

## CITIZENSHIP AND STATE-BUILDING IN EAST TIMOR

Patrícia Jerónimo<sup>1</sup>

*Abstract:* One of the most fundamental state prerogatives is to decide who belongs to the political community. When East Timor became independent from Indonesia on May 20, 2002, the Constitution of the new country set the criteria for attributing Timorese citizenship by origin. The constitutional provision on citizenship combines the traditional *jus soli* and *jus sanguinis* principles in such a way that grants easy access to Timorese citizenship by origin. This generosity may be explained by the fact that East Timor is a small and poor country with a vast diaspora, although recent legal developments suggest that the Constituent Assembly might have said more than it intended. The clarification of the scope of the constitutional provision is extremely important, not only for symbolic reasons (connection between citizenship and national identity), but also for its practical consequences, given that many fundamental rights under the Constitution (including the right to own land) are exclusive to Timorese citizens.

### I. OVERVIEW

Nationality is a legal bond based on a “genuine connection of existence, interests and sentiments” that ties a person to a state through a web of reciprocal rights and duties.<sup>2</sup> Citizenship<sup>3</sup> provides individuals with a national identity<sup>4</sup> and entitlements that are exclusive to citizens, including the right to vote, the right to enter the country, and the right to own land. For the state, the power to decide who belongs to the political community is a fundamental prerogative. It is an expression of state sovereignty and a matter under the state’s *domaine reserve*,<sup>5</sup> although International Law sets requirements that, if not met, determine the ineffectiveness of citizenship status in the international arena.<sup>6</sup> Stringent as these International Law

---

<sup>1</sup> Assistant Professor at the Law School of the University of Minho, Portugal. This article corresponds to a conference presentation at the National University of East Timor (Universidade Nacional Timor Lorosa'e) in Dili, on June 11, 2010.

<sup>2</sup> See *Nottebohm* (Liechtenstein v. Guatemala) – Second Phase, 1955 I.C.J. 4. (“According to the practice of States, to arbitral and judicial decisions and to the opinions of writers, nationality is a legal bond having as its basis a social fact of attachment, a genuine connection of existence, interests and sentiments, together with the existence of reciprocal rights and duties.”). See also RUI MANUEL MOURA RAMOS, DA COMUNIDADE INTERNACIONAL E DO SEU DIREITO. ESTUDOS DE DIREITO INTERNACIONAL PÚBLICO E RELAÇÕES INTERNACIONAIS 109 (1996).

<sup>3</sup> Nationality and citizenship are often used as synonyms, even though the two concepts are not entirely coincident. As Ramos explains, the two terms correspond to different perspectives of the same reality. Nationality underlines the connection between the person and the political community, while citizenship refers mainly to the rights and duties that result from that connection. See RAMOS, DO DIREITO PORTUGUÊS DA NACIONALIDADE 5-6 (1992). In East Timor, as in Portugal, the two terms are used interchangeably.

<sup>4</sup> Citizenship/nationality is a sign of belonging to a political community and marks the border between *us* and *them*, the foreigners. See PATRICK WEIL & RANDALL HANSEN, NATIONALITE ET CITOYENNETE EN EUROPE 10 (1999).

<sup>5</sup> See ANTÓNIO MARQUES DOS SANTOS, ESTUDOS DE DIREITO DA NACIONALIDADE 282 (1998).

<sup>6</sup> First and foremost, International Law requires effective ties between the individual and the state. Other requirements are, for example, that the state does not set rules on the conditions for acquisition or loss of a foreign citizenship, and that the state’s rules on acquisition of citizenship meet the following requirements: a) do not discriminate based on sex, race, religion or financial status; b) respect individual will in matters pertaining to the acquisition of citizenship; and c) do not determine the

requirements may be, it is for the domestic law of each state to determine who may hold citizenship.<sup>7</sup>

In East Timor, the main criteria for attributing citizenship are described in the Constitution (*Constituição da República Democrática de Timor-Leste*), which entered into force on May 20, 2002, the date on which United Nations Transitional Administration rule ended. The United Nations Transitional Administration in East Timor (UNTAET), which ruled the country between November 1999 and May 2002, decided against directly addressing the issue of citizenship, in view of the issue's "constitutional dignity"<sup>8</sup> and symbolism. However, UNTAET set minimum standards to identify East Timorese persons for border control purposes. UNTAET Regulation 2000/9 (On the Establishment of a Border Regime for East Timor) recognized as East Timorese all persons born in East Timor before 1975, persons born outside East Timor but with one parent or grandparent born in East Timor before December 1975, and the spouses and dependent children under 18 years of age of persons who were either born in East Timor before 1975 or born to a parent or grandparent born in East Timor before 1975.<sup>9</sup> The recognition, as well as the failure to obtain recognition as East Timorese under this Regulation, did not confer or detract from the rights of citizenship of any person.

Before East Timorese independence in 2002, the inhabitants of the eastern part of the island of Timor had other nationalities (Portuguese and Indonesian, for the most part) or were stateless. Regarding Portuguese citizenship, it is important to note that Portugal never acknowledged the unilateral declaration of independence made by FRETILIN (*Frente Revolucionária do Timor-Leste Independente*) on November 28, 1975. In addition, Portugal always acted in international fora as the administrative power of East Timor following the Indonesian invasion. As a result, the infamous Decree-Law 308-A/75, of July 24, 1975, which would have stripped the native population of Portuguese citizenship, never applied in East Timor. Persons born in East Timor before April 25, 1976 kept their Portuguese citizenship. Persons born in East Timor after that date were considered to be born abroad, which meant that, under Law 2098 of July 29, 1959, they would only be entitled to acquire Portuguese citizenship by origin, upon declaration, if one of the parents was Portuguese and if the

---

collective loss or acquisition collective acquisition or loss of citizenship, unless in cases of significant territorial changes or the formation of new states (and here with due safeguard to the legitimate expectations of the state's inhabitants and of their right of option). See JORGE MIRANDA & RUI MEDEIROS, *CONSTITUIÇÃO PORTUGUESA ANOTADA* 124 (2010); SANTOS, *supra* note 5, at 281-89; JORGE MIRANDA, *MANUAL DE DIREITO CONSTITUCIONAL, ESTRUTURA CONSTITUCIONAL DO ESTADO* 97-103 (1998).

<sup>7</sup> This is why the legal provisions that are relevant to ascertain whether a person is a national of a given state are only the ones in that state's Nationality Law. See SANTOS, *supra* note 5, at 283-84.

<sup>8</sup> See MIRANDA, *supra* note 6, at 97.

