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# **Housing, Property and Land Rights in East Timor:**

## ***Proposals for an Effective Dispute Resolution and Claim Verification Mechanism***

**Jean du Plessis and Scott Leckie (UNCHS (Habitat))**  
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## Executive Summary

The successful resolution of housing, land and property disputes and the verification of urgent claims on housing, land and property constitutes one of the fundamental challenges facing the UN Transitional Administration in East Timor. Such disputes have emerged in recent months and will surely increase in the months ahead. In order to meet this challenge, this paper proposes that of all the possible institutional options, UNTAET establish, in the shortest possible time-frame, an *East Timor Land Dispute Mechanism (ETLDM)* to provide several vital (but currently unavailable) services to the people of East Timor. These include the provision of:

- an effective, fair, consistent and prompt legally recognised procedure for peacefully resolving lingering disputes;
- a means for the verification of housing, land and property claims, on an urgent basis, and the subsequent issuance of provisional rights;
- enhanced legal clarity with respect to housing, land and property rights in East Timor; and
- a legal and structural assurance to all persons involved in these processes that no person, family or community will suffer homelessness or other human rights violations.

The ETLDM will be comprised of three main bodies: (1) *The Land Dispute Application Office (LDAO)*; (2) *The Land Dispute Mediation Board (LDMB)*; and (3) *The Land Dispute Tribunal (LDT)*. Once these bodies are established, individuals and groups with viable claims will be able to submit standardised application forms to local offices of the LDAO, which will route them either to the LDMB or the LDT. The LDMB will promote mediated settlements on disputes submitted to it, while the LDT will issue rulings on ownership, tenure rights or title verification. The LDT will base its rulings on all relevant law as expressed in previous UNTAET Regulations. All resolved cases will be provisionally registered in the new land registry.

This report proposes that the United Nations Centre on Human Settlements (Habitat) take institutional responsibility for the management and administration of the Programme. Habitat would operate under the auspices of UNTAET and work closely with the UNTAET Land and Property Unit, but will maintain the independence required to ensure that all persons who submit claims under the ETLDM are afforded a wholly impartial and independent review of their applications.

Approximately 100 people will be employed under the proposed programme, a large majority of whom will be East Timorese. A strong emphasis will be placed on training and mentoring of staff in order to strengthen land, property and housing administration skills in East Timor. After two years in operation, it is anticipated that a significant proportion of the outstanding housing, land and property disputes and relevant claims will have been settled and verified.

The East Timor Land Dispute Mechanism will require a first year budget of US\$ 2.8 million.

## Introduction

Few issues confronting the people of East Timor are more pervasive and potentially contentious than those relating to the successful resolution of housing, land and property disputes and relevant verification of ownership and tenure claims. It is now widely recognised that resolving housing, land and property claims constitutes one of the greatest challenges facing both UNTAET and the current and future political leadership of East Timor. Ensuring mutually satisfactory solutions to such disputes will be imperative to ensure social stability, the widespread enjoyment of basic human rights - in particular housing rights - and the smooth transition to full independence for the people of East Timor in the near future.

This paper will examine how UNTAET and the people of East Timor can together seek to most effectively address fundamental elements of the housing, land and property question through the establishment of an equitable, fair and consistent procedural mechanism designed to assist in the full resolution of the many disputes and potential claims to housing, land and property in East Timor.<sup>1</sup>

The development of a procedural mechanism to secure an effective remedy to all persons involved in such disputes and to at least provisionally verify - on an official basis - housing, land and property claims has been premised on a wide variety of factors, including:

- That political independence for the people of East Timor is an eventual certainty;
- That fairly and rapidly resolving such disputes will contribute considerably to the political, social and economic stability of East Timor;
- That such an approach has been discussed in detail with the representatives of the people of East Timor, and based on their many constructive inputs into the development of these proposals;

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<sup>1</sup> The authors of this paper consulted a wide variety of persons and institutions in the preparation of this paper, and are very grateful for the assistance provided from the following: UNTAET Land and Property Unit: Michael Brown, Pedro de Soussa, Nigel Thomson, Campbell Watson, Liz Biok, Kath Elderton, Ian Moss, Grant Cullen, Bu Wilson, Joao de Sarmiento, Antonio Vitor, Warren Wright. (These and other members of the unit also made valuable contributions during a workshop at which a preliminary proposal was presented and discussed.) UNTAET Governance and Political Affairs: Jean-Christian Cady, Faith Harding, Jonathan Prentice, Flavio Domingo. UNTAET Legal Affairs: Hans-Jorg Strohmeyer, Jonathan Morrow, Vijaya Samareweera. UNTAET Media: Peter Biro. UNTAET Human Rights Office: Sidney Jones, Bill Smith. UNTAET SRSG Office: Fabrizio Hochschild. Viqueque District Administrator: Richard Manning. Land and Property Officer, Aileu: John Tynnella. Community Empowerment and Governance Project: Christopher Dureau. CNRT: Joao Gonsalves, Sofia Borges, Mario Carrascalao (former Governor of East Timor). Focus group of ten women working for the NGO FOKOPES. Focus group of eight students from different parts of East Timor, convened by the East Timor Student Solidarity Council. Judge of Dili District Court: Justice Dos Santos. Lawyer and Anthropologist: Dionisio Soares. Two *Liurai* from Baucau: Abel de Costa Belo, Cipriano da Silva Correira. Head Justice and Reconciliation Commission: Manuel Abrantes. Dili Catholic Church: Father Fransico Barretto. Vice President Chamber of Commerce: Gino Favaro. Sonia, Carlos and numerous other residents of East Timor who provided valuable information and ideas. Thanks to Antonio Vitor and Liz Biok for arranging an enlightening consultation process with East Timorese stakeholders, and to Fransico da Silva and Joao de Sarmiento for helping with translation.

- That the nature of East Timor society, its culture, customs and history have been taken fully into account in the development of the proposed procedure;
- That land in East Timor is much more than a commodity; land (particularly customary land) is revered and considered a community good, forming an indispensable and central component of Timorese culture and life.
- That clarity with respect to housing, land and property rights will be highly beneficial to the economic reconstruction and development of East Timor;
- That the protection and promotion of internationally recognised human rights, in particular those rights recognised within the standards noted in UNTAET Regulation No. 1999/1, will be enhanced through the establishment of such a procedure;
- That the establishment of specialised judicial and other bodies mandated to promote housing, land and property restitution and other rights in post-conflict societies is commonplace throughout the international community;
- That the scale and nature of housing, land and property issues are within the overall mandate and capacity of UNTAET to address; and
- That redress for past violations of human rights carried out under previous regimes cannot be divorced from the process of settling land and property disputes and verifying related claims.

Given the turbulent history of land relations in East Timor and the immense complexities these raise, it is highly unlikely that all land injustices of the past can or will be rectified under the procedures proposed below. Indeed, there are some questions without answers in the area of housing, land and property rights in East Timor today, and these can only ever be answered by the future democratic government of East Timor. What is inherently possible, however, is to create a system of land rights dispute resolution in East Timor which as much as possible seeks to redress the injustices of the past, reverses arbitrary and violent land confiscation notwithstanding when these took place, and one which builds on the existing institutions and rich cultural fabric of this new nation. This document outlines the basis for the creation of such an mechanism.

## **1. Housing, Land and Property Disputes in East Timor: Current and Potential Challenges Facing East Timor**

Housing, land and property disputes are an increasingly sensitive topic in East Timor, and their peaceful resolution will form a key litmus test as to the success or failure of the UNTAET mission once it transfers the governance of the country to the people of East Timor. The process of developing a dispute resolution mechanism will need to take heed of the types of anticipated disputes, the likely number of such conflicts and the historical and other considerations connected to them. Bearing this in mind, section 1 examines the spectrum of possible housing, land and property disputes likely to arise, as well as analysing several additional challenges facing East Timor in this regard.

As in many countries with a colonial past or experience with illegal occupation, East Timor has a history of land disputes that have sometimes manifested into political violence and

instability. In addition to the problems caused by external entities, even during the brief period of internal rule in 1975 which eventually erupted in a short, but painful civil war, many consider land issues as one of the main origins of the fighting. The often tragic history of East Timor, both recent and further back in time, is well known and the desire by all parties to ensure a non-violent and prosperous future for the country is clearly discernable by all groups involved in the establishment of an independent and democratic East Timor. At the same time, concern about the land issue and on-going and possible future land disputes is equally evident in Timorese society. Many land questions and problems remain unanswered and unsolved, which only adds to general uncertainty about some of the more important decisions yet to be made in this emerging nation.

Although the temptation to delay decision-making on housing, land and property issues must surely be almost irresistible to some key players in East Timor, failing to act to provide clarity with respect to housing, land and property rights, to prevent conflicts whenever possible and to resolve unavoidable disputes will only serve to postpone crucial choices affecting East Timor's the economic, political and legal future. Regularising the housing, land and property rights situation in East Timor will invariably (as in all countries undergoing periods of major transition and transformation) be arduous, complicated and sometimes painful. This is inevitable in any process designed to fairly - in accordance with internationally recognised human rights - rectify the legacy of literally centuries of domination by outside powers without any democratic mandate given by the people of East Timor.

While ultimate decisions about housing, land and property rights will *always* be subject to eventual approval by the people of East Timor, as represented by the democratic government of East Timor, it is neither necessary nor prudent to wait several years more to find amicable outcomes to on-going and potential housing, land and property disputes. Attention must be given *now* to resolving these dilemmas and to begin to develop an increasingly clear picture as to who has the right to reside in or own the housing, land and property of East Timor, based on an independent, fair, consistent and equitable legal framework and dispute resolution and claims verification procedure. Clearly, the stakes are high. The current tensions in Uato Lari (Viqueque) resulting from a long-standing land dispute is but one of many cases in point. However, the possible consequences of having no housing, land and property dispute resolution mechanism in place are surely far less desirable than conscientiously tackling this issue head on as soon as possible.

There is nothing at all unusual about the establishment of specialised bodies to deal with housing, land and property disputes and claims. This is particularly true in both post-conflict societies and countries undergoing major political transformation; both instances of which apply to East Timor. Housing, land and property dispute resolution mechanisms continue to operate in countries such as South Africa, Estonia, Germany, Bosnia & Herzegovina, Kosovo, Latvia, Georgia and elsewhere and have between them issued millions of decisions about housing, land and property rights over the past decade. The establishment of a similar mechanism in East Timor, therefore, will add this new country to the list of nations which are attempting to rectify years, if not decades (or more), of manipulation, dispossession and often destruction of the housing, land and property rights of people across the globe.

To do so will not be a simple or necessarily painless undertaking. But this does not mean it cannot or should not be done. The severe displacement and disruption of the past decades, coupled with the decimation of the housing stock in September 1999, has created a very

difficult environment for the resolution of many the types of possible disputes and verification claims. While the political future of East Timor is clear in terms of the ability of the people of the country to assert and act upon their rights to self-determination, the present transitional situation is somewhat more ambiguous. This ambiguity has a bearing on many areas of policy and law, in particular those relating to housing, land and property. Moreover, the likelihood of the emergence of a clarified legal situation during this transitional period is by no means a foregone conclusion, even though a partial attempt will be made to do so later in this document. It is this lack of legal clarity and the many divergent views of the applicable law, combined with historical legacies, that are the major sources of the disputes which have arisen and will arise in the coming months.

It is important to keep constantly in mind that housing, land and property disputes in post-conflict, post-occupation settings are sadly almost a guaranteed feature of every nation's political history which has experienced such traumas. In this regard East Timor shares many common experiences with some of the nations mentioned earlier which are also attempting to grapple with housing, land and property issues. Examining how these other nations have sought to provide redress will be useful in determining the shape of the proposed model for East Timor. At the same time, however, many of the specific features of the history of East Timor are relatively unique and thus require innovative approaches to the resolution of disputes. For instance, the fact that the country has only had a very short period of semi-independence in 1975, and has otherwise been governed by illegitimate, non-representative and non-democratic regimes, makes complete reliance on past law as the basis for determining rights inherently unreasonable. The fact that the current UN administration is by its very nature temporary also creates unique considerations in the design of a dispute resolution mechanism. There are many other features similar to these which will be addressed below in section 4. One common feature, though, that runs through all nations undergoing dramatic transition is the need to redress housing, land and property rights and resolve disputes quickly and as fairly as possible.

### **Actual and Potential Housing, Land and Property Disputes**

There are a range of actual and potential types of housing, land and property disputes that will may arise or already have arisen in East Timor. While not all manifestations of such conflicts can be outlined here, it may be instructive to delineate some of the larger, more pervasive (actual and possible) disputes with a view to providing some idea as to the types of disputes the proposed East Timor Land Dispute Mechanism will need to resolve.

#### ***Housing, Land or Property Confiscated During Indonesian Rule***

Few countries have ever undergone the degree of displacement and manipulation of housing, land and property rights as that experienced by the people of East Timor during the 24 year Indonesian occupation. The scale of disruption was so large that it is unlikely that any family escaped these measures. Rights to housing, land and property were often revoked on the basis of the 'social function' of land, and overall, land acquisition procedures were widely known to have been highly corrupt and unjust. Land confiscation during the Indonesian occupation was carried out based on various grounds and rationale, many of which would clearly contravene international human rights standards, thus justifying the submission of applications for restitution. In addition, the failure of the authorities to pay compensation in the vast majority of cases, has meant the recent emergence of many claims for the return of these uncompensated lands and properties.

Under Indonesian rule, the arbitrary deprivation of housing, land and property involved the forced resettlement of villages for the purposes of providing lands under the highly inequitable transmigration programme, acquisition in the name of 'public development' and 'private development', confiscation on the basis of 'public interest', seizure of land on the basis of non-recognition of tenure, outright confiscation by the Indonesian Military, and on other questionable grounds. Typically, the acquisition of land involved harassment, intimidation, no clear definition of what constituted public interest or development, little or no compensation, limited access to independent mechanisms for valuation and no effective right of appeal to an independent judiciary. *These and similar acts seriously contravene human rights standards, and will be a major source of applications under the proposed procedures.* Arguably there are strong grounds for restoring rights to all land non-consensually acquired under Indonesian administration. This would apply both to those holding valid Portuguese titles as well those basing applications on customary law.

### ***Demands for Restitution of Original Lands by Communities Displaced During Portuguese Rule***

Disputes may also arise based on claims that the Portuguese authorities confiscated or expropriated housing, land or property during their colonial rule. Under the 1901 Carte de Lei of 9 May 1901 all land not proved to be based on Portuguese titles was held by the State which could be the subject of land *alvara* titles. A subsequent law of 2 December 1901 maintained that 'all overseas land which until 11 May 1901 was not included in a system of valid individual land ownership based on Portuguese laws, is controlled by the State'. Customary land classified as land without title (or 'land without master') became state land and could subsequently be allocated by Government, resulting in many persons and communities losing land or control over land. Disputes may emerge from individuals and communities which lost access to land and property as a result of the imposition of these laws, and care must be exercised to ensure that such claims are not summarily dismissed due to the length of time that has passed since the adoption of the two laws just mentioned. By way of comparison, people in South Africa may submit claims under the Land Restitution Act relating to land confiscated as far back as 1913.

### ***Assertion of Portuguese titles***

Official records and land registration experts confirm that 2,709 land title certificates were issued by the Portuguese administration during colonial rule. If this number is accurate, assessing the validity of title documents (notwithstanding the eventual legal weight accorded to them) should in many respects prove easier than titles issued during the Indonesian occupation. Potential disputes may arise when claimants submit applications seeking restoration of title or compensation or restitution for housing, land or property acquired during the colonial period (e.g. until 1975), but since abandoned. At the same time, however, it must be recalled that only those considered to have 'assimilated' were conferred official title during the Portuguese colonial period, which in itself raises issues of equity. During Portuguese rule land ownership was concentrated in five assimilated groups: The Catholic Church, the State Agricultural Company (SAPT), *liurai* favoured by the Portuguese administration, a *mestizo* elite of mixed Portuguese and indigenous descent and the Chinese-Timorese traders. It is expected that most disputes centring on land acquired during this period will come from these five groups. The SAPT has already made indicated their intent to

pursue some 20 claims, while a further 50 claims have been addressed to staff of the UNTAET Land and Property Unit have from Chinese businessmen.

While various types of titles were issued during Portuguese rule (including freehold title (*propriedade perfaide*), 20 year leasehold which could be converted into freehold after 40 years (*aforamento*), commercial leases for a term of less than 30 years (*arrendamento*), occupation rights based on traditional rights, or a lease agreement for less than five years (*ocupacao*) and 'control' right to allow housing development (*venda*)), the fate of Portuguese titles under Indonesian rule differed. Some were subject to sale (although many are now claiming to have never been paid), while others were converted into Indonesian title. In terms of the Conversion Law (Regulation No. 18 (1991) those titleholders who did not return to become Indonesian citizens received Indonesian titles lesser in status than those who did receive citizenship, while those who did not apply for conversion either personally or through power of attorney did not receive Indonesian titles. Portuguese titles were converted into ownership rights (*hak milik*) where the titleholder was an Indonesian citizen, while non-Indonesian citizens received lesser rights, thus raising issues of discriminatory treatment. Under the Conversion Law, the right of building and commercial rights of use were prohibited for foreigners and these had to be transferred within one year or revert to the State. This, too, on the surface appears arbitrary. Under the subsequent Regulation of the Head of the BPN No. 4 of 1992 Portuguese titleholders were required to apply for confirmation of their title conversion. Some failed to apply, and while title may not have been lost, it did restrict the right to register or validly transfer the title as long as no application for conversion had been made. Housing, land and property rights could also be lost through abandonment and lapse due to expiry of term. *All of these consequences of the various Conversion standards raise serious human rights concerns, and will need to be taken into account in the proposed dispute resolution procedures.*

### ***Secondary Occupation of Abandoned/Returnee Residential Properties***

The secondary occupation (squatting) of abandoned and/or returnee houses is widespread throughout East Timor, and especially so in Dili given the scale of housing destruction in September 1999. Such unlawful occupation of homes can create serious issues of law and order and can also, if not handled properly, result in violent episodes when the original owner or tenant returns home to find their homes occupied by others with nowhere else to go. This reality, however, should not be seen as inherently negative or necessarily as worrisome as some have suggested. While it is certainly true that original *bona fide* owners or tenants (insofar as they are officially recognised as such) must have a right to the eventual restitution of their homes, the occupation of their homes now is humanitarian in nature, and essentially a side effect of a much larger problem that needs desperately to be addressed. Above all, it signals the obvious but insufficiently addressed problem of a massive shortage of affordable housing, particularly in the urban areas of the country. As in all other parts of the world, when people have no legal affordable housing available to them they solve their own housing needs by which ever method they can; in this instance by occupying abandoned homes. The massive shortfall of adequate housing in East Timor may in fact generate the largest number of relevant disputes of all possible housing, land or property disputes. Indeed, many of the East Timorese with whom the authors spoke in the preparation of this report indicated as much.

