

THE JURIDICAL REGIME OF REAL ESTATE

Part I: Ownership over real estate

The occupation of Timor-Leste between 1975 and 1999 was an illegal act as recognised worldwide, namely by United Nations Security Council Resolutions 384 of 22

December 1975, and 389 of 22 April 1976. This is the reason why Indonesia was unable

to succeed the Portuguese Administration in Timor-Leste.

Under Resolution 1272 of 25 October 1999, the United Nations Transitional Administration in East Timor (hereinafter referred to as UNTAET) was given the power

to administer Timor-Leste on a provisional basis, which enabled it to administer only

movable and immovable assets, both public and private, as provided for in section 7 of

UNTAET Regulation No. 1991/1.

Among the various temporary measures taken by UNTAET regarding the ownership of real estate, one singles out Regulation No. 2000/27 that aimed at freezing

the juridical status of some real estate assets. The transitional administration faced

numerous situations of illegitimate appropriation or occupation of real estate assets, as

per Executive Orders Nos. 2002/5 and 2002/7. The vast majority of these cases have not

been settled.

Following the destruction of the country and the disruption of the Public Administration that occurred during the period of organised terrorism in 1999, there is

presently no real estate registry, both public and private. However, the preparation of a

national real estate cadastre was already initiated.

Numerous real estate assets, which are now the property of the State of Timor-Leste, have been illegally occupied or appropriated. Similarly, several real estate assets

belonging to ordinary citizens, namely national citizens living abroad and foreign

citizens, have also been illegally occupied or appropriated.

Section 54 of the Constitution of the Democratic Republic of Timor-Leste provides for the general principles relating to private property by unequivocally recognising this right. It states that private property should not be used to the detriment of its social purpose and that only national citizens have the right to private ownership of land. The Constitution further establishes in its section 161 that illegal appropriation of movable or immovable property and real estate is considered a crime. Following international recognition of the independence of Timor-Leste on 20 May 2002 and the establishment of a national government based on the results of democratic elections, it is now an imperative of the government to establish a legal framework based on the constitutional principles that governs the regime of ownership over real estate in order to put in place a policy that helps settle the problems resulting from the indefiniteness of the ownership of public and private immovable property. On the one hand, the current situation of indefiniteness of ownership affects the State property by depriving it of important resources to administer the country and, on the other hand, it creates social instability, which delays the development of the country. In order to implement sections 138, 140 and 141 of the Constitution, the Government has the constitutional duty to create the necessary conditions for the economic development of the country, and it is both technically and juridically indispensable for it to have a real estate cadastre that serves as the basis for the future registry of title deeds.

CHAPTER I

GENERAL PROVISIONS

Section 1

(Real estate)

1. For the purposes of the provisions of the present law, real estate refers to the rural and urban property, as well as their integral parts.
2. An integral part refers to every movable object that is materially linked to a

building on a permanent basis.

3. Urban buildings refer to immovable assets that are located within the limits of

towns and district urban centres.

4. Rural buildings refer to those that are located outside of legally established urban areas.

5. Urban limits of towns and population centres shall be determined by a specific legal instrument.

6. The definition of urban areas must take into account whether the current or future use of the soil is intended for housing, trading, industry or services as

main activity, and their inclusion in development and urban planning projects.

7. Rural areas refer to those where the soil is used mainly for farming or agriculture & livestock industries.

8. For the purposes of the provisions of the present law, an object is anything that can be the object of legal relations, excluding those objects that are within

the public domain and those that, given their nature, are not liable to individual appropriation.

Section 2

(Private real estate)

For the purposes of the provisions of the present law, private real estate shall be the rural and urban buildings that can be the object of legal business, the owners of which are national private persons, whether individuals or corporate bodies, or the State.

Section 3

(Public real estate)

1. Immovable assets are public when outside the domain of legal commerce and are,

by nature, not liable to individual appropriation;

2. The mineral resources of the soil and subsoil are subject to specific legislation.

Section 4

(State's private real estate)

1. Private real estate of the State of Timor-Leste shall comprise:

a) All real estate assets owned by the Portuguese State as on 7 December 1975; and

b) Real estate assets that are acquired by the State by virtue of law or juridical business.

2. The disposal of State' s private real estate assets shall be regulated by Decree-
Law.

CHAPTER II

ILLICIT DEALINGS

Section 5

(Illegal appropriation)

1. A person who has illegally benefited from or occupied a state' s immovable asset, claiming to be their property, and who has secured the title thereof, against the payment of a favour or through fraudulent means, incurs a criminal offence of usurpation of immovable property.

2. A person who appropriates themselves illegally of someone else' s immovable asset shall be punished with a prison sentence ranging from 30 to 180 days, and each day of fine shall correspond to an amount ranging from one to two hundred US Dollars, which is calculated on the basis of the offender' s economic status.

