

# A Short History of Human Rights in Africa: The Case of Mozambican Constitutions (1975-2018)

Laura António Nhaueleque

Higher Institute “Dom Bosco”, Maputo, Mozambique

Email: lauramacua@gmail.com

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## Abstract

Despite the fact that a constitution protecting fundamental human rights has been in place since 1990, authorities in Mozambique have been and still are responsible for human rights violations. This article aims to explain these violations by analysing the three Mozambican constitutions that have been in force since the country gained independence from Portugal in 1975. It highlights the many contradictions that remain in the current constitution, adopted in 2004 and amended in 2018. Using an analytical, multidisciplinary approach and the theories of constitutional amendment and dismemberment, it emerges that Mozambique does not yet have an effective approach to protecting and respecting human rights. In particular, the large amount of power assigned to the President by the constitution hinders meaningful progress towards a higher level of human rights protection, as does the lack of juridical and political democratic culture, as evidenced by the electoral processes of 2023 and 2024.

## Keywords

Constitutional Transition, Fundamental Rights, Socialism, Democratic System, Separation of Powers

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## 1. Introduction

This article focuses on understanding the constitutional assumptions of respect for human rights in Mozambique. To do this, an analysis of the three Constitutions that the country has had to date has been carried out. The first one was approved by parliament (the Popular Assembly) in 1975, shortly after independence (with amendments in 1978-1979); the second one was established in 1990, and it was known as the Constitution of the democratic “turning point”; and finally in 2004, a last Constitution was approved, for the first time by a multiparty parlia-

ment. The 2018 Constitution, currently in force, did not bring about significant changes in the area of respect for and promotion of human rights, as it focused on amending some articles relating to the model of governance and decentralisation, without touching on other relevant aspects.

The theoretical assumptions of this work are based on the distinction between constitutional amendments and constitutional dismemberment (Albert, 2018). In the case of Mozambique, the four constitutional amendments followed these two models: on the one hand, in the transition from colonial to socialist and from socialist to democratic rule, the constitutional change responded to constitutional dismemberment. In terms of content, this example represents the opposite of what Albert argues with regard to constitutional regression in countries that move from democratic to authoritarian or semi-authoritarian regimes, as in the case of Hungary. However, the mechanism of discontinuity from one constitution to another is the same, with the difference that, in the case of countries such as Mozambique, most jurists and academics advocated for the advancement of this dismemberment (in the two transitions mentioned above) and the foundation of a new legal order. On the other hand, the constitutional amendments of 2004 and 2018 are fully part of a plan of constitutional amendments. In this case, the changes, especially in 2018, were not significant in terms of the underlying philosophy of constitutional principles and, more importantly here, the formulation of human rights.

The article was written from a multidisciplinary methodological perspective, in which legal analysis was combined with an understanding of the historical, political and, in part, cultural dynamics present in Mozambique. The specific bibliography found was relatively modest, and it was possible to draw on more general texts that indirectly touched on the subject addressed here. Although a multidisciplinary and analytical methodology was adopted, the angle from which the relationship between Mozambican constitutions and human rights was viewed was not neutral: on the contrary, the author's position has been one of strict application of fundamental rights in Mozambique, based on its constitutions, questioning why, until now, the State continues to violate the most basic rights of its citizens, instead of protecting them. However, this was not done on the basis of the already exhausted debate between "universalism" and "relativism" in human rights (Cassese, 2005; Stango, 2014), but rather by looking at a "localist" perspective on human rights, in which the endogenous elements of various communities or societies interact with the "absolutism" of human rights doctrine, leading, as in the case of Mozambique, to obvious inconsistencies (Aguilar, 2008).

The text is divided into four parts: the first deals with human rights in relation to the 1975 Constitution; the second deals with the constitutional and legislative changes introduced in 1978-1979; the third presents the innovations introduced in the first liberal-inspired Constitution of 1990; finally, the last part questions the new openings as well as the contradictions of the current Constitution, approved in 2004. The article concludes with some concluding remarks.

