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Weimar in Africa: human rights and government in the Spanish territories of the Gulf of Guinea, 1931-1936

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**WEIMAR IN AFRICA: HUMAN RIGHTS AND
GOVERNMENT IN THE SPANISH TERRITORIES
OF THE GULF OF GUINEA, 1931-1936**

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ABREVIATIONS

AGA: Archivo General de la Administración de Alcalá de Henares: General Archive of the Administration located in Alcalá de Henares

BOC: Boletín Oficial de los Territorios Españoles de Golfo de Guinea:

CE'31: Constitución Española de 9 de diciembre de 1931: Spanish Constitution of December, 9th, 1931

DGMC: Dirección General de Marruecos y Colonias: General Directorate of Morocco and Colonies

GG: Gobernador General de los Territorios Españoles del Golfo de Guinea: General Governor of the Spanish Territories of the Gulf of Guinea

ILO: International Labour Organization

RCS: Republican Colonial Statute

RD: Real Decreto: Royal Decree

STGG: Spanish Territories of the Gulf of Guinea

INTRODUCTION

Interest in Equatorial Guinea studies has increased in these first two decades of the 21st century. In recent years, PhD theses, individual and co-authored monographs, scientific papers, documentaries, seminars and conferences, etc., have focused their attention on Guinea. Many of this research work in addition to the colonial period, further analyzes the 50 years extending from its independence in 1968 to nowadays¹. However, apart from the effort scholars have made to immortalize Guinea both in its existence as a colony and as an independent state, it should be noted that other efforts have resulted in the diversification of the analyzed aspects about Guinea. Along with historical studies, which of course constitute the majority, we should also mention anthropological studies, which, thanks to ethnographic research in the field, have revealed a great deal of information about the cultures of the ethnic groups that compose Equatorial Guinea. Nor can we forget the studies carried out in fields such as literature or linguistics. Gender studies have not generated much interest yet, but even so, it is not

¹ On the occasion of the celebration of the 50th anniversary of the independence of Equatorial Guinea, a number of books covering this long period of Guinean history were published. We can highlight the following titles: J. A. YTURRIAGA BARBERÁN, *Guinea Ecuatorial: 50 años de su independencia*, Madrid, Editorial Pígalion Edypro, 2018; C. M. EYA NCHAMA, *Cincuenta aniversario de la independencia de Guinea Ecuatorial: Cruz Melchor Eya Nchama conversa con Gustavo Bueno Sánchez*, Oviedo, Pentalfa Ediciones, 1918; J. M^a CALVO ROY, *Guinea Ecuatorial: la ocasión perdida*, Madrid, Sial Ediciones, 2019.

impossible to find some titles on the matter². In short, the interest in research on Guinea is growing by the day and bibliographical references are becoming increasingly extensive³. However, despite these developments, the legal perspective has yet to capture the interest of scholars. Such lack of interest not only concerns contemporary or current researchers on Guinea, but also classic ones, that is, the ancient colonial agents or officials who wrote their memories or experiences about the colonization of Guinea. If we except some classic research works like those of Olesa Muñido⁴ and Cordero Torres⁵, in addition to some legal articles by contemporary scholars like Petit (a pioneer in the field)⁶, Belmonte Medina, Clavero⁷, Carrasco González⁸, Campos Serrano⁹, Mikó Abogo¹⁰, and Mbomio Nvó¹¹, the result is an almost complete lack of legal studies on either the colonial or post-colonial period of Guinean history.

The present thesis constitutes one of the few studies carried out on Guinea until now, be it from a strictly legal perspective or from a historical-legal point of view. In the line initiated by Petit and Clavero, it intends to take an additional step toward overcoming the constitutional abstraction that continues to characterise the studies

² In the field of gender studies, we can mention the following titles: J. RIOCHÍ SIAFÁ, *Las mujeres de Guinea Ecuatorial. Una aproximación a los estudios de género*, Madrid, Editorial Diwan Mayrit, 2018; J. ALLAN, *Silenced Resistance: Women, Dictatorships, and Genderwashing in Western Sahara and Equatorial Guinea (Women in Africa and the Diaspora)*, University of Wisconsin Press, 2019.

