

The History of Torture or Inhuman and Degrading Treatment Seen from the Perspective of Human Rights The Case of Timor-Leste

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Abstract: Human rights are inalienable and inherent to every individual from birth, encompassing fundamental guarantees such as the right to life, equality, security, health, image, and physical integrity. These rights exist to ensure that every human being can live with dignity, and therefore must be respected, protected, and upheld by the state. However, history shows that although human rights are theoretically innate, they have often been violated by those in power, particularly authoritarian regimes, and only gained recognition after prolonged struggles by communities against oppression. The state seeks stability and order, yet this objective can sometimes lead rulers to justify the violation of human rights. For this reason, mechanisms and advocates for human rights emerged to ensure that state power remains controlled and limited. Human rights must be integrated into constitutional and legal frameworks so that their protection becomes a national obligation. The experience of Timor-Leste under Portuguese colonization and Indonesian occupation highlights the critical importance of safeguarding human dignity and preventing the repetition of past violations. Torture and degrading treatment fundamentally contradict human rights because they harm life and dignity. In the contemporary world, human rights should not remain merely theoretical discussions but must be embedded in national laws to protect all citizens, particularly during times of conflict when violations are most likely to occur.

Keywords: Human Rights; Torture; Timor-Leste

INTRODUCTION

When a child is born, he enters a family, a community and is automatically among other human beings. Throughout her life she is connected to other people. He needs them in order to be able to live fully as a human being, and therefore others will certainly also need him in the family and/or within the community.

We know that we, as human beings, need each other in order to be able to fully realize ourselves as human beings. Because no one can live in the world alone. Human being, by nature, is a social being or a social animal according to the language used by Aristotle. He said that the union between men is natural and the city, as a space of citizenship, is a natural creation. He says that every city exists by nature. Formed at first to preserve life, the city subsists to ensure a good life, a happy life as possible.



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We can deduce from this that, based on this need to communicate with each other in order to achieve a happier life, human beings group together to live in community. Aristotle already said that every city is a certain form of community, which is constituted in view of some benefit of happiness.

As human beings live within communities, they create a system of control, standards of conduct, rules and laws so that they can live in harmony and stability, giving and receiving benefits from the community, both in a broad and restricted sense. As St. Thomas Aquinas says, "the law is an order of reason promulgated by the head of the community, with a view to the common good."

Therefore, in order for these rules to be successful, forms of punishment are created for those who violate the rules. Sanctions vary according to the degree of severity. They range from the so-called attention, to the isolation of the community, torture, and even the death penalty, sanctions that were "well accepted" in the past, within the ancient and traditional communities. These penalties still exist today in any part of the world and, however, the world is getting worse and worse. There is still a lack of respect for the natural rights of human beings, because the arrogance and arbitrariness of the rulers and leaders of some religions, as well as the indifference of many people to natural rights, are still present in the behaviour of political and social bodies and in individuals.

Torture, inhuman and degrading treatment are means that some rulers use to secure power. But we must not forget that some rulers have been paying for their atrocities. Fear and terror within communities peaked after the Second World War.

It was only after this conflict that humanity realized that there was a catastrophe, a holocaust that needed to be dealt with, to be taken into account so that it would not be repeated. From this was born the United Nations Organization, which implemented systems for the protection of fundamental human rights, that is, natural and inalienable rights. Torture, inhuman and degrading treatment were prohibited with the creation of the United Nations. What relevance does all this have for Timor-Leste?

This article will deal with how fundamental rights were born, an integral part of raising awareness of the respect due to human beings and prohibiting all kinds of acts that, calling into question this respect, practice torture, inhuman and degrading treatment of the dignity of the human person. We will then dedicate a few pages to torture and its evolution in the world, including Timor-Leste before the invasion of Indonesia, at the time of the civil war in 1975 between political parties, during the illegal occupation of Indonesia (we will give more emphasis to this part) and also after Independence in the light of the Universal Human Rights Protection Systems and the State Human Rights Protection Systems, such as the Constitution and the Penal Code of Timor-Leste.

