

****Recommended amendments and comments in redfont**

SPECIAL REGIME FOR DEFINITION OF OWNERSHIP OF IMMOVABLE PROPERTY

The Constitution of the Democratic Republic of Timor-Leste, in its article 54, ensures the right of all private citizens to own land. The full exercise of this right depends on the resolution of the current status regarding the ownership of immovable property.

With the goals of regularizing the legal status of immovable property in Timor-Leste, **promoting tenure security**, the **equitable** distribution of property among citizens and ensuring **secure** access to land by all, this law establishes the Special Regime for definition of ownership of immovable property and creates mechanisms that allow for the identification of legitimate owners, recognition and granting of first property rights in Timor-Leste.

The National Parliament hereby orders the following, under the provisions of article 95.2 item a) of the Constitution of the Republic and for all legal effects:

CHAPTER I

OBJECT AND DEFINITIONS

Article 1

Object

1. This law establishes a special regime for the definition of immovable property ownership by recognizing and awarding the rights of immovable property ownership in the Democratic Republic of Timor-Leste.
2. The special regime for the definition of immovable property ownership has the purpose of clarifying the legal status of immovable properties in Timor-Leste, promoting the **equitable** distribution of property among citizens and ensuring **secure** access to land for all.
3. The recognition and award of the property rights shall conform to the guiding principles of acceptance of previous rights, acknowledgment of possession as the basis for awarding ownership rights and due compensation in cases of duplicity of rights.

Article 2

Previous Right

1. For the purposes of the present law, shall be defined as previous rights:
 - a) Rights over immovable property that are informal property rights as recognized under this Law.,

Rational: This provision as written or translated is unclear. If informal rights are different and distinct from community rights as envisaged in the law (even though both being customary in nature) then it is important to explicitly state this in the definition of “informal property rights” in Art. 3(1)(f). The changes above simply ensure that the definition below is not repeated in this article.

- b) Rights over immovable property granted by the Portuguese and Indonesian administrations in the territory of Timor-Leste, namely *propriedade perfeita* (freehold), *aforamento* (tenure), *hak milik* (property right), *hak gunabangunan* (leasehold) and *hakgunausaha* (utilization rights).
2. For the purposes of this statute, informal property right, *propriedade perfeita* and *hak milik* are named as primary previous rights, and *aforamento*, *hakgunabangunan* and *hakgunausaha* are named as secondary previous rights.
3. All previous secondary rights of *aforamento* expected to expire after December 7, 1975 are considered to be in effect.
4. All previous secondary rights of *hakgunabangunan* and *hakgunausaha* expected to expire after August 30, 1999 are considered to be in effect.

Article 3

Definitions

1. For the purposes of this law, the meaning of the following definitions are:
 - a) *Ownership claim* is the act by which one or more individuals or legal entities claim to hold and requiring recognition for the ownership right over a piece of immovable property. The claim shall be addressed to the National Directorate of Land, Property and Cadastral Services (DNTPSC) and within the scope of the cadastral survey process;
 - b) *Claimant* is the individual or legal entity who has submitted a valid and timely ownership claim, individually or in a group, as a claimant to ownership or compensation;
 - c) *Claimant in possession* is the claimant in possession of the claimed piece of immovable property;
 - d) *Uncontested claimant* is the single claimant for ownership of a piece of immovable property or a group of claimants in mutual agreement.
 - e) *Immovable property* is the soil and everything permanently linked to the soil, namely buildings, in accordance with the terms under the Civil Code;
 - f) *Informal property right* is the rights over immovable property, customary and resulting from long term possessions, which have the essential features of property rights, including the

right to access and use. Informal property rights are distinct from “community property” rights, subject to exception under Article 27(4).

- g) *Propriedadeprefeita* is the right to full and exclusive enjoyment of the rights of use,fruition and disposal of immovable property as referred to in the law applicable during the Portuguese administration;
- h) *Aforamento* is the right of *tenant* to use the propertyby means of payment of rent and with the right of *retrieval*as referred to in the law applicable during the Portuguese administration;
- i) *Hakmilik* is the right of full and exclusive enjoyment of the rights of use, fruition anddisposal of immovable property as referred to in the law applicable during theIndonesian administration;
- j) *Hakgunabangunan* is the right to temporarily build or maintain worksites on landowned by a third party, as referred to in the law applicable during theIndonesian administration;

Hakgunausaha is the right to use the State-owned land for the economic benefit for anestablished period of time, as referred to in the law applicable during theIndonesian administration. CHAPTER II

GENERAL PROVISIONS

Article 4

Equality of Rights

1. Property rights are available to any national individuals, male or female, as well as legal entities and local communities.
2. Property rights are assured equally to males and females and any form of discrimination, including with respect to ownership, acquisition, management, administration, enjoyment and disposition of property, is prohibited.

Rational: Recommend supplementing this as consistent with RDTL Constitution (Sec. 16) and Timor-Leste’ obligations under CEDAW (art 16).

Article 5

Public Domain of the State

1. The public domain, as defined in Article 3 of Law 1/2003,includes all assets included in that domain in accordance with the Law, individually or by means of identification by type.

Rational: Recommend adding this language to ensure harmonization with existing legislation in force.

2. The inclusion and maintenance of any asset in the public domain always rests upon the premise that the asset is indispensable for the protection of the public interest and the collective needs.
3. Without detriment of any special legislation that may classify other assets as public domain, the public domain shall include the following:
 - a) Coastal and territorial waters, interior waters, their beds and margins and the continental platform;
 - b) The air layers above the territory in excess of the limit granted to the owner or surface owner;
 - c) The air space through which radio electrical waves can propagate;
 - d) The beaches and the strip of the sea coast and outline of islands, islets, bays and estuaries, measuring from the line of the highest flood marks and by observing a protective strip to the interior of the territory;
 - e) All waters of rivers, lakes, lagoons and connected lands with exceptions on waters that are considered to be private or community owned as referred to under the terms of the Civil Code;
 - f) Oil and natural gas deposits;
 - g) Mineral deposits, hydro and mineral resources and geothermal resources, as well as natural underground caves and other natural resources existing in the underground, excluding spring waters and mineral masses such as rocks, common land and other materials normally used in construction;
 - h) Railroad infrastructures, by observing a range of protective bordering strip;
 - i) Airports and airdromes of public interest, by observing a range of protective bordering strip, as required in the public interest;

Rational: While protective border strips or “buffer zones” will be further defined in subsequent legislation, it is important to insert qualification criteria in this Law (such as “as required in the public interest”) for three key reasons: (1) ensure certainty regarding ownership of land situated more or less near the protective borders; (2) limit unjustifiable claims by the state to land surrounding public domain and utilities; and (3) ensure that subsequent regulations adopted carry on the spirit and intent of the Law. See also former President Ramos-Horta comments on Land Law, para. 10.

- j) Artificial ports and docks of public interest, by observing a range of protective bordering strip;
- k) Public utility dams, by observing a range of protective bordering strip;

- l) The highway network including, specifically, roads, streets, public pathways, squares and green areas, as well as their accessories and artworks, by observing a range of protective bordering strip;
 - m) Public cemeteries;
 - n) Monuments and buildings of national interest, provided that they are properly classified and included in the public domain;
 - o) Military installations, infrastructures relevant for national security and territorial areas reserved for the purposes of civil protection or military defense;
 - p) The strip of land along the terrestrial border.
4. The National Property Cadastre identifies and characterizes all assets of the State's public domain.
 5. The system for determining and utilizing the public domain of the State is regulated by a separate Decree Law.

Article 6

Private Immovable Property of the State

Rational: To clearly distinguish from the concept of “public domain.”

