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Research Article

Building a Justice System for the Defence of Human Rights in Timor-Leste (A Contribution to Judicial Reform in a Democratic State of Law)

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Abstract

Timor-Leste, a newly independent state, was declared a democratic state under the rule of law and respecting human dignity as a result of the struggle for the right to self-determination and human rights.

In the process of building Timor-Leste as a state under the rule of law, Timor-Leste still faces many challenges, especially related to the lack of qualified human resources in all sectors, including justice and human rights.

Basically, the rule of law means that the state is based on law. Law is a fundamental part of building an organized and organized state, while Timor-Leste chooses to follow the doctrine of civil law from continental Europe as a logical consequence inherited from Portuguese law, which states that law must be written, contained in a legal document, the constitution, codes, or in writing. But the state must also, beyond the supremacy of law, respect human rights issues. This means that Timor-Leste is a state governed by the rule of law, seeking to respect and value human rights.

Respect for and appreciation of human rights is enshrined in the Constitution of Timor-Leste. The interpretation of fundamental rights in Timor-Leste must be in harmony with the Universal Declaration of Human Rights. The State is not based solely on law (as a state governed by law), but more than that, it is based on human rights, on the Universal Declaration of Human Rights; on respect for the dignity of the human person. Regarding the issue of justice, the Timor-Leste justice system must respect and value human rights. That is, every act of the Timor-Leste justice system

must be applied in accordance with the Universal Declaration of Human Rights, with the primary objective of respecting and valuing human rights.

Keywords: Human Rights; Fundamental Rights; Justice System; Slowness

INTRODUCTION

In the process of building a Democratic Rule of Law that respects and values Human Rights, one of the main parts to which we need to pay close attention is the Justice System. We are always concerned with how to build a good justice system, on the one hand, to protect the rights of citizens and, on the other, to contribute to the socio-economic and political development of the State. These two issues are interrelated. One cannot live without the other. That when there is good protection of citizens' rights, at the same time, we guarantee and contribute to development in the socio-economic and political sectors of the State. When we ensure socio-economic and political development, we must do so with the aim of protecting citizens' rights (Pires, Paulo, 2013; Vasconcelos, P. C. B. D., 2011). Because when the State does development, one cannot speak only of theory, but the quality of life of people, the rights of people, should be the main measure to evaluate whether development is well done or not.

When we talk about building the State, we are actually talking about how the State guarantees and promotes a better life for people (Gouveia, Jorge Bacelar, 2011; Miranda, J., 2025). Building a state means building a better life for people. A good life that, at least, is protected and valued by the International Mechanism for the Protection of Human Rights. On the issue of Justice, if the State does not create a good Justice System, it will become a factor that may contribute to the violation of citizens' rights and Human Rights and, eventually, a deficient Justice System may become a burden on the State. Because the State either spends budgetary resources inefficiently or does not obtain adequate returns for national development.

We can say that a deficient justice system can weaken the democratic rule of law, violate human rights and negatively affect the country's development (Mac Crorie, B. F. D. S., 2005). These two parts, the precarious justice system and the precarious development, are supported by the people. The State cannot be built on the basis of theoretical concepts, numbers and graphs, but on the basis of the well-being of the people (Lucia, Maria, 2005; Vasconcelos, Pedro Carlos Bacelar, 1996). I like and I am happy to hear in seminars or foreign reports or analysts say that Timor-Leste is rich, has good economic growth, internal development is going well, the protection of citizens' rights, the appreciation of human rights, but I will believe more when the roads in Dili, the capital, throughout the territory, can be good, guarantee the basic needs of the population, cannot penalize and prohibit the work of journalists in the common interest of the State, cannot discriminate in access to justice or participation in the life of the State, citizens live freely and move around at any time without fear, prevent abortion or the abandonment of babies and other social problems. This development is not only on paper, but really contributes to the well-being of the people. Therefore, in the context of judicial reform, we need to build a

justice system in Timor-Leste that ensures development for the well-being of the people.

I am trying to give some advice, according to my personal observation that I have actually found (I will limit myself to talking about the issue of the slowness and independence of the judiciary because it is only my personal observation. or Human Rights will be better able to conduct a better investigation on these issues. Not only as a citizen who has an interest in the area of Human Rights, but especially because Timor-Leste is a State that lives because it is also the result of the struggle for the protection of Human Rights. As Barbara Oliveira et al (2013) state in Fundamental Rights in Timor-Leste on page 51 "During Timor-Leste's resistance to Indonesian occupation, various international mechanisms were used to promote the human rights of the Timorese people, including the defunct Human Rights Commission, the Security Council, the United Nations General Assembly and the International Court of Justice". Therefore, we can see on page 52 of the above-mentioned book when it is written according to some documents that "[t]he struggle of the Timorese people to obtain their independence was, in its essence and in all dimensions, a struggle for human rights" (Botelho, C. I. T. S., 2010). It also complies with Article 23 of the Constitution of the Democratic Republic of Timor-Leste, which establishes that "The fundamental rights enshrined in the Constitution do not exclude any others contained in the law and must be interpreted in accordance with the Universal Declaration of Human Rights" (Miranda, J., 2025; Oliveira, 2013).