³ E. REUSS GALINDO, *Guinea Española – Guinea Ecuatorial. Estudio de una biblioteca guineana*, Libris (Asociación de Libreros de viejo), 2008

⁴ F. FELIPE OLESA MUÑIDO, *Derecho penal aplicable a indígenas en los territorios españoles del Golfo de Guinea*, Madrid, Anuario de Derecho Penal y Ciencias Penales (Instituto de Estudios Africanos), 1953

⁵ J. M^a CORDERO TORRES, *Tratado elemental de derecho colonial español*, Madrid, Editora Nacional, 1941

⁶ C. PETIT, *Detrimentum Rei Publicae*, en Portillo Valdés, José M^a y otros, *Constitución de España en Guinea: Orígenes y destinos*, Centro de Estudios Políticos y Constitucionales, 1998, pp. 425-494

⁷ B. CLAVERO, *Bioko, 1837-1876: Constitucionalismo de Europa en África, derecho internacional consuetudinario del trabajo mediante*, en Quaderni Fiorentini, n^o 35, 2006, pp. 430-556

⁸ A. M. CARRASCO GONZÁLEZ, El Gobernador de Fernando Poo en el cambio de régimen, en e-Legal History, n^o 10, 2010, pp. 1-27; *Estatuto del indígena en la Guinea Española: nacionalidad, ciudadanía y capacidad*, en e-Legal History, n^o 12, 2011, pp. 1-44

⁹ A. CAMPOS SERRANO y P. MICÓ ABOGO, *Trabajo y libertades sindicales en Guinea Ecuatorial*, Madrid, Fundación Paz y Solidaridad Serafín Aliaga de Comisiones Obreras, 2006

¹⁰ *Idem*

¹¹ P. MBOMIO NVÓ, *La tutela constitucional del derecho de huelga: Propuesta de regulación del derecho de huelga en Guinea Ecuatorial*, Madrid, Tesis Doctoral, UNED, Facultad de Derecho, Departamento de Derecho de la empresa, 2011

carried out on the colonial reality of Guinea. Indeed, with the aforementioned exceptions, almost all scholars often analyse the colonial reality of Guinea by divorcing it from the political ideologies that were expressed in the constitutions that applied to the metropolis during the colonial period.

In fact, the constitutional abstraction that marks the historiographic studies on Guinea is not entirely unfounded. Inasmuch as the colonial space had always been formally declared outside of the constitutional realm, it should not be surprising that scholars have shown disinterest in trying to identify a level of coherence or incoherence between the constitutional principles in force in the metropolis and the reality of the colonial space. However, if such abstraction is understandable in relation to Spanish constitutionalism before the 14th of April of 1931, it should be revisited in relation to the republican regime that was established following that date. It is true that the republicans were prudent and avoided to include the colonial issue in their constitution -a declaration made on the basis of such values as equality, freedom, justice, or the dignity of the working class. But it is also true that this constitutional silence, at least formally speaking, was replaced by the solemn declaration in the explanatory statement that accompanied the Decree of July 22nd, 1931, by which the new colonial statute for the Spanish Territories in the Gulf of Guinea was introduced. For the first time in the colonization of Guinea, a colonial statute declared the need to overcome the abstraction that had always separated the metropolis from the colony. For the first time in the colonization of Guinea, a colonial legislator declared the need to adapt colonial law to the democratic-republican values in force in the metropolis.

From a historical-legal perspective, the present thesis analyses the main reforms adopted by the republicans in the STGG since their adoption of that new criterion of interpretation of colonial reality. It aims to incorporate the reality of the said colonial territories into the new democratic-humanizing discourse that came into force in the metropolis in April of 1931. By effecting that incorporation, it seeks to reach one of the following conclusions: either that the colonizers also breathed the air of freedom and democracy that began blowing in the Peninsula on April 14th, 1931 -the hypothesis we start out with- or that the Republic, just like the extinguished monarchy, conceived the colonial territory as a space in which some or all of the legal guarantees introduced by the new constitution could not be applied.

