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COUNTRY
REPORT
2017/07

MARCH 2017

REPORT ON CITIZENSHIP LAW: EAST TIMOR (TIMOR-LESTE)

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Global Citizenship Observatory (GLOBALCIT)
Robert Schuman Centre for Advanced Studies
in collaboration with
Edinburgh University Law School

Report on Citizenship Law: East Timor (Timor-Leste)
RSCAS/GLOBALCIT-CR 2017/7
March 2017

© Patrícia Jerónimo, 2017
Printed in Italy
European University Institute
Badia Fiesolana
I – 50014 San Domenico di Fiesole (FI)

www.eui.eu/RSCAS/Publications/
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Research for the 2016/2017 GLOBALCIT Reports has been supported by the European University Institute's [Global Governance Programme](#), the EUI Research Council, and the British Academy Research Project CITMODES (co-directed by the EUI and the University of Edinburgh).

The financial support from these projects is gratefully acknowledged.

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Report on Citizenship Law

East Timor (Timor-Leste)

Patrícia Jerónimo

1. Introduction

Timor-Leste is among the world's newest nations, having been officially recognised by the international community as an independent state on 20 May 2002. The nation-building process is still very much under way and is fraught with perils, from internal divisions to conspicuous external influences, not to mention the frailty of its institutions, its lack of infra-structures, the extreme poverty of the population (in spite of the country's wealth in natural resources) and the challenges in securing respect for human rights. The memory of the violence which followed the 1999 independence referendum is still fresh. And so are the marks of 400 years of Portuguese colonial rule and of 24 years of Indonesian military occupation.

The country is very small – ‘half an island located on the easternmost tip of the Archipelago of the Lesser Sunda Islands, near Australia and New Guinea, 19 000 km² in area’ (Carneiro de Sousa 2001: 183) –, but is characterised by ‘dramatic geography, isolation, and diverse local cultural traditions’, including more than sixteen distinct language groups (Harrington 2007). Currently it has a population of over 1,200,000 people.¹

Timorese citizenship was born with the new independent state, on 20 May 2002. The Constitution of the Democratic Republic of Timor-Leste (*Constituição da República Democrática de Timor-Leste*),² which entered into force on that same day, set the criteria for the attribution of Timorese citizenship by birth (*cidadania originária*) and referred to ordinary legislation the definition of the rules on acquisition,³ loss, reacquisition, registration and proof of Timorese citizenship (Article 3, under the heading ‘citizenship’). Much like the rest of the constitutional text, Article 3 reflects the combined influences of the Mozambican Constitution of 1990 and of the Portuguese Constitution of 1976 (Charlesworth 2003: 328). The first is reflected in the Constituent Assembly's option for setting substantive criteria for the attribution of citizenship, while the second is evidenced by its option for referring the bulk of the citizenship regime to ordinary legislation. The combination is not without difficulties, as will be discussed below.

¹ Information available at <http://countrymeters.info/pt/Timor-Leste> [18.09.2016].

² Available at http://www.mj.gov.tl/jornal/public/docs/ConstituicaoRDTL_Portugues.pdf [22.01.2017].

³ Following a long standing tradition in Portuguese speaking countries, the Timorese Constitution and ordinary legislation distinguish between *attribution* of citizenship by birth and *acquisition* of citizenship by naturalisation. The terms will be used accordingly throughout this report.

Article 3 of the Timorese Constitution adopts the traditional *ius soli* and *ius sanguinis* principles for the attribution of citizenship by birth. Both principles are enunciated in very broad terms, making access to Timorese citizenship by birth remarkably easy. This may be explained by the fact that Timor-Leste is a small and poor country with a vast diaspora, but later legal developments, i.e. the adoption of the 2002 Nationality Act and of the 2004 Nationality Regulation,⁴ suggest that the Constituent Assembly might have come across as more inclusive than what was actually intended. The attempts made by the National Parliament and by the Government to introduce restrictions in the access to Timorese citizenship by birth lack a constitutional mandate and should be deemed unconstitutional. The issue, however, has not yet reached the Timorese courts and seems to be absent from academic and political debates in the country.

The wide scope with which the *ius soli* and *ius sanguinis* principles are enshrined in the Timorese Constitution may be considered problematic for its potential incompatibility with international law standards, as it allows for the attribution of Timorese citizenship by birth to individuals who have no effective ties with Timor-Leste. In spite of this potential contradiction with international law, the Timorese citizenship regime – as set by the Constitution and by the 2002 Nationality Act – is clearly designed to be in line with international human rights standards. Timorese law institutes safeguards against statelessness [Article 3 (2) (b) of the Constitution, Articles 11 (2) and 14 (1) of the Nationality Act], shows considerable respect for individuals’ will in matters of attribution and loss of citizenship [Article 3 (2) (c) of the Constitution, Article 14 (1) of the Nationality Act], and accepts dual citizenship [Article 29 of the Nationality Act]. Furthermore, it treats citizenship not only as a legal status, but also as a fundamental right, as evidenced by the inclusion of citizenship among the rights that are to be safeguarded in case of public emergency [Article 25 (5) of the Constitution]; by the attribution of Timorese citizenship by birth to anyone born in Timor-Leste who does not hold another citizenship [Article 3 (2) (b) of the Constitution]; and by the prohibition of arbitrary deprivations of citizenship and of the right to change citizenship [Article 2 (1) of the Nationality Act].

The mix-and-match of international and foreign legal influences explains many of the inconsistencies that pervade the Timorese citizenship regime, as well as its overall poor legislative technique. They may also help explain some misunderstandings about the content of the rules in force among public officials and members of the political elite. Until recently, Timorese authorities were reportedly denying Timorese citizenship to individuals falling under one of the categories of Article 3 of the Constitution on the grounds that these individuals also held Indonesian citizenship and that Indonesian law does not allow dual citizenship (even though dual citizenship is allowed by Timorese law, the law which the Timorese authorities should be applying). There are also reports of discriminatory practices against individuals of Chinese descent, both when they request recognition as Timorese citizens by birth under Article 3 of the Constitution and when they apply for acquired citizenship (*cidadania adquirida*) under one of the categories set by the 2002 Nationality Act. One reason for these misunderstandings may be that the constitutional and legal provisions on access to Timorese citizenship, being as they are transplanted from foreign legal systems, do not adequately reflect the sentiments among the Timorese about who belongs and who does

⁴ Like in many other legal systems, citizenship and nationality are taken as synonymous and used interchangeably in Timor-Leste. The Timorese Constitution even uses the two terms in the same provision, with the same meaning [Article 3 (2) (b)]. Editorial constraints require us to use the term ‘citizenship’ in this report, even when ‘nationality’ is the term used in the primary sources. The only exception will be the reference to Nationality Acts or Regulations.

not (and should not) belong to the political community. For example, the regime's acceptance of dual citizenship and its lack of absolute impediments on naturalisation by Indonesian residents, while in full accordance with international human rights standards, frustrates the expectations of many Timorese citizens who still resent the Indonesians for the Indonesian military occupation and the Timorese who supported that occupation (many of whom took refuge in Indonesia after 1999). The expectations regarding a restricted access to Timorese citizenship are very high, not only because of a wish to protect the symbolic value of citizenship as a title of membership in the political community, but also (or more importantly) because of a wish to limit access to the material advantage of being entitled to own land in Timor-Leste, which Article 54 (4) of the Constitution reserves for 'national citizens'.

It may be argued that the criteria set by the Constitution need refinement, to better reflect public sentiment about membership in the community and/or to abide by the international law requirement of effective ties between the citizen and the state. However, since the Constitution is the supreme law of the land, to which all other laws and state acts must conform [Article 2 (3) of the Constitution], this refinement can only be made through Constitutional reform, not through a law or a decree. Furthermore, while the absence of effective ties between Timor-Leste and some of its citizens will determine the ineffectiveness of the citizenship status in the international arena, it may not be used by the Timorese authorities to refuse recognition of the Timorese citizenship by birth to individuals who fall under the categories of Article 3 (2) and (3) of the Constitution. So long as Article 3 of the Constitution stays in its current phrasing, any restrictions imposed by ordinary legislation and administrative practice in the access to Timorese citizenship by birth are to be deemed invalid and subject to judicial reversal.

2. Historical Background

2.1. Territory and membership criteria under Portuguese rule

The Portuguese are deemed to have arrived in the island of Timor in the early sixteenth century. They found the island divided into two empires: the Eastern empire, under the *Bahale* emperor, and the Western empire, under the *Senobai* emperor. This division persists to this day, corresponding roughly to what are now the territories of Timor-Leste and of Indonesia's West Timor (Teles 2001: 582-583). The continued relevance of the division can be explained by the fact that it was along the border between the two Timorese empires that Portugal and The Netherlands, which had had competing colonial claims over the island since the sixteenth century, eventually agreed on a demarcation between their respective territories, in a series of treaties and protocols signed between 1859 and 1916 (Teles 2001: 572-573).

The Portuguese hold of Timor was never strong. At first, the island was mainly visited by Portuguese sandalwood traders and Dominican missionaries. Effective occupation only started in the eighteenth century, with the foundation of the 'city of Dili' in 1769, and it took more than a century after that for the colonial domination to definitively spread throughout Eastern Timor. Even then, however, the empire's interest in this colonial outpost was negligible – 'the colony was far away, serving rather to exile political opponents and rebels

from the Portuguese African colonies than as a territory of economic colonization' (Carneiro de Sousa 2001: 184-185). The Portuguese rule over Eastern Timor was, to some extent, a form of indirect rule, as it relied heavily on alliances with the traditional local powers, which were then allowed to 'govern' the peoples of Timor according to their own traditional norms and practices. Obedience to Portuguese laws was imposed on those of the indigenous population who converted to Catholicism, but the 'European' and the traditional legal systems continued to coexist for the duration of the Portuguese presence in the territory (Carneiro de Sousa 2001: 189-191).

'Demographic colonisation' was likewise minimal. The few attempts ever made at bringing in European settlers took place in the late nineteenth century and were largely unsuccessful due to the distance from the metropolis. It is estimated that no more than 20 European settlers arrived before 1930, and only a couple of dozens more arrived in the years after that. The 1970 census reported the presence in Eastern Timor of 1,463 'whites', but this number comprised the military and civil servants with temporary commissions in the territory. As noted by Thomaz (2008: 324), there were not more than 50 'whites' actually resident in Eastern Timor at that time, and these were for the most part married to indigenous women, therefore in a course of miscegenation. In 1970, the reported number of 'mestizos' was 1939. Besides the 'whites', the 'mestizos' and the indigenous population, the inhabitants of Eastern Timor in 1970 also comprised around 20,000 Chinese 'immigrants', who were 'universally perceived as foreigners' and looked upon with distrust by the Timorese (Thomaz 2008: 326-327). The Chinese presence in Eastern Timor was, however, already a few centuries old, having been actively encouraged by the Portuguese administration, from the eighteenth century onwards, as a way to foster the economic development of the territory (Figueiredo 2004: 227-229).

The distinction between citizens and foreigners was never straightforward, neither in theory nor in practice (Silva 2009: 15-17, 148-149, 160-237). Until 1822, the criteria for the identification of the naturals of the kingdom of Portugal were set by the Philippine Ordinances (*Ordenações Filipinas*), of 1603. Per Title LV of Book 2 of the Ordinances, naturals of the kingdom were those born in the kingdom to a father⁵ who was a natural of the kingdom (*ius solis* combined with *ius sanguinis a patre*) and those born in the kingdom to a foreign father and a mother who was a natural of the kingdom, provided that the foreign father had his domicile and assets in the kingdom and had lived there for more than ten consecutive years (*ius soli* combined with *ius domicilii a patre*). Within the meaning of these provisions, birth in the kingdom was to be interpreted as birth in continental Portugal, in one of the adjacent islands (Azores, Madeira, Porto Santo) or (until 1815) in Brazil.⁶ The Portuguese possessions in Africa and Asia were not included. Therefore, the children born in Timor to a father who was a natural of the kingdom would only be considered as naturals of the kingdom if the father was in Timor in the service of the kingdom. That would clearly be the case with the military officers and the civil servants in the colonial administration; less so with the sandalwood traders and other merchants.

The first Portuguese Constitution, of 1822,⁷ made an express mention to Timor as part of the United Kingdom of Portugal, Brazil and Algarves, the territory of the 'Portuguese

⁵ Or mother, if the children were born out of wedlock.

⁶ Information available at <http://www1.ci.uc.pt/ihti/proj/filipinas/l2p489.htm> [30.09.2016].

⁷ Text available at <https://www.parlamento.pt/Parlamento/Documents/CRP-1822.pdf> [30.09.2016].

nation’ [Article 20-IV].⁸ Article 21 stated that ‘all Portuguese are citizens’ and set the criteria for the recognition of that ‘quality’. Portuguese were the children born in the United Kingdom to a Portuguese father⁹ and the children born abroad to a Portuguese father¹⁰, provided in this case that they established their domicile in the Kingdom. The residence requirement was waived if the father was abroad in the service of the nation. Portuguese were also the foundlings found in any part of the United Kingdom, of unknown parents; the freed slaves; the children of a foreign father born and domiciled in the United Kingdom, who declared their wish to be Portuguese upon reaching majority; and the foreigners who obtained a naturalisation letter (*carta de naturalização*). Per Article 22, any foreigner domiciled in the Kingdom could obtain a naturalisation letter after marrying a Portuguese woman, acquiring assets or exercising useful commercial or industrial activities in the Kingdom, or rendering relevant services to the nation.

There were, therefore, in theory, many grounds for persons born and/or domiciled in East Timor to be considered Portuguese, although not all individuals born in the territory were automatically granted the status. This became the case, however, soon after, under the Constitutional Charter of 1826,¹¹ which recognised as Portuguese all those born in Portugal or its dominions, even if to a foreign father, provided that the father was not in Portugal or its dominions in the service of his nation (‘diplomatic exception’) [Article 7 (1)]. The first Portuguese Civil Code, adopted in 1867,¹² reaffirmed this rule, by establishing that Portuguese citizens were, among others, those born in the kingdom to a Portuguese father and a Portuguese mother¹³ [Article 18 (1)]; those born in the kingdom to a foreign father, if the father was not in the kingdom in the service of his nation, unless they declared their wish not to be Portuguese [Article 18 (2)]; and those born in the kingdom to unknown parents or to parents of unknown citizenship [Article 18 (4)]. This strong *ius soli* tradition was continued and strengthened by the first Portuguese Nationality Act, of 1959.¹⁴ Under the heading ‘attribution by mere effect of the law’, the Nationality Act identified as Portuguese those born in Portuguese territory to a Portuguese father [Article 1 (1) (a)]; to a Portuguese mother, if the father was unknown, stateless or of unknown citizenship [Article 1 (1) (b)]; to stateless or unknown parents or to parents of unknown citizenship [Article 1 (1) (c)]; to a foreign father, unless the father was in Portuguese territory in the service of his state [Article 1 (1) (d)]; to a foreign mother, if the father was unknown, stateless or of unknown citizenship, unless the mother was in Portuguese territory in the service of her state [Article 1 (1) (e)].

⁸ Similar provisions were included in the subsequent constitutional texts, under the Monarchy and the Republic, until 1976 – Article 2 of the 1826 Constitution; Article 2 of the 1838 Constitution; Article 1 of the 1933 Constitution. The only exception is the first republican Constitution, of 1911, which merely stated that the territory of the Portuguese nation was the one which existed at the time of the proclamation of the Republic (Article 2).

⁹ Or to a Portuguese mother, if illegitimate.

¹⁰ Or to a Portuguese mother, if illegitimate.

¹¹ In force between 1826 and 1828, again between 1834 and 1836, and from 1842 until 1910. Text available at <https://www.parlamento.pt/Parlamento/Documents/CartaConstitucional.pdf> [30.09.2016]. From 1911 onwards, all republican constitutional texts referred to ordinary legislation the definition of the criteria for the identification of Portuguese citizens – Article 74 of the 1911 Constitution; Article 7 of the 1933 Constitution; Article 4 of the 1976 Constitution.

¹² Available at <http://www.fd.ulisboa.pt/wp-content/uploads/2014/12/Codigo-Civil-Portugues-de-1867.pdf> [30.0.2016]. The Civil Code was made applicable to the overseas provinces in 1869, by Decree of 1 December 1869, the Organic Charter of the Administrative Institutions of the Overseas Provinces. The Decree recognised a separate civil status for the natives who had not yet converted to Catholicism, allowing them to continue to live by their traditional norms and practices, instead of by the Civil Code, since the Civil Code only applied to the civilised members of the population (Silva 2009: 212-225).

¹³ Or only to a Portuguese mother, if illegitimate.

¹⁴ Law no. 2098, of 29 July 1959. Text available at <https://dre.pt/application/file/431555> [30.09.2016].

So, it can be said that, for more than a century before the end of the Portuguese rule over East Timor in 1975, every child born in the territory was a Portuguese citizen, save for the cases in which the ‘diplomatic exception’ applied. The picture is not as clear-cut as that, however, because the 1826 Constitutional Charter identified Catholicism as the religion of the Kingdom and explicitly associated ‘other religions’ with ‘foreignness’, by ruling that all other religions would be allowed to *foreigners*, provided that the cult was performed in private [Article 6]. The provision was criticised for being discriminatory and inconsistent with the constitutional prohibition of persecution on grounds of religion. Article 6 came to be interpreted, by prominent legal scholars in continental Portugal, as meaning that only Catholics were entitled to Portuguese citizenship by birth, which significantly compromised the potential reach of the Charter’s *ius soli* rule in the overseas territories. There were, nonetheless, also voices in metropolitan academia and in the colonial administration which dismissed the relevance of Article 6 for the attribution of citizenship and took the Charter’s *ius soli* at face value. This latter view eventually prevailed and became the norm in the colonial literature and in the official discourse from the late nineteenth century onwards (Silva 2009: 196-212, 227, 233-237).¹⁵ With the separation between Church and state in the republican Constitutions of 1911 and 1933, the question was definitively settled.

