

## **'Land reform' in Timor Leste? Why the Constitution is worth defending**

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International aid agencies have moved into the land debate in Timor Leste, at a time when controversy rages over proposed leases of large tracts of land to foreign biofuel companies and a proposed new land law. The leases, and their potential alienation of agricultural land, were initiated in the middle of a serious food crisis, when the AMP government was financing a number of private contracts for rice import and distribution - themselves subject to corruption claims. This planned alienation of farm land is remarkable when one considers that Timor Leste has the fastest population growth rate on earth. What land will be used to grow the food needed for this growing population?

The aid agencies (mainly USAID but also AusAID and the World Bank), for their part, bring particular economic liberal ideas about 'land reform', which challenge provisions of Timor Leste's constitution and carry hidden social, ecological and food security dangers. After the controversial land leases became public in 2008, the AMP government put out a proposed land law, developed by USAID. Though the main part of this bill sets up a mechanism to resolve land conflicts, it also represents a foundation stone for land and agricultural 'modernisation', which would include commercialisation and foreign control of land. While there have been more than 400 leases of 'state land' in Timor Leste since 1999, making use of government decrees (Fitzpatrick, McWilliam and Barnes 2008, s.43), and while the 2009 land bill relates mainly to urban land, the USAID project adds powerful momentum to a systematic commercialisation of land that is likely to affect the entire nation. There will be pressure for more land claims.

Yet Timor Leste's 2001 constitution (section 54.4) specifies that only Timor Leste 'natural persons' can own land – that is, neither corporations nor foreigners. This constitutional protection was presumably enacted in response to prior foreign control of land and dispossession. The proposed law would sidestep the constitutional protection by normalising medium to long term leases, which are effectively similar to ownership.

Critical questions posed by these processes would seem to include, what is the character of the proposed 'land reform'? what threats might be posed? and, on land matters, is the constitution worth defending? Allegations of corruption have been raised around the land leases, but here I want to focus on these foundational questions.

This paper therefore explains the ideas and interests of the international aid agencies, looks at the risks of land and agricultural 'modernisation', in particular the rationalisation and commercialisation of land, exposure to volatile food import prices and the overstated benefits and unaccounted costs of monocultures. Finally it considers the future of customary land and small farming, before summing up on the above mentioned questions.

### **'Land reform' and the aid agencies**

While they do not necessarily support Timor Leste's proposed biofuel leases (MAP-GTLeste Biotech 2008; RDTL-EDA 2008), AusAID, USAID and the World Bank, have long pushed for such land commercialisation. They have developed a notion of 'land reform' which plays on uncertainties over title but more generally emphasises the themes of 'strong titles', land registration, development of land markets and openings for foreign investors. Yet these are themes which bring particular dangers in dispossession, damaging monocultures and food insecurity.

Economic liberal approaches to land, agriculture and food security are closely linked. The approach to food security promoted by large grain exporters such as Australia suggests 'the important role that trade liberalisation can play in reducing poverty and increasing food security' (DFAT 1996, vii). A strong linkage is seen between commodified land, monocultures and agricultural liberalisation.

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AusAID, the most active agency on 'land reform' in Melanesia, has been a strong promoter of Australia's highly commodified land title system, but it recently modified its position on customary land. AusAID now says its approach is to 'recognise' and 'protect' customary title, but by supporting 'recording or registration', and by 'facilitating dealings in customary land', although only after 'robust and open community consultation and participation' (AusAID 2008, xii-xv). The 'land reform' said to be necessary will provide for public purpose land, attract investment, provide tenure for urban settlers, enhance women's rights and facilitate rural credit (AusAID 2008, 10).

In Timor Leste, however, it is USAID which has become the lead agency on 'land reform', beginning a 'land law program' in 2004, which reported in 2006 (USAID 2006b). This was followed by a 'Technical Framework for a Transitional Land Law' in 2008 (Lopes 2008) and the government's draft law in 2009 (RDTL 2009). The US agency said it saw no particular problem in most land title in Timor Leste but argued that property rights 'must be strengthened' and proposes the broader construction of 'indefeasible' title ('enforceable against the world') after a nation wide survey (Lopes 2008, 23-24). A dual system of registration - group title in customary land and individual title in 'formalisation areas' - was suggested (Lopes 2008, 19, 24).

