



Long-Term Land Disputes: From A Security Perspective

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On Land Dispute and National Stability in Timor-Leste”



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Contents	1
I. Introduction	2
II. Land Issues in Timor-Leste	3
III. Land Issues during Portuguese Time	4
IV. Land Issues during Indonesian Time	5
V. Land Issues Post 1999	8
VI. The Complexity of Land Issues	8
1. Official Information on Land and Land Ownership	9
2. The Land Law of Timor-Leste	10
3. Institution for Land Administration	10
VII. Land and Development	11
VIII. Land and Stability	12
IX. Strengthening the Land Rights in the Development Process	13
X. Conclusion and Recommendation	15
Bibliography	18

I. Introduction

As we are aware that land is the source of living for human beings. All creatures and human beings do they living on the land, use the land for shelter, a place to play, for business and for economic development to sustain the life of individuals, community and nation. Not only that. Land is also important for burying those who died. Sayful Azam, SH in his book titled “*The Existence of Land Law in the Realization of the Agrarian Law Conduct [Eksistensi Hukum Tanah Dalam Mewujudkan Tertib Hukum Agraria]*”, stated that land is the place for dwellings, land is the source of living, and land is the place to bury people when they died”¹.

The human need for land is a very fundamental issue. Article 17 of the Universal Declaration of Human Rights stated that “Everyone has the right to own property alone as well as in association with others”². This indicates that everyone is entitled to possession of the land and to use it for the enjoyment of their life. Article 54 of the RDTL Constitution stated that “Every individual has the right to private property”³. In addition the history shows that the culture of Timor-Leste guarantees this right. Since the ancestors, there has been a traditional system in Timor-Leste that regulates the rights of land ownership. This traditional system still exists today. We all shall appreciate the knowledge of our ancestors who have created such a system to regulate land ownership in the community.

This indicates that all cultures in the world always have a traditional system governing land ownership rights. Nevertheless, a small country like Timor-Leste must have a land administration system that is simple, adequate yet modern to ensure the existing land rights. We have gained the struggle over land as a sovereign State in 1999. Today, we have the sovereignty over the land as a nation. We are all happy that the Timorese people are now ruling their homeland. However, in this country we need to define the basic provisions for the attribution and also recognition of the right of land ownerships for every people. In addition, we also need to make clear the boundaries of land and sea with Indonesia and Australia. The State is obliged to guarantee this fundamental right of its citizens. Therefore, it is important to create an adequate, and simple yet modern system of land administration in order to contribute to the strengthening of land rights, and maintaining the development and National Stability in Timor-Leste.

The 8th Edition of the Voice of Fundasaun Mahein (FM) will present about the land Issues in Timor-Leste, which covers the mainland, islands pertaining to Timor-Leste, the division of borders by countries invading the Timor Island, in addition making a detailed discussion about the problems occurring during the Portuguese time, land issues during the Indonesian time and during the 1999 period in one part. In another part, this report will explain in detail about the complexity of land Issues, as well as linking it to the land and development, land and Stability, strengthening the rights for land ownership and finally closing it with conclusion and options for recommendations about land in Timor-Leste.

¹ Azam Sayful, SH, 2003

² Prof. DR. Ahmad Ali, SH.,MH., et al, Human Rights Protection in the Area of Land Ownership, National Human Rights Commission, Jakarta 2006, Page 15

³ Constituent Assembly, RDTL Constitution, 2002

II. Land Issues in Timor-Leste

Timor-Leste obtained its independence in 1999. Nevertheless, still there are many problems facing this newly independent country. Ranging from problems related to the political, economic, education, health and infrastructure issues to issues of stability. This occurs as a consequence of the occupations in the past that gives the opportunity to land disputes in the community. Until now Timor-Leste does not have an adequate system to resolve the issues in question.

Talking about land dispute, starting from the early time where Portuguese initiated its colonization, Portuguese and Dutch divided the Timor Island into two different administrations. The two European colonialists disputed over this small island and it takes a long time to resolve the dispute. Portugal began to entering Timor-Leste in 1515. In 1615 the Dutch colonists also started to occupy Kupang, West Timor. Portugal and the Netherlands made various attempts in negotiation to exchange the land on the Timor Island. In 1859 Portugal and the Netherlands signed a treaty to decide on the border of Portuguese Timor (Timor-Leste actual) and Dutch-occupied West Timor (Indonesia)⁴. The consequences of the division of the border until now still leave the problem between Timor-Leste and Indonesia.

