



“The Timorese are the ones who will choose whether or not they want to use Traditional Justice”

The Constitution of Timor-Leste, Section 2, states that the State recognizes and values the norms and customs of East Timor that are not contrary to the Constitution and to any legislation dealing specifically with customary law. Until now there is no former law that deals with the traditional law, however, the debate is open. To find out more about it, SCIT info spoke with a Lia nain, the highest figure in the traditional justice system. Mr. Eugénio Sarmento, who is also chairperson of the Lia nain Forum, explains how the traditional justice system works and his view on how it could integrate into the formal justice system.

How does a person become a Lia nain?

It is a natural process. The Lia nain is not selected through an election. It is the ‘sacred house’ (*Uma Lisan*) that appoints him, because the current Lia nain received a sign when the future Lia nain was born. After becoming a true Lia nain, the child/youth must chew betel offered to him by the current Lia nain, chief of his ‘sacred house’. Then, if no lizards sing and nobody sneezes, it means that the souls of the forefathers are saying that he will be the Lia nain. It is a natural process, not a political process.

Who in your family preceded you as Lia nain?

My grandfather, my grandfather was a great Lia nain.

Why were you chosen among all your brethren?

As I explained, the Lia nain is neither selected nor elected. It comes naturally.

Yet, someone has to say who the new Lia nain is...

There are signs. For example, my tribe, our origin comes from the Snake, so our Totem has a snake and we respect the Snake, always. So, when I was very young, there were always many snakes around and this was a sign that I was the Lia nain.

What are the main responsibilities of a Lian nain?

The primary responsibility of the Lia nain is to pray to God to resolve conflicts according to traditional law, for example, misunderstandings between the bride’s and groom’s family, property disputes, etc. Moreover, the Lia nain is also part of this country’s administrative system, because the Lia nain also makes decisions, such as, for example, to declare war, or regarding appointment or deposing of a Liurai, in the event he fails to serve the people well. This is because the Lian nain is the spokesperson of the tribe, the sacred house, and is independent of the kingdom.

How many years have you acted as Lia nain?

As I explained, by nature, since the beginning, since I was very small; when someone is a Lia nain, he is always a Lia nain. It is when the sacred house is built, however, that everyone automatically becomes aware that we are the Lia nain.

When did you begin resolving conflicts?

We built our sacred house in 2007. I was already Lia



nain before that.

And how is this conflict resolution process?

We have 4 different levels for conflict resolution. The first level is at home. The eldest member of a family is responsible for resolving conflicts that may arise in the family. If unable to do so, the case goes before the Village Chief. If the Village Chief is unable to resolve it, then the case goes to the Suco Chief. If the Suco Chief cannot resolve it, then it becomes the responsibility of the Liurai. The Liurai, however, is not the highest ‘court’. In the traditional system, the ‘court of appeal’, the most important of all is the assembly of the Lia

“The Lian nain have to be independent and just, otherwise they will die”

nain. The assembly of Lian nain uses magic whenever it meets to resolve a case. The case is not resolved through logic, but rather through magic. This is what the system of legal positivism fails to accept. Because, when the system of magic is used, it is to determine who acted improperly and who acted well. When things get as far as to this ‘court of appeal’, the person aware that he or she committed a crime or sin will refuse to take part in the ritual, and will lose if he or she insists on taking it further.

How does this magic ‘court of appeal’ work?

The ritual begins at 7 p.m., when the roosters and hens go up the trees. The Lia nai begins by mixing rice and mineral lime. The rice represents the land, because the land is sacred. The lime represents fire and water because, to make lime, you have to use fire and add water. Then the Lia nain begin to pray to their God: ‘You can see the sacred land clearer than we can. We are in the dark. Oh sacred land, reveal to use the path to discover who is guilty and who is innocent’. The fire will provide light and the water will reveal.

Next, the Lia nain offers the lime and betel both to the victim and the suspect. They begin chewing and it both



The SCIT works under the direction and supervision of the Office of the General Prosecutor of Timor-Leste

Editorial:

On the 5th edition of SCIT info we are pleased to report great developments in terms of reparations for the victims of past human rights violations in Timor-leste: the Parliament approved a resolution that opens the way to the establishment of a new institution that will implement recommendations from both CAVR and CTF. The new institution will not only establish a program of reparations but also try to address the problem of missing persons. Furthermore we give notice of the “Independent Needs assessment” report on the Justice System of Timor-leste, released last October. Finally we offer a portrait of the traditional justice system, through the voice of Lia nain Eugenio Sarmento and the answers to some frequently asked questions about Criminal proceedings of Serious crimes.

