

## Post-conflict land administration; a facilitator of the post-conflict state building in the case of Timor-Leste

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**Key words:** conflict, post-conflict, land administration, state building, Timor-Leste

### SUMMARY

There is a growing recognition that land administration has a fundamental role to play in the post-conflict contexts. This paper observes land administration in the broader post-conflict state building in the case of Timor-Leste.

The history of Timor-Leste witnesses many conflicts and the violence in the human rights during the period 1974-1999. Estimated number of people that died as a direct consequence of the conflict, and conflict-related hunger and illnesses in this period was around 183,000. The violence was followed with displacement of population in several waves during the conflict period and after the conflict ended during the crises period in 2006. The country's two colonial administrations were complicated by widespread illegal occupation as a result of the displacements. Further complicating issues were the destruction of the infrastructure and housing, where majority of the state archives and records were destroyed; archives with land and property records were target of the Indonesian militia actions. The events from the two and a half decades of conflicts and displacement in regards to land issues resulted in a very complicated situation on the ground, where a numerous disputes and claims over the land occurred. Tackling the housing-, property rights and land administration were very sensitive activities which could very easy be a cause of a new conflict. There was a challenging period ahead in respect to the developments of housing-, property rights and land administration in the post-conflict Timor-Leste.

General characteristics of the war-torn societies are noted as: weak institutions, economic and social problems and low security (Ball, 2001); these were present in post-conflict Timor-Leste as well. This paper identifies that development in the land sector helped strengthening the institutions and contributed to the economic and social development, specifically after the crises period in 2006. These arguments suggest that land administration can be seen as a facilitator of the broader process of post-conflict state-building in Timor-Leste.

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## **1. INTRODUCTION**

The Portuguese involvement in Timor started in the 1500's and the archipelago was a colony of both Portugal and the Netherlands since then. Portugal moved its bases in Dili in 1771 and with this Portugal has strengthened its governance powers over the east part of Timor. In 1913 the colonial boundaries were fixed, where Portugal took over the eastern half of the island, Timor-Leste. With this, Timor-Leste has become the most remote part of the Portuguese colonies, and for the purposes of administering colonial Timor-Leste, the Portuguese civil law was applied. In the World War II it was occupied by the Japanese forces, and it was freed after the Allied Forces landed. After the end of the World War II, Portuguese colonial administration returned, and remained there until the Carnation Revolution in 1974 in Portugal. Following the revolution Portugal abandoned its colonies and in Timor-Leste a civil war started between the local political parties. With the Indonesian invasion over the county, from 1975, a new difficult colonial period started for Timor-Leste. This was a period of humanitarian crises, most of the population displaced, infrastructure and housing stock were destroyed, there were almost no economic activities, food shortage, all senior officials fled in Indonesia and institutions of government ceased to operate. United Nations (UN) established its authority in 1999, which in practice meant transfer of Timor-Leste into a UN protectorate.

Mass displacement of the population together with destroyed houses and infrastructure lead to illegal occupation of the abandoned houses and properties. During the withdrawal of the Indonesian military a target of their activities were all state archives including land record archives. Because of the general violence majority of the public officers -including land professionals- fled the country. All land offices were closed in the time of the biggest conflict activities. The post-conflict period identified multiple layers of potential competition claims and disputes over the land. It was beneficial that Agreement Document from 1999 had references on the land dispute mechanism and land administration. However the developments from 2000 in the National cabinet practically stopped the establishment of land claims commission. In the following sections the developments in housing-, property rights and land administration in the conflict and post-conflict Timor-Leste will be explored.

The broad question addressed in this paper is: can post-conflict land administration be seen as a facilitator of the overall post-conflict state building process in the case of Timor-Leste? It starts with exploring the characteristics of conflict and post-conflict in Timor-Leste in section 2. The land administration developments during the conflict and in the post conflict period are elaborated in section 3. The role of the land administration as facilitator of the post-conflict state building in the case of Timor-Leste is acknowledged in section 4. Finally, section 5 draws conclusions from this study.

## **2. CONFLICT AND POST CONFLICT TIMOR-LESTE**

The history of Timor-Leste in the period of 1974-1999 is marked with violations in human

rights such as: self-determination, killing and disappearance, forced displacement and famine, detention and torture, violation of the laws of war, political trials, sexual violence, violations of the rights of the child, and violations of economic and social rights. The CAVR report estimates that 103,000 people were killed in the conflict, and together with conflict-related death due to hunger and illnesses the total number of dead people in this period was around 183,000 (CAVR, 2005). This violence's were followed with several waves of displacement of the population in large numbers and widespread destruction of houses and infrastructure.

