

Customary Law Practices in Timorese Society: Traditional Justice, Legal Pluralism, and the Tension with Human Rights

Hercus Pereira Dos Santos

Instituto de São João de Brito Ulmera Likisa

Corresponding Author: Hercus Pereira Dos Santos santoshercus10@gmail.com

ARTICLE INFO

Keywords: Customary Law, Traditional Justice, Legal Pluralism, TimorLeste; LiaNa'in, Nahe Biti, Human Rights, Gender

Received : 5 May 2026

Revised : 20 June 2026

Accepted: 21 July 2026

©2026 Santos : This is an open-access article distributed under the terms of the [Creative Commons Atribusi 4.0 Internasional](https://creativecommons.org/licenses/by/4.0/).



ABSTRACT

This article examines the practice of customary law (traditional justice) in Timorese society and its position within the legal pluralism adopted by the State of TimorLeste. Drawing on field interviews conducted in 2020 with community leaders, elders, and liana'in in the sucos of Ulmera and Funar, the study explores how traditional justice continues to operate alongside the formal state justice system more than two decades after independence. The findings show that traditional justice is valued for its speed, simplicity, accessibility, and its central objective of reconciliation between conflicting parties, in contrast to the individualistic and timeconsuming character of state justice. At the same time, the practice reveals significant limitations, particularly the neartotal exclusion of women from decisionmaking roles and the coercive influence of supernatural belief and fear of curses in compelling compliance. The article situates these findings historically, tracing the persistence of customary authority through the Portuguese and Indonesian periods and the introduction of democratic ruleoflaw concepts under the UN Transitional Administration. It concludes that while the Constitution of TimorLeste implicitly recognises nonjurisdictional dispute resolution and the State increasingly values traditional justice as a partner to formal courts, greater attention to gender equality within customary structures is needed to reconcile traditional practice with international human rights standards

INTRODUCTION

We begin this article with a story from the oral tradition of the House of Bamatak commonly known as Loro Wehali, Rota Wehali, Luhan Wehali, Debu Wehali, Ukun ni nain, Justisa ni nain (Note 1) in which the first four ancestors (two men and two women) came from the royal house of Wehali carrying a crocodile and, by an invisible path, appeared on Mount Aihahi. The elder brother and his wife asked the younger brother and his wife to return to Wehali through a hole in the hill that served as a gateway in and out of Wehali. When the younger couple entered the hole, the elder couple lifted a great stone to seal it, so that the younger brother and his wife would become judges in the world beyond: whenever the elder brother, doing justice on earth, could find no solution, he would ask the younger brother to reveal the truth in the world beyond, making that truth shine like a star or the moon in the dark night (Note 2).

"O ukun elik, jutisa elik, o muna ukun hene, o muna jutisa henene, o matan anesa hitu, o matan anesa hula." (Note 3)

Today, the elders of the House of Bamatak of Funar recount that the first dispute encountered by the ancestors of Bamatak on Mount Aihahi was a dispute over land between the House of Bamatak and the House of Manehi'ak-Manekaolik. Because the ancestors of Bamatak arrived first on Mount Aihahi, followed later by relatives from Warlaba, near to Fatumakerek who founded Manehi'ak-Manekaolik, the mountain was eventually divided in two: the eastern part for Bamatak and the western part for Manehi'akManekaolik. This division followed a change in the burial ritual performed by the founders of Manehi'akManekaolik for the deceased elder brother of the founder of Bamatak exposing the body atop a Benjamin fig tree before burial in the earth. After that burial, the two houses lived together in harmony as neighbours on Mount Aihahi.

In the past, whoever owned land, he had economic and political power which was later called the landlord (Land Lord). In the history of the world, many Land Lords later became kings or rulers. So it is likely that when Na'i Bere was alive, he was the sole ruler of the land of the Aihahi region which included East Aihahi and West Aihahi. It was only after Na'i Bere died with the belief that Na'i Bere was from the kingdom of Wehali that his body had to be placed on the Benjamin fig tree which was the symbol of the kingdom of Wehali itself. Hali which means Benjamin fig tree. Na'i Bere's body was placed on a Benjamin fig tree so that his body would remain illuminated by the Sun, perhaps because the Sun is related to Ada Lulin (Sacred House) and one of them is Ada Lelo - Ada Lulin Bamatak.

Ada means house and lelo means sun. Beliefs related to the Sun are found in many places. In some places, even the Sun is referred to as god: the sun god. But by Manehi'ak-Manekaolik the burial ritual of Na'i Bere was given despite the belief of the children of Na'i Bere that when their father came from Wehali he appeared through the ground and continued to rise upwards like a shoot that penetrated from the ground and always rose upwards which is called Mosun ni nain, Laur nia nain, which means the one who appears and sprouts. Emerging from the ground and always grow upwards. So that Na'i Bere who has died must still be placed on top and in this case on top of the Benjamin fig tree which

remains related to the kingdom of Wehali. But then Na'i Bere was buried in the ground with the help of the ritual of Manehi'ak-Manekaolik. So the Aihahi of the West was given to Manehi'ak-Manekaolik.

LITERATURE REVIEW

In a Portuguese document in 1737 about the payment of Finta and Auxiliares in a book entitled *Timor no Passado; Fontes para a sua História* (Séculos XVII e XVIII), p. 213, by Artur Teodoro de Matos, mention the kingdom name of Aifai Unar. The order in which Aifai Unar's name is mentioned is close to several nearby kingdom names, one of which is the Kingdom of Aifailacor.