## 2. Human Rights and the 1975 Constitution

There are two trends in the Mozambican debate regarding the emergence or introduction of human rights in the country, both from a legislative and constitutional point of view and in cultural terms. These have been highlighted in recent studies, and the widespread view in Mozambican society is that human rights, at least in their theoretical formulation, were imported or imposed by the international community at the time of the democratic transition in the early 1990s (Bussotti, 2012). The main NGO that first dealt with human rights in Mozambique, the Mozambican Human Rights League, chaired for many years by Alice Mabote, was founded in 1994, after some pioneering local activists participated in the Vienna Conference in 1993, where the United Nations approved a declaration and a programme of action to implement more coherently the provisions of the United Nations Charter and the 1948 Universal Declaration of Human Rights (Nkamate, 2014). Since then, of the approximately 5000 NGOs operating in Mozambique, a large number continue to deal with human rights issues in their various forms, with substantial international funding (Bussotti & De Muti, 2013). There is no doubt that the State's confrontations with these organisations—as well as with some private newspapers, such as Canal de Moçambique, A Verdade, Evidências and Savana, in addition to the weekly newspaper Demos, which closed in 2004 testify that the culture of human rights is still far from being fully established in Mozambique, as the annual reports of various international NGOs have pointed out, even with reference to the most recent period, according to an evolution with a few changes in the last few years (Human Rights Watch, 2017; Amnesty International, 2017; Human Rights Watch, 2024). After the start of the conflict in Cabo Delgado (Northern Mozambique) in 2017, with constant attacks by jihadist groups linked to the Islamic State, threats against journalists and independent media outlets have multiplied, further restricting the right to information guaranteed by the Constitution to all Mozambican citizens (Nhanale & Cossa, 2023).

The sudden introduction of human rights and the philosophical theory behind them in a country like Mozambique has left several grey areas. It is precisely these that this research intends to discuss here, beginning with an analysis of the first Constitution, that of 1975, and its constitutional dismemberment.

When the first Constitution was approved in 1975, Mozambique had just emerged from an armed struggle against Portuguese colonialism, which had sought to change its legal status at the end of its presence in this African country. Although Salazar had already changed Mozambique's status from colony to overseas province in 1951, with Law 5/72 on the "Political-Administrative Statute of the Province of Mozambique", which Salazar's successor, Marcello Caetano, had approved, Mozambique became an "autonomous region of the Portuguese Republic", using the "honorary designation of State" (art. 2). However, the essence of colonial law remained the same, with Portugal as the coloniser and Mozambique as a colony, albeit with some additional political autonomy.

The struggle for liberation, which lasted around 11 years and led to the coun-

try's independence on 25 July 1975 under the leadership of nurse Samora Machel, who was killed in a plane crash in 1986 (Cabrita, 2005), sought to break all ties of dependence with Portugal. Thus, Mozambique became known as the "People's Republic of Mozambique" and all institutions, from Parliament to the courts, included the adjective "people's" in their official names, the meaning of which was clear: only a force that was supposedly popular and widely supported by the majority of the population could legitimately represent the interests, aspirations and desires of the entire nation. This force was the Mozambique Liberation Front (FRELIMO).

Since the first Constitution of 1975, Mozambican politics has never been so clear and explicit in its ideological stance, in socialist and Marxist practice—especially after the Third FRELIMO Congress of 1977—but with many nuances of a more "democratic" nature, as demonstrated by the fact that it allowed both private property and freedom of religious worship. A glimpse of socialism could be seen in the preference for countries such as the Soviet Union and China among the privileged allies mentioned in the constitutional text, although even in this case, long-standing democratic friends were not excluded (Zeca, 2017). Faced with this international chess game, Mozambique never formally joined the Warsaw Pact, but rather the Association of Non-Aligned Countries, whose foundation dates back to 1955, with the Bandung Conference.

Furthermore, ideological positions within Frelimo were not yet fully defined at the time of independence. According to Sumich, the two main groups (the more "conservative" and the more "radical", basically from the south) had postponed the final challenge for ideological and political hegemony until independence was achieved (Sumich, 2008).

The ideology that prevailed was inspired by a model of strong modernisation and "popular" democracy that did not allow any party to compete with FRELIMO (Jafar, 2014). That united and heterogeneous front, which had been the essential feature of the liberation struggle, was transformed into a Marxist-Leninist party in 1977, with no real possibility of internal or external discussion (Ncomo, 2003). In this vein, some have argued that "the socialist project in Mozambique was above all more 'assimilationist' than the Portuguese would ever have dared to imagine", with authoritarianism and the absolute domination of the state over local society as its central elements (Fry, 2000: p. 119). Other authors (Baltazar, 2020: p. 37) speak of a "cat hiding with its tail sticking out" to describe the obvious ambiguity between constitutional principles and common legal practice.

The first Constitution was subdivided into five titles, with the Nationality Law attached as an annex. The first two titles dealt with human rights and matters relating to "General Principles" and "Fundamental Rights and Duties of Citizens" respectively.

From Article 1, it is stated that Mozambique is a "sovereign, independent and democratic state", preferring this last word to the adjective "socialist". The ideological and institutional model chosen is "popular" democracy, which is in the

hands of FRELIMO, the party of peasants allied with the working class. The State has economic planning duties, without however holding a monopoly on private property, except for major natural resources such as land and water.

