

EXPERT REPORT ON THE LEGAL STATUS OF TRADITIONAL MARRIAGE IN TIMOR-LESTE



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Abstract

This report is written in response to a letter of instruction from *Asylum Welcome* a charitable organisation based in Oxford which assists and advises asylum seekers, refugees and certain other migrants, amongst them people from Timor-Leste who are seeking to apply for status under the European Union Settlement Scheme as family members of EU nationals settled in the UK.

The letter of instruction requests my expert opinion on the features and legal status of traditional marriage in Timor-Leste. I have not been referred to any specific client and it is clear that my report is intended as a generic report in relation to the questions put to me. The questions I have been asked to address can be summarised as the following: (1) What are the main features of customary or traditional marriage in Timor-Leste; how common are they; and what is their status in Timor-Leste's society? (2) Under the law of Timor-Leste, are traditional marriages legally recognised as valid marriages and under which provisions? (3) What are the evidential and procedural requirements in Timor-Leste for a traditional marriage to be legally recognised as a valid marriage?

As a result, I present a report that contextualizes traditional marriage (bride-price based monogamic marriage²) in the legal system of Timor-Leste, presents its legal characteristics, its effects, and its legal status in the country of reference, based on an analysis of the legal system and current legislation, as well as the experience of forensic practice in Timor-Leste.

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² Translation of the term "casamento barlaqueado monogâmico" as found in the English version of the Timor-Leste's Civil Code provided by "Lao Hamutuk," an non-governmental organisation based in Timor-Leste. Original in Portuguese. Available on: <https://www.laohamutuk.org/Oil/onshore/laws/Law10-2011CivilCodeEn.pdf>

Part One - Summary addressing the questions raised

1st) What are the main features of customary or traditional marriage in Timor-Leste; how common are they; and what is their status in Timor-Leste's society?

According to the law, there is an established form for the solemnisation of bride-price based monogamic marriage. The celebration should be *public*; there must be an *oral proclamation* by the celebrants, who are the *Lia-Nain*; the *express manifestation* by each of the betrothed, and finally, the *drafting of the marriage record on a common sheet of paper*. Bride-price based monogamic marriage is the most common form of marriage celebration in Timor-Leste, often also accompanied by a Catholic celebration. Purely civil marriages are extremely rare. In terms of its social status, it is one of the most important ceremonies in the country's cultural tradition, and the barlake is the subject of numerous social and anthropological studies.

2nd) Under the law of Timor-Leste, are traditional marriages legally recognised as valid marriages and under which provisions?

The bride-price based monogamic marriage that complies with the requirements listed in Articles 1503 and 1504 of the Civil Code, while not falling under the provisions of Article 1517 of the same Code and not being declared invalid by a court judgement, is legally existing, valid, and effective in Timor-Leste, producing all the legal effects arising therefrom. The recognition of the legality of traditional marriage is also constitutionally supported by Section 2.4 of the CRDTL.

3rd) What are the evidential and procedural requirements in Timor-Leste for a traditional marriage to be legally recognised as a valid marriage?

Timor-Leste, in adopting the Civil Law legal system, recognizes the existence, validity, and effectiveness of all legal acts that meet the legal requirements. Therefore, for the proof of traditional marriage, the production of the record signed by any of the community authorities containing the requirements mentioned in the response to the second question is sufficient.

Part Two - Contextualisation - The model of justice system adopted in Timor-Leste.

When we talk about justice system models, we are referring to the organisational structures of laws and the way laws are applied in certain countries. Two main systems are widely recognized: Civil Law and Common Law. It is necessary to understand the two models, their differences, and their own characteristics in order to understand the status of bride-price based marriages (traditional marriages) in Timor-Leste.

The Civil Law model is a legal system in which norms are applied through the interpretation of written law. Consequently, in this system, norms are usually in written form. The Civil Law has its origins in the Roman Empire and is therefore characterised by positivism (development of legal norms through a legislative process). This legislative process aims to create laws that regulate the conduct of society and to guide judges, prosecutors, public defenders, lawyers, and all those who work in the judicial system.

On the other hand, Common Law is a system predominantly adopted in English-speaking countries. In this system, judicial decisions are immediate sources of law; therefore, the law emerges case-by-case from the decisions brought before the Judiciary.

Timor-Leste is a country that has several peculiarities in terms of the organisation of the State and the legal system. Its official languages are Tetum and Portuguese³, in addition to adopting English and Indonesian Bahasa as working languages. It is important to note at this point that we will not carry out a detailed historical analysis of the country in this report as it is not the subject of the consultation. However, it is worth noting that the adopted legal system in Timor-Leste was a Civil Law system, even though the UN Administration initially organized and viewed judicial institutions from the perspective of Common Law⁴.

In this sense, the legal model in place during the Indonesian occupation (1975 to 1999) was inspired by the Muslim system. However, since its independence (2002), Timor-Leste has been influenced by countries with a Civil Law system in the shaping of its legal system, especially Portugal, Brasil, and Cabo Verde.

The Timorese legal system has gradually been renewed through the legislative activity of the Parliament (directly) and the Government (delegated), thereby replacing the various UN Resolutions established during the transitional period (1999 to 2002), as well

³ Section 13 (Official languages and national languages) 1. Tetum and Portuguese shall be the official languages in the Democratic Republic of East Timor. 2. Tetum and the other national languages shall be valued and developed by the State.

