CHAPTER 9

‘Empty Land’? The Politics of Land in Timor-Leste

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Our ancestors footsteps are our land, in the past when our ancestors would walk and stop to rest, they would first leave a signal. When they went past a place that had no signal or sign they would place some rocks or plant some trees ... If another community wants to use our land for farming or other activities, they must first ask permission because even though the land may seem physically empty it has an owner and eventually we will need to visit it to worship the ancestors, to look for firewood or other things ... We use some ‘empty land’ to bury the dead, when anyone from our clan dies they must be buried on their land ... Our land is our body, we will not sell it because if we sold it we would all die.

Interview with participant from Suku Tutuala (Haburas 2013: 107)

During the land law consultations of 2009, then minister for justice Sra Lucia Lobato frequently referred to the vast quantities of ‘empty land’ that needed to be brought under state control in order to drive investment in Timor-Leste. These statements and comments reflect the predominantly top-down, neoliberal paradigm that the Timor-Leste government has adopted in its *Strategic Development Plan 2011–2030* (RDTL 2010). In the government’s view of land, there are vast, ‘empty’ areas of forest, mountain, beach and scrub land that have no owner, and, therefore, can be considered *rai estado* (state land)—a concept in stark contrast to the passage above that underlines the importance of land to local communities. This difference in worldviews cuts to the heart of land politics in Timor-Leste and yet is rarely acknowledged by the political elite and other development actors.

Rai mamuk or 'empty land' is one of many such phrases that litter the land rights discourse in Timor-Leste. Language and discourse may seem a strange starting point for a discussion of land rights and land politics, which are often described and defined in more concrete terms. However, in the context of a long legacy of land injustice and displacement in Timor-Leste; the absence of a legal structure for the resolution of land rights; increasing demand for land from the state, domestic and foreign investors, as well as growing urban and peri-urban communities, these seemingly innocent, spatially descriptive words are part of the language of power that individuals, communities and the state tap into in order to influence the validity and existence of land rights in Timor-Leste.

This chapter outlines the politics and exclusion surrounding the 2009 draft transitional land law, which led to an alternative civil society-driven consultation process and eventually to the development of a highly participatory program known as *Matadalan ba Rai* (lit. guide to land). During this process, a team of civil society representatives spoke to communities about their land problems using participatory mechanisms, including village-level community consultation groups, interviews, video, photography, artwork, and storytelling. The large published report speaks to a set of land identities and meanings very different to those put forward by the government and key development actors and donors in Timor-Leste.

Land rights in Timor-Leste: a history

Timor-Leste's vibrant patchwork of customary land rights and uses over 450 years of Portuguese colonisation, layers of displacement and migration, and a violent 24-year occupation by the Indonesian military provide the context for the land issues that the country faces today. Under both the Portuguese and Indonesian regimes, land was taken from traditional owners by force, and through the co-opting of complex local political alliances. By the end of the Portuguese colonial occupation in 1975, 2,843 titles had been issued and land was concentrated in the hands of five principal groups: the Portuguese state; the *mestiço* (mixed race) elite; Timorese *liurai* (traditional chiefs), who had been co-opted by the Portuguese; the Catholic Church; and Chinese traders (Fitzpatrick 2002: 93, 104). During the Indonesian era, some 44,091 titles were issued (Fitzpatrick 2002: 95). Of these, it is estimated that between 10 and 30 per cent of titles were issued corruptly; a further 30 per cent were issued to the 25,000 Indonesian citizens moving to Timor from other provinces of Indonesia under the *Transmigrasi* (Transmigration) program (Fitzpatrick 2002: 66). In 1999, the Indonesia military and militia groups retreated from Timor-Leste, taking with

them all land records and destroying over 70 per cent of built infrastructure (CAVR 2006a: 27). Over 68,000 homes were destroyed in the capital city alone (CAVR 2006a: 27).

Land has contributed to, and in many cases escalated, violent conflict in Timor-Leste. Most notably, this occurred during the 2006 crisis, when discontent over housing distribution in the capital, Dili, between groups associated with *lorosa'e* (eastern) and *loromonu* (western) areas of Timor-Leste aggravated the conflict and contributed to extensive property destruction. The haphazard and ad hoc refugee return process post-2006, the failure to deal with urban land ownership issues since independence, as well as a concentration of economic development and opportunities in the capital has further complicated land rights in Dili and beyond.