1. State properties are those that are owned or have been used by the Portuguese administration until December 7, 1975, and Indonesian administration, to October 19, 1999, in the territory of Timor-Leste, without prejudice of the informal property rights and community property rights or other potential indemnity, subject to mechanisms provided for in this Law (and subsequent regulation?).

Comment: Given power and capacity asymmetries between the state and the majority of persons possessing property in Timor-Leste, vesting a higher legal status in State properties owned and used by the Portuguese and Indonesian administrations while placing the burden of challenge or dispute on the people who may have legitimate long term customary rights to the property and were arguably deprived of this property through violence or duress, should be remedied by subsequent establishment (via regulation under Art. 6(5)) of a system where the State’s higher legal status applies only when the State is in possession of the land. In those cases where a claimant or a community is in possession of the land, the State’s claim should trump only when it shows that there is a legitimate public interest. In other words, the burden would shift with possession.

What is the rationale of vesting a higher legal status in State properties owned and used by the Portuguese and Indonesian administrations than other legitimate rights? Community property governed by customary tenure arrangements should trump these claims by the State. (See Policy Notes on Customary Land in Timor Leste prepared by Fitzpatrick et al at para 29: "Potentially, this

definition of state property covers a significant amount of land currently claimed by origin groups.") Long-term possessors should also trump these claims by the State unless there is a legitimate public interest reason as to why the State needs the land in question.

2. Considered as the State property those which are currently in their possession and are developed in activities related to public administration or activities of public interest, prevailing state ownership over any prior claims, without prejudice of the right to compensation, under provisions of this law.

Comment: If there are competing claims by the State and a private claimant to such property it should be subject to normal rules of adjudication without a presumption in favour of the State. If a private claim trumps the State's claim, and the State requires the land for a public interest purpose, the State should engage processes established under the Expropriation Law.

Also, if the land is used for activities of public interest shouldn't it be classified as property in the public domain of the State?

3. State properties are those for which the previous primary or secondary rights belong to foreigners, are accrued to the State under this Act.
4. All immovable property with no known owner shall be considered as State assets.
5. The system of use and disposal of State-owned immovable property shall be regulated in a separate Decree Law.

Article 7

Legal Entities

1. National legal entities constituted exclusively of national citizens and whose capital is wholly and exclusively owned by national citizens is entitled to property rights over immovable property.
2. Other legal entities who, by law, be granted this right may still be in possession of property right.
3. Other legal entities, holders of prior rights, who maintained ownership of the property reverts to the private domain of the State, may continue to use the property by means of lease with the State.
4. Revert to the State the immovable properties of which its previous ownership are extinct legal entities, except in cases of special adverse possession or usual possession by third parties, as identified within the scope of the process for acknowledging and granting first property rights.
5. The system to be adopted for the identification of legal entities falling within paragraph 1 and 2 is defined by the Ministry of Justice in the form of Ministerial Diploma

Article 8

Foreigners

1. Immovable property of foreign claimants who hold previous rights shall revert to the State, except in cases of special adverse possession by national citizens.
2. Foreign claimants holding previous rights who maintain current possession of any immovable property reverted to the private domain of the State have the right to continue to use the property by means of lease contracts.

CHAPTER III

POSSESSION

Article 9

Concept

1. For the purposes of this law, possession is the use or the real possibility of use of the property for the purposes of housing, cultivation, business, construction or any other activity requiring the physical use of the immovable property, in a way corresponding with the exercise of the property right.
2. Possession may be exercised in person or through third parties.
3. Landlords exercise their possession through their lessees.
4. Evidence of possession are construction, plants, fences and enclosures.

Article 10

Possession in case of ancestral domain

It is considered to be holder the one who inhabits, has construct buildings or made plantations of immovable property which its ownership is claimed by others based on ancestral custom, despite this pay rent. **Unclear (This could be due to poor translation.)**

Article 11

Mere Occupants

1. The following are considered to be mere occupants of immovable property:
 - a) People using the property with no intention of acting as beneficiaries of the right of ownership, such as lessees;
 - b) People who simply took advantage of the tolerance of legitimate owners;

- c) Representatives and agents of the owner, as well as anyone exercising possession on behalf of someone else;
2. Mere occupants cannot acquire for themselves, by means of special adverse possession, the right to own the immovable property they possess.

Article 12

Possession Protection

Until the first ownership rights are recognized or awarded within the scope of the special regime established in this law, actual and peaceful owners (**possessors?**) shall enjoy full legal protection under the terms of the Civil Code.

Article 13

Intent of Ownership

Individuals who, in exercising his/her possession, do not implicitly or explicitly exclude the conviction of being holders of the property right are considered to be owners (**possessors?**) with *intent* of ownership.

Article 14

Public and Notorious Possession

Public and notorious possession is the possession practiced in a way intended to be known by the interested parties.

Article 15

Lasting Possession

For the purposes of this statute, lasting possession is the uninterrupted possession for at least twenty years.

Article 16

Peaceful Possession

1. Peaceful possession is the possession obtained without the use of violence or threat.
2. Possession is deemed violent when the owner, in order to obtain it, uses physical or psychological coercion under the terms defined in the Civil Code.

Article 17

Interruption of Possession

1. Dispossession occurs when someone is unduly deprived of the exercise of holding or enjoying the possessed property or the possibility of continuing its possession.

National claimants who held previous rights and were dispossessed after December 31, 1998 without the ability to recover possession are deemed actual and peaceful owners (possessors?), subject to the provisions on Special Protection against Eviction provided in this Law. **Rational:** This has important implications for people who occupied the empty houses post-1999 and also for the upheaval of 2006, which changed occupation patterns again. These people are most likely to be subject to eviction under this law unless they benefited from mediated agreements, which are recognized under article 32(5). While some of these people occupied empty houses despite having another primary residence, others do not have alternative housing options. To ensure people are not subject to forced eviction and left without access to alternative adequate housing, protections under Articles 56-62 must be explicitly recognized in this provisions. (see further comments on articles 54 - 62).

Article 18

Succession and accession in possession

The declaring holder can, for the purpose of determining the date of the initial possession, adding the possession to its predecessors in that same possession, provided that they are continuous and peaceful, regardless of the form of transmission, pursuant to the provisions under the Civil Code.

CHAPTER IV

SPECIAL ADVERSE POSSESSION

Article 19

Notion

Special adverse possession is the mechanism for acquisition of the ownership right related to an immovable piece of property within the scope of the special regime for determining ownership of immovable property in the cases of possession maintained for a certain period of time and in accordance with the requirements established in this chapter.

Article 20

Immovable Property Not Susceptible to Acquisition Through Special Adverse Possession

Immovable property located in areas of public domain of the State shall not be object of special adverse possession, except as may be necessary to avoid a serious problem of relocation and as provided in subsequent decree-law regulating the State's public domain

Rational: The State should grant an exception in those situations foreseen in Article 59, where the number of people to be relocated would raise serious problems of relocation. In such situations, the

occupiers should have a right to enter into a lease agreement with the State to continue their possession on the basis of clear and secure tenure, conditioned on the right of the State to refuse or revoke such arrangements with due process if and when the property is required for a public interest reason.

Article 21

Requirements

Ownership rights through special adverse possession shall be awarded to any claimant in current possession who cumulatively meets the following requirements:

- a) Claimant holds Timorese citizenship and possess the property with the intention of ownership, continuously, publicly and notoriously;
- b) Claimant has initiated possession in a peaceful manner before or on December 31, 1998, without the use of physical violence or psychological coercion.

Question: So, read with article 17, does this mean that someone dispossessed in 1999 or 2006 and not currently in possession of the property can claim ownership on the basis of special adverse possession as long as they meet the criteria of (a) and (b)?