In the process of building the Democratic Rule of Law in Timor-Leste, we need to take into account respect for international law and human rights, not only in our empty speeches or in our participation in the international world on human rights, or in the approval, ratification or accession of our competent sovereign bodies to treaties, conventions or norms of the international legal order, as provided for in the Constitution of the Democratic Republic of Timor-Leste, in article 9, paragraph 2, which states that "The norms contained in international conventions, treaties and agreements enter into force in the internal legal order upon approval, ratification or ratification of the internal legal order and after publication in the Official Gazette" and the recognition of the State of Timor-Leste to international law is very important, as provided for in paragraph 1, which says that "The Timorese legal order adopts the principles of general or common international law", but especially and extremely important, I repeat, extremely important, and sometimes they forget that the number invalidates all the norms of laws contrary to the provisions of international conventions, treaties and agreements received in the Timorese internal legal order" (Andrade, J. C. V. D.,2017; Jerónimo, P., 2012). This means that any norm of the State of Timor-Leste and any decision of the State that is contrary to international law, including the International Mechanism for the Protection of Human Rights that the State of Timor-Leste has legally accepted, according to the procedure, cannot happen during the lifetime of the State of Timor-Leste. Because we can say that the Constitution of Timor-Leste prohibits, does not allow, the organs of sovereignty or officials of the State of Timor-Leste to make laws, establish policies of the State of Timor-Leste or make any decision that violates International Law and the International Mechanism for the Protection of Human Rights that Timor-Leste has

received, in accordance with Article 9, No. 2 of the Constitution of the Democratic Republic of Timor-Leste, which is valid in the domestic legal system (Canotilho, 2003;Canotilho & Moreira, 1991). Because these laws, including all political policies and decisions, are invalid from the point of view of the Constitution of the Democratic Republic of Timor-Leste.

As my professors at the Law School of the University of Minho say; Professors Maria Clara Calheiros and Sérgio Mouta Faria "In terms of hierarchy, it is a matter of establishing a normative hierarchy between different categories of acts of different bodies endowed with normative power, which will imply the imposition of respect for the norms of a lower hierarchical degree than the higher grammatical discourse. Any contradiction is resolved by the invalidity of the inferior normative act". Similarly, Maria Lúcia Amaral, Professor and Judge of the Portuguese Constitutional Court, states "What nature should be given to the written constitution, and what place should it be given in the hierarchy of sources of law of a State? positive juridical norms, as it should be the first and supreme source of order of the constituted State, only one conclusion seemed possible: the result of the exercise of the greater power (the constitution) must bind the result of the exercise of the lesser powers (ordinary law, administrative acts, judicial sentences). Constitutional texts must therefore be the source, and the highest source, of positive state law."

The state can act when there is a clear danger (such as armed men, terrorists or infectious diseases) to public order or to the common good, to the public interest. When there is no real danger because civilians do not have weapons (there are no terrorists) or because people have a strong conscience to take good care of themselves in terms of health (people are careful not to contract contagious diseases), the State cannot intervene to violate Human Rights. Although the State acts, in some extreme situations the State has reasons to act in the public interest, the State is still obliged to seek to respect the International Standards of International Law or the International Mechanism for the Protection of Human Rights that the State of Timor-Leste has accepted and is valid in the domestic legal order of the Democratic Republic of Timor-Leste. Because perhaps the rulers can make laws, establish state policies and make some political decisions that are against international law and the International Mechanism for the Protection of Human Rights that favor their interests and the rulers can win in the present, but I fear that tomorrow, after 50 years, according to historians of Timor-Leste, and guarantors of the fundamental freedoms and rights of citizens, can give these rulers a bad name.

As a citizen, I hope that the National Liberation Hero will help build a good foundation for the Democratic Rule of Law and Human Rights. As His Excellency President Taur Matan Ruak said, what kind of civilization do we want to build in Timor-Leste? This is a fundamental issue that requires the reflection of everyone, especially the Hero of National Liberation, to avoid damage to the Democratic Rule of Law and not to violate Human Rights, but, above all, to create a good culture and tradition for the life of the State of Timor-Leste, for the present generation and also for future generations, in the context of Democracy and Human Rights. In the history of Timor-Leste it will always be written that the Hero of National Liberation also became a Hero of the Construction of a Democratic Rule of Law that respects Human

Rights. I say this because, in a state that has just emerged from the war, the role of the Hero of National Liberation is very important, and sometimes, if he does not take care of himself, he will harm the state with which he contributed to the national liberation struggle. Mainly because these Heroes of National Liberation are military, and generally the military are not used to criticism, they are not used to democracy. The military has a line of command (a line of command, a hierarchy where the top gives orders to those below and these cannot be questioned). But all of us, as Timorese, have a duty to ensure that what the enemy did in the dark times does not repeat itself in this time of Independence. Otherwise, we will not know how to distinguish life during illegal foreign occupation from life during Independence. This is a great sadness! We need to build East Timor as a civilized nation.

As a citizen, I want my leaders to have a good reputation as Heroes of the National Liberation Struggle and Heroes of Human Rights Defenders in the Democratic Rule of Law of Timor-Leste throughout their lives. The authorities have the right to choose those who care about keeping the name of the National Liberation Heroes, even if at some point they are not there, or to choose those who support the National Liberation Heroes because they have an interest in wealth, projects or positions. I am only afraid that these people will be the first to speak ill of these Heroes of National Liberation. As a generation that lived in the Indonesian era, I also followed the situation of President Soeharto, who, when he was alive, some people praised him and made him happy, as long as he was happy, and people called him Bapak Pembangunan. Unfortunately, when he died, the opposite situation, people gave the President a bad name. Soeharto is a dictator, anti-democratic, anti-freedom and violator of human rights in Indonesia. I hope that the situation that happened to President Suharto will not happen to my National Liberation Heroes in Timor-Leste. Sometimes, the National Liberation Hero may not be conscious, because he is too concerned with the numerous tasks of building this State, but everything that the National Liberation Hero says and does, even involuntarily, will contribute to the construction of this State. The contribution for good or evil depends on the good or bad behavior of the Heroes of National Liberation. Because the Hero of National Liberation has become, voluntarily or involuntarily, a model or standard for all citizens in the life of this State. Citizens can say, "Do it yourself." Or they can say: "Are you the ones speaking, or who opposes?" I think that now that the Heroes of National Liberation govern Timor-Leste, several failures will arise, especially when tomorrow the ruler ceases to be the Hero of National Liberation, Timor-Leste will become as we do not know. We can only have the guarantee of good governance in the future when the Heroes of National Liberation establish a good system of governance with a good system of control, based on the democratic rule of law and respect for human rights. Why can we ask the Hero of National Liberation, on a day-to-day basis, what is missing? I don't think it is. But if they manage to establish a good civilization for the life of the State in a Democratic State of Law that respects Human Rights, people will be proud to be leaving a legacy for Timor-Leste and for the good of the world.