⁴ BROWN, Anne. *State Formation and Political Community in Timor-Leste – The Centrality of the Local*. Available on: <https://journals.openedition.org/rccs/5717>

as the other Indonesian laws that had their validity extended in that territory, pursuant to Section 165 of the transitional provisions of the Constitution of the Democratic Republic of Timor-Leste (CRDTL). Since the promulgation of the Constitution of the Republic on March 22, 2002, several other statutes have entered into force, such as the Penal Code, the Code of Criminal Procedure, the Civil Code, and the Code of Civil Procedure.

To conclude this brief contextualisation, it is necessary to add that, even with the adoption of the Civil Law system in Timor-Leste, and the gradual development of national legislation, formal justice and traditional justice in that country coexist harmoniously, including with constitutional provision.

Indeed, the State recognizes and values, according to section 2.4 of the CRDTL, the norms and customs of Timor-Leste that are not contrary to the Constitution and to any legislation dealing specifically with customary law.

Such constitutional provision stemmed from the formal recognition of the traditional conflict resolution mechanisms existing and consolidated within Timor-Leste's communities. These mechanisms remained alive and immune to the period of Portuguese and Indonesian domination, whether due to the limited impact of the period of Portuguese colonisation on the dissemination of legal values within the communities or due to the authoritarian bias of the Indonesian system⁵. It represents an authentic and customary form of conflict resolution through mediation conducted within the community power structures.

Furthermore, Timorese society has historically been strongly organized around small communities, linked by kinship ties, forming village structures, which reinforces the usual preference of its members to resolve a conflict situation using the existing mechanisms within their own community.

The traditional agreements, often put in writing, under the direction of a community leader or the head of the *Suku* or village, reveal not only customary law but also a high degree of community involvement in strengthening mechanisms that contribute to the restoration of harmony within the social environment.

Therefore, one of the great contemporary legal challenges in Timor-Leste remains the coexistence of formal justice, inspired by the European law system (continental), under the strong influence of Portuguese law, with the population's traditions and perceptions of legal obligations arising from or imposed by traditional justice.

⁵ ANDRADE, Roberto de Campos. *Tradição, Direito e Princípios na construção do sistema de justiça em Timor Leste*. In: VERAS, F. M., REZENDE, R. E. *Visões jurídicas brasileiras em Timor*. Baucau: Gráfica Diocesana de Baucau, 2008, p. 46.

Part Three - The legal status of marriage in Timor-Leste.

Given the context of a country under the Civil Law regime, it becomes imperative to analyse the written legislation, in the first instance. The hierarchy of norms⁶, a characteristic of this system, places the Constitution of the Democratic Republic of Timor-Leste as the highest source of law, above all other laws of the country.

Precisely within the constitutional text, we find the first support for the recognition of legal relationships established through customary law. We reproduce below the full text of Section 2 of the Constitution, highlighting the fourth paragraph.

Section 2

(Sovereignty and constitutionality)

1. Sovereignty rests with the people, who shall exercise it in the manner and form laid down in the Constitution.
2. The State shall be subject to the Constitution and to the law.
3. The validity of the laws and other actions of the State and local Government depends upon their compliance with the Constitution.
- 4. The State shall recognise and value the norms and customs of East Timor that are not contrary to the Constitution and to any legislation dealing specifically with customary law.**

Through this constitutional provision, Timorese law recognizes that, despite the predominance of written law as the primary source of the national normative system, this finding does not rule out the possibility of unwritten legal norms (customary or consuetudinary norms), whose creation process, unlike written norms, does not operate institutionally, but rather through the engagement of society itself. Thus, legal custom, one of the oldest legal sources which even preceded written law, acts contemporaneously in the Civil Law system and, especially, in the constitutional law of Timor-Leste, as an authentic subsidiary (secondary, mediate, or indirect) formal source, as widely recognized in legal doctrine⁷.

⁶ KELSEN, Hans. *Pure Theory of Law*, 1934.

⁷ USAID Timor-Leste; The Asia Foundation Timor-Leste; Legal Education Project Timor-Leste Stanford Law School. *An Introduction to Constitutional Law in Timor-Leste*. Available in: <https://law.stanford.edu/wp->

Informed by this constitutional principle, the civil law of Timor-Leste, currently regulated by the Civil Code, formalised on September 14, 2011, by Law number 10/2011, approved and decreed by the National Parliament, contains provisions relating to traditional marriage, referred to as "bride-price based monogamic" in the original text. We hereby reproduce the relevant provisions of Title II, Chapter I, of the Timor-Leste Civil Code.

TITLE II

ON MARRIAGE

CHAPTER I

Modalities of marriage

ARTICLE 1475

(Civil, catholic, and bride-price based monogamic marriage)

1. Marriage is either civil, catholic, or bride-price based monogamic.
2. Civil law recognises value and efficacy of marriage in catholic matrimony and in bride-price based monogamic marriage, pursuant to the following provisions.

ARTICLE 1478

(Bride-price based monogamic marriage)

1. Bride-price based monogamic marriage is that which is entered into between people of different genders in accordance with the customs and usage of a certain region.
2. Bride-price based monogamic marriage is governed, with respect to effects, by the common norms of this code, except as otherwise provided.