Article 22

Capacity for Acquisition

1. The mechanism of special adverse possession is available to anyone capable of acquisition.
2. Those who are legally incompetent may acquire on the basis of special adverse possession, on their own or through their legal representatives.

CHAPTER V

PROTECTION ZONES AND COMMUNITY PROPERTY

Article 23

Community Protection Zones

Community Protection Zones are areas protected by the State for the purpose of safeguarding common interests of local communities through the protection of residential areas, agricultural areas, either cultivated or fallow ground, forests, culturally relevant sites, pastures, watersprings or areas with natural resources that are shared by the population and necessary for its subsistence.

Comment: Some clarification is needed here. This could be interpreted as vesting in the State significant power over the commons (areas outside community property) that can be easily abused despite a legislative intention to require the State to "protect". Either mandate strict safeguards to protect against

State abuse of power (see below) or change to the legislative recognition of community governance systems of use and custodianship. Note that civil society groups stated their preference for a legal recognition of community governance systems over such areas in which local communities control the administration and management of such areas in coordination with the State.

Article 24

Protection

In Community Protection Zones, the State is responsible for the following:

- a) Ensure that all customary practices conform to the Constitution and are participatory, non-discriminatory and respect gender equality;
- b) Respect and protect the customary rights of individuals, families and communities to use and access resources in the CPZ;
- c) Promote environmental and socio-cultural sustainability in the uses of natural resources and the way of life of each local community;
- d) Protect immovable property in the community from real estate speculation and **unscrupulous or exploitative commercial activities by third parties; and**
- e) **Respecting, protecting and fulfilling the human rights of members of local communities who depend on or otherwise use the resources therein.**

Rational: These protections need to be accompanied by clear enforceable legislative rights and requirements. In particular customary rights to use and access resources in CPZs (including outside community property boundaries) should be recognized and fully respected. Any acts by the State or a third party that restricts or impedes these rights, including by blocking access or through destruction or pollution of natural resources, should be regulated require the free prior and informed consent of rights-holders and local communities.

Suggestion: While there is no universally accepted legal definition of "indigenous peoples" in international law, and an experience of marginalization from the dominant society is usually regarded as one characteristic that may not be present in the Timorese context, it is arguable that each of the individual language-based ethnic groups within the Timorese population with a special collective attachment and dependency on their ancestral land constitutes an indigenous peoples (see for example, analysis in the Resettlement Policy Framework for the Road Climate Resilience Project prepared for the Ministry of Infrastructure available at <http://www.worldbank.org/projects/P125032/timor-leste-road-climate-resilience-project?lang=en>). It should thus be carefully considered, based on consultations with such groups, whether the special rights of indigenous peoples with regard to their territory, land and resources as recognised in the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) should be enshrined in this law. This would include the right to consent to or reject to the use of their territory for development by

the State or third parties. States have an obligation to provide effective mechanisms for prevention of, and redress for any action which has the effect of dispossessing indigenous peoples and individuals of their lands, territories or resources (art 8 (2)(b)). While these are to some extent recognized through the legal recognition of "community property" in article 27 and its legal status as a primary previous right, in some cases, notions of "territory" could extend to access and use rights (as well as prohibitions on the use of certain areas or resources such as water sources or forests (*tara bandu*)) beyond what may be demarcated as community property into wider parts of the CPZ, which may be subject to customary uses by multiple groups. (While the extent of this is unclear, see Policy Notes on Customary Land in Timor Leste prepared by Fitzpatrick et al. for some guidance)

Article 25

Use of Immovable Property in Community Protection Zones

1. The use of immovable property by individuals, families and groups in Community Protection Zones shall be respected by the community and protected by the State.

As suggested above in Article 24, rights of local community members to access and use natural resources in Community Protection Zones for subsistence, livelihoods, social or cultural purposes should be recognized under the law. This recognition should extend to the entitlements under the Expropriation Law (and relevant provisions of the Civil Code). This is especially important for women who may have use and access rights but not recognized rights akin to ownership .

Consider as an alternative based on further public consultation: "The use of resources within Community Protection Zones shall be subject to community governance systems and protected by the State."

2. The State is responsible for ensuring that all economic activities performed by third parties in Community Protection Zones, inclusive of immovable property rights owners within such Zones:
 - a) only commence after the completion of an environmental and human rights impact assessment and after any prospective harms are avoided and mitigated through appropriate safeguard measures as provided for in Law regulating such (not sure what the law is)
 - b) benefit the local community(ies) as a whole in an inclusive and non discriminatory manner;
 - c) are performed in a sustainable way from the environmental and socio-cultural points of view;
 - d) respect the ways of life of each local community and its use and access to natural resources.
 - e) do not threaten the livelihoods of local communities by depriving them of, or restricting, their access to natural resources.

- f) respect the cultural and customary practices of local communities with respect to their special attachments and use of the natural resources therein.
 - g) fully respect the human rights of the members of local communities.
3. All economic activities performed by third parties in Community Protection Zones shall be preceded by consultation with the local community, as to be defined in subsequent legislation, and subject to the principles of non-discrimination and gender equality.

Recommendation: Any subsequent legislation at a minimum should require a meaningful and transparent process of free and informed consultation and the provision of meaningful opportunities for participation in decision-making about third party economic activities. Particular measures should be taken to ensure that women and other disadvantaged persons have an opportunity to participate in these decision-making processes. Women should be empowered to develop their own methods of participation and decision-making in consultations, however, regulations should mandate that community representation include women selected or elected by their own peers/and or community at large.

Third parties should also be directly bound by the above safeguards. The law should prohibit third party activity that does not comply with the safeguards. It should also guarantee access to effective legal redress should these principles be infringed, as suggested in new Article 87

- 4.
5. Additional suggestion: Note that UNDRIP article 32 calls on States to obtain the free and informed consent of indigenous peoples prior to the approval of any project affecting their land or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.

Article 26

Ownership of Immovable Property in Community Protection Zones

The characterization of an area as Community Protection Zone does not affect the ownership of immovable properties, including informal, of private persons, legal entities, communities and the State located in it or their rights of their respective owners, without prejudice of the limitations resulting from the protective legal regime.

Comment: If CPZ's constitute or include territory or resources subject to customary tenure systems this article is not consistent with UNDRIP.

With regards to State claims, unless there is a legitimate public interest reason, they should not trump conflicting customary claims (including use and access rights).

Article 27

Community Property

1. Any immovable property acknowledged by the community as being of their common and shared use, by a group of individuals or families, organized in accordance with local practices and customs, subject to the principles of non-discrimination and gender equality, shall be considered as community property.
2. All community properties are inalienable and not pledged.
3. The demarcation of the community property follow the rules established in this Act and as to be determined by a separate statute.

Resolution of disputes over community property, as well as registration and titling of such property will be subject to the provisions of Decree-Law adopted as per Article 28. **Rational:** Resolving disputes over community property (as per Article 27.4 above) or proceeding with its registration and titling as per Article 34(2) before the Decree-law regulating community property is adopted could cause grave injury to the system of community property rights, including the potential for conflict and violence within communities as they seek to claim their rights and benefits under this law with very little clarity on the definition, representation and system of community property to be recognized by the State. It is advised that the Ministry of Justice carefully weigh the benefits and disadvantages of allowing community property processes to go ahead without any further regulation and/or allowing the commission or the courts – institutions with only limited capacity in dealing with civil and land cases - to deal with such matters.