Needless to say, recognition as Portuguese did not mean that all individuals born in East Timor under Portuguese rule were treated as equals. Membership and rights did not go together. Apart from the existence of slavery – in theory, only until 1878, when the *de jure* abolition of slavery came into effect (Figueiredo 2004: 386) –, there was, until very late in the Portuguese rule over the territory, a marked distinction in legal status between the Portuguese born in continental Portugal (and their offspring) and the indigenous population. The indigenous population was expected to benefit from the Portuguese civilizing mission, but, as noted earlier, the Portuguese colonial administration was ready to accept that many among the natives would not abandon their traditional norms and practices.¹⁶ It was therefore deemed inadequate to grant them the same rights as those granted to the ‘citizens of the motherland’ (Silva 2015: 201). The Organic Law for the Civil Administration of the Overseas Provinces, of 1914,¹⁷ prescribed that the indigenous population of each colony was to be under the protection of the colony’s governor, who, for that purpose, would *inter alia* define and regulate the civil, criminal and political status of the natives [Article 16 (1) and (2)].¹⁸ Statutes

¹⁵ Consider, for instance, Opinion no. 331 of the Superior Council for the Colonies, annexed to the 1930 Colonial Act (*Acto Colonial*): ‘With the advent of the liberal regime, the utilitarian and mercantilist features that had characterised the colonial administration were replaced by an assimilationist or centralist policy, and the indigenous in our colonies, who until then had had no rights or safeguards, found themselves from one day to the other as Portuguese citizens, with the same rights, exemptions and privileges as the Portuguese citizens in Europe, without distinction of race, colour or religion. These rights were bestowed upon them by Articles 1, 2 and 145 of the Constitutional Charter of 29 April 1826’. Text available at <https://dre.pt/application/dir/pdfgratis/1930/07/15600.pdf> [01.10.2016]

¹⁶ At first, for purely pragmatic reasons, i.e. the colonial administration’s lack of resources; from the late nineteenth century onwards, by reference to principles of international colonial law according to which respect for the legal institutions of native populations was a right of the colonised peoples and a duty for the colonising powers (Silva 2015: 191-200).

¹⁷ Law no. 277, of 15 August 1914, available at <http://www.fd.unl.pt/anexos/investigacao/1407.pdf> [03.10.2016].

¹⁸ The ‘indigenous statute’ (*Estatuto do Indigenato*) hereby introduced was later confirmed by the 1930 Colonial Act, which ruled that, ‘in the colonies, consideration shall be paid to the stage of evolution of the native peoples, with the adoption of special statutes for the indigenous population, which shall establish, under the influence of Portuguese public and private law, legal regimes that accommodate their individual, domestic and social usages and customs, provided that these are not incompatible with morals and the dictates of humanity’ (Article 22). The Colonial Act was given constitutional dignity by Article 132 of the 1933 Constitution and republished, with slight changes, by Decree-Law no. 22:465, of 11 April 1933; text available at https://www.parlamento.pt/Parlamento/Documents/acto_colonial.pdf [01.10.2016].

exclusively adopted for the natives were only applicable to the individuals who were naturals or inhabitants of the colony, as defined by the Government's Council; 'all other individuals were exempted from those provisions and were guaranteed the full use of all civil and political rights recognised by the laws in force' [Article 17].¹⁹ On the basis of 'civilizational criteria', to be ascertained by the administrative authorities (Silva 2012: 132), the indigenous population was divided into two groups: a small group of 'assimilated natives' (*assimilados*), socialised through education and employment in the colonial administration, who enjoyed individual rights (theoretically) on a par with Portuguese citizens in continental Portugal (Taylor-Leech 2008: 157), and a large group of 'unassimilated natives', the indigenous population *sensu stricto*, to whom specific statutes applied and who did not enjoy equal civil or political rights. This categorisation was only abandoned in 1971, with an amendment to the 1933 Constitution²⁰ which eliminated any references to indigenous populations.

On 25 April 1974, the 'Carnation Revolution' in continental Portugal put an end to the *Estado Novo* dictatorship and opened the way for decolonisation. East Timor had been declared a 'non-self-governing territory' for the purposes of Chapter XI of the UN Charter, by the UN General Assembly, in 1960 (Teles 2001: 587-588), which meant that, from an international perspective, the East Timorese were recognised the right to self-determination and it was understood that 'steps sh[ould] be taken to transfer all powers to [them], without any conditions or reservations, in accordance with their freely expressed will and desire, without any distinction as to race, creed or colour, in order to enable them to enjoy complete independence and freedom'.²¹ With the change of government in 1974, Portugal acknowledged its obligations vis-à-vis its overseas possessions under Chapter XI of the UN Charter, and 'proceeded quite rapidly to grant independence to those possessions', with the exception of Macau, which was temporarily kept as a 'Chinese territory under Portuguese administration' by agreement with the People's Republic of China, and East Timor (Nygh 2002: 508; Teles 2001: 589). Portugal made preparations for the independence of East Timor, in 1974 and 1975, including the organisation of local elections by the National Decolonisation Commission, between March and July of 1975 (Lisson 2008: 1477), and the setting of a high-level meeting in Macau, in June 1975, with the main Timorese political forces – FRETILIN,²² UDT²³ and APODETI²⁴ – to agree on the terms of the self-determination process (Teles 2001: 592).²⁵ However, these efforts proved fruitless. UDT attempted to seize power in August 1975

¹⁹ In case this formulation was not sufficiently clear as to the exclusion of the indigenous population from the exercise of political rights, Article 18 (3) added that the definition of the civil, political and criminal status of the natives should respect the rule according to which they were, in principle, not to be granted political rights regarding 'institutions of a European character'. Before 1914, the large majority of the indigenous population was already excluded from the political process, as they were not allowed to vote (let alone hold office) for lack of assets and/or of education, which were the constitutional requirements for the exercise of the right to vote (Figueiredo 2004: 294, 304).

²⁰ Law no. 3/71, of 16 August 1971. Text available at https://www.parlamento.pt/Parlamento/Documents/Lei3_71.pdf [01.10.2016].

²¹ Declaration on the granting of independence to colonial countries and peoples, of 14 December 1960; text available at [http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/1514\(XV\)](http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/1514(XV)) [01.10.2016].

²² Revolutionary Front for an Independent Timor-Leste (*Frente Revolucionária de Timor-Leste Independente*), earlier ASDT – Timorese Social Democratic Association (*Associação Social-Democrata Timorense*) –, which favoured immediate independence from Portugal (Lisson 2008: 1476-1477; Teles 2001: 590).

²³ Timorese Democratic Union (*União Democrática Timorense*), which favoured a federative solution with Portugal (Lisson 2008: 1476; Teles 2001: 590).

²⁴ Timorese Popular Democratic Association (*Associação Popular Democrática Timorense*), which favoured integration with Indonesia (Lisson 2008: 1476-1477; Teles 2001: 590).

²⁵ The meeting did not take place as planned, because FRETILIN refused to participate if APODETI was present. Due to FRETILIN's absence, the Portuguese government conducted separate talks with UDT and APODETI and decided to define unilaterally the self-determination procedure, which it did with Law no. 7/75,

and a brief civil war ensued, at which point the Portuguese administration withdrew to the off-shore island of Ataúro²⁶ (Teles 2001: 593-594; Lisson 2008: 1477). FRETILIN came out victorious of the civil war and, faced with the intensification of Indonesian military operations in the territory (Lisson 2008: 1477-1478), decided to unilaterally declare the independence of the Democratic Republic of Timor-Leste, on 28 November 1975.

FRETILIN's declaration of independence was recognised by fifteen states (Escaraméia 2002), but not by Portugal, which expressly refused to acknowledge Timor's independence in a formal announcement made by the National Decolonisation Commission on 29 November 1975 (Teles 2001: 595). East Timor had ceased to be part of the Portuguese territory in 1974, by effect of Law no. 7/74, of 27 July 1974,²⁷ which clarified that Portugal's recognition of peoples' right to self-determination included the acceptance of the independence of the overseas territories and the derogation of Article 1 of the 1933 Constitution to the extent that it included the overseas territories in the definition of the Portuguese territory (Teles 2001: 589). The exact constitutional status of East Timor in the Portuguese legal system became disputed when the 1976 Constitution used the expression 'under Portuguese administration' only in relation to Macau and not East Timor (Teles 2001: 611-613; Nygh 2002: 508-510).²⁸ Nevertheless, it was as 'administering power' over East Timor and as a champion of the Timorese people's right to self-determination that Portugal continued to act vis-à-vis the international community for the duration of the Indonesian military occupation of the territory, from December 1975 until August 1999.²⁹ The fact that Portugal never recognised the independence of East Timor, nor the legitimacy of the Indonesian annexation of the territory, had important consequences for the citizenship status of the East Timorese. Infamous Decree-Law no. 308-A/75, of 24 July 1975,³⁰ never applied in

of 17 July 1975 (Teles 2001: 592-593). Law no. 7/75, which was never enforced, defined a new Organic Statute for Timor, to govern the decolonisation process and the exercise of political power 'until the end of the sovereignty prerogatives exercised by Portugal over the territory'. Article 2 of Law no. 7/75 established that the political future of Timor was to be decided by a Popular Assembly to be elected by direct, secret and universal suffrage. The election was scheduled for the third Sunday of October 1976 (Article 3). The definition of the political and administrative statute of Timor was to be done in such a way that all Portuguese prerogatives over the territory would cease on the third Sunday of October 1978 (Article 5). For the duration of the transitional period, a provisional government would be in place, acting according to the rules set in the Organic Statute for Timor. Law no. 7/75 was silent on citizenship issues. Law no. 7/75 is available at <https://dre.pt/application/file/336624> [02.10.2016].

²⁶ From where the last remaining representatives of the Portuguese administration eventually left Timor on 8 December 1975, one day after the Indonesian military invasion (Teles 2001: 595).

²⁷ Available at <https://dre.pt/application/file/279174> [02.10.2016].

²⁸ The democratic Constitution which replaced the 1933 Constitution, on 25 April 1976, defined the Portuguese territory as comprising the continental territory in Europe and the archipelagos of Azores and Madeira [Article 5 (1), under the heading 'territory']. Article 5 (4) made an express mention to Macau, prescribing that 'the territory of Macau, under Portuguese administration, is governed by statute appropriate to its special circumstances'. No similar mention was made about East Timor. The 1976 Constitution included an autonomous provision on East Timor – Article 307, under the heading 'independence of Timor' –, where it was stated that Portugal continued to be bound by its responsibilities under international law to promote and safeguard East Timor's right to independence. However, this provision did not use the expression 'under Portuguese administration'.

²⁹ It is worth noting that, in 1984, the Timorese resistance abandoned its claim to have declared independence, in a move designed to facilitate Portugal's role as champion of the East Timorese's right to self-determination. This way, it could no longer be argued – by Indonesia and other states – that Portugal's role as administering power over East Timor was inconsistent with the status of the proclaimed Democratic Republic of Timor-Leste as a subject of international law (Valle 2010: 293).

³⁰ Adopted under fear of an 'invasion' of Portuguese citizens from former colonies in Africa and Asia, Decree-Law no. 308-A/75, of 24 July 1975, set as a rule that the persons born or domiciled in an overseas territory turned independent would lose Portuguese citizenship (with a few exceptions), irrespective of their wish to keep Portuguese citizenship and whether or not they had acquired the citizenship of the new state. This Decree-Law was severely criticised in the literature (Ramos 1976: 140-140; Jerónimo 2008: 127-136) and was eventually

East Timor and therefore those in East Timor who had been attributed or had acquired Portuguese citizenship before 25 April 1976³¹ were not deprived of their Portuguese citizenship.

2.2. Membership criteria under Indonesian rule

Indonesian military forces invaded Dili on 7 December 1975, with the tacit support of the US Government (Lisson 2008: 1478) and under the pretext of crushing a communist revolution led by the FRETILIN (Carter 2011: 665; Harrington 2007). Portugal immediately severed diplomatic relations with Indonesia (Escarameia 2002) and brought the invasion to the attention of the United Nations, prompting resolutions by the General Assembly – Resolution 3485 (XXX), of 12 December 1975³² – and by the Security Council – Resolution 384 (1975), of 22 December 1975.³³ Both resolutions deplored the military intervention of the armed forces of Indonesia in Portuguese Timor and called upon the Government of Indonesia to withdraw without delay its armed forces from the territory in order to enable the people of the territory freely to exercise their right to self-determination. A few months later, the Security Council passed a new resolution – Resolution 389 (1976), of 22 April 1976³⁴ – reaffirming ‘the inalienable right of the people of East Timor to self-determination and independence’ and renewing its call for the immediate withdrawal of the Indonesian forces from the territory.

Still, on 17 July 1976, the Indonesian Parliament passed Law no. 7 of 1976, by force of which East Timor was annexed as the 27th Province of the Republic of Indonesia (Timor Timur). The Indonesian authorities claimed to be responding to a request from the people of East Timor, but the annexation was never accepted by the United Nations as resulting from an act of self-determination³⁵ and East Timor remained on the list of non-self-governing territories pursuant to Chapter XI (Nygh 2002: 509). The right of the people of East Timor to self-determination and independence continued to be affirmed by the General Assembly in several resolutions until 1982,³⁶ and was expressly mentioned by the International Court of

abrogated by Law no. 113/88, of 29 December 1988, when the bulk of its effects was deemed to have already been produced.

³¹ The date of the entry into force of the 1976 Constitution, which excluded East Timor from the definition of Portuguese territory. However, as noted above, the exclusion was operated earlier, by Law no. 7/74, of 27 July 1974, so it could be argued that it was from this earlier date that births in East Timor were to be considered as births abroad for purposes of the 1959 Nationality Act. For a similar view, see Piotrowicz (1996: 325). Nevertheless, 25 April 1976 is the reference date commonly used in the Portuguese literature. See Ramos (2013: 131).

³² The text of Resolution 3485 (XXX), of 12 December 1975, is available at <https://documents-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/001/98/IMG/NR000198.pdf?OpenElement> [02.01.2017].

³³ The text of Resolution 384 (1975), of 22 December 1975, is available at <https://documents-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/782/32/IMG/NR078232.pdf?OpenElement> [02.01.2017].

³⁴ The text of Resolution 389 (1976), of 22 April 1976, is available at <http://www.refworld.org/docid/3b00f1710.html> [02.01.2017].

³⁵ In its first resolution after the adoption of Law no. 7, the General Assembly expressly rejected the claim that East Timor had been integrated into Indonesia, ‘inasmuch as the people of the Territory have not been able to exercise freely their right to self-determination and independence’. Resolution 31/53, of 1 December 1976, available at <https://documents-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/302/36/IMG/NR030236.pdf?OpenElement> [03.01.2017].

³⁶ Besides Resolution 31/53, of 1 December 1976, just cited, see e.g. Resolution 32/34, of 28 November 1977, available at <http://www.un.org/documents/ga/res/32/ares32r34.pdf> [03.01.2017]; Resolution 35/27, of 11

Justice (ICJ) in its judgment on the case *East Timor (Portugal v Australia)*, of 1995.³⁷ In spite of Indonesia's attempts to 'normalise' its occupation of the territory in the 1980s, through a decrease in military operations and the adoption of policies designed to 'Indonesianise' East Timor, such as transmigration and education reforms (Lisson 2008: 1479; Hicks 2007: 13-14), the occupation was never lawful from an international law perspective. Not only it disrespected the East Timorese people's right to self-determination, but it was also marked from the start by egregious human rights violations.

While unlawful, the Indonesian occupation of East Timor was not without effects, including in matters of citizenship. With the formal annexation of East Timor as the 27th Province of the Republic of Indonesia, in July 1976, the East Timorese were automatically considered to be Indonesian citizens, entitled, at least in principle, to the same rights as citizens from the other provinces, including political rights, access to civil service employment, and the right to a passport (Piotrowicz 1996: 323; Nygh 2002: 509-510). However, the East Timorese who so wished were authorised 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 as civil servants (Jerónimo 2011b: 30-31). Not satisfied with this, in 1991, the Indonesian authorities promulgated a decree prohibiting foreigners from owning land in East Timor, a move which was designed to force the East Timorese who had retained their Portuguese citizenship to renounce it and become Indonesian, under threat of expropriation (Cabasset-Semedo and Durand 2009: 247).³⁸

For the duration of the Indonesian occupation of East Timor, the criteria for attribution, acquisition and loss of Indonesian citizenship were set by Law no. 62 of 1958.³⁹ The East Timorese men who did not renounce their Indonesian citizenship in favour of their Portuguese citizenship passed the Indonesian citizenship to their legitimate offspring, even when the child was born within 300 days after the father's demise, per Article 1 (b) (c) of Law no. 62 of 1958. Children born out of wedlock acquired Indonesian citizenship if born to a mother who was a citizen of Indonesia [Article 1 (d)]. The mother's Indonesian citizenship also passed to her legitimate offspring when and for as long as the father's citizenship was unknown [Article 1 (e)]. Children born in the territory to unknown parents or to stateless parents or to parents of unknown citizenship were Indonesian citizens, and the same was true of foundlings when both parents were unknown [Article 1 (f) (g) (h)]. Indonesian citizenship was also attributed to persons born in the territory to foreign parents if they had not acquired

November 1980, available at <http://www.un.org/documents/ga/res/35/a35r27e.pdf> [03.01.2017]; Resolution 36/50, of 24 November 1981, available at <http://www.un.org/documents/ga/res/36/a36r050.htm> [03.01.2017]; and Resolution 37/30, of 23 November 1982, available at <http://www.un.org/documents/ga/res/37/a37r030.htm> [03.01.2017]. The majorities supporting these resolutions decreased as the years passed and the issue of East Timor became less topical (Schrijver 2000: 28-30; Escarameia 2002).

³⁷ *East Timor (Portugal v Australia)*, Judgment, I.C.J. Reports 1995, available at <http://www.icj-cij.org/docket/index.php?p1=3&p2=3&case=84&code=pa&p3=4> [02.01.2017]. Australia, which had been the only country to formally recognise the annexation, by entering into a treaty with Indonesia for the exploitation of natural resources in the Timor Sea (*Timor Gap Treaty*), had to acknowledge before the ICJ that 'the territory of East Timor remain[ed] a non-self-governing territory and its people ha[d] the right to self-determination' (p. 90, par. 37; see also par. 31).

³⁸ The East Timorese were given until 31 May 1992 to become Indonesian or be expropriated (Cabasset-Semedo and Durand 2009: 247).

