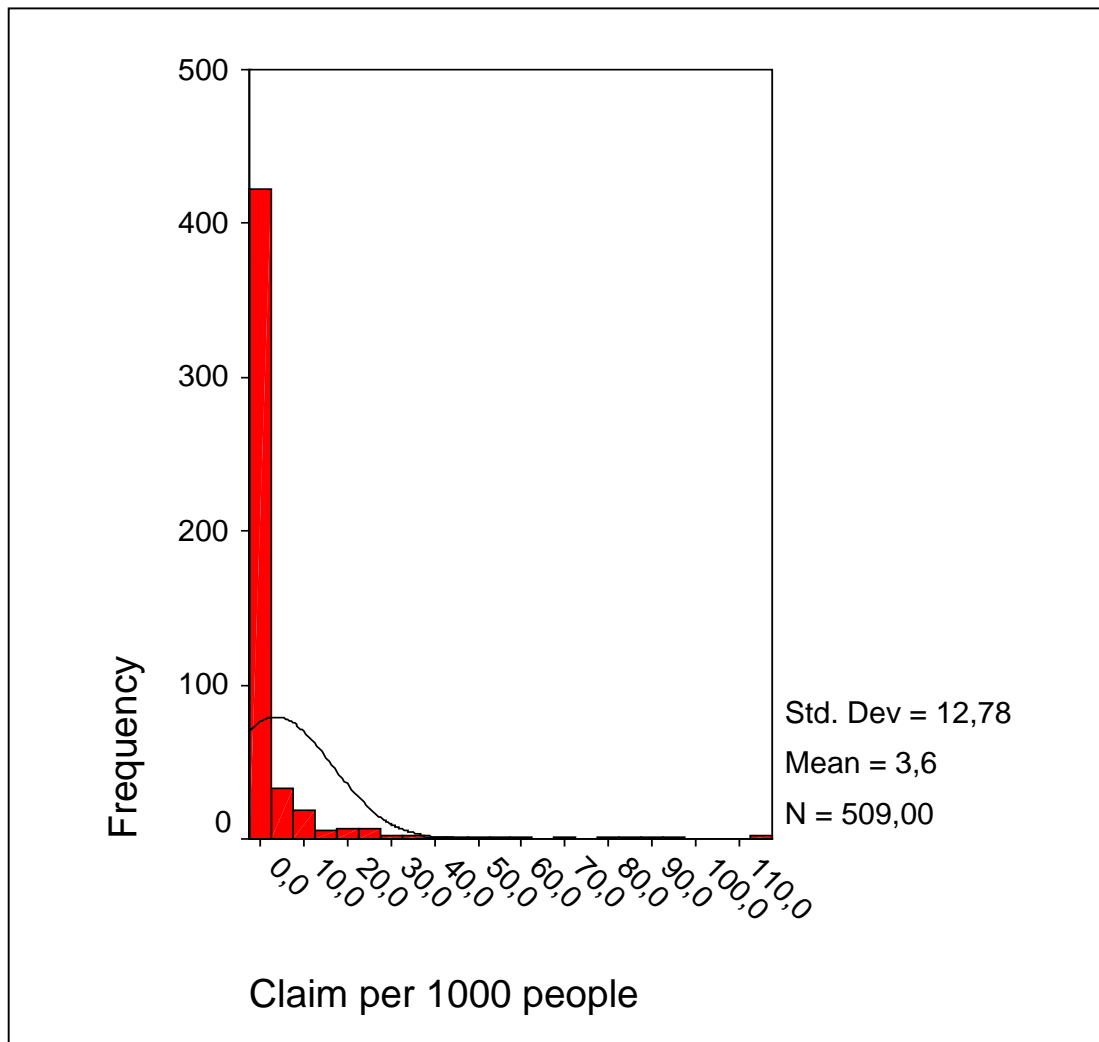
³⁰ The database cites a wide range of entries in relation to the remaining 513 claims, including ‘illegal occupancy,’ ‘letter of attorney’ and ‘Affidavit.’

³¹ Concession right transferable to freehold right in due course.

³² Concessions announced in the *Buletin Oficial* could concern leasehold rights as well as freehold rights.

³³ The reader is advised to remember at all times that this analysis is based only on the estimated 40% of all land claims that have so far been entered into the Land Claim database.

Figure 3: Distribution of claims per thousand people by *suco*



The data indicates that the mean or average number of land claims per thousand people by *suco*, is 3.6. In other words, there is a high concentration of *sucos* with no, or very few claims (i.e., 50% of all *sucos* have less than the mean of 3.6 claims per 1,000 people). Above the mean, there is a concentration of claims per 1,000 people by *suco* within the first standard deviation (from 3.6 claims per 1,000 people by *suco* up to 16.38 claims per thousand people by *suco*).³⁴ The range of claims per 1,000 people by *suco* is wide, revealing that, in some locations, over 100 claims per thousand people by *suco* (more than 7 standard deviations from the mean) have been lodged. If it is assumed that people live five to a house on average,³⁵ then up to one in every two properties could be subject to

³⁴ Standard Deviation is defined (Neuman 2003:545) as ‘As measure of dispersion for one variable [in this case numbers of land claims per 1,000 people by *suco*] that indicates an average distance between the scores and the mean.’

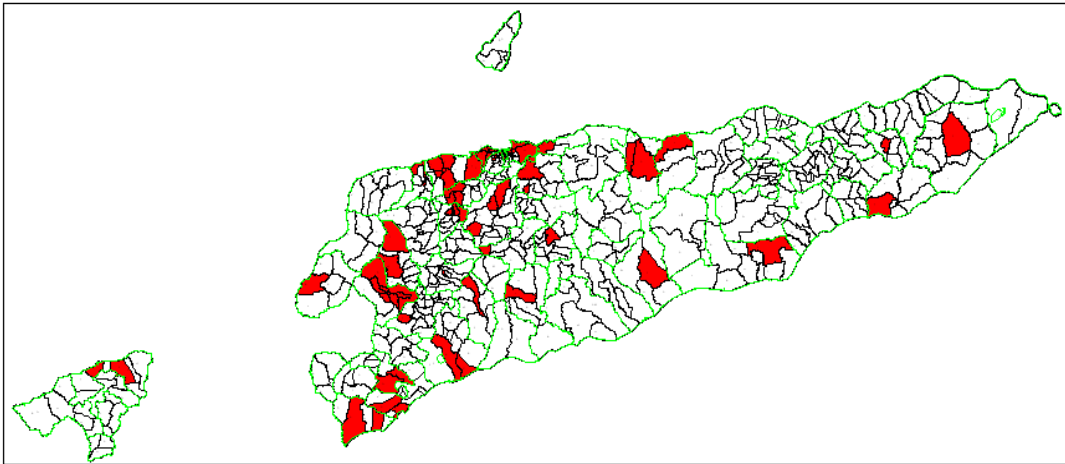
³⁵ Based on Department of Statistics Information provided during June 2004.

land claims³⁶ in these high-claim areas (or alternately, a smaller number of properties could be subject to multiple claims). These areas with the highest concentrations of claims include particular *sucos* in Covalima and parts of metropolitan Dili.

4. Geographic Distribution of Land Claims Concentrations

Figure 4 below indicates those areas of East Timor so far subject to a below average concentration of land claims (un-shaded) and those areas so far subject to an above average concentration of land claims, calculated on a number of claims per thousand people by *suco* basis.

Figure 4: Geographic distribution of areas with concentrations of land claims (indicated by shading) above the mean of 3.6 claims per 1,000 people by *suco*.



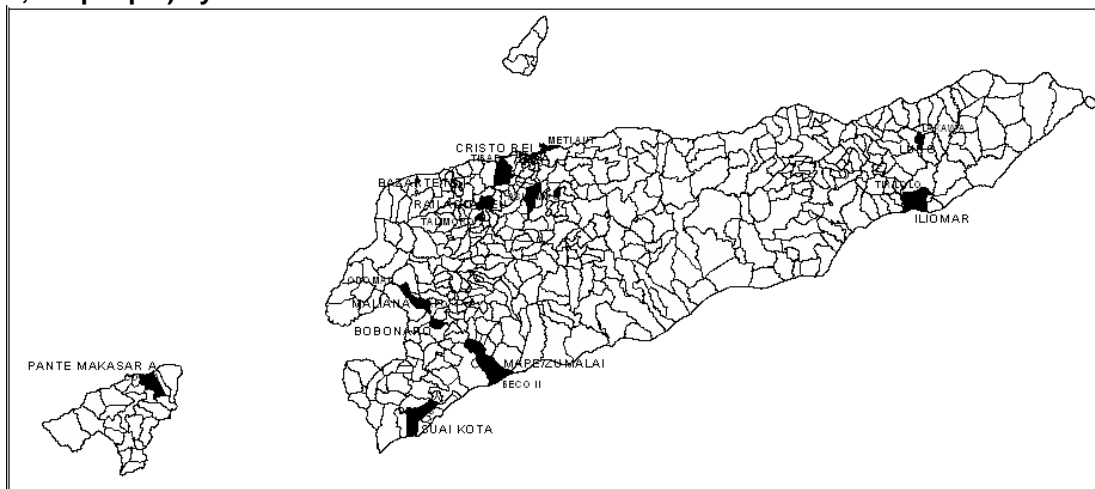
A number of explanations for the minimal numbers of land claims throughout most of the country can be advanced. The first of these is that potential land claimants living in rural East Timor may have minimal information concerning the land claim process. It is even possible these individuals have significantly less access to information about the land claim process than many land claimants now living in Indonesia.³⁷ A possible further explanation is that customary land administration systems operating throughout many rural parts of East Timor remove the need for and/or the possibility of lodging formal land claims. This possibility receives further comment in the second half of this research report, in relation to the assessment of survey data.

To indicate the location of areas with particularly high concentrations of land claims, the following map (Figure 5) shows the location of *sucos* with concentrations of land claims higher than one standard deviation from the mean (in this case, the mean number of claims per 1,000 people by *suco* is 3.6, and one standard deviation equals 12.78. From hereon in this report and for descriptive purposes, *sucos* in this category (greater than one standard deviation from the mean) are classified as ‘high-claim’ areas.

³⁶ Potentially by their occupiers, who may also be their legitimate owners.

³⁷ As suggested by the Director of DNTP, Pedro de Souza Xavier, during discussions with the writer in June 2004.

Figure 5: Geographic distribution of areas with concentrations of land claims (indicated by shading) above one standard deviation from the median (i.e., greater than 16.38 claims per 1,000 people) by *suco*.



Sub-districts with high-claim *sucos*, as indicated in Figure 5 above, are outlined in the following table (Figure 6):

Figure 6: Sub-districts with high-claim *sucos*

District	Aileu	Bobonaro	Covalima	Dili	Ermera	Lautem	Liquica	Oecusse
Sub-district	Aileu	Bobonaro	Mape/Zumalai	Cristo Rei	Ermera Kota	Iliomar	Bazartete	Pante Makasar
	Remexio	Maliana	Suaia Kota	Dom Alexio	Railaco	Luro		
			Tilomar	Nein Feto				
				Vera Cruz				

III. Stage 2: Information and Perspectives Obtained from Randomly Selected Respondents Concerning Land Rights and Title Restitution Issues in East Timor

i. Introduction

This component of the research was undertaken to collect information and perspectives concerning land rights and title restitution matters from members of the general population. Accordingly, it was decided to target respondents on the basis of random sampling, as opposed to selecting them based on particular experience or knowledge. Interview respondents were targeted on the basis of their status as household heads.

The sample for this stage of the research includes both urban and rural areas, and sub-districts both with and without high-claim *sucos* (refer Figure 6). For the most part, the data presentation and analysis is stratified into three groupings: *Dili urban* (2 sub-districts

in the Dili metropolitan area), *rural* (9 rural sub-districts), and *whole sample* (the 2 Dili metropolitan sub-districts combined with the 9 rural sub-districts). The purpose of this stratification is to facilitate comparison and contrast between the main urban centre in East Timor, and more rural areas.

ii. Methodology

The fieldwork for the land claim and title restitution phase of the LLP research agenda took place during May 2004, and involved interviews with randomly selected respondents from throughout the country. Over 700 interviews were completed in 11 sub-districts selected from five districts throughout the country. These interviews were completed by 10 research units organized into five district research teams. The same questionnaire was used for all interviews.

Personnel involved in the fieldwork included six ARD-LLP project staff, 11 UNTL academic staff, 20 UNTL students and 2 DNTP staff. These field personnel were supported by locally hired guides. Field personnel participated in capacity-building activities relating to questionnaire use and GPS use in preparation for the fieldwork. UNTL lecturers and DNTP staff involved in the research had additional training prior to the fieldwork as part of their enrollment in the Charles Darwin University/LLP in-country Social Science Research Methods course³⁸ that LLP has been running during 2004.

1. Questionnaire Design

The questionnaire designed for this LLP project contained 23 questions, with a number of these divided into smaller sub-questions. The questionnaire³⁹ was designed to collect information on the following specific areas related to land claim and title restitution:

- ◆ Concepts of property ownership.
- ◆ The kinds of land rights about which respondents have knowledge.
- ◆ The kinds of land rights enjoyed by respondents.
- ◆ Land claims (incidence nationally, knowledge by respondents of process, participation in process, perceptions of process).
- ◆ Perceptions of the legitimacy of state land acquisitions in former times.
- ◆ Transference of properties.
- ◆ Proof and evidence of ownership.
- ◆ The relative legitimacy of different land rights (including separable rights).

The questionnaire was piloted in the Dili metropolitan area and in rural locations near Metinaro, prior to the commencement of the full research phase. Each interview took between 30 and 45 minutes to complete.

³⁸ Graduate Certificate in Social Science Research Methods.

³⁹ For reasons of space the questionnaire is not included in this document. The questionnaire may be obtained by contacting LLP directly at landlawprogram@hotmail.com.

2. Sampling Strategy

The sampling strategy was developed to include both metropolitan and rural areas, and areas with both high and low densities of land claims (see Figure 7 below). The sampling strategy also ensured that data would be gathered in a range of regions throughout the country. In accordance with these principles, five districts were chosen. These included Dili district as the major population center located on the north coast, Lautem in the east, Covalima in the southwest, Bobonaro in the northwest, and the enclave of Oecusse-Ambeno. Two metropolitan Dili sub-districts were included in the sample, in addition to one rural sub-district in Dili district. In each of the remaining four districts, the district-center sub-district was chosen, along with one other sub-district.