This means that perhaps the center of the first Funar kingdom was on the hill of Aihahi. This is a very common thing in ancient times. Past history shows that in many traditional ancient regions or kingdoms the center of the kingdom was always on the hills in order to protect itself better (see better from top to bottom) from the threat of enemy attacks or wild beasts. In the developed kingdoms of the past, they usually erected high towers in order to better control the enemy from the top of the tower.

From the first landing of Na'i Bere with his brother Na'i Mali (who was later made the ruler and judge of the occult on the hill of Aihahi) on the hill of Aihahi, Na'i Bere was the only ruler of Aihahi (East Aihahi and West Aihahi) as ukun isek, justisa isek, the one who made visible rule and visible justice until the time of Na'i Bere's death when power was taken over by Manehi'ak-Manekaolik with the granting of all the territory of Western Aihahi.

With a kingdom called Aifai Unar which should have been the Kingdom of Aihahi Hunar (because Portuguese people find difficult to pronounce the letter H) which in later documents was only referred to as the Kingdom of Funar, the first clan or dynasty as ruler was the Bamatak. Because the first Aihahi ownership was from the Bamatak clan with the only ruler of Aihahi was Na'i Bere. Then after Na'i Bere died, power was taken over by Manehi'ak-Manekaolik.

In the subsequent process, the Bamatak serves as the authority that select the rulers and/or grants the ruler the mandate to rule – as documented by Judith Bovensiepen in her doctoral thesis, *The Land of Gold*. As in modern state, a swearing-in ceremony for President of the Republic by Parliament. In 1897, Bento de França explained that Parliament in East Timor can rule the kingdom as it was happened only when a crisis occurs in the royal lineage.

In the kingdom of Funar, one of the Bamatak leaders named Jerimias Hahik Wain ruled the kingdom of Funar when his uncle (brother of her mother) Dom João da Cruz, from Manehi'ak, was imprisoned in Atauro island and then during Second World War, in Japanese government in East Timor, 1942-1945, Leki Bere, one of Bamatak leaders, was rulling the Kingdom of Funar. He was pretended to be imprisoned in Atauro island but the other Bamatak leader named António Ferreira saved Leki Bere life by him giving the land of Maniru to the Liurai of Maneka'olik Anibal do Espírito Santo.

The Bamatak also acts as the highest authority in matters of customary law and traditional justice; when a dispute cannot be resolved or a party wishes to appeal, it is the Bamatak who settles the matter.

We see, the story of land and power dispute between Bamatak, Manehi'ak, Maneka'olik among thousands like it worldwide, illustrates how disputes arose in ancient times and how ancestral communities sought to resolve them and restore harmony. It frames the central concern of this article: the enduring role of customary law in regulating social life in Timor-Leste, and its relationship with the modern democratic state.

TimorLeste, recognised as an independent state on 20 May 2002, has not yet fully internalised the basic principles of Western European democratic rule of law. Although the Portuguese presence lasted 450 years, Portuguese law never deeply penetrated Timorese society, largely because Portuguese administration did not intervene directly at the community level; instead, Portugal ruled through the leaders of the Timorese kingdoms, a model some historians describe as indirect rule. Even after Portugal became a republic and abolished monarchical power domestically, its administration in Timor continued to respect local rulers. Consequently, the largely illiterate native population continued to regulate their lives through customary law, while only a small, educated, assimilated elite made use of Portuguese law.

Following the Indonesian invasion, the occupying administration pursued a transmigration policy that brought Indonesian settlers into even remote areas of the territory, yet Timorese society continued to resist Indonesian cultural influence. Guedes and Mendes (2005, p. 87) note the marked growth of Christianity in TimorLeste during this period as "an identity reaction" to an Indonesian power perceived as Islamic in character. Even though Indonesia is the world's largest Muslimmajority country, Timorese overwhelmingly embraced Catholicism as a form of resistance to the occupation, and as under Portuguese rule very few Timorese made active use of Indonesian law, with the majority continuing to live by customary law.

The United Nations Transitional Administration in East Timor (UNTAET) introduced the foundational concepts for the new state the rule of law, democracy, and human rights which were essentially new to Timorese society. We consider it one of the shortcomings of the UN administration that it did not adequately prepare Timorese citizens to navigate the political pluralism inherent in the democratic rule of law. Having lived through Portuguese rule, Indonesian occupation, and then the arrival of the United Nations with its WesternEuropean democratic concepts, Timorese society experienced what can fairly be called a cultural shock. We therefore share the view expressed by Pedro Bacelar de Vasconcelos, as cited in the master's thesis of Adão (n.d., p. 79), that civic education was not needed to teach Timorese the meaning of democracy since in 1999 they had already given the world a lesson in democracy but rather to familiarise them with the practical tools of representative democracy, including how political parties function, since these tools were not part of the local cultural tradition.

We agree that greater civic education along these lines could have averted many of the unnecessary crises that marked TimorLeste's postindependence period. During the resistance, command of the armed, clandestine, and diaspora struggle rested with the Falintil military leadership, where decisionmaking was

necessarily centralised rather than democratic a pattern consistent with both military necessity and local culture, in which conflicts were traditionally resolved by the decision of a leader. This culture of leadercentred decisionmaking came into tension with the new culture of democratic rule of law, democracy, and human rights introduced by UNTAET.