As seen, the Civil Code includes three forms of marriage within national legislation: 1) Civil marriage; 2) Catholic marriage; 3) Bride-price based monogamic marriage. All three types have the same form of existence, validity, and effectiveness under the civil legal system.

The reasons for the legal status of these three forms of marriage being identical are based on historical and social facts, which are beyond the scope of this report. However, it is necessary to point out the fact that Timor-Leste is a predominantly Catholic country. The number of baptized Christians totals 96.9% of the population, according to the 2010 census.

Despite this fact, the practice of the Catholic religion has never displaced Traditional Family Religion as a belief system preexisting Christianity, which continues to be preserved as one of the greatest treasures of Timorese history and cultural identity. In this regard, the Civil Code merely confirms (makes law) the idea of the sacred legacy, the memory of the ancestors, and tradition as roots of the existence and identity of the people, which traditional marriage is situated.

Thus, it is a legal reality that, for those who opt for a Catholic marriage, for example, there is no need to also undergo a civil marriage. Similarly, for those who marry in the traditional form, the bride-price based monogamic, there is no legal requirement for another form to be celebrated - be it Catholic or civil - for the union to be legally recognized.

Following this, within the same Title, there are other pertinent provisions of Chapter IV:

CHAPTER IV

Celebration of civil marriage and of bride-price based monogamic marriage

SECTION I

General Provisions

ARTICLE 1503

(Publicity and solemnity)

1. The celebration of marriage is public and follows the solemnities established by civil registration laws.
2. The celebration of the bride-price based monogamic marriage is public and takes place as follows:
 - a) Oral proclamation in that the marriage conducted by the Li-Nains of both betrothed shall take place;
 - b) Express or tacit declaration by each of the betrothed;
 - c) Drafting of the marriage record on a common sheet of paper.

According to the article, there is therefore a legally established method for the performance of bride-price based monogamic marriage. The celebration must be, firstly, *public*; it requires an *oral proclamation* by the celebrants, who are the Lia-Nain; the *explicit expression* by each of the betrothed, and finally, the *drafting of a record on common sheet of paper*.

The *public* celebration as a requirement for marriage means that the ceremony is accessible to anyone, and commonly, the event is indeed witnessed by all members of the families and the community. The *oral proclamation* refers to the solemn act of the verbal declaration that a marriage has taken place, made by the traditional and spiritual authorities (Lia-nain) of each of the spouses (usually with words like "I declare you married"). The *explicit expression* of the spouses is the act of accepting the other party as husband or wife (usually with the words "I do"). Finally, the *drafting of the record on common sheet of paper* means drafting a minute, a written description of the events of the marriage and its central elements (such as names, dates, location), usually written by hand (less commonly also typed or printed) in the village or *Suku* (administrative units) record book.

It is interesting to note at this point that the Civil Code incorporates into the codified law the provision for an authority typical of Timor-Leste's traditional culture, the Lia-Nain (literally translated as "the owner of the word")⁸.

And the Civil Code continues, regulating the issue, and emphasizing that community and traditional authorities must intervene in the marriage:

2. It is indispensable that the bride-price based monogamic marriage be celebrated in the presence of:
 - a) The contracting parties;
 - b) The respective Lian-Nains, who preside over the ceremony;
 - c) The community authorities;
 - d) At least two adult or fully emancipated witnesses.

Continuing the analysis of the Timorese Civil Code and its framework concerning marriage, it can be seen that the legislation, as is usual within a Civil Law system, also

⁸ I will explain in the fourth part of this report who the traditional authorities of Timor-Leste are and what functions they assume.

delves into the issue of marriage, as a legal act, its impact on the levels of existence, validity, and effectiveness.

In a Civil Law system, legal facts have three levels: level of existence, level of validity, and level of effectiveness. For a life event to have legal repercussions and therefore be considered legal, it must traverse these three levels, meeting the legal requirements of each. If an event meets only the level of existence but not that of validity, it is a legal event that will be considered invalid. If, however, it meets the levels of existence and validity, but not that of effectiveness, it is an existing and valid legal event, but ineffective.

For this reason, the Timorese Civil Code includes the following provisions regarding marriage:

SECTION II

Bride-price based monogamic marriage

ARTICLE 1515

(Invalidity of bride-price based monogamic marriage)

The invalidity of the bride-price based monogamic marriage is governed by the norms of this Code which are applicable to the invalidity of civil marriage, with the necessary adaptations.

SECTION III

Civil Marriage

SUBSECTION I

General provision

ARTICLE 1516

(Validity rule)

A civil marriage is valid when in relation to which none of the causes for inexistence of legality, or annullability, specified in the law occur.

SUBSECTION II

Inexistence of marriage

ARTICLE 1517

(Inexistent marriages)

1. It is legally inexistent:

- a) A marriage celebrated before someone who did not have functional competence for the act, except in the case of urgent marriage;
 - b) An urgent marriage that has not been endorsed;
 - c) A marriage in whose celebration a declaration of will of one or both betrothed parties, or of the attorney of one of them, was missing;
 - d) A marriage contracted through an attorney when celebrated after the effects of the power of attorney have ceased or when the latter has not been granted by the person referred to therein as the grantor, or when it is void due to failure to either grant special powers for the act or expressly designate the other contracting party;
 - e) A marriage contracted by two persons of the same gender.
2. However, a marriage celebrated before a person who, without having functional competence for the act, publicly exercised the corresponding functions, is not considered as legally inexistent, except if both betrothed parties were, at the time when the marriage was celebrated, aware of the lack of such competence.