The sampling, therefore, includes a greater number of urban and semi-urbanized areas than one would expect to find were the entire country sampled randomly. This sampling strategy reflects the particular relevance of state land laws to urbanized areas in the East Timorese context. In considering the results, however, the reader should be aware that outside of urbanized and other relatively highly populated areas, views supporting customary principles of land administration and other characteristics that feature prominently in the rural sample data in this report, are likely to dominate even more strongly.

As during the course of the LLP research into land dispute mediation, it was decided to select locations for interviews with household heads using GIS maps, and a process of random point generation. Accordingly, LLP prepared GIS maps of each of the selected sub-districts, featuring settlements, roads and vehicle tracks. To increase the probability that sampling waypoints would be generated only in populated areas and hence reduce time wastage in the field, random waypoints for interviews were selected only in buffered areas. These included areas within 0.5 kilometers of roads and vehicle tracks, and areas within two kilometers of settlements. One hundred and twenty points were randomly generated in the buffered areas in each sub-district, and randomly numbered from 1 to 120. Field staff were instructed to work forward from waypoint 1 until such time as they had undertaken 60 interviews. The 60 additional waypoints were generated in case the location of any of the first 60 waypoints turned out to be uninhabited. Because teams divided into numerous groups in the field and regrouped at intervals, the total interviews in each of the sub-districts did not always equal exactly 60.⁴⁰ Information concerning the sub-districts included in the sample, the number of interviews undertaken in each sub-district and the gender of respondents is outlined in Figure 7, below.

⁴⁰ Data from all interviews undertaken is used in the analysis.

Figure 7: Respondent Details

District	Sub-district	District Centre Status: Yes = X	Sub-district includes one or more High Claim <i>sucos</i> ⁴¹ Yes = X	Urban Status (for data analysis purposes): Yes = X	Respondents (Heads of Household Interviewed)		
					Male	Female	Total
Bobonaro	Balibo				56	14	70
	Maliana	X	X		62	9	71
Covalima	Suai Kota (Town)	X	X		45	11	56
	Tilomar		X		52	16	68
Dili	Dom Alexio (metropolitan)	N/A	X	X	44	12	56
	Metinaro				71	13	84
	Nain Feto (metropolitan)	N/A	X	X	31	29	60
Lautem	Lautem				42	19	61
	Los Palos	X			43	25	68
Oecusse	Oesilo				46	17	63
	Pante Makasar	X	X		45	15	60
Total Respondents					537	180	717

The age of respondents ranged from 16 years to 114 years, with a median⁴² age of approximately 38.5 years. The geographical location of surveyed areas is as outlined in Figure 8 below.

Figure 8: Geographical Location of Surveyed Areas



⁴¹ 'High Claim' designates *sucos* with concentrations of land claims per thousand people by *suco*, of greater than one standard deviation than the mean (i.e., more than 16.38 claims per thousand people by *suco*).

⁴² In other words, half of all respondents were below this age, and the other half were above it.

3. Analysis of Data

The survey results were collated and analyzed using Access, Excel and SPSS programs.

iii. Results

1. Understanding of Land Rights Types

a) Means of accessing land

Respondents were questioned in relation to how they had accessed land up until now (see Figure 9 below).

Figure 9: Means of accessing land up until now (Q1)⁴³

Up until now, what ways have people used to get access to land in your <i>suco</i> ? (respondents able to suggest more than one means of acquiring land).	Urban (116)		Rural (601)		Whole sample (717)	
	No.	% ⁴⁴	No.	%	No.	%
Community/ <i>Adat</i> allocation	24	20.69%	301	50.08%	325	45.33%
Purchase from a community	4	3.45%	23	3.83%	27	3.77%
Purchase from an individual	12	10.34%	18	3.00%	30	4.18%
Lease from a community	2	1.72%	26	4.33%	28	3.91%
Lease from an individual	10	8.62%	22	3.66%	32	4.46%
Use of individually-owned land without payment (including share-cropping)	8	6.90%	35	5.82%	43	6.00%
Inheritance of community land	1	0.86%	61	10.15%	62	8.65%
Inheritance of private titled land	15	12.93%	107	17.80%	122	17.02%
Lease of government land	5	4.31%	3	0.50%	8	1.12%
Otherwise acquire land from Government (including transmigration land, military housing, transfer leased land to freehold)	12	10.26%	2	0.28%	14	1.70%
Do not know	16	13.79%	45	7.49%	61	8.51%
No answer	2	1.72%	15	2.50%	17	2.37%
Other	6	5.13%	48	6.80%	54	6.56%
Total responses	117		706		823	

The data indicates that in rural areas, the most common means of accessing land has been through community/*Adat* allocation (slightly over half of rural responses indicated this option), with the next most common means of accessing land (17.8%) being inheritance of private titled land. Purchases and leases of land, either from communities, individuals or

⁴³ Note that the % column in this table refers to the percent of options indicated in each particular column.

⁴⁴ The percentage columns, throughout the tables, indicate the proportion of respondents in each category who indicated each of the options.

the government,⁴⁵ have been relatively less frequent means of accessing land compared to community allocation and inheritance.

Interestingly, the data also indicate that community/*Adat* allocation has been the most common single means of accessing land in urban Dili as well, with this category attracting more responses (20%) than any other single category. Inheritance of private land, followed by purchase of private land and lease of private land have also been relatively common means of accessing land in (Dili) urban areas.

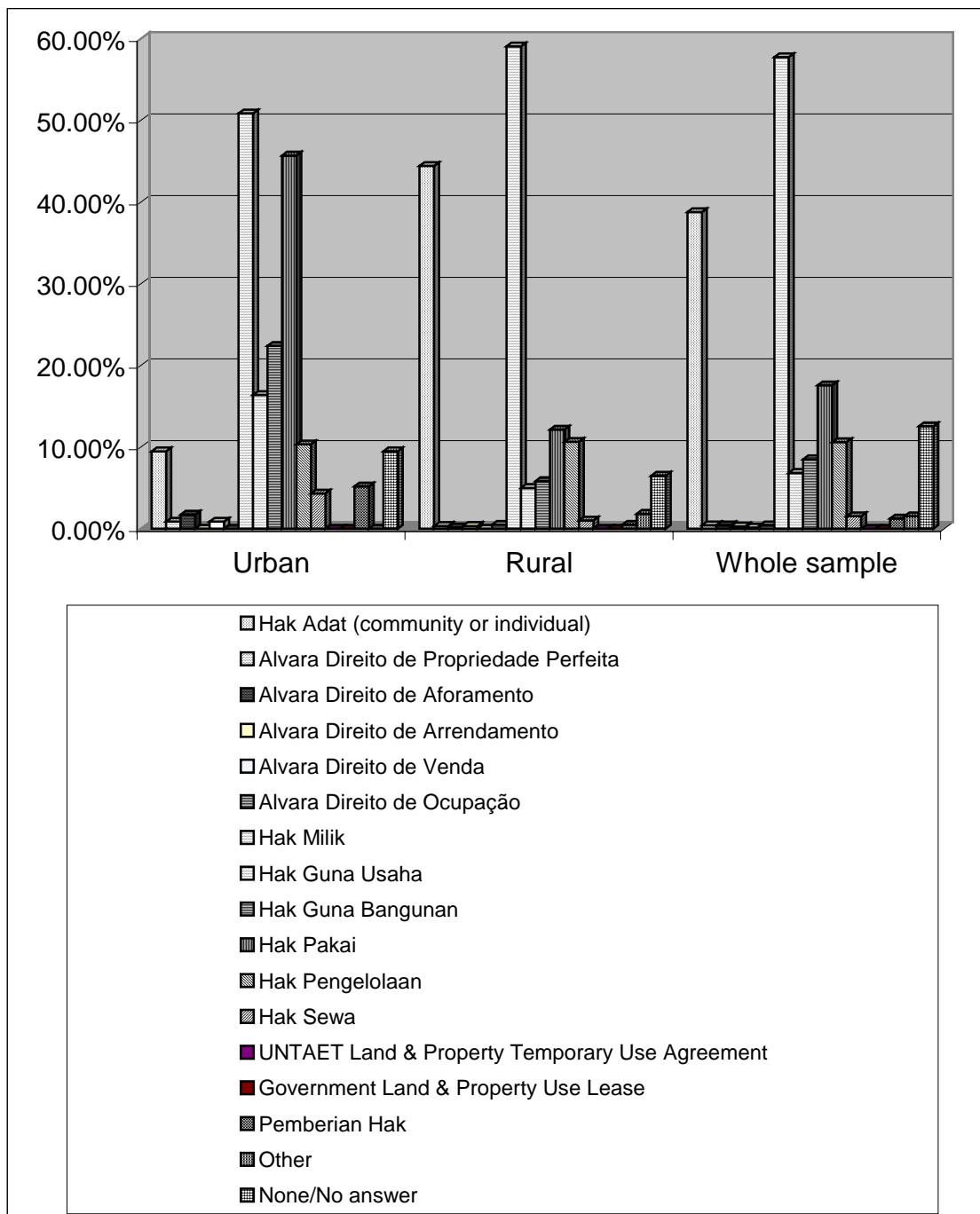
b) Knowledge of land rights types

Respondents were questioned about the kinds of land rights of which they have knowledge. Note that respondents were *not* presented with a list of rights to choose from, as the objective of this question was to assess the extent to which respondents were aware of the range of land rights that have formally prevailed throughout East Timor.

Figure 10: Kinds of land rights known to respondents (Q2).
(The same information is presented over-page in bar-graph format)

Please name the kinds of land rights you know of:	Urban (116)		Rural (601)		Whole sample (717)	
	No.	%	No.	%	No.	%
<i>Hak adat</i> (community <u>or</u> individual)	11	9.48%	267	44.43%	278	38.77%
<i>Alvara Direito de Propriedade Perfeita</i>	1	0.86%	2	0.33%	3	0.42%
<i>Alvara Direito de Aforamento</i>	2	1.72%	1	0.17%	3	0.42%
<i>Alvara Direito de Arrendamento</i>	0	0.00%	2	0.33%	2	0.28%
<i>Alvara Direito de Venda</i>	1	0.86%	0	0.00%	1	0.14%
<i>Alvara Direito de Ocupação</i>	0	0.00%	3	0.50%	3	0.42%
<i>Hak Milik</i>	59	50.86%	355	59.07%	414	57.74%
<i>Hak Guna Usaha</i>	19	16.38%	30	4.99%	49	6.83%
<i>Hak Guna Bangunan</i>	26	22.41%	35	5.82%	61	8.51%
<i>Hak Pakai</i>	53	45.69%	73	12.15%	126	17.57%
<i>Hak Pengelolaan</i>	12	10.34%	64	10.65%	76	10.60%
<i>Hak Sewa</i>	5	4.31%	6	1.00%	11	1.53%
UNTAET Land & Property Temporary Use Agreement	0	0.00%	0	0.00%	0	0.00%
Government Land & Property Use Lease	0	0.00%	0	0.00%	0	0.00%
Pemberian Hak	6	5.17%	3	0.50%	9	1.26%
Other	0	0.00%	11	1.83%	11	1.53%
None/No answer	11	9.48%	39	6.49%	90	12.55%
Total responses	206		891		1137	

⁴⁵ According to the Director of Land and Property, Pedro de Souza Xavier, the purchase of government land was uncommon during Indonesian times.



Overall, the data (see Figure 10 above) indicates *hak milik*,⁴⁶ or private ownership, to be the most commonly known kind of land right, with this land right being the kind of right most commonly known in all categories (Dili-urban: 51%; Rural: 59%; Whole sample 58%). In urban areas, the second most indicated right is *hak pakai*,⁴⁷ referred to by 46%

⁴⁶ This is not to imply that the concept of *hak milik* or private freehold understood by respondents throughout East Timor (and particularly in rural areas) is identical to concepts of freehold understood in societies with more established systems. This question is examined in greater detail later in the report.

⁴⁷(Ind.) Meaning the right to use land. Administrative fees and taxes may be payable. This basis for using land is different from the Indonesian term for a lease agreement (*hak sewa*).

of respondents. In rural areas however, where customary administration continues to exert a prominent influence, the second most indicated response (44.5%) is *hak adat*.⁴⁸ The Indonesian right *hak guna bangunan* (the right to build upon government land) also features prominently (22.6%) in the Dili urban sample, as does the Indonesian right (*hak guna usaha*) concerning the use of government land for business purposes (indicated by 16.5% of the sample). In rural areas, after *hak milik* and *hak adat*, there is no single third kind of right known by over 15% of respondents, although the *hak pakai* right and the *hak pengelolaan* right (pertaining to the lease of land for agricultural purposes)⁴⁹ are each known by over 10% of the sample (12% and 11%, respectively). Significantly, very few respondents from either the Dili urban or the rural sample indicated specific knowledge of any Portuguese-era rights. Respondents also had little knowledge of a number of other rights, including UNTAET Temporary Use Agreements and the Indonesian *hak sewa* (lease agreement).

Almost 13% of the applications lodged to date with DNTP (see Figure 2, above) draw on *pemberian hak*⁵⁰ documentation for support. It is noted that despite this relatively large number (in fact the second most common basis for claiming land), only 1.26% of the overall sample indicated *pemberian hak* as a type of land right of which they are aware. In fact, *pemberian hak* is less a land right in itself than a process of acquiring rights, and it is for this reason—to shed light on the use of *pemberian hak* as a relatively common basis for land claims—that a question was included in the questionnaire aimed at establishing common perceptions concerning it.

⁴⁸ Or the administration of land through customary administrative and ritual mechanisms.

⁴⁹ According to DNTP sources consulted during June 2004, *hak pengelolaan* was the kind of right most commonly granted to transmigrants during Indonesian times.

⁵⁰ Literally, the *process of giving rights*, in reference to rights being issued on the basis of long-term occupancy based on other rights.