Private property was formally recognised (Article 12), although it was subordinated, in terms of interests, to state property (Article 13), and foreign capital had the right to establish itself in Mozambique, carrying out investments favourable to the interests of the people (Article 14).

Among civil rights, in addition to private property (Article 12), freedom of religious worship was guaranteed (Article 19): Mozambique declares itself a secular state, with a clear separation from religious institutions, allowing everyone to practise their religious beliefs or not to practise any beliefs (Article 33).

Freedom of opinion, assembly, association (Article 27), domicile and the secrecy of correspondence were other individual freedoms guaranteed by the 1975 Constitution (Article 33), as well as the right to a fair trial and to a defence in accordance with the law on the part of the accused (Article 35). The limits, which are frankly quite vague, on individual freedoms were characterised by the need not to conflict with the “interests of the people” (Art. 36).

It is not difficult to deduce, through an analysis of Mozambique’s first Constitution, that the political arena was monopolised by FRELIMO, that state structures depended directly on the single party and its governing body, the Central Committee, but that the state continued to guarantee fundamental individual freedoms, although these were always subject to the “higher interests” of the Mozambican people. Such perspective left FRELIMO ample room for manoeuvre to act in a highly arbitrary manner against anyone who opposes its policies.

The 1975 Constitution contained contradictions from the point of view of political rights. All citizens over the age of 18 had active and passive political rights (Article 26), as did women who met these conditions (Article 27). However, the effective possibilities for choice were clearly restricted, since there was only one party to vote for (Article 37). In the Popular Assembly, only members of FRELIMO or the national or provincial government, also representing FRELIMO, could be elected, including the “ten suitable citizens” who were supposedly independent, chosen by the Central Committee of FRELIMO (Article 37).

The role of the State was not limited to a “negative” approach to fundamental human rights (an expression never used in the first constitutional text). On the contrary, the State played an active role in some key areas: based on the premise of promoting human dignity and combating all forms of exploitation of man by man (Article 6), it dignified and safeguarded the right/duty to work, the “driving force of development” (Article 7), playing an active role in reducing illiteracy and disseminating Mozambican culture both domestically and internationally (Article 15), guaranteeing an effective health system for all citizens (Article 16), and promoting the rights of women and young people.

In short, the State assumed a proactive role in promoting certain rights that, according to Marshall, could be defined as “social” (Marshall, 1950).

This brief analysis of the 1975 Constitution makes it clear that it emphasised social rights, with an active role for the State in implementing them, and allowed civil rights and, formally but not in substance, political rights as well. The history of Mozambique, thanks in part to the constitutional amendments of 1978-1979, shows that in reality the violations of fundamental rights by the state were brutal, which seems to clash with the constitutional dictum.

The outbreak of armed conflict with Renamo and the openly socialist turn resulting from the Third FRELIMO Congress in 1977 led to a significant revision of the approach to human rights. This approach is partly reflected in Law 11/78 of 15 August 1978, which reproduced the socialist political shift evident at the Third Congress of the single party, although nothing was changed with regard to the fundamental rights of citizens, which therefore remain the same as those illustrated above.

### **3. The Shift to Marxism-Leninism and the First Constitutional Revision of 1978**

The constitutional revision—which should be considered a constitutional amendment—as stated in the introduction to Law 11/78, has its roots in the fact that some bodies fundamental to the functioning of the state, such as provincial governments, people’s assemblies, but above all the national People’s Assembly, had already become fully operational, overcoming the transitional situation evident in 1975.

Above all, Article 1 introduced a long, purely ideological preamble, which aimed to extol the role of FRELIMO as the sole representative of the Mozambican people, capable of breaking the chains of colonial rule and thus fulfilling the aspirations for freedom of all Mozambicans. This preamble includes a long speech by Samora Machel, which the President of Mozambique delivered at the time of *the Proclamation of Independence*.

The ideological shift is evident in Article 2, which has undergone significant changes. Among these is the mention of the fundamental objectives, which now read as follows: “The establishment of popular democracy and the construction of the material and ideological foundations of socialist society”.

However, constitutional guarantees regarding private property and freedom of religion, opinion, assembly and association remained unchanged, thus revealing the “hidden tail of the cat” referred to by the constitutionalist Baltazar, mentioned above. Individual guarantees too remained unchanged in the Constitution, while the idea of establishing a socialist society was openly expressed, finding its logical expression above all in Title III, relating to state bodies.

Here, political power was vested in the People’s Assemblies and, at the central level, in the national People’s Assembly. The powers of the President of the Republic were also extended and specified, while the administration of justice responded, at least formally, to criteria closer to those of a liberal state than a socialist one. In fact (Article 73), “judges are independent and owe obedience only to

the law” and are not required to report their decisions to a political authority.