Many allegations have been made by returning families that large (and unaffordable) payment demands are commonly made by secondary occupants to the returning owners for

'watching the house' or for 'improvements made'. If the returning family either does not or cannot pay, the secondary occupants refuse to leave, thus generating further potential for conflict. Some reports have emerged that one family may be in secondary occupation of up to five (or more) houses in the hopes of eventually 'selling' or 'renting' the premises to persons and families in need. Resolving these disputes before they turn ugly is a major challenge facing UNTAET and one that requires prompt attention. Under the proposed dispute resolution mechanism outlined below, returnees can utilise the relevant procedures as a means of securing the restitution of their homes, but even this will be difficult in the absence of an expansion by UNTAET to include official competencies in the area of housing. It is our view that the vast majority of secondary occupants will be willing to move from homes claimed by returnees if they can maintain their dignity by doing so *and* are guaranteed by UNTAET some form of rehousing, resettlement to alternative land or the provision of compensation. In instances where no one claims houses occupied by secondary occupants or where the housing in question was formerly utilised as military housing, the dwelling in question should be considered public property. In turn, the secondary occupants should be allowed to remain and eventually be conferred tenure rights as paying tenants and perhaps eventual owners.

### ***Demands to Reverse Indonesian Judicial Decisions Concerning Housing, Land and Property***

Disputes may also come about involving demands for the reversal of Indonesian judicial decisions concerning allocations or the establishment of rights to housing, land and property. Given the almost complete absence of an independent judicial system in East Timor during the occupation, it is not unreasonable to expect that claims demanding reversal will arise.

### ***Demands to Reverse UNTAET Allocations***

In accordance with the powers granted under section 7 of Regulation 1999/1, UNTAET has temporarily allocated several hundred largely abandoned public properties over the past eight months. UNTAET now administers various public and abandoned buildings, most of which are under temporary use agreements for periods varying from several months to several years (sometimes up to ten years). Given the lack of legal clarity as to ownership and related rights, and the fact that people are returning to buildings they fled from during the violence of September 1999 and which may have been allocated by UNTAET, many 'public' and 'abandoned' buildings are currently facing informal claims by claimants who believe their rights are being interfered with by making the allocations.

### ***Compensation Demands for Housing Damage and Destruction***

Claims for compensatory damages may surface from East Timorese whose homes and properties were destroyed subsequent to the popular consultation held on 30 August 1999. As is well known, the scale of the damage to the housing stock is estimated to be over 50%, with some estimates as high as 80%. This issue is closely related to the on-going negotiations between UNTAET and Indonesia on various outstanding areas of concern, including assets and liabilities. While it is probably unlikely that Indonesia will provide any financial compensation to East Timor for the destruction wreaked in the country throughout the occupation (despite quite convincing grounds that it should be required to do so under international law, and that statute of limitations for civil claims relating to reparations for

gross violations of human rights do not exist), demands for compensation may nonetheless surface, and mechanisms need to be in place to adequately deal with any such claims.

### ***The Re-emergence of Traditional Conflicts***

The re-emergence of long standing but dormant traditional land conflicts may occur. Recent months have been witness to several such disputes are the legacies of the dispossession of land and political manipulation carried out by Portuguese and Indonesian authorities. Great care must be taken by the relevant authorities in East Timor to resolve these disputes as rapidly as possible placing adequate emphasis on traditional and customary laws insofar as they relate to the conflicts concerned. Although many such disputes will be based almost entirely on informal or customary law (either *adat* law, variations thereof, or local customs and practices), this should not preclude such cases from being resolved thorough reliance on the East Timor Land Dispute Mechanism.

### **Additional Challenges to the Effective Resolution of Housing, Land and Property Disputes**

In addition to the potential housing, land and property disputes in East Timor, there are several additional challenges facing the country which require urgent attention if the proposed Land Dispute Mechanism is to function in accordance with expectations.

### ***The Absence of an UNTAET Housing Component***

At present, the administrative structures of UNTAET lack a housing component or even any mention of the term 'housing'. Consequently, the institution as a whole lacks official competence to issue a housing policy, allocate sufficient funds to the reconstruction and rehabilitation of housing and to act as the guarantor of housing rights in East Timor. The absence of an official housing policy component within the UNTAET Administration poses a serious threat the successful implementation of a housing, land and property dispute resolution mechanism, and the design proposed in this document necessarily presumes that UNTAET will in fact develop a housing competence in the near future. The entire design of the East Timor Land Dispute Mechanism is premised on ensuring that no persons become homeless or suffer any other housing rights violations as a result of involvement in the process, and it is strongly felt that only UNTAET can provide these guarantees - as the Government of the moment - to all persons invoking the dispute resolution mechanism. Virtually all governments of the world maintain official housing competencies, and while the stature of UNTAET in this regard is surely unique, there is no valid reason why it cannot incorporate housing responsibilities into its structure. It should also be noted that UNTAET Regulation 1999/1 explicitly provides that 'all persons undertaking public duties or holding public office in East Timor shall observe internationally recognised standards...' UNTAET is also under this obligation and must, therefore, observe the numerous housing rights provisions under international human rights law, many of which create clear legal obligations on behalf of Governments or those with the jurisdiction of Government (See annex 3). Incorporating housing into the mandate of UNTAET will allow it to carry out vital functions such as the creation of a national land bank which would find and allocate undeveloped land for new self-build housing, and the development of simple plans, the large-scale provision of building materials, and promises of eventual full ownership to those currently residing in the new popular settlements of the country.

### ***Inadequate Information on National Housing Stock***

While progress has been made by UNTAET with respect to surveying public buildings, to date no nationwide survey of the national housing stock has been undertaken. Due perhaps in part to the absence of official UNTAET competence on housing issues, but equally to the scale of the problem, little has been accomplished thus far. This is problematic in terms of the effective functioning of the ETLDM due to the fact that the identification and provision of suitable alternative land and housing for persons whose claims are rejected or fail is a cornerstone of the process. Without a national survey, it will be difficult to implement this vital element of the ETLDM process.

### ***Inadequate Housing, Property and Land Registration Records***

The destruction of much of the housing, property and land registration records is an additional obstacle to resolving possible disputes. Some have estimated that with respect to Dili, 100% of the land tax and district information records and 60% of the land title records were destroyed in the recent violence. At the same time, the loss of these records may not necessarily prove as disastrous as some have indicated. Only a small portion of the total land area of East Timor was ever subject to official registration (mostly urban areas), with most land still under customary as opposed to formal title, thus making official records of limited relevance. In the second place, many titles issued during the Indonesian period were either fraudulent or based on the arbitrary deprivation of housing, land and property by the occupation authorities, thus reducing the credibility of these titles alone acting as a convincing basis of evidence of ownership or tenancy claims. While thirdly, it is highly likely that the Government of Indonesia also maintains copies of many relevant records in Jakarta, and these may provide (with the previous caveats in mind) valuable sources of information for the Land Claims Tribunal in assessing applications.

### ***The Absence of a Consistent Legal and Regulatory Framework***

The continued lack of legal clarity also constitutes a major challenge to the resolution of housing, land and property disputes. The very transitional nature of UNTAET and its legal powers, combined with the problematic legislative legacies left behind by the former regimes which have governed East Timor, make the development of a clear legal framework for addressing applications far more difficult than in other countries where similar procedures exist. In particular, the continued application of pre-25 October 1999 law, in particular Indonesian Law, also creates challenges to the successful resolution of disputes. While UNTAET Regulation No. 1999/1 clearly states this legal regime shall apply, the Regulation also provides that subsequent UNTAET Regulations may replace this law and thus override it. Given the complexity of land law applicable to East Timor, and the inconsistent nature of some provisions of Indonesian law with relevant international national standards it may be necessary to suspend the application of certain legal provisions in order for the Land Claims Tribunal to work effectively.

### ***The Unresolved Issue of East Timorese Citizenship***

Until such a time that clarity emerges as to who is and who is not an East Timorese citizen and the rights to housing, land and property a citizen may or may not have, it will be difficult for the Land Dispute Mechanism to issue final pronouncements on many claims, particularly those from obvious non-Timorese citizens. Given the tendency of many Timorese decision-

makers to favour restrictions on the right of foreigners to own property in the country, the determination of such issues will be vital to the procedures proposed below.

## **2. Laws, Regulations and Decrees Governing the Determination and Registration of Land Rights**

Determining precisely which legal regimes apply to East Timor, where various legal norms fit within any hierarchy of laws relevant to the country and the weight accorded the different legal standards and principles present a series of considerable challenges with respect to the design of remedial procedures to resolve housing, land and property disputes. Obviously, the choice of legal regime or which elements of which legal regimes upon which to base decisions will have a marked influence on any decisions under such a procedure will affect the nature of the dispute resolution process. In addition, any attempt to resolve these disputes cannot ignore the political and historical context in which they are to operate. This section will briefly address the specific UNTAET mandate to address housing, land and property issues, the need to suspend the application of parts of two Indonesian-era laws and guidance which can be offered by international human rights law in determining the legality of past actions relating to housing, land and property and as a means of assisting the Land Dispute Mechanism in determining the validity of applications asserting housing, land and property rights today.

### ***UNTAET's Legislative Mandate on Housing, Land and Property Issues***

UNTAET has a clear legal mandate, and even obligation, to examine and address housing, land and property issues in East Timor. This mandate is derived from the contents of UN Security Council Resolution 1272 which emphasises the duty of UNTAET to protect and promote human rights, one of which is the widely recognised right to adequate housing (See annex 1). UNTAET, therefore, must take into account and apply wherever possible, international human rights standards recognizing the right to adequate housing and related rights. This approach is augmented by Section 3.1 of UNTAET Regulation No. 1999/1 that provides that:

*Until replaced by UNTAET regulations or subsequent legislation of democratically established institutions of East Timor, the laws applied in East Timor prior to 25 October 1999 shall apply in East Timor insofar as they do not conflict with the standards referred to in section 2, the fulfillment of the mandate given to UNTAET under United Nations Security Council resolution 1272 (1999), or the present or any other regulation and directive issued by the Transitional Administrator.*

Consequently, given the position of traditional or customary law in East Timor, five distinct legal regimes are relevant to the current situation with respect to housing, land and property in East Timor. These are:

- Customary or Traditional (*adat*) Law
- Laws Applied in East Timor prior to 25 October 1999;
- International Human Rights Standards;
- Security Council Resolution 1272; and
- UNTAET Regulations or Directives

If we take these four distinct legal regimes as the legal basis for developing an appropriate subsequent regulatory and procedural framework for designing a fair and equitable means of resolving land and property disputes and verifying relevant land and housing claims we can see that the law relevant in this regard is far more extensive than merely the law that was in place prior to 25 October 1999. This important point is far more than merely a legal technicality, for it forms the basis for any new legal framework which will be developed to deal adequately with disputes relating to land and housing. Prior to examining the possible guiding role to be played by the international law relating to housing rights, land rights and property rights in the context of dispute resolution, it will be useful to give some attention to the various domestic legal regimes in so far as they relate to the matters at hand, and to assess whether any suspension of law may be required as a pre-requisite to the successful functioning the Land Dispute Mechanism. This, in turn, will be followed by more extensive reference to some of the guiding principles which may be used in the determination of housing, land and property rights in East Timor.

### ***Possible Areas of Legislative Suspension***

Given that Indonesian law (insofar as it does not conflict with international standards) still technically applies to East Timor, it will be important to ensure that that law is (in accordance with Regulation 1999/1) fully consistent with international human rights standards. This has a bearing not only on the obvious need for legal consistency and clarity, but may also be critical as a means of preventing the continued application of provisions by the Land Dispute Mechanism or others which are manifestly incompatible with human rights norms. At the same time, legislative suspension is invariably a tricky business and care must be taken to ensure that any suspended provisions are either determined to be entirely unnecessary to replace, or in fact replaced by new provisions which are compatible with international standards. Taking these points into account, it may be necessary to suspend the application in East Timor of elements of two Indonesian laws: The Basic Agrarian Law (1960) and the Conversion Law (1991).

#### *The Basic Agrarian Law (1960)*

The 1960 Act establishes eleven 'rights in land', including: 1. Rights of ownership (hak milik); 2. Rights of exploitation (hak guna-usaha); 3. Rights of building (hak guna-bangunan); 4. Rights of use (hak pakai); 5. Rights of lease for building (hak sewa tanah bangunan); 6. Rights of lease in farmland (hak sewa tanah pertanian); 7. Rights to clear land (hak membuka tanah); 8. Rights to harvest forest products (hak memungut hasil hutan); 9. Right to pawn (hak gadai); 10. Rights to Sharecrop (hak usaha bagi hasil); and 11. Right to lodging (hak menumpang). Under the Act traditional land tenure rights are acknowledged (hak ulayat), but ownership and disputes about land are meant to be settled in State courts which would only recognise title evidenced by some official document. The 1960 Basic Agrarian Law also effectively pays only lip service to traditional land rights (adat law) and undermines these rights in its current form by requiring these rights to be converted into individual titles. On the basis of this provision, many East Timorese lost their land to new owners who came to East Timor after 1975 and who could produce some kind of 'official' document as 'evidence' of their right of ownership to land. In addition, land ownership (hak milik) is generally restricted to Indonesian citizens only (Article 9). Non-citizens may also acquire hak milik by non-testamentary disposition of a deceased's estate or by marriage but it must be transferred within one year to an Indonesian citizen or released to the State. An applicant for conversion must show that she/he is an Indonesian national and the regulations

require that the area and use of the subject land be specified and registered in the Land Registry Office. Only the statutory rights may be registered so that *adat* rights must be subsumed under one of the statutory rights. Article 12 imports the village philosophy of *gotong royong* which is not relevant to East Timor villages, while Article 21(3) effectively ends the ownership rights of Timorese who have adopted another citizenship, or who have lost Indonesian citizenship. Article 27(3) and 27(4)(e) remove ownership (*hak milat*) and cultivation rights when properties are abandoned. All of these anomalies are possible grounds for legislative suspension.

### *The Conversion Law (1991)*

The 1991 Conversion Law was ostensibly designed to convert land titles issued during Portuguese rule into Indonesian legal norms, reflecting Indonesian legal understandings of land and property law. This law, however, makes important and essentially arbitrary distinctions between citizens of Indonesia and 'foreign citizens' and others, in effect giving the former group considerably greater rights than the latter groups. In addition, Article 5 effectively extinguished or transferred rights to 'exploit' or 'use' buildings if the rights held belonged to a foreign citizen or foreign legal entity. If this was not carried out (and in many instances it was not), 'the right on the land concerned shall be abolished for the sake of law and the land shall become land directly controlled by the State....'. The Conversion Law also transferred land held by institutions of the Government of Portugal or other public entity to the Indonesian State. Both on grounds of unfair differential treatment between different groups on the basis of citizenship and the fact that the law is expressly concerned with East Timor, this Law could be suspended. This point of view is further strengthened by the fact that the time-lines envisaged in this law have long elapsed and that its current relevance is questionable.

### ***Guiding Principles in the Determination of Housing, Land and Property Rights in East Timor***

The process of settling housing, land and property conflicts in East Timor, whether through mediation or adjudication, must be based on a reasoned consideration of various relevant legal regimes including customary law, Portuguese law, Indonesian law and law established by UNTAET. Given the relative complexity and confusion surrounding the vexed question of which legal regime to apply to which cases and the considerable disagreement on this point throughout Timorese society, it is proposed that the determination of housing, land and property rights in East Timor be based not exclusively on one or more components of law which may have applied to the territory of East Timor at one point in time, but also on basic international legal principles and norms which have achieved widespread and consistent global acceptance.

It is strongly felt that reliance on any of the current or former legal regimes as the sole basis for the determination of housing, land and property rights will not necessarily ensure the right to an effective remedy or due process to those involved in such disputes. Given the conflicting nature of many claims, the historical baggage associated with them, the fact that no regime which ever adopted land or property laws in East Timor had democratic legitimacy in the eyes of the population and the international nature of the current administration (UNTAET), reference can and must be made under the UNTAET administered land dispute mechanism (by those parties involved in mediation and those engaged in judicial remedies) to over-arching international legal principles and norms; both as a means of providing additional

guidance to decision-makers when reference to local law is insufficient for determining the validity of a claim, as well as ensuring that basic principles of human rights pervade the entire dispute resolution process.

Formally requiring the conflict dispute mechanism to take fully into account these international principles and norms, moreover, can provide additional grounds for the assessment of the disputes concerned. Such principles and norms, therefore, can be examined both in terms of the current situation facing a party to a dispute, as well as within the historical context of the conflict concerned. Should such principles and norms pervade the determination process this will allow decision-makers the clear option of taking into account any human rights violations which may have occurred throughout history with relevance to the housing, property or land under dispute, which in turn can be weighed against other rights which may be asserted by involved parties.