<sup>9</sup> UNTAET Regulation 2000/9, Art. 7, para. 4(b)-(d).

birth was registered at a Portuguese consular post or at the Central Registry Office.<sup>10</sup>

Portuguese Law 37/81, of October 3, 1981, which replaced Law 2098, made access to Portuguese citizenship much easier for persons born in East Timor, as it attributed Portuguese citizenship by origin to the children of a Portuguese father or mother born in a territory under Portuguese administration.<sup>11</sup> It is interesting to note, however, that in 1995 and 1998, the Portuguese Government declared, through its Ambassador in Australia, that Portuguese citizenship was not attributed *ope legis* to all persons born in East Timor before 1975, but required an application by the interested parties, to be evaluated on a case-by-case basis. This mistaken interpretation of Portuguese nationality law can be explained by the political circumstances in which the Portuguese Ambassador's statements were made.

The Australian Government, which, since 1979, had always treated Timorese refugees as Indonesian citizens, began in 1992 to reject asylum applications filed by Timorese refugees. Australia argued that the refugees had retained Portuguese citizenship and that under the 1951 Geneva Convention, Portugal was the state primarily responsible for their protection. It has been argued that the Portuguese Government misinterpreted its own nationality laws to help the Timorese refugees in their asylum applications before the Australian authorities to avoid mass deportations to Portugal.<sup>12</sup>

In 1999, East Timor stopped being a territory under Portuguese administration, which meant that children born in East Timor from then on were to be considered born abroad. Under Law 37/81, the attribution of Portuguese citizenship by origin to persons born in East Timor to a Portuguese parent is now dependent upon registration at the Portuguese civil registry or, alternatively, upon declaration of the will to be Portuguese.<sup>13</sup>

As for Indonesian citizenship, with the formal annexation of East Timor as the 26th Province of the Republic of Indonesia,<sup>14</sup> East Timorese were automatically considered to be Indonesian citizens, entitled, at least in principle, to the same rights as citizens from the other provinces (political

---

<sup>10</sup> As an alternative to registration, Law 2098 also extended citizenship by origin to the children of Portuguese parents born abroad, provided that they had settled in Portugal.

<sup>11</sup> Law 37/81, art. 1(1)(a). See also RUI MANUEL MOURA RAMOS, *DO DIREITO PORTUGUÊS DA NACIONALIDADE*, 70-71 (1992); MIRANDA, *supra* note 6, at 124-25.

<sup>12</sup> See PETER NYGH, *Portuguese nationality and the status of the inhabitants of East Timor under the Geneva Convention 1951*, in ESTUDOS EM HOMENAGEM À PROFESSORA DOUTORA ISABEL DE MAGALHÃES COLLAÇO 507-31 (2002).

<sup>13</sup> Law 37/81, art. 1(1)(c). Interviews conducted by the author with public officials at the Portuguese consular post in Dili indicate that many Timorese citizens continue to exercise this right to Portuguese citizenship by origin, and also that practically all requests are granted.

<sup>14</sup> Annexation occurred in 1976.

rights, access to civil service employment, the right to a passport).<sup>15</sup> Any East Timorese who so wished were, nevertheless, authorized to renounce Indonesian citizenship and retain Portuguese citizenship. Many of those who retained Portuguese citizenship left East Timor for Portugal or Australia. Those who remained in East Timor were treated as foreigners and excluded from participation in the public affairs of the country, including the right to vote and access to employment in the civil service.

On October 20, 1999, the Indonesian Parliament officially acknowledged the results of the East Timorese independence referendum and recognized East Timor's separation from the rest of the Republic, while safeguarding the rights of East Timorese who wished to remain loyal to Indonesia. Post-referendum violence displaced over 250,000 East Timorese, the majority of whom sought refuge in the western part of the island. Of these refugees, approximately 30,000 remained in Indonesia after 2002. According to the 2003 Indonesian Census, most opted for Indonesian citizenship, even though the government gave them the option to retain Timorese citizenship and remain in Indonesia as foreigners with a valid residence permit.<sup>16</sup> This meant renunciation of Timorese citizenship for many refugees, given that Indonesian Nationality Law does not allow dual citizenship.<sup>17</sup>

## II. THE CONSTITUTIONAL DEFINITION OF TIMORESE CITIZENSHIP BY ORIGIN

The Constitution approved by the Constituent Assembly on March 22, 2002 was highly influenced by the Portuguese Constitution of 1976,<sup>18</sup> but the provision on citizenship (Article 3) was more meaningfully influenced by the Mozambican Constitution of 1990.<sup>19</sup> This Mozambican influence explains the option for setting substantive criteria instead of merely deferring the matter to ordinary law.<sup>20</sup> It also explains the phrasing of Article 3(2)(a), which, as will be explained later, may raise doubts as to

---

<sup>15</sup> On the common use of Indonesian passports by the Timorese requesting asylum before the Australian authorities during Indonesian occupation, see PETER NYGH, PORTUGUESE NATIONALITY AND THE STATUS OF THE INHABITANTS OF EAST TIMOR UNDER THE GENEVA CONVENTION 1951, 509-10; RYSZARD PIOTROWICZ, *Refugee Status and Multiple Nationality in the Indonesian Archipelago: Is there a Timor Gap?*, 8 INT. JNL. OF REFUGEE LAW 323 (1996).

<sup>16</sup> See The International Observatory on Statelessness, *Indonesia*, available at <http://www.nationalityforall.org/indonesia> (last visited June 9, 2011).

<sup>17</sup> See Indonesian Law on Nationality, Law 12/2006; See also Indonesian Law on Nationality, Law 62/1958.

<sup>18</sup> See PEDRO BACELAR DE VASCONCELOS, *A transição em Timor-Leste (1999/2002)*, in RUI CENTENO & RUI NOVAIS, *TIMOR-LESTE DA NAÇÃO AO ESTADO* 70-71 (2006); JORGE BACELAR GOUVEIA, *ESTUDOS DE DIREITO PÚBLICO DE LÍNGUA PORTUGUESA* 318-19 (2004).

<sup>19</sup> See Hilary Charlesworth, *The Constitution of East Timor*, 2 INT. JNL. OF CONSTITUTIONAL LAW 328 (2003).