Between the mid-15th century and 16th one, Portugal and Spain led the first colonial expansions in Africa and the Americas. Both nations, reputed Catholic kingdoms, with the excuse of Christianizing the so-called infidels, requested legal guarantees from Rome to protect their rights over the discovered territories. Portugal, a pioneer in this practice, received, among others, two bulls from Pope Nicholas V: the *Dum Diversas* of June 18th, 1452¹², and *Romanus Pontifex* of January 8th, 1455¹³. Both documents, roughly speaking, granted Alfonso V, King of Portugal, the ownership of all the ports and territories discovered and traversed on the West African coast, the ownership of the seas adjacent to such territories, and the power to Christianize the natives of those territories, with the ability to enslave them if necessary¹⁴. 38 years after the issuing of the Portuguese titles, Spain received from Pope Alexander VI, among others, two bulls named *Inter Caetera*. The first one, called the *Bula Breve*¹⁵, was issued on May 3rd, 1493, and the second one, called the *Bula Menor*¹⁶, was issued on May 4th, 1493. These documents gave the Catholic kings, in the New World, the same rights recognized by Pope Nicholas V to Alfonso V of Portugal. Based on the principles set forth in all these bulls, Portugal and Spain further intensified their explorations and exploitation of lands beyond the Iberian Peninsula. But the brutality that such an

¹² The Latin version of this bull can be read in: LEAVY MARIA JORDÃO, *Bullarium Patronatus Portugalliae Regum in ecclesiis Africae, Asiae atque Oceaniae. TOMUS I (1171-1600)*, OLISIPONE (Lisbon), EX TYPOGRAPHIA NATIONALI, MDCCCLXVIII (1868), pp. 22-23. An English version can be read in: D.G. MONTALVO, *Papal Bull Dum Diversas Issued by Pope Nicholas V 18 June, 1452*, Resources of Tyler History Blog, available at tylerhistory.org/2018/08/27/1452-papal-bull-dum-diversas/. Some fragments are also mentioned in: I. GUTIÉRREZ AZOPARDO, *Los Papas en los inicios de la Trata Negrera, África Fundación Sur, Blog Académico, October 2nd, 2008*, africafundacion.org/spip.php?article1847

¹³ The full text of the bull can be read in both Latin and Spanish in: A. GARCÍA GALLO, *Las Bulas de Alejandro VI y el ordenamiento jurídico de la expansión portuguesa y castellana en África e Indias*, Madrid, Anuario de Historia del Derecho Español (Instituto Nacional de Estudios Jurídicos), nº 27-28, 1957-1958, pp. 765-775, boe.es/publicaciones/anuarios_derecho/abrir_pdf.php?id=ANU-H-1957-100830. The bull is also cited in a number of articles including: M^a L. BEJARANO ALMADA, *Las bulas alejandrinas: detonantes de la evangelización en el Nuevo Mundo*, Revista del Colegio de San Luis (Nueva Época), nº 12, 2016, p. 233; A. ALDO CASSI, *Ultramar. L'invenzione europea del nuovo mondo*, Roma, Editori Laterza, 2007, pp. 39-40

¹⁴ It was written in the *Dum Diversas*: «[...] te [al rey Alfonso V de Portugal] concedemos, por la autoridad apostólica y a tenor de las presentes la plena y libre facultad, que poseerás a perpetuidad y según tus usos y los de tus sucesores, de invadir, conquistar, apoderarse, subyugar y reducir a esclavitud perpetua a los sarracenos, paganos y otros infieles y a los enemigos de Cristo [...]». See I. GUTIÉRREZ AZOPARDO, *Cit.*

¹⁵ The full text of the bull can be read in: A. GARCÍA GALLO, *Cit.*, pp. 799-808

¹⁶ *Idem*

undertaking entailed for the natives of the discovered territories soon gave rise to the so-called "debate on the question of the Indies", a meeting in which the nature of the Indians was to be determined. From the resolution of this debate, that is, either from the affirmation of the humanity of the Indians or from the affirmation of their animality, would be drawn, in turn, the decision on other issues such as the enslavement or the affirmation of the rights of the Indians.

