

## EAST TIMOR LAND LAW PROGRAM



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# LAND ADMINISTRATION IN EAST TIMOR

FUNCTIONS AND RESPONSIBILITIES: LESSONS  
LEARNED FROM ALBANIA, MOZAMBIQUE,  
RWANDA, AND THAILAND

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# ACRONYMS AND ABBREVIATIONS

DINAGECA	National Directorate for Geography and Cadastre of Mozambique
FRELIMO	Front for the Liberation of Mozambique
FAO	United Nations Food and Agriculture Organization
GIS	Geographic Information System
IPRS	Immovable Property Registration System
LIS	Land Information System
LLPII	East Timor Land Law Program II
LPU	East Timor Land and Property Unit
MINITERE	Rwandan Ministry of Lands, Environment, Forestry, Water and Mines
NGO	Nongovernmental Organization
ONREPP	Thai Office of Natural Resources and Environmental Policy and Planning
RENAMO	Mozambique National Resistance
RPF	Rwandan Patriotic Front
USAID	United States Agency for International Development

# 1.0 INTRODUCTION

This report represents an activity of the United States Agency for International Development (USAID) East Timor Land Law Program (LLPII), which requires a comparative study of the organization, jurisdiction, and coordination of government agencies that deal with land. East Timor lacks clear roles for each of its departments and ministries with regard to land issues, and there is a need to distribute and coordinate responsibilities among a number of ministries, including the ministries of agriculture, public works and justice (in which the Land and Property Unit is located).

This report centers on a comparative analysis of four other countries: Albania, Mozambique, Rwanda, and Thailand, which were selected in consultation between ARD technical staff and the LLPII Chief of Party based on relevance to or similarities with East Timor, including traits such as a large subsistence agricultural component and relatively limited indigenous experience of state administration. Based on this analysis, this report includes in Section 5.0 a set of recommendations concerning the allocation of responsibilities for the implementation and administration of land law in East Timor.

The report begins with a discussion in Section 2.0 of the broad authorities, responsibilities, and activities that are necessary for the administration of the full range of land related laws necessary in a country such as East Timor. These include the areas of mineral rights, agriculture, water, coastal zones, natural resources, potential parks and recreation areas, forests, environmental conservation, urban planning, municipal government services, and the management of services related to the land market (buying, selling, leasing, and property development).

Section 3.0 provides a brief outline of the four countries included in the case study, with a country profile and description, in broad terms, of how each country allocates responsibility for land use. In Section 4.0, we attempt to provide a comparative analysis of the broad areas of land administration responsibilities and how they are allocated between national and local administrative entities in the four countries. This analysis should also give attention to the relative effectiveness of each of the land administration systems examined. Based on this analysis, the report concludes with a section outlining options and recommendations for East Timor within the context of the development challenges facing the country at the present time. These include East Timor's limited experience at conducting state administration and the possibility that the resources available for land administration (and public administration generally) may remain limited for the foreseeable future.

# 2.0 LAND ADMINISTRATION

For the purposes of this study, we define *land* as any object of immovable property. This includes land and permanent attachments located on it, such as buildings, forests, and roads. This definition is consistent with the land laws that have passed and that are under consideration in East Timor. Some land administration systems treat non-land objects separately from land objects. In Mozambique, for example, private citizens can own buildings, but never the land on which the buildings are located. The distinction is not relevant to the objectives of this study. The concepts, principles, and functions of land administration apply to both land and non-land immovable objects of property. In this report, all references to land apply also to non-land objects of immovable property.

A World Bank report describes two core functions of land administration: the registration of rights; and the survey and mapping of the boundaries of these rights.<sup>1</sup> Their endnote, however, admits that this might be overly-simplistic given the complexity and variety of forms that land administration takes. Different countries emphasize different aspects in their systems. Some countries would insist on including land *use* or *valuation* as core functions. Still, these formal rights and the property over which owners exercise them serve to anchor our discussion; they represent the core components of all land administration systems, and they are universal in both the time and space where humans live. Human beings exist in physical space, and their rights to use that space are fundamental to their existence within their family, village, community, and country.



Dale and McLaughlin describe three attributes of land that every country must manage: tenure, value, and use.<sup>2</sup> Tenure refers to ownership rights: who has them and what are they. The value of the land, a country's most fundamental and irreducible resource, is important for taxation and the land market (if any). How the land is used by those who possess ownership rights is important to optimize land productivity for economic growth and equitable distribution of wealth. Governments must develop national land policies that address these three attributes of land for optimum benefit of its citizens.

