CENTRO NACIONAL DE INVESTIGAÇÃO CIENTÍFICA
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UNIVERSIDADE NACIONAL TIMOR LOROSA'E

REPORT ON RESEARCH FINDINGS AND POLICY RECOMMENDATIONS FOR

STATE PROPERTY ADMINISTRATION / LEASE OF GOVERNMENT AND PRIVATE PROPERTY

Prepared for the Government of Timor-Leste
by the Universidade Nacional Timor Lorasa'e,
The Direcção de Terras e Propriedades, and ARD, Inc.

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PREFACE

The Land Law Program for Timor-Leste is a USAID-funded activity of the Ministry of Justice Land and Property Unit (LPU), and the National University of Timor Lorosa'e (UNTL), supported by the technical team of ARD, Inc. The Program is conducting sound research to inform policy recommendations concerning land law. It also supports the Government of Timor-Leste's legislative agenda related to land. This includes rendering technical assistance in the process of drafting four main laws regarding Land Dispute Mediation, Technical and Legal Land Registration, Land Title Restitution, and Compliance with the Constitution by Foreign Proprietors, as well as supporting the drafting of other laws.

Economic stability and growth depend directly on effective administration of clear and transparent land laws. Current capital assets are now locked behind the uncertainty over long-term use and ownership rights to immovable property.

This is the first of a series of research studies focusing on various critical land titling issues. Findings of these studies (including targeted, short-term comparative studies) are supporting the LPU policy and legislative development. The Program is developing the research, policy, and legislative drafting capacity of LPU and the UNTL. This first report contains research findings and offers policy options for laws related to leasing state and private property.

The report reflects the research findings and the policy recommendations of the authors only.

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REPORT ON RESEARCH FINDINGS AND POLICY RECOMMENDATIONS FOR STATE PROPERTY ADMINISTRATION AND LEASING OF GOVERNMENT AND PRIVATE PROPERTY

Introduction

In July and August of 2002, the Council of Ministers accepted a proposal made by the Government of Timor-Leste's Land and Property Unit regarding land policy and legislation. The proposal suggested that a gradual step-by-step approach to developing policies and legislation would permit the Government, the Parliament and other interested parties to make a substantive contribution that would strengthen the legitimacy and functionality of the nation's Land Law. Recent experience in Timor-Leste indicates that it is problematic to attempt to develop complex legal frameworks in one step. The debate associated with developing a complete legal framework is contentious and can be difficult to direct toward productive outcomes. Moreover, adopting such an approach often leaves legislators with no choice but to import large quantities of text from legal documents which govern affairs in other countries. The objective of the Government of Timor-Leste is to engage relevant stakeholders in focused, well-informed discussions, the outcome of which will be national land law that best serves the people of Timor-Leste.

On March 10, 2003, the Government of Timor-Leste enacted Land Law 01-2003, which is the basic, or umbrella, law underlying the Juridical Regime of Immovable Property. The purposes of this law are (1) to establish clear legal jurisdiction for addressing land issues; (2) to define several land-law-related legal terms; (3) to determine what constitutes State Property (public domain and private domain); (4) to establish the *Direcção de Terras e Propriedades (Government of Timor-Leste's Land and Property Unit, LPU)* as a legal entity with a clear mission and substantive powers; and, (5) to pave the way for future legislation that enhances the Juridical Regime of Immovable Property.

The Ministry of Justice, through the Directorate of Land and Property, is responsible for administering immoveable property in Timor-Leste. Also, this entity bears the responsibility for proposing national-level land policy as well as drafting land legislation.

The Land Law Program of Timor-Leste (LLP) exists to enhance the capacity of faculty and student social scientists affiliated with the Nacional Universidade de Timor-Leste to conduct world-class research that informs and supports the Ministry of Justice and the Directorate of Land and Property in their quest to produce land policy options and legislation in accordance with the agenda previously established by the Government.

The legislative agenda of the Ministry of Justice calls first for the development of the overarching laws related to the administration of State Property. The Ministry anticipates developing policies and legislation related to: leasing procedures; requisites; valuation; and, administrative eviction.

This document reports the findings of research efforts targeted toward informing the discussion associated with developing the State Property Administration Law. In addition, it provides recommendations regarding relevant policies that the Ministry of Justice might adopt.

Methodology

The Constitution of Timor-Leste prohibits foreign nationals from owning land within the country. In the process of preparing the State Property Administration Law, the Government's main concern was to find ways to facilitate the leasing of property as a viable investment option for foreigners. Hence, in addition to developing policy regarding administrative procedures and other aspects of the relevant body of law, the researchers investigated mechanisms through which to make lease options attractive to foreign and national investors.

This first report is based on research activities and consultation implemented by the Land Law Program (LLP). They include the following:

- ***Social Science Field Research***. ARD staff, in association with members of the faculty, staff and student body of the Centro de Investigação Nacional-CNIC of the National University of Timor Lorosa'e implemented an intensive data gathering exercise. Technical experts developed a questionnaire designed to elicit specific information regarding businesses currently operating in Dili. According to the official Business Register, more than 80% of the country's businesses are located in Dili. ARD's technical staff, working with faculty and student researchers, successfully interviewed a total of 223 respondents who answered approximately 22 questions each. Their findings, along with the underlying analysis, comprise chapter 2 of this document.

- ***Survey and Analysis of Foreign Investment Systems Under Restricted Land Ownership Regimes***. International legal experts conducted two comparative studies focusing on lease policies in eight countries in which foreigners are not permitted to own land: Moçambique, Cambodia, Papua New Guinea, Thailand, USA (Hawaii and Indian Reservations), Fiji Islands, New Zealand (Maori Reserved Lands) and Vietnam. (Studies are available)

- ***Development of Policy Recommendations.*** The Land Law Program's legislative specialist attended numerous meetings and discussions with the Directorate of Land and Property and the Minister and Vice-Minister of Justice to explore various options in order to develop specific recommendations regarding policy alternatives.

Content of the Report

Due to the need to prepare an easily accessible document to be used by officials of the Government of Timor-Leste, Parliamentarians, stakeholders, community groups, and/or any individuals interested in learning about the program's research findings and recommendations, we have structured the report so as to make identifying and locating relevant information easy. The report begins with an overview of policy recommendations. Afterward, specifically in Chapter 2, we present the findings that underlie the recommendations. In Chapter 3, we present a table that summarizes the information gleaned from the two comparative case studies on lease options developed under restricted-ownership regimes. The full versions of the case studies are available as independent documents.

CHAPTER 1
POLICY RECOMMENDATIONS

Content and Name of the Law

The first issues to resolve were those regarding the content for the law governing the administration of State property and the title for the law.

The legislative agenda prepared by the Ministry of Justice and the Directorate of Land and Property refers to this law as the "State Property Administration Law." The agenda identifies the main aspects of the law: leasing procedures, requisites, valuation, eviction, notices, etc. The agenda also states that future legislation will address the sale of government property, credit, mortgages, etc. High-level discussions with government officials produced some clarity regarding the objective of the law under consideration. That is, the Government of Timor-Leste refined the scope of the law to address the leasing of government property.

The terms "State Property" and "Administration" are broad and encompass a large number of different possibilities. The term "State Property" could refer to public domain property such as streets, roads, beaches, etc. which cannot be owned or used exclusively by an individual. Land Law 01-2003, identifies and defines such properties to be "those that are inalienable and cannot be appropriated by anyone." The term "State Property" also could refer to private domain property. That is property which can be owned or used exclusively by an entity or person. It *is* alienable. For example, the building currently used by the Directorate of Land and Property is a private domain property belonging to the State. Members of the public are not able to use it without restrictions. This building has been allocated to the DTP entity and, if the government decides to do so and if there is legislation that allows it, eventually this property could be leased or sold to any private individual or corporation. For the purposes of the development of the policies and legislation relevant to the Government's objectives, Land Law 01-2003 is of restricted, clearly defined scope and substance.

This first law seeks to establish policy and procedures for the use and lease of State Property of Private Domain. (not to be confused with the term "private property" which refers to property that does not belong to the State).

When speaking of "Administration," again, there are many different forms of administering property. The including leasing, buying, selling, granting concessions, etc. In the context of this document, the term "Administration" refers to operating within the framework that governs the disposition of State Property of Private Domain.

Policy Options

There seem to be two options in this regard. The first is for the government to consider drafting a "State Property Administration Law" that will address issues for both private and public domain property (buildings, land, mining, forests, beaches, roads, etc.) and all the different possibilities of administration such as leases, sales, purchase, concessions, etc. The main problem with this option is that with every new law that is promulgated, more administrative resources are required for the entity (DTP or other) responsible for the enforcement of the law. Also, building capacity in these areas is essential.

The government has stated that it may be appropriate to consider the sale and purchase of government property at a later stage, when laws are in place and procedures for transparency have been implemented.

The second option is to rename the law and regulate the main aspects, relating to leasing provisions that were initially proposed in the legislative agenda.

Recommendation

It seems appropriate to select the second option. Consequently, we recommend renaming the law project so that its title includes a reference to its specific jurisdiction; *e.g.*, "Act for the Leasing of State Property of Private Domain" as a part of the Juridical Regime of Immovable Property.

Addressing the Lease of Private Property

Currently, the legislative agenda does not include the development of a law that sets parameters for leases between private parties. Nevertheless, our research findings strongly suggest the need to address this issue as soon as possible.

As outlined in the following table (Table 6 imported from the Research Findings Section), our survey data indicates that of the 114 respondents who lease business land in Dili, the majority (over 60%) lease land from private individuals. This reality highlights the need for a law to address the leasing options for privately owned land. Providing legislation that governs transactions associated with government property will address less than half of all leasehold transactions. Consequently, we strongly recommend developing legislation that addresses private property leases.

Table 6: Breakdown of leased land (government land vs private land belonging to another party, including land leased from a community)

Business ownership status	Type of leased land				
	Government land		Private land belonging to other party (including land leased from a community[1])		Total responses in category
	Total number	% of category	Total number	% of category	
Overall	43	38%	71	62%	114
Timor-Leste-owned	28	40%	42	60%	70
Foreign-owned	14	47%	16	53%	30
Mixed-ownership	1	-	13	-	14
Foreign-share (former 2 categories combined)	15	34%	29	66%	44

[1] A total of nine respondents (of 71 in this category) indicated that they leased their business land from a community/suco.