### *The right to adequate housing*

The right to adequate housing is widely enshrined in international human rights standards, most notably in the Covenant on Economic, Social and Cultural Rights (Article 11(1)), The Universal Declaration on Human Rights (Article 25(1)), the Convention on the Elimination of All Forms of Racial Discrimination (Article 5(e)(iii)) and many others (See annex 3). The most important legal interpretation of this right is found in Committee on Economic, Social and Cultural Rights General Comment No. 4 on the Right to Adequate Housing (1991) (See annex 4). Among other things, General Comment No. 4 provides considerable guidance as to what housing rights mean in law, and prescribes that for housing to be considered 'adequate', seven basic criteria must be in place. These are: security of tenure, habitability, affordability, accessibility, availability of materials, location and culturally adequate.

### *Protection against forced evictions*

Few areas under international law have advanced more in recent years than attention to the practice of forced evictions. It is now widely recognised that 'forced evictions constitute gross violations of human rights'. The General Comment No. 7 on Forced Evictions (1997), issued by the UN Committee on Economic, Social and Cultural Rights provides the greatest legal clarity in this regard.

### *Rights to Respect for the Home*

Under article 17 (right to respect of the home) of the Covenant on Civil and Political Rights, 'interference with one's home' can only take place 'in cases envisaged by the law'. It is not enough, however, that the such interference is addressed in the law, but it must (particularly when involving the complete removal of ownership or tenancy rights without relocation, re-housing or compensation) "be in accordance with the provisions, aims and objectives of the Covenant and should be, in any event, reasonable in the particular circumstances".<sup>2</sup>

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<sup>2</sup> General Comment No. 16 of Human Rights Committee on Article 17 of the Covenant on Civil and Political Rights (1988).

### *Property rights and the peaceful enjoyment of possessions*

The right to property has a long and controversial history under international human rights law. While the Universal Declaration recognises property rights in Article 17, the subsequent Covenants both failed to enshrine these rights, although several other rights they do enshrine are of direct relevance (housing rights, the right to respect for the home, etc). The regional human rights treaties in Europe and the Americas and Africa (there is no Asian system of human rights protection, nor regional human rights treaty) all recognise various formulations of property rights, however these systems can only provide secondary guidance to relevant cases in East Timor. At the same time, the jurisprudence under the European Convention of Human Rights on Article 1 of Protocol One ('the right to the peaceful enjoyment of possessions') is the best international source of case law on property rights anywhere. For instance, in the case of Loizidou v. Turkey, which involved the impossibility of return to one's property, the European Court noted that: *...the complaint is not limited to access to property but is much wider and concerns a factual situation: because of the continuous denial of access the applicant had effectively lost all control, as well as all possibilities to use, to sell, to bequeath, to mortgage, to develop and to enjoy her land....The continuous denial of access must therefore be regarded as an interference with her rights under Article 1 of Protocol No. 1.*<sup>3</sup> The Court has also issued the following pronouncement with respect to the legitimacy of actions by the State resulting in the deprivation of property: *'In this connection, the Court recalls that not only must a measure depriving a person of his property pursue, on the facts as well as in principle, a legitimate aim 'in the public interest', but there must also be a reasonable relationship of proportionality between the aim employed and the aim sought to be realized....The requisite balance will not be found if the person concerned has had to bear an individual and excessive burden....Clearly, compensation terms are material to the assessment whether a fair balance has been struck between the various interests at stake and, notably, whether or not a disproportionate burden has been imposed on the person who has been deprived of his possessions.*<sup>4</sup>

### *Protection against homelessness*

General Comment No. 7 (1997) on Forced evictions provides the following: '17. Evictions should not result in rendering individuals homeless or vulnerable to violation of other human rights. Where those affected are unable to provide for themselves, the State party must take all appropriate measures, to the maximum of its available resources, to ensure that adequate alternative housing, resettlement or access to productive land, as they case may be, is available'. This right needs to find a central place in the Land Dispute Mechanism proposed below.

### *Freedom of movement and right to choose one's residence*

The freedom of movement and the right to choose one's residence is also widely recognised under international human rights standards and must be taken into account, particularly during relocation or resettlement undertakings.

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<sup>3</sup> Loizidou v. Turkey (40/1993/435/514, judgment 18 December 1996).

<sup>4</sup> See the case of Lithgow and others v. U.K (Judgment 8 July 1986, Series A, No. 102; (1986) 8 EHRR 329, para. 120).

### *The right to restitution for dispossession*

The right (particularly of refugees and internally displaced persons) to the restitution of housing, land or property upon return to their places of habitual residence have been increasingly recognised under international human rights law. UN Sub-Commission on Protection and Promotion of Human Rights resolution 1998/26; '1. Reaffirms the right of all refugees, as defined in relevant international legal instruments, and internally displaced persons to return to their homes and places of habitual residence in their country and/or place of origin, should they so wish; 2. Reaffirms also the universal applicability of the right to adequate housing, the right to freedom of movement, the right to privacy and respect for the home and the particular importance of these rights for returning refugees and internally displaced persons wishing to return to their homes and places of habitual residence; 3. Confirms that the adoption or application of laws by States which are designed to or result in the loss or removal of tenancy, use, ownership or other rights connected with housing or property, the active retraction of the right to reside within a particular place, or laws of abandonment employed against refugees or internally displaced persons pose serious impediments to the return and reintegration of refugees and internally displaced persons and to reconstruction and reconciliation; 4. Urges all States to ensure the free and fair exercise of the right to return to one's home and place of habitual residence by all refugees and internally displaced persons and to develop effective and expeditious legal, administrative and other procedures to ensure the free and fair exercise of this right, including fair and effective mechanisms designed to resolve outstanding housing and property problems...'

### *Non-discrimination and Equality of treatment*

The principles of non-discrimination and equality of treatment form cornerstones of human rights law and now constitute customary international law. As such, if housing, land or property transactions were based on any discriminatory grounds, such as race, colour, sex, nationality, ethnic origin, political belief, social origin, sexual orientation, citizenship or other ground, the transaction could lawfully be declared to be null and void. By the same stroke, any decisions made under the Land Dispute Mechanism must be of a non-discriminatory nature.

### *Reasonableness and Proportionality*

The international legal principles of *reasonableness* and *proportionality* are also important in cases dealing with housing, land or property. If States revoked such rights in an arbitrary manner or applied the law based upon racial, ethnic or national origin or other forms of discrimination, this would necessarily be classified as both *unreasonable and disproportionate*, and thus a violation of international law.

### *The Fair Balance Doctrine*

The now widely accepted *fair balance doctrine* stipulates that in determining the compatibility of a certain act by a State with regard to housing and property issues, any interference in the exercise of these rights must strike a *fair balance* between the aim sought to be achieved and the nature of the act. In determining the existence of *fair balance*, the European human rights bodies have noted there had been a violation of Article 1 of Protocol No. 1 (the right to the peaceful enjoyment of possessions) when no fair balance had been

struck between the interest of protecting the right to property and the demands of the general interest as a result of the length of expropriation proceedings, the difficulties encountered by the applicants to obtain full payment of the compensation awarded and the deterioration of the plots eventually returned to them<sup>5</sup>.

***Possible Circumstances Where Reasonable Clarity May Exist With Respect to the Conferral of Rights to Remain, Reside, Own, Exploit or Occupy Relating to Housing, Land or Property Claims***

Under the proposed East Timor Land Dispute Mechanism applications relating to housing, land and property disputes and verification claims may be submitted by persons and groups seeking confirmation of their rights to remain, reside, own, exploit or occupy the housing, land or property in question. With a view to providing provisional legal clarity as to the likely outcome of particular types of applications and thus reducing the number of disputes and verifications submitted to the proposed structures, it may be useful here to delineate a variety of possible circumstances where reasonable clarity may now exist in a sufficient manner for such applications to receive purely administrative attention rather than judicial or mediated action. The following examples use the term 'first applicant' to refer to the person or group initiating an application and presumes that the first applicant can present relevant documents or other reliable evidence indicating *prima facie* rights (of whatever sort) to the housing, land or property under application. The proposed mechanism places the onus on the applicant to prove they acquired the housing, land or property in question in a legitimate manner. The following circumstances where reasonable clarity may exist are also premised on the fact that massive housing, land and property rights violations have taken place in East Timor over the past decades, and it is felt that these must be taken into account in any determination of current rights with respect to housing, land and property, particularly for the past victims of these crimes. In particular, many people experienced widely recognised violations of these rights, such as: the inability to exercise the right to return to and the restitution of their original homes; the unjustified, unreasonable, disproportionate and arbitrary interference with the right to respect for the home and the inability to peacefully enjoy and access their possessions; the unreasonable and unjustifiable deprivation of possessions, both movable and immovable; and treatment of a discriminatory nature based on ethnic or national origin, political belief or other grounds.

As such, the following ten scenarios (there may be cases where such scenarios appear in conjunction with one another and would have to be considered jointly) may be clear enough to allow for administrative decisions or rulings to be made:

*1. First applicant can show uninterrupted formal title, based on currently held documents issued during the Portuguese Period, officially recognised and/or converted during the Indonesian Period, and not currently challenged by any party.*

*2. First applicant can show that the land or property under dispute was acquired by the current occupant prior to 30 August 1999 on the basis of a corrupt, fraudulent, arbitrary, violent, or otherwise unlawful practice, inconsistent with internationally recognised human rights.*

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<sup>5</sup> Zubani v. Italy (European Court on Human Rights, Judgment 7 August 1996).

3. *First applicant can show that the housing, land or property under dispute was acquired by the second claimant under the Indonesian SKEP 40 decree or that housing, land or property was otherwise allocated by the military between 7 December 1975 - 30 August 1999.*

4. *First applicant can show that the land or property under dispute was acquired by the second claimant on the basis of family or other special connections or relations, including business connections, with the ruling Indonesian regime at any point from 7 December 1975 - 25 October 1999.*

5. *First applicant can show that the land or property under dispute was compulsorily acquired during the Indonesian Period for the exclusive purpose of settling Indonesian migrants under the Transmigration programme.*

6. *First applicant can show that the land or property under dispute is land or property from which they were arbitrarily evicted or dispossessed, without just compensation or reason, at any point from 7 December 1975 - 30 August 1999.*

7. *First applicant can show that the land or property under dispute was expropriated (for whatever alleged reason) during the Indonesian Period, without the payment of just compensation.*

8. *First applicant can show that the land or property under dispute is claimed by the second claimant on the exclusive grounds that the second claimant acquired the land or property under dispute on the basis of the failure of the first claimant to convert Portuguese titles based on the application of Indonesian Government Regulation No. 18 of 1991, and which required those claimants seeking to convert their Portuguese titles into Indonesian titles to be present in East Timor in order to do so.*

9. *First applicant can show that rights to the land or property in question were relinquished or otherwise lost on the basis of the application of Article 5(1) or 5(2) of Indonesian Government Regulation No. 18 of 1991 (Conversion Law).*

10. *First applicant can show that the land or property in question was acquired from them, or had rights associated with it degraded or reverted to the Government, solely on the basis of first claimant's status as a 'foreign citizen' under Government Regulation No. 18 of 1991.*

### **3. Existing and Previous Remedial Mechanisms for Land and Property Disputes: Lessons for the Future**

Existing remedial mechanisms for land and property management in East Timor are not able to deal with the large scale insecurity which prevails in respect of housing, land and property rights. The UNTAET Land and Property Unit has done its best to put in place transitional systems to deal with land administration. However, with the resources at their disposal and with the chaos caused by the events following on the August 1999 referendum, the Unit has by their own admission not managed to cope with the huge number of public and abandoned properties placed under their care in accordance with Regulation No. 1999/1. Even the

simple task of getting even the most basic information about specific pieces of land has been extremely difficult and time consuming, giving the appearance that many of the most basic tools of land administration have been lost or destroyed.

The situation is made more complicated by the fact that the task is not just one of rebuilding a destroyed system. The system put in place by the Indonesian Government after the invasion in 1975 has been thoroughly discredited. That system was instrumental in formalising the dispossession of East Timorese of fundamental land, housing and property rights, and in conferring new rights upon favoured groups and individuals without a sound legal basis. It contributed to the implementation of a politically motivated programme of resettlement of East Timorese from mountainous areas where military control was difficult, to lower lying areas of closed settlements. It formalised the rights of migrants from other parts of Indonesia, brought as part of a transmigration programme aimed at building support in the region for Jakarta. So intensive was this process that by the 1990s that as much as half of the population of Dili was not of East Timorese origins.

There is no doubt that many former staff members of the previous land administration system, and in the government of East Timor in general, tried in good faith to make the best of the administration systems imposed on them. It is also true that many inhabitants made quite legitimate land transactions during the era of rule by Jakarta. Many land administration officials did excellent work, under difficult circumstances, in an effort to try to keep the system fair. There is absolutely no doubt that those officials from the previous administration who have remained in East Timor, can play a central role in the building of a new land administration system for East Timor. It is very encouraging that good progress has been made by the UNTAET Land and Property Unit to incorporate such former employees into their transitional land administration system.

However, it remains true that the previous land administration system was deeply flawed. It was part of a complex and cumbersome government, ruling over more than 200 million people and based thousands of kilometers away. Many different levels and spheres of government crossed each other both horizontally and vertically. Accountability was severely compromised due to the unusual powers of the military, combined with the dealings of an influential commercial elite built on cronyism and corruption.

These are some of the complexities that will have to be well understood in the resolution of land disputes and application for registration of land rights. Mediators and Adjudicators will have to untangle the details pertaining to specific cases where individual and group rights were denied through the system. But this does not mean that an attempt must be made to try to resurrect the previous land administration, or to create a dispute resolution mechanism using aspects of that system. Nor would it make much sense to try to revive the Portuguese system that preceded it.

Does this mean that the answer lies in creating something entirely new that bears little relation to the systems of the past? During a series of consultations and interviews with a broad spectrum of East Timorese and UNTAET role players on the creation of a land dispute resolution mechanism, most people interviewed agreed that the previous formal systems could not and should not be revived. However, they also said that provision should be made for the inclusion of customary law and customary land dispute resolution structures in any new land dispute resolution mechanism. This was a common thread in all the discussions held during several weeks of interviews.

What exactly are these ‘customary’ laws and mechanisms, and how should they be incorporated into the proposed land dispute resolution mechanisms? The dilemma is that, while making room for them in a future system is demanded, it is not possible to pin down a single, uniform East Timorese ‘customary law’ or ‘customary system’. The customary systems have their origins in diverse social, ethnic and language groupings. In addition, manipulation and interference by external powers over many years, tended to undermine and splinter the customary systems that were in place.

Prior to the arrival of the Portuguese in the 16<sup>th</sup> century, East Timor was occupied by a number different kingdoms and rulers (*liurai*), descendent from the original settlers of the territory. These different groups followed certain similar but also some very different customs and practices. A significant common thread linking many of them, was social organisation along a patrilineal system of descent, with marriage playing a central role in social organisation, including land allocation and use. (In a few areas the system was reportedly matrilineal.) Land was controlled and allocated by the *liurai*, assisted by sub-leaders or *dato*, usually in exchange for compensation of some kind. Legal authority was held by a council comprised of the *lian nain*, *macair fukun* or *dato ua’in*.

Whatever the original similarities and differences may have been, current manifestations of customary laws and systems in East Timor will invariably bear the marks of attempts by the colonial and occupation powers to incorporate, to change or to undermine their power and influence over the inhabitants. The main aim of the Portuguese presence in East Timor was trade and extraction of resources. During more than four centuries of Portuguese presence, a combination of co-opted, manipulation of allegiances and military suppression was used to govern the territory. As long as the customary systems allowed the achievement of overriding commercial aims, they were allowed to persist and were, indeed, often relied on to maintain social cohesion. Where expedient, *liurai* were supported and given resources and allowed to expand their land holdings. Where *liurai* resisted the Portuguese, they were severely dealt with. In the more remote areas, they were generally left alone.

In formal legal terms, the role of customary law in criminal matters was completely removed during Portuguese rule of East Timor. But its role in civil matters, including allocation and ownership of land, was to some extent left intact. When disputes over land arose, customary law and procedures would hold sway in most cases. If the state was itself a party to the matter, or if a dispute could not be resolved, the matter would be heard in the state courts.

During the time of Portuguese occupation, the amount of land under customary control was significantly reduced and brought under colonial title. This had the effect of further eroding the influence of the customary land allocation systems. This further reduced the amount of land under customary ownership and control. The extent of political influence of the *liurai* was also significantly reduced.

Even more traumatic changes took place after the Indonesian invasion of 1975. Any legal recognition that there had been for customary law under the Portuguese, was finally removed. Some *liurai* did assume positions in the new civil administration, but the price of doing so was that they had to play a fundamentally transformed role, according to completely new rules and laws, such as UU No. 5 of 1974 and the Law on Agrarian Reform of 1965. Both criminal and civil matters, and land matters in particular, would in future be governed by formal legislation, implementation by a bureaucracy, and the jurisdiction of the state courts.

In the light of all the changes mentioned above, it is remarkable that customary laws and systems have continued to hold the deep respect of many East Timorese, and do so even today. At a very local level, particularly with respect to land allocation, there is no doubt that *de facto* elements of customary law persist, in spite of the formal, legal context. This is due mainly to the very deep historical origins of the customary systems, measured against the utter lack of credibility of the complex and corrupt system imposed from Jakarta. It is also a reflection of the fact that an absolutely invaluable source of information and wisdom on land matters, reside in those customary structures that have managed to maintain a role in spite of the traumatic events of the past decades. Future land disputes will not be resolved without information. It is likely that much of that information, including details of boundaries, levels of rights and history of acquisition and loss, can be accessed through their involvement in the dispute resolution process.

However, it must also be noted that customary leaders may themselves emerge as interested parties in future land disputes, having developed land interests of their own, as distinct from land interests which they may hold on behalf of a community. Care must be taken to ensure protection the rights of complainants in such situations, and to provide them with access to objective forums, should the customary structures fail to resolve conflicts that may arise.