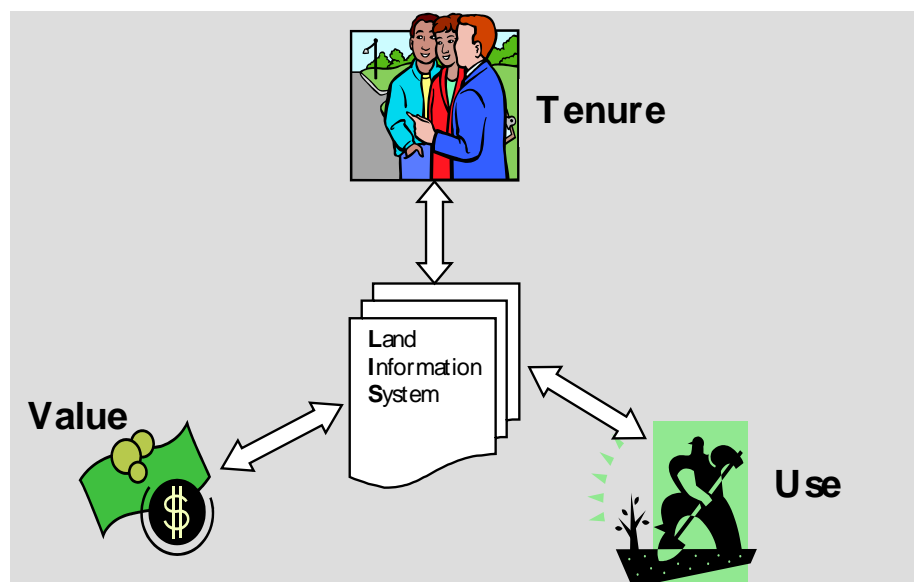
In this study, we consider “rights” and “property” as the primary *objects* of land administration. All functions of land administration fall neatly into the three categories derived from the above-mentioned attributes: tenure, value, and use. Modern digital technologies now enable efficient sharing of information about the core

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<sup>1</sup> Land Equity International Pty. Ltd. preliminary report prepared for the World Bank. *Comparative Study of Land Administration Systems: Critical Issues and Future Challenges* (n.p., 2003) pp. 96.

<sup>2</sup> Dale, Peter and John McLaughlin, *Land Administration* (New York: Oxford University Press, 2003) pp. 8–9.

objects of land administration. The land information system (LIS) manages the flow and access to this information and plays a central role in any modern land administration system.<sup>3</sup>



These are four broad categories of land administration functions, within which all related activities and responsibilities fall: tenure, use, value, and information. We apply specific definitions to these terms for the purposes of this study. References to government ministries here are generic and not related specifically to East Timor or any particular country.

*Tenure* refers to the definition of rights related to land and their assignment to persons (both natural and juridical). Such rights might include, but are not limited to, rights to subsurface minerals, rights of way in airspace, rights to fishing in territorial waters, rights to hunting, and various types of rights to use public lands (especially forests and pastures). Land administration activities related to tenure include land registration and dispute resolution. Surveying and mapping the object of these rights, the land and other immovable properties, is a key activity related to tenure. As digital technologies continue to improve, this activity is increasingly relegated to the *information* category. This is a juridical category of land administration often closely linked to a ministry of justice.

*Use* refers to any and all considerations of monitoring, regulating, planning, and otherwise controlling what rights the government assigns to what lands and under what circumstances. Examples of government entities that may have responsibilities and activities in this category include the ministries of agriculture, environment, public works, transportation, communications, defense, tourism, industry, and local government. Municipal governments often have responsibilities for urban planning.

*Value* refers to assessment and taxation, appraisal and land market, leasing of state properties, and banking and mortgage activities. This category is closely linked to the ministry of finance. Municipal governments also often have responsibilities for land-related taxation.

*Information* refers to the database of owners and corresponding maps of land parcels and immovable properties that serve the common needs of all land-related activities. This database and map is closely linked to *tenure*. The government entity having responsibility for *tenure* activities gathers and maintains this

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<sup>3</sup> Ibid. p. 153.



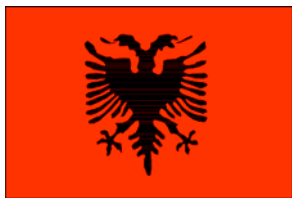
information. However, this information serves the needs of other land administration activities. In fact, it can be the foundation on which the broader land information system rests. Government units responsible for assessment and taxation of land can add *value*-related information to the LIS and link the administration of taxation to the database of owners (and occupants under lease of state property) and, thereby, to the digital maps of lands. Government units responsible for *use*-related activities can contribute to the LIS by designating restrictions, waivers, permits, and regulations to the land parcels and/or their owners in the database. Without a central LIS, each government unit would need to develop and maintain its own separate database and map, causing duplication of effort and inaccuracies. The LIS is so critical and relies so heavily on technology that it is sometimes operated by an entity that is independent of any of the government units who use or contribute to it, but this entity holds responsibility for ensuring that each unit has appropriate and secure access to the LIS. Such a unit might be a National Land Center or a National Geodetic and Geographic Information Agency reporting directly to the cabinet. Alternatively, such an agency would develop and administer national spatial data standards and support their use such that the information flowed efficiently between all land-related activities, no matter where the digital data is primarily stored and maintained.