Policy Options

Two options exist with respect to addressing the issue of developing legislation to govern lease agreements. The first is to legislate only for State Property of Private Domain by enacting a Decree Law approved by the Council of Ministers. The implication is that the research and legislative drafting team will leave the matter of private property leases to be the subject of future assignment.

Alternatively, legislators could develop and enact land laws that govern both "State Property of Public Domain" as well as "private property" leases.

Recommendation:

Subsequent to the findings of the researchers, we recommend that legislature work to develop laws that govern both "State Property of Public Domain" as well as "private property" leases.

Two Independent Law Projects

Should the government elect to develop laws that address the leasing framework for both government-owned and private property, then it must decide how to draft the legal instruments. For example, legislators will have to determine whether to develop one law or whether to prepare two independent laws. In addition, there is the question of whether to enact laws or whether to establish Decree-Laws.

The process for enacting a law is long and complex, while that for establishing a Decree-Law is less so. For a bill to become a law, the Council of Ministers must approve it. Then the National Parliament must ratify it. Finally, the President of the Republic must promulgate it. In contrast to the requirement for enacting a Law, a Decree-Law only requires the approval of the Council of Ministers in order to make it effective. Therefore, it represents a faster and less complex option.

The jurisdiction and enforceability of a law is stronger than that for a Decree-Law. A law obligates private individuals and institutions. It also provides a more permanent or stable legal environment. On the other hand, jurisdiction and enforceability associated with a Decree-Law is limited in terms of the Government's Constitutional and legal mandates. A Decree-Law can obligate private individuals and institutions to a limited extent. The legal environment regulated by Decree-Law can be more easily reformed. The distinct qualities of the two mechanisms represent benefits and disadvantages to consider in making the choice of which to employ.

Drafting Options

There are two options for drafting the lease laws. The first requires that Parliament draft one law governing leases associated with both State Property of Private Domain and private property transactions. Government officials and Parliamentarians would debate and approve only one bill related to the topic. The benefit of this approach is that there will be one law to address the entire matter of leasehold transactions in a stable legal environment. The drawback is that the Government's Constitutional mandate to administer State Property would be diminished were a law to be passed by Parliament which set the rules for the exercise of this duty.

The second option requires that Government officials draft two bills: one related to government property transactions and the other related to private property transactions. The benefits of this approach is that is allows for two independent laws to regulate two different sectors.

With respect to government properties, the Council of Ministers would enact a Decree-Law. The Constitution of Timor-Leste asserts that the administration of State property is a major duty of the Government. Consequently, the Government must have flexibility to act and react to circumstances and conditions as they evolve with respect to this issue. Although the legal environment may change more easily, it is also true that every lease contract entered into before the Decree-Law is changed would remain in full effect following the enactment of the Decree-Law.

The bill related to private property would require ratification from Parliament. It would obligate all private individuals/entities in the country, ad the legal framework in which the law existed would be stable. This law would recognize and respect private ownership, and it would establish the right of the individual to enter into Agreements of whatever sort found to be acceptable for all parties involved. All parties to an Agreement relating to the disposition of private property would enjoy the benefit of the freedom to create appropriate terms and conditions of agreement, while facing a minimum number of administrative rules, procedures and legal requirements governing oral or written leases.

Recommendation:

Based on the arguments expressed above and on the legal mandate of Law 01-2003 on the Juridical Regime of Immovable Property, article 15, number 4, which orders that the leasing and administration of government-owned and abandoned property be regulated by Decree-Law, we recommend that the Government elects the second option. That is, (1) to develop a Decree-Law to govern lease transactions related to government-owned property and (2) to develop a Law to govern lease transactions related to private property.

Decree- Law On The Leasing Of Government Property (Private Domain)

A Decree-Law for the Lease of Government Property must address several issues. This legal framework should:

- Create a transparent environment for the administration of government property.
- Enable the collection of income produced by leases.
- Facilitate the accessibility to government property by official government and international institutions.
- Provide for options for the use of government property by Timorese individuals and corporations in need of housing and business alternatives.
- Offer government property leases as an attractive option for foreign investors, to stimulate the economic development of Timor-Leste.

The Decree-Law must make general provisions for: (a) procedures and requisites, (b) length of the leases, (c) renewals, (d) improvements, (e) transparency of process, (f) rent value. The Decree-Law shall regulate these matters in a permanent manner.

In light of the mandate of article 15, number 4 of Law 01-2003 and because there are many abandoned private properties in Timor-Leste, the Decree-Law must include a provisional section that establishes the rules for the temporary administration of abandoned property by the Government. This section will regulate such cases only as long as they exist.

There are several very important policy options concerning the different matters pertaining to the leasing of government property. We shall consider the options for each of the topics that must be defined in the Decree-law.

a) Procedures and Requisites:

The research findings indicate the importance of clear rules and procedures for leasing government land. According to our research (refer Table 7 from 2c of the Research chapter), only 36% of Timor-Leste-owned businesses presently have leases. Foreign-owned businesses, perhaps because of the greater amount of capital that they require (refer Table 4 under 1b of the chapter three), show a greater tendency to obtain leases than Timor-Leste-owned businesses, with over three-quarters of foreign-owned businesses possessing leases at present.

Overall however, business-owners without leases indicate they are strongly in favor of obtaining them. As the following table indicates (Table 9 imported from Chapter 3), this is most clearly the case in relation to Timor-Leste owned businesses on government land, of which 100% of business-owners are interested in obtaining leases.

Table 9: Interest in obtaining a lease for businesses presently without leases

Business ownership status	**Interest in obtaining lease (Yes or No)**																
	Government land				**Private land**				**Customary land to which the owner has entitlements**				**Total responses**				
	Yes		**No**		**Yes**		**No**		**Yes**		**No**		**Yes**		**No**		**Total**
	No.	**%**	**No.**	**%**	**No.**	**%**	**No.**	**%**	**No.**	**%**	**No.**	**%**	**No.**	**%**	**No.**	**%**	
Overall	20	95%	1	5%	16	64%	9	36%	2		4		38	73%	14	27%	52
Timor-Leste-owned	18		0		15		7		2		2		35	80%	9	20%	44
Foreign-owned	2		1		0		2		0		2		2		5		7
Mixed	0		0		1		0		0		0		1		0		1
Foreign-share	2		1		1		2		0		2		3		5		8

The strong interest in obtaining leases for businesses located on government land may suggest that the promulgation of land law 01-2003 which defines procedures and the obligations of illegal occupants to 'regularize' their situation, has produced a positive response from the community.

Recommendation:

The Decree-Law for the Leasing of Government Property must address issues such as:

- Who is entitled to a lease;
- What the requisites are;
- Personal and corporate information required;
- Who is responsible for the processing of the petition;
- Who is responsible for authorizing and executing the leases;
- What are the essential elements of the agreement and other such matters.

b) Length of Leases:

The Constitution of Timor-Leste restricts the right of property ownership to citizens of Timor-Leste. Therefore, the Government considers that developing procedures designed to encourage foreign investment on leasehold land to be of major importance.

In undertaking our assessment, we examined case studies representing a range of countries with each of which maintained restrictions on property ownership rights for non-nationals: Moçambique, Cambodia, Papua New Guinea, Thailand, USA (Hawaii and Indian Reservations), Fiji Islands, New Zealand (Maori Reserved Lands) and Vietnam. Based on the information drawn from the case studies, we have determined that most countries with restrictions on land ownership to foreigners have concluded that the most successful strategy to attract foreign investment is to offer long-term leases. This is depicted in the following table:

Table. Lease Length in Regimes with Restricted Land Ownership by Foreign Citizens

CAMBODIA	**Up to 70 yrs.**
HAWAII	**99 yrs.**
MOÇAMBIQUE	**Up to 50 yrs.**
PAPUA NEW GUINEA	**Up to 99 yrs.**
THAILAND	**Up to 50 yrs. (Recently increased from 30)**
VIET NAM	**Up to 50 yrs. (Exceptionally 70)**
FIJI	**10 to 99 years; Industrial Purposes normally 50 to 75 yrs.**
NEW ZEALAND MAORI RESERVATIONS	**5 years for commercial purposes; 7 years for private residential. Perpetually renewable.**

Though the field research data gathered in Timor-Leste did not indicate great support for longer-term leases, we believe the reason for this is that the business environment still is adjusting to new economic realities. Investors appear to be concentrating largely in short-term enterprises.

As discussed under 5a of the research chapter, the number of business owners that wanted more flexibility with respect to lease terms was similar to the number that wanted access to obtaining longer lease arrangements. This supports the conclusion that currently (1) many Timorese businesses are unable to make long term commitments and (2) many foreign businesses may not plan on making long term commitments in Timor-Leste.

We recommend that the Government develop policy options following guidance taken from observations regarding the successes achieved in other countries with respect to establishing leasing regimes.

Policy Options:

When proposing time frames for the duration of leases, the Government can opt to offer short- (under 10 years), medium- (11 to 50 years), or long-term (51 to 99 years) lease agreements. The Government must determine whether policy options will consider the size of the applicant's investment when establishing the duration of the lease. With the exception of Thailand, which does require a minimum investment of 40 million baht (approximately USD $500,000) before authorizing leases to foreign investors, the cases that comprise the comparative study did not consider the magnitude of the investment as a condition upon which to base the duration of the lease.

Recommendation:

The government should consider the experiences of other countries which indicate that longer-term lease agreements appear to be more effective for attracting foreign investors. We recommend that Timor-Leste act in favor of issuing medium- to long-term lease agreements to foreign investors. Moreover, we suggest that this approach be linked with a system designed to encourage more capital intensive investments.

Evidence indicates that foreign-owned businesses inject more money in the Timor-Leste economy than Timor-Leste-owned businesses do. (Refer to table 4 and 1b. of the Research chapter.) Also, the data make clear that almost 50% of foreign owned businesses have invested less than USD $20,000, which is similar to the capital investment patterns exhibited by Timor-Leste owned businesses. However, foreign-owned businesses occupy a significant proportion of the immovable property in the country. It is likely that the economy would benefit from actions designed to reconfigure the patterns of land occupancy. The objective should be to encourage an increase in (1) the number of Timor-Leste occupied properties and (2) the level of capital investment associated with foreign-owned occupancy. For housing purposes, both for nationals and non nationals, it may be best not to limit or establish ranges of time limitations.

