



Universiteit
Leiden
The Netherlands

Building land tenure systems: The political, legal, and institutional struggles of Timor-Leste

Ribeiro de Almeida, B.

Citation

Ribeiro de Almeida, B. (2020, September 24). *Building land tenure systems: The political, legal, and institutional struggles of Timor-Leste*. Meijers-reeks. Retrieved from <https://hdl.handle.net/1887/136944>

Version: Publisher's Version

License: [Licence agreement concerning inclusion of doctoral thesis in the Institutional Repository of the University of Leiden](#)

Downloaded from: <https://hdl.handle.net/1887/136944>

Note: To cite this publication please use the final published version (if applicable).

Cover Page



Universiteit Leiden



The handle <http://hdl.handle.net/1887/136944> holds various files of this Leiden University dissertation.

Author: Ribeiro de Almeida B.

Title: Building land tenure systems: The political, legal, and institutional struggles of Timor-Leste

Issue Date: 2020-09-24

9 | The layers in movement – the formal land tenure system and the Suai Supply Base



Ami ba ne'ebé?
'Where should we go?' Holbelis, like many other villages in Covalima, lies in the path of the Tasi Mane Project.

9.1 INTRODUCTION

This chapter brings together the five key analytical themes identified in the Land Tenure System Analysis Model described in Chapter 1. Through a case study, this chapter shows how the points studied in each of these themes interact with each other in practice, how these interactions shape the norms, institutions and practices of the formal land tenure system, and how this system impacts land tenure on the ground.

The case study presented in this chapter is the Suai Supply Base, which is a part of the larger Tasi Mane Project, a grandiose state-led infrastructure plan envisioned by former Prime Minister Gusmão, through which he hopes to create an oil and gas industry in the south coast of the country. The Suai Supply Base is a particularly interesting case study because it brings together many of the points raised in previous chapters. It provides a clear example of the practical consequences of colonialism, occupation and violence on land tenure, and the clash between prevalent customary land tenure systems with the formal state system (Chapter 3, 6 and 8). It showcases the current high-modernistic visions of development of the Timorese political elite, centred on state-led infrastructure development and private investors (Chapter 4), and how the formal land tenure system is selectively used to implement this vision, to the detriment of local populations (Chapter 6). It also illustrates the weaknesses of the Timorese rule of law and legal framework (Chapter 4 and 6), the results of poor lawmaking processes (Chapter 5), and the effects of the above-described authoritarian temptation (Chapter 4). Finally, this chapter shows the practices and fragilities of the state and non-state institutions working on land-related issues (Chapter 7), and the consequences on the ground for those who cross the path of the state (Chapter 8). Even when the state does not use force to obtain land, the implicit threat of it, combined with little respect for legal process and protection of individual rights, paves the way for land acquisition by the state.

The first part of this chapter focuses on the political environment surrounding this case study, which includes the dispute between Timor-Leste and Australia over resources in the Timor Sea, the creation of the Tasi Mane Project, and an overview of the geographical area where the Suai Supply Base is being implemented. The second part of this chapter focuses on the land tenure situation and the role of land tenure systems in this area, focusing specifically on the lack of protection they give to people's land rights, the process followed by the Government to obtain access to the land they required, and the consequences of this process.

9.2 OIL, POLITICS AND 'DEVELOPMENT'

This section focuses on the geopolitical and economic background in which the ideas of the Tasi Mane Project were developed, and which are relevant to better understanding land tenure in the case of the Supply Base.

9.2.1 The resource dispute in the Timor Sea

This case study is connected with the oil and gas reserves that lie in the Timor Sea, an arm of the Indian Ocean that separates Australia from the island of Timor. Geophysical exploration of the Timor Sea revealed the existence of these reserves in the 1960s, prompting the negotiation of seabed boundaries between Australia and its northern neighbours, at the time Indonesia and Portugal.

In 1972 Australia and Indonesia negotiated and agreed on their seabed boundaries, including the Indonesian part of the island of Timor. The demarcation was done using the 'continental shelf' principle, which moved the boundary considerably closer to the Indonesian shore, than the more-common principle of equidistance would have (Munton, 2006: 47; Dunda, 2007: 16; King, 2013: 3).¹ Portugal, at the time still ruling Timor-Leste, was not willing to follow the same principle and refused to negotiate its maritime boundaries with Australia, leaving in the Australian boundary what is now known as the 'Timor Gap' (Map 3).



Map 3 – The Timor Gap in the Australian Boundary

1 Unawareness of the existence of oil and gas reserves by Indonesian authorities, and a gesture of 'goodwill' with the powerful neighbour are some of the explanations for this biased deal (King, 2013: 6).

After the occupation of Timor-Leste in 1975, Indonesia and Australia were not able to agree on closing the Timor Gap, but instead established a joint development zone for the area, leaving seabed boundaries undefined (Munton, 2006: 81). At the time of independence in 2002, Prime Minister Alkatiri agreed with Australia to keep the same approach to the Timor Gap, managing, however, to change the revenue-sharing from 50:50 to 90:10 in favour of Timor-Leste (Bugalksi, 2004: 291).² The generosity of the new revenue-sharing formula was contested by many Timorese, who argued that if the equidistant principle was applied, Australia would not have any rights over these reserves, but Alkatiri opted for the pragmatic solution that gave to Timor-Leste access to a source of revenues (Schofield, 2005: 267). In 2000 the two countries approved the specific plans to start the gas extraction in the Bayu-Undan fields, which included the construction of a pipeline from these fields to Darwin (Australia), where one of the world's biggest plants for processing liquefied natural gas was being built (King, 2013: 34, Munton, 2006: 196).

The exploitation of the Greater Sunrise, a gas field at least three times bigger than the Bayu-Undan and partially located in the joint development zone, became much more controversial, and the development of this gas field is a central element of this case study. A treaty signed by the two countries in 2006 regulated the exploitation of the Greater Sunrise, but one critical issue remained unresolved: Where should the pipeline of this field go to? The Timorese politicians envisioned the pipeline coming to Timor-Leste, as an opportunity for economic and social development, as well as a matter of justice, considering that the Bayu-Undan pipeline went to Australia (Bloomberg 06/05/2009). Woodside Petroleum Ltd., the company responsible for the commercial exploitation of the field, was much more inclined to a floating-facility option, arguing that the costs and technical difficulties of processing the oil and gas in Timor-Leste made this option infeasible (King, 2006: 70).

However, bringing the pipeline to Timor-Leste was a central promise of Gusmão's first election campaign to Prime Minister in 2007. Through his charismatic leadership, he made this dispute a matter of national pride, leaving the impasse unresolved for the next few years (Reuters 13/01/2010).³ In 2012, during the swearing-in of his re-elected Government, Gusmão reaffirmed that:

2 In 2002, days before the signing of a second treaty on this matter, Australia declared it would not recognize the compulsory jurisdiction of the International Court of Justice in maritime-boundary disputes, and that it would not accept any procedures for dispute resolution on sea-boundary delimitation established in the United Nations Convention on the Law of the Sea (Munton, 2006: 191). This move was intended to prevent Timor-Leste from taking the dispute over resources to international jurisdictions.

3 Andrew Fowler and Peter Cronau reportage for the Four Corners show of the Australian Broadcasting Corporation (ABC) summarizes well the tensions created by this process (ABC 01/10/2012).

‘The Government is committed to bringing the pipeline of the Greater Sunrise to the south coast of Timor-Leste. We will prove to the world that the pipeline to Timor-Leste is a viable, and economically safe solution, and that our horizon is in the development of a petro-industry capable of creating direct economic dividends to our population’ (Gusmão, 2012: 8).

The impasse developed further in 2013 when Timor-Leste, led by Gusmão, took the case to the International Court of Justice.⁴ Timor-Leste argued that Australia had failed to negotiate the 2006 treaty in good faith, since it resorted to spying during the negotiations of the treaty in 2004. In 2012 a former Australian intelligence officer revealed that the Australian secret services had used an Australian aid project to plant listening devices in Prime Minister Alkatiri’s conference room, therefore giving Australia an unfair advantage in the negotiations (The Australian 03/12/2013).⁵

Contrary to what many predicted, Gusmão’s bold move paid off. In the beginning of 2018, after a few years of dispute and negotiations, Australia agreed to establish the medium boundary line in the Timor Gap (Inside Story 08/03/2018). This move gave Timor-Leste full rights over the almost-depleted Bayu-Undan, and a share of the Greater Sunrise field higher than the initial 50 percent: 70 percent if the pipeline goes to Timor-Leste, and 80 percent if it goes to Darwin. However, and despite this surprising progress, there is still no agreement regarding the pipeline.