In the debate on the question of the Indies, two theses were confronted: the colonialist-slavery thesis defended by Juan Ginés de Sepúlveda and his co-religionists, and the colonialist-humanist thesis defended mainly by Bartolomé de Las Casas and Francisco de Vitoria. It is of no interest here which thesis ended up prevailing. Historical reality would reveal the triumph of the first thesis. In the period from the 16th century to the outbreak of the liberal revolutions, not only were the Indians enslaved in their lands, but hundreds of thousands of Africans were kidnapped from their homes and enslaved in the so-called New World.

In 1776, the Revolution of the thirteen British colonies in North America broke out. Years later, in 1789, the French Revolution took place. Both revolutions, known as the main liberal revolutions, marked the exaltation of the bases of iusnaturalism received from the Salamanca School and developed throughout the Enlightenment. With such revolutions, the universalism of the natural rights defended by those monks from Salamanca, acquired solemnity. Rights such as equality, freedom, or property, were publicly declared values inherent to humanity, and therefore untouchable and inviolable by any authority.

However, it is well known that the constitutions and bills of rights emanating from the liberal revolutions did not overcome the abstraction that separated them from reality. The declared natural equality coexisted with the legal exclusion of the female collective, the proclaimed freedom befriended the enslavement of the colonized, and non property-owners were excluded from the "social contract". In short, the universalism of the rights declared in the liberal constitutions could not to be interpreted beyond their strict sexual, racial, and patrimonial limits. Were all human beings equal? Yes, but only men; were all men free by nature? Yes, but only the colonizers; and, were all citizens parties to the social contract? Yes, but only property-owners.

The industrialisation process that took place in Western Europe and North America in the nineteenth century could not better convey the abstraction that characterized the rights and freedoms proclaimed in liberal constitutions and bills of rights. Principles such as contractual freedom, the autonomy of will and contractual equality only served to further distance the discourse from reality. In the face of the power of machines, many rural groups were forced to move to the cities in order to provide for themselves. But the cities were under the control of capital owners, who in turn moved the machines of the large factories. But, as it is well known, capital owners were not exactly moved by their humanist feelings; they were moved by the eagerness to accumulate more and more capital, a purpose that can only be achieved through the philosophy of maximum reduction of expenses. But expenses here not only concern the repair and purchase of new machinery; expenses are also the salaries of workers in the big industries. It is precisely within this logic that we must understand the reality of the rural collectives that flowed into the cities. For these peasants, on the basis of an autonomy of will driven by hunger, had to choose between returning to the countryside and dying of starvation, or accepting the contractual conditions of industrialists who were prepared to pay only the minimum necessary to maximize their profits. The workers' acceptance of such contracts only drives the process forward. The workers work under subhuman working conditions and for subsistence wages; the industrialists pocket huge profits that they reinvest in the industry; and the industry in turn grows, driving more and more peasants into the city. Such an influx of more peasants into the cities only increases the bargaining power of the industrialists; for as there is more demand for employment and little supply of it, the employers can further dehumanize the already inhumane working conditions. But, as the 19th century progressed, the working class, under the intellectual tutelage of thinkers like Marx and Engels, became increasingly aware of its unjust reality until, at the end of the century, it expressed a collective discontent that caused the so-called "social question" to explode.

The social question posed a complicated dilemma for the liberals. Either they approved the social demands of the working class and thus saved the basis of liberalism, or they ignored the voices of the workers and faced a revolution that threatened to end all liberal legal conquests. The outbreak of World War I, and the economic instability resulting from the conflict, only increased the pressure on liberal governments to respond to the demands of the working class. Either the answers were further delayed,

or the proletarian revolution, which had already triumphed in Russia, would take over the continent, sweeping away all liberal legal conquests.

