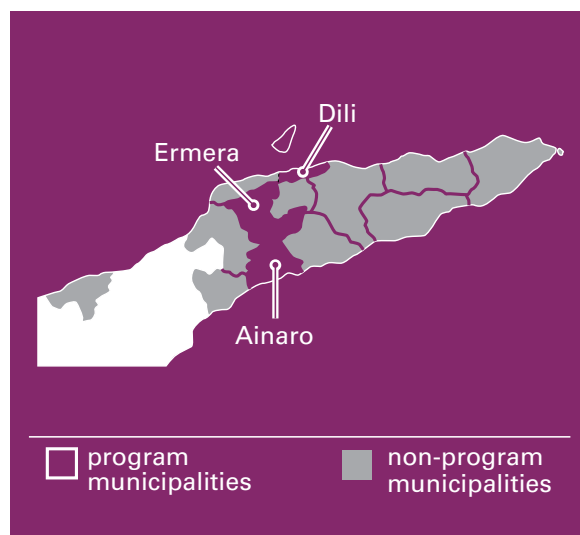


LAND POLICY BRIEF

DECEMBER 2016

KEY FINDINGS FROM THE SURVEY ON ACCESS TO LAND, TENURE SECURITY AND LAND CONFLICTS IN TIMOR-LESTE



Continued stability and future development in Timor-Leste are dependent on establishing the necessary legal and administrative mechanisms for providing access to land, land tenure security, as well as preventing and addressing land-related conflict. The survey interviewed representatives of 1,152 households between 3 and 8 of September 2016 in Ainaro, Ermera, and the urban area of Dili and was conducted by The Asia Foundation and the Van Vollenhoven Institute. The survey provides new and relevant evidence for policymakers to ground their decisions on, both with the current draft of Land Law Package, and/or other land-related legislation.

Information such as the very high number of people that currently live without tenure security, the difficulty of households in accessing land, the structural discrimination against women in accessing land were not new findings, but are now better quantified, giving policymakers more guidance about what problems need to be addressed and how. In addition, the survey provides new information on the possible effects of current draft land legislation and areas where the current draft laws can be modified.

The following are the key findings of the survey.



The Asia Foundation

 Van Vollenhoven Institute
for Law, Governance & Society

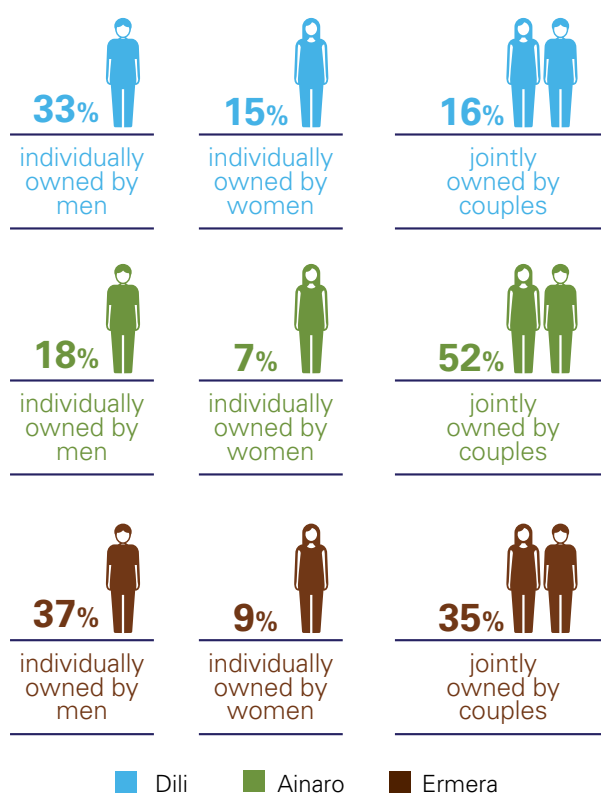
Findings on Access to Land

The survey found that there is no significant land market in Ermera and Ainaro, where people accessed land mostly through inheritance, during the Portuguese and the Indonesian administrations. In Dili there are more signs of a land market with people buying land from third parties, and more people settling in Dili from 1999 onwards (39 percent). However, the legality of these transactions can be questioned by the government (e.g., un-notarized sales). The majority of respondents indicated that it is difficult to obtain more land, and in Dili less than half of the households have access to other parcels of land in their 'home' districts. In all areas the majority of respondents indicated that it is difficult to obtain more land either due to high prices, or the lack of sellers.