It is prudent to either define or provide some parameters of what is a community, how is it organized, who represents it, and if registration of ownership is done under the cadastral survey, who holds this ownership (i.e. under what form of entity or organization). These are all matters that should be clarified before any processes commence over community property. As such, this Law should make clear that all disputes and registration of community property does not proceed until the subsequent decree-law is adopted. Matters related to community property have been little consulted and in fact Ita Nia Rai chose not to make any community property registration until further consultation was conducted and there was more clarity around the definition and system of community property, ensuring that both customs and human rights are protected and fulfilled.

If this is not an option the Government decides to take, then at the very least this Law should (after consultation), define or provide some parameters around the system of community property providing the commission and the courts some basic guidance on the resolution of disputes involving community property.

Additional comment: What does this mean in terms of rights and entitlements under the Expropriation Law?

Some fundamental principles should be added about common property that honors its social, economic and cultural value to the communities and individuals. Consider also recognising the

special rights of communities as indigenous peoples to their territory, land and resources, including right to own, use, develop and control their lands, territory and resources and the right to freely consent or deny approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources (UNDRIP 26 and 32).

Article 28

System of protected Community areas and Community Property

The system of community protected zones and community property is regulated by Decree-Law

CHAPTER VI

CADASTRAL SURVEY

Article 29

National Register of Properties

1. The National Register of Properties is the database that contains the official information on properties collected through the cadastral survey process.
2. The National Register of Properties comprised of cadastral database and the database of r property records.
3. One can integrate the National Register of Properties information collected under the cadastral survey provided in this chapter.
4. The DNTPSC is responsible over the establishment, management and updating of the National Register of Properties

Article 30

Systematic Cadastral Survey

The systematic cadastral survey is to collect data on the properties held by DNTPSC in contiguous and predetermined collection areas, in accordance with a specific procedural framework to be established under subsequent Ministerial Diploma, and in order to compose the National Register of Properties.

Rational: What is the specific procedural framework? Presumably another regulation should be adopted since DL 27/2011 does not really provide for a procedural framework or specific due process guidelines on the cadastral survey itself.

Article 31

Collected Information

1. Are collected through the cadastral survey in each collection area, the necessary information on the composition of the National Register of Properties, including:
 - a) The administrative location of the property;
 - b) The geometric outline of the plot, geo-referenced;
 - c) The location of the plot, geo-referenced;
 - d) The type of the plot in accordance with the technical specifications;
 - e) The statements of ownership pursuant to Article 32;
 - f) Other data that is technically considered necessary.
2. Each parcel of land is assigned a Unique Identification Number.

Article 32

Statement of ownership

1. During the process of cadastral survey, the DNTPSC collects statements held by persons, individually or jointly, or legal entities on the property located in the collection areas, consistent with the provisions of the Civil Code on the governing property regime

Comment/Suggestions: It is understood that the Civil Code has a communal property regime that does not provide for presumptive joint titling of marital property and may not allow for the presumptive registration of a family home as joint property if this was acquired or inherited prior to the marriage. Additionally, the rights of persons in de facto unions (a large number of “married” persons in Timor-Leste) must be taken into account. It appears that such unions fall outside of the legal definition of the marriage under the Civil Code and it is unclear whether these would be retroactively classified as marriages under Article 11.1 of the Civil Code. In either case, consultations should be had both within and outside the Ministry of Justice to debate whether this Law should seek to extend and elevate presumptive joint titling, especially for family homes for both those who are married as defined under the Civil Code and those under de facto unions. This is an important way to elevate the rights of women with respect to access to and control over land. It is also good practice to require that surveyors to enter both names and photos of both spouses in the registry.

2. With statements of ownership referred to above, copies of any evidence that claimants can submit are also collected.
3. No one may be prevented from submitting statements about plots considered to be in their possession.
4. Each statement is assigned an identification number.

5. Agreements resulting from mediation or negotiation in which the parties have agreed on the final transfer of ownership of the property are valid for the purposes of the statement of ownership.
6. It is up to DNTPSC, and secondarily to public entities to submit a statement of ownership of immovable property of the State.

Article 33

Publication

1. The information gathered in the collection area are arranged in a cadastral map and list of claimants, and published for a period of sixty days.
2. **Rational: Thirty days may not be sufficient to ensure that the principles of due process in relation to the systematic cadastral survey including the publication of maps and list of claimants and statements of ownership. Here it is important to note the experiences of the Ita Nia Rai programme (see the USAID evaluation as well as the Rede Ba Rai report on INR) – sometimes the programme had to publish or re-publish the maps and list of claimants for longer periods of time to ensure that this process was accessible and understandable for disadvantaged people, including those who are illiterate, indigent or otherwise face marginalization and exclusion. In fact DL 27/2011 also mandated the republishing of maps and list of claimants. Some of the lessons learned from Ita Nia Rai were that the systematic cadastral survey must be conducted on the basis of full access to information provided in an appropriate language and through suitable methods and fora, participatory processes and gender equality, processes that INR has sought to rectify as the programme progressed All these should be further defined and clarified in specific regulation or guidelines (see above)**
3. In cases where the physical characteristics of the area collection are justified, the DNTPSC can determine the publication of the cadastral map a period longer than thirty days.
4. The publication period should be determined and announced before the start, and there can be no extension.
5. During the period of publication, DNTPSC collects statements of ownership of the properties identified in the cadastral map that have not yet been submitted in accordance with Articles 31 and 32
6. There shall be no allowance for ownership claims submitted after the deadline set out in paragraphs 1 and 2 unless the claimant offers irrefutable evidence that she/he was unable to access the information in the cadastral map for reasons beyond his/her control and the absence of negligence on the part of the claimant.

OR

7. Any claim submitted after the established term, under the terms of this article, shall be subject to judicial review as per Articles 74 and 75 and shall only constitute a claim for compensation.

Rational: As mentioned above, the provisions concerning publication do not take into account the position of Timorese nationals who may have a valid claim but are not located in the area, are unable to make a claim within the prescribed period for reasons beyond their control or because of their disadvantaged status. If the period of publication is to remain at 30 days, then it is recommended that either an exception be made to sub-article 6 or allow for claims to compensation after an initial determination of ownership is made.

Article 34

Cadastral survey in Community Protection Zone

1. The property cadastral survey in Community Protection Zone must be preceded by a meaningful and transparent process of **free, prior and informed** consultation with the local community, **give due recognition of their customary laws, traditions, customs and tenure systems**, and meets the other requisites laid down in legislation, including the principle of non-discrimination and gender equality in community consultations **Special measures will be adopted in subsequent regulation to strengthen and protect the rights of women during the cadastral survey in Community Protection Zones, including equal participation of women in community representation and decision-making and explicit requirement that women be consulted in the process.**
2. The local community can submit statement of ownership in the process of cadastral survey.

Please see suggestions and comments under Article 27.

Article 35

Gratuity of Cadastral Survey

The systematic cadastral survey is free of charge.

CHAPTER VII

DEFINITION OF OWNERSHIP OF IMMOVABLE PROPERTY

SECTION I

RIGHTS OF OWNERSHIP AND UNCONTESTED CASES

Article 36

Holders of Primary Previous Rights

1. National claimants with uncontested informal proprietary right, *propriedade perfeita* or *hakmilik* shall be granted property rights.

Article 37

Actual Possession for Holders of Previous Rights

1. Ownership rights shall be awarded to national claimants who hold secondary previous rights and have current and peaceful possession of the claimed property.
2. The claimant shall only acquire the ownership right over the portion of the property owned by him/her.

Article 38

Uncontested Possession

1. In uncontested cases, the uncontested claimant is granted ownership rights, provided that the uncontested possession is peaceful, except if the immovable property is located in an area of public domain of the State.
2. The claimant shall only acquire the property right over the portion of the property possessed by him/her.