In addition, the proposed land dispute resolution model will have to factor in a number of possible variations with respect to local level customary dispute resolution mechanisms, including:

- Differences that may exist between customary practices from place to place;
- The fact that, in some localities, no customary systems may exist; and
- Possible co-existence of a customary system with other relevant dispute resolution mechanisms in a particular area, such as community committees, NGOs, political groupings, or the Church.

The land, housing and property disputes and uncertainties faced by the people of East Timor, result from layer upon layer of imposed land administration systems. Any future land dispute resolution mechanism must be designed in such a way that the mistakes of the past are not repeated. One way of preventing a repeat of past mistakes, will be to ensure that the future system is effective, appropriate, and carries the support of the people it is intended to serve. While it will not be feasible, or wise, to try to recreate a single 'customary system', it will be possible to incorporate local level institutions and practices, wherever these exist and have the support of their communities. Indeed, it is difficult to see how such a system could succeed without their inclusion.

#### **4. Conceptual Considerations in the Design of the East Timor Land Dispute Mechanism**

The proposed design of a practical mechanism to equitably, effectively and efficiently resolve land and property disputes in East Timor has taken into account a range of difficult questions and after considerable reflection on each has sought to incorporate particular features into the structure of the proposed procedure. With a view to providing the reasoning behind the choices made in the proposed model of the East Timor Land Dispute Mechanism, it may be useful to briefly elaborate some of the key conceptual considerations grappled with in the design and why the new mechanism has been formulated in the way it has.

### ***All Land and Property Claims or Only Disputes and Verification?***

The proposed East Timor Land Dispute Mechanism will only examine claims arising from housing, land and property disputes and urgent applications for the provisional registration of non-disputed land and property rights. It is understood that all rights to land and property will, in the long run, require full registration by the government of an independent East Timor. In order to ensure political legitimacy, such final registration should preferably wait for future policy and laws, in order to ensure consistency and universal coverage. The scale of such an undertaking would in any event far exceed the time-span and current capacities of UNTAET. Consequently, the proposed mechanism will only register claims based on alleged disputes relating to housing, land or property, and urgent applications for provisional registration of title. Therefore not all persons with claims to land or property need to present claims under the proposed structure; only those with real or perceived disputes need to do so, or those with an urgent need for the certainty provided by provisional registration of their title in a newly created land registry.

### ***Rights to Ownership or All Types of Relevant Rights?***

The new procedure will apply to both ownership and tenancy or occupancy rights, and also to a certain extent to customary land rights under customary law. Only in this way can the procedure be fair and equitable. The new procedure has a human rights orientation, and is based on the necessity of ensuring full respect for the housing rights of the Timorese people, in accordance with international human rights law. Given that not all Timorese were ever or will ever be 'owners' of the housing, land or property in or on which they reside, it seems clear that all tenure groups should have access to the proposed structure. This will promote the protection of the housing rights of everyone in East Timor, in accordance with international human rights standards.

### ***Existing District Courts or a New Institution?***

A new three-person adjudicative Land Dispute Tribunal needs to be established. While recognising the considerable progress that has been made in re-establishing the judicial system in East Timor in particular the District Courts, it does not appear that the judicial system will in the near future be capable of handling the volume of land and property disputes which are likely to be filed. The creation of a new institution to examine and pronounce on housing, land and property disputes will have a specialised mandate, restricted to housing, land and property disputes and claims for verification. Expertise on these matters, greater than that which is now available within the nascent judicial structures of East Timor, will be required. District Courts will, therefore, be required to forward any relevant cases to the Land Dispute Applications Office for consideration.

### ***Indonesian Law, Portuguese Law or All Relevant Laws and Standards?***

In accordance with UNTAET Regulation 1999/1, all activities of those working with or under the auspices of UNTAET must comply with the norms established pursuant to various international human rights treaties. In this light and considering the ambiguous nature of many questions of law relating to housing, land and property in East Timor, the new dispute resolution mechanism will take into account all relevant law and standards in the determination of land and property claims. A new Regulation requires approval, which determines criteria and guidelines to the members of the proposed Tribunal, and to UNTAET

and East Timorese land administrators, to assist them with the interpretation of the applicable laws, norms and standards.

### ***Suspension or Retention of Currently Applicable Law?***

It will be incumbent on the decision-makers entrusted with implementing the dispute mechanism to ensure that whatever law is applied is done so in a consistent manner throughout East Timor and that the law which is applied is itself fully consistent with international human rights law and other relevant standards. This accords with UNTAET Regulation No. 1999/1. This raises the question as to the necessity or desirability of suspending the application of certain Indonesian laws relevant to land and property, arguments in favour of which seem to tip the balance against retaining *in toto* former laws relevant to housing, land and property (See Annex 2).

### ***National or regional/local bodies?***

The new mechanism will have national jurisdiction, with a central office co-ordinating the overall activities of the procedure. At the same time, 13 district offices will be established to assist claimants to submit their claims and to co-ordinate mediation of disputes in the districts. It is proposed that all the institutions established to implement the mechanism, be located within the UNTAET Land and Property Unit, under the coordination and administration of the UN Centre on Human Settlements (Habitat). At regional and district level, close co-operation will be required between the dispute resolution mechanism and District Administrators.

### ***Eviction or tolerance of squatters?***

International law widely prohibits all but the most exceptional cases of forced eviction. In order to conform with international human rights law and standards, the new procedure must ensure that no person, family or community is made homeless as a result of the resolution of a housing, land or property dispute. Measures have been incorporated into the structure to ensure the provision of alternative land and/or housing or compensation to any party found not to have a right to continue to reside in a place subject to dispute. The forced eviction of residents will not take place unless alternative land and/or housing is made available to them. In addition, every effort will be made to refrain from eviction and find alternatives to eviction if at all possible.

### ***Completion of the dispute resolution process prior to the departure of UNTAET, or a longer-term time scale?***

While the new procedure has been designed to work rapidly, it is highly unlikely that it will be able to ensure the resolution of all land and property disputes prior to the eventual departure of UNTAET. For this reason the mechanism, while having mainly short- and medium-term objectives, has been designed in such a way that it can form a foundation on which the future administration and government of East Timor will be able to build a future land reform programme and land administration system. Concerted attempts will be made to ensure a high level of political ownership by the East Timorese community of the land dispute resolution mechanism.

### ***Mediated settlements or judicial decisions?***

The new procedure provides claimants with the option of choosing a mediated or judicial route for the resolution of their dispute or application. An attempt has been made, through the inclusion of mediated procedures, to assist in the conclusion of mutually satisfactory dispute settlements which will be officially recognised, but that do not require judicial consideration as such. In cases where mediation is not possible or fails, disputes will be routed to the judicial body for a final decision.

### ***A Practical or Ideological Design?***

The situation in East Timor is characterised by a glaring lack of legal clarity on housing, land and property issues, an urgent need for the resolution of highly sensitive disputes and difficult transitional political challenges. This context has necessitated the development of a practical rather than ideological model. Lessons from other countries which have undertaken similar programmes have also been fully incorporated into the design to promote practical solutions.

### ***A Two-Tier (Indonesian and Others) or Uniform (All Parties) System?***

Pending the outcome of negotiations between UNTAET and the Government of Indonesia, particularly concerning a final settlement on assets, claims and liabilities, the proposed structure contains a uniform system which recognises the rights of all persons with legitimate disputes and claims to invoke the proposed procedure. At the same time, the proposed structure will be strengthened if the Government of Indonesia agrees to take responsibility for settling any claims originating from its citizens.

### ***Permanent or Interim Solutions?***

The outcome of the adjudicative process by the Land Claims Tribunal will be the issuance of provisional title or rights which should provide sufficient clarity, even while being temporary in nature, to allow residential and commercial stability to emerge during the tenure of UNTAET. Given the provisional nature of UNTAET's mandate in accordance with Security Council Res. 1272 and subsequent agreements, the proposed dispute resolution and claims procedure can only issue provisional decisions on the cases presented to it. Nonetheless, when possible, every attempt should be made by the organs involved to make the formalisation of the provisional decision as simple as possible for the eventual East Timor Government.

### ***Time-limit for claims or open-ended?***

The mechanism will be applicable to claims and applications that arise from events that occurred prior to the date of promulgation of its enabling Regulation. The question arises whether there should be a cut-off date for the submission of claims and applications. In the absence of such a time limit, it will be necessary to advertise every claim and application in such a way that every interested party is made aware of the claim or application. This is a very difficult task, and can lead to nation-wide insecurity and even conflict. As such, a one or two-year deadline has been proposed.

### ***Private land or public land or both?***

Disputes or claims for all immovable private and public housing, land and property may be submitted under the proposed procedure.

### ***Last bona fide title holder or historical claims?***

Some have argued that the ‘last *bona fide* owner’ of a given property should automatically prevail in a given dispute relating to housing, land and property. Precluding a consideration of human rights norms from such an analysis would mean, in the most simple sense, that widely recognised rights to compensation (if not restitution or reparation) would be *ipso facto* excluded from this process. Ignoring one right in the interests of recognising another does not appear an avenue worthy of support. In addition, given the lack of legitimacy of all former regimes governing East Timor, in particular the most recent occupation regime, it will be difficult to even define the actual meaning of *bona fide* in a meaningful legal sense. East Timor has a particularly harsh and complex history of land occupation, repeated dispersal of communities, forced transmigration and manipulation of land title, plus endemic corruption in the Indonesian system of allocation of rights to land and other resources. In view of this history, housing, land and property disputes brought to the proposed mechanism are likely to take diverse forms. In some cases, disputes will be based entirely on non-written customary law where the role of formal title deeds would be essentially irrelevant, and oral evidence on the history of acquisition will be key. In other cases, title certificates may be looked to as one form of evidence to determine rights to a piece of land. Even in these cases, oral evidence may prove decisive, given the fact that so many records have recently been destroyed. Only in a likely minority of cases will such titles in and of themselves provide conclusive guarantees of *bona fide* rights. In this light, the new procedure will have to carefully examine any claim on a particular property, and base ultimate judgement on various criteria, including the history of acquisition of the property, and not exclusively the most recent *bona fide* transaction in respect of that property. However, it is acknowledged that there may be a number of urgent, non-contested applications for property registration, where it can be shown that the property was acquired and transferred in good faith, from the Portuguese era right up to the present. Such applications should be given the opportunity of speedy processing in order to promote certainty, stability and investment. The proposed procedure will accommodate this need.

### ***Historical Justice for Human Rights Violations or Procedural Expediency?***

A key question in the development of procedures designed to resolve housing, land and property disputes hinges on the extent to which the proposed procedures will provide justice for past human rights violations suffered by claimants which affected their housing, land or property status (for instance in the form of restitution to their original homes or lands from which they were dispossessed) or, as proposed by some, to aim for procedural expediency by focusing on securing the rights of the most recent legitimate owner or rights holder. The proposed procedure should not exclude seeking to rectify unjust and arbitrary applications of law in order to restore rights which may have been revoked by previous governments, and has been designed to take such violations into account as one source of evidence in the eventual determination of rights.

### ***Winners and Losers or Win-Win Outcomes?***

Every effort will be made to ensure that 'win-win' outcomes are guaranteed in each dispute or claim presented to either the East Timor Land Dispute Mediation Board or the East Timor Land Dispute Tribunal. Given the highly volatile nature of many land disputes and the history of violent conflict in East Timor arising from land disputes, it is considered indispensable that all persons involved in resolving such disputes and seeking verification of their rights, are widely protected against undue hardship at the conclusion of the dispute resolution process. Only in this way can potential conflict arising out of final decisions linked to this process be avoided. Consequently, and notwithstanding the nature of the housing, land or property dispute or verification claim considered under the East Timor Land Dispute Mechanism, the bodies involved will ensure that all parties after each dispute have:

- Full protection against homelessness or other violations of rights;
- Access to alternative land and/or adequate housing or reasonable financial or other forms of compensation;
- Provisional security of tenure throughout the duration of UNTAET's presence in the country; and
- Provisional entry into the new land registry property book for both the successful applicant and the losing party.

### **5. Design of a Practical Mechanism for the Equitable, Effective and Efficient Resolution of Land and Property Disputes**

Against the background explained in earlier sections, a large proportion of the population of East Timor is affected by severe insecurity with respect to their land, housing and property rights. This is a result of a violent history of land occupation, repeated displacement of communities, forced transmigration and manipulation of land title, in addition to endemic corruption in the Indonesian system of allocation of rights to land and other resources. Most of the official records have recently been removed or destroyed, adding further uncertainty to an imposed land administration system that was highly complex, cumbersome and ineffective. Further compounding the problem, is the extent of house, building and infrastructure destruction in the wake of the August 2000 referendum, which itself was accompanied by further population dispersal, homelessness, and the invasion of vacant land and abandoned buildings.

As a result, there exists a pervasive sense of residential and commercial insecurity amongst the inhabitants of East Timor, which has had an inhibiting effect on reconstruction, development and investment. Numerous calls have been made for UNTAET to take urgent action to bring some certainty and justice with regard to land occupation, ownership and tenure rights. It has been demanded that this be done in a way that does not preclude future land administration and tenure programmes in an independent East Timor, but rather creates a foundation upon which such programmes can in future be built.

In response to these urgent demands, it is proposed that immediate steps be taken by UNTAET, with the assistance of UNCHS (Habitat), to create an East Timor Land Dispute Mechanism which displays as many as possible of the following attributes and benefits:

## *ATTRIBUTES*

- The mechanism must be appropriate to the situation and people of East Timor.
- Aligned with likely future land policy and law of independent East Timor.
- Attract the best available East Timorese skills.
- Attract the best available international skills.
- Co-ordinated nationally.
- Include district-level and regional-level capacity.
- Incorporate local dispute resolution mechanisms, including customary structures, where appropriate and possible.
- Rapid first phase implementation through urgent pending cases.

## *BENEFITS*

- Meets actual rather than perceived needs.
- Reflects accurate diagnosis.
- Appropriate design.
- Political ownership, participation and support .
- Support for mechanism.
- Avoids delay and duplication.
- Builds foundation for future land administration.
- Language.
- Local knowledge and understanding.
- Credibility.
- Longer term sustainability of programme.
- Builds on lessons learnt in other countries.
- Impartiality and independence.
- Comparative legal experience.
- Promotes consistency of approach and basic standards.
- Reduces risk of legal challenge.
- Reduces risk of manipulation by vested local interests.
- Simplifies logistics.
- Taps local knowledge.
- Links with local role players (e.g. DA, NGOs, development programmes).
- Increased credibility.
- Taps local knowledge on rights, succession and boundaries.
- Appropriate and sustainable of outcomes.
- Avoids expense and delays of litigation.
- Reduces need for monitoring and policing from outside.
- Public ceremonial endorsement of settlements, where appropriate.
- Reduces delay of commencement of programme.
- Ability to act quickly in cases at crisis point.
- Visible results early on.

- Lessons from actual cases.
  - Early identification of problems with land dispute mechanism.
  - Timely adaptation of land dispute mechanism, before larger scale implementation.
  - Increased enthusiasm and support.
  - Delivery of product at optimal cost.
  - Acceptable outcomes.
  - Possibility of providing alternatives for ‘losers’ in disputes.
  - Not vindictive or punitive.
  - Reduces chance of further feuds.
  - Reduced error and delay.
  - Reduced chances of conflict.
  - Protection of rights.
  - Increased credibility and trust.
  - Deadline for lodgement of claims unproblematic.
  - Clearer basis of application and definition of rights.
  - Increased judicial capacity (e.g. at appeal stage).
  - Creative alternatives for unsuccessful applicants or parties in disputes.
  - Ability to meet requirements of international human rights law and standards.
- Efficient and effective.
  - Flexible and creative, allowing a variety of options to parties in dispute
  - Well known and understood by the people of East Timor.
  - Optimal alignment with key transitional programmes, including citizenship registration, re-establishment of effective judiciary, housing delivery policy and programmes, and reconstruction and development programmes.

Achieving all of the above will require concerted effort by a number of role players. The work ahead is reflected in the design description given below, and also in the plan of action given in the last section of this paper.

## **BASIC ELEMENTS OF THE PROPOSED MECHANISM**

The proposed East Timor Land Dispute Mechanism (see Chart 1) will provide for the submission of land, housing and property ownership or tenure disputes, as well as urgent claims for verification of land title, within a deadline period and in terms of set criteria. In terms of the proposed system, any land, housing or property dispute, or urgent claim for verification of title, will take the form of a formal application, submitted on a prescribed format in the presence and with the assistance of a Land Dispute Applications Officer.

Three institutional bodies will manage the dispute resolution process:

1. a Land Dispute Applications Office, headed by a Chief Land Dispute Applications Officer;
2. a Land Dispute Mediations Board (the Mediation Board), headed by a National Mediations Co-ordinator; and
3. a Land Dispute Tribunal (the Land Tribunal), with the status of a Special Court, consisting of three Adjudicators, one of which will act as Land Tribunal Chairperson.

In order to ensure optimal co-ordination and effectiveness, it is proposed that these three institutions should operate within the ambit of the UNTAET Land and Property Unit. The managers of the three institutions will be supervised and supported by the head of the Land and Property Unit. Close links will exist between the Land Dispute Applications Office and the East Timor Land Registry, and also between the Land Tribunal, the UNTAET Judicial Affairs and UNTAET Legal Affairs.

Cases filed before any of the District Courts of East Timor will automatically be referred to the Land Dispute Applications Office, after which they will be treated in the same way as any other application.

After submission, acceptance, sorting and prioritisation, cases will be processed via two possible routes:

1. Land Dispute Mediation Board: a mediation process aimed at full and final settlement between the parties; and
2. Land Dispute Tribunal: adjudication of cases where mediation has failed or is deemed unworkable; and consideration and ratification of uncontested applications for verification of title.

*Successful applications will result in the provisional registration of rights in the new East Timor Land Registry.* Provisional registration will be formulated in the strongest terms possible under the present, transitional circumstances, in order to provide an acceptable level of security. However, final registration of title will have to occur in accordance with future policies and laws, once these have been put in place by a democratically elected government of an independent East Timor.