The US generally urges strong private investor and property rights. USAID in 2005 argued that 'land tenure and property security' were necessary to stimulate 'efficient market transactions' including 'sale/purchase/lease' transactions. These can be assisted by a 'market assisted land redistribution', which can include 'incentives to reduce barriers to obtaining land' and 'technical assistance' for titling, which can in turn lead to 'privatization / reallocation of state lands' (USAID, 2005, 27-28). The Timorese land bill does not yet go this far, however in Iraq USAID set up a program for the, 'clear definition of land occupancy ... [through] the eventual introduction of Unique Parcel Registration Numbers ... [to] provide the records and stability necessary should the GOI [Govt. of Iraq] choose to move toward a system of private agricultural land ownership' (USAID, 2006a, 225-233). This would be the likely next step for Timor Leste.

The 'Special Regime for the Determination of Ownership of Immovable Property' (RDTL 2009), however, is mostly about a rapid determination of land disputes which have come about through the impact of various colonial regimes, displacement, squatting and urbanisation. The proposed law sets out procedures for registration, identifying possession, compensation, eviction and awarding of title. It would set up a National Property Cadastre (a register of surveyed land) and a Cadastral Commission, to hear appeals. Some protections are built in, such as a requirement for the government to provide an alternative residence for those evicted from their family home. However there are tightly defined periods for determinations and evictions. Importantly, the land bill provides for the leasing of alienated or 'unused' land which will revert to the state. Specifically, 'any non-residential use of immovable property that has reverted to the state shall be regularised through a leasing contract' (Art 87.4). This provides for the 'regularisation' of foreign controlled land, including agricultural land.

The bill largely excludes rural customary land (the bill calls it 'community land'), which still provides for up to 80% of the East Timorese population. This land is to be identified in the land register but is not to be regulated by this Bill. The government is urged to 'consult with the local community before authorising third parties to use land in community land areas'. The move to 'reform' customary land is thus seen as a logical next step.

### **'Modernisation' of land and agriculture**

It is useful, at this stage, to review the general problems, which I call the 'high risks', of land and agricultural 'modernisation'. Practically this means a shift into large scale 'green revolution' type monocultures. The 'high risks' can be described as, the rationalisation of land, exposure to import price volatility, and the overstated benefit and unaccounted costs of large monocultures.

#### *Rationalisation of land*

Most former colonies share a history of indigenous peoples being displaced from their lands, initially by conquest but later by other means. This displacement and dispossession was, in all cases, disastrous for the development and security of those communities, including their food security. Yet in relatively recent times, modernist arguments have suggested that all countries would be better off with greater land

registration, commercialisation and rationalisation, typically followed by the ‘more highly productive’ large scale monocultures.

The 1950s Swynnerton Plan in Kenya, for example, backed access to registered land for Africans, with modernist goals of providing ‘greater security to landholders, [and to] enhance the freedom to transact land and serve as a basis for agricultural credit’ (Dickerman et al 1989, x-xi). These are the themes used in liberalisation plans today. Lawrence, the chief British expert on land registration, came to the view that registration should be used only when there was a ‘general demand’ for registration, when the costs were not high and where there were likely gains in agricultural productivity (Lawrence 1970). However Okoth-Ogendo concluded that any such benefits were outweighed by specific disadvantages, the redistribution of political power, creation of economic disparities, generation of a ‘disequilibrium’ in social institutions, failure to develop extension and rural credit, and a general failure to improve agricultural productivity. Of the new registered land owners, less than 5% were women; further, the new land regime was ‘creating new forms of stratification and status differentials’ amongst the small farming sector (Okoth-Ogendo 1986). More recently, others have concluded that ‘the hoped for benefits of [land registration in Africa] do not accrue automatically and, in some circumstances, the effects of registration may be the converse of those anticipated’ (Cotula et al 2004, 3). Registration may exacerbate land disputes, elite groups may claim land beyond their entitlements under the customary system, those without education or influence may find their land registered to someone else, secondary owners of land such as women ‘often do not appear in the land register and are thus expropriated’. In Kenya, there was ‘no significant correlation’ between registered land title and rural credit, there were ‘negative repercussions’ on vulnerable groups (Cotula et al 2004, 4-5).

