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**Promotion et protection de tous les droits de l'homme, civils, politiques, économiques, sociaux et culturels, y compris le droit au développement**

## Visite au Timor-Leste

### Rapport de la Rapporteuse spéciale sur les droits des peuples autochtones\*, \*\*

#### Résumé

La Rapporteuse spéciale sur les droits des peuples autochtones, Victoria Tauli-Corpus, a effectué une visite au Timor-Leste du 8 au 16 avril 2019.

La culture et les langues autochtones timoraises présentent une grande diversité et ont été préservées tout au long des périodes de colonisation et d'occupation. La grande majorité de la population partage les valeurs et les croyances spirituelles des autochtones, qui sous-tendent des institutions locales fortes, le système de justice coutumière et la gestion des terrains communaux. Les pratiques autochtones ont mené à d'importants progrès en matière de protection de l'environnement et de biodiversité, qui peuvent être une source d'inspiration pour d'autres pays. Il importe de poursuivre l'harmonisation entre la justice formelle et la justice coutumière pour renforcer l'accès de tous à la justice. Le Timor-Leste s'est fermement engagé à respecter les normes en matière de droits de l'homme et à adopter des politiques nationales de développement fondées sur les droits ; toutefois, des ressources supplémentaires sont nécessaires pour une mise en œuvre et un suivi efficaces, notamment dans les domaines de l'éducation, de la santé et de la nutrition.

Le présent rapport comprend des recommandations portant, entre autres, sur la justice formelle et la justice coutumière, l'occupation des terres, la consultation des communautés et l'obtention de leur consentement, les mesures de protection de l'environnement et d'adaptation aux changements climatiques, l'éducation et la nutrition.

\* Il a été convenu que le présent rapport serait publié après la date normale de publication en raison de circonstances indépendantes de la volonté du soumetteur.

\*\* Le résumé du présent rapport est distribué dans toutes les langues officielles. Le corps du rapport, annexé au résumé, est distribué dans la langue de l'original seulement.



## Annexe

### **Report of the Special Rapporteur on the rights of indigenous peoples on her visit to Timor-Leste**

#### **I. Introduction**

1. In the present report, the Special Rapporteur on the rights of indigenous peoples, Victoria Tauli-Corpuz, presents the findings of her visit to Timor-Leste from 8 to 16 April 2019. She thanks the Government for having invited her and for its excellent cooperation during the visit.
2. During her visit, she met with the President, the Minister of Foreign Affairs and Cooperation, the Minister for Legislative Reform and Parliamentary Affairs, the Minister for Education, Youth and Sports, the Minister for Justice, the Secretary of State for Equality and Inclusion, the Secretary of State for the Environment, senior representatives of several ministries, members of the judiciary, the President of the Court of Appeal, parliamentarians and several traditional Elders (Lia Nain), as well as with representatives of the Prosecutor General's Office, the Public Defender's Office, the independent national human rights institution (Provedoria de Direitos Humanos e Justiça), a broad range of civil society organizations and the United Nations country team.
3. She held meetings in Dili and visited communities in Ermera, Liquiçá and Atauro. She had several separate meetings with women throughout the visit.
4. During the visit, the Special Rapporteur studied diverse issues affecting indigenous peoples, including customary justice systems, community land issues, education, conservation and climate change adaptation and mitigation measures. The present report takes into account recommendations previously issued by other human rights mechanisms, including the Special Rapporteur on extreme poverty and human rights, who visited the country in 2011 (A/HRC/20/25/Add.1).

#### **II. Indigenous history and identity in Timor-Leste**

5. The vast majority of the population of Timor-Leste is of Malay-Polynesian and Melanesian-Papuan origin. The history of the first indigenous peoples in Timor-Leste has been traced back some 40,000 years through archaeological sites and rock paintings. The early inhabitants had high-level maritime and fishing skills. Indigenous legends refer to creation myths whereby a giant crocodile turned into the island of Timor.
6. In the thirteenth century Javanese and Chinese traders visited and in the fifteenth century Dutch and Portuguese arrived, subsequently resulting in Timor-Leste becoming a Portuguese colony for over 400 years. The colonial presence was concentrated on the coast. Despite the introduction of Roman Catholicism, the strong animist beliefs of most Timorese remain to the present day.
7. Japan occupied Timor-Leste during the Second World War, after which Portugal resumed colonial rule. Timor-Leste unilaterally declared itself independent from Portugal on 28 November 1975. Days later Indonesia invaded and annexed the territory as its twenty-seventh province. The annexation was never recognized by the United Nations. It is estimated that the ensuing 24-year period of occupation cost the lives of over 100,000 Timorese due to violence, disease and famine.<sup>1</sup> In the 1999 referendum, an overwhelming majority of East Timorese voted for independence from Indonesia. After a period of United Nations administration, Timor-Leste achieved self-determination in political terms and became an independent State on 20 May 2002.

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<sup>1</sup> *Chegal: The Final Report of the Timor-Leste Commission for Reception, Truth and Reconciliation (CAVR)*, 2005.

8. During colonialism and occupation, the concept of indigenes was associated with being “uncivilized”. In 1930, Portugal adopted the Colonial Act and applied it to its colonies. The law officially distinguished between *indigenes* (indigenous Timorese) and *não indigenes* (this included whites, *mestiços* and *assimilados*). One could gain *assimilado* status, for example, by learning Portuguese, doing military service and having “good character”.<sup>2</sup> The stigma and divisions caused by the application of such terminology has left a long-standing legacy in Timor-Leste.

9. During the national liberation movement in the 1970s, terms formerly considered derogatory, such as *maubere* (people of the dirt), were used as a rallying cry for independence by the educated elite of *mestiços* and *assimilados*.<sup>3</sup> In contrast, today the same term *maubere* is associated with the rising desire to reclaim indigenous traditions and increased pride in indigenous culture and identity. A growing movement towards self-identification as indigenous is taking place in the country. The Special Rapporteur notes that unlike indigenous peoples in many other countries, the Timorese have since independence truly been able to self-determine their future and to govern themselves, and are doing so with ample consideration of the importance of preserving traditional practices.

10. During her visit, the Special Rapporteur observed that at times the colonial bias against their own culture inherited by some Timorese has impacted on the development of inclusive and culturally adequate national policies by Timorese authorities. The recognition by politicians and policymakers of the importance of indigenous traditions, customary governance and rights is vital in ensuring an inclusive national unity in the future.

