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van Dokkum, A.

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## CHAPTER 8 – COLONIALISM IN MOZAMBIQUE: SUBMISSION AS LAW

In the final century or so of its existence, the Portuguese colonialist government produced a considerable legal literature on how government in the colonies was to be arranged. Much of the contents and even wording of such legislation was recycled, however, so that it is not necessary to discuss all laws in detail. What follows is a summary of legal developments concerning colonial Mozambique since 1854, when the first step was made towards the abolition of slavery, which came to be replaced by other forms of submission. This chapter studies how Portuguese legislation imposed on Africans a racialist ordering of society. Portuguese legislation itself never evolved into accepting African populations as equals of the Portuguese within the empire. The chapter also studies how the institution of chiefdom was transformed into a part of the colonial government in Mozambique. The information given is for providing background; due to considerations of word count, I cannot mention all details that might otherwise be relevant in a more in-depth historical overview.

### Colonial legislation about government and labour regime

As a first step towards the abolition of slavery, it was decreed in 1854 that slaves should be registered. Also the category of *liberto* (freed slave) was created. Despite the implication of the word, *libertos* remained subject to certain obligations. In 1858 it was decreed that in 1878 all slaves would be set free.<sup>57</sup> The *Organic Charter* of Mozambique of 1869 defined Mozambique as a “province”. It was subdivided into districts, which consisted of one or more *concelhos* (with « c », ± “municipal area”). Mozambique was assigned a governor-general, who chose himself the members of a supporting provincial council (*conselho*, with « s »). District governors, appointed by royal decree, were military officers. *Concelhos* had an administrator, appointed by the governor-general, and a municipal chamber of which members were chosen by a *concelho*’s electors.<sup>58</sup>

Portuguese government official António Enes (~ Ennes) shaped much of Mozambique’s colonial legislation. In 1890 he produced legislation that intended to reform the Mozambican

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<sup>57</sup> 1854, 1858: as I write unavailable to me either physically or electronically, but mentioned in Portugal (1869). See also Portugal (1875). Marques (2006: 679-681, 686) writes that the *liberto* category was introduced by Viscount Sá da Bandeira to facilitate politically the abolition of slavery in the long run; for 1854 also cf. Capela (2010: 37). See the [L] section in the bibliography for legislative texts.

<sup>58</sup> This paragraph: *Organic Charter* of 1869 (Gracias [ed.] 1894: 7-107): art. 1-4, 49, 64, 72.

*prazos* (Enes in Portugal 1890). He noted that the *prazos* were unproductive because they forced neither *prazo*-holders nor the people living on it to work. The 1890 legislation demanded from *prazo*-holders that the people living on their territories should pay half of their tax in the form of labour, under organized bureaucratic control of the government. This would promote the development of plantations, but also enhance “Portuguese dominion in Africa” and promote that *indígenas* would respect “Portuguese civilization” rather than their *prazo*-holder as their master (Enes in *ibid.*). This piece of legislation can be seen as the blueprint for the treatment of Africans in Mozambique during the next seven decades (Serra [ed.] 2000: 271-272).

In 1891 Enes was sent to Mozambique to supervise the implementation of the 1891 treaty with the British (Azevedo 1991: 63-64). He summarized his observations in a 1893 report, stressing that the abolition of slavery was good, but that this should not mean that a “labourer would be transformed into a vagabond”, and complaining that Africans now had their “sacred right to laziness” protected, a privilege not granted to “whites” in the metropole. “Sympathy with the black” prevented him from considering extermination justified, but he did not understand why Portuguese legislation hesitated to compel Africans to work (Enes 1971: 70, 75).

In the years 1895-1896 Enes was Royal Commissioner of Mozambique, amongst other things responsible for subduing Gaza king Ngungunyana (Azevedo 1991: 63-64, 234). In 1899 Enes formulated an “obligation to work” for *indígenas* (indigenous people) in the Labour Law of that year.<sup>59</sup> The law also mentions the requirement for local government institutions to use indigenous authorities for controlling purposes (art. 40). Although this Labour Law was not formally enforced in Mozambique, its ideas guided local regulations (Penvenne in Newitt 1995: 410, 490).