<sup>20</sup> As is the case with the Portuguese Constitution (Article 4). See MIRANDA, *supra* note 6, at 110-11.

the exact scope intended for the provision. Unlike the Mozambican Constitution, however, the Timorese Constitution only establishes the criteria for attribution of citizenship by origin, deferring to ordinary law modes of acquiring, losing and reacquiring Timorese citizenship, as well as the rules for registration and proof of Timorese citizenship.<sup>21</sup>

Under Article 3(2), Timorese citizens by origin are the persons born in Timorese territory who: a) are the children of a father or mother born in East Timor; b) are the children of unknown parents, stateless parents or parents of unknown nationality; c) are the children of a foreign father or mother and, being over 17 years of age, declare their will to be Timorese citizens. Article 3(3) adds that, even if born abroad, the children of a Timorese father or mother are also Timorese citizens by origin.<sup>22</sup>

This provision combines the classic criteria for attribution of citizenship by origin: *jus sanguinis* and *jus soli*. Citizenship is attributed both on the basis of the parents' national identity (*jus sanguinis*, paragraph 3) and on the basis of birth in Timorese territory (*jus soli*, paragraph 2). The criteria are employed in a very wide sense, which makes access to Timorese citizenship by origin considerably easy.

The Timorese Constitution adopts *jus sanguinis* without any restrictions. The Constitution does not require that a birth be registered at the nearest Timorese Consular Post or at the Central Registry Office in East Timor. Every child of a Timorese citizen will be Timorese, irrespective of place of birth and with no need to make a statement to that effect.<sup>23</sup> The attribution is effective automatically. This means that all Timorese

---

<sup>21</sup> Timorese Constitution, art. 3(4).

<sup>22</sup> An English version of the Timorese Constitution, available on the Timorese Government's website, adds two sub-paragraphs to paragraph 3: a) Children of an East Timorese father or mother living overseas; b) Children of an East Timorese father or mother serving the state outside the country. See Government of East Timor, *The Constitution*, available at <http://www.gov.east-timor.org/constitution/constitution.htm> (last visited Mar. 18, 2011). These two sub-paragraphs do not appear in the Portuguese and Tetum versions of the Constitution as it was published in the Official Journal "Jornal da República", Series I, no. 1, of June 4, 2003, and are therefore of no legal value.

<sup>23</sup> It is, however, important to note that Article 23, paragraph 2, of the Timorese Law on Nationality (Law 9/2002, of Nov. 5, 2002), mentions a statement to be made as a precondition for attribution of Timorese citizenship by origin to a person born abroad. Similarly, Article 6 of the Nationality Regulation (Decree-Law 1/2004, of Feb. 4, 2004) requires registration of the birth at the Timorese Civil Registry as a precondition for attribution of Timorese citizenship to children of a Timorese parent born abroad. Both provisions lack a constitutional basis and it is arguable that they restrict a fundamental right (the right to Timorese nationality) without fulfilling the requirements set in Article 24 of the Constitution (admissibility of laws which are restrictive of fundamental rights). The reference made in Article 23 of the Law on Nationality and the requirement introduced by Article 6 of the Nationality Regulation may be explained by the fact that both Acts were, to a large extent, copied from the Portuguese Law on Nationality and from the Decree-Law that develops it. They cannot, however, be taken to mean that a statement of the will to be Timorese is required for the attribution of Timorese citizenship by origin. The attribution is preexistent and independent of any registration or declaration. Such acts should be admitted only as probative and as a means to serve the state's interest in controlling the data regarding the number of Timorese citizens in the diaspora. Their absence cannot be used as a justification to deny Timorese citizenship by origin to a person born abroad to a Timorese parent.

descendants in the diaspora are entitled to Timorese citizenship, even if they do not keep any contacts with the country.<sup>24</sup>

*Jus soli* also has a very wide scope. Aside from the double *jus soli* rule (sub-paragraph a)), and the statelessness prevention clause (sub-paragraph b)), Article 3(2) of the Timorese Constitution provides that all persons born in East Timor to a foreign father or mother are entitled to citizenship by origin, as soon as they become adults, by means of a simple declaration of the will to be Timorese (sub-paragraph c)). All persons in these circumstances have a right to make the declaration and to be recognized as Timorese citizens by origin as an effect of that declaration. Timorese authorities cannot object to the declaration or to its effects.

Looking more closely at the text of Article 3, several interpretative difficulties arise. One reason for these difficulties is the structure of the Article, which is unusual and counterintuitive. Contrary to the common normative approach to the issue, Article 3 does not begin by enunciating the strongest and most evident criterion for attribution of citizenship by origin, that is, the coincidence of *jus soli* and *jus sanguinis*. This criterion is not spelled out in paragraph 2(a), as some have argued.<sup>25</sup> It is paragraph 3 that sets that criterion, albeit indirectly given the use of the phrasing “even if born abroad.”<sup>26</sup>

What Article 3(2)(a) prescribes, following a similar provision in the 1990 Mozambican Constitution,<sup>27</sup> is that persons born in East Timor to a father or mother also born in East Timor (double *jus soli*) are Timorese citizens. It is not necessary that one of the parents be Timorese (such a requirement would, anyway, be redundant because of paragraph 3), but only that one of the parents was born in East Timor. One can question whether the Constituent Assembly wanted to establish the double *jus soli* criterion, since it means the automatic attribution of Timorese citizenship by origin to the children of foreigners, whenever one of the foreign parents

---

<sup>24</sup> It is fair to question whether this attribution of Timorese citizenship to all children of Timorese citizens born abroad does not contradict the International Law requirement that a state's nationality reflects the existence of an effective bond between the state and the person to whom the nationality is conferred. On this point, regarding an identical solution in German Law, see RYSZARD PIOTROWICZ, REFUGEE STATUS AND MULTIPLE NATIONALITY IN THE INDONESIAN ARCHIPELAGO 328 (1996).

<sup>25</sup> See, e.g. EAST TIMOR LAND LAW PROGRAM, REPORT ON RESEARCH FINDINGS, POLICY OPTIONS AND RECOMMENDATIONS FOR COMPLIANCE WITH THE CONSTITUTION BY NON-NATIONAL CLAIMANTS OF PRE-EXISTING FREEHOLD RIGHTS IN EAST TIMOR (2004), available at <http://www.mj.gov.tl/dntp/rel/DATA/LLP%20/ARD%20Reports%20and%20studies/Non-national%20claimants%20Report/Non-national%20claimants%20-%20engl.pdf> (last visited Mar. 18, 2011).

<sup>26</sup> *Id.*

<sup>27</sup> 1990 Mozambican Constitution, art. 11(1)(a) (Mozambicans are the persons born in Mozambique to a father or a mother born in Mozambique.). It must be noted, however, that the Mozambican Constitution of 1990, as well as the new Constitution of 2004, define a much more extensive set of criteria for attributing Mozambican citizenship than the criteria set by the Timorese Constitution. The wide scope of Article 11(1)(a) is narrowed down by the concurrent effect of other constitutional provisions regarding attribution of citizenship by origin, while in the Timorese Constitution the scope of Article 3(2)(a) is left constitutionally wide open.

was born in Timorese territory. This includes, among others, the children of Indonesian citizens who were born in East Timor during Indonesian occupation. It is likely that the Constituent Assembly did not intend this result. However, the language of Article 3 does not allow for a different interpretation.