³⁹ Law no. 62 of 1958, Law on the Citizenship of the Republic of Indonesia, of 1 August 1958, available at <http://www.refworld.org/docid/3ae6b4ec8.html> [29.12.2016]. It was repealed by Law no. 12/2006, of 1 August 2006, available at http://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=74794 [04.01.2017].

the citizenship of either parent at the time of birth and as long as they did not acquire the citizenship of one of the parents [Article 1 (i)]. Indonesian citizenship could furthermore be acquired in a number of ways, including adoption [Article 2], marriage [Article 7], and naturalisation [Article 5]. The acquisition and the loss of Indonesian citizenship by the husband were automatically extended to the wife (Article 9).⁴⁰ The acquisition and loss of Indonesian citizenship by the father were also extended to his legitimate children under the age of 18 and single, provided that the children resided in Indonesia and, for purposes of loss, that the children did not become stateless [Articles 13 (1) and 15 (1)].⁴¹ Indonesia's refusal to allow dual citizenship was reflected *inter alia* in the naturalisation requirement that applicants declared to have renounced to any prior citizenship according to the legal provisions in force in the country of origin [Article 5 (2) (h)], and in the norm according to which foreign women married to Indonesian citizens could only make a statement to the effect that they wished to acquire Indonesian citizenship if they did not possess another citizenship [Article 7 (1)]. Furthermore, Indonesian citizenship would be lost in case of voluntary acquisition of another citizenship [Article 17 (a)], in case an Indonesian citizen failed to reject or renounce another citizenship while having the opportunity to do so⁴² [Article 17 (b)], and in case of possession of a valid passport from a foreign country [Article 17 (j)].

Meanwhile, Portugal continued to perceive itself as the 'administering power' of the territory and to legislate accordingly in matters of citizenship. As mentioned earlier, Decree-Law no. 308-A/75, of 24 July 1975, did not apply in East Timor and therefore those in East Timor who had been attributed or had acquired Portuguese citizenship before 25 April 1976 were able to keep their Portuguese citizenship and to pass it on to their offspring. Persons born in East Timor after that date were considered to be born abroad, since East Timor ceased to be part of the Portuguese territory (Ramos 2013: 131). Anyway, all those born in East Timor to a Portuguese citizen – the majority of the inhabitants of East Timor at the time – were entitled to Portuguese citizenship, having only to fulfil one of three alternative requirements: (a) declare their wish to be Portuguese; (b) have their birth registered in the Portuguese Civil Registry; or (c) voluntarily establish domicile in Portuguese territory and declare it before the competent authorities (Article 4 of Law no. 2098, of 29 July 1959). In 1981, a new Nationality Act – Law no. 37/81, of 3 October 1981⁴³ – introduced the reference to 'territories under Portuguese administration', treating these territories as separate but equivalent to the national territory for purposes of attributing Portuguese citizenship by birth and of granting Portuguese citizenship by naturalisation.⁴⁴ Per Article 1 (1) (a) of Law no. 37/81, Portuguese by birth were, among others, the children born to a Portuguese father or mother in Portuguese territory or in a territory under Portuguese administration. This provision made access to Portuguese citizenship for persons born in East Timor even easier, since the attribution was no longer conditional on declaration, registration or residence in Portugal, but occurred by operation of the law.

⁴⁰ Unless, in the first case, the wife possessed another citizenship and, in the second case, she became stateless following the loss of the Indonesian citizenship (Article 9). Women were not allowed to apply for naturalisation while married [Article 5 (2) last par.].

⁴¹ Similar rules applied for the children born out of wedlock, who would acquire or lose Indonesian citizenship upon acquisition or loss of Indonesian citizenship by their mother [Articles 13 (2) and 15 (2)].

⁴² *A contrario*, one can assume that Indonesian citizenship would not be lost if the other citizenship had been imposed by a foreign State or could not be renounced according to the laws of that State.

⁴³ Available at <https://dre.pt/application/file/564082> [04.01.2017].

⁴⁴ Per Article 6 (1) (c), one of the naturalisation requirements was that the applicant had resided for at least six years in Portuguese territory or in a territory under Portuguese administration.

The issue of whether the inhabitants of East Timor were Indonesian and/or Portuguese citizens became highly topical in the early 1990s, when, following the ‘Santa Cruz massacre’ of November 1991, a large number of East Timorese arrived in Australia seeking asylum. The Australian authorities, which, since 1979, had always treated the East Timorese as Indonesian citizens, begun, in 1992, to hold the view that the persons born in East Timor (before and after 1976) had also retained their Portuguese citizenship and were therefore not entitled to claim protection in Australia as refugees, since Portugal was the state primarily responsible for their protection under the 1951 Geneva Convention (Nygh 2002: 507-508, 510). Possibly in an attempt to help the East Timorese in their asylum applications before the Australian authorities and/or to avoid mass deportations to Portugal, the Portuguese Government reacted, through its Ambassador in Australia, stating (wrongly) that the attribution of Portuguese citizenship to persons born in East Timor was not automatic, but required an application by the interested party, to be examined on a case-by-case basis (Nygh 2002: 522).⁴⁵ This eventually persuaded the Australian courts that, while it was legally accurate that the appellants had retained their Portuguese citizenship, such status was ineffective and therefore ‘reference to Portugal as a country offering prior protection to East Timorese refugees could not be sustained’ (Nygh 2002: 508, 520-521, 528-531).

By the end of the 1990s, following Soeharto’s resignation as President of Indonesia and with growing international attention to the East Timorese plight for independence, conditions were finally gathered for significant developments in the talks held by the UN Secretary-General with Indonesia and Portugal about the status of East Timor.⁴⁶ In January 1999, President Habibie of Indonesia announced that the East Timorese would be allowed to choose between a status of greater autonomy within Indonesia and a transition to independence (UNHCR EPAU 2004: 11). On 5 May 1999, Portugal and Indonesia signed an Agreement on the Question of East Timor,⁴⁷ in which the two countries requested the UN Secretary-General to put the constitutional framework for autonomy proposed by Indonesia to the East Timorese people, both inside and outside East Timor, for their consideration and acceptance or rejection through a popular consultation on the basis of a direct, secret and

⁴⁵ As the press statement issued by the Embassy of Portugal to Australia in 1998 went, “Portugal has consistently stated that the attribution of Portuguese citizenship to East Timorese born persons presupposes an individual and voluntary application that reveals the wish to become a Portuguese national. It means that East Timorese are not automatically Portuguese nationals. Portuguese nationality laws were not designed to force the assimilation of East Timorese people into the Portuguese State, but to positively provide them with the right of exercising a free choice on what concerns their nationality until self determination is settled in the Territory” (*apud* Nygh 2002: 519). This reading is blatantly wrong for people born in East Timor before 25 April 1976, who (irrespective of the citizenship of the parents) were Portuguese by operation of the law, and for those born after the entry into force of Law no. 37/81, of 3 October 1981, who (if born to a Portuguese parent) were Portuguese by operation of the law. For the attribution of Portuguese citizenship to people born in East Timor in the intermediate period, when births in East Timor were considered to be births abroad, Law no. 2098, of 29 July 1959, only required that one of the parents be Portuguese and that the interested party fulfilled one of three alternative requirements: declared his or her wish to be Portuguese; had his or her birth registered in the Portuguese Civil Registry; or established voluntary domicile in Portuguese territory and declared it before the competent authorities (Article 4). If the legal requirements were fulfilled, the Portuguese authorities had no margin of appreciation to decline the attribution of Portuguese citizenship.

⁴⁶ The talks were held on a regular basis, at the request of the UN General Assembly, from 1982 onwards. Information available at <http://www.un.org/en/peacekeeping/missions/past/unmiset/background.html> [05.01.2017].

⁴⁷ Agreement Between the Republic of Indonesia and the Portuguese Republic on the Question of East Timor, of 5 May 1999, also known as New York Agreement, available at http://peacemaker.un.org/sites/peacemaker.un.org/files/ID%20TL_990505_AgreementOnEastTimor.pdf [05.01.2017].

universal ballot (Article 1).⁴⁸ A separate agreement among the United Nations and the Governments of Portugal and Indonesia, of the same date, established the ‘modalities’ for the popular consultation,⁴⁹ including the rules on who would be entitled to vote, i.e. who would be recognised as East Timorese in the absence of a formal East Timorese citizenship.⁵⁰ The approach was deliberately inclusive (Carter 2011: 668-669). Eligible to vote in the popular consultation were the persons, aged 17 years or above, who (a) were born in East Timor, (b) were born outside East Timor but with at least one parent having been born in East Timor, and (c) whose spouses fell under either of the two previous categories.⁵¹ The agreement also established that voter registration and balloting would take place not only in East Timor but also abroad, ‘at locations of major East Timorese concentration’.⁵²

Pursuant to the Agreement on the Question of East Timor, a United Nations Mission in East Timor (UNAMET) was established to organise and conduct the popular consultation.⁵³ Amid security concerns, UNAMET was able to register 451,792 voters from a population of over 800,000 in East Timor and abroad (Sousa 2001: 299). The vote, which had been initially scheduled for 8 August 1999, took place on 30 August 1999, per decision of the Secretary-General (Schreuer 2000: 19-20). The turnout was very high and the position of the Timorese people unequivocal. 98% of registered voters went to the polls, 78.5% of whom rejected the constitutional framework for autonomy proposed by Indonesia (Sousa 2001: 299; UNHCR EPAU 2004: 11). The announcement of the results by the Secretary-General, on 4 September 1999, was followed by a period of extreme violence, in which pro-Indonesia Timorese militias, with the complacency and/or support of the Indonesian military, engaged in a widespread scorched-earth campaign, killing, looting and destroying everything in sight, including government buildings, water supplies and the country’s electrical grid (Harrington

⁴⁸ Per Article 6 of the New York Agreement, if the Secretary-General were to determine, on the basis of the result of the popular consultation and in accordance with this Agreement, that the proposed constitutional framework for special autonomy was not acceptable to the East Timorese people, the Government of Indonesia would have to take the constitutional steps necessary to terminate its links with East Timor thus restoring under Indonesian law the status East Timor held prior to 17 July 1976, and the Governments of Indonesia and Portugal and the Secretary-General would have to agree on arrangements for a peaceful and orderly transfer of authority in East Timor to the United Nations. The Secretary-General would then initiate the procedure enabling East Timor to begin a process of transition towards independence.

⁴⁹ Agreement Regarding the Modalities for the Popular Consultation of the East Timorese through a Direct Ballot, of 5 May 1999, available at http://peacemaker.un.org/sites/peacemaker.un.org/files/ID%20TL_990505_AgreementOnEastTimor.pdf [05.01.2017].

⁵⁰ There was not even a ‘Timorese definition’ that could be used as reference, since the FRETILIN Constitution of the Democratic Republic of Timor-Leste, of 28 November 1975, had not set any criteria for identifying those who were to be considered Timorese citizens. The text of the 1975 Constitution is available at <http://cedis.fd.unl.pt/wp-content/uploads/2016/02/CONST-TIMOR-75.pdf> [06.01.2017].

⁵¹ It is worth noting that the Constitutional Framework for a Special Autonomy for East Timor (CF), annexed to the Agreement on the Question of East Timor, included a section on ‘East Timorese identity and Immigration’, which set the criteria for considering a person as having East Timorese identity, irrespective of nationality. East Timorese would be any person (a) who was a lawful resident of East Timor prior to or in December 1975, (b) whose father, mother, grandfather, or grandmother was a lawful resident of East Timor prior to or in December 1975, or (c) who had permanently resided in East Timor for a period of at least five years at the time of the entry into force of the Agreement on the Question of East Timor (Article 16 of the CF). Persons considered as having East Timorese identity would be entitled to permanent domicile in East Timor. The Government of the Special Autonomous Region of East Timor (SARET) would have the exclusive right to establish the rules and procedures under which persons who did not have East Timorese identity could acquire such identity (Article 17 of the CF).

⁵² These were the cities of Jakarta, Yogyakarta, Surabaya, Denpasar, Ujung Pandang, Sydney, Darwin, Perth, Melbourne, Lisbon, Maputo, Macau, and New York.

⁵³ Security Council Resolution 1246 (1999), of 11 June 1999, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N99/174/13/PDF/N9917413.pdf?OpenElement> [06.01.2017].

2007; Carter 2011: 665-667). Over half of the civilian population (more than 500,000 persons) was displaced, with a significant number (the estimates range between 250,000 and 300,000 persons) fleeing to or being forced to move to West Timor (Schreuer 2000: 20; Harrington 2007), which created a ‘very complex refugee case-load’ (UNHCR EPAU 2004: 12)⁵⁴. UNAMET was unable to intervene and most of its staff was evacuated (Schreuer 2000: 20). On 15 September 1999, by Resolution 1264 (1999),⁵⁵ the Security Council authorised the establishment of a multinational force under a unified command structure with the task to restore peace and security in East Timor, to protect and support UNAMET in carrying out its tasks and to facilitate humanitarian assistance operations. The International Force for East Timor (INTERFET), led by Australia, arrived in East Timor on 20 September 1999 and put an end to the violence (UNHCR EPAU 2004: 12). A month later, on 19 October 1999, the Indonesian People’s Consultative Assembly ratified the results of the popular consultation and recognised East Timor’s separation from the rest of the Republic (Sousa 2001: 299). Indonesian military and police withdrew completely by 1 November 1999 (Schreuer 2000: 21).

With the arrival of INTERFET, mass returns of internally displaced persons and of the East Timorese refugees in Indonesia begun almost immediately. The first ‘returnee’ flight from Kupang was organised by UNHCR on 10 October 1999 (UNHCR EPAU 2004: 12). Return flows from West Timor dried up in 2000, raising security concerns for East Timor and making repatriation not only a humanitarian but also a political objective. According to the UNHCR, approximately 225,000 persons (nearly 90% of the refugees) returned to East Timor (UNHCR EPAU 2004: 1-2, 25).

2.3. Membership criteria under UNTAET

Following its invitation to the Secretary-General to plan and prepare for a United Nations transitional administration in East Timor, incorporating a peacekeeping operation,⁵⁶ the Security Council decided, by Resolution 1272 (1999) of 25 October 1999,⁵⁷ to establish, in accordance with the report of the Secretary-General, a United Nations Transitional Administration in East Timor (UNTAET), for an initial period until 31 January 2001.⁵⁸ UNTAET was endowed with overall responsibility for the administration of East Timor and

⁵⁴ ‘East Timorese society was split three ways: an estimated 250-280,000 or close to one third had taken refuge (or been forced to take refuge) in other parts of Indonesia, many of them in West Timor («refugees»), more than 300,000 were internally displaced to the mountain fastnesses within East Timor («IDPs»), and a minority had remained in their home areas («stayees»)’ (UNHCR EPAU 2004: 12).

⁵⁵ Resolution 1264 (1999), of 15 September 1999, is available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N99/264/81/PDF/N9926481.pdf?OpenElement> [08.01.2017].

⁵⁶ Resolution 1264 (1999), of 15 September 1999, cited, par. 11.

⁵⁷ Available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N99/312/77/PDF/N9931277.pdf?OpenElement> [08.01.2017].

⁵⁸ Later extended until 20 May 2002, the date when Timor-Leste became officially independent and the UN presence in the territory transformed into the United Nations Mission of Support in East Timor (UNMISSET), per Security Council Resolution 1410 (2002), of 17 May 2002. UNMISSET completed its mandate on 20 May 2005. Resolution 1410 (2002), of 17 May 2002, is available at [http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/1410\(2002\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/1410(2002)) [11.01.2017]. UNMISSET was followed by UNOTIL (United Nations Office in Timor-Leste), until May 2006, and by UNMIT (United Nations Integrated Mission in Timor-Leste), until August 2007 (Harrington 2007).

empowered to exercise all legislative and executive authority, including the administration of justice.⁵⁹ Its mandate consisted *inter alia* of maintaining law and order throughout the territory and of supporting capacity-building for self-government.⁶⁰ It was expected to consult and cooperate closely with the East Timorese people in order to carry out its mandate effectively with a view to the development of local democratic institutions, including an independent East Timorese human rights institution, and the transfer to these institutions of its administrative and public service functions.⁶¹

Although UNTAET's legislative powers were very wide, per Security Council Resolution 1272 (1999) and UNTAET Regulation 1999/1,⁶² the Transitional Administrator, Sérgio Vieira de Mello, ultimately decided against ruling on the criteria for attribution, acquisition and loss of East Timorese citizenship, possibly due to the constitutional dignity and symbolism of the subject (Jerónimo 2011b: 29). The first UNTAET Regulations used East Timorese identity and origin as eligibility requirements, but were silent on who was to be considered East Timorese or of East Timorese origin. UNTAET Regulation 1999/2,⁶³ which established the National Consultative Council as a joint consultative forum of representatives of the East Timorese people and of UNTAET, prescribed that, of the Council's 15 members, 11 had to be East Timorese. Per Article 2 (2) of UNTAET Regulation 1999/2, the East Timorese members in the Council had to include seven representatives of the National Council of East Timorese Resistance (CNRT), three representatives of political groups outside the CNRT already in existence prior to 30 August 1999, and one representative of the Roman Catholic Church in East Timor. The Transitional Administrator was to appoint the East Timorese members of the Council after consultation with the CNRT, the other political groups and the representative of the Catholic Church in East Timor [Article 2 (5) of UNTAET Regulation 1999/2].⁶⁴ UNTAET Regulation 1999/3, of 3 December 1999, on the establishment of a Transitional Judicial Service Commission,⁶⁵ prescribed that the Commission was to be composed of five individuals, of whom three 'of East Timorese origin', and presided by 'an East Timorese individual of high moral standing' [Article 2 (1)

⁵⁹ Resolution 1272 (1999), of 25 October 1999, cited, par. 1.

⁶⁰ Resolution 1272 (1999), of 25 October 1999, cited, par. 2 (a) (e).

⁶¹ Resolution 1272 (1999), of 25 October 1999, cited, par. 8.

⁶² UNTAET Regulation 1999/1, of 27 November 1999, on the authority of the Transitional Administration in East Timor, is available at <http://www.un.org/en/peacekeeping/missions/past/etimor/untaetR/etreg1.htm> [11.01.2017].

⁶³ UNTAET Regulation 1999/2, of 2 December 1999, on the establishment of a National Consultative Council, is available at <http://www.un.org/en/peacekeeping/missions/past/etimor/untaetR/etreg2.htm> [11.01.2017].

