

**REPUBLIC OF EAST TIMOR**  
**Law Project No.**  
**JURIDICAL REGIME OF REAL ESTATE**  
**(Part 1)**

The occupation of East Timor between 1975 and 1999 was an illegal act as recognised worldwide, namely by United Nations Security Council Resolutions 384 of 22 December 1975, and 389 of 22 April 1976. This is the reason why Indonesia was unable to succeed the Portuguese Administration in East Timor.

Under Resolution 1272 of 25 October 1999, the United Nations Transitional Administration in East Timor (hereinafter referred to as UNTAET) was given the power to administer East Timor on a provisional basis, which enabled it to administer only movable and real estate, both public and private, as provided for in section 7 of UNTAET Regulation no. 1991/1.

Among the various temporary measures taken by UNTAET regarding the ownership of real estate, one singles out Regulation no. 2000/27 that aimed at freezing the juridical status of some real estate. The transitional administration faced numerous situations of illegitimate appropriation or occupation of real estate, as per Executive Orders nos. 2002/5 and 2002/7. The vast majority of these cases have not been settled.

Following the destruction of the country and the disruption of the Public Administration that occurred during the period of terrorism in 1999, there is presently no real estate registry, both public and private. However, the preparation of a national real estate cadastre was already initiated.

Numerous real estate, that are now the property of the State of East Timor, have been illegitimately occupied or owned. Similarly, several real estate belonging to ordinary citizens, namely national citizens living abroad and foreign citizens, have also been illegally occupied or appropriated.

Section 54 of the Constitution of the Democratic Republic of East Timor provides for the general principles relating to private ownership by unequivocally recognising this right. It states that private ownership should not be used to the detriment of its social purpose and that only national citizens have the right to private ownership of land. The Constitution further establishes in its section 161 that illegal appropriation of movable property and real estate is considered crime.

Following international recognition of the independence of East Timor on 20 May 2002 and the establishment of a national government based on the results of democratic elections, it is now an imperative of the government to establish a legal framework based on the constitutional principles that governs the regime of land property in order to put in place a policy that helps settle the problems resulting from the indefiniteness of the ownership of public and private property. On the one hand, the current situation of indefiniteness of ownership affects the State property by depriving it of important resources

to administer the country and, on the other hand, it creates social instability which delays the development of the country,

In order to implement sections 138, 140 and 141 of the Constitution, the Government has the constitutional duty to create the necessary conditions for the economic development of the country, and it is both technically and juridically indispensable for it to have a real estate cadastre that serves as the basis for the future registry of title deeds.

Notwithstanding the fact that, under paragraphs b), c), k), n) and o) of section 115 of the Constitution, the Government has the power to take up measures aimed at settling this national problem, it is deemed convenient to submit this matter to the National Parliament for it applies to all nation and the definition of solutions calls for the largest participation possible, namely that of the direct representatives of the people.

On these terms, under section 97.1 and section 115.2.a, the Government submits the following bill to the National Parliament, with a request for priority and urgency.

## **CHAPTER I**

### **General provisions**

#### **Section 1**

##### **Real estate**

For the purposes of the provisions of the present law, real estate shall be the rural and urban buildings, as well as their integral parts, on the terms to be defined by the general law.

#### **Section 2**

##### **Private real estate**

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

#### **Section 3**

##### **Public real estate**

For the purposes of the provisions of the present law, public real estate shall be real estate outside the domain of commerce that cannot be the object of private rights, namely roads, beaches, lakes, water courses and their respective beds, as well as the mineral resources of the subsoil, the juridical regime of which is subject to specific legislation.

#### **Section 4**

##### **State real estate**

1. Private real estate of the State of East Timor shall comprise:
  - a) All real estate owned by the Portuguese State as on 7 December 1975; and

- b) Real estate that are acquired by virtue of law or juridical business.
2. The use of State real estate shall be regulated by Decree-Law.