It's worth noting that the legislation explicitly states that the grounds for declaring the non-existence (level of existence) and annulability (validity) of civil marriage also apply to bride-price based monogamic marriage, with the necessary adaptations.

As such, the grounds outlined in Article 1517 are the only ones that can lead to the declaration of the non-existence of a bride-price based monogamic marriage. If none of these conditions apply, and the requirements of Articles 1503 and 1504 are met, it is legally valid.

The Civil Code continues by addressing the legal level of *validity* in the following articles:

SUBSECTION III
Annulability of marriage
DIVISION I

General provisions

ARTICLE 1519

(Causes for annulability)

A marriage is annulable if:

- a) Contracted with some diriment impediment;
- b) Celebrated, by one or both betrothed parties, with lack of will or with the will vitiated by error or duress;
- c) Celebrated without the presence of witnesses when required by law.

ARTICLE 1520

(Need for annulment action)

The annulability of marriage may not be invoked for any effect, either judicial or extrajudicial, as long as it is not acknowledged by a sentence in an action specifically filed to that end.

According to the legal text, the grounds for annulment of a marriage are exhaustive; therefore, only those outlined in Article 1519 apply. Additionally, to cease on the level of validity, they must be declared by *a judgement*, a court order.

Under the Civil Law system, the level of validity examines whether the act is compatible with the legal framework. Validity thus assesses the lawfulness of the act. There are two degrees of invalidity: nullity and voidability. The former prevents the legal act from entering the level of effectiveness, while voidability allows it, albeit under the threat of its effectiveness being cancelled by a subsequent annulment initiated by the interested party.

The Timorese Civil Code, in the context of marriage and in accordance with the text of Article 1520, clearly adopts only voidability, requiring that in order for the effects of a voidable marriage to cease, the cause of invalidity must be decreed through a judicial decision.

Thus, it is concluded that a bride-price based monogamic marriage that complies with the requirements listed in Articles 1503 and 1504, while not falling within the ambit of Article 1517 and not being declared invalid by a court, is legally existent, valid, and effective in Timor-Leste, producing all legal effects therefrom.

Despite this finding, the Civil Code adds a formality to follow, specifically the requirement for the registration of a bride-price based monogamic marriage – just as the

registration of civil and Catholic marriages is also necessary. There still exists the possibility of registering other types of marriages not provided for in the Code.

The full text of the aforesaid mentioned article follows:

CHAPTER VIII

Registration of marriage

SECTION I

General provisions

ARTICLE 1538

(Marriages subject to registration)

1. Registration is compulsory:

- a) For marriages entered into in Timor-Leste in any of the forms provided for by Timorese law;
- b) For marriages of a Timorese person or persons entered into abroad;
- c) For marriages of foreigners who, after entering into the marriage, acquire Timorese nationality.

2. Registration, at the request of an individual who demonstrates a legitimate interest therein, of any other marriages that do not contradict the fundamental principles of international public order of the Timorese State, is also permitted.

ARTICLE 1539

(Form of registration)

Registration of the marriage consists of a record drawn up by registration or transcription, in compliance with the registration laws.

As can be seen, the legislation, after addressing the requirements and form of bride-price based monogamic marriage, along with the conditions of its validity across the levels of existence, validity, and effectiveness, imposes a final legal formality: registration. Furthermore, regarding the method of registration, it states that it can occur through either *registration* or *transcription*. This means that the drafting of the minute can occur at the

time of the celebration (registration *strictu sensu*), or can take place subsequently (transcription).

It is important to emphasize, however, that the requirement for registration, under the Civil Law system, does not interfere with the levels of existence and validity of a legal act. Therefore, in the case of bride-price based marriage, the absence of a subsequent registration can only affect the level of effectiveness of the marriage, and only for specific effects, and if the ineffectiveness is declared by a court. In other words, until a court deems the marriage ineffective for certain invoked interests, this marriage will be existent, valid, and effective, or in other words, a perfect legal act.

4th Part - Considerations on the frequency of Bride-Price Based Monogamic Marriage

Having established that bride-price based monogamic marriage is one of the legally valid forms of marriage in Timor-Leste, it is important to note that this is, in fact, the most common form of marriage and, by percentage, the most used in the country, alongside Catholic marriage.

Traditional marriage is referred to as "bride-price based monogamic marriage" by the Civil Code of Timor-Leste due to a specific cultural context. The original expression in Portuguese for this kind of marriage is "*casamento barlaqueado monogâmico*", because the term *barlake* (Tetum) can be culturally translated in the West as the "bride's dowry"⁹.

According to numerous sociological and anthropological studies on the *barlake* in Timor-Leste, these matrimonial exchanges that characterise it are considered the most significant factor in the act of marriage. It is also not uncommon for a ceremony in the Catholic church to be held to complement the *barlake* in this complex process of marriage celebration, and this can even happen long after the ritual exchanges that constitute the *barlake*¹⁰.

Therefore, it is quite rare in practice to come across a civil marriage, as envisaged in the Civil Code. Even individuals who, for a specific reason, opt for a civil marriage at the notarial service in Timor-Leste, are often already legally married in the form of bride-price based monogamic or Catholic marriages, or even both.

⁹ It's a simplification commonly adopted for the purpose of understanding, but one that deserves further analysis given the cultural complexity of the issue.

