

The History of Human Rights and the process of building Timor-Leste as State of Law

¹ Hercus Pereira dos Santos

Institute of São João de Brito, Kasait, Likisa, Timor-Leste

*Corresponding Author:

Email Penulis: santoshercus10@gmail.com

Abstract

The History of Human Rights began since the existence of human beings in which it is called natural rights and that throughout human history, these natural rights have been questioned and violated and only with the creation of the United Nations, Human Rights were formalized with the Universal Declaration of Human Rights with the main intention to respect the dignity of the human person, avoid war and all things that endanger Human Rights. Timor-Leste as a new state of the 21st century was born at a time when Human Rights are highly valued and become a sensitive subject that attracts a lot of attention from the international community, which makes Timor-Leste's struggle for independence go through the struggle for Human Rights and that has a very strong echo and has managed to attract strong support in the world for the right to self-determination. Therefore, we can say that the struggle for independence in Timor-Leste is also a struggle for Human Rights. Aware of the importance of Human Rights in the world and in the lives of people, since the beginning of independence and in the process of building the rule of law, Timor-Leste has already ratified the international human rights treaties to ensure that independent Timor-Leste values, respects and avoids any type of human rights violations. Timor-Leste must not repeat the human rights violations of the past but must promote the protection and enhancement of human rights for all.

Keywords: Human Rights, State Building, Rule of Law, Protection

1. INTRODUCTION

According to the beliefs that recognize Abram as a father, they believe that God created Man from His breath. This breath is something magical that can sometimes give rise to a certain thing, or even the birth of a country. At least, we can see this with the birth of the PALOP and Timor-Leste countries that have as their origin a special breath, the breath of freedom, or the breath of the soul, said Xanana Gusmão, who dreamed of that same freedom for his people of

Timor-Leste, in his poem written in Cipinang, Jakarta when he was still imprisoned. According to him, this breath of the soul "allows us to meditate on the future of the island of Timor". The future is free from any oppression, and from this we also find it, from any act that goes against the fundamental rights of the citizen.

The concrete inspiration for the proclamation of an independent Timor-Leste began with the Carnation Revolution in Portugal. The breath of freedom from that carnation revolution in Portugal on April 25, 1974, which was carried out by the captains of the Portuguese army, in which one of its objectives is the decolonization of its colonists, also reached Timor-Leste. A faraway country, in the far east.

According to the book entitled *Timor Labyrinth of Decolonization*, by Paulo Pires, a Timorese politician from 1975, on page 49 he quoted,

“ O discurso do Presidente da República Portuguesa, em 27 de Junho de 1974 foi claro: o reconhecimento do direito dos povos colonizados por Portugal quer na Afrifa, quer na Oceania à sua autodeterminação, incluindo a independência” .

Translation

"The speech of the President of the Portuguese Republic, on June 27, 1974 was clear: the recognition of the right of the peoples colonized by Portugal both in Africa and in Oceania to their self-determination, including independence".

From there, soon after the revolution, political parties with a different political vision and ideology were born in Timor-Leste. The UDT (Timorese Democratic Union) with a democratic political ideology. Its objective is the gradual independence of Timor-Leste under the flag of Portugal (to have an idea perhaps the case can be identical with Macau, the gradual transfer of Macau to China). ASDT (Social Democratic Association of Timor-Leste that later transformed into Fretilin-Revolutionary Front Timor-Leste Independente with a left-wing ideology) with the objective of the immediate independence of Timor-Leste with and APODETI (Popular Democratic Association of Timor-Leste) with the objective of integrating Timor-Leste into Indonesia. It has two other small parties which were the Kota party (with the aim of restoring the traditional monarchy system of Timor) and the Labour party. These last two parties did not have much influence at that time.

We should note here that the carnation revolution in Portugal arose within the environment of left-wing ideology. Some Timorese students who were in Lisbon shared this idea

and returned to Timor-Leste and influenced the transformation of ASDT into Fretilin. Fretilin, sensing the need of the Timorese people for the independence of their country and sensing a threat so clear and so close to its giant neighbour Indonesia, unilaterally declared the independence of the Democratic Republic of Timor-Leste on 28 November 1975.