9.2.2 The Tasi Mane Project and the Suai Supply Base

It was under this scenario of dispute with Australia that the Tasi Mane Project was born.⁶ The project is the result of a grand vision of Gusmão, through which he intends to build an oil and gas processing industry in the country, and to force Australia and Woodside to bring the pipeline to the shore of Timor-Leste.⁷ In line with Scott’s definition of high-modernistic, state-planned development (Scott, 1998, see Chapter 4), the Tasi Mane Project is proudly classified by politicians as a ‘mega project’, and consists of three clusters of

4 <http://www.laohamutuk.org/Oil/Boundary/CMATSindex.htm>

5 Australia representatives never confirmed or denied the accusations, but the case became even more complex after the Australian secret services searched and apprehended documents from the residence and office of the Australian lawyer that represented Timor-Leste in the arbitration case (The Australian 03/12/2013; ABC 24/03/2014).

6 This project has been called other names, such as South Coast Petroleum Infrastructure Project, and South Coast Petroleum Corridor. ‘Tasi Mane’ literally means the ‘man sea’ in Tetum, and it is commonly used by the Timorese to refer the south coast sea, much rougher than the calm north cost sea, called the ‘Tasi Feto’, or the ‘woman sea’.

7 However, the idea of building a supply base to serve the oil and gas fields in the Timor Gap is not new, and was a point of contention between Indonesia and Australia during the Indonesian occupation (Mboeik & Pellokila, 1996: 4)

petroleum industry and support infrastructure, spread along the south coast of the country and connected by a four-lane highway (GoTL, 2011c: 138).

The three clusters are: (1) the Suai Supply Base; (2) the Betano Refinery and Petrochemical Industry; and (3) the Beaco LNG-Plant (Map 4). Besides the logistical and technical infrastructure, the plan also includes the construction, from scratch, of four new cities that will change the rural landscape of the south coast. The estimates regarding the cost of the project – both global and for its individual clusters – have varied significantly, and the initial idea of attracting private investors was progressively replaced by extensive public investment (GoTL, 2011c: 140).⁸



Map 4 – Tasi Mane Project clusters

Source: GoTL, 2011c: 140

The Suai Supply Base cluster (hereafter ‘Suai cluster’) is in the centre of this case study. This cluster is envisioned as a logistics base for the petroleum sector, divided into three main infrastructures: (1) the supply base, composed of a sea port, container park, warehouse, logistics area, office spaces, fuel storage facility, heavy-metals workshop, and shipbuilding and repair facilities; (2) the rehabilitated Suai airport; and (3) the new city ‘Nova Suai’ (or New Suai, in English; GoTL, 2011c: 140).⁹ The Suai cluster is especially symbolic because it is the starting point of this grand vision. Gusmão’s visit to the Lamongan shore base in Java (Indonesia) in October 2010 gave the final impulse to move the project from paper to reality. A few months after his trip,

⁸ See here <http://www.laohamutuk.org/Oil/TasiMane/13SSBen.htm>. See also GoTL, 2012a: 4-26.

⁹ Some documents also state that non-oil related industries such as industrial fishing are also expected to be introduced in the area (Timor GAP, 2013: 26).

several multi-million dollar contracts for the initial preparations were awarded, and the fast implementation of the Suai Supply Base was declared an ‘inescapable national imperative’ (Government Resolution 45/2010).¹⁰

Since 2010 much has happened in the Suai cluster. The Suai airport was expanded, and was inaugurated in 2017 as ‘Commander in Chief of FANINTIL Kay Rala Xanana Gusmão International Airport’ (Tatoli 20/06/2017). The section of the highway that connects Suai to Betano was finished, but became controversial because no pedestrian or vehicle crossing was included in the project, which cut off a number of villages from their agricultural fields, and causing major floods (Tatoli 23/02/2018; Sentru Mídia Investigativu 29/11/2018). The new city ‘Nova Suai’ has made little or no progress until now. The Suai Supply Base has seen only difficult and limited progress. The process to vacate the necessary land is mostly finished (see below), and in June 2015 a 720 million USD contract for the design and construction of the supply base was awarded to a Korean company (Sapo Notícias, 25/06/2015). However, this contract – the most expensive contract ever awarded in Timor-Leste – was suspended by the Audit Chamber due to illegalities in the procurement process (Sapo Notícias 30/10/2015). The Government appealed and, in 2017, the Court of Appeal overruled the decision of the Audit Chamber, but by then the Korean company had walked away from the contract (Sapo Notícias 20/07/2017). At the time of writing the next steps of this project are not yet public.

The Tasi Mane Project has raised serious concerns among national and international observers.¹¹ First, the project is criticized for putting the cart before the horse. The project is based on the premise that the pipeline will come to Timor-Leste, but there is still no final decision on this matter. Timor-Leste risks spending invaluable resources on an oil and gas industry that will have no oil and gas to process. Second, observers worry about the ever-growing estimated costs of the project, now calculated at around 12.5 billion USD, almost the entire value of the Timorese Petroleum Fund, and about the lack of a public cost-benefit analysis (Scheiner, 2018: 16; see Chapter 4). Furthermore, no foreign investors have shown real interest in the project.¹² Third,

10 Lamongan became the example to follow. The same company responsible for the Lamongan shore base received these contracts. In 2011 and 2013 respectively, a delegation of MPs and a group of community leaders from Covalima visited the Lamongan shore base (Parlamento Nacional, 2011: 3; Luta Hamutuk, 2014: 1). See also Government Resolution 26/2011 and 19/2014.

11 Among many others, see La’o Hamutuk, 2010a: 7; The Diplomat 17/10/2011; Fundasaun Mahein, 2013; Tempo Semanal 11/04/2014; La’o Hamutuk, 2015: 5; Bovensiepen *et al.*, 2016: 226; and Scambary, 2017.

12 As mentioned in Chapter 4, also in regard to the Tasi Mane Project, politicians and state officials often refer to construction companies as ‘investors’, despite the fact that these companies only receive government payments and do not invest their own money in the country. For instance, a leader of the national petroleum company told me in an interview how the government was planning to build Nova Suai by having an ‘investor’ building the houses and then the government buying those houses.

observers criticize many wrong assumptions and blind spots of the project, and its disregard for social and environmental impacts. For instance, the promised job creation does not take into consideration that the oil and gas industry mostly needs highly skilled workers, of which the great majority will be foreign personnel (Scambary, 2015: 302). Furthermore, the cost of creating these jobs is much higher than the salaries that these jobs will ever create, and estimations do not take into consideration the many (self-employed) agricultural jobs that will be lost with the displacement of people.¹³ Finally, this investment shows that there is no real effort from the Government to diversify the economy from the oil and gas sector.

When considering the uncertainty about the pipeline, the economic, social, and environmental costs of the project, and the difficulties of its implementation, one must ask: why is Gusmão leading the country into such a risky venture, and why are the Timorese following? The nationalistic discourse of independence and sovereignty has been a leading argument of Gusmão to promote the project and elicit support from political elites, war veterans, and the Timorese in general (Bovensiepen & Nygaard-Christensen, 2018).¹⁴ With this project, Gusmão intends to affirm Timorese sovereignty over its national resources and to show Australia, Woodside, and the world that the Timorese are capable of implementing this complex project. The nationalistic value put on the project is such that those who disagree with it are depicted by project supporters as unpatriotic, almost equivalent to those who, before independence, supported integration with Indonesia (Cryan, 2015a: 6; *Timor Post* 02/10/2014; *Suara Timor Lorosae* 17/03/2016; *The Diplomat* 01/06/2019).

However, patriotism and nationalistic views alone do not explain the national commitment to this uncertain venture. This project would not move forward without the strong and mostly unquestioned leadership of Gusmão, his political savviness, and the ambition of – as one of the founding fathers and visionary of the nation – to leave another mark in the independence

13 Based on a PowerPoint presentation by Timor GAP, 300 jobs will be created during the construction and 250 during the operation of the supply base. Another 1000 to 1500 will be indirectly created (available at <http://www.laohamutuk.org/Oil/TasiMane/2012/SSBIntro25Oct2012.pdf>). Regarding the supply base, La'o Hamutuk concludes that the creation of each job will cost almost twice as much as the salaries that those jobs will create (see <http://www.laohamutuk.org/Oil/TasiMane/13SSBen.htm>).