As long as this is the text of Article 3 of the Constitution, Timorese authorities cannot but recognize entitlement to Timorese citizenship by origin to all persons who are in those conditions. The attribution results directly from the letter of the Constitution. There is also no point in trying to narrow the scope of Article 3(2)(a) by means of new laws<sup>28</sup> because the Constitution is the supreme law of the land, to which all other laws must conform.<sup>29</sup> It may seem obvious that the Constituent Assembly said more than what was intended, but the only way of overcoming that inaccuracy is by revising the Constitution according to the rules of Articles 154 to 157. One way of doing so would be to insert, in Article 3(2)(a), a precise time reference, like the date of the Indonesian invasion, which was the criterion adopted by UNTAET in Regulation 2000/9, mentioned earlier.

Another question raised by Article 3 pertains to the meaning of “Timorese” in paragraph 3. We know that the children of Timorese parents are Timorese – this is a common phrasing of the *jus sanguinis* principle – but, without a precise time reference, we are left without knowing for sure who should be considered Timorese such that the individual’s children may benefit from Timorese citizenship by origin under paragraph 3. If Article 3 identified as Timorese citizens by origin all persons born in East Timor before a certain date and their offspring, the problem would be solved, but that is not the case.

It may be argued that the reference to “Timorese” in paragraph three presupposes and refers to a Timorese national identity anchored in ethnic, historic and cultural traits, but this line of reasoning raises problems of its own. For example, there is no indication in the constitutional text that allows us to define the concept of Timorese in an ethnic, historical or cultural sense.<sup>30</sup> The existence of an ethnic identity specific to East Timor is also highly disputed in the literature, in view of the diversity of physical, cultural and linguistic traits observable among the indigenous populations.<sup>31</sup> As the law stands, it is up for the administrative authorities<sup>32</sup>

---

<sup>28</sup> That was the case with Decree-Law 1/2004, of February 4 (Regulation on Nationality), which requires that in order to obtain Timorese citizenship under Article 3, paragraph 2, sub-paragraph a) it is necessary to present a birth registration expressly stating that one of the parents is a Timorese national.

<sup>29</sup> East Timor Constitution, art. 2(2)-(3).

<sup>30</sup> The references to the Fatherland (*pátria*) and to the Maubere people, which appear in the Preamble and in Article 11, are not of much help here.

<sup>31</sup> “It is a demographic fact that Timor-Leste is an extremely diverse region, comprised of indigenous Antoni peoples, Malays, Makassarese, Melanesians, Papuans, Chinese, Arabs, and Gujeratis. While Tetum and Portuguese are the official languages, there are about sixteen major indigenous languages, with Galole, Mambae, and Kemak also spoken by a significant number of people. The East

and the courts to decide, on a case-by-case basis, who is considered a Timorese for the purpose of paragraph three.

One last topic concerns the scope of paragraph 2(c). Under this provision, all persons born in East Timor to a foreign father or mother are entitled to Timorese citizenship by origin as soon as they become adults, by means of a simple declaration. As mentioned *supra*, this provision confers a right that may be exercised by the persons entitled and against which no opposition can be raised by the Timorese authorities. Curiously enough, this provision does not set a time limit for the submission of the declaration to Timorese authorities, nor does it impose a minimum residence in East Timor prior to the declaration. This leads to the conclusion that even a person who was born in East Timor by mere chance,<sup>33</sup> and resided for most of his or her life outside the country, is entitled to obtain Timorese citizenship by origin, as long as the person declares his or her will to be Timorese anytime after turning seventeen. Such an interpretation is true to the letter of the Constitution and is not contradicted by the Law on Nationality or by the corresponding regulations.<sup>34</sup> It is, however, clearly at odds with the International Law requirement that citizenship reflect the existence of effective ties between the state and its citizens.<sup>35</sup> Even though the Timorese authorities are constitutionally obligated to acknowledge the

---

Timorese simply cannot be said to share a common language or culture or distinct hereditary physical traits." See David Lisson, *Defining 'National Group' in the Genocide Convention: A Case Study of Timor-Leste*, 60 STAN. L. REV. 1488-89 (2008).

<sup>32</sup> Under Article 32 of the Timorese Law on Nationality, it is incumbent upon the Government to solve any doubts that may arise in the interpretation of the Law on Nationality.

<sup>33</sup> This is not as improbable as it may seem given the considerable number of persons working in development aid programs in East Timor for short periods of time (six months to two years).

<sup>34</sup> Article 8, paragraph 1, sub-paragraph c), of the Law on Nationality has exactly the same phrasing as Article 3, paragraph 2, sub-paragraph c), of the Timorese Constitution. Article 19, paragraph 1, of the Law on Nationality adds that the "nationality declarations" which express the will to obtain Timorese citizenship may be made before the diplomatic and consular agents of East Timor and are registered *ex officio*. As for the Nationality Regulation, it is worth mentioning that the provisions which concern the attribution of citizenship by origin to persons born in East Timor to a foreign parent, while not requiring a minimum residence nor setting a time limit for the declaration, nevertheless narrow the scope of the constitutional and legal provisions referred earlier. Article 1, paragraph c), identifies as entitled to Timorese citizenship by origin the persons born in East Timor to a foreign father *and* mother, who, after becoming adults, declare their will to be Timorese. The phrasing of this provision is narrower than the corresponding constitutional and legal provisions because, by requiring that both parents be foreigners, it excludes the cases in which one of the parents is a foreigner and the other parent is either unknown, stateless or of unknown nationality. Article 1, paragraph 1, sub-paragraph c), of the Nationality Regulation must, therefore, be interpreted in accordance with the Constitution, so that the "and" is read as an "or." Otherwise, this provision is unconstitutional. The same is true for Article 7, paragraph 1, of the Nationality Regulation, which prescribes that the persons born in Timorese territory to a foreign father *and* mother must declare their will to be Timorese after reaching 17 years of age. The only requirement added by this Article is that, with the declaration, the interested party presents his or her birth certificate, as well as a document issued by the competent service attesting to the situation of the parents (paragraph 2).

<sup>35</sup> The "clear absence of any effective ties with the Timorese society" is one of the grounds for opposition by the Timorese authorities to the acquisition (after birth) and reacquisition of Timorese citizenship, under Article 16, paragraph a), of the Law on Nationality. This provision, however, does not apply to the attribution of citizenship by origin, of which the effects are *ope legis*.