¹⁰ SILVA, Kelly. *Marriage Prestations, Gift Making and Identity in Urban East Timor*. Oceania, 2018.

Furthermore, there is a single notarial service in Timor-Leste, situated in Dili, the capital. Notarial functions in rural areas (such as birth, death, or marriage registrations) are carried out by administrative authorities that are distant from the rural population. There is no regulated public transport in the country, which also contributes to the cultural mismatch between the realities of everyday life and the provisions of the Civil Code, notably concerning the celebration of a purely civil marriage in Timor-Leste.

5th Part - Considerations on the construction of the State, administrative power, and local authorities in Timor-Leste

Given the various references in this report to the cultural peculiarities of Timor-Leste, it is important in this final part to provide some clarifications.

As mentioned, Timor-Leste is a post-conflict country, where its current institutions were formed during a transitional government operated by the UN until the first election held in the country. The UNTAET (United Nations Transitional Administration in East Timor) exercised complete authority - political and administrative - during the transition, consolidating the Executive, Legislative, and Judicial powers, while simultaneously working to prepare national institutions to assume control of the post-independence State¹¹.

The process of establishing national institutions, including legal institutions, depended on the coordination of diverse collaborators, both domestic and international, from varied institutional cultures. There was also a need for coordination with national elites and local leaders, resulting in a hybrid justice system that combines typically Western features – a court, judges, public prosecution, and public defense alongside private legal practice – but maintaining the structure of local power based on a system of cultural beliefs and customs.

At this juncture, the Timorese state was and is constituted by entrusting state functions to local authorities.

Administratively, the country is divided into 13 districts (*Distritu*): *Bobonaro, Liquiçá, Dili, Baucau, Manatuto*, and *Lautém* on the northern coast; *Cova-Lima, Ainaro, Manufahi* and *Viqueque*, on the south coast; *Ermera* and *Aileu*, situated in the hilly countryside, and *Oecussi-Ambeno*, located within the Indonesian territory. These districts are further divided

11 For a better understanding of the subject, we recommend reading SAHIN, Selver B., *Building the state in Timor-Leste*, 2007. Available in: <https://www.jstor.org/stable/10.1525/as.2007.47.2.250>

into 67 sub-districts (*Subdistritu*). Each sub-district is divided into *Sukus* ranging from 2 to 18 per sub-district. Therefore, *Suku* is the smallest administrative division of East Timor, and it can consist of one or more villages. There are 498 *sukus* in the territory¹².

Currently, it is Law 09/2016, known as the "*Suku's Law*," that regulates the status granted to community authorities, expressly recognizing traditional authorities as an extension of state administration. This Law explicitly mentions the following traditional authorities: "Chefe de Suku" (*Suku Chief*), "Chefe de Aldeia" (Village Chief), "Lia-Nain," as well as community councils and their specific composition, assigning them state functions.

For the purposes of this report, it suffices to mention Article 6 of the Law, which reaffirms the competency of the *Suku* for registry activities, such as census activities, death registration, residency declarations, and, in general, all registry activities.

Article 6.

Competencies

In carrying out their respective responsibilities, the Sucos exercise the following competencies:

(...)

z) Support the activities of the registry services;

(...)

Therefore, it is important to clarify that the "community authority" referred to in Article 1504 of the Civil Code, as mentioned earlier, can be either the "Village Chief" or the "*Suku Chief*" as both are authorities invested with state powers according to the current law.

As such, a document issued by either the Village Chief or the *Suku Chief*, recorded in the books of these traditional and legally recognised administrative authorities, is considered legal proof of the existence, validity, and effectiveness of marriage in Timor-Leste.

The reality of Timor-Leste also dictates that almost all public records are still being handwritten by administrative authorities. In Dili, institutions already have computer systems and equipment, although internet access is not of high quality. However, outside

¹² Data and description extracted from the official government page of Timor-Leste. Available at: <http://timor-leste.gov.tl/?p=91>

the capital - in any location, except the capital, to be exact - computer systems are rarely available, among other reasons, due to limited internet access, which, when available, is financially inaccessible¹³.

Another authority mentioned in the articles of the analyzed Civil Code is the *Lia-Nain*. As mentioned, often translated as "the owners of the word," they are considered leaders of customary practices and are associated with power over the traditional rituals of Timor-Leste. In the process of political-administrative incorporation of traditional rituals, exemplified by the marriage ritual, there has been a legislative choice to recognize traditional authority as formal authority within the Civil Code. Hence, the reason *Lia-Nain* acts as the officiant. It is common, even in various realms of public administration, to have the presence of *Lia-Nain*, including in nationally important ceremonies, such as the inauguration of a new composition of the national parliament¹⁴.

It is also important to add the anthropological definition of the cultural identity of the *Lia-Nain*. According to Lúcio Souza (2019)¹⁵:

The *lia na`in* of Timor-Leste is traditionally associated with the local community, the small-scale locality framed by parochial sociopolitical traditional power structures in which they have a particular ritual role. They are the ones that know and pronounce through words the mythical stories that uncover the origin of the world, and the relationship between mankind, nature, and ancestors.