It may be feasible for the Government to consider developing a range of lease durations based on the size of the investment proposed

c) Renewal of Leases:

Our comparative studies indicate a general trend towards offering renewable leases. In most cases, very long leases are limited to one renewal.

Recommendation

We recommend that the Government permit renewable leases. For that purpose, a process of control and verification of proper use and commitments of investment should be met.

d) Improvements

As indicated in Table 21 of Chapter 2, approximately 50% of all businesses own buildings on leased land. Improvements on leased land are also very common with 64% of business owners stating they have rehabilitated buildings on leased property. Consequently, it is necessary to address the way in which improvements made by tenants occupying government property should be managed.

Our comparative study indicates that only one country, Papua New Guinea, has determined that, at the expiration of a lease agreement, the Government must compensate Lessees for the value of improvements made to State property. In contrast, Moçambique has determined, in its legislation, that improvements shall revert to the State at the end of the lease. The other countries surveyed have not legislated on this matter. We can assess neither the applicability nor the efficacy of adopting a similar policy in Timor-Leste similar to that of Papua New Guinea.

Policy Options

Timor-Leste can elect to compensate leaseholders for the value of authorized improvements they make during the term of the lease agreement. Likewise, at the expiration of a lease agreement, the Government may choose to revert property and all authorized improvements to the State without compensating the leaseholder for the value of the improvements.

Recommendation:

Unauthorized improvements on government property should not be compensated and should revert to the State upon the expiration of the lease agreement.

When the Tenant undertakes major improvements with authorization from the Directorate of Land and Property, compensation should take place through monthly deductions from rent over an agreed period of time. However, if the lease were to be prematurely and legally terminated, by any of the parties, the uncompensated balance of the capital expenditure on improvements should be paid to the tenant.

e) Transparency of the Process

The comparative studies carried out by the Program covered eight countries: Moçambique, Cambodia, Papua New Guinea, Thailand, USA (Hawaii and Indian Reservations), Fiji Islands, New Zealand (Maori Reserved Lands) and Vietnam.

Only one of these countries, Papua New Guinea, has established a mechanism to make the process leasing government-owned property transparent. All land that is available for leasing must be advertised in the National Gazette with information on the type of lease being

offered; the purpose of the lease; the duration of the lease; a description of the property; and, the amount of rental rate, among other details. Once this information has been published, the Government accepts and processes applications. Then, it publishes a list of names of successful applicants in the National Gazette. We were not able to assess the efficiency of such a system, but it is worth considering during the process of developing Timor-Leste's land policy.

Based on our research findings, we have concluded that the present rental market for business premises lacks transparency and may be internally inconsistent (refer to the discussion under 2e of the Research chapter). On this basis, the introduction of a transparency model for the leasing of government land could contribute to the development of a more predictable rental market.

Policy Options:

Two policy options exist: (1) to facilitate the dissemination of public information concerning the processes of leasing government property, or (2) not to do so. Disseminating information to the contributes to the transparency of the processes and gives all citizens equal opportunity to legitimately request the lease of land that they may need for housing or income-generating activities. In the absence of the provision for public information, safeguards against corruption may require that the Government establishes an entity to regulate and control the issuing of leases for the use of Government land. In this case, the regulating body must be independent from the entity that is responsible for the overall administration of Government property.

Recommendation:

We recommend adopting a fairly simple, but public advertisement process so that communities in the vicinity of government-owned property can be made aware of the leasing arrangements to be implemented by the Directorate of Land and Property. It would be far too complex to advertise leasing requests in a national gazette. Nevertheless, posting signs in certain government offices and outside the properties may be effective for diseminiating relevant information.

f) Rent Value:

One of the main concerns of the property leasing market is that of rent value. Currently, Timor-Leste does not have a formal market from which to determine real estate or lease values.

With this in mind, our research program designed several questions to assess whether there is a clear perception of how rent values are established. Tables 10a and 10b below (imported from section 2e of the Research chapter) indicate that there were very few responses (41 of 137) in relation to the amounts being paid by the tenants.

Table 10a: Monthly leasing payments (leased government and leased private land)

Business ownership status	Monthly payments for leased land in $US																				
	Leased government land										Leased private land										Sub-total
	A	B	C	D	E	F	G	H	I	J	A	B	C	D	E	F	G	H	I	J	
Overall	2	3	1	1	1	2	4	0	0	0	1	0	0	1	0	0	10	4	1	2	33
Timor-Leste-owned	2	2	1	1	0	2	1	0	0	0	0	0	0	1	0	0	4	0	1	0	15
Foreign-owned	0	0	0	0	1	0	3	0	0	0	1	0	0	0	0	0	6	4	0	2	17
Mixed	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1
Foreign share	0	1	0	0	1	0	3	0	0	0	1	0	0	0	0	0	6	4	0	2	18

Table 10b: Monthly leasing payments (leased customary land, and customary land to which the business owner has entitlements)

Business ownership status	Monthly payments for leased land in $US																				
	Leased customary land										Customary land to which the business owner has entitlements										Sub-total
	A	B	C	D	E	F	G	H	I	J	A	B	C	D	E	F	G	H	I	J	
Overall	0	0	0	0	0	0	0	0	0	0	0	1	3	1	0	0	0	0	0	3	8
Timor-Leste-owned	0	0	0	0	0	0	0	0	0	0	0	1	2	0	0	0	0	0	0	3	6
Foreign-owned	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Mixed	0	0	0	0	0	0	0	0	0	0	0	0	1	1	0	0	0	0	0	0	2
Foreign share	0	0	0	0	0	0	0	0	0	0	0	0	1	1	0	0	0	0	0	0	2

Total responses: 41 (out of sample of 137)

Key: **A**: <US$1 per month
B: US$2-5 per month
C: US$6-10 per month
D: US$11-20 per month
E: US$21-50 per month
F: US$51-100 per month
G: US$101-500 per month
H: US$501-1000 per month
I: US$1001-3000 per month
J: >$3000

The secretive nature of the rental market, as indicated by the poor response-rate, is further complicated by the two-tier market resulting from the substantial number of properties rented by internationals, who pay far higher rent than that which Timorese could afford.

We recommend conducting further research to improve understanding of the rental market. This could involve a search of DTP records, possibly as part of a broader study examining the present use and occupancy status of a randomly selected sample of government properties (based on the DTP register of government properties).

Again, the qualitative feedback received from the business community in the course of the survey (see 4a of the chapter three), indicates the need for a more predictable property market, evidence indicates that both national and foreign business proprietors would welcome government policies which encouraged greater uniformity.

Policy Options:

With respect to rental values, policymakers should consider whether and how to determine rates for leasing of government-owned property. By contrast, the Government should refrain from establishing policies that regulate the process by which individuals determine lease rates for private property transactions.

If the government decides to regulate government property rents, the options are:

- To establish parameters such as zones, types of use, utilities that service the property, condition and size of the buildings, etc, and prepare a fixed chart with set rents for properties of different categories. The Directorate of Land and Property, would then have a basis for the negotiation of lease agreements.
- To establish percentages of the property value as an indicator for monthly rent.
- To establish parameters based on the applicant's income and justified needs.

Recommendation:

Given the needs perceived by the Ministry of Justice and the Directorate of Land and Property, we recommend that the Government establishes a system for preparing an official chart, with referential values based on the subject property's conditions, utilities, use and location. This chart should be independent of the Decree-Law, as it may require periodic revision to respond to market realities. We recommend that the Decree-Law provide for the creation and biannual revision and updating of such a chart, which will be compiled and maintained by the Directorate of Land and Property, and approved by the Minister of Justice through ministerial decree.

Law on Leasing of Private Property

All legal systems can regulate, with as much detail as required, the aspects pertaining to public (government) enterprises. In fact, the more public law is clarified, the better. In terms of government leases, the Decree-Law to be prepared should establish as many parameters as possible to set clear and transparent rules so that little room is left for discretion and, hence, corruption.

With respect to private law, however, the general principle is that private parties are free to exercise their rights with little, if any, limitations imposed by law. That is, in terms of leasing private property, the landlords and tenants should be free to establish terms and conditions as they see fit.

It also is true that, although private parties may freely set their contractual conditions and obligations, they must have a minimum of legal guidance. This is to ensure that disputes arising from differing interpretations of the terms of the Agreement or from vaguely defined elements of the Agreement may be resolved in accordance with prevailing and legally enforceable norms.

For example, a lease agreement should clearly identify the parties to the Agreement, the property in question, the amount of rent, whether or not subletting is allowed. However, it may be that a specific contract fails to mention subletting. The law must provide a framework within which disputes may be resolved by referring to certain default conditions. In the present example, the law may establish that, in the absence of specifications to the contrary, subletting is allowed. It is imperative to develop a law to regulate certain aspects of lease agreements in order to create a more stable and predictable leasing environment associated with private property. Qualitative responses from informants questioned in the course of this survey, support the determination that normalization of the leasing environment, is essential, regardless of the nature of the property (Government- or privately-owned).

Recommendation

As previously discussed, it is important to regulate both State Property and Private Property leases. Consequently, we recommend that Parliament establish a Law that governs private property leasing agreements. This law should be independent from the Decree-Law regarding State Property. We suggest that Parliament take the action in this matter because the law must govern private transactions, and such matters fall outside the purview of the Government.

The law should address issues such as:

- Formalities and types of lease agreements.
- Content of the agreements.
- Minimum obligations and rights for Tenants and Landlords.
- Causes and procedures for termination, notices, etc.
- Bonds and liabilities.

Other Investment Policy Recommendations:

- There is strong feeling in the business community that land laws alone are insufficient to produce an increase in business security. We recommend, therefore, that appropriate officials direct their attention to developing physical and financial infrastructure and to revewing procedures relating to tax, customs, visas and other matters.

- The significant number of foreign business-owners (unable to own land in accordance with the Constitution) indicating they own buildings on leased land (refer Table 20 under 5b. of the results section) should be noted, in relation to the drafting of future laws that may modify the Indonesian-era law that enabled separate ownership of land, and of buildings upon that land.

- The law on foreign investment and/or corporations should clearly establish the concept of a national- versus a foreign-owned company by determining the minimum required percentage of Timorese investment to be considered a national company. One common definition of a national company or business is that 51% of the capital is owned by national citizens. This will be important to clarify ownership of land held by corporations.