Timorese citizenship of anyone who meets the minimal requirements of sub-paragraph c), the international community would not recognize as valid the attribution of Timorese citizenship to a person born by mere chance in East Timor.

### III. LAW 9/2002: THE LAW ON NATIONALITY

Following Article 3, paragraph 4, of the Timorese Constitution, the National Parliament approved, on October 2, 2002, the Law on Nationality (Law 9/2002),<sup>36</sup> which sets the conditions for attribution, acquisition, loss and reacquisition of Timorese nationality, as well as the rules on nationality registration, proof and appeal procedures.

Chapter I enunciates a set of basic principles, including the principle that no citizen shall be arbitrarily deprived of his or her nationality nor denied the right to change his or her nationality (Article 2, paragraph 1). Article 4 provides that the attribution, acquisition, loss, and reacquisition of Timorese nationality are governed by the law in force at the time of the events upon which they depend. The attribution of Timorese citizenship by origin is retroactive to the date of birth (Article 5), while the loss of Timorese citizenship is effective only from the moment when it is decreed (Article 6). Article 7 requires the Minister of Justice to assess and decide all matters pertaining to the attribution, acquisition, loss, and reacquisition of Timorese nationality, whenever that incumbency does not fall upon the National Parliament [which is the case with the naturalization for rendering important services to the country (Article 13)].

Chapter II, on nationality by origin, contains only one Article – Article 8 – and this provision is an exact copy of Article 3, paragraphs 2 and 3, of the Constitution. More relevant is Chapter III, which establishes the various modes of acquisition of Timorese nationality: affiliation, adoption, marriage, naturalization *stricto sensu* and naturalization for important services rendered to East Timor.

All persons who acquire Timorese nationality may request that their minor children be granted Timorese nationality as well. The extension of Timorese nationality to minor children is not automatic, but requires a request by the parents. The children may opt for a different nationality when they become adults (Article 9). Children adopted without restrictions<sup>37</sup> by Timorese citizens automatically acquire Timorese nationality (Article 10). Foreigners married to Timorese nationals may acquire Timorese nationality by request, provided that, at the time of the request, they fulfill three cumulative requirements: a) they are married for

---

<sup>36</sup> Published in the Official Journal “Jornal da República”, Series I, no. 7, of July 16, 2003.

<sup>37</sup> Full adoption (adoção plena) means that all ties with the biological family are severed.

more than five years; b) they have (lawfully<sup>38</sup>) resided in Timorese territory for at least two years; and c) they are proficient in one of the two official languages, Portuguese or Tetum<sup>39</sup> (Article 1, paragraph 1). If a foreigner loses his or her prior nationality as a result of marriage to a Timorese national, he or she will automatically acquire Timorese nationality (Article 11, paragraph 2).

Article 12 lists the conditions for naturalization *stricto sensu*. The Minister of Justice may grant Timorese nationality to foreigners who request it and who, at the time of the request, fulfill a number of requirements: a) they are of age, under Timorese Law and under the Law of their state of origin; b) they are regular and lawful residents of East Timor for at least 10 years, counted before December 7, 1975 and since May 20, 2002<sup>40</sup>; c) they are proficient in one of the two official languages; d) they offer civic and moral guarantees of integration into Timorese society; e) they have the means to provide for their own subsistence; and f) they know the history and culture of East Timor.<sup>41</sup> As mentioned earlier, the National Parliament may also grant Timorese nationality to foreign citizens who render important services to the country (Article 13).<sup>42</sup>

It is important to note that, for the most part, the law leaves the government fairly free to decide whether or not to grant Timorese nationality. Only Article 10, paragraph 1, and Article 11, paragraph 2, determine the acquisition of Timorese nationality *ope legis*.<sup>43</sup> The phrasing in all other provisions of this Chapter point to a wide margin of discretionary decision by the Government – “may be granted”, “may acquire”, “may grant.” The law does not recognize to the persons that fall under the conditions set in Articles 9, 11 (paragraph 1), and 12, an

---

<sup>38</sup> This requirement is not established by Article 1, paragraph 1, of the Law on Nationality, but is derived from Article 9, paragraph 3, sub-paragraph c), of the Nationality Regulation, which requires that the applicant presents, with his or her request, a valid residence permit issued by the competent authorities.

<sup>39</sup> The proof of proficiency in one of the two official languages is to be done by document issued by an institution recognized by the Ministry of Justice [Article 9, paragraph 3, sub-paragraph d), of the Nationality Regulation].

<sup>40</sup> Article 12, paragraph 2, excludes from the concept of regular residents all foreign citizens who took residence in East Timor in the context of the Indonesian transmigration policy or of foreign military occupation.

<sup>41</sup> Under Article 12 of the Nationality Regulation, the applicants for naturalization must provide information on their current and previous places of residence, on their professional activities and on the reasons for wishing to become Timorese. Among the documents required with the application are: a valid residence permit, issued by the competent authorities; a document attesting to the entrance and stay in East Timor; a document attesting to the integration into Timorese society, issued by the community structures in place, namely social clubs and cultural centers; and a document attesting to the knowledge of Timorese culture and history, issued by the Ministry of Education, Culture, Youth and Sports.

<sup>42</sup> The first recipient of this honor was Portuguese President Jorge Sampaio, in 2006, for his role in the process that led to the 1999 referendum and to the independence of East Timor.

<sup>43</sup> The acquisition of Timorese nationality *ope legis* as a consequence of full adoption is confirmed by article 10 of the Nationality Regulation, even if this provision treats the acquisition as a mere presumption, susceptible to be reversed by proof to the contrary.

entitlement to obtain Timorese citizenship. The fact that they fulfill the requirements set by those provisions does not guarantee, by itself, that they will obtain Timorese nationality. Furthermore, and contrary to what happens with the attribution of citizenship by origin, the Public Prosecutor may oppose the acquisition of Timorese nationality on several grounds. These grounds, which are common to the reacquisition of Timorese nationality, are listed in Article 16: a) the clear absence of effective ties with Timorese society; b) conviction for a crime punishable by Law with imprisonment of more than eight years; c) conviction for a crime against national security; d) the exercise, without the Government's permission, of sovereign functions in favor of a foreign state<sup>44</sup>; e) or the provision of military service in favor of a foreign state, outside expressly authorized cases.