We will also see the impotence of the Systems for the Universal Protection of Human Rights in the interests of the so-called powerful States, in relation to the violation of human rights and, in particular, in relation to torture, inhuman and degrading treatment in East Timor. In this context of torture, inhuman and degrading treatment practised during the civil war and the invasion of Indonesia, we consider the Chega report of the Committee on Reception, Truth and Reconciliation to be the fundamental basis. This committee was

established on the basis of UNTAET Regulation No. 2001/10. It began its function in 2002 and was in force until 2005. Its function was to search for the truth of history, of crimes from 1974 to 1999. Then it had a main mission, which was reconciliation for less serious crimes among the Timorese.

METHODOLOGY

This study employs a qualitative research approach using two complementary methods, namely observation and literature analysis. The observational method was applied to identify and understand factual conditions related to practices of torture and inhuman or degrading treatment in East Timor through empirical evidence, documented cases, and relevant reports. To strengthen the analytical foundation, the study also integrates a comprehensive literature review of academic publications, legal documents, historical records, and reports from international and national human rights organizations. The purpose of combining observation with literature analysis is to obtain a holistic understanding of the mechanisms, patterns, and contributing factors behind the occurrence of torture and degrading treatment within the sociopolitical context of East Timor. Through this methodological framework, the research aims to ensure the validity of findings and provide an in-depth examination of human rights violations from both empirical and theoretical perspectives.

DISCUSSION

Human Rights

According to Professor João Rosas, the modern concept of human rights emerged particularly after the end of the Second World War. The two world wars generated global suffering and triggered international awareness of the urgency to uphold peace, respect for rights, freedoms, and guarantees, especially relating to civil and political rights, which later became the first generation of human rights. At that time, the dominant concern of the international community focused on establishing political mechanisms capable of ensuring world peace and stability, while economic, social, and cultural rights were not yet prioritized.

Subsequently, the second generation of human rights economic, social, and cultural rights was influenced by the Mexican Constitution of 1917 and the Weimar Constitution of 1919. The third generation of rights emerged after the Second World War and emphasized collective interests. In academic discourse, the evolution of fundamental rights is also frequently traced to the Code of Hammurabi (circa 3800 BC), considered the earliest codification addressing the right to life, property, dignity, family, and the supremacy of law, followed by the Law of the Twelve Tables, which expanded the principle of equality among citizens.

During the Middle Ages, despite being characterized as a period of dogmatism, the Catholic Church contributed to the conceptual development of natural rights by promoting the view that humans possess inherent dignity as creations of God. Thinkers such as Saint Augustine and Saint Isidore of Seville regarded natural law as immutable and divinely rooted. However, the emergence of the Magna Carta in 1215 marked a significant transition, as it imposed limitations on monarchical power and introduced early political guarantees for citizens.

Modern theorists later challenged the theological basis of rights. Grotius contributed to the secularization of law by positing that natural law would exist even in the absence of divine will, while John Locke emphasized that natural rights do not depend on citizenship, state laws, or cultural affiliation, thereby

affirming the universal nature of human rights. This perspective suggests that human rights exist solely by virtue of human existence.

Following the shift from a divine to a rational conception of law, a series of legal-political declarations emerged to limit arbitrary state power and protect individual rights, including the Habeas Corpus Act (1679), the Bill of Rights (1689), the Virginia Declaration of Rights (1776), the United States Declaration of Independence (1776), and the French Declaration of the Rights of Man and of the Citizen (1789).

The international legal protection of human rights was institutionalized between 1945 and 1948 as a response to the atrocities of the Second World War. The establishment of the United Nations in 1945 marked a formal commitment to maintaining global peace. Subsequently, the United Nations General Assembly adopted the Declaration on the Protection of All Persons from Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on 9 December 1975. This was followed by the adoption of the Convention Against Torture on 10 December 1984, which entered into force on 26 June 1987, and the establishment of the Committee Against Torture on 1 January 1988 pursuant to Article 17 of the Convention. Despite the existence of these international control mechanisms, violations of human rights including war, torture, and inhuman or degrading treatment continue to occur. The case of the Indonesian invasion of East Timor serves as a clear example of this ongoing problem. Contemporary geopolitical developments also indicate that universal human rights protection systems may become ineffective in the face of competing global political and strategic interests.