11. Timor-Leste is characterized by the strength and diversity of its more than 30 indigenous cultures and languages, which have been retained throughout colonization and occupation. The vast majority of the country shares indigenous values and spiritual beliefs which are reflected in strong local institutional structures, customary justice and collective land management. The Special Rapporteur notes that, as most Timorese are indigenous, she addresses key human rights issues that affect the majority, including poverty, health and education.

12. Indigenous concepts such as *lisan* (customary law and practices) and *lulik* (sacred/spiritual/forbidden) form an integral part of and regulate everyday life for the vast majority of the population, providing guidance both on the relationship between people and between people and nature. The notion of *lulik* as an indigenous spiritual moral order exists in different terms in all languages in Timor-Leste and its main objective is to ensure peace and tranquillity in society.<sup>4</sup>

13. Social organization is based on family and clan membership. *Uma lulik* (sacred houses) play a key role for Timorese spiritual and societal structures. While discouraged during Indonesian occupation, since 2002 indigenous identity is being reinvigorated and the construction of *uma lulik* is rapidly increasing. Government officials told the Special Rapporteur that they estimate that there are currently about 5,000 *uma lulik* across the country. *Lia Nain* (traditional leaders, “owners of words” in Tetum) exercise community authority on spiritual and traditional law matters.

14. The current population is approximately 1.3 million. Timor-Leste has one of the youngest populations in the Asia and the Pacific region, with a median age of 17.4 years. Some 70 per cent of Timorese live in rural areas and practise subsistence farming and fishing. Government sources emphasize the diversity of indigenous groups in Timor-Leste, reflected in the multitude of indigenous languages and cultural practices.<sup>5</sup> Tetum speakers, accounting for about 25 per cent of the population, are the largest indigenous group ; other groups include the Mambae, Kemak, Bunak and Fataluku. The Tetum and Portuguese

<sup>2</sup> M. Leach, *Nation-Building and Nationality in Timor-Leste* (Routledge, 2017), chaps. 2 and 3.

<sup>3</sup> L. Palmer and A. McWilliam, “Ambivalent ‘indigenities’ in an independent Timor-Leste: between the customary and national governance of resources”, *Asia Pacific Viewpoint*, 2018.

<sup>4</sup> J. Trindade, “The core values of Timor-Leste”, conference paper presented at Communicating New Research on Timor-Leste, third Timor-Leste Studies Association conference, 2011.

<sup>5</sup> See [www.timorleste.tl/east-timor/about/people-culture/](http://www.timorleste.tl/east-timor/about/people-culture/).

languages have been given official status in the country, while Bahasa Indonesia and English are considered working languages.

### **III. Legal and institutional framework**

15. Timor-Leste is one of the world's newest countries, and since its emergence from occupation and conflict it has made remarkable progress in establishing legal and institutional frameworks. Timor-Leste has made strong commitments to international human rights standards by ratifying seven of the core human rights treaties and by setting national social development policies.

16. The Constitution, adopted in 2002, contains provision for a democratic and pluralistic society in which fundamental rights and freedoms are upheld. It guarantees a range of rights, including access to courts by all (sect. 26); the right to life (sect. 29); personal freedom, security and integrity (sect. 30); freedom of speech and information (sect. 40); freedom of conscience, religion and worship (sect. 45); equality of all citizens before the law (sect. 16 (1)); and non-discrimination (sect. 16 (2)). It also protects economic, social and cultural rights and duties (Part II, Title III).

17. Timor-Leste supported the adoption by the General Assembly of the United Nations Declaration on the Rights of Indigenous Peoples in 2007, and the Constitution contains several provisions which explicitly recognize the country's customs, traditional values and cultural heritage.

18. The Constitution of Timor-Leste explicitly notes in section 2 (4) that "the State shall recognize and value the norms and customs of [Timor-Leste] that are not contrary to the Constitution and to any legislation dealing specifically with customary law". Section 6 (g) defines as one of the fundamental objectives of the State "to assert and value the personality and the cultural heritage of the East Timorese people".

19. Regarding education and culture, section 59 (1) and (5) of the Constitution states that "the State shall recognize and guarantee that every citizen has the right to education and culture, and it is incumbent upon it to promote the establishment of a public system of universal and compulsory basic education that is free of charge" and that "everyone has the right to cultural enjoyment and creativity and the duty to preserve, protect and value cultural heritage". Section 13 notes that while Tetum and Portuguese shall be the official languages, "Tetum and the other national languages shall be valued and developed by the State".

20. The Constitution contains very progressive provisions on environmental rights. Section 61 on the environment sets out that "everyone has the right to a humane, healthy, and ecologically balanced environment and the duty to protect it and improve it for the benefit of the future generations" and that "the State shall recognize the need to preserve and rationalize natural resources" and "promote actions aimed at protecting the environment and safeguarding the sustainable development of the economy".

21. Section 27 of the Constitution provides for the establishment of an ombudsman as "an independent organ in charge of examining and seeking to settle citizens' complaints against public bodies, certifying the conformity of the acts with the law, preventing and initiating the whole process to remedy injustice".

### **IV. Human rights issues**

#### **A. Formal and customary justice**

22. Among the main thematic issues raised during the visit of the Special Rapporteur was the relationship between the formal and customary justice systems. In the 17 years since its independence, Timor-Leste has faced remarkable challenges in establishing a judicial system. The normative framework and institutional structures needed to be established from zero and deal with a complex post-conflict situation. Few trained legal

personnel remained in Timor-Leste after the end of the Indonesian occupation and this continues to present challenges to the administration of justice.

23. While progress has been achieved, access to the formal justice system remains tenuous for the majority of the population. Courts have only been established in four locations. In addition to Dili, three district courts exist, located in Baucau, Suai and Oecusse. This means in practice that geographic access is extremely difficult for most people, especially in rural areas. The capacity of the justice system remains limited and it struggles with a backlog of thousands of cases. A donor project which sought to expand the presence of mobile courts pending the establishment of additional district courts has been temporarily suspended for funding reasons. The Special Rapporteur notes the positive step taken by the Government in indicating its willingness to assume the costs of continuing the mobile court system, and encourages the undertaking of an assessment to inform its design.