The rules on loss of nationality, set by Article 14, also reflect how fragile acquired nationality is when compared with nationality by origin. Nationality by origin can only be lost by renunciation, which means that it can never be withdrawn against the person's will. Respect for individual will is not without limits, however, because only the citizens who also have another nationality can renounce Timorese nationality. This requirement is imposed as a means to prevent statelessness. The loss of Timorese nationality occurs when a Timorese national voluntarily acquires a foreign nationality and declares his or her will not to be Timorese [Article 14, paragraph 1, sub-paragraph a)], and when the minor children of Timorese nationals born abroad, after becoming adults, express their will not to be Timorese, provided that they have another nationality [Article 14, paragraph 1, sub-paragraph b)].

Acquired nationality, on the other hand, may be withdrawn against the person's will,<sup>45</sup> being irrelevant in these circumstances that the loss of Timorese nationality results in the person's statelessness. Under Article 14, paragraph 2, Timorese nationality acquired by naturalization<sup>46</sup> is lost if

---

<sup>44</sup> This specific ground for opposing the acquisition of Timorese nationality is difficult to understand, since it is hardly reasonable that a foreigner, even if residing in East Timor, would need to obtain the Timorese Government's permission to exercise sovereign functions for a foreign state, particularly if that foreign state is the state of the person's nationality. There seems to have been some sort of confusion with the grounds for withdrawal of Timorese citizenship. Article 14, paragraph 2, sub-paragraph b), is identical to this provision.

<sup>45</sup> It goes without saying that the acquired nationality may also be lost by renunciation, under Article 14, paragraph 1, sub-paragraph a).

<sup>46</sup> The text of this law appears to indicate that only nationality obtained through naturalization under articles 12 and 13 may be lost on the grounds listed in Article 14, paragraph 2, but it is doubtful that that was the legislator's intention. It can be argued that the legislature wanted to provide a stronger protection to nationality acquired through affiliation, adoption or marriage, in order to safeguard the interests of the Timorese nationals with family relations with the persons concerned. If that is the case, the persons who acquire Timorese nationality because they are adopted by or married to Timorese nationals, or because they are the children of persons who acquired Timorese nationality, can only lose the Timorese nationality under Article 14, paragraph 1, sub-paragraph a), that is, by means of renunciation, provided they hold another nationality. I believe, however, that, at least in the hypothesis of

a person a) renders military service to a foreign state (unless expressly authorized by the state in an agreement with the foreign state concerned); b) exercises sovereign functions on behalf of a foreign state, without the permission of East Timorese authorities; c) is convicted in final instance for a crime against the national security of the Timorese state; d) has obtained Timorese nationality by forging documents, by fraud, or by inducing the competent authorities in error, in any other way.

The loss of nationality is not irreversible unless it was coercively imposed on the basis of one of the grounds listed in Article 14, paragraph 2. If Timorese nationality was lost due to a declaration of will by the parents during the minority of the child, the person concerned may reacquire Timorese nationality by option after becoming an adult (Article 15, paragraph 1). The only requirement is that the individual proves that he or she has resided in national territory for at least one year before the declaration (Article 15, paragraph 2). If Timorese nationality was lost by renunciation, under Article 14, paragraph 1, reacquisition depends upon a positive decision by the Ministry of Justice, in the exercise of discretionary powers, and will only be granted if the person has resided in national territory for at least five years prior to the request (Article 15, paragraph 3). The Public Prosecutor may, however, oppose the reacquisition of nationality with one of the grounds listed in Article 16, as mentioned earlier.

Finally, it is important to note that Timorese Law is entirely open to double nationality, which may be confirmed by the fact that the acquisition of a foreign nationality does not, *ipso facto*, constitute a reason for the loss of Timorese nationality.<sup>47</sup> For cases of multiple nationality, the Timorese Law sets two criteria, according to whether one of the nationalities is Timorese or all the nationalities are foreign nationalities. If the person holding multiple nationalities is also a Timorese national, the other nationalities are not acknowledged nor will they have any effect in the Timorese legal order (Article 29). If the person only has foreign nationalities, the prevalent nationality will be the nationality of the state where the person resides on a regular basis or, in its absence, the nationality of the state with which the person keeps a stronger bond (Article 30).

---

Article 11, paragraph 1 (acquisition through marriage), the Timorese Government should be able to withdraw the Timorese nationality to persons who fall under one of the reasons listed in Article 14, paragraph 2. That should certainly be the case if a person obtains Timorese nationality with a forged marriage certificate.

<sup>47</sup> Under Article 14, paragraph 1, sub-paragraph a), the acquisition of a foreign nationality is not a reason for the loss of Timorese nationality, but a condition without which the will to renounce to Timorese citizenship will not be attended, in order to prevent statelessness.

#### IV. CITIZENSHIP AND FUNDAMENTAL RIGHTS

Citizenship is not only a legal status, but is increasingly considered a fundamental human right. Article 15 of the Universal Declaration of Human Rights states that everyone has the right to a nationality and that no one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality. The International Covenant on Civil and Political Rights<sup>48</sup> states that every child has the right to acquire a nationality (Article 24, paragraph 3)<sup>49</sup> and the International Convention on the Elimination of All Forms of Racial Discrimination<sup>50</sup> requires signatories to guarantee the right of everyone, without distinction as to race, color, or national or ethnic origin, to equality before the law, notably in the enjoyment of the right to nationality [Article 5, paragraph d), sub-paragraph iii].

While the Timorese Constitution does not say so expressly, the recognition in East Timor of a fundamental right to nationality may be deduced from a number of safe indicators: by reference to the Universal Declaration as an interpretative standard for all provisions on fundamental rights (Article 23); the inclusion of citizenship among the rights that are to be safeguarded in case of public emergency (Article 25, paragraph 5); the guarantee against statelessness, which attributes Timorese citizenship by origin to everyone born in East Timor who does not hold another nationality [Article 3, paragraph 2, sub-paragraph b)]; and, outside the Constitution, the reproduction, in Article 2, paragraph 1, of the Law on Nationality, of the Universal Declaration provision which prohibits the arbitrary deprivation of nationality and of the right to change nationality.

Timorese citizens are entitled to a number of fundamental rights, considered part and parcel of state identity<sup>51</sup> and sovereignty and, therefore, denied to all those who are not full members of the political community. According to Article 25 of the International Covenant on Civil and Political Rights, the fundamental entitlements of citizenship are the right and the opportunity to take part in the conduct of public affairs, directly or through freely chosen representatives; to vote and to be elected at genuine periodic elections; and to have access, on general terms of equality, to public service in his country. In the Timorese Constitution, these are the right to vote and be elected (Article 47), the right to create and join political parties (Article

---

<sup>48</sup> Ratified by National Parliament Resolution no. 3/2003, of July 22. Published in the Official Journal, on August 20, 2003.