In this sense, they play a major role in the flow of life, of people, animals, and plants (Fox, 1980). They deal with the *lulik* (sacred or forbidden), a major potency rooted in the local beliefs. They do this through words that are part of ritual knowledge and also a power, with the ability to either foster or manage violent threats and promote peace. Towards outsiders, the *lia na`in* usually have depicted themselves as a voice in the silence, in the shadow (Traube, 1986), the peripheral interior realm versus the exterior, the center, the government, the secular power (Souza, 2009; Traube, 1986).

The *Lia-Nain*, therefore, are traditional authorities that were incorporated into the socio-political and legal context of Timor-Leste, including the function of officiating

13 See, for example, the contents of the following article: <https://www.diligenteonline.com/ha-mas-nao-tem-as-dificuldades-no-acesso-a-internet-em-timor-leste/>

14 <https://pt.tatoli.tl/2020/09/04/representantes-dos-lia-nain-realizam-rituais-para-reposicao-da-mesa-da-presidencia-do-pn/>

15 . State appropriation of traditional actors and oral narratives in Timor-Leste. *Austrian Journal of South-East Asian Studies*, 12(2), 209-223. Available in: https://run.unl.pt/bitstream/10362/95422/1/3214_Article_Text_4974_1_10_20191224.pdf

traditional marriages, within a larger context of “(re)creating the nation’s cultural identity as a political means to foster the identity and union of the young state” (SOUSA, 2019). They may or may not be direct family members. For example, they could be uncles or cousins and they can also be more distant relatives, who are not legally considered relatives, but culturally they are.

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TO WHOM IT MAY CONCERN

I confirm that I have made clear which facts and matters referred to in this report are within my knowledge and which are not. Those within my knowledge, I confirm to be true. The opinions I have expressed represent my true and complete professional opinions on the matters to which they refer.

I understand that, to the extent that this report may be used in legal proceedings, I owe the court a duty of truthfulness. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

Porto Alegre, Rio Grande do Sul, Brasil.

March, 2024.

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Alessandra Quines Cruz.

APPENDIX TO EXPERT REPORT
CURRICULUM VITAE OF ALESSANDRA QUINES CRUZ¹⁶.

¹⁶ This is a summary prepared to inform this report. The entire curriculum vitae is available at the following link:
<https://lattes.cnpq.br/5175916153394355>

Alessandra Quines Cruz

Lawyer

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Summary

Lawyer with 19 years of experience. Public Defender for 17 years. Master in Human Rights. 2 years of experience in international cooperation as a Public Defender in Timor-Leste. Author of several legal reports, with experience as expert witness.

Education

- | | |
|--------------------|--|
| 2013 - 2015 | Master in Law (Human Rights).
Ritter dos Reis University Center, UniRITTER, Porto Alegre, Brazil |
| 2014 - 2014 | Postgraduate Specialization in Public Policies for Indigenous and Afro-descendants.
Pontificia Católica del Peru, PUCP, Lima, Peru. |
| 2013 - 2013 | Postgraduate Specialization in Transparency, Accountability and Fight Against Corruption.
University of Chile, UCHILE, Santiago, Chile. |
| 2010 - 2010 | Postgraduate Specialization in Inter-American Human Rights System and the 100 rules of Brasilia. University of Chile, UCHILE, Santiago, Chile. |
| 2000 - 2004 | Law graduation. University of the Campanha Region, URCAMP, Brazil. |
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Work Experience

1. Public Defender's Office of the State of Rio Grande do Sul, Brazil

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|-----------------------|--|
| 2022 - present | Internal Affairs at Public Defender's Office (<i>Defensora Pública-Corregedora</i>). |
| 2016 - 2018 | International Public Defender and United Nations Development Programme's Advisor at Public Defender's Office of Timor-Leste and UNDP Timor-Leste office.
Other information: Technical cooperation project "Support to the Timor-Leste Justice Sector" between the Brazilian Cooperation Agency (ABC) and the United Nations Development Program (UNDP). |
| 2016 - 2018 | Teacher at the Timor-Leste Legal Training Center.
Other information: Courses taught: Constitutional Law, Citizenship Rights, Ethics and Deontology, Children's Rights and Family Rights. |
| 2006 - present | Public Defender at Public Defender's Office. |
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Positions and work as expert witness

- 10/2020 – 08//2022** Superior Council of the Public Defender's Office. Specification: Counselor
- 01/2020 - present** ANADEP Ethnic-Racial Equality Commission. Specification: advisor.
- 02/2017 - 08/2017** Specialized Technical Service: Public Defender's Office of Timor-Leste. Specification: Training for Access to Justice Clinics in Timor-Leste.
- 2015 - 2015** Competition Committee for the IV Public Competition for Public Defender of RS. Specification: Surveyor.
- 08/2015 - 04/2016** State Council for the Rights of People with Disabilities – COEPEDE. Specification: Advisor.
- 08/2015 - 04/2016** Special Committee to develop State Policy for the Homeless Population Specification: Advisor.
- 08/2015 - 04/2016** State Protection Program for human rights defenders. Specification: Counselor.
- 08/2015 - 04/2016** State Committee for Attention to Migrants, Refugees and Stateless Persons. Specification: Expert witness.
- 08/2015 - 04/2016** State Council for the Promotion of LGBTQIAPN+ Rights. Specification: Expert witness.
- 08/2015 - 04/2016** State Commission for the Eradication of Slave Labor – COETRAE. Specification: Expert Witness
- 08/2015 - 04/2016** Human Rights Commission of the National Council of Public Defenders General – CONDEGE. Specification: Expert witness
- 07/2015 - 04/2016** State Council for the Elderly – CEI. Specification: Advisor.
- 08/2014 - 04/2016** State Council for Human Rights – CEDH. Specification: Counselor.
- 06/2014 - 04/2016** Deliberative Council of the State Witness Protection Program – PROTEGE. Specification: Counselor.
- 01/2014 - 04/2016** Human Rights Defense Center of the Public Defender's Office of the State of Rio Grande do Sul – NUDDH. Specification: Director
- 08/2013 - 12/2013** Human Rights Defense Center of the Public Defender's Office of the State of Rio Grande do Sul – NUDDH. Specification: Deputy director
- 11/2008 - 11/2009** Research and Development, Observation Project, Prevention and Treatment of Over-Indebtedness of Vulnerable Consumers. Specification: Expert witness