The *Organic Charter* of Mozambique of 1907 (Portugal 1907) made Lourenço Marques the capital of the “province” (art. 1). The territory was still divided into districts but now knew more local diversification with not only *concelhos*, but also civil boroughs or major captainships, which could further be subdivided into “military commands” (art. 2), a type of government that, as we have seen, already existed in Barue before 1907. *Concelhos* could be established in cases of a sufficient number of agglomerated Europeans or with some commercial or industrial importance (art. 84). Bureaucracy was defined to deal with “indigenous affairs”, such as the regulation of the “duties” of chiefs, control of migration of

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<sup>59</sup> Portugal (1899); cf. Serra ([ed.] 2000: 206, 211). Antecedent legislation was Portugal (1878) and (1894). The latter defined *indígenas* in terms of “customs” and “race”.

the *indígenas* and the organization of the “supply of indigenous labourers” (art. 37). Civil boroughs encompassed indigenous areas that were “totally dominated and pacified” but where the inhabitants’ “state of civilization and progress [was not yet] compatible with a more perfect administrative system” (art. 85). Major captainships were to be established where (Portuguese) authority was not “absolutely effective” or where the *indígena* was not “totally pacified” (art. 86). Civil boroughs, major captainships, and military commands were to have boundaries that coincided “as much as possible with indigenous divisions”, so that indigenous authorities could easily be “absorbed and substituted” (art. 87).

In 1910 the Portuguese monarchy was overthrown and a republic was installed. The republican constitution adopted a year later (Portugal 1911) summed up many “individual rights and guarantees” for “Portuguese and resident strangers” (art. 3). The administration of the overseas areas was to be determined by “decentralization, with special laws adequate for the state of civilization” of each of them (art. 67). The Constitution changed nothing in the overseas areas. This led to the paradoxical situation that a liberal and republican Constitution could continue colonial subjugation and exploitation (Meneses pers. comm.).

Portugal (1914) considered the overseas occupations “colonies”, although the word « provinces » was also used.<sup>60</sup> “Indigenous chiefs” were to be submitted “as much as possible by peaceful means” and incorporated within the administration of the colony. *Indígenas* were to be ruled under a specific civil, political and criminal statute and would not normally be able to enjoy “political rights in relation to institutions of a European character” (*Bases* [principles] 16, 18, 31). This separation of *indígenas* from Europeans came to be known as the infamous *indigenato* system. Only “assimilated” (*assimilados*) could be associated with “whites” (*Base* 31; Meneses 2007: 17).<sup>61</sup> In 1918 territories of *indígenas* were legally defined as separate from other territories.<sup>62</sup>

In 1926 an army coup in Portugal overthrew the republican government and started a military dictatorship legislating through “decrees with the force of law” (Caetano 1986: 103). After this event, Portugal (1926) further formalized for Angola and Mozambique the *indigenato* regime.<sup>63</sup> *Indígenas*, with their “mentality of primitives”, were not to be regulated under Portuguese law but under “their own juridical order”. This shielded Africans juridically,

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<sup>60</sup> Law 277 of 1914.

<sup>61</sup> *Assimilados* had to comply with requirements such as being able to speak Portuguese and having “good behaviour” (Meneses 2010: 86). For Mozambique, see Portugal (1917).

<sup>62</sup> Decree 3:983 (Portugal 1918); cf. Galli (2003: 158).

<sup>63</sup> Decree 12:533 of 1926; cf. Meneses (2007: 15). Later versions were Decree 16:473 (Portugal 1929) and Decree-law 39 666 (Portugal 1954); cf. Galli (2003: 232).

politically and sociologically off from Europeans. However, Africans were nonetheless subject to a “progressive fulfilment of their legal and moral duties to work” which duties were defined by the colonizer. Forced labour was permitted for the “public interest” (Portugal 1926: art. 5).