SECTION II

DISPUTED CASES

Article 39

Definition and Resolution

1. Contested cases are understood as cases in which there is more than one valid claim for possession or different previous rights over the same property.
2. Contested cases that cannot be settled through negotiation between the parties, mediation or other forms of mutual agreement shall be resolved by administrative decision under the system described in this law or by court order.

Article 40

Dispute among the holders of previous primary rights

1. In cases of dispute between national claimants holding previous primary rights when one of the claimants owns (should this be possessors?) the immovable property of part thereof, such claimant will be granted property rights over the part of the property he/she owns (possessors?).

2. The property right over the part of the property not owned by either claimant will be granted pursuant to the terms of no. 1 of article 45.

Article 41

Dispute among the Holders of Previous Primary Rights and Previous Secondary Rights

In cases of dispute between a national claimant holding prior primary rights and a national claimant holding prior secondary rights, the property right will be granted to the holder of the prior primary right, regardless of possession, subject to protection under Article 47, unless the secondary right claimant offers irrefutable evidence that the primary right was acquired through violence, duress or corrupt basis.

Comment: While this may be a political/policy decision, a prerogative of the government, it is important to note that from a human rights perspective this policy is questionable since it is likely to benefit an elite who profited from Portuguese and Indonesian administrations even though many titles were issued on a dubious and corrupt basis. In the case of Portuguese and Indonesian issued titles, this squarely places restitution above possession. This provision could lead to the displacement of significant numbers of people, which is particularly problematic given the housing shortages and subdued land markets in Dili and nationwide. Giving priority rights to current possessors over holders of hak milik and propiedade perfeita would better ensure the realization of the right to adequate housing and minimize the need for eviction and resettlement. Given the fact that there is no comprehensive resettlement policy beyond the relevant provisions of this law and minimal capacity within government institutions to deal with resettlement needs, article 41 should seek to provide some exception.

Article 42

Dispute Among the Holders of Previous Secondary Rights

1. In the cases of dispute between national claimants holding previous secondary rights, the property right is granted according to the possession entitled to each. **Unclear but probably due to poor translation. Assume this means that the property right is granted to whichever is currently in possession.**
2. The property right over the portion of the property not owned by either claimant will be granted pursuant to no. 2 of article 45.

Article 43

Holders of Previous Primary Rights and Special Adverse Possession

The property right will be granted to the national claimant holding either one of the previous primary rights, in detriment of the claimant in possession, even when the latter has complied with the requirements of special adverse possession.

See comments to article 41 above.

Article 44

Holders of Secondary Previous Rights and Special Adverse Possession

1. In contested cases between a national claimant in possession and a claimant holding a secondary previous right, the ownership right shall be awarded to the owner who meets the requirements of the special adverse possession.
2. If the actual owner does not comply with the requirements of special adverse possession, the right shall be awarded to the holder of the secondary previous rights.
3. Claimants in possession shall only acquire ownership rights over the portion of the property possessed by him/her.
4. In the cases referred to in paragraph 2, the holder of the secondary previous right is only recognized the right of ownership on the part of the property formerly owned

Article 45

Dispute Among Claimants Without Possession

1. In disputed cases between claimants holding previous primary rights when neither claimant is found to be in possession of the property, the property right is granted to the claimant holding the most recent right, exception in the case of informal property rights, which prevail over the other.
2. In disputed cases between claimants holding previous secondary rights when neither claimant is found to be in possession of the property, the property right is granted to the claimant holding the most recent right.

Question: Does this Article apply for foreign claimants as well?

Article 46

Disputed Cases Involving Confrontations

1. Demarcation shall be made in accordance with the titles of each party and, in the absence of sufficient evidence, in harmony with the possession held by the neighbors or in accordance with the results of other probative evidence.
2. If the titles do not specify the boundaries of the property or the area pertaining to each owner and the issue cannot be resolved by possession or other probative evidence, demarcation shall be made by distributing the contested property into equal parcels.
3. If the titles indicate an area larger or smaller than the total area of the land, the difference or addition shall be attributed proportionally to each party's parcel.

CHAPTER VIII

COMPENSATION AND REIMBURSEMENT

SECTION I

COMPENSATION

Article 47

Admissibility

1. The following will be entitled to compensation:
 - a) The Timorese nationals claimants in disputed cases who are not entitled to the property right under the special regime for definition of ownership and is the holder of the previous rights;
 - b) The Timorese national claimants in possession, who are not entitled to the property under the special regime for definition of ownership and who comply with the requirements of special adverse possession.
2. In the cases referred to in line a)above, in which the title refers to a specificpurpose for the granting of the secondary previous right, claimants with certificates shallonly be entitled to compensation if they were still in compliance with the originalpurpose of the property, as stated in the certificate, when the claimant was dispossessed.
3. The compensation as referred to in paragraph 1 will not be covered in cases where the loss of right is due to ordinary adverse possession.
4. The compensation is paid by the State, without prejudice of the right to reimbursement provided in the subsequent articles.
5. The compensation as referred to in number 1 will only be paid upon the final settlement of the dispute

Article 48

Efficient Use of Property

1. The compensation shall correspond to the value of the immovable property at the timewhen the claimant was dispossessed, updated to the date of the decision recognizing the property right to a third party.
2. It is understood by the efficient use of the property the most likely use of the property on the established date, where the efficient use must be physically possible, justified, legally permissible, financially feasible and maximally productive.

3. Unless proven otherwise, the value of the efficient use of the property is calculated based on the fair use actually given by the claimant at the time it was dispossessed
4. If compensation does not correspond with the minimum amount needed to access alternative adequate housing, a claimant would be entitled to the minimum amount needed to access alternative housing. This amount is to be established under a Ministerial Diploma from the Ministry of Social Solidarity in consultation with the Ministry of Justice.

Rational: When compensation is paid to someone who will be displaced as a result of the application of the special regime of ownership (even though the compensation is not provided for resettlement per se), otherwise without access to an alternative residence, the amount of compensation should guarantee access to adequate housing. A floor compensation amount should be established which corresponds to the minimum amount needed to access alternative adequate housing in situations in which people will otherwise not have such access. Moreover, global experience shows that compensation alone in the case of displacement leads to a substantial risk of impoverishment, landlessness and squatting. Resettlement to alternative adequate housing (as defined by CESCR in General Comment 4) and/or productive land as relevant to the situation should be the preferred option for household being displaced by the application of this law. Other compensation and support for disruption of livelihoods should also be required to ensure no deterioration in livelihoods and living standards and no regressions in the enjoyment of human rights .

5. The amount of compensation to holders of previous secondary rights or holders with special adverse possession, is calculated based on the amount of compensation that would be assigned to a primary previous holder of the right
6. In the process of property valuation, the Cadastral Commission gives the opportunity to applicants to advice on the provisions of paragraph 3.

Applicants should be provided access to necessary technical and legal advice for these purposes, as suggested below.

Article 49

Leasing of State Property

1. All immovable property of the State's private domain may be assigned to occupants protected against eviction by means of special lease or sold.

Suggestion: The State should be required to transfer rights (ownership or leasehold) to occupants unless there is a genuine public interest reason for not doing so.

2. The allocation of immovable property of the State's private domain shall be regulated by decree-law.

SECTION II

REIMBURSEMENT

Article 50

Obligation to Compensate

1. In contested cases, when the ownership right is awarded to the claimant in possession by means of special adverse possession, he or she shall compensate the claimant holding secondary previous rights, unless the claimant by means of special adverse possession offers irrefutable evidence that the secondary previous right was acquired through violence, duress or corrupt basis.

Rational: This should not be automatic since secondary previous rights may have been issued under dubious circumstances. Should holders of secondary rights from the Portuguese administration (often an elite) that have not used the land since 1975 be automatically compensated by people who have peacefully possessed land for many years and may not have the means to pay the compensation? Even if they are exempted under article 51 they are indebted to the State with their land as collateral (art 52).