This study considers these four broad categories of land administration activities in Albania, Mozambique, Rwanda, and Thailand. The next section of the report presents and discusses how each of these countries allocates land-related responsibilities and activities among their government units and in the context of their country's overall land policy.

# 3.0 COUNTRY PROFILES

In this section, we present the results of our research for each of the four countries selected as part of the study—Albania, Mozambique, Rwanda, and Thailand. We focus on the government entities that hold primary responsibilities for tenure, use, value, and information activities related to land. In Table 3.1, below, we summarize how each country delegates land authority in each of these four areas.

## 3.1 ALBANIA



**Background.** Between 1990 and 1992, Albania ended 46 years of xenophobic Communist rule and established a multiparty democracy. The transition has proven difficult as successive governments have tried to deal with high unemployment, widespread corruption, a dilapidated infrastructure, powerful organized crime networks with links to high government officials, and disruptive political opponents. International observers judged parliamentary elections in 2001 and local elections in 2003 to be acceptable and a step toward democratic development, but they identified serious deficiencies. Many of these deficiencies have been addressed through bi-partisan changes to the electoral code in 2003 and 2005, but implementation of these changes will not be demonstrated until parliamentary elections in July 2005.

**Land Administration.** Albania approved a law in 1994 that is now the basis of the title registration system of immovable property. The Immovable Property Registration System (IPRS) was established and set up to unify the cadastre and deeds registry into one integrated title system, directed by the Chief Registrar and responsible to the Council of Ministers. Established as an independent institution, through advocacy by donor agencies and the Chief Registrar, the IPRS is self-financed through transaction fees associated with registration of land. The role of notaries in relation to the registry has not been satisfactorily defined in Albania. Civil law practice in Albania defines a central role for notaries in the legal system; the IPRS, however, is modeled after common law country registries with notaries not being a part of the legal system. Thus, notaries have solidified their jurisdiction through legislation and have increased notary fees. This has resulted in delays as citizens are reluctant to pay both the notary fees and the transfer tax ordered by the Ministry of Finance. These delays in registration impede the land market and make transactions less secure.

The IPRS is unable to make legislative proposals directly to Parliament because of its non-ministerial status. In addition, its cross-institutional links are viewed as weak due to lack of cooperation from other ministries and governmental organizations. In some cases, IPRS proposals to the government have been actively blocked by governmental organizations. As it is seen to have a narrow mandate, most people do not support the idea of the IPRS being elevated to a ministerial status or even integrated into a ministry. Currently, the Ministry of Public Works has jurisdiction over urban properties, while the Ministry of Agriculture has jurisdiction over agricultural issues. There is some concern over integrating the IPRS into the Ministry of Finance due to the fear that taxation, law enforcement, and supervision of notaries would be too closely tied to the registration system, and the public would avoid the registration process.

Other countries are unclear on their views of the IPRS, and they categorize it in various ways, such as as a legal entity, a quasi-independent agency, a support service, a cadastre, or a GIS organization. The original No. 7843 and No. 8752 laws, “On Structures for Land Administration and Protection,” envisioned a system in which the cadastres would evolve into a GIS database concerned with problems of land quality, valuation,

taxation, and other considerations of land use. In reality, the rural cadastres and the IPRS remain technically and functionally separate, and the rural cadastre office continues to hold the archives of ownership data. However, through a donor-funded project, cadastre records were transferred to IPRS, but the relationship between the two organizations still remains one of “service and sales” rather than of inter-agency cooperation.

To address some of these concerns, recent reform recommendations have included:

1. Pass new legislation to redefine the structure of the IPRS and its relations to all other pertinent judicial and administrative units;
2. Limit district registry office responsibilities to the intake of transaction documents and the output of registry information; and
3. Encourage a close working relationship between the IPRS, the real estate professions, and the judiciary to develop methods of “automatic” registration of transactions.<sup>4</sup>

The Albanian Ministry of the Environment has been assigned to environmental monitoring, regulation, and enforcement, while the Ministry of Agriculture and Food (MOAF) is responsible for administration and management of most of the country’s productive natural resources. Three bodies working under the MOAF include: the Directorate General of Forests and Pastures, the Directorate General of Fisheries, and the Project Environmental Management Unit. In addition, the Forest and Pastures Research Institute and the Institute of Fishery Research help MOAF with biodiversity conservation issues.