2. Ritter dos Reis University Center- UniRITTER

- 2013 - 2015** Researcher. Specification: Line of research: Human rights; constitutional rights; indigenous rights; intercultural dialogue.

3. Court of Justice of the State of Rio Grande do Sul - TJRS

- 01/2006 - 08/2006** Judge's advisor.

4. Ministry of foreign affairs – Brazil.

2016 - 2018 International cooperator in Timor-Leste.

5. United Nations Development Programme of Timor-Leste.

2016 - 2018 Advisor

Publications

Complete legal reports published in journals

1. **CRUZ, A. Q.**; SCHÄFER, Gilberto;SCHÄFER, GILBERTO; LEIVAS, P. G. C.
O dever de consulta aos povos indígenas: considerações sobre o instituto e sobre o proveito de uma legislação interna a partir da experiência peruana. REVISTA DA AJURIS - ASSOCIAÇÃO DOS JUÍZES DO RIO GRANDE DO SUL. , v.43, p.13 - 28, 2016.
(The duty to consult indigenous peoples: considerations about the institute and the benefits of internal legislation based on the Peruvian experience).
2. **CRUZ, A. Q.**
Dever de Consulta aos Povos Indígenas e Diálogo Intercultural. REVISTA DA DEFENSORIA PÚBLICA DO ESTADO DO RIO GRANDE DO SUL. , v.13, p.174 - 185, 2015.
(Duty of Consultation with Indigenous Peoples and Intercultural Dialogue).
3. **CRUZ, A. Q.**
O Compromisso de Ajustamento de Conduta. Revista do Direito (Bagé). , v.5, p.61 - 64, 2005.
(The Conduct Adjustment Pledge).
4. **CRUZ, A. Q.**; SOUZA, C. R. S.
Responsabilidade moral e redes de práticas motivadas no Estado-Nação Pós-colonial: um pouco da história de Timor-Leste In: Direitos Humanos na Sociedade Complexa: movimento entre os saberes.1 ed.Porto Alegre: Evangraf, 2019, v.IV, p. 13-30.
(Moral responsibility and networks of motivated practices in the Postcolonial Nation-State: a little about the history of Timor-Leste).
5. **CRUZ, A. Q.**; FERRARI, E. K.
Cooperação Internacional pela Defensoria Pública Brasileira como Reforço do Modelo de Instrumento Democrático por meio do Diálogo Intercultural para Realização dos Direitos Humanos In: Coletânea de Direitos Humanos Egressos UNIRITTER.1 ed.Rio de Janeiro: Lumen Juris, 2018, v.III, p. 21-32.
(International Cooperation by the Brazilian Public Defender's Office as Reinforcement of the Democratic Instrument Model through Intercultural Dialogue for the Realization of Human Rights).
6. **CRUZ, A. Q.**
Direitos Humanos In: Desvendando Bancas e Carreiras: Defensor Público Federal e Estadual.1 ed.Salvador: JusPODIVM, 2018, v.1, p. 693-751.
(Human Rights In: Uncovering Banks and Careers: Federal and State Public Defender)
7. **CRUZ, A. Q.**
Direitos Humanos In: Preparando para concursos? Questões discursivas comentadas Defensoria Pública Estadual Defensor Público.3 ed.Salvador: JusPODIVM, 2018, v.1, p. 273-302.
(Human Rights In: Preparing for competitions? Commented discursive questions State Public Defender's Office)
8. **CRUZ, A. Q.**
Direitos Humanos In: Coleção preparando para concursos questões discursivas comentadas Defensoria Pública Estadual Defensor Público.2 ed.Salvador: JusPODIVM, 2016, v.1, p. 243-262.
(Human Rights In: Collection preparing for competitions commented speech questions State Public Defender)

9. **CRUZ, A. Q.**

O Dever de Consulta aos Povos Indígenas como Diálogo Intercultural In: Coletânea de Direitos Humanos Egressos UNIRITTER. 1 ed. Rio de Janeiro: Lumen Juris, 2016, v.1, p. 3-16.
(*The Duty of Consultation with Indigenous Peoples as Intercultural Dialogue*)

10. **CRUZ, A. Q.**

Direitos Humanos In: Coleção Preparando para Concursos - Questões discursivas comentadas - Defensoria Pública Estadual. 1 ed. Salvador: JusPODIVM, 2015, v.1, p. 123-138.
(*Human Rights In: Collection Preparing for Competitions - Commented discursive questions - State Public Defender's Office*)

Full Papers in Congress Annals

1. **CRUZ, A. Q.**

Cooperação Internacional pela Defensoria Pública como Reforço do Modelo de Instrumento Democrático por meio do Diálogo Intercultural In: XIII Congresso Nacional de Defensores Públicos, 2017, Florianópolis.