Soon after a few days Fretilin's fear came to pass, the illegal invasion of the Indonesian armed forces on December 7, 1975 in the homeland of the Maubere people in the capital of Timor-Leste, Dili, with the support of the USA and its allies. It should be remembered here that the USA and England supplied all war material to Indonesia for this invasion.

It is important to remember here also that Indonesia's invasion of Timor-Leste was made within a cold war environment. In Southeast Asia, we recall just two events to have a slightly clearer view of the political situation at that time, the very great concern of the US with the first President of Indonesia, Eng. Soekarno, who shared the leftist idea and was one of the Soviet Union's greatest allies in Asia. He was the President of Indonesia from 1945 until 1965, the year he was overthrown in 1965 by Soeharto, the largest U.S. ally in Asia. The second event was the loss of the US war in Vietnam.

We have seen that it is not very strange that the invasion of Indonesia is supported by the USA, England and Australia. We can say, safely based on the official letter from the Indonesian Minister of Foreign Affairs, Adam Malik, Fretilin's Head of External Relations, Jose Ramos Horta, who clearly showed respect for Indonesia for the future independent Timor-Leste, that Indonesia's invasion of Timor-Leste was not Indonesia's true intention. It was the intention of the US to limit the influence of the socialist-communist idea in Asia and Australia with the idea that it is easier to have a negotiation of the exploitation of Timorese wealth in the Timor Sea with its ally Indonesia (under the leadership of the West's friend in Asia, Soeharto) than the future Independent Timor-Leste under left-wing ideology.

But Adam Malik's language changed after the US intervention with its allies. In the book *Timor Labyrinth of Decolonization* by Paulo Pires on page 38 quoting from the Sunday Times newspaper in London Adam Malik's statement "Indonesia, although without great ambitions about Timor, wishes to «avoid the installation of a FRETILIN regime or even the maintenance of the connection to Lisbon that Jakarta considers pro-communist".

Which clearly shows that the question of Timor-Portuguese is truly not a question of the inspiration of its people for Independence but a question of the ideology that was going to be adopted in the future Independent Timor-Leste.

3. LITERATURE REVIEW

This study is based on the author's observation of the importance of votes as a parameter of democracy in the process of state-building in Timor-Leste and the consultation of relevant documents on voting and democracy

4. RESEARCH METHOD

From the beginning, the unilateral declaration of independence of Timor-Leste was made by Fretilin (Revolutionary Front for the Independence of Timor-Leste) and was not recognized by Portugal or by the international community. The entire struggle of the Timorese people for independence was carried out by the diplomatic flag of Portugal, which resulted in the agreement of May 5. This agreement gives the Timorese people the right to self-determination (referendum). This agreement was signed by Portugal and Indonesia under the United Nations. The result of the reference came out according to the expectations of all those who fought for the Timorese cause. 78% of voters rejected Indonesia's autonomy. The reference was organized by UNAMET (United Nations Mission in East Timor) based on Security Council resolution number 1246 of 11 June 1999. According to Mari'e Alkatiri in an interview with sapo.tl, the result should be more than 78% but in order not to humiliate Indonesia too much, he lowered the result to this number. According to him, this figure of 78% was a political and diplomatic solution.

The loss of Indonesia causes Indonesian militias and military to totally destroy Timor-Leste. As the situation became worse and worse, the United Nations with resolution number 1264 of 15 September sent INTERFET (International Force for East Timor) to Timor-Leste with the aim of restoring peace and order. Then it was established by the United Nations, the UNTAET (United Nations Transitional Administration in East Timor) with resolution number 1272 of October 22, 1999. One of UNTAET's main missions was to help build foundations for a new independent state of Timor-Leste. One of the foundations was the election to the Constituent Assembly on August 30, 2001 to draft the Constitution of Timor-Leste. According to the Annotated Constitution of the Democratic Republic of Timor-Leste on page 17 it says that "In the name of the

constituent powers with which they have been democratically invested, the elected deputies synthesize their purposes to build a rule of law, a constitutional democracy respectful of human rights designed according to the principle of separation of powers, assume their commitment to the promotion of a culture of tolerance and respect for political pluralism and the determination to continue the fight against "all forms of tyranny".