24. Language is a major impediment in ensuring access to justice. Most judges were trained in Bahasa Indonesia under Indonesian rule and are now required to operate in the official languages of Portuguese and Tetum. The judiciary thus operates in languages that are not mother tongue for the majority of the population. Furthermore, knowledge of local languages among judges, prosecutors and public defenders is often limited (A/HRC/19/58/Add.1, para. 46). Only in 2017 was Tetum explicitly recognized as an official language in the judicial sector,<sup>6</sup> and interpreters in indigenous mother-tongue languages remain unavailable. Surveys have shown that the majority of the Timorese have little knowledge of the formal justice system and of concepts such as “prosecutor” and “lawyer” and that one third of those who have been to court did not understand the procedures followed.<sup>7</sup>

25. During Indonesian occupation indigenous customary justice practices were restricted; however, since 2002 they are becoming increasingly revitalized. For most Timorese, these customary practices are an integral part of everyday life and play a central role in resolving disputes between individuals and communities, such as land disputes, conflict between communities and natural resources management. The Special Rapporteur was repeatedly told that customary justice is the natural first resort for the vast majority of the population.

26. While the Constitution affirms that the State recognizes and values the norms and customs of Timor-Leste that are not contrary to the Constitution, it does not indicate how this should be undertaken. There is, however, another provision in the Constitution which suggests the possibility of formal engagement between the formal legal system and the customary system, namely section 123 (5) on categories of courts, which states that “the law may institutionalize means and ways for the non-jurisdictional resolution of disputes”. However, to date, neither the Constitution, the Penal Code nor other legislation has been adopted to give concrete guidance on how such customs should be recognized in practice.

27. The vast majority of legal conflicts are settled in the customary justice system at the hamlet (*aldeia*) or village (*suco*) level. These are decided by the traditional Elder (*Lia Nain*) or the elected *suco* council according to customary rules established by the local community. The rules are based on spiritual traditions of sacred practice which for many centuries have regulated community relationships. The *Lia Nain* is considered to be the transmitter of knowledge and traditions from the ancestors to the present generation.

28. Customary justice thus takes into account spiritual beliefs but also the importance of community harmony and equilibrium with the environment. It safeguards harmony with nature by regulating the use of natural resources to ensure their sustainability. Furthermore, by addressing underlying potential causes of conflict at an early stage, customary justice contributes to conflict prevention, unlike the reactive and perpetrator-focused approach of formal justice systems. Local regulations and moral codes of conduct are in many

<sup>6</sup> Decree-law No. 11 /2017 on the official languages to be used in the justice sector, 29 March 2017.

<sup>7</sup> M. Hirst, *Access to Justice Brief: Community Dispute Resolution in Timor Leste – A Legal and Human Rights Analysis* (United States Agency for International Development, 2016), p. 8; and A. Kovar, “Customary law and domestic violence in Timor-Leste”, United Nations Development Programme (UNDP) Timor-Leste, 2011, p. 29.

communities referred to as *tara bandu* (“hanging prohibitions”) as some of these rules were traditionally signalled by placing items in trees.

29. For the majority of the population, resorting to customary justice is preferred over the formal justice system. It is inaccurate to understand customary justice merely as a form of “alternative dispute resolution”. Customary measures are integrated into the indigenous worldview and social structure; they are understood and accepted by the community and provide swift and accessible redress, and also provide an opportunity to transmit cultural and traditional knowledge to the next generation. Strong compliance is ensured by the sense of community belonging and spiritual duty; sanctions may, for example, entail community work, the loss of social status or being denied marriage.

30. The Special Rapporteur was told by traditional Elders that they consider the customary and formal justice systems as complementary. This perspective was also echoed by several authorities, judges and other judicial actors in the formal justice system, who underlined that they do not see a contradiction between the two justice systems.

31. The Special Rapporteur notes that, in terms of access to justice and compliance with human rights standards, there are shortcomings in both the formal justice system and the customary justice system. In the customary justice system, hearings are commonly conducted in public, which is clearly unsuitable for crimes relating to emotionally vulnerable victims of domestic violence and child abuse. Some customary justice practices may entail physical punishments, in contravention of international human rights law.

32. While there are practices in the customary justice system in Timor-Leste that need to be amended to comply with human rights standards, many aspects of the customary justice system have an undeniable complementary added value to the formal system that must be acknowledged, such as accessibility, awareness of community cultural specificities and languages, low cost and trust; also, it is understood by everyone in the community. The Special Rapporteur has, however, observed in many countries that there are often unfounded prejudices and a lack of understanding of customary justice systems. In this regard, the Special Rapporteur would like to recall that the United Nations Declaration on the Rights of Indigenous Peoples, in articles 5 and 34, affirms the right to maintain and strengthen indigenous legal institutions and juridical systems or customs, with the caveat that these should be in accordance with international human rights standards.

33. Domestic violence has been defined as a public crime since 2010, requiring investigation in the formal justice system. While an increasing number of such cases are being brought before the formal justice system, in practice many of these crimes continue to be addressed through customary justice. The ordinary justice system has not proven to be sufficiently accessible nor able to effectively address such violations, and the criticism has been raised that the focus on punishing the perpetrator has been insufficient to date to guarantee justice for victims of domestic violence. At the same time, overall public awareness that domestic violence is a crime requiring prosecution in the formal justice system has increased.<sup>8</sup> Research has shown that many *tara bandu* regulations adopted since 2010 replaced mention of domestic violence with reference to the formal justice system, stating that it is a crime requiring investigation in the formal justice system.<sup>9</sup> This points to the role that customary justice systems can play in socializing formal law and acting in favour of condemnation and prevention of such acts at the local level.

34. Collaboration and coordination with the existing customary justice system is likely to be more constructive than promotion of the formal justice system in disregard of traditional practices. International experiences have shown that when traditional leaders’ support was gained for initiatives in support of women’s rights, these achieved more long-

<sup>8</sup> Centro de Estudos Sociais da Universidade de Coimbra and Comissão para a Reforma Legislativa e do Sector da Justiça, *Para Uma Justiça De Matriz Timorense: o contributo das justiças comunitárias* (2017), p. 151.