From this brief account of Timorese reality, it can be said that TimorLeste is, on one hand, a country that preserves its cultural identity strongly, and on the other, a country still learning to apply the concepts of democratic rule of law, human rights, and democracy while simultaneously valuing the customary law practised throughout its territory for the sake of peace and social cohesion. TimorLeste may thus be described as a state that has opted for legal pluralism: it seeks to build a democratic rule of law while allowing, valuing, and promoting the use of customary law within communities, for the benefit of both community and state. This article accordingly examines the practice of customary law in Timorese society, drawing on interviews conducted in 2020.

The Justice Sector Strategic Plan for TimorLeste (20112030), approved by the Coordination Council for Justice in Dili on 12 February 2010, recognises that "the justice sector plays a crucial role in efforts to consolidate peace and stability, ensure the rule of law and promote accountability and transparency" (Ministry of Justice, TimorLeste [JSSP], 2010, p. 7). According to this plan, the State must build a justice system that guarantees fundamental rights and access to justice for all citizens, serves the values and culture of TimorLeste, and earns the confidence of the Timorese people (JSSP, 2010, p. 7).

In reality, this plan remains far from fully realised. We recognise the State's efforts to improve the justice system a task that is neither easy nor quick while acknowledging that many cases remain pending in the courts. Judicial delay is a global phenomenon, but it is especially acute in TimorLeste as a young state with limited human resources in the justice sector. It is largely for this reason that ordinary people turn to traditional justice, as the chief of Ulmera suco explained in an interview on 8 June 2020:

"In formal justice, we spend a lot of time because the process takes a long time and many times we file a complaint in the state court and this complaint takes 4 years and 5 years is that we receive notification to solve the problem in court. Often people leave the case in the state process, they did not go to check due to lack of money. It often happens like this." (Interview, Chief of Ulmera Suco, 8 June 2020)

As the Independent Comprehensive Needs Assessment of the Justice Sector (2009), cited in the JSSP (2010, p. 7), observes for ordinary citizens: conflicts must be resolved, wrongs corrected, rights protected, offenders punished and victims compensated and the process of administering justice must be credible, independent, transparent, effective, efficient, fast, and fair. By contrast, all interviewees describe traditional justice as fast and simple, a speed and simplicity that is itself a major reason people prefer it to state justice. As a young mechanic from Batará put it, "The population has more confidence in traditional justice than in state justice" (Interview, 10 June 2020).

The head of Ulmera suco likewise observed that "the State recognizes traditional justice. Sometimes the state court orders that the problem be resolved again in the traditional courts" (Interview, 8 June 2020) a statement consistent with Article 123(5) of the Constitution, which provides that "the law may institutionalise instruments and forms of nonjurisdictional settlement of conflicts." Although this provision does not specify which nonjurisdictional forms are envisaged, we read it as tacitly recognising traditional dispute resolution and endorsing a plurality of problemsolving mechanisms state and traditional that together help populations obtain a swift resolution to conflict, contributing to peace and social harmony.

METHODS

This study uses a qualitative, sociolegal (empirical legal) approach situated within the field of legal anthropology. Rather than analysing customary law solely from statutory or constitutional text, the research treats traditional justice as a lived social practice, to be understood through the accounts of the people who administer and rely on it. The design combines two complementary strands of data: (1) documentary and literature analysis of the Constitution of the Democratic Republic of TimorLeste, the Justice Sector Strategic Plan 20112030, and relevant historical and legalanthropological scholarship on TimorLeste and comparable customarylaw settings; and (2) primary field data gathered through interviews with community members directly involved in traditional justice. This combination allows the practice of customary law described by informants to be read against, and situated within, the formal legal and historical framework of the state.

Fieldwork was carried out in 2020 in three locations chosen to capture variation across TimorLeste's regions and social settings: Ulmera village (Bazartete administrative post, Liquiça municipality) in the west; Funar suco (Laklubar administrative post, Manatuto municipality) in the central highlands, historically the seat of a precolonial kingdom; and the suco of Comoro (Dom Aleixo administrative post, Dili municipality), where informants originally from Batara suco (Laklubar, Manatuto) but resident in the capital were interviewed.

Informants were selected purposively, on the basis of their direct involvement in the administration or practice of traditional justice, to ensure that the data reflect firsthand experience rather than secondhand impressions. Five informants were interviewed:

- The chief (chefe de suco) of Ulmera, interviewed on 8 June 2020;
- An elder (katuas) and former liurai (traditional chief) of Ulmera, interviewed on 9 June 2020;
- An elder of Funar, interviewed on 28 December 2020;
- A young mechanic, resident in Dili but active in traditional justice in his home suco of Batara (Laklubar, Manatuto), interviewed on 10 June 2020; and
- A young student, also active in traditional justice in Batara, interviewed on 11 June 2020

This composition deliberately mixes senior customary authorities (suco chiefs, elders, former liurai) with younger practitioners, in order to capture both the established structure of traditional justice and how it is understood and carried forward by a younger generation.

Data were collected through semistructured, inperson interviews conducted in the informants' own communities. An interview guide covering a common set of themes the meaning and origin of traditional justice, its procedure and the role of the liana'in, the relationship between traditional and state justice, the participation of women, and informants' views on how the State should engage with customary law was used to keep the interviews comparable across sites, while allowing informants to elaborate on locally specific practices, terminology, and narratives (such as the oral history of the House of Bamatak recounted in the Introduction). Interviews were conducted in the local language and recorded in written form; direct quotations reproduced in this article are drawn from these interview records and are cited by role, location, and date rather than by informant name, to protect the privacy of participants.