Figure 11: Understanding of the meaning of *pemberian hak* (Q3)

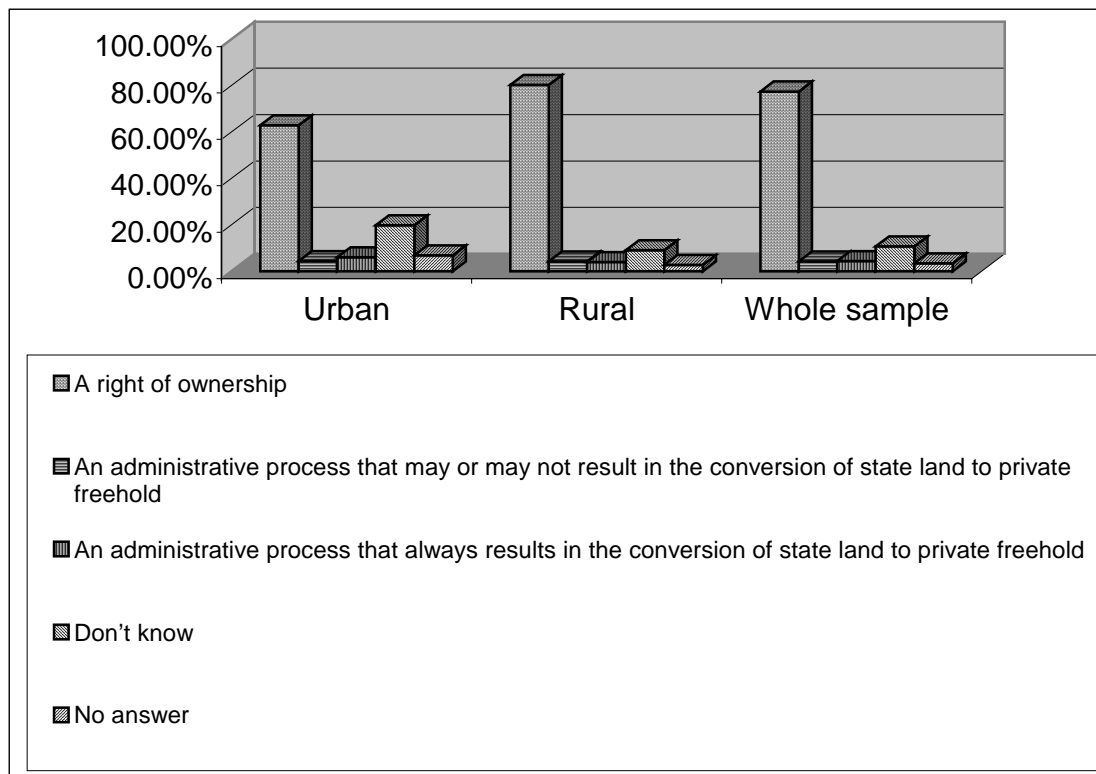
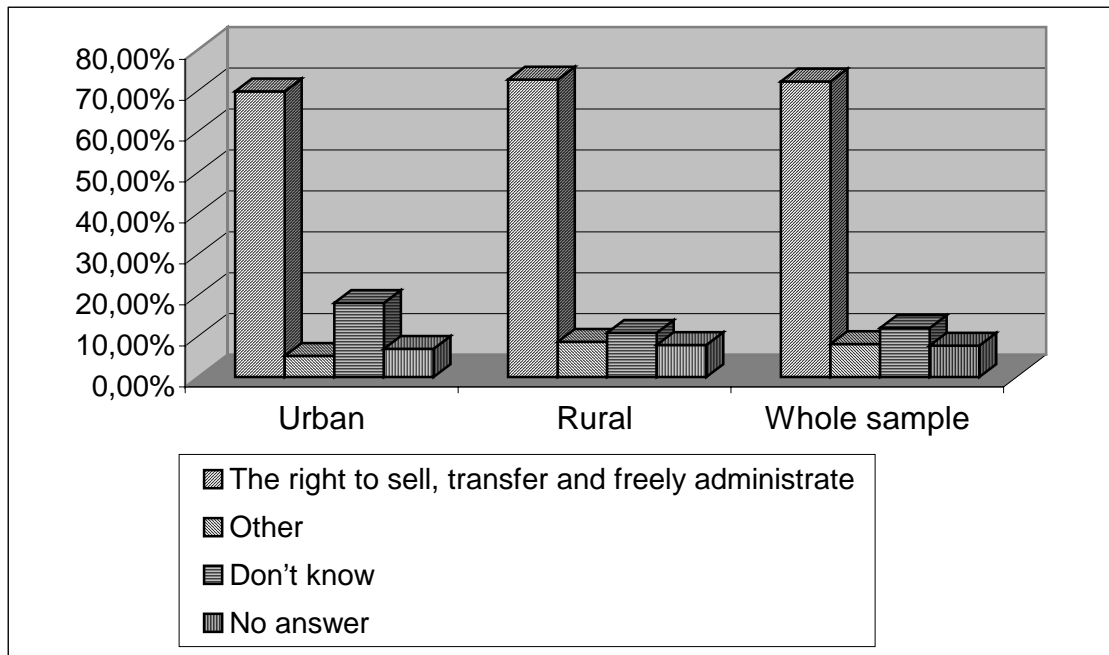


Figure 11 above presents the results of Question 3, which asked respondents to indicate which of three options reflected the meaning of *pemberian hak*. The data reveals that the majority of respondents (particularly in rural areas) believe the term to mean ‘a right or ownership,’ suggesting that some confusion may prevail in respect to the term.

c) Concepts of ownership

In order to establish perceptions of property ownership in the community, a question was included in the questionnaire on this matter (see Figure 12 below).

Figure 12: Concepts of ownership (Q4)



Responses to this question indicate that a sound majority of respondents believe *private property ownership* to be associated with ‘the right to sell, transfer and freely administrate property.’ This result is of some interest, given the large proportion of respondents who indicate they hold private ownership of property (as discussed in the next paragraphs).

d) Individual land rights status enjoyed by respondents

Respondents were questioned concerning their broad land rights and residential status, and the results for this question are presented in Figure 13 below.

Figure 13: Individual land rights and residential status of respondents (Q5)

Individual land rights status and residential status, where respondents may possess more than one kind of land rights (e.g., <i>hak adat</i> & <i>hak milik</i>)	Urban (116)		Rural (601)		Whole Sample (717)	
	No.	%	No.	%	No.	%
Government land						
I live on government land in a government house	9	7.76%	10	1.66%	19	2.65%
I live on government land in a house I own myself	9	7.76%	11	1.83%	20	2.79%
I live on government land in a house owned by another individual	2	1.72%	3	0.50%	5	0.70%
Total in this category	20		24		44	
Community land						
The land I live on is community land, and I possess <i>Hak Adat Pribadi</i> (community freehold) for this land. My children will inherit this land	7	6.03%	165	27.45%	172	23.99%
The land I live on is community land, and I possess <i>Hak Adat Masyarakat</i> (community rights only) for this land. My children may not inherit this land	0	0.00%	10	1.66%	10	1.39%
Total in this category	7		175		182	
Private land owned by respondent (i.e. NOT community land, and able to be freely administered)						
I have a government certificate for my property	39	33.62%	186	30.95%	225	31.38%
I do not yet have a government certificate for my property	19	16.38%	203	33.78%	222	30.96%
Total in this category	58		389		447	
Private land owned by someone else						
I <i>lease</i> private land from someone else and I own my own house on this land	3	2.59%	4	0.67%	7	0.98%
I <i>lease</i> private land from someone else. My landlord also owns the house	0	0.00%	4	0.67%	4	0.56%
I <i>use</i> private land owned by someone else without payment, and I own my own house on this land	5	4.31%	5	0.83%	10	1.39%
I <i>use</i> private land owned by someone else without payment, and the owner of the land also owns the house	4	3.45%	3	0.50%	7	0.98%
Total in this category	12		16		28	
Land owned by an Association (including a Church Association)						
I live on land owned by an Association and the Association also owns the house	6	5.17%	22	3.66%	28	3.91%
I live on land owned by an Association, in a house I own myself	5	4.31%	24	3.99%	29	4.04%
Total in this category	11		46		57	
Abandoned property						
I live on abandoned land	3	2.59%	5	0.83%	11	1.53%
Other						
Other land rights status	2	1.72%	15	2.50%	17	2.37%

According to the information, the single largest land right held by Dili urban respondents is private land ownership (*hak milik*) supported by a government certificate (34%). This is followed (16.5%) by claimed possession of the same land right, but without, at this time, a government certificate supporting private ownership. Reasonably large numbers of other Dili respondents fall into two further categories, with approximately 8% of respondents

indicating they live on government land in a government house, and a further 8% indicating they live on government land in a house they own themselves. A further 6% of Dili urban respondents indicate that they live on community land and enjoy *hak adat pribadi* (private, heritable freehold on community land) on this land.

The rural sample bears similarities to the urban sample in relation to the two most common kinds of land rights/living status categories, with 31.5% of respondents indicating they live on their own land with a government certificate, and a further 31% indicating they live on government land without—as yet—a government certificate. A further substantial number (24%) indicated they possess *hak adat pribadi* (private freehold) on community land.

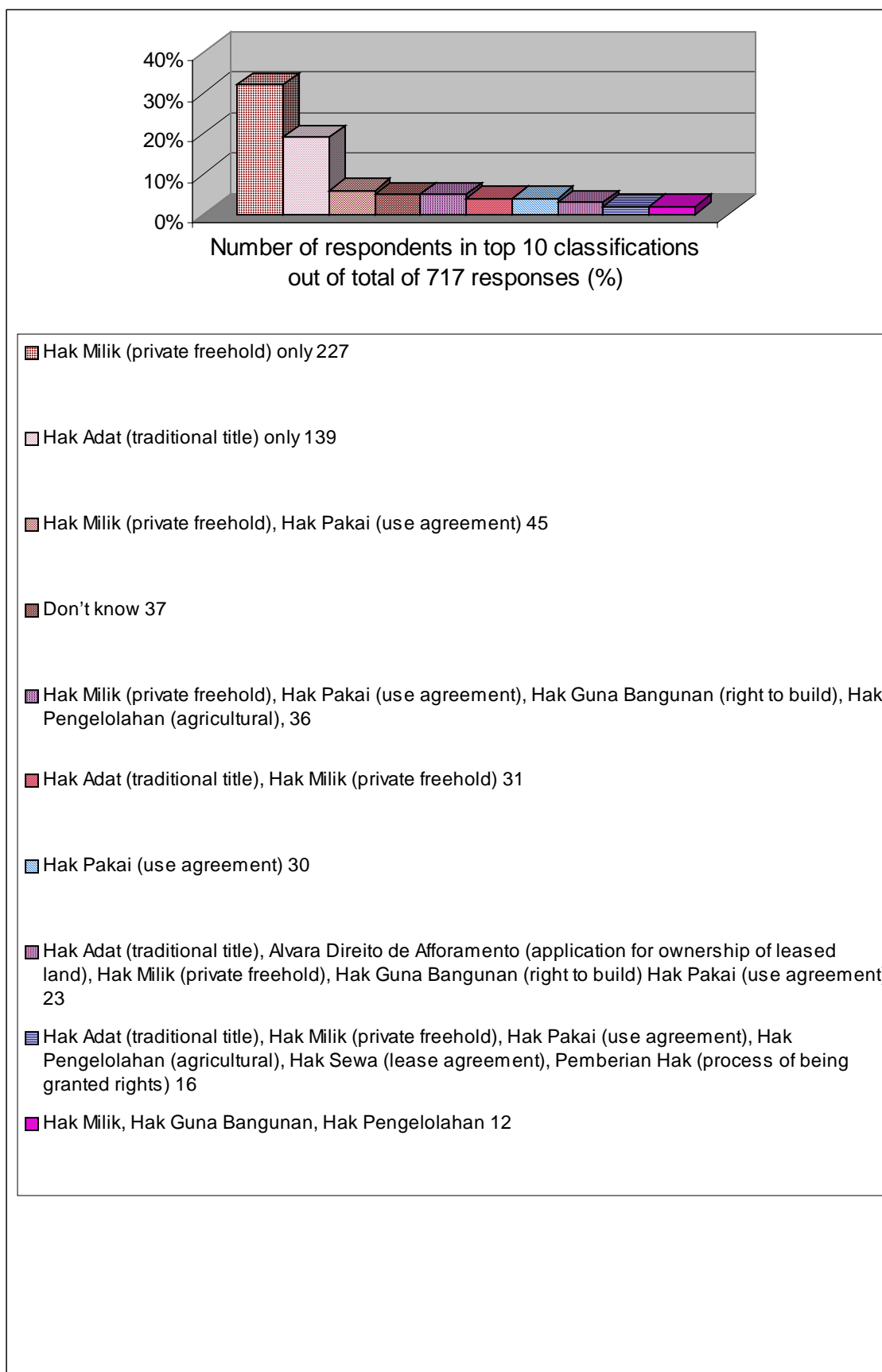
Assuming bona fide information from respondents, therefore, private property ownership in some form or other (either through formal or customary mechanisms) appears to be enjoyed by a relatively high proportion of the sample. This appears to be the case more in rural areas than in urban Dili, where over 15% of the population lives on government land either in houses they own themselves or that are owned by the government.

A further notable feature indicated by the data presented in Figure 13, is the relatively low number of respondents—both in the Dili urban and the rural samples, who indicate they are leasing private land from a third party or using private land owned by a third party without payment. A total of around 10% of respondents are in this category in the Dili urban sample (the proportion of the rural sample is substantially less), and the majority of these respondents (around 8%) *make no payment* for their use of land belonging to another party.

Respondents were also surveyed with respect to the specific land rights documentation they hold over their land, and invited to indicate if they held more than one kind of land right. This possibility was foreseen for respondents who may have acquired formal titles for land over which they already possessed customary (*adat*) title. In the event, respondents indicated that, in many cases, they possess multiple rights, some of which combinations may be unlikely to co-exist. The 10 most common responses (stating rights or combinations of rights) are outlined in Figure 14 below. Figure 14 includes information provided by the 586 respondents who fell into the top 10 categories.

Whereas a large number of respondents indicate that they possess only one right—for example, *hak milik* (private title) or *hak adat* (traditional title)—185 respondents, or 26% of the overall sample indicated they possess a combination of rights as outlined in some of the categories included in Figure 14 below. While it is possible that some respondents may have indicated both their residential rights and their rights over farming land, some of the combinations indicated by respondents (for example, *hak pakai* and *hak milik* in rural areas) support the conclusion that some confusion may prevail in the community concerning different kinds of land rights. This information, combined with evidence indicating misunderstanding concerning the meaning of the term *pemberian hak* (see Figure 11, above) and the difficulty of educating the community on land-related issues (see Figure 15 under Section 2.a), supports the need for a simple, easy to understand land rights system in East Timor.