3. A fine that is not voluntarily paid shall be replaced by the provision of labour in favour of the community for an equal period of time.

4. Where an offender refuses to observe the penalty of provision of labour in favour of the community, the penalty of imprisonment for an equal period of time shall apply, and the offender may at all times avoid, totally or in part, serving the sentence by paying the fine imposed on him or her or by providing labour in favour of the community.

5. A citizen who, having been notified by the Direco de Terras e Propriedades (Land and Property Authority), hereinafter referred to as DTP, of illegal occupation of immovable property, vacates such immovable property or regularizes its occupation, within 30 days of that notice, shall not be liable to criminal prosecution.

6. Preventive imprisonment shall be applicable under no circumstance.

7. The criminal proceeding for a criminal offence of usurpation of immovable property does not obviate any other judicial or administrative proceedings with a view to returning proceeds levied on a third party for the use of an immovable asset and unduly perceived by the offender.

Section 6

(Illegal occupation)

1. For the purposes of the provisions of the present law, illegal occupation shall mean the act of someone utilising someone else's real estate or acting as its possessor against the owner's will.
2. For the purposes of the present law, possession is the power that is manifested when someone acts in a way that corresponds to the exercise of ownership rights or of any other real right, and possession may be exercised by the rights holder or through someone else.
3. A person illegally occupying someone else's real estate shall be punished with a fine of 30 to 90 days, at a daily rate varying from a minimum of 50 cents to a maximum of one hundred US Dollars, to be calculated on the basis of the offender's economic status in such a way that, within the established limits, its amount should constitute a penalty commensurate with the offender's degree of guilt.
4. The fine provided for in section 6.3 above shall not be convertible into imprisonment, but failure to pay it shall determine the seizure and execution of the offender's assets as may be required for the payment of such outstanding fine.
5. The provisions of subsections 5 and 6 of the preceding section shall apply, *mutatis mutandis*, to illegal occupation.
6. A third party who has proved to have acted in good faith shall not be considered as an illegal occupant.

CHAPTER III

ADMINISTRATIVE EVICTION FROM STATE'S REAL ESTATE

Section 7

(Requisites)

1. Once a State's real estate is identified, DTP must notify its occupants of such a fact and order them to vacate the asset within a period of 30 days, on pain of administrative eviction and without prejudice to the proceeding corresponding to the responsibility provided for in the preceding Chapter II.

2. Occupants shall have a period of 10 days from the date of notification to lodge an appeal in writing against such a decision before the Minister of Justice if they so wish.

3. A tacit rejection of the appeal provided for in section 7.2 above shall be deemed to exist whenever there is no response to the appeal within a period of 15 days from the date the appeal was lodged.

Section 8 (Procedures)

1. Having elapsed the period provided for in section 7.1 above, DTP may undertake the administrative eviction from the State's real estate illegally appropriated or occupied. Where necessary, DTP may resort to police force.

2. A judicial appeal filed against an eviction warrant does not suspend an ongoing administrative eviction.

3. Expenses pertaining to administrative eviction shall be borne by the evictee, and DTP shall submit to the Public Prosecution Service a certificate of the amount of the expenses of seizure and execution of the real estate of the evictee in an amount that allows the respective payment.

4. Administrative eviction does not confer any right to indemnity or compensation for construction or improvement works undertaken in the immovable asset.

Section 9 (Bona-fide third parties)

Administrative eviction shall not prejudice the rights acquired by bona-fide third parties.

Section 10 (Judicial appeal)

1. Administrative eviction can be appealed against before the courts of law within a period of 30 days from the date of the administrative eviction.

2. The competent court shall be the one corresponding to the location of the real estate in question.

3. Pending the approval and entry into force of the code on judicial expenses, the costs of proceeding shall be fixed by the court, in an amount varying between

fifty and five hundred US dollars.

Section 11

(Procedures for appeal)

1. The petition for appeal must mention the de facto and the jure reasons, as well as the clear and concise formulation of the request.
2. The petition for appeal must also be submitted together with a document certifying the act that is the object of the appeal, as well as all other supporting documents.
3. Once the appeal has been lodged, the judge may invite the appellant to correct the deficiencies contained in the petition.
4. Where the judge is of the opinion that there is no untimeliness, illegitimacy of the parties or manifest illegality of the appeal, he or she shall order the referral of copies to the Ministry of Justice so as to enable the latter to answer within a period of 30 days if they so wish.
5. Once the response from the Ministry of Justice is received or the prescribed period of time has elapsed, and in cases where the appeal may affect the rights of third parties, the judge shall order the citation of the same to answer within a period of 15 days.
6. Once the responses have been gathered or where the respective prescribed periods of time have elapsed, the judge may requisition the documents deemed necessary or notify the parties to produce them.
7. Thereafter, the proceeding continues for a period of 48 hours, the endorsement of the Public Prosecution Service, and the decision shall be issued within 15 days.

