

East Timor, Land Management – a Long Way to Go, but we have started.

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Key Words: East Timor, Land Administration, Ownership, Land Rights, Leasing.

Summary.

East Timor has seen a number of administrations in the past thirty years, each with their own, but different processes.

Following upheaval and independence from Indonesia in 1999 East Timor has had to rebuild and develop a land administration system to cater for the needs of its society. Previous systems have not been beneficial for development, and with the almost complete destruction of records in 1999, a new system has had to be instituted.

Commencing with the development of a leasing system to cater for the needs of those who have been displaced, and to allow some development and legal occupation, East Timor is moving to a new and fresh land registration system. This process will comprise a completely modern cadastral system, developed from raw base material, and linked to land ownership following identification of landowners.

The authorities are also faced with the interim management and dilemma of many thousands of abandoned properties, some of which will never be claimed by their rightful owners.

The National Directorate of Land and Property, together with many government agencies in East Timor, is severely under resourced, and struggling to keep pace with public expectation. Assistance from donors has been most valuable and is essential for the ongoing progress of land matters.

Nevertheless, the framework exists for a step to the next level, and East Timor is looking forward to land registration and the associated social and economic benefits.

East Timor History

East Timor (more correctly known as Timor-Leste [Portuguese language]), the newest nation of the world, contains an area of some 14,700 square kilometres, and is situated on the eastern end of the Indonesian archipelago, some 500 kilometres north west of Darwin in Australia. East Timor has a population of just under one million people and comprises approximately 50% of the island of Timor, together with the two small islands of Ataúro and Jaco (uninhabited 'national park') and the Oecussi enclave located in West Timor. Oecussi is a remnant of the Dutch and Portuguese colonial times which saw Portugal retain this pocket of the former Dutch East Indies. (Ref: Figure 1).

In overall terms, East Timor is approximately 290 km long and 70 km wide. The present currency is the US dollar. The official language is Tetun and Portuguese, with Indonesian spoken widely.



Figure 1 – East Timor map¹

Early History saw Portuguese traders occupying East Timor in the 1600's with slow increase in influence coming about until the late 1800's by which time Portugal was treating East Timor as a colony and installed an administration to manage and secure it's interests.

The first East Timorese political parties were formed in 1974, and took brief 'control' over East Timor, on 28th November 1975, when East Timor was offered independence following a coup in Portugal. On 7th December 1975, Indonesia invaded East Timor, and declared East Timor to be the 27th Indonesian province on July 1976.

In May 1999, under the umbrella of the United Nations, Portugal and Indonesia agreed to carry out a popular consultative process in East Timor. This process aimed to decide the political future of the country with the options being 'Special Autonomy' or 'Independence'. This consultation took place on 30th August 1999, with almost 80% of the population in favour of total independence from Indonesia. Some days after declaration of results, the Indonesian military and sponsored militia groups undertook a retaliation campaign, which caused many deaths and much damage within the country. There was substantial destruction of infrastructure, almost complete destruction of public buildings and associated public records (including most land related material), as well as serious damage to the housing stock of the country.

Due to the nature of the violence and destruction, in November 1999, The United Nations, authorised an Australian-led multinational force to restore the peace and security in the country. The Indonesian troops departed the country within days of the arrival of the UN force, and militia groups quickly disbanded or mostly fled to West Timor.

¹ www.factmonster.com/atlas/country/easttimor.html, on 30th November 2005

Two years after the popular consultation, the first free elections were carried out in East Timor. On 20th May 2002, the Independence of East Timor was declared, and the UN Transitional Administration handed over authority for the country to the new Government of the Republic of Timor-Leste.