There has been debate whether the labour regime aspect or the juridico-political aspect (c.q. the “native question”) in the *indigenato* system should be given more analytical priority, with O’Laughlin (2000) defending the first viewpoint and Mamdani (1996: 23; 2000) the latter. The 1667 comment by Barretto, quoted above makes it clear that the three aspects of *Portuguese occupation* of Africa, a resultant relation of *masters and subordinates*, and *work done* by the latter for the first were inextricably intertwined in this old colonial attitude. Surely, colonizers would have an advantage by letting others work for them. However, to determine who should be masters and who subordinates, a sociological distinction has first to be made. The *indigenato* system can be seen as a 20<sup>th</sup>-century manifestation of a general centuries old attitude of Europeans to endow themselves with rights to the detriment of others, coupled with a widespread psychological disposition of European historical superiority (Meneses 2010). This even comprised the *right to kill* non-Europeans (Van Walraven and Abbink 2003: 24-25). Thus I would say that in a more restricted sense, say when dealing with the specifics of *indigenato* decrees, O’Laughlin has a point in stressing the labour regime aspects, but that in a wider sense Mamdani is correct in stressing more the political point of view.

When António Salazar had become the paramount leader of the Portuguese government from 1930 onwards, the post-1926 regime came to be known as the *Estado Novo* (New State – Newitt 1995: 445). The New State defined the status of its overseas occupations in the *Colonial Act* of 1930.<sup>64</sup> The state might compel *indígenas* “to work on public schemes” in the case of “judicial decisions of a penal nature” or “the fulfilment of fiscal obligations”.<sup>65</sup> The Portuguese Constitution of 1933 stipulated that “the arrangements of the *Colonial Act* are considered constitutional material” (Portugal 1933a: art. 132). Local government was further specified in the *Organic Charter of the Portuguese Empire* and the *Overseas Administrative Reform* of 1933.<sup>66</sup> Municipal chambers, municipal commissions and local boards would still be defined according to the “importance, development and European population of a certain

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<sup>64</sup> Decree 18:570 of 1930, including the *Colonial Act* (Portugal 1930; 1948: 59-75).

<sup>65</sup> *Colonial Act* art. 2; art. 15; art. 19; art. 20; cf. Portugal (1948: 61, 66, 67)

<sup>66</sup> Decree-law 23:228 (Portugal 1933b) resp. Decree-law 23:229 (Portugal 1933c).

borough”. *Indígenas* should be “protected”,<sup>67</sup> and there were to be arranged relationships with the indigenous chiefs for maintaining public order. The *indígenas* should be “persuaded” to “evolve” towards Portuguese civilization.<sup>68</sup>

*Indígenas* were to be grouped into a three-tier administrative system the layers of which were headed by indigenous authorities (*chefes gentílicos*). Chiefdoms were the larger entities, subdivided into groups of settlements and these again into settlements. Administrative posts of a borough or *concelho* were to be defined in such a way that chiefdoms would fit entirely within one single post. Frictions concerning the “local traditions” existed with the selection and deposition of indigenous leaders. On the one hand the choice of leaders should be according to “indigenous traditions”, but on the other hand the colonial government reserved the right to choose leaders of its own preference and the population was not allowed to reinstall according to its wishes a deposed leader or depose a leader installed by the Portuguese government. A peculiarity is the mentioning of “kingdom”. In Mozambique Portugal had totally destroyed the previously existing kingdoms. The professed idea that chiefs would work according to “local custom” was to a large extent fictitious,<sup>69</sup> because such kingdoms like Barue and Gaza, politically relevant in precolonial times, did not exist anymore. On the other hand, in the Makonde area the Portuguese colonial regime added “traditional” governmental layers were they never existed, or had different functions (West 1998: 147-149).

A constitutional reform in 1951 classified the overseas “colonies” back to “provinces”.<sup>70</sup> In 1953 the *Organic Law of Overseas Portugal* reiterated the still numerous competences of the metropolitan government.<sup>71</sup> In the provinces of the State of India, Angola and Mozambique Portuguese citizens were to represent themselves in a legislative council elected every four years. In Angola and Mozambique representation “for” (not: “of”) the “indigenous population” was to be “guaranteed” as well.<sup>72</sup> In Mozambique this was realized by the appointment of two members of the legislative council by the government council out of a

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<sup>67</sup> References from « ‘importance »: Portugal (1933b: art. 136, art. 231).

<sup>68</sup> Portugal (1933c: art. 28; art. 48-6-o; art. 51-10).