At the end of 1978, when Mozambique’s Constitution was completed, the country’s ideological and normative position remained ambiguous. On the one hand, the word “socialism” was finally introduced, almost as a nod to its great Soviet, Chinese and Cuban allies, but fundamental individual freedoms were maintained, with the People’s Assemblies designated as the central bodies for disseminating the principles of the new state.

Just one year after the constitutional revision, in 1979, Samora Machel amended some of the fundamental constitutional principles, without however going through a formal process. At the same time, the Mozambican state established a stable police force for the first time with the founding of the Popular Police of Mozambique (L. 5/79), as will be seen in more detail below. Two laws introduced the principle of the state as a violator of human rights: Law No. 2 and Law No. 3 of 1979. The first was entitled *Law on Crimes against the Security of the People and the People’s State*; the second concerned the establishment of a Revolutionary Military Court, providing the legal instrument for the crimes provided for in Law No. 2 of 1979 to be duly tried and punished.

The first of the two laws mentioned above defined the type of crime against security: these are almost exclusively crimes of a political and military nature, namely: against national independence, against the organisation of the Frelimo Party and the Mozambican State; against the political and social stability of the nation or the programmes outlined by Frelimo; against the normal economic development of the country and, finally, against international peace and humanity (Article 1). The range of allegedly serious criminal acts was vast and rather undefined. The subsequent penalties were very harsh, including the death penalty for the crime of high treason (Article 17), espionage (Article 29), piracy (Article 31), kidnapping (Article 33) and agitation resulting in the death of a citizen (Article 35), providing in all cases, with the exception of high treason, the possibility of sentencing the defendant to 30 years’ imprisonment as an alternative to capital punishment. Crimes of a military nature (Articles 35 and 36) were also punishable by 30 years’ imprisonment or the death penalty.

The SNASP (state security services) was responsible for investigating the above-mentioned crimes, leaving it to the Provincial People’s Court to pass judgement, although the Supreme People’s Court must confirm all death sentences (art. 52).

However, in order to fully implement the new principles introduced by Law 2/1979, the Mozambican government asked the People’s Assembly to pass a new law, Law No. 3 of 1979, which established a “new judicial organization” (Law 3/1979, *Preamble*). This organisation consisted of the establishment of the People’s Military Court and was motivated by “the escalation of enemy action”: “we respond to reactionary violence with revolutionary violence”, as stated in the Preamble to the same law.

The new Court had exclusive jurisdiction over crimes against the Security of the People and the People’s State (Article 1), and there was no possibility of appeal

by the convicted person (Article 3). When applying the death penalty, the Court must proceed with its execution by firing squad within five days of the sentence being handed down (Article 6).

In legal terms, the introduction of the two laws mentioned above overturned the previous legal system, introducing into the Mozambican justice system principles of almost total arbitrariness in the trial of alleged enemies of the people by the omnipresent FRELIMO party, thus giving rise to a systematic violation (also due to the way in which the laws were implemented in practice) of fundamental rights, first and foremost the right to life and to a fair trial. Between 1981 and 1982, it is estimated that almost twenty individuals accused of being political enemies were convicted and shot. Several figures, such as Uria Simango and Joana Simeão, as set out in *Action Order No. 5/80* of the Ministry of Security, were publicly prosecuted and sentenced to death, as can be read in the following order:

*“In the spirit of the customs, practices and traditions of the armed struggle for national liberation, the Permanent Political Committee of Frelimo has tried and sentenced to death by firing squad the following deserters and traitors to the people and the national cause (sic) who have already been executed: Uria Simango, Lázaro Nkavandame, Julio Razão Nihia, Mateus Ngwegere, Joana Simeão, Paulo Gumané” (MINISTRY OF SECURITY, 27/7/1980: Action Order No. 5/80).*

Such practices continued for several years, despite frequent interventions by Amnesty International ([Canal de Moçambique, 2014](#)). While it is true that, as the same Mozambican legislator admitted in the Preamble to Law 3/1979, the introduction of the death penalty and the People’s Military Court were instruments to be read in the light of Renamo’s military attacks, such a shift effectively established a culture of arbitrariness and abuse of power that not only affected the period of civil war but also spread to the period following the adoption of the liberal Constitution of 1990 and the signing of the 1992 Peace Accords.

In 1981, Samora Machel, in his campaign known as *the Offensive for Legality*, declared that torture, beatings and corporal punishment were prohibited in Mozambique. However, not only did the two laws introducing the death penalty already exist at that time, but just two years later, on 31 March 1983, the socialist regime adopted public flogging as an additional punishment for a series of crimes, both political and, above all, common, which was quickly and widely applied (Law 5/1983). Once again, Amnesty International opposed this practice, but in vain. “Economic” crimes, such as the “black” market, theft and others, were included in the types of crimes that provided for flogging as an additional punishment to imprisonment. The maximum that could be imposed was 90 lashes, but divided into intervals of eight days, since 30 consecutive lashes was the maximum that the law allowed to be imposed at one time (Article 4).