As described in the 2001 Local Government Law, municipal, district, and commune governments have the legal authority to take responsibility for environmental management within the municipality. The Coastal Zone Management Plan, also approved in 2001 but completed five years earlier, sought to inventory Albania’s coastal marine resources and to identify future directions to improve the management of these resources. The delay in approving the law resulted in inaction, and currently the virtually uncontrolled development of land and exploitation of natural resources since 1990 is threatening the Albanian coastal and marine waters.

The Ministry of Transportation and Communications oversees Albania’s railway system.

Various ministries and organizations have been involved in carrying out the privatization of real estate, including the Ministry of Agriculture, the Ministry of Construction and Territorial Adjustment, the National Commission of Compensation and Restitution, the National Agency for Privatization, and municipalities.

State agencies involved in land administration include: the Land Research Institute, the Geology and Geodesy Enterprise, and the ITU-Military Topographic Institute.

### 3.2 MOZAMBIQUE



**Background.** Almost five centuries as a Portuguese colony came to a close for Mozambique with independence in 1975. Large-scale emigration by whites, economic dependence on South Africa, a severe drought, and a prolonged civil war hindered the country’s development. The ruling Front for the Liberation of Mozambique (FRELIMO) party formally abandoned Marxism in 1989, and, the following year, a new constitution provided for multiparty elections and a free market economy. A United Nations-negotiated peace agreement between FRELIMO and rebel Mozambique National Resistance (RENAMO) forces ended the fighting in 1992. In

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<sup>4</sup> Note that these recommendations for Albania are consistent with the approach being adopted in East Timor.

December 2004, Mozambique underwent a delicate transition as Joaquim Chissano stepped down from the presidency after 18 years in office. His newly elected successor, Armando Emilio Guebuza, has promised to continue the sound economic policies that have encouraged foreign investment.

**Land Administration.** From the beginning of Mozambique's independence, the Marxist government assumed ownership of all lands, recognizing only usufructs based on custom. As the 1990s progressed, it was found that provincial-level officials were granting concessions to individuals or commercial firms before consulting with district officials or local communities. The July 1997 Land Law was enacted and by declaration "... assures the diverse right of the Mozambican people over land and other natural resources, while promoting new investment and the sustainable and equitable use of these resources." It allows for occupancy rights to be accepted as full rights equal to registered land rights. It also provides that oral evidence is acceptable if no paper documentation exists. In addition, as long as no constitutional principles are broken, the communities are left to manage their own affairs and are given a strong role in the management of land and other resources, including being consulted and participating in the allocation of land to new investors.

Four organizations are involved in securing tenure and overseeing land management in Mozambique. Twenty-two ministries are involved in land allocation, with the majority of cases going through the Ministry of Agriculture and Rural Development. Often there are areas of overlap and duplication of effort, which leads to concern as to how well these groups will be able to coordinate with one another in the future. The Land Commission has been responsible for the development of policy and legislation, but its future is questionable due to a very small staff, a soon to expire mandate, and no capacity to direct land law policy. The National Directorate for Geography and Cadastre (DINAGECA) within the Ministry of Agriculture and Rural Development is responsible for titling. In comparison to the Land Commission, it has a larger staff, mapping resources, ten provincial offices and 128 district offices. Although it is aspiring to be more efficient, it is felt that DINAGECA will be unable to deal effectively with the volume of cadastral work ahead. All registries go through the Registo Predial, which also has a National Directorate and is controlled by the Ministry of Justice. The Land Commission's work has resulted in a debate over whether the land question is first and foremost a socio-economic and judicial issue that involves interests far beyond the narrower confines of the cadastral services and even the Ministry of Agriculture. It is clear that engagement of other ministries not involved in the government's agricultural sector program, PROAGRI, will be needed in order to fully implement the Land Law and the policies that support it.

New laws being passed in Africa, like Mozambique's 1997 Land Law, are being structured in a way that uses an innovative approach to alleviating poverty and providing governance and transparency, service delivery, decentralization, and protection of women. Realizing that conventional approaches used by the rest of the world are not affordable and not relevant to Africa's local requirements, the new laws typically have the following characteristics: decentralized local land administration offices; land professionals moved from routine operations to management; no systematic mechanisms for titling; no rigid boundaries in customary areas; and development of spatial information systems as public good for the delivery of economic and social services.