Brief Land History

Until 1900 the traditional kings ruled the land in East Timor. In the beginning of the 20th century, there were two main waves of Portuguese colonial dispossession. The first began in May 1901, when the Portuguese government passed a new law on overseas land concessions declaring all land “without a master” automatically vested in the State of Portugal. This land could be subject to Portuguese issued land titles, known as “Alvará”. The second took place in 1910 requiring all transfers of “native tenure” to be approved by the Portuguese Governor. There was some dispute over this, as Portuguese viewed land that was at least 50% cultivated as having a master, whereas local practice saw land upon which specific citizens collected indigenous fruit etc as also having a master. [Brunero 2001]

During Indonesian times, there were two particular processes which disturbed the normal use of land. These processes were: (1) transmigration and (2) translocation. Transmigration was the practice of resettling persons(in to East Timor) from elsewhere in Indonesia. Translocation was the practice of resettling/relocating East Timorese persons within East Timor. Often, translocation was undertaken for the purpose of moving rural East Timorese away from areas where they would be likely to come in contact with FALINTIL (independence) guerrillas, and into areas where they would be more easily controlled. As the data of transmigration and translocation indicates, transmigrants from elsewhere in Indonesia were always settled on sites which included translocated persons from within East Timor. Translocation programs, by contrast, were often developed purely for the purpose of settling translocated persons only [Nixon, 2005].

Each of the Portuguese administrations and Indonesian administrations issued freehold and lesser titles/land rights (various concessions and occupation or user rights).

During the Portuguese era some 3000 titles were issued, and during the Indonesian era some 47000 titles were issued.

The United Nations Transitional Administration in East Timor (UNTAET) established a process of Temporary Use Agreements, which provided for short term leasing of land, to allow legal occupation by incoming occupants, and also to generate some funds, which were directed to the East Timorese administration.

Land and property laws in East Timor

The National Directorate of Land and Property (Direcção Nacional de Terras e Propriedades - DNTP) was created in the Ministry of Justice, and absorbed the role of the Land and Property Unit originally established by the UN.

As referred to previously, the existing property titles in the public archives were mostly destroyed during the September 1999 violence. The rampant destruction of private property also saw the loss of many private documents, that could have assisted the re-establishment of land records.

Very obviously, there is a need to generate a property system parallel with the development of the new country. A country without land titles or a land administration system is a country

that does not provide very much certainty for investors or property owners, and there are extreme limitations on capacity to borrow and invest. The definition of State and private property and the conversion of the previous titles and various rights to be converted or acknowledged in a new titling system are also required.

In this context, the East Timorese government has promulgated three diplomas (two parliamentary laws and a decree-law) which legislate matters of land and property. It is important to note at this stage, that as with a number of countries, previous laws have recognised land (i.e. essentially the vacant land) as being able to be owned, as distinct from the improvements on the land (i.e. buildings, other structures, trees) which may be separately owned. Conversion to any new system must recognise these prior rights, whilst attempting to limit any future ownership to land incorporating the improvements. Hence in this paper there is reference to 'land' and 'property'.

The promulgated diplomas are:

- Law 1/2003, 10 March, "*Juridical Regime of Immovable Property – Part I. Ownership of Immovable Property*
- Decree-law 19/2004, 29 December, "*Juridical Regime of Immovable Property- Official Allocation and Lease of State Property*"
- Law 12/2005, 2 September "*Juridical Regime of Immovable Property– Part II: Leases between Private Parties*".

The Democratic Republic of East Timor Constitution refers to Land and Property in Section 54 "Rights of private property". This section reveals that the system of real property in East Timor is private in nature (i.e. private land rights apply). It is important to note that whilst the Constitution states "Only national citizens have the right of private ownership of property (i.e. land)", there was no nationalisation of foreign ownership – contrary to the beliefs of many citizens! This has led to some confusion which will be clarified in a forthcoming law.

Nevertheless, the principle land law of East Timor (Law 1, 2003) establishes three important elements, these being:

1. Definition of 'State' property;
2. Definition of 'Abandoned' property, which is private property, but it able to be administered by the State, and;
3. The timeframe for recording the land claims.