The reality shows that land disputes always occur in the border areas between the people from Atambua and the people of Oe-cusse. The Indonesian military comprised of 28 fully-armed personnel entered illegally into Suco Naktuka (Citrana) to destroy the office building of Timor-Leste's Ministry of Social and Solidarity in June 2010⁵. Both the Government of Timor-Leste and Indonesia have made a range of efforts to find solutions to the land disputes in the border but it has not been fully in effect. The Member of the National Parliament, Arsenio Paixao Bano, stated that the Timor-Leste's Ministry of Foreign Affairs is "too soft" against Indonesia for not seeking prompt solutions to the issue in question. The Secretary of State for Region IV, Jorge da Conceicao Teme also stated that the problem occurs because negotiations about the border demarcation between Timor-Leste and Indonesia have been taken too long. Thus, on behalf of the people of Oecusse, Arsenio Bano and the Secretary of State, Jorge da Conceicao Teme call upon the Government of Timor-Leste to quickly finalize the negotiation process for the remaining 3% of the border demarcation which is still in pending⁶, including the island of Fatuk Sinai. The people of Oecusse insist that Fatuk Sinai belongs to Timor-Leste, while Indonesia also claiming that the island belongs to them. As of 13th December 2003, the Indonesian military has established a military post and conducted military training in Fatuk Sinai to defend the island as an integral part of Indonesia⁷.

Meanwhile, the Timor-Leste's maritime border has not yet being defined. The first Constitutional Government has entered into an MoU with the Australian government for not defining the maritime border between Timor-Leste and Australia until the next 50 years⁸.

⁴ <http://timor-leste.gov.tl/?p=29&lang=pt>

⁵ STL News, 2 July 2010 Edition, Page 14

⁶ Page 14

⁷ University of San Francisco School of Law, 16-24 June 2004, Page 5

⁸ <http://www.seasite.niu.edu/easttimor/oil.htm>

However, what is interesting is that the two nations agreed to continue the oil exploration in the Timor Sea. This situation may open the opportunity for disputes in the future between Timor-Leste and Australia. The polemics over the oil pipeline to Timor-Leste has currently raised high political tension between the two nations. The Australian Ambassador in Timor-Leste, Peter Heyward, stated that the Greater Sunrise is located within the Australian maritime zone⁹. These situations indicated that despite Timor-Leste being an independent state, there are few maritime and land border areas of Timor-Leste remains undefined. The government of Timor-Leste often being passive in the negotiation to defend the Timor-Leste's maritime and land borders.

III. Land Issues during Portuguese Time

Portugal is the longest colonial in Timor-Leste with 450 years of ruling. As the consequence of the protracted colonization, the Portuguese government adopted various policies to control the life of the people in relation to land. They established the land administration system to serve their interests and taking over people's land with force. They expel people from their land to occupy other people's land; they give land only to their associates or collaborators; committed corruptions and nepotisms and created rules that merely defends and favors their interests.

The consequences from the aforementioned attitudes have currently lead to tangible disputes over land with a range of complexities within the society. There are some lands used by the Portuguese administration to building State lodgings but were now being claimed by the community as private lands with the reason that the Portuguese administration has taken over the land unjustly, non-transparently and by force. The ruling system with stick (king) established by the Portuguese in order to bring people from one area to be in rule in another area also has contributed to the growing problems. Nowadays, the heirs of the kings continued to claim the land used by their antecedents as their private properties. This actually happens because they were born in the lands previously ruled by their forbearers. Given the situation, the land disputes, which often end up with conflict, between the king's heirs and the community arises. The community said that those lands have been handed to the kings in order to rule. But now, as the system does no longer exist, we want to retract our lands. On the contrary, the king's heirs also stated that our fathers or grand fathers have been ruling this area based on a process and that we have been living in this land for and extended period of time. This kind of situation can, at some stage, make the king's heirs become victims and may also allow injustice to be in effect in the community in case there is no adequate mechanism in place to find solutions.

The Portuguese government has produced a series of laws to regulate about land. Based on *Carte de Lei No. 1901* dated 19 May 1901 that all lands without certificates from the Portuguese administration, will become state-owned and be subject to *license (alvará)*. In addition, according to the law dated 11 May 1901 it is stated that the lands owned by foreign citizens which have not entered into the system as legitimate private lands in accordance with the Portuguese Law, as of 11 May 1901, will be reverted to State ownership. Customary (adat) lands are considered to be non-ownership land and will be reverted to State ownership. The consequence of those laws has made many individuals and groups to lose

⁹ Televizaun Timor Leste, 9 June 2010

their rights over land ownerships. Portuguese has also issued a range of certificates in Timor-Leste for the attribution of land ownership rights. The certificates including the types of entitlements namely ownership rights (*propriedade perfeita*), tenure (the right to lease the land for a duration of 20 years with the right of retrieval after 40 years of lease), leasing (contract for use of land for economic benefit for at least 30 years), Occupation (the right to use based on the customary practice or lease agreement to use the land for a period of 5 years) and Business (the right to temporarily build or maintain worksites). The Portuguese government managed to issue at least 2.709 certificates for land ownerships in Timor-Leste¹⁰. The category for those who obtained the certificates are mainly the Catholic Church, *Sociedade Agricola Patria e Trabalho* (SAPT), those kings who closely associated with the Portuguese Government, the Elite Mestizos (Portuguese-Timorese) and the half-caste business-people Chinese-Timorese¹¹.