### 3.3 RWANDA



**Background.** In 1959 (three years before independence from Belgium), the majority ethnic group, the Hutus, overthrew the ruling Tutsi king. Over the next several years, thousands of Tutsis were killed, and 150,000 were driven into exile in neighboring countries. The children of these exiles later formed a rebel group, the Rwandan Patriotic Front (RPF) and began a civil war in 1990. The war, along with several political and economic upheavals, exacerbated ethnic tensions, culminating in April 1994 in the genocide of roughly 800,000 Tutsis and moderate Hutus. The Tutsi rebels defeated the Hutu regime and ended the killing in July 1994, but approximately 2 million Hutu refugees—many fearing Tutsi retribution—fled to neighboring Burundi, Tanzania, Uganda, and

the former Zaire. Since then, most of the refugees have returned to Rwanda, but a group of about 10,000 that remains in the neighboring Democratic Republic of the Congo has formed an extremist insurgency bent on retaking Rwanda, much as the RPF tried in 1990. Despite substantial international assistance and political reforms—including Rwanda’s first local elections in March 1999 and its first post-genocide presidential and legislative elections in August and September 2003, respectively—the country continues to struggle to boost investment and agricultural output, and ethnic reconciliation is complicated by the Tutsi political dominance. Kigali’s increasing centralization and intolerance of dissent, the nagging Hutu extremist insurgency across the border, and Rwandan involvement in two wars in recent years in the neighboring Democratic Republic of the Congo continue to hinder Rwanda’s efforts to escape its bloody legacy.

**Land Administration.** The Republic of Rwanda, made up of twelve provinces, gives responsibility for administering agricultural lands and farms to the Ministry of Interior. The communities, from the local level Nyumba Kumi to the sector level Conseillers, report through a local authority, Bourgemestre and represent and help the Ministry of Interior to administer the land. Although a small amount of land is registered in the formal national registration system, most land is under informal tenure.

Seeking to safeguard against disputes arising from the government’s current “villagization” projects and to address problems related to land tenure, administration, transactions use, and consolidation, the government announced a draft National Land Policy in 1991. A draft Land Law was published in 1992. Both were to be reviewed by the Cabinet and Parliament by the end of 2002. The objective of the law and the policy was to ensure better land management while conferring security on the existing occupants of the land. It sought to accomplish this by decentralizing land management and administration and setting up a structure for land taxation. Some proposals of the draft included involving local communities in allocating title and lists clarification on property rights achieved by land policy to be essential in ensuring the people have an incentive to invest in their land. The Cabinet approved Rwanda’s Land Policy in February 2004. The Land Law was undergoing final correction in February 2005 prior to submission for ratification but, as of June 2005, was stalled in Parliament.

Essentially, the proposed land policy contains the following elements: 1) compulsory land registration, the costs of which are to be borne by the applicants; 2) the introduction of a standardized land tax system; 3) an inventory of all land to be compiled into a national cadastre, which will also be decentralized to the district level; 4) the creation of a land information management center; 5) the creation of land commissions at the national, provincial, and district levels, which will be responsible for making recommendations on land allocation, land use and development plans, and appropriating undeveloped land<sup>5</sup> (membership of land commissions seems to be set by presidential or ministerial decree); and 6) the creation of district level registrar offices responsible for the issuing of title deeds and leasehold contracts and maintaining a district level register of land ownership.

As of November 2004, the Ministry of Lands, Environment, Forestry, Water, and Mines (MINITERE) had the mandate and authority for land administration and management of systems for urban and rural land registration.<sup>6</sup> Although MINITERE is the *de jure* lead agency with land administration responsibilities, other governmental units also have a vested interest in land administration. These include the Ministries of Infrastructure (“villagization”), Justice (ownership dispute resolution), Finance (taxation), Agriculture (consolidation), and Local Government (provincial and district registries). The current land policy proposes a National Land Information Center to function as a repository for all spatial data and land registration information, which will serve as the engine of land administration and land use management in Rwanda. The proposed structure reflects the following technical units: a national land registry unit, spatial services unit, spatial coordination unit, training and decentralization unit, and a support unit. The center will not register

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<sup>5</sup> The proposed land policy in East Timor is exactly the same, except for district level commissions.

<sup>6</sup> However, the Kigali City Council has the authority over its own land administration.

land itself (a function of the district level registrar office); rather, it will compile registration information on a national leveling order to monitor land registration activities throughout the country, report on current trends, and safeguard against undesirable expropriations.

Currently, land taxation is based on fees and taxes collected as part of the state land concession process. Fees are assessed for surveying and concession contract preparation, and taxes are calculated based on the rural or urban status of the property multiplied by the area of the parcel. A transfer tax is also imposed upon the transfer of concession rights. In the case of a sale of a house or farm, the transfer tax is usually based on 6 percent of the sale price. In the case of a donation, a 3 percent tax is imposed based on the valuation of the property determined by MINITERE. In the case of inheritance, a 1.5 percent transfer tax based on valuation is imposed. The draft land policy allows for district governments to set and collect land taxes to fund their own operations. The national land policy sets a framework which will create minimum and maximum rates at which local governments can set their own land tax rates which will be stipulated in the land concession/lease contracts.

### 3.4 THAILAND



**Background.** A unified Thai kingdom was established in the mid-14th century. Known as Siam until 1939, Thailand is the only Southeast Asian country never to have been taken over by a European power. A bloodless revolution in 1932 led to a constitutional monarchy. In alliance with Japan during World War II, Thailand became a US ally following the conflict. Thailand is currently facing armed violence in its three Muslim-majority southernmost provinces.