Access to justice is a fundamental part of the protection of Human Rights and also an indicator of a State that we call the Democratic Rule of Law. Without guaranteeing access to justice for citizens in an adequate and fair manner, we cannot

say that our State is a Democratic State based on the rule of law and respectful of Human Rights. We must be aware of the importance of establishing the State of Timor-Leste as a State of Democratic Law and respect for Human Rights, which guarantees all citizens the right of access to justice. Because the Rule of Law, according to Professor Gomes Canotilho, says that "a State or a form of political-state organization whose activity is determined and limited by law" That the State creates the law and the State itself submits to the law that the State creates and the fundamental law of a State is the Constitution and the Constitution of Timor-Leste itself also ensures the right of access to justice as mentioned in Article 26. While the International Mechanism for the Protection of Human Rights also seeks to ensure the right of access to justice for all 11 of the Universal Declaration of Human Rights and Articles 2, 3 and 14 of the International Covenant on Civil and Political Rights.

METHODS

The methodology used in this work is the application of procedures from the qualitative method of bibliographic study and unstructured observation. This observation technique aims to construct knowledge, with the purpose of proving its validity and usefulness in various spheres of society (Prodanov & Freitas, 2013, p. 14) and in this question about the justice system in Timor-Leste in relation to the defense of Human Rights. The purpose of the research is to seek solutions to improve the service of citizens in relation to the state justice system, based on scientific procedure (Barros & Lehfeld, 2000).

DISCUSSION AND ANALYSIS

The State of Timor-Leste has now started to implement the judicial reform. Therefore, we need to question some important points, among others, such as: a) Why do we carry out judicial reform? b) Who do we do it for? c) How do we do it?

When we carry out judicial reforms, we can see that the judicial system will now have some weaknesses because it does not meet the needs of the people or the interests of the state or there will be a lack of things in the judicial system that we need to define. In the justice system there may be problems, among other problems, such as the slowness and independence of the judiciary. I will confine myself to two issues that I have to say that I cannot address all the issues, because, on the one hand, justice is a complex issue and we cannot say everything here, and on the other hand, other conditions are limited. Therefore, I must only limit the slowness and independence of the judiciary.

Slowness

We see that the problem of slowness is always a questionable problem and one that people pay attention to when they talk about reform on the judicial side. Large countries such as Portugal or other large countries have always faced problems with the problem of slowness in the Justice System. The issue of slowness destroys the quality of justice. While the quality of justice can be a measure in the State that we call the Democratic State of Law that seeks to value the issue of human rights. We cannot say that a State is a Democratic State of Law that values human rights when

its State Justice System does not guarantee the right of citizens to have justice for their lives in a timely manner.

The professor at the University of Coimbra, Boaventura Santos, from the Center for Social Studies and also from the Permanent Observatory of Portuguese Justice said that there are two types of delay that he calls systemic delay and active delay. He stated that "systemic delay is that which results from work overload, excessive bureaucracy, positivism and legalism". He added that "with reforms that affect systemic backwardness, we can have faster justice". But, in particular, Professor Boaventura Santos emphasized the importance, not only of the speed of the judicial response, but mainly of quality. This speed must guarantee the quality of justice. As he said, "it is clear that the issue of speed is an important issue, which has to be resolved". I am, of course, in favour of speedy justice. The speed with which the judicial system responds to the request addressed to it is also an essential component of its quality. While active delay, according to Professor Boaventura Santos, "Situations of active delay are situations of process "in the drawer", of intentional non-decision in which, during the conflict of interest in which they are involved, those involved and those responsible for the use of all possible delaying excuses are used". The active delay is applied by the operators of the judicial system with the intention, according to Professor Boaventura Santos, of "preventing the normal development of the procedures with a view to archiving the process". Therefore, we need to agree with Professor Bouventura Santos that Timor-Leste, when carrying out judicial reform, needs to be attentive to the quality of the Justice System.

I think that in Timor-Leste there is also its own experience, its own problem, regarding the issue of slowness, when the State of Timor-Leste adopts only Portuguese as the language used in the Court and when the Tetum language is also used to hold judgments in the Court, the number of pending cases decreases. But in the context of Timor-Leste, we need to take into account that not everyone speaks Tetum and Portuguese. We commend our Government for valuing the use of Tetum in the courts, along with Portuguese. This is an important step. Nor should we forget that some mountain populations do not understand the two official languages. How to resolve the language issue is also a problem in the context of Timor-Leste's multilingual society. There are several language groups in Timor-Leste. The understanding between the parties involved in the resolution of a conflict in the State Justice System is very important to take into account. A small failure to interpret one party's wishes can cause confusion when the other party does not fully understand. The right to know everything in criminal matters in the language of the person involved in the crime and in the language in which he knows the main part provided for in the International Covenant on Civil and Political Rights in Article 14(3)(a) states that, "To be promptly informed, in a language that he understands, in a detailed manner, about the nature and motives of the accusation brought against her". Therefore, the right to free interpretation is very important, as provided for in the same article, in paragraph f), which states that "To be assisted free of charge by an interpreter if he does not understand or speak the language used in court".