Interview data were analysed using a qualitative descriptiveinterpretive approach. Responses were organised thematically around the research questions the practice and procedure of traditional justice, its perceived advantages and disadvantages relative to state justice, and its tension with human rights norms, particularly regarding the position of women and compared across informants and sites to identify points of convergence and divergence. Recurring themes and representative statements were then crosschecked against the documentary sources described above (the Constitution, the Justice Sector Strategic Plan, prior empirical studies such as the 2017 Coimbra Centre for Social Studies report, and the legalanthropological literature) to situate the field findings within the broader legal and historical context of TimorLeste.

As a qualitative study based on five informants across three sites, this research is not intended to be statistically representative of TimorLeste as a whole; its aim is instead to provide an indepth, contextualised account of how traditional justice is understood and practised by those directly engaged with it. The neartotal absence of female informants in decisionmaking roles is itself a finding of the study, reflecting the gendered structure of traditional justice authority described in Section 4, rather than a limitation of sampling alone; nonetheless, future research incorporating women's own accounts of their experience within, and exclusion from, traditional justice processes would usefully complement the findings presented here.

RESULTS AND DISCUSSION

Traditional Justice In Practice: Findings From The Field

Interviewees consistently described local power structures as an integral part of the state, with village and suco chiefs seen as representatives of the state at the local level. An elder of Funar explained: "The population has access to the court of the State, as for example, the State establishes village and suco so the chief of the village and chief of the suco do justice as a representative of the State"

(Interview, Funar, 28 December 2020). Similarly, a young mechanic noted that "the state values traditional justice well, because the chief of the suco and the village, as representatives of the state, order the case to be resolved first by the liana'in" (Interview, 10 June 2020).

Interviewees were also able to distinguish clearly between traditional and state justice. A katuas (elder) and former liurai (chief) of Ulmera Suco explained:

"Traditional justice must be linked to culture, and each Timorese has their custom (lisan) and that this lisan is not written and so traditional justice has no writing and this traditional justice transmitted by the ancestors so far we Timorese are still using it. We use two cultures: written culture and unwritten culture. Written culture such as the Constitution and many written laws and also including the Bible." (Interview, Ulmera, 9 June 2020)

Given the strong influence of Catholicism in TimorLeste evident, for instance, in the syncretic ordeal practices of Laklubar subdistrict, where Catholic doctrine mixes with ancient indigenous belief it is notable that this elder classified the Bible itself as part of "written culture," reflecting how Catholic teaching functions as a normative standard for citizen behaviour. The chief of Ulmera suco defined traditional justice as "that justice normally applied to citizens who commit problems and that this problem is solved through family and sanctions applied according to the Timorese tradition. This tradition linked to the culture of umane and manefoun. This is traditional justice" (Interview, 8 June 2020).

A young mechanic employed in a state institution but who regularly performs traditional justice in his home suco of Batara, Laklubar, Manatuto explained that traditional justice is "a law that existed before since the times of the ancestors... the community itself prefers that before going to state law, the community begins by first seeking the existing traditional law" (Interview, 10 June 2020). A young student, also active in traditional justice in Batara, described it as similar to state justice but oriented toward satisfying all parties: "this justice does not depend only on the LiaNa'in ... but must also fit the traditions that exist in the suco or in the village to seek a solution for the people (victim and suspect) who are in conflict" (Interview, 11 June 2020).

All interviewees reported learning traditional justice informally, by observing their parents and grandparents practise it from an early age. The elder of Funar recalled: "I know (about traditional justice) because in the past I lived with my father and grandfather and that they were the ones who did traditional justice" (Interview, Funar, 28 December 2020). Only the young mechanic had presided over cases up to the level of the administrative post; the other interviewees were active within their own village or suco.

The traditional justice process described by all interviewees follows a broadly consistent pattern, also documented in the wider scholarship: a complaint is filed by the victim with the liana'in of the community; if unresolved, the case proceeds to the village chief, and if still unresolved, to the head of the suco. Once a complaint is accepted, the suspect is summoned and the dispute is addressed through the Nahe Biti process, generally within the custom system of Uma Lisan governing the fetosanumane relationship. The young mechanic alone also referenced the TamaWer ordeal as a customary means of resolving conflict

consistent with the wider anthropological record of ordeal practices as a means of determining truth through appeal to magical or supernatural power, found across many societies, including, for example, trial by hot water in the Philippines (Titiev, 1992, p. 267). Such ordeal customs function, in Titiev's words (1992, p. 266), as "a favorite method [that] consists in subduing a suspect, and, from time to time, also his accuser." In the Timorese context, this power is closely bound to the sacred house within the fetosanumane relationship, as the chief of Ulmera suco explained:

"People accept traditional justice because this justice linked the force of the oath with nature and fetosanumane. Therefore, people are afraid not to accept with the decision we make [and] the more these parties in conflict have a family relationship as umanefetosan[,] the fetosan usually accepts the whole process because she is afraid of the mamafatin (Note 4) of the sacred house of the umane." (Interview, Ulmera, 8 June 2020)

For the elder of Funar, the final instance of traditional justice is the head of the suco. All interviewees distinguished traditional justice from state justice along broadly similar lines; as the young mechanic put it, "traditional justice comes from the times of the ancestors, before independence, while state justice is justice done by the State [and is] based on the written laws of the State" (Interview, 10 June 2020).