<sup>69</sup> This paragraph up to here: Portugal (1933c: art. 91; art. 93; art. 96-97; art. 91; art. 94, 99); cf. Florêncio (2012: 93); Meneses (2007: 15).

<sup>70</sup> Law 2:048, *Constitution* (Portugal 1951: 409).

<sup>71</sup> Law 2 066 (Portugal 1953; cf. Portugal 1956): *Bases* IV, VII-XVI.

<sup>72</sup> Last two sentences: *Organic Law of Overseas Portugal* of 1953: *Bases* XXIII: I, XXV: II; *Base* XXV: III-d. Note that Goa, Damão and Diu were termed « State of India », though nonetheless juridically being a “Province” (cf. “colony” in Portugal 1933b). In 1973, the Province of Mozambique was elevated to “State”, but this was nothing more than symbolic, as Portugal (1972b: art. 2) indicates.

pool of three candidates proposed by the governor-general.<sup>73</sup>

Overseas provinces were divided into *concelhos*, but if these had not reached a certain level of “economic and social development” they might “temporarily” be substituted by boroughs. When opportune, *concelhos* and boroughs might be grouped into districts. *Concelhos* might be divided into parishes satisfying a certain population and “urban conditions”. Otherwise *concelhos*, like areas outside borough capitals, were divided into administrative posts. Only the *concelhos* and the parishes were “properly speaking” self-standing local bodies (*autarquias locais*).<sup>74</sup> The 1972 *Organic Charter* largely retained the different status between areas with less and more “economic and social development” concerning the administrative division within the overseas “provinces”.<sup>75</sup>

In 1954 it was stated that “the authorities can only impose [...] work in cases specifically recognized by law”.<sup>76</sup> In spite of such a soothing clause, forced labour was well remembered in Barue during my fieldwork (Matias SN; Francisca M; Sueta AC; Tomás SCS). Another way to get the population to work was not only through direct enforcement but through imposing tax obligations for which people had to work to be able to satisfy them. One notorious way to obtain money was to work in mines in South Africa (Serra [ed.] 2000: 377-394).

In 1961 the *indigenato* system was abolished by decree.<sup>77</sup> The decree’s sole article consists of only two *lines*, but the accompanying introduction devotes two *pages* to exalting the virtues of Portuguese colonialism. Portugal had been capable of “implanting humane democracy in the World to which the West had expanded”. Although concerning the protection of social structures in tropical regions there had been

a problem of legal technique, which was translated in the mix-up of the concept of citizenship as the capacity for enjoyment and exercise of political rights,

Portuguese legislation had always been targeted at “the evolution and progress of the overseas populations”. The abolishment of the *indigenato* is, the introduction concludes, only a “logical consequence” of this evolutionary approach. Legally, compulsory labour ceased to exist. Newitt identifies the anticolonial war (in Angola), economic considerations, and

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<sup>73</sup> *Statute of the Province of Mozambique* (Portugal 1955: art. 21).

<sup>74</sup> This paragraph up to here: *Organic Law of Overseas Portugal of 1953: Base XLVI: I; Base XLVI: II; Base XLVI: IV; Base XLVI: V; Base XLVIII; Base XLIX: I.*

<sup>75</sup> Law 5/72; Portugal (1973: 365-402): *Base XLVIII: 2*; cf. Pitrosse (2009: 44).

<sup>76</sup> Decree-law 39 666; Portugal (1954: art. 32).

<sup>77</sup> Decree 43 893 of 6 September 1961; Portugal (1961a). See Meneses (2007: 18).

investigations by the International Labour Organization into Portugal's colonial labour situation as motivations for the abolition of the *indigenato* (1981: 223-224, 230, 240). Nevertheless, the Portuguese colonial government would not significantly alter the legal and political structures of its overseas empire.

The 1961 abolition of the *indigenato* also did not change the fact that in practice *indígenas* were never eligible to participate in elections within the Portuguese nation. In fact, not even every citizen was allowed to participate in elections, as requirements of literacy, tax contributions, or education prevailed.<sup>78</sup> Consequently people of African descent still had very little opportunity to exercise political rights after 1961 (Marcum 1969: 191-192; Neves de Souto 2007: 30). The system of chiefdoms and subordinate entities was simply continued using "tradition" as argument.<sup>79</sup> In 1963 it was only stipulated that three (out of 27) members of the Mozambican Legislative Council should be elected by and from amongst the "chiefdom authorities".<sup>80</sup> Effective from 1973, this was augmented to six (out of 50 – Portugal 1972b: art. 25-1-b).

