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Land Issues in a Newly Independent
East Timor

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Major Issues

Recent events in the Pacific have highlighted the importance of land to postcolonial social stability. Currently, land issues in East Timor contain significant potential for political conflict and economic instability. The laws and institutions of a newly independent East Timor are ultimately a matter for the East Timorese. But Australia can play a significant role in helping to develop an effective and sustainable land administration system, particularly by promoting political compromise and contributing to adequate institutional development.

Four major issues stand out: land claims, land administration, conflict resolution and economic development. The first—land claims—is the key. East Timor's unfortunate colonial history means that land may now potentially be claimed on four competing bases: underlying traditional interests, titles issued in both the Portuguese and Indonesian eras, or long term occupation. Until this issue is resolved, it will be all but impossible to establish an effective system of land administration. The paper examines alternatives and puts forward some options for resolving the complex array of competing claims to land.

Re-establishing a system of land administration is also an urgent priority. The basic policy choice lies between:

- A 'big bang' approach where all alleged titleholders must apply afresh for new titles through a process of systematic registration. Systematic registration is just that: a 'roll out' of titles registration in designated areas. This process is expensive and time-consuming, but would have the benefit of systematically addressing all land disputes at the same time as all new titles are registered.
- A more graduated approach which begins with applicant-driven registration of titles or notification of disputes. In this first stage, only those disputes brought to a Land Claims Commission, as opposed to those uncovered by a systematic registration process, would be heard and determined. Equally, only those who specifically apply for a new title, as opposed to those living in areas designated for systematic registration, would receive a fresh title certificate. The advantage of this approach is that it requires relatively little institutional capacity, and far less funding than systematic registration. Systematic registration could then take place, as a second stage, once the legal framework and institutions of mediation and adjudication have been properly established.

Resolving land claims and re-establishing land administration will not succeed without an effective system of conflict resolution. Australian policy-makers should be wary of the Papua New Guinea experience. On paper, that country has highly credible and sophisticated laws to deal with land conflict, particularly in respect of customary land, but in practice these rules appear to have failed to prevent many conflicts as the relevant institutions lack the capacity, funding and political support to implement them. The obvious lesson is that conflict resolution institutions must be as self-funding and self-enforcing as possible.

Providing sufficient land certainty for economic development is inseparable from all these three preceding issues of land claims, land administration and conflict resolution. It will be tempting, particularly for non-lawyers, to argue for a clean slate: to allocate lands and titles afresh, and to facilitate urgently needed investment by legislating away all prior claims. Indeed, there is some talk of nationalising land for this purpose. But postcolonial experience shows that there is no magic wand solution to intractable land conflict. Certainty cannot be restored simply through state fiat. Institutional decisions will be ineffective without social consensus and ground-level support. The paper puts forward two ideas for promoting investment and sustainable economic development through the controlled use of land and resources.

Introduction

Quite apart from human rights considerations, Australia has important strategic interests in a stable East Timor. Recent events in the Pacific have highlighted the importance of land to social stability, particularly in customary and postcolonial environments. Currently, land issues in East Timor contain significant potential for political conflict and economic instability. This paper will provide a brief overview of four key land issues and possible responses to them.¹

The first key issue is that of land claims. Currently, land may potentially be claimed on four competing bases: underlying traditional interests, titles issued in both the Portuguese and Indonesian eras, or long term occupation. The paper will discuss the nature and number of these claims, institutional and legal requirements to resolve them, and the political division between the two major political groups, Uniao Democratica Timorese (UDT) and Frente Revolucionara de Timor Leste (Fretilin), over the status of pre-1975 Portuguese titles.

The second issue is land administration. All land title offices were destroyed during the militia violence, apparently as a deliberate policy of the Indonesian army, and most records were lost in the destruction. The paper will canvass how a Land Titles Office may be re-established; what form a new registry system may take; how it may be extended, particularly in urban and peri-urban areas; and the key areas where capacity-building and institutional strengthening will be required.

The third issue is conflict resolution. This is not only inseparable from land claims and land administration, but is important due to the re-emergence of long suppressed rural conflicts. The paper will discuss current responses by the United Nations Transitional Administration in East Timor (UNTAET) to land conflict, the possibilities and structure of a mediation process, and institutional issues of compensation funding, provision of alternative land and training for mediators and judicial officers. The fourth and final issue is that of establishing sufficient certainty and procedures for private investment. Possible options for UNTAET, including state guarantees of title for major projects, will be discussed. Then, long term issues of land development will be canvassed, including the extent, if any, of dealings that may be allowed in customary land, and ways in which customary groups may embark on sustainable development through agricultural, forestry, mining or fishery agreements.

The Local Context

East Timor has a land area of approximately 14 600 square kilometres. Some 42 per cent is viable agricultural land, of which approximately half is currently cultivated.² The bulk of agricultural activity is subsistence farming (corn, rice, root crops, vegetables and fruit), although there is some production of coffee, tobacco, cloves, cocoa, vanilla and areca nuts.³ Coffee is particularly seen, with Timor Gap revenues, as the potential backbone of future export income. There is also potential for cattle and poultry breeding, and fisheries activity. However, aside from some mahogany, forestry activity is limited due to severe deforestation, and the once-thriving sandalwood trade has all but expired due to over-exploitation.⁴

Agricultural activity and settlement patterns are defined by the rugged landscape. The north and south coasts are divided by a dramatic mountain range, with some peaks over 3000 m. Overall, the country is in the dry tropics climatic zone, with annual wet and dry seasons. The north coast receives relatively little annual rainfall (50–100 cm) as compared to the mountain areas (250–300 cm) and the south coast (150–200 cm). Most mountain areas are too steep and deforested for intensive cultivation, and irrigated cultivation is thus largely confined either to the south, or areas surrounding flood plains, swamp land or natural springs.⁵

Although few surveys have been conducted, and available information should be treated with care, mining potential outside the Timor Gap appears relatively limited.⁶ East Timor certainly does not have the enormous mineral reserves of Irian Jaya (West Papua) and Papua New Guinea.⁷ There are known marble and plutonium deposits in Manatuto, on the north coast, and some gold and other metals in several sub-districts. There are also some indications of possible oil and gas reserves along the south coast, although reportedly these are relatively small-scale and may be difficult to exploit.⁸ Of course, as is well known, the zone previously shared by Australia and Indonesia under the Timor Gap Treaty has recently shown significant potential, most notably for natural gas.⁹

Culturally and linguistically, the country is a patchwork of different ethnic groups, with as many as 30 separate languages. Prior to the arrival of the Portuguese, East Timor experienced waves of migration of Austronesian, Papuan and proto-Malayan peoples.¹⁰ Generally speaking, there is greater Melanesian influence on the south coast, and proto-Malayan in the north. These distinctions have been enhanced, to some extent, by geographical separation based on the mountain divide, and perceptions of varying degrees of resistance to Indonesian rule.¹¹