Within this political environment that Timor-Leste has gone through, Timor-Leste, in the drafting of its constitution, is very careful in its process of building the Democratic Rule of Law, based on the fundamental rights of its citizen. This care is manifested within its Constitution, as a primary source of positive law in its legal system (the character of the supremacy of Constitutional Law), which was approved on March 22, 2002 and entered into force according to article 170 of the Constitution on May 20, 2002 and this also means the extinction of UNTAET and a democratic rule of law was born in the Democratic Republic of Timor-Leste. As Professor Jorge Bacelar Gouveia says,

“Cumpro também assinalar o relevo dado, sendo assim erigida a parte própria, à matéria da defesa e segurança, no que não terá sido alheio o recente percurso histórico-político do povo e do território de Timor-Leste, o mesmo igualmente se dizendo dos princípios fundamentais, que se apresentam numa parte inicial, sistematicamente autonomizado.” .

Translation

"It is also important to point out the emphasis given, thus being erected to the matter of defence and security, in which the recent historical-political path of the people and territory of Timor-Leste has not been unrelated, the same can also be said of the fundamental principles, which are presented in an initial part, systematically autonomous".

As a rule of law, its construction is based on the principle of legality, the protection of fundamental rights and the separation of powers. We can confirm this statement on the basis of the fundamental principles of the first part and the fundamental rights, duties,

freedoms and guarantees of the second part and the separation of power of the third part of its Constitution.

Just to remind here that in relation to the principle of legality, based on the Timorese reality where there are still very strong old traditional systems that directly influence the life of the community on the ground, the Constitution of Timor-Leste also gives importance to customary law, as stated in article 2 (4) of the Constitution "The State recognizes and values the norms and customary practices of Timor-Leste that do not contradict the Constitution and the legislation that deals especially with customary law". That is why we believe that Law No. 10/2003 of 10 December is contrary to the Constitution.

That is why we share the idea, in relation to this relationship of the primacy of state laws over customary norms, of Professor Jorge Bacelar Gouveia when he says, "Daí automaticamente não se segue, porém, a impossibilidade de a lei- neste caso, a lei constitucional- se pronunciar sobre a validade do costume." .

Translation

"From this it does not automatically follow, however, the impossibility of the law - in this case, the constitutional law - to pronounce on the validity of custom".

We hope that we can address this issue, the importance of customary law in the construction of the Timorese Democratic Rule of Law, in another pertinent opportunity.

As a newborn country, Timor-Leste is still very fragile. The fragility of the construction of the rule of law of Timor-Leste due to its lack of well-qualified human resources in all areas, the divisionism between existing ethnicities, the conflict between martial arts, the conflicts of the past that have not yet been well resolved means that at any time the political situation of Timor-Leste can change drastically from one moment to another. On top of that, with the announcement of the current Prime Minister, the great statesman and hero of Timor-Leste, Xanana Gusmão, to leave any state power in the future, causes a very strong concern within Timorese society. What we think is that his resignation must be in harmony with the Constitution. Therefore, he must continue to exercise his function as Prime Minister until the end of his term because he does not yet face any legal impediment to the exercise of his function as Prime Minister according to

what the Constitution provides. If it is of his own volition to resign, there is no legal impediment not to hold an early legislative election for the formation of the new government.

In our view, precisely because of this issue of building the rule of law, Xanana Gusmão wanted to cut off any dependence placed on him. So that the construction of the democratic rule of law in Timor-Leste does not fall into a chaotic situation with the absence of it. As a sage, a politician and a strategist he must be imagining what Timor-Leste will be like in the future without his presence.

2. Fundamental Rights and their evolution

Fundamental rights, according to José Carlos Viera de Andrade, “Os direitos fundamentais triunfaram politicamente nos fins do século XVIII com as revoluções liberais. Aparecem por isso, fundamentalmente, como liberdades, esferas de autonomia dos indivíduos em face do poder do Estado.” .

Translation

"Fundamental rights triumphed politically at the end of the eighteenth century with the liberal revolutions. Therefore, they appear, fundamentally, as freedoms, spheres of autonomy of individuals in the face of the power of the State".

Once again we have seen that the history of humanity is linked to the principle of freedom. Freedom is something more desired by the human being in the personal and private sphere or in the public and collective sphere. The breath of freedom has importance in the world of humanity.