⁶⁴ The National Consultative Council was later replaced by the National Council, with UNTAET Regulation 2000/24. The National Council was endowed with power to initiate legislation and was composed only of Timorese members, in a total number of 33. Besides the groups already represented in the National Consultative Council (CNRT, other political parties and the Roman Catholic Church), who kept their number of representatives, the National Council also included other representatives of relevant organisations of the East Timorese civil society, namely one from the Protestant church denominations, one from the Muslim community, one from the women's organisations, one from the students/youth organisations, one from the Timorese NGO forum, one from the professional associations, one from the farming community, one from the business community, one from the labour organisations and one from each of the 13 Districts of East Timor [Article 3 (1) and (2)]. UNTAET Regulation 2000/24, of 14 July 2000, on the establishment of a National Council, is available at <http://mj.gov.tl/jornal/lawsTL/UNTAET-Law/Regulations%20English/Reg2000-24.pdf> [11.01.2017]. The composition of the National Council was further enlarged to 36, by UNTAET Regulation 2000/33, which added to the list in Article 3 (2) of Regulation 2000/24 three additional representatives selected at the discretion of the Transitional Administrator from the CNRT or from political parties outside the CNRT, or both. UNTAET Regulation 2000/33, of 26 October 2000, to amend Regulation 2000/24 on the establishment of a National Council, is available at <http://mj.gov.tl/jornal/lawsTL/UNTAET-Law/Regulations%20English/Reg2000-33.pdf> [11.01.2017].

⁶⁵ Available at <http://www.un.org/en/peacekeeping/missions/past/etimor/untaetR/etreg3.htm> [11.01.2017].

and (2) of UNTAET Regulation 1999/3]. The East Timorese members of the Commission were to be appointed by the Transitional Administrator after consultations with relevant East Timorese interlocutors and social groups [Article 2 (5) of UNTAET Regulation 1999/3]. Furthermore, the Commission was competent to receive and review individual applications of legal professionals of East Timorese origin for provisional service in judicial or prosecutorial office [Article 8 (1) of UNTAET Regulation 1999/3]. The list of certificates required in Article 9 did not include prove of East Timorese origin.⁶⁶

In February 2000, when it was still expected that the Transitional Administrator would promulgate a Regulation on East Timorese citizenship, UNTAET Regulation 2000/9, of 25 February 2000, on the establishment of a border regime for East Timor,⁶⁷ set provisional criteria for the identification of those who would be entitled to enter East Timor without need for a permit. The criteria were similar to those established by the Agreement Regarding the Modalities for the Popular Consultation of the East Timorese through a Direct Ballot, of 5 May 1999, with the difference of the addition of a time threshold for the birth in East Timor and the inclusion of grandchildren of persons born in East Timor and of the underage dependent children of persons born in East Timor or of children/grandchildren of persons born in East Timor. Per Article 7 (4) of UNTAET Regulation 2000/9, ‘until a regulation on East Timorese citizenship [was] promulgated by the Transitional Administrator’, a person seeking entry to East Timor would not require a permit if that person was born in East Timor before December 1975; was born outside East Timor but with one parent or grandparent born in East Timor before 1975; or was the spouse, or the dependent child aged under 18, of a person who fell under one of the previous categories. The burden of proof rested with the person seeking entry to East Timor [Article 7 (5)]. Article 20, under the heading ‘citizenship’, clarified that nothing in the regulation conferred or detracted from the rights of citizenship of any person.

UNTAET Regulation 2001/3, of 16 March 2001, on the establishment of the Central Civil Registry for East Timor,⁶⁸ went back to the 1999 Agreement criteria when defining who was to be considered a ‘habitual resident’ of East Timor for registration purposes. Per Article 6 (1) (a), ‘habitual resident’ denoted a person who was either born in East Timor, or born outside East Timor but with at least one parent having been born in East Timor, or whose spouse fell under one of the two previous categories.⁶⁹ UNTAET Regulation 2001/3 distinguished between habitual residents and ‘long-term residents’, the latter being those who, without being habitual residents, had resided in East Timor for more than 182 cumulative days within any consecutive period of 12 months [Article 6 (1) (b)]. The Central Civil

⁶⁶ Similarly, vague references to ‘East Timorese’ and ‘East Timorese origin’ were made by later regulations regarding, *inter alia*, the composition of judicial panels. See, for instance, Articles 10 (3) and 15 (5) of UNTAET Regulation 2000/11, on the organization of courts in East Timor, available at <http://mj.gov.tl/jornal/lawsTL/UNTAET-Law/Regulations%20English/Reg2000-11.pdf> [11.01.2017]. See also Article 22 of UNTAET Regulation 2000/15, on the establishment of panels with exclusive jurisdiction over serious criminal offences, available at <http://mj.gov.tl/jornal/lawsTL/UNTAET-Law/Regulations%20English/Reg2000-15.pdf> [11.01.2017].

⁶⁷ Available at <http://mj.gov.tl/jornal/lawsTL/UNTAET-Law/Regulations%20English/Reg2000-09.pdf> [11.01.2017].

⁶⁸ Available at <http://mj.gov.tl/jornal/lawsTL/UNTAET-Law/Regulations%20English/Reg2001-03.pdf> [12.01.2017].

⁶⁹ This same set of criteria was later used by UNTAET Regulation 2001/22, of 10 August 2001, on the establishment of the East Timor Police Service, but to define ‘resident of East Timor’ without further qualifications [Article 1 (n)]. Per Article 16 (3) (a), only residents of East Timor were eligible for appointment into the East Timor Police Service. UNTAET Regulation 2001/22 is available at <http://mj.gov.tl/jornal/lawsTL/UNTAET-Law/Regulations%20English/Reg2001-22.pdf> [12.01.2017].

Registry was established to maintain a register of the residents of East Timor, including verification and registration of the identity and residence of residents of East Timor and the issue of identity cards to such persons of the age of 16 years and above who were duly registered [Article 2 (1)]. Registration with the Central Civil Registry was mandatory for all residents of East Timor who had attained the age of 16 years and who did not suffer from any mental or legal incapacity, and was available to all other who satisfied the requirements for registration; the parents and family members had a duty to accomplish registration for children under 16 and persons suffering from any mental or legal incapacity [Article 5 (1)]. Residents of East Timor could establish their identity and eligibility for registration by a wide range of evidentiary methods, per Article 7. Any person aged 16 years or above duly registered by the Civil Registry as a habitual resident or as a long-term resident was entitled to receive an identity card [Article 8 (1) and (2)]. Similarly to the Regulation on the border regime, UNTAET Regulation 2001/3 also included a disclaimer regarding citizenship. Article 8 (4) ruled that neither registration nor the issue of an identity card by the Civil Registry would confer upon any person a right to the citizenship of East Timor or the entitlement to claim a right to the citizenship of East Timor. Pursuant to this Regulation, a massive registration campaign was conducted. It ended on 23 June 2001, with 778,989 East Timorese residents having been registered and issued temporary identity cards.⁷⁰

UNTAET Regulation 2001/2, of 16 March 2001, on the election of a Constituent Assembly to prepare a Constitution for an independent and democratic East Timor,⁷¹ also followed the 1999 Agreement criteria when defining who was eligible to vote in the election for the Constituent Assembly.⁷² Eligible to vote (and to be elected) were the persons, aged 17 years or above, who were born in East Timor, or were born outside East Timor, but with at least one parent having been born in East Timor, or were spouses of persons falling under one of the two previous categories (Articles 30 and 32). However, contrary to what had happened in the popular consultation of 1999, this time there was no registration and balloting abroad, since entitlement to vote was restricted to those registered in East Timor and present in East Timor on polling day.⁷³ The election took place on 30 August 2001, giving a clear victory to FRETILIN, the ‘party of the resistance’, and the Constituent Assembly had its inaugural session on 15 September 2001. A first draft was provisionally approved on 9 February 2002 and the Constitution was finally approved on 22 March 2002 (Brandt 2005: 18).

Reports about the workings of the Constituent Assembly seem to be fairly consensual in their criticism about the lack of openness to input from civil society organisations and the

⁷⁰ Information available at <http://www.un.org/en/peacekeeping/missions/past/etimor/Untaetchrono.html> [11.01.2017].

⁷¹ Available at <http://mj.gov.tl/jornal/lawsTL/UNTAET-Law/Regulations%20English/Reg2001-02.pdf> [12.01.2017].

⁷² And the same is true of UNTAET Regulation 2002/01, of 16 January 2002, on the election of the first President of an independent and democratic East Timor, regarding the eligibility of voters (Article 21). To stand as candidate, further age, residence and registration requirements applied (Article 23). UNTAET Regulation 2002/01 is available at <http://mj.gov.tl/jornal/lawsTL/UNTAET-Law/Regulations%20English/Reg2002-01.pdf> [12.01.2017].

⁷³ Per Article 4 (2), only residents of a given district, who registered as such in that district and were present in that district on polling day, would be allowed to vote for that district’s representative. Per Article 5 (2), all persons eligible to vote who had registered in East Timor and were present in East Timor on polling day would be entitled to vote for the national representatives. This exclusion of non-residents was criticised for impeding a large number of East Timorese, some of whom were abroad in refugee camps, to take part in the nation building process. Carter (2011: 672) argues that, ‘[g]iven the presence of a large number of refugees and the transformative nature of the election, there is a strong argument that the non-resident citizen population ought to be given the right to vote in the Constituent Assembly election as a matter of international human rights law’.

general population concerning the issues to be considered when drafting the Constitution, as well as about the way in which the one-week public consultation on the first draft of the Constitution was conducted (Baltazar 2004; Brandt 2005: 16-18). Under a very tight schedule, the debates in the Constituent Assembly were ultimately framed by and focused on the draft submitted by FRETILIN, which bore a marked resemblance to the Portuguese Constitution of 1976 (Brandt 2005: 16), with some signs of influence by the Mozambican Constitution of 1990 (Charlesworth 2003: 328), visible *inter alia* in the definition of substantive criteria for the attribution of East Timorese citizenship instead of a mere reference to ordinary law.

It is not entirely clear whether there was much discussion about the criteria for attribution of Timorese citizenship during the debates in the Constituent Assembly and/or during the public consultation process. The issue had been discussed in the constitutional consultations held in the districts in preparation for the election of the Constituent Assembly, between 18 June and 18 July 2001, with some districts favouring *ius sanguinis*, others *ius soli*, others a combination of both criteria, and some districts expressly rejecting the admissibility of dual citizenship (Adão 2009: 360-361). According to Oliveira *et al.* (2015: 115), the issue of whether or not to include a provision explicitly barring dual citizenship was later addressed during the debates in the Constituent Assembly and a provision to that effect was included in the draft circulated in December 2001 as Article 3 (3). Devereux (2015: 69), in her overview of the drafting history of the constitutional provisions pertaining to fundamental rights, only mentions a debate about the inclusion of a provision prescribing that those who had ‘acquired citizenship’, as opposed to citizens by birth, would be ineligible for diplomatic and military posts [draft Article 4]. Neither provision made it into the final text approved by the Constituent Assembly. Baltazar’s (2004) account of the public consultation process which followed the approval of the first draft of the Constitution, on 9 February 2002, makes no reference to discussions about the terms in which East Timorese citizenship had been defined in the draft. The public consultation focused on other issues, such as the date of independence, official languages, equality of women and men, the national flag, family, marriage and maternity, freedom of demonstration, national defence and security, judicial review and the transformation of the Constituent Assembly into the National Parliament.

2.4. Membership status(es) at the time of independence

On 20 May 2002, the Democratic Republic of Timor-Leste became an independent state and, with the entry into force of the Constitution, several hundred thousands of individuals, in Timor-Leste and abroad, automatically became Timorese citizens by birth. That was the case with all individuals born to an East Timorese parent, irrespective of place of birth, with all individuals born in Timor-Leste to a parent also born in Timor-Leste and with all individuals born in Timor-Leste to unknown parents, stateless parents or parents of unknown citizenship [Article 3 (2) (a) and (b) and (3)]. Individuals born in Timor-Leste to foreign parents were not attributed Timorese citizenship automatically, but were nevertheless entitled to it by operation of the law, sufficing that they declared their wish to be Timorese if over (or after reaching) 17 years of age [Article 3 (2) (c)].

The Constitution did not include a provision barring dual citizenship, so the new Timorese citizens were not deprived of their previous citizenship statuses, most prominently their Portuguese and Indonesian citizenships. With the establishment of UNTAET, on 25

October 1999, East Timor had ceased to be a ‘territory under Portuguese administration’, so children born in East Timor after that date started to be considered by Portuguese authorities as having been born abroad. They were (and are) nevertheless entitled to Portuguese citizenship by birth if born to a Portuguese parent and provided that the birth is registered at the Portuguese Civil Registry or, alternatively, upon declaration of the wish to be Portuguese [Portuguese Nationality Act, Law no. 37/81, Article 1(1) (c)].⁷⁴ The coexistence in the same individual of Portuguese and Timorese citizenships is not problematic since both Portugal and Timor-Leste allow dual citizenship. The same cannot be said of Indonesia. When the Indonesian People’s Consultative Assembly recognised East Timor’s separation from the rest of the Republic, on 19 October 1999, it safeguarded the rights of the East Timorese who wished to remain loyal to Indonesia (Jerónimo 2011b: 31), most of whom were in Indonesia as refugees.⁷⁵ According to the 2003 Indonesian Census, of the circa 30,000⁷⁶ East Timorese who remained in Indonesia after Timor-Leste’s independence, most opted for Indonesian citizenship, even though the Indonesian government gave them the possibility to retain Timorese citizenship and remain in Indonesia as foreigners with a valid residence permit.⁷⁷ Indonesian law does not allow dual citizenship and therefore the East Timorese who opted for Indonesian citizenship are deemed by Indonesian authorities to have renounced their Timorese citizenship.

However, in the absence of an express act of renunciation before the Timorese authorities, these individuals are entitled to Timorese citizenship by birth in Timor-Leste provided they meet the criteria set in Article 3 (2) or (3) of the Timorese Constitution. There are, nevertheless, reports that the Timorese authorities make a different interpretation of their obligations under the Constitution. According to the International Crisis Group (2011: 10), in 2010, the Timor-Leste Consulate in Kupang (West Timor) stopped issuing temporary travelling papers for those born in East Timor who wished to return to the country ‘with the intention of applying for’ Timorese citizenship unless they could provide a letter of recommendation from the Indonesian Justice Ministry. This seems to suggest that the Timor-Leste authorities believe that they can only grant Timorese citizenship to those who are not Indonesian citizens. The reference to an ‘application for Timorese citizenship’ also suggests confusion regarding the entitlement to Timorese citizenship for individuals who meet the constitutional criteria. Furthermore, the requirement imposed by the Timor-Leste Consulate in Kupang worked as a considerable obstacle for Timorese citizens wishing to travel to Timor-Leste since they had to pay a 20 USD fee and wait for a period of about six months to get the

⁷⁴ Interviews conducted by the author with public officials at the Portuguese consular post in Dili indicate that many Timorese continue to exercise their right to Portuguese citizenship by birth and that practically all requests are granted (Jerónimo 2011b: 30).

⁷⁵ The East Timorese who fled to Indonesia after the popular consultation were treated as refugees by UNHCR even though they held Indonesian citizenship. Their eligibility to be treated as refugees ended in December 2002, when the UNHCR issued a ‘cessation of status’ declaration. Nevertheless, the Indonesian authorities continued, until 2005, to treat them as *pengungsi*, which can be translated either as ‘internally displaced person’ or as ‘refugee’. In 2005, Indonesia’s central government closed the IDP/refugee camps and put an end to the *pengungsi* status. The ‘ex-refugees’ began to be treated as *warga baru*, i.e. ‘new citizens’. Those who want to return to Timor-Leste have to go through a lengthy administrative process and explicitly give up their right to Indonesian citizenship (International Crisis Group 2011: 3, 6-7, 9; Internal Displacement Monitoring Centre 2010: 1, 3).

⁷⁶ As pointed out by International Crisis Group (2011: 3), there are no consensual estimates about the size of the remaining population of ‘ex-refugees’. ‘The former East Timorese claim the population is closer to between 110,000 and 200,000, while the Nusa Tenggara Timur (NTT) provincial administration gave an estimate of just over 100,000 in 2010’.

⁷⁷ See The International Observatory on Statelessness, *Indonesia*, available at <http://www.nationalityforall.org/indonesia> [09.06.2011].

letter from the Indonesian Justice Ministry (International Crisis Group 2011: 10). Many of the East Timorese who remain in Indonesia are held back by this lack of clarity regarding their legal status in Timor-Leste, in particular by the fear that their access to property and basic political rights will not be upheld upon return (International Crisis Group 2011: 1, 10-11).

3. Current citizenship regime

The ground rules for attribution of Timorese citizenship by birth are set in Article 3 of the Timorese Constitution, but the bulk of the citizenship regime is defined by Law no. 9/2002, of 5 November 2002 (Nationality Act),⁷⁸ and by Decree-Law no. 1/2004, of 4 February 2004 (Regulation of the Nationality Act).⁷⁹ All remain in force in their original versions. As mentioned earlier, the normative framework resulting from these three sources is not always consistent, which can be explained to some extent by the overlap of different foreign influences.

Although the Timorese Constitution bears a striking resemblance to the Portuguese Constitution of 1976, it seems to have been the Mozambican Constitution of 1990 to influence the drafting of Article 3, with the inclusion of substantive criteria for attribution of citizenship by birth, instead of the mere reference to ordinary legislation or international treaty that we find in Article 4 of the Portuguese Constitution.⁸⁰ The Mozambican influence can be seen, not only in the definition of substantive criteria,⁸¹ but also in the drafting of Article 3 (2) and (3). The wording of the two first subparagraphs of Article 3 (2) is almost identical to that of their Mozambican counterparts. Per Article 11 (1) (a) and (b) of the 1990 Constitution of Mozambique, Mozambicans were those who, having been born in Mozambique, were children of a father or a mother born in Mozambique (a), or were children of stateless or unknown parents or of parents of unknown citizenship (b).⁸² As for Article 3 (2) (c) of the Timorese Constitution, it seems to resonate Article 12 (3) of the 1990 Mozambican Constitution, which ruled that individuals born in Mozambique to foreign parents, after the proclamation of independence, would only have Mozambican citizenship if they declared by themselves, if older than 18 years of age, or through their legal representatives, if underage, their wish to be Mozambican. Similarities can also be found between Article 3 (3) of the Timorese Constitution and Article 14 of the 1990 Mozambican Constitution, which attributed Mozambican citizenship to individuals born to a Mozambican father or mother who had fought for independence, even if they were born abroad before the proclamation of independence. The citizenship regime set by the Timorese Constitution,

⁷⁸ *Lei da Nacionalidade*, available at http://www.mj.gov.tl/jornal/public/docs/2002_2005/leis_parlamento_nacional/9_2002.pdf [22.01.2017].

⁷⁹ *Regulamento da Lei da Nacionalidade*, available at http://www.mj.gov.tl/jornal/public/docs/2002_2005/decreto_lei_governo/1_2004.pdf [22.01.2017].

⁸⁰ The text of the 1976 Portuguese Constitution is available at <http://www.tribunalconstitucional.pt/tc/crp.html> [22.01.2017].