Notwithstanding this diversity, traditional social structure is based throughout East Timor on 'kings' known as *liurai*. Prior to the arrival of the Portuguese, East Timor consisted of numerous small kingdoms under the hereditary control of a *liurai*. The *liurai* system, and other customary institutions, retain strong influence in East Timor, particularly in rural areas. However, we also know that this traditional system has been disrupted and factionalised by colonisation and war. For example, after the Dom Boaventura rebellion of

1911–12, the most significant *liurai*-led revolt against Portuguese rule during the colonial period, the Portuguese administration required that all *liurai* obtain approval before taking up office.¹² They also withdrew recognition from hostile *liurai*, particularly in Lautem, Viqueque and Liquisa.¹³ Over time, as the Portuguese fragmented *liurai* power, the *suco* (princedom) rather than the *reino* (kingdom), became the basic indigenous political unit.¹⁴ *Suco* are governed by a customary authority commonly known as *dato* (although there are significant local variations in terminology). A *dato* is usually the head of a lineage descended from assistants to the original *liurai*.

UNTAET and the Institutions of Government

On 30 August 1999, 78.5 per cent of East Timorese voters, by rejecting the option of greater autonomy within the Indonesian state, effectively voted for independence. The ensuing violence and destruction by pro-Indonesian militia displaced most of the population and destroyed much of its housing stock. All government records, including land titles, were directly targeted and either burnt or carried off. Being either non-East Timorese or pro-autonomy supporters,¹⁵ virtually all senior civil servants including the judiciary, and most lawyers and public notaries, fled to Indonesia after the vote. All large-scale business operations, also controlled by Indonesians or pro-autonomy supporters, ceased to operate. In the result, economic activity stopped altogether, unemployment was almost universal and the institutions of government simply ceased to exist.

On 25 October 1999, the United Nations Security Council passed Resolution No 1272, establishing the UNTAET. Article 1 vested all legislative and executive authority with respect to East Timor, including the administration of justice, in the hands of the UNTAET. Article 8 stressed 'the need for UNTAET to consult and co-operate closely with the East Timorese people ... with a view to developing local democratic institutions and transfer to these institutions of UNTAET administration and public service functions'. UNTAET's first regulation (No 1 of 1999) contained similar provisions, and in particular vested UNTAET's powers (and obligation to consult with the East Timorese) in the hands of a Transitional Administrator, who is currently Mr Sergio Viera de Mello.

The primary political representative of the East Timorese people is the Council of National Resistance for East Timor (CNRT). CNRT was established in 1998, as a successor organisation to CNRM (the Council of Maubere People's National Resistance), and consists of representatives from most of East Timor's pro-independence political groups. These include, most notably, the two largest political groups, UDT and Fretilin. The leader of CNRT is Xanana Gusmao. UNTAET now co-operates and consults with CNRT, and other East Timorese representatives, through a period of co-government with UNTAET in which international and East Timorese ministers serve together in a Cabinet, and East Timorese members have been progressively introduced into management positions within a mixed East Timorese and international East Timor Administration. The former UN staff Governance and Public Administration department heads have become senior civil

servants under their respective ministers and, again over time, are expected to be replaced by East Timorese. Ultimately, through this process, elections are to be held to choose a Constituent Assembly which will draft and adopt a constitution. Following this process, the Constituent Assembly will become the East Timorese Parliament, and full independence would become available some time soon thereafter. It is expected that elections will be held between April and November 2001.

Pursuant to these proposals, on 14 July 2000 UNTAET promulgated Regulation No 23, establishing a Cabinet of the Transitional Government in East Timor, and Regulation No 24, establishing a National Council (NC). Under Regulation No 23, Cabinet officers are to hold such portfolios as determined by the Transitional Administrator, and are vested with executive authority over offices and departments within their respective portfolios (article 1). The Cabinet is empowered to formulate policies and programs for the government of East Timor, to supervise the East Timor Administration, to recommend regulations or return draft regulations to the NC, and to recommend approval and promulgation of draft regulations by the Transitional Administrator (article 4.1). It may also require officials of the East Timor administration to provide information to it as directed (article 4.2). The portfolios of the First Cabinet are internal administration, infrastructure, economic affairs, social affairs, police and emergency services, political affairs, and justice and finance. While it appears, therefore, that the Cabinet will play a powerful role in East Timor, its power remains ultimately circumscribed by the Transitional Administrator. This is because Cabinet membership, composition and portfolios are to be determined by the Transitional Administrator, and Cabinet decisions are ineffective until review and approval by the Transitional Administrator (articles 1 and 4.3).

Under Regulation No 24, and unlike its predecessor consultative body, the National Civic Council (NCC),¹⁶ the NC is expressly established as a forum for legislative matters (article 1), with power to amend existing regulations, and to initiate, modify and recommend draft regulations (article 2). The NC is also a much enlarged version of the NCC. It has 33 members including seven from CNRT, three from political parties outside CNRT, and one each from the Catholic Church, Protestant Churches, Muslim community, women's organisations, students/youth organisations, the Timorese NGO forum, professional associations, farming community, business community, labour organisations, and the 13 Districts of East Timor. In many ways, the NC bears the hallmarks of a nascent Parliament, with a Speaker and deputy Speaker, authority over its rules of procedure, power to establish advisory committees and authority to require the appearance of Cabinet officers to answer questions regarding their respective functions (articles 1, 4.1, 4.3, 6.1). Notably, it is also to have its own secretariat (article 4.5). Nevertheless, again it is important to note that the Transitional Administrator retains a discretion to approve any draft regulations or amendment endorsed by the NC, where it has also received the recommendation of the Cabinet, provided that the draft regulation is consistent with the fulfilment of his mandate under Security Council Resolution 1272. He also has the sole

power to appoint NC members after consultation with relevant groups represented on the NC (article 3.3).

Land Claims

Resolving land claims in East Timor will be a pre-condition to establishing social and economic certainty. Yet they present issues of unusual complexity and sensitivity, and hence their consideration forms a substantial part of this paper. This complexity arises from East Timor's unfortunate colonial history. Most colonies only experienced one wave of dispossession, and thus generally have only one category of dispossessed claimant. East Timor has suffered successive waves, from Portuguese colonisation through Japanese occupation to Indonesian invasion. As a result, land in East Timor can now be claimed on four bases: underlying traditional interests, titles issued in both the Portuguese and Indonesian eras, or through long term occupation.

