

Submission to the 83rd CEDAW Pre-Working Group Session

Recommendations for List of Issues Prior to Reporting (LoIPR) for Timor-Leste

Women's Land Rights in Timor-Leste

Oxfam in Timor-Leste
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Introduction

Land rights are fundamental to women's equality in Timor-Leste and around the world. They are also fundamental to achieving a range of other development targets and human rights. Land rights are particularly important to Timorese women farmers¹, and indigenous women who rely on customary land for their livelihoods as well as unique spiritual and cultural connections to the land. This submission shows that the Government of Timor-Leste's report to CEDAW² does not adequately described the real situation facing women's land rights in Timor-Leste. It argues that women's land rights are being threatened in Timor-Leste and summarises questions that the Committee should ask about women's land rights in the LoIPR.

Oxfam in Timor-Leste is part of a global movement fighting inequality, poverty and injustice. Oxfam has been working in Timor-Leste since 1999. Since 2010 we have supported land rights work in Timor-Leste and since 2015 have worked with over 11 local partner organisations, including Rede ba Rai (Timor-Leste Land Network) and its members, to advocate for land justice for the people of Timor-Leste. The findings in this submission are based on our work and monitoring in the field and the work of our partner organisations.

General Situation for Women's Land Rights in Timor-Leste

- (1) **Much legislative progress but significant implementation problems remain.** As articulated in the state's report, Timor-Leste has made important strides in embedding gender equality in the constitution, domestic legislation and by ratifying a wide range of international treaties. After many years of contentious debate, the Government of Timor-Leste approved a transitional land law (Law 13/2017) which establishes a process for registering land claims, resolving disputes and issuing titles to Timorese landowners. The law provides special protections to women, including recognition that men and women should have equal rights to land (Article 4), recognition that women and other vulnerable groups should receive particular protection (Article 5) and recognition that incentives should be provided for husbands and wives to make joint claims to land (Article 32.7). In 2017 the Government also approved an expropriation law which provides strong protections for communities. The Law establishes that expropriations must be non-discriminatory (Article 8) and places specific duties on the state to protect and consult with vulnerable groups (Article 10). Unfortunately, the Government has a long way to go in fully implementing these laws and in several cases is knowingly choosing to ignore domestic and international law.

¹ More than 80% of households in Timor-Leste are engaged in some form of agriculture and 66% of employed women are self-employed as farmers. 2018 Census Analytical Report on Agriculture.

² Timor-Leste Government, 2021, [Fourth periodic report submitted by Timor-Leste under article 18 of the Convention](#), CEDAW/C/TLS/4.

- (2) **The transitional land law (Law 13/2017) requires a further 18 pieces of subsidiary legislation in order for it to be fully implementable.** Little progress has been made on developing these laws and the state uses this rationale when implementing evictions and land registrations in contradiction to the laws which have already been approved.
- (3) **Insufficient consultation with women and communities on important land laws and policies.** While consultation around the original laws (Law 13/2017; Law 8/2017) was open and transparent, in recent years the government has repeatedly failed to open legal drafting processes to the public and civil society. This means that women's voices and concerns about new land laws and policies are not being heard. For example, The Community Property and Community Protection Zone law (regulating customary land) was fully developed and submitted to the Council of Ministers in 2020 by the Ministry of Justice with no public consultation. Credible recent media reports (February 2022) suggest that a new Law on Land Certificates was just submitted to the Council of Ministers, again, with no public consultation.³
- (4) **Land registration processes have been implemented contrary to numerous provisions of the Land Law (13/2017) and have a particularly detrimental effect on women's land rights.** Since Independence, the Government of Timor-Leste has undertaken several land registration processes. The INR project (2008-2012) established significant safeguards and special procedures to ensure women's involvement in land registration processes. However, in 2013 the Government of Timor-Leste signed a \$57 million contract with two private companies to implement the National Cadastral System (SNC) project (2014-2020). Research carried out by Rede ba Rai with support from Oxfam in Timor-Leste demonstrates that this program was not implemented in compliance with the special protections laid down for women in Law 13/2017 and has a detrimental effect on women's land rights.⁴ In particular, the project failed to:
- establish appropriate policies and protection mechanisms for women;
 - share sufficient and targeted information with women about their land rights prior to registration processes – in many cases implemented information sessions in locations and at times that were not accessible for women or people with disabilities;
 - share information about legal incentives for men and women to make joint spousal claims;
 - share information about special protections for community land; and
 - analyse and publish gender disaggregated data which would have allowed the government and other stakeholders to monitor the project's impact on women and adapt procedures.