## 2.1 History of conflicts

Carnation Revolution of 25 April 1974 in Portugal is believed that has opened the way for decolonization of the colonies under Portuguese rule. In the period following the revolution Portugal started abandoning the colonies and in the case of Timor-Leste a civil war started between Timorese political parties. In parallel with the civil war, Indonesia was preparing for the military intervention. In December 1975 the invasion by Indonesian forces led a large part of the population to flee Dili and other urban centers, and they moved into the interior of the country which was mostly mountainous. In the following three years significant number of Timorese population were forcibly resettled along the major costal roads and away from interior. The period from 1977 to 1979 saw a big humanitarian tragedy, where Indonesia's military operation managed to destroy Timorese Resistance. There were elections in 1982, but the political and economic situation did not changed a lot. Another unsuccessful attempt to strengthen the resistance in 1983 was crashed by Indonesia Military. In the period until 1991 consolidation of the resistance was evident; however this was still a period of an ineffective involvement from UN and the International Community. Turning point in this long crises period was the Santa Cruz massacre in 1991, which was filmed by international media and after this tragic event the world changed the perception of the Indonesian occupation over Timor-Leste (CAVR, 2005). In parallel the student movement started to grow and it became a central driver of the resistance.

With the appointment of Kofi Anan as UN general secretary in 1997, more inclusive approach in solving the crises in Timor-Leste was seen. The role of UN and the International Community grow bigger in mid and late 1998 and in 1999 a Popular Consultation - referendum was announced. On 5 May 1999 Agreement Document (AD, 1999) was signed between Portugal and Indonesia on the question of East Timor. Within the AD, referendum was scheduled for 3 September 1999. UN stepped into Timor-Leste where the UN Mission in East Timor (UNAMET) was established, with the aim to have observer's role during the referendum process. After the referendum, UNAMET announced the results, where 78.5% of East Timorese voters have chosen to reject the proposal for special autonomy within the Republic of Indonesia and only 21.5% voted for special autonomy. After the referendum Indonesia started to withdraw from Timor-Leste, unfortunately in a very destructive and un-human way (CAVR, 2005).

The violence after the 1999 referendum resulted in burned cities and more than the half of the population displaced. About 250,000 people were driven over the border in Indonesia and some 300,000 fled their homes in urban areas, particularly in Dili (ICG, 2010). The attacks of the pro-Indonesia militia after the referendum caused widespread destruction of the infrastructure, housing and property. Followed by the violence and destruction there was

evident loss of public and private records. Economic activities almost completely ceased and Timor-Leste experienced a severe food shortages. During this violence all senior official fled in Indonesia and institutions of government ceased to operate (Fitzpatrick, 2002).

## 2.2 Post-conflict period in Timor-Leste

The UN Security Council passed the Resolution No. 1272 (UN, 1999) on 25 October 1999 and established the UN Transitional Authority in East Timor (UNTAET). By enforcing this resolution the UN took over the broad governmental functions in an effort to ensure that peace was maintained after period of conflicts and destruction. With this the Timor-Leste was practically transferred into a UN protectorate. Elections were held late 2001 for a constituent assembly to draft a constitution. East Timor became formally independent on 20 May 2002 (CAVR, 2005).

The period after the independence might be best described as a time during which the general population's high expectations of life in an independent nation were not met; therefore a social unrest started. This was especially for the economic development. Having oil and gas revenues that failed to reach the population, the poverty continued to be the reality for most Timorese. As supportive causes of political conflict and collapse of the economic market, the instable and ineffective land administration system of the Timor-Leste was identified (Tan et al., 2006).