Although official policies have yet to be formulated, in broad political terms UDT is said to support restoration of pre-1975 Portuguese titles.¹⁷ In part this is due to distaste for Indonesian rule; but there is also an alleged element of self-interest, as many of its supporters—particularly former civil servants—reputedly accumulated significant landholdings under the Portuguese administration. Fretilin, for its part, desires land justice for traditional and/or dispossessed groups. Its leader, Xanana Gusmao, has also reportedly indicated that consideration needs to be given to recognising bona fide Indonesian titles.¹⁸ It is inevitable, therefore, that competing claims will arise with significant political and economic implications. Put at its simplest, restoration of Portuguese titles may favour UDT interests and arguably entrench Portuguese dispossession. Conversely, recognising traditional claims or Indonesian titles may diminish UDT interests.

Australia's interests favour compromise and minimisation of conflict. It should not be forgotten that the brief armed conflict in 1975 between UDT and Fretilin, the two main political parties, was triggered in part by Fretilin's policies of land reform. The following part accordingly considers issues relevant to resolving competing land claims in East Timor.

Colonial Dispossession and Claims Based on Traditional Rights

Claims based on dispossessed customary interests, generally supported by Fretilin, have great social significance, particularly as a result of widespread dispossession and resettlement under both the Portuguese and Indonesian regimes. Briefly, Portuguese dispossession began in earnest after May 1901,¹⁹ when a new law on overseas land concessions was passed which inter alia stated that all land not proved to be based on Portuguese titles was held by the state.²⁰ Pursuant to this law, the Portuguese

administration developed the *Carte de Lei*, a map of traditional lands divided between those controlled by a *liurai* and those 'without a master'. The latter were vested in the Portuguese state, and could be the subject of issued land titles known as *alvara*. This process was undeniably a major source of Portuguese dispossession.

In December 1910, the Governor of East Timor also issued a decree requiring *inter alia* all transfers of 'native tenure' to be approved by the Governor. The catch was that to establish native tenure the occupier must have cultivated or built upon at least half of the land area. All lands outside these areas were deemed unused and could be subject of grant of *alvara* titles by the Portuguese administration. In particular, such grants could be made by the District Administrator up to an area of 100 hectares and over that amount by the Governor.²¹ This also was a major source of dispossession because customary tenure, at that time, was largely based on hunting and shifting cultivation; and, in any event, customary conceptions of tenure extended far beyond areas surrounding cultivation and housing. It follows that to limit native tenure holdings to twice the area of their housing and fixed cultivation was to deprive traditional groups of much of their land.

In the result, by the time of the first declaration of independence in 1974, land ownership was allegedly highly concentrated between five groups: the Catholic Church, the State Agricultural Company known as SAPT (*Sociedade Agricola Partia e Trabalho*), *liurai* favoured by the Portuguese administration, a mestizo elite of mixed Portuguese and indigenous descent, and Chinese-Timorese trading concerns.²²

Indonesian rule continued this history of dispossession, while adding another factor: massive resettlement of villages from the Fretilin-dominated interior to areas along the coast or adjacent to major roads. More details of the dispossessory aspects of Indonesian land administration may be found in other works by the author.²³ Suffice it to say that, first, most land compulsorily acquired for both public and private development was taken without due process or adequate compensation. This was because officials eschewed use of Indonesia's 1961 law on compulsory land acquisition, in favour of often spurious assertions—made in an atmosphere of intimidation and duress—that land-holders had in fact agreed to the acquisition in question. Second, substantial tracts of traditional lands, particularly forest areas, were taken on the basis of *de facto* non-recognition of customary tenure by Indonesian authorities. This was broadly because the formal recognition of custom in Indonesian land law is made subject to inherently vague concepts of national interest and the social function of land. Third, most of the East Timorese population, at times, have been displaced or resettled due to war and militia violence.

It should be apparent therefore, even from this brief historical account, that there are substantial social and political pressures to restore traditional lands lost due to colonial dispossession. The preliminary point needs to be made, however, that this is a quite distinct issue from that of recognising customary tenure. The social structure of East Timor is such that customary interests must be recognised. Almost all rural areas continue to follow traditional lives, guided by traditional institutions, and occupy land that has never been registered in a formal titles system. The contentious issue, for our purposes, is

not whether current traditional occupiers should receive formal recognition, but whether those who have lost traditional lands through colonial dispossession should receive their lands back, or indeed receive some other form of remedy.

Restitution

One disadvantage of restoring land to dispossessed traditional owners is that it will entail substantial resources and expertise. While the notion of formally recognising titles on the basis of traditional connections to land will be familiar to Australian readers, the Australian native title approach—sifting a history of dispossession through legalistic notions of traditional connection and extinguishment—demands great institutional capacity. Issues such as the status of migrant groups, the significance of intermarriage, the possibility of opportunistic claims and conflict within customary groups—these all require substantial anthropological, legal and, above all, mediation skills. While building these skills should be a major priority in the reconstruction of East Timor, an initial assessment should be made as to the institutional capacity to embark on a native title-type process. The likely conclusion, of course, is that such a process will require substantial and sustained assistance from the international community.

Land Reform

One alternative would be a process of land reform: provision of sufficient lands for poor and displaced groups. The advantages of this process are that it avoids the complex issues of migrant groups and defining customary claims, while ensuring that dispossession is redressed by granting all people the right to adequate land. This result may be easier to achieve than it seems, because war and famine have created surprisingly large tracts of unused and fertile land in East Timor. Hence, a degree of land justice may conceivably be achieved through creation of a land bank, and mediated movement by the dispossessed and landless to lands with suitable infrastructure and fertility. Those peoples would then receive statutory rights, which would also avoid the inadequacies of defining the content of customary title by reference to its traditional indicia, rather than allowing more modern uses.

However, disadvantages of land reform include the fact that, in customary law, all land in East Timor is owned by *liurai* and/or customary groups. Even though large amounts of land are unused, the East Timorese recognise that traditional rights remain all over that land. It follows that, if there were to be land allocations to the poor and dispossessed, that process would always entail negotiation with traditional owners. Moreover, for reasons of spiritual connection, those wishing to move will prefer return to their ancestral lands to living on the traditional lands of another group. In either event, the difficult questions of customary tenure will not be able to be avoided. If negotiations with traditional owners will be necessary, who represents those owners and what is the nature of their

compensable interest? If those moving wish to return to their ancestral lands, what is the status of migrant groups on that land?

Another disadvantage of land reform concerns its comparative lessons and experiences. In many post-colonial countries its results have been disappointing.²⁴ If unused lands are to be allocated to the poor and dispossessed, then sufficient shelter, agricultural tools and infrastructure must be provided. If large holdings are to be limited, or broken up, economically important agricultural industries should be sustained. If the whole process is to reduce conflict and allow certainty, then political consensus must be established and political retribution avoided.