The Number of Certificates Issued by the Portuguese Administration 1901-1975

District	Total Number of Certificates By District
Ainaro	68
Aileu	112
Baucau	120
Bobonaro	71
Covalima	12
Dili	1503
Ermera	308
Liquisa	258
Lospalos	74
Manufahi	50
Manatuto	50
Oe-cuse	124
Viqueque	51
Total	2.709 Certificates

See: Law Policy Research Resources

¹⁰ Jean du Plessis and Scott Leckie, UNCHS (HABITAT), 31 May 2000, Page 7

¹¹ Ibid

Having looked at the above statistics, the number of certificates issued in Dili is higher than other districts. The districts of Ermera and Liquisa also have a higher. Other districts; Oecusse, Baucau and Aileu also have high number of certificates issued compared to other districts which mostly having less than 80 certificates. From these figures we can come to a conclusion that despite the hundreds of years of Portuguese occupation in Timor-Leste, only few people obtained certificates for land. Majority of those were in the district capitals.

IV. Land Issues during Indonesian Time

The Indonesian invasion into Timor-Leste on 7 December 1975 has severely complicating the prolonged land issues in Timor-Leste. The Indonesian government occupies all the properties left by both Portuguese Administration and its citizens. The military moved people, by force, from one place to the other, setting up compulsory concentration (shelter) areas aiming at controlling the movement of the guerilla-fighters and implementing the transmigration programs, seizing lands with reasons of public and private developments. During the Indonesian occupation, some Timorese people have abandoned their land and became refugees in other countries such as Portugal, Australia, Africa and many others. The majority have to abandon their land of origin in order to find a secure place to safe their lives from the military's persecution. Thereby, the Indonesian government and military and its political associates are starting to occupy many abandoned lands in the district and sub-district capitals in Timor-Leste.

Based on the CAVR *Chega* report, the forced displacement has started since 1975 until 1999. Nevertheless the majority of those have been taken place in the years of 1975-1978 and 1999. There are 61,400 people being forcibly displaced in 1975-1976 and 28,800 people were displaced by force in 1999¹². The CAVR noted that "expelling people from their places, marking new administration borders and establishing new customs and practices on the possessions and use of lands which triggered more complex problems on land. The situation has prejudiced the possession and use of land, from the very beginning and to date has left vast effects towards the economic, social and cultural structures of the Timorese society"¹³.

In connection with the fact of forced displacement and its impact on land ownership, as mentioned above, the CAVR also recommended in section 3.4 on the right to personal security: a national commitment to non-violence, article 3.4.3 states that "the Parliament and the Government will conduct an investigation to oversee the land disputes, which have occurred as a result of a large and widespread propaganda by removing people from their homes, which has been carried out during the Indonesian occupation, and with reference to the results of these investigations, promoting the peaceful mediation for all disputes in order to avoid violence"¹⁴.

The Indonesian government also issued a wide range of rights for people to become owners of the land. The rights were granted by giving a certificate that includes the types of

¹² CAVR, Executive Summary of *Chega* Report!, 2005, Page 48-49

¹³ Page 160

¹⁴ Page 179

certificates such as *hak milik*, *hak pakai*, *hak guna usaha* and *hak guna bangunan*. However, the certification process is sometimes not done in a transparent way and full of political collusion, in the sense that *people can secretly obtain ownership rights over the land of others*. People who are closer to the military and the Indonesian government having an easy access to obtain ownership rights over land. While people who were suspected of being members of the clandestine, the resistance people or FRETILIN were difficult to obtain a certificate. The majority of the resistance people did not have an opportunity to get a certificate at that time.

According to the report data from the University of San Francisco, Law Making Program, Civil Society Module in 2004, stated that during the Indonesian occupation, the Government has issued more than 44,000 certificates for land ownership¹⁵. The category for those who obtained the certificate consists of individuals, groups, religious institutions, business groups, State companies and the Government of Indonesia. From this figure, we can formulate that more than half of the population at that time have obtained a certificate, especially those who live in the district and sub-district capitals in Timor-Leste. The certificate issued in Dili is the highest compared to other districts. The districts of Covalima, Bobonaro and Baucau also occupy a high place after Dili. While other districts also get a certificate but with a relatively lower rate. This happens because the majority of the advanced district capitals have a very high transactions for land (land market). The research conducted by the *East Timor Land Law and Policy Research Resources* indicates that during the Indonesian occupation of Timor-Leste, the Government has issued a certificate with the following figures¹⁶.

Total Number of Certificates Issued by the Indonesian Administration from 1980-1999

District	Total Number of Certificates By District
Ainaro	2656
Aileu	899
Baucau	4236
Bobonaro	5653
Covalima	6570
Dili	18795
Ermera	2613
Liquisa	2134

¹⁵ University of San Francisco, 9-14 February 2004, page 3

Lospalos	469
Manufahi	3189
Manatuto	2027
Oe-ccuse	2002
Viqueque	858
Total	44091 Certificates

See: Law policy Research Resources

V. Land Issues Post 1999

The land disputes that occurred during the Portuguese and Indonesian administration have become even more complex with the violence in September 1999. The violence that occurred after 1999 is very high, forcing many people to move out from their land, and many land documents were destroyed. The consequences of the destruction by the military, police and the pro-Indonesian militias by destroying the houses owned by pro-independence supporters.