Figure 14: Kind of land rights held by respondents (Q6)

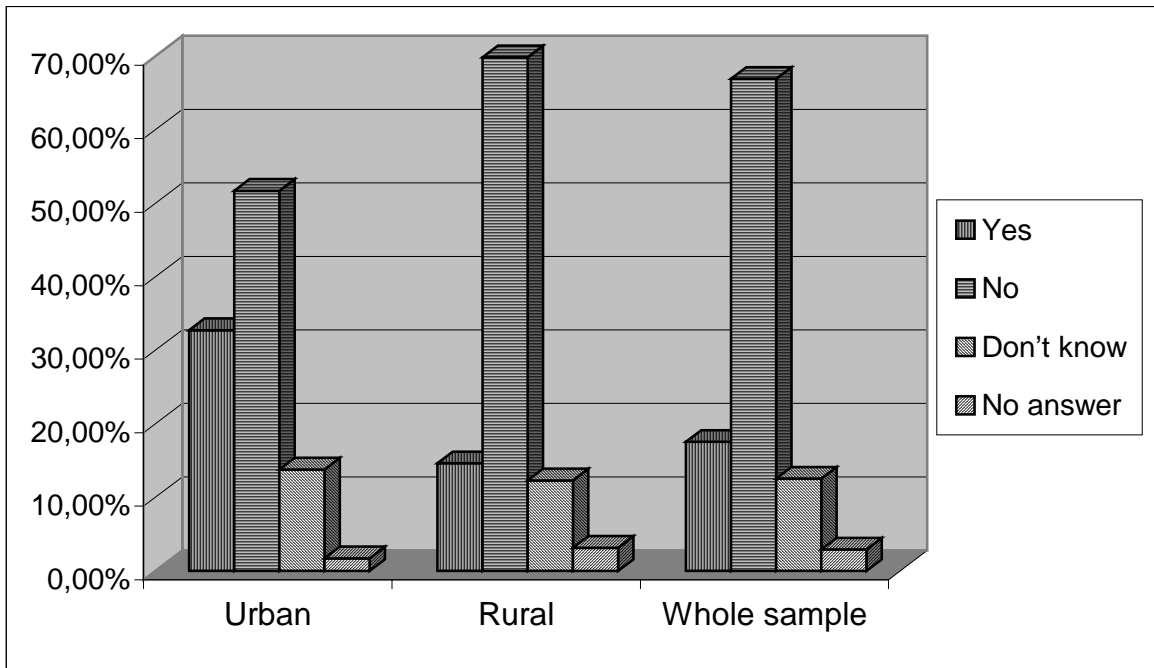


2. Land Claim Issues

a) Knowledge of the government land claim process

To assess the extent to which knowledge of the formal government land claim process prevails throughout the community, respondents were questioned in relation to this matter (see Figure 15 below).

Figure 15: Knowledge of formal government process for claiming land (Q7)



The data indicates that only 33% of the urban sample and 15% of the rural sample are aware of a formal government process for claiming land, supporting the conclusion that public information concerning the formal land claim process has not yet been thoroughly disseminated throughout East Timor.

b) Filing of claims

Respondents were asked if they know of claims that other persons have filed concerning their land (Figure 16 below). One motivation in asking this question was to assess whether unnecessary concern prevails in the community concerning filing of land claims over properties.

Figure 16: Number of respondent who know/think their land is under claim by another person or family (Q8) & Number of respondents who have lodged a claim with the government (Q9). This table also includes DNTF database information concerning the *actual* number of land claims that have been lodged by Timorese applicants.

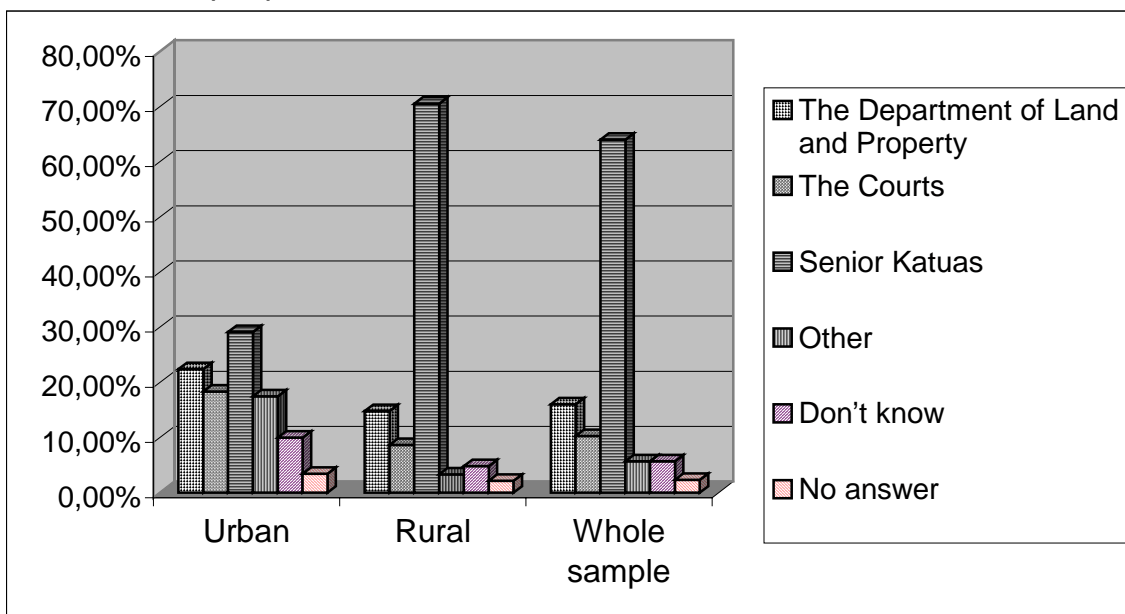
DISTRICT	SUB DISTRICT	16(a) Total Timorese claims in DNTF Land Claim database	Number of respondents included in survey by sub-district	LLP Research Findings									
				16(b) Has another person or family lodged a formal claim with the government for your property?(Q8)					16(c) Has your family lodged a formal land claim with the government? (Q9)				
				Yes	No	Do not know	No answer	Yes	No	Do not know	No answer		
BOBONARO	Balibo	1	70	5	7%	56	9	0	7	10%	58	5	0
	Maliana	83	71	20	28%	42	7	2	4	6%	57	7	3
COVALIMA	Suai Kota (town)	8	56	16	28%	32	1	7	6	11%	45	1	4
	Tilomar	0	68	3	2%	63	2	0	2	3%	63	1	0
DILI	Dom Aleixo	317	56	8	14%	33	13	2	12	21%	48	0	0
	Metinaro	2	84	8	9.5%	51	24	1	1	1%	71	10	2
	Nain Feto	100	60	11	18%	49	0	0	8	13%	38	8	2
LAUTEM	Lospalos	22	61	5	8%	46	14	3	3	5%	47	16	2
	Lautem/Moro	1	68	2	3%	58	1	0	2	3%	57	2	0
OECUSSE	Pante Makasar	1	63	5	8%	53	2	0	3	5%	54	2	1
	Oesilo	2	60	1	2%	57	4	1	0	0%	60	3	0
Grand Total		535	717	84		540	77	16	48		598	55	14

On the assumption that East Timor citizens, particularly in rural areas, are unlikely to have knowledge of land claims that have been lodged concerning their land by foreigners, Figure 16 allows comparison between (a) the number of land claims that have actually been lodged to date by Timorese citizens, (b) the number of respondents who believe that claims have been lodged regarding their properties, and (c) the number of respondents who claim to have lodged land claims over properties. The results indicate a disparity in some sub-districts (see lightly shaded portions of the graph) between actual filings by Timorese citizens according to the DNTP database, and the numbers that LLP research interviewees believe/or assert that they have filed. There may be a number of explanations for this, including the possibility that some claimants may be claiming land in sub-districts other than those in which they live.⁵¹ However, given the minority of respondents aware of the formal land claim procedures (see Figure 15 above), confusion is likely to be a factor in the results as well. In this respect, it may also be the case that some respondents are referring to non-formal land claim processes.

c) *Compulsory resolution of land claims*

Respondents were questioned concerning who should make a compulsory decision (arbitrate) concerning a land dispute or claim, in the event that such a decision must be made (see Figure 17 below):

Figure 17: Respondents' views concerning who should make a compulsory decision concerning the resolution of a land dispute or claim, in the event a compulsory decision must be made (Q10)



Whereas the proportions differ between the rural and urban samples, the results are the same in terms of the overall ranking of the authorities whom respondents believe should be responsible for making compulsory decisions concerning land disputes and claims. In

⁵¹ With respect to Pante Makasar, the links between Oecusse and Kupanf/West Timor could be an influencing factor, with respondents being aware of Indonesian claims on land as well as Timorese claims.

this respect, senior *katuas* (elders) are the most favored arbitrators (Dili urban: 29.2%; Rural 70.5%), followed by DNTP (Dili urban: 22.5%; Rural: 14.8%) and the Courts (Dili urban: 18.3%; Rural 8.6%). The most marked difference between the two samples for this question is the profound support for senior *katuas* as arbitrators in rural areas compared with the more modest support in urban areas. However, it is also of note that even in urban areas, senior *katuas* are still regarded by the largest single number of respondents as the authority that should arbitrate a land claim. The strength of support for the involvement of *katuas* in land arbitration matters suggests that policymakers may wish to consider means of integrating *katuas* into formal land claim resolution procedures to heighten their credibility and legitimacy in the eyes of urban as well as rural populations.

d) *Perceptions concerning land claims*

Respondents were questioned about their perceptions concerning the legitimacy of land claims in their communities. The results are outlined in Figure 18 below.

In considering the results outlined in Figure 18, it is important to bear in mind that, in many cases, as discussed under Section 2.a above, respondents were unaware of the formal government land claim process prior to being approached by LLP researchers. Therefore, it is possible that some responses are given in reference to informal claims; for example, the physical occupation of abandoned properties.

Notwithstanding the above, the results provide *generally encouraging information* about confidence levels in the community concerning the validity of land claims. For example, the response to question 18a indicates that very few respondents (less than 6% overall) agree⁵² with the statement that ‘many people in my *suco* are trying to claim properties using false evidence,’ with around 85% of the overall sample disagreeing with this statement. Similarly, although there is slightly more agreement with the statement presented in question 18b asserting that ‘many people who sold their properties during Indonesian times, are now trying to claim them back again,’ the agreement is still only 14% overall compared to a 78% disagreement. Likewise, in respect to questions 18c and 18d, the clear majority of respondents believe that ‘most land titles’ issued during the Portuguese and Indonesian periods are legitimate (60% overall and 68% overall, respectively), compared with only 20% overall and 19% overall, respectively, of respondents who disagree that most of these titles are valid. Importantly, of those respondents who disagree that most Portuguese and Indonesian titles are valid, only a minority disagree ‘strongly’ (5.5% and 3.3% of the respective samples). While it is difficult to draw conclusions in the absence of empirical data from other similar situations with which to make comparisons, it appears that there is reason to conclude, albeit with some caution, that a fair degree of confidence prevails among respondents with respect to the legitimacy of evidence being used in relation to land claims, as well as the legitimacy of land titles from the Portuguese and Indonesian eras.

⁵² Please note that in order to increase the clarity of the written analysis, the ‘strongly agree’ and ‘agree’ categories are simply referred to in the text as ‘agree.’ Similarly, the ‘disagree’ and ‘strongly disagree’ figures are referred to as ‘disagree.’

Figure 18: Perceptions and confidence levels concerning land claims (Q11)

Please indicate your level agreement or disagreement with the following statements						
Statement, and level of agreement/disagreement	Urban		Rural		Whole Sample	
	No.	%	No.	%	No.	%
a). Many people in my <i>suco</i> are trying to claim properties using false evidence.						
Strongly Agree	3	2.59%	16	2.66%	19	2.65%
Agree	3	2.59%	18	3.00%	21	2.93%
Disagree	45	38.79%	323	53.74%	368	51.32%
Strongly Disagree	50	43.10%	198	32.95%	248	34.59%
Don't know	15	12.93%	46	7.65%	61	8.51%
Total	116		601		717	
b). Many people who sold their properties during Indonesian times, are now trying to claim them back again.						
Strongly Agree	2	1.72%	41	6.82%	43	6.00%
Agree	5	4.31%	52	8.65%	57	7.95%
Disagree	68	58.62%	329	54.74%	397	55.37%
Strongly Disagree	30	25.86%	135	22.46%	165	23.01%
Don't know	11	9.48%	44	7.32%	55	7.67%
Total	116		601		717	
c). Most land title certificates issued during Portuguese times are legitimate.						
Strongly Agree	18	15.52%	59	9.82%	77	10.74%
Agree	57	49.14%	298	49.58%	355	49.51%
Disagree	17	14.66%	108	17.97%	125	17.43%
Strongly Disagree	6	5.17%	32	5.32%	38	5.30%
Don't know	18	15.52%	104	17.30%	122	17.02%
Total	116		601		717	
d). Most land title certificates issued during Indonesian times are legitimate.						
Strongly Agree	15	12.93%	75	12.48%	90	12.55%
Agree	54	46.55%	351	58.40%	405	56.49%
Disagree	20	17.24%	95	15.81%	115	16.04%
Strongly Disagree	6	5.17%	18	3.00%	24	3.35%
Don't know	21	18.10%	62	10.32%	83	11.58%
Total	116		601		717	
e). Women should have the same right as men to claim land.						
Strongly Agree	22	18.97%	154	25.62%	176	24.55%
Agree	58	50.00%	361	60.07%	419	58.44%
Disagree	20	17.24%	43	7.15%	63	8.79%
Strongly Disagree	4	3.45%	14	2.33%	18	2.51%
Don't know	12	10.34%	29	4.83%	41	5.72%
Total	116		601		717	
f). Most land claims in my <i>suco</i> are legitimate.						
Strongly Agree	8	6.90%	45	7.49%	53	7.39%
Agree	59	50.86%	245	40.77%	304	42.40%
Disagree	16	13.79%	117	19.47%	133	18.55%
Strongly Disagree	2	1.72%	26	4.33%	28	3.91%
Don't know	31	26.72%	168	27.95%	199	27.75%
Total	116		601		717	

It is worth noting that the data presented in Figure 18 above (Part f) concerning the statement ‘most land claims in my *suco* are legitimate,’ is less positive. This statement is supported by only 58% of the Dili urban sample, and only 48% of the rural sample. However, the number of respondents who answer ‘Don’t know’ to this question, is substantially higher than in other questions, with over a quarter of respondents (27% of the Dili urban sample and 28% of the rural sample) selecting this option. The proportion

of the sample actively disagreeing with the statement that ‘most land claims in my *sucu* are legitimate,’ therefore, remains a minority of less than 16% of the Dili urban sample, and less than 24% of the rural sample. Furthermore, of those who disagree with the statement in any capacity, less than 4% of the overall sample disagrees ‘strongly.’