It is in this context that a new constitutionalism emerged -the social constitutionalism introduced by the Weimar Constitution of August 11th, 1919. But the role it played in constitutional history was not only due to its social guarantees; two years before the adoption of the German Charter, the Mexican constitution of 1917¹⁷ had already established social guarantees in favour of the working class. But despite the pioneering character of the Mexican Charter in this regard, it cannot be considered a turning point in constitutional history. In the Mexican Charter, the meaning of the term "citizen" did not yet transcend the patrimonial confines established by liberal constitutionalism. According to the Mexican Constitution, the holder of national sovereignty was not yet defined with objective and integrating criteria. In 1917, in the United States of Mexico, being a Mexican was not enough to to be a citizen. It was necessary to not be a woman, but it was not enough to be a man; it was necessary to "have an honest way of living" (Art.34.II), that is, to be a "proprietor". It is precisely for this reason that the Mexican Charter insisted on adding the adjective "proprietor" to terms such as "deputy" or "senator". In the Weimar Constitution, on the other hand, all sexual, racial and patrimonial criteria used by the liberals to establish the distinction between citizens, the true holders of national sovereignty, and the rest of the components of the people, were dropped. In the German Charter of 1919, there were no other conditions for defining German citizens than the objective requirements of "being German" and "over 20 years of age". the constitution intended to overcome the abstraction that characterized the interpretation of a cardinal liberal principle such as the sacredness of the right to property. According to Weimar constitutionalism, the protection of property transcended from a strictly individualistic dimension to acquire a collectivistic dimension. In other words, in the German Charter, property was untouchable as long as it did not collide with the collective interest. As soon as the latter situation arose, property could be expropriated in benefit of the general interest.

¹⁷ The original text of the constitution can be read in: *Diario Oficial (Mexicano)*, n° 30 (TOMO V) de 5 de febrero de 1917, pp. 149-161, available at diputados.gob.mx/LeyesBiblio/ref/cpeum/CPEUM_orig_05feb1917_ima.pdf . A commentary on the text can be read in: M^a PILAR VILLABONA, *La Constitución mexicana de 1917 y la Española de 1931*, en *Revista de Estudios políticos*, n° 31/32, 1983, pp. 199-207

As we have seen before, the social question was not but a consequence of that strictly economic-patrimonial interpretation that was made of principles such as party autonomy, contractual freedom, or contractual equality. Before Weimar, such principles were interpreted independently from any external circumstances that might vitiate their content. In other words, before Weimar, the working class, regardless of the motives that pushed it to accept the subhuman working conditions of employers, was formally equated with the employer in terms of contractual freedom. After all, it retained its party autonomy to reject the working conditions offered by employers. With the Weimar Constitution, this formal interpretation was overcome. In the German Charter, the weak bargaining power of the worker was reinforced by a series of social guarantees whose purpose was none other than to put them on a factual equal footing with the employer in the context of labour relations. Weimar constitutionalism was the first experience in the humanization of employer-employee relations. Accordingly, the working class ceased to be a mere instrument at the service of maximizing the profits of employers, and its protection became a central concern of labour law.

Along with the aforementioned novelties, Weimar constitutionalism introduced another no less important one. Under liberal constitutionalism, since constitutions were conceived as mere political documents, the content of the rights and freedoms declared in them became subject to the development of laws that often ended up emptying the content of constitutional declarations. However, since the Weimar Constitution, constitutions acquired a normative effectiveness and the constitutional rights and freedoms went from being "mere declarations of rights" to being "true declarations of rights". In other words, since the Weimar Constitution, constitutional provisions could be directly invoked to seek the protection of a fundamental right before the courts. Moreover, Weimar asserted the constitution's supreme position within the pyramid of the national legal order. Such supremacy of the constitution implied the inclusion of a mechanism to guarantee the superiority of the constitutional text.