Amnesty International noted that those sentenced to this horrific punishment had not been given a fair trial or the possibility of appeal. By 26 April 1983, just one month after the law was passed, 20 prisoners had been flogged in Maputo for non-political crimes ([Canal de Moçambique, 2006](#)).

After President Samora Machel pointed out in May 1983 that few guilty parties had been sentenced to the additional punishment of flogging, it is believed that by the end of that year the number of defendants who had undergone this form of torture was around 100 (Canal de Moçambique, 2006).

Also in 1983 (Resolution No. 2 of 23 March), the Mozambican government launched *Operation Production*, which aimed to forcibly relocate “unproductive” citizens from the country’s main cities (mainly Maputo) to rural areas such as Niassa, Nampula and Zambézia. The general idea behind this measure was expressed by the then Minister Teodato Hunguana, who said that such an operation was consistent with the policy of accelerated modernisation that FRELIMO intended to implement at that time (Quembo, 2012), while other authors argue that this measure was implemented in an attempt to curb the wave of urban crime that was being felt, mainly in Maputo and Beira (Folio, 2007). According to Cahen, Operation Production “was a tragedy and its main person responsible, but not the only one, was Armando Guebuza” (Lazagna, 2006, 126). On the contrary, Quembo emphasises, much more than personal responsibilities, the fact that this operation was implemented by the Frelimo party as a whole and by the bureaucratic machinery of the Mozambican state, thus finding agreement among the most prominent members of the party-state (Quembo, 2012).

In fact, through this operation, mainly political personnel not aligned with FRELIMO’s ideas, religious figures, intellectuals, but also ordinary people, were sent to re-education camps, where in many cases the individuals targeted ended up finding death (Thomaz, 2008). The Catholic Church itself intervened to point out the unnecessary harshness of such a programme and the way in which it was implemented (Bussotti, 2011). Later, leading figures of that period, such as Marcelino dos Santos, admitted that the Mozambican state executed several political enemies after independence, without informing the people or the international community: Lazaro Nkavandame, Gwenjere, Joana Simeão and many others lost their lives because of their political choices and, as Marcelino dos Santos argued, “we are not sorry for what we did because we acted using revolutionary violence against traitors and against traitors of the Mozambican people” (Manhique, 2015).

The intersection between the People’s Courts and Operation Production resulted in systematic human rights violations, involving ordinary people as well as the so-called political opponents. As reported in a magazine at the time, individuals in Maputo who exercised professions traditionally accepted in Mozambican culture, such as traditional healers, were treated as unemployed and sent to re-education camps. In this case, Judge Melchior Manuel did not hesitate to take this decision after hearing statements from the head of the defendant’s neighbourhood and the Frelimo Party cell in Texlom where the defendant had worked until 1981, decreeing that “1) There is no recognition by the State of the activity of traditional healers; 2) For the purposes of ‘Operation Production’, traditional healers are treated as unemployed and casual workers” (Manuel, 1984b). The same attitude was taken by this judge towards an alleged prostitute, a 31-year-old woman found

having sex with a Spanish aid worker at the Casa da Cultura in Maputo, who was immediately evacuated to the re-education camp at Quinta Floresta in Niassa (Manuel, 1984a).

These two examples serve to describe the type of justice practised by the People's Courts at the time of Operation Production, and the cultural legacy they left behind among the population, but above all to those who, after this phase, continued to exercise institutional roles, from the judiciary to law and order, to neighbourhood representatives and leaders.

In general, it can be concluded that the 1975 Constitution and its 1978 revision never promoted human rights violations; on the contrary, they always upheld respect for fundamental rights, even individual rights, albeit with a constant subordination to the general interests of the country, represented by Frelimo.

The human rights violations perpetrated by the regime, citing the civil war and economic sabotage as the main reasons, were carried out despite the constitutional dictum, through the adoption of laws and programmes (such as those mentioned above) specifically designed to repress internal dissent, but which then spread, in a highly arbitrary manner, to a large section of the population, mainly the most vulnerable, such as the unemployed, women and young people.

The perceptions that Mozambicans had of the transition from colonialism to the socialist period would demonstrate an idea of continuity with regard to abuses perpetrated by the state against its citizens: compulsory military recruitment, for example, is assimilated to inhumane practices typical of the colonial era, representing them as an expression of the same authoritarianism and without understanding their political content (Ribeiro, 2000). The same can be said with regard to the ethnic exclusion of entire populations, mainly those in central and northern Mozambique (Bussotti & Nhauelque, 2022).