Therefore, many people who are returning from their hiding place occupied the houses abandoned by the Government and the people of Indonesia and also the supporters of the autonomy. This kind of incident occurs mostly in the district and sub-district capitals. Only because of the difficult circumstances, many people in the family have to be separated and some occupied the abandoned houses. Some of them, because they do not have good housing, they strive themselves to rebuild their houses which were destroyed in order to live in. In addition, since the resources and opportunities for development is more concentrated in the district capitals, especially in Dili, many people come to the capital to find jobs. Given the situation, the number of disputes over land and house become higher in the community, especially in the capital of the districts, including in Dili.

That is not all, there is also a situation where there are illegal transactions for land. Some people have sold their land to the Government of Indonesia, but now they took it back and sell it to others. Some, despite they have just occupied the houses in 1999, they sold it to others. The interesting thing is, though, many people want to buy the house and the land although it is not accompanied with documents that justify land ownership in accordance with the law.

VI. The Complexity of Land Issues

Talking about land disputes in Timor-Leste, often people say that the issue is complex and sensitive. Feelings about the complexity and sensitivity of land issues have become a concern for many people. These concerns has not only come from the Timorese people, but also by many people. The State of Timor-Leste is also concerned with this issue. According to the report from UNCHS (HABITAT) on Housing, Property and Land Rights in Timor-Leste

recognizes that land dispute is a potential obstacle to the stability and development¹⁷.

Given the complexity of land dispute which is potential for conflict, the Director of the NDLPSC, Jaime Xavier Lopes acknowledges the complexity of the land disputes in question. According to the Director, this happens because land has many dimensions; political, economic, and socio-cultural dimensions¹⁸. We all agreed that the land dispute is a very complex issue. This complexity occurs as a consequence of the conflicts that occurred during the Portuguese and Indonesian occupation. Plus the occupation of Japan during World War II in 1942-1945¹⁹. Japan also took people's land by force, to build homes and roads in order to provide logistical support in the war against Australia. In addition, during the Portuguese occupation there were several conflicts involving the presence of Indonesian group that eventually gave rise to the conflict between the communities. This situation occurs in Viqueque in 1959 where there is a conflict between the communities in Uatolari, Uatocarabau and Baguia²⁰. As a consequence of the conflict, the Portuguese exiled some people and imprisoned them in other colonies in Africa. Many people lost their rights for land at the time.

The complexity of the dispute in question continues to be a major concern. Land disputes continue to happen. Land security is very little and the people have not fully have trust over their right to the land they use or live in because the land system is unclear. This confusion has led to conflict in the community and hampering the peacebuilding and nation-building process. Why does the land disputes persisted and led to conflict and hinder the process of nation building? FM argues that these complications arise due to various factors such as the following:

1. Official Information on Land and Land Ownership

Until now, there has not been official information held by the State about land and land ownerships in Timor-Leste. People often say that "this is my land" but we cannot justify the truth about the land because there is no official information that serves as reference. Often there is a situation where people provide fake information to each other in the process land transactions. When someone wants to buy a land, s/he need to ask for the information to others who are better informed about the status of the land with the presence of many witnesses in the community, especially from Suco and Aldeia chiefs. Nevertheless, land disputes continue to occur even after the purchase of the land.

This is a reality in many places in Dili. It has been found during the community meetings held by the Ita Nia Rai program in the districts including in Dili. In a community meeting held in Dili, a participant said that he has bought a piece of land in 2000. He received confirmation from the person who sold the land and also from the neighbors that the land is not disputed. Thus he handed the money to the owner of the land and began planning to build a house.

¹⁷ Jean Du Plessis and Scot Leckie (UNCHS(HABITAT), 31 May 2001

¹⁸ Monthly Bulletin of Ita Nia Rai "Our Voice" 12th Edition, January-February 2010, Page 1

¹⁹ <http://users.erols.com/kurrency/tp.htm>

²⁰ Routledge, Tayler and Francis Group, The Asia Pacific Journal of Anthropology
Vol. 8, No. 1, March 2007, pp. 27_41

However, by the time he was about to build his house, someone appeared and claiming that the land was his. Given the situation, he decided to continue the construction of his house because the land has been purchased. The man who sold the land continues to provide support to build his house. But when the crisis occurs in 2006 he fled his home. In 2009, when he returned from the IDP camp to repair his house, the man who once claimed to be the owner of the land continues to dispute with him. Often he was intimidated, but he refused to react. The question raised by the participants is "what should he do"? The question indicates that there is no security for landowners. People who have bought the land, did not feel comfortable even though they have lived there for quite a long time, they have spent lots of money to purchase the land and building a house, but their life was unsafe because they are often being threatened. The interesting thing is that they just do not know how to solve the problems. This situation occurs because there is no official data that can be used as point of reference by the people who want to enter into land transactions. Many people who have been victimized in land transactions. One consequence is that the people who had bought the land could lose money and properties that have been invested in the land if the land status is constantly being disputed. Another consequence is that the person who bought the land could face conflict with the person selling the land and the person claiming to be the owner of the land. Such a situation has the potential for physical conflict if not having a fair solution.