- We recommend that the Timor-Leste business register be updated at regular intervals. This register should also be expanded to include information concerning the exact composition of business partners and their relative share in the business.

CHAPTER 2
RESEARCH RESULTS AND OBSERVATIONS
DECREE LAW ON STATE PROPERTY LEASES

Introduction

This component of the LLP research has been designed to provide input into the law on State Property Administration, the purpose of which is to establish preliminary procedures for the leasing of government land. This is considered to be a priority agenda, in order to establish procedures designed to encourage the stable and secure leasing of land for business purposes, as well as to facilitate land access for housing. The former is a matter of particular importance in relation to foreign owned businesses, since the Constitution of Timor-Leste reserves the right of land ownership for Timor-Leste citizens. Accordingly, foreign businesses must rely on leases to secure their business premises. In the course of designing this component of the research, it was decided to expand the data collection process beyond the government leasehold sector, to enable comparisons to be made with the wider business sector.

Methodology

Introduction

Preparation for this stage of the research involved ARD staff in association with senior staff from the Department of Land and Property and Dr Faustino from the UNTL National Research Centre. This group collectively took responsibility for the development of the research questionnaire and the generation of the sample.

Capacity building workshops totaling four full days took place during the first and second weeks of August. These included introductory lectures concerning the Land Law Project, lectures specifically concerning the purpose of the Law on State Property Administration, and workshops on social science research methods. A copy of the Business Register was presented to faculty and students using a Power-point demonstration (refer *sampling strategy* section below), and UNTL faculty and students had the opportunity to suggest changes and amendments to the methodology at various stages.

Field research was conducted by ten researcher/student teams, each consisting of one researcher (the pool of ten researchers comprised eight UNTL lecturers and two ARD project researchers), matched with two UNTL students. To avoid oversized teams and to ensure adequate supervision of the students by the researchers, the two students on each team were rotated so that at any one time each of the ten teams included one researcher and one student only.

The fieldwork took place over a ten-day period beginning 16th August 2003 and concluding 25th August 2003. Every day was worked with the exception of Sundays. A total of 223 interviews were conducted during this period based on a specially designed questionnaire employing multiple choice and open ended questions.

At the conclusion of the fieldwork, all researchers (the eight UNTL lecturers plus the two ARD project researchers) then spent two days writing a *Laporan Dosen* (Lecturer's Report).

The Lecturer's Report provided an opportunity for these researchers to reflect on their role in the research process, as well as to provide feedback on the number of businesses visited, how many had gone out of business or moved, etc.

Questionnaire

The questionnaire (see Appendix A), directed at business owners, partners and managers, was designed to collect data on the following areas:

1. The profile of businesses operating in Timor-Leste, including:
    a. Whether businesses are owned by Timor-Lesteese, foreign, or mixed owners.
    b. The nature of businesses (hospitality, commerce, etc.)
    c. The size (in terms of financial investment) of businesses.
    d. The amount of land occupied by businesses.
    e. The value of the land (as perceived by business proprietors) occupied by the businesses.
    f. What kind of land are business situated on (private, government, customary), and how many businesses own the land on which their business is situated on.

2. For businesses which lease the land on which they are situated:
    a. What kind of land is the business situated on (private, government or customary).
    b. Does the business possess a written lease or agreement, and if so, what kind of written lease or written agreement and with whom was it arranged.
    c. Details concerning the terms and conditions of the leasing arrangement, including the amount of rent paid.

3. For all businesses (whether they lease the land on which they are situated *or* own it), information was sought relating to the extent to which the business owner enjoys peaceful and undisturbed use of the business premises.

While the questionnaire sought information on a wide variety of matters, potentially of use later in the research project, certain sections of the data were selected for priority analysis (refer *Results* section), in accordance with the particular concerns of this stage of the research project. This data receives the most analysis in this research report, although several more general themes are also addressed.

Sampling strategy

In accordance with the importance of business investment to the Timor-Leste economy, and the related objective of establishing a database depicting business land access patterns and the terms and conditions of this access, a copy of the Business Register was requested from the Department of Trade and Commerce. While it is known that not all businesses are included on the business register (particularly small locally owned businesses including kiosks selling daily necessities such as soap and cigarettes, etc.), the Business Register was selected as the sole source for the selection of the sample on the basis that any significantly sized business intending to abide by the laws of Timor-Leste and wishing to receive the various forms of protection available from the government of Timor-Leste, would be included on the Business Register. The Business Register, therefore, is regarded as a list of the business population for

the purposes of this stage of the research. The Business Register was provided by the Department of Trade and Commerce in electronic format in Microsoft Access form.

A preliminary reading of the Business Register suggested that the overwhelming majority of businesses in Timor-Leste are registered in Dili (5179 out of 6676 at the national level). For this reason, and in order to facilitate better supervision of research staff at this early stage of the project, the decision was made to focus primarily on Dili for this stage of the investigation. Accordingly, all businesses not registered in Dili were eliminated from the pool of potential businesses to be subjected to a process of structured random selection.[2] The remaining pool of businesses was then stratified equally into the two categories of (i) businesses owned by Timor-Leste nationals (totaling 3242 of Dili-registered businesses), and (ii) businesses owned by foreigners (totaling 1937 of Dili-registered businesses). [3]

On the basis of established reckoning concerning sample size for social research, an initial sample of 240 businesses (480 in total) was randomly sampled from each of the stratified pools (Timor-Leste national-owned and foreign-owned businesses respectively) using a process of structured random sampling. The decision to sample each of the stratified pools equally, thereby over-representing foreign-owned businesses in the total sample, was made on the basis that foreign owned businesses are of special interest in view of the foreign investment factor, and the potential economic development benefits which are of concern to the government. An additional sample was later made, using a similar but revised technique, to compensate for the significant number of businesses found to be no longer in operation (see *Sampling Reality* section below).

The sampling reality, and associated insights

In the course of visiting, and attempting to visit Dili business randomly selected from the Business Register, it transpired that a substantial proportion of these businesses, though registered in Dili, are either unable to be located and/or no longer in operation. Though registered in Dili, many business were located elsewhere, while others were without addresses altogether. Specifically, the teams found many of the businesses impossible to locate for the following reasons:

1. No address listed, only an obsolete Telstra telephone number.
2. Some businesses registered in Dili, but located elsewhere, including overseas.
3. Though registered at an address in Dili, the team found many businesses to be unknown at that address. The team refers to these as *fictive*, or fictitious businesses.

[2] Structured random selection, based on access to a list of the complete population to be sampled, involves the following steps:

(i) Determining the number of the population to be selected for interview in order to achieve a statistically viable sample reflecting the broader population.
(ii) Dividing the total population by the number to be sampled.
(iii) Randomly selecting a starting point within the first interval arrived at through the process outlined in steps (i) and (ii). For example if one intended to randomly select twenty-five individuals for interview from a list of one hundred, then the first interval would go from one to four.
(iv) Proceeding through the list of the population at appropriate intervals (intervals of four in the case of the example outlined above), to select the required sample.

[3] In fact, the information in the Business Register concerning whether businesses are foreign owned or Timor-Lesteese owned was incorrect in relation to a number of businesses included in the sample (refer results section).

4. Many businesses were known at the address listed, but had moved to an unknown new address.
5. Many businesses had gone bankrupt and/or ceased trading in the period since they were registered.

For these reasons, it was necessary for the team to select a further 480 businesses from the Business register to supplement the original selection. This procedure firstly required the elimination from the database of all business selected during the initial sampling. Secondly, since many of the un-locatable businesses from the original selection were small kiosk businesses selling daily needs and established with minimal capital, these businesses (43 of which were represented in the first sample) were also eliminated from the database. Those businesses remaining in the second selection pool, therefore, consisted of the 5179 Dili-registered businesses, minus the 480 business selected in the first round, minus all 745 Dili-registered kiosks. The remaining 3954 businesses, again stratified into Timor-Leste-owned and foreign-owned businesses, were then subjected to structured random sampling as in the initial instance.

Altogether, research teams attempted to physically visit 395 businesses, completing interviews with 223. The following table (Table 1) provides a breakdown of the outcomes of these visits:

Table 1: Overall results of attempted visits to 395 Dili-registered businesses (Timor-Leste-owned *and* Foreigner-owner)

Results of visit:	**Number of businesses:**	**Percentage of attempted visits:**
Business has gone bankrupt or moved to unknown address:	85	21.5%
Business considered 'fictitious' by local residents:	67	17%
Business owners and/or managers refused to respond:	20	5%
Active responses:	223	56.5%
Total:	395	100%

As indicated in Table 1 above, the 'strike-rate' achieved by the project teams suggests the Timor-Leste Business Register to be in need of updating (see *Observations* section). Altogether, based on the figures presented above, those businesses presently existing (including those which refused to respond to our researchers) represent less than 65% of the sample visited, suggesting that the number of businesses included in the Business Register that are actually active, could be up to 35% less than indicated (or around 2899, excluding small kiosk businesses). Overall, therefore, in interviewing 223 businesses, this component of the research may have included up to eight percent of registered businesses operating in Dili (excluding kiosks).

Results

1.Profile of businesses

a). Ownership of business (from survey question 2)

The following ownership status (national vs foreign) prevailed in relation to the 223 businesses successfully interviewed following the stratified random selection process (see Table 2):

Table 2: Ownership of businesses included in survey, as declared by interviewed business-owners

Ownership of business	Number of businesses	Percentage of businesses
Timor-Lesteese	160	72%
Foreign	40	18%
Mixed	23	10%
Total:	223	100%

While inconsistencies prevailed between Business Register information and respondent information concerning the ownership status of individual businesses, the overall ratio of the business ownership status of the sample interviewed, was fairly close to that indicated in the business-ownership register (see Table 3 below) for the businesses that were successfully interviewed. This is particularly the case if it is assumed that mixed-ownership businesses are documented in the Business Register as foreign-owned.[4]

Table 3: Ownership of businesses included in survey according to the Business Register

Ownership of business according to Business Register	Number of businesses	Percentage of businesses
Timor-Leste-owned	167	75%
Foreign	56	25%
Total:	223	100%

It should be remembered, however, that the original intention was to over-represent foreign businesses in the sample because of their economic importance. That only 28% (instead of around half) of the sample indicated a foreign-interest, therefore, suggests that foreign-owned businesses represent an over-proportion of those businesses which have gone broke, have moved to new locations, or never traded in the first place. According to the business register, about 43% of Dili-registered businesses (excluding small kiosk businesses) should have an element of foreign ownership, so the proportion of foreign-share businesses still operating may be even less than the proportion of foreign-share businesses included in our survey.