As we have discussed briefly, Weimar constitutionalism marked the beginning of an egalitarian and integrating interpretation of constitutional rights and freedoms. The entire German population was objectively integrated into the Weimar system of legal guarantees. The only group whose status was not determined in the German Charter was that of the colonized. In relation to the latter, Article 6 merely established that the

colonial question fell within the exclusive competence of the Reich. Several interpretations could be drawn from this provision. Inspired by the inclusive legal discourse of the Weimarian model, it is possible to believe that the concept of "German people" also included the colonized, who would acquire German citizenship through a process of naturalization that could have been subsequently adopted. It can be presumed that when the said article referred to the exclusive competence of the Reich to legislate on colonial issues, it referred to the legislative power of the Reichstag. It is also possible that the concept of "German people", as occurred under German colonial law before the First World War¹⁸, excluded all the colonized. Unfortunately, none of these interpretations could be confirmed then, nor can they be confirmed today. Article 6 would never be anything more than a romantic wish: the German colonial territories were not only divided among the Allies (Great Britain, France, Japan, and Belgium), but never again became subject to German dominion. Consequently, in relation to the colonial question, an experimental field was lacking to confirm whether Weimarian constitutionalism was integrative with the colonized peoples, or whether it simply excluded them as did the constitutions and bills of rights approved under the liberal regime.

But the fact that the Weimar Republic lacked colonies in which to observe or assess the transformative effectiveness of the democratic and integrating values of its Charter did not prevent such observation from being carried out indirectly. With the exception of the old democracies, that is, the United States of America, Great Britain and France, all the constitutional experiences that took place in the inter-war period were inspired by the Weimar model. But among all those constitutions impregnated by the new values of German constitutionalism, only the Spanish one of 1931 had colonies in which to assess the legal-administrative transformations derived from the new social democratic republicanism of the Weimar Constitution. So, "Weimar in Africa..." is a title that must be understood in its strictly hypothetical and metaphorical sense. Since Germany lacked colonies in the inter-war period, and being Spain the only colonial Republic that was inspired almost entirely by Weimar values, this, through the legal-administrative reforms approved in its STGG, becomes, for the purposes of the present

¹⁸ With regard to the most important features of German colonial law, see: J. ZOLLMANN, *German Colonial Law and Comparative Law, 1884-1919*, en THOMAS DUVE, *Entanglements in Legal History*, Max Planck Institute for European Legal History, 2014, pp. 253-294

thesis, the only criterion available to make a hypothetical evaluation of how the constitutionalism of Weimar could have affected the daily life of the colonized.

In relation to the main sources used for the development of this thesis, we must begin by recalling the central role played by the work of the poet and jurist Agustín Junco Miranda¹⁹, who, as a result of his direct experience in the STGG, in addition to his book *Cartas de la Guinea*²⁰, his only work in prose, legated for historians a powerful legislative compilation in which he brought together all the regulations approved in Spanish Guinea since the Treaty of El Pardo of 1778, until 1945²¹. This text has been fundamental in allowing us to observe the main formal transformations that the new regime brought about in colonial legislation.

As José Siale Djagani²² recalls, an opinion defended by other scholars like Ndongo Bidyogo²³, the Spanish colonial state (like other colonizer states) manifested itself in its colonial space as a dual state. On the one hand, the colonising action was articulated through a power regulated by colonial norms. It is true that most of these norms lacked a common sense of justice, but at least they sought a certain legal security. But, on the other hand, the colonizing action manifested itself in the colony as a factual power that overflowed all formality. In the relations between the colonizers and the colonized, a factual-administrative practice ruled, whose principles, without drawing legal content, gave meaning to the law itself. For example, in Spanish Guinea, slapping a native was considered an appropriate punishment according to "indigenous psychology"²⁴; putting a white (European) man to work as a *bracero* was prohibited;