The proposed Mechanism will not deal with the registration of every piece of property in East Timor. This must be made clear from the outset in order to prevent the land dispute mechanism from being overwhelmed with applications. Cases where there is no dispute, nor any urgent developmental or other need for registration, will be processed in the course of an equally important, but longer-term, project. For this reason, criteria for admission of an application will be clearly formulated in the Regulation.

Essentially, the Mechanism is directed at resolving two types of cases:

1. where land, housing and property disputes exist and cannot be resolved without assistance or external intervention;
2. where verification and provisional registration of title are urgently required for investment or development purposes.

It is also proposed that, in order to bring certainty within a reasonably short period of time, all applications should be lodged within a set deadline. It is proposed that this cut-off date for submission of applications should be set at one or two years from the date of promulgation of the enabling regulation. (The NCC will be requested to determine the exact period.) The setting of such deadlines is common practice in most countries that have introduced similar programmes. However, it is recognised that a deadline can be problematic if it is unrealistically short, or in the absence of an effective campaign to inform and assist all potential applicants to exercise their right to lodge applications.

Given the urgency of the situation, the creation of these bodies should be done as quickly as possible. While rollout of systems will take time, ways should in the meantime be found to begin accepting and processing applications and testing some of the proposed methods. Visible progress with cases will increase enthusiasm for the process and build momentum.

## **SUBMISSION OF APPLICATIONS**

The submission of applications will be done on a prescribed format and will be submitted to a Land Dispute Applications Office located at district, regional and national centres. In cases referred to the Land Dispute Applications Office by a District Court, the parties will be approached and assisted to lodge applications. Any court papers, sworn statements or other legal documents, will be attached to such applications as supporting information.

The submission of applications will be accompanied by an intensive communications campaign throughout East Timor, conducted by the Land Dispute Applications Office in close co-operation with the UNTAET Office of Communication and Public Information. Potential applicants will be made aware of the opportunity to lodge applications, and the prescribed conditions and procedures for doing so. The campaign will be conducted in all relevant languages, and variety of appropriate communications methods will be used. Steps will also have to be taken, with the assistance of the governments of Portugal, Australia and Indonesia, to ensure that potential applicants in those countries have also been informed of the process, and have access to the necessary documentation and application forms.

The Land Dispute Applications Office will be headed by a Chief Land Dispute Applications Officer (CLDAO), who will be responsible for the overall management of the submission, recording and referral process.

The CLDAO will be selected on the basis of specific criteria. He or she must:

- be of the highest moral integrity and professional standing
- have no criminal record
- be a fit and proper person to be assume the powers and responsibilities of the CLDAO; and
- by reason of his or her training and experience, have expertise in the field of housing, land and property matters relevant to the application of the enabling regulation.

The CLDAO will be assisted by District Land Dispute Application Officers (DLDAO) and Research Assistants, supported by technical personnel.

Any person accepting employment in the Land Dispute Application Office will be required to make a prescribed oath or solemn declaration prior to being appointed.

The CLDAO and DLDAOs will take steps to promote best practice and sound ethics amongst officers of the Land Dispute Applications Office, and will put in place mechanisms to monitor and prevent corruption, bribery and fraud. In view of the extent to which previous land administration systems were discredited and hampered by corrupt practices, the task of ensuring that the system is immune from such influences will be extremely important, and will warrant concerted effort and resources.

The CLDAO will ensure that each applicant is given the necessary assistance and to ensure that the required information has been recorded in a database. To ensure consistency, accuracy and integrity of information, the Land Dispute Applications Office will maintain a close working relationship with the Land Registry. This will include management of inter-linked databases.

The CLDAO will ensure that any documentary evidence submitted by an applicant is copied and certified. Relevant information will be entered into a database. Each applicant will be provided with advice, information and assistance to complete their application. Each applicant will also receive a certified copy of their application and proof of its submission. Specific advice will be given on the two options of mediation and adjudication, after which applicants will be asked to state their preference.

It is considered highly desirable for the applications process to be done in a standardised, digital format from as early as possible, starting at the submission point itself. Applications should be typed onto the specified format with the assistance of the Land Dispute Applications Office, and supporting documentation should be certified and digitally stored by scanning. This will require appropriate computer and communications technology, which has been provided for in the budget. It is believed that using digital technology from the outset, will greatly contribute to the efficiency and effectiveness of the process, and solve a number of logistical problems that will otherwise have to be overcome. This is based on the assumption that an appropriate level of interconnectivity between districts and the central office can be achieved.

After submission of an application, the CLDAO will, on the basis of a recommendation by the relevant DLDAO, decide whether or not an application qualifies to be admitted, in terms of criteria set by regulation. The applicant will be informed of the outcome of this decision, plus reasons for any negative decision. The applicant will have the right of appeal to the Land Dispute Tribunal against the decision of the CLDAO.

The CLDAO will, with the assistance of a Database Manager and in close co-operation with the head of the East Timor Land Registry, take steps to develop an appropriate database to facilitate efficient and cost effective management of the process. This database will be available to, and will meet the information needs of, the Land Dispute Applications Office, the Mediation Board and the Land Tribunal. The database will be linked to scanned documentary evidence, including maps and photographs, pertaining to any application. The database will also be linked to the emerging mapping system and cadastre of the administration of East Timor.

The CLDAO will determine policy on confidentiality of personal information of claimants, in line with the law and any emerging policies, and will take steps to protect such confidentiality, as well as integrity of information.

Where appropriate, the CLDAO will take steps to publicise applications and to invite public comment, objection or counterclaims, to be received within a set time period. The CLDAO will inform the Head of the UNTAET Land and Property Unit, the District Administrator and the Transitional Administrator of all applications, all of whom will have the right to comment, object or respond.

In terms of the preference stated by applicants, and criteria determined by regulation, the CLDAO will decide on the most appropriate route for an application, and will refer disputes and claims to the Mediation Board and the Land Tribunal. Uncontested urgent applications that meet the criteria set in the regulations, will be processed administratively and referred, with comment and recommendations, for ratification by the Land Tribunal.

## **STAFFING OF THE LAND DISPUTE APPLICATIONS OFFICE**

### **OFFICE OF THE CLDAO**

The office of the CLDAO will be based in Dili, and will include the following minimum staff complement:

- 1 x Chief Land Dispute Applications Officer (CLDAO)
- 1 x Secretary
- 1 x Communications Expert
- 1 x Technical Database Manager (Shared with Land Registry)
- 1 x Information Technology Assistant
- 1 x Financial Manager
- 1 x Administrative Assistant

### **DISTRICT OFFICES**

There will be one Land Dispute Applications Office in each district, based in the district office of the UNTAET Land and Property Unit, and will include the following minimum staff complement:

- 13 x District Land Dispute Applications Officers (DLDAO) (one per district office)
- 13 x Researchers / Field Workers (one per district office).

### **TRAINEES**

There will be a strong emphasis on in-service training and mentoring programmes, conducted by the East Timorese and International experts employed by the office.

In addition to the above posts, the office will have:

8 x training positions, to be divided between the different offices by the CLDAO in consultation with the DLDAOs.

### **COMPOSITION**

At least half of the staff of the Land Dispute Applications Office will be East Timorese.

## **ENABLING POWERS**

In order to carry out the responsibilities indicated above, the CLDAO will be given the following powers by regulation:

- To appoint District Land Dispute Applications Officers
- To deploy and re-deploy staff as deemed appropriate
- To determine information status, confidentiality and access levels on the Land Dispute Applications database;
- To decide on *prima facie* compliance of applications, in terms of criteria as set out in the relevant Regulation;
- After consultation with applicants, to decide between Mediation Board and Land Tribunal routes in specific cases;
- To decide whether or not to publicise and invite public comment on an application;
- To certify authenticity of documents and sworn statements; and
- To delegate any of the above powers to one or more of the DLDAOs.

## **MEDIATION**

The mediation process is central to the success of the proposed Land Dispute Mechanism. International experience has shown that restitution processes based on litigation above are invariably expensive, slow and ineffective, and can increase rather than reduce conflict. There is no doubt that litigation can serve a useful and often indispensable purpose in any process involving a contest over rights. It can be used to clear up difficult legal issues, and can bring finality to cases that cannot be resolved in any other way. But this should be as a last resort only. In the proposed model, therefore, use of the Land Tribunal has been limited to cases of non-resolvable conflicts, and the ratification of urgent, uncontested applications for verification and provisional registration of title.

Mediated settlements, on the other hand, are more able to accommodate a diversity of rights, interests and needs. They are less likely to result in parties being left with nothing at all, as the parties, the mediators and any other agencies brought on board, can more easily formulate viable alternatives. Many East Timorese have expressed a concern that any future land dispute mechanism, should not create further conflict by causing parties to be humiliated. Great emphasis has been placed on the importance of reconciliation and ‘win-win’ solutions. Well managed mediation processes, backed up by the provision of viable land, housing and development alternatives, will probably be the most effective way of reaching this outcome.

This means that the majority of contested applications made to the Land Dispute Applications Office, should be referred to the Land Dispute Mediation Board for processing. The Board will consist of thirteen District Land Dispute Mediators (the District Mediator), deployed and supervised by a National Land Dispute Mediation Co-ordinator (the National Mediation Co-ordinator), plus technical support staff. The Board will have periodic meetings, not less than four per year, chaired by the National Mediation Co-ordinator. The Board shall adopt its own Rules of Procedure.

The National Mediation Co-ordinator and each District Mediator will be selected on the basis of the specific criteria. He or she must:

- be of the highest moral integrity and professional standing
- have no criminal record
- be a fit and proper person to be a member of the Land Dispute Mediation Board; and
- by reason of his or her training and experience, have expertise in the fields of law and land matters relevant to the application of the enabling regulation and the relevant laws listed therein.

Any person accepting employment with the Mediation Board, will be required to make a prescribed oath or solemn declaration prior to being appointed.

The National Mediation Co-ordinator and District Mediators will take steps to promote best practice and sound ethics amongst officers of the Mediations Board, and will put in place mechanisms to monitor and prevent corruption, bribery and fraud. In view of the extent to which previous land administration systems were discredited and hampered by corrupt practices, the task ensuring that the system is immune from such influences will be extremely important, and will warrant concerted effort and resources.

Once disputes have been referred to the Mediation Board, each District Mediator will gather further information and will, in consultation with the National Mediation Co-ordinator and the relevant District Administrator, begin to sort through, group and prioritise urgent cases.

## **INTERNAL MEDIATION**

An essential first step in the processing of any particular case will involve referring the matter back to the locality where the dispute has occurred and to meet with the parties. The purpose of this initial meeting or meetings, will be to inform the affected parties about the application, gather information, and to establish whether it is possible for existing local dispute resolution structures to resolve the matter. The District Mediator will urge the parties to make a last, concerted effort to sort out the problem without external intervention. Internal mediation can include customary dispute resolution methods, and can happen at any of a number of levels, right down to the level of family meetings.

The District Mediator will seek advice and assistance from any relevant local service providers, development agencies and NGOs, in order to establish whether additional resources could contribute to a locally designed settlement of the dispute, and will convey that information to the parties.

Should a full and final settlement of the matter be reached in this way, the District Mediator will assist the parties to record the outcome in a formal settlement agreement (which must include the headings given in the pro forma agreement attached as in the Annex). The District Mediator will refer the agreement, a report on the matter (on a standard report format attached in the Annex), and all other supporting documentation including the initial application, to the District Administrator for comment.

Once the District Administrator has commented, the District Mediator will refer the matter to the Land Registry for provisional registration. This will be done via the office of the National Mediation Co-ordinator.

At all stages progress made will be recorded against benchmarks on the applications database.

## **EXTERNAL MEDIATION**

Should it not be possible for the parties to resolve the dispute amongst themselves, the District Mediator will formulate a mediation strategy that is appropriate for the particular case.

One of the main tools at the disposal of the District Mediator, will be the convening of case-specific Mediation Committees. Members of such Mediation Committees will be selected by the District Mediator on account of their standing in the community, their integrity, their acceptability to the disputing parties, the particular contribution they can bring to the case, and the absence of any vested interests in the particular matter.

The Mediation Committee will also seek information, advice and assistance from any relevant local service providers, and representatives of development agencies and NGOs, in order to establish whether additional resources could contribute to a locally designed settlement of the dispute, and will convey that information to the parties.

The District Mediator will chair the Mediation Committee, or will in consultation with the National Mediation Co-ordinator appoint a suitable person to do so. It will be the responsibility of the Mediation Committee Chairperson to formulate a mediation programme including time frames and dates of meetings for the case in question, after consultation with the parties and members of the committee. The office of the District Mediator will take care of logistical arrangements and proper record keeping of proceedings, and will ensure that all parties are informed in good time of meetings.

Participation in Mediation Committees will be strictly voluntary, although provision will be made for *per diem* allowances members. Participants will be required to make a prescribed oath or solemn declaration prior to being admitted onto a Mediation Committee.

Mediation Committees will consist of at least three members and not more than five persons, including the Chairperson. The District Administrator will be kept informed of pending mediations and will have the right to make submissions to any Mediation Committee.

Mediation events will be advertised well in advance, using methods that are appropriate to the particular situation.

Should a full and final settlement of the matter be reached as a result of external mediation, the Mediation Committee will assist the parties to record the outcome in a formal settlement agreement (which must include the headings given in the pro forma agreement). The District Mediator will refer the agreement, a report on the matter (on a standard report format), and all other supporting documentation including the initial application, to the District Administrator for comment.

Unresolved cases will be referred to the Land Dispute Tribunal.

Once the District Administrator has commented, the Mediator will refer the matter to the Land Registry for provisional registration. This will be done via the office of the National Mediation Co-ordinator.

At all stages progress made will be recorded against benchmarks on the applications database.

## **STAFFING**

### **OFFICE OF THE NATIONAL MEDIATION CO-ORDINATOR**

The office of the National Mediation Co-ordinator will be based in Dili, and will include the following minimum staff complement:

- 1 x National Mediation Co-ordinator
- 1 x Secretary
- 1 x Information Technology Assistant
- 1 x Financial Manager
- 1 x Administrative Assistant

### **DISTRICT MEDIATION OFFICES**

There will be one Mediation Office in each district, based in the district office of the UNTAET Land and Property Unit, and will include the following minimum staff complement:

- 13 x District Land Dispute Mediators (one per district office)
- 13 x Researchers / Field Workers (one per district office)

### **TRAINEES**

There will be a strong emphasis on in-service training and mentoring programmes, conducted by the East Timorese and International experts employed by the Land Dispute Mediation Board.

In addition to the above posts, the Board will have:

- 8 x training positions, to be divided between the different offices by the National Mediation Co-ordinator in consultation with the District Mediators.

### **COMPOSITION**

At least half of the staff of the Land Dispute Mediation Board will be East Timorese.

### **ENABLING POWERS**

In order to carry out the responsibilities indicated above, the National Land Dispute Mediation Co-ordinator will be given the following powers by regulation:

- Deploy and supervise District Land Dispute Mediators

- Appoint members of local or district level Mediation Committees to deal with particular cases, in accordance with set criteria
- call parties to meeting/s

## **ADJUDICATION**

The Land Dispute Tribunal (the Land Tribunal) will deal with non-resolvable conflicts in which mediated settlements have failed or where mediation was not otherwise agreed to by the parties. The Land Tribunal will also be responsible for the consideration and ratification of urgent, uncontested applications for verification and provisional registration of title. The Land Dispute Mediation Board or the Land Dispute Applications Office will refer cases to the Land Tribunal.

The Land Tribunal will consist of three Adjudicators, one East Timorese independent expert and two International independent experts. One of the three Adjudicators will be appointed as Land Tribunal Chairperson. Each Adjudicator will be selected on the basis of specific criteria: He or she must:

- is of the highest moral integrity and professional competence
- have no criminal record
- be a fit and proper person to be a member of the Land Tribunal; and
- be qualified to be admitted as an advocate or attorney and has, for a cumulative period of at least ten years, practised as an advocate or an attorney or lectured in law at a university; or
- has served a minimum of five years as a judge in his or her home country; or
- by reason of his or her training and experience, have expertise in the fields of law and land matters relevant to the application of the enabling regulation and the relevant laws listed therein.

Any employee accepting employment with the Land Tribunal, will be required to make a prescribed oath or solemn declaration prior to being appointed.

The Adjudicators will take steps to promote best practice and sound ethics amongst officers of the Land Tribunal, and will put in place mechanisms to monitor and prevent corruption, bribery and fraud. In view of the extent to which previous land administration systems were discredited and hampered by corrupt practices, the task ensuring that the system is immune from such influences will be extremely important, and will warrant concerted effort and resources.

The Land Tribunal will:

- draw up its own Rules of Procedure
- receive disputes and claim verifications from the Registry or the Mediation Panel
- inform affected parties
- collect relevant information
- determine priority cases
- determine process and time frames of cases
- refer cases to the Land Dispute Mediation Board where deemed appropriate
- determine who should attend sessions

- set dates and call parties to sessions
- hear evidence
- hear appeals against decisions made by the Chief Land Dispute Applications Officer not to accept specific applications
- propose alternative remedies to disputing parties
- admit any evidence, including oral evidence, which it considers relevant and cogent to the matter being heard by it
- consider any relevant regulation or law, including a customary law, in making a decision
- issue judicial rulings on any cases, claims or applications brought before it, which rulings may confer the following rights: ownership rights; tenancy rights; customary/traditional rights; rights of temporary occupation; and rights of temporary exploitation
- refer rulings to the new East Timor Land Registry for provisional registration, pending final registration in accordance with future East Timorese land laws and policies.

At all stages progress made will be recorded against benchmarks on the applications database.