Safeguards must be in place to ensure this does not place an undue and unmanageable financial burden on special adverse possessors (see below Article 51 + 52).

2. The compensation as referred to in the previous item shall be calculated based on the boundaries of the property on which it has under the property law.

Article 51

Obligation to Reimburse

The State may grant all or part of the exemption from the payment referred to in the previous article, when circumstances arise from serious economic distress, to be regulated in subsequent regulation by the Ministry of Social Solidarity (presumably this is the ministry defining this).

Comment: Article 50 and 51 could result in economic hardships for the household in question that could have adverse consequences such as reduced food intake, withdrawing children from school, and reduced likelihood of accessing healthcare. This is a serious human rights issue and women are more likely to bear the brunt of this unexpected economic burden. Safeguards must be in place to ensure there are no regressions in the enjoyment of human rights, and particularly economic and social rights as a result of article 50.

Article 52

Reimbursement Guarantee

1. The reimbursement obligation is guaranteed with a mortgage on the property, made payable to the State.
2. Partial reimbursement obligation will be applied where humanitarian reasons exist, as prescribed in subsequent regulation by the Ministry of Social Solidarity.
3. The mortgage is recorded in the property cadastre until later registration in the Land Registry.

Rational: Recommend deleting this article because it would jeopardize the tenure security of households indebted to the State who are unable to discharge their reimbursement obligation placing a serious economic burden that would have an adverse impact on the human rights of these families. Otherwise, allow for partial collateral where humanitarian grounds so justify.

Article 53

Regime of Compensation and Reimbursement

Notwithstanding the provisions of this section, the regime for compensation and reimbursement shall subject to regulation approved by the Ministry of Social Solidarity

Comment: This law should mandate that the regime for compensation and reimbursement shall not place undue or unmanageable economic burdens on households and will comply in full with the human rights obligations of the State, including by ensuring no regression in the enjoyment of economic and social rights. The right to adequate housing should be guaranteed for people who will be displaced as a result of the application of this law. The law should also require the regulation to uphold the principles of equality between women and men, especially in regard to the payment of compensation. Further, the law should ensure compensation for improvements made to property.

CHAPTER IX

PROCESS OF ADMINISTRATIVE EVICTION

SECTION I

SCOPE OF APPLICATION

Article 54

Arbitrary Occupants of State Property

1. The DNTPSC shall be the entity with the authority to conduct the administrative eviction of arbitrary occupants of State property.
2. Arbitrary occupants are any individuals whose occupation is not authorized by the competent authority, or a valid lease contract or any other administrative act allowing the use of the property by the occupant.

3. The DNTPSC may conclude mutual agreements with arbitrary occupants to promote the eviction of State properties. **Unclear**
4. **The Ministry of Justice is responsible for developing guidelines on administrative evictions and procedure.**

Rational: Given minimal institutional capacity within the Ministry of Justice to conduct evictions that are in compliance with the state's human rights obligations, it should be mandated that specific and detailed guidelines be developed on administrative evictions and its procedures. Such guidelines should also include the special protection measures with respect to family homes.

Article 55

Arbitrary Occupants of Restituted Private Property

1. The DNTPSC shall be the entity with authority to conduct administrative eviction of arbitrary occupants of private immovable property provided for in this law, when it is occupied by someone other than the claimant who is definitely recognized the right of ownership.
2. The previous article shall not apply where the decision on ownership of the property is decided by judicial authority.

SECTION II

SPECIAL PROTECTION AGAINST EVICTION

Article 56

Definition

1. Residents of family homes who are occupying the property whose ownership has been recognized or awarded to a third party, can only be evicted after being offered an alternative place of residence that meets the requirements of Article 58 of the Constitution. .
2. **Widows and disadvantaged female-headed households, along with other disadvantaged households, should be given priority in locating alternative housing and connecting to basic services.**

Rational: The offer of an alternative house is positive. Although the obligation to ensure access to alternative adequate housing remains even after the 18-month period elapses, the current housing shortage in Dili and elsewhere, the subdued real estate market in parts of the country and the lack of available land for resettlement can mean that 18 months could elapse without those being displaced having secured alternative housing. This could have an adverse impact on the human rights of these persons, leading to homelessness and loss of livelihoods and basic services. Because of this, alternative housing should be provided before final eviction. If the

article is not amended then the Ministry of Justice should consider what is the recourse in such situation? How can these individuals pursue the state to make right its obligation under article 57? Courts?

The Constitution of Timor-Leste enshrines a right to a house of adequate size and satisfactory standards that preserves family privacy (section 58), which should be interpreted consistently with Timor-Leste's human rights treaty obligations as authoritatively defined by the CESCR the Special Rapporteur on the Right to Adequate Housing.

The house should meet the definition of adequacy established under international law (see CESCR General Comment 4 and the UN Basic Principles and Guidelines on Development-based Evictions and Displacement). In particular the house should be of an adequate size and quality to provide protection from the elements and privacy. Housing design and materials should be culturally appropriate. It should be situated in a location that provides access to suitable livelihood opportunities and facilities such as schools and health services. There should also be access to basic services, such as water and sanitation. Any special access needs of disadvantaged groups, such as disabled persons or persons with particular illnesses should be taken into account. Appropriate arrangements must be made to guarantee security of tenure.

Widows and disadvantaged female-headed households, along with other disadvantaged households, may require special assistance in accessing an alternative house. Provision should be made in the law to recognize this need for special assistance to disadvantaged households, including through support to locate an alternative house, connect to basic services and receive financial support until livelihoods are at least restored.

3. No special protection against eviction shall be provided to persons who have occupied properties after the recognition or award of the property right to a third party, save for the right to seek judicial redress.

Rational: See para 17 of the UN Basic Principles and Guidelines on Development-based Evictions and Displacement : "States must ensure that adequate and effective legal or other appropriate remedies are available to any person claiming that his/her right to protection against forced evictions has been violated or is under threat of violation."

Even in these cases it is a violation of international law for the State to carry out a forced eviction. In order for the eviction to be consistent with international law it must be justified for the general welfare and comply with a number of legal protections before during and after the eviction. No one can be left homeless following an eviction. See, CESCR General Comment 7 and the UN Basic Principles and Guidelines on Development-based Evictions and Displacement.

Article 57

Government Obligation

1. It is the responsibility of the Government to provide a adequate alternative housing to residents offamily homes or means to obtain it.
2. The awarding of alternative housing or financial aid to its acquisition as referred to in the previous number are regulated by Decree-Law. **The Decree law must uphold and give effect to the States international human rights law obligations.**

Comment: A resettlement policy should be adopted prior to the development of the Decree-Lawwhich must be human rights-compliant.

Article 58

Family Home

1. For the purposes of special protection against eviction, a family home is defined as property used to house the owner, with or without dependents, when he or she has noother adequate home or the means to obtain it.
2. It is considered as family home the property essential to the livelihood of the owner and their dependents, without having the ability to find a suitable alternative

Comment: The inclusion of subsection 2 is particularly positive.

Article 59

Expropriation for relocation

If, taking into account the number of people affected, the awarding of property rights to a claimant raises serious problems of relocation, the State may, under the Expropriation Law, opting the expropriation of the property.

Comment: A human rights-compliant resettlement policy or law should be applicable in these cases. In recognition of the serious and multidimensional risks to affected persons, eviction and other forms of displacement should be avoided and minimized wherever possible under this law.