2. The Land Law of Timor-Leste

Until now Timor-Leste does not have its own land law to define the titles of land ownership. Since the time of the transitional government in 1999 until now Timor-Leste is still using the Indonesian legislations in dealing with disputes at the court. Actually, the Indonesian laws are also less relevant to the real situation in Timor-Leste. In 2009 the Government of Timor-Leste, through the Ministry of Justice began a public consultation on a draft Land Law. The Draft Land Law has been approved by the Council of Ministers on March 10, 2010²¹.

Now, the law has been sent to the Commission A of the National Parliament to be debated for final approval. It is expected that the law will be approved within this year to help resolve the land disputes that have been growing in Timor-Leste. The National Parliament shall do an in-depth debate on the legislation is for it to reflect the real situation in Timor-Leste prior to the final ratification. Thus, the law would not bring injustice to the people of Timor-Leste.

3. Institution of Land Administration

Since 1999 until now, there has not been a well-resourced professional institution to establish a good land administration system for Timor-Leste. It is true that we have the National Directorate for Land and Property and Cadastral Services (NDLPCS) under the Ministry of Justice which has been starting to look into the land issue, nevertheless, the services has not been running effectively. According to the report titling *Cambodian Land Titling Project: Lessons for Timor-Leste*, it is stated that the current land administration

²¹ <http://www.laohamutuk.org/Agri/land/10TransitionalLandLawEn.htm>

system in the NDLPCS has not been efficient, less proactive in their role, so, it opens the opportunity for the corruption and fraud-management²².

With the reputation of the land administration system which falls within the NDLPCS, this will have a negative impact on the process of finding a solution to the land disputes in Timor-Leste. In many meetings organized by Ita Nia Rai program, many community members expressed their feelings of dissatisfaction with the services in dealing with disputes that they have launched to the NDLPCS. According to the communities that it is very difficult to get answers from the NDLPCS. Often they raise their concerns but did not get good service from the NDLPCS. Manuel Paixao, a participant in a community meeting organized by INR said that he has been occupying the land since 1975 when the owner fled to Australia. In 2001, the owner of the land returned and starts the legal process in the courts, but until now there has been no decision. But now the government began collecting data through the Ita Nia Rai (INR). How would it be, is the plot can be measured? Who is eligible to make a statement of ownership? ²³. This indicates that people are having doubt on the capacity of the State institutions for never giving solutions to their disputes. Therefore, the public demanded the seriousness of the NDLPCS in providing services relating to land disputes.

The NDLPCS staff are not having good cooperation, thus, it gives a negative impact on the effective performance of land administration. Often the staff also did not show a good cooperation with the INR program. The INR team has made maximum efforts to engage with the staff in accordance with the direction given by the Director but they did not get a good response. Many staff consider that the INR is only a project. The interesting thing is that the INR was establish with the request of the Government, but the staff said that it was merely a project.

Some of the functions performed by the INR is to help the NDLPCS in establishing the land administration system, contributing to the process of drafting the law which has now been submitted to the National Parliament and provide capacity building to the NDLPCS. Nevertheless, the reality shows that many staff from the NDLPCS did not take advantage of this opportunity. The level of cooperation between the Government and the INR was limited to the policy level, while it is less at the technical level. The Minister and the Director of the NDLPCS has been very supportive, however the technical staff find it difficult to engage in the program.

VII. Land and Development

Disputes over land not only led to conflict in the community but has also hampered the development process. The development cannot be undertaken if the status of land ownership has not be well-resolved. Often there is a situation where there are no projects, no landowners. But whenever the Government or an NGO started to plan to carry out a project, landowners will be showing up automatically to hamper the development process.

Even some constructions cannot proceed because of the intervention of the owners of the

²² Ibere Lopes, land Law Specialist, April 2009, page 6

²³ INR Community meeting in Suco Colmera, Dili, 8 July 2010

land. In May 2010, there was a situation where the construction of the Manleuana market was stopped due to the intervention of landowners. This happens because there is no communication between the authorities with landowners prior to the commencement of the construction of the market. The Minister of Justice herself intervened in resolving the issue by deciding to pay compensation to the owner of the land before continuing the construction.