We have seen that in every revolution and in every resistance of Man, he is always inspired by the principle of freedom. With this freedom, it leads the human being to build a new concept of state, the secular and democratic state, based on the popular sovereignty of the people as opposed to the absolute state, which is based on the divine right of the monarch.

Jose Carlos Viera de Andrade says about fundamental rights come from natural rights, “os direitos fundamentais relevam em primeira instância do chamado direito natural.” .

Translation

"fundamental rights fall in the first instance of the so-called natural law".

This means that fundamental rights were born together with the human being. Regardless of race, color, religion and many other differences that exist in the human being. We can say that man alone has fundamental rights. According to him, fundamental rights were born from a philosophical perspective and then entered the positive order or legal practice of political societies. Whereas natural law for Locke is freedom. Freedom in itself. Freedom seen as a property right.

The human being itself is born within a society, a culture, a civilization and that these societies, cultures and civilizations are various and so the evolution of the concept of fundamental rights also varies. Cristina M.M Queiroz says,

“Definir os direitos, a ordem jurídica, mesmo tratando-se dos direitos fundamentais, não se apresenta como tarefa fácil. A noção mostra-se difícil. O horizonte diverge consoante os países e as nacionalidades. As concepções filosóficas que lhe subjazem divergem também. As questões que levanta e conleva não são de resposta fácil.”

.

Translation

"Defining rights, the legal order, even when dealing with fundamental rights, is not an easy task. The notion proves difficult. The horizon differs according to countries and nationalities. The philosophical conceptions that underlie it also diverge. The questions it raises and leads to are not easy to answer".

The view on the importance of fundamental rights also varies from one country to another. For some states, the most important thing is rights, freedoms and guarantees, and for others it is economic, social and cultural rights. It all depends on the game of interest that is behind it. Or we can say that it also depends on the culture, worldview, characteristics and needs of each country. We have seen that in the occidental world personal and individual rights and freedom prevail more than the common interest of society that still exists in the Asian and African worlds. This leads to affirm that the

invention of Human Rights is seen as a Western, European invention that was born under the inspiration of this so-called individual personal freedom.

The pre-constitutional period began with the Code of your-Nammu (dated 2100 BC) and the Code of Humarabi (dated 1690). The purpose of these two codes is, inter alia, to limit the application of arbitrary penalties to the population.

While in Greece with the Stoics and then in Rome with Cicero they also had the recognition of the dignity and equality of men. Even though at that time there was the practice of slavery. The masters who own the slaves as their "property". But the most important thing is that the awareness of the dignity and equality of human beings was born at that time. While Professor João Rosas said that even the protagonists of the elaboration of texts that defend the fundamental rights of the human person, also have slaves, such as Thomas Jefferson when he wrote the US declaration, there are slaves at home. There is always a difference in treatment within society from time immemorial until today. It is a reality of human life.

But the historical milestone that gives a lot of importance and has a lot of influence in shaping the idea of the fundamental rights of the human being in the occidental world precisely identified with the existence of a powerful identity of a religious character with a lot of political power, the Catholic Church, within European society in the Middle Ages. According to the teaching of Jesus Christ, the greatest commandment of the Law is love (Matt 22:37-40). The law of love prevails in all circumstances of life, even in the face of an enemy (Luke 6:27-36).

The teaching of Jesus came to contradict the teaching of Moses and the Jewish tradition where there is an arbitrary treatment in relation to the judgment of the so-called "sinner", the one who violates the law of Moses with stoning. For example, in the case of stoning. When the people were about to stone Mary Magdalene, Jesus appeared and contested the degrading act of human dignity. Or it came to contradict even the old law in any ancient society "an eye for an eye and a tooth for a tooth". Love is the law that dignifies the human being as the "face" of God. God is the great, the magnificent, the Most High and that if the human being is the image of God, then the human being is worthy, valuable and incomparable with any other creation of God.

According to Christian teaching, man is created by God according to his likeness. All men are children of God. Apostle Paul says in his letter to the Galatians: "You are all children of God....." (Gal 3:26), he goes further to say "There is neither Jew nor Greek, there is neither slave nor free" (Gal 3:28). It was with the teaching of Jesus that he gave a new vision of treatment to respect for the dignity of the human person, equality between men and women of difference, cultures and nations.