Significant funding has been poured into efforts to formalise and register land and property rights, most notably three consecutive USAID-funded land law projects costing a total of US\$14.5 million. The primary objective of these land law programs was to promote economic development, conflict prevention, economic investment, and the sustainable use of resources. The clearly stated view of these consecutive projects has been that 'a formal property rights system contributes to economic development and facilitates private sector investment in the economy' (*Rede ba Rai* 2013: 23).

Land legislation 1999–2009

Due to the contentious and political nature of land policy decisions, very little was done to regulate land issues during the UNTAET (United Nations Transitional Administration in East Timor) period (1999–2002) other than basic resettlement of internally displaced people and refugees and the minimum amount needed to establish the basis of a functioning administration in Dili and in district capitals. The FRETILIN (*Frente Revolucionária de Timor-Leste Independente*; Revolutionary Front for an Independent East Timor) government's Law No. 1/2003 on The Regulation of State Land provides an expansive definition of state land. It defines all previously designated Portuguese state land and all former Indonesian state land as the property of the Timorese state (irrespective of how it was acquired), and states that all 'abandoned property' should be administered by the Timorese state. While there was almost no consultation on this law during its drafting and approval phases, its implementation has regularly proven contentious. There have been significant objections from communities in Dili and rural areas who feel that their land was wrongly taken from them by previous state action and that they should be provided with some form of compensation from the present government.

Ita Nia Rai and the 2009 draft land law

A third, highly ambitious USAID land law project, branded locally as *Ita Nia Rai* (lit. our land), was launched in 2008. The passage of significant land legislation laying down the basis of all land ownership in Timor-Leste was stated as one of its five core objectives. Other objectives included the establishment of an independent land commission and a national cadastre, and the mapping and registration of over 50,000 land claims.

The program's legal advisor began drafting a policy document in early 2008, which was presented to a drafting committee in September 2008 (Lopes 2008). This document was quickly followed by a draft transitional land law, released for public consultation in June 2009.

Civil society advocates immediately argued that these policy options did not reflect Timorese cultural understandings of land and, given the importance and fundamental nature of land in Timor to identity, spirituality and community life in general, that the law should be based on a broadly consultative land policy. In this respect, they argued that the processes (as well as the outcomes) of drafting land policy were vitally important to resolving land issues in Timor-Leste.

The original Ministry of Justice plan for consultation allowed comments and submissions on the law within a three-month period. After significant lobbying from civil society groups and opposition leaders (most notably Fernanda Borges from *Partidu Unidade Nasional* (National Unity Party)), the ministry agreed that they would hold district-level consultations in each of Timor-Leste's 13 districts. After a significant campaign on the design of this participatory process, further consultations were organised in 27 subdistricts, and the process became one of the most consultative legislative processes in Timor-Leste (aside from the development of the national constitution).

Despite praise, the process turned out to be severely flawed. Copies of the law were handed out on the morning of the consultations but the minister of justice misrepresented the law on multiple occasions, stating that its purpose was to ensure fair distribution of land to all people. Community concerns were dismissed as *beik* (stupid) and rarely, if ever, documented by government officials. The *Rede ba Rai* (Timor-Leste Land Network) and members of a host of national civil society organisations were responsible for the only coherent and public documentation of the process (Wright 2009).

Although the Minister assured participants that the law would re-distribute land in Timor-Leste, and guaranteed that it would give land to those who currently do not have land rights, many community members left the meeting worried and confused as there are no articles in the law that match the ministers words (Wright 2009).

After some alterations, the law was approved by the Council of Ministers in March 2010. The law lays down the basic principles by which land titles will be recognised and issued in Timor-Leste. This includes a recognition of previous (Portuguese- and Indonesian- era) freehold ownership rights. A complex process of adverse possession is laid down, which is, however, only applicable to those who moved onto land after 31 December 1998. This date is highly significant as it does not allow anyone who began using land during or after the 1999 conflict to formalise their rights. In terms of this chapter, perhaps the most significant element of the law is its broad and wide-ranging definition of state land, which includes all land under state possession, all notional 'empty land' without an identified owner, all properties identified in 2003 by the state as abandoned, and any land that was once used by the Portuguese or Indonesian governments. This effectively creates a presumption in favour of state land that trumps all other claims. A token recognition of community property and community protection zones and a weak protection against eviction for those living in the 'family home' provides only very limited levels of protection *vis à vis* the state.

Perhaps the biggest fear of civil society was that the expansive definition of state land, along with strong powers of expropriation and a top-down, neoliberal state development paradigm, would lead to an erosion of communal and informal rights with little or no due process or adequate compensation.