Torture

Throughout human history, torture and other forms of inhuman or degrading treatment have been used as instruments to achieve certain objectives by actors in power. The view of the third-century jurist Alpiano illustrates this, defining *quaestio* (torture) as the infliction of bodily suffering for the purpose of discovering the truth that perpetrators seek to obtain at any cost. Alpiano also emphasizes that torture has historically been employed by authorities not only for investigative purposes but also for political objectives.

Practices of torture and inhuman or degrading treatment have occurred under various political systems. They are commonly associated with dictatorial republics and absolute monarchies, where respect for fundamental rights, democratic principles, and freedoms is absent. However, historical and contemporary developments demonstrate that torture also occurs within states claiming to be democratic and within certain religious communities that justify violence on moral or doctrinal grounds.

At the core of torture lies the pursuit of interests that disregard human dignity. Such acts constitute violations of key principles of human rights, including the right to dignity, the right to physical integrity, and the right to life. Over time, and across civilizations, methods of torture have taken diverse forms. While the Code of Hammurabi is regarded as an early instrument aimed at protecting individual rights, it also codified severe punishments such as amputation and the death penalty under the doctrine of *lex talionis*. Scriptural and religious laws in different traditions have, at certain historical periods, also incorporated provisions that permitted physical punishment for perceived violations of moral norms.

Torture, Inhuman and Degrading Treatment in Timor-Leste Before the Indonesian Invasion

Article 1 of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment defines torture as any act by which severe physical or mental pain or suffering is intentionally inflicted for purposes including, but not limited to, obtaining information or confessions, punishment for an act committed or suspected to have been committed, intimidation or coercion, or discrimination, when such pain or suffering is inflicted by or with the consent or acquiescence of a public official or other person acting in an official capacity.

In Timor-Leste, historical evidence indicates that torture and inhuman or degrading treatment existed long before the Indonesian invasion. Traditional societal structures were marked by social stratification, in which the lower classes were disproportionately subjected to physical punishment and severe penalties. A common characteristic across these practices was the use of violence by ruling elites to impose control and maintain authority over ordinary members of the community.

Captain José S. Martinho, in *Timor: Quatro Século de Colonização Portuguesa*, records that individuals accused of minor theft, such as stealing livestock, were subjected to corporal punishment, including amputation. Such penalties were primarily imposed upon members of lower social strata, while individuals from higher social classes were rarely subjected to similar treatment unless involved in treason or conflicts related to political succession.

During the Portuguese colonial period, Portuguese authorities occupied the highest hierarchical position within the social structure of Timor. This placed them beyond the reach of local jurisdiction, and conflicts between Timorese and Portuguese typically resulted in impunity for the colonial authorities.

René Pélisser, in *Timor em Guerra*, also documents instances in which traditional rulers suspected of disloyalty were subjected to corporal punishment through methods intended to humiliate and physically weaken them, including forced yoking with added weights and whipping.

Traditional society in Timor-Leste practiced multiple forms of torture and inhuman treatment, including kneeling on stones for extended periods, prolonged tying of limbs, amputation, crucifixion-type binding to wooden structures, exposure to insects, and confinement with animals. These methods were imposed both as punitive and deterrent mechanisms within the socio-political framework of the time.

Civil War in 1975

The internal armed conflict that unfolded in Timor-Leste in 1975 between the União Democrática Timorense (UDT) and the Frente Revolucionária de Timor-Leste Independente (Fretilin) constitutes a critical historical episode that illustrates the systematic use of torture and other forms of inhuman or degrading treatment as instruments of political control and coercion. Historical testimonies and documentary evidence, including those originating from UDT members affiliated with the Anti-Communist Movement (MAC), indicate that the conflict was initiated through a military coup launched on 11 August 1975 targeting Fretilin headquarters, resulting in widespread arrests, arbitrary detention, and extrajudicial killings of individuals identified as Fretilin supporters across multiple regions. According to the Chega Report issued by the Commission for Reception, Truth and Reconciliation (CAVR), UDT routinely employed physical and psychological violence, including severe beatings, kicking, slapping, and prolonged tying in detention facilities designed for interrogation, particularly those located in Dili.