In our attempt to include 50% foreign-owned businesses in our sample, we succeeded in including 28%. Had we intended to include a proportional representation of 43%, it is possible we may have ended up with foreign-owned business representation of 20% - 25%. Given the relatively small size of the foreign-business sample, the vagaries of the Business

[4] It is of note that the Business Register refers only to Timor-Leste-owned, and foreign-owned businesses, and makes no reference to businesses of mixed ownership. Including the possibility of reference to businesses of mixed ownership might be a worthwhile development in future.

Register and Dili business realities, however, it is not considered inappropriate to present an 'overall' category in the results tables which follow. The reader, however, should bear in mind the possibility that foreign-owned businesses may be slightly over-represented in the 'Overall' categories included in the data tables.

For businesses of mixed ownership, no information was collected concerning the share of each business owned by the foreign partner(s). For taxation and regulatory purposes, however, this information might be of use to the government in future (see *Observations* section).

In presenting the data, the tables which follow contain a 'foreign-share' section, in which businesses which indicated mixed ownership, are pooled with those which indicated foreign ownership.

b). Investment in businesses (from survey question 4)

Question 3 of the survey invited respondents to indicate the extent of the investment they had made in their business. Options were provided as follows:

□ Up to $5000.
□ $5001 to $20,000.
□ $20,001 to $100,000.
□ More than $100,000.

The table presented below (Table 4) presents the overall response to this question, and also the response according to business ownership status using the categories of Timor-Leste-owned, foreign-owned, mixed ownership, and foreign-share (combined categories of foreign-owned and mixed ownership). As presented in Table 4, the data indicates that almost three quarters of Timor-Leste-owned businesses have invested US$20,000 or less, with close to half having invested US$5000 or less. And this after small kiosk businesses were deliberately removed from the sample.

Over half of foreign-owned businesses (and over sixty percent of the foreign-share category) indicated that their investments were between US$5000 and US$100,000, while one third of (wholly) foreign-owned businesses (compared to fourteen percent of Timor-Leste-owned businesses) indicated they had invested over US$100,000. Foreign-owned businesses which indicated investments of less than US$5000 represented less than fifteen percent of the foreign-owned sample, as did the foreign-share category generally.

The figures support the belief that foreign-owned businesses invest larger amounts of capital than local businesses.

Table 4: Investment in businesses by ownership status (in US$)

Business ownership status	Amount invested in business (US$)								
	Up to 5000	% of category	5001-20,000	% of category	20,001-100,000	% of category	Over 100,000	% of category	Total responses in category
Overall	78	39%	59	30%	29	14.5%	33	16.5%	199
Timor-Leste-owned	71	48%	38	25%	19	13%	21	14%	149
Foreign-owned	4	13.3%	10	33.3%	6	20%	10	33.3%	30
Mixed-ownership	3	-	11	-	4	-	2	-	20
Foreign-share (foreign-owned and mixed-ownership combined)	7	14%	21	42%	10	20%	12	24%	50

2.Land-types accessed for business purposes and leasing conditions

a). Land on which businesses are located (from survey question 7)

The data indicates that about half of all businesses sampled are situated on leased land, and half situated on land owned by the business owner(s). The data also indicates (see Table 5 below) that more Timor-Leste-owned businesses are situated on land owned by the business owner(s) than on leased land (54% compared to 40%), and that this trend is reversed in relation to foreign-owned businesses (75% on leased land compared to 20% on land owned by the business owner). Given that the Timor-Leste Constitution reserves the right of land ownership to Timor-Leste citizens, it is of significance that such a high number of foreign business-owners claim to own their own business premises. If the sample reliably represents the broader population of foreign-business owners operating in Dili, then the number of foreign business owners claiming property rights in Dili alone may be considerable.

Table 5: Business location by leased or non-leased land (not including distinction between government and non-government land)

Business ownership status	Type of land						
	Land (govt. *and* private) leased by business		Private land owned by business-owner		Other[5]		Total responses in category
	Total number	% of category	Total number	% of category	Total number	% of category	
Overall	105	47%	103	46.5%	14	6.5%	222
Timor-Leste-owned	63	40%	86	54%	10	6%	159
Foreign-owned	30	75%	8	20%	2	5%	40
Mixed-ownership	12	52%	9	39%	2	9%	23
Foreign-share (former 2 categories combined)	42	67%	17	27%	4	6%	63

b). Businesses on leased land – leased government land or leased private land

Table 6 (below) presents a breakdown of leased land, referring to the distinction between (a) leased government land, and (b) leased private land belonging to another party (including land leased from a community/suco). The data indicates a general trend towards the leasing of private land belonging to another party (62% of the overall sample), over leasing government land (38% overall). The trend towards leasing private land belonging to another party (66% compared with 34% for government land), is most pronounced with respect to the general category of foreign-share businesses, while the foreign-owned category is closer to an equal split.

Table 6: Breakdown of leased land (government land vs private land belonging to another party, including land leased from a community)

Business ownership status	Type of leased land				
	Government land		Private land belonging to other party (including land leased from a community[6])		Total responses in category
	Total number	% of category	Total number	% of category	
Overall	43	38%	71	62%	114
Timor-Leste-owned	28	40%	42	60%	70
Foreign-owned	14	47%	16	53%	30
Mixed-ownership	1	-	13	-	14
Foreign-share (former 2 categories combined)	15	34%	29	66%	44

[5] Including (a) customary land to which the individual has entitlement, and (b) land leased by the business from a community.

[6] A total of nine respondents (of 71 in this category) indicated that they leased their business land from a community/suco.

c). Possession of lease agreements for leased land (from survey questions (a) 8, 13, 28, and (b) 17,36)

The survey data (see Table 7 below) indicates that of the overall sample, about half of the respondents possess leases, and half do not. While Timor-Leste-owned businesses are more likely not to have leases than to have them, this trend is reversed in relation to foreign-owned businesses, about three-quarters of which have leases (compared to only 36% for Timor-Leste-owned businesses.

Table 7: Agreement status for leased business land (agreement or no agreement)

Business ownership status	Do you have a lease for the land on which your business is situated(Y/N)?										
	Lease or Agreement						Total responses in category				
	Leased govt. land		Leased private land		Leased customary land		Yes		No		Total
	Yes	No	Yes	No	Yes	No	Number	%	Number	%	
Overall	20	21	35	27	1	4	56	52%	52	48%	108
Timor-Leste-owned	10	18	13	22	1	2	24	36%	42	64%	66
Foreign-owned	9	3	14	2	0	2	23	77%	7	23%	30
Mixed	1	0	8	3	0	0	9	75%	3	25%	12
Foreign share	10	3	22	5	0	2	32	76%	10	24%	42

For leased privately owned land, and leased customary/suco land, data was collected on whether leases entered into for business properties were written leases/agreements, or verbal agreements. The results (outlined in Table 8 below) indicate that for those businesses that possess leases, written agreements are used (without exception) by foreign and mixed-ownership businesses, while Timor-Leste-owned businesses also demonstrate a tendency to use written agreements over verbal ones.

Table 8: Agreement status for leased business land (written or verbal agreement – leased private land and leased customary land only)

Business ownership status	Lease type												
	Private land				Customary/suco land				Total responses				
	Written lease		Verbal lease		Written lease		Verbal lease		Written		Verbal		Total
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	
Overall	29	95%	1		5		2		34	83%	7	17%	41
Timor-Leste-owned	7		5		3		2		10		7		17
Foreign-owned	14		0		0		0		14		0		14
Mixed	8		0		2		0		10		0		10
Foreign share	22		0		2		0		24		0		24

d). Interest in obtaining lease (from survey questions 9, 14, 30)

Businesses without leases and situated on (a) government land, (b) private land belonging to another party, and (c) land to which the business owner has customary entitlements, were asked if they would be interested in obtaining a lease. The main insights from this question (due to the response rates) came from Timor-Leste business owners, indicating (refer Table 9 below) strong interest in regularizing the occupancy of their business premises and acquiring leases. Interestingly, Timor-Leste business-owners occupying government land appear significantly more interested in acquiring leases than those leasing private land, possibly suggesting concern about the intention of the government to assert rights over state property.

Table 9: Interest in obtaining a lease for businesses presently without leases

Business ownership status	Interest in obtaining lease (Yes or No)																
	Government land				Private land				Customary land to which the owner has entitlements				Total responses				
	Yes		No		Yes		No		Yes		No		Yes		No		Total
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	
Overall	20	95 %	1	5 %	16	64 %	9	36 %	2		4		38	73 %	14	27 %	52
Timor-Leste-owned	18		0		15		7		2		2		35	80 %	9	20 %	44
Foreign-owned	2		1		0		2		0		2		2		5		7
Mixed	0		0		1		0		0		0		1		0		1
Foreign-share	2		1		1		2		0		2		3		5		8

e). Monthly leasing payments (from survey questions 12, 20, 35, 40)

The following table (Table 10a/10b below) is included to demonstrate the difficulty experienced by the research team in collecting information from business-owners concerning leasing payments. According to the researchers' accounts, business owners were concerned about the taxation implications of revealing this information. Generally, the main insight from the experience of attempting to collect information about lease payments being paid by Dili businesses, relate to the secretive nature of the business-rental market. One trend, however, may be identifiable from the data, specifically the indication that most foreign-owned businesses may be paying at least US$100 per month.