Such practices, together with the passivity with which Mozambicans used to accept them, meant that the institutionalised culture of human rights violations and related abuses penetrated deeply into the political and judicial elite and the police forces of Mozambique, far beyond the harshness of the measures that this or that political figure might have taken.

In the next section, we will see how the new Constitution of 1990 recovered some of the principles of the 1975 Constitution, but enshrined them in a completely different ideological and philosophical framework, one that was liberal and democratic, based on pluralism, freedom of expression and of the press, and above all on the abolition of the death penalty.

#### **4. Human Rights and the Constitutional Shift of 1990**

The 1990 Constitution was approved when the country was still torn apart by civil war, although negotiations with Renamo had already begun, leading to peace in the not too distant future.

Against this backdrop, FRELIMO, the party-state, approved a completely new Constitution, rejecting the principles of the socialist state derived from the 1975

Constitution, the 1978 Reform and the measures taken since 1979. This Constitution was the result of a profound constitutional dismantling.

It is likely that the death of Samora Machel in 1986 accelerated the process of gradual withdrawal from the socialist system and entry into the Western system, which the former president had already begun with the accession to the Bretton Woods institutions (namely the World Bank and the International Monetary Fund) in 1984. The Economic Rehabilitation Programme (PRE), later revised as the Economic and Social Rehabilitation Programme (PRES), raised several criticisms due to its strongly negative social impact (Hanlon, 1991; Abrahamsson & Nilsson, 1995), to the point of theorising a veritable process of “normalization” or “disciplinarianisation” of the country, beyond its economic choices (Macamo, 2003).

The 1990 Constitution constituted a “natural” alignment with the framework of liberal reforms that Mozambique had adopted in the late 1980s: economic reforms preceded political and institutional reforms, which, however, had the curious characteristic of introducing democracy through a parliament that was still a monopoly of one party. In a way, the new Constitution accelerated and facilitated the negotiations in Rome with Renamo, since Frelimo itself had already accepted, in advance and not as a clause to close the peace agreement, those liberal and democratic principles for which Dhlakama’s movement-party claimed to be fighting (Morozzo della Rocca, 1994).

Not that the approval of that Constitution, which the two sides agreed not to touch in the Rome negotiations, guaranteed a politically “open” and risk-free system, as has been noted (Bussotti, 2014). On the contrary, the institutional framework, which was based essentially on the extremely high concentration of powers in the hands of the President of the Republic, to the detriment of Parliament, and the limited influence of local authorities, probably already concealed, behind the reassuring facade of multipartyism, the risks of a “competitive authoritarianism” that Mozambique experienced in the second phase of its brief history as an independent country (Levitsky & Way, 2002). The evident manipulation of the 2023 local elections and the 2024 general and presidential elections, with a subsequent wave of demonstrations and popular protests, indicate the fragility and ambiguity of the new Mozambican democratic framework (CDD, 2024).

However, beyond considerations of a more political nature, the 1990 Constitution introduced for the first time in Mozambique a whole range of individual rights that the previous 1975 Constitution and, above all, the practice of local institutions in the administration of justice had not highlighted as priorities. The state was now required to refrain from violence against its citizens, including those who expressed political opinions different from those defended by Frelimo.

The transitional situation in which the Mozambican legislature found itself when it approved the 1990 Constitution is evident from the Preamble: it still evokes the glorious role of Frelimo in the country’s struggle for liberation and admits that, in the name of the people, there will be a shift in the principles governing coexistence among Mozambican citizens.

In fact, the “people” saw this sudden and abrupt transition without any involvement, watching the structural changes in the country in a completely passive manner. From the point of view of local society’s participation, there was no difference between the 1975 and 1990 Constitutions (Mondlane, 2012).

Apart from these preliminary considerations, the 1990 Constitution was based on the following pillars: the people continue to be identified as the true sovereign, exercising their power through the Constitution (Article 2); social justice as one of the fundamental objectives, together with respect for human rights and equality of citizens before the law (Article 6); democracy and freedom must be strengthened (Article 6), and the activities of religious denominations must be valued within a secular state (Article 9). The State was still the owner of all natural resources, land and subsoil present in Mozambique (Article 35), including land (Article 46), but allowed and encouraged free economic initiative (Article 41).