In this medieval age that Magna Charta Libertatum of 1215 was born, it also provides for the limitation of the King's arbitrary power before the nobility class, the church; the clergy. In doctrine, Magna Charta Libertatum is considered as one of the instruments of delimitation of power. In addition, Magna Carta is also considered to be the origin of the principle of Habeas Corpus; the recognition of the integrity of the body and the freedom of each one in the face of the power of the State. There is also the principle of legality and the idea of a fair process.

While in the modern age, in relation to fundamental rights, Petition of Rights (1628), Abolition of Star Chamber (1641), The Habeas Corpus Act (1679), the Bill of Rights (1689) were born. The Bill of Rights, which was born out of the Glorious Revolution, was based on an idea that the people have the right to resist any holder of power who does not take care of the protection of property.

These declarations that were born in England and then had an influence with the American Revolution that gave rise to the Declarations of Rights of the States (Virginia, Pennsylvania and Maryland) and then the Federal Constitution of 1787 was also born.

The fundamental milestone for the recognition of fundamental rights in the contemporary age happened with the French Revolution, where the Declaration of the Rights of Man and of the Citizen of 1789 was born, where it clearly states in its article 16 "that any society in which the guarantee of fundamental rights is not ensured, nor the separation of powers established, has no constitution".

It was in this period that the so-called Liberal State was born. In the liberal state, according to Professor J. J. Gomes Canotilho and Vital Morreira, fundamental rights are (a). the rights of individuals before the State; citizen's right to defense against the State; (b) rights of individual liberty. c) fundamental rights have the character of norms for the

distribution of competences between the individual and the State; (d) the rights of freedoms are presented as pre-state rights, defined as a domain of individual and social freedom, in which any interference by the State is prohibited; (e) the freedom guaranteed by fundamental rights is freedom in and for itself. Expression of one's own individual freedom; (f) at the basis of all freedoms are the right to private property and the freedom to conduct a business, as presuppositions of the autonomy and independence of individuals.

3. Fundamental Rights in the Constitution of the Democratic Republic of Timor-Leste

To understand the legal political system of a state we must look at its constitution. With this idea, we tried to analyze the Protection of Fundamental Rights in the Construction of the Democratic Rule of Law of Timor-Leste based on the Constitution. Since anywhere in the world the construction of a democratic state of law must be based on and in harmony with constitutional guarantees, constitutional legal principles, the protection of the rights of the citizen, the protection of the dignity of the human person, freedom, justice and among other democratic principles. According to Gomes Canotilho, the guarantees "were translated both into the right of citizens to demand from the public authorities the protection of their rights, and into the recognition of procedural means appropriate to this purpose (e.g.: right of access to the courts for the defence of rights, principles of *Nullum crimen sine lege* and *nulla poena sine crimen*, right of habeas corpus, principle *non bis in idem*).

Respect for the constitution, laws and democratic rules is fundamental and inseparable in the process of building a democratic rule of law in the world at large. Without this respect the state becomes like a machine to satisfy the will of the ruler who intends only to secure his power.

We can see this clearly, as it happened in absolute monarchy or in dictatorship states, where the will of the king and/or the dictator emanates the whole life of the kingdom or state. As happened in France with the monarch Louis XIV when he says that the state was him ("*L'État c'est moi*". The state is me) Or in the most recent case of our

time with North Korea where its President of the Republic Kim Jong-un had his uncle, Jang Song-thaek, killed on charges of treason. For in states dictatorships or in an absolute monarchy the penalty for a person accused of treason is death.

In the Timorese context there is no place for such a dictatorship because the Constitution of the Democratic Republic of Timor-Leste is well ensuring, in the preamble of the Constitution, the prohibition of any illegal act that contravenes the principle of legality and the principle of the dignity of the human person, as we will see in paragraph 12, when it says that "They solemnly reaffirm their determination to combat all forms of tyranny, oppression, domination and social, cultural or religious segregation, defend national independence, respect and guarantee human rights and the fundamental rights of the citizen, ensure the principle of separation of powers in the organization of the State and establish the essential rules of pluralist democracy, with a view to building a just and prosperous country and the development of a solidary and fraternal society".