To summarise: political realities are that colonial dispossession cannot be ignored in creating a new land system in East Timor. That being so, the broad policy choice appears to be between the rock of land restitution and hard place of land reform. Both have advantages and disadvantages, and, bearing these in mind, this paper briefly sketches two possible forms of political compromise.

Restitution and Land Reform

The first, with the virtue of relative simplicity, would be to redress Indonesian dispossession through land restitution, and Portuguese dispossession through land reform. In other words, those who lost lands through unlawful or unjust taking by the Indonesian authorities may have a right to return of their land, or some other remedy such as compensation. But those who lost land through unlawful or unjust taking by the Portuguese administration would receive no remedy other than a general right to participate in a land reform process. This would avoid the difficult issues of tracing details of dispossession (e.g. location and boundaries, genealogy and identity of claimants, and time and manner of dispossession) back to 1910 or earlier. The trade-off for UDT interests, if they are to accept the concept of land reform, could be *prima facie* recognition of Portuguese era titles. This issue is discussed further below.

Zones

The second possibility, not necessarily inconsistent with the first, would be to divide the country into zones. Urban areas, economically strategic sites such as plantation land, and public purpose lands (hospitals, schools etc.) could be legally freed of any claim by traditional interests. All other areas could be the subject of claim, but where competing interests such as *bona fide* Portuguese or Indonesian titles were upheld, traditional claimants would only receive a right to compensation, substitute lands or some other form of benefit.

Claims Based on Portuguese Titles

If, then, customary tenure is to be recognised, and perhaps serve as a basis for restoring lands taken under the Portuguese or Indonesian administrations, what of Portuguese titles? How could they be upheld in any quest for social and political compromise? According to Indonesian statistics, 2843 Portuguese titles were issued and registered under Portuguese administration.²⁵ If they are upheld, in what circumstances, if any, would they be defeated by claims based on traditional interests or Indonesian titles?

This difficult question has two aspects: internal and external. Internally, the issue is what was the fate of those titles? Some Portuguese title properties were confiscated by the Indonesian military without compensation, and would legitimately therefore be the subject of claim. But, aside from confiscation, Indonesian law did formally recognise pre-1975 Portuguese titles, although after 1991 many of these titles were converted into lesser interests.²⁶ On the basis of this recognition, a number of Portuguese title properties were sold. It appears that those sold, or, being interests limited in time (e.g. *aforamento* rights), lapsed, should not validly be allowed to be claimed. However, those that were compulsorily converted to lesser rights, arguably should be the subject of full claim. In short, if pre-1975 titles are to be recognised, tracing their history post-1975 will be fundamental. This will raise difficult questions of proof which are discussed below when considering re-establishment of a system of land administration.

The external aspect relates to the nature of any competing claims. Is, for example, there a bona fide occupier, based on an Indonesian title, without knowledge of the dispossessed Portuguese land-holder? What is the status of any post-30 August 1999 occupation? Are such occupiers acting in good faith? Did they require, and if so seek, permission to occupy from UNTAET? Is there a claim based on underlying traditional titles? At this point, of course, the reader might well ask what need is there to consider any competing claims. Given that Indonesia was a belligerent occupier, why not simply decree that all non-consensual land acquisitions under the Indonesian administration were null and void? Why not revert to pre-1975 titles, and perhaps include land reform to remedy Portuguese dispossession?

The advantage of simply restoring all land non-consensually acquired under Indonesian administration is that it accords with the UN General Assembly view that Indonesian occupation was unlawful. It satisfies the substantial political pressure to simply restore pre-1975 Portuguese era titles. It avoids the complex process of untangling the different methods of Indonesian dispossession. It solves the problem of limited non-Indonesian expertise in Indonesian law and administration. Finally, it avoids difficult evidentiary issues arising out of the destruction of land records.

However, there are substantial disadvantages to simply restoring all pre-1975 Portuguese era titles. First, many thousands of titles were issued under the Indonesian administration.²⁷ While a number of these were issued to persons other than the true owners, through bribery and subornation of local officials, it appears that many more are

held in good faith by East Timorese themselves. Second, Xanana Gusmao has reportedly indicated that bona fide Indonesian titles may be respected, and East Timor's geographic and strategic environment requires future cooperation and good relations with Indonesia. Third, invalidating all Indonesian titles without compensation may well be in breach of international customary law,²⁸ and hence would be outside UNTAET's legal authority.

Simple reversion to pre-1975 Portuguese titles has its political attractions, particularly given the antagonism towards Indonesian rule. But, in the author's view, it would:

- dispossess too many bona fide East Timorese land-holders who received titles under Indonesian titling programs
- raise enormous practical difficulties of unravelling chains of title, both where Indonesian titles were based on converted Portuguese titles, and where the pre-1975 Portuguese title holder has died intestate under Portuguese law
- antagonise Indonesia at a time when good strategic and economic relations are paramount, and
- likely be politically unacceptable to Fretilin because of its boost to UDT interests.

Claims Based on Indonesian Titles

Should it be necessary, therefore, to uphold Indonesian titles, legal and institutional principles will need to be developed to distinguish bona and mala fide Indonesian titles. This is necessary because many titles were issued corruptly to persons other than the true owners. Indeed, one former East Timor land titles officer under Indonesian administration estimated that 20–30 per cent of all Indonesian titles issued in East Timor were issued through corrupt processes.²⁹ It is also urgent because many Indonesian titleholders are now seeking to sell their titles through agents in East Timor, and, although such sales have recently been declared temporarily invalid by UNTAET,³⁰ if they were ultimately to be allowed, it would assist to entrench corrupt dispossession under Indonesian titling programs.

That said, and as with Portuguese titles, prima facie recognition of Indonesian titles will also require remedies to redress dispossession during the period of Indonesian rule. This issue cannot be ignored because non-consensual acquisition of land in East Timor was marked by duress, lack of due process and non-payment of adequate compensation. If, then, land taken by the Indonesians is to be returned, certain institutional requirements will need to be met, including knowledge of the Indonesian system of land administration, legal reform to establish a sound basis for many forms of tenure not recognised by Indonesian land law, provision for public purpose land to be quarantined from restitution, and development of alternative remedies of compensation or substitute land. Many of

these issues, of course, overlap with those discussed when considering means to remedy Portuguese dispossession.