**Land Administration.** The Thai legal system recognizes only three basic types of land ownership and use: private ownership; state property; and various types of land-use certificates granted to farmers and smallholders of land. Many different agencies have the authority to issue various types of land-use certificates and titles. Numerous government agencies conduct zoning and land allocation activities in parallel. Agency responsibilities sometimes are a function of watershed boundaries and at other times a function of political or administrative boundaries. Despite the activity, there seems to be no coherent strategy in place.

The focus of land use planning has been in protected areas. In order to distinguish core protected areas from community land and agricultural uses, Thailand is attempting zoning exercises. Comprehensive regional/provincial land use planning was abandoned in 1997. Land use planning in Thailand is characterized by significant local opposition by local nongovernmental organizations (NGOs) and a pervasive lack of citizen participation. In addition, overall land use planning is hindered by the fact that there is no systematic or standardized planning approach or supporting laws or regulations. Land use planning does not appear to be linked to land allocation. There is also no monitoring or assessment of completed land use planning activities.

The legal framework of Thailand includes the following acts and policies: Land Code (1954), Land Allocation Act (1978), Land Development Act (1983), Land Reform Act (1992), Forest Act (1941, as amended in 1948, 1982, and 1989), National Forest Reserve Act (1982), First National Forestry Policy (1985), Act on Tambon Administration (1994, reviewed in 1999), and the Thai Constitution.

The main institutions of Thailand that are involved in land use planning, land allocation, and/or land reform include: the Office of Natural Resources and Environmental Policy and Planning (ONREPP); the Land Development Department/Ministry of Agriculture and Cooperatives; the Department of National Park, Wildlife, and Plant Conservation/Ministry of Natural Resources and Environment; the Royal Forestry Department/Ministry of Natural Resources and Environment; the Agricultural Land Reform Office; the Department of Public Welfare/Ministry of the Interior; the Department of Lands; the Department of Cooperative Promotion; the National Land Allocation Commission; the Forestry Faculty/Kasetsart

University and Regional Community Forestry Training Center; local governments (Tambon Administration Offices); and other national government bodies, including the National Forest Policy Board, the Land Consolidation Commission, the Agricultural Land Reform Committee, the Land Development Committee, the Land Sub-committee, and the National Economic and Social Development Board.

**TABLE 3.1 LAND ADMINISTRATION SUMMARY TABLE**

	TENURE	USE	VALUE	INFORMATION
<b>ALBANIA</b>	COM	MOE, MOAF, MOTC, MOPW	MOF	COM, RCO
<b>MOZAMBIQUE</b>	MOARD	MOARD	MOFP	MOARD
<b>RWANDA</b>	MINITERE, KCC	MINITERE	MINITERE, LMG, CG LMG	NLIC
<b>THAILAND</b>	DOL, MONRE, ALRO, MOI	ONREPP, MOA, MONRE	LMG	DOL

ALRO: Agricultural Land Reform Office  
 CG: Central Government  
 COM: Council of Ministers  
 DOL: Department of Lands  
 KCC: Kigali City Council  
 LMG: Local and Municipal Government  
 MINITERE: Ministry of Lands, Environment  
 Forestry, Water, and Mines  
 MOA: Ministry of Agriculture  
 MOAF: Ministry of Agriculture and Food  
 MOARD: Ministry of Agriculture and Rural  
 Development

MOE: Ministry of Environment  
 MOF: Ministry of  
 Finance  
 MOFP: Ministry of Finance and Planning  
 MOI: Ministry of the Interior  
 MONRE: Ministry of Natural Resources and  
 Environment  
 MOPW: Ministry of Public Works  
 MOTC: Ministry of Transportation and  
 Communications  
 NLIC: National Land Information Center  
 ONREPP: Office of Natural Resources and  
 Environmental Policy and Planning  
 RCO: Rural Cadastre Office

# 4.0 COMPARATIVE ANALYSIS

In this section, we summarize the findings, compare and contrast the approaches in the four subject countries, and indicate why each country has developed this profile and why it may or may not be an effective approach to land administration. As noted above, selection of each country was prompted by their relevance to the perceived land reform situation in East Timor and was key to the selection of the four countries for this comparative report.