14 This symbolic value of the project can be found in documents such as the 2010 leaked version of the draft Strategic Development Plan 2011-2030, which states that 'The Logistic Base should meet a world-class standard to attract international oil and gas companies working in Timor-Leste (at least it must be comparable to the similar facility available in Northwest Australia)' (GoTL, 2011c: 4-80). Regarding the elicitation of war veterans' support for the project see, for instance, *Timor Post* 23/10/2013; *Timor Post* 02/10/2014; *Jornal Nacional Diário* 20/03/2015; *Timor GAP*, 2015: 3.

struggle and development of the country (see Chapter 4).¹⁵ Furthermore, bringing the pipeline to Timor-Leste would give Gusmão another tremendous political victory over his eternal political rival, Alkatiri, who was not able to secure the pipeline.¹⁶

The high-modernistic views of development of the Timorese elite, mostly based on infrastructure and promises of private investment, and the money available in the Timorese Petroleum Fund, further allow them to think big (see Chapter 4). Personal benefits for the elite, both through legitimate businesses but also through rent-seeking opportunities, can further explain the support they give to this project. In the words of Alfredo Pires, the former Minister of Petroleum and Natural Resources:

‘Timor-Leste now has money. So for anyone who has money, it becomes a bit difficult for someone to tell them what to do’ (Tempo Semanal 01/04/2013).

A national survey conducted at the end of 2016 concluded that 89 percent of respondents were in favour of the Tasi Mane Project (CISR, 2016: 24). The nationalistic discourse, the utopic views of the future, the promises of work and better life, and the co-optation of national and local elites leave little room for those directly affected by the project to negotiate their position. This topic is further debated below.

9.2.3 The Suai and the area of the Suai Supply Base

Before analysing the land-related issues raised by the Suai Supply Base, it is important to provide a brief description of the area. Suai, located on the south coast of the country, is one of the sub-districts of the district of Covalima, and also the name of the district capital. Despite distancing only around 190 km from the capital, Dili, Suai is quite isolated due to very poor roads, which makes a journey from Dili to Suai 10 to 12 hours long (Tempo Semanal 11/04/2014). Most residents in the district of Covalima are subsistence farmers (GoTL, 2012a: ES-10; Crespi & Guillaud, 2018: 433).¹⁷ Suco Kamenasa, the most relevant area for this case study, has a population of 3,493 people distributed across 612 households (GoTL, 2011d: 46).¹⁸

The supply base is planned to be located on the coastal area of the east side of the city of Suai, near the village of Sanfuk, in the flat area between

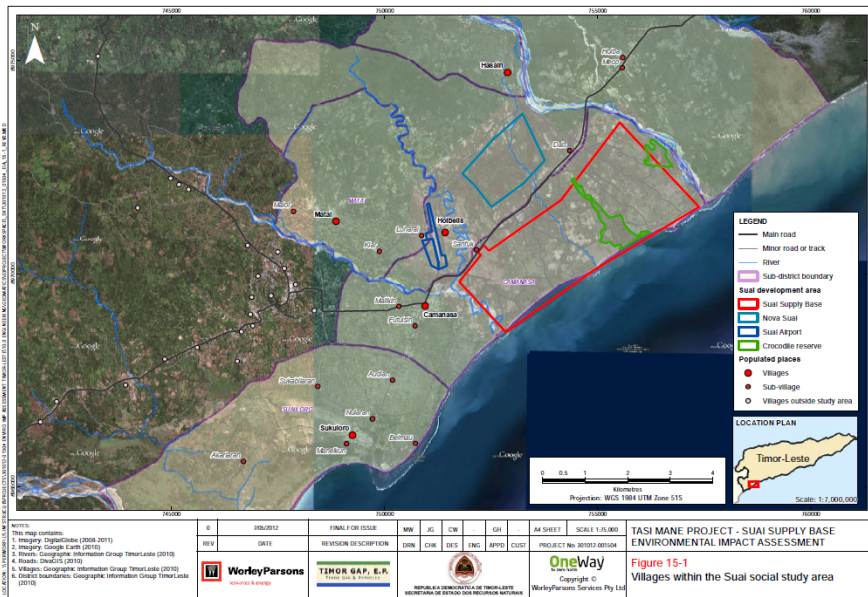
15 The way the project is envisioned and planned resonates with McCarthy’s description of the disastrous ‘Million Hectare’ project in Kalimantan, in which Suharto’s decisions totally eclipsed technical matters of the project (McCarthy 2013: Chapter 6).

16 About this rivalry see Shoesmith, 2013.

17 In Suai only 19.5% of the population between 15 and 17 attend to secondary school, and 32.6% of the population never attended school (GoTL, 2011b: 56, 58).

18 Kamenasa is also written as Camenaça, Camanasa, Camenasa, and Camenassa.

the river Kamenasa and the River Raiketan (GoTL, 2012a: 4-25; Map 5). The area selected for the supply base has around 1306 ha, and comprises land with relatively high agricultural potential (GoTL, 2012b: 15-254).¹⁹ Before the project, the area was mostly used by subsistence farmers to grow a large variety of crops (GoTL, 2012a: 5-79). As the following sections describe, the situation on the ground changed significantly after the land acquisition for the construction of the Suai Supply Base started.



Map 5 – The Suai cluster
 Source: GoTL, 2012b: 15-227

9.3 LAND TENURE, LAND TENURE SYSTEMS AND ‘DEVELOPMENT’

The second part of this chapter focuses on the land tenure situation and the role of land tenure systems in the Suai cluster, with special focus on the Suai Supply Base.²⁰

Grandiose infrastructure projects need large tracts of land. After the initial planning of the Suai Supply base project, at the end of 2011 obtaining access

19 Like many specificities of the Tasi Mane Project, the supply base area varies considerably in different documents.
 20 The land acquisition process for the Suai airport happened more or less at the same time and in the same fashion as the supply base, and in a close geographical area. Considering the similarities, in the description of the supply base case I make some references to the airport process, too.

to the necessary land was the next step. At the time, no land registration nor other form of territorialisation of the formal land tenure system had been implemented in the area by the Timorese Government, with land administration being based on customary systems. Moreover, at that time the draft Land Law and Expropriation Law were pending in Parliament (Chapter 5). The legal framework was extremely unclear regarding which land rights were recognized by the formal land tenure system, the administrative mechanisms to identify land claims were limited, and there was no legal framework for expropriation (Chapter 6). Moreover, DNTPSC nor any other state institution was prepared for conducting the social assessments and legal procedures necessary for an adequate land acquisition (Chapter 7). Nevertheless, as it happened many times previously at a smaller scale, the Government moved ahead with the project.²¹

The next sections analyse the role of the formal land tenure system in the implementation of the Suai supply base. The process used by the Government to free land for the project can be roughly divided into four main approaches: it started with (1) an informal approach by an inter-ministerial team, followed by (2) an agreement with the ‘community of Kamenasa’. Later, (3) a legislative approach was tried, followed by (4) a contractual approach. These approaches are detailed in the following sections.

9.3.1 The informal approach of the Inter-Ministerial Team

The first serious effort to free the land (*liberstasaun rai*, as it was called in Tetum), started at the end of 2011, with the formation of an inter-ministerial team lead by the national petroleum company – Timor GAP – closely directed by the Minister of Petroleum and Natural Resources at the time, Alfredo Pires.²² The tasks of this team were divided according to the competency of each member: the MoJ, represented by DNTPSC, was responsible for collecting information regarding land tenure; the Ministry of Agriculture and Fisheries was responsible for collecting information regarding rights over trees, plantations, livestock and fisheries; the State Secretariat of Environment collected information about the environment and culturally relevant sites; the local authorities, *lia na'in*, and veterans were responsible for helping to identify the

21 Interestingly, the problems found and the tactics used to obtain land for this project have remarkable resemblances with those experienced in Kupang (West Timor), during Suharto’s authoritarian regime, for the construction of a supply base to serve the oil and gas activities (Mboeik & Pellokila, 1996).

22 Timor GAP, the national petroleum company, should not be mistaken with the Timor Gap in the Australian maritime boundary mentioned above. The work of this inter-ministerial team is documented in a PowerPoint presentation of the Timor GAP, available at <http://www.laohamutuk.org/Oil/TasiMane/2012/LacerdaPresLibertaRai24Oct2012.pdf>, and <http://www.laohamutuk.org/Oil/TasiMane/2012/Lacerda13Nov2012.pdf>. See also Transparency Timor Blog 15/05/2013.

owners of land and plantations, and provide witness statements about tenure; and finally the National Police of Timor-Leste, also a member of the team, was responsible for keeping order during the process of freeing land.²³

After a few coordination meetings, the inter-ministerial team started the so-called ‘socialization’ of the project, through one-day public meetings at each of the four relevant sucos (Kamenasa, Matai, Belakasak, and Labarai).²⁴ Afterwards, DNTPSC started the identification of land rights (hereafter called ‘survey’). However, this survey raised a number of questions: what land rights were going to be identified? Through which process? And based on what legislation? (Chapter 6).