Claims Based on Non-Traditional Long Term Occupation

It finally remains to mention claims based on non-traditional long term occupation. This is relatively widespread in East Timor, particularly in urban and peri-urban areas, due to displacement and economic migration. Indonesian land law generally does not recognise rights based on long term occupation, and thus the issue is whether the law should be reformed to allow claims based on this phenomenon. It is arguable that post-30 August 1999 occupations should not be recognised because that would entrench recent displacement and economic migration, and reward opportunistic occupations. At the same time, however, equity considerations suggest that long term occupation from before 30 August 1999 should, if it meets certain criteria relating to term of years and avoidance of conflict, be granted formal recognition. This is reportedly an issue of particular concern for Xanana Gusmao because of the large number of displaced poor communities.³¹ Recognising such occupation, of course, would simply be equivalent to the 'adverse possession' provisions of most developed legal systems.³²

To summarise, finally, what form a political compromise over land claims may take, this paper briefly suggests two possibilities. The first, in brief, would be to recognise customary rights as the underlying tenure of East Timor. Circumstances would then be recognised where those rights would presumptively have been extinguished by, or co-exist with, either subsequent Portuguese titles, bona fide Indonesian titles or public interest requirements or uses. Bona fide Indonesian titles would also extinguish Portuguese era titles, but would lose to public interest requirements or uses. The second would be to recognise Portuguese titles as the underlying tenure of East Timor, including the Portuguese *occupao* right of traditional owners,³³ but allow for those rights to be extinguished by bona fide Indonesian titles or public interest requirements, *and* embark on a process of land reform for poor and traditional groups. Such a process would not involve legalistic processes of land restitution, but land justice: that is, provision of appropriate lands for poor and displaced groups.

Land Administration

A system of land administration must be re-established as an urgent priority. This issue may be divided into two parts: re-establishing the land registry, and extending registration to previously unregistered areas. The first arises due to the destruction of most land titling records in East Timor. Militia groups, apparently under direct orders from the Indonesian military, directly targeted land title offices and records. As a result, approximately 80 per cent of all written records were burnt and irrecoverable. Additionally, because most land-

holders were forced to flee so quickly, most copies of land titles certificates were left behind and burnt in the general destruction.

Re-establishing the Land Registry

One possibility would be to integrate the land claims process with re-establishment of the land registry. This may be termed the 'big bang' approach. It would be done by requiring all alleged titleholders either to apply afresh for a registered title (sporadic registration), and/or be registered through a systematic roll-out of land titling in designated areas (systematic registration). Registrations under either the Portuguese or Indonesian administrations would not be valid per se, but would act as evidence of an entitlement to a new registration. In this approach registration may arise not only from 'urgent' sporadic applications, which would presumably apply to commercial developments, but also the determination of notified land disputes. The result would be that land disputes will fall to be resolved after either notification by the parties, or through the systematic registration process. In either event, the result will be a registered title in the hands of a successful claimant.

A number of key issues would have to be resolved under this approach, in particular:

1. the legal framework for competing applications
2. provision of funding and development of institutional capacity, and
3. the legal status of any registered titles.

Of these, the legal framework presents perhaps the most difficult questions. Where there are conflicting claims, is it possible to leave the fundamental issue of which titles are valid (Indonesian, Portuguese, or traditional) for resolution at a later date? Should the land registry allow for registration of Indonesian titles (i.e. those recognised by Indonesia's basic land law - the Basic Agrarian Law of 1960), and also allow for claims to be made on the basis of Portuguese titles? Is it possible to disentangle the politically sensitive question of competing claims from the practical imperative to re-establish a functioning land registry?

In other words, there is a risk that re-establishment of the land registry will be delayed by an unresolved competition between Portuguese and Indonesian titles. This 'big bang' approach requires significant funding and institutional capacity. Systematic registration is notoriously slow and expensive and, without sufficient funding, may overload the nascent dispute resolution and adjudication system. This would be particularly so if the land registration process, to the extent that it is a final and conclusive determination of land claims, throws up a host of opportunistic or long-submerged land disputes. In other words, claims may well be widespread because of fears that systematic registration will be the

'last word' on entitlements to land. Without clear principles to govern the resolution of competing claims, social and commercial certainty may suffer as the land registration process becomes bogged in widespread land disputes.

An alternative would be to begin with a sporadic applicant-driven system only, and leave systematic registration to a later date. Only those disputes brought to a Land Claims Commission, as opposed to those uncovered by a systematic registration process, would be heard and determined. Equally, only those who specifically apply for a new title would receive a fresh title certificate. Moreover, that title could be qualified only. In other words, it would be good evidence of title unless and until proven otherwise. After a certain period, if no competing claims had been made, the qualified title would automatically convert to an absolute one. Hence, a commercial investor could gain some interim certainty with respect to land, without waiting for a full-blown land registration and title determination process. It would also allow some certainty pending political resolution of the competing Indonesian/Portuguese/traditional titles issue. Further, the advantage of this approach is that it requires relatively little institutional capacity, and far less funding than systematic registration. Systematic registration could then take place, as a second stage, once the legal framework and institutions of mediation and adjudication have been properly established.

Another incremental option is to begin with a rudimentary 'deeds registration system'. Importantly, this system focuses on transactions rather than titles, and may thus be established without necessarily waiting for a legal framework to resolve competing underlying claims to land. At its simplest, the deeds registration system grants priority to registered land transactions over competing unregistered transactions. It means that an investor can check a location and, should there be no registered dealing over it, register their transaction in the knowledge that it will be protected from a claim by any competing unregistered interest in the land. Importantly, this process does not grant a valid interest to its registered holder where there is no underlying title to that interest, for example where the 'owner' purportedly granting the interest is ultimately determined not to be the true owner, or the transaction is otherwise invalid due to fraud, forgery or mistake. In other words, a registered interest may be defeated by a competing true owner, as ultimately determined by a land claims framework. The system would thus not provide complete certainty to land administration, although it has the potential to evolve to that result, as it has in Great Britain and many parts of the United States of America; but it does have the advantage of providing partial certainty until East Timor's future government formulates a legal framework to determine competing underlying claims to ownership of land.

Provision of Funding and Institutional Development

The policy choice is a difficult one. If successful, the 'big bang' approach would, at one stroke, solve the issues of land claims and re-establishing the land registry. However, without proper funding and sufficient institutional capacity, embarking on systematic

registration, at this stage, may well overwhelm institutional development with opportunistic claims and intractable conflicts. Moreover, in making this policy choice and in formulating policy recommendations, the sheer difficulty of systematic registration in the context of East Timor should be recognised.