Marek Michon
Head of SCIT



“The Lia nain is neither selected nor elected”

have guilt, their mouths will begin to bleed simultaneously. If one of them is honest and innocent, the mouth of that person will not bleed, nor will he or she cough. On the other hand, the one who is guilty will vomit blood and fall to the ground. If even then, the person refuses to admit his or her guilt, death may result, because this is very dangerous.

What types of cases are resolved through this ritual?

All kinds. Theft, rebellion and even killing, this is our tradition. Cases of murder, however, are different. If I kill someone, I cannot pay for it with a water buffalo or a property. Whoever kills a person has to pay with a person. Either a son or a brother.

Is this tradition still practiced?

Yes, still.

Now, however, Timor-Leste has a formal justice system. If called upon to resolve one of these cases, what do you do?

We now live in modern times. I send these cases to the court. Rarely is this ritual practiced that I called the ‘traditional court of appeal’ because it is very expensive, it involves lots of costs. The guilty party must kill a water buffalo. The buffalo is called ‘cornobado’, which means: the sign of traditional law and order. So, everybody who attends the ‘hearing’ has to eat all the meat of the water buffalo. Whoever eats this meat once cannot participate in another ‘trial’ or will have to pay double.

How do you see future integration of the formal justice system with the traditional justice system?

First, a study needs to be done to see what are the advantages and disadvantages of integrating the two systems and the peculiarities of each region. Because each ethno-linguistic group has a different system. I can only speak of the system from my land.

In the case of the traditional justice system of

your ethnic group, how might it integrate with the formal Justice System?

The problem is that, with modernization, globalization, communication, etc., people, and particularly the young, no longer consider culture important, and this includes traditional law. This is the problem. If they do not like it, how can we have the means to resolve conflicts?

So, the people will have to choose...

Yes.

What is your opinion of the formal justice system?

It is good, but the problem is that whoever has the most money can win. This cannot happen.

According to Timorese law, judges must be independent. In the traditional system, do the Lia nain also have to be independent?

The Lia nain have to be independent and just, otherwise they will die. They are the first to eat the mixture. There is a difference, however, in the traditional justice system. The Lia nain can only administer justice within his own ethno-linguistic group. At least, though, some things can be resolved, so that not everything has to go before the court.

Can women be Lia nain?

Here in Timor, there is only one ethno-linguistic group where women can be Lia nain, they are the Nauteti, from the region of Uatucarbau, Uatulari...

They are called Nain Feto.

Do you think that the traditional justice system could address the cases of crimes against humanity committed in Timor-Leste between 1975 and 1999?

The traditional system can resolve any type of problem, including the problem of 1975, directly going to magic justice. Not through man’s logic, but rather through the spirit. The spirit cannot lie to us.

Report ‘An Independent and comprehensive needs assessment’ released in October

International judges evaluated Timorese Justice System

A group of four international judges and legal experts from the United States, Portugal and Kazakhstan, including former head of the Special Panels for Serious Crimes, Judge Philip Rapoza, came to Timor-Leste during the months of August and September to evaluate Timorese judicial system. This mission was sent by the United Nations in consultation with Timorese Government, following the 2006 Secretary-General Report (S/2006/628) and Security Council resolution 1867.

For this report, the experts’ panel interviewed 140 people in Timor-Leste, both Timorese and international, including the leaders of the country.

The experts delivered their report on 13 October 2009 concluding that a significant progress had been achieved due to dedication of people working in judicial system. The report however also pointed out that many needs and challenges had remained.

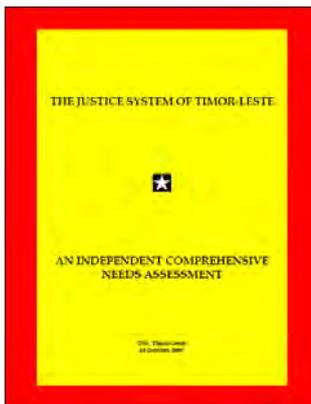
One of the major challenges is related to the independence of the judiciary. In their report the experts stated that although the Timorese judges were confident in their position, “the institutional independence of the judiciary is

still not fully recognized by other state actors”.