⁸¹ In this aspect, the Mozambican Constitution is not different from other Lusophone Constitutions, such as that of Brazil. See Jerónimo (2016).

⁸² The 1990 Constitution of Mozambique is available at <http://www.resdal.org/Archivo/d000009e.htm> [19.01.2017]. The Constitution was replaced in 2006, but the provisions on citizenship were kept practically untouched. The 2006 Constitution of Mozambique is available at http://www.presidencia.gov.mz/files/republica/constituicao_republica_moc.pdf [19.01.2017].

however, is much shorter and less precise than that of its Mozambican counterpart.⁸³ It does not include a time threshold, for instance, nor a number of other qualifications that would narrow and/or clarify the scope of the constitutional provisions and prevent misinterpretations. As it is, the citizenship regime set by the Timorese Constitution is very inclusive, which, as hinted earlier, is probably not what was intended by the representatives in the Constituent Assembly.

Pursuant to Article 3 (4) of the Timorese Constitution, Law no. 9/2002, of 5 November 2002 (Nationality Act), regulates the acquisition, loss and reacquisition of Timorese citizenship, as well as its registration and proof. In its structure, in some aspects of its regime and in the wording of several of its provisions, Law no. 9/2002 reflects the crossed influences of the Portuguese and Cape Verdean Nationality Acts in force at the time of its enactment,⁸⁴ which can be explained by the involvement of Portuguese and Cape Verdean legal advisors in the drafting of the Act. Notably, the structure of Law no. 9/2002 is very similar to that of the Cape Verdean Nationality Act, with an introductory section of general provisions (Articles 1 to 7),⁸⁵ followed by sections on citizenship by birth (Article 8),⁸⁶ acquisition of citizenship (Articles 9 to 13),⁸⁷ loss and reacquisition of citizenship (Articles 14 and 15),⁸⁸ opposition to acquisition or reacquisition of citizenship (Articles 16 and 17),⁸⁹ registration and proof of citizenship (Articles 18 to 26), citizenship disputes (Articles 27 to 30),⁹⁰ and final provisions (Articles 31 to 33).⁹¹ Similarities of regime among Law no. 9/2002 and both its Cape Verdean and Portuguese counterparts can be found in the categories of grounds for the acquisition of citizenship – by underage children of naturalised citizens,⁹² by children adopted by citizens,⁹³ by spouses of citizens,⁹⁴ and under the general naturalisation procedure⁹⁵ –, in the acceptance of dual citizenship⁹⁶ and most evidently in the provisions regarding registration and proof of citizenship and citizenship disputes, which replicate the Cape Verdean and/or Portuguese legal provisions almost *verbatim*.⁹⁷ The Cape Verdean

⁸³ The citizenship regime in the 1990 Constitution of Mozambique is spread over more than 20 provisions, covering attribution, acquisition, loss and reacquisition of Mozambican citizenship (Articles 11 to 29).

⁸⁴ Portuguese Law no. 37/81, of 3 October 1981, as amended by Law no. 25/94, of 19 August 1994, available at <https://dre.tretas.org/dre/61160/lei-25-94-de-19-de-agosto> [22.01.2017]; Cape Verdean Law no. 80/III/90, of 29 June 1990, available at <http://www.refworld.org/pdfid/4c5a796c2.pdf> [22.01.2017], as amended by Law no. 41/IV/92, of 6 April 1992, available at <http://www.refworld.org/docid/4c5a76d82.html> [22.01.2017], and by Law no. 64/IV/92, of 30 December 1992, available at <http://www.refworld.org/docid/4c5a81e22.html> [22.01.2017]. It is worth noting that, like the Portuguese Constitution, the Cape Verdean Constitution does not set substantive criteria for the attribution of citizenship (Article 5). The text of the 1992 Cape Verdean Constitution, as amended by Constitutional Law no. 1/V/99, of 23 November 1999, is available at <http://www.ucp.pt/site/resources/documents/IEP/LusoForum/constituicao%20cape%20verde.pdf> [22.01.2017].

⁸⁵ Similarly to Articles 1 to 6 of the 1990 Cape Verdean Nationality Act.

⁸⁶ Similarly to Articles 7 and 8 of the 1990 Cape Verdean Nationality Act.

⁸⁷ Similarly to Articles 9 to 13 of the 1990 Cape Verdean Nationality Act.

⁸⁸ Similarly to Articles 14 to 18 of the 1990 Cape Verdean Nationality Act.

⁸⁹ Similarly to Articles 19 and 20 of the 1990 Cape Verdean Nationality Act.

⁹⁰ With a slight difference, since the registration and proof of Cape Verdean citizenship were addressed in the same section as the citizenship disputes, Articles 21 to 33 of the 1990 Cape Verdean Nationality Act.

⁹¹ Final and transitory provisions in the 1990 Cape Verdean Nationality Act (Articles 34 to 38).

⁹² Article 9 of the Timorese Act, Article 10 of the Cape Verdean Act and Article 2 of the Portuguese Act.

⁹³ Article 10 of the Timorese Act, Article 11 of the Cape Verdean Act and Article 5 of the Portuguese Act.

⁹⁴ Article 11 of the Timorese Act, Article 9 of the Cape Verdean Act and Article 3 of the Portuguese Act.

⁹⁵ Article 12 of the Timorese Act, Article 12 of the Cape Verdean Act and Article 6 of the Portuguese Act.

⁹⁶ Which can be deduced from the grounds for loss of citizenship, which do not include the acquisition of another citizenship. Article 14 of the Timorese Act, Article 15 of the Cape Verdean Act and Article 8 of the Portuguese Act.

⁹⁷ In particular, Article 19 of the Timorese Act, on declarations made before diplomatic and consular agents, replicates Articles 22 and 26 of the Cape Verdean Act and Articles 17 and 15 of the Portuguese Act; Article 20

influence seems to be prevalent, since Law no. 9/2002 governs aspects, such as the reacquisition of citizenship [Articles 15 to 17],⁹⁸ which are absent from the Portuguese Nationality Act. On the other hand, the Portuguese influence is more readily apparent in Decree-Law no. 1/2004, of 4 February 2004 (Regulation of the Nationality Act), which is strikingly similar to the 1982 Portuguese Nationality Regulation,⁹⁹ both in its structure and in the wording of many of its provisions.¹⁰⁰

The Timorese Nationality Act has, nevertheless, a few distinctive features. Under the heading ‘basic principles’, Article 2 (1) prescribes that no citizen can be arbitrarily deprived of his or her citizenship nor of the right to change citizenship, while Article 2 (2) specifies that, for the purposes of the Act, (a) *citizenship* is determined by law and constitutes a legal bond between the individual and the state; (b) *foreigner* is the individual without a legal bond of citizenship with the Democratic Republic of Timor-Leste; and (c) *stateless* is the individual who cannot prove a legal bond of citizenship with any state. Article 3 explicitly states that citizenship can be by birth (*originária*) or acquired (*adquirida*), replicating an identical statement in Article 3 (1) of the Constitution. Article 13 establishes an autonomous category of naturalisation for high and relevant services to Timor-Leste.¹⁰¹ Article 12 (1) (b), on naturalisation requirements, establishes a very precise residence timeframe, carving out the period of Indonesian occupation. Article 16 (d) and (e) surprisingly include among the grounds for opposition to acquisition of Timorese citizenship by foreigners the exercise of sovereign functions in favour of a foreign state without the government’s authorisation and the rendering of military service in favour of a foreign state outside of the cases expressly authorised.

Before moving on to the detailed analysis of the different modes of attribution, acquisition and loss of Timorese citizenship, it is worth mentioning a few general aspects of the current citizenship regime, namely the temporal scope of citizenship laws and decisions, the competent authorities to assess and decide on matters of citizenship, and the conflicts among multiple citizenships.

of the Timorese Act, on annotations to the birth registration, replicates Article 23 of the Cape Verdean Act and Article 19 of the Portuguese Act; Article 21 of the Timorese Act, on the birth registration of children born to foreign parents or to parents of unknown citizenship, replicates Article 24 of the Cape Verdean Act and Article 37 of the Portuguese Act; Article 23 of the Timorese Act, on proof of citizenship by birth, replicates Article 28 of the Cape Verdean Act and Article 21 of the Portuguese Act; Article 24 of the Timorese Act, on proof of acquisition and loss of citizenship, replicates Article 22 of the Portuguese Act; Article 25 of the Timorese Act, on the opinions by the Registrar of the Central Registry Office, replicates Article 23 of the Portuguese Act; Article 26 of the Timorese Act, on citizenship certificates, replicates Article 24 of the Portuguese Act; Article 27 of the Timorese Act, on legitimacy to appeal against acts pertaining to attribution, acquisition, loss and reacquisition of citizenship, replicates Article 33 of the Cape Verdean Act and Article 25 of the Portuguese Act.

⁹⁸ Similarly to Articles 17 to 20 of the Cape Verdean Nationality Act.

⁹⁹ Decree-Law no. 322/82, of 12 August 1982, available at <https://dre.pt/application/file/397866> [22.01.2017], as amended by Decree-Law no. 253/94, of 20 October 1994, available at <https://dre.pt/application/file/625909> [22.01.2017], and by Decree-Law no. 37/97, of 31 January 1997, available at <https://dre.pt/application/file/571102> [22.01.2017].

¹⁰⁰ For *verbatim* similarities consider *e.g.* Article 3 of the Timorese Regulation, on filiation, and Article 3 of the Portuguese Regulation; Article 4 of the Timorese Regulation, on birth registration of stateless children, and Article 4 of the Portuguese Regulation; Article 5 of the Timorese Regulation, on registration of children born abroad to a Timorese parent in the service of the State, with Article 5 of the Portuguese Regulation.

¹⁰¹ Whereas the Cape Verdean and Portuguese Nationality Acts only consider such services as a reason to waive some of the requirements in the general naturalisation procedure: residence, for naturalisation as Cape Verdean [Article 12 (2) of the Cape Verdean Nationality Act]; residence, language and effective ties, for naturalisation as Portuguese [Article 6 (2) of the Portuguese Nationality Act].

Per Article 4 of the Timorese Nationality Act, the attribution, acquisition, loss and reacquisition of Timorese citizenship are governed by the law in force at the time when the acts and facts which originate those effects take place. Since birth is the fact that originates the attribution of Timorese citizenship, one could wonder whether this means that only individuals born after the entry into force of the Timorese Constitution, on 20 May 2002, are Timorese citizens by birth. The Constitution includes no transitory provisions on the subject. Also, contrary to its Cape Verdean counterpart [Article 3], the Timorese Nationality Act does not expressly extend the provisions pertaining to the attribution of citizenship by birth to individuals born before its entry into force. The practice of the Timorese authorities, however, has been to recognise as Timorese citizens by birth individuals who fall under Article 3 (2) and (3) of the Constitution, irrespective of time of birth. Per Article 5 of the Timorese Nationality Act, the attribution of Timorese citizenship produces effects since birth but¹⁰² any retroactive effects do not hinder the validity of legal relations previously established on the basis of a different citizenship. There is no provision on the effects of decisions granting Timorese citizenship by filiation, adoption, marriage or naturalisation, but it is to be deduced *a contrario* from Article 5 that these will not have retroactive effects. Less clear is whether those adopted by a Timorese before the entry into force of Law no. 9/2002 are to be entitled to Timorese citizenship under Article 10. The effects of the loss of Timorese citizenship are produced from the date of the acts or facts that originate it (Article 6).

As for the authorities with competence in matters of citizenship, Article 7 of the Timorese Nationality Act prescribes that the Minister of Justice is competent to assess and decide all questions pertaining to the attribution, acquisition, loss and reacquisition of citizenship, when that competence does not belong to the National Parliament, which is only the case with the naturalisation for high and relevant services to the country (Article 13). However, decisions on reacquisition of citizenship under Article 15 (3) are to be decided by the Ministry of Justice. Besides, the Minister of Justice is not the sole authority competent to clarify the doubts arising in the interpretation and application of the Nationality Act, since Article 32 makes it incumbent upon the whole government to render that task. The Supreme Court of Justice – and, until its installation, the Court of Appeal – is competent to decide the appeals against decisions pertaining to the attribution, acquisition, loss and reacquisition of citizenship [Article 17 (1) and (3) and Article 28]. Also, the Registrar of the Central Registry Office is competent to issue opinions on all questions of citizenship, namely those submitted by consular agents in case of uncertainty about the Timorese citizenship of a person who requests a consular registration (Article 25), and may issue ‘citizenship certificates’ (*certificados de nacionalidade timorense*) per request, even in the absence of a registration (Article 26).

If a person is a citizen of more than one State, Articles 29 and 30 apply to determine which citizenship is to prevail. When one of the competing citizenships is Timorese citizenship, only this citizenship status is relevant vis-à-vis the Timorese authorities. This is the standard approach to conflicts between national and foreign citizenships.¹⁰³ However, the wording of Article 29 leaves much to be desired in terms of clarity, since it uses the word ‘attributed’ which is specific to citizenship by birth. Per Article 29, any other citizenship attributed to Timorese citizens will not be recognised nor be allowed to produce effects in the Timorese legal system. It does not seem to make sense to restrict the scope of this provision to

¹⁰² Due to poor drafting style, the wording of the provision is ‘and’ instead of ‘but’, which does not convey the caveat intended by the legislator in safeguarding the validity of prior legal relations.

¹⁰³ Consider e.g. Article 27 of the Portuguese Nationality Act, which reads: ‘If someone has two or more citizenships and one of those is Portuguese, only this citizenship is relevant vis-à-vis Portuguese law’.

cases in which a foreign State attributes its citizenship by birth to a Timorese citizen. Since Timor-Leste allows dual citizenship, it is likely that some Timorese citizens will naturalise abroad while keeping their Timorese citizenship and it is reasonable for the Timorese authorities to refuse to recognise the acquisition of a foreign citizenship and its effects in Timor-Leste under Article 29, in spite of the wording of this provision. If the competing citizenships are all foreign, Article 30 prescribes that the prevailing citizenship will be that of the state where the foreigner has his or her habitual residence or, in its absence, that of the state with which the foreigner keeps stronger ties.

A final note just to mention Decree-Law no. 2/2004, of 4 February 2004 (Legal Regime of Civil Identification),¹⁰⁴ which replaced UNTAET Regulation 2001/3. Decree-Law no. 2/2004 instituted an identity card (*bilhete de identidade*) for ‘national citizens’ [Article 3 (1)] to constitute sufficient evidence of the Timorese citizenship and civil identity of his or her holder vis-à-vis any public or private authorities and entities [Article 4 (1)]. The procurement of the identity card is mandatory for national citizens and its presentation is mandatory when imposed by law (Article 5). Identity cards were issued over a period of one year, between December 2009 and December 2010, according to the calendar set by Ministerial Diploma no. 073/2009, of 24 November 2009.¹⁰⁵ In the interim, the ‘habitual resident’ identity card issued under UNTAET Regulation 2001/3 was recognised as temporarily valid [Article 50 (3) of Decree-Law no. 2/2004].

3.1. Modes of attribution and acquisition of Timorese citizenship

Birth in the territory to a father or a mother born in the territory: Instead of beginning its listing of grounds for attribution of citizenship by birth with the strongest and most evident grounds, i.e. the coincidence of *ius soli* and *ius sanguinis*, the Timorese Constitution begins with what resembles a ‘double *ius soli*’ provision. Timorese citizens by birth are those born in national territory to a father or a mother born in Timor-Leste [Article 3 (2) (a) of the Constitution, replicated by Article 8 (1) (a) of the Nationality Act]. This choice of wording is easy to understand if we recall that the 1990 Mozambican Constitution – after which Article 3 is modelled – begins its section on citizenship by birth with a very similar provision. Nevertheless, this wording has proven counterintuitive and some in Timor-Leste have interpreted Article 3 (2) (a) as requiring that one of the parents be a Timorese citizen (Jerónimo 2011b: 33). The Government clearly shared this interpretation at some point, since Decree-Law no. 1/2004, of 4 February 2004 (Regulation of the Nationality Act), identified as entitled to Timorese citizenship the individuals born in Timorese territory to a father or a mother born in Timor-Leste in whose birth registration is mentioned the Timorese citizenship of one of the parents [Article 1 (1) (a) of the Regulation]. This interpretation has no basis in the text of the Constitution and the restriction introduced by the Nationality Regulation is to be deemed unconstitutional. Again, however, it is not difficult to understand this legislative course. To interpret Article 3 (2) (a) of the Constitution as a double *ius soli* provision means the automatic attribution of Timorese citizenship by birth to the children of foreigners,

¹⁰⁴ *Regime Jurídico da Identificação Civil*, available at http://www.mj.gov.tl/jornal/public/docs/2002_2005/decreto_lei_governo/2_2004.pdf [23.01.2017].

¹⁰⁵ *Aprova os Modelos de Impresso de Pedido e Emissão de Bilhete de Identidade de Timorenses*, available at http://www.mj.gov.tl/jornal/public/docs/2009/serie_1/serie1_no44.pdf [23.01.2017].

whenever one of the foreign parents proves to have been born in Timorese territory,¹⁰⁶ which includes the children of Indonesian citizens who were themselves born in East Timor during the Indonesian occupation. The Constituent Assembly could have prevented this outcome by setting a time threshold similar to the one that it later used, in its role as National Parliament,¹⁰⁷ when regulating the naturalisation procedure in the Nationality Act. Article 3 (2) (a) would read: Timorese citizens by birth are those born in national territory to a father or a mother *born in Timor-Leste before 7 December 1975 or after 20 May 2002*. Alternatively, of course, the Constituent Assembly could have drafted Article 3 (2) (a) to read: Timorese citizens by birth are those born in national territory to a *Timorese father or mother*. But then it would have to change the wording of Article 3 (3) in order to avoid unnecessary repetitions, since Article 3 (3) already attributes Timorese citizenship by birth to individuals born in Timor-Leste to a Timorese father or mother. In the absence of a constitutional reform that changes the wording of Article 3 (2) (a) one way or another, this provision will continue to attribute Timorese citizenship by birth to all individuals born in Timor-Leste to a father or a mother also born in Timor-Leste, irrespective of the parents' citizenship and even of the legality or illegality of their residence status in the country. Timorese authorities are therefore not authorised to refuse recognition of Timorese citizenship by birth to these individuals. The attribution results directly from the letter of the Constitution. Also, since all laws must conform to the Constitution in order to be valid [Article 2 (2) and (3) of the Constitution], there is no point in trying to narrow the scope of Article 3 (2) (a) by means of new legislative acts, as was attempted in 2004 with the Regulation of the Nationality Act.