In 2006 the young country faced serious problems: insufficient employment creation for the country's young and fast-growing population; the inability of the government to spend the resources at its disposal, adding to the perceptions of corruption among a suspicious population; and the failure to create an environment conducive to private investment (ADB, 2007). The 2006 crisis grew out of the so-called petitioners protest, in which a group of almost 600 soldiers refused to return to their barracks because of complaints about living conditions and, especially, discriminatory policies regarding army recruitment and promotions (ICG, 2006). In reality the causes of the crisis lay much deeper (Van der Auweraert, 2012). The crisis, and its eventual resolution, could be summarized through a brief overview of a number of key events:

- April–June 2006: a demonstration by the petitioners in front of the main government complex in the capital, Dili, initiated a period of violence and instability. An estimated 150,000 Timorese fled their homes and seek refuge in makeshift camps, public buildings, or with family and friends. 38 people were killed and 1,650 houses were destroyed;
- June 2006–April 2007: the arrival of international troops brought an uneasy calm, but sporadic violence continued. The UN Security Council voted to establish the UN Integrated Mission in Timor-Leste (UNMIT), which included an international police force to replace the international military troops;
- May–July 2007: Jose Ramos-Horta was elected president, and FRETILIN, which had governed Timor-Leste since independence, failed to win the majority required to govern alone;
- August–January 2008: the formation of a government by the Alliance for a Parliamentary Majority coalition was followed by violence, with more than 400 houses destroyed in two districts outside Dili;
- February–March 2008: President Ramos-Horta was seriously wounded in an assassination

attempt, and the leader of the rebel group that carried out the attempt, died in action. Sometime later, the remaining rebels surrendered, opening the road for a return to political stability (ICG, 2010).

This section, addressing the events and activities during the conflict and the post-conflict period in Timor-Leste sets the stage for better understanding the events and developments in relation to housing-, property rights and land administration and about the post-conflict state building as discussed in the following sections.

### **3. LAND AND LAND ADMINISTRATION IN CONFLICT AND POST-CONFLICT TIMOR-LESTE**

According to Land Administration Guidelines, land administration is considered as ‘the process of determining, recording and disseminating information about tenure, value and use of land when implementing land management policies’ (UN/ECE, 1996). Land administration is the most appropriate instrument for implementing National Land Policies, with a number of functions like support in establishment of the land market, land use, setting the tax and management of the state land (van der Molen, 2002). Housing land and properties (HLP) and land administration issues are always negatively affected by the conflict and if not addressed properly in a post-conflict context they could be cause of secondary conflicts and even erupt in a new armed conflict (Todorovski et al., 2012). The period of protracted violent conflicts had its effects on the HLP and land administration in the case of Timor-Leste. In general post-conflict HLP and land administration characteristics were additionally complicated with displacement, secondary occupations and destruction of infrastructure, houses and land records (Fitzpatrick, 2002). This section will address the events and developments in relation to these issues during the conflict and post-conflict period.

#### **3.1 Land administration during the conflict period**

Historically observing land and property in Timor-Leste were organised under the customary traditions. The system of customary law, called ‘*tara bunda*’, was well-practiced in Timor-Leste and provided protection of land and natural resources on village and next higher level ‘hamlet’ (Miyazawa, 2013). For the purpose of administering the colonial Timor-Leste the Portuguese civil law was applied. Despite the Portuguese colonisation and Indonesian occupation customary land systems were highly resilient; however, the customary organised lands were not registered within the formal land registration systems (Fitzpatrick et al., 2008).

The ownership over land in the Timor-Leste was closely related to the way land and natural resources were managed in the rural areas under the customary traditions (Miyazawa, 2013). With population about one million there were 47,000 formal land titles at the end of the conflict; 2,709 were from Portuguese colonial era, and 44,091 were issued during the Indonesian era (Hohe and Nixon, 2003). These figures were mainly related to the properties in the urban areas, and the rest of the land and property were organised under customary laws (Miyazawa, 2013). The forests were managed by customary communities in Timor-Leste. According to the estimation of the global forests resources in 2005, 33% of forests were public and 67% were private forests, where private forests in Timor-Leste were managed by communities (FAO, 2005).

The period of conflicts from 1975-1999, resulted in massive displacement of the population, which further lead to ‘illegal’ occupation - secondary occupation (Leckie, 2000) - of the abandoned houses and properties. Another reason for the displacement was the destruction houses and infrastructure. While withdrawing, target of the Indonesian military activities were all state archives including land titles offices containing the land title books with supporting property documentation. Approximately 80 % of the available land records in Dili were burnt and irrecoverable. Because most of the inhabitants of Dili were forced and fled as quickly as possible, most copies of land title records were left behind and also burnt or destroyed in the general destruction. In other regions the destruction was even more complete, as all land title offices were completely burnt and destroyed under the direct attack of the retreating militia. Frequently repeated story about the land books of Dili was that the Indonesian head of the land title office managed to rescue the main land title book for Dili, and took it with him during the withdraw to West Timor (Fitzpatrick, 2002). Land records are always negatively affected during the conflict; another example is the case of Cambodia where all state archives, including the land archives, were burned and destroyed during the authoritative regime 1975-79 (Todorovski and van der Molen, 2014).