The response to the statement ‘women should have the right to land as men’ (see Part e of Figure 18 above), was strongly supportive. Whereas it might have been expected that urban respondents would be more in favor of this statement than rural respondents, the reverse situation prevails. Hence, 86% of the rural sample supports women having the same right as men to claim land, but only 69% of the Dili urban sample supports this.

e) Past developments relating to land (including government acquisitions)

Respondents were questioned on whether the government had acquired land in their sub-district during Indonesian times (see Figure 19). Those who answered ‘Yes’ were asked a further question concerning the fairness of the government acquisition process (as indicated in Figure 20 below).

Figure 19: Did the government acquire land in your sub-district during Indonesian times? (Q12)

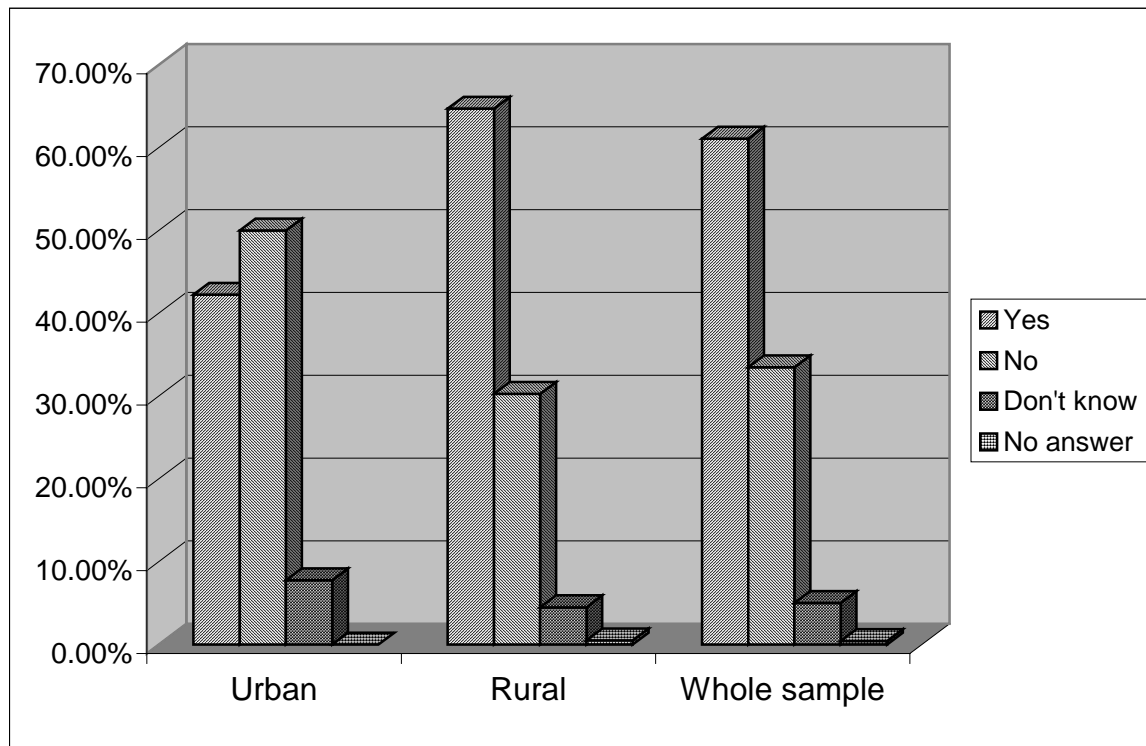
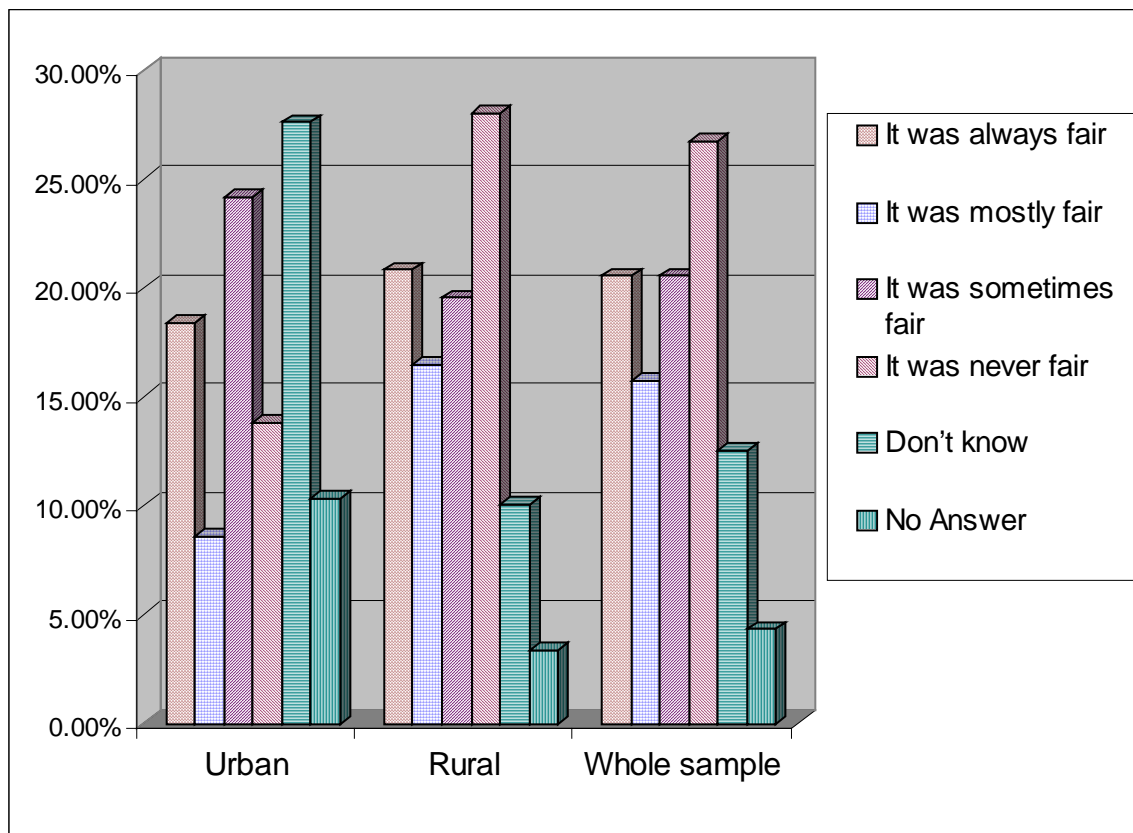


Figure 20: Fairness of land acquisition process during Indonesian times (Q13)



The data presented in Figure 20 above indicates that, in terms of combined categories, 18.5% of the Dili urban sample and 37% of the rural sample (overall 36%) believe that government acquisition of land during Indonesian time was either 'always fair, or 'mostly fair.' Against this, 22% of the Dili urban sample and 47.5% of the rural sample (overall 47%) believe that government acquisition of land during Indonesian time was either 'sometimes fair' or 'never fair.' On the basis that in overall terms, 27% of the sample believes that government acquisition of land during Indonesian times was 'never fair,' it has to be concluded that considerable misgivings prevail in the community concerning the putative stock of government housing at present. Given that the possibility of distributing government properties to aggrieved claimants is considered to be part of the repertoire of options available to the government in the course of resolving land claims, the possibility that the stock of government housing may itself be open to contestation in many cases should be taken into account prior to the commencement of this process.

f) Use of agricultural and transmigration land acquired by the government during Indonesian times

Respondents, who indicated that land in their sub-districts had been acquired during Indonesian times for the development of transmigration or irrigation areas, were questioned concerning the present use of that land. The responses to this question are outlined in Figure 21 below.

Figure 21: Present users of any irrigation projects or transmigration areas built during Indonesian times (Q14)⁵³

If irrigation projects or transmigration areas were built during Indonesian times, who mostly works this land now (indicate more than one option if appropriate)?	Rural (401)	
	No.	%
The original land owners from before the project have returned from elsewhere to work the land again	75	19.28%
The original land owners from before the project have worked the land the whole time	39	10.03%
People have come down from the mountains to use the project land, and this is alright	46	11.83%
People have come down from the mountains to use the project land, but these people may have to leave if the real owners decide to return	64	16.45%
Nobody works this land now	45	11.57%
Other	25	6.43%
Don't know	80	20.57%
No answer	27	6.94%
Total options indicated	401	

According to the data, the largest response category is that of ‘don’t know’ (20.5%) concerning who works irrigation or transmigration project lands now. It is interesting to note, however, that the next largest response category (19.25%) supports the statement that ‘the original land owners from before the project have returned from elsewhere to work the land again.’ This is followed (16.5%) by support for the statement that ‘people have come down from the mountains to use the project land, but these people may have to leave if the real owners decide to return.’ Only 10% of respondents support the statement that ‘the original land owners from before the project have worked the land the whole time.’ In sum, the data suggest that, in many cases, people have returned to land they originally occupied and for which they may or may not have been appropriately compensated during Indonesian times (see Section 2.e, above), while others appear to have taken the opportunity to relocate to land abandoned by transmigrants or internal migrants to make use of its productive potential. In other cases, the original owners appear to have been the beneficiaries of agricultural development projects undertaken during Indonesian times.

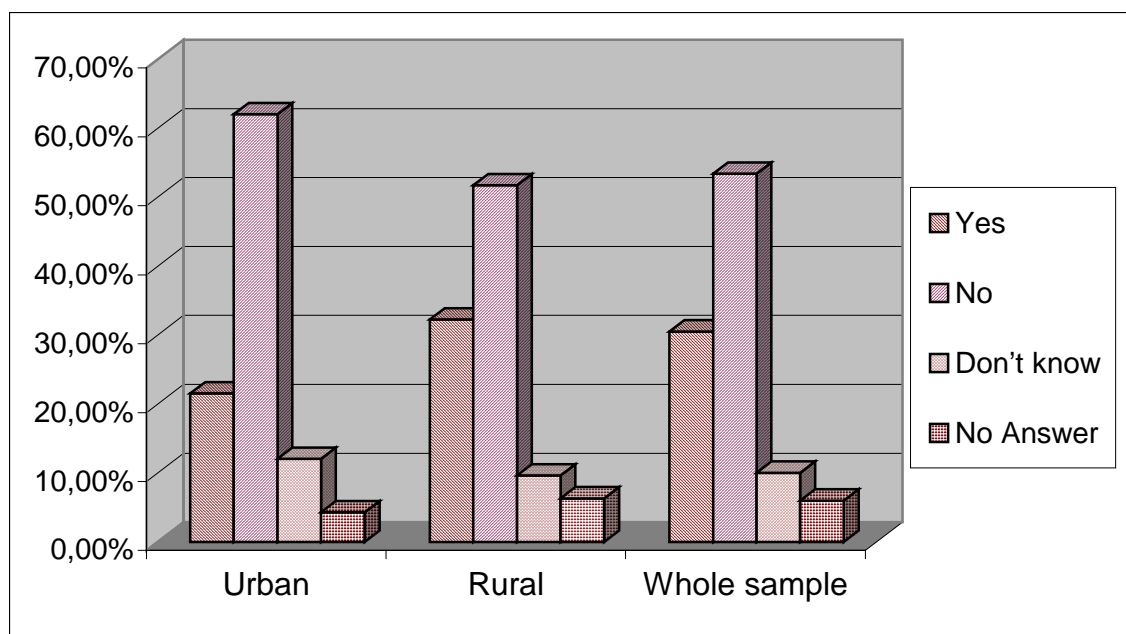
g) Abandoned property

Respondents were questioned concerning circumstances under which individuals might be deemed to lose ownership of properties they have abandoned (see Figure 22 below).

Figure 22: Loss of ownership through abandonment of properties (Q15)

Does an owner who abandons a property lose ownership of that property?	Urban (116)		Rural (601)		Whole Sample (717)	
	No.	%	No.	%	No.	%
Yes	25	21.55%	194	32.28%	219	30.54%
No	72	62.07%	311	51.75%	383	53.42%
Don't know	14	12.07%	58	9.65%	72	10.04%
No answer	5	4.31%	38	6.32%	43	6.00%
Total options indicated from 717 respondents	116	100.00%	601	100.00%	717	100.00%

⁵³ This chart only presents data from the rural sample, consisting of 401 respondents.



The data presented in Figure 22 above suggest that the majority of respondents support the view that an owner does *not* forfeit ownership of a property by abandoning it. This view is more pronounced in urban areas than in rural areas, with 62% of urban respondents indicating that an owner of abandoned property does not lose ownership of this property compared with 52% of respondents in rural areas. It is likely this difference can be partly attributed to the functioning of customary land administration systems in rural areas, which provide that land is liable to be allocated by *katuas* according to availability and need. Anecdotal accounts suggest that, in some rural areas, land may be reallocated to other parties upon abandonment, but will return to the original owner should he/she ever return.

3. Transference, Proof and Evidence

a) *Transference of freehold title*

Respondents were asked a range of questions related to different land transference scenarios, as outlined in Figure 23 below.