Birth in the territory to unknown parents, to stateless parents or to parents of unknown citizenship: The second category of citizens by birth identified in the Constitution is that of those born in national territory to unknown parents, to stateless parents or to parents of unknown citizenship [Article 3 (2) (b), replicated by Article 8 (1) (b) of the Nationality Act]. Even though Timor-Leste is not a party to the 1961 UN Convention on the Reduction of Statelessness,¹⁰⁸ this provision is clearly designed to prevent statelessness by attributing Timorese citizenship to individuals who would otherwise have no citizenship. It is consistent with the recognition of citizenship as a fundamental right in Article 25 (5) of the Constitution and in the Universal Declaration of Human Rights [Article 15 (1)], which, per Article 23 of the Constitution, provides the template for the interpretation of the constitutional provisions on fundamental rights. It is also consistent with Timor-Leste's obligations under the 1966 International Covenant on Civil and Political Rights, which prescribes, in Article 24 (3), that 'every child has the right to acquire a nationality'.¹⁰⁹ Given the purpose of Article 3 (2) (b) of the Constitution, it is to be assumed that, on 20 May 2002, Timorese citizenship was attributed by operation of the law to all individuals who had been born in East Timor and who had no other citizenship. It is not clear whether this has been the interpretation adopted by the Timorese authorities.

¹⁰⁶ It is highly unlikely that the reference, in Article 3 (2) (a), to 'Timor-Leste' as the place of birth of the parents was meant to cover only parents born after Timor-Leste was officially recognised as an independent state on 20 May 2002. That would lead to the absurd result of keeping the application of Article 3 (2) (a) on hold for 17 to 20 years, until the first foreigners born in Timor-Leste after independence became parents. Furthermore, although such an interpretation would provide a time threshold that would narrow the scope of Article 3 (2) (a), it would still not allow for the requirement that one of the parents be a Timorese citizen.

¹⁰⁷ Per Article 167 (1) of the Constitution, the Constituent Assembly was converted into National Parliament with the entry into force of the Constitution.

¹⁰⁸ Nor to the 1954 Convention relating to the Status of Stateless Persons. Information available at <http://www.unhcr.org/un-conventions-on-statelessness.html> [24.01.2017].

¹⁰⁹ Timor-Leste ratified the Covenant in 2003. National Parliament Resolution no. 3/2003, of 22 July 2003, is available at http://www.mj.gov.tl/jornal/public/docs/2002_2005/resolucao_parlamento/3_2003.pdf [24.01.2017].

Article 21 (1) of the Nationality Act requires that the birth registration of children born in Timor-Leste to parents of unknown citizenship include an express mention to the unknown citizenship of the parents.¹¹⁰ Failure to include this mention in the birth registration cannot in any way affect the entitlement to Timorese citizenship by birth of those who fall under the hypothesis of Article 3 (2) (b) of the Constitution, contrary to what is suggested by the phrasing of Article 1 (1) (b) of the Nationality Regulation, which identifies as entitled to Timorese citizenship the individuals born in Timorese territory whose birth registration includes the mention that the parents are unknown, or that the citizenship of the parents is unknown or that it is proven that the parents are stateless.

Birth in the territory to a foreign father or mother combined with declaration after the age of 17: Per Article 3 (2) (c) of the Constitution [replicated by Article 8 (1) (c) of the Nationality Act], individuals born in national territory to a foreign father or mother¹¹¹ are Timorese citizens by birth, provided that they declare, of their own accord, after reaching 17 years of age, their wish to be Timorese. All persons who fall under the hypothesis of Article 3 (2) (c) are entitled to make the declaration and to be recognised as Timorese citizens by birth following the declaration. The Timorese authorities cannot oppose the declaration nor its effects. It is worth noting that, contrary to its counterpart in the 1990 Mozambican Constitution, Article 3 (2) (c) does not set a time limit for the submission of the declaration to the Timorese authorities, which means that the declaration can be made at any time.¹¹² Also, Article 3 (2) (c) does not require a minimum residence in Timor-Leste prior to the declaration as a means to attest the existence of effective ties with the country.

In its very broad phrasing, Article 3 (2) (c) includes even persons born in Timor-Leste by mere chance, due, for instance, to the fact that the mother is temporarily positioned in the country as worker for an international development program. It can be argued that, in such circumstances, the international law requirement of ‘effective ties’ between the citizen and the State is not met and that, therefore, the attribution of Timorese citizenship under Article 3 (2) (c) will not be recognised by the international community. However, absent a constitutional reform of Article 3 (2) (c) to set additional requirements, the Timorese authorities are bound to recognise as Timorese citizen anyone born in Timor-Leste to a foreign parent, as long as he or she declares his or her wish to be Timorese. The absence of effective ties with Timorese society is foreseen in the Nationality Act as grounds for opposing the acquisition or reacquisition of citizenship [Article 16 (a)], not the attribution of citizenship, which operates by mere force of the law.

¹¹⁰ Following a similar provision in the Cape Verdean Nationality Act, Article 21 (2) of the Timorese Nationality Act requires that, whenever possible, the unknown citizenship of the parents is attested by a document demonstrating that none of the parents is Timorese. It is hard to imagine what such a document would look like and what its practical relevance would be.

¹¹¹ Article 1 (1) (c) of the Nationality Regulation reads ‘foreign father *and* mother’ instead of ‘foreign father or mother’. This phrasing may seem to be more logical than the one adopted in the Constitution and in the Nationality Act, since, if one of the parents is a foreigner and the other not, it will most likely be a case in which one of the parents is a Timorese citizen and therefore the child will be Timorese under Article 3 (3) of the Constitution without needing to invoke Article 3 (2) (c). It is, however, possible that one of the parents is a foreigner and the other parent is either unknown, stateless or of unknown citizenship. By requiring that both father and mother are foreigners, Article 1 (1) (c) of the Nationality Regulation is narrower than the corresponding constitutional and legal provisions, and can be deemed unconstitutional. The ‘glitch’, also found in Article 7 (1) of the Nationality Regulation, is easily corrected by an ‘interpretation in accordance with the Constitution’ which replaces the ‘and’ for the constitutional ‘or’.

¹¹² Irrespective of when the declaration is made, however, the attribution of Timorese citizenship will have retroactive effects to the date of birth, per Article 5 of the Nationality Act.

The birth registration of children born in Timor-Leste to a foreign parent or parents must include an express mention that the parent(s) is/are foreigner(s) and, whenever possible, the foreign citizenship of the parent(s) must be certified by a document attesting that none of the parents is Timorese (Article 21 of the Nationality Act). Article 2 (3) and (4) of the Nationality Regulation adds specifications for the cases in which the foreign father or mother are in Timor-Leste in the service of their country. Per Article 2 (3), the birth registration must mention, as an ‘identification element’ of the registered child, the ‘special situation of the parents’. Per Article 2 (4), the author of the registration request must present a document issued by his or her respective diplomatic or consular services, and confirmed by the Ministry for Foreign Affairs and Cooperation, which proves that the father or the mother of the child was in Timor-Leste in the service of his or her State at the time of birth.¹¹³ These specifications seem to be mere formalities, since neither the Constitution nor the Nationality Act include a ‘diplomatic exception’, i.e. the exemption of children of diplomats and consular officers from the imposition, by a *ius soli* rule, of the citizenship of the State where the parents happen to be positioned at the time of birth. Such an exemption is not necessary, because Timorese citizenship is not imposed but merely offered. The children born in Timor-Leste to foreign diplomats are entitled to Timorese citizenship under Article 3 (2) (c) of the Constitution like any other child born in Timor-Leste to a foreign parent.

As for the ‘citizenship declaration’ (*declaração de nacionalidade*), Article 19 (1) of the Nationality Act allows for it to be submitted before Timorese diplomatic or consular agents, in which case it is registered *ex officio* on the basis of the necessary documents sent, for that purpose, to the Central Registry Office. Article 19 (2) clarifies that the mere consular registration is not, in itself, a title attributing Timorese citizenship. The Nationality Regulation adds a considerable amount of confusion to the regime, by using the same expression – ‘citizenship declaration’ – to two very different cases in its Articles 6 and 7. Article 6 will be looked at below when we discuss the attribution of Timorese citizenship to children born abroad to a Timorese parent. Article 7 refers to the ‘citizenship declaration’ that individuals born in Timorese territory to a foreign father *and* mother *must* make after reaching 17 years of age [paragraph (1)]. Besides the ‘typo’ in the use of ‘and’ instead of ‘or’, addressed earlier, there seems to be also a mistake in the use of the verb ‘must’ (*devem*). The declaration is not an obligation but an entitlement. Obviously, not all individuals born in Timor-Leste to foreign parent(s) are obliged to declare their wish to be Timorese. An even bigger confusion is made in Article 7 (2), which prescribes that the citizenship declaration must be accompanied by the birth certificate of the author of the declaration and by a document issued by the competent services attesting to the ‘circumstances pertaining to the *Timorese* parents’ of the author of the declaration. A similar mistake is made in the template for the citizenship declaration under Article 7 of the Nationality Regulation (Model D1), which was approved by Ministerial Diploma no. 4/2006, of 23 October 2006.¹¹⁴

Birth to a Timorese father or mother irrespective of place of birth: Article 3 (3) of the Constitution recognises as Timorese citizens by birth the children of a Timorese father or mother, even if born abroad.¹¹⁵ This provision is replicated by Article 8 (2) of the Nationality

¹¹³ This requirement is waived when the child to be registered is the child of a diplomatic or consular officer accredited with the Timorese Government [Article 2 (4) of the Nationality Regulation].

¹¹⁴ Available at http://www.mj.gov.tl/jornal/public/docs/2006/serie_1/serie1_no19.pdf [25.01.2017], p. 1563.

¹¹⁵ It is worth noting that the English version of the Timorese Constitution available on the Timorese government’s website has a different wording to Article 3 (3). It reads: ‘Irrespective of being born in a foreign country, children of a Timorese father or mother shall be considered original citizens of East Timor. (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;’. The text is available at <http://timor-leste.gov.tl/wp->

Act. The Timorese Constitution adopts *ius sanguinis* without any restrictions. Every child of a Timorese is a Timorese citizen. The Constitution does not require that the birth be registered at the Central Registry Office, if occurred in Timor-Leste, nor at the nearest Timorese consular post, if occurred abroad. It also does not require that the children of Timorese parent(s) born abroad make a declaration of their wish to be Timorese citizens. Therefore, any registrations or declarations required by ordinary legislation from children of Timorese parent(s) born in Timor-Leste or abroad can only be admitted for their evidentiary value and not as a condition for the attribution of Timorese citizenship. Otherwise, they will not pass constitutional muster. That is the case with Article 18 (1) and (2) of the Nationality Act, which requires that all births which determine the attribution of Timorese citizenship be registered in the Central Registry Office or in the Timorese Civil Registry. The birth registration proves the citizenship by birth of individuals born in Timor-Leste to a Timorese father or mother, provided that said registration does not include ‘any mention to the contrary’, i.e. the information that none of the parents is Timorese [Article 23 (1) of the Nationality Act]. Similarly, for individuals born abroad to a Timorese parent, it is the birth registration, lodged with the Timorese Civil Registry, or, alternatively, the baptism certificate, that prove their Timorese citizenship by birth [Article 23 (2) of the Nationality Act].¹¹⁶ It is important to note, however, that Article 23 (2) of the Nationality Act also mentions, as possible proof of the Timorese citizenship of individuals born abroad, ‘the registration of the declaration upon which its attribution is dependent’. The attribution of citizenship by birth to children born abroad to a Timorese parent is not dependent upon any declaration. This mention to a declaration suggests confusion on the part of the legislator between the cases of birth in the territory to a foreign parent with the cases of birth abroad to a Timorese parent [Article 3 (2) (c) and (3) of the Constitution]. This mention is entirely inconsistent with the Constitution and is therefore invalid. Also problematic from this perspective is the phrasing of Article 6 of the Nationality Regulation, which suggests that the birth registration in the Timorese Civil Registry is a precondition for the attribution of Timorese citizenship by birth to children born abroad to a Timorese parent. Under the heading ‘citizenship declaration’, Article 6 (1) reads: ‘The children born abroad to a Timorese father or mother who want to be attributed Timorese citizenship must register their birth in the Timorese Civil Registry, by means of a declaration submitted by themselves, when capable, or by their legal representatives, when incapable’.

While it is clear that Article 3 (3) of the Constitution does not require registrations nor declarations for the attribution of citizenship by birth, questions may still arise regarding the interpretation of the term ‘Timorese’, in the absence of a time reference or another qualification which may help identify who is to be considered as Timorese so that his or her children may be attributed Timorese citizenship by birth under this provision. It may be

content/uploads/2010/03/Constitution_RDTL_ENG.pdf [25.01.2017]. The most likely explanation for this is that the translation was made based on an earlier version of the constitutional text. Less easy to explain is why the Timorese authorities have not replaced it for an accurate version yet. Anyway, since the 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 4 June 2003), they are of no legal value.

¹¹⁶ Article 5 of the Nationality Regulation specifies that the birth registrations of children born abroad to a Timorese father or a mother who is abroad in the service of Timor-Leste must include a special mention to this circumstance as an identification element of the child [subparagraph (1)]. The person declaring the birth must present a document attesting the Timorese citizenship of one of the parents [Article 5 (2)], unless the parent is identified in the registration, in a special mention, as a Timorese diplomatic or consular official, or unless the registry official has official knowledge that the parent is abroad in the service of Timor-Leste [Article 5 (3)]. As mentioned *a propos* Article 2 (3) and (4), these specifications are mere formalities, since Timorese diplomats have exactly the same right to pass on their Timorese citizenship to their offspring as any other Timorese citizen abroad.

argued that the use of the term ‘Timorese’ instead of ‘Timorese citizen’ is deliberate and is meant to evoke a ‘Timorese national identity’ anchored in ethnic, historic and cultural traits. However, this line of reasoning raises a number of problems. First of all, there is no indication in the constitutional text as to what that ‘Timorese national identity’ might be. The references to fatherland (*pátria*) and Maubere people, in the Preamble and in Article 11 (1), are not particularly illuminating. Furthermore, the sheer existence of an ethnic identity specific to Timor-Leste is highly disputed in the literature, in view of the diversity of physical, cultural and linguistic traits observable among the indigenous populations (Lisson 2008: 1488-1489). On the other hand, if ‘Timorese’ is to be taken as synonymous with ‘Timorese citizen’, we still need to know from what point in time we should start recognising the existence of Timorese citizens for the purposes of Article 3 (3) of the Constitution. As mentioned earlier, to set that time threshold on 20 May 2002 would lead to the absurd result of keeping the application of Article 3 (3) on hold for 17 to 20 years, until the first Timorese citizens became parents. Neither the Nationality Act nor the Nationality Regulation help clarify matters. As the law stands, it is up for the government to clarify any doubts arising in the interpretation and application of the Nationality Act and this includes the meaning of ‘Timorese’ in Article 8 (2) of the Nationality Act, which replicates Article 3 (3) of the Constitution. The criteria set by the 1999 New York Agreements and later by UNTAET may be of some use here. The matter is yet to reach the Timorese courts.

Acquisition of citizenship by underage children based on the acquisition of citizenship by one of the parents: Per Article 9 of the Nationality Act, all persons who acquire Timorese citizenship may request that their underage children (i.e. under 17 years of age¹¹⁷) acquire Timorese citizenship as well. The extension of Timorese citizenship to underage children is not automatic. It has to be expressly requested by the parents. Less clear, however, is whether the Public Prosecutor may oppose the acquisition and whether the government has any margin of appreciation to deny requests made under Article 9. The wording of Article 9 – by using the verb ‘may’ (*pode*) – suggests that children of Timorese citizens by acquisition are not entitled by law to acquire Timorese citizenship and that therefore Timorese authorities can oppose or deny the parents’ request. Also, Article 16 of the Nationality Act, which lists grounds for opposing the acquisition of Timorese citizenship, applies generally to all cases of acquisition, without excluding acquisition under Article 9.¹¹⁸ It may be argued that most of the grounds listed in Article 16 are hardly applicable to individuals under 17 years of age (e.g. conviction for crime punishable with a prison sentence of over eight years; unauthorised exercise of sovereign functions in favour of a foreign State), but there is, at least, the possibility that the child has no effective ties with the Timorese society, in which case Article 16 (a) could be invoked by the Public Prosecutor to oppose the acquisition of Timorese citizenship. Nevertheless, a more favourable interpretation is allowed by the wording of Article 8 (1) of the Nationality Regulation, which reads: ‘If any of the parents who acquired Timorese citizenship wants that his or her underage children also acquire Timorese citizenship, they must *declare* their wish’. The only requirement added by Article 8 (2) of the Nationality Regulation is that the declaration made by the parents includes the identification of the registration of the parents’ acquisition of Timorese citizenship. This suggests that the

¹¹⁷ That 17 years is the age of majority in Timor-Leste could be inferred from the constitutional provision on the exercise of political rights [Article 47 (1) of the Constitution] and was made explicit by Article 118 of the Timorese Civil Code, which was approved by Law no. 10/2011, of 14 September 2011, available at <http://www.mj.gov.tl/jornal/?q=node/803> [29.01.2017].

¹¹⁸ This argument is not particularly strong, however, since Article 16 does not exclude Article 10 (acquisition by adoption) either and, as we will see, there is little doubt that the Public Prosecutor cannot oppose the acquisition of citizenship under this Article.

parents are entitled to extend their acquired Timorese citizenship to their underage children and that they only have to make a declaration to that effect to obtain the desired outcome.

Article 9 of the Nationality Act adds the clarification that the children who acquire Timorese citizenship per their parents' request are entitled to opt for another citizenship after becoming adults. A similar clarification is made by Article 8 (3) of the Nationality Regulation.

Acquisition of citizenship based on adoption by Timorese citizen: Children¹¹⁹ adopted by a Timorese citizen acquire Timorese citizenship. It is necessary however that the adoption be a 'full adoption', i.e. that it extinguishes the previous ties between the child and his or her natural family, save for purposes of establishing marriage impediments (Article 10 of the Nationality Act). The acquisition is automatic upon adoption. Children adopted by Timorese citizens are entitled to Timorese citizenship. There is no need for a declaration, nor room for the Timorese authorities to oppose or deny the acquisition. This, which could be inferred from the wording of Article 10 (1) of the Nationality Act, is explicitly stated by Article 18 (2) of the Nationality Act, when it refers to the 'acquisition by adoption per mere fact [sic] of the law'. The Nationality Regulation reiterates this idea that citizenship is acquired by mere effect of the law, but adds the term 'assumption', suggesting that the acquisition under Article 10 of the Nationality Act may be reversed by proof to the contrary. Article 10 of the Nationality Regulation reads: 'It is assumed that individuals in whose birth registration is mentioned that they were fully adopted by a Timorese citizen have acquired Timorese citizenship, by mere effect of the law, provided that there is no later mention that, under the law, contradicts that assumption'.