Because of the general violence large numbers of the public officers moved in Indonesia. This was similar with the majority of senior and experienced civil servants who worked in the land administration system had fled the country (Meeuwissen, 2003). All land offices were closed in the time of the biggest conflict activities. The post-conflict period identified multiple layers of potential competitions claims and disputes over the land. The situation on the ground after the end of the conflict was: current occupiers, underlying traditional interests, and title holders from Portuguese and from the Indonesian period. The events from the post-colonial and post-conflict period had a negative effect on the housing-, property rights and land administration in the country.

It was beneficial for land dispute mechanism and land administration developments that Agreement Document from 1999 had short and precise references on these issues, and it contained a parts about: *‘adopt legislations regulating or restricting the ownership of property; establish a Land Claims Commission, which shall make recommendations in order to decide on all disputed claims to title over real property through the court; and about the right to own property and not to be arbitrary deprived of it’* (AD, 1999). On a request of UNTAET, UN-HABITAT undertook an initial mission to Timor-Leste in mid-December 1999 and a follow-up mission in February 2000. Based on a project proposal within the UNTAET mission the Land and Property Commission was included (Meeuwissen, 2003). The mandate of this Commission was to: facilitate transition toward Timor-Leste system; policy and institutional development; monitor and support allocation on public and abandoned land; and establish national and district offices (Meeuwissen, 2001). However developments in 2000 in the National cabinet, on the suggestion of the head of the Timor-Leste Admiration to UNTAET not to proceed with the establishment of land claims commission as in AD, practically froze the question on the commission on a longer term.

‘Based on the situation on the ground the following three phenomenon’s required urgent response: (1) ad hoc housing occupation and conflict caused by population displacement and property destruction; (2) allocation of public and abandoned properties for humanitarian and

security and commercial purposes; and (3) re-establishment a form of land administration, particularly so as to minimize the risk of a developing informal market in private land' (Fitzpatrick, 2002). These three phenomenon's were addressed in details in a study by Fitzpatrick (2002) where land policy and template strategies for their implementations.

### **3.2 Land administration in the post-conflict period**

As reported in the literature, land administration systems can suffer in several ways during a conflict. The most obvious blow follows from the loss of staff and records. Staff can be killed, (forced to) leave the area or not be able or willing to return to their jobs within land administration systems (Zevenbergen and Burns, 2010). Land records in post-conflict contexts can be: damaged stolen, lost, fraud or manipulated by powering parties (groups), partly or fully destroyed, moved in third country or even be a target for violent attack (Todorovski, 2011). Historically observing, land administration issues have not been figured prominently in UN emergency and peacebuilding operations. While some UN missions (including cases when UN exercised transitional governing functions, such as those in Kosovo and East Timor) included developing capacities for addressing land administration problems in post-conflict areas (UN-HABITAT, 2007).

Numerous displacement and the effects from the conflict period of two and a half decades, were the main causes of the uncertainty over the property rights in post-conflict Timor-Leste. The lack of the property records only aggravated the chaotic picture, and unregistered transactions made it almost impossible to identify legitimate owners; this was particularly evident in the urban and peri-urban areas of Timor-Leste (Lopes, 2009). Establishment of greater certainty and order on land and property matters was recognised as critical in realisation of the rule of law (Meeuwissen, 2003). There was no clear existing land administration system in post-conflict Timor-Leste, and some areas like the legal framework needed significant improvement (Tan et al., 2006).

#### *3.2.1 Land administration in the period 2000-2008*

In the post-conflict period, the government's capacity to deal with the complex land situation was far from sufficient. Institution building was urgently needed, especially in the areas of law, land registration and conflict resolution mechanisms. The most fundamental was the law, because without a clear law it was impossible to sort out the claims (de Silva and Furusawa, 2014). Development of these identified weak points was realised with support of the UN, UN-HABITAT and international donors. Therefore, one of the first laws passed in the national parliament was the law on land matters (Meeuwissen, 2003).