The most frequent cases handled through traditional justice, according to interviewees, include theft, land disputes, defamation, family disagreements, and disputes arising from animals such as dogs biting a neighbour's pigs or goats. Parties dissatisfied with a traditional resolution may take their case to state court, and conversely state courts sometimes refer parties back to traditional justice if the parties wish evidence, in the interviewees' view, that the State recognises and values customary law as a mechanism of conflict resolution.

Interviewees uniformly favoured continued and expanded state support for traditional justice, citing the shortage of human resources in the state courts. The young mechanic suggested that "in the future it may open state courts in the districts, but now it is better now the State promotes the use of traditional justice for the resolution of conflicts" (Interview, 10 June 2020). Interviewees also called for formal regulation recognising the competence of traditional justice practitioners and for the State to consult liana'in and elders when drafting relevant legislation, "for the good of all" (Interview, Funar, 28 December 2020). Several also urged the State to promote customary law as intangible heritage, both domestically and internationally, so that "even if we have just had our independence... our old law or our traditional justice already existed before the existence of the state courts" (Interview, 10 June 2020). The elder of Funar likewise urged that "the State must provide training on State law and the State must regularize customary law or traditional justice" (Interview, Funar, 28 December 2020).

Taken together, these findings reflect the legal plurality that characterises Timor-Leste: Timorese citizens are, on one hand, already versed in customary law practice, and on the other, increasingly organise their lives according to state positive law, whose application relies on the coercive means of the State. This plurality, properly supported, can help reduce crime and promote the harmony

and stability that TimorLeste needs as it continues to build a democratic rule of law capable of delivering the peace and prosperity envisioned by those who gave their lives for the liberation of the homeland.

Advantages and Disadvantages of Traditional Justice

Advantages of Traditional Justice

Every social norm, from ancient times to the present, functions to regulate human life within community for the common good, harmony, and social peace, prescribing rights, obligations, and sanctions for their violation. Many such norms of social conduct are legal norms; Amaral (2012, p. 50) defines law itself as a normative system. What matters for our purposes is that, within the single space of TimorLeste, several normative systems coexist to regulate citizens' conduct, with customary rights operating alongside the State's positive law.

TimorLeste has opted for legal pluralism rather than legal monism, under which the State alone could administer justice. The Constitution instead promotes and values customary law, positioning TimorLeste as a country that embraces legal pluralism. The State's recognition of traditional justice reflects the understanding that customary law is a component of Timorese culture that brings genuine benefits for conflict resolution, social cohesion, and community harmony.

The principal aim of traditional justice is reconciliation of the disputing parties with one another, and with the community as a whole an objective largely absent from state justice, which functions primarily to apply codified law with little concern for reconciliation. This distinction matters greatly in a society such as TimorLeste, where custom remains integral to preserving family reputation, social peace, and shared interest, and where a culture of *fetosan* and communal responsibility means that one family member's problem becomes the concern of all. State justice, by contrast, is individualistic: each person answers only for their own acts. The chief of Ulmera suco captured this vividly:

"In traditional justice, there is no one who wins and another who loses. Everyone wins and everyone loses... If the parties who are in conflict have a family relationship like fetosan, then automatically the fetosan will accept to make reconciliation with umane, because the fetosan is afraid of the umane. Fetosan will give pig and such to umane as a symbol of recognition and appreciation... and umane will also give goat and some amount of money as a symbol of recognition and appreciation to fetosan for the continuity of the family relationship. Everyone doesn't lose." (Interview, Ulmera, 8 June 2020)

This distinction between simple and complex societies is echoed by Assis and Kumpel (2011, p. 51), who observe that legal anthropologists typically find that simple societies operate flexible legal processes in which reconciliation of the parties takes primacy, whereas complex societies apply formalistic, inflexible processes focused on the application of law with little regard for reconciliation.

A further advantage of traditional justice is its speed, owing to the simplicity and flexibility of the process, in contrast to the protracted timelines typical of state justice a problem widely debated across many countries. Developing countries such as TimorLeste tend to rely on traditional ancestral systems, while developed countries increasingly turn to alternative dispute

resolution mechanisms such as conciliation, mediation, and arbitration. As Piske (n.d., p. 54) observes, growing confidence in conciliation, mediation, and arbitration reflects not only the speed with which they resolve claims but also the psychological sense of peace they offer litigants part of a broader shift toward structural and functional change in how justice systems operate.

This speed is central to the greater trust the population places in traditional justice. Human beings generally prefer a definitive resolution that allows them to move on with life, yet TimorLeste's state courts remain underresourced, geographically distant from rural populations, and costly in time and money to access a serious obstacle for a largely lowincome, rural population. As the Ulmera suco chief again observed, "In formal justice, we spend a lot of time because the process takes a long time and many times we file a complaint in state court and that complaint takes 4 years and 5 years is that we receive notice to resolve the problem in court" (Interview, 8 June 2020).

In the spirit of reconciliation the State has sought to promote since the liberation of the homeland, the Chega National Center successor to the Reception, Truth and Reconciliation Commission reported via its Facebook page that on 25 November 2022, in collaboration with the Martial Arts Regulator Commission, g7+, the National Directorate for the Prevention of Community Conflict, the NGO Belun, local authorities, and the liana'in of Labarai suco, it facilitated dialogue and reconciliation among martial arts groups (PSHT, IKS, KORK, Padjajaran, karate, and others) to prevent renewed community conflict, with the participation of the Covalima municipal administrator, the National Police and FFDTL commanders on the IndonesiaTimorLeste border, and members of the Border Patrol Unit.