<sup>49</sup> Article 29 of the *International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families* (ratified by National Parliament Resolution no. 23/2003, of November 19) includes a similar provision, "Each child of a migrant worker shall have the right to a name, to registration of birth and to a nationality."

<sup>50</sup> Ratified by National Parliament Resolution no. 10/2003, of September 10.

<sup>51</sup> See MIRANDA, *supra* note 6, at 125.

46, paragraph 2),<sup>52</sup> the right to participate in referenda (Article 66, paragraph 1), the right to submit complaints to the Ombudsman for acts or omissions by the public powers (Article 27, paragraph 2), the right to submit petitions to the public powers (Article 48), the right to be a member of the State Council (Article 90, paragraph 2) and the right to be a member of the Supreme Court of Justice (Article 127, paragraph 1).<sup>53</sup>

Aside from political rights, the Constitution grants other rights that are exclusive to Timorese citizens precisely because they are the “human substratum”<sup>54</sup> of the Timorese state. These are the right not to be expelled or extradited<sup>55</sup> from national territory (Article 35, paragraph 4); the right to freely leave the national territory and to return to it (Article 44, paragraph 2);<sup>56</sup> the right to serve in the military (Article 146, paragraph 1); the right to the protection of the state when traveling or residing abroad (Article 22); and the right to own private property (Article 54, paragraph 4).<sup>57</sup> As for the

<sup>52</sup> Law 3/2004, of April 14 (On Political Parties) prescribes that the political parties are composed solely of national citizens (Article 1, paragraph 2).

<sup>53</sup> Ordinary law adds to this list by defining several specific regimes of access to public office in the country. For example, Law 8/2004, of June 8 (Civil Service Statute), prescribes that only Timorese citizens may apply for permanent positions in the Public Administration [Article 14, paragraph 1, subparagraph a)], adding that the loss of citizenship results in the automatic loss of the position as a civil servant, without the need to follow the normal layoff procedure (Article 14, paragraph 3). Law 8/2009, of July 15 (Anti-Corruption Commission), prescribes that the Commissary is a Timorese citizen, chosen among judges, lawyers, etc. (Article 8).

<sup>54</sup> See MIRANDA, *supra* note 6, at 50.

<sup>55</sup> The Portuguese text of the Constitution uses the word expatriate (*expatriado*) instead of extradited (*extraditado*), but it is likely that the Constituent Assembly intended to say the latter. Only “extradited” makes sense in the context of Article 35 as a whole. Expatriation and expulsion are practically synonyms and the heading of Article 35 is expulsion and extradition. It is worth mentioning that the *Extradition Convention between the Member States of the Portuguese Speaking Countries Community*, which East Timor ratified by Resolution no. 15/2009, of May 6, safeguards the possibility that the states refuse the extradition of its own nationals.

<sup>56</sup> Law 9/2003, of October 15 (On Immigration and Asylum), restates the entitlement of all citizens who prove to have Timorese nationality to the right to enter and leave the Timorese territory. It admits restrictions, however, to the right to leave the country for two categories of persons: a) citizens upon whom an order or restriction issued under the Law may be impending (article 14, paragraph 2); b) minor children travelling without the person in charge of custody or without a written authorization given by said person (Article 14, paragraph 3). It is worth noting that this right to freely enter and leave the national territory has implicit another right, of utmost practical importance, which is the right to obtain a passport from the competent national authorities. The passport is a strong indicator that its owner has the nationality of the issuing state, but it cannot be taken as a prerequisite for the attribution of nationality, as it is reported to have happened in many occasions in East Timor for the past few years. The attribution of nationality is a direct effect of the Constitution and the Law. It is Timorese nationality that entitles a person to a Timorese passport, not vice versa. As Piotrowicz notes, “[a] passport does not of itself confer nationality. Rather, one obtains a country’s passport because one already possesses its nationality. The issue of the passport is simply one of evidence of the applicant’s status.” See PIOTROWICZ, *supra* note 23, at 342. This truism is acknowledged by Article 12 of Decree-Law 44/2008, of December 31 (Legal Framework for Passports), where entitles all Timorese citizens to obtain a common passport. The applicant must prove his or her identity by presenting a Timorese identity card, a civil registration card, or a birth certificate (Article 16).

<sup>57</sup> One important issue, still without a legal answer in East Timor, concerns the possible effects of the loss of Timorese nationality over the property of land that the person acquired as a Timorese citizen. In view of the express constitutional prohibition, it is clear that the person, once he or she becomes a foreigner, will no longer be able to keep property of land in East Timor. The question is whether the property of these lands should pass directly to the state or if it should be given priority to the

remaining rights provided by the Constitution, the universality principle (Article 16) and the duty to interpret fundamental rights provisions in accordance with the Universal Declaration of Human Rights (Article 23) recommend that they be extended to foreigners and stateless persons, even where the text of the Constitution seems to suggest otherwise.<sup>58</sup>

The Constitution does not distinguish between citizens by origin and naturalized citizens, except in what concerns the right to be elected as President of the Republic, which is exclusive to the Timorese citizens by origin [Article 75, paragraph 1, sub-paragraph a)]. Here, the Constituent Assembly departed from Mozambican influence,<sup>59</sup> even though a proposal was offered to exclude citizens with acquired citizenship from diplomatic and military careers and also to add further restrictions in the access to public functions, to be introduced by ordinary law. In the absence of a constitutional provision explicitly authorizing the restriction of any other rights apart from that to be elected as President of the Republic, the ordinary law cannot establish other forms of discrimination against naturalized citizens, nor can it prescribe any incapacities, even if temporary, to those individuals who reacquire Timorese citizenship.<sup>60</sup>

The Constitution also does not discriminate against Timorese citizens who are outside the country. Under Article 22, such citizens are entitled to the protection of the state for the exercise of rights and duties that are not incompatible with the absence from the country.<sup>61</sup> This solution is entirely

---

person's heirs who are Timorese nationals, if they exist. If the land is lost for the state, should the person be awarded a financial compensation for the loss of the land? What shall be the consequences of a later reacquisition of Timorese nationality by the same person? Thus far, no such issue has been brought to the administrative authorities or the judicial courts.

<sup>58</sup> That is the case, for example, with Article 38, paragraph 1 (right to access electronic personal data) and with Article 50, paragraph 1 (right to work and to choose profession freely). The Court of Appeals has, however, been making a literal interpretation of the Constitution, stating that whenever the Constitution uses the word "citizen," the corresponding right is exclusive to Timorese citizens (Case 3/2003 (judicial review), published in the Official Journal "Jornal da República", Series I, no. 11, of May 18, 2007. See Patrícia Jerónimo, *Os Direitos Fundamentais na Jurisprudência Constitucional do Tribunal de Recurso*, available at [http://www.fup.pt/?p=FF17&id\\_ano=1&id\\_disciplina=3](http://www.fup.pt/?p=FF17&id_ano=1&id_disciplina=3).