Responses to 23a indicate strong support (with 82% of the overall sample agreeing or strongly agreeing) for the statement that male and female children should have equal rights to inherit land. In assessing the meaning of this data, it should also be taken into account that matrilineal land tenure systems exist in two of the five sub-districts included in the sample. It would be difficult, therefore, to conclude that the data solely supports inheritance rights for female children in patrilineal land tenure systems. In fact, it is likely that a proportion of respondents favor inheritance rights for male children in matrilineal land tenure systems. Notwithstanding this factor, the level of support for equal inheritance rights suggests that government policymaking in this area might garner substantial community support. In policy-making in this area, however, it will be

important as well to take into account the complex cultural factors associated with land tenure systems in East Timor.

Question 23b outlines respondent's perceptions about the frequency with which the private sale of land takes place. The data indicates that overall, 50% of respondents either agree or strongly agree that 'the sale of freehold land (*hak milik*) between private individuals is common,' as opposed to 41% either disagreeing or strongly disagreeing (with the remaining 9% not knowing). It is surprising in this respect that an apparently greater proportion of rural respondents than Dili urban respondents consider freehold transactions common, when the reverse situation might have been expected.

In relation to question 23b, it is of note that qualitative research (Meitzner Yoder 2004) indicates that, at least in parts of East Timor, individuals may be likely to possess a range of different kinds of land rights. Some of these rights may be consistent with freehold principles, while others may not. This does not justify a conclusion that a substantial proportion of land within the customary system is freehold land, even if it is the case that most people *do* have access to *some* freehold land.

Question 23c outlines respondent's views concerning whether private owners of land expect their property to be returned eventually, in the event they allow other individuals to build houses upon it. Overall, 54.5% of the sample either agreed or strongly agreed (compared with 37% of respondents who either disagreed or strongly disagreed) with the assertion that land owners would expect to eventually get their properties back under these circumstances. The trend in this regard appears more pronounced in rural areas (combined agree/strongly agree 56%) than in urban areas (combined disagree/strongly disagree 47.5%). These results have some bearing on regularizing ownership in cases where one party owns a house upon land borrowed from another party, since the owners of land in this category may be unwilling to transfer it permanently to other parties.

In order to assess community receptiveness to the principle of state appropriation of land, respondents were asked to respond to the statement asserting that 'the government has the right to take land back from communities and individuals to use for government purposes.'⁵⁴ Overall, the majority of respondents oppose the right of government to take back land, but they do not oppose it by a particularly large margin (combined disagree/strongly disagree: 50%, against combined agree/strongly agree: 41%). It is worth noting, however, that a substantial number of those who disagree, do so strongly, which suggests the need for cautious policy-making in this area. In this respect, 19% of the urban sample disagrees strongly, whereas only 12.5% of the rural sample disagrees strongly.

⁵⁴ Note that the question made no reference to the possibility of compensation for expropriated land.

Figure 23: Perceptions concerning land transfer scenarios (Q16)

Please indicate your level agreement or disagreement with the following statements						
Statement, and level of agreement/disagreement	Urban		Rural		Whole Sample	
	No.	%	No.	%	No.	%
a). Male and female children should have equal rights to inherit land.						
Strongly Agree	27	23.28%	169	28.12%	196	27.34%
Agree	73	62.93%	317	52.75%	390	54.39%
Disagree	8	6.90%	93	15.47%	101	14.09%
Strongly Disagree	2	1.72%	10	1.66%	12	1.67%
Don't know	6	5.17%	12	2.00%	18	2.51%
Total	116		601		717	
b). The sale of freehold land (<i>hak milik</i>) between private individuals is common.						
Strongly Agree	10	8.62%	33	5.49%	43	6.00%
Agree	38	32.76%	279	46.42%	317	44.21%
Disagree	41	35.34%	199	33.11%	240	33.47%
Strongly Disagree	14	12.07%	40	6.66%	54	7.53%
Don't know	13	11.21%	50	8.32%	63	8.79%
Total	116	100.00%	601	100.00%	717	100.00%
c). Owners of privately-owned land sometimes allow other people to build houses on their land. However, the owners always expect to be able to get the land back eventually.						
Strongly Agree	9	7.76%	49	8.15%	58	8.09%
Agree	46	39.66%	287	47.75%	333	46.44%
Disagree	37	31.90%	177	29.45%	214	29.85%
Strongly Disagree	10	8.62%	42	6.99%	52	7.25%
Don't know	14	12.07%	46	7.65%	60	8.37%
Total	116	100.00%	601	100.00%	717	100.00%
d). The government has the right to take land back from communities and individuals to use for government purposes.						
Strongly Agree	1	0.86%	60	9.98%	61	8.51%
Agree	39	33.62%	193	32.11%	232	32.36%
Disagree	36	31.03%	223	37.10%	259	36.12%
Strongly Disagree	22	18.97%	75	12.48%	97	13.53%
Don't know	18	15.52%	50	8.32%	68	9.48%
Total	116	100.00%	601	100.00%	717	100.00%

b) Proof and evidence

Respondents were questioned concerning the importance of a range of evidence types for claiming or requesting freehold title. The responses are listed in Figure 24, ranked first to last in accordance with the overall support they received from respondents. This was determined through combining the ‘important’ and ‘very important’ scores from the ‘whole sample’ category. The range of evidence-types offered as options in this question was determined partly through reference to the kinds of proof referred to in land claims received by DNTTP.

The data indicates that Indonesian freehold (*hak milik*) certificates are considered by the greatest number of respondents to be ‘important,’ or ‘very important’ kinds of proof when claiming or requesting freehold title (82.5% overall). Second to Indonesian freehold, Portuguese freehold certificates get the most support as important kinds of proof (76.5% overall, with somewhat greater support in urban areas than in rural areas). The next most respected kinds of proof, in order of overall (whole sample) terms, are crops, trees and buildings (69.6%); witness accounts (66.5%); written receipts of purchase (64%); written declaration of ownership (61.5%); tax receipt (59%); receipts indicating payment of

installations to government (54%); evidence of Indonesian lease for *hak guna bangunan* (54%); bank loan papers (52%); and evidence of Portuguese lease agreement (48.5%).

It is of note that some differences prevail in the regard for evidence types, between urban and rural areas. In particular, crops, trees and buildings are regarded as more substantial evidence in rural areas (72.5% ‘important’ or ‘very important’) than in urban areas (55% ‘important’ or ‘very important’). Evidence of Portuguese lease agreement, however, is regarded as more important in urban areas (64% ‘important’ or ‘very important’) than in rural areas (46% ‘important’ or ‘very important’). The information included in Figure 24 could be of use to government policymakers in determining the weighting of different kinds of evidence presented in relation to land claims. It may be worth noting that respondents accord *seven* of ten forms of proof support at the equivalent of an extraordinary majority (e.g., 60% or greater). Careful attention to these aspects of proof should heighten the credibility of claim accreditation proceedings and help reduce conflicts.

Figure 24: Strength of evidence in relation to claims and request for freehold title (Q17).

Please indicate how important each of the following kinds of evidence is as proof when claiming or requesting freehold title.

Type of Evidence	Very important		Important		Not important		Not applicable/No answer		Total
	No.	%	No.	%	No.	%	No.	%	
b) Indonesian freehold certificate (<i>Hak Milik</i>)									
Urban	33	28.45%	63	54.31%	10	8.62%	10	8.62%	116
Rural	128	21.30%	368	61.23%	65	10.82%	40	6.66%	601
Whole Sample	161	22.45%	431	60.11%	75	10.46%	50	6.97%	717
a) Portuguese freehold certificate (<i>Alvara Direito de Aforamento</i>)									
Urban	36	31.03%	59	50.86%	7	6.03%	14	12.07%	116
Rural	128	21.30%	325	54.08%	79	13.14%	69	11.48%	601
Whole Sample	164	22.87%	384	53.56%	86	11.99%	83	11.58%	717
c) Crops, trees and buildings									
Urban	24	20.69%	40	34.48%	23	19.83%	29	25.00%	116
Rural	154	25.62%	281	46.76%	80	13.31%	86	14.31%	601
Whole Sample	178	24.83%	321	44.77%	103	14.37%	115	16.04%	717
d) Witness accounts									
Urban	23	19.83%	53	45.69%	18	15.52%	22	18.97%	116
Rural	124	20.63%	276	45.92%	122	20.30%	79	13.14%	601
Whole Sample	147	20.50%	329	45.89%	140	19.53%	101	14.09%	717
e) Written receipt of purchase									
Urban	20	17.24%	53	45.69%	18	15.52%	25	21.55%	116
Rural	83	13.81%	301	50.08%	127	21.13%	90	14.98%	601
Whole Sample	103	14.37%	354	49.37%	145	20.22%	115	16.04%	717
g) Written declaration of ownership									
Urban	18	15.52%	57	49.14%	20	17.24%	21	18.10%	116
Rural	96	15.97%	270	44.93%	142	23.63%	93	15.47%	601
Whole Sample	114	15.90%	327	45.61%	162	22.59%	114	15.90%	717
f) Tax receipt									
Urban	19	16.38%	48	41.38%	27	23.28%	22	18.97%	116
Rural	85	14.14%	273	45.42%	175	29.12%	68	11.31%	601
Whole Sample	104	14.50%	321	44.77%	202	28.17%	90	12.55%	717
h) Receipts of payment of installations to government									
Urban	19	16.38%	46	39.66%	20	17.24%	31	26.72%	116
Rural	79	13.14%	244	40.60%	135	22.46%	143	23.79%	601
Whole Sample	98	13.67%	290	40.45%	155	21.62%	174	24.27%	717
i) Evidence of Indonesian lease for <i>Hak Guna Bungunan</i>									
Urban	15	12.93%	44	37.93%	28	24.14%	29	25.00%	116
Rural	81	13.48%	247	41.10%	172	28.62%	101	16.81%	601
Whole Sample	96	13.39%	291	40.59%	200	27.89%	130	18.13%	717
j) Bank loan papers									
Urban	20	17.24%	43	37.07%	26	22.41%	27	23.28%	116
Rural	71	11.81%	239	39.77%	141	23.46%	150	24.96%	601
Whole Sample	91	12.69%	282	39.33%	167	23.29%	177	24.69%	717
k) Evidence of Portuguese lease agreement									
Urban	27	23.28%	47	40.52%	24	20.69%	18	15.52%	116
Rural	60	9.98%	215	35.77%	187	31.11%	139	23.13%	601
Whole Sample	87	12.13%	262	36.54%	211	29.43%	157	21.90%	717
l) Other									
Urban	2	1.72%	9	7.76%	5	4.31%	16	13.79%	32
Rural	19	3.16%	26	4.33%	10	1.66%	9	1.50%	64
Whole Sample	21	2.93%	35	4.88%	15	2.09%	25	3.49%	96

c) *Relative legitimacy of different rights*

In terms of the relative legitimacy of particular kinds of land rights in relation to other kinds of land rights, the research included a further question aimed at collecting data on the relative prominence of particular land rights types in the experience of each respondent. This is presented in Figure 25 below.

Figure 25: The relative legitimacy of different types of land rights (Q18)

Please respond to the following questions concerning different kinds of land rights						
Question; Yes/No	Urban (116)		Rural (601)		Whole Sample (717)	
	No.	%	No.	%	No.	%
a) Do you know of cases of valid Portuguese-titled land being claimed by other parties (i.e., someone other than the owner) based on <i>Hak Adat</i> ?						
Yes	24	20.69%	113	18.80%	137	19.11%
No	92	79.31%	488	81.20%	580	80.89%
Total	116	100.00%	601	100.00%	717	100.00%
b) Do you know of cases of valid Indonesian-titled land being claimed by other parties (i.e., someone other than the owner) based on <i>Hak Adat</i> ?						
Yes	27	23.28%	163	27.12%	190	26.50%
No	89	76.72%	438	72.88%	527	73.50%
Total	116	100.00%	601	100.00%	717	100.00%
c) Do you know of cases of valid Portuguese-titled land being claimed by other parties (i.e., someone other than the owner) based on Indonesian title?						
Yes	20	17.24%	114	18.97%	134	18.69%
No	96	82.76%	487	81.03%	583	81.31%
Total	116	100.00%	601	100.00%	717	100.00%
d) Do you know of cases of valid Indonesian-titled land being claimed by other parties (i.e., someone other than the owner) based on Portuguese title?						
Yes	22	18.97%	135	22.46%	157	21.90%
No	94	81.03%	466	77.54%	560	78.10%
Total	116	100.00%	601	100.00%	717	100.00%
e) Do you know of cases of Portuguese-titled land or Indonesian-titled land being claimed by other parties based on UNTAET Temporary Use Agreements?						
Yes	4	3.45%	53	8.82%	57	7.95%
No	112	96.55%	548	91.18%	660	92.05%
Total	116	100.00%	601	100.00%	717	100.00%

Whereas only a minority of respondents' claim to know of Portuguese-titled or Indonesian-titled land being claimed by other parties based on UNTAET temporary use agreements (25e), over a quarter of respondents (overall) claim to know of cases of Indonesian-titled land being claimed by other parties based on *Hak Adat*. Respondents claim to know of fewer cases of Portuguese-titled land being claimed on the basis of *adat* title (19% overall), but it is of note in this regard that fewer parcels of land were titled during the Portuguese era than during the Indonesian era.