¹⁹ A brief biography of the author can be read in: A. MIRANDA JUNCO, *Poemas y ensayos*, Tenerife, Universidad de La Laguna, 1994, pp. 1-9, available at: [C:/Users/Usuario/Downloads/MIRANDA%20\(1994\),%20Poemas%20y%20ensayo.pdf](C:/Users/Usuario/Downloads/MIRANDA%20(1994),%20Poemas%20y%20ensayo.pdf)

²⁰ A. MIRANDA JUNCO, *Cartas de la Guinea*, Madrid, Editorial Espasa-Calpe, 1940

²¹ A. MIRANDA JUNCO, *Leyes Coloniales: Legislación de los territorios españoles del Golfo de Guinea*, Madrid, Imprenta Sucesores de Rivadeneyra, 1945

²² J. F. SIALE DJANGANI, *Ēsási Eweera: en el laberinto del Estado dual*, en Endoxa: Series Filosóficas, nº 37, 2016, pp. 169-171

²³ D. NDONGO BIDYOGO, *Historia y Tragedia de Guinea Ecuatorial*, Barcelona, Editorial Bellaterra, 2020, pp. 21-33

²⁴ On March 17th, a doctor of the General Hospital of Santa Isabel, after slapping a native nurse who was caught committing an administrative fault, reported the infraction to the Governor in these terms: «En cumplimiento de mi deber, tengo el honor de dar cuenta a V.E. de una falta de consideración cometida en mañana de hoy, en esta oficina, por el enfermero 2º Bernardo Ngache, y el mozo Pedro Nsie, quienes

celebrating mixed marriages between colonizers and colonized people was forbidden, etc. Similar to these, there were many other practices in force in the STGG, whose validity, in the absence of prior codification, which existed in other colonizer states²⁵, was beyond doubt. In order to understand these practices and the logic that often underpinned them, it was necessary to explore the writings and documents issued by colonial officials, agents and private settlers throughout the process of colonization of Guinea. In this sense, the eight months invested in the search and reading of documents at the the General Archive of the Administration (AGA) (located in Alcalá de Henares) were vital.

In seeking to reconstruct the extra-legal colonial reality, in addition to the aforementioned archival documents, journalistic sources and historical literature have also been useful. With regard to the former, it should be noted that the silence that marked the metropolitan press in relation to the reality of the STGG makes unparalleled the value of *La Guinea Española*, a journal that, thanks to its constant rhythm of publication, must be considered the most important among the journals and reviews focused on the colonial issue. Along with *La Guinea Española*, we should also mention the Catalan journal, *El Progreso*, from which some pieces were selected in the preparation of this thesis.

In relation to historical literature, a deficiency should also be noted. As mentioned above, despite the existence of abundant historiographical material on

fueran sorprendidos por mí, el primero escribiendo a mano en la mesa de mi despacho y el otro en la máquina de la oficina, sendas cartas que no traté de averiguar a quienes iban dirigidas.... Conociendo, como conozco la psicología especial de esta gente, al momento de ser sorprendidos, y antes de que pudieran esconder sus respectivas cartas, con ellas apuñadas, golpeé al primero de una bofetada, no haciendo lo mismo con el segundo, por haberse humillado reconociendo su falta.... Estos hechos, Excmo. Sr. No es posible tolerarlos, particularmente a esta clase de empleados; por el contrario, deben ser reprimidos de modo más rápido y contundente, como lo hice, que es el único castigo que ellos consideran justo, sobre todo, cuando se aplica en el momento oportuno y cuando a quien lo inflige, comprenden ellos que le asiste toda la razón [...]». AGA G-1838 (81/8107), escrito (nº 379) de 17 de marzo de 1932, firmado por un médico del Hospital General de Santa Isabel