<sup>9</sup> Belun and The Asia Foundation, *Tara Bandu: Its Role and Use in Community Conflict Prevention in Timor-Leste* (2013), p. 29.

term acceptance and legitimacy as they were attached to existing community values and practices.<sup>10</sup>

35. During her visit, the Special Rapporteur spoke to several women who related how better awareness of women's rights within the customary justice system had improved their situation, for example by reducing early marriage and dowries<sup>11</sup> and enabling girls to gain better access to education. Women also noted that they participate actively in customary justice processes at the *suco* level. While it is true that in most instances traditional authorities in the country are men, studies show that there is significant community acceptance of increasing the participation of women in the customary justice system.<sup>12</sup>

36. Customary justice practices by indigenous peoples are not static, and the Special Rapporteur has observed in various countries that indigenous communities are generally open to incorporating human rights guarantees in their practices. Such change needs to come from within indigenous communities but can be encouraged by increased awareness-raising of international and national legal standards through culturally appropriate dialogue. In this regard, the Special Rapporteur notes that a constructive dialogue between both systems will help address their respective shortcomings and increase knowledge of procedures and best practices in both systems. The Special Rapporteur has witnessed many examples across the world, including in her own country, the Philippines, and in Latin America, where the two systems can act in a mutually reinforcing manner. The Special Rapporteur will dedicate her thematic report to the Human Rights Council at its forty-second session to exploring this issue in more detail.

37. Furthermore, during her visit the Special Rapporteur witnessed in several locations, and through discussions with community members, how indigenous traditional knowledge and customary justice regulations, whether oral or in writing, have contributed to important forest and marine conservation outcomes. She also learned about how customary practices were incorporated into transitional justice measures by the Commission on Reception, Truth and Reconciliation through the concept of *nahe biti*,<sup>13</sup> which means "rolling out the mat", experiences from which valuable lessons can be learned.

38. The Special Rapporteur welcomes the measures announced by the Timor-Leste Government to develop a hybrid justice system inclusive of cultural traditions,<sup>14</sup> and its intention to undertake participatory consultations with communities across the country on how the formal and customary justice systems can harmonize their coexistence and strengthen their contribution to ensuring access to justice for all. She looks forward to continuing her engagement with the Government on this matter through technical assistance. Ensuring justice for all is a key objective of Sustainable Development Goal 16 and Timor-Leste could provide important lessons for other countries.

## B. Land, territories and resources

39. Most Timorese depend on subsistence farming, and over 90 per cent of the lands in Timor-Leste are governed through customary land tenure systems (*rai lisan*). Customary practices and traditions that govern property ownership and management in Timor-Leste date back to before the Portuguese colonization.

40. These customary practices and traditions revolve around the concept of intergenerational responsibility to protect lands and resources to sustain the present and future generations. This is reflected in their customary value, *ema iha oan, rai la bele iha*

<sup>10</sup> Kovar, "Customary law and domestic violence in Timor-Leste" p. 33.

<sup>11</sup> Raised as concerns by the Committee on the Elimination of Discrimination against Women (CEDAW/C/TLS/CO/2-3, para. 14) and the Committee on the Rights of the Child (CRC/C/TLS/CO/2-3, para. 22).

<sup>12</sup> Kovar, "Customary law and domestic violence in Timor-Leste", p. 18.

<sup>13</sup> D. Babo-Soares, "'Nahe biti': the philosophy and process of grass-roots reconciliation (and justice) in East Timor", *Asia Pacific Journal of Anthropology*, vol. 5, No. 1 (2004), pp. 15–33.

<sup>14</sup> Remarks by Fidelis Magalhães, Minister for Legislative Reform and Parliamentary Affairs, at a seminar on culture, custom and rights in Timor-Leste (Dili, 11 April 2019).

oan (people can have children, land cannot), which also seeks to ensure equal access for all to lands and sufficient resources to sustain the population.<sup>15</sup> The indigenous culture of the Timorese is closely interlinked with their relationship to their lands, the environment and the whole ecosystem. Most of the lands are community lands that may be utilized by all of its members, who have the collective obligation to protect and preserve them. Individual ownership usually covers agricultural and household lands.

41. Land registration or certification is a foreign concept, as the Timorese traditionally identified boundaries to their lands through customary practices, without codification. When Indonesia occupied the country, it introduced property ownership in line with Indonesian laws, resulting in the issuance of some 44,000 titles, in contrast to the small number issued by the Portuguese of about 3,000.<sup>16</sup> During the Indonesian occupation, individual certificates giving title to customary lands were issued to people who may not have had any traditional relationship to the lands. Timorese who were forcibly displaced during the conflict but later decided to return were faced with people who had occupied their lands in their absence. At the end of the occupation, a strong movement to revive or strengthen customary laws and practices emerged, especially in relation to land and the environment.

42. The Special Rapporteur recognizes the efforts of the Government to address the complex issues relating to land in the country. The Constitution of Timor-Leste recognizes traditional norms and customs, which include customary concepts of landownership and management. In 2017, the law on the special regime on the determination of ownership of land<sup>17</sup> was passed. This was supposed to be the legislative response to the complex issues regarding land, including addressing competing claims. However, in the two years since its adoption, most of the complementary laws required to implement the Land Law have yet to be drafted.

43. Despite the fact that legislation remains pending, the Government has launched land registration projects. The first land registration scheme was the *Ita Nia Rai* (Our Land) project initiated a decade ago. The second is the *Sistema Nacional de Cadastro* (National Cadastral System), launched in 2014 and ongoing. The previous land registration scheme did not foresee the registration of community lands, while such provisions have been included under the current project. However, very few communal titles have been registered and concerns have been raised that sacred sites, water resources and other protected areas of communities have not been adequately mapped.

44. The Special Rapporteur was told that many people have received little or no information about the ongoing land registration process, do not fully understand the impact and implications it will have on their customs and traditions, and were not adequately informed or consulted before or during the implementation. It is reported that most of the land that has been registered so far has been registered as private titles with one owner, while much of the land should have registered as customary land. Furthermore, measures have allegedly not been taken in the registration process to consider the specific needs of vulnerable groups such as the elderly, widows, persons with disabilities and orphans. The Special Rapporteur was informed that the lack of community participation risks increasing tensions and conflicts over lands and resources.

45. Information received indicates that land disputes are still most often settled through the customary justice system. In meetings with the Special Rapporteur, government officials voiced their support for the customary system and recognized its efficiency in settling land disputes, noting that the customary justice system is better understood and trusted by the people, promotes reconciliation and restoration of relationships, and the decisions made are respected more and implemented more often by the parties.