Customary rights were recognized in the Constitution as long as they do not contradict the Constitution and legislation that regulates them. Private property rights included transfer rights, and the right to just compensation if expropriated by government for public purposes ((GOTL, 2002) Constitution 2002, Arts. 17, 54). The Law 01/2003 addressed: 'Juridical Regime for Immovable Property', as the umbrella land law and it established the legal jurisdiction for addressing land issues, defined land law-related legal terms, defined state property and established the National Directorate for Land, Property and Cadastral Services (DNTPSC) (GOTL, 2003).

Based on the Law (1/2003) it was possible to obtain a lease agreement of state property. At the beginning this procedure lasted from two to four months, DNTPSC was responsible for documents investigation, survey of each property and issuing the lease agreement. The Law 1/2003 did not delegate power to DNTPSC for signing the lease agreements, thus the final lease agreements needed a signature from the Minister of Justice (De Sousa, 2005).

The same Law (1/2003) defined and recognised that the illegal occupation of state land could be regularised. Approximately 6000 'illegal' occupants submitted applications for regularisation their property relations. This activity together with the lengthy normal lease acquisition procedure, accelerated creation of alternative processes in: modification, simplification and speeding of the steps in the procedures. Result was a determination of new 'special lease agreements' (Ilyas, 2004). Legal acts developed in the following period were: Decree Law 19/2004 on State Property Administration/Leasing of State Property, the Law 12/2005 on Leasing Between Private Individuals, and the Law 12/2005 also established temporary housing for homeless citizens (USAID, 2012).

The new procedures were very simple and fast. Applicant submitted an application in DNTPSC with a copy of his identity document and determined location of his property. For this purposes orthophotomaps in R=1:1000 were used, where the particular parcel was immediately marked on the map which was publicly available.



Figure 1: Orthophotomap from the fieldwork used for preparation and issuing leases R=1:1000 (source: (De Sousa, 2005))

DNTPSC then prepared a lease agreement using their database and attached orthophotomap, to be signed by the Director of DNTPSC, who was now delegated to sign the lease agreements instead of the Minister of Justice himself. This speeded the document preparations from four months to in majority of cases in one day (De Sousa, 2005).

Although the procedure was simplified and speeded, result was that only properties with

applications were registered in the system. DNTPSC, together with many governmental agencies in Timor-Leste, were severely under resourced, and struggling to keep pace with the public expectations. Assistance from the donors was most valuable and essential for long term building the capacities and progress of land matters (De Sousa, 2005).

In regards to the disputed properties, a research was conducted in 2004 for the Timor-Leste Land Law Program, where it was identified that people preferred to resolve the land disputes and conflicts on the local level if possible. The tendency was to take the land disputes first to the elders at the family or at hamlet level, then if necessary to a village – or at sub-district level mediation forum. Most people preferred to avoid the formal court system, which shows the preferences of the population to resolve land disputes via customary means (Urreasta and Nixon, 2004).

The crises in 2006 created a new wave of displacement of the population living in Dili where approximately 150,000 citizens fled from their homes and 1,650 houses were destroyed (ICG, 2010). After this crisis, UN re-formulated its mandate and established the new more inclusive UNMIT mission with included international police force to replace the international military troops (UN, 2006). The new elected government identified and put the land and property issues in relation to displaced population high on its political agenda.

The new government of Timor-Leste faced a dilemma to develop a strategy to promote return and resettlement of the displaced population or to determine property ownership on the whole territory. The government decided that the strategy would be more appropriate for the return and resettlement purposes, and then determine ownership over the whole territory. The so called ‘cash for return’ programme, was heavily criticized by humanitarian agencies including the UN – who argued that promoting the return without first resolving the property ownership issues would provoke further tensions and cause of re-displacement (Lopes, 2009). In December 2007 National Recovery Strategy was adopted with an aim to end the displacement in Timor-Leste and addressed all obstacles that displaced populations were facing in the process of return or resettlement. For the first time in history in Timor-Leste, the victims of conflict and human rights violations received a systematic redress – finances and materials for house construction. The National Recovery Strategy was remarkable efficient and effective way of ending the displacement crises in what appears to be in a durable manner (Van der Auweraert, 2012).

### *3.2.2 Land administration in the period after 2008*

The Ministerial Regulation on the Cadastre No. 229/2008 served as the basis for more systematic land registration data collection and was an important step toward developing a comprehensive land law and policy. A Technical Framework for a Transitional Land Law for East Timor was developed in 2008 with the assistance of USAID (USAID, 2012).