In regard to accountability for Crimes against Humanity and other serious crimes, the experts recommended that the Serious Crimes Investigation Team (SCIT) should continue to function, and be given the necessary resources, until it completes all the 1999 cases. Furthermore the report recommended that the UN and the international community should make clear to the authorities of Timor-Leste that it would support the process of bringing to justice those responsible for past serious Human rights violations.

The report also highlighted the need for developing a “legal Tetum”, the need for increasing the number of judges and wider presence of public defenders in the regions as well as the necessity of enhancing coordination between PNTL officers and the Prosecutors. The experts congratulated Timor-Leste for the development of the Penal Code and Witness Protection Law and called for the urgent development of a ‘Childrens` Code’.

In regard to traditional justice, the experts recommended that the “Customary Law system should be harmonized with the formal justice system and not operate as a parallel” one.



Cover of the report on the Justice System of Timor-Leste

Baucau NGO, CTI, took dissemination of 'Chega' report to all sub-districts

“We want both reconciliation and justice”

During the months of September and October, all the sub-districts of Baucau have hosted community meetings about the recommendations of the 'Chega' Report. The community in the sub-districts received the initiative with enthusiasm and critical spirit, underlining the need for reparations and stressing they want both “reconciliation and justice”.

This activity was organized by the Community Transformation Institute (CTI), a local NGO who have also invited the Post-CAVR Secretariat, Hak Association, the Serious Crimes Investigation Team (SCIT) and Human Rights and Transitional Justice Unit (HRTJ) from UNMIT.

The meetings were held in Quelicai, Loilubo, Bucoli, Venilale, Laga and Baucau, and had an average of 60 participants. The speakers reviewed the most significant recommendations made by the CAVR, analyzed them in light of the fundamental Universal Human Rights and informed the community about what had been done in terms of implementation of the main recommendations. Mr. Clemens Loos from HRTJ/UNMIT explained that some of them have been implemented, such as the creation of the new Penal Code and the Witness Protection Law.

The participants, some of them carrying a print of Constitution of Timor-Leste, stressed the need for reparations to the most vulnerable and raised important issues such as: “who is considered a victim?” and “why aren't the perpetrators being brought before the court?”. The recommendation made by CAVR on the establishment of an International Tribunal to deal with the serious human rights violations of 74-99 was also one of the most debated in every sub-district. Mr. Saturnino, in Loilubo explained why: “because we want reconciliation but justice must come before. The UN has to establish an international tribunal”. In Quelicai, the sub-district administrator asked the UNMIT officials to “help the Timorese fight for an International Tribunal”.

In Baucau, Mr. Dionisio Babo a former CTF commissioner participated in the meeting. He explained that one of the greatest achievements of that commission was the recognition by the Government of Indonesia that they were responsible for the violence of 1999. The participants expressed satisfac-



tion with the work of both CAVR and CTF but for some, like Mr. Saturnino and Mr. Francisco da Costa insisted that “if there is no judicial process it seems like Indonesia never committed any crime during the invasion of Timor-Leste”. If the opinions are divided in regard to the issue of justice, there is wide consensus among participants of these meetings concerning their desire to be heard: “The leaders and the UN must listen to us, the people”, said Mr. Ximenes in Laga. CTI is planning to extend the initiative to Viqueque district starting in January 2010.



**“Politics
aside,
justice must
follow its
course”,
former
combatant,
Baucau**

New institution to oversee reparations to the victims will be established

Parliament passes resolution on implementation of CAVR and CTF recommendations

On the 14th December 2009, the Parliament of Timor-Leste approved a resolution that defines the guidelines for the implementation of the recommendation of the Commission for Reception, Truth and Reconciliation (CAVR) and the Commission for Truth and Friendship (CTF). The resolution that will be defined in law by the parliament, leads to the “establishment of a new institution” that will follow-up on those recommendations. The new institution will be funded by the government and will

respond to Parliament. Its mandate will be to undertake programs in five areas: **documentation and research** (having custody over the CAVR archives); **reparations to the victims** of past human rights violations and **memorialisation; socialization, education and training; disappearances and missing persons; and reporting.**

According to the resolution, the program of reparations will target the most vulnerable victims of human rights violations committed be-

tween 1974-1999 “who continue to suffer as a result of the violation, who self-identify as victims and who have not already benefited from another relevant Government program”. This will involve registering of victims, among other activities.

Concerning the program on missing people, the new institution will “add value to work already undertaken by organizations such as the 12 November Committee and the International Committee for the Red Cross”. The

program will include the creation of a registry of missing or forcefully disappeared and aims to gain cooperation from Indonesia. The resolution comes as a result of the National Consensus Dialogue meetings held in July and September 2009, endorsed by the President, with the support of several national and international NGOs and UNMIT’s Human Rights and Transitional Justice Unit. No consensus was yet reached in regard to the issue of justice.