CHAPTER IV

FINAL AND TRANSITIONAL PROVISIONS

Section 12

(Real estate assets that are the property of national citizens)

1. National citizens whose real estate assets have been illegally appropriated or

occupied by third parties, must submit their claims relating to the right of ownership over such assets, within a period of one year from the date of entry into force of the present law, that the mechanisms for mediation or administrative restitution of the respective title deeds may be enforced under such terms as may be established by law.

2. The claims provided for in section 12.1 above shall be filed with DTP, and the

respective documental evidence shall immediately be attached thereto.

3. Unclaimed private immovable assets without identified owners shall be presumed to be the property of the State.

4. The presumption referred to in section 12.3 above may be rebutted by way of a judicial appeal that must be lodged not later than December 31, 2008.

5. A claim and judicial appeal provided for in this section shall not undermine

the proprietor's right to propose at the competent civil court a compensation action as prescribed for such a case.

Section 13

(Real estate assets that are the property of expatriate nationals)

1. For such purposes as may be established by the law, expatriate nationals must,

within a period of one year from the date of the entry into force of the present law,

provide DTP with all data on the immovable assets they owned until the 19 May 2002.

2. For the purposes of the provisions of section 13.1 above, the respective documental evidence must immediately be attached thereto; otherwise such immovable assets will be presumed abandoned and shall therefore be forfeited to the State.

3. Any acts of disposal of real estate undertaken by expatriate nationals as from the 20 May 2002 shall be considered non-existent.

Section 14

(Mandatory reporting)

1. For the purposes of the procedures referred to in sections 5 and 6 above, DTP

must report to the Public Prosecution Service the appropriations and occupations

it is aware of by virtue of claims submitted to it under sections 12 and 13 of the

present law.

2. Appropriation and occupation of State's real estate assets that DTP is unofficially

aware of must also be reported to the Public Prosecution Service.

3. Failure to observe the provisions of sections 14.1 and 14.2 above shall amount to serious disciplinary offence.

Section 15

Abandoned real estate assets

1. Abandoned real estate assets that are the property of national citizens or foreign

citizens shall be temporarily administered by the State.

2. The temporary administration of such real estate assets as referred to in section

15.1 above shall be aimed at:

a) Protecting the legitimate rights of the citizens who own them;

b) Granting their use to a third party or the State itself on a temporary basis;

and

c) Ensuring that real estate assets are not used to the detriment of its social

purpose.

3. Real estate assets referred to in sections 15.1 and 15.2 above may be leased to

national or foreign citizens and to individuals or corporate bodies through payment of an adequate rent.

The regime of leasing and of administration provided for in this section shall be regulated

by decree-law.

Section 16

(Past acts relating to State's real estate assets)

1. Any acts of disposal relating to real estate assets owned by the Portuguese State as

at the 7 December 1975 that may have taken place under whatever form between the 7 December 1975 and the 19 May 2002, namely those undertaken by the Indonesian Administration, shall be considered non-existent.

2. Real estate assets acquired or built by public entities within the period referred to

in section 16.1 above shall be automatically forfeited to the State.

3. For the purposes of the provisions of section 16.2 above, the rights of bona-fide

third parties that have onerously acquired the respective real estate assets through

a fair price shall be safeguarded, and the State shall be the creditor of the balance

due for their acquisition where their payment has not been totally made.

4. No act of the United Nations Transitional Administration in East Timor shall be construed as conferring any right of ownership whatsoever over State' s real estate assets.

Section 17
(Competent entity)

1. DTP, under the Ministry of Justice, shall be the entity responsible for the enforcement of the present law.

2. Until such a time as the legal instruments relating to real estate registry and real estate cadastre enter into force, DTP shall be the competent entity to register real estate assets and prepare the respective cadastre.

3. DTP must submit the draft legal instruments referred to in section 17.2, and an instrument that will regulate the provisions contained in section 15, as well as

prepare its organic law.

Section 18

(Counting of time limits)

1. The time limits provided for in the present law shall be counted in consecutive days and shall start on the day immediately following the day of the event from which they start to count.

2. Where the end of the time limit does not fall on a working day, the former shall be transferred to the next working day.

Section 19

(Repeals)

All legislation contrary to the present law is hereby repealed.

Section 20

(Entry into force)

The present law shall enter into force on the day following its publication.

Approved on 3 December 2002.

The Speaker of the National Parliament,

[Signed]

Francisco Guterres "Lu-010"

Promulgated on 24 December 2002.

To be published.

The President of the Republic

[Signed]

Kay Rala Xanana Gusmo



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