Given this constitutional system, which was still “mixed”, at least in principle, Title II addressed the issue of Fundamental Rights, Duties and Freedoms. Here too, adherence to liberal principles was “imperfect”, since the State was not only a neutral guarantor, but also dictated some of the ethically preferable behaviours of citizens. For example, the right and duty to vote for Mozambican citizens over the age of 18 (Article 73) reflected the necessary civic commitment that all citizens must demonstrate towards their country; the right to press and information (art. 74), which will be better regulated by the adoption of a specific law, Law 18/91, known as the Press Law, intersected with the right of assembly, association and active participation in public life (arts. 75-77 and art. 80, concerning the possibility of lodging complaints and petitions with the competent authorities). In terms of workers’ rights, the existence of free trade unions and the right to strike were recognised (Article 91), while education was considered a right and a duty (Article 92) and medical and health care a duty of the State (Article 94).

These rights and freedoms were guaranteed by the State and had to be exercised within constitutional limits (Art. 96). As for possible violations of these inalienable prerogatives by State agents, the new Constitution assumed full responsibility, setting out all the principles that are “sacred” from a legal point of view, such as the right to the presumption of innocence, the non-retroactivity of the law, except when it benefits the defendant, maximum limits on preventive detention (Article 101), and habeas corpus (Article 102).

Such freedoms may be suspended on an exceptional basis only after a declaration of war, siege or emergency (Article 106).

A brief analysis of the new 1990 Constitution suggests that it is based on some of the fundamental principles of liberalism, both in economic and social and political terms, introducing the individual as a privileged subject of law. However, the legacy of the past is felt in two ways: on the one hand, in terms of the significant presence of the state in the country’s economy (mainly with regard to natural resources, which belong to it), promoting a “positive” conception of rights (e.g. with regard to medical care, education, the duty to vote, etc.) and not simply a

“negative” one. On the other hand, in terms of institutional architecture, with few guarantees for the opposition and a strong concentration of power in the hands of the president, thus threatening the political pluralism that had been formally embraced for the first time and revealing traces of authoritarianism within a framework of democratic guarantees.

There is little doubt that, in part, such ambiguity may have contributed to widespread human rights violations by the state.

Still in 2001, more than 10 years after the new Constitution came into force, the Attorney General described the legal culture of the Mozambican political elite before Parliament as follows: “the culture of legality is still a dream, even among our leaders” (AR, 2002: p. 23).

## 5. Human Rights and the 2004 Constitution

The 2004 Constitution represents the last stage of Mozambican constitutional reform, except for the specific amendment made in 2018, which concerns government bodies and decentralisation policy. Unlike the two previous ones, it is the first constitutional charter voted on by a multiparty parliament. This unprecedented condition is reflected in the text of the new Constitution, both in the preamble and in the principles it proposes, which are better defined and more clearly oriented towards liberalism and pluralist democracy.

The Preamble is extremely concise and unpretentious. The name FRELIMO never appears, as the expression “National Liberation Struggle” encompasses the entire glorious history of the fight against Portuguese colonialism; above all, it emphasises the principle of the rule of law and respect for and guarantee of “the fundamental rights and freedoms of citizens”.

Within the fundamental articles that guide the 2004 Constitution, new and decisive changes can already be found in Article 2. Two paragraphs are introduced, establishing the superiority of the Constitution over all individual and collective actors operating in Mozambique. Article 3 emphasises and reinforces this concept, explicitly introducing the principle of the democratic rule of law, which was absent from the 1990 Constitution. In terms of legal theory and respect for human rights, this is precisely the most relevant article in the entire new Constitution: “The Republic of Mozambique is a State governed by the rule of law, based on pluralism of expression, democratic political organisation, and respect for and guarantee of fundamental human rights and freedoms”. Article 4, also new, introduces the principle of legal pluralism, recognising the simultaneous presence, within the national territory, of “various normative systems”, including “traditional” ones, provided that they do not contradict constitutional principles. Article 118 is explicitly dedicated to traditional authorities, which are recognised and valued “according to customary law”. This is a recognition of a legal and cultural complexity that previous constitutions not only refused to consider but (especially the 1975 constitution) radically denied (Sousa Santos & Trinidad, 2003).

Title II (which in the 2004 Constitution is called Chapter II), “Rights, Duties

and Freedoms” (the word “fundamental” is omitted in the 2004 version) is also much more essential and concise compared to the 1990 Constitution. Without much preamble, Chapter II begins with the section on freedom of expression and information, which essentially reproduces Title II of the 1990 Constitution, except that the Press Law had not yet been approved at the time of the adoption of the second Constitution. In this new context, the rights of expression are better detailed through the introduction of a new article (No. 49), entirely dedicated to broadcasting rights, the right of reply and the right of political response.

In general, “negative” freedoms, particularly in the sphere of individual rights of expression, assembly and association, are better defined, while the “interventionist” role of the State with regard to participation in the political life of citizens is greatly reduced: this principle is explicitly stated in the first article of Chapter III, No. 56, “Individual Rights, Freedoms and Guarantees”, which, in point 3, states: “The law may only limit rights, freedoms and guarantees in cases expressly provided for by the Constitution”, thus removing the State from having a predominant role in determining the values and behaviour of citizens, as was still evident in the 1990 Constitution.