Table 10a: Monthly leasing payments (leased government and leased private land)

Business ownership status	Monthly payments for leased land in $US																				
	Leased government land										Leased private land										Sub-total
	A	B	C	D	E	F	G	H	I	J	A	B	C	D	E	F	G	H	I	J	
Overall	2	3	1	1	1	2	4	0	0	0	1	0	0	1	0	0	10	4	1	2	33
Timor-Leste-owned	2	2	1	1	0	2	1	0	0	0	0	0	0	1	0	0	4	0	1	0	15
Foreign-owned	0	0	0	0	1	0	3	0	0	0	1	0	0	0	0	0	6	4	0	2	17
Mixed	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1
Foreign share	0	1	0	0	1	0	3	0	0	0	1	0	0	0	0	0	6	4	0	2	18

Table 10b: Monthly leasing payments (leased customary land, and customary land to which the business owner has entitlements)

Business ownership status	Monthly payments for leased land in $US																				
	Leased customary land										Customary land to which the business owner has entitlements										Sub-total
	A	B	C	D	E	F	G	H	I	J	A	B	C	D	E	F	G	H	I	J	
Overall	0	0	0	0	0	0	0	0	0	0	0	1	3	1	0	0	0	0	0	3	8
Timor-Leste-owned	0	0	0	0	0	0	0	0	0	0	0	1	2	0	0	0	0	0	0	3	6
Foreign-owned	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Mixed	0	0	0	0	0	0	0	0	0	0	0	0	1	1	0	0	0	0	0	0	2
Foreign share	0	0	0	0	0	0	0	0	0	0	0	0	1	1	0	0	0	0	0	0	2

Total responses: 41 (out of sample of 137)

Key: **A**: <US$1 per month
B: US$2-5 per month
C: US$6-10 per month
D: US$11-20 per month
E: US$21-50 per month
F: US$51-100 per month
G: US$101-500 per month
H: US$501-1000 per month
I: US$1001-3000 per month
J: >$3000

3. Concerns relating to security of business

a. Disruption (from survey questions 22, 45, 23, 46)

All respondents were questioned in relation to a number of business security issues, specifically, (a) whether the ownership/occupation of the land on which their business is situated had been disturbed or disrupted, (b) if they had heard of disruptions to the ownership/occupation of the land on which the businesses of others are situated, (c) whether they had heard that the ownership of their business premises was under challenge from

others, and (d) if they had heard that the ownership of other businesses is under challenge by others.

When asked if their own business premises had been disrupted or disturbed, the overwhelming majority of business owners owning their own business premises, indicated they had experienced no disruption (see Table 11). The proportion of business-owners leasing their business premises that indicated an absence of disruption/disturbance was slightly lower, perhaps suggesting that leasehold land is more vulnerable to disturbances.

Table 11: Disturbance or disruption to the land on which the interviewees' business is situated, by land-type and business-ownership status (specifically from questions 22 & 45)

Business ownership status	Has ownership/occupation of the land on which your business is situated been disturbed or disrupted?												
	Private land owned by business owner				All categories of leased land and customary entitlement land combined				Total responses				
	Yes		No		Yes		No						
	x	%	x	%	x	%	x	%	Yes		No		Total
Overall	5	5	97	95%	30	26%	85	74%	35	16%	182	84%	217
Timor-Leste-owned	5	6%	80	94%	11	16%	59	84%	16	10%	139	90%	155
Foreign owned	0	-	8	-	17	-	15	-	17		23		40
Mixed	0	-	9	-	2	-	11	-	2		20		22
Foreign-share	0	0%	17	100%	19	42%	26	58%	19	31%	43	69%	62

Those most likely to have heard that the ownership/occupation of the land on which other business are situated has been disrupted or disturbed, according to the data outlined in Table 12 (below), are proprietors of foreign-owned businesses. Tables 13 and 14 (below) provide further indications of this.

Table 12: Business owners (all categories of land) who have heard of disturbance or disruption to the occupation of the land on which other businesses are situated (specifically from questions 23 & 46)

Business ownership status	Business owners (all categories of land) who have heard of disruption to the occupation of the land on which other businesses are situated				
	Have heard of disruption		Have not heard of disruption		Total responses
	Num.	%	Num.	%	
Overall	42	20%	171	80%	213
Timor-Leste-owned	24	15%	132	85%	156
Foreign owned	17		18		35
Mixed	1		21		22
Foreign-share	18	32%	39	68%	57

Table 13: Business owners who have heard that the ownership status of their business premises (whether personally they lease *or* own the premises) has been challenged by others (specifically from questions 24 & 47)

Business ownership status	Has the business-owner heard that the ownership status of their business premises been challenged by others?												
	Private land owned by business owner				All other land (all leased and customary entitlement land)				Total responses				
	Yes		No		Yes		No		Yes		No		Total
	x	%	x	%	x	%	x	%	x	%	x	%	
Overall	9	9%	87	91%	29	26%	81	74%	38	18%	168	82%	206
Timor-Leste-owned	9	11%	75	89%	10	15%	55	85%	19	13%	130	87%	149
Foreign owned	0		3		18		14		18		17		35
Mixed	0		9		1		12		1		21		22
Foreign-share	0		12		19	42%	26	58%	19	33%	38	67%	57

Table 14: Business owners who have heard that the ownership status of the business premises of others has been challenged (specifically from questions 25 & 48)

Business ownership status	Business owners who have heard that the ownership status of other business premises has been challenged				
	Have heard of challenge		Have not heard of challenge		Total responses
	Num.	%	Num.	%	
Overall	43	28%	111	72%	154
Timor-Leste-owned	23	24%	74	76%	97
Foreign owned	18		17		35
Mixed	2		20		22
Foreign-share	20	35%	37	65%	57

b). General concerns about business and land and property maters in Timor-Leste (from open ended survey questions 26, 52, and 27, 53)

Qualitative responses were sought from respondents relating to business and land and property matters in Timor-Leste (specifically, 'What problems concern you relating to business and property matters in Timor-Leste?'). Representative answers to this question included the following points:

- Security should be taken into account for policy makers in this country on matters relating to business security.
- Most local businesses are having a major problem finding capital to invest with (access to credit).

- The government has to provide improved infrastructure in order to support business development activities.
- Land and property laws should be created as soon as possible.
- There should be clear zoning on locations for foreign and local businesses. Legislation securing access to land for business purposes should be drafted as soon as possible.
- Tax rates need to be reconsidered by the government, because the rates of import tax and visa taxes are high in Timor-Leste at the moment.
- There is no commercial bank, no insurance, and no secure laws relating to land and property entitlement.
- There are problems with the taxation system. It should be a clearer system.
- There is a lack of clarity concerning laws and legal processes.
- Problems are experienced bringing goods through customs.
- There is a lack of reliable land title certification.
- Human resources in Timor-Leste have to be improved.
- The government has to think about laws on investment and trade in Timor-Leste.
- Problems with marketing and competition.
- The government needs to accommodate both Portuguese and Indonesian land title certification.
- There needs to be a protection system for local products from Timor-Leste, and also a stable price system for the marketing of goods here.
- There need to be some laws for foreign investment, land and property, and abandoned property.
- There are high rates of taxes, no insurance protection, electricity prices are high and the power is always going down.
- There will need to be a civic education program on land laws and property ownership and this will need to be done for all levels of the community.

4.Issues particular to specific land categories

a). Lease types for government land used for business purposes (from survey question 10)

Respondents leasing government land for business purposes who possessed leases were asked what kind of leases they had, but the response was poor (see Table 15). Of the twenty responses, however, the vast majority were issued from the UNTAET period onward.

Table 15: Lease types for government land by business ownership status

Business ownership status	**Types of lease for leased government land**					
	Portuguese era	**Indonesian era**	**UNTAET-issued**	**RDTL-issued**	**Other**	**Total**
Overall	0	1	5	10	4	20
Timor-Leste-owned businesses	0	0	3	6	1	10
Foreign-owned business	0	1	2	3	3	9
Mixed	0	0	0	1	0	1
Foreign-share	0	1	2	4	3	10

b). Title documents for privately-owned land used for business purposes (from survey question 21)

Respondents owning the premises, on which their businesses are situated, were asked what kind of ownership documentation they possessed. The response to this question firstly provides some indication concerning the identity of those foreigners who claim ownership of their business premises, since two of these individuals have title from Portuguese times and the other six titles from Indonesian times. As the following table (Table 16 below) indicates, the majority of titles are Indonesian-era.

Table 16: Ownership documentation for privately-owned (freehold) business-premises by business-ownership status

Business ownership status	Title-type for privately-owned business premises				
	Portuguese era-title	Indonesian era-title	A receipt of purchase	Other	Total responses
Overall	13	69	3	6	91
Timor-Leste-owned businesses	8	57	3	6	74
Foreign-owned business	2	6	0	0	8
Mixed	3	6	0	0	9
Foreign-share	5	12	0	0	17

5.General matters relating to satisfaction with leases, provisions of agreements, and improvement made to leased premises.

a). Satisfaction with length of lease, and preferred length of lease (from survey questions 11, 19 & 39, and 41 & 42)

The information outlined in Table 17 (below), indicates the length of the leases possessed by the fifty-four respondents who answered this question, and suggests a reasonably even spread of expiration dates for lease agreements throughout the present decade, with a significant proportion extending into the next decade.

Table 17: Lease periods, by government land and leased private land (including leased community/suco land

Lease periods for all businesses				
Year of expiry	Government land	Leased private land, including community/suco land	Total responses (54)	
			No.	%
2003	3	3	6	11%
2004	1	7	8	15%
2005	1	4	5	9%
2006	0	6	6	11%
2007	1	7	8	15%
2008	3	3	6	11%
2009	0	3	3	6%
2010	1	0	1	2%
Other	10	1	11	20%

The majority of business owners in all categories expressed satisfaction with the length of their business leases (see Table 18). This information, however, may be of limited use in determining future policy since (a) many local businesses may not be in a position to contemplate the long-term viability of their businesses until the broader business scenario becomes more stable and recovers from the UN 'bubble economy', and (b) anecdotal evidence suggests that many foreign businesses have invested in Timor-Leste to capitalize on the high UN wages, and may not be interested in a long-term post UN commitment.

Table 18: Satisfaction with length of lease by business ownership status

Business ownership status	**Satisfaction with length of lease for all leases (govt., private, etc.)**				
	Yes		**No**		**Total responses**
	No.	**%**	**No.**	**%**	
Overall	120	82%	27	18%	147
Timor-Leste-owned businesses	80	81%	19	19%	99
Foreign-owned business	29	81%	7	19%	36
Mixed	11		1		12
Foreign-share	40	83%	8	17%	48

Those businesses expressing dissatisfaction with the length of their leases, indicated the preferences outlined in Table 19 (below). That as many business owners wanted a 'more flexible' lease as wanted a 'longer lease' (with a significant minority actually preferring a 'shorter lease') further supports the conclusion referred to above that (a) many businesses are unable to make long-term commitments at this point, and that (b) many other businesses do not plan on making long-term commitments in Timor-Leste.