Ironically, DNTPSC adopted an approach that much resembled the one developed by the *Ita Nia Rai* project (INR), which DNTPSC senior officials had much criticized (Chapter 3 and 7). The area to be surveyed was divided into several collection areas, in which DNTPSC staff collected geographical information of land parcels and claims of land ownership from individuals. After the collection phase, maps with the identified parcels and land claimants were displayed in public places in the beginning of 2013 (Fundasaun Mahein, 2013: 2). During the period of the maps’ publication, land claimants were expected to come and verify the data in the maps, and present a reclamation if anything was incorrect.²⁵ Around 1,800 land parcels were identified through this process. However, while this survey was – at first glance – more systematic and transparent than previous processes conducted by DNTPSC, it was nevertheless quite problematic.

First, as detailed in Chapter 3, the process created by INR was designed for land registration in urban areas, where more individualized land rights, resembling ownership rights, are more prevalent. The INR process was not at all designed for areas ruled by complex customary land tenure systems, with multiple overlapping land rights, competing authorities, several material and symbolic roles for land, and flexibility regarding rights and boundaries (Crespi & Guillaud, 2018: 437). By focusing only on individual ownership of land, the survey was much simplified, but to the detriment of those whose land rights did not fit into the established categories (see Chapter 2). As later became obvious, the survey seriously endangered the livelihoods and social

23 Slide 11 of the PowerPoint mentioned in the previous footnote.

24 According to slide 7 of the PowerPoint referred to in footnote 22, the following topics were covered: (1) introduction to the roles of the inter-ministerial team; (2) how to involve Timor-Leste in the oil industry; (3) a description of the Suai Supply Base Project; (4) the outreach strategy; (5) and the process for identification of land, property and environmental matters. Information regarding compensation, livelihoods and other central questions for the affected people seemed to have been left for the ‘questions’ part of the session. Based on the photos of the events, La’o Hamutuk’s prediction that women would not be adequately involved in the consultation process was right (La’o Hamutuk, 2008: 71). More information about this consultation can also be found at GoTL, 2012a: 5-49.

25 Slide 40 of the PowerPoint referred to in footnote 22.

connections of many of those that somehow were connected to that land, but did not, or could not, claim it as owners (see below).

Second, while people without clearly recognized formal land rights were allowed to claim ownership of land and crops in the survey, discretionary restrictions on land claims were imposed by the state officials involved in the process. As described in Chapters 6, 7 and 8, a broad understanding of which land belongs to the state, the unclear concept of abandoned land, and arbitrary administrative processes for identifying land rights left many Timorese at risk of seeing land that they use and depend on, registered as state land. This was exactly what happened in this case. People were barred from claiming land in those cases where the Dili-based state officials decided, on the spot, that land was abandoned or somehow belonged to the state (see here *Timor Post*, 26/01/2012: 15; Cryan, 2015a: 4; Chapter 7). During an interview, a state official even told me how a corn field that was farmed during the beginning of the survey was considered state land because, at the end, the corn had been harvested and therefore there was no proof of occupation. He explained me how the team was afraid that, if they allowed people to claim land without any clear evidence of use or formal rights, they could later be accused of corruption or other crimes. Therefore, and without clear law or guidelines to follow, they adopted an approach that could also protect their own position.

Nevertheless, the high number of people affected, the visibility of the project, and the fact that land belonging to war veterans and politicians was also needed might explain the recognition that the Government gave to land claims without formal rights. While this was progress when compared with other cases (Almeida, 2018a; Almeida, 2019), an undetermined number of people was nevertheless excluded from the survey.

Third, despite resembling the land claims process developed by INR, DNTPSC decided to conduct this survey independently, without the technical support of INR staff. At that time, the USAID was starting its phasing-out of the INR project (Chapter 7), and the debate about its continuity was inflaming egos inside DNTPSC. This survey was an opportunity to show the autonomy and capacity of the department in moving forward with such a task. But the copied approach improvised by DNTPSC overlooked key elements of the INR process, such as professional public-information campaigns and carefully designed internal processes, which further contributed to misinformation and confusion.²⁶

Fourth, although at first glance this survey seemed more systematic, it was in fact illegal. As described in Chapter 6, the only piece of legislation that, at the time of this survey, provided a legal path for identifying land rights was Decree-Law 27/2011. However, even the very basic legal requirements

26 One symbolic example of the problems of this improvised process is the very unclear form used for collecting land information. See slide 31 of the PowerPoint referred to in footnote 22.

established in this decree-law, such as the publication of notices about the survey in the Official Journal, and the publication of maps for at least 30 days, were not followed.²⁷ I, at the time the only legal adviser working with DNTPSC, only came to know about this survey a few months after it was completed; DNTPSC staff did not seek any legal advice regarding the legality of their survey.

Furthermore, even if the survey was legal, the land could not be expropriated because there was no expropriation law. But, as described in Chapter 4, in such a weak rule of law environment the legality of the survey and land acquisition was not a concern of politicians and state officials, who were much more concerned about delivering results for Gusmão's great vision. Without incentives or pressure to follow the law, the mere appearance of legality was enough to move the project forward.

Despite the problems of the survey, at first the Government was pleased with the work of the inter-ministerial team, which was presented as an example to follow in other land acquisition processes (Jornal Nacional Diário 13/02/2012). However, as the following section shows, these problems soon became visible.

9.3.2 The 10-percent agreement with the 'community of Kamenasa'

For almost one year after the survey was completed, not much happened. Suddenly, in April 2013, it was announced in the media that, in a public ceremony in Covalima, representatives of the 'community of Kamenasa' had signed a declaration in which they temporarily gave the necessary 1113 hectares of land for the implementation of the supply base to the Government.²⁸ The transfer was for a period of 150 years, and the compensation was 10 percent of the profits of the management of the supply base.²⁹ The agreement was signed by 15 representatives of the community, all men, and also by the District Administrator, the Sub-District Administrator, the suco chief of Matai, the suco chief of Kamenasa, the former director of DNTPSC of Suai, the District Commander of the National Police of Timor-Leste, and a

27 The publication period only lasted for 12 days, from the 15 to 26 of May, 2012.

28 For simplicity I use the expression 'community of Kamenasa', the same one that government representatives used to refer to the signatories of this agreement and the group they claimed to represent. However, as detailed below, this expression is misleading because implies a united single group that does not exist in reality.

29 As detailed below, it remained unclear what this really meant in practice.

number of war veterans (La'ó Hamutuk, 2014: 2).³⁰ At the time, Alfredo Pires, at the time Minister of Petroleum and Natural Resources stated that:

'The Government promises that it will make a concerted effort [to proclaim] the day of 6 of April the Day of the Heroes of Development in Suai Kamenasa' (Timor Post 12/04/2013).

The Government explained that the customary rules of that community did not allow for a permanent transfer of land, and therefore they opted for a 'temporary' transaction of 150 years.³¹ The distribution of the 10 percent of profits would be done through a foundation, supported by the Government, although the nature of this support – financial, logistical, or administrative – remained unclear (Timor GAP, 2013: 27; Fundasaun Mahein, 2013: 4).

A few days later, a new ceremony was organized. In this ceremony one of the community representatives, the *lia na'in*, Jorge Alves, handed over the signed agreement to Gusmão, who thanked the community for their understanding of the importance of the Suai Supply Base in the process of developing the country (Jornal Nacional Diário 12/04/2013).³² However, the text of the agreement was kept secret, and no copy of it was given to the signatories (Cryan, 2015a: 6; Bovensiepen, 2016: 84; Grainger, 2017: 181). As debated below, the text of the agreement became in fact a matter of much speculation, which the Government's secrecy did not help to dissipate.³³

As the legal adviser working on land issues, I was surprised by this agreement. What was the connection between the previous survey and this agreement? How was the collective decision of such a heterogeneous group of people achieved, and how was the community represented in this process? How was the transaction formalized? How legal was this agreement? Answers to these and other questions started to emerge in the following months.

My first insight into more-detailed information about the 10-percent agreement came at an event in May 2013, in which a representative of a national CSO proudly described how their support to the community allowed it to bargain a raise, from 7 to 10 percent, in the share of profits of the project. The questions that I and other members of the audience raised took this CSO

30 Rede ba Rai posted to its Facebook page several photos of this event, where many signatories of this agreement used their fingerprint to sign it, showing that they are probably illiterate and therefore not able to read it. Interestingly, the approach for land acquisition and the composition of this group of representatives closely resembles those of forestry projects in the south coast during the Indonesian occupation (see D'Andrea, 2003: 12).

31 See the media release of the Presidency of the Council of Ministers, 22/04/2013. It is not however clear what specific right in rem was transferred by the 'community of Kamenasa' to the Government.