We can also see that the issue of delay can also arise due to the issue of space. We know that the population does not have good access to justice in Timorese society

because the State Justice System does not reach the grassroots. We commend some of the attempts made by the State of Timor-Leste. But we also need to think about how to help the population to have immediate assistance to solve their problems when conflicts arise between them, to prevent other crimes and also to ensure stability and harmony among the population. How to solve a problem in the State Justice System populations from a village to a distant capital. We also know that populations have low levels of income. They have difficulties with transport, housing and are likely to have their work as farmers undermined at the grassroots level.

To fight corruption, one way, among others, is to bring justice closer to the population. The Government of Timor-Leste needs help to try to improve justice for the people and also for the interest of the State. The Government can find ways to establish, in addition to the existence of the Mobile Court that we should all praise, Alternative Dispute Resolution or Alternative Dispute Resolution Means to help solve people's problems other than murder. We can create Alternative Dispute Resolution as a component that is part of some relevant Courts or Departments, perhaps as is the case in Japan, to help solve citizens' problems. If possible, the Government could also set up a department of community law that could contemplate community justice for the people. That the Government needs to give competence and conditions to the local authorities to solve problems of the population other than murders. Therefore, the Government needs to create a Justice that seeks to be closer to the population. A legal basis is therefore needed to enable Community justice. The government needs to provide training as a way to teach or share knowledge on how local authorities can act appropriately and correctly (so as not to violate state law and human rights) when resolving problems or conflicts between communities. In this way, the state not only provides alternatives for resolving conflicts between communities, but has also begun to reduce the number of people seeking justice through the formal state. It will reduce the State's expenditure in the area of justice, solve problems related to language (because the population can solve its problems with its own language and indirectly can also contribute to the valorization of the mother tongue), 4th of the Constitution of the RDTL which establishes that, "The State recognizes and values the norms and customary practices of Timor-Leste that do not contradict the Constitution and the legislation that deals especially with customary law". I can say that if the state does not create a concrete system to comply with the articles of the Constitution (including the International Mechanism for the Protection of Human Rights), then the articles of the Constitution become useless rhetoric. All state standards are useless without the creation of an enforcement mechanism. All the words of the norms of the State are dead words if they are not interpreted and applied in the real living conditions of the citizens and the State. Of course, we all know that the state authorities are conducting a study to find out how to establish a policy, a legal basis and a system that can enhance Timor-Leste's customary law.

The valuation of Timor-Leste's customary law will face some challenges related to positivist theory of law and legal dogmatism. Some people, like Kelsen, think that the law in force is only the law of the state. Law is Positive Law established by the legislator. Thus, Positive Law in Timor-Leste is the law of the State. But unfortunately the State of Timor-Leste itself also made a mess by making law no. 10/2003, of 10

December, which talks about the source of law. While the Constitution of Timor-Leste, as mentioned above, recognises and values customary law in article 2, number 4, on the other hand, law no. 10/2003, of 10 December, does not mention customary law. Or perhaps when mentioning the source of law in Timor-Leste is the Constitution, among other things, as in article 2 number 3 paragraph a the State thinks it includes the recognition of the Common Law which is also provided for in the Constitution of Timor-Leste. If so, we do not know exactly when the State can issue a law on customary law, as provided for in Article 2(4) of the Constitution. Because in the context of Timor-Leste, Timorese society is a society rich in legal pluralism. In such a society, not only does the law of the state become law for the citizens, but the citizens themselves, in their daily lives, use customary law passed down from generation to generation. We kill or we do not recognize and do not value Customary Law, on the one hand we violate the Constitution of Timor-Leste, on the other we kill the cultural heritage of a people. But when we recognize and value the customary law of Timor-Leste, we also confront it with the positivist theory of law. In fact, from the point of view of the positivist theory of law, the State has a monopoly on law. Only the State establishes the law and, often, the State establishes the law by force and coercion, where the State forces everyone to respect and accept the laws of the State. Whether we like it or not, the law (of the State) is the law, as in Latin it is called Dura Lex Sed Lex. Norberto Bobbio also said: "For the effort to centralize the State resulting from the State's intention to gradually suppress the 'parallel powers' that certain social groups had to impose valid and generally accepted conducts on the members of the respective community, including resorting to coercive means; that is, the State claims for itself the monopoly of the use of legitimate force and, to this end, limits or suppresses the power of these closest or intermediary social groups". But Norberto Bobbio himself also considers law not only as a norm, but also as a value and a social fact. Thus, he, together with others, created a three-dimensional theory of law that seeks to value social values and facts. Based on the three-dimensional theory of law, Norbeto Bobbio said, "Law is three-dimensional insofar as it presents itself as a normative element that disciplines human behavior, presupposing a factual situation and referring to determined values". Thus, the three-dimensional theory of law leads us to accept that law is also a social phenomenon, of a social fact, living from a social reality, in a social reality and living corresponds to a social reality. From the point of view of the positivist theory of law, I can also think that law is a child of social reality and, by living with life, he, as a child, independent, free from coercive instruments, protects social reality. That is, to say that the legal norm arises from a social fact, from a social phenomenon, lives from a social reality, in a social reality and life corresponds to a social reality. But when legal norms (created by legislators) are born, these legal norms no longer depend on social reality. When these legal norms survive, then, in their total independence, the interpretation and application do not depend on the social reality and lead to the protection of the social reality of our people and the interests of the State that are violated by the protection provided by the legal norm itself. But, for me, the law of the state is made in the best interest of the citizen and the state in the socio-cultural and political context of the country itself, and we need to decide everything based on the socio-cultural and political