The *Matadalan ba Rai* project

Aside from the substantive criticisms of various concepts and articles of the transitional land law, a key criticism of the government and USAID drafting process was that there was no overall land policy, and, as a result, it was difficult for communities to understand the core objectives and values of such an important piece of legislation. Civil society consistently urged meaningful consultation to be carried out in order to build consensus on such a fundamental issue. After significant unsuccessful lobbying of the minister for justice and land sector donors, including USAID and the World Bank, civil society actors decided to launch a land consultation process 'of their own'.

Based on our experiences we [civil society] concluded that the Government and International Agencies working in the land sector are unwilling to hold meaningful consultation with communities about land issues and that they have no will to draft a Land Policy which could help to guide our work throughout this sector. It is because of this that we have organised a separate consultation process (Haburas Foundation 2013: 17).

The consultation process intended firstly to gather a broad sense of the land problems and issues that communities faced on the ground which could be fed in to civil society advocacy work and submissions on the draft land laws, but also to inform civil societies’ own work on land issues. The project also hoped to show, contrary to government and donor organisations beliefs, that effective and efficient consultation was possible and could be carried out without unrealistically large budgets and time frames (Haburas Foundation 2013: 18).

A basic consultation process was carried out in 36 *suku* (villages) across seven of Timor-Leste’s 13 districts. The consultation process was carried out between April and August 2010, and included a variety of participatory methods to help community groups identify and prioritise key land problems in their respective *suku*. Later, further thematic workshops, interviews and surveys were used to check and add more depth and case study evidence to the data collected during the preliminary consultation process. A total of 1,973 participants were involved in the process.

Land issues identified by community groups were distilled into categories, and the percentage of people selecting these issues as a priority was calculated (see Figure 9.1). The data shows clearly that the largest worry for community groups is fear of a ‘state land grab’, whereas more localised issues such as ‘land conflict between neighbours’ were considered a relatively minor issue.

Figure 9.1 Prioritisation of community level land problems.
Source: Haburas Foundation 2013.

Throughout the consultation process, community values and understandings of land came to the fore through narratives, stories, case studies and mapping processes. In writing up the results, 15 separate chapters are dedicated to each of the categories identified above, but three themes recurred throughout the report: the importance of the context and 'social function' of land; the legacy of colonial injustice; and disillusionment with the lack of consultation over land decisions and development processes. All three issues are crucially important to the land rights context in Timor-Leste, but in the remainder of this chapter I will focus on the first to illustrate the extreme divergence between local understandings of the 'social function' of land and government perceptions of its economic value.

Timorese contexts and the social function of land

During the consultation process, an 'imagination and mapping' session was undertaken, where communities described their land and discussed the fundamental question 'what is land?' Discussions and artwork from these sessions shows the multi-layered functions of land. As summarised by the Matadalan report:

Land is our home, land is where we grow rice and cassava. Land gives us food and a place to open our small stalls. Land is a place to farm and fish and raise animals. Land is a place to get water, to pick firewood and to look for medicine. Land is the basis of our culture because it is here that we see our ancestors footsteps, our sacred stones and our spiritual houses. Land is core to identity, it shows who is our family. Land is a way to share resources and wealth (Haburas Foundation 2013: 35–36).

The drawing below was developed by a community group in Tutuala, Lautem District, in order to illustrate the significance of their land. They show economic areas: a fisherman catching fish to sustain his livelihood, and the food gardens and chickens to the far right. Their land is also an important place for their culture—represented by the sacred symbol *tei* on the far left of the shore. This symbol represents the source of the Tutuala Ratu (clan). They go to the sacrificial altar to pray to the ancestors, to ask for permission to share the land, and to thank the ancestors for the sustenance and strength they derive from the land.

Figure 9.2 Explaining the significance of land, Tutuala, Lautem.

Source: Haburas Foundation 2013.

The drawing shows three houses made with traditional materials. A fundamental basis of their identity is the *uma lulik* (spiritual house), which can be seen on the right, and the sacred stones to the far right that mark the *ia mari tulia* (footsteps of the ancestors). This group explained that boats are fundamentally important to their culture and identity because that was how their ancestors first came to these lands. Finally, the group explained that their land was a place of nature, close to the sea, the forest and the mountains, full of wild birds and animals. This explanation and picture is a perfect explanation of the complex layers of function and attachment that land performs at the community level.

During the consultation process, a pilot survey attempting to show how individual households thought about and perceived their land rights was carried out in rural areas. In this survey, instead of asking households whether they owned a particular piece of land, they were asked a number of questions about what activities they could and could not do on a piece of land that they used or had rights to.