#### Portuguese and Western international reactions to the anticolonial insurrection

Portugal had anticipated insurgencies at least since 1960 (Cann 1997: 39-40). The independence struggle in Mozambique will be dealt with below; here comments concerning the last years of the colonial situation will be given. The Portuguese regime believed it could maintain the (African) population's "overall support for the defense of the colonies and the concept of Portuguese sovereignty" (1997: 145). It tried to do this by implementing social programmes (education, health), executing psychological operations, and resettle the population in *aldeamentos* ("protected villages"). The *aldeamentos* were focal points for social programmes and psychological operations, but also had the objective to deny guerrilla forces access to the population (1997: 143, 146-159), where the latter motive was in fact predominant (Borges Coelho 1989: 39-40; cf. Thompson 2013.)

As for the psychological operations (or psycho-social action), these comprised "knowing the population", "its interests and aspirations", its "social forces", "ethnicities" and "traditional authorities", so as to control it through manipulation rather than physical force.

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<sup>78</sup> Law 2:015 of 1946: art. 1; Portugal (1973: 160-161).

<sup>79</sup> Decree 43 896 (Portugal 1961b); cf. Galli (2003: 159, 232).

<sup>80</sup> *Political-administrative Statute of the Province of Mozambique* of 1963, effective 1964 (based on a revised *Organic Overseas Law*); Decree 45 375; Portugal (1963: art. 26-2-e).



Anthropological studies were executed in this framework (Borges Coelho 1989: 30-35); we shall encounter one of these below in more detail (cf. Portugal 1967 in section [A] of the bibliography).

Despite the psycho-social action, the Portuguese regime also relied on military force to counter anticolonial insurgencies. In Southern Africa this was done together with the “white” minority regimes of South Africa and Rhodesia in the secret Alcora military alliance (Afonso forthcoming; Neves de Souto 2007: 302-321). Such cooperation was a result of the desire to maintain the privileged position of the “white” minority regimes in Southern Africa so that these would remain, as formulated by Salazar, an “anchor of the Western civilization”. Euro-American countries did little to challenge that attitude, or even positively cooperated, e.g. within the framework of NATO or the construction of dams for hydro-electric power (Meneses forthcoming: 41, 42-43, 45, 47).

USA policy was ambiguous. In early 1963 Frelimo-leader Mondlane had good relationships with Robert Kennedy, who believed anticolonialist movements should be helped, but covertly so that the relationship with Portugal would not be disrupted. In this way the USA could develop relations with future African leaders. The CIA provided a subsidy of USD 60,000 through the African-American Institute (AAI) to Mondlane. The Ford Foundation provided USD 99,700 also through the AAI for the Mozambique Institute, Mondlane’s educational facility in Tanzania (Schneidman 2004: 43-46; cf. Rita [N] 2013). Under President Johnson, USA support for Frelimo would end, although there would be support from Western European countries like Denmark, Norway, Sweden and the Netherlands (Schneidman 2004: 83; for the USA, see Minter 1972).

With hardly any serious objections from fellow Western governments, Portugal could continue to militarily counter anticolonial insurgencies. In Mozambique a massive operation to destroy Frelimo in Cabo Delgado, called “Gordian Knot”, lasted from May to August 1970 but failed to achieve its objective (Munslow 1983: 116). Several massacres against the population were also carried out, such as the one at Wiriyamu on 16 December 1972, which finally severely damaged Portugal’s moral standing within the Western world (Henriksen 1983: 130; Neves de Souto 2007: 271-273; cf. Cann 1997: 120).

### Summary

An overview was given of Portugal’s colonial policies concerning the African population in Mozambique, known generally as the *indigenato* system. Africans were separated from

Europeans in political, legal and spatial terms and were subjected to compulsory labour regimes the terms of which they could not influence. Western countries did very little or nothing at all to change this situation.