Per Article 18 (2) of the Nationality Act, the acquisition of Timorese citizenship based on adoption is exempted from mandatory registration at the Central Registry Office, which may be explained by the fact that the adoption is established by judicial decision [Article 1853 (1) of the Civil Code] and is therefore already part of the public record. Nevertheless, Article 22 of the Nationality Act prescribes that, if the adoptee is a foreign child born in Timor-Leste, the information regarding the Timorese citizenship of the adopter is added to the child's birth registration with mention to the judicial decision which decreed the adoption. Also, Article 10 of the Nationality Registration refers to a mention in the birth registration of the fact that the individual was fully adopted by a Timorese citizen. Article 11 (1) of the Nationality Regulation specifies that the judicial petition for full adoption¹²⁰ of a foreigner by a Timorese citizen must be accompanied by proof of the Timorese citizenship of the adopter and that a mention to this citizenship must be included in the decision which establishes the adoptive filiation as well as in its communication for inclusion in the birth registration.

Acquisition of citizenship based on marriage to Timorese citizen: Per Article 11 (1) of the Nationality Act, foreigners married¹²¹ to Timorese citizens may acquire Timorese citizenship provided that they request it and that, at the time of the request, they meet three cumulative

¹¹⁹ Only individuals underage may be adopted. Per Article 1859 (2) of the Timorese Civil Code, the adoptee must be under 15 years of age at the time of the judicial petition for adoption, unless he or she has been entrusted to the adopter before the age of 15 or is the child of the adopter's spouse, in which case the adoptee can be older than 15 (but younger than 17).

¹²⁰ Or for conversion of a simple adoption (*adopção restrita*) into a full adoption, per Article 11 (3) of the Nationality Regulation.

¹²¹ There is, as yet, no equivalence between marriage and *de facto* unions in Timorese law.

requirements: (a) are married for more than five years;¹²² (b) have resided in national territory for the previous two years; and (c) are able to speak one of the official languages, i.e. Portuguese or Tetum.¹²³ The residence in national territory must not be irregular, at least at the time of the submission of the request, since Article 9 (3) (c) of the Nationality Regulation requires the presentation of a valid residence permit issued by the competent authorities. These requirements are waived whenever the foreigner proves to have lost his or her foreign citizenship as a consequence of the marriage [Article 11 (2) of the Nationality Act],¹²⁴ a waiver which is designed to prevent statelessness. Per Article 11 (3) of the Nationality Act, neither the declaration of nullity nor the annulment of the marriage hinder the citizenship acquired by the spouse who married in good faith.

The Nationality Act is not very clear as to whether the Public Prosecutor can oppose the acquisition under Article 11 and whether the government has any margin of appreciation when ruling on the requests. The different wording of Article 11 (1) – ‘may acquire’ – and Article 11 (2) – ‘acquire’ – may suggest that only those who fall under Article 11 (2) have a legal entitlement to Timorese citizenship unopposable by the Timorese authorities. Furthermore, Article 16 lists grounds for opposing the acquisition of Timorese citizenship without excluding any type of acquisition, and it is arguable that some of these grounds, such as the conviction for crimes against the internal or external security of Timor-Leste [subparagraph (c)], should be applicable to foreign spouses of Timorese citizens who request Timorese citizenship under Article 11 (1) of the Nationality Act. However, the way in which the acquisition of Timorese citizenship based on marriage is regulated by the Nationality Regulation suggests a more favourable reading, since it does not foresee the possibility of opposition. Article 9 (5) of the Nationality Regulation prescribes that two provisions [Articles 12 and 13] of the section on acquisition of citizenship by naturalisation are applicable to the acquisition of citizenship by marriage, but significantly leaves out Article 14, which sets the deadlines for the appeals against decisions by the Minister of Justice, depending on whether the decisions follow or ignore the opinion of the Public Prosecutor. The only reason to leave Article 14 out is that the Public Prosecutor is not at liberty to oppose the acquisition of Timorese citizenship under Article 11 of the Nationality Act. This reading is welcome, since it strengthens the legal standing of foreigners married to Timorese citizens, entitling them to Timorese citizenship whenever they fulfil the requirements in Article 11 of the Nationality Act. If such is the case, however, it would be advisable for the Timorese legislator to explicitly restrict the scope of Article 16 of the Nationality Act to cover only cases of opposition to acquisition of Timorese citizenship by naturalisation.

The only official data available regarding the acquisition of Timorese citizenship based on marriage to a Timorese citizen is Order no. 74/III/2008, of 5 March 2008,¹²⁵ which lists, by name, 86 individuals – all Indonesian citizens, 67 women and 19 men – whom the Minister of Justice granted Timorese citizenship. In another case of terminological confusion

¹²² The marriage is proved by a marriage certificate, which must be certified by the corresponding consular authorities if the marriage was celebrated abroad [Article 9 (2) and (3) (b) of the Nationality Regulation].

¹²³ Article 13 (1) of the Constitution. The ability to speak one of the two official languages is proved by a document issued by an institution recognised by the Ministry of Justice [Article 9 (3) (d) of the Nationality Regulation].

¹²⁴ Per Article 9 (4) of the Nationality Regulation, the loss of citizenship referred to in Article 11 (2) of the Nationality Act is proved by the presentation of a declaration by the foreign state or by copy of the legal act of that state duly translated into one of the official languages.

¹²⁵ *Despacho n.º 74/III/2008 Atribuição de Nacionalidade Tomorense [sic] por Casamento*, published in the second series of the Official Journal, on 7 March 2007, available at http://www.mj.gov.tl/jornal/public/docs/2008/serie_2/serie2_no7.pdf [09.02.2017].

on the part of the Timorese authorities, the Order is entitled ‘*attribution* of Timorese citizenship by marriage’.

Acquisition by naturalisation: Per Article 12 (1) of the Nationality Act, the Minister of Justice may grant Timorese citizenship to foreigners, upon request, provided that, at the time of the request, the applicants meet five cumulative requirements: (a) they have reached majority according to Timorese law and to the law of their State of origin;¹²⁶ (b) they have resided on a regular and habitual basis in Timor-Leste for at least ten years, counted before 7 December of 1975 or after 20 May 2002; (c) they know how to speak one of the official languages; (d) they offer moral and civic guarantees of integration in Timorese society; (e) they are capable of governing themselves and of providing for their own subsistence; and (f) they know the history and culture of Timor-Leste. Article 12 (2) adds that the foreigners who established residence in Timor-Leste as a result of the transmigration policy or of foreign military occupation are not considered habitual nor regular residents. This provision reinforces and widens the temporal limits of the residence requirement in Article 12 (1) (b), by making it impossible for someone who arrived in Timor-Leste under the Indonesian transmigration policy or military occupation to ever naturalise as Timorese, even if resident in Timor-Leste for more than ten years after independence.

The naturalisation procedure is regulated in Articles 12 to 14 of the Nationality Regulation. The request is directed at the Minister of Justice and submitted before the competent service of the National Directorate for Registries and Notary (*Direcção Nacional dos Registos e do Notariado*), which is currently the Department for Civil Central Registry and Citizenship (*Departamento de Registo Central Civil e da Nacionalidade*).¹²⁷ Besides the identification of the applicant, it must include information on his or her current and previous places of residence, his or her (presumably, professional) activities and the reasons for wishing to be Timorese [Article 12 (2)]. The application must be accompanied by the following documents: (a) applicant’s birth certificate, certified by the competent authorities of the state where it was issued and, if necessary, translated; (b) applicant’s valid residence permit, issued by the competent Timorese authorities; (c) document attesting the applicant’s entrance and permanence in Timor-Leste; (d) document attesting the applicant’s knowledge of one of the official languages of Timor-Leste, issued by the Ministry of Education, Culture, Youth and Sports; (e) document attesting the applicant’s integration in Timorese society, issued by the community structures in place, namely social clubs and centers for cultural training; (f) document attesting the applicant’s capacity to provide for his or her own subsistence; (g) document attesting the applicant’s knowledge of the history and culture of Timor-Leste, issued by the Ministry of Education, Culture, Youth and Sports; and (h) the applicant’s updated criminal record in the country of origin, duly certified and translated, and his or her updated criminal record in Timor-Leste [Article 12 (3)]. The procedure to obtain the documents listed in subparagraphs (d) and (g) is to be established jointly by the Ministry of Education, Culture, Youth and Sports and the Ministry of Justice [Article 12 (4)].¹²⁸

Upon submission, the request is subject to a preliminary assessment by the Director of the Department for Civil Central Registry and Citizenship who determines whether the file is

¹²⁶ In case the foreign applicant has already more than one citizenship at the time of the request, the criteria set in Article 30 of the Nationality Act with regard to conflicts among foreign citizenships may be used to determine which of the foreign laws is to be considered for the purpose of determining whether the applicant has reached majority or not.

¹²⁷ Information available at <http://www.mj.gov.tl/?q=node/481> [30.01.2017].

¹²⁸ It was not possible to confirm whether the joint Ministerial Diploma was already adopted, since the information available from the official journal’s website is incomplete.

complete or not [Article 13 (2) of the Nationality Regulation]. If the file is incomplete, the applicant is notified and given 30 days to add documents, give information or perform any other act that might be required, absent which the application is shelved [Article 13 (4)]. Once the file is complete, the National Director for Registries and Notary has eight days to order the publication of the application in several *fora*, at the applicant's expenses [Article 13 (5)], following which the Director sends the file to the Public Prosecutor [Article 13 (6)]. The Public Prosecutor issues its opinion after receiving information from the National Police and the Intelligence Services and sends the complete file to the Minister of Justice who then has 30 days to decide [Article 13 (7) and (8) of the Nationality Regulation]. Per Article 17 (2) of the Nationality Act, all authorities must report to the Public Prosecutor any of the facts likely to constitute grounds for opposition under Article 16 of the Nationality Act and citizens may report such facts if they so wish.

The Public Prosecutor may oppose the acquisition of Timorese citizenship on the following grounds: (a) clear inexistence of any effective ties to Timorese society; (b) conviction for crime punishable with prison sentence of more than eight years; (c) conviction for crime against the internal or external security of Timor-Leste; (d) exercise of sovereign functions on behalf of a foreign state without the Timorese Government's permission; and (e) rendering of military service in favour of a foreign state, outside of the cases expressly authorised [Article 16 of the Nationality Act]. Subparagraphs (d) and (e) do not seem to fit in a list of grounds for acquisition of Timorese citizenship, since there is no reason why a foreigner, even if resident in Timor-Leste, would need the Timorese government's permission to render services to foreign countries, e.g. their original state of citizenship. The inclusion of these two subparagraphs seems to be due to confusion with the grounds for loss of Timorese citizenship, which are listed in Article 14 (2) of the Nationality Act with a similar phrasing.

According to Article 17 (1) of the Nationality Act, the Public Prosecutor has six months to oppose the acquisition, counted from the date of the submission of the application. This deadline seems to be overly extended and inconsistent with the timeframe set by Articles 13 and 14 of the Nationality Regulation, which give 30 days for the Minister of Justice to decide [Article 13 (8)] and 30 days for the Public Prosecutor and the applicant to appeal the Minister's decision [Article 14 (1) (b) and (c)]. If the Minister grants naturalisation in accordance with a favourable opinion by the Public Prosecutor, the acquisition of Timorese citizenship is recognised and is registered in the Citizenship Registry [Article 14 (1) (a) of the Nationality Regulation]. If the Justice Minister decides against granting¹²⁹ Timorese citizenship, in accordance with the opinion of the Public Prosecutor, the applicant may appeal the decision to the Supreme Court of Justice¹³⁰ within 30 days after he or she is personally notified of the decision [Article 14 (1) (b) of the Nationality Regulation]. If the Minister's decision, either positive or negative, is contrary to the Public Prosecutor's opinion, the Public Prosecutor must appeal the decision to the Supreme Court of Justice within 30 days [Article 14 (1) (c) of the Nationality Regulation].

Naturalisation as reward for high and relevant services to Timor-Leste: The National Parliament may grant Timorese citizenship to foreigners who have rendered high and relevant

¹²⁹ The term used in Article 14 (1) (b) is attribution (*atribuição*), which is a clear mistake on the part of the legislator, since attribution only applies to citizenship by birth and not to acquired citizenship, as mentioned earlier.

¹³⁰ Article 17 (1) of the Nationality Act also mentions the possibility of an appeal to the Supreme Court of Justice while Article 17 (3) adds that, until the installation of the Supreme Court of Justice, it is incumbent upon the Timorese justices in the Court of Appeal to rule on appeals against decisions which refuse to grant Timorese citizenship.

services to the country (Article 13 of the Nationality Act). The first recipient of this honour was Portuguese President Jorge Sampaio, in 2006, for his role in the process that led to the 1999 referendum and to the independence of Timor-Leste (Jerónimo 2011b: 37). The decision by the Parliament is entirely free. However, it is necessary that the high and relevant services be already rendered by the time the Timorese citizenship is granted, given the use of the past tense in the text of the law. Article 13 may not be used to naturalise individuals as Timorese citizens with a view to their prospective services to Timor-Leste as members of the national football team, for instance.

3.2. Modes of loss of Timorese citizenship

Loss of Timorese citizenship is governed by Articles 2 (1) and 14 of the Nationality Act and Articles 16 and 17 of the Nationality Regulation. Article 2 (1) of the Nationality Act sets the basic principle that no citizen may be arbitrarily deprived of his or her citizenship nor denied the right to change citizenship. Article 14 lists separately grounds for voluntary loss (renunciation), applicable to citizens by birth and to citizens with acquired citizenship, and grounds for involuntary loss (withdrawal), which are applicable only to citizens who acquired Timorese citizenship by naturalisation. The division in Article 14 of the Nationality Act is mirrored in the separate treatment of voluntary and involuntary loss in Articles 16 and 17 of the Nationality Regulation.

There is a measure of consideration for individual will in the regulation of loss of citizenship, but just up to a point. Renunciation is only accepted by Timorese authorities if the Timorese citizen has another citizenship, a requirement designed to prevent statelessness. Furthermore, under Article 14 (2), Timorese citizenship acquired by naturalisation may be withdrawn by the Timorese authorities irrespective of the individual's will and of whether he or she will become stateless as a consequence of the withdrawal. Citizenship acquired by naturalisation is therefore less secure than citizenship by birth and also than citizenship acquired by means other than naturalisation (i.e. filiation, adoption and marriage), which can only be lost by renunciation.¹³¹ A stronger protection for citizenship acquired on the basis of filiation, adoption or marriage may be explained by the National Parliament's wish to safeguard the interests of the Timorese citizens who are family members with the persons concerned. It can be argued, however, that there is at least one ground for loss, among those listed in Article 14 (2) of the Nationality Act, which could also be applicable to cases of acquisition by means other than naturalisation, that of acquisition of Timorese citizenship by forging documents or using another type of fraud [Article 14 (2) (d)]. There is, after all, no apparent reason why Timorese authorities would not want to withdraw Timorese citizenship from persons who acquired it by forging a marriage certificate, for instance. In any case, under the current wording of the law, only individuals who became Timorese citizens by naturalisation may be deprived of their Timorese citizenship under Article 14 (2) of the Nationality Act.

¹³¹ This lesser status of citizenship acquired by naturalisation gives support to the claim that the National Parliament may have had only naturalisation in mind when it listed grounds for opposing the acquisition of Timorese citizenship in Article 16 of the Nationality Act. However, as pointed out earlier, if that was indeed the legislator's intention, the phrasing of Article 16 should have been narrowed down to cover only cases of acquisition by naturalisation and not refer broadly to acquisition of Timorese citizenship.

Per Article 6 of the Nationality Act, the loss of Timorese citizenship produces effects from the date of the acts or facts that originate it. One prominent effect of the loss of Timorese citizenship is the loss of the entitlement to own land in Timor-Leste [Article 54 (4) of the Timorese Constitution]. This raises a number of practical questions regarding ownership of land by former citizens, in particular when they did not renounce their Timorese citizenship (in which case they had time to make arrangements regarding their land assets in Timor-Leste), but were deprived of Timorese citizenship against their will. Is ownership of such land to pass directly to the state or should priority be given to the person's heirs who are Timorese citizens, if they exist? If the land is lost to the state, should the person be awarded a financial compensation? And what should be the consequences of a later reacquisition of Timorese citizenship by the same person? The Timorese legislator is yet to address the issue.

One effect of the loss of Timorese citizenship which has already been addressed by the legislator is the loss of the position as a civil servant in the Public Administration of Timor-Leste. Law no. 8/2004, of 5 May 2004 (Public Administration Statute),¹³² prescribes that only Timorese citizens may apply for permanent positions in the Public Administration [Article 14 (1) (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 (3)].

Renunciation of Timorese citizenship following naturalisation abroad: Per Article 14 (1) (a) of the Nationality Act, a person who voluntarily acquires a foreign citizenship and expresses his or her wish not to be Timorese loses Timorese citizenship. Any Timorese citizen (by birth or any form of acquisition) who also holds another citizenship is entitled to renounce his or her Timorese citizenship. This provision combines respect for the individuals' will with a proviso designed to prevent statelessness. The acquisition of a foreign citizenship is not, in and of itself, a cause for loss, which attests the acceptance of dual citizenship in Timor-Leste and makes it illegitimate for the Timorese authorities to deny Timorese citizenship to individuals who have another citizenship (e.g. Indonesian citizenship) if these individuals do not expressly renounce their Timorese citizenship. Renunciation is not to be assumed.

Article 16 (1) (a) of the Nationality Regulation replicates Article 14 (1) (a) of the Nationality Act with a slightly different wording. Article 16 (2) of the Nationality Regulation, in yet another case of imprecise phrasing, lists the formalities to be adopted in cases of voluntary loss, mixing cause with effect and requirements imposed on individuals with actions to be taken by the Timorese authorities. It reads: 'Those who have lost Timorese citizenship under the previous paragraph must: (a) make a declaration expressing the wish not to be Timorese; (b) present certificate or document attesting the acquisition of a foreign citizenship; (c) the National Directorate for Registries and Notary records the wish not to be Timorese in the book on loss of citizenship'.