Although Albania has a more established government structure and more advanced (but very ineffective) regulations for land administration than East Timor, there are important lessons to be learned there where corruption is entrenched and land administration is proceeding so slowly. Albania's recent history, like East Timor's, puts it in a position of having large segments of untitled land occupied and otherwise used by communal groups. Most of the non-urban property in Albania is now formally registered and titled. Albania has a small oil field, some modest mineral resources, and tourist interests in its coastal areas. Albania clearly has moved in the direction of creating a central administrative agency under the Council of Ministers to oversee land administration; this is a perceived strength. However, as noted above, substantial responsibilities for many land-related activities, especially land use, reside in a diffuse array of other government agencies where the technical skill and legal responsibilities prescribe them. Confusing, over-lapping, and sometimes conflicting distribution of land-related responsibilities dilutes the effectiveness of all agencies related to land.

Mozambique has a strong subsistence agricultural component with a mixture of land and coastal regions that have some similarities to East Timor. The Portuguese influence is also notable, as are historical ties between the countries, especially during Indonesian administration of East Timor. Importantly, Mozambique now has an impressive and comprehensive set of laws related to land available among developing countries. Mozambique might not yet have the best system for implementing and administering the laws, but the country's legal context is a useful benchmark for any country struggling to reform its land policies. Institutionally, Mozambique's approach has been to consolidate land administration within one ministry, the Ministry of Agriculture and Rural Development, and then assign specific responsibilities to a number of departments. Institutional leadership, however, remains weak due to inter-departmental rivalries within the ministry and an overall lack of resources.

Rwanda, by contrast, is a small country with a recent conflict-ridden history that has resulted in a government with little practical or administrative experience. Like Mozambique, Rwanda has a strong subsistence agriculture component and a history of European colonial influence. Donor institutions are currently looking very seriously at major funding for land administration improvements in Rwanda, a development very relevant to the situation in East Timor. Rwanda's proposed approach is to create a "land center" under the MINITERE to provide the leadership and policy guidance for land administration and land use management. This land center will be comprised of sub-units with responsibilities for registries, mapping, data collection, training, etc. While this approach appears promising, the country has not yet adopted it, due largely to the question of ownership of state property.

The relevance of Thailand is rooted in its proximity to East Timor, with attendant opportunities to strengthen ties between the two countries through its educational institutions, if not through direct government-to-government contacts. Arguably, Thailand has one of the best-run overall land administration systems in the



region, with well-established laws and regulations. However, the Thai system is highly complex with no lead agency for land use planning and up to 14 different government agencies responsible for land allocation. That being said, Thailand has the most extensive land administration experience and breadth of expertise (across all functional areas) in the region. East Timor should consider tapping in Thailand's technical capabilities and drawing lessons learned from Thailand, even if the overall Thai land administration model is not a good fit.

# 5.0 OPTIONS AND RECOMMENDATIONS FOR EAST TIMOR



**Background.** The Portuguese began to trade with the island of Timor in the early 16th century and colonized it in mid-century. Skirmishing with the Dutch in the region eventually resulted in an 1859 treaty in which Portugal ceded the western portion of the island. Imperial Japan occupied East Timor from 1942 to 1945, but Portugal resumed colonial authority after the Japanese defeat in World War II. East Timor declared itself independent from Portugal on 28 November 1975 and was invaded and occupied by Indonesian forces nine days later. It was incorporated into Indonesia in July 1976 as the province of East Timor. An unsuccessful campaign of pacification followed over the next two decades, during which an estimated 100,000 to 250,000 individuals lost their lives. On 30 August 1999, in a United Nations-supervised popular referendum, an overwhelming majority of the people of East Timor voted for independence from Indonesia. Between the referendum and the arrival of a multinational peacekeeping force in late September 1999, anti-independence Timorese militias—organized and supported by the Indonesian military—commenced a large-scale, scorched-earth campaign of retribution. The militias killed approximately 1,300 Timorese and forcibly pushed 300,000 people into West Timor as refugees. The majority of the country’s infrastructure, including homes, irrigation systems, water supply systems, and schools, and nearly 100 percent of the country’s electrical grid, was destroyed. On 20 September 1999, the Australian led peacekeeping troops of the International Force for East Timor (INTERFET) deployed to the country and brought the violence to an end. On 20 May 2002, East Timor was internationally recognized as an independent state.

**Land Administration.** As in other developing countries, East Timor’s existing land administration structure requires reorganization. The government’s structure includes several land-related agencies, including 1) the Land and Property Unit (LPU) within the Ministry of Justice; 2) the Urban Planning Department within the Ministry of Public Works; 3) the Forestry Department within the Ministry of Agriculture; and 4) the Mapping-Cadastral Department within the Ministry of Agriculture. In addition, there are several other departments scattered throughout the government that have land administration-related responsibilities, such as planning, building permits and control, land taxation, and expropriation processes. While the LPU’s role is quite clear and specific with the laws now in place, the government frequently assigns new roles and responsibilities, some of which overlap with the work of existing agencies. This causes confusion and inter-agency clashes.