In particular, most Indonesian title documents were destroyed during the militia violence, and thus oral testimony will likely be the key evidentiary material. There is no other real choice. But this, again, raises the possibility that land registration will become bogged down as opportunistic claims and neighbourhood disputes are triggered by the land registration process, particularly if this process purports to produce final and conclusive statements of title. The simple phrase, 'neighbourhood recognition of titleholders', hides a multitude of practical difficulties. It is important not to over-romanticise community processes. In almost all small communities, there are political disputes over access to resources, and political leaders who may manipulate those disputes for their own private ends. The mere fact that a traditional leader, such as a *liurai*, or an elected government figure, such as a *chefe de suko*, states that a particular person or family has the right to a land block may not represent the consensus view of the community, and thus registration may simply exacerbate any conflict at village level. Sifting oral testimony in developed legal systems, particularly in the absence of documentary evidence, presents notorious difficulties for judges and juries. In East Timor, it will be compounded beyond measure by the relative inexperience of its lawyers and mediators.

The Legal Status of Registered Titles

The final question relates to the legal status of any registered titles. One often hears, in this context, Australian lawyers extolling the benefits of our Torrens system, which, subject to certain narrow exceptions, grants absolute indefeasible status to bona fide registered titles.³⁴ In theory, this system reduces costs and enhances certainty by allowing investors to rely with confidence on the legal finality of the titles register. Yet, in truth, there is considerable misinformed comment on the benefits of a Torrens system for developing countries. The author's experience in Malaysia and Papua New Guinea, both countries with Torrens systems, suggests that certain institutional preconditions are necessary for an effective Torrens system. These include:

- a relative absence of fraud, corruption and incompetence, particularly in Land Titles Offices
- a relatively settled and dispute-free system of underlying tenure so that the register can faithfully reflect community understanding of land ownership
- public confidence in the system and relatively low barriers to entry so that the public will record subsequent transactions and thus maintain the reliability of the register

- a relatively competent judiciary so that necessary exceptions to indefeasibility are not widened to such an extent that the register loses its reliability, and
- a compensation fund to ensure that those who lose their land through fraudulent registration and then bona fide sale can receive a remedy other than land restoration.

Developing all these pre-conditions, particularly in relation to settled understandings of underlying tenure, may well be gradual in East Timor.

Extending the Land Register

The related issue of extending the land registry system to previously unregistered areas may be dealt with briefly. Economists tend to view land registration as wholly positive, a precondition to land mobilisation, productive agriculture, a market for credit and, ultimately, economic development.³⁵ In the 1990s, for example, the World Bank strongly supported land registration programs, and indeed AusAID has funded many land registration programs in our region, including in Indonesia, Thailand, Laos and Papua New Guinea.³⁶ However, care needs to be taken, particularly in relation to customary lands. Systematic registration of land titles in the Third World is notoriously expensive, and often fails to achieve its objectives of increased certainty and reduced conflict.³⁷ In the author's opinion, too often means are mistaken for ends, and, as a result, registration programs are incorrectly measured by number of certificates issued rather than empirical assessments of reduced levels of conflict and uncertainty.

Ultimately, should land registration programs be deemed desirable, they must be developed by reference to issues of institutional supply and demand. In terms of supply, project design should consider the capacity and susceptibility to corruption of implementing agencies, the adequacy of supporting laws and regulations, and the provision of post-registration funding and expertise. In terms of institutional demand, project design must consider a whole range of factors, particularly relating to the demand by land-holders themselves, and include such issues as:

- the nature of existing tenures, agricultural use and land types
- the nature and degree of land disputes
- the degree of public confidence in state institutions
- the degree of awareness by landowners of the purpose and nature of land registration programs
- the degree of demand by outside developers for land certainty
- the nature of informal institutions or dealings already existing over the land

- the nature of any incipient markets for credit and institutional credit-providers, and
- the pressure on customary forms of authority and tenure from individualisation of tenures.

Conflict Resolution

Resolving land claims and re-establishing land administration will not succeed without an effective system of dispute resolution. Policy-makers in East Timor should be wary of the Papua New Guinea experience. On paper, that country has highly credible and sophisticated laws to deal with land conflict, particularly in respect of customary land, but in practice these rules are all but meaningless as the relevant institutions lack the capacity, funding and political support to implement them.³⁸ The obvious lesson, of course, is that conflict resolution institutions must be as self-funding and self-enforcing as possible. This will require that there be as close conformity as possible with existing patterns of dispute resolution.

So much is straightforward. However, in practice the romantic notion that traditional processes can be largely substituted for a state-sponsored system often yields to the reality of intractable intra-and inter-communal disputes over land. Inter-communal land conflict is a particular problem in East Timor because of its history of displacement and migration. Major disputes are currently ongoing in the districts of Los Palos, Maliana and Viqueque. Inter-communal conflict is also a problem because land is such a basic resource and source of power. In either case, disputes may remain unresolved or suppressed unless there is external dispute resolution assistance. In short, conflict resolution in traditional societies is a delicate task: traditional processes must be respected, but appropriate bridges must be provided for state institutions to assist and/or intervene.

Building Bridges Between Tradition and the State

Building bridges between state institutions and traditional processes begins with detailed knowledge of social structure. Here, UNTAET is at a disadvantage because it appears that circumstances changed so much under Indonesian occupation that international anthropological experts on East Timor, largely barred from study during the Indonesian era, will require considerable time and effort to update their pre-1975 knowledge.³⁹ Obviously, the East Timorese know their country best and, as with all other issues discussed in this paper, should determine what institutions are appropriate. But even the East Timorese will require structured projects and funding to provide appropriate anthropological information for a land claims process. Australia is well placed to assist in this task as a result of institutional anthropological capacity developed in the native title process, and also because Professor James Fox, a leading anthropological expert on East Timor, is based at the Australian National University.

A host of questions will require answer. For example, if localised dispute resolution institutions are to be established, who best performs a dispute resolution role in traditional communities: the *liurai* or some other institution of customary authority? What is their relationship with Church representatives, and CNRT and East Timor Administration officials? Would dispute resolution institutions based around *liurai* and East Timor Administration officials be effective or viable? To what extent do *liurai* represent an unacceptable form of feudal authority? How would human rights and non-discriminatory practices be guaranteed? In what circumstances would state law and institutions intervene to modify or overturn traditional determinations?

Developing a System for Dispute Resolution

In general terms, a three-tier system of conflict resolution is likely to be proposed: traditional processes, then mediation and, failing that, judicial determination. Outside mediation of land conflict is increasingly being used in the Third World. It is to be distinguished from traditional processes, even though they also often require voluntary acceptance of decisions. UNTAET is fortunate enough to have experienced Canadian and Australian mediators who are working on mediation guidelines with East Timorese representatives, including Xanana Gusmao himself. Nevertheless, training and funding East Timorese mediators will require sustained international assistance, particularly after UNTAET's mandate expires.