While reliable data was not made publicly available, results from an external assessment of 10,652 claims in nine municipalities found that 64% of claims were made by men only, in comparison to 22% of claims from women only. Joint husband and wife or spousal claims are difficult to assess because the SNC project did not share any data, but a manual count based on maps published at the community level suggests these are fewer than 2%. The state report blames low levels of joint claims on women's lower levels of literacy, but the reality is that no specific measures were designed or implemented as part of the land registration process to protect and ensure women's knowledge of these provisions. This failure is a significant violation of the legal obligations set forth in Law 13/2017 (Article 32.7). Civil society groups, and indeed the United Nations Special Rapporteur on the rights of indigenous peoples have urged the Government of Timor-Leste to conduct an independent and open evaluation of the entire land registration process with a specific focus on the impact that the project had on women, indigenous people and other vulnerable groups, but to date the Government has declined.⁵

³ Tempo Timor 21/02/2022 '[MJ Deklara Lei Sertifikadu Rai ba Sidadaun iha Ona KM](#)' [Minister for Justice declares that a law on land certificates for citizens is before the Council of Ministers]

⁴ Rede ba Rai 2019 [Land Registration in Timor-Leste: Impact Analysis of the National Cadastral System \(SNC\)](#).

⁵ United Nations Special Rapporteur on the Rights of Indigenous People 2019 [End of mission statement by the United Nations Special Rapporteur on the rights of indigenous peoples](#), Victoria Tauli-Corpuz on her visit to Timor-Leste; Rede ba Rai 2019 [Land Registration in Timor-Leste: Impact Analysis of the National Cadastral System \(SNC\)](#).

- (5) **The badly implemented land registration process has a particularly significant impact on indigenous and rural women.** Customary systems of land management are an integral part of everyday life in Timor-Leste where some 97% of land is held under customary tenure. The land law (13/2017) establishes the concepts of ‘community property’ and ‘community protection zones’ and allows for customary land to be registered as such. Despite the approval of this law in 2017, the Government of Timor-Leste and the SNC project did not establish any new procedures or regulations regarding the registration of customary land and little or no information was shared with communities about these options. Fewer than 1% of claims collected under the SNC were categorised as ‘customary land’. The SNC project registered the majority of land parcels as private land with a single owner; in reality many of these parcels are customary land.⁶ Anecdotal evidence suggests that large areas of customary land were subdivided and individually claimed so they would not be lost. This failure has a huge impact on the security of communities, as it will lead to the erosion of customary governance mechanisms and potentially the loss of customary rights to land. This was further aggravated by the fact that Article 8 of Law 13/2017 deems all land without an owner as ‘vacant’ and as such it becomes state land. Therefore, land that is not registered under the SNC process risks being permanently removed from communities. This failure is a major violation of the protections for communities and customary land provided in Law 13/2017 and is likely to significantly weaken the rights of rural women and men whose livelihoods depend on customary land. This problem is particularly acute for women as in instances of such pressure it is much more likely that men’s names will be used to register customary lands. Properly designed processes which seek to establish inclusive governance mechanisms for customary land (as opposed to individual registration) would help address this.
- (6) **The Government of Timor-Leste has repeatedly failed to implement the expropriation law in cases of state acquisition of land from private citizens.** In 2017 the Government of Timor-Leste approved an expropriation law which lays down a clear procedure for expropriations and provides strong protections for communities (Law 8/2017). The state report rightly takes great pride in describing some of the excellent protective principles enshrined in this law (p38-39). Unfortunately, since 2017 the Government of Timor-Leste has consistently failed to implement the law in cases of state expropriation of land, implementing evictions and expropriation processes with little regard for due process or appropriate compensation. In contrast, evictions and expropriations have been characterised by misinformation, a lack of consultation and in some cases intimidation. Communities evicted in 2015-2016 to make way for a range of developments in the Special Social Market Economic Zone of Oecusse-Ambeno (ZEEMS) were promised future compensation for their land, but to this day are still waiting. The Suai Case described in the state report (p39), far from being an example of a well-managed process, was marked by manipulation of information, intimidation and broken promises.⁷ Information about the expropriation law and its protections remains very low amongst affected communities, particularly women. With post-independence development in Timor-Leste focused on large scale infrastructure (roads, airports, ports), petroleum development and city beautification, the need for land expropriation is likely to increase over the coming years (2020-2030). Furthermore, government plans to encourage onshore petroleum exploration and mining of natural resources (including marble, limestone, gold, copper, manganese) could significantly escalate land expropriations and evictions in coming years. It is imperative that the Government begin implementing the expropriation law and its obligations under international law.