Rationalisation and displacement of communities from land has often been linked to problems of food security. Maxwell and Wiebe (1999, 830) note the ‘conventional links’ of a ‘linear framework’, that suggest land must be mobilised for large scale production, to generate more income; this income, in turn, can be used to purchase more food. This is a pattern relied on by liberal modernist writers (e.g. De Soto 2001). However the commercialisation of customary lands can rapidly feed into ‘forced asset sales’ and the disruption of small, diverse farming patterns can destabilise regional food production and distribution mechanisms. A push to commercialise small land holdings ‘may fail to serve either growth or equity purposes [whereas] diversification, rather than specialisation, is an imperative for food security’ (Maxwell and Wiebe 1999, 841).

#### *Exposure to price volatility*

Many small countries have seen both a breakdown in widespread land tenure and the collapse of domestic food grain production. Even assuming a rational distributive mechanism within the country, such countries become vulnerable to the volatility of international food grain prices. On the tenth anniversary of the WTO’s Agreement on Agriculture, and noting the post-1994 rise in food imports, the UN’s Food and Agriculture Organisation commented,

‘Although lower basic food prices on international markets bring short-term benefits to net food-importing developing countries, lower international prices can also have negative impacts on domestic production in developing countries that might have lingering effects on their food security’ (FAO 2004).

The global food crisis of 2008 was the culmination of a double movement in price volatility, which had been brewing for some years. Timor was already in the grip of yet another of its own food crises, following the political violence of 2006; the global food crisis compounded this. In the first phase, cheap subsidised grain imports killed local developing country markets. In the second phase, expensive grain imports starved whole populations. Until the recent crisis, small farmers had been hurt by cheap imports. When imported staple food is cheap, farmers cannot justify planting next season’s crop. The earlier low prices were a result of heavy domestic subsidies by the big grain exporters, such as the USA and Australia, and pressures for agricultural liberalisation.

A good example of the damage from price volatility can be seen in Haiti, a country which was almost self sufficient in staple food production in the early 1980s, but by 2008 was food import dependent and starving. Under financial pressure from the US and the World Bank, Haiti began to dismantle its tariffs and other forms of protection (Georges 2004). Rice production fell sharply in the early 1990s and at the same time imports rose strongly (Toler 1996). By 2000, US rice imports into Haiti had risen to more than 200,000 tonnes. This drove many local farmers out of business and, when prices rose again, poor people could not afford to buy rice (Georges 2004). Haiti was in a serious food crisis in

2003, with damaged agriculture, food aid dependence and almost 4 million hungry (FAO 2003). By 2008 the situation had worsened (UN 2008).

Low food prices damage local production. High food prices hit poor people who have to buy their food. This is the unstable situation created by trade-dependent food patterns. The 2008 experience – driven by high oil prices, the biofuel industry and speculators – demonstrates that this volatility has worsened and the consequences are grave. The UN's World Food Programme (WFP) admitted that, with the price rises, it did not have the money to maintain its existing feeding programmes in 78 countries, let alone start new ones (Borger 2008). This was a predictable consequence of agricultural liberalisation, one that has already hit Timor Leste.

#### *Overstated benefits and unaccounted costs of large monocultures*

The claimed social benefits of large monocultures are typically over-stated. Corporate investors encourage this. Yet the extraction of profits from local resources and labour is the main reason large monocultures are created. So, in political debates, the income benefits to local communities are often exaggerated and the environmental costs are played down (e.g. SSCM 2008). With its narrow focus on export incomes and assumptions of unlimited growth, agricultural liberalisation promotes large chemical-intensive monocultures and ignores two substantial issues, the social value lost through displacement of small farming and the environmental damage of the monocultures. These massive 'negative externalities' (costs not incorporated into market prices) are passed across by large agricultural corporations to communities and the environment.

Monocultures have an ugly ecological footprint. The 'Green Revolution' of the 1960s, which promoted new seed varieties, chemical additives and irrigation, was anything but 'green' in the contemporary sense. It always worked in favour of monocultures, which reduce the diversity of production in a region, as well as reducing the capacity of small farmers to companion plant and spread their crop options. Sugar cane, soy beans and oil palm are similar in this regard. Land clearing erodes and degrades the soil, silting up rivers and choking surrounding marine reef systems. Excess fertiliser runs into the water, causing algae blooms. Some of the chemicals used caused cancer. These environmental and health costs were passed on to the wider community, being ignored by the economic statements of industrial agriculture. Further, productivity gains were 'uneven across crops and regions' and 'farmers benefited only where cost reductions exceeded price reductions' (Evenson and Gollin 2003). Most small farmers could not afford the more expensive inputs and consumers and small farmers alike discussed for many years the need to get off this 'pesticide treadmill' (Hansen 1986; Nicholls and Altieri 1997).