context of the country. If not, who is state law for? What does the state law do in relation to production? Dignify people or destroy them? Is state law just a punishment machine? Or can it also be a means of mental transformation and human dignity? I believe that the State needs to choose to make laws as a way of transforming the mentality and dignity of us, human beings, in the process of building a Democratic Rule of Law that respects Human Rights. We may have different opinions, but I believe that the law does not appear suddenly and must have a reason for being, and the law itself is always influenced by social forces. As Lawrence M. Friedman said, "Social forces are constantly at work on the law – destroying here, renewing there; invigorating here, deadening there; choosing what parts of 'law' will operate, which parts will not; what substitutes, detours, and bypasses will spring up; what changes will take place openly or secretly. For want of a better term, we can call some of these forces the legal culture. It is the element of social attitude and value. The phrase 'social forces' is itself an abstraction; in any event, such forces do not work directly on the legal system. People in society have needs and make demands; these sometimes do and sometimes do not invoke legal process – depending on the culture". Therefore, when the State creates laws (according to the will of the legislator) always because it is based on a social reality, created with the need to protect the social reality itself that is provided for in the law itself, where if there is no law, there may be a violation of human rights or violation of the interests of the State. While Professor Maria Clara Calheiros and Sérgio Mouta Faria made it clear that law is not a social science. In fact, we all agree with this idea because law does not study social phenomena (it is the area of sociology, anthropology, psychology, etc.), but law only studies legal norms.

We all receive ideas from the positivist theory of law that allows the State to have a monopoly on the creation of laws. But we also hope that when the State makes laws, it makes laws in the context of Timor-Leste, with its own characteristics, with its own culture, with its own way of thinking, with its own needs and also with its own history. Or in summary by Lawrence M. Friedman is legal culture where he says that, "Besides structure and substance, then, there is a third and vital element of the legal system. It is the element of demand. What creates a demand? One factor, for what of a better term, we call 'the legal culture'. By this we mean ideias, attitudes, beliefs, expectations, and opinions about law". Where it also states that, "Basically, legal culture refers to two rather different sets of attitudes and values: that of the general public (we can call this 'lay legal culture'), and that of lawyers, judges, and other professionals (we can call this 'internal legal culture'). Lay legal culture can exist on many levels. It is possible to speak of the legal culture of France or Nigeria as a whole (attitudes and values which, on the whole are characteristic of Frenchmen or Nigerians). There are also regional, local, or group attitudes and values about law; those of the Yoruba, or Jews, or Britons, or plumbers, cabdrievers, big business executives". Therefore, we cannot make laws as in Europe or on other continents. We are also careful not to copy and paste laws from other countries. Laws can be very good in other countries, but we need to see if these laws can be used in Timor-Leste or not. We need to make our own laws; laws that are consistent with the sociocultural and political reality of our country. If we make laws according to other countries or copy and paste from other countries, I can compare it to a father who sees a beautiful

shoe (Nike or Adidas brand) in the store and really wants to buy it for his son. But when he got home, his son was wearing his shoes. Either the child does not want to use it or, if the parent forces it, the child may cry because the squeeze causes the child's legs to hurt and not walk well. The money is spent in between. The law is the same, legislators think that some laws in other countries are very good, but copying and pasting correctly will harm the state and people's lives. Either the population does not want to accept these laws and opposes them, or if the State imposes them, the law itself will cause an outcry from the population. It causes suffering to the population because it harms the lives of the population and development does not work. The laws enacted by the State must help the life of the population and value the cultural identity of the people to guarantee the Democratic Rule of Law and also respect Human Rights. For example, I have only mentioned a few, but there will be other issues, such as land law, including customary lands, tara bandu, barlakeadu, gender issues, women's and children's rights, etc. The state must respect the rights of people to promote customary law that respects human rights, as stated in the UN Declarations on the Rights of Indigenous Peoples (2007) stresses the importance of "the collective right to promote and develop culture, customs and Institutions in accordance with standards of human rights".

When we look closely, any people lives in a culture. Have your own cultural identity. So I agree with Gadamer when he says: "it is in the tradition that we are and that we can become". This means that our lives must be linked to tradition because tradition is part of our lives. I can say that we humans live in tradition, of tradition and with tradition. But all traditions are made by us, humans. Therefore, these traditions also live in a context and in a time. A tradition is valid in some contexts and times, but in other contexts and times it is no longer consistent with the reality of our human life and we humans need to adapt. Tradition itself must be dynamic, just as life itself is dynamic. Therefore, customary law that is no longer conditioned to the reality of our human life in the present time, in the context of the Democratic Rule of Law and the valorization of Human Rights, we must eliminate it. Why don't we create a new tradition that is good for guaranteeing the Democratic Rule of Law and respect for Human Rights as a tradition that we can leave to the next generation?

Portugal is one of the oldest countries in the world where only a strong state legal culture will give value to custom, as provided for in its civil code in article 348. Carlos Feijó said that, "It should also be noted that, under the terms of paragraph 3 of article 348, the court will only be empowered to judge in accordance with the established law, with the law, if the content of the customary law invoked does not exist or cannot be proven". Carlos Feijó also said that, in this sense, that position striving for the supremacy and prevalence of the law as translating the general will would give space to custom as a mediate source to the extent that the law recognizes its value as an effective means of living and regulating life at the local level, functioning as a mechanism of homeostasis, social regulation, at the local (foreign) level." Freitas do Amaral also said that, "for the CC [Portuguese Civil Code], after all, custom is the source of Law!" Freitas do Amaral further reinforced his opinion by saying "custom is the source of law in the Portuguese courts, not only when the interested party invokes and proves it, but also – and this is the most interesting point

– when none of the parties invokes it, as long as the court knows it and can determine its content". As Professors Maria Clara Calheiros and Sérgio Mouta Faria said, in relation to Portuguese law, "This is what happens in our legal system with custom and foreign law. Those who wish to accept a customary norm or a legal norm of a legal system other than the Portuguese one see the burden of proof fall on them". But then Professor Maira Clara Calheiros and Sergio Mouta Faria also said that, "Now, if in matters of allegation of facts it is up to the litigants to assume, under penalty of seeing their thesis frustrated, the leadership, the same does not happen with regard to the invocation of the applicable law – in this regard the principle iura novit curia applies, that is, the court has an obligation to know the law. Thus, if one of the litigants forgets in the action to allege the existence of a certain damage that he has suffered, this fact may determine the loss of the right to the respective compensation, but the same does not happen if, having invoked the damage, that same litigant has not mentioned the rules of law against which he would be entitled to compensation". With a principle called iura novit curia, the Court has the obligation to know the law, because the party in conflict does not know any law, but if the Court knows, the Court must apply the law.