Fretilin's counter-offensive on 15 August 1975 resulted in the progressive expansion of military operations and mass detentions. The Chega Report documents that Fretilin detained approximately 2,000 individuals,

a figure corroborated by the International Committee of the Red Cross (ICRC), in detention centers lacking adequate sanitary and humanitarian conditions. In these facilities, detainees were subjected to physical and psychological abuse including severe beatings that produced permanent disabilities or life-threatening injuries, as reflected in documented cases such as those inflicted on Mouzinho and Chico Oliveira. Furthermore, internal ideological disputes within Fretilin resulted in intra-organizational violence, including the detention and torture of high-ranking party members, most notably the president, Francisco Xavier do Amaral, who was subjected to burning with heated metal objects. This reflects a pattern of political instrumentalization of torture not only for inter-party conflict but also for internal party consolidation.

Throughout the civil war, both UDT and Fretilin employed torture and degrading treatment as a systematic mechanism of social control and intelligence extraction. Violent methods documented in the Chega Report include beatings, kicking, punching, slapping, forced labor, and prolonged constraint. UDT frequently implemented additional forms of violence, including prolonged binding lasting more than one week, threats of execution, cuts with machetes or razor blades, and burning with cigarettes. Fretilin's practices were similarly characterized by high physical brutality, including beatings using rifle butts, iron bars, wooden sticks, electrical cables, helmets, bamboo, and thorned branches; stabbing; dragging detainees; burning; exposure to extreme sunlight; urination on victims; forced exposure to ant-infested areas; and public humiliation through forced nudity.

The Indonesian military invasion of 7 December 1975 marked a new era characterized by the most extensive and systematic torture practices recorded in the contemporary history of Timor-Leste. Despite United Nations Security Council Resolution 384, which required Indonesia to withdraw and respect the right to self-determination of Timorese people, the occupation continued for 24 years. The Chega Report demonstrates that the Indonesian National Armed Forces (TNI/ABRI) institutionalized torture as a centralized apparatus for political repression against pro-independence civilians. Practices recorded during the occupation include beatings using fists or objects such as wooden clubs, iron bars, rifle butts, hammers, belts, and electric cables; kicking with military boots; whipping; cutting with sharp instruments; prolonged immobilization; suspension; burning of body parts—including genitals—with cigarettes or fire; electric shocks applied to various parts of the body; attempted drowning; forced exposure to extreme temperature; confinement in water; dragging victims with vehicles; mutilation; forced consumption of urine or inedible items; exposure to dangerous animals; and prolonged public humiliation.

Torture during the occupation was accompanied by psychological and emotional violence designed to dismantle individual autonomy and community solidarity. Practices included prolonged solitary confinement, deprivation of light, ventilation, and food, threats of execution, mock executions, forced participation in the torture of other detainees, and enforced witnessing of torture inflicted on family members. Particularly systematic was the use of gender-based and conflict-related sexual violence against women, which operated both as a method of subjugation and as a tool of collective intimidation. The Chega Report emphasizes that the number of recorded victims does not reflect the full scale of violations due to structural barriers to reporting including fear, social stigma, geographic isolation, and the destruction of documentary evidence during the occupation.

Collectively, historical evidence shows that torture and inhuman or degrading treatment in Timor-Leste did not arise episodically but instead emerged as an instrument of political domination across successive periods: intra-Timorese conflict prior to the invasion, internal repression within resistance movements, and

the Indonesian occupation. The continuity of torture across these historical phases indicates that such practices operated not merely as isolated acts of individual brutality but as components of institutional strategies designed to consolidate power, extract information, control populations, and dismantle political resistance. The legal and historical analysis of this trajectory reinforces the contemporary imperative to establish robust constitutional safeguards, judicial accountability frameworks, and transitional justice mechanisms to ensure non-recurrence and full protection of the right to human dignity.

Timor-Leste Independent

Based on its long, difficult, and painful historical experience, the Timorese people have developed a strong awareness of the necessity of building a democratic state grounded in fundamental legal principles. These principles include the rule of law, supremacy of the Constitution, adherence to statutory norms, democracy, freedom of expression, protection of human rights, and respect for the fundamental rights of citizens, as well as a commitment to combating all forms of tyranny and oppression. These guiding values are expressly affirmed in the Preamble of the Constitution of the Democratic Republic of Timor-Leste, which reflects the legal and political aspirations of the nation.