32 See also Timor Post 12/04/2013a; Presidency of the Council of Ministers 22/04/2013.

33 I recall a presentation by Timor GAP officials sometime after, where the agreement was proudly mentioned, but its image included in the PowerPoint presentation was blurred to hide the text from the audience.

representative by surprise: What is the definition of ‘profit’, and how is the profit calculated? How the profit is equitably distributed within the community? What will happen before the profits start to flow? What happens if there is no profit? Who is ‘the community’ and how were its representatives selected? What will be the mechanisms for transparency and fair management the promised profits?

Puzzled by these questions, the CSO representative defensively answered that the organization was there to support the community, but was not responsible for their final decision. After this presentation there was a generalized concern among the participants about the quality of the support the community had received during the negotiations, the transparency and legality of the agreement, and the lack of awareness of the difficulties and problems that the implementation of this agreement would bring.

These concerns were later confirmed by reports of other CSOs and news in the press. It became clear that the 10-percent agreement created expectations on the affected people that were far from the announced terms of the agreement. There were expectations that the profit of the supply base would pay USD\$1000 per month to each affected person during the following 150 years (Fundasaun Mahein, 2013: 4).³⁴ There was the belief that, besides the monthly payment, the beneficiaries would get the status of civil servants, and have priority over other Timorese and foreigners in accessing future jobs at the supply base (Fundasaun Mahein, 2013: 5, 11; Bovensiepen *et al.*, 2016: 227).

There were reports of disputes between communities, as well as strong opposition to the agreement among individual community members. One of the conflicts between communities was described to me directly by Timor GAP officials, who were looking for a legal solution to it. The supply base was planned to be built in the administrative area of suco Kamenasa (see also Crespi & Guillaud, 2018: 434).³⁵ Such an area roughly corresponds to what was previously considered the land of the *Liurai* (king) of Kamenasa, and during the Portuguese administration was considered part of the suco of Kamenasa.³⁶ However, during the Indonesian administration, the population of the Dais village, from suco Belcasac in the northern area of the District of Covalima, was moved to the eastern area of suco Kamenasa by the Bupati,

34 This demand for a rent of USD\$1000 per month is found in many sources, even before the signing of the agreement (Jornal Nacional Diário 13/02/2012; La’o Hamutuk Blog 01/05/2013; slide 9 of the PowerPoint presentation referred to in footnote 22). See also GoTL, 2012b: 15-242. The same demand for a monthly rent was also common in the Betano cluster (Fundasaun Mahein, 2013a: 7).

35 Many sucos correspond to areas of customary groups, but in some cases problems such as displacement created mismatches between the administrative delimitations and the claims of customary groups. In practice, the delimitation of sucos is a very heated topic that no government has yet been able to address.

36 Fox reports that in 1999 the concept of a traditional ruler of the kingdom of Kamenasa was still present (Fox, 2003: 17).

in order to prevent this community supporting the resistance fighters.³⁷ Since then, the population of Dais village has been living inside suco Kamenasa, using mostly for agriculture a considerable part of the land needed for the supply base.³⁸ The presence of the Dais population in the area had been always controversial, but the prospect of compensations raised the level of disputes. The population of Sanfuk village, represented by its *lia na'in*, Jorge Alves, one of the main signatories of the agreement with the Government, was strongly opposed to the payment of any compensation for land rights to the people from Dais. On the other hand, the people from Dais were opposed to this view, and claimed that their ancestors also had land rights over that area, and they were the ones that, for more than 30 years, had lived there and first cleared and farmed the land (Fundasaun Mahein, 2013: 11; also Crespi & Guillaud, 2018: 438).³⁹ The fact that a number of people from Dais were members of martial art groups further raised the potential for violent conflict (Fundasaun Mahein, 2013: 11).

Other disputes between the communities also surfaced. La'ó Hamutuk reported that people from the Fatu-Isin village were upset because the Government paid much more attention to the people of Sanfuk village during consultations (La'ó Hamutuk, 2014: 4; Independente 31/07/2014).⁴⁰ Additionally, the *lia na'in* of Fatu-Isin, who was critical of the 10-percent agreement, was simply excluded from its signing (La'ó Hamutuk, 2014: 1, 4). To further complicate this dispute, the community liaison person representing Timor GAP was a nephew of the *Liurai*, Jorge Alves, raising questions about his independence (Business Timor 16/02/2015).

In addition to these conflicts between communities, a number of individual community members were unhappy with the 10-percent agreement: since they were not properly involved in the process, they were not aware of the benefits that such an agreement could bring to them, and they did not feel represented by the signatories, whom they considered to have been manipulated by the

37 While Belcasac is a Bunaq-speaking region, the main language of Kamenasa is Tetum Terik. Schapper reports that 'the Bunaq are typically regarded by their neighbours with disdain, frequently characterised as a coarse and aggressive people' (Schapper, 2011: 163). Bupati is an administrative Indonesian position that heads a regency.

38 Figure 15-1 of the environmental impact assessment shows where the Dais population is currently settled inside suco Kamenasa (GoTL, 2012b: 15-228).

39 This conflict was actually one of the concerns raised by the affected people during the consultations in October 2011. See the report made public at Transparency Timor blog 12/05/2013.

40 Contrary to this position, the Government's press release talks about 'a long process of consultation with the local community over several years' (Presidency of the Council of Ministers 22/04/2013). Similar problems also happened in the airport project. In this case, the lack of involvement of the traditional structure of the community of Holbelis was the last straw in a series of actions that were seen as discriminatory by the community, and triggered strong protests of this community against the way Alfredo Pires was managing the project, as well as the lack of Timorese workers in the construction (Suara Timor Lorosae 18/11/2014).

Government.⁴¹ The lack of access to a copy of the signed document, both by the signatories and the ‘represented’ community members became the source of much suspicion and distrust (La’o Hamutuk, 2014: 2; Fundasaun Mahein, 2013: 11; Bovensiepen, 2016: 84).⁴² Requests from civil society to get access to a copy of the agreement were refused with the justification that such an agreement was not public (La’o Hamutuk, 2014: 2).⁴³ As often happens in Timor-Leste, refusing access to basic information became another tool of state power.⁴⁴

To further complicate this matter, a few months after the signature of this agreement, Timor GAP took 23 community leaders on a study tour to similar supply bases in Lamongan, Indonesia and Kemaman, Malaysia (Timor GAP, 2013: 27, Timor GAP, 2014a: 3). This tour was presented by Timor GAP as a way of showing to community leaders the operations of a supply base, and the positive flow-on effects for the local community that such a base has. But some of the affected people perceived the tour as a gift to those who had cooperated with the Government, and as a mechanism to further divide collaborators and opponents to the supply base (Tempo Semanal 11/04/2014).

These conflicts show that the signatories of the 10-percent agreement were not the legitimate representatives of the so-called ‘community of Kamenasa’, and their agreement was far from the legitimate collective decision of a close-knit group.⁴⁵ When I asked state officials who decided, and how, that those 15 people were the representatives of the ‘community of Kamenasa’, the answer was always vague, referring to the representatives having been appointed by the community. As the following section shows, representation in the signing of this agreement became an issue.

9.3.3 The legislative approach

After the signing of the 10-percent agreement, the politicians and state officials involved in the process were convinced that the land problem was mostly solved, but reality proved them wrong. In addition to the above-mentioned protests and conflicts, the legality of this agreement was extremely dubious,

41 Fundasaun Mahein, 2013: 11; La’o Hamutuk, 2014: 7; Crispi & Guillaud, 2018: 436.

42 On representation of communities more generally, see for instance German *et al.*, 2011: 37.

43 Another point of heated discussions in the area was to decide who deserved to live in the (future) luxurious new city, Nova Suai. The idea of ‘deserve’ (*merese*) alludes to the vision of development as a flow of gifts, used by the New Order regime to discipline the population (Li 2014, chap. 1, para. 26).

44 For instance, see the secrecy that surrounds the SNC project on land registration briefly mentioned in Chapter 3 and 7, and further detailed in Rede ba Rai, 2019: 62.