I see that people who have doubts, doubts, about the valuation of customary law are also right because they are concerned that customary law does not value human dignity and violates the International Mechanism for the Protection of Human Rights. We all agree with your concerns. Therefore, when the State enacts laws regulating customary law, it will seek to rely on the principle of prater legem or secundum legem and on international law and the International Mechanism for the Protection of Human Rights, including the Constitution of the Democratic Republic of Timor-Leste (and with due respect for Article 29 and other articles). That the State legislates on customary law in accordance with the Constitution of the Republic of Timor-Leste, as provided for in Article 2(4), but that it also respects Article 9, Article 23 and other relevant articles. So that laws cannot contradict the Constitution. Thus, in addition to guaranteeing Timor-Leste as a Democratic State of Law and respect for Human Rights (in accordance with our Constitution), we also take advantage of legal pluralism as an alternative means to help the lives of the population, solve their problems and ensure stability and harmony among citizens.

As the International Council on Human Rights Policy (ICHRP) study on Plural Legal Orders and Human Rights acknowledges, "the tension between culture and rights is a dynamic processs rather than a pair of static opposites. People are bearers of culture and of rights. They influence one another and the rights paradigm itself is a cultural phenomenon". Also sharing Brian Tamanah's idea when he says that, "The basic problem is that local norms and process could not be removed their original medium without losing their integrity. In many indigenous contexts, rules were not treated as bainding dictates, but rather as flexible rules that could be negotiated in the course of resolving disputes.". While René David says that, "custom should be one of the elements that allow the jurist to discover the just solution". Therefore, I agree with the opinion of Carlos Feijó when he says that, "The monist posture that sees the State as the exclusive source of creation and application of Law is a paradigm that deserves to be rethought".

Now we are also attentive, in all countries, in relation to judicial reform, we are facing two sides that, as Boaventura Santos called hegemonic and counter-hegemonic. According to Boaventura Santos, hegemony, "It is a field of business, of economic interests, which calls for an efficient, fast judicial system that allows the predictability of business, gives legal certainty and guarantees the safeguarding of property rights. The protagonists of the hegemonic camp are the World Bank, the International Monetary Fund and the large multilateral and national development aid agencies, such as the International Development Bank, USAID, etc. It is in this field that most of the reforms of the judicial system around the world are concentrated." While on counter-hegemonic, he says, "It is the camp of citizens who have become aware that the processes of constitutional change have given them significant rights and who, therefore, see in the law and in the courts an important instrument to make their claims and their just aspirations to be included in the social contract. A certain disagreement is established in relation to the discrepancy between the rights enshrined and the rights applied." The way to reconcile these two situations is that we need to be careful, in the process of judicial reform, that one party does not harm the other.

Independence of the judiciary

A fundamental part of the State Justice System is that the Judiciary can have total independence for its activity. On the other hand, in reality there are some issues that the population needs to find solutions to their problems, there is no effective and efficient service on the part of the state entity that is responsible for solving the problems that the population presents, which also contributes to the issue of slowness. However, when there is a risk of active non-compliance, our Penal Code also provides for some solutions for the population to use, among others, it is the abuse of power (Article 297), the denial of justice (Article 282) and in relation to the lawyer or public defender it is the malfeasance of the lawyer or public defender (Article 28). As these are cases of crime, it is the responsibility of the Public Prosecutor's Office as the perpetrator of the crime, so the Public Prosecutor's Office must investigate when a population makes a complaint. It is no longer a question of the separation of functions of the institutions of each judicial body. By virtue of the separation of functions of the institutions of the judiciary, each of their attributions, one does not interfere with the other in the execution of the work of serving justice, in accordance with the law, but when there are institutions of judicial organs if there are some officials in the exercise of their functions who commit crimes (as provided for in the Code of the Public Prosecutions Office) when the population complains. Therefore, we need to be aware that, as a state institution, each has its own independence and all judicial bodies also have their own independence. However, in the exercise of the function (exercise of the function, perform duties) all agents of the State are subject to the law in force. It is no longer an institutional problem when individuals from these judicial institutions commit acts that may be against the law. As in Indonesia, even a judge of the Constitutional Court itself, but when he has evidence of corruption (against the criminal law), the Commission for the Eradication of Corruption prosecutes him. Sometimes, there are those who think that instead of putting people in prison, everyone gains nothing, at least they ask for compensation

and other rights according to the law to carry on this life. But when the situation does not improve, there is no favorable, unfortunately and forced solution, so think about prosecuting according to the criminal law. I don't think anyone would lose everything! For example, if people buy products in the store, if they do not receive the products, the money must be returned. People give money to buy things. People can't just lose money and get nothing. Who can accept this? I don't think everyone accepts it. This is a question of justice. Otherwise, when the state officials are performing their duties and complying with the law, the official will have an accident and will not be considered at fault, as long as he does not violate any law, and the state must take responsibility if there is any compensation to the affected party.