Renunciation of Timorese citizenship by children born abroad to Timorese parents, upon reaching majority: Per Article 14 (1) (b) of the Nationality Act, the underage children of Timorese citizens who are born abroad and who, due to that fact, also have another citizenship, lose Timorese citizenship if, upon reaching majority, they express their wish not to be Timorese. Given the broad scope of Article 14 (1) (a), this provision is arguably redundant. The content of the two subparagraphs is certainly very similar, in the combination of respect for the individuals' will with a safeguard against statelessness. The only difference seems to be in the reference to 'voluntary acquisition' of a foreign citizenship in subparagraph

¹³² *Estatuto da Função Pública*, available at http://www.mj.gov.tl/jornal/public/docs/2002_2005/leis_parlamento_nacional/8_2004.pdf [05.02.2017].

(a), whereas the hypothesis in subparagraph (b) is that the children born abroad are attributed by law (i.e. involuntarily) the citizenship of their state of birth. Either way, the consequence is the same: if they have another citizenship and want to renounce their Timorese citizenship, they are entitled to do so. Again, an express renunciation is required.

Article 16 (1) (b) of the Nationality Regulation replicates Article 14 (1) (b) of the Nationality Act, with considerable (if ultimately irrelevant) differences in phrasing. Article 16 (1) (b) reads that Timorese citizenship is lost by ‘those born abroad to a Timorese father or mother who, after 17 years of age, declare their wish to renounce their Timorese citizenship’. Instead of setting a deadline for the renunciation that could provide precision to the vague reference to ‘upon reaching majority’ in Article 14 (1) (b) of the Nationality Act, Article 16 (1) (b) of the Nationality Regulation merely clarifies that the declaration must be made after the individuals turn 17 years of age, which must be taken to mean that the renunciation can happen at any time after that point. Also, Article 16 (1) (b) of the Nationality Regulation does not mention the requirement that the individuals have another citizenship in order not to become stateless upon renunciation. This omission is rectified, however, by Article 16 (2) of the Nationality Regulation, which requires that individuals wishing to renounce their Timorese citizenship make a declaration expressing their wish not to be Timorese and present a certificate or a document attesting the acquisition of a foreign citizenship [subparagraphs (a) and (b)]. As with renunciations under Article 14 (1) (a) of the Nationality Act, the National Directorate for Registries and Notary records the renunciation in the book on loss of citizenship [Article 16 (2) (c) of the Nationality Regulation].

Loss of Timorese citizenship acquired by naturalisation following the performance of unauthorised military service on behalf of a foreign state: Per Article 14 (2) (a) of the Nationality Act, Timorese citizenship acquired by naturalisation is withdrawn if the naturalised citizen renders military service on behalf of a foreign state, unless the performance of military service is expressly authorised by agreement celebrated with the state in question. As pointed out earlier, in this case, as with the rest of the cases listed in Article 14 (2), no attention is paid to whether or not the withdrawal of Timorese citizenship will render the individual stateless. Upon taking notice, by any means, of the unauthorised performance of military service by a naturalised citizen on behalf of a foreign state, the Public Prosecutor requests the Minister of Justice¹³³ that the individual’s Timorese citizenship be withdrawn [Article 17 (1) of the Nationality Regulation]. The citizen is notified in person of the Public Prosecutor’s request and given 30 days to submit his or her defence to the Minister of Justice [Article 17 (2)]. When this 30-day period elapses, the Minister of Justice decides and communicates his or her decision to the Public Prosecutor and to the interested citizen, who is notified in person of the content of the decision [Article 17 (3)]. If the Minister of Justice dismisses the Public Prosecutor’s request, he or she has 30 days to appeal the decision to the Supreme Court of Justice [Article 17 (4)]. Likewise, if the Minister of Justice rules favourably on the Public Prosecutor’s request, the interested citizen has 30 days to appeal the decision to the Supreme Court of Justice [Article 17 (5)]. Article 17 (7) orders that, if the procedure results in the loss of Timorese citizenship, the Ministry of Justice must communicate it to the Registry.

¹³³ The actual wording is Ministry of Justice, but this seems to be another case of mistaken wording on the part of the legislator. The only time Article 17 of the Nationality Regulation refers to the Minister of Justice instead of the Ministry is actually the only instance where a reference to the Ministry (and not the Minister) would be in order. That is when, at the end of the procedure, it is required that the loss of citizenship be communicated to the Registry [Article 17 (7)], something which is for the Ministry’s staff and not for the Minister to do. The analysis of the procedure as laid down in Article 17 of the Nationality Regulation will treat all references to the Ministry of Justice as references to the Minister of Justice and vice-versa.

Loss of Timorese citizenship acquired by naturalisation following the performance of unauthorised sovereign functions on behalf of a foreign state: Per Article 14 (2) (b) of the Nationality Act, Timorese citizenship acquired by naturalisation is withdrawn if the naturalised citizen exercises sovereign functions on behalf of a foreign state without authorisation from the Timorese government. Neither the Nationality Act nor the Nationality Regulation elaborate on what are to be considered ‘sovereign functions’ for the purposes of Article 14 (2) (b), although it is safe to assume that these will include functions in the three branches of government (legislative, executive and judicial), e.g. as parliamentarian, cabinet minister, justice, and diplomat. Again there is no safeguard against statelessness. The procedure for withdrawal of citizenship, before the Minister of Justice and the Supreme Court of Justice, is that which is set in Article 17 of the Nationality Regulation and which we described in the previous section.

Loss of Timorese citizenship acquired by naturalisation following conviction for crime against the external security of Timor-Leste: Per Article 14 (2) (c) of the Nationality Act, Timorese citizenship acquired by naturalisation is withdrawn if the naturalised citizen is convicted in last instance for a crime against the external security of the ‘Timorese State’. The Criminal Code¹³⁴ in force includes a section on ‘crimes against the security of the State’, which lists treason, cooperation with enemy armed forces, sabotage against the national defence, campaign against peace efforts, violation of State secrets, diplomatic infidelity, subversion of the rule of law, attempt against holder of sovereign office, coercion against constitutional organ, disturbance of the workings of constitutional organ, and insult against national symbols (Articles 196 to 206 of the Criminal Code). It is doubtful, however, that all the crimes listed in this section are to be considered as grounds for loss under Article 14 (1) (c) – consider, for instance, the crime of disturbance of the workings of constitutional organ – and, on the other hand, that only the crimes here listed amount to crimes against the security of Timor-Leste. Suffice to say that terrorism and other crimes against peace and humanity are listed in a different section of the Criminal Code, in Articles 123 and ff. Without a clear legal criterion to identify crimes against the external security of the Timorese state, it will be up for the Minister of Justice, and ultimately, to the Supreme Court of Justice, to determine whether a conviction for a specific crime can lead to the withdrawal of Timorese citizenship under Article 14 (1) (c) of the Nationality Act. There is no safeguard against statelessness. The procedure is that which is set by Article 17 of the Nationality Regulation.

Loss of Timorese citizenship acquired by naturalisation due to fraud: Per Article 14 (2) (d) of the Nationality Act, Timorese citizenship acquired by naturalisation is withdrawn if it is established that the naturalised citizen obtained Timorese citizenship by forging documents, by using fraudulent means or by misleading the competent authorities in any other way. There is no safeguard against statelessness. The procedure is that which is set by Article 17 of the Nationality Regulation.

¹³⁴ Approved by Decree-Law no. 19/2009, of 8 April 2009, available at <http://www.mj.gov.tl/jornal/?q=node/1271> [05.02.2017].

3.3. Reacquisition of Timorese citizenship

Except for the cases of withdrawal of Timorese citizenship against individuals' will, listed in Article 14 (2) of the Nationality Act, the loss of Timorese citizenship is not irreversible. Timorese citizenship can be reacquired under the terms set by Articles 15 to 17 of the Nationality Act and by Articles 18 and 19 of the Nationality Regulation. Article 15 of the Nationality Act distinguishes between cases in which the declaration of the wish not to be Timorese was made by the parents on behalf of their underage children and cases of renunciation by adults, a distinction which does not seem to make much sense given that at no point in the Nationality Act are parents allowed to declare their wish for their underage children not to be Timorese. The only provision in the Nationality Act which allows parents to make decisions regarding their underage children's citizenship is Article 9 and what is foreseen there is the acquisition (not the loss) of Timorese citizenship. So it is not very clear in which circumstances Article 15 (1) and (2) will apply.

Article 15 (1) of the Nationality Act reads: 'If Timorese citizenship is lost by children due to declaration made by the parents while the children are underage, the affected citizens may reacquire citizenship by option after reaching majority'. It is required, however, that the 'citizens' prove to have residence established in national territory for at least one year [Article 15 (2)]. It is not clear what is meant by the use of the term 'option' in Article 15 (1). It is not replicated in Article 18 (1) of the Nationality Regulation, which for the rest is very similar to Article 15 (1) and (2). One way to interpret it is as meaning that individuals in these circumstances are legally entitled to reacquire Timorese citizenship without room for opposition by the Public Prosecutor under Article 16 of the Nationality Act. Such an interpretation is supported by the fact that Article 15 (1) and (2), unlike Article 15 (3), does not refer to a 'decision by the Minister of Justice'. However, Article 16 of the Nationality Act refers generally to reacquisition, which can be taken to mean that it also applies to the cases (if there are any) under Article 15 (1) and (2).

Article 15 (3) of the Nationality Act applies to cases of renunciation to Timorese citizenship by individuals who voluntarily acquired a foreign citizenship and by children of Timorese citizens born abroad who declared their wish not to be Timorese upon reaching majority. They may reacquire Timorese citizenship, by a decision of the Minister of Justice,¹³⁵ provided that they have established residence in national territory for at least five years at the time of the request. Article 15 (3) of the Nationality Act is replicated by Article 18 (2) and (3) of the Nationality Regulation.

The Public Prosecutor may oppose the reacquisition of Timorese citizenship on the following grounds: (a) clear inexistence of any effective ties to Timorese society; (b) conviction for crime punishable with prison sentence of more than eight years; (c) conviction for crime against the internal or external security of Timor-Leste; (d) exercise of sovereign functions on behalf of a foreign state without the Timorese government's permission; and (e) rendering of military service in favour of a foreign state, outside of the cases expressly authorised [Article 16 of the Nationality Act]. As noted *a propos* the grounds for opposing the acquisition of Timorese citizenship, it is difficult to understand why a foreigner, even if a former Timorese citizen residing in Timor-Leste, would need the Timorese government's permission to render services to a foreign State. The Public Prosecutor has six months to

¹³⁵ Again, the actual wording is Ministry of Justice.

oppose the reacquisition, counted from the date of the submission of the application [Article 17 (1) of the Nationality Act].

Per Article 19 of the Nationality Regulation, Articles 13 and 14 apply to the reacquisition procedure. Therefore, the request is directed at the Minister of Justice and submitted before the competent service of the National Directorate for Registries and Notary. Upon submission, the request is subject to a preliminary assessment by the Director of the Department for Civil Central Registry and Citizenship who determines whether the file is complete or not [Article 13 (2) of the Nationality Regulation]. If the file is incomplete, the applicant is notified and given 30 days to add documents, give information or perform any other act that might be required, absent which the application is shelved [Article 13 (4)]. Once the file is complete, the National Director for Registries and Notary has eight days to order the publication of the application in several *fora*, at the applicant's expenses [Article 13 (5)], following which the Director sends the file to the Public Prosecutor [Article 13 (6)]. The Public Prosecutor issues its opinion after receiving information from the National Police and the Intelligence Services and sends the complete file to the Minister of Justice who then has 30 days to decide [Article 13 (7) and (8) of the Nationality Regulation]. Per Article 17 (2) of the Nationality Act, all authorities must report to the Public Prosecutor any of the facts likely to constitute grounds for opposition under Article 16 of the Nationality Act and citizens may report such facts if they so wish.

If the Minister grants the reacquisition of Timorese citizenship in accordance with a favourable opinion by the Public Prosecutor, the reacquisition is registered in the Citizenship Registry [Article 14 (1) (a) of the Nationality Regulation]. If the Justice Minister decides against the reacquisition, in accordance with the opinion of the Public Prosecutor, the applicant may appeal the decision to the Supreme Court of Justice within 30 days after he or she is personally notified of the decision [Article 14 (1) (b) of the Nationality Regulation]. If the Minister's decision, either positive or negative, is contrary to the Public Prosecutor's opinion, the Public Prosecutor must appeal the decision to the Supreme Court of Justice within 30 days [Article 14 (1) (c) of the Nationality Regulation].

Neither the Nationality Act nor the Nationality Regulation clarify whether or not the reacquisition has retroactive effects, i.e. whether or not it returns the individual to the legal situation existing prior to the loss of Timorese citizenship. For instance, it is not clear whether the reacquisition of Timorese citizenship by a former Timorese citizen by birth returns him or her to his/her status as a citizen by birth (eligible to the office of President of the Republic) or whether it is a form of facilitated acquisition which renders him/her ineligible to the office of President of the Republic. Retroactive effects, which are the rule under the 2004 (as were under the 1990) Mozambican Constitution,¹³⁶ would raise a number of practical difficulties in Timor-Leste, as they would require *inter alia* the restitution of land which might have been seized by the state and the reinstatement of the former citizen as civil servant in the Public Administration, to mention just the two effects of loss pointed out earlier.

¹³⁶ Articles 25 (2) and 26 (2) of the 1990 Mozambican Constitution and Article 32 (3) of the 2004 Mozambican Constitution, the latter available at http://www.presidencia.gov.mz/files/republica/constituicao_republica_moc.pdf [05.02.2017].

3.4. Rights of citizens by birth and by acquisition

The Timorese Constitution does not distinguish between the rights of citizens by birth and the rights of citizens by acquisition, except for purposes of determining who is eligible for the office of President of the Republic, an entitlement reserved for Timorese citizens by birth [Article 75 (1) (a)]. Here, the Constituent Assembly preferred the Portuguese model over the Mozambican one,¹³⁷ even though there was at some point a proposal to exclude citizens with acquired citizenship from diplomatic and military careers, as mentioned earlier in this report. In the absence of a constitutional provision explicitly authorising other distinctions in the rights enjoyed by citizens by birth and by citizens by acquisition, ordinary law cannot establish other forms of discrimination against citizens by acquisition, nor can it impose any incapacities, even if temporary, on individuals who reacquire Timorese citizenship under Article 15 of the Nationality Act. Any such differentiation among Timorese citizens would be contrary to the constitutional principles of universality and equality, according to which all citizens are equal before the law, are entitled to the same rights and subject to the same obligations [Article 16 (1) of the Constitution]. It would also be contrary to Article 24 (1) of the Constitution, which prescribes that the restriction of civil and political rights is only possible in the cases expressly foreseen in the Constitution (Miranda 1998: 128-129).

It was for this reason that Article 6 of Law no. 3/2004, of 14 April 2004, on Political Parties,¹³⁸ which prescribed that only Timorese citizens by birth were entitled to hold leadership positions in political parties, was deemed invalid in the literature (Jerónimo 2012: 114). A 2016 legal reform corrected the problem by eliminating the requirement of citizenship by birth in Article 6 of Law no. 3/2004.¹³⁹ It is also highly questionable that the differentiated regime for loss of Timorese citizenship set in Article 14 of the Nationality Act passes constitutional muster, since individuals who acquire Timorese citizenship by naturalisation clearly have a weaker status, which they can be deprived of against their will and with no regard to whether or not they will become stateless as a consequence of the withdrawal of Timorese citizenship.

¹³⁷ Under Article 29 of the 1990 Mozambican Constitution, citizens with acquired citizenship were denied access to the diplomatic, the military and any equivalent careers, while ordinary law was to establish requirements for the exercise of public functions or of private functions of public interest by Mozambican citizens with acquired citizenship and by foreigners. The 2004 Mozambican Constitution makes the differences in status even clearer, by prescribing that the citizens with acquired citizenship, aside from being denied access to the diplomatic and military careers, cannot be members of Parliament, nor cabinet ministers, nor hold a position in any sovereign power of the State [Article 30 (1)].

¹³⁸ *Lei sobre Partidos Políticos*, available at http://www.mj.gov.tl/jornal/public/docs/2002_2005/leis_parlamento_nacional/3_2004.pdf [05.02.2017].

¹³⁹ Law no. 2/2016, of 3 February 2016, available at http://mj.gov.tl/jornal/public/docs/2016/serie_1/SERIE_I_NO_5.pdf [05.02.2017].

4. Current political debates and reforms

As pointed out at the start of this report, the Timorese citizenship regime has not yet reached the courts. A case law search on the Timorese courts' website only produced one result and this was not a 'citizenship case'.¹⁴⁰ The dispute centred on the illicit occupation of a house and one of the arguments used by the occupants to contest the ownership of the house by the claimant was that she was an Indonesian citizen and therefore could not own immovable assets in Timor-Leste. The claimant's Timorese citizenship was accepted as unquestionable by the Court of Appeal on the simple grounds that she had proved to have been born in the city of Baucau, Timor-Leste, on 6 June 1961. The Court of Appeal mentioned Article 3 (2) and (3) of the Constitution as well as Article 8 (1) and (2) of the Nationality Act, but there is no indication that it checked whether the claimant also fulfilled other constitutional and legal requirements for the attribution of Timorese citizenship besides birth in the territory. From the brief references in the text of the judgement, it is not possible to assess whether the claimant was born to a Timorese parent, to parents also born in Timor-Leste, to unknown parents, to stateless parents or to parents of unknown citizenship.

The superficial way in which the Court of Appeal addressed the issue can be taken as representative of the general approach to citizenship issues in the country. As pointed out throughout this report, the legal framework set by ordinary legislation is full of terminological and regulatory inconsistencies and is often at odds with the constitutional norm, which raises questions as to its validity. A thorough legal reform seems to be in order. The criteria set by the Constitution need refinement, to dispel doubts as to their scope (e.g. by setting temporal benchmarks) and to align the Timorese legal system with the requirements of International Law as to effective ties between the citizen and the state of citizenship. The Nationality Act and the Nationality Regulation need to be revised in order to eliminate all the provisions which do not pass constitutional muster and to gain precision and consistency. There are also important questions still to be addressed, either in the Constitution or in ordinary legislation, concerning, for instance, the effects of loss of citizenship on land ownership in Timor-Leste.

¹⁴⁰ Judgment of the Court of Appeal of 15 March 2010, Case no. AC-10-03-2010-P-12-CIV-09-TR, available at <https://www.tribunais.tl/?q=node/4> [05.02.2017].

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2017/07