45 A few examples of the use of this idea of the ‘community of Kamenasa’ can be found at Timor Post 12/04/2013; Timor Post 12/04/2013a; Independente 25/08/2014; Timor GAP, 2013: 27.

both due to the legitimacy of the signatories, and the lack of legal formalities of the contract.⁴⁶ Worried with the legal fragilities of the 10-percent agreement, the international lawyers of Timor GAP recommended that measures would have to be taken to strengthen the legality of the land acquisition. The legality of this agreement had two main problems: first, any affected person could easily start a court case against it. While a successful challenge of the agreement in court was not very likely due to the weaknesses of the judicial system, it was nevertheless possible (see Chapter 4). Second, with such a weak legal foundation, any diligent private investor would be reluctant to invest in the supply base.⁴⁷

The fact that prospective (foreign) investors were the trigger for politicians' and state officials' concerns about legality is quite revealing of the very limited role that law plays in the Timorese formal land tenure system. For politicians and state officials the law works more as a tool to drive expropriation processes, applicable on demand and reinterpreted when needed, than as a set of norms that must be followed. The law, or more precisely a vague and partial reference to it, gives the state stronger legitimacy and another tool to claim ownership of land or to bully people into quickly and cheaply leaving their land, but does little to guide and limit state interventions. Although the process had an appearance of legality, there was no real concern regarding due process when dealing with national citizens; only when illegality could scare investors, this became a concern for the Government. Furthermore, the fact that the issue of legality was only raised after the signing of the 10-percent agreement is quite revealing of the amateurism that had been guiding the project.

But addressing the identified legal issues was not easy. The draft Land Law and Expropriation Law, at the time again waiting to be debated in Parliament, were the more obvious solution to this problem, but waiting for the approval of these draft laws presented a number of obstacles. First, there was no guarantee when and whether these draft laws would be approved, therefore jeopardising the tight schedules that Gusmão had established for the project. Second, it was not certain that some of the purposes that the land was going to be used for would fit in the concept of public purpose, and therefore expropriation would not be possible (e.g., industrial area). Third, the require-

46 By the time of the signing of this agreement, the Civil Code was already in place. According to article 809, the transaction of immovable property would have to be done through a notarized deed (see Chapter 6). The Civil Code also recognizes communal property that is customarily claimed, but does not regulate further the management of these kinds of property. Interestingly, during an interview a local judge raised the exact same concern regarding the legality of these contracts.

47 On this matter, the Director of Timor GAP said during a consultation in Suai that 'we need the legal basis for the land (...), we need security for investors, we have to protect the investors' (Independente 11/04/2014). Concerns about investors were also a reason for government officials' appeal for national unity in supporting the project, and for the prevention of internal criticism (Bovensiepen *et al.*, 2016: 229).

ments of those laws would demand various time-consuming administrative processes, such as a new survey, a preparation of a resettlement plan, and the renegotiation of compensation. This would further delay the implementation of the project and show how worthless the 10-percent agreement was, forcing politicians and state officials back to the negotiating table. Finally, the regulatory framework necessary to implement these draft laws was not yet written, which would further delay the process (Chapter 6). As such, the solution found by Timor GAP and its lawyers was the approval of specific legislation for this project.⁴⁸

Timor GAP and the Ministry of Petroleum and Natural Resources, in collaboration with an international law firm, then began drafting a decree-law specifically designed to provide a legal basis to the already finished land acquisition. The decision of approving a decree-law instead of a law had an obvious tactical objective: it could be easily pushed through the Council of Ministers, while a law would be dependent on Parliament's agenda, and the results would be unpredictable (see Chapter 5). However, a decree-law would also have a limitation. The Constitution establishes that expropriation has to be regulated by a law from Parliament or a decree-law with a legislative authorization from Parliament.⁴⁹ Therefore, this decree-law would have to perform a *de facto* expropriation, without ever calling it such. A foreign law firm was hired for drafting this decree-law.

Before analysing this decree-law, two important notes should be made. First, before the approval of this decree-law, Government had already approved Government Resolution 20/2014, which established the maximum land values to be paid in the Suai cluster, including also the land necessary for the highway. This resolution says that, considering the difficulties identifying and negotiating the acquisition of land rights, the maximum price to be paid for land is USD\$3 per square meter, and it establishes a list of prices for different trees and crops. To the best of my knowledge, this price was established in the Council of Ministers and was decided without any technical study, consultation with the affected people, nor support of any valuation specialist (see also La'o Hamutuk, 2014: 7).⁵⁰ This resolution never talks about

48 The lack of legality of the 10-percent agreement is implicitly acknowledged in the Timor GAP Newsletter, where it is mentioned that, after the approval of this specific legislation, a new contract between the government and the community would be signed (Timor GAP, 2014a: 3). The approval of legislation for a specific land acquisition is not new for the Timorese: the (fairly equivalent) presidential decrees for land acquisition were a common practice in Indonesia during the New Order regime (Davidson, 2015: 40).

49 Art. 96.1 1) of the Constitution. See also Almeida, 2017a: 181.

50 According to its annual report of 2013, Timor GAP 'coordinated the discussions on the drafting of a compensation value table for agricultural crops and trees including land issues with MAP (Ministry of Agriculture and Fishery) and SETP (Secretary of State for Land and Property)' (Timor GAP, 2013: 28). There is no mention in Timor GAP annual reports of any consultation with the affected people about land value tables. State officials also reported complaints from the affected people about the land value.

expropriation, leaving room for two interpretations: one is that these were the maximum values that the state was willing to pay for a negotiated land acquisition, and that it would not acquire land where the owner refused this price. Another interpretation is that this is the maximum price per square meter that the state will pay, with or without the agreement of the land owner, therefore through expropriation.⁵¹ Albeit unconstitutional, this second interpretation was the one adopted by politicians and state officials, who often referred to this resolution as the price established by law, and which people therefore had to accept. The low legal literacy of the people affected, the lack of any legal aid available to them, and the pressure put on them by the Government and state officials gave them little room to challenge this resolution. Talking about land compensation for the Suai airport, Minister Alfredo Pires said that:

‘The Government is ready to pay compensation, but it will have to happen according to the process and the table that was approved by the Council of Ministers’ (Independente 31/07/2014).⁵²

The second note about the draft decree-law is about its lawmaking process, which presents another example of how legal drafters and the drafting and approval process have a significant impact on the final outcome, as debated in Chapter 5. Starting with the legal drafters, the international law firm hired to draft this decree-law attempted the impossible task of, retroactively, providing legal legitimacy to a process that had been conducted without any legal concerns. Solving the legal problems of the land-acquisition process, while respecting the rule of law and protecting basic rights of the affected people, was an impossible mission. But it is difficult for a commercial law firm to impose strict limits to its client or refuse to continue the drafting, even when the outcome is far from ideal. Furthermore, unlike international organizations, law firms do not have safeguard mechanisms that they can refer to in order to guide their work, and which allow them to refuse to continue when the requested outcome violates those safeguards.⁵³ I personally know the people involved in the drafting, having worked with them when I provided some comments to the draft, and I know that they are respectable professionals who did their best in drafting this decree-law. But they were in a position in which the client was demanding an impossible product, and in the world of business, ‘the client is always right’. Additionally, a law firm only works with lawyers, which are not aware of the intricacies of local communities, and therefore could

51 See for instance Independente 31/07/2014.

52 Also regarding the Suai airport process, see the press release of the MoJ (Ministério da Justiça, undated). Nevertheless, state officials told me the lack of consultation about the USD\$3 per square meter raised protests on the ground. Regarding this solution see also La’o Hamutuk, 2014: 5.

53 On the role of safeguard mechanisms in Timor-Leste, see Almeida, 2019.

not take them into account. Timor GAP also made some efforts to involve other relevant ministries, including MoJ, and had at least one consultation session with (some of) the affected people. But despite these efforts, the final draft that was sent to be debated in Council of Ministers was far from satisfactory.⁵⁴

The approval process provides another example of the fragilities of the lawmaking process described in Chapter 5. According to reports of informants, in Council of Ministers Gusmão tore apart the legal solutions that had been found.⁵⁵ Just the month before, the Vice Prime Minister Lasama had explained to people living in the area of the planned Suai airport expansion how Gusmão was feeling about their demands for compensation. The Prime Minister was angry because other big projects, such as electrification, happened all over the country, cutting people's trees and getting into their gardens, and people didn't ask for compensation; the people from Suai were the only ones asking for it (Independente 31/07/2014, Timor Post 31/07/2014; Ministério da Justiça, undated).⁵⁶ At the Council of Ministers meeting, the draft was mostly changed on the spot, without consultation, study or proper control of the legality of those changes, and mostly at the whim of the Prime Minister.

The result of this lawmaking process speaks for itself. Decree-law 36/2014 regulating the transaction of rights over immovable property in the Suai Supply Base Project, besides being an example of poor legislative writing with several gaps and incoherencies, violates basic principles of law and the Timorese Constitution, and raises the questions about legality to a new level. The following paragraph provides a summary of some, but by no means all, examples.