## **LAND TRIBUNAL STAFFING**

### **ADJUDICATORS**

2 x International Adjudicator (D1)  
1 x East Timorese Adjudicator (D1)

### **SUPPORT STAFF**

3 x Legal Secretaries  
3 x Researchers  
3 x Trainee Researchers  
3 x Legal Senior Legal Advisors  
1 x Land and Property Expert  
1 x Financial Manager  
2 x Administrative Assistants  
3 x Trainees

### **TRAINEES**

There will be a strong emphasis on in-service training and mentoring programmes, conducted by the East Timorese and International experts employed by the Land Dispute Tribunal.

As indicated above, five training positions have been provided to the Land Dispute Tribunal.

### **COMPOSITION**

At least half of the staff of the Land Dispute Tribunal will be East Timorese.

### **ENABLING POWERS**

In order to carry out the responsibilities indicated above, the Adjudicators of the Land Tribunal will have powers equivalent to that of a Judge of an East Timor District Court, and

the specific power to order the provisional registration of its findings in the East Timor Land Registry.

## **6. Recommended Legislative and Regulatory Measures**

For UNTAET to begin to attempt to effectively resolve housing, land and property disputes in East Timor, two legislative actions should be undertaken. Firstly, an UNTAET Regulation suspending the application of certain provisions of Indonesian legislation should be approved. This Regulation should be followed by the approval of another Regulation outlining the scope, powers and functions of a housing, land and property dispute resolution procedure. Draft regulations on these issues are contained below.

### ***Future East Timorese Policy and Law on Land, Housing and Property***

While ultimately outside the jurisdiction of UNTAET, care should be taken to ensure that future East Timorese Policy and Law is not adversely affected by any decisions relating to the resolution of housing, land and property disputes. The idea of convening a National Land Congress has been mentioned as one means of striving to find a consensus-based approach to move forward on new policy and land legislation in an independent East Timor. The authors of the present proposal support such an approach, and hope that the near future will witness the adoption of an East Timor Land Act, based on the norms enshrined in the first Constitution of an Independent East Timor.

## **7. Plan of Action: Establishment and First Year of Operation**

### ***June 2000***

- Presentation of UNCHS (Habitat) report to key UNTAET decision-makers for comment
- Submission of report to National Consultation Council (NCC) for comment and for proposal on deadline for submission of applications (one vs. two years)
- Submission of Final Report and NCC comments to Transitional Administrator (SRSG) for approval
- Fundraising and call for CVs for future staff by UNCHS (Habitat)
- Submission of draft Regulations to UNTAET Legal Affairs for consideration, further drafting and finalisation
- High level consultations on housing policy and future programmes
- Design and planning of internal and public communications campaigns

### ***July 2000***

- Approval of finalised plan of action
- Promulgation of UNTAET Regulations by Transitional Administrator (SRSG)
- Confirmation of funding from UNTAET and/or UNCHS (Habitat)

- Selection and commencement of appointment of key personnel, including Tribunal Adjudicators, National Mediation Co-ordinator, first District Mediators, and Chief Land Dispute Applications Officer
- Design of training programme for staff of Land Dispute Mechanism
- Commencement of internal and public communications campaigns
- Design of standard formats
- Distribution of application forms
- Determination and publication of delivery points of application forms in all district centres
- Design of workflow systems
- Conceptual design of database
- Formal establishment of Land Dispute Applications Office, Land Dispute Mediation Board and Land Dispute Tribunal
- Commencement of procurement of equipment and office space
- Clarification on housing policy and programmes
- Commencement of project identifying available public housing stock and land

### *August 2000*

- Ongoing communications campaign
- Commencement of training
- Database design and testing
- Drafting and adoption of rules of procedure by Land Dispute Mediations Board and Land Dispute Tribunal
- Receipt, assessment and acceptance of first applications (disputes and claims) by Land Dispute Applications Office
- Review of existing files and District Court cases; where applicable, translation into formal applications
- Ongoing appointment of staff
- Ongoing procurement of equipment and office space
- Ongoing identification of available public housing stock and land

### *September 2000*

- Roll out of database
- Land Applications Office operational at centre, receiving applications from district delivery points
- Referral of cases to Mediation Board and Tribunal
- Prioritisation of received cases by Mediation Board and Tribunal
- Tribunal determines roll and prepares for first hearings
- Mediation Board formulated programme and commences mediation processes
- Ongoing communications campaign
- Ongoing training of staff
- Housing policy, programmes and implementation plan in place

### *October 2000*

- Database operational at centre. Commencement of links with districts.

- Land Applications Office operational in certain districts
- First hearings before Tribunal
- Mediations Board operational in certain districts
- Ongoing communications campaign
- First phase staff training complete
- First findings by Tribunal

#### ***November 2000***

- First mediated settlements in place
- Database fully operational
- Land Applications Office fully operational
- Mediations Board fully operational
- Tribunal fully operational
- Ongoing communications campaign

#### ***December 2000***

- Ongoing operations

#### ***January 2001***

- Ongoing operations

#### ***February 2001***

- Ongoing operations

#### ***March 2001***

- Ongoing operations

#### ***April 2001***

- Ongoing operations

#### ***May 2001***

- Ongoing operations

#### ***June 2001***

- Finalise first annual report and present to the Transitional Administrator (SRSG)

**BUDGET FOR THE EAST TIMOR LAND DISPUTE MECHANISM (first rough draft)**

***1. STAFFING NEEDS***

***1.1 STAFFING OF THE LAND DISPUTE APPLICATIONS OFFICE***

**OFFICE OF THE CHIEF LAND DISPUTE APPLICATIONS OFFICER**

|   |        |
|---|--------|
| 1 x Chief Land Dispute Applications Officer (CLDAO) (I, P4)         | 50.000 |
| 1 x Secretary (L)   | 4.500  |
| 1 x Communications Expert (I, P3)                                   | 45.000 |
| 1 x Technical Database Manager<br>(Shared w/ Land Registry) (I, P3) | 45.000 |
| 1 x Information Technology Assistant (L)                            | 5.500  |
| 1 x Financial Manager (L)   | 10.000 |
| 1 x Administrative Assistant (L)                                    | 8.000  |

**DISTRICT OFFICES**

|   |               |
|---|---------------|
| 13 x District Land Dispute Applications Officers (DLDAO)<br>(one per district office) (I, P3) | 45.000 (x 13) |
| 13 x Researchers / Field Workers (one per district office).                                   | 10.000 (x 13) |

**TRAINEES**

|                            |             |
|----------------------------|-------------|
| 8 x Training Positions (L) | 4.000 (x 8) |
|----------------------------|-------------|

Sub-total.....US\$ 915,000

***1.2 STAFFING OF THE LAND DISPUTE APPLICATIONS OFFICE***

**OFFICE OF THE NATIONAL MEDIATION CO-ORDINATOR**

|   |             |
|---|-------------|
| 1 x National Mediation Co-ordinator (I, P3) | 45.000      |
| 1 x Secretary (L)                           | 4.500       |
| 1 x Information Technology Assistant (L)    | 5.500       |
| 1 x Administrative Assistant (L)            | 8.000       |
| 1 x Financial Manager (L)                   | 10.000      |
| 2 x Administrative Assistants (L)           | 8.000 (x 2) |

**DISTRICT MEDIATION OFFICES**

|  |               |
|--|---------------|
| 13 x District Land Dispute Mediators (one<br>per district office)(I, P3) | 45.000 (x13)  |
| 13 x Researchers / Field Workers (one<br>per district office)(L)         | 10.000 (x 13) |

## TRAINEES

|                        |              |
|------------------------|--------------|
| 8 x training positions | 4.000 (x 8)  |
| Sub-total.....         | US\$ 719.000 |

### **1.3 STAFFING OF THE LAND DISPUTE TRIBUNAL**

#### ADJUDICATORS

|   |              |
|---|--------------|
| 1 x International Adjudicator (Chairperson) (I, D1) | 60.000       |
| 2 x East Timorese Adjudicator (D1)                  | 60.000 (x 2) |

#### SUPPORT STAFF

|                                   |              |
|-----------------------------------|--------------|
| 3 x Legal Secretaries (L)         | 8.000 (x 3)  |
| 3 x Researchers (L)               | 10.000 (x 3) |
| 3 x Senior Legal Advisors (I, P3) | 45.000 (x 3) |
| 1 x Land and Property Expert (L)  | 10.000       |
| 1 x Financial Manager (L)         | 10.000       |
| 2 x Administrative Assistants (L) | 8.000 (x 3)  |
| 3 x Trainees                      | 4.000 (x 3)  |
| Translator/Interpreter (L)        | 6.000 (x 3)  |

*Sub-total.....443.000*

**TOTAL STAFFING COSTS.....US\$ 2,077,000**

### **2. RUNNING COSTS**

|                           |        |
|---------------------------|--------|
| <i>Travel</i>             | 91.000 |
| <i>Sub-contracts</i>      | 35.000 |
| <i>Training/Workshops</i> | 15.000 |

Sub-total.....US\$ 141.000

### **3. CAPITAL COSTS**

#### *Equipment*

|                     |        |
|---------------------|--------|
| Computers (40)      | 70.000 |
| Laser Printers (13) | 30.000 |
| Typewriter (1)      | 200    |

|                             |                       |
|-----------------------------|-----------------------|
| Scanners (13)               | 8.000                 |
| Office Supplies             |                       |
| Photocopiers (2)            | 8.000                 |
| Stationary, Paper, etc      | 18.000                |
| Furniture, Bookshelves, etc | 14.000                |
| Communications              |                       |
| Phone/Fax lines (5)         | 1.000                 |
| Cell Phones (20)            | 6.000                 |
| E-mail connections (40)     | 8.000                 |
| Annual communication costs  | 40.000                |
| Vehicles (7)                | 140.000               |
| Literature Procurement      | 5.000                 |
| Sub-total.....              | US\$ 348,200          |
| <b>4. MISCELLANEOUS</b>     | <b>130.000</b>        |
| <b>5. SUPPORT COSTS</b>     | <b>187.000</b>        |
| <b>TOTAL BUDGET.....</b>    | <b>US\$ 2,883,200</b> |

# ***ANNEXES***

## **Annex 1**

### **Draft REGULATION No. 2000/ ...**

#### **ON THE SUSPENSION OF THE APPLICATION OF CERTAIN LEGAL PROVISIONS CONSIDERED INCONSISTANT WITH INTERNATIONALLY RECOGNIZED HUMAN RIGHTS STANDARDS**

The Special Representative of the Secretary-General (hereinafter: Transitional Administrator),

Pursuant to the authority given to him under United Nations Security Council resolution 1272 (1999) of 25 October 1999,

Taking into account United Nations Transitional Administration in East Timor (UNTAET) Regulation No.1999/1 of 27 November 1999 on the Authority of the Transitional Administration in East Timor,

After consultation in the National Consultative Council,

For the purposes of establishing a legal basis for resolving housing, land and property disputes in a manner which is consistent with international human rights standards in accordance with UNTAET Regulation No. 1999/1,

Promulgates the following:

#### **I. General Provisions**

##### **Section 1**

##### **Suspension of Certain Provisions of the Basic Agrarian Law of 1960**

1.1. The Special Representative to the Secretary-General hereby suspends any further application of the following provisions of the Basic Agrarian Law of 1960 within the territory under his jurisdiction:

a) Articles 9, 12, 21(3), 27(3) and 27(4)(e).

1.2. The application of provisions of the law noted in the previous sub-section shall be suspended on the grounds that it, in accordance with UNTAET Regulation No. 1999/1, section 3, they are not consistent with international human rights standards due to the differential treatment accorded Indonesian citizens and non-Indonesian citizens with respect to rights relating to housing, land and property established pursuant to international human rights standards stipulated in Regulation No. 1999/1.

Section 2  
Suspension of Government Regulation No. 18 of 1991

2.1. The Special Representative to the Secretary-General hereby suspends any further application of *Indonesian Government Regulation No. 18 of 1991 (31 March 1991) Re: Provisions on the Conversion of Land Rights in The Province of East Timor in Accordance with the Basic Agrarian Law*.

2.2. The application of the law noted in the previous sub-section shall be suspended on the grounds that it, in accordance with UNTAET Regulation No. 1999/1, section 3, is not consistent with international standards due to:

- a) the differential treatment accorded Indonesian citizens and non-Indonesian citizens with respect to rights relating to housing, land and property;
- b) the previous use of Regulation No. 18 of 1991 as a basis for the arbitrary expropriation of rights relating to housing, land and property from foreign citizens; and
- c) the arbitrary application of Regulation No. 18 of 1991 against persons not willing to return to East Timor in person to register rights to housing, land and property, in particular those persons recognised as political refugees and asylum seekers.

Section 3  
Entry into force

3.1. The present Regulation enters into force on .... 2000.

(to be signed)  
Sergio Vieira de Mello  
Transitional Administrator

## **Annex 2**

### **Draft REGULATION No. 2000/...**

#### **ON THE ESTABLISHMENT OF A MECHANISM FOR THE RESOLUTION OF LAND, HOUSING AND PROPERTY OWNERSHIP OR TENURE DISPUTES AND THE URGENT VERIFICATION OF HOUSING, LAND AND PROPERTY RIGHTS**

The Special Representative of the Secretary-General (hereinafter: Transitional Administrator),

Pursuant to the authority given to him under United Nations Security Council resolution 1272 (1999) of 25 October 1999,

Taking into account United Nations Transitional Administration in East Timor (UNTAET) Regulation No.1999/1 of 27 November 1999 on the Authority of the Transitional Administration in East Timor,

After consultation in the National Consultative Council,

For the purposes of providing a fair, effective and equitable procedure for the resolution of housing, land and property disputes and the verification of housing, land and property rights,

Promulgates the following:

#### **I. The East Timor Land Dispute Mechanism**

##### Section 1

##### The East Timor Land Dispute Mechanism

1.1 The East Timor Land Dispute Mechanism is hereby established (hereinafter: 'Land Dispute Mechanism'), and is comprised of a Land Dispute Tribunal, a Land Dispute Mediation Board and a Land Dispute Applications Office.

1.2. The Land Dispute Mechanism shall be co-ordinated by the United Nations Centre on Human Settlements (Habitat), and operate under the auspices and with the support of the United Nations Transitional Authority in East Timor.

#### **II. The East Timor Land Dispute Tribunal**

##### Section 2

##### The East Timor Land Dispute Tribunal

2.1. The East Timor Land Dispute Tribunal is hereby established (hereinafter: 'the Land Dispute Tribunal') for the purposes of receiving, investigating, verifying and

adjudicating housing, land and property ownership and tenure rights disputes and claims referred to it by the appropriate bodies as established pursuant to the present Regulation.

2.2. The Land Dispute Tribunal shall have the legal status of a court as stipulated in UNTAET Regulation 2000/11. It shall have exclusive jurisdiction for cases submitted to it and may issue final decisions and other provisional measures of protection as stipulated in the present Regulation. Final decisions are binding and enforceable and are not subject to any other judicial or administrative authority in East Timor.

2.3. Final decisions issued by the Land Dispute Tribunal may confer the following rights: ownership rights; tenancy rights; customary rights; rights of temporary occupation; and rights of temporary exploitation, and may involve: orders for restitution of housing, land or property, orders for compensation, and orders reversing previous judicial decisions made under the jurisdiction of the previous or present administrators of East Timor,

2.4. The Land Dispute Tribunal will adopt its own rules of procedure and evidence.

2.5. In order to give effect to section 1.2 of the present Regulation, section 4 of UNTAET Regulation 2000/11 is hereby revoked, and replaced with the following new provision:

“The judiciary in East Timor shall be composed of District Courts, as determined by UNTAET Regulation 2000/11, one Court of Appeal, and one Special Tribunal, to be known as the East Timor Land Dispute Tribunal, as determined by the present Regulation”.

### Section 3

#### Functions, Powers and Duties of the Land Dispute Tribunal

3.1. The Land Dispute Tribunal shall have the following, functions, powers and duties:

- (a) receive applications and disputes from the Land Dispute Applications Office or the Land Disputes Mediation Board;
- (b) inform affected parties
- (b) collect relevant information
- (c) determine priority cases
- (d) determine process and time frames of cases
- (e) refer cases to the Land Dispute Mediation Board, as appropriate
- (f) determine who should attend sessions
- (g) set dates and call parties to sessions
- (h) hear evidence
- (i) propose alternative remedies to disputing parties
- (j) admit any evidence, including oral evidence, which it considers relevant and cogent to the matter being heard by it
- (k) consider any relevant regulation or law, including a customary law, in making a decision
- (l) reject cases
- (m) issue judicial rulings on any disputes or applications brought before it

(o) refer rulings to the new East Timor Land Registry for provisional registration, pending final registration in accordance with future East Timorese land laws and policies.

#### Section 4

##### Composition and Terms of Office of the Land Dispute Tribunal

4.1. The Land Dispute Tribunal is composed of three independent members of the highest moral integrity and professional standing. Two members shall be independent East Timorese experts and one member shall be an international independent expert.

4.2. Members of the Land Dispute Tribunal shall be appointed by the Special Representative of the Secretary-General as soon as possible after the promulgation of the present Regulation, in consultation with the National Consultative Committee.

4.3. Members of the Land Dispute Tribunal shall serve a two-year term, subject to one possible extension of two additional years.

4.4. Members of the Tribunal shall be referred to as Land Dispute Tribunal Adjudicators. They shall have a status equivalent to that of a Judge as stipulated under UNTAET Regulation 2000/11.

#### Section 5

##### Selection Criteria of the Land Dispute Tribunal

5.1. No person shall be qualified to be appointed a member of the Land Dispute Tribunal unless he or she:

- (a) is of the highest moral integrity and professional competence
- (b) has no criminal record
- (c) is a fit and proper person to be a member of the Tribunal
- (d) is qualified to be admitted as an advocate or attorney and has, for a cumulative period of at least ten years, practised as an advocate or an attorney or lectured in law at a university
- (e) has served a minimum of five years as a judge in his or her home country
- (f) by reason of his or her training and experience, has expertise in the fields of law and land matters relevant to the application of the present Regulation and the relevant laws listed therein.