Research by the Centre for Social Studies of the University of Coimbra (July 2017) confirms that the majority of the Timorese population still strongly retains customary law and relies on traditional justice as the primary mechanism for resolving community conflict. Traditional justice thus plays a significant role in social stability: in a traditional society such as TimorLeste, fear of supernatural sanction encourages compliance with customary norms and discourages conflict. As an elder of Ulmera explained:

"Traditional justice is very important, very, very important to be developed better to support the community... So the state and the church seek to strengthen traditional justice to contribute to stability and to avoid the problem. Only traditional justice can contribute to stability. When it is only the State that seeks to maintain stability, this is not enough... But in traditional justice, populations are afraid of lisan (supernatural power), curse, etc." (Interview, Ulmera, 9 June 2020)

Land disputes a very common problem in TimorLeste (Santos, 2017, p. 154) illustrate this well: because most Timorese are farmers dependent on land for daily survival, communities overwhelmingly turn to traditional mechanisms to resolve such disputes. In the context of domestic violence, the Coimbra Centre for Social Studies reports cases already resolved through traditional justice being subsequently recognised by state courts through suspended sentences for defendants (Santos, 2017, p. 153). Reconciliation between the couple, the extended family, and the wider community rather than punishment alone is the

primary objective. Since the Timorese family is understood expansively, encompassing the kin of both spouses, everyone bears responsibility for contributing to the resolution.

Once a dispute is resolved, the parties typically hold a small gathering as a sign of peace and respect for the traditional justice administrators and the wider community described by an elder of Ulmera as *"covering the ears and eyes," meaning to set aside the past dispute and look only to a shared future of friendship and harmony. Sessions that begin with raised voices and strong words often end in embraces and tears. As Assis and Kumpel (2011, p. 117) put it, "order and law have to be maintained, since cooperation is the essence of all cultural achievement."*

Disadvantages of Traditional Justice

Traditional justice in TimorLeste recognises only the authority of men to adjudicate community disputes. Across the interviews conducted, the overwhelming majority of respondents confirmed that only men serve on traditional justice councils, reflecting the largely patriarchal character of Timorese tradition. Women's role in decisionmaking is severely limited: while women may offer opinions, suggestions, or express agreement or disagreement during proceedings, the final decision rests with men. Even in matrilineal communities, where lineage passes through the female line and women bear responsibility for the sacred house, it is still the husbands who administer justice and make decisions; women retain only symbolic spiritual authority and continuity of lineage. As an elder of Ulmera stated bluntly: "Women have little power. Men are the ones who have the most power. Because it is men who take responsibility to eat sacred meats. Not women. Women can give an opinion, but they cannot decide. They don't have the capacity to make decisions" (Interview, Ulmera, 9 June 2020).

In much of rural TimorLeste, where fetosanumane relationships pervade community life, traditional justice administrators seek first to identify the sacred houses to which the conflicting parties belong. The elder of Ulmera explained: "When there is a problem, then the LiaNa'in should seek to know which parts that are in conflict belong to which sacred house. Then it is through liana'in that we try to solve the problem with a purpose for mutual respect" (Interview, Ulmera, 9 June 2020) a point echoed by the chief of Ulmera suco: "Two people when they create problems, we need to know the sacred houses of these people first. So we need the elder of each holy house to sit together to see the problem solved" (Interview, Ulmera, 8 June 2020).

The concept of fetosanumane is sometimes rendered in English anthropology as "wifegiver and wifetaker." In patriarchal practice, the fetosan (wifetaker) must show deference to the umane (wifegiver), who holds the authority to bestow sacred blessing through buamalus (Note 5) upon the fetosan's children. Consequently, the fetosan is often obliged to accept a decision even when it contradicts their own view, for fear that a curse might otherwise fall upon their children. As the elder of Ulmera observed: "The teaching of Christ is that whoever slaps you on the right cheek, turn the other also to him. But not in culture. Culture does not forgive. Culture can curse" (Interview, Ulmera, 9 June 2020).

Before a traditional justice session begins, administrators typically pray at sacred mountains or sites, and to the sacred houses and ancestors of both parties a ritual that reinforces the parties' fear of rejecting a solution that may run counter to their will. Across all interviews, respondents consistently linked conflict resolution to the supernatural authority of lisan and the fetosanumane relationship, revealing that traditional justice affords little space for freedom of thought or dissent from established custom. Everyone is expected to contribute to family and community harmony, even where the outcome conflicts with individual will particularly where fetosanumane ties are involved, as the elder of Ulmera again confirmed: "If the parties who are in conflict have a family relationship like fetosanumane, then automatically fetosan will accept to make reconciliation with umane because fetosan is afraid of umane" (Interview, Ulmera, 9 June 2020).

This dynamic illustrates the continuing supremacy of customary law in Timorese society, rooted in deep respect for the sacred house and the umane-fetosan relationship. It resonates with Malinowski's (n.d.) observations in the Trobriand Islands of northeastern New Guinea (Note 6), where he found that "if we designate the sum total of rules, conventions, and patterns of behavior as the body of custom, there is no doubt that the natives feel a deep respect for all this, tend to do what others do, what everyone approves, and that, if they are not led astray or directed in another direction by their desires and interests, they will rather follow the impositions of custom than any other way."