<sup>59</sup> Under Article 29 of the 1990 Mozambican Constitution, citizens with acquired citizenship were not entitled to enter the diplomatic, military or any equivalent career (paragraph 1), while it was incumbent upon the ordinary law to establish the requirements for the exercise of public functions or of private function of public interest by Mozambican citizens with acquired citizenship and by foreigners (paragraph 2). The Constitutional Reform of 2004 made the differences in treatment even more clear, by prescribing that the citizens with acquired citizenship, aside from being denied access to the diplomatic and military careers, cannot be elected as parliamentarians, be members of Government or access a position in one of the state's public powers (Article 30, paragraph 1).

<sup>60</sup> Against such a possibility we can invoke the principle of universality and equality, consecrated in Article 16, and the specific regime applied to laws which are restrictive of fundamental rights, set by Article 24, under which the restriction of fundamental rights is only possible in the cases expressly authorized by the Constitution. Article 6 of Law 3/2004 (On Political Parties), must be considered unconstitutional, to the extent that it only entitles Timorese citizens by origin to access Political Parties' leadership positions.

<sup>61</sup> This provision does not only extend the rights and duties consecrated in the Constitution to the Timorese citizens traveling or residing abroad, but also entitles them to a fundamental right to the protection of the state against situations occurred abroad that may threaten or violate their fundamental

understandable, since citizenship is a personal status that follows the person wherever he or she may be. The constitutional protection of the fundamental rights and freedoms of a citizen cannot be dependent, in principle, on whether he or she is in Timorese territory. However, the extension of the fundamental rights and duties consecrated in the Constitution to citizens traveling or residing abroad is not without limits. It is necessary that the enjoyment of the fundamental rights is not incompatible with the absence from Timorese territory. The determination of which rights and duties are incompatible with the absence from the country can only be done on a case-by-case basis, considering the constitutional status of each right and duty.

The Constitution only provides one concrete indication, when it excludes the participation in referenda for citizens who are not registered in East Timor (Article 66, paragraph 1). It is up for the legislature, therefore, to verify, in each case, if and in what measure the absence from the country constitutes an insurmountable obstacle to the recognition of a given right or the imposition of a certain duty. Under the law currently in force, absence from East Timor is relevant for the fulfillment of military duties<sup>62</sup> and for the exercise of political rights. Timorese citizens residing abroad are not entitled to elect and be elected in the elections for the National Parliament and for President of the Republic,<sup>63</sup> or to the right to political party leadership.<sup>64</sup>

---

rights (discrimination by the foreign state's authorities, violence by armed groups, natural disasters, etc.). The Timorese state has, under this provision, the duty to protect the fundamental rights of the Timorese citizens traveling or residing abroad, which it should do mostly through diplomatic and consular protection mechanisms, as governed by the two Vienna Conventions on Diplomatic Relations and on Consular Relations, which East Timor ratified in one single National Parliament Resolution (Resolution no. 24/2003, of November 19). Similarly to what is prescribed in these two international treaties, Decree-Law 4/2008, of March 5 (Organic Structure of the Ministry of Foreign Affairs), lists, among the competences of the diplomatic missions and consular posts, the duty to protect the interests of the Timorese citizens while abroad [Article 19, paragraph 3, sub-paragraph b), and Article 20, paragraph 5, sub-paragraph b)]. The diplomatic protection covers all forms of assistance provided by the state, through its diplomacy, to its nationals who are abroad or who have interests to protect abroad. This includes, for example, consular assistance, diplomatic contacts, negotiations, economic pressure and retaliation. The consular functions include, more specifically, the issuance of passports and other travel documents; help and assistance; safeguard of the interests of nationals, both individuals and bodies corporate, in cases of succession *mortis causa* in the territory of the receiving State; safeguard of the interests of minors and other persons lacking full capacity; arrange for appropriate representation for its nationals before the tribunals and other authorities of the receiving state [Article 5, paragraphs d), e), g), h) and i) of the *Vienna Convention on Consular Relations*].

<sup>62</sup> Law 3/2007, of February 28 (Law on Military Service), establishes that the legal residence abroad on a permanent basis, started before the year in which the citizens reaches 18 years of age, is a ground for postponement of the classification and selection examinations [Article 18, paragraph b)].

<sup>63</sup> Law 6/2006, of December 28 (Electoral Law for the National Parliament), recognizes active and passive electoral capacity only to Timorese citizens residing in national territory (Article 4, paragraph 1, and Article 6). Law 7/2006, of December 28 (Electoral Law for President of the Republic), makes it exclusive for the citizens residing in national territory the active electoral capacity, even if it does not prescribe the same requirement for the passive electoral capacity (Article 5, paragraph 1, and Article 6).

<sup>64</sup> Law 3/2004, of April 14 (On Political Parties), establishes that only Timorese citizens residing in the country are entitled to hold Political Parties' leadership positions (Article 6).



It should be noted that the exclusion of Timorese citizens residing abroad from the right to vote in elections for National Parliament and for President of the Republic is at odds with Article 41 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, under which all migrant workers and the members of their families have the right to participate in public affairs of their state of origin and to vote and to be elected at elections of that state, in accordance with its legislation. East Timor, as a State Party to the Convention, made a commitment to facilitate the exercise of these rights, but the provisions just described conflict with East Timor's obligations under the Convention.

## V. CONCLUSION

Timorese Nationality Law is, to a large extent, a regime under construction. It contains several inconsistencies, some of which are the product of external influence by the Mozambican and the Portuguese nationality laws, and it leaves many important questions unanswered. The criteria set by the Constitution need refinement, if not to reflect a more accurate idea of the East Timorese people, at least to align the Timorese legal system with the requirements of International Law. Because the Constitution is the supreme law of the land, to which all other laws must conform, this refinement can only be made through Constitutional reform, not through a law or decree. The provisions of the Timorese Law on Nationality and its corresponding regulations, which restrict the scope of the constitutional provisions by denying the right to Timorese citizenship to persons who fall under the definition of Article 3 of the Constitution and by imposing new requirements for access to Timorese citizenship by origin, should be deemed unconstitutional. The same is true for the provisions which restrict access to fundamental rights outside the cases authorized by the Constitution. There is currently no real academic debate in East Timor about this issue, and few such nationality cases reach the courts. As a result, it will be necessary for the legislature to address the issues raised in this article in the years to come.