#### Section 6

##### Oath by Land Dispute Tribunal Adjudicators

6.1. Upon appointment, the Transitional Administrator shall receive the following oath or solemn declaration from each Land Dispute Tribunal Adjudicator:

"I swear (solemnly declare) that in carrying out the functions entrusted to me as a Member of the Tribunal I will perform my duties independently and impartially.

I will, at all times, uphold the law and act in accordance with the dignity that the performance of my functions requires.

"I will carry out my functions without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or all other status."

#### Section 7

#### Removal and Replacement of Land Dispute Tribunal Adjudicators

7.1. Members of the Tribunal may be removed and replaced on the following grounds:

- (a) physical or mental incapacity which is likely to be permanent or prolonged
- (b) serious misconduct
- (c) failure in the due execution of office
- (d) having been placed, by personal conduct or otherwise, in a position incompatible with the due execution of office

7.2. Any Member shall not hold any other public or administrative office incompatible with his or her functions, or engage in any occupation of a professional nature, whether remunerative or not, or otherwise engage in any activity that is incompatible with his or her functions.

#### Section 8

#### Sessions of the Land Dispute Tribunal

8.1. The Land Dispute Tribunal shall meet regularly, in accordance with the number of relevant applications presented to it.

8.2. The Land Dispute Tribunal shall meet in Dili.

#### Section 9

#### Technical Support for the Land Dispute Tribunal

9.1. The Land Dispute Tribunal shall receive technical support from a Secretariat.

### **III. The East Timor Land Dispute Mediation Board**

#### Section 10

#### East Timor Land Dispute Mediation Board

10.1. The East Timor Land Dispute Mediation Board is hereby established (hereinafter: 'the Land Dispute Mediation Board') for the purposes of promoting mediated settlements for housing, land and property disputes and claims referred to it by the Land Dispute Applications Office or the Land Dispute Tribunal.

10.2. The Land Dispute Mediation Board shall adopt its own rules of procedure and evidence.

### Section 11

#### Functions, Powers and Duties of the Land Dispute Mediation Board

11.1. The Land Dispute Mediation Board, through the management and authority of a National Mediation Co-ordinator, have the following functions, powers and duties:

- (a) receive applications that represent land, housing and property ownership or tenure disputes from the Land Dispute Applications Office
- (b) determine priority cases
- (c) inform affected parties
- (d) collect relevant information
- (e) liaise with local, sub-district and district role players including service providers and NGOs
- (f) liaise and work closely with District Administrators
- (g) attempt settlement of disputes through internal mediation conducted by local dispute resolution structures, as appropriate
- (h) in cases where internal mediation has failed, the District Mediator shall convene case-specific Mediation Committees of at least three and not more than five members, including the chairperson
- (i) the District Mediator shall select appropriate members of case-specific Mediation Committees, on the basis of each member's: agreement to serve on the committee on a voluntary and unpaid basis, standing in the community, integrity, acceptability to the disputing parties, the particular contribution they can bring to the case, and the absence of any vested interests in the particular matter
- (j) develop a policy and provide for payment of *per diem* allowances to members of case-specific Mediation Committees to cover costs incurred by them during their service on such Committees
- (k) the District Mediator shall act as Chairperson of each case-specific Mediation Committee, or in consultation with the National Mediation Co-ordinator, appoint a suitable Chairperson to each such Committee
- (l) assist parties to draft formal settlement agreements
- (m) witness signature of agreements
- (n) determine key steps and time frames for specific mediation processes
- (o) determine who should attend meetings
- (p) set dates and call parties to meetings
- (q) ensure keeping of proper records of all proceedings
- (r) propose remedies to parties
- (s) refer unresolved cases to the Land Dispute Tribunal
- (t) refer mediated settlement agreements the District Mediator, who shall refer mediated settlement agreements to the relevant District Administrator for comment, and thereafter refer such agreements through the Office of the National Mediation Co-ordinator, to the East Timor Land Registry for provisional registration

Section 12  
Composition and Terms of Office of the Land Dispute Mediation Board

12.1. The Land Dispute Mediation Board is composed of one National Land Dispute Mediation Board Co-ordinator and thirteen District Land Dispute Mediators of the highest moral integrity and professional standing.

12.2. Members of the Land Dispute Mediation Board shall be appointed by the Transitional Administrator as soon as possible after the promulgation of the present Regulation, in consultation with the National Consultative Committee.

12.3. Each mediator shall be assigned to a district in East Timor for a given period by the National Mediation Co-ordinator, and may be redeployed to other districts, as appropriate.

12.4. Members of the Land Dispute Mediation Board shall serve a two-year term, subject to one possible extension of two additional years.

Section 13  
Selection Criteria of the Land Dispute Mediation Board

13.1. No person shall be qualified to be appointed a member of the Land Dispute Mediation Board unless he or she:

- (a) is of the highest moral integrity and professional standing
- (b) has no criminal record
- (c) is a fit and proper person to be a member of the Land Dispute Mediation Board;  
and
- (d) by reason of his or her training and experience, has expertise in the fields of law and land matters relevant to the application of this Regulation and the relevant laws listed therein.

Section 14  
Oath by Members of the Land Dispute Mediation Board

14.1. Upon appointment, the Transitional Administrator shall receive the following oath or solemn declaration from each Mediator:

"I swear (solemnly declare) that in carrying out the functions entrusted to me as a mediator I will perform my duties independently and impartially. I will, at all times, uphold the law and act in accordance with the dignity that the performance of my functions requires.

"I will carry out my functions without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or all other status."

## Section 15

### Removal and replacement of Members of the Land Dispute Mediation Board

15.1. Mediators may be removed and replaced on the following grounds:

- (a) physical or mental incapacity which is likely to be permanent or prolonged
- (b) serious misconduct
- (c) failure in the due execution of office
- (d) having been placed, by personal conduct or otherwise, in a position incompatible with the due execution of office

15.2. Mediators shall not hold any other public or administrative office incompatible with his or her functions, or engage in any occupation of a professional nature, whether remunerative or not, or otherwise engage in any activity that is incompatible with his or her functions.

## Section 16

### Sessions of the Land Dispute Mediation Board

16.1. The Mediation Board and Mediation Committees shall determine their own meeting times and working sessions, in accordance with the number of relevant applications presented to it.

## Section 17

### Technical Support for the Land Dispute Mediation Board

17.1. The Land Dispute Mediation Board shall receive technical support from a Secretariat

## **IV. The East Timor Land Dispute Applications Office**

### Section 18

#### The East Timor Land Dispute Applications Office

18.1. The East Timor Land Dispute Applications Office is hereby established (hereinafter: 'the Land Dispute Applications Office') for the purposes of receiving, accepting, recording, mapping, sorting and referring housing, land and property ownership and tenure rights disputes and claims to the Land Dispute Mediation Board or the Land Dispute Tribunal.

18.2. The Land Dispute Applications Office shall adopt its own rules of procedure and evidence, in accordance with the present Regulation.

### Section 19

#### Functions, Powers and Duties of the Land Dispute Applications Office

19.1. The Land Dispute Applications Office shall have the following functions, powers and duties:

- (a) Informing potential applicants of the present Regulation, and all relevant processes and procedures, as stipulated in the present Regulation
- (b) Receive applications
- (c) Receive referrals of land cases from District Courts
- (d) Interview applicants to obtain required information
- (e) Assist applicants to complete submissions on prescribed format
- (f) Obtain, copy, certify and scan all relevant documentation and return all originals to source
- (g) Provide applicants with copies of their submissions
- (h) Advise and assist applicants to decide between mediation and tribunal dispute resolution routes
- (i) Provide applicants with proof of registration of their dispute or application.
- (j) Develop an appropriate database and other computer software to facilitate management of the process and to meet the information needs of the Land Dispute Applications office, tribunal and national land registry
- (k) Ensure the procurement of appropriate computer and other hardware for the effective functioning of the application process
- (l) Recording all applications on the applications database
- (m) Link the database to scanned documentary evidence, including maps and photographs, pertaining to any application or dispute
- (n) Link database to available mapping system and cadastre
- (o) Determining *prima facie* compliance of applications, in terms of criteria as set out in the present Regulation, record decision on database, and inform applicants of the decision
- (p) Determine policy on confidentiality of personal information of applicants and witnesses
- (q) Protect confidentiality and integrity of information
- (r) Promote best practice and sound ethics in the Land Dispute Applications Office
- (s) Prevent corruption, bribery and fraud in the Land Dispute Applications Office
- (t) Make the database available to the Land Dispute Mediation Board and Land Dispute Tribunal staff, and ensure that they are trained in its proper use
- (u) Where required, publicise applications and invite public comment, objection or counter applications within set time period
- (v) Refer applications and disputes to Land Dispute Mediation board and Land Dispute Tribunal
- (x) Establish central, regional and district capacity as deemed appropriate
- (y) Provide ongoing training and support to its own staff.

19.2. The Chief Land Dispute Applications Officer, is hereby given the following specific powers:

- (a) To appoint District Land Dispute Applications Officers (DLDAO)
- (b) To deploy and re-deploy staff as appropriate
- (c) To determine information status, confidentiality and access levels on the Land Dispute Applications database
- (d) To determine on *prima facie* compliance of applications, in terms of criteria as stipulated in the present Regulation
- (e) After consultation with applicants, to determine whether to submit the application to the Land Dispute Mediation Board or Land Dispute Tribunal, in accordance with the contents of the relevant application

- (f) To determine whether or not to publicise and invite public comment on an application
- (g) To advertise applications and call for public comment
- (i) To certify authenticity of documents and sworn statements
- (k) To delegate any of the above powers to one or more of the DLDAOs

#### Section 20

#### Composition and Terms of Office of the Land Dispute Applications Office

20.1. The East Timor Land Dispute Applications Office will be composed of the Office of the Chief Land Dispute Applications Officer (CLDAO) based in Dili, and one Land Dispute Applications Office in each district centre.

#### Section 21

#### Selection Criteria of the Land Dispute Applications Office

21.1. No person shall be qualified to be appointed a CLDAO unless he or she:

- (a) is of the highest moral integrity and professional standing
- (b) has no criminal record
- (c) is a fit and proper person to be assume the powers and responsibilities of the CLDAO; and
- (d) by reason of his or her training and experience, have expertise in the field of land matters relevant to the application of the enabling regulation.

#### Section 22

#### Oath by Staff of the Land Dispute Applications Office

22.1. Upon appointment, the Transitional Administrator shall receive the following oath or solemn declaration from the Staff of the Land Dispute Applications Office:

"I swear (solemnly declare) that in carrying out the functions entrusted to me as an employee of the Land Dispute Applications Office. I will perform my duties independently and impartially. I will, at all times, uphold the law and act in accordance with the dignity that the performance of my functions requires.

"I will carry out my functions without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or all other status."

#### Section 23

#### Removal and Replacement of Staff of the Land Dispute Applications Office:

23.1. Land Dispute Applications Officers may be removed and replaced on the following grounds:

- (a) physical or mental incapacity which is likely to be permanent or prolonged
- (b) serious misconduct
- (c) failure in the due execution of office

(d) having been placed, by personal conduct or otherwise, in a position incompatible with the due execution of office

23.2. Land Dispute Applications Officers shall not hold any other public or administrative office incompatible with his or her functions, or engage in any occupation of a professional nature, whether remunerative or not, or otherwise engage in any activity that is incompatible with his or her functions.

#### Section 24

##### Sessions of the Land Dispute Applications Office:

24.1. The Land Administration Office shall determine meeting times and working sessions, in accordance with the number of applications presented to it.

### **V. The Good Offices of the Transitional Administrator**

#### Section 25

##### The Good Offices of the Transitional Administrator

25.1. Where appropriate, the Transitional Administrator may offer his good offices to assist in the settlement of housing, land or property disputes which cannot otherwise be resolved by the institutions established pursuant to the present Regulation.

### **VI. The Submission of Land and Property Disputes or Verification Applications**

#### Section 26

##### The Submission of Applications Relating to Housing, Land or Property Disputes or Claims for the Urgent Verification of Title

26.1. All natural persons and relevant groups shall have a right to submit well-founded applications relating to disputes concerning private housing, land and other immovable property, whether of a residential, commercial or other nature, within the territory of East Timor or to have verified similar applications in the absence of a dispute, in particular where the verification and provisional registration of title are urgently required for investment or development purposes.

26.2 Indonesian military officials previously based in East Timor under the employ of the Indonesian Military (TNI, KODIM or others) or other military institution, who acquired private housing, land or property in East Timor shall have no right to submit applications relating to such housing, land or property under the present Regulation.

26.3. Every effort shall be made by all persons seeking resolution of land and property disputes and all persons seeking verification of title claims to present reliable evidence that the housing land or property under dispute or claim was not acquired in a fraudulent, violent or otherwise unlawful manner.

26.4. UNTAET shall establish facilities at which applicants will be offered assistance with the completion of their application forms and the copying of any documents offered in

support of the application in: Dili (Dili District), Manatuto (Manatuto District), Baucau (Baucau District), Lospalos (Lautem District), Viqueque (Viqueque District), Same (Manufahi District), Ainaro (Ainaro District), Suai (Covalima District), Mailana (Bobonaro District), Liquica (Liquica District), Ermera (Ermera District), Aileu (Aileu District) and Oecusse (Ambeno District).

26.5. Applicants who are not in a position to visit any of the above facilities, may submit applications and supporting documentation directly to the Land and Property Unit of UNTAET or by the use of regular mail.

26.6. Applications may be submitted through power of attorney.

26.7. UNTAET, in its capacity as transitional administrative authority, will be considered as an interested party in any application submitted in terms of the present Regulation.

### Section 27

#### Standard Application Format and Deadline of Submission of Applications

27.1. All applications shall be submitted on the standard application form within one year of the proclamation of the present Regulation.

27.2. Certified copies of any available evidence must be attached to the application form, at the time of submission. The original copies of any such evidence must be kept by the applicant(s).

### Section 28

#### Sources of Evidence

28.1. Possible sources of evidence in support of application may include: Portuguese land title records, Indonesian records, cadastral extracts, sworn statements of councils of customary law, *corpus juris civilis*, legally valid contracts of sale or tenancy, inheritance decisions, building permits, property or land tax records, official certificates establishing residency, telephone book references, utility bills, witnesses, sworn affidavits, UNTAET allocation documents and other appropriate evidence.

### Section 29

#### Public Information

29.1. UNTAET shall take all reasonable steps to inform potential applicants of the contents of the present Regulation, and in particular the one-year deadline for the submission of applications. All documentation including the application form shall be made available on request in any of the following languages: English, Bahasa Indonesian, Tetum and Portuguese.

### Section 30

#### Public Records

30.1. All institutions established pursuant to the present Regulation shall have free access to any and all official records in East Timor, or elsewhere, relevant to any application

submitted for consideration under the Land Dispute Mechanism, in particular official records relating to housing, land or property utilised as sources of evidence.

Section 31  
Legal Representation

31.1. All applicants and parties shall represent themselves before the relevant bodies established pursuant to the present Regulation.

**VII. Applicable Law**

Section 32  
Legal Basis of Tribunal Orders on Ownership, Tenure Rights or Title Verification

32.1. In the determination of ownership, tenure rights or title verification, due regard shall be paid by all institutions established pursuant to the present Regulation to:

- (a) applicable laws as established pursuant to section 3.1 of Regulation 1999/1;
- (b) the political and other relevant circumstances prevailing at the time that the housing, land or property in dispute or under claim was allegedly acquired by the party concerned;
- (c) international standards of direct relevance to legal and human rights issues relating to land and property, in particular the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights and the Universal Declaration of Human Rights; and
- (d) the historical treatment and/or status under customary law norms of the land or property under application.

32.2. Disputes and/or claims under consideration by the Land Claims Tribunal wherein any of the following features are present may, prima facie, constitute compelling grounds for the restitution or restoration of ownership rights, tenancy rights, customary rights, rights of temporary occupation or rights of temporary exploitation:

- (a) applicant can show uninterrupted formal title, based on currently held documents issued during the Portuguese Period, officially recognised and/or converted during the Indonesian Period, and not currently challenged by any party;
- (b) applicant can show that the land or property under dispute was acquired by the current occupant prior to 30 August 1999 on the basis of a corrupt, fraudulent, arbitrary, violent, or otherwise unlawful practice, inconsistent with internationally recognised human rights;
- (c) applicant can show that the housing, land or property under dispute was forcibly or otherwise confiscated by the Indonesian military between 7 December 1975 and 25 October 1999 shall, including under the SKEP 40 decree;

(d) applicant can show that the land or property under dispute was acquired by the second claimant on the basis of family or other special connections or relations, including business connections, with the ruling Indonesian regime at any point from 7 December 1975 - 25 October 1999;

(e) applicant can show that the land or property under dispute was compulsorily acquired during the Indonesian Period for the exclusive purpose of settling Indonesian migrants under the Transmigration programme;

(f) applicant can show that the land or property under dispute is land or property from which they were arbitrarily evicted or dispossessed, without just compensation or reason, at any point from 7 December 1975 - 30 August 1999;

(g) applicant can show that the land or property under dispute was expropriated (for whatever alleged reason) during the Indonesian Period, without the payment of just compensation;

(h) applicant can show that the land or property under dispute is claimed by the second claimant on the exclusive grounds that the second claimant acquired the land or property under dispute on the basis of the failure of the first claimant to convert Portuguese titles based on the application of Indonesian Government Regulation No. 18 of 1991, and which required those claimants seeking to convert their Portuguese titles into Indonesian titles to be present in East Timor in order to do so;

(i) applicant can show that rights to the land or property in question were relinquished or otherwise lost on the basis of the application of Article 5(1) or 5(2) of Indonesian Government Regulation No. 18 of 1991 (Conversion Law); or where

(j) applicant can show that the land or property in question was acquired from them, or had rights associated with it degraded or reverted to the Government, solely on the basis of first claimant's status as a 'foreign citizen' under Government Regulation No. 18 of 1991.