Often, when populations are prevented from accessing justice, sometimes for various reasons, and perhaps among these reasons is the fact that, among the people in conflict, one of them has a friendly, family, political or special relationship with some individuals who occupy positions in the state justice entity. This prevents the population from finding quick, efficient and effective solutions to their problems. It is putting the population in a dilemmatic situation, without hope for the case that the population wants to solve. We cannot talk, it is like lying to each other, when the judiciary does not have a mechanism to ensure that, when their officials perform their duties, they are not interfered with by other entities or by other individuals or by racial or ethnic, group or partisan discrimination. Therefore, in order to guarantee the independence of the judiciary, we need to create a strong control mechanism that can come from the state or from civil society. We commend the State of Timor-Leste for the establishment of the Ombudsman for Human Rights and Justice. But we may also need another body that is mandated to bring to court the cases of the population against officials of State institutions, contributing to guarantee the right of citizens to access justice and the protection of Human Rights in Timor-Leste.

The control mechanism that comes from the state must create strong laws to impose strong administrative or criminal sanctions on public officials who do not cooperate with justice or on judicial officials who do not perform their duties with complete independence. The state needs to give the Anti-Corruption Commission a better task, through a legal basis, so that it can carry out its functions properly. It also authorizes the CAC to share some functions of the Public Prosecutor's Office. That the CAC can also be the perpetrator of a crime, but only related to crimes related to the exercise of functions as agents of the State. On the other hand, we can create our CAC to be like the Indonesian KPK, which can integrate into the characteristics of Timor-Leste itself. But we can see that the Indonesian KPK does not only prosecute the executive ruler, but also the judges of the Constitutional Court, who arrest and prosecute. The situation in Indonesia may have happened in the same way as in Italy in the 1990s, in an attempt to fight corruption.

There are some ideas to make the CAC law also include the reversal of the burden of proof and, on the other hand, we also know that the theory of criminal law teaches that there can be no reversal of the burden of proof in criminal cases. The solution to this case is that the State can create a law that obliges all public employees to declare their assets when they assume any leadership position. The exit position will be clearly defined by law. The CAC can help define which positions are vulnerable

to corruption. When a civil servant leaves office, he must also declare his assets. That is, declaring assets before and after exercising leadership functions. This is a preventive measure that we need to think about. I believe that prevention is the best way. Someone goes to jail for corruption and no one wins. The state gains nothing, unless state law requires the return of the money. Prison also increases the costs of the state. Therefore, we look for strong and adequate prevention mechanisms that do not allow people to commit corruption.

The State also needs to establish the Public Defender's Office as a fully independent body. Not only independence in empty words that are worth nothing, but mainly how to make the Public Defender's Office a truly independent body in all its activities, including administrative and financial ones. That the Public Defender's Office cannot supervise the Ministry of Justice in any dependency. But be alone. If the Public Defender's Office cannot support itself, it can submit financially and administratively to the Office of the President of the Republic, where we, Timorese, usually consider the President of the Republic as the father of the nation. Because the Public Defender's Office is the means for small populations to defend themselves, to have access to justice, when they see the violation of their rights or when they need to safeguard their rights in a Democratic State of Law that protects Human Rights. When the Public Defender's Office is submitted to the executive body, there may be a tendency or a high probability that the small population will not be able to receive, because there may be impediments, the protection of their rights when these small populations face a problem with the rulers or with people linked to the ruling party. Because no judicial body is independent, as it has a direct link in financial and administrative matters with the Government. To put an end to this interference, we need to find a mechanism that can really guarantee the independence of the judiciary.

Thus, I can affirm that the Public Defender's Office is an organ, among others, that has a role of paramount importance and is at the forefront of the Democratic Rule of Law and Human Rights in guaranteeing access to justice for citizens. We cannot say that a State is a Democratic State of Law that respects Human Rights if there is no guarantee of citizens' access to justice (Queiroz, C. M., 2002). Whether we like it or not, because it is not a question of will or not, but of a fundamental right of the citizen in a Democratic State of Law that protects human rights, the Public Defender's Office must be independent and perform its functions well and professionally to help the population that needs its legal assistance. Without their help, wisdom and professionalism, small and poor people cannot get justice, they cannot take their cases to court and they cannot defend themselves in court. I went to attend a trial (at that time I went with the intention of attending the trial in Court for my master's studies) in the Court related to the case of killings among ritual arts in a district where, in my opinion, the Titular Defenders did not perform their duties properly. Because in this trial I didn't see any difference, except in clothing, between the Prosecutor and the Defense Lawyer. The Public Prosecutor's Office prosecutes, according to its function, the criminal acts that members of these ritual arts may (with respect to the presumption of innocence) commit. But the defenders of the title do not seek to "defend" the defendant. This is an experience I saw in a court trial. There was only one trial and I cannot generalize that the defense lawyer did not defend the

defendant. So I wrote defend in quotation marks. Because if in the previous trial they also exercised their function of defending the defendants or if not, in the next trial they seek to defend the defendant. Perhaps, at that moment and only at that moment, they did not defend the defendant.

I hope that the Titular Defender in Court proceedings will try to defend the defendant well and professionally. In criminal proceedings, at least, the Titular Defenders seek to contribute to the reduction of the defendants' sentences when they demonstrate cooperation and "good behavior", perhaps because they show strong remorse. Perhaps this is where it is very important to have good communication between the client and the Titular Defenders. Explain to them any legal issues that are relevant to your situation. It is necessary to consider aggravating factors and mitigating factors. In fact, people are likely to commit crimes (when the Court has not decided and we respect the presumption of innocence) or they can commit crimes (when the Court has declared), but people are people and we need good and appropriate treatment. If a person does not repent of the crime he has committed or has serious problems, he should receive severe penalties. But especially sometimes, we need to see clearly that a person commits a crime not by his will, but because of circumstances and mentality. Timor-Leste, as a country that has just come out of a long war, will have some mentality that will come from the time of war or from some circumstances that lead a person to commit a crime. That the long war has created some bad mentalities and we need to create some ways to change these bad mentalities in the context of building a Democratic Rule of Law and respect for Human Rights.