Overall, in many Timorese localities there remains little respect for women's rights as decisionmakers in traditional justice. Women play an essential supporting role organising domestic tasks, preparing ceremonies but are excluded from decisionmaking, and children's interests are similarly represented by parents or older siblings rather than by the children themselves.

Tension Between Traditional Justice and Human Rights

The exclusion of women from decisionmaking roles in traditional justice constitutes a genuine tension with international human rights norms. Yet this exclusion should not be read as reflecting an absence of female political agency in Timorese culture historically. In ancient times, several kingdoms in Timor were ruled by queens. Belo (2013) documents numerous queens who governed Timorese kingdoms; a document from the Secretariat of the Government of Dili dated 28 February 1815, cited by Belo (2013, pp. 3435), lists thirteen queens who then reigned over thirteen kingdoms, including Alas, Ermera, Samoro, Bibico, Luca, Lacro, Dotic, Laycore, Vemasse, Bibiluto, Funar, Clacoc, and Larantuca.

Queens ruled in Timor even earlier than 1815. In the kingdom of Ambeno, in western Timor, a queen was baptised by Friar António de São Jacinto in July 1641 at Lifau (Note 7) (Belo, 2013, p. 183); the same friar baptised the queen of Mena (Note 8) that same year, and, between 1642 and 1645, travelled to eastern Timor to baptise the queen of Luca a kingdom now within Viqueque district (Belo, 2013, p. 234). Belo's work documents several further examples of female rule in Timor's kingdoms.

This history indicates that TimorLeste's original culture accorded real value to women's political authority. In the culture of Funar itself once ruled by a queen important clans maintain two paired sacred houses, Ada Lelo ("Sacred House of the Sun," considered feminine) and Ada Ua ("Sacred House of the Sceptre," considered masculine), regarded as an inseparable couple; their forced separation is believed to invoke a fatal curse, as illustrated by the death of the Funar Lia-na'in Isidro Mateus (Note 9), reportedly linked to an attempt to separate Ua from Lelo.

Ada Lelo bears responsibility for the clan's internal or private affairs death, traditional marriage (barlaque), and similar matters and is regarded as the more sacred house, while Ada Ua governs external affairs such as the administration of justice and representation of the clan or kingdom. Together, the two houses form what should be a perfect union ensuring the community's social cohesion a structure resonating with Durand's (2010, p. 42) discussion of paired oppositions such as feminine/masculine, indoor/outdoor, and property/asset. In Timorese culture, women are understood to bear responsibility for internal, domestic affairs, while men take responsibility for external activities such as farming and earning income. As Durand (2010, p. 42) observes, "these elements were not opposites. To live in harmony, they would have to seek complementarity between them."

We suggest that Timorese custom conceived of the kingdom itself as a kind of extended family, in which a woman representing the more important Lelo house could rule, provided that important decisions were always made in consultation with, and with the agreement of, the notable men (datos), who also held the power to remove a queen or king an arrangement the Portuguese described as an "aristocratic republic," in which royal power was constitutionally limited (Durand, 2010, p. 43). Across much of Timorese culture, governing authority was not strictly hereditary but was conferred by, or with the concurrence of, the notables or datos of the clan or kingdom, who together determined succession. This arrangement was significantly altered under Portuguese colonial rule, which accorded greater importance to men in kingdom governance than to women.

Among our interviewees, most reported that in their area women may speak and contribute ideas but cannot make binding decisions. A partial exception came from the elder of Funar, who explained that a woman's capacity to decide depends on the formal position she holds: "Yes, if the woman has any position then she can do justice for all the people. Because it has a position that we determine either in the village or in the suco or in the post. Because we have determined some position for her in which this position gives her the right to do justice" (Interview, Funar, 28 December 2020). This distinction may reflect Funar's history as a kingdom once ruled by queens; notably, the current head of Funar suco is a woman, Olinda Pereira. Historically, Timorese culture also refers to women through the concept of inan maromak (Mother God), underscoring an original cultural valuation of women that diminished with Portuguese presence, as Durand (2010) observes: "Many groups functioned in a matrilineary way, with women taking a decisive place. The first Portuguese narratives attest that it was

not uncommon to find queens directing the kingdoms. Over the centuries, the role of women has diminished, particularly due to external influences."

These external influences extended into colonial education policy. The Portuguese state delegated responsibility for basic education to the Catholic Church under DecreeLaw No. 233 and Ordinance No. 165 of 27 June 1914 (Jornal Tornado, n.d.), with schools typically segregated by sex. In the Soibada mission, for instance, the boys' school (Colégio Nuno Álvares Pereira), run by the Jesuits, produced many of TimorLeste's future national leaders including Francisco Xavier do Amaral, the first President of the Democratic Republic of TimorLeste, and Nicolau dos Reis Lobato while the girls' school (Imaculada Conceição), run by the Canossian Sisters, focused primarily on literacy alongside sewing and related domestic skills (Agência Ecclesia, n.d.).

This pattern of male precedence was reinforced further during the Indonesian occupation, during which the majority Muslim Indonesian population brought norms affording limited scope for women's emancipation for example, the practice that only men (or, in a father's absence, the eldest son) may serve as imam, and evidentiary conventions weighting a man's testimony more heavily than that of women.