There are two categories of 'State' property: Public and Private Domain. Public Domain is clearly beaches, rivers, certain mountains and other lands etc. not able to be privately owned and the more difficult category being the Private Domain of the State, composed of all the properties which belonged to the Portuguese State until 7th December 1975, and the properties acquired by the Timorese State, by the enforcement of the Law or by juridical transaction. (ie. properties being those of the former Indonesian administration). The 'Abandoned' properties under State Administration (section 15) are the properties abandoned by the owners (the majority are foreign citizens who left the country, for security reasons during 1999 and have not returned to exercise control over the property). The abandoned properties may be returned, in the future, to the owners who can prove some form of ownership (subject to expected law on land titles restitution).

This existing law Law establishes what is illegal appropriation and illegal occupancy (sections 5 and 6), and the mechanisms to deal with unlawful situations, including the administrative eviction (chapter III, from section 7 to 11). This eviction process, which is without reference to the Court, has so far been use most carefully, cautiously and effectively used by the government, through DNTP.

The National Directorate of Land and Property has the duty of the execution of this law, which means that is the competent entity to administer the State and Abandoned lands and properties in East Timor.

The 29th December 2004, the Decree-law 19/2004 was promulgated. This decree-law defined the conditions in which the State real assets (or under State Administration) could be allocated to other governmental departments, or be leased to private citizens or entities.

In regard to abandoned property, this Decree law states that the period of the lease agreement of a property under State Administration is enforceable by the tenant (with support of the State if necessary), even after the restitution of the property to the real owner (section 23). That is to say, the lease runs with the property, even after the restitution of the property to the rightful owner. The periods for lease agreements in State private domain property are longer (up to 50 years) than for those under State Administration, which has the maximum of three years (Section 22), although with possibility of renewal.

The third legal diploma regarding land and property was promulgated on 2nd September 2005, and it is the law 12/2005, and is in regard to private contracts and private property. This law states the minimum conditions of the of lease agreements of private property between individuals. This is an attempt by the government to assist the active leasing market for immovable assets in East Timor, even without the existence of land titles, and recognizing, in this way, these transactions. This law refers also that the recording of these lease agreements shall be undertaken by the National Directorate of Land and Property.

These Laws allows the National Directorate of Land and Property to practise their functions in the administration of the State real assets.

Land Claims

After the promulgation of Law 1/2003, it was possible to create an archive of Land Claims and Disputes in East Timor. The law provided a period for presentation of documents claiming rights over land and property. This period was open for all citizens (national and foreigners), and resulted 5781 claims being lodged in East Timor and 6548 claims lodged in Indonesia, with small numbers in other countries (e.g. Australia, Portugal). Analysis of the claims recorded in East Timor, it was observed that the majority of the claimants are foreigners' individuals (72%). The percentage of national individual claimants is 26%, and from companies 2% of the total number of claims. Figure 2 presents these results.

It should be noted that many East Timorese did not lodge claim their own property, believing themselves to be the rightful and undisputed owner. In essence, the claims process was to set a deadline for claims by non-residents, in order that the government could then address such issues, and not have new (and perhaps conflicting) claims arriving over time.

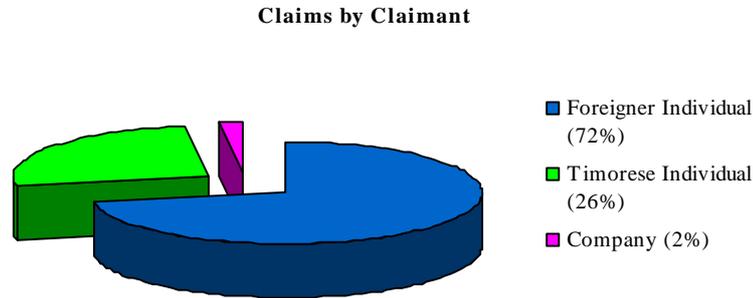


Figure 2 - Percentage of claims by claimant

According to some, the Constitution is not clear regarding the (pre-existing) rights available to foreign land owners. The resolution of the apparent uncertainty within the Constitution in relation to land owned by foreign citizens (in the majority Indonesian and Portuguese) is the subject of the forthcoming Land Titles legislation.