32.3 There shall be no right to appeal decisions issued by the Land Dispute Tribunal.

### Section 33 Security of Tenure

33.1. All persons legally within the territory presently under the jurisdiction of UNTAET have the provisional right to security of tenure and the right to be protected against arbitrary forced eviction, unless or until a ruling is issued by the Land Dispute Tribunal.

### Section 34 Protection Against Homelessness

34.1. No enforcement of any Judgement issued by the East Timor Land Dispute Tribunal shall be made until such time as the unlawful occupant(s) of the land or property (evictee) in question is provided with alternative land and/or housing of an adequate standard or reasonable compensation by the appropriate UNTAET institutions.

34.2. In accordance with Section 7 of UNTAET Regulation 1999/1, UNTAET may allocate public or private abandoned property to the unlawful occupant(s) in compliance with the terms of sub-section 1 of the present Section.

Section 35  
Provisional Registration of Settlements and Decisions

35.1. All settlements and decisions shall be provisionally registered in the Land Registry.

Section 36  
Entry into force

36.1. The present Regulation enters into force on .... 2000.

(to be signed)  
Sergio Vieira de Mello  
Transitional Administrator

### Annex 3.

#### *Relevant International Human Rights Standards on Housing and Property Rights*

**INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS (1966), adopted by United Nations General Assembly (UNGA) resolution 2200A(XXI), 16 December 1966, entered into force on 3 January 1976. Article 11(1) states:**

*The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.*

**INTERNATIONAL CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION (1965), adopted by UNGA resolution 2106A(XX), entered into force on 4 January 1969. Article 5(e) (iii) states:**

*In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and eliminate racial discrimination in all of its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:...(e) in particular...(iii) the right to housing.*

**INTERNATIONAL CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN (1979), adopted by UNGA resolution 34/180 on 18 December 1979, entered into force on 3 September 1981. Article 14(2)(h) states:**

*States Parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to such women the right...(h) to enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications.*

**INTERNATIONAL CONVENTION ON THE RIGHTS OF THE CHILD (1989), adopted by UNGA resolution 44/25 on 20 November 1989, entered into force on 2 September 1990. Article 27(3) states:**

*States Parties in accordance with national conditions and within their means shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in the case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.*

**INTERNATIONAL CONVENTION RELATING TO THE STATUS OF REFUGEES (1951), adopted on by UNGA resolution 429(V) on 28 July 1951, entered into force on 22 April 1954. Article 21 states:**

*As regards housing, the Contracting States, in so far as the matter is regulated by laws or regulations or is subject to the control of public authorities, shall accord refugees lawfully staying in their territory treatment as favorable as possible and, in any event, not less favorable than that accorded to aliens generally in the same circumstances.*

**UNIVERSAL DECLARATION ON HUMAN RIGHTS (1948), adopted and proclaimed by United Nations General Assembly resolution 217A (III) on 10 December 1948.**

**Article 25(1) states:**

*Everyone has the right to a standard of living adequate for the health and well-being of himself and his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.*

## Annex 2.

### *General Comment No. 4 on the Right to Adequate Housing (1991)*

On 12 December 1991 the United Nations Committee on Economic, Social and Cultural Rights adopted General Comment No. 4 on the Right to Adequate Housing by a unanimous vote (UN doc: E/C.12/1991/4, pp. 114-120). The Committee is legally responsible for examining the degree to which countries which have ratified the Covenant on Economic, Social and Cultural Rights have undertaken the necessary steps leading towards the full enjoyment of the rights found in Covenant for all citizens. At present, 139 countries have ratified the Covenant, which contains the most important legal basis of housing rights found in international law. This General Comment is the single most authoritative *legal interpretation* of what the right to housing actually means in legal terms under international law.

*GENERAL COMMENT NO. 4 (1991) THE RIGHT TO ADEQUATE HOUSING (ART. 11(1) OF THE COVENANT), adopted by the UN Committee on Economic, Social and Cultural Rights on 12 December 1991.*

1. Pursuant to article 11(1) of the Covenant, States parties “recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions”. The right to adequate housing which is thus derived from the right to an adequate standard of living, is of central importance for the enjoyment of all economic, social and cultural rights.

2. The Committee has been able to accumulate a large amount of information pertaining to this right. Since 1979 the Committee, and its predecessors have examined 75 reports dealing with the right to adequate housing. The Committee has also devoted a day of general discussion to the issue at each of its third and fourth sessions<sup>1</sup>. In addition, the Committee has taken careful note of information generated by the International Year of Shelter for the Homeless (1987), including the Global Strategy for Shelter to the year 2000 endorsed by the General Assembly.<sup>6</sup> The Committee has also reviewed relevant reports and other documentation of the Commission on Human Rights and the Sub-Commission on Prevention of Discrimination and Protection of Minorities.<sup>7</sup>

3. Although a wide variety of international instruments address the different dimensions of the right to adequate housing<sup>8</sup>, article 11(1) of the Covenant is the most comprehensive and perhaps the most important of the relevant provisions.

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<sup>1</sup> E/C.12/1990/3, paras. 281-285.

<sup>2</sup> A/43/8/Add.1; General Assembly resolution 42/191, annex.

<sup>3</sup> Commission on Human Rights resolutions 1986/36 and 1987/22; /CN.4/Sub.2/1990/19, paras. 108-120; E/CN.4/Sub.2/1991/17, paras. 137-139; and see also Sub-Commission resolution 1991/26.

<sup>4</sup> See, for example, article 25(1) of the Universal Declaration on Human Rights, article 5(e)(iii) of the International Convention on the Elimination of All Forms of Racial Discrimination, article 14(2) of the International Convention on the Elimination of All Forms of Discrimination Against Women, article 27(3) of the Convention on the Rights of the Child, article 10 of the Declaration on Social Progress and Development, section III (8) of the UN Vancouver Declaration on Human Settlements (1976), article 8(1) of the Declaration

4. Despite the fact the international community has frequently reaffirmed the importance of full respect for the right to adequate housing, there remains a disturbingly large gap between the standards set in article 11(1) of the Covenant and the situation prevailing in many parts of the world. While the problems are often particularly acute in some developing countries which confront major resource and other constraints, the Committee observes that significant problems of homelessness and inadequate housing also exist in some of the most economically developed societies. Worldwide, the United Nations estimates that there are over 100 million persons homeless and over 1 billion inadequately housed.<sup>9</sup> There is no indication that this number is decreasing. It seems clear that no State party is free of significant problems of one kind or another in relation to the right to housing.

5. In some instances, the reports of States parties examined by the Committee have acknowledged and described difficulties in ensuring the right to adequate housing. For the most part, however, the information provided has been insufficient to enable the Committee to obtain an adequate picture of the situation prevailing in the State concerned. This General Comment thus aims to identify some of the principal issues which the Committee considers to be important in relation to this right.

6. The right to adequate housing applies to everyone. While reference to “himself and his family” reflects assumptions as to gender roles and economic activity patterns commonly accepted in 1966 when the Covenant was adopted, the phrase cannot be read today as implying any limitation upon the applicability of the right to individuals or to female-headed households, or other such groups. Thus, the concept of “family” must be understood in a wide sense. Further, individuals, as well as families, are entitled to adequate housing regardless of age, economic status, group or other affiliation or status and other such factors. In particular, enjoyment of this right must, in accordance with article 2(2) of the Covenant, not be subject to any form of discrimination.

7. In the Committee’s view the right to housing should not be interpreted in a narrow or restrictive sense which equates it with, for example, the shelter provided by merely having a roof over one’s head or views shelter exclusively as a commodity. Rather it should be seen as the right to live somewhere in security, peace and dignity. This is appropriate for at least two reasons. In the first place, the right to housing is integrally linked to other human rights and to the fundamental principles upon which the Covenant is premised. Thus, “inherent dignity of the human person” from which the rights in the Covenant are said to derive requires that the term “housing” be interpreted so as to take account of a variety of other considerations, most importantly that housing rights should be ensured to all persons irrespective of income or access to economic resources. Secondly, the reference in article 11(1) must be read as referring not to housing tout court but to adequate housing. As both the Commission on Human Settlements and the Global Strategy for Shelter to the Year 2000 have stated: “Adequate shelter means....adequate privacy, adequate space, adequate security, adequate lighting and ventilation, adequate basic infrastructure and adequate location with regard to work and basic facilities—all at a reasonable cost.”<sup>10</sup>

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on the Right to Development, and International Labour Organization Recommendation No. 115 on Workers Housing (1961).

<sup>5</sup> A/43/8/Add.1.

<sup>6</sup> *ibid*, para. 5.

8. Thus the concept of adequacy is particularly significant in relation to the right to housing since it serves to underline a number of factors which must be taken into account in determining whether particular forms of shelter can be considered to constitute “adequate housing” for the purposes of the Covenant. While adequacy is determined in part by social, economic, cultural, climatic, ecological and other factors, the Committee believes that it is nevertheless possible to identify certain aspects of the right that must be taken into account for this purpose in any particular context. They include the following:

(a) Legal Security of Tenure:

Tenure takes a variety of forms, including rental (public and private) accommodation, cooperative housing, lease, owner-occupation, emergency housing and informal settlements, including occupation of land or property. Notwithstanding the type of tenure, all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats. States parties should consequently take immediate measures aimed at conferring legal security of tenure upon those persons and households currently lacking such protection, in genuine consultation with affected persons and groups;

(b) Availability of Services, Materials, Facilities and Infrastructure:

An adequate house must contain certain facilities essential for health, security, comfort and nutrition. All beneficiaries of the right to adequate housing should have sustainable access to natural and common resources, potable drinking water, energy for cooking, heating and lighting, sanitation and washing facilities, food storage, refuse disposal, site drainage and emergency services;

(c) Affordable:

Personal or household financial costs associated with housing should be at such a level that the attainment and satisfaction of other basic needs are not threatened or compromised. Steps should be taken by States parties to ensure that the percentage of housing-related costs is, in general, commensurate with income levels. States parties should establish housing subsidies for those unable to obtain affordable housing, as well as forms and levels of housing finance which adequately reflect housing needs. In accordance with the principle of affordability tenants should be protected from unreasonable rent levels or rent increases by appropriate means. In societies where natural materials constitute the chief sources of building materials for housing, steps should be taken by States parties to ensure the availability of such materials;

(d) Habitable:

Adequate housing must be habitable, in terms of providing the inhabitants with adequate space and protecting them from cold, damp, heat, rain, wind or other threats to health, structural hazards, and disease vectors. The physical safety of occupants must be guaranteed as well. The Committee encourages States parties to comprehensively apply the “Health Principles of Housing” prepared by the World Health Organization (WHO) which view housing as the environmental factor most frequently associated with disease conditions in epidemiological analyses; i.e. inadequate and deficient housing and living conditions are invariably associated with higher mortality and morbidity rates;

(e) Accessibility:

Adequate housing must be accessible to those entitled to it. Disadvantaged groups must be accorded full and sustainable access to adequate housing resources. Thus, such disadvantaged groups as the elderly, children, the physically disabled, the terminally ill, HIV-positive individuals, persons with persistent medical problems, the mentally ill, victims of natural disasters, people living in disaster-prone areas and other groups should be ensured some degree of priority consideration in the housing sphere. Both housing law and policy should take fully into account the special housing needs of these groups. Within many States parties increasing access to land by landless or impoverished segments of the society should constitute a central policy goal. Discernable governmental obligations need to be developed aiming to substantiate the right of all to a secure place to live in peace and dignity, including access to land as an entitlement;

(f) Location:

Adequate housing must be in a location which allows access to employment options, health care services, schools, child care centers and other social facilities. This is both true in large cities and in rural areas where the temporal and financial costs of getting to and from places of work can place excessive demands upon the budgets of poor households. Similarly, housing should not be built on polluted sites nor in immediate proximity to pollution sources that threaten the right to health of the inhabitants;

(g) Culturally Adequate:

The way housing is constructed, the building materials used and the policies supporting these must appropriately enable the expression of cultural identity and diversity of housing. Activities geared towards development or modernization in the housing sphere should ensure that the cultural dimensions of housing are not sacrificed and that they should ensure, inter alia, modern technological facilities, as appropriate.

9. As noted above, the right to adequate housing cannot be viewed in isolation from other human rights contained in the two international instruments. Reference has already been made in this regard to the concept of human dignity and the principle of non-discrimination. In addition, the full enjoyment of other rights such as the right to freedom of expression, the right to freedom of association (such as for tenants and other community-based groups), the right to freedom to choose one's residence and the right to participate in public decision-making is indispensable if the right to adequate housing is to be realized and maintained by all groups in society. Similarly, the right not be subjected to arbitrary interference with one's privacy, family, home or correspondence constitutes a very important dimension in defining the right to housing.

10. Regardless of the state of development of any country, there are certain steps which must be taken immediately. As recommended in the Global Shelter Strategy and in other international analyses, many of the measures required to promote the right to housing require only abstention by the Government from certain practices and a commitment to facilitate "self-help" by affected groups. To the extent that any such steps are considered to be beyond the maximum resources available to a State party, it is appropriate that a request be made as soon as possible for international cooperation in accordance with articles 11(1), 22 and 23 of the Covenant,

and that the Committee is informed thereof.

11. States parties must give due priority to those social groups living in unfavorable conditions by giving them particular consideration. Policies and legislation should correspondingly not be designed to benefit already advantaged social groups at the expense of others. The Committee is aware that external factors can affect the right to a continuous improvement in living conditions, and that in many States parties overall living conditions declined during the 1980s. However, as noted by the committee in its General Comment No. 2, despite externally caused problems, the obligations found in the Covenant continue to apply and are perhaps even more pertinent during times of economic contraction. It would thus appear to the Committee that a general decline in living and housing conditions, directly attributable to policy and legislative decisions by States parties, and in the absence of accompanying compensatory measures, would be inconsistent with the obligations found in the Covenant.

12. While the most appropriate means for achieving the full realization of the right to adequate housing will inevitably vary significantly from one State party to another, the Covenant clearly requires that each State party take whatever steps are necessary for that purpose. This will almost invariably require the adoption of a national housing strategy which, as stated in the Global Shelter Strategy, “defines the objectives for the development of shelter conditions, identifies the resources available to meet these goals and the most cost-effective way of using them and sets out the responsibilities and time-frame for the implementation of the necessary measures” (para. 32). Both for reasons of relevance and effectiveness, as well as in order to ensure respect for other human rights, such a strategy should reflect extensive genuine consultation with, and participation by, all of those affected, including the homeless, the inadequately housed and their representatives. Further, steps should be taken to ensure co-ordination between ministries, regional and local authorities in order to reconcile related policies (economics, agriculture, environment, energy and so forth) with the obligation arising from article 11 of the Covenant.

13. Effective monitoring of the situation with respect to housing is another obligation of immediate effect. For a State party to satisfy its obligations under article 11(1) it must determine, *inter alia*, that it has taken whatever steps are necessary, either alone or on the basis of international cooperation, to ascertain the full extent of homelessness and inadequate housing within its jurisdiction. In this regard, the revised reporting guidelines adopted by the Committee<sup>11</sup> emphasize the need to “provide detailed information about those groups within society that are vulnerable and disadvantaged with regard to housing”. They include, in particular, homeless persons and families, those inadequately housed and without ready access to basic amenities, those living in “illegal” settlements, those subject to forced evictions and low-income groups.

14. Measures designed to satisfy a State party’s obligations in respect of the right to adequate housing may reflect whatever mix of public and private sector measures considered appropriate. While in some States public financing of housing might most usefully be spent on direct construction of new housing, in most cases, experience has shown the inability of Governments to fully satisfy housing deficits with publicly built housing. The promotion by States parties of “enabling strategies”, combined with a full commitment to obligations

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<sup>7</sup> E/C.12/1991/1.

concerning the right to adequate housing, should thus be encouraged. In essence, the obligation is to demonstrate that, in aggregate, the measures being taken are sufficient to realize the right for every individual in the shortest possible time in accordance with the maximum of available resources.

15. Many of the measures that will be required will involve resource allocations and policy initiatives of a general kind. Nevertheless, the role of formal legislative and administrative measures should not be underestimated in this context. The Global Shelter Strategy (paras. 66-67) has drawn attention to the type of measures that might be taken in this regard and to their importance.

16. In some States, the right to adequate housing is constitutionally entrenched. In such cases, the Committee is interested in learning of the legal and practical significance of such an approach. Details of specific cases and of other ways in which entrenchment has proved useful should thus be provided.

17. The Committee views many component elements of the right to adequate housing as being at least consistent with the provision of domestic legal remedies. Depending on the legal system, such areas might include, but are not limited to:

- (a) legal appeals aimed at preventing planned evictions or demolitions through the issuance of court-ordered injunctions;
- (b) legal procedures seeking compensation following an illegal eviction;
- (c) complaints against illegal actions carried out or supported by landlords (whether public or private) in relation to rent levels, dwelling maintenance, and racial or other forms of discrimination;
- (d) allegations of any form of discrimination in the allocation and availability of access to housing; and
- (e) complaints against landlords concerning unhealthy or inadequate housing conditions. In some legal systems, it would also be appropriate to explore the possibility of facilitating class action suits in situations involving significantly increased levels of homelessness.

18. In this regard, the Committee considers that instances of forced evictions are prima facie incompatible with the requirements of the Covenant and can only be justified in the most exceptional circumstances, and in accordance with the relevant principles of international law.

19. Finally, article 11 (1) concludes with the obligation of States parties to “recognize the essential importance of international cooperation based on free consent.” Traditionally, less than 5 percent of all international assistance has been directed towards housing or human settlements, and often the manner by which such funding is provided does little to address the housing needs of disadvantaged groups. States parties, both recipients and providers, should ensure that a substantial portion of financing is devoted to creating conditions leading to as higher number of persons being adequately housed. International Financial Institutions promoting measures of structural adjustment should ensure that such measures do not compromise the enjoyment of the right to adequate housing. States parties should, when contemplating international financial cooperation, seek to indicate areas relevant to the right to adequate housing where external financing would have the most effect. Such requests should take full account of the needs and views of the affected groups.