Respondents were asked whether they had rights to build a house on their land, farm their land, plant perennial trees, pass on the land as inheritance, build a spiritual house on the land, lease the land to an outsider, or to sell the land.

While the right to farm and build a house are relatively strong 'use' rights, the right to plant perennial trees, pass on land as inheritance, and, particularly, to build a spiritual house on land are traditionally seen as the strongest forms of rights across Timor-Leste. The planting of perennial trees is often described by communities as 'traditional title' because the longevity of trees implies an equally long-term interest in the land.

What can be seen in the data is that many households who perceived themselves as having extremely strong rights (that is, the right to plant perennial trees and the right to pass land on as inheritance) felt that they could not lease land to someone from outside of their community (only 36 per cent agreed they could), and even fewer (17 per cent) felt that they had the right to sell their land.

Conclusion

The *Matadalan ba Rai* report puts together 250 pages of rich case studies and analysis showing and discussing community perceptions of land in Timor-Leste. What emerges is a clear illustration of the importance of the social and spiritual elements of land. The Haburas Foundation team also provides an interesting summary in the report's introduction, stating that land in Timor has many dimensions:

Land is always linked to people and has many social functions. At Haburas Foundation and Rede ba Rai we follow the principle that land has seven functions: Social, Cultural, Economic, Political Identity, Habitation and Shelter, Ecological and finally as a mechanism for the sharing and distribution of wealth and resources (Haburas Foundation 2013: 35).

This understanding of land rights highlights the disparity between local understandings of land, the government view that 'empty land' is land to be alienated for development, and the donor view that land (once titled) could easily be sold and mortgaged in order to drive investment and economic development.

A fundamental driver and catalyst of this clash of worldviews and understandings of land is the government development paradigm, which prioritises infrastructure and petroleum development with little reference to local values and rights. Over 50 per cent of the 2013 state Budget was spent on infrastructure projects (with only 8.4 per cent and 4.2 per cent on education and health respectively) (*La'o Hamutuk* 2013). The *Strategic Development Plan* clearly echoes the logic and priorities of the land titling programs. Mega projects such as the south coast development plan, urban beautification schemes, and private investments are increasingly driving forced evictions, conflict and disputes between communities and the state.

The *Matadalan ba Rai* project has continued and sparked the creation of Land Defence Groups across eight of Timor-Leste's 13 districts. The program team continues to disseminate information about community land rights, to work against forced evictions, and advocate for more just and consultative land laws as part of the Timor-Leste land rights network. The consultation report acts as a guide and strategic plan for civil society organisation work on land. It was given serious consideration by a number of parliamentarians during the 2011 land law debates and a number of articles were changed during Commission A discussions. The government majority, however, removed any amendments when the law was debated and approved in plenary.

The draft transitional land laws were eventually vetoed by President Ramos-Horta in March 2012, stating (among other reasons) that the laws had been unconsultative and reflected neither Timorese values nor international human rights best practice. While they have been redrafted and approved by the Council of Ministers, it is unclear whether they will be approved by parliament any time soon. Many of the controversial articles remain unchanged, and debate and dissent within parliament seems to have died down. In the absence of any enacted legislation, the land deals, alienation and forced evictions will likely continue unabated. Rather than taking proactive steps to mediate and discuss these divergent worldviews through consultation and constructive policy processes, opposition to even discussing alternative models is becoming entrenched. Top-down economic development that ignores traditional economies, and the spiritual and social realms of communities, remains the dominant worldview amongst the upper echelons of Dili's policy world.

Acknowledgements

I worked as a legal advisor to *Rede ba Rai* (2008–12) and helped to design and implement the *Matadalan ba Rai* consultation process. I would like to acknowledge the fantastic *Matadalan ba Rai* team within the Haburas Foundation and the many communities and individuals who participated with great enthusiasm in the consultation process. Particular thanks to the 37 land rights defenders who carried out this consultation in their various districts and continue to do amazing land rights work in Timor-Leste. Thanks as always to the diverse and vibrant members of the *Rede ba Rai* network in Dili, and, finally, thanks to Ines Martins from *La'o Hamutuk* for all of her work on these issues and for co-presenting this paper at the Timor Update.

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This text is taken from *A New Era? Timor-Leste after the UN*,
edited by Sue Ingram, Lia Kent and Andrew McWilliam,
published 2015 by ANU Press, The Australian National University,
Canberra, Australia.