Timor-Leste is aware of the importance of respect for the Constitution, the laws and the democratic culture and respect for democratically elected institutions that are normal paths to a democratic state of law that is being built.

This awareness of the importance of respect for the Constitution and the laws shares the definition of the Rule of Law, according to Klaus Stern, quoted by Maria Lúcia Amaral in the book *The Shape of the Republic*, where Klaus Stern says,

“o Estado de Direito significa que o poder do Estado só pode ser exercido com fundamento na Constituição, e em leis que formal e materialmente sejam conformes com ela (Constituição), e com o fim de garantir a dignidade da pessoa humana, a liberdade, a justiça, e a segurança.”.

Translation

“the Rule of Law means that the power of the State can only be exercised based on the Constitution, and in laws that are formally and materially in conformity with it

(Constitution), and with the purpose of guaranteeing the dignity of the human person, freedom, justice, and security.” .

Based on this definition mentioned above, we make a link of interpretation to the preamble of the Constitution of Timor-Leste in paragraph 10 where it says that "Fully aware of the need to erect a democratic and institutional culture proper to a Rule of Law where respect for the Constitution, the laws and the democratically elected institutions are its unquestionable basis" and in harmony with article 1 of the Constitution where it is stated that "Timor-Leste is a democratic and institutional culture of the Constitution of Timor-Leste". Democratic, sovereign, independent and unitary rule of law, based on the popular will and respect for the dignity of the human person".

From this we can deduce and affirm with certainty that the principle of the democratic rule of law prevails in the legal system of Timor-Leste. According to Gomes Canotilho and Vital Moreira,

“o princípio de Estado de Direito, exprime, de forma global, a ideia de uma «ordem de paz» estadualmente garantida através do direito, mas é também referido como designante de vários subprincípios concretizadores com ele conexados (princípio de juridicidade, princípio da constitucionalidade, princípio da legalidade da administração, princípio da protecção da confiança, princípio da divisão de poderes, entre outros).” .

Translation

"the principle of the Rule of Law expresses, in a global way, the idea of a «peace order» guaranteed by the state through law, but it is also referred to as designating several concretizing sub-principles connected with it (principle of legality, principle of constitutionality, principle of legality of administration, principle of protection of confidence, principle of division of powers, among others).".

Gomes Canotilho and Vital Moreira further state that "In turn, the democratic principle means the, ““Por sua vez, o princípio democrático significa o «poder do povo, pelo povo e para povo», mas ele também uma condensação de várias dimensões concretizadoras do fundamento e legitimação do poder político (princípio da soberania

popular, princípio eleitoral, princípio pluripartidário, princípio representativo, princípio participativo.»” .

Translation

«power of the people, by the people and for the people», but it also a condensation of several dimensions that materialize the foundation and legitimation of political power (principle of popular sovereignty, electoral principle, multi-party principle, representative principle, participatory principle”.

Professors Gomes Canotilho and Vital Moreira further state that,

“o Estado de Direito só o é verdadeiramente enquanto democraticamente legitimado (pela sua formação e pelo seu conteúdo). O Estado democrático só o é genuinamente enquanto a sua organização e funcionamento assentam no direito e não na prepotência.” .

Translation

"the Rule of Law is only truly legitimate as it is democratically legitimized (by its formation and its content). The democratic state is only genuinely democratic as long as its organization and functioning are based on law and not on arrogance."

In the same article 1 of the Constitution, it is also invoked one of the main elements in Klaus' definition of the rule of law, which is respect for the principle of the dignity of the human person. Since the principle of the dignity of the human person is one of the important principles in the protection of the fundamental rights of the citizen.

In any state, without the principle of the rule of law, the fundamental rights of the citizen are in danger. In a direct way, we can say that without the principle of the rule of law, there is no respect for the fundamental rights of the citizen.

The guarantee of the protection of the fundamental rights of the citizen can only be ensured within a state governed by the rule of law. Because the birth of the principle of the rule of law is based on the principle of popular sovereignty, the secularization and secularization of power, precisely to oppose the principle of the absolute state where an idea of the divine power of the Monarch, ancient régime, resides.

According to Professor Pedro Carlos Bacelar de Vasconcelos, “o princípio da soberania popular significa então, liminarmente, é o processo de secularização e laicização porque se vai diferenciar da sociedade uma identidade nova, o Estado.” .