Given the constitutional prohibition, foreigners with pre-existing land rights could be offered some land right being less than an ownership right, although it may be more definitive to provide foreign owners with a period to comply with the Constitution, by allowing them to sell property, or take out citizenship.

Normal Lease Agreements

The National Directorate of Land and Property celebrates, based on Law 1/2003, the lease agreements of State property. The celebrated lease agreements (about 400 at the present moment) render US\$ 1.8 million per year².

As few property records exist there is the need for research, investigation and survey of each property prior to the government offering a binding lease to a tenant. In addition, there is no issued power of delegation to the National Director of Land and Property to actually authorise leases, and thus the Minister of Justice actually signs every Lease Agreement. The whole process sees lease agreements taking two to four months to be complete. The lack of competent technical staff and insufficient staff members, as well as the process, reflects the delay in the celebration of the Agreements.

² Estimated income Financial Year 2005/6. Note that DNTP total budget (all items) is US\$ 245,000 for the same period.

Special Lease Agreements

The same Law (1/2003) defined, illegal occupancy. In this way, it recognised that the illegal occupants of State property or property under State administration could be regularised in the short term to overcome the problem of illegal occupancy, and give some comfort to those illegally, but necessarily, occupying property for need of shelter or business. After the promulgation of the law, approximately 6000 'illegal' occupants submitted applications to DNTP for regularization of illegal occupation. This regularization is undertaken by the celebration of a lease agreement with the State. The lack of technical staff to proceed to the elaboration of normal lease agreements evidenced that it would be impossible to solve the situation of illegal occupancy in a short time period.

It was, therefore, necessary to create an alternative process, similar to the normal lease agreements procedures, but with a modification in some of the steps, replacing them for simpler and faster procedures. In this way, a process of establishment of 'special lease agreements' was determined. [Ilyas, 2005].

The requisites to celebrate a special lease agreement are:

- Residential Use;
- National citizen;
- Property occupancy since 2000;
- Developed property (there is no special lease agreement on vacant land);
- Automatic Monthly rent of US\$ 10 (ten American dollars);
- 1 (one) year lease agreement, with automatically renewal for more one year.

The process is extremely simple and requires the applicant to attend DNTP (although in some areas DNTP set up a temporary local office) complete a lease application form, and present this, together with a photocopy of an identity card (registry card, voting card, or passport).

At DNTP, the location of the property is determined, using information provided by the applicant. The location of the property is marked on the orthophotomaps, 1: 1000 scale, provided by the Australian Defence Force (ADF), from 2001³ aerial photography, taken on behalf of DNTP. A Special Lease is prepared and identified by number on the orthophoto, and orthophoto also attached to the lease. Although this process is done by hand, it allows applicants to come and identify their property on the orthophoto, and be aware of the process being undertaken. Data collected is then inserted in to a database.

³ ADF provided detailed aerial photography of the whole of East Timor, after a request from DNTP. Most urban areas have maps (orthophotos) at 1:1000, which allow rapid identification of property, and will be the basis for much of the cadastral element of the land registration system. The maps provide a clear indication of what properties were developed in 2001, thus clarifying many issues of date of development.