SECTION III

PROCEDURE

Article 60

Notification

1. The DNTPSC shall notify the occupant about the definitive administrative decisionrecognizing or awarding property right to another party. **The notice shall also set out all the information about the eviction, the right to appeal, the right to access legal aid for those unable to afford legal**

assistance, the right to apply for family home resident status and how to make the application. The notice must be provided directly to the occupant by DNTPS in the Tetum language and in an accessible form.

2. Whenever there is a recognition/award of ownership the Ministry of Justice shall immediately notify the Ministry of Social Solidarity to enable MSS to prepare adequate alternate housing.

Rational: The notice should provide all the necessary and specific information about the eviction procedure to ensure that occupants benefit from the rights and remedies provided in the law - the institution should be charged to proactively provide such information. A number of reasons warrant such specificity: (1) administrative procedure is only minimally developed in Timor-Leste, especially at the institutional level (challenges with eviction process to date are one illustration), (2) institutional capacity around transparency of administrative processes and access to information is still basic and developing, and (3) public information is not easily accessible, both because they may not be available or because individuals may not have the ability or means to access such information. Perhaps a guideline could be adopted that further explains the notification, however, to address power asymmetries between the people and the state, legal protections that ensure that the institutions fully respect due process rights of affected people in the process of eviction must be incorporated into this law.

Sub-article 2: Adding this language will help ensure coordination between MoJ and MSS, a serious challenge in the past. The notification provides notice to MSS to prepare alternative housing more efficiently should the need arise.

1. The occupant shall have ninety days, counting from the date of receipt of the notice, to vacate the property,

Rational: Would make eviction procedures in the country compliant with the UN Basic Principles which require a minimum of 90-days notice (paragraph 56).

Article 61

Obtaining Declaration of Family Home Resident Status

1. Arbitrary occupants may request a declaration from the Ministry of Social Solidarity attesting to their status as family home residents for the purposes of special protection against eviction.
2. The submittal of the request stated in the previous number shall interrupt the term set out in the previous article.
3. The Ministry of Social Solidarity shall have thirty days to issue the declaration attesting the status of the occupant as family home resident, with priority given to applications from **female-headed households, widows, and persons with disabilities**. A declaration rejecting the request is subject to administrative and judicial review as prescribed in DL No. 32/2008 and other legislation.

4. If the period of time set out in the previous number elapses without a response from the Ministry of Social Solidarity, it shall be assumed that the petitioner resides in a family home residence.
5. The criteria for obtaining resident status in the family home are determined by Ministerial Diploma of the Ministry of Social Solidarity

Rational: Legal protections to fully respect the human rights of affected people in the process of eviction must be incorporated into this law. In order for the eviction to be consistent with international law it must comply with the legal protections before during and after the eviction as established in CESCR General Comment 7 and the UN Basic Principles and Guidelines on Development-based Evictions and Displacement .

As the custodian of the home, women experience particular impacts from eviction. Particular measures must be taken to ensure the human rights of women are fully respected before, during and after an eviction. Female-headed households and widows require special protections against eviction and support in accessing an alternative house. Provision should be made in the law for such assistance to disadvantaged households, including through special support from the Ministry of Social Solidarity, which may include logistical and financial support.

Article 62

Administrative Eviction

Upon the cessation of the occupant's status as family home resident or at the end of the eighteen month period, whichever occurs first, the DNTPSC shall notify the arbitrary occupant of State property or restituted private property to vacate the property in a period of thirty days counting from the notice. **The UN Basic Principles require a minimum of 90-days notice (paragraph 56). See comments to article 56 (1) in regards to the 18-month period.**

3. The eviction can be appealed, as set out in Decree-law No 32/2008, of August 27, which regulates the administrative procedure.
4. The decision on administrative appeal is liable to judicial review which is to be filed within 45 days of its notification
5. The provisions of paragraph 1 and Articles 60 and 61, shall apply to decisions rendered by the court, with the necessary adaptations

CHAPTER IX

PROCESS FOR RECOGNITION AND AWARD OF FIRST PROPERTY RIGHTS

SECTION I

ADMINISTRATIVE PROCESS

Subsection I

CADASTRAL COMMISSION

Article 63

Creation

The Cadastral Commission is hereby established under the Ministry of Justice to study disputed cases within the scope of the process for recognition and granting first property rights.

Article 64

Composition

1. The members of the Cadastral Commission shall be the following:
 - a) Six jurists of renowned moral and ethical integrity, appointed by the Prime-Minister as proposed by the Minister of Justice;
 - b) Three technicians specialized in land and property, of renowned moral and ethical integrity, appointed by the DNTPSC.
2. Each one of the authorities mentioned in the previous number shall appoint one other substitute member to replace the effective member during his absences or impediment.
3. The Minister of Justice shall appoint a President from among the Commission members.
4. The Cadastral Commission can organize into arbitration panels with decision-making autonomy, composed of at least two lawyers and an expert in land and property.
5. In discharging its functions, the Cadastral Commission shall be assisted by a Technical Secretariat.

Article 65

Operations

1. All deliberations, related to its organization, regulations and working methods shall be made by a majority of votes of the members present and approved by the Minister of Justice; OR (see comment below)
2. All deliberations related to cases before the Commission shall be made by a majority of votes of the members present.

Rational: If deliberations mean internal deliberation on the organization, regulations and structure of the commission, then approval by the Minister is appropriate. In this case, the meaning of deliberations should be specified to clear any ambiguity around this language. **If deliberation is referring to the decision on the cases before the Commission then the Minister**

should not have approval authority. Commission should be an impartial administrative body basing its decisions on the rule of law. Having a political figure (such as the Minister) approve administrative decisions (of which he/she has no preview or understanding, since he/she is not hearing cases) creates political interference in the operations of the Commission.

The Cadastral Commission shall be governed by this law, the ordinance that regulates the bylaws and approved by its members, as part of their duties and skills.

Subsection II

ADMINISTRATIVE DECISION OVER DISPUTED CASES

Article 66

Initiation of Proceedings

By the end of the deadline for submission of statements on the cadastral survey as provided for in Article 33 item 1 and 2, the DNTPSC shall refer the disputed cases to the Cadastral Commission.

Article 67

Probative Diligence

As part of the resolution procedure in disputed cases, in order to form its own opinion about the truth of the facts stated in the declarations, Cadastral Commission, directly or through the DNTPSC, through its district offices, may include:

- a) Summon claimants to provide clarification, individually or collectively;
- b) Hear witnesses introduced by the claimants;
- c) Consult with local and community authorities;
- d) Request submittal of additional documents from claimants;
- e) Conduct all probative diligence necessary to validate the information included in the claims.

Article 68

Decision in Contested Cases

In contested cases, the Cadastral Commission shall:

- a) Recognize or grant ownership rights to national claimants in accordance with the criteria established in this law and its own assessment about the alleged facts, formed during the process of cadastral survey and by means of probative diligences;

- b) Determine if there are compensation and reimbursement obligations under the terms of this law, and sets their values, in conformity with the provisions of Article 48.

Article 69

Content of the Decision

1. The administrative decision within the scope of the special regime for definition of ownership of immovable property shall contain the following:
 - a. The identification of each title holder and each parcel;
 - b. Information on whether the obligation to compensate is or is not applicable;
 - c. Information on whether the obligation to reimburse is or is not applicable; and
 - d. The amounts to be compensated and reimbursed.

Decisions of the Commission must be in writing and lay out the facts and law which form the basis of the decision. **Rational: Other due process rights should be offered to disputants by this law again to address power asymmetries.**

Article 70

Impediment

1. The member of the Cadastral Commission shall not be allowed and must abstain from voting or making any decisions related to contested cases if:
 - a. the claimant is his or her spouse, a person with whom he/she lives under terms analogous to marriage, or his/her relative or any akin, in a first degree or second degree relative or kin; **or**
 - b. **the member has an economic interest in the decision or could financially benefit from the decision.**
2. Disqualified Cadastral Commission members in accordance with no. 1 shall be replaced by proxies during contested case deliberations.
3. If a Cadastral Commission member who is disqualified due to impediment votes on a contested case, the decision on said vote can be annulled by an administrative appeal filed by the injured party.