⁶ Rede ba Rai 2019 [Land Registration in Timor-Leste: Impact Analysis of the National Cadastral System \(SNC\)](#).

⁷ Cryan 2015, ‘[Impacts of the Suai Supply Base Project in Timor-Leste](#)’ SSGM In Brief 2015/47, Australia National University

- (7) **The Government has recognised the importance of women's land rights in the Maubisse Declaration but little data is available on progress towards these goals.** The Government of Timor-Leste has developed an action plan for advancing the rights of rural women, known as the Maubisse Declaration. It is encouraging that the Maubisse Declaration on the Rights of Rural Women includes specific commitments relating to land and property. Unfortunately, little data is publicly available on progress towards these goals and research from civil society suggests that progress towards the first two goals has been limited.⁸
- (8) **Laws and policies relating to marriage hinder progress to protect women's land rights.** Some rules relating to marriage and inheritance which made it into the Civil Code may negatively affect women's rights to land. For example, the Code adopted a fault-based divorce system meaning that both spouses must agree to the divorce or one of the spouses must show that the other has been negligent in their duties as a spouse. Similarly, protections for marital property may only apply to registered marriages when in practice many customary marriages and defacto relationships in Timor-Leste remain unregistered.
- (9) **Little is being done to address patriarchal social norms relating to land ownership.** Like most places in the world, women's land rights in Timor-Leste are influenced by a range of highly patriarchal norms, including: a diverse range of customary norms and societal structures, religious norms and ideals; Portuguese and Indonesian era norms and colonial structures; and more recently adopted but still highly patriarchal modern state and capitalist norms and structures. These norms operate at all levels, from the family, to community, to the highest levels of the state. The combined effect of these patriarchal, colonial and capitalist norms and structures is to significantly constrain women's power, decision-making and voice on issues which affect their day-to-day life. While reliable nationwide data is limited, research across various areas of Timor-Leste suggests that women frequently have less control over the assets on which their livelihoods depend.⁹ The state currently has no programmes or projects which specifically seek to address these issues.

Issues for inclusion in the List of Issues for Timor-Leste

We humbly recommend that the Committee ask the state of Timor-Leste to provide additional information in the following areas:

Legislative Framework

Ask the state to:

- a. explain what mechanisms are used to ensure that women's voices, in particular the voices of rural and indigenous women, are heard during legislative drafting processes, and clarify why the development of subsidiary land legislation, including a law on community property and community protection zones has been developed behind closed doors;

⁸ The Maubisse Declaration mandates the Secretary of State for Land and Property to achieving the following goals: (1) by 2023 – guarantee that 50% of rural women have obtained information regarding the Laws governing Land and Property; (2) by 2023 – guarantee a 20% participation rate for rural women regarding access to land and property and ownership of land; (3) by 2023 – improve the capacity of the institution to provide data disaggregated by sex, and into categories for women and men, people with disabilities, geographic location (urban and rural), age and so forth. Rede ba Rai 2019 Land Registration in Timor-Leste: Impact Analysis of the National Cadastral System (SNC), Rede ba Rai

⁹ Grenfell et al. 2015 Beyond Fragility & Inequality: Economic Dimensions of Domestic Violence in Timor-Leste. The Asia Foundation

- b. clarify why progress on developing the full set of subsidiary land legislation and implementing regulations has been so slow and how this work is being supported and resourced by the state;
- c. clarify why existing legislation such as the expropriation law is not being followed by the state in expropriation and eviction processes.