The same situation also occurs at the Suco and Aldeia levels. Often the Suco and Aldeia offices cannot be built because of land disputes. In 2005, the incidence appears in Suco Osso Huna / Bagueia where the Secondary School SATILOS in Osso Huna want to build a school but the Suco Chief did not give his consent because he is afraid that the land ownership is unclear. Nevertheless, because it is considered that education is something essential, ultimately, the school was given the land by a member of the community to continue the construction of the school building. In 2009 the government of Parliamentary Majority Alliance (AMP) declared that 2009 is the year of infrastructure. However, it cannot be executed, and it remains only as a political campaign as it is facing many problems which also include land disputes.

First of all the state needs to resolve the issue of land disputes through the empowerment of a professional land administration institution, drafting the laws that reflect the real situation in Timor-Leste in order to strengthen the ownership of the land before launching its National Development Plan. The Prime Minister Kay Rala Xanana Gusmão has begun consultations on the National Strategic Plan (NSDP) until 2030, but all these will not be implemented if the land issue remains a polemic. The people will defend their land and this could lead to conflict. Fundasaun Mahein is concerned that the government could use its power to take people's land by force with an excuse to make development. An interesting case that occurred in 2005 where the government expels Ir. Mario Viegas Carascalão. Actually Ir. Mario has a certificate issued during the Indonesian period, but the Government, with just holding on to Law No. 1/2003 expels him from his house. In addition, there are cases in which the Government is occupying public land in Metinaro to build the F-FDTL Headquarters without providing compensation to landowners. During the reign of the Parliamentary Majority Alliance (AMP) Government, there has been similar situations happened where the Ministers began to make a range of contract agreement to release hundreds of hectares of land to investors. In January 2008, the Minister of Agriculture, Mariano Asanami signed a *Memorandum of Understanding (MoU)* with the GT Leste Biotech, an Indonesian company to offer 100 hectares of land to be planted with sugarcane in Timor-Leste. In February 2008, the Secretary of State, Avelino da Silva signed a contract with an Australian company called *Biofuel Company Environment Development Australia for Jatropha Development* with 50 hectares of land in Baucau²⁴.

Fundasaun Mahein is concerned that if the land administration system is not properly in place, the RDTL Government may be in the position to use its powers to occupy people's land in order to build the International Refugee Processing Center. According to the news that has been spreading so far, it is said that during the visit of President Ramos Horta to Australia, the Australian Prime Minister, Julia Gillard made a request to build an International Refugee Processing Center in Timor-Leste. Fundasaun Mahein requested that

²⁴ <http://www.globalresearch.ca/index.php?context=va&aid=10210> Privatising Land in Timor Leste

the discussion to be launched by the government regarding the international refugee center should be opened for a public debate in order to listen to the people and that all the decisions to be taken should truly reflect the interest of the people and not only to reflect the political interests of a great nation.

VIII. Land and Stability

The consequence of this situation is where the dispute over land being a major factor that often led to conflict in the community. During the 2006 crisis in Dili, the fact also shows that many people take advantage of this political crisis to take over land and houses in Dili. The 2006 crisis resulted in more than 150,000 people fled their homes to live in IDP camps for more than two years. The 2006 crisis showed us that Timor-Leste is a country with huge potential for the emergence of conflict. It is inevitable that the 2006 crisis is emerging as the crisis that occurs within the military institution, but it will eventually come to the surface because there is a lot of interest to take advantage on this opportunity for personal and group interests.

Thus it can be said that the crisis is not only caused by one factor, but by many factors. One of the factors that actually contribute to the onset of the crisis is the dispute over land and houses. "Based on the reports of the conflict in the Village in 2007 shows that the land dispute was a factor that led to the conflict at the village level in Timor-Leste (BELUN, 2008). The report which was conducted in 53 Suco in Timor-Leste showed that the land dispute and the land border are the main causes of conflict that occurs in 64 percent of the Suco and Aldeia level²⁵.

The same situation also occurs at the Suco dan Aldeia level. The conflict of land disputes occurred in Suco Osso Huna, Baguia on 5 November 2007. Two warring parties attacked each other because there is no longer a solution to the land problem they face. As a result of the conflict, several people suffered serious injuries and some people have defects in the eye. Of the two warring parties, 4 people have been imprisoned for committing crimes during the conflict. This situation eventually led to the Suco Osso Huna being entered in the red list for conflict of land disputes.

IX. Strengthening Land Titles in the Development Process

The State leaders also acknowledged the complexity of land issues. Therefore, after the 2006 crisis, the Prime Minister Jose Ramos-Horta asked the donors to help the Strengthening Property Rights program in Timor-Leste. The U.S. GOVERNMENT reacted to the appeal by providing funding of U.S. \$ 10 million to the Government to assist the program. At the end of September 2007, the U.S. Government, through its Agency for International Development (USAID) launched the Strengthening Property Rights program in Timor-Leste. The program is known as the "Ita-Nia Rai"²⁶.

This suggests that, inevitably, the Government must admit that it is the time now to give answers to the complexity of land issues in Timor-Leste. With the onset of the crisis in 2006,

²⁵ University of San Francisco School of Law, 9-14 February 2004, Page 3

²⁶ www.itanirai.tl

the State must find a way to strengthen the land ownerships. Nevertheless, the interesting thing is that the government started this process with "Ita Nia Rai" which is technically run by an American organization called Association of Rural Development (ARD) Inc.