USAID was one of the major donors supporting property rights development in Timor-Leste; where its role nowadays is considered as a developing partner. In 2007 the government accelerated institution building for land and property with assistance of USAID. The project was called Strengthening Property Rights in Timor-Leste, and it was given a Tenun name, ‘In Nia Rai’ (Our Land) or INR. The Ministry of Justice was responsible for the project, and it

was implemented through subcontracting consultancies between 2007 and 2012. The INR project included a pilot land registration programme carried out in the capitals of the thirteen districts. Via systematic procedure, data was collected based on orthophotomaps and interviews with claimants. Orthophotomaps were made public with all claimants' names and photographs, and (if there was no dispute, or after a dispute was solved) measurement was done. If there were duplicate claims the plot would be shaded in red and the applicants number attached. There was a period of 30-day for objection (for parcels without duplicate claims) before the process for particular property is closed. From the process it emerged that a large number of disputes arose. The overall process was also positive from the aspect that it prevented illegal transaction once the cadastral maps were made public, displayed on most frequent places in certain community; paper orthophotomaps containing disputed properties.



Figure 2: Orthophotomap from public display of registered and disputed properties  
(Source: DNTPSC <http://itaniarai.mj.gov.tl/eng/index.html> accessed 12.02.2015)

(de Silva and Furusawa, 2014) identified that DNTPSC had no appropriately trained and skilled staff to precede the registration in the second phase in the farmland and in the rural areas. Building the capacities in land administration should be viewed as a strategic long term activity including training and education of staff on various levels of hierarchy, in a wider context of developing institutional infrastructures for implementing land polices in a sustainable way (Enemark and van der Molen, 2008).

In March 2011 the cabinet finished a legal package comprising the Law on Special Regime

for Determination of Ownership of Immovable Property, the Law on Expropriation and the Law on Real Estate Financial Fund. The laws were passed in the parliament in 2012 but the president rejected the promulgation, arguing that people's rights were not fully accommodated (Gov. of Timor-Leste, 2012). That's why the USAID report from 2012 identified the areas for improvement of legal framework in Timor-Leste: (1) currently there is no mechanism to convert Portuguese and Indonesian titles to Timorese equivalent; (2) no legal mechanism to recognize ownership of a possessor who had never possessed a title; and (3) no mechanism to resolve conflicts where Portuguese and Indonesian titles overlap (USAID, 2012).

The project Strengthening Property Rights in Timor-Leste supported by USAID, and the governmental programmes such as the National Recovery Strategy are identified as good practice, involving multiple stakeholders and bringing social peace and reconciliation. It is advisable that customary land owners should be integrated as legitimate stakeholders within the formal land administration system.

In this section first the influences of the long colonial and conflict period over the land and its administration were elaborated and then the focus was on the developments that occur in relation of land disputes registration, land registration and land administration in post-conflict Timor-Leste. Findings from this section will be used for the discussion about answering the broad question in the sub-section 4.3.

#### **4. POST-CONFLICT STATE BUILDING IN TIMOR-LESTE**

In this section, first the main characteristics of the post-conflict societies will be acknowledged based on the available literature. Then the post-conflict state building in Timor-Leste is addressed based on the events and developments elaborated in the sections 2 and 3. Further below in this section observation will be made on how and when the previously elaborated land and land administration facilitated the broader process of post-conflict state building in the case of Timor-Leste.

##### **4.1 Main characteristics of the post-conflict societies**

The first challenge that post-conflict states are facing is the process of keeping the peace. Peace building is described as actions undertaken by international or national actors to institutionalise peace, understood as the absence of armed conflict and at least a modicum of political process (Call and Cousens, 2008). Peace building requires some form of doing justice, and if justice is required, rule of law becomes one of the necessary perspectives for looking at the given post-conflict environment. This process should follow in parallel to the post-conflict state building on a long-term basis. State building is defined 'as purposeful action to build capacity, institutions and legitimacy of the state in relation to an effective political process to negotiate the mutual demands between the state and societal groups (OECD, 2008). Observing the state building in post-conflict contexts, Ball (2001) distinguishes three main characteristics of war-torn societies: institutional weaknesses, economic and social problems, and serious security problems. Firstly 'institutional weaknesses' like non-participatory and malfunctioning political and judicial systems, strong competition for power instead of attention to governing, a limited legitimacy of political leaders and no consensus on which way society should go. Secondly, 'economic and social

problems' destroyed or decaying social and economic infrastructure, an increase of the illegal economy, people reverting to subsistence activities, hatred among population groups and, conflicts over land and property. Finally these societies have to cope with serious 'security problems' huge quantities of small arms freely circulating among the population, political influence of the armed forces, demobilization and disarmament (Ball, 2001). It is very challenging to address land issues, especially access to land during the peace building (Unruh and Williams, 2013). Land is seen as politically too sensitive or technically too complicated to be tackled early in the post-conflict period (EU-UN, 2012).