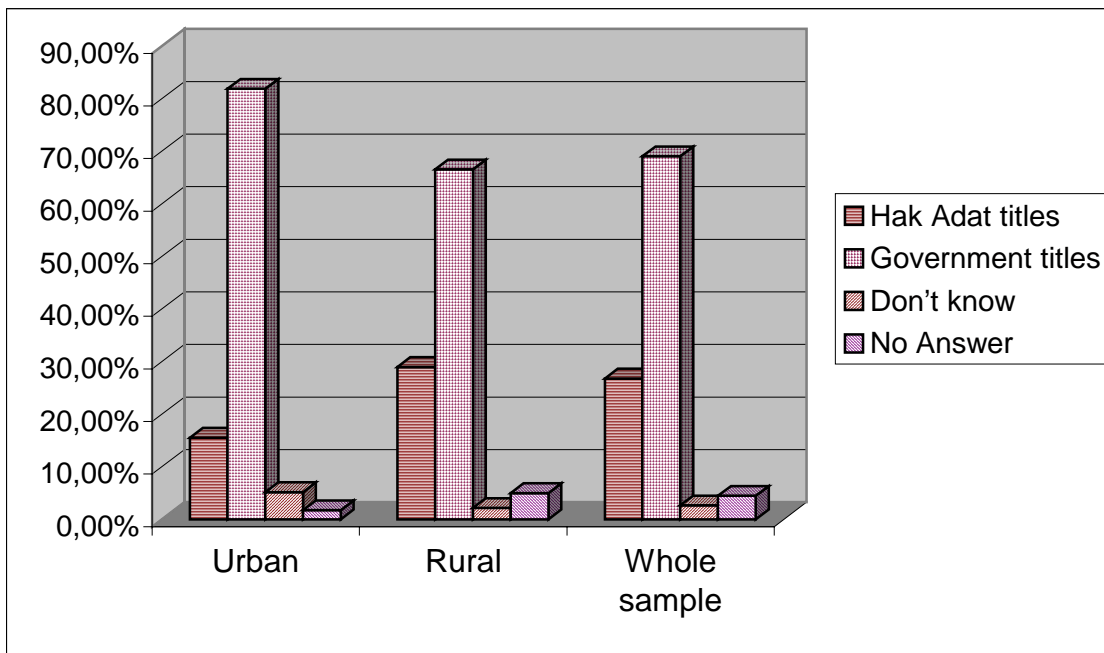
Concerning the relative legitimacy of Indonesian and Portuguese titles, the data indicates that the number of respondents claiming to know of Portuguese-titled land being claimed on the basis of Indonesian title, is similar to (although slightly lower than) the number of respondents claiming to know of Indonesian-titled land being claimed on the basis of Portuguese title. It seems reasonable to conclude on the basis of the data presented in

Figure 25, that Portuguese and Indonesian titles are held in similar regard to one another throughout the community.

With respect to the relative validity of government and *adat* titles, respondents were asked which of those titles are most valid. The results are outlined in Figure 26 below.

Figure 26: Relative validity of *Adat* and Government titles (Q19)

Which of the following titles are most valid?	Urban (116)		Rural (601)		Whole Sample (717)	
	No.	%	No.	%	No.	%
<i>Hak Adat</i> titles	18	15.52%	174	28.95%	192	26.78%
Government titles	95	81.90%	400	66.56%	495	69.04%
Don't know	6	5.17%	13	2.16%	19	2.65%
No answer	2	1.72%	30	4.99%	32	4.46%
Total options indicated from 717 respondents	121		617		738	

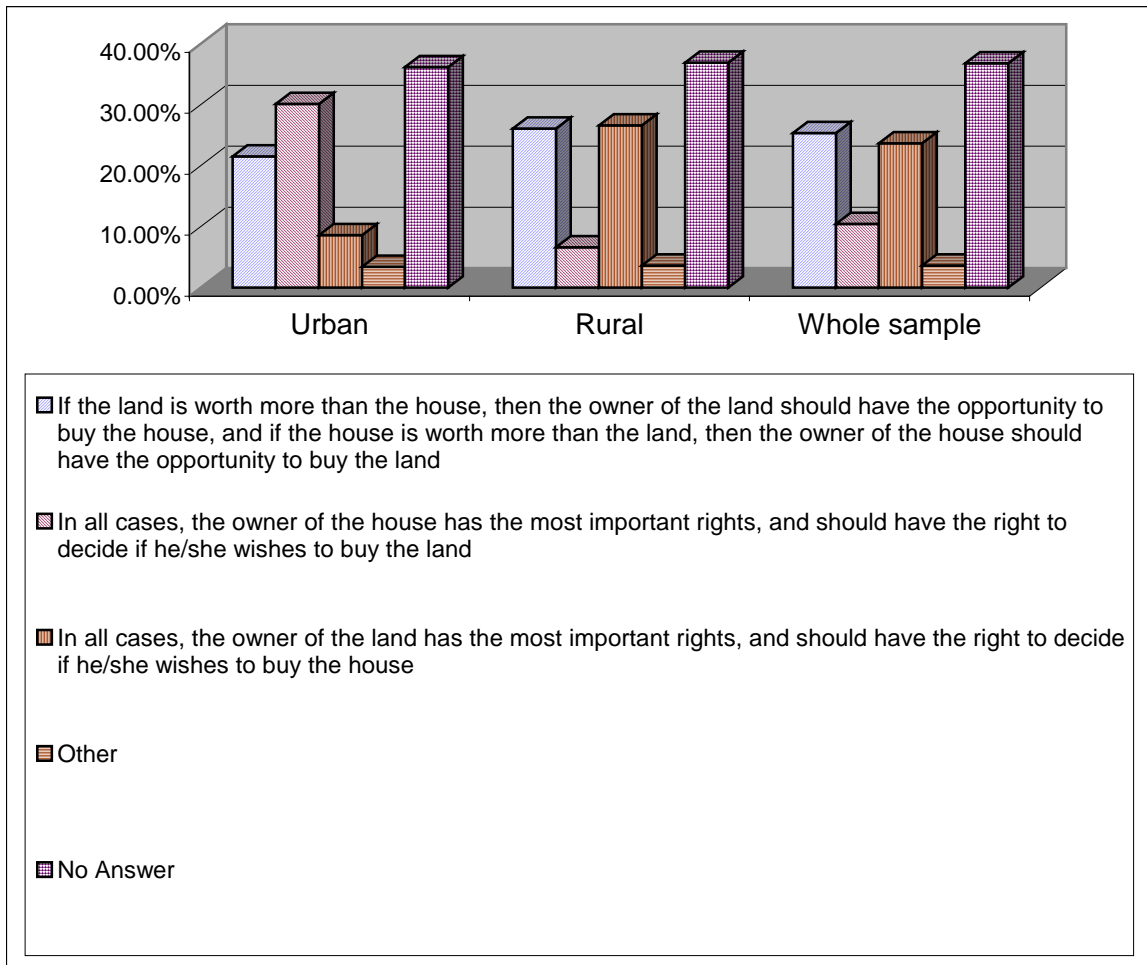


The data from the overall sample indicates that most people (69%) consider government title to be more valid. It is of note, however, that support in rural areas for *adat* title as the most valid form of land title is still strong, with 29% of rural respondents considering that *adat* title is more valid, compared with roughly half that number (15.5%) in urban Dili. Furthermore, it was noted during the course of the research that, in some districts, such as Maliana, support for *adat* title over government title can be widespread and uniform, suggesting that views on the relative validity of *adat* and government titles may differ from region to region, as well as within regions.

d) Separable rights – land and buildings

To inform the development of the East Timor private property system, respondents were questioned concerning separable rights issues. This question was designed to inform government policy-making concerning the assimilation of different rights over single land parcels. The results for this question are outlined in Figure 27 below.

Figure 27: Appropriate means of combining ownership rights (Q20)



A most notable aspect concerning the data presented in Figure 27 above, is the high proportion of respondents (over 36%) who provided no answer to this question. This response suggests that, to date, a large proportion of the East Timor community may not yet have contemplated the possibility of combining ownership of land with the ownership of buildings constructed upon that land, in accordance with the principles of a private property system. If this policy objective is to be advanced, therefore, it may be necessary to support it with a broad public education campaign.

With respect to those who did respond to the question, 25% of the overall sample (21.5% of the urban sample, 26% of the rural sample) supported the principle (27a) that the owner of the more valuable component of the combined house/land parcel should have the

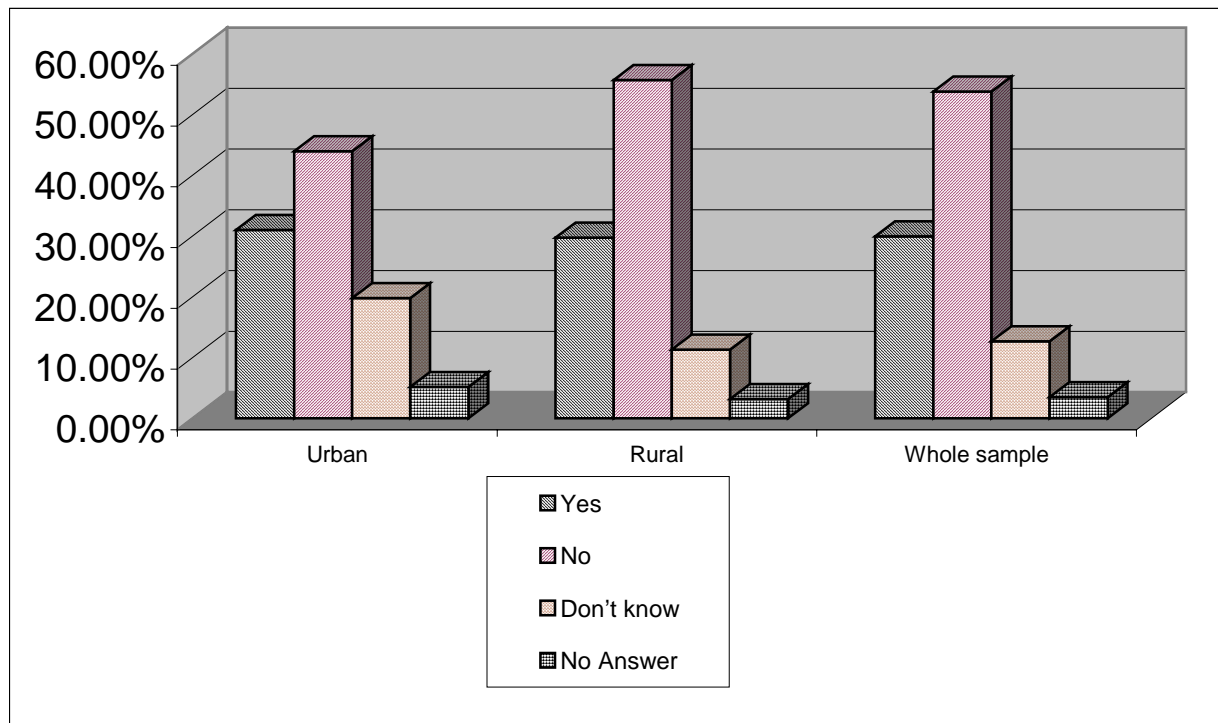
opportunity to buy the other share. The remainder of the sample who answered the question—those who think one way or the other concerning who should have the right to buy the other component of a house/land parcel—is divided according to urban/rural origin. In the Dili urban sample, 30% of respondents (compared with 7% of rural respondents) believe that the owner of the house has the superior rights and should be able to buy the land. In rural areas, however, 24% of respondents (compared with only 10.5% of urban respondents) believe the owner of the land has the more important rights.

In conclusion, therefore, there are a range of responses concerning the resolution of divided property ownership issues, as well as a substantial non-response rate to the question. Whereas those who believe that the owner of the more valuable component of a house/land parcel should have the option to buy the remaining part represent the single largest proportion of the sample *who answered the question*, there are many in rural areas who believe land ownership to be the most important factor.

e) Separable rights – Trees and private land

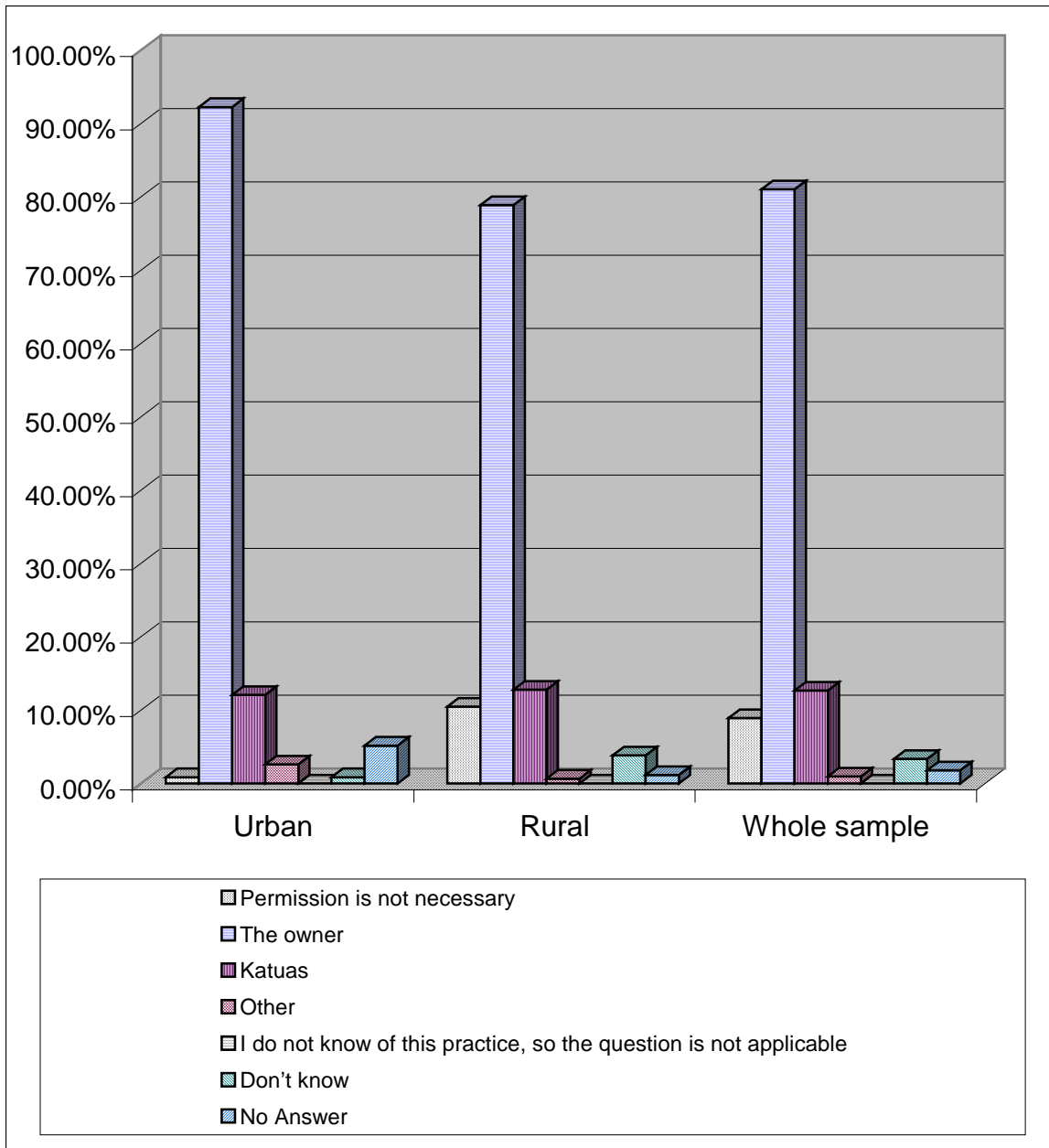
Regarding a further separable rights issue of interest to policymakers, respondents were asked several questions (see Figures 28 and 29) examining hypothetical situations where community members plant trees on land parcels belonging to other individuals.