46. The Special Rapporteur notes that the Government now has the opportunity to orient the legal framework towards respect and recognition of customary land tenure systems and

<sup>15</sup> Rede ba Rai (Timor-Leste Land Network), *Land Registration and Land Justice in Timor-Leste: Culture, Power and Justice* (2013).

<sup>16</sup> D. Fitzpatrick, *Land Claims in East Timor* (Canberra, Asia Pacific Press, 2002).

<sup>17</sup> Land Law, No. 13/2017.



traditional practices governing lands and resources. In the development of complementary laws to implement the Land Law and in the undertaking of land registration, the Special Rapporteur urges the Government to conduct inclusive consultations with people in the villages, especially those who have the historical knowledge of traditions and customs, women and other stakeholders, to ensure that the complementary laws will be designed in a manner that does not deny the Timorese their customary lands and traditional practices and at the same time respects the equal rights of women in decision-making and property rights.

47. The Land Law of 2017 provides that both men and women have equal rights to obtain land titles. Its implementation on the ground, however, faces many challenges. Estimates indicate that to date three times as many land claims have been submitted by men than women. Furthermore, under customary law, in many communities women cannot inherit land and primarily gain access to land through marriage. The Special Rapporteur remains concerned that if this is not addressed in practice, both by State and traditional authorities, women will continue to face discrimination and marginalization. The Special Rapporteur is also aware that in some communities men cannot inherit land, or only the eldest child or son can inherit land and the younger men face the same obstacles as the women.

48. As noted above, Timor-Leste recognizes the customary rights of its people to their lands and their contribution to the preservation of the environment, and has enshrined the obligation to protect the environment in the Constitution. At the same time, in 2011 the Government embarked on the large-scale *Tasi Mane* project, which it described in its Strategic Development Plan (2011–2030).<sup>18</sup> The aims of this project are to build offshore and onshore oil and gas pipelines, an onshore oil refinery and petrochemical complex, a highway, a port and an airport along the south coast of Timor-Leste.

49. Serious concerns were raised during the visit regarding environmental and social consequences of the *Tasi Mane* project and the failure to undertake comprehensive impact assessments. Local communities are concerned over the pollution that will affect water and land resources, impacting on human health and biodiversity. Several complaints were received by the Special Rapporteur indicating that there has been insufficient information, consultation and participation in the decision-making and planning stages and that affected communities have been displaced without adequate compensation or relocation plans. The Special Rapporteur was also informed about ongoing efforts to draft a decree-law on evictions, and calls on the Government to ensure that any such measures are fully in line with international human rights obligations.

50. In the formulation of legislation and policies, the Special Rapporteur urges the Government to be guided by the United Nations Declaration on the Rights of Indigenous Peoples, especially articles 8, 10 and 25–29 and article 32, which deals with the right to land, territories and resources and the obligation not to conduct forced removal, to take measures for prevention and redress and to ensure free, prior and informed consent.

### C. Conservation and climate change

51. Traditions and customs on sustainable use and management of lands and resources remain vibrant across the country. The Special Rapporteur observed how the Government recognizes the importance of traditions and customs to protect and preserve the natural resources, the environment and the country's biodiversity.

52. The country is extremely rich in terrestrial and marine ecosystems. Almost half of the land area of Timor-Leste is forest.<sup>19</sup> The Food and Agriculture Organization of the United Nations (FAO) has estimated that approximately 65 per cent of the forestland is

<sup>18</sup> See <http://timor-leste.gov.tl/wp-content/uploads/2011/07/Timor-Leste-Strategic-Plan-2011-20301.pdf>.

<sup>19</sup> Timor-Leste forest information and data available at <https://rainforests.mongabay.com/deforestation/2000/Timor-Leste.htm>.

owned or managed by communities.<sup>20</sup> Between 70 and 80 per cent of the population lives in rural areas and are heavily reliant on subsistence agriculture and the ecosystem.<sup>21</sup>

53. However, the country is facing environmental concerns which, if not addressed, could result in environmental damage and loss of livelihood and culture. The destruction of natural resources during the Indonesian occupation has contributed to the environmental problems that the country is now experiencing. Deforestation during the occupation resulted in the loss of about 30 per cent of the forest coverage. Timor-Leste is now facing amplified impacts of climate change, including the degradation of soil and freshwater resources.<sup>22</sup> The Special Rapporteur was informed about several government schemes to plant trees throughout the country, and in this regard notes the importance of the use of native species in these efforts in order to protect the environment in a sustainable manner and reduce soil erosion.

54. Empirical evidence has proven that indigenous peoples' traditional management of resources has been effective in keeping territories resilient to climate change and has protected parts of their territories from unmitigated devastation. Traditional knowledge of resource management is now being promoted internationally as a means to combat and mitigate the impacts of climate change and prevent environmental disasters (A/HRC/36/46).

55. The Special Rapporteur notes the positive step taken by the Government in the Strategic Development Plan 2011–2030, in which it acknowledges the importance of strengthening the bond of the Timorese with nature in order to ensure sustainable management of the environment and natural resources for the next generation.<sup>23</sup> The decision of the Government in 2015 to make the teaching of permaculture a compulsory subject in the primary school curriculum is an excellent example of this recognition. During the visit, the Special Rapporteur witnessed inspiring initiatives undertaken in schools to educate children hands-on about plants and conservation.

56. The Special Rapporteur notes the Government's creation of over 40 protected areas and the adoption by the Department of Protected Areas and National Parks of the Strategic Action Plan (2011), which is designed to ensure the active participation of local communities and the use of their traditional knowledge in the management of protected areas.<sup>24</sup>

57. Among the customary practices being revitalized since independence is *tara bandu*, traditional rules that govern the relationship between people but that also regulate the relationship between people and the environment and animals. *Tara bandu* is rooted in the cultural and customary beliefs of the Timorese, whose lives are deeply interlinked with their lands, environment and resources and which they consider sacred (*lulik*) and an obligation to protect for the next generation. *Tara bandu* is developed and enforced collectively at the local community level under the leadership of traditional authorities.<sup>25</sup> It is based on a social accord to maintain peace and order and ensure mutual respect in the local community.