In terms of judicial resolution of land conflict, there has also to date been relatively little capacity-building. Currently, all land disputes fall directly within the jurisdiction of the District Court. The District Court judges have received some training, including a two-day program by the author in December 1999. But events have illustrated what is all too easy for Western lawyers to overlook, namely that an effective judiciary requires not only training and experience but substantial social and political support. The lesson for Australia is that capacity-building should not simply focus on training, but should also ensure, through close consultation and monitoring, that the conditions for an effective institution have also been developed.

Economic Development

Investors—both foreign and domestic—have been pressing for a quick resolution of land titling issues. But it is hoped that the foregoing analysis has shown that providing sufficient land certainty for economic development is inseparable from all these preceding issues of land claims, land administration and conflict resolution. It is tempting, particularly for non-lawyers, to argue for a clean slate: to allocate lands and titles afresh, and to facilitate urgently needed investment by legislating away all prior claims. Indeed, there is some talk of nationalising land for this purpose. But postcolonial experience

shows that there is no magic wand solution to intractable land conflict. Certainty cannot be restored simply through state fiat. Institutional decisions will be ineffective without ground-level support. Reconstruction cannot occur without a stable foundation of property ownership accepted by most East Timorese. Ultimately, there is no alternative to a principled, transparent land claims process.

Major Projects

One possibility, which in the author's view should be considered, is that a category of 'major projects' be established. Such projects would receive a state guarantee of title and all valid competing claims would, at best, receive alternative remedies of compensation or substitute lands. This is essential for large-scale investment as currently, without a state guarantee, there is no hope for certainty of title until a legal and institutional framework is developed to determine competing land claims. Of course, such an approach must be developed and supported by East Timorese groups and, in particular, land-holders potentially affected. If not, there is a risk of allegations of favouritism towards major investors at the expense of local land-holders, and perhaps of social unrest at sites of major projects. Certainly, if it were appropriate, this state guarantee benefit should only be made available where the project involves a certain level of investment, and employs a minimum number of East Timorese. Australia could help develop this mechanism by assisting with a compensation fund to underpin the 'major projects' guarantee.

Sustainable and Equitable Development

This type of major projects approach may only be temporary, and would likely do little, in the longer run, to promote sustainable and equitable development. The perennial challenge for postcolonial countries is to allow participation of poor and traditional groups in economic development. The Indonesian experience itself shows that authoritarian top-down development often lacks sustainability, and certainly encourages corruption and environmental destruction. How, then, can a land system be established to promote broad-based sustainable development?

Commonly, in postcolonial countries, legitimate concerns that economic development on traditional lands will lead to landlessness and exploitation have been met by a prohibition on outsiders directly dealing in customary land. Dealings in customary land are thus only valid as between members of a customary group. Outsiders can only gain an interest in traditional lands by way of compulsory acquisition by the state. This system may work relatively well where the government is democratic and accountable, but fails utterly when state officials are authoritarian and corrupt. In particular, it engenders a vicious cycle where investors eschew paying market price to traditional owners, in favour of acquiring

title through corruptly suborning state officials to expropriate the land at below-market values.

One possibility, of course, is to prohibit dealings by outsiders in customary land, and for the state to renounce any rights of expropriation. But this is rarely politically acceptable, particularly when the land in question has economic value; and, in any event, prevents traditional land-holders from using their land to raise credit or capital for their own uses. Hence, this paper suggests a third way, which involves allowing direct negotiations between customary landholders and economic investors through mandatory use of template agreements. Such agreements may take many forms, and will differ according to their subject matter (mining, timber products, fisheries etc.). In essence, however, the legal framework would have five common elements:

- allowing customary groups to grant long term leases over their land to outsiders
- providing that leases and ancillary agreements are to be invalid unless they follow a template form
- developing template agreements to provide for community benefit packages, including health, education and infrastructure development, future generations trusts, and methods for distributing compensation funds or royalties
- monitoring of such agreements by an independent statutory authority, and
- providing special credit institutions which allow such leases to be used as security for loans.

Indeed, this template approach may even be used by the customary group itself to raise capital for its own economic purposes. Hence, for example they may grant a state-guaranteed lease to itself (as an incorporated body), and such a lease, being free in formal terms from any underlying disputes within the community as to title, could then be used to obtain credit or obtain outsider joint venture participation.

Conclusion

It is hoped that in its short compass this paper establishes a fundamental point, namely that a major historical opportunity exists for East Timor, with international assistance, to establish a land system that will avoid or mitigate the intractable and systemic land conflicts apparent in parts of the Third World. Australia is particularly well-positioned to play a part. It is a repository of considerable expertise on East Timor. It is not bound, as Portugal may be, to support UDT through outright reversion to pre-1975 titles. It has substantial native title expertise in areas relevant to institutional development in East Timor. Perhaps most importantly, there are Australians in significant positions in the

UNTAET Land and Property Unit. Asserting these advantages, and ensuring that sufficient money and attention is provided to East Timor's land system, will be time and money well spent in Australia's strategic interests.

Endnotes

1. For reasons of space this paper does not consider housing issues, notwithstanding that these also are particularly pressing in the early stages of East Timor's reconstruction.
2. UNTAET Agricultural Unit, *Mini Brie–Agriculture*, 17 February 2000, Dili, UNTAET p. 1.
3. Joachim Metzner, *Man and Environment in Eastern Timor*, Australian National University Development Studies Centre Monograph Number 8, ANU, Canberra, 1977, p. 116.
4. UNTAET Agricultural Unit, op. cit., p. 1.
5. Metzner, op. cit., p. 116.
6. Personal communication with Bob Churcher, Head of the UNTAET Infrastructure Unit, 18 February 2000.
7. Personal communication with Bob Churcher, Head of the UNTAET Infrastructure Unit, 18 February 2000.
8. Yayasan Hak, *The Politics of Agrarian Disputes in East Timor: the Struggle for Land Rights and the Right to Self Determination*, Yayasan Hak, Dili, undated, copy on file with author, pp. 1–3.
9. In early 2000 Australia negotiated transitional arrangements with UNTAET concerning matters formerly governed by the Timor Gap treaty. UNTAET's authority to agree to these new arrangements, on behalf of the East Timorese people, arises from its UN Security Council mandate. The new arrangements essentially agreed to continue the terms of the Timor Gap treaty, with appropriate substitution of East Timor for Indonesia, until a new agreement can be negotiated: see generally D. Rothwell and M. Tsamenyi eds, *The Maritime Dimensions Of Independent East Timor*, Wollongong Papers on Maritime Policy, Centre for Maritime Policy, University of Wollongong, Wollongong, 2000.
10. George Aditjondro, *In the shadow of Mount Ramelau: the impact of the occupation of East Timor*, Indonesian Documentation and Information Centre, Leiden, The Netherlands, 1994, pp. 55–56.
11. For example, the people of Los Palos, in the easternmost part of East Timor, reportedly resent what they allege to be a lesser degree of resistance to Indonesian rule in some Western parts of East Timor: see UNAMET, *Summary Situation Report for Los Palos, The Los Palos Regional Social Structures*, Dili, Sept 1999, copy on file with author, p. 2.
12. Shepard Forman, 'Descent, alliance and exchange ideology among the Makassae of East Timor', in James J. Fox ed., *The Flow of Life: Essays on Eastern Indonesia*, Harvard University Press, Cambridge, Massachusetts, 1980, pp 152–177; James Dunn, *Timor: a People Betrayed*, ABC Books, Sydney, 1996, pp. 4–5.