## **CHAPTER II Illicitudes**

### **Section 5 Illegal appropriation**

1. For the purposes of the provisions of the present law, illegal appropriation shall mean the act undertaken by someone who, having occupied a real estate belonging to someone else, has claimed for themselves, before any entity of the Administration, its ownership, has mentioned documentally before such entity of the Administration that they are the owner of such real estate, or has undertaken before such entity actions documentally proving that they have acted in such capacity.
2. A person who appropriates themselves illegally of someone else's real estate shall be punished with a prison sentence ranging from one month to six months, automatically replaced by an equal period of fine or labor in favor of the community.
3. The fine referred to in section 5.2 above shall be fixed in days, and each day of fine shall correspond to an amount varying between one and two hundred US dollars, to be calculated on the basis of the economic status of the offender.
4. The fine that is not paid voluntarily shall be replaced by the provision of labor in favor of the community for an equal period of time.
5. Where the offender refuses to observe the penalty of provision of labor in favor of the community, the penalty of imprisonment for an equal period of time shall apply, and the offender may at all times prevent, totally or in part, the accomplishment of the sentence by paying the fine imposed on him or her or by providing labor in favor of the community.
6. The persons who, voluntarily, and in a period of 30 days after being notified by the Land and Property Authority (Direcção de Terras e Propriedades), hereinafter referred to as DTP, declare that they are not the owner of the asset and regularize their occupation or vacate it shall not be liable to prosecution.
7. Preventive imprisonment shall not be applicable to the crime provided for in this section.
8. The criminal proceeding referred to in this section shall not prejudice a possible judicial or administrative proceeding on the part of the State with a view to returning the proceeds from the real estate unduly received by the offender.

### **Section 6 Illegal occupation**

1. For the purposes of the provisions of the present law, illegal occupation shall mean the act of someone using someone else's real estate or acting as the possessor of such a real estate.

2. A person occupying illegally someone else's real estate shall be punished by fine, the amount of which shall be a half of the amount that would be applicable to the case of illegal appropriation.
3. The fine provided for in section 6.2 above shall never be convertible into imprisonment or provision of labor in favor of the community.
4. Failure to pay the fine provided for in section 6.3 above shall imply the seizure and enforcement of assets of the offender in an amount that allows the respective payment.
5. The provisions of section 5, numerals 6 and 8 shall be applicable, *mutatis mutandis*, to the illegal occupation of fixed real estate.

### **CHAPTER III**

#### **Administrative eviction from State real estate**

##### **Section 7**

##### **Requisites**

1. Once a State real estate is identified, DTP should notify its occupants of such a fact and order them to vacate the asset within a period of 30 days on pain of administrative eviction and without prejudice to the proceeding corresponding to the responsibility provided for in Chapter II above.
2. The occupants shall have a period of 10 days from the date of notification to lodge an appeal in writing against such a decision before the Minister of Justice.
3. It shall be deemed to exist a tacit rejection of the appeal provided for in section 7.2 above whenever there is no response to the appeal within a period of 15 days from the date the appeal was lodged.

##### **Section 8**

##### **Procedure**

1. Having elapsed the period provided for in Section 7.1 above, DTP may undertake the administrative eviction of the State real estate illegally appropriated or occupied. Where necessary, DTP may resort to police force.
2. Expenses resulting from administrative eviction shall be borne by the evictees, and DTP shall submit to the Public Prosecution Service a certificate of the amount of the expenses for seizure and enforcement of the real estate of the offender in an amount that allows the respective payment.
3. No indemnity or compensation shall be paid for construction or improvement works undertaken.

##### **Section 9**

##### **Bona-fide third parties**

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

## **Section 10**

### **Judicial appeal**

1. Administrative eviction can be appealed before the courts of law within a period of 30 days from the date of the administrative eviction. Administrative eviction is not suspended by such appeal.
2. The competent court shall be the one corresponding to the location of the fixed real estate.
3. So long as the code on judicial expenses is not in force, the costs shall be fixed by the court, in an amount varying between fifty and five hundred US dollars.

