

## SOCIAL AND ENVIRONMENTAL SAFEGUARDS ASSESSMENT (SUMMARY)<sup>1</sup>

### A. Country Context

1. **Population.** The population of Timor-Leste was projected to be 1.25 million in 2015 of which approximately 70% live in small settlements in rural areas.<sup>2</sup> The population relies heavily on natural resources (oil, agricultural land, marine resources, and forests) for livelihoods. The population is growing by over 2.7% per year, and is forecast to reach 1.85 million by 2030.

2. **Customary land tenure.** Despite Timor-Leste's often violent turmoil, a system of customary and communal ownership, particularly in rural areas, has been remarkably resilient. The largest part of the country's land is governed by local customary systems of tenure, where authority over land ownership and transactions rests with local traditional leaders. Land use is allocated by community leaders and the sale of land to outsiders is generally not permitted. Community members still retain "highly individuated rights to land" within community areas; even if these do not equate to statutory rights, they function like inheritable usage rights.

3. **Land titles.** Timor-Leste was under Portuguese colonial administration for over 400 years until November 1975, followed by Indonesian occupation from 1975 to 1999. This historical legacy has resulted in four sources of claim to land ownership: Traditional title, title recognised under Portuguese administration, title recognised under Indonesian occupation and title recognised since independence. About 3,000 land titles were issued by the Governor of Portuguese Timor; over half were issued in the last 25 years of Portuguese rule. A large proportion were not full ownership rights (*propriedade perfeita*) but a form of limited-term lease with an option to buy (*aforamento*) that frequently stipulated how the land would be used. A large number of titles (some 45,000) was issued by the Indonesian administration. These were roughly evenly split between titles of full ownership with a wider range of usage rights (*hak milik*) and state (military) titles. Until a full-scale conversion process began in 1991, decisions on land holdings were based on a decree issued by the armed forces commander that gave the military power to make allocations. Even after a decade of independence, Timor-Leste lacks fully developed property records and a legal framework for registration or land ownership.

4. **History of conflict and displacement.** A history of repeated conflicts and displacements further complicated patterns of land ownership and how they are understood. Major displacements occurred during: (i) the Portuguese colonial administration, characterized by relocation to improve agricultural productivity and where families opened up new land for cultivation; (ii) the Indonesian occupation, resulting in displacement of a large part of the population from Dili and other urban centres to the interior in 1975 (many Timorese were forcibly resettled along major coastal roads, and others were affected by transmigration programs that resettled groups from other Indonesian provinces); (iii) conflict following 1999 referendum, in which over half the population was displaced (an estimated 250,000 people were driven over the border into West Timor and some 300,000 fled homes in urban areas); and (iv) the 2006 crisis and subsequent insecurity in the capital in April and May 2006 which displaced up to 150,000 people (many took up residence in camps for internally displaced or sought shelter with

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<sup>1</sup> This summary is based on information that was gathered through: ADB. 2009. *Regional: Strengthening and Use of Country Safeguard Systems*. Manila; ADB. 2012. *Timor-Leste: Strengthening the Regulatory Framework for EIA in Timor-Leste*. Manila; ADB. 2012. *Timor-Leste: Developing Resettlement Safeguards Capacity in the Transport Sector in Timor-Leste*. Manila.

<sup>2</sup> Government of Timor-Leste, Ministry of Finance, General Directorate of Statistics; and United Nations Population Fund. 2011. *Population and Housing Census 2010: Population Projection Monograph*. Volume 8. Dili.

elsewhere in the city or countryside, but had difficulty returning to their properties which had sometimes been occupied in their absence).

5. **Framework for land.** The Constitution provides for rights to private property including the right to own and transfer private property. The Juridical Regime of Real Estate No. 11/2003 provides preliminary rules pertaining to land tenure and property rights. The Civil Code contains provisions governing decisions pertaining to land including the sale and lease of land. Decree Law No. 27/2011 Regime for Regularization of Ownership of Immovable Property in Undisputed Cases enables those claiming private property rights to register undisputed claims where land has been surveyed and cadastral, and the Directorate of Lands, Property and Cadastral Services (DLPCS) has confirmed that the cases are indeed undisputed. New laws are needed to fully administer all land parcels, particularly those involving multiple claims. For this, the government has developed three draft laws: (i) the Special Regime for the Definition of Ownership of Real Estate; (ii) the Law on Expropriation; and (iii) the Law on Real Estate Financial Fund. These laws are yet to be approved by Parliament. There are several institutions mandated with the implementation of the existing laws as well as draft laws referred to above. The principle agency in the context of land administration, including acquisition, is the DLPCS which comes under the Ministry of Justice (MOJ).

6. **Framework for environmental protection and management.** Ensuring the environmental soundness and sustainability of projects and supporting integration of environmental considerations into the project decision-making process is provided by the Constitution, the Environmental Basic Law No. 26/2012 (EBL) and Environmental Licensing Law No. 5/2011 (ELL), and draft Biodiversity Law. Through the ELL, the National Directorate for Environment (NDE) implements a system of environmental assessment and licensing, under which proponents of projects or activities that may impact the environment are required to undertake environmental assessment together with an environmental management plan.

7. **Traditional laws and practices.** There are traditional regulations and customs in Timor-Leste that contribute to conserving natural resources such as forests and crops. This system of communal protection is known as Tara Bandu, an agreement within a community to protect a special area or resource for a period of time, which is usually carried out for the harvest of agricultural produce, cutting of trees or collecting of forest products, and hunting or fishing.

## **B. Key Social and Environmental Safeguard Issues**

8. **Inadequate legal framework for land administration and acquisition.** The history of different administrations and series of displacements has resulted in conflicting claims to land. Documents and records were destroyed in the post referendum violence in 1999, making independent verification and cross-checking of titles that did exist impossible in most instances. The country is yet to promulgate comprehensive land law and system for registration of all land parcels. Timor-Leste has no land expropriation law; a draft Expropriation Law was approved by the Council of Ministers in 2013, but it is yet to be approved by Parliament.