Gender Inequality

In the researched municipalities (all patrilineal) men have greater access to, and ownership of, land and housing. However, there are several cases where the land is claimed to be owned individually by men, but the house is jointly owned by the couple. Any process of land registration or titling that does not incorporate clear measures to mitigate gender discrimination will most likely reinforce these inequalities and create another structural barrier for women to gain equal access to, and control of, land.

Who owns the land?



Findings on Dispute Resolution

The number of current disputes is around 10 percent, which is in line with previous studies. Communities prefer for land disputes to be resolved through village processes and not through the courts. However, they also feel that state representatives should be present for the dispute to be fully resolved.

In case of dispute over your land parcel, who do you think is able to solve it fairly?

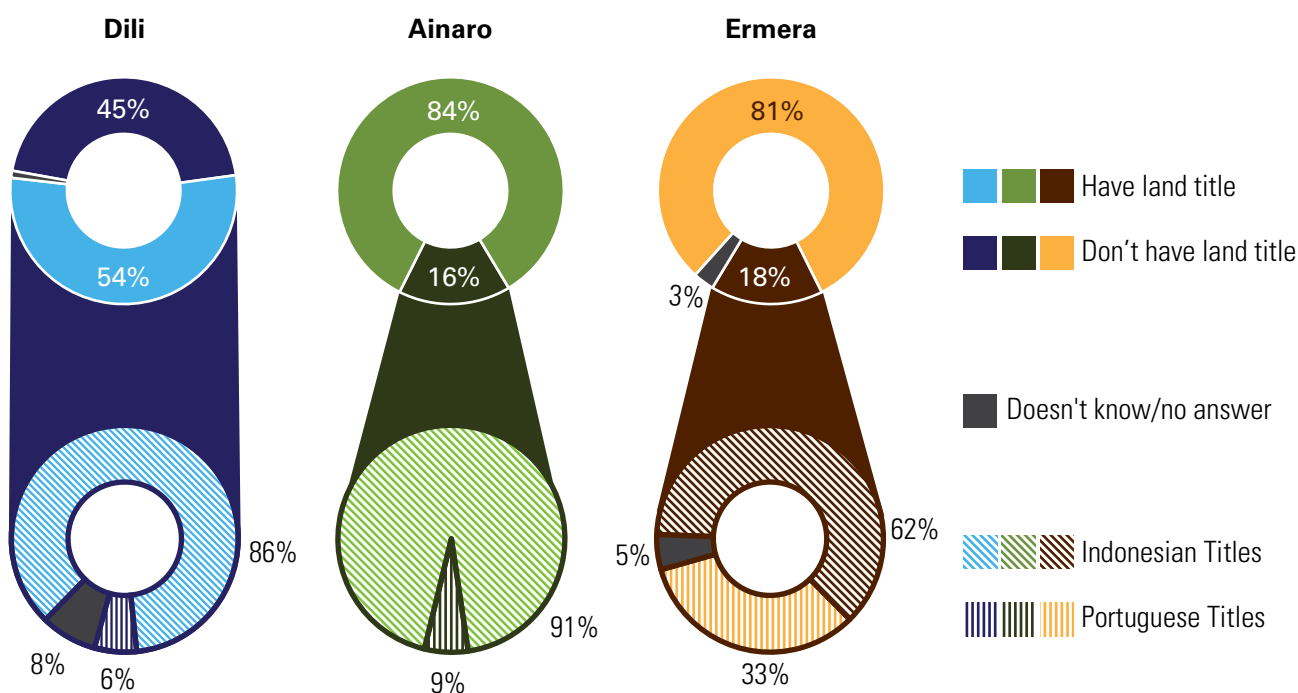
	Family	Aldeia chief	Suku chief	Customary Leader	Community members	DNTP	PNTL	Lawyer	Courts
DILI	42%	83%	83%	35%	13%	30%	18%	6%	26%
AINARO	75%	92%	91%	94%	24%	20%	46%	10%	19%
ERMERA	73%	94%	87%	79%	15%	10%	16%	1%	14%

Findings on Land Tenure security

Lack of Legal Tenure Security

Most of the respondents consider that they own the land where they live (Dili: 87 percent; Ermera: 97 percent; Ainaro: 100 percent), despite not having a land title. Without a land title the land rights of the majority of households are not recognized under the current Law 1/2003, leaving them without any legal tenure security. A stricter interpretation of Law 1/2003 leaves even more people without legal tenure security.