Translation

"the principle of popular sovereignty means, then, at the outset, the process of secularization and secularization because a new identity, the State, will be differentiated from society".

The secular state is free from all divine and supernatural ideas. Jorge Bacelar Gouveia says that,

“o princípio do Estado de Direito surge como um dos principais resultados do Constitucionalismo e do Liberalismo, sendo a expressão firme da oposição ao sistema político precedente, com a preocupação essencial pela limitação do poder político, por isso também fundando o Estado Contemporâneo.” .

Translation

"the principle of the Rule of Law emerges as one of the main results of Constitutionalism and Liberalism, being the firm expression of opposition to the previous political system, with the essential concern for the limitation of political power, for this reason also founding the Contemporary State."

Timor-Leste also provides for its commitment in Article 9 to international conventions, treaties and agreements and these prevail in its domestic legal system. In this spirit, Article 23 provides that any interpretation of the fundamental rights of the constitution must be in line with the Universal Declaration of Human Rights. This means that the source of the interpretation of fundamental rights in the domestic legal system based on the Declaration.

We are following the idea of Professor Jorge Miranda when he says that this interpretation of the Constitution in accordance with the Declaration becomes all the easier because it is certain that it was one of its sources. More than that, it is also very important to highlight the Professor's statement in relation to the importance of

interpretation in line with the Declaration. According to the Professor, some articles of the Declaration, which, usefully, clarify constitutional norms, avoid doubts, overcome divergences of location or formulation, provide richer perspectives than, apparently, the perspectives of the text emanating from domestic law.

Timor-Leste as a newly independent state, Article 23 is a very fundamental article that clearly shows, in the light of the construction of the rule of law, Timor-Leste's commitment to guarantee and promote the fundamental rights of its citizen and that this commitment emerges as one of the main objectives of the state as provided for in Article 6; the guarantee and promotion of the fundamental rights and freedoms of citizens. We deduce that this guarantee and promotion of fundamental rights and freedoms, since these rights and freedoms are based on respect for the dignity of the human person, the protection of the dignity of the human person according to Article 1 of the Constitution. In any state that does not respect the principle of human dignity, to call into question fundamental rights and freedoms. We are sharing the idea of Professor Benedita Mac Crorie as she says, “Assim, no Estado contemporâneo, assegurar o respeito da dignidade humana continua a ser o fim da sociedade política. ”.

Translation

"Thus, in the contemporary State, ensuring respect for human dignity remains the end of political society."

A citizen, as a human person, has in himself a value of dignity that cannot be violated in any circumstance of his life within and in any state of Democratic Law. The dignity of the human person is something inalienable and inalienable and that man cannot be considered as a means or instrument, but seen as an end, as Kant teaches. That is, a citizen, by the mere fact of being a person, cannot be abused his dignity as a human person in any circumstance. Therefore, here, it also invokes the prohibition of any form of cruel and degrading treatment that could jeopardize the principle of human dignity, such as death penalties, torture, etc.

This guarantee and promotion of fundamental freedoms and the protection of the dignity of the human person of citizens is in line with the spirit of universality and equality of Article 16. In other words, every citizen, by the simple fact of being a person, is equal

before the law and that no one can be discriminated against, for any reason, in the legal system of Timor-Leste.

In the light of article 29, number 2, paragraph gives exclusive competence to the National Parliament to legislate on the matter of rights, freedom and guarantees, and that any constitutional revision must respect, among others, the rights, freedoms and guarantees of the citizen, according to article 156, paragraph b. It is a guarantee exposed in the political dynamics of the construction of the democratic rule of law in Timor-Leste.

As we know that politics is dynamic and it is possible that there will be any change in the national political situation since Timor-Leste is a recent state and has just come out of a difficult conflict during its struggle for independence and is a legacy of many problems of the past and of many fractions of party and group interests within Timorese society and also foreign interests that may influence the internal politics of the country. However, in any case, Timor-Leste gives a guarantee for the respect of the fundamental rights of the citizen even in the matter of constitutional revision according to this article.