58. In recent years, *tara bandu* regulations have proven to be highly effective resource conservation mechanisms as, for instance, they prohibit and penalize the cutting and burning of forests and restrict hunting and fishing in specific locations during certain

<sup>20</sup> 2010 census. For further information on conservation agriculture and use of forestland in Timor-Leste, see [www.fao.org](http://www.fao.org).

<sup>21</sup> See <http://gov.east-timor.org/MAFF/>.

<sup>22</sup> *Timor-Leste's Fifth National Report to the Convention on Biodiversity 2015*.

<sup>23</sup> *Timor-Leste Strategic Development Plan 2011–2030*, pp. 54 and 220.

<sup>24</sup> P. Pinto, "The functions of local knowledge in the management of protected areas and national parks", in *Local Knowledge of Timor Leste!*, D. do Amaral de Carvalho, ed. (Jakarta, United Nations Educational, Scientific and Cultural Organization (UNESCO), 2011), pp. 35–38.

<sup>25</sup> N. Miyazawa, "Customary law and community-based natural resource management in post-conflict Timor-Leste", in J. Unruh and R.C. Williams, eds., *Land and Post-Conflict Peace-Building* (Earthscan, 2013); Belun and Asia Foundation, *Tara Bandu*, p. 14; and do Amaral de Carvalho, "Tara bandu as traditional (local) ecological knowledge", in *Local Knowledge of Timor Leste!*, pp. 52–67.

periods, protecting ecosystems and allowing species to regenerate.<sup>26</sup> The Special Rapporteur visited several local communities that have effectively resorted to *tara bandu* in order to expand mangrove forests so as to protect the coastline or to enforce temporary no-fishing zones, with remarkable gains for the coral reef ecosystem.

59. *Tara bandu* provides an effective, participatory and community-driven approach to sustainable environmental protection that furthermore strengthens traditional practices and community cohesion. The Special Rapporteur is impressed by the pride the Timorese take in their cultural heritage and how indigenous practices have translated into important gains in environmental conservation. These can serve as inspiring examples for other countries. The Special Rapporteur encourages the Government and international donors, at the request of and in consultation with local communities, to support traditional authorities and communities to further strengthen their use of customary practices for conservation and climate change adaptation.

#### **D. Free, prior and informed consent**

60. The principle of free, prior and informed consent is anchored in indigenous peoples' right to self-determination. By virtue of this right, indigenous peoples can "freely determine their political status and freely pursue their economic, social and cultural development".<sup>27</sup> It also flows from other rights guaranteed by international treaties like the right to develop and maintain cultures (International Covenant on Civil and Political Rights, art. 27 and International Covenant on Economic, Social and Cultural Rights, art. 15) and within the framework of the principle of non-discrimination. The United Nations Declaration identifies some of the instances where free, prior and informed consent is required: (a) when States adopt administrative or legislative measures that affect indigenous peoples (art. 19); (b) in case of relocation (art. 10); (c) for any act that impacts on their customary properties, laws, traditions and customs (art. 11); (d) when taking, occupying or destroying their lands, territories and resources (art. 28); (e) in the disposal of hazardous wastes (art. 29); (f) when any project will impact on their land, territories and resources (art. 32).

61. Throughout the visit, the Special Rapporteur took note of certain initiatives by government officials to consult with local communities and impart public information on certain legislative and administrative measures. There are, however, legislative and administrative issuances that require additional access to information and consultation. For instance, Environmental Licensing Decree-Law No. 5 of 2011 requires consultation and stipulates that information shall be made available. However, such processes, which are provided for under the laws and applied to a certain extent in practice, are not being observed within the full scope, context and framework of free, prior and informed consent. The Special Rapporteur calls on the Government to further strengthen its legal framework to incorporate free, prior and informed consent, guided by international legal documents elaborating on this principle.

#### **E. Education and languages**

62. This year, the world celebrates the International Year of Indigenous Languages. There are more than 7,000 languages in the world, and more than 5,000 of them are indigenous. Indigenous peoples' languages are not only tools of communication and education but are integral to their identity, culture and history. The Special Rapporteur was informed that there are some 36 indigenous languages in Timor-Leste and notes their rich diversity. However, she was also informed that some indigenous languages may be on the brink of disappearance. Internationally, the importance of indigenous languages is gaining recognition, and the Special Rapporteur calls on the Government to take further measures to protect and revitalize all indigenous languages in Timor-Leste.

<sup>26</sup> Conservation International, "Biodiversity survey reveals reefs in Timor-Leste's Atauro Island hold the world's highest reef fish species average", 18 August 2016.

<sup>27</sup> United Nations Declaration on the Rights of Indigenous Peoples, art. 3.

63. Limited literacy remains a major concern in the country and hampers development. The origins of this situation can be traced back to the colonial period. During Portuguese rule, very few schools were established. Most were located in the urban areas and catered primarily to an elite part of the population. During the Indonesian occupation more schools were set up and made accessible, including in the rural areas; however, they were used as a tool to assimilate Timorese into Indonesian culture. Teachers were brought in from Indonesia, Bahasa Indonesia was used as the medium of instruction and the curriculum was aligned with that of the Indonesian educational system.

64. Since independence, Timor-Leste has had to completely rebuild its educational system. The Special Rapporteur acknowledges that the Government has a national legal and policy framework to prioritize education as a means of achieving national development. The Constitution stipulates that everyone has the right to equal opportunities and free basic education and the right to cultural heritage, and that “other national languages shall be valued and developed by the State” in addition to the official languages of Portuguese and Tetum.

65. According to the Government, at the time of the independence in 2002, Timor-Leste had a total of 943 primary and secondary schools. In the initial period after independence, Portuguese was prioritized in education although there were an insufficient number of proficient teachers who could teach the language. In the last decade, a shift towards Tetum took place in the educational sector. By the end of 2016, there were 1,715 primary and secondary schools.<sup>28</sup> The census of 2015 revealed the national literacy rate to be 63 per cent (65.6 per cent for males and 58.9 per cent for females). The United Nations Children’s Fund reports that an increasing number of children are going to school and fewer children are dropping out.