Figure 28: Do you know of cases where a community member owns trees on someone else's land? (Q21)



The data outlined in Figure 28 above suggest that a minority of respondents overall, are aware of community members owning trees on land owned by other parties. At 30%, however, this minority is substantial, suggesting that the practice is reasonably widespread and may be deserving of attention in the course of the policy development process.

Figure 29: In cases where community members plant trees on someone else's private land (*tanah milik*), permission must be first granted from whom (indicate more than one option if necessary)? (Q22)



Respondents were also questioned concerning who must give permission in the event that community members do plant trees on private land owned by others. The results, outlined in Figure 29 above, suggest that the vast majority of respondents (92% of the Dili urban

sample, 79% of the whole sample) consider that permission must be granted by the owner in the event another person wishes to plant trees upon privately owned land. The permission of *katuas* (elders) is considered important by 12.5% of the sample, while 10% consider that permission is not necessary.

f) Planting rights and land expropriation in communities

Respondents were also questioned concerning who must give permission for the planting of trees on community land, the subsequent ownership of the trees and harvest rights, and expropriation of community land. The results are presented in Figure 30 below.

Figure 30: Community land: Planting rights, ownership and expropriation (Q23)

Please indicate your agreement or disagreement with the following statements						
Statement, and level of agreement/disagreement	Urban		Rural		Whole Sample	
	No.	%	No.	%	No.	%
a). I require the permission of <i>Katuas</i> , if I wish to plant a tree on community land.						
Yes	30	44.12%	251	68.39%	281	64.60%
No	33	48.53%	2	0.54%	35	8.04%
Not applicable/No answer	5	7.35%	114	31.06%	119	27.36%
Total	68		367		435	
b) Once I plant a tree on community land, I have the right to harvest from that tree for my entire life.						
Yes	43	62.32%	296	81.54%	339	78.47%
No	14	20.30%	40	11.02%	54	12.50%
Not applicable/No answer	12	17.39%	27	7.44%	39	9.03%
Total	69		363		432	
c) Even if I move to another place, I will have the right to harvest fruit from trees that I plant.						
Yes	32	46.38%	269	74.72%	301	70.16%
No	24	34.78%	64	17.77%	88	20.51%
Not applicable/No answer	13	18.84%	27	7.50%	40	9.32%
Total	69		360		429	
d) My children will inherit the right to harvest fruit from trees that I plant.						
Yes	34	48.57%	265	73.41%	299	69.37%
No	25	35.71%	68	18.84%	93	21.58%
Not applicable/No answer	11	15.71%	28	7.76%	39	9.05%
Total	70		361		431	
e) My children will inherit the right to harvest fruit trees that I plant even if they move away from the land on which the trees are planted.						
Yes	30	42.86%	241	66.30%	271	62.73%
No	25	35.71%	91	25.14%	116	26.85%
Not applicable/No answer	15	21.43%	30	8.29%	45	10.42%
Total	70		362		432	
f) Whoever first plants trees on the land, is the real owner of that land.						
Yes	15	21.74%	187	51.66%	202	46.87%
No	44	63.77%	139	38.40%	183	42.46%
Not applicable/No answer	10	14.49%	36	9.94%	46	10.67%
Total	69		362		431	
g) <i>Katuas</i> have the right to take back Tanah Adat Pribadi.						
Yes	12	20.34%	157	43.61%	169	40.33%
No	37	62.71%	162	44.99%	199	47.49%
Not applicable/No answer	10	16.95%	41	11.39%	51	12.17%
Total	59		360	98.92%	419	

Overall, the information outlined in Figure 30 above indicates the significance associated with the ownership of trees on community land throughout the areas sampled. Responses to Question 30a indicate that *katuas* play a prominent role in the administration of

community land in Dili, with 44% of the urban sample responding that *katuas* must be consulted in the event an individual wants to plant a tree on community land. As might be expected, the permission of *katuas* in rural areas is more important, with 68.5% of rural respondents answering that *katuas* must approve the planting of a tree on community land.

With respect to tree ownership, the data outlined under 30b, 30c, 30d and 30e indicate that the substantial majority of rural respondents believe that the individual ownership of trees upon community land (assuming the necessary planting protocols have been observed) is a robust and inheritable right. To illustrate the case more specifically, 81.5% of rural respondents believe that after planting a tree on community land, they will possess the harvest rights for that tree for their entire lives. 75% of respondents consider they will maintain their harvest rights for such trees even if they move to another place, and 73.5% believe their children will inherit the rights to harvest these trees. 66.57%, still a substantial majority of respondents, believe that their children will inherit the rights to harvest the trees that they plant, even if their children move away from the area. The results for the Dili urban figures are not as pronounced as the rural figures, yet they still indicate majority support for the concept that the right to privately owned trees on community land is robust and long lasting.

Question 30f proposed to respondents that ‘whoever first plants trees on the land is the real owner of that land.’ Responses to this question differed between the urban Dili and rural samples in that a majority (64%) of urban respondents opposed the statement whereas a majority (52%) of rural respondents supported it.

With respect to the right of *katuas* to take back or expropriate privately owned customarily administered land (*tanah adat pribadi*), this concept is opposed by a substantial number of Dili urban respondents. The response of rural respondents is more divided, however, since 45% of the rural sample disagree that *katuas* have the right to expropriate *tanah adat pribadi*, while 43.5% believe that *katuas* do have this right.

IV. A Summary of Major Research Findings, and Reflection on their Implications for the Development of Policies and Procedures

1. Land Claims and Land Claimants

a) Nationality of claimants

The analysis of the DNTP database undertaken by LLP (see Stage 1 – Land Claim Information) indicates that the vast majority of land claims in East Timor (around 90%) are Indonesian claims. Of these, it is expected (on the basis of an analysis of names) that less than two percent are claimants originating from, and with the right to claim citizenship in, East Timor. The high proportion of non-national land claimants supports the need for the development of clear policies relating to the resolution of foreign ownership issues.

b) Concentrations of claims

The DNTP Land Claim database (refer to Figure 1) also indicates that the majority of land claims (almost 62%) are concentrated in Dili. However, a number of other districts also have concentrations of claims (Bobonaro, Covalima, Oecusse) resulting from the development of transmigration areas during Indonesian times, and proximity to West Timor. To facilitate the processing of land claims, there may be benefits to focusing increased DNTP resources in high claim areas, once processes for resolving land claims have been fully determined.

c) The quality of documentation submitted in support of claims

The large number of land claims either lacking complete evidence (see Figure 2) or accompanied by potentially invalid documentation, highlights the necessity for a systematic process for assessing claims. It may be desirable for this process to include mechanisms whereby claims with invalid or incomplete documentation will be either rejected or scheduled for processing at a later point.

d) Government properties potentially subject to claim—land acquisitions during Indonesian times

The data suggest (see Figure 20 under Section 2.e, Research Results) that, particularly in rural areas included in the survey, many respondents (over 25% overall) consider that government land acquisition during Indonesian times was ‘never fair.’ These results suggest the possibility that a substantial number of government properties may be subject to claim. Although it is too early to tell what the extent of this situation might be, there is the potential for it to affect—perhaps in some areas more so than others—the ability of the government to dispense properties to land claimants in compensation for the loss of other properties, since the ownership of many of these government properties may also be in dispute.

e) Perceptions of the land claim process

Notwithstanding the lack of knowledge concerning the formal land claims process, and in the absence of empirical data from similar situations elsewhere with which to make comparisons, there appears reason to cautiously conclude (see Section 2.d, Research Results) that a fair degree of confidence exists among sample respondents concerning the legitimacy of those land claims of which respondents are aware, and the legitimacy of evidence being used in relation to these claims (including the legitimacy of land titles acquired during both the Portuguese and Indonesian eras).

2. Land Rights

a) Understanding of land rights—the advantages of a simple land rights system

Responses to a number of LLP research questions (see Sections 1.b, 1.d and 2.a, Research Results) indicate that knowledge in the community concerning aspects of formal land rights systems is poor (e.g., knowledge of specific Portuguese land rights, understanding of the meaning of *pemberian hak*, knowledge of UNTAET temporary use agreements). The difficulty of organizing comprehensive public information campaigns about land right issues is also clear from LLP research findings (see Figure 15), which indicate that only a minority of respondents have knowledge of the formal East Timor land claim process. These research findings highlight the advantages of a future land rights law that is as simple, as clear, and as easy to understand as possible.

b) Freehold land rights—concepts and transactions

The data suggest (refer to Figure 12 Section 1.c, Research Results) that the majority of respondents conceive of ownership in a manner consistent with international legal principles, specifically ‘the right to sell, transfer and freely administrate.’ Furthermore, the research results also indicate (see Figure 23, Section 3.a, Research Results) that the sale of freehold land between private individuals is considered common by around half the sample overall, with rural respondents supporting the assertion that such transactions are common—more so than urban respondents. Other information examined, however, suggests that, at least in some parts of East Timor, individuals are likely to possess a range of different kinds of land rights, some of which may be consistent with freehold and some of which may not. Therefore, it may not be correct to assume that a substantial proportion of land within the customary system is freehold, even if most people *do* have access to *some* freehold land. On this basis, caution may be advisable in relation to extending freehold principles to customary areas.

c) Equal rights for women and men to claim and inherit land

A substantial overall majority of respondents indicated support (see Figure 18, Section 2.d, Research Results) for the principle that women should have the same rights as men to claim land. Similarly, a substantial majority of respondents supported the view that male

and female children should have equal rights to inherit land (see Figure 23 under Section 3.a, Research Results). Although the results may not be as straightforward as they appear (for instance, a proportion of those respondents favoring equal inheritance rights for male and female children are likely to be men in matrilineal areas favoring increased inheritance rights for male children), the results appear to indicate support for advancing gender equity objectives with respect to land rights. Notwithstanding this indication, there are also likely to be advantages to observing cultural aspects relating to the transfer and inheritance of land in accordance with local (matrilineal or patrilineal) practice.

d) Government expropriation of land

More respondents disagree with the right of Government to ‘take back land from communities and individuals to use for government purposes,’ than agree with this principle (see Figure 23a, Section 3.a, Research Results). Furthermore, a considerable number of respondents (19% of the urban sample, 12.5% of the rural sample) disagree ‘strongly’ with the principle of state expropriation of land. On this basis, any state expropriation would be likely to benefit from a comprehensive public education program advertising the social benefits and transparent nature of the program. It is likely that the experience of state expropriation during Indonesian times, as referred to above, has influenced present views on this matter.

e) Proof and evidence—regard for Indonesian freehold certificates

The research findings indicate that Indonesian freehold certificates are most highly regarded as an important form of evidence in support of land claims or requests for freehold title. Other highly regarded forms of evidence include Portuguese freehold certificates; crops, trees and buildings; witness accounts; written receipts of purchase; and a range of other evidence types as outlined in Figure 24, Section 2.g, Research Results. Some differences prevail between urban and rural areas concerning the authority accorded particular types of evidence, with crops, trees and buildings being held in higher regard in rural areas than in urban areas. Policymakers may wish to take these urban/rural distinctions into account.

f) Forfeiture of rights to abandoned land

Survey results (see Figure 22, Section 2.g, Research Results) reveal that the majority of respondents disagree with the principle that an owner forfeits ownership of property by abandoning it, with this belief being more pronounced in urban areas than in rural areas. This information may be of use in informing policies regulating abandoned properties.

g) Separable rights—Land and buildings, land and trees

Little uniformity of view exists among respondents (see Figure 27, Section 3.d, Research Results) concerning an appropriate strategy for combining ownership of buildings and land, in cases where the titles to these components are presently held by different parties. It is suggested that one reason for this may be that little consideration has been given to

the matter up to this point. The basis of this suggestion is the relatively large number of respondents (over 36%) who gave no answer to this question. Of those who responded, the largest portion of the sample (25%) supported the view that the owner of the more valuable part of a house/land parcel should have the option to buy the remaining component. In rural areas, however, there is almost as much support for the principle that ownership of the land is the most important factor.

Further insights are provided into potential challenges associated with combining ownership rights, by the results to a question asking if land owners expect to be able to eventually reclaim their land in the event they allow other people to build houses on it (see Figure 23d, Section 3.a, Research Results). In urban areas, 47.2% of respondents either agree or strongly agree with the principle that ‘owners always expect to get their land back again’ compared with 40.52% who disagree or strongly disagree. In rural areas, support for the principle of reclaiming land eventually is stronger, with 55.90% agreeing or strongly agreeing that owners ‘should always get their land back again,’ compared with 36.44% who disagree or strongly disagree.

In relation to individual ownership rights associated with trees planted on community land, other research results (see Figure 30, Section 3.f, Research Results) indicate that such rights are robust and long lasting. In this respect, 75% of rural respondents consider that they will retain the right to harvest trees they plant on community land for their entire lives, and almost as many respondents consider that their children will inherit the same rights to these trees. Furthermore, approximately 30% of respondents know of cases where individuals possess ownership rights relating to trees planted on the private land of another person (see Figure 28, Section 3.e, Research Results), suggesting that this practice may be reasonably widespread and potentially deserving of attention in the policy development process.

3. Land Administration

a) Integration of customary and formal mechanisms

Particular research findings point to the advantages of integrating aspects of local (traditional or customary) systems into state land administration, where appropriate. Hence, whereas government title is recognized as ‘more valid’ than *adat* title in both urban and rural areas alike (see Figure 26, Section 3.c, Research Results), it is significant that *katuas* are the category of individuals supported by the single largest group of respondents (both in urban and rural areas) as the most appropriate persons to arbitrate—where appropriate—decisions concerning land claims (see Figure 17, Section 2.c, Research Results). This data provides further support to the conclusions of the LLP *Report on Research Findings and Policy Recommendations for a Legal Framework for Land Dispute Mediation*, in which the principle of integrating aspects of local (traditional or customary) systems into a legal framework on land dispute mediation is proposed.

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