Table 19: Preferred kind of lease by those dissatisfied with existing lease, by business ownership status and land type:

Business ownership status	**Kind of lease preferred by those dissatisfied with existing lease (all land-lease categories combined)**			
	Longer	**Shorter**	**More flexible**	**Total responses**
Overall	13	7	13	33
Timor-Leste-owned businesses	11	7	8	26
Foreign-owned business	2	0	5	7
Mixed	0	0	0	0
Foreign-share	2	0	5	7

b). Assessment of the extent to which those who lease land, own buildings on that land (from survey question 43)

In order to explore the legacy of ongoing impact of Indonesian laws allowing separate parties to own (a) land, and (b) buildings situated on that land, business owners were asked if they

leased land for their business but owned the buildings thereon. As the following table indicates (Table 20), of those who responded to this question, about 50% indicated that they do in fact own property on their leased business premises. It is significant that such a high number of foreigners indicate that they own buildings on leased land, and this reality should be addressed in the course of drafting other land laws.

Table 20: Extent to which businesses lease land but own buildings on that land

Business ownership status	Do businesses own buildings on leased land? (Y/N)				
	Lease land all categories				
	Y		N		Total
	No.	%	No.	%	
Overall	45	50.5%	44	49.5%	89
Timor-Leste-owned businesses	23	51%	22	49%	45
Foreign-owned business	11	46%	13	54%	24
Mixed	1		9		10
Foreign-share	12	35%	22	65%	34

c). Rehabilitation and construction of buildings on leased business premises (from survey questions 49 and 50)

Table 21: Businesses that have constructed and/or rehabilitated buildings on leasehold land

Business ownership status	Have you constructed or rehabilitated a building on leasehold land?									
	Rehabilitated a building					Built a new building				
	Yes	%	No	%	Total responses	Yes	%	No	%	Total responses
Overall	70	64%	39	36%	109	30	28%	78	72%	108
Timor-Leste-owned businesses	46	64%	26	36%	72	23	31%	51	69%	74
Foreign-owned businesses	20		6		26	5		26		31
Mixed	4		7		11	2		1		3
Foreign share	24	65%	13	35%	37	7	21%	27	79%	34

According to the information presented in Table 21 (above), respondents who indicated they had rehabilitated a building on leased land numbered 70 overall (of 109 responses), while those who indicated they had built a new building on leased land numbered, by comparison, only 30 overall (of 108 responses). From these figures, a preference for rehabilitation over construction appears clear, perhaps reflecting the limited certainty concerning long term tenure security at present. The tendency towards rehabilitation over construction is most pronounced in relation to foreign-owned businesses, with 20 respondents (of 26) indicating they had rehabilitated, and only 5 (of 31)[7] indicating they had built a new building.

[7] The number of total respondents differ because the information was sought from two separate questions, one on reconstruction and one on building from new (questions 49 and 50 in the questionnaire) .

Whereas information from Timor-Leste-owned businesses indicates a similar high level of building rehabilitation as for foreign-owned-businesses (70 out 109 responses), Timor-Leste-owned businesses indicate a much higher rate of constructing new buildings (approaching a third of responses). The extent to which this is attributable to scarcity of existing buildings, perhaps due to these having been accessed by foreign businesses with greater capital, and/or the extent to which it indicates a higher level of security with respect to leased land, can only be speculated.

Table 22 (below) provides an indication of the resources expended on rehabilitation and reconstruction of buildings on leased land. The data presented on this table indicates that of the ninety businesses located on leasehold land that responded to this question, around seventy percent had spent under US$10,000 on construction and rehabilitation of buildings, with eighty percent having spent less than US$20,000.

Observations

a). The qualitative responses sought as part of this survey (discussed under *General concerns about business and land and property mattes in Timor-Leste* under point 3b above) suggest that the business community sees the development of land laws generally in Timor-Leste as a matter of priority. On this basis it is likely that land law development will receive strong support. For example, the high number of business owners who do not have, but wish to have leases on the government properties they occupy (see section 2d under *Results*) indicates the demand for a legal framework on leases.

b). Whereas it was originally envisaged that the State Property Administration law (scheduled for finalization during September 2003) would solely concern leasing procedures relating to government land, the evidence produced by this research project indicates that in fact (refer section 2b under *Results*), the majority of both foreign-owned and Timor-Leste-owned businesses are situated on leased land belonging to private individuals, as opposed to government land. It is therefore recommended that a law governing leases on private land is also developed.

c). As a general observation, there appears strong sentiment in the business community that land laws will not alone produce an increase in business security, and that some attention should be given to physical and financial infrastructural development and a review of procedures relating to tax, customs, visas and other procedures.

d). An unforeseen discovery in the course of this research was the extent to which the Timor-Leste Business Register is an unreliable document in need of updating. Even when correctly filled in and up-to-date however, the Business Register contains no information relating to foreign/local ownership ratios or the amount of investment in the business. Given that land and property proposed to ensure that all businesses applying to lease government land should be registered on the Business Register, it is recommended not only that the Business Register be kept up-to-date, but also that it be developed to include a range of information useful for taxation and administrative purposes. In particular, information concerning the amount of capital businesses plan to invest in Timor-Leste could assist the Department of Land and Property in determining an appropriate length of lease for each land-lease application. While the Timor-Leste business community at present is still in the process of stabilizing, a reality reflected in the popularity of 'more flexible' leasing arrangements (see Tables 19, 18, and also the discussion under 5a of the *Results* section), the post-conflict boom phase of Timor-

Leste's development will soon draw to a close, and a more considered approach to business investment is likely to become increasingly appropriate for all parties.

e). It is recommended that further research be undertaken in relation to the business rental market (refer 2e of the *Results* section). The research referred to in this report has managed to establish only that a somewhat secretive market prevails in relation to this matter.

f). The significant number of foreign-business-owners (unable to own land in accordance with the Timor-Leste Constitution) indicating they own buildings on leased land (refer Table 20 under 5b of the *Results* section) should be noted, in due course, in relation to the drafting of amendments to Indonesian-era law enabling the separate ownership of land, and of buildings upon that land.

g). It is suggested that a random study of government properties (using the register held by the Department of Land and Property) may be a useful undertaking, in order to provide a profile of the present occupancy and use status of government properties.

Amount spent on rehabilitation and construction on leased business premises (from survey question 51)

Table 22 Amount spent on rehabilitation and construction on leased business premises by business ownership status and land type

Business ownership status	Amount spent on Rehabilitation and construction of buildings on leased building premises in US$ (by numbers of each respondents in each category																														Total
	Leased government land										Leased private land										Leased customary land										
	<2000		2001-5000		5001-10,000		10,001-20,000		>20,000		<2000		2001-5000		5001-10,000		10,001-20,000		>20,000		<2000		2001-5000		5001-10,000		10,001-20,000		>20,000		
Overall	8	23 %	8	23 %	8	23 %	6	17 %	5	14 %	17	36 %	9	19 %	6	13 %	5	11 %	10	21 %	5		2		0				1		90
Timor-Leste-owned businesses	5		7		4		3		3		11		7		4		4		7		3		2		0		0		1		61
Foreign-owned businesses	3		1		4		3		1		2		0		1		0		3		2		0		0		0		0		20
Mixed	0		0		0		0		1		4		2		1		1		0		0		0		0		0		0		9
Foreign share	3		1		4		3		2		6		2		2		1		3		2		0		0		0		0		29

No response = 33

CHAPTER 3
Comparative Study Summary
Leasehold Regimes in Countries that Restrict Land ownership by Foreign Citizens

	Cambodia	Hawaii	Moçambique	Papua New Guinea	Thailand
Origin of Prohibition	Constitutional prohibition	Federal Constitution does not prohibit. State Constitution prohibits only for home lands.	Constitution & Land Act (also for Moçambiquens)		• Prohibition by Land Code • Exemptions: Provided by Investment Act/Condominium Act
Lease Period	Up to 70 years	99 years	50 years	Up to 99 years	Up to 50 years (recently increased from 30)
Renewable	Yes	Yes. Not to exceed 199 years	Yes, only once (Art.17)	Not clearly determined	Yes, for additional 50 years
Other Agreements	Lease, grant, lending, transfer			Grant of license: Specific use for limited time period	
Subleasing	Yes, after 3 years & with government approval				Yes, sublease or transfer rights in part or whole
Eligibility		50% blood quantum natives	Foreigners living 5 years in Moçambique & registered foreign companies.		
Uses	Residential, agricultural, ranching only			Agriculture, business & residence	
Joint Venture Options	Yes, private sector and infrastructural projects				
Improvements			Revert to state	Some cases: payment of improvements at expiration of lease	
Compliance			2 years provisional lease subject to implementation of 'Exploitation Plan. After 2 years, authorization and title to be confirmed or revoked	Agriculture: Minimum improvements must be prescribed. Government official inspection	
Other Requisites & Information	Foreigners shall be treated in non-discriminatory way except for ownership of land		License for economic activity is required by land law		• Private leases must be registered. Only owner can lease • Government approval (Commerce & Industry) • Min. US$500,000
Anticipated Termination			Lease subject to Tax compliance. Expropriation with compensation		
Collateral			Lease holder may mortgage assets & improvements NOT land (Constitution)		Lease rights can be used as security
Transparency			• Advertisement of available land for leasing • Advertisement of successful applicants		

Appendix A

State Property Administration Research Questionnaire

CENTRO NACIONAL DE INVESTIGAÇÃO CIENTÍFICA
NATIONAL RESEARCH CENTRE
UNIVERSIDADE NACIONAL TIMOR LOROSA'E

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Business Land-Title-Security Survey

Interview completed by……..……..…… (Name), on……..…… (Date)

Introduction

This survey is being undertaken by the Centro Nacional de Investigação Científica (CNIC), Universidade Nacional Timor Lorosa'e (UNTL), together with the American firm Associates in Rural Development (ARD). The purpose of the survey is to collect information on security of tenure for businesses in Timor-Leste. You have been randomly selected to participate in this survey, and your cooperation would be appreciated. Information from this survey will be used in statistical form only. No reference will be made to your personal identity and all interviews will be anonymous. All questions in this survey refer to your business premises. None of the questions refer to the land you live on (if this is separate from your business address).