9. **Inadequate institutional capacity for land administration and acquisition.** Developing physical infrastructure often requires land acquisition and/or resettlement. Several transport sector projects that require land acquisition are already being implemented; using acquisition that relies on negotiation with affected persons. This process is not regulated by law and can vary depending on source of funding for the project. There is the possibility of safeguards not being provided in some cases, and in the absence of legislation, there is a lack of transparency and consistency. As the land expropriation law is still pending, existing

institutions have no institutional experience in land acquisition. The organizational chart of the DLPCS does not include dedicated staff with responsibility for land acquisition and resettlement. Implementation capacity for land acquisition and resettlement is very weak.

10. The lack of adequate legal framework and implementation capacity poses challenges to development projects, especially those supporting infrastructure as these often require acquisition of, or access to, land. The main challenges include:

- Absence of land records and titles - land records are either missing or incomplete and most land parcels remain unregistered and boundaries unmarked, making it difficult for identification of the boundary and ownership of state land (e.g. roads) as well as non-state land;
- Overlapping claims/ownership disputes – due to conflicting or overlapping claims resulting from legacies of different administration and conflict-induced displacements, many public and private land parcels are still occupied by internally-displaced persons;
- Lack of data on transactions of land and properties – the DLPCS lacks capacity in determining market prices of land and assets on land;
- Weak capacity of DLPCS and poor coordination between DLPCS and project executing and implementing agencies. As a result, project agencies try to find short-cuts to access land rather than following proper process and procedures in coordination with DLPCS; and
- Over-reliance on consultants for social safeguard planning, monitoring and reporting – largely because project agencies lack counterpart staff with required skills on preparation of safeguard plans (e.g. land acquisition and resettlement plans), monitoring, and reporting.

11. **Inadequate regulatory framework for environmental management.** A number of elements of the regulatory framework for environmental assessment and licensing require strengthening:

- There are significant gaps in the assessment process and environmental licensing scheme which result in difficulties implementing the ELL. The most significant is that NDE is currently unable to properly assess and administer category A projects given the absence of a functioning evaluation committee;
- A number of critical regulations that are essential to enable the proper implementation of the ELL have not been drafted;<sup>3</sup>
- There has been limited communication of the ELL to relevant stakeholders. One significant reason for this is that the law is in Portuguese and there are currently no official Tetum or English translations of the ELL, and there is limited budget for NDE to obtain official translations in other languages; and
- Staff of NDE have very limited experience in understanding and implementing legal processes and monitoring for regulatory compliance, and have limited experience and technical understanding that is relevant to analyzing the environmental impacts of development projects.

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<sup>3</sup> Terms of reference for EIS; public consultation procedure; impacts and benefits agreement for category A projects; the roles and functions of an evaluation committee for category A projects; fees and other charges related to the environmental licensing procedure; proper forms for the environmental licensing procedure; the scheme for rehabilitation and decommissioning of projects; and technical parameters for emissions of various environmental components.

12. The government has started to address the above challenges by strengthening the country safeguard systems (CSS) framework and building the capacity of NDE. It requested ADB to provide support for CSS review, institutional capacity assessment, and preparation of an action plan as a platform for further strengthening in the medium and long term.<sup>4</sup> Remaining gaps could be filled by the adoption of the draft legislation, especially the draft Biodiversity Law, the draft Forestry Law, and the draft Law on Protected Areas.

### C. Ongoing Support for Safeguards Strengthening

13. **Intersection of ADB and Timor-Leste Government strategy.** ADB's Strategy 2020 and Safeguard Policy Statement, and Timor-Leste's Strategic Development Plan, target environmentally and socially sustainable economic growth and call for effective management of safeguards required for infrastructure projects. ADB will support effective management of environmental and social safeguards at national and project levels. Where needed, ADB will also provide support to address weaknesses in the legal framework, institutional structures, and capacity for effective application of safeguards. The ongoing focus in respect of further strengthening the CSS and capacity building includes:

- For land acquisition and resettlement - allocation of additional technical assistance to help build the capacity of DLPCS and other relevant institutions on (i) implementation of Expropriation Law (once approved) and guidelines on land acquisition and resettlement, (ii) providing effective and efficient land acquisition services in various sectors, and (iii) providing support in establishing systems and procedures to collect and update data on market prices for land and assets. For environment - this could include (i) support for development of environmental standards and development of laboratory and testing services, (ii) capacity building at district level, and (iii) supporting implementation of a strategy to deal with activities operating without a license;
- Providing support to project executing agencies for advance preparation of detailed technical design and undertaking of land acquisition and resettlement activities, environmental license applications and environmental assessment;
- Application of adequate resources (human and financial) to implement and monitor safeguard requirements at project level and consideration of ADB financing land acquisition and resettlement costs during projects' design phase;
- Promoting improved coordination between executing agencies, DLPCS and NDE. Executing agencies should follow the formal and legal processes to acquire land for projects with support from DLPCS to ensure compliance with CSS and development partners' policies and requirements; and
- Enhanced capacity building of project implementation staff and consultants, NGOs and other stakeholders on safeguards at national and local level. This includes public awareness on requirements of the CSS.

14. The financing of these activities to support environmental and social safeguard systems can be provided by ADB through enhanced allocations to safeguards at the project design stage. Safeguards specific technical assistance will also be considered and co-financing from other development partners will be pursued.

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<sup>4</sup> This was done through: ADB. 2012. *Timor-Leste: Strengthening the Regulatory Framework for EIA in Timor-Leste*. Manila.