In the view of Professor Jorge Miranda,

“Estado de Direito não equivale a Estado sujeito ao Direito, porque não há Estado sem sujeição ao Direito no duplo sentido de Estado que age segundo processos jurídicos e que realiza uma ideia de Direito, seja ela qual for. Estado de Direito só existe quando esses processos se encontram diferenciados por diversos órgãos, de harmonia com um princípio de divisão do poder, e quando o cendem; só existe quando se dá limitação material do poder político; e esta equivale a salvaguarda dos direitos fundamentais da pessoa humana.”.

Translation

"The Rule of Law is not equivalent to a State subject to the Law, because there is no State without subjection to the Law in the double sense of a State that acts according to legal processes and that realizes an idea of Law, whatever it may be. The rule of law only exists when these processes are differentiated by various bodies, in accordance with a principle of power sharing, and when they are divided into it; it only exists when there is a material limitation of political power; and this is equivalent to safeguarding the fundamental rights of the human person."

In accordance with Professor Jorge Miranda's idea of the rule of law in relation to the principle of separation of power, which in his language is referred to as "the division of power", which we can find in the Constitution of Timor-Leste in article 69.

It is also important to mention here that the Annotated Constitution of Timor-Leste makes a very pertinent note in relation to the principle of separation of power. According to this annotation, "the principle of separation of powers is one of the genetic marks of modern constitutionalism of liberal origin. The ideal concept of the Constitution, referred to in Article 16 of the Universal Declaration of Human and Citizen Rights, provides for a written document in which the fundamental rights of the citizen are protected and the organization of political power according to the principle of separation of powers is guaranteed. In this understanding, without separation of powers there is no Constitution". In the words of Professor Pedro Carlos Bacelar de Vasconcelos, "a separação dos poderes é já o pressuposto e programa necessário do próprio constitucionalismo".

Translation

"the separation of powers is already the presupposition and necessary program of constitutionalism itself".

4. CONCLUSION

We have seen that in the protection of fundamental rights in the construction of the Democratic Rule of Law of Timor-Leste, the Constitution, as a fundamental order of a political community, enshrines the respect and promotion of the fundamental rights of the citizen, as requirements of a Democratic Rule of Law and the interpretation of these fundamental rights must be in line with the Universal Declaration of Human Rights.

The study was done only by observation and consultation of the written works and so I think that this study integrates only subjective ideas from my observation and my analysis and so I recognize that this study still has some limitations and I hope that the future study of the same subject can be improved even more.

*Lecturer for East Timor History and Culture, Peace Education in Institute of São João de Brito, Kasait, Likisa, Timor-Lest.

References

- ANDRADE, J. C. Viera de, *Os Direitos Fundamentais na Constituição Portuguesa de 1976*, ed. 5º, Coimbra, 2012.
- BOTELHO, Catarina Santos, *A tutela directa dos direitos fundamentais*, Coimbra, 2010.
- CANOTILHO, J. J Gomes, and MOREIRA, Vital, *Fundamentos da Constituição*, Coimbra, 1991.
- CANOTILHO, J. J Gomes, *Constitutional Law and Theory of the Constitution*, ed.7ª, Coimbra, 2003.
- CRORIE, Benedita Ferreira da Silva, *The Attachment of Individuals to Fundamental Rights*, Coimbra, 2005.
- GOUVEIA, Jorge Bacelar, *Manual de Direito Constitucional*, Vol I, ed. 4º, Coimbra, 2011.
- JERÓNIMO, Patrícia, "Fundamental Rights in the Constitution of the Democratic Republic of Timor-Leste and in the case law of the Court of Appeal", text available at <http://repositorium.sdum.uminho.pt/handle/1822/21651>
- LUCIA, Maria, *A Forma da República*, Coimbra, 2005.
- MIRANDA, Jorge, "Manual de Direito Constitucional", Volume VI, ed. 4th, Coimbra, 2013.
- PIRES, Paulo, *Timor Labyrinth of Decolonization*, ed. Colibri, 2013.
- QUEIROZ, Cristina M. M, *Fundamental Rights; General Theory*, Coimbra, 2002.
- VASCONCELOS, Pedro Carlos Bacelar, *General Theory of Legal Control of Public Power*, ed.1º, Lisbon, 1996.
- VASCONCELOS, Pedro Carlos Bacelar, "Annotated Constitution of the Democratic Republic of Timor-Leste", Braga, 2011.