#### **4.2 Post-conflict state building in Timor-Leste**

Keeping the peace immediately after the conflict in Timor-Leste was possible with big involvement of UNTAET and the UN security forces (UN, 1999). UNTAET was mediator and facilitator of the democratic processes like for the elections in 2001, and facilitated the process of preparation and adoption of the Constitution in 2002; the formal procedure for the independence of the Republic of Timor-Leste. UNTAET supported the processes of state formation with required ministries and other governmental bodies and assisted in the development and adoption of required laws and other state legal framework. The crises from 2006 showed that situation on ground was far away from acceptable, the general population's high expectations of life in an independent nation were not met and social unrest grew. Economic situation with available oil and gas revenue, failed to create growth, and poverty continued to be the reality for most Timorese (ADB, 2007). If legitimacy of the state in the eyes of its citizens in establishing sustainable state-society relation, based on the state's capacity to provide security and social services (Takeuchi, 2014), Timor-Leste failed in accomplishing this in the first six years after the conflict.

Speaking to Timorese people at that time it was noticeable and sad, the extent to which the crises in 2006 had reawakened 'the trauma and the legacy of long years of political conflict and violence' and how much fear there was that at any given moment, 'the communal conflict would turn into a new war with a greater displacement crises' (Trindade and Castro, 2007). After the crises in 2006 UN reformulated its mandate, a new mission UNMIT was adopted by the UN Security Council (UN, 2006), including an international police force to replace the international military troops. Elections took place in 2007, formation of a government by the Alliance for a Parliamentary Majority coalition and political stability was accomplished only after the events in 2008 (ICG, 2010). It is believed that successful implementation of the National Recovery Strategy had a big positive impact of the overall social life in Timor-Leste (Van der Auweraert, 2012).

The post-conflict period generally could be observed in three time phases: emergency, early recovery and the reconstruction. Activities in the emergency phase focus on establishing basic governance and providing humanitarian services. Activities in the early recovery could be identified as: development of policies, strategies and legal framework, establishment of government and administrative infrastructure (Songo, 2014; Todorovski et al., 2012). Based on the events, activities and developments in the period from 2000 till 2008 could be accepted of both emergency and early recovery. A reconstruction period is when implementation of the developed policies strategies, legal framework and administrative infrastructure from the early recovery period was took place (Songo, 2014; Todorovski et al., 2012), for the case of Timor-

Leste the period after 2008 could be accepted as reconstruction period.

### **4.3 Land administration in post-conflict state building in the case of Timor-Leste**

The post-conflict land administration in Timor-Leste was significantly influenced by the colonial and conflict characteristics. Where, largest impacts were from: displacement, illegal occupation, destruction of infrastructure and houses, loss of land records, and land professionals which fled the country. The rest of the section will make an observation about how land and land administration facilitated the process of post-conflict state building in the case of Timor-Leste. For this we will use the structure of the characteristics of the war-torn societies (Ball, 2001).

Recognizing that the rule of law is critical to a states emerging from a conflict (Rugege, 2013), we found that the developments of the legal framework, the establishment of organisations, and the participation of communities and the citizens in the land sector (USAID, 2012), contributed to the realisation of the rule of law in the case of Timor-Leste.

*Institutional weaknesses:* Post-conflict contexts face institutional weaknesses like: limited legitimacy of the state, a non-functioning political system and government structure, not available or adequately skilled professionals and an inadequate legal framework. Legitimacy of state initially was supported by the involvement of the UNTAET and international security forces; the land sector was supported by UN-HABITAT. The post-conflict governmental structure was supported by creation and performance of the DNTPSC; organisation responsible for land registration and administration, and registration of disputed properties. DNTPSC with support of UN and international donors significantly improved the legal framework and operational procedures. Training and education of the staff of DNTPSC was and still is supported by capacity building projects funded by international donors.