The Government institute like *The National Directorate for Land and Property and Cadastral Services* (NDLPCS) just serves a partner in the implementation of the program. ARD Inc. is entrusted by USAID and the Government to win the tender for the execution of the program. ARD Inc. is the organization entrusted by USAID to carry out the INR. ARD inc. regarded as an organization that has the technical experience on land administration in post-conflict countries around the world²⁷.

Why the Government entrusted the ARD Inc. to run the INR program to collect the land data in Timor-Leste despite knowing clearly that the land issue is very complex. It is very interesting that the government does not have self-esteem and do not entrusted the Timorese institution to find solutions to land issues. Or is it because USAID assumed that Timor-Leste as a post-conflict country, it is desperately needing the help from the ARD Inc. to run the perogram. ARD Inc runs the Ita Nia Rai program with other partners such as the *Agricultural Cooperative Development International / Volunteers in Overseas Cooperative Assistance* ACDI / VOCA (a U.S. organization), *Land Equality Rights* (Law) an Australian organization and NGO BELUN, an Timorese organization which also has links with the University of California, USA.

USAID and the Government of Timor-Leste, through the Minister of Justice signed an MoU (Memorandum of Understanding) for the implementation of the Ita Nia Rai program taken place at the Ministry of Justice, on 13 June 2009. The MoU serves as the basis for the cooperation between USAID and the Ministry of Justice. The Dispatch of the Minister of Justice No. 229/GM/MJ/VII/2008 regarding the National Cadastre serves as the basis for land data collection in Timor-Leste²⁸. The decision of the Minister of Justice was issued based on the MoU between USAID and the Ministry of Justice. What is very interesting is that the decision is not complying with the RDTL Constitution. Fundasaun Mahein proposes that all sorts of laws in force in the State of Timor-Leste must be based on the RDTL Constitution. Not only based on the MoU agreed with other countries. Moreover the MoU itself until now has not been accessible to the public. Timorese community has never informed about the contents of the memorandum of understanding. It is expected that the Government of Timor-Leste and USAID can publish the MoU in the near future for the public to have access to.

The data collection process carried out by the INR was implemented directly by ARD Inc. and the Ministry of Justice with the NDLPCS only responsible for the policy issue. The reality shows that although the USAID provide funds of \$ 10 million dollars to the Government to run the program but the Government has never seen the physical form of the fund. This is because everything was handed over directly by USAID to the ARD Inc. the NDLPCS which in charge of land affairs does not get any money from ARD Inc.. According to the plan, the Government is just to wait to receive the final product, which is the National Database

²⁷ Ibid

²⁸ www.itaniarai.tl

(National Cadastre) in 2012.

Cadastre is the system established to create a National Database on land and land ownerships. The National Database is created through data collection or national data collection process conducted throughout the country. The process itself is similar to a census that gives opportunity to people to claim land ownerships. The data collection will be done systematically, from one place to another in order, transparently; open to the public and with equal treatment, which means that everyone has an equal right to make a statement on the existing land tenure. Equal rights means that adults and children, men and women will have equal opportunity to participate in all process of the national data collection. Women also can make a statement as land owners²⁹. USAID "Strengthening Property Rights" Program under an agreement with the Ministry of Justice to conduct a national survey within 5 years period (2008 - 2012).

Data Collected by Ita Nia Rai Program During the Data Collection Process in Timor-Leste as per 6 July 2010:

District	Total Plots	Total Claims
Aileu	922	1039
Baucau	1585	1670
Bobonaro	2670	2877
Dili	5273	5359
Liquica	1814	2086
Lautem	449	455
Manatuto	1385	1441
Oecusse	2420	2443
Total	16518	17370

See: Ita Nia rain : www.itaniarai.it

X. Conclusion and Recommendation

Land issue is one of the problems that need to be considered by the State of Timor-Leste. Inevitably it is the time now to strengthen the land rights in Timor-Leste. It also the time now for those who have lost their rights during the Indonesian and Portuguese occupation to have justice for their rights. Moreover, we do not want Timor-Leste continues to be a place for conflict over land and housing disputes. Therefore, the strengthening of land rights is one

²⁹ Ibid

of the priority issues to guarantee development and prevent conflicts in Timor-Leste.

We have gained the struggle over land as a sovereign State in 1999, but we still need to make more efforts to free our people from poverty and destitution. Land is a fundamental issue that needs to be resolved in order to contribute to the liberation of our people from poverty and destitution. Therefore, like it or not it is time for Timor-Leste to establish a simple, appropriate and modern systematic land administration to guarantee the constitutional rights for land in Timor-Leste.