Do you have a formal land title for this parcel? What kind of land title?



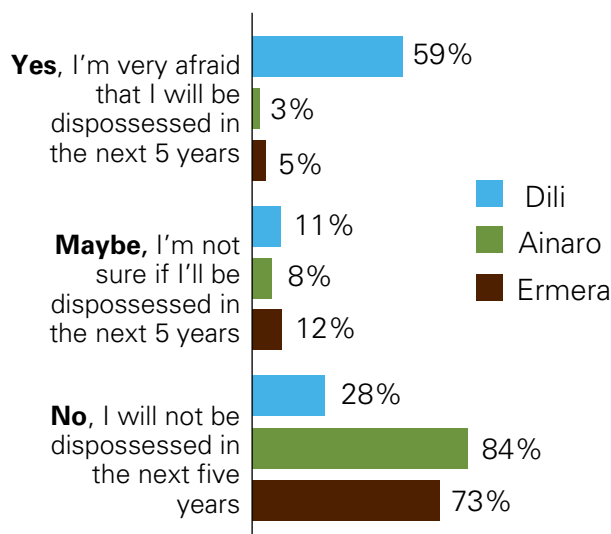
Estimated number of people without legal tenure security

	Loose interpretation of Law 1/2003	Strict interpretation of Law 1/2003
Dili	101,000	214,000
Ainaro	55,700	65,300
Ermera	102,000	116,800

Evictions

The tenure insecurity of households is however perceived differently in different areas. The majority of households in Dili have low perceived tenure security, with 70 percent of the households fearing that they will be evicted in the next five years, and 50 percent reporting that being evicted by the state is their main concern regarding land. In Ainaro and Ermera the perceived tenure security was much higher. However, it is expected in other municipalities where state-led dispossession for infrastructure projects has been happening perceived land tenure security could be lower. These results show that it is urgent to approve legislation that reduces the legal tenure insecurity of the Timorese.

Are you afraid of being evicted in the next 5 years?



Titling

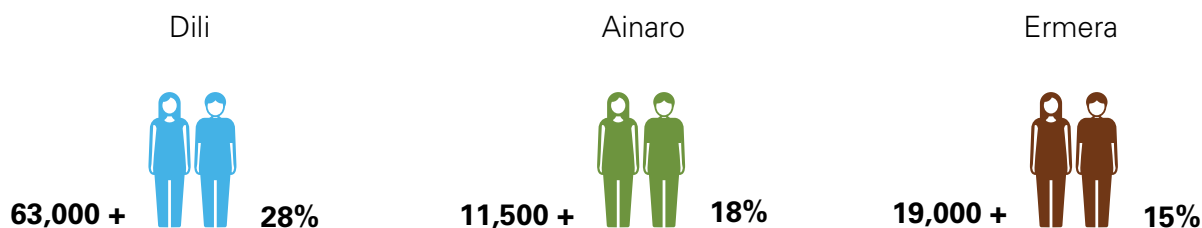
Despite the strong public support for land titling, experience in other countries advises caution due to the risks of land titling initiatives in rural areas, especially when focused on individualized land rights. Such programs can cause conflict in areas where land related conflict is latent, further disadvantage less powerful members of a community and vulnerable groups such as women, as well as endanger central social links of communities and families. Alternatives to individualized land rights in these areas should be studied and considered as a preferential solution to provide legal tenure security.

Findings Relevant for the Land Law

Compensation

Under the current draft Land Law a considerable percentage of the households will not have any land rights recognized by law and will not be entitled to any compensation. The lack of any protection against evictions in the current draft law will leave these households without any social protection and may cause further marginalization due to difficulties in assessing equivalent land.