Access to Justice

Ask the state to:

- a. provide data on what specific measures have been taken to ensure women's access to information about the expropriation law, the land law and their broader land rights, and what has been the impact of these measures at the community level (specifically, how is this work resourced and how many women, in what locations, have received what types of information and/or training);
- b. provide information on how legal assistance is guaranteed and provided to women and communities facing eviction and women engaged in disputes with the state;
- c. provide information on how the implementation of evictions and expropriations (and specifically their impact on women) are monitored by the state;
- d. explain why disaggregated (anonymised) data regarding land registration was not collected and/or has not been made publicly available and to clarify how this issue will be resolved;
- e. explain what mechanisms exist for women and communities to make complaints about the implementation of land registration;
- f. explain why repeated requests for a full evaluation of the impact of land registration processes (and in particular its impact on women) has been ignored by the state;
- g. explain what specific capacity building is being provided to judges, lawyers and other legal actors regarding new land laws, specifically Law 13/2017 and Law 8/2017;
- h. provide specific information regarding the human, technical and financial resources that are allocated to the Provedoria dos Direitos Humanos e Justiça (PDHJ) – national human rights institution – to work on monitoring the impact of evictions on women and evidence of how the state takes into account reports of human rights abuses referred to it by the PDHJ.

Sex Roles and Stereotyping

Ask the state to provide further information about what specific measures have been implemented to address prevalent ideas that women cannot own land.

Economic and Social Rights

Ask the state to:

- a. provide information on what specific measures are being taken to investigate and remedy the negative impact that land registration is having on women's land rights;
- b. in light of information relating to forced evictions and the lack of due procedure when the state seeks to acquire land from citizens, and the claims made by the state on page 38, ask the state to provide clear information relating to evictions and expropriations, including:
 - i. how many women have been evicted or relocated by the state since the approval of the expropriation law and land law in 2017?
 - ii. in how many of these cases were the mechanisms and procedures for vulnerable people, laid down in the expropriation law, followed?
 - iii. what specific measures did the state take to ensure the protection of women's land rights during these evictions? How successful were these measures?

- iv. in how many cases did the state succeed in ensuring that the standard of living of affected community members did not fall as a result of the eviction/expropriation as required under article 8.4 of the expropriation law?
- v. specifically regarding the Suai Supply Base case mentioned on page 39 of the state report, why have owners of only 342 hectares of land been compensated and owners of the remaining 771 hectares not been compensated, despite the land having been already taken from communities?

Rural Women

Ask the state to:

- a. provide information on what concrete measures are being taken to secure and increase women's access to productive land, and specifically what impact these measures have had on local women;
- b. provide information on what programmes and mechanisms are in place to address rural women's lack of access to information about land rights, and specifically what reach these programmes have had across the country.

Indigenous Women

Ask the state to:

- a. provide detailed information on how it has responded to recommendations made by the Special Rapporteur on the rights of indigenous peoples, specifically, her calls to: urgently review the land registration process; consult with customary communities on the production of a specific law regulating and protecting customary land; cease forced displacements of indigenous peoples from their lands and ensure the implementation of free, prior and informed consent;
- b. provide information disaggregated by age, sex and location on access to social services by indigenous women, in particular their access to legal assistance and legal information;
- c. provide information on measures that are in place to involve indigenous women in decision-making processes related to the use of ancestral lands, to ensure their access to and control of indigenous property and to involve them in territorial government.

Women and Girls with Disabilities

Ask the state to:

- a. provide information disaggregated by age, sex and location on access to social services by women and girls with disabilities, in particular their access to legal assistance and legal information;
- b. report on measures to protect women and girls with disabilities' rights to land and specific measures taken to investigate the negative impact of land registration on them.

Climate Change and Disaster Risk Reduction

Ask the state to explain concrete measures taken to provide long-term solutions to women and communities displaced by natural disasters. Ask for specific information about the number of women affected by Cyclone Seroja (April 2021), how women's voices have been included in the process towards finding sustainable relocation solutions, and concrete progress made towards relocating displaced families.