As demonstrated above, approaches to land administration can vary greatly, depending on political heritage, geographical location, and a number of other factors. Some countries vest greater control in central ministries; others rely more on local control, especially with regard to ongoing administrative tasks. Dale and McLaughlin have identified four key issues that need to be addressed when deciding on a particular land administration organizational structure:

1. Operations integration and the selection of a lead agency;
2. The degree to which operations are centralized or decentralized;
3. The extent of outsourcing and partnerships between governmental and non-governmental sectors; and
4. Structuring land administration according to sound business practices.<sup>7</sup>

The task at hand for East Timor is to determine which approach, or mix of approaches, makes the best use of the country's resources and maximizes effective land administration. As land administration systems have developed over time, responsibilities for tenure, use, valuation, and information services has usually been divided among several governmental departments. The more recent trend of assigning over-arching responsibilities to a single land agency is an attempt to address the coordination challenges of a system with multiple departments having responsibility for multiple, though related, land administration activities. To a greater or lesser degree, the four countries in this report all have moved, or are moving, in the direction of establishing some form of a unified land department. From an overall structural standpoint, the differences among the countries lie in the implementation strategies.

At this point, it is clear that East Timor is following the trend of many similarly situated countries around the world, including those covered in this report. The LPU has a specific mandate, with specific basic responsibilities as a unit within the Ministry of Justice, although there is some evidence that the scope and number of its administrative responsibilities is evolving. As East Timor refines the role of the LPU, the fundamental question of the extent to which land administration is centralized or decentralized is critical. This is a fundamental policy question, and it touches especially on the *land tenure* and *land use* functions of land administration. From a practical standpoint, a more decentralized approach fosters greater accountability because the administrative systems are rooted in local government structures that presumably are answerable to the local population. A more centralized approach, of course, provides greater economies of scale and potentially reduces costs—not an unimportant consideration for East Timor. The correct approach for the country lies somewhere in the middle: creating a system, as in Rwanda, in which local authorities undertake day-to-day land administration activities, but with strong communications and other logistical support provided by the national land agency. Private outsourcing of specific activities (such as surveying, mapping, and evaluation) should be explored on a pilot basis and then replicated as required.

Regardless of the extent of centralized or decentralized planning, East Timor has the option of assigning greater land use responsibilities to a variety of governmental departments, although this does not appear to be the direction in which the country is currently headed. While this may increase the risk of inter-departmental clashes and less policy integration, land use planning may benefit from greater sector expertise. As noted above, Albania's experience in this regard has led to a diminishment of authority of its lead land agency.

As noted in the discussion of Rwanda's approach to land management, East Timor would also have the option of separating out the functions of land policy development from the line ministry responsible for leading land administration. The advantage of this approach would be to focus greater attention, and perhaps resources, on land policy; the down-side, of course, is the potential marginalization of the LPU, as in Albania.

With respect to *valuation* issues, East Timor is assigning this responsibility to the LPU, associating it with the technical skill and responsibility related to the creation and maintenance of the overall national property cadastre. However, applying the valuation data for the purposes of taxation requires entirely different skills and is associated with entirely different responsibilities more effectively administered by the Ministry of

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<sup>7</sup> Op. Cit., p. 128

Finance or local government units. Effective land administration depends on a clear definition and allocation of these responsibilities and authorities.

Our comparative research indicates that the trend in organizing land administration *information systems* is to subordinate such responsibilities to the lead land agency. Unlike other land administration activities, this particular organizational structure poses the fewest challenges, largely because the activities involved are very technical in nature and somewhat more removed from highly charged land policy debates that typically take front stage in national capitals. The approach taken by Rwanda seems particularly appropriate for East Timor.

To summarize, East Timor has a number of options to consider as it develops its land administration organizational structure. We summarize some of the possibilities in Table 5.1, below. This is not intended to be an exhaustive list, and many other permutations are possible.

**TABLE 5.1 LAND ADMINISTRATION IN EAST TIMOR**

	TENURE <sup>a</sup>	USE	VALUE	INFORMATION
<b>SCENARIO 1</b>	LPU under justice ministry	LPU	LPU and local units	LPU
<b>SCENARIO 2</b>	LPU under cabinet	Various line ministries	Finance ministry and local units	LPU
<b>SCENARIO 3</b>	LPU and line ministries	Various line ministries	Scenario 1 or scenario 2	LPU

<sup>a</sup> An independent National Land Council will hold responsibility for First Registration in East Timor under current draft legislation, after which the LPU will be responsible for maintaining the land registry.

The development of an effective land administration organizational structure in East Timor will be an important component of establishing the proper institutional base for economic growth and the reduction of poverty in that country. Among other things, effective land administration provides land title guarantee and land tenure security, supports the process of land taxation, provides bank loan security, develops and guides land transactions, protects public and private state land, reduces the severity and frequency of land disputes, facilitates land reform broadly, and improves infrastructure planning and development.

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