Rational: It is important to extend the requirement of recusal even to financially related conflict of interest, again keeping in mind the power asymmetries between the claimants and the commissioners.

Article 71

Suspicion

1. The claimants may object member of the Cadastral Commission member due to suspicion if there are prior and justified reasons for questioning the impartiality of said member.
2. The claimants in contested cases may file for disqualification due to suspicion of the Cadastral Commission member at any time, by way of a petition forwarded to the Chair of the Cadastral Commission by the date prior to the date of the administrative decision.
3. All incidents of suspicion are to be investigated and decided by the President of the Cadastral Commission. **The decision of the President should be subject to appeal to an outside party such as the Ombudsman.**
4. If the suspicion is filed against the President of the Cadastral Commission, the incident is investigated and decided by the member that replaced the President.
5. If the suspicion is deemed valid, the contested case is assigned to another arbitral panel or the member the object of suspicion is replaced by a proxy in the voting proceedings.

Article 72

Deferred Application

1. The administrative decisions in contested cases as referred to in Article 68 shall only take effects after the expiry of the deadline for judicial review.
2. If there are no appeals filed after the deadline mentioned in the previous number, the administrative decision shall take effect immediately.

Suggestion: The Ministry of Justice, upon consultations with other stakeholders, should decide a reasonable deadline to be placed on the Cadastral Commission's decision-making process. In other countries disputes can linger for years at the Cadastral Commission, especially in cases involving powerful parties. Comparative studies could be used to ensure that all implications are fully considered.

SECTION II

APPEAL

Article 73

Deadline for Contest

The administrative decision rendered in disputed cases is likely to be subject of judicial review, with suspending effect, to be deducted within 60 days of its notification.

Article 74

Jurisdiction to hear the appeal

1. The courts have jurisdiction to decide on the appeals as referred to in the previous article.
2. The judicial review takes the form of common process, with specialties referred to in Articles 75, 76 and 77.

Article 75

Legitimacy

The holders of rights or legally protected interests that are injured may file an appeal against the administrative decision.

Article 76

Notice for Filing the Appeal

Upon receiving the judicial review, the court shall notify the competent authority on the granting of property titles of its decisions, to immediately suspend the process of granting and issuing the titles.

Article 77

State Intervention in the Judicial process

1. The state is said to intervene in the proceedings under Article 276 and subsequent of the Civil Procedure Code, if requested by either party, the increase on amount of compensation determined by the Cadastral Commission.
2. The State may intervene in the proceedings under Article 271 and subsequent of the Civil Procedure Code, when the disputed case referred to constitute an obligation of the State to pay any compensation to any of the claimants.

SECTION II

REGISTRATION AND AWARDING OF TITLES

Article 78

Registration of rights and Endorsements

The record in the National Register of Properties and the issuance of securities is regulated by Ministerial Diploma from the Ministry of Justice

Article 79

Effects of Titling

1. The awarding of a title on a property gives the holder the right to act as owners.

See recommendation/comment under Article 32.

2. The adverse possession takes place five years after the first registration of immovable property under this Law, applying the latter deadlines as set out in the Civil Code.
3. The recognition of a property right in disputed cases only constitutes cases considered between the parties.

CHAPTER XI

ADDITIONAL, FINAL AND TRANSITIONAL PROVISIONS

Article 80

Crimes

Any practice of active or passive corruption, falsification of documents, provision of false statements or other crimes practiced within the scope of application of this law shall be punished under the provisions of the Penal Code and other applicable legislation.

Suggestion: Through proper consultation of the Criminal Code, add (i) illegal interference with peaceful possession until ownership rights are determined and (b) the carrying out or ordering of forced evictions as defined under international law as punishable offences.

Article 81

Possession of Immovable Property by Foreign National Citizens

1. The immovable property of foreigners is reverted to State ownership, when peacefully occupied by a Timorese citizen, may be acquired by means of a proceeding to be regulated by decree-law.
2. The national citizens shall benefit from the presumption of actual possession set out in paragraph 3 of article 17 of this law.
3. In cases when a contract of lease was entered with the State for the immovable property and the State intends to alienate the property to the lessee, the amount of the revenues paid to the State by the occupant shall be deducted from the price.
4. Until the effective date of the decree law regulating the acquisition procedure set out in this article, the national citizens who occupy properties reverted to State possession for residential purposes shall be granted the right of habitation and use for subsistence or livelihood activities, extended tacitly to their heirs and legatees. These occupiers should be guaranteed protection against forced eviction and other undue interference with their right of habitation and use for subsistence or livelihood activities as provided in this law

5. Non residential use of immovable property reverted to the State shall be regulated by means of a lease contract or other forms allowed by law.

Article 82

Abandoned Property Under State Administration

1. All lease contracts entered under Law no 1/2003, of March 10, related to abandoned immovable property shall remain to be effective until their termination dates and the private holder who was granted the ownership right shall become the landlord.
2. All revenues received by the State until the recognition or awarding of the ownership right over abandoned immovable property shall constitute State revenue and cannot be claimed by the holder.
3. For the purposes of this law, renters or arbitrary occupants of abandoned immovable property shall not be considered to be in possession.
4. For the purposes of the provisions of this article, only immovable property identified as abandoned by the DNTPSC under Law no 1/2003 of March 10 shall be considered as such.

Article 83

Progressive Taxation

The taxation of immovable property, to be approved by law, must be progressive.

Article 84

Lawsuits

1. Judicial proceedings that become un-appealable are not affected by this law.
2. This law applies to pending litigation.
3. The Judge may suspend the ongoing legal proceedings and wait for a decision on the process of granting and recognizing first property rights, if it deems more appropriate to the resolution of the dispute.

Article 85

Previous Complaints

1. Claims submitted under Law no. 1/2003 of 10 March are considered to be statements of ownership whenever technically feasible.
2. Claims are technically viable when they unequivocally identify the claimant and the claimed property.

3. The complainants referred to in paragraph 1 shall have the burden of verifying its claim was inserted in the cadastral maps during the publication period, in accordance with Article 33 and present new statement where this has not happened.

Article 86

Cadastral Survey and Statements of Previous Ownership

The cadastral survey collected the statements of ownership and acts of recognition of the right of ownership for the purposes of registration issued under Decree-Law no. 27/2011 of 6 July, are considered valid.

Comment: The evaluation of Ita Nia Rai by USAID and report of Rede ba Rai highlight problems and inaccuracies with the cadastral survey. It is important that these existing problems and inaccuracies be addressed before this provision is adopted or provision should be made to ensure that they are in the future People who consider that they were wronged by the process or not afforded due process because of mistakes or transgressions of the surveyors should have the right to submit a statement of ownership to contest competing statements.

Article 87

Claimants or occupants unable to afford legal assistance shall have access to legal aid through all proceedings specified herein as provided under current legislation in force.

Rational: Although there is other law that grants indigent persons access to legal aid, it is important to specify in this specific and critically important piece of legislation that such persons have the right to access legal aid for all processes under this law.

Article 88

Presumptions

The presumptions of Article 12, Law no. No. 1/2003 of 10 March are no longer in effect.

Article 89

Repeal

Any statutes or standards with provisions contrary to the content of this law are hereby also repealed.

Article 90

(Effective Date)

This law shall take effect on the ninetieth day following the date of its publication.