The few social protections that had been included in the already-weak initial draft were simply removed, such as an option for replacement land as compensation, and a safeguard clause establishing that the living condition of the affected people could not be left worse than before the process. Furthermore, the 10-percent agreement on profits of the supply base (as unclear as that was), initially promised to be in favour of the community and managed by a foundation, was completely subverted. It was converted into 10 percent of the shares of the commercial company that would manage the supply base, in favour of those that claimed land in the (illegal) survey, shared among them

54 To my knowledge there was at least one consultation session with the population in Suai regarding this decree-law (Independente 11/04/2014). The only public output of the lawmaking was the decree-law. There are no other public reports or support documents that can help jurists and the people in general to understand the ideas that guided the drafting process (see Chapter 5). Regarding the approval of this decree-law, see the press release of the Presidency of the Council of Ministers 22/08/2014.

55 I, together with other advisers of MoJ, provided comments on the draft decree-law, but did not participate in the Council of Ministers meetings. A number of conversations with informants in January 2015 gave me insights about this debate.

56 The meeting with Vice Prime Minister Lasama happened because the people affected by the airport construction were demanding being compensated before the construction started (see the press release of the MoJ – Ministério da Justiça, undated). On the land acquisition for the electricity project, see Almeida, 2019.

proportionately to the land area they claimed.⁵⁷ Moreover, this decree-law established preposterous legal solutions such as retroactively addressing the problems of legitimacy of the 10-percent agreement, legalising through decree the illegal survey, and limit any possibility of the affected people taking their case to court. For instance it says that:

‘[f]or the sake of this Decree-Law, the community of Kamenasa decided, freely, to be represented before the state and any other third parties, by their community traditional leaders, invested [in that power] according to their uses and traditions, and accepted by the members of that community’. (art. 3.2).⁵⁸

Finally, while never using the word, this decree-law establishes a *de facto* expropriation. This is visible when the legal text fixes a compensation, not a price, imposed by the Government and not negotiated with the affected people (art. 13.2). In conclusion, the legislative power was not used to, in conformity to constitutional limits, harmonize legitimate public interests and state powers with the individual land rights of the Timorese, but rather as a tool to cut legal corners and promote fast and cheap dispossession.

It would be expected that in a democratic country the approval of such legislation would cause a wave of protests and public indignation. But despite the incongruities and abuses of this decree-law, its approval prompted almost no reaction in Parliament or civil society. To my knowledge, only the local CSO La’o Hamutuk sent a submission to the President, asking him to not promulgate this decree-law. However, while providing a good description of the facts on the ground and presenting strong political arguments against the approval of the decree-law, this submission failed to use obvious legal arguments to advocate for the veto of this decree-law (see Chapter 7).⁵⁹ Despite sitting on this decree-law for almost half a year, the President promulgated it in mid-December 2014.

57 It is not necessary to be a commercial law specialist to imagine all the ways in which shareholders of 10 percent of a company can be cut from any hypothetical profit.

58 Ironically, the lack of mandate of the signatories of that agreement was used by Alfredo Pires to justify the disputes in the Supply Base Project, and deflect the controversy around the land acquisition. See page 6 of <http://www.laohamutuk.org/econ/OGE15/LHKartaOJE15PN28Nov2014en.pdf>

59 I must highlight the role of La’o Hamutuk, a local CSO run mostly by local researchers, which provides an invaluable and, unfortunately, all-too-rare service as a watchdog of Government activities in Timor-Leste. The amount of information gathered for this case study through La’o Hamutuk’s website is itself a good example of the value of this organization to Timorese political debate and accountability.

9.3.4 The contractual approach

Although there were efforts to provide a legal basis for the land acquisition, legality was never a major concern, and even before the entry into force of Decree-Law 36/2014, another strategy for land acquisition was put in place.

At this point in the process the general climate around the project and this land acquisition process was one of confusion, distrust, and fear to speak out against the project, due to its high political profile and the Government tactics to convince people to accept it (La'ó Hamutuk, 2014: 5, 7; Cryan, 2015a: 6). I was told by state officials how they were entrusted by Gusmão to give a clear message to the local population: if they did not give up their land, the project would be moved elsewhere, so others, more cooperative with the Government, would benefit from it (see also Bovensiepen, 2018: 135). I was also told how the Government strategically involved local war veterans in public meetings and media appearances, in order to curb any dissent against the project (see also Timor Post 23/10/2013; Jornal Nacional Diário 20/05/2015). Informants also mentioned that state officials in Suai had been avoiding public meetings where civil society organizations were present (see also La'ó Hamutuk, 2014: 7). After a meeting of CSOs with affected people, a representative of a war veterans association of Covalima warned the CSOs that they were not allowed to do political propaganda, and they should respect the state and the Government (Timor Post 02/10/2014). Finally, state officials also explained to me how, once the Government resolution establishing the price of USD\$3 per square meter was approved, their message in public meetings became much simpler: we did not come here to negotiate, we came here to inform you about the price established by Government to take your land.

At the end of 2014 contracts for the acquisition of 147 parcels, corresponding to 148 hectares of land for the first stage of construction, were signed between the Government and the individuals that had been identified in the survey (Timor GAP, 2014: 31). The people could choose between the 10 percent of profits for 150 years, or a USD\$3 per square meter payment for definitive sale of the land (Business Timor 13/04/2015). The majority, quite confused about the 10 percent option, opted for a definitive sale of the land (La'ó Hamutuk, 2014: 5).⁶⁰ People were asked to open bank accounts in order to receive the payments of these contracts, but the payments took several months, which was a cause of discomfort and distrust by the signatories (Timor Post 20/12/2014).

60 The initial draft of Decree-Law 36/2014 clearly established the two as options for compensation, but the approved version of the draft leaves it very unclear (see art. 6). It should be noted that according to article 9.1 these transactions should be registered by the MoJ, according to a ministerial-decree that was never approved.

In 2016, when I last visited Suai, these contracts were still being signed.⁶¹ Interestingly, many of those that had chosen the 10 percent solution were now changing to the definitive sale of their land (Timor GAP, 2016: 41). While I did not see these contracts, experience tells me that most probably they have several legal problems. I recall a situation when I suddenly started receiving phone calls from DNTPSC colleagues, asking me the meaning of certain legal words. After two or three calls, I inquired why they were asking those questions, and they told me that they were in Suai, signing contracts for the acquisition of land for the airport. The draft contract used was based on an old contract, prepared for a completely different situation, by a former MoJ adviser, and it was totally inadequate for that situation. Furthermore, as in the previous 10-percent agreement, there are reports that people did not receive a copy of the contract they signed (Crespi & Guillaud, 2018: 437).

Months after the signing of these contracts, the compensations for the loss of land started to be paid, and at the time of writing the process of land acquisition was considered mostly finished. After much jostling, the Government had managed to free the land from people, although with a quite questionable legality. The effects of these informal and arbitrary processes are debated in the following section.

9.3.5 The effects of land acquisition

The full impact of this project will never be known. As argued by Bovensiepen and Yoder, the mere planning of these mega projects has effects on the ground, and even from the early stages there are many consequences that are not immediately perceived nor anticipated by those involved (Bovensiepen & Yoder, 2018: 382, 390). To my knowledge the Government has no clear information about the impacts of the land acquisition. An initial environmental impact assessment from 2012 recommended a detailed Resettlement Action Plan that could assess the social impacts of the project, but this recommendation was ignored by the Government (GoTL, 2012b: 15-266; Cryan, 2015a: 8). However, the partial picture provided by several media articles and academic research conducted in the area since the start of this project provides enough reason to question the way the formal land tenure system was used to free land for the project.

At the end of 2017 the compensation for the land acquisition had been mostly paid. While the values of compensation are not publicly available, different reports talk about compensations of around USD\$10,000 or USD\$15,000, with a few cases going as high as USD\$180,000 (Business Timor13/04/2015;

61 In 2016 Timor GAP reported to have cleared 348.16 hectares of a total 1,113 hectares (Timor GAP, 2016: 41).

Grainger, 2017: 184).⁶² Once people accepted that they were going to lose their land, they attempted to position themselves inside families, clans and towards the state in a way that would maximize the benefits from their loss (Cryan, 2015a: 12; Bovensiepen, 2018: 131). The increase, reinvention, and adaptation of customary rituals are part of these positioning strategies (Crespi & Guillaud, 2018: 434). In some cases, the compensation for the land was shared between those claiming the ownership of the land and those using it, but in other cases the land acquisition created serious disputes. There are many reports of disputes within families, and within and between customary groups. The mismatch between the individualized identification of land ownership adopted by the Government and the complex network of customary-based land rights on the ground, and the lack of solution for grievances caused by forced displacement and colonial injustices are main causes of these disputes (Grainger, 2017: 186; Crespi & Guillaud, 2018: 437).