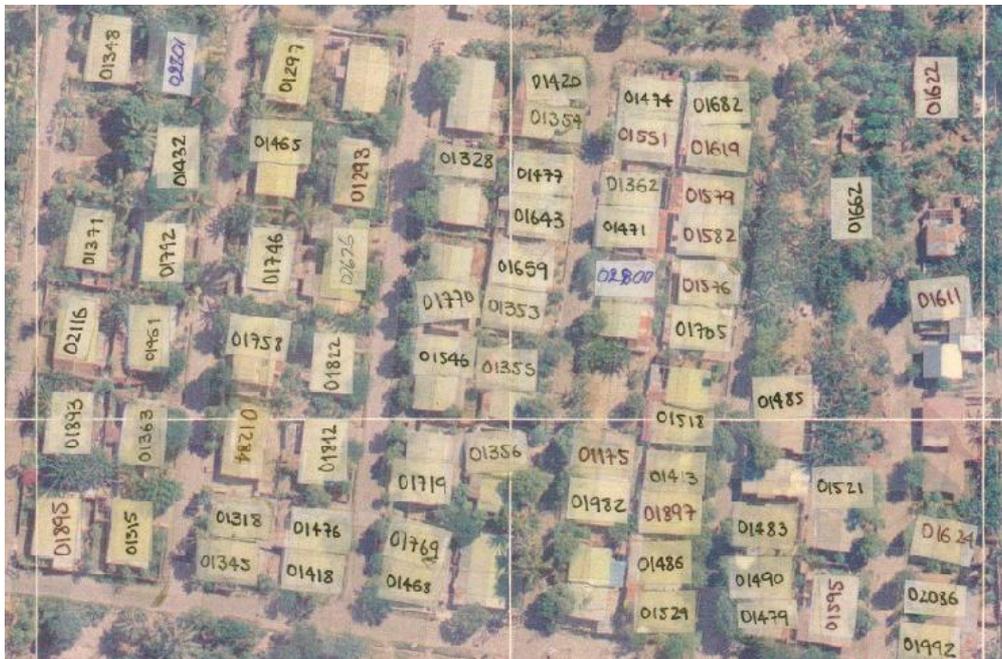


Figure 3 - Orthophotomap of the location of leased properties

The data collected in the application for is inserted in the database, which is showed in the Figure 4.

REPÚBLICA DEMOCRÁTICA DE TIMOR LESTE
Ministério da Justiça
 Direcção Nacional de Terras e Propriedades
 Avenida Bispo de Medeiros, Balide, Dili, Tel. 3339067

CONTRATO ESPECIAL DE ARRENDAMENTO
 Número do Contrato: 00000

Arrendatário(s):
 Nome de Arrendatário(s):
 Telefone: Cópia de Registo:
 Nome do Contacto:
 Endereço do Contacto:

Localização da Propriedade Arrendada:
 Nome do Distrito: Nome de Sub Distrito: Domínio:
 Nome da Suco: Nome da Aldeia: Matrícula:
 Rua/Avenida:
 Nome do Edifício:
 Tipo de Bem Móvel: Área de Propriedade:
 Forma da Propriedade: Risco No:
 Orthophoto Existing: Orthophoto Mapping:

Detalhes do Contrato:
 Uso Autorizado: Tempo de Duração:
 Pagamento Mensal: Data do Começo:
 Data do Cancelamento: Data do Contrato:
 Representante dos Estados:
 Cargo:

This is designed for Rental Application Processing Pilot Project conducted by ARI, Inc. as part of USAID - East Timor Land Law Study

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Figure 4 – Special Contracts Database

From the database, it is possible to automatically print the lease agreement. This agreement can be signed by the Director of the National Directorate of Land and Property, delegated by the Minister of Justice, instead of being signed by the Minister, as happens in the normal lease agreements. Since this process occurs within the National Directorate Office, where the

Director is located, the lease agreement can be printed, signed by the applicant, and signed by the Director. Given that land identification takes place in the office, followed immediately by lease preparation and signature, the time in the celebration of lease agreements is reduced from 4 months to only 1 day. This is a rapid process, and has been most successful. Applicants are aware that the provision of false or misleading information will see their lease cancelled and themselves likely to be evicted, thus resulting in very few errors. The process relies on an honesty system, and with the orthophotos on display, the system is, in some way, self checking, as errors are likely to be noticed by neighbours or other applicants from that location.

The lease agreement is delivered, with an explanatory brochure in how to pay the rent. The rent is paid in to a specific government rent account at a commercial bank, ensuring a minimum of steps in the payment process. Bank accounts are numbered in parallel with the lease number so recording and monitoring is relatively easy. It should be noted that at no stage does any payment or cash come to the DNTP office, thus reducing the likelihood of confusion over payment, or temptation for rent money to go astray. In District offices, where banking facilities are not available, payments are made to the District Finance Office – again, no payment comes directly to DNTP.