## **Section 11**

### **Procedures for the appeal**

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

## **CHAPTER IV**

### **Final and transitional provisions**

## **Section 12**

### **Real estate that are the property of national citizens**

1. National citizens, whether absent or present in the national territory, whose real estate has been illegally appropriated or occupied by third parties, should submit their claims relating to the right of property over these real estate, within a period of one year from the date of entry into force of the present Law, on pain of the real estate being presumed as forfeited to the State.

2. A judicial appeal can be lodged against the presumption referred to in section 12.1 above until the 31 December 2008.
3. Such claims shall be submitted to DSAP, and the necessary documental evidence, where it exists, should be submitted together immediately.

### **Section 13** **Expatriate nationals**

1. For such purposes as may be established by the law, expatriate nationals, whether absent or present in the national territory, should, within a period of one year from the date of the entry into force of the present law, provide DTP with all data on the fixed real estate they owned until the 19 May 2002.
2. For the purposes of the provisions of section 13.1 above, the necessary documental evidence, where it exists, should be submitted together immediately.
3. Any acts of disposal of real estate undertaken from the 20 May 2002 by expatriate nationals shall be considered inexistant.

### **Section 14** **Mandatory communication**

1. For the purposes of the procedures referred to in sections 5 and 6 above, DTP should communicate to the Public Prosecution Service the appropriations and occupations it is aware of by virtue of the claims submitted to it under sections 12 and 13 of this law.
2. Appropriations and occupations of State real estate that DTP is officiously aware of should also be communicated to the Public Prosecution Service.
3. Failure to observe the provisions of sections 14.1 and 14.2 above shall amount to serious disciplinary offence.

### **Section 15** **Abandoned real estate**

1. Abandoned real estate that is the property of national citizens or foreign citizens shall be temporarily administered by the State.
2. The temporary administration of such fixed real estate shall be aimed at:
  - a) Protecting the legitimate rights of these bona-fide citizens;
  - b) Granting temporarily their use; and
  - c) Ensuring that the real estate is not used to the detriment of its social purpose.
3. The renting of such real estate to national or foreign citizens and to individuals or corporate bodies may take place through the payment of an adequate rent.

The regime of renting and of administration referred to in this section shall be regulated by Decree-Law.

**Section 16**  
**Passed acts relating to State real estate**

1. Any acts of appropriation relating to the real estate owned by the Portuguese State as at the 7 December 1975 that may have taken place under whatever form between the 7 December 1975 and the 19 May 2002, namely those undertaken by the Indonesian Administration, are considered inexistant.
2. Real estate acquired or built by public entities within the period referred to in section 16.1 above shall revert in favor of the State.
3. For the purposes of the provisions of section 16.2 above, the rights of bona-fide third parties that have onerously acquired the respective real estate through a fair price shall be safeguarded, and the State shall be the creditor of the balance due for their acquisition where their payment has not been totally made.
4. No act of the United Nations Transitional Administration in East Timor shall be construed as conferring any right of property whatsoever on State real estate.

**Section 17**  
**Competent entity**

1. DTP shall be the entity responsible for the enforcement of the present law.
2. Until such a time as the legal statutes relating to real estate registry and real estate cadastre enters into force, DTP shall be the competent entity to register the real estate and prepare the respective cadastre.
3. DTP should submit, until the 31 December 2002, the draft legal instruments referred to in section 17.2, an instrument that regulates the provisions contained in section 15, as well as prepare its organic law.

**Section 18**  
**Counting of time limits**

1. The time limits provided for in the present law shall be counted in consecutive days and shall start on the day immediately following the day of the event from which they start to count.
2. Where the end of the time limit is not a working day, this day shall be transferred to the first ensuing working day.

**Section 19**  
**Repeals**

All legislation contrary to the present law is hereby repealed.

**Section 20**  
**Entry into force**

The present law shall enter into force on 20 May 2002.