Number of people who may face eviction under the draft land law 2016





Furthermore, the survey also found that the majority of households would react negatively to any loss of their land through the Land Law, even if compensation is paid to them. The Land Law must establish strong protections against eviction or other measures that effectively protect the housing rights and avoid the marginalization of households. Alternative housing options should be considered for those not protected by new laws, including leasing options and pro-poor housing options in the city.

Ownership

The concept of ‘ownership’ perceived by the great majority of respondents is very different from western-like definitions of ownership, in which the owner can freely transfer and avail of the property. Despite claiming to be the owners of the land, the great majority of respondents reported not to be allowed to transact or somehow burden the property.

What are the respondents NOT allowed to do with their land?

	Sell/ give their land to members of their family	Sell/ give their land to members of their community	Sell/give their land to people from other municipality	Sell/ give their land to foreigners	Rent their land to people of other municipality	Transfer the land as inheritance	Build a house in their land
Dili	81%	87%	92%	95%	78%	26%	17%
Ainaro	81%	87%	89%	89	74%	8%	6%
Ermera	61%	72%	75%	76%	65%	15%	8%

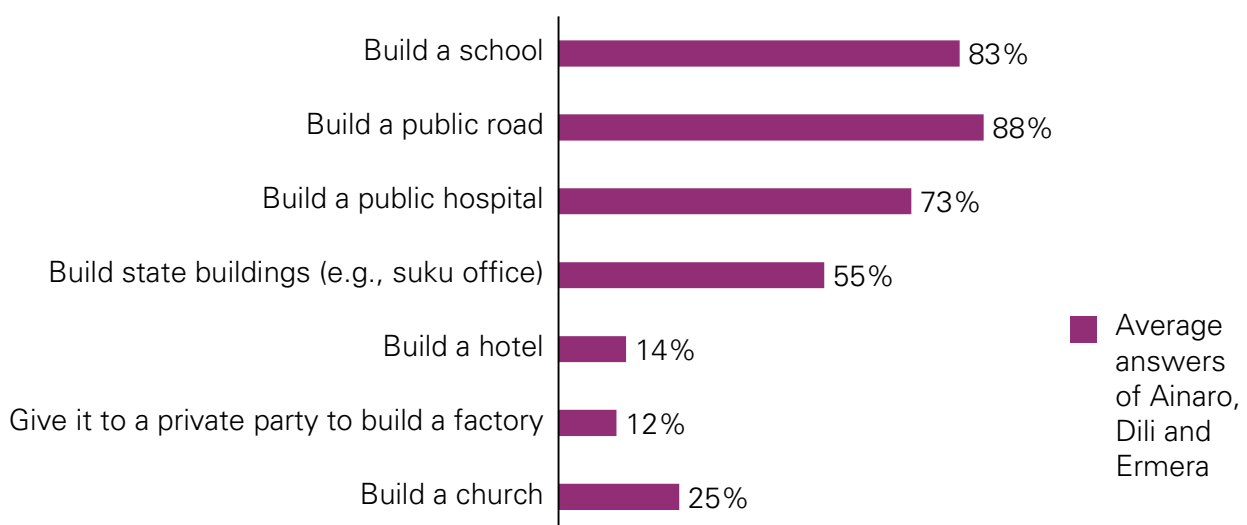
These results indicate that besides the ‘owner’ there are other rights and beneficiaries of the land, and a western-like ownership will be at odds with the current understanding and relation with land of the Timorese. The social changes and potential conflict that can derive from this shift of land tenure paradigm are unpredictable, and can endanger central social links of communities and families.



Findings Relevant for the Expropriation Law

A considerable number of respondents defend that the power of the state to expropriate land for public purpose and upon the payment of fair compensation should only be exerted carefully or not used at all. While only a few respondents disagree with expropriation for more obvious purposes such as the construction of public roads and hospitals, the great majority of respondents disagree with expropriations for private enterprises such as hotels and factories, as well as religious purposes.

In which situations can the government take land from individuals and communities?



In case of expropriation the majority of the respondents prefer to receive alternative land and house of the same value instead of monetary compensation.