The prices of land in the private market for those that wanted to replace their land quickly escalated, in some places as much as five times the initial USD\$3 per square meter paid by the Government (Cryan, 2015a: 10; Bovensiepen, 2018: 131). There are also many rumours that strategically located parcels of land were bought by politicians and state officials, for speculation (Grainer, 2017: 184). Some of the affected people managed to invest their compensation money well, buying land elsewhere or starting new, non-agricultural, activities. But others chose not to, or were unable to, buy new land or wisely invest their money. Instead, they kept living off the compensation they received and were somehow expected to transition from being subsistence farmers to wage workers (Grainger, 2017: 185; Bovensiepen, 2018: 134).⁶³ In fact, there are many reports that considerable amounts of compensation were spent on goods such as motorcycles, cars, and televisions, and that loans were given based on expected compensations (Business Timor 13/04/2015; Cryan, 2015a: 10; Crespi & Guillaud, 2018: 443).⁶⁴ Gambling in the area is also on the rise (Bovensiepen & Nygaard-Christensen, 2018: 16).

The feelings of people from Suai about the project vary between excitement, expectation, and fear. Some people seem to be hopeful that the project will bring positive changes to the area and improve their quality of life (Bovensiepen *et al.*, 2016; Crespi & Guillaud, 2018: 443). However, at least for now, the jobs and opportunities created have been far below the very high expecta-

62 To give some perspective to the relative value of these compensations, the average national monthly income per capita in rural areas in 2011 was around USD\$50 (GoTL, 2011e: 22).

63 The people affected by the airport construction are also struggling to find land to re-establish their livelihoods (Timor Post 21/04/2014).

64 Referring to the people affected by the construction of the Suai airport, Alfredo Pires said that the affected people were not victims, but were actually lucky for receiving such compensation, because it enabled them to make investments (Business Timor 25/05/2015). Regarding access to land and the use of compensations, see also <http://www.laohamutuk.org/Oil/TasiMane/13SSBen.htm>

tions, and there are reports of outbreaks of violence against contractors who employed foreign workers.⁶⁵ People affected by the project express concerns about the negative effects on their livelihoods, but also on social cohesion and loss of traditions.⁶⁶ Also relevant, the nationalistic discourse about the project used by politicians and state officials, and the deliberate involvement of war veterans in the promotion of the project, side-lined most critical voices against the project, especially at the local level (Bovensiepen, 2018: 134). However, as happened during Portuguese and Indonesian times, those local leaders who managed to show the right support and commitment to the project, managed to strengthen their position as community leaders, to the detriment of those that were not supportive (Crespi & Guillaud, 2018: 436, 440).⁶⁷

9.4 CONCLUSION

What does the Supply Base case study show about the formation of the Timorese formal land tenure system? First, this case illustrates the political environment that surrounds the formation of the Timorese land tenure system. The supply base is one of the most paradigmatic examples of a vision of development based on high-modernistic, large-scale infrastructure projects, concentrated on the state, fuelled by oil and gas revenues, and envisioned by a very centralized leadership. Securing people's land rights is not a priority of the political elite, and can even be a disadvantage for this kind of project. As I was told by a Timor GAP official, the leading mentality is that people should look at the future benefits of the project, not at the struggles that the project will bring them now.

This case is also a demonstration of the almost-unquestioned power of Gusmão. While a nationalistic sentiment, fuelled by the dispute with Australia, is the motor of this high-risk project, it would probably never happen without the strong and mostly unchallenged leadership and political influence of Gusmão. Furthermore, this case shows how planning, administrative processes, the law and people's rights have to bend and give way under the weight of Gusmão's vision.

Legality was not a major concern of politicians and state officials, with the law being used as an instrument for state action but not as a source of protection of people's rights. Politicians and state officials selectively used and reinterpreted the law as necessary to their intents, but ignored it when incon-

65 See Cryan, 2105a: 11; La'ó Hamutuk, 2016: 5; Bovensiepen *et al.*, 2016: 227; Grainer, 2017: 186.

66 See Fundasaun Mahein, 2013: 10, 14; Business Timor in 16/02/2015a; Bovensiepen, 2018: 131; Crespi & Guillaud, 2018: 436, 443.

67 About the appropriation of development by local actors in Timor-Leste, see Shepherd, 2014: 234. A very vivid image of the Tasi Mane Project in 2019 can be found at ABC 21/07/2019.

venient, showing the weak rule of law and lack of autonomy that marks the Timorese legal system (see Bedner, 2016a; Chapter 4). Legal gaps about land rights and expropriation did not prevent the project from moving forward. New, unconstitutional legislation such as the Government Resolution 20/2014 is a good example of how law is selectively used to promote and impose the project. And while inside the Government there were some efforts made to develop a systematic process of land acquisition, the single effort to give real legality to the project was only intended to please eventual investors, not the affected populations, and even in this case these legal concerns were mostly abandoned. Without legal aid, legal knowledge, and a reliable judicial system to challenge the legality of the process, and under pressure to accept the project, the affected people could only try to maximize their compensation.

Furthermore, this case shows that the formal land tenure system did not provide an answer to past land grievances and was not adequate to deal with the complex customary systems on the ground. It is, however, relevant that, despite the problems of the approach adopted, the Government recognized land rights that had not been formalized by previous administrations, and were not clearly protected by law. The high number of people affected, the visibility of the project, and the fact that some war veterans and politicians were affected by it might explain why, in this case, why some compensation was paid by the state. However, this recognition was based on the discretion of state officials, therefore excluding many without clear legal reason.

The case also shows that the process adopted for lawmaking has an impact on the final outcome. The choice of the legal drafters and the discussion process have an impact on the legal solutions adopted, and without adequate preparation nor control mechanisms, even carefully studied solutions (although problematic) can be undone in minutes by uninformed politicians. The result was a piece of legislation that was full of gaps, contradictions and unconstitutionality. However, this had little impact in practice. This legislation attempted to give an appearance of legality to the process, but there was no real commitment to comply with the law.

The supply base case provides a clear example of the influences, fragilities and dilemmas of the institutions working on land administration. DNTPSC's staff, without the legal and administrative mechanisms to adequately identify and grant land rights and acquire them, and politically pressured to conduct a quick and cheap land acquisition, did not have the instruments nor the incentive to implement a fair and legal process. Furthermore, discretionary power in deciding who has which rights to land and using pressure to make people relinquish their land have been part of the professional practice of DNTPSC's senior staff since their Indonesian training. Moreover, giving too much protection to people's rights can result in problems for these civil servants, so there is little incentive to provide local populations with an adequate process. The fragilities of civil society organizations, both in supporting communities in understanding their rights, negotiating with Government,

and challenging the legality of such processes, provide further leeway for these arbitrary and discretionary approaches. While politically vocal, their lack of technical skills prevent them from going beyond political advocacy into legal action against the Government when wrongdoings occur.

Regarding those on the ground, this case shows how people have difficulty protecting their land rights when they stand in the path of a state project. The formal land tenure system does not even provide them with mechanisms to address their inter-community and family land-related grievances. If anything, the formal land tenure system can be selectively used by the state against them. Formal defence strategies, such as legal argumentation or court cases, are far realities for most Timorese. Some people manage to adapt and even thrive under the state threat, but many others end up losing more than they gain when they interact with the state.

Finally, the Supply Base case study illustrates the value of using the Land Tenure System Analysis Model described in Chapter 1 for the analysis of a formal land tenure system. A simpler ‘law on the books and law in practice’ approach would conclude that the Timorese legal framework has various gaps and it is used selectively by the Government when deemed necessary to justify its actions, and ignored when its application is inconvenient. But such approach would not be able to identify why those gaps in the legal framework exist, nor why state officials have so much discretion in their use of the law. Moreover, it would not allow to anticipate nor understand the clashes that the state’s formal system has with the existing informal systems on the ground. For different reasons, the ‘law on the books and law in practice’ is at times the only approach possible, and one can learn a lot about a social issue from it. But, as debated in Chapter 1, if international organizations and politicians are serious about addressing complex land-related problems, they must invest more on broader studies such as the one proposed by the Land Tenure System Analysis Model.

I would have liked to finish this chapter with a note of hope, saying that the approval of the Land Law and Expropriation Law was bringing changes to the protection that the formal land tenure system gives to the land rights of people on the ground, and the Government’s approach to land acquisition. However, more than two years after the approval of these laws, no serious steps were taken to implement them. Moreover, at the time I was revising this chapter, news was circulating about the formation of a new inter-ministerial team for the acquisition of land for another cluster of the Tasi Mane Project, this time the liquefied natural gas plant in Beaço (Tatoli 16/05/2019). This news made me fear that the same arbitrary and improvised approach for land acquisition will be used again, with similar consequences to those that happen to be on the path of the state.