In the context of Timor-Leste, we need to reconcile the positivist theory of law with the valorization of the customary law of Timor-Leste, as required by the Constitution. Perhaps we can say that, in the Justice System of Timor-Leste, a good transition phase is sometimes necessary to avoid the "culture shock", between the legalistic legal culture and the customary law (legal pluralism) of Timor-Leste. But we must make it clear that valuing customary law implies respect for our Constitution, International Law and the International Mechanism for the Protection of Human Rights in the context of building a Democratic Rule of Law that respects Human Rights. This means that the valorization of customary law leads to respect for the Positive Law created by the State and the State, by creating Positive Law, leads to the valorization of Customary Law in accordance with the Constitution, International Law and the International Mechanism for the Protection of Human Rights.

Therefore, I believe that the person who holds the law well is not the person who holds the law with his eyes closed, but rather the person who holds the law with his eyes closed (clean eyes) to see everything, to judge everything, to make a better decision. Therefore, it is perhaps better for those who apply the law to need, as a symbol, unclosed eyes and use the customs of Timor-Leste to bring to light all that is good in the socio-cultural and political reality of Timor-Leste itself for the benefit of the citizens and the State of Timor-Leste. Because, for me, the law should be applied when it causes damage to oneself, to others and to the State. In this sense, legislators in Timor-Leste also need to be careful, they cannot turn a blind eye, so when making

a law it is necessary to look at the circumstances and the socio-cultural and political reality of Timor-Leste.

Another very important part is the mechanism for monitoring civil society to guarantee the right of all citizens to access justice and the independence of the judiciary. We commend the work of the non-governmental organizations that have carried out during this period, among them, JSMP, Yayasan HAK, Ajar, Rede Feto, and also on behalf of the Catholic Church, when they also gave some important ideas to the Justice System in Timor-Leste. The National University of Timor-Leste, as a public university and with more than the necessary conditions, needs to establish a Centre for Social Studies, a Centre for Human Rights, an Observatory of Justice in Timor-Leste and an Observatory of Human Rights in Timor-Leste to conduct research and analysis on issues of justice and human rights in Timor-Leste. I would also like to suggest that the Ministry of Education create a Human Rights department to oversee the implementation of Human Rights policies for students.

If possible, the Attorney General's Office of the Republic of Timor-Leste could also create a department related to Human Rights, just as in Portugal, the Attorney General's Office in the Office of Documentation and Comparative Law also contributes to Human Rights. I would like to suggest the same to the National Parliament.

I would also like to suggest to the President of the Democratic Republic of Timor-Leste, because the President of the Republic, as an important part, has been distributing the Human Rights Award which is very good to value and encourage individuals, groups and societies to promote and ensure the protection of human rights, to establish the Department of Human Rights to, on the one hand, coordinate, collaborate on activities, studies, seminars, socialization to the community related to Human Rights, work together with relevant State entities and civil society and, on the other hand, seek to provide advice to the President of the Republic when the President of the Republic needs to take any intervention on Human Rights issues inside the country and international human rights issues.

The people of Timor-Leste believe in the President of the Republic's rule to approach the people and listen to the people's voice and the President of the Republic can be a check and balance for other rulers in showing exactly how to contribute to building this State well and carefully. Because the people of Timor-Leste will also put great hope in the President of the Republic as the father of the nation to contribute to the process of building a democratic rule of law that respects human rights for the well-being of the people.

Another important part is the continuous specialized training of all justice operators, that is, all those who work and serve Justice, so that they can improve their knowledge, quality, efficiency and effectiveness in all their work. Because without good specialized training it can contribute to delays, poor quality of justice and also affects the independence of the judiciary. I believe that when all those who work in Justice have good training and knowledge, they themselves will contribute to building a good Justice System to serve all citizens in a Democratic State of Law that respects Human Rights in the Democratic Republic of Timor-Leste. Otherwise, the justice operators who should protect the rights of citizens enshrined in the Constitution (and

other laws) and also protect Human Rights, violate the rights and Human Rights of the population. Thus, specialized training (education that we need to see as a factor in transforming people's mentality and a means of dignity) continues to be a very important part of the judicial reform process to contribute to the construction of a Democratic Rule of Law, respectful of Human Rights.

I also agree with Boaventura Santos when he states that, "The judicial system is today faced with a dilemma. If it does not take its share of the responsibility, it will remain independent from a corporate point of view, but it will be increasingly irrelevant both socially and politically. It will no longer have allies in society and will become more and more isolated. If, on the contrary, it assumes its share of responsibility, it will become politicized and, with it, the level of tension and conflict will increase, both internally and in the relationship with other instances of power. Truly, a democratic judicial system has no alternative but the second. It has to lose its isolation, it has to articulate with other organizations and institutions in society that can help it assume its political relevance".

CONCLUSION

Finally, I would like to leave the last word in this article that can summarize everything about Rights and Human Rights, because in my opinion this issue is the core, the root and the root of the violation of Rights and Human Rights is the issue of justice. Jesus Christ, I interpret the connection with justice, not with the politics of power, said: "Render to Caesar the things that are Caesar's and to God the things that are God's". That is, to give what belongs to its owner. Because at that time the coin was the image of Caesar. So it belongs to Caesar (But as Christians or people who believe in God (including friends of other religions), we all believe that all things belong to God). Therefore, what belongs to us is ours and what belongs to others belongs to others. When some people think that this is still wrong, they begin to lose sensitivity to justice. Even worse is if these friends study or work in the area of Justice. Because justice in short, which gives everyone what is due to them, is to guarantee the legal certainty of citizens' rights and protect Human Rights. This is the essence of justice in law, in the context of judicial reform, leading to the establishment of a justice system that seeks to guarantee the Democratic Rule of Law and Human Rights in the Democratic Republic of Timor-Leste.

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