Finally there is the contribution of biofuels, which have raised competition between food for people and food for cars. Biofuels have generated a substitution of food crops for fuel inputs in recent years. The UN's Special Rapporteur on the Right to Food, Jean Ziegler, strongly opposes the biofuel industry and points to a startling opportunity cost, '232kg of corn is needed to make 50 litres of bioethanol. A child could live on that amount of corn for a year' (Biofuels Digest 2007). Food expert von Braun suggested that biofuels added a substantial amount - perhaps 30% - to the food prices rises of 2007-08 (in Borger 2008).

#### **Customary land and small farming**

Small farms are typically undermined and displaced by the monocultures; yet there are a range of social benefits from small farming. While the export contributions of small farmers may struggle to match those of the monocultures, they add value through substantial subsistence production, widespread employment and social security. When the formal economy fails in developing countries, small farms provide a refuge for livelihoods. Small farms also stabilise ecologies, with greater crop diversity and less damage to soil and water systems.

The additional social value provided by small farming communities has been referred to as 'multifunctionality'. Yet these 'positive externalities' (benefits not incorporated into market prices) are not accounted for in the arguments for expansion of chemically-intensive monocultures. The effect is to undermine strategies of sustainable development, and that is why it has been said that, 'the multifunctional view of agriculture ... offers the possibility of going beyond the questions concerning productivity and market competitiveness towards ... sustainable development...

[multifunctionality] presents an opportunity for numerous countries of the South to pursue their public policies on a new basis' (Losch 2004).

As Mazoyer points out, small farmers are affected both as consumers and producers in food crises, 'The majority of those suffering under nutrition are not purchasers and consumers of food, but rather producers and sellers of agricultural goods who have been reduced to extreme poverty through falling agricultural prices ... the poverty and under nutrition of non-farmers is indirectly but largely due to the impoverishment of under-equipped small farming communities' (Mazoyer 2001).

On the other hand, studies in Melanesia have shown that the productivity of customary land is widely under-estimated (Bourke and Vlassak 2004; Anderson 2006) and that cash economies may better supplement rather than displace viable subsistence livelihoods. Informal sector incomes (such as transport, roadside produce selling, small stores) in Papua New Guinea often deliver three or four times the incomes of participation in many 'modernist' industries, such as production for oil palm plantations, or labour in mining operations and fish canneries. Good incomes in PNG's rural fruit and vegetable markets depend mainly on sustained access to good quality land and access to good roads (Anderson 2008).

It should be recognised that small farmers add substantial value through subsistence production, local food security, widespread employment, social security and ecological stabilisation.

## Conclusion

Modernist 'land reform' proposals pose two broad, consequential problems for Timor Leste. The first is that a rapid, legal 'resolution' of disputes – which allocates 'unused' land to agribusiness – will exclude a more considered, inclusive process, which could look at how up to a quarter of the population became landless. Alienated land might then be used to include those people. The 'quick fix' approach will certainly exclude them, along with many others who are illiterate or who will become landless as rationalisation proceeds.

The second consequential problem is that both land tenure and agriculture are being steered into the export-oriented, monoculture model, the 'modernisation' of land and agriculture. While this is not the immediate aim of the 2009 land bill, rural customary land will be next. The logic is for rationalisation of land and cash crop production to devalue and 'squeeze out' small farming, as has been happening in Indonesia since the Asian financial crisis.

Land, after people, is Timor Leste's most precious asset; the constitution recognises this, yet alienation to foreign corporations and large leases subvert it. In Timor Leste's proposed 'land reform', investor interest is conflating dispute resolution with modernist land and agriculture models. This process, pushed by USAID, presents a number of 'high risks' for the environment, livelihoods and food security.

Timor Leste's small farmers have a future and an important role in sustainable development, but only if they retain their land and diverse cropping, if there is infrastructure support for local markets, if they are allowed to pursue supplemented livelihoods (cash economy activities together with subsistence farming), if they are backed by rural health and education services, and if export crops supplement rather than displace traditional farming. Timor Leste's constitutional protection of land is certainly worth defending.

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