All individual rights relating to justice are specified more clearly and expanded compared to the 1990 Constitution. For example, an entire article, No. 63, on “Judicial mandate and advocacy” has been inserted, concerning the guarantees that defendants and their lawyers have before the public authorities, outlining their rights to privacy, the inviolability of correspondence between them, and the right of lawyers to communicate confidentially with their clients, even if they are in custody. Situations of preventive detention, criminal proceedings (which explicitly exclude torture as a means of obtaining evidence, in Article 65), challenges and appeals to the courts are also regulated in a more comprehensive and exhaustive manner. Article 71 introduces an innovation concerning the use of information technology, in the sense of data protection and the prohibition by the State from using computerised means to record personal data, including political, philosophical, religious or other opinions.

In Chapter IV, on political rights, where in the 1990 Constitution the State had the possibility of imposing, to a certain extent, the active participation of citizens, now the State once again guarantees only “negative” rights, except for the duty to vote, which remains, but without the provision of any sanctions. Furthermore, the new Constitution introduces some “positive” rights for special categories of vulnerable citizens: in addition to women (Article 122), children (Article 121), young people (Article 123), the elderly (Article 124), and persons with disabilities (Article 125).

The organisation of the state remains a critical issue in the 2004 Constitution. Although we do not wish to analyse this part of the new Constitution in depth, it is worth noting the following:

- 1) The principle of separation of powers is explicitly established. For example, judges are completely independent and owe obedience only to the law (Article 217);

2) The principle of decentralisation and deconcentration of powers is also evident, outlining the various institutional levels of which the State is composed, although, for example from a financial point of view, decentralised bodies, including municipalities, enjoy very little autonomy from the centre;

3) The powers of the President of the Republic remain the same, from the appointment of the chief judges of the various courts, the Prime Minister together with all other members of the executive, the rectors and vice-rectors of public universities, the chiefs of staff, the entire diplomatic corps, the Governor and Deputy Governor of the Central Bank. Other appointments, such as that of the President of the Superior Council for Social Communication, the only body controlling the Mozambican media, and the President of the Superior Council of the Judiciary, which controls the activity of all judges in the country and is chaired by the President of the Supreme Court, are also the responsibility of the President of the Republic, thus effectively undermining the principles of separation of powers set out in the Constitution.

## 6. Conclusion

This article aimed to analyse, from the perspective of their historical and political evolution, the constitutional changes in independent Mozambique and their relationship with respect for and promotion of human rights, based on the theory developed by Albert on constitutional amendment and constitutional dismemberment.

The case of Mozambique confirms the ambiguities of the transition from a single-party regime to a democratic regime: although the 2004 Constitution contains clear principles of respect for human rights, the typical legacy of a still authoritarian state with powers highly concentrated in the hands of a single figure (the President of the Republic) leaves ample room for the authorities to exercise arbitrary power against their own citizens.

The direct dependence of the judiciary on the President of the Republic, for example, is evident in all its facets, making it unlikely that this Constitution will bring about innovations that guarantee effective respect for the rule of law established as the central guideline for coexistence among Mozambicans.

These aspects have been highlighted by eminent constitutionalists, who have emphasised that Mozambique, in addition to being a presidential state (Cistac, 2011), is also a state where there is no accountability and where internal and external factors contribute to weakening the fundamental principles of the separation of powers. A recent study has highlighted how Mozambican justice operators themselves admit serious difficulties in recognising the autonomous functioning of the judiciary in the country (Ucama, 2016).

Threats and, over recent years, new conflicts both in the north of the country (in the form of Islamic terrorism) and in urban areas, after the 2023 and 2024 elections, with the execution of political opponents, intellectuals and journalists, clearly carried out by the state (Human Rights Watch, 2017), have confirmed that

the culture of human rights is still far from being fully accepted by the Mozambican authorities. The same can be said about the treatment of certain categories of workers, as has recently been the case in a ruby mine in Montepuez (Cabo Delgado Province), where forms of actual slavery and torture have been discovered against miners, with the complicity of the local police (Nhantumbo, 2017), or prisoners, whose conditions remain well below the level of human acceptability (LUSA, 2017).

In short, it seems that the constitutional dismemberment that had led the country from an authoritarian to a democratic regime is now coming to terms with ambiguities that are partly constitutional, but largely rooted in a political and legal culture anchored in past models that are ill-suited to the reality of a free country that respects the human rights of its citizens.

### Conflicts of Interest

The author declares no conflicts of interest regarding the publication of this paper.

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