To verify the location of the properties as submitted by the applicant, DNTP staff undertook filed visits. These verification visits allowed observation of the use of the property by the tenant in order to ensure residential use and that no sub-leasing was taking place. Given that the rent is set at \$10, there could easily be circumstances of profiteering by sub-leasing at substantially higher rentals. Verifications showed 89% of the visited properties were correctly occupied by the applicants and used for residential purposes. A small number (3.7%) of occupants could not be located (possible mis-identification on orthophoto), others had moved or in some cases ‘sold’ their lease. Only 2.7% of properties were sub-leased. This shows that, even for people (villagers) unfamiliar with mapping and surveying, the use of orthophotomaps in the location of properties is very effective, and provides a high level of accuracy, particularly given the time involved⁴. Figure 5 shows the results of the technical inspections. During this process, DNTP staff delivered notification letters regarding late rent payments, which increased the monthly rental collection.

Of course, the development of the cadastral material links directly to the Cadastral System which is to be the basis for the land ownership and registration project due to commence in 2006.

The cadastral system will support national development in East Timor by providing better security and transparency of land ownership. The system will record all essential information in regard to land ownership, and have capacity to record public and private leases as well. Given the (proposed) links between the data base and mapping/cadastral database within DNTP we are expecting to establish a quick, reliable and understandable process for the recording of land transactions.

⁴ The orthophotomaps will be the basis of much of the cadastral component of actual land registration, however considerable verification and field work will be associated with this task and DNTP expects an extremely low (if any) error rate in this process.

Special Lease Agreements - Technical Inspections

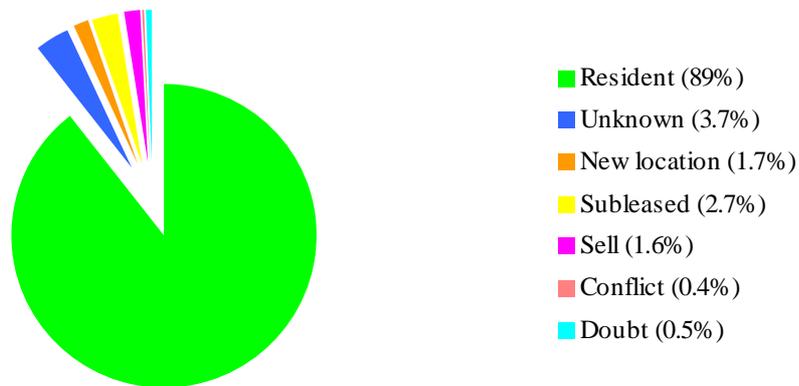


Figure 5 – Results of Technical Inspections

Since the beginning of this ‘Special Lease’ project, in July 2004, to the present date, more than 2700 lease agreements have been entered, reverting about US\$86,000 to the State. There is an extremely high number of non-paying tenants (many tenants have no employment and use such properties for shelter [their own properties having been destroyed]) and whilst this is of some concern, DNTP is satisfied with the process, and will continue to pursue this practice across the whole country. One very redeeming factor of the Special Lease process is that the mere submission of an application form by a tenant is recognition that the tenant is not the owner and thus is an indication that such property will ultimately be one for DNTP to properly lease or dispose of when Land Registration takes place. There is also recognition by the community that DNTP is the responsible authority in such matters, and this cements the authority of DNTP when later issues arise.

This Special Lease procedure is simple, without the need for substantial resources or staff. It continues to solve the situation of illegal occupancy that thousands of national citizens were facing. At the present, the project has been completed in one sub-district of Dili only, but is being extended to encompass all Dili sub-districts and, in the future, the entire country.

Future

The management of State Property is being undertaken by the National Directorate of Land and Property, and for the most part, processes are in place. From now forward, it is necessary to solve the issue of private property.

As referred previously, land titles issued during the previous administrations are in various forms, and different to those envisaged for the future. These ownership rights need to be integrated in to the new system, with the respective equivalence, but minding the nationality of the citizens.