Fundasaun Mahein (FM) Recommendations:

FM's Recommendation 1:

The National Parliament and the Government to start implementing the CAVR recommendation to make inquiries into the issues of land disputes, which have occurred as the result of a big and wider propaganda to expel people from their land, taken place during the Indonesian occupation. Based on the findings of the inquiry, promoting peaceful mediation to all disputes in order to prevent violence”³⁰. The recommendation is very important to be implemented in order to help finding integrated solutions and reflecting the economic, political and cultural aspects of Timor-Leste over land disputes that arise in the past.

FM's Recommendation 2:

The National Parliament need to conduct a more in-depth discussion on the Draft Land Law that was passed by the Council of Ministers in order to ensure the national interests of the people of Timor-Leste. Given that land is fundamental human rights, for livelihoods, and identities of the people, hence we need a law that truly reflects the identity of Timor-Leste.

FM's Recommendation 3:

The State needs to establish an independent national institution to oversee the land administration in Timor-Leste. Based on FM observations that the land issue is very complex, so it needs an independent institution to specifically monitor and managing the work independently. So far we see that the NDLPCS often seems less effective due to political interventions and the post of director of this institution is often replaced by a political decision from the Ministry of Justice. Every time the government changed, the director is also being replaced on the basis of political interests. This situation does not contribute to the process of finding a better solution to the land Issues in Timor-Leste. Political interventions to the NDLPCS always give negative implications on the effectiveness of the NDLPCS.

FM's Recommendation 4:

The Government should define the forms of cooperation established with organization and donors that provide assistance in the development of land administration in Timor-Leste to

³⁰ Page 179

empower the government institutions in the implementation of the program. The cooperation should not only be done at the policy level but should also involve the experts so that they are informed about the processes undertaken during the implementation of the program.

FM's Recommendation 5:

The Minister of Justice and USAID to publish an MoU on the implementation of the Land Rights Strengthening Program in Timor-Leste "Ita Nia Rai" so that the public can access the MoU in question. This is important to ensure transparency in the implementation of the programs related to fundamental issues such as land.

FM's Recommendation 6:

The Minister of Justice to oversee the work of the NDLPSC to ensure the effectiveness of the professional institutional functioning. This is important to ensure transparency, good management and preventing corruption and collusion within the administration system. In addition, it will ensure the coordination and quality work of the institution with the partners the Government has established such as INR in order to guarantee the sustainability of the administration system in the future. Particularly in monitoring the data already collected by the INR. FM is concerned that the data collected by INR will not be worthwhile if the NDLPSC is not monitoring the data and will ultimately lead to new conflicts in Timor-Leste in the future.

FM's Recommendation 7:

The Government shall continue the process of collecting data about land and granting land rights for free as the process currently running in Timor-Leste to help strengthen the land entitlements for all people. FM is concerned that this data collection will only be conducted in the district capitals and not going down to the villages and hamlets. If this case happens, this constitutes a form of discrimination against the people of this nation and it is potential to generate new conflicts in the future.

FM's Recommendation 8:

It is requested to the State to carry out land reform so that the people in Timor-Leste will all have a right over land ownership as provided in the Constitution.

FM's Recommendation 9:

The State shall be in the position to reject the request of the Australian government to establish the regional refugee center in Timor-Leste.

Bibliography:

Azam Sayful, SH, 2003

Prof. DR. Ahmad Ali, SH.,MH., et al, Human Rights Protection in the Area of Land Ownership, National Human Rights Commission, Jakarta 2006.

Constituent Assembly, RDTL Constitution, 2002

<http://timor-leste.gov.tl/?p=29&lang=pt>

STL News, 2 July 2010 Edition

University of San Francisco School of Law, 16-24 June 2004

<http://www.seasite.niu.edu/easttimor/oil.html>

Televizaun Timor Leste, 9 June 2010

Jean du Plessis and Scott Leckie, UNCHS (HABITAT), 31 May 2000

<http://www.eastimorlawjornal.org/LEGALRESEARH/land> law policy Research Resources 2.html

CAVR, Executive Summary of Chega Report!, 2005, Page 48-49

University of San Francisco, 9-14 February 2004

<http://www.eastimorlawjornal.org/LEGALRESEARH/land> law policy Research Resources 2.html

Jean Du Plessis and Scot Leckie (UNCHS(HABITAT)), 31 May 2001

Ita Nia Rai Monthly Bulletin "Our Voice" 12th Edition, January-February 2010, Page 1

<http://users.erols.com/kurrency/tp.html>

Routledge, Tayler and Francis Group, The Asia Pacific Journal of Anthropology Vol. 8, No. 1, March 2007, pp. 27_41

<http://www.laohamutuk.org/Agri/land/10TransitionalLandLawEn.html>

Ibere Lopes, land Law Specialist, April 2009

<http://www.globalresearch.ca/index.php?context=va&aid=10210>Privatising Land in Timor Leste

Ibere Lopes, land Law Specialist, April 2009

<http://timorlorosaenacao.blogspot.com/>

BELUN, March 2008

University of San Francisco School of Law, 9-14 February 2004

www.itaniarai.tl