*Economic and social problems:* Post-conflict states witness social and economic problems such as: death and injury, displacement, destroyed properties and infrastructure, loss of proof of identity and ownership. Addressing land issues in the AD (1999), was a first step of involvement of specific land disputes mechanisms and land administration in the improvement of the social and economic situation. DNTPSC assisted in regards of displacement and destroyed properties by providing cadastral products and services –when they become available. The project Strengthening Property Rights in Timor-Leste supported by USAID and the National Recovery Strategy had a successful implementation, which to a big degree put to an end the long and difficult problems of the displaced people. It is believed that the project and the strategy had beneficial impact on the social life in supported the overall difficult economic situation in Timor-Leste. Development of land administration, specifically in creation of the land record that were destroyed and unavailable, contributed to the service provision to all land related sectors and significantly increased the security of the land rights. This was also seen as a support of the establishment of the land market within the overall economic development of Timor-Leste.

*Security situation:* After the conflict ended in 1999, the peacekeeping process in Timor-Leste was realized with involvement of UNTAET and UN security forces. However their presence was not enough to stop the escalations of the social unrest into the crises in 2006. With

establishment of the second UN mission UNMIT where international police forces were included, the overall security situation was on higher and acceptable level. HLP and land administration issues that contributed to the security situation in other post-conflict cases were creation and availability of functional land dispute resolution mechanisms. With the Law No. 1/2003 this duty for the case of Timor-Leste was briefly given to the DNTPSC, but further legal legislation, operations and procedures were not developed. It was identified that within the registration process there was a possibility to map the disputed parcels. These maps were publicly displayed in the easy accessible points in the communities, which were believed that this stopped continuation of the illegal land and property transactions; with this conflicts over disputed properties were significantly reduced. From the video statement, of Mr. Mokokoane, village chief from Timor-Leste, we can derive that registration of land in the land administration system and availability of lease agreements and land records, resulted in preventing the conflicts over land. In the past this conflicts over land were a regular practice but nowadays with availability of the lease agreements this is reduced especially in inheritance cases (Mokokoane, 2014).

## 5. CONCLUSIONS

Answering the broad question of this paper we conclude that post-conflict land administration can be seen as a facilitator of state building in Timor-Leste. As per the discussion in section 4.3 we conclude that post-conflict land administration had a positive role in strengthening of the institutional weaknesses, it contributed in improvement of the economic and social situation, and to some degree to the security situation of post-conflict Timor-Leste.

From the findings in this section about land administration during the conflict in Timor-Leste we could derive that it was effected with: complex colonial and conflict characteristics complicated with many waves of displacement, secondary occupations and destruction of infrastructure and houses. Land records were burned and destroyed and almost all senior and experienced official involved in land fled Timor-Leste after the 1999 referendum. Legal framework for land administration was outdated and not appropriate. AD (1999) included creation of the land dispute commission and improvements of the land administration system. It was assessed as a negative point that establishment of land claim commission was not fully develop after 2000 (de Silva and Furusawa, 2014) as instructed in the AD (AD, 1999).

One of the first adapted laws in the Independent Parliament of Timor-Leste was the Land Law 1/2003. Within this law DNTPSC was established with mandate to administer immovable property, develop policies and draft legislation, and it served as register for properties under disputes. DNTPSC with support of UN, UN-HABITAT and international donors significantly improved the legal framework, operational procedures, and the employees were trained and educated. Initially pilot projects were started about the registration and issuing the lease agreements and afterwards more systematic projects for land registration and administration in thirteen capital cities were performed with support of USAID. During the registration process all properties which were under dispute were registered and made visual on publicly displayed paper orthophotomaps – shaded in red. This was identified as good practice that stopped transactions of the disputed properties and reduced land conflicts. Creation of the land record and making them available, contributed to the service provision significantly

increased the security of the land rights. This was also seen as a support of the establishment of the land market. National Recovery Strategy and implementation of the project Strengthening Property Rights in supported by USAID, are identified as good practice, involving multiple stakeholders and bringing social peace and reconciliation; where it was advisable that customary land owners should be integrated as legitimate stakeholders within the formal land administration system.

This study acknowledged the contributions of the land administration in the post-conflict contexts in the case of Timor-Leste. Thus, recommendation from this study is further research on which functions of land administration and within which circumstances facilitates post-conflict state building. Since we identified that land administration facilitates state building in post-conflict contexts, it is recommendable that same interventions in land administration to be applied in peace situation when developing land sector in the underdeveloped.

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