How to return private property titles in East Timor?

The first step in private land rights is the promulgation of the Law which will decide how, when and what titles will be returned. It’s expected that the law will be promulgated within the next the twelve months..

The proposed property system will be a set of cadastre and ownership registration, undertaken together.

The cadastre will begin with the use of orthophotomaps, obtaining and defining parcels identifiable from features visible marks on the maps. Areas without visible markers on the orthophotomaps, will be identified by conventional survey methods. Following orthophoto identification, and simple field verification of boundaries the material will be transferred to digital data, in the office, and maps prepared for public display.



Figure 6 - Unique Parcel Identifier, using orthophotomaps

As with other countries, the process of public display allows all people to see the boundaries of their own and neighbours properties, in a public and transparent process. All potential owners will be invited to present whatever documents and witness statements they have that can contribute as evidence of any land rights (mostly these persons will be those who did not submit claims previously). The data presented to DNTP will be scanned and saved in the archive of the National Directorate of Land and Property. This data will be matched and cross checked in reference to land parcels claimed, and subsequently used in the restitution of the titles, after the promulgation of the Law. The properties with boundary claims or disputed claims will be analysed and resolved by reference to the Land Commission. Disputes will be kept out of the regular court system, to ensure skilled land based decisions, and so as not to further clog the overburdened legal system.

Learned Lessons

Whilst there has been considerable concern regarding the slow pace of progress of Land Registration in East Timor, we are determined to 'hasten slowly' in order to ensure the minimum of errors. Past experience in related matters has provided us with many examples of a rushed decision being a bad decision and resulted in more anxiety and lost time and money for persons involved.

Pressure for quick land decisions in East Timor is to be avoided as there are so many vested interests, some perhaps knowing that in time, more 'facts' might be revealed, and a decision may not go in their favour.

Land Registration underpins much social harmony, investment and development, as well as providing 'pride of ownership' for those concerned, and I am very conscious of the need to move this whole process forward. With the assistance of USAID and the Land Law Program, and AusAID with their capacity building and technical support we have got to the stage where we have the existing laws in place, and land registration just around the corner. It is attendance at conferences such as this and other activities which all contribute to the processes being developed within DNTP.

Whilst at times our office has no electricity or fuel for vehicles (and the situation in District offices is worse), there is no point in being disheartened, for it must be remembered that just over 6 years ago our office (and much of the country) was reduced to a pile of rubble, we did not possess a pencil, let alone expensive plotters, scanners, cars or motorcycles. Although some staff skills are low, we do have staff, we have buildings, we have maps and plans, we can measure land and conduct interviews, so progress is relative and six years ago land registration was along way from peoples minds.

We do need support in the future. DNTP does not have the financial or technical capacity to undertake land registration unassisted, however no matter how we go about this, I am determined that the process will be on the basis of "...do it once, do it right..."

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Biographical Notes.

Pedro de Sousa Xavier was born in 1963 in Viqueque district of East Timor, and undertook his schooling in Maliana. Following completion of secondary schooling Pedro was sponsored by the Government Land Office to study at the National Land College in Jogjakarta (Indonesia).

Pedro undertook a Degree in Land Administration (1988-1992) followed by a Degree in Cadastral Survey and Mapping (1995-1997). In between this study Pedro was employed in the Land Office in Liquica (East Timor).

In 1998-1999 Pedro was part of the Judicial Task Force for the World Bank sponsored Indonesian Land Administration Project in West Java.

Pedro returned to East Timor in November 1999 and commenced employment with the UNTAET Land and Property Unit, being appointed as Manager in 2000. Pedro has since retained this role, and was appointed as National Director of Land and Property in 2002.

Pedro has visited Land Offices and spoken at conferences in many countries including Indonesia, Australia, Cambodia, Germany, France, Austria, Thailand, Philipines, Cabo Verde, and recently spent two months with the Department of Sustainability and Environment in Victoria, Australia.

Special Note

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