66. During the Special Rapporteur’s visit, she was informed about the many challenges and obstacles to full access to quality education, which she was able to observe in person through school visits. Many of the obstacles in the area of education that were identified by the Special Rapporteur on extreme poverty and human rights in 2011 (A/HRC/20/21/Add.1) prevail. Disparities persist in access to education between children from urban and rural areas. The 2015 census also showed a significantly higher literacy rate in urban areas (86.2 per cent) as compared with rural areas (52.5 per cent). Net enrolment in primary education in urban areas is almost 100 per cent compared with 60 per cent in rural areas. In secondary education, net enrolment is low at 29 per cent, although gross enrolment is 69 per cent. Educational materials are lacking and school infrastructure conditions poor. The Special Rapporteur was told that despite the fact that most classes are given in Tetum, educational materials consist of a mixture of books in Tetum, Portuguese, Bahasa Indonesia and English. Some 68 per cent of children with disabilities have never attended school, and literacy rates for persons with disabilities are much lower than for persons with no disabilities: while 64 per cent of persons without disabilities are literate, only 15.3 per cent of persons with disabilities 5 years of age and older can read and write in any of the four working languages in the country.<sup>29</sup>

67. One major obstacle is the use of Portuguese and Tetum in primary school as mediums of instruction when most children do not speak or understand these languages. The Special Rapporteur was informed that about 90 per cent of the population speaks Tetum, while less than a quarter can communicate in Portuguese. Most children from outside the area of Dili only learn Tetum as a second language as their mother tongue is a local language.

68. Primary-school children who struggle to understand their teachers become disengaged, which results in high dropout rates, putting them at a disadvantage in continuing their education. In practice, this has impacted Timorese children whose mother tongue is a local language other than Tetum.

69. The Special Rapporteur welcomes the earnest efforts of the Government to assess its educational policy. Since 2012, the Ministry of Education has been piloting a mother-

<sup>28</sup> National Policy for Inclusive Education 2017.

<sup>29</sup> National Policy for Inclusive Education 2017, quoting the 2015 census.

tongue education programme in 10 primary schools in three different regions. It aims to introduce children to linguistic and numeric skills in their mother tongue and to support their transition to learning the official Timorese languages later on. Evaluations have indicated that the pilot programme has had a positive impact on school attendance, educational performance and the subsequent acquisition of Timor-Leste's official languages.<sup>30</sup>

70. The Strategic Development Plan 2011–2030 stipulates that “local languages will be employed as languages of teaching and learning in the first years of basic education, providing a smooth transition to the acquisition of Timor-Leste's official languages, in accordance with the recommendations of the ‘Mother Tongue-Based Multilingual Education Policy for Timor-Leste’”.<sup>31</sup> The National Policy for Inclusive Education adopted in 2017 also refers to the Mother Tongue-Based Multilingual Education Policy.<sup>32</sup>

71. The Special Rapporteur regrets that despite the positive results from the assessments of the mother-tongue programme showing remarkable improvement in the performance of schoolchildren, to date the Government has not implemented the programme beyond the pilot schools that were included in the project. The Special Rapporteur calls on the Government to expand and implement the use of mother-tongue education in schools throughout the country and provide the necessary resources, trainings and materials for this.

## F. Development, poverty, the rights to food and health

72. In 2018 Timor-Leste ranked 132nd out of 189 countries on the UNDP Human Development Index.<sup>33</sup> Timor-Leste has the highest rate of chronic malnutrition in South-East Asia and one of the highest in the world. Statistics indicate that nearly half of all children under 5 years of age suffer from chronic malnutrition and about 36 per cent of the population is chronically food insecure.

73. While there is a policy framework to address the incidence of chronic malnutrition, including the Zero Hunger National Action Plan 2015–2025, the National Nutrition Strategy 2014–2019 and the Food and Nutrition Security Policy of 2017, the State budget allocations for agriculture and health are reportedly only 2 and 5 per cent, respectively, for 2019. The Special Rapporteur recommends that additional government resources be assigned to implement, coordinate, monitor and evaluate the measures taken to reduce malnutrition. Multisectoral interventions in agriculture, health, education, water and sanitation should be supported.

74. Although the majority of the population works in the agricultural sector, domestic food production is insufficient and the country is highly dependent on the importation of food products, notably rice. The Special Rapporteur was informed about existing initiatives to use local indigenous crops such as cassava and sweet potato and she urges the Government to focus on increasing their production, notably with a view to reducing the incidence of malnutrition. She was also told about the *Bolsa da Mãe* programme which enables poor female-headed households to receive cash benefits on the condition that children attend and complete schooling. The Special Rapporteur recommends that the Government strengthen resources for implementation of this programme.

75. The Government of Timor-Leste has made commitments to the rights of persons with disabilities. The Constitution, in section 16, prohibits discrimination based on disability while section 21 specifically guarantees equal rights and responsibilities of persons with disabilities. The importance of addressing the rights of persons with disabilities is recognized in the Strategic Development Plan 2011–2030, the National Policy for Inclusion and Promotion of the Rights of People with Disabilities of 2012 and the

<sup>30</sup> S. Walter, “The Mother Tongue-Based Multilingual Education (EMBLI) pilot program endline assessment: Timor-Leste”, 2016; and Jo Caffery and others, “The Timor-Leste Mother Tongue Based Multilingual Education pilot project: a strategic evaluation”, 2014.

<sup>31</sup> Timor-Leste Strategic Development Plan 2011–2030, p. 16.

<sup>32</sup> National Policy for Inclusive Education 2017, objective 4, p. 28.

<sup>33</sup> See <http://hdr.undp.org/en/2018-update>.

Inclusive Education Policy of 2017, among others. Despite these commitments, key challenges persist. Persons with disabilities who met with the Special Rapporteur noted a lack of appropriate policies and services, especially in rural areas. They stated that they feel invisible as their situation is not adequately recorded in statistics, nor are they adequately addressed by government policies on education, health and access to justice. Global evidence shows that investing in disability brings benefits to all. The Special Rapporteur calls on the Government to ratify the Convention on the Rights of Persons with Disabilities and strengthen efforts to increase the accuracy of data and the integration of disability in legislation, planning and budgeting.

76. In order to support traditional livelihoods and protect cultural heritage, the Special Rapporteur notes the importance that consultations be undertaken with women weavers in order to promote the protection of the designs of indigenous textiles (*tais*).