Livro de Teses e Práticas Exitosas: Defensoria Pública: em Defesa das Pessoas em Situação de Vulnerabilidade. Brasília: ANADEP, 2017. p.21 – 26
(*International Cooperation by the Public Defender's Office as Reinforcement of the Democratic Instrument Model through Intercultural Dialogue*)

2. **CRUZ, A. Q.**

A Defensoria como Instrumento do Diálogo Intercultural na Defesa dos Povos Indígenas In: XII Congresso Nacional de Defensores Públicos, 2015, Curitiba.

Livro de Teses e Práticas Exitosas: Defensoria como Metagarantia: transformando promessas constitucionais em efetividade. Curitiba: ANADEP, 2015. p.13 – 16
(*The Public Defender's Office as an Instrument for Intercultural Dialogue in the Defense of Indigenous Peoples*)

3. **CRUZ, A. Q.**; KERN, L. P.

Centro de Referência em Direitos Humanos In: XII Congresso Nacional de Defensores Públicos, 2015, Curitiba.

Livro de Teses e Práticas Exitosas: Defensoria como Metagarantia: transformando promessas constitucionais em efetividade. Curitiba: ANADEP, 2015. p.227 – 229
(*Human Rights Reference Center*)

4. **CRUZ, A. Q.**

A Luta Contra a Corrupção sob um Enfoque de Direitos Humanos e as Possibilidades de Atuação da Defensoria Pública In: XI Congresso Nacional de Defensores Públicos, 2013, Vitória.

Livro de Teses e Práticas Exitosas: Defensoria Pública e seus novos desafios. Brasília: ANADEP, 2013. p.11 – 17
(*The Fight Against Corruption from a Human Rights Approach and the Possibilities of Action by the Public Defender's Office*)

Newspaper articles

1. **CRUZ, A. Q.**

Iemanjá e a Intolerância Religiosa. (*Iemanjá and Religious Intolerance*). Zero Hora. Porto Alegre, 2015.

2. **CRUZ, A. Q.**

Todo dia é dia de índio?. (*Is every day an indigenous day?*). Correio do Povo. Porto Alegre, p.02 - 02, 2015.

3. **CRUZ, A. Q.**

Quem é o povo?. (*Who are the people?*) Zero Hora. Porto Alegre, 2014.

Other technical productions

1. **CRUZ, A. Q.**

Instituições do Sistema de Justiça e os Desafios na Efetivação dos Direitos dos Povos Indígenas, 2022. (*Institutions of the Justice System and the Challenges in Enforcing the Rights of Indigenous Peoples*). Short course taught.

2. **CRUZ, A. Q.**

Direitos Humanos para o Curso Extensivo Preparatório à Carreira de Defensora de Defensor Público, 2021. (*Human Rights for the Extensive Preparatory Course for the Public Defender Career*). Short course taught.

3. **CRUZ, A. Q.;** LAVIGNE, J.; JOHANN, C. A.; VIEL, V.; GROHE, S. L. S.

Educação em Direitos Humanos e o Papel Transformador do Professor, 2020. (Human Rights Education and the Transformative Role of the Teacher). Short course taught.

4. **CRUZ, A. Q.;** COUTO, E. F.

Atualização para Oficiais de Justiça da Defensoria Pública de Timor-Leste, 2018. (Update for Justice Officers of the Public Defender's Office of Timor-Leste). Short course taught.

5. **CRUZ, A. Q.;** COUTO, E. F.; COELHO, A.; SILVA, I.

Atualização Profissional em Direito Civil para Defensores/as Públicos/as, 2017. (Professional Update in Civil Law for Public Defenders). Short course taught.

6. **CRUZ, A. Q.**

Clínica de Acesso à Justiça de Baucau - Timor-Leste, 2017. (Baucau - Timor-Leste Access to Justice Clinic). Short course taught.

7. **CRUZ, A. Q.**

Clínica de Acesso à Justiça de Suai, Timor-Leste, 2017. (Suai Access to Justice Clinic, Timor-Leste). Short course taught.

8. **CRUZ, A. Q.;** SANTOS, C.

Discussão e Aprovação do Procedimento Operacional Padrão (POPe) do Regulamento das CAJs – Baucau- Timor-Leste, 2017. (Discussion and Approval of the Standard Operating Procedure (POPe) of the AJCs Regulations – Baucau-Timor-Leste). Short course taught.

9. **CRUZ, A. Q.;** SANTOS, C.

Discussão e Aprovação do Procedimento Operacional Padrão (POPe) do Regulamento das CAJs Suai, 2017. (Discussion and Approval of the Standard Operating Procedure (POPe) of the AJCs Regulations – Suai-Timor-Leste). Short course taught.

10. **CRUZ, A. Q.**

Programa de Atualização jurídica e administrativa para os Defensores Aposentados, 2015. (Legal and administrative update program for retired defenders). Short course taught.

11. **CRUZ, A. Q.**

Capacitação para Assessores Jurídicos da SUSEPE, 2012. (Training for Superintendence of penitentiary services - SUSEPE's Legal Advisors). Short course taught.