UNMIT/Serious Crimes Investigation
Team (SCIT) newsletter • issue
5 • December 2009

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**Investigating 1999 to
assist bringing Justice
in Timor-Leste**

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In Short....

- **UN Security-Council meeting about TL in February** The council will decide whether UNMIT will maintain its current strength or should be downsized and/or reinforced in some areas.
- **National Consensus Dialogue Part II in April** The leaders of Timor-Leste will gather again in April to debate the issue of justice for the human rights violations of the past.
- **National Victims' Association approves its statutes.** The representatives of the victims from all districts will get together again around April 2010 to approve the statutes of their association, 'Martires da Patria'

Who has jurisdiction over crimes against humanity in Timor-L?

What are Crimes Against Humanity?

Crimes Against Humanity, as described in the Rome Statute and in the Timorese Penal Code (Article 124) are crimes **committed as part of widespread or systematic attack against a civilian population**, such as crimes of: murder; extermination; enslavement; forcible deportation or transfer of population; imprisonment or deprivation of liberty; torture; rape, sexual violence, enforced prostitution, forced pregnancy, enforced sterilization, or any form of sexual violence of comparable gravity; persecution; enforced disappearance of persons; apartheid; other inhumane acts of similar character intentionally causing great suffering, or serious injuries to body or to mental or physical health.

Who has the power to investigate the Serious Crimes from 1974 to 1999?

According to the Timorese constitution, Article 160° : "Acts committed between the 25th of April 1974 and the 31st of December 1999 that can be considered crimes against humanity of genocide or of war **shall be liable to criminal proceedings with the national or international courts**". This means that both national police or international police/investigators can investigate those crimes.

Currently in Timor-Leste, the Office of the Prosecutor and the PNTL have the power to investigate the Crimes Against Humanity committed at anytime in the past. To complete investigations into the crimes committed in 1999, the authorities of Timor-Leste have signed an agreement with the United Nations that gives mandate to the Serious Crimes Investigation Team to complete those investigations, which had been initiated by the former Serious Crimes Unit. SCIT works under the direction of the Office of the Prosecutor General.

Who has the competence to bring those cases to the court?

Once an investigation is completed, only the Office of the Prosecutor has the competence to decide whether the case should be closed or if there is enough evidence to send it to the court, that is to file an indictment with the court.

Which court has jurisdiction over crimes against humanity in Timor-Leste?

It seems that under Article 3 of the Code of Criminal Procedure of Timor-Leste **all provisions regulating cases related to serious crimes committed between 1 January and 25 October 1999 remain in force** (sub-articles 9.1, 9.2 and 9.4 of UNTAET Regulation No. 2000/11 and UNTAET Regulation No. 2000/15).

This means, in a broad interpretation of the Law, that in Timor-Leste all Crimes Against Humanity, Genocide and War Crimes committed between at anytime in the past, including 1999, fall under the **exclusive jurisdiction of the District Court of Dili** and must be heard by a panel of judges composed of two international judges and 1 national judge.

Murders, Sexual Offences and Torture who do not constitute Crimes against Humanity, Genocide or War Crimes committed during 1999 would be of the exclusive jurisdiction of the District Court of Dili while the same crimes committed between 1974 and 1998 would not and would therefore be heard by a panel of judges before the District Court where the offences were committed.

If someone who is charged with crimes against humanity, there is arrest warrant against him, comes back to Timor-Leste, what is the procedure?

If the person who committed the Crime Against Humanity was already charged, this means that there is a file in the court with evidence against him and an arrest warrant issued by the court. In that case, if the police (PNTL or UNPOL depending on the district) is aware that that person is back, can arrest him immediately and bring him to the Prosecutor who will then present him before a judge. The judge will then decide whether the person can wait for trial living in freedom, or if he should remain on pre-trial detention.

Which court can decide on pre-trial detention for someone charged with Serious crimes?

As we have seen, the current legislation states that the Dili District court has exclusive jurisdiction over Crimes Against Humanity, genocide, and war crimes committed at any time and Murders, Sexual Offences and Torture committed in 1999. However, the Code of Criminal Procedure of Timor-Leste—Articles 30 and 31— states that decisions by any other courts that do not have jurisdiction, made for reasons of urgency, will be considered valid.