## V. Conclusions and recommendations

### A. Conclusions

77. The Special Rapporteur observes that Timorese indigenous cultures and languages are particularly diverse and have been retained throughout colonization and occupation. The vast majority of the population shares indigenous values and spiritual beliefs which are reflected in strong local institutions, the customary justice system and communal land management. Indigenous practices have translated into important gains in environmental protection and biodiversity that can serve as inspiring examples for other countries. Further harmonization between the formal and customary justice systems is important to strengthen access to justice for all. Timor-Leste has made strong commitments to human rights standards and national rights-based development policies; however, additional resource allocations are required to ensure their effective implementation and monitoring, notably in the areas of education, health and nutrition.

### B. Recommendations

78. The Special Rapporteur makes the following recommendations.

#### Formal and customary justice

79. In order to increase the capacity of the formal justice system, the Special Rapporteur urges the Government to strengthen the training of legal professionals and increase resource allocation and institutional presence across the country. An assessment should be undertaken to inform the continuation of the mobile court system as an interim measure. Measures should be taken to train interpreters in local mother-tongue languages to ensure that the legal process is understood and accessible in rural areas.

80. The Special Rapporteur recalls that the United Nations Declaration on the Rights of Indigenous Peoples, in articles 5 and 34, affirms the right to maintain and strengthen indigenous legal institutions and juridical systems or customs, with the caveat that these should be in accordance with international human rights standards.

81. Culturally appropriate dialogue to increase awareness of international and national legal standards is essential. In this regard, the Special Rapporteur notes that formal and customary justice systems will benefit from constructive dialogue to overcome their respective shortcomings and gain knowledge of procedures and best practices in both systems.

82. In order to increase and entrench women's rights, coordination should be strengthened between the formal and customary justice systems. Measures should be adopted to seek the support of traditional Elders and to encourage the active participation of women at the *aldeia* and *suco* levels.

83. Consideration should be given to lessons learned from how customary practices were incorporated into transitional justice measures by the Commission on Reception, Truth and Reconciliation through the concept of *nahe biti*.

84. The Special Rapporteur welcomes the measures announced by the Timor-Leste Government to develop a hybrid justice system inclusive of cultural traditions, and its intention to undertake participatory consultations with communities across the country on how the formal and customary justice systems can harmonize their coexistence and strengthen their contribution to ensuring access to justice for all. She looks forward to continuing her engagement with the Government through technical assistance on this matter. Ensuring justice for all is a key objective of Sustainable Development Goal 16 and the Special Rapporteur hopes Timor-Leste will provide important lessons for other countries.

#### Land, territories and resources

85. To prevent further disputes or conflicts in relation to land, the Special Rapporteur recommends that the Government temporarily suspend and review the implementation of its National Cadastral System. It is essential to conduct culturally appropriate and good-faith dialogue and consultations with communities prior to undertaking land registration.

86. The Government should protect the traditional ownership of the Timorese to their lands and prioritize the adoption of the laws complementary to the Land Law. The Timorese, especially affected local communities, should be consulted in the drafting of such laws; their rights under the United Nations Declaration on the Rights of Indigenous Peoples, notably to free prior and informed consent, should be duly respected and protected by the future laws and the implementation of land registration.

87. Individual land claims as well as community land claims should both be guaranteed in the land registration process. Specific measures should be adopted to ensure the equal right of women to own property. The specific needs of vulnerable groups such as the elderly, widows, persons with disabilities and orphans should be considered.

88. On any project that directly or indirectly impacts the lives, lands, territories and resources of local communities, the Government should ensure: (a) that the free, prior and informed consent of the communities affected will be obtained; (b) transparency, including making information readily available to the public; (c) guaranteed plans for mitigation and prevention of environmental impacts; (d) proper relocation in case of forced displacements; (e) the inclusion of clear mechanisms for redress.

89. Any measures and legislation on evictions should be fully in line with international human rights obligations.

#### Conservation and climate change

90. The Special Rapporteur commends the Government for its positive recognition of customary practices for natural resource management. She encourages the Government and international donors, at the request of and in consultation with local communities, to support traditional authorities and communities to further strengthen the use of customary practices for conservation and climate change adaptation.

#### Free, prior and informed consent

91. The Government should further strengthen its awareness of and revise the legal framework to incorporate provisions on free, prior and informed consent, guided by international legal documents elaborating on this principle, and ensure that this principle is respected in all matters. The Environmental Licensing Law, for example, should be revised to explicitly incorporate the principle of free, prior and informed consent.

### Education and languages

92. The Special Rapporteur recognizes the commitments the Government has made in the field of education. However, she urges further action and additional budget allocations to achieve these commitments in practice, notably by increasing the budget for building schools; providing necessary infrastructure within schools, including educational materials; providing necessary training for teachers, increasing the number of teachers and raising their salaries; and, overall, providing the necessary facilities to fully implement the National Education Policy of 2017 and the educational goals of the Strategic Development Plan 2011–2030.

93. The Special Rapporteur furthermore calls on the Government to take measures to protect and revitalize all mother tongues in Timor-Leste as they are integral to the cultural identity of the Timorese and the loss of languages impacts adversely on their cultural heritage, customs and traditions. In particular, in view of the successful results of the mother-tongue education pilot programme, the Government should scale up the use of the mother tongue in schools in other parts of the country and provide the needed trainings and materials.

### Development, poverty and the rights to food and health

94. While Timor-Leste has a policy framework to address malnutrition, including the Zero Hunger National Action Plan 2015–2025, the National Nutrition Strategy 2014–2019 and the Food and Nutrition Security Policy of 2017, the State budget allocations for agriculture and health are insufficient. The Special Rapporteur recommends that additional government resources be assigned to implement, coordinate, monitor and evaluate the measures taken to reduce malnutrition. Multisectoral interventions in agriculture, health, education, water and sanitation should be supported.

95. In order to reduce food insecurity and the reliance on food importation and combat the incidence of malnutrition, the Special Rapporteur encourages the Government to focus on increasing the production of traditional crops such as cassava and sweet potato.

96. The Special Rapporteur recommends that the Government strengthen resources for the implementation of the *Bolsa da Mãe* programme in order to support poor female-headed households.

97. The Special Rapporteur calls on the Government to ratify the Convention on the Rights of Persons with Disabilities and strengthen efforts to increase the accuracy of data and the integration of disability in legislation, planning and budgeting.

### Cultural heritage

98. In order to support traditional livelihoods and protect cultural heritage, the Special Rapporteur recommends that consultations be undertaken with women weavers in order to promote the protection of the designs of indigenous textiles (*tais*).

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