13. Kevin Sherlock, *East Timor: Liurais and Chefes de Suco: Indigenous Authorities in 1952*, The Author, Darwin, 1983, p. 15.
14. Forman, op. cit., p. 5.
15. 'Pro-autonomy' supporters were East Timorese who supported the ballot option of greater autonomy for East Timor within the Indonesian state, and opposed calls for independence.
16. On 2 December 1999, UNTAET Regulation No 2 had established the National Consultative Council (NCC), a body intended to be the 'primary mechanism' for participation of East Timorese representatives in UNTAET decision-making processes. The NCC had fifteen members: seven from CNRT (including Xanana Gusmao), one from the Catholic Church, three from political groups outside CNRT who supported autonomy rather than independence, and four from UNTAET. The function of the NCC, in particular, was to provide advice and policy recommendations to UNTAET's Transitional Administrator (article 3). In practice, the NCC considered draft regulations put forward by UNTAET prior to their promulgation, but it did not, in terms, possess any power to amend draft regulations or put forward any regulations of its own, and it lacked any secretariat to provide technical expertise and advice.
17. Personal communication with members of East Timor's Yayasan Hak ('Rights Foundation'), Dili, 20 February 2000.
18. Personal communication with members of East Timor's Yayasan Hak ('Rights Foundation'), Dili, 20 February 2000.
19. The first Portuguese traders actually arrived in Timor in the sixteenth century. In 1701, the first Portuguese governor was appointed. However, dispossession did not begin in earnest until the 1900s as, until then, Portuguese settlements were largely on the coast, and the hinterland served only as a site for tax and trade: see Geoffrey Gunn, *Timor Loro Sae: 500 Years*, Livros do Oriente, Macau, 1999, p. 192.
20. Dunn, op. cit., at p. 196–7.
21. ibid at 197, citing Yvette Lawson, *East Timor: Roots Continue to Grow: A Provisional Analysis of Changes in Foreign Domination and the Continuing Struggle for Freedom and Independence*, University of Amsterdam, Amsterdam, August 1989.
22. Aditjondro, op. cit., p. 55.
23. See Daniel Fitzpatrick, 'Beyond Dualism: Land Acquisition and Law in Indonesia', in T. Lindsey ed., *Indonesia: Law and Society*, Federation Press, Sydney, 1999, pp. 74–94. See also Daniel Fitzpatrick, 'Disputes and Pluralism in Modern Indonesian Land Law', *Yale Journal of International Law*, vol. 22 no. 1, Winter 1997, pp. 171–212.
24. Klaus Deininger and Pedro Olinto, 'Implementing Negotiated Land Reform: Initial Experience from Colombia, Brazil and South Africa', a paper presented at the International Conference on Land Tenure in the Developing World, University of Capetown South Africa, 27–29 January 1998, p. 1.
25. Paulino da Cruz, *Studi Tentang Penguasaan dan Penggunaan Tanah Bekas Hak Portugis yang Ditunda Konversinya Dengan PP No. 34 Tahun 1992 di Kabupaten Dili Propinsi Timur-Timur*, ('Study concerning the Control and Use of Former Portuguese Title Land that

- was Converted under Presidential Decision No. 34 of 1992 in the Dili Region of East Timor Province'), thesis completed at Sekolah Tinggi Pertanahan Nasional Yogyakarta, ('National Land College, Yogyakarta'), 1999, p. 44. Copy on file with author.
26. See Indonesian Government Regulation No 18 of 1990; see also Government Regulation No. 34 of 1992.
 27. da Cruz, *op. cit.*, at 44.
 28. This is a difficult international law issue, not canvassed in this paper, relating to the status of legal acts by a 'belligerent occupier'.
 29. Personal Communication, 25 February 2000.
 30. UNTAET Regulation No. 27 of 2000, On the Temporary Prohibition of Transactions in Land by Indonesian Citizens not Habitually Resident in East Timor and by Indonesian Corporations.
 31. Personal Communication, Bernard Collaery, Legal Adviser to Xanana Gusmao, 5 January 2000.
 32. The legal principle of adverse possession holds generally that title to land can be obtained through long term peaceful occupation where the original owner has either not disputed that occupation or allowed it through an agreement such as a lease.
 33. Under colonial Portuguese land law, traditional rights to land received limited recognition as an *occupao* (occupation) right. This right could not be registered or mortgaged: personal communication with an East Timorese formerly employed in the land titles office under the Indonesian administration, 15 February 2000.
 34. In general terms, indefeasibility under the Torrens system protects registered titleholders from any claim by an unregistered interest holder, unless the registered titleholder has committed fraud or is subject to some personal obligation to the claimant.
 35. See, for example, Antônio Salazar, P. Brandão and Gershon Feder, 'Regulatory policies and reform: the case of land markets' in Claudio Frischtak ed., *Regulatory Policies and Reform: A Comparative Perspective*, World Bank, Washington, December 1995, pp. 191–209.
 36. See for example AusAID Project Brief, *Thailand: Land Ownership Reduces Poverty*, at <http://www.ausaid.gov.au/publications/proj/projbrf03.cfm> (19 January 2001).
 37. See S. R. Simpson, 'Land Problems in Papua New Guinea' in S. R. Simpson et al., eds, *Land Tenure and Economic Development: Problems and Policies in Papua New Guinea and Kenya*, New Guinea Research Bulletin Number 40, New Guinea Research Unit, Australian National University, Canberra, 1971, p. 1; S. R. Simpson, *Land Law and Registration*, Cambridge University Press, Cambridge, New York, 1976; Jack Knetsch and Michael Trebilcock, *Land Policy and Economic Development in Papua New Guinea*, Institute of National Affairs Discussion Paper No. 6, Port Moresby, 1981.
 38. See for example Norman Oliver, *Land Mobilisation Programme: Review of Land Dispute Settlement Organisations and Mechanisms*, Government of Papua New Guinea Department of Lands and Physical Planning, Port Moresby, 30 April 1995. Copy on file with author.

39. This at least was the opinion of Professor Jim Fox, a leading anthropological expert on East Timor, in personal communication in April 2000.