In addition to establishing the essential pillars of a democratic state governed by the rule of law, the Constitution explicitly incorporates international law into the domestic legal system. Article 9(1) stipulates that “The Timorese legal order adopts the principles of general and common international law,” while Article 9(2) provides that norms contained in international conventions, treaties, and agreements shall have domestic legal effect following approval, ratification, or accession by the competent authorities and subsequent publication in the Official Gazette. Following its independence and recognition as a sovereign state on 20 May 2002, Timor-Leste ratified numerous international conventions and treaties concerning universal systems for the protection of human rights, beginning with the Charter of the United Nations through National Parliament Resolution No. 1/2002. It subsequently ratified, among others, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment through Resolution No. 9/2003 of 17 September, the International Covenant on Civil and Political Rights through Resolution No. 3/2003 of 22 July, and the Optional Protocol to the Convention against Torture in 2005.

These actions reflect Timor-Leste’s strong commitment to respecting, promoting, and protecting human rights. Specifically regarding the prohibition of torture and other inhuman treatment, Timor-Leste adheres not only to the aforementioned international conventions but also to additional universal instruments, including Article 5 of the Universal Declaration of Human Rights and Article 7 of the International Covenant on Civil and Political Rights. Domestically, the Constitution of the Republic guarantees protection against torture and degrading treatment through Articles 25(5), 30(4), 34(4), and 35(3). In addition, the Timor-Leste Penal Code, enacted through Decree-Law No. 19/2009, expressly criminalizes torture and other cruel, degrading, or inhuman treatment under Article 167.

The combination of constitutional provisions, statutory criminal law, and adherence to universal human rights systems demonstrates that Timor-Leste ensures the prohibition of torture and inhuman or degrading treatment through multilayered protective mechanisms. These include respect for constitutional legality; recognition of supra-legal principles through the direct and automatic reception of international law pursuant to Article 9(1), which reflects the influence of Portuguese civil law doctrine; and alignment with universal systems for the protection of human rights within the domestic legal framework. Furthermore, Article 23 of the Constitution requires that any interpretation of fundamental rights including those relating

to the prohibition of torture must be consistent with the Universal Declaration of Human Rights, thereby reinforcing legal certainty in the application of human rights norms.

The ratification of the Optional Protocol to the Convention against Torture demonstrates Timor-Leste's willingness to allow independent national or international bodies to conduct regular and unrestricted visits to facilities where persons are deprived of liberty, with the aim of preventing torture and inhuman treatment. Although the Optional Protocol does not provide for punitive sanctions and does not publicly disclose investigative reports, it formulates recommendations for improving detention conditions. Such recommendations are particularly important for a young state emerging from post-conflict conditions, as they contribute to strengthening human rights protection throughout its institutional structures, including the National Police of Timor-Leste and the National Directorate of Prison Services and Social Reintegration under the Ministry of Justice. International organizations, such as Human Rights Watch, have also consistently expressed concern regarding the need for ongoing improvement in the protection of human rights within these governmental institutions.

CONCLUSIONS

The issue of torture, inhuman and degrading treatment is an old issue. An issue that arose due to the arrogance of human beings in relation to their neighbors. An issue that arose because of the stratification of social classes. Therefore, in order to maintain security of power, security in governance and stability, the rulers opt, one among several other means, for torture. All this is aimed at ensuring the interests of those in power. We can certainly take as an example the case of Timor-Leste from 1975 until its liberation from the illegal occupation of Indonesia. Everyone knew that Indonesia's invasion of East Timor was illegal. There have been several United Nations resolutions. But no one can stop this invasion that brings disaster to humanity in the 19th century. The United Nations resolutions were impotent; had no effect. After the unequal struggle, Timor-Leste was born as an independent country in the world in the 20th century. Timor-Leste has learned from the past. That is why after its proclamation of Independence on May 20, 2002, Timor-Leste ratified many international conventions such as Universal Systems for the Protection of Human Rights, which have automatic and immediate effect according to Article 9 of the Constitution, in its internal legal system for the protection and respect for life and human dignity, For rights, freedoms and guarantees, democracy, economic, social and cultural rights for a true democratic rule of law. Even so, as a fragile country that has several problems from the past, Timor-Leste needs to be careful and seek to make a great effort to guarantee and promote respect for Human Rights in Timor-Leste, especially in relation to the performance of government institutions such as the Police and Prison Service.

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