Thank you

About the survey

The survey is divided into three parts:

Part 1 - helps us to understand the profile of your business.

Part 2 - is about the kind of land tenure situation that applies to your business. This part of the survey has five sections (A,B,C,D,E) for different kinds of leasing arrangements. *You only need to answer questions from one of these sections depending on your specific situation*.

Part 3 - is about how secure you feel with your business leasing arrangement, and what kind of improvements (if any) you would like.

Part I - Business Profile

Section A – Preliminary Information

1. This study targets business owners. Are you:

□ The sole owner of this business.
□ A partner in this business or corporation.
□ A manager in this business or corporation.

If none of the above, can you help us make an appointment with the owner of the business, with a partner, or with the manager?

2. Is this business:

□ Timor-Lesteese owned.
□ Foreign owned.
□ Mixed (Timorese and foreign).

3. Which of the following best describes the kind of business you operate:

□ Hotel, restaurant, tourism.
□ Commerce.
□ Industry.
□ Other (specify)…….

4. Approximately how much money have you invested in your business:

□ Up to $5000.
□ $5001 to $20,000.
□ $20,001 to $100,000.
□ More than $100,000.

5. What is, in your opinion, the **price per square meter** of the premises on which your business is situated:

□ Up to $5.
□ $6 - $10.
□ $11 - $15.
□ $16 - $20.
□ More than $20.
□ Do not know.

6. How much land does your business occupy:

□ Up to 10 square metres.
□ 11 - 50 square metres.
□ 51 - 100 square metres.
□ 101 - 200 square metres.
□ 201 – 500 square metres.
□ 501 – 1000 square metres.
□ More than 1000 square metres.

7. Is your business located on:

□ Government land (**Go to Part II Section A**).
□ Private land belonging to another party (**Go to Part II Section B**).
□ Private land that you own. (**Go to Part II Section C**).
□ Customary land that you are entitled to (**Go to Part II Section D**)
□ Land that you lease from a community (**Go to Part II Section E**).

Part II – Land Information

Section A (Part II) – Your business is on government land.

8. Do you possess a lease or written agreement of some kind:

□ Yes (**Go to Question 10**)
□ No

9. If you don't have a lease or written agreement, would you be interested in obtaining one:

□ Yes
□ No

If you don't have a lease, go now to Part III of the survey.

10. Do you possess:

□ A Portuguese-era lease.
□ An Indonesian-era lease.
□ A lease issued by UNTAET.
□ An RDTL (Republic Democratic de Timor-Leste) Government lease.
□ Other (please describe)……..

11. When does your current lease/agreement expire:

□ 2003 □ 2007
□ 2004 □ 2008
□ 2005 □ 2009
□ 2006 □ 2010

□ Other (please write the year)……

12. What monthly payment do you make for the land on which your business is situated:

□ Up to $1 per month.
□ $2 - $5 per month.
□ $6 - $10 per month.
□ $11 - $20 per month.
□ $21- $50 per month.
□ $51 - $100 per month.
□ $101 - $500 per month.
□ $501 - $1000 per month.
□ $1001 - $3000 per month.
□ More than $3000 per month.

Please go to Part III

Section B (Part II) – Your business is on private land belonging to another party.

13. Do you possess a lease or written agreement of some kind:

□ Yes (**Go to Question 15**)
□ No

14. If you don't have a lease or written agreement, would you be interested in obtaining one:

□ Yes
□ No

If you don't have a lease, go now to Part III of the survey.

15. Do you lease your land from:

□ A private individual.
□ A religious institution.
□ An Association.
□ Other (please describe the kind of institution you lease your land from)……..

16. What kind of land-ownership evidence has been presented by your landlord:

□ Portuguese-era title.
□ Indonesian-era title.
□ A receipt of purchase.
□ None
□ Other (what kind of evidence).....

17. What kind of lease do you have:

□ A verbal lease.
□ A written lease.

18. When was your current lease signed (or agreement arrived at)?

□ Before September 1999
□ 1999 (after September)
□ 2000
□ 2001
□ 2002
□ 2003

19. When does your current lease or agreement expire:

□ 2003 □ 2007
□ 2004 □ 2008
□ 2005 □ 2009
□2006 □ 2010

□ Other (please write the year)……

20. What monthly payment do you make for the land on which your business is situated:

□ Up to $1 per month
□ $2 - $5 per month.
□ $6 - $10 per month.
□ $11 - $20 per month.
□ $21- $50 per month.
□ $51 - $100 per month.
□ $101 - $500 per month.
□ $501 - $1000 per month.
□ $1001 - $3000 per month.
□ More than $3000 per month.

Please go to Part III

Section C (Part II) – Your business is on land that you own.

21. For the land on which your business is located, do you possess:

□ Portuguese-era title
□ Indonesian –era title
□ Customary land use entitlement (**Go to Section D, Part II**)
□ A receipt of purchase from (enter the year)…….
□ Other entitlement (please outline)……

22. Has anyone disturbed or disputed your ownership of the land:

□ Yes
□ No

23. Have you heard of other businesses where occupation of the land is disturbed or disputed:

□ Yes.
□ No.

24. Have you heard that someone different claims the land or building where your business is situated:

□ Yes
□ No

25. Have you heard of other businesses where someone different from the landlord claims the land or the building:

□ Yes.
□ No.

26. What problems concern you relating to business and property matters in Timor-Leste? (can you please describe) ……

27. What solution(s) do you suggest for the problems you have described? .....

Thank you for your cooperation with this survey (The survey is now finished for those who own their own business premises).

Section D (Part II) - Your business is on Customary land that you are entitled to.

28. Do you have an agreement for the land you use for your business:

□ Yes
□ No (**Go to Question 30**)

29. If you have an agreement, did you arrange it with:

□ The Aldeia Chief
□ The Suco Chief
□ The Sub-district Coordinator
□ Other (please outline how your lease or agreement was arranged)……
…..

……
…….
(If more space is required, use the back of the page)

Now go to Question 33

30. If you have no agreement, would you be interested in obtaining one:

□ Yes (**Go to next question**)
□ No (**Go to Question 33**)

31. If you answered 'Yes' to Question 30, who would you be interested in obtaining an agreement with (you may choose more than one option):

□ The Aldeia Chief
□ The Suco Chief
□ The Sub-district Coordinator
□ The Department of Land and Property, (Ministry of Justice)
□ Other (please state)……..

32. What kind of agreement would you like:

(please describe)……

……(use back of page of necessary)

33. Do you pay money for the use of your business premises:

□ Yes (Go to Question 34)
□ No (**Go now to Part III of the Questionnaire**)

34. Who do you pay money to:

□ The Aldeia Chief
□ The Suco Chief
□ The Sub-district Coordinator
□ Other (please state)…….

35. What monthly payment do you make for the land on which your business is situated:

□ Up to $1 per month
□ $2 - $5 per month.
□ $6 - $10 per month.
□ $11 - $20 per month.
□ $21- $50 per month.
□ $51 - $100 per month.
□ $101 - $500 per month.
□ $501 - $1000 per month.
□ $1001 - $3000 per month.
□ More than $3000 per month.

Please go to Part III

Section E (Part II) - Your business is on Customary/Suco land that you lease.

36. What kind of lease or agreement do you have:

□ A verbal lease.
□ A written lease.

37. Did you arrange your lease with:

□ The Aldeia Chief
□ The Suco Chief
□ The Sub-district Coordinator
□ Other (please outline how your lease or agreement was arranged)……
….

……
…….
(If more space is required, use the back of the page)

38. When was your current lease signed (or agreement arrived at)?

□ Before September 1999
□ 1999 (after September)
□ 2000
□ 2001
□ 2002
□ 2003

39. When does your current lease or agreement expire:

□ 2003	□ 2007	□ 2009
□ 2004	□ 2008	□ 2010
□ 2005	□ 2009	□ Other (please write the year)……

40. What monthly payment do you make for the land on which your business is situated:

□ Up to $1 per month.
□ $2 to $5 per month.
□ $6 - $10 per month.
□ $11 - $20 per month.
□ $21- $50 per month.
□ $51 - $100 per month.
□ $101 - $500 per month.
□ $501 - $1000 per month.
□ $1001 - $3000 per month.
□ More than $3000 per month.

Part III – Satisfaction with Tenure, Provisions of Agreements, and Improvements

41. If you have a lease, are you satisfied with its duration:

□ Yes (**Go to Question 43**)
□ No
□ This question is non-applicable because you do not have a lease (**Go to Question 45**).

42. If you answered 'No', to Question 41, would you prefer:

□ A longer lease.
□ A shorter lease.
□ A more flexible lease.

43. If you have a lease; Do you lease land but own buildings on that land:

□ Yes
□ No
□ This question is non-applicable because you do not have a lease (**Go to Question 45**).

44. Which (if any) of the following provisions does your lease/agreement include:

□ Your landlord is responsible for maintaining the premises.
□ Your landlord must give notice if he/she wishes to break the lease or raise the rent.
□ If your premises are destroyed by natural disaster or civil disturbance, you may break your lease at short notice.
□ If you break your lease early, you must pay a penalty (for example one or more months rent).
□ You pay a security deposit or bond on your lease (for example one or more months of rent payments in advance).
□ You are able to extend your lease.
□ Investments in improvements are deducted from the rent.

45. Has anyone disturbed or disputed your occupation of the land:

□ Yes.
□ No.

46. Have you heard of other businesses where occupation of the land is disturbed or disputed:

□ Yes.
□ No.

47. Have you heard that someone different from the landlord claims the land or the building where your property is situated:

□ Yes.
□ No.

48. Have you heard of other businesses where someone different from the landlord claims the land or the building:

□ Yes.
□ No.

49. Have you rehabilitated a building on the land where your business is situated:

□ Yes
□ No

50. Have you built a new building on the land where your business is situated:

□ Yes
□ No

51. How much have you spent on renovations and building on the land on which your business is situated:

□ Less than $2000
□ $2001 - $5000
□ $5001 - $10,000
□ $10,001 - $20,000
□ More than $20,000

52. What problems concern you relating to business and property matters in Timor-Leste? (can you please describe)……

53. What solution(s) do you suggest for the problems you have described?.....

Thank you for your cooperation with this survey.