Today, scholars widely observe that women's societal role in TimorLeste remains significantly diminished relative to men, and rates of violence against women remain a serious concern. The national NGO ALFeLa (Asosiasaun Asistensia Legal ba Feto no Labarik Association for Legal Assistance for Women and Children) reported handling 487 new cases of genderbased violence across all TimorLeste's municipalities between January and August of the reporting year (Radio Liberdade Dili, 2022). Numerous national and international organisations similarly document continuing high rates of sexual violence against women and children a reality that sits in evident tension with international human rights standards, particularly regarding the rights of women and children.

Encouragingly, the State of TimorLeste has demonstrated sensitivity to this tension and made efforts to protect women from violence while promoting their fuller participation in political life, including through ratification of the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child, and through a quota policy supporting women's political participation. National organisations such as ALFeLa and various international NGOs likewise work to raise awareness of domestic violence legislation and promote civic education on gender equality, including in remote areas.

These combined efforts point toward a positive trajectory: growing public knowledge of and respect for human rights, particularly the rights of women and children, and the gradual opening of traditional justice to greater female participation not only in offering opinions but potentially in decisionmaking itself. Achieving this will require sustained collaboration between the State, civil society, and TimorLeste's religious communities toward socialisation and education that centres equality between women and men in all positions of

authority, including as administrators of conflict resolution within Timorese society

CONCLUSIONS AND RECOMMENDATIONS

This article has examined how customary law continues to function as a vital mechanism of dispute resolution in Timorese society, operating alongside, and often in preference to, the formal state justice system. Field interviews conducted in 2020 in Ulmera and Funar demonstrate that traditional justice is valued chiefly for its speed, accessibility, and its core orientation toward reconciliation rather than adjudication of winners and losers qualities that stand in marked contrast to a state justice system still constrained by limited human resources, geographic distance from rural communities, and lengthy procedural delays. The Constitution's recognition of nonjurisdictional dispute resolution mechanisms, together with the State's practice of referring appropriate cases back to traditional forums, indicates an emerging institutional acceptance of legal pluralism in TimorLeste.

At the same time, this study confirms that traditional justice carries significant costs, most notably the structural exclusion of women from decisionmaking authority and the coercive role played by fear of supernatural sanction in securing compliance dynamics that sit uneasily against international human rights norms despite TimorLeste's historical tradition of female political authority in precolonial kingdoms. Addressing this tension will require continued state investment in civic education, closer engagement with liana'in and customary leaders in the drafting of relevant legislation, and sustained collaboration between the State, civil society organisations, and religious institutions to expand women's meaningful participation in traditional justice, so that customary law can be preserved as a living cultural heritage while becoming more fully consistent with the equal rights of all Timorese citizens.

FURTHER STUDY

This study still has limitations, so further research on Customary Law Practices in Timorese Society: Traditional Justice, Legal Pluralism, and the Tension with Human Rights is needed to refine this study and enhance the insights of readers and the authors.

REFERENCES

- Agência Ecclesia. (n.d.). Expulsão dos jesuítas e das religiosas canossianas de Timor em 1910. Retrieved November 29, 2022, from <https://agencia.ecclesia.pt/portal/expulsaodosjesuitasedasreligiosascanossianasdetimorem1910/>
- Amaral, D. F. do. (2012). Manual de introdução ao direito (Vol. I). Almedina.
- Assis, O. Q., & Kumpel, V. F. (2011). Manual da antropologia jurídica. Editora Saraiva.
- Belo, C. F. X. (2013). Os antigos reinos de TimorLeste. Porto Editora.
- Durand, F. (2010). História de TimorLeste. Lidel.
- Guedes, A. M., & Mendes, N. C. (2005). Essays on nationalism in TimorLeste. Diplomatic Institute of the Ministry of Foreign Affairs.
- Jornal Tornado. (n.d.). As escolas em TimorLeste durante a colonização portuguesa. Retrieved November 29, 2022, from <https://www.jornaltornado.pt/ascolasemt看morlesteduranteacolizacaoportuguesa/>
- Malinowski, B. (n.d.). Crime and custom in savage society [Lecture material]. Universidade de São Paulo. Retrieved November 27, 2022, from https://edisciplinas.usp.br/pluginfile.php/227513/mod_resource/content/1/Aula%201.%20Malinowski
- Ministry of Justice, TimorLeste. (2010). Justice sector strategic plan 20112030. Retrieved November 24, 2022, from https://www.mj.gov.tl/files/JSSP_PORTUGUESE.pdf
- Piske, O. (n.d.). Conciliação, mediação e arbitragem. Retrieved November 26, 2022, from <https://core.ac.uk/download/pdf/16037209.pdf>
- Radio Liberdade Dili. (2022, September 28). Tinan ne'e ALFeLa rejistu kazu violensia 487. <https://radioliberaldatedili.com/2022/09/28/tinanneelfelarejistukazuvio lensia487/>
- Santos, B. de S. (2017). Para uma justiça de matriz timorense. Centro de Estudos Sociais, Universidade de Coimbra.

Titiev, M. (1992). Introduction to cultural anthropology (7th ed.). Calouste Gulbenkian Foundation.

Vasconcelos, P. B. de, as cited in Adão, J. C. G. (n.d.). [Master's thesis]. Universidade Católica Portuguesa. Retrieved October 30, 2022, from <https://repositorio.ucp.pt/handle/10400.14/2651>