²⁵ For example, France and Italy formally prohibited mixed marriages between white and native settlers. See: O. DA NAPOLI, *Il diritto coloniale dall'età liberale al Fascismo: tra missione civilizzatrice e razzismo*, Tesi di Dottorato, Università degli Studi di Napoli "Federico II", Dipartimento di Giurisprudenza, pp. 98-107; J. P. SARTRE, *Colonialismo y neocolonialismo (Situations V)*, traducción de J. MARTÍNEZ ALINARI, Buenos Aires, Editorial Losada, 1965, p. 8; D. LOSURDO, *Controhistoria del liberalismo*, Roma, Laterza, 2006, p. 98; *Política colonial y organización del trabajo en la isla de Fernando Poo: 1880-1930*, Tesis Doctoral, Universidad de Barcelona (Facultad de Geografía e Historia, Departamento de Antropología Cultural), Noviembre de 1983, p. 161

Guinea, the republican period receives almost no special attention in all these historiographical studies. Among the few titles that make a colonial criticism of the Republic, apart from a chapter in "Historia y Tragedia." by Donato Ndong, we can mention some essays by Emilio Carles²⁶, Francisco Madrid²⁷, Miguel Ángel Pozanco²⁸, Guillermo Cabanellas²⁹, and Antonio Rebollo³⁰.

Finally, it is also important to mention the usefulness of the Journal of Sessions of the Congress of Deputies in the preparation of this thesis. It is true that the colonial question was not within the competence of the Spanish parliament; but, being competent to approve the State budget, it had to deal with the colonial budget, which was the means by which the colonial question was introduced into the Congress of Deputies. But in addition to the colonial budgets, the republican congress also debated, although very rarely, questions relating to the rights of those residing in the STGG. In order to discover the opinion of the republicans in relation to all these colonial issues, it has been useful to check the said Journal of Sessions of the Congress of Deputies.

²⁶ EMILIO CARLES, *Misioneros, negreros y esclavos: notas de un viaje a Fernando Poo*, Valencia, Colección Cuaderno de Cultura (Publicación quincenal; LV. Col. Sección: Reportajes Sensacionales), 1932

²⁷ FRANCISCO MADRID, *La Guinea incógnita. Vergüenza y escándalo colonial*, Madrid, Editorial España, 1933

²⁸ M. ÁNGEL POZANCO, *Guinea Mártir: narraciones, notas y comentarios de un condenado a muerte*, Madrid, Editor Colección Actualidad, 1937

²⁹ G. CABANELLAS, *¡Esclavos! Notas sobre el África negra*, Madrid, Redacción y Administración, 1933; *La selva siempre triunfa*, Madrid, Editado por El Cobre Ediciones, 2009 (1ª Edición en 1944)

³⁰ E. ANTONIO REBOLLO, *Estupendos misterios de la Guinea. O exposición internacional permanente de nuestro desastre colonial*, Madrid, Agencia Española Librería, 1933

CHAPTER 1

THE COLONIAL QUESTION AND THE LEAGUE OF NATIONS

SUMMARY: 1. The mandate system in the Treaty of Versailles 2. The ILO and the social question in the colonial space 3. The Slavery Convention of 1926 and the Forced Labour Convention of 1930 (No 29) 4. Weimar and the new interwar social constitutionalism 4.1. A constitution born and marked by a context of war and revolution 4.2. The Constitution of Weimar

1. The mandate system in the Treaty of Versailles

If the Congress of Berlin (15/11/1884 - 22/02/1885) meant the incorporation of Germany into the colonial enterprise³¹, the Treaty of Versailles, in contrast marked the sudden end of the German colonial project. Article 119³² of the pact took away from the Germans not only the part assigned to them in the distribution of that «magnifique gâteau de l'Afrique»³³, but also the territories they possessed in the Southern Pacific³⁴. It

³¹ J. R. DRINCOURT ÁLVAREZ, *Estado constitucional: un análisis histórico de Francia (1871-1931) con referencia comparada a Gran Bretaña*, Universidad Complutense de Madrid (Departamento de Historia Contemporánea, Facultad de Geografía), Tesis doctoral dirigida por Juan Carlos Pereira Castañares, 2015, p. 51; R. MESA, *La idea colonial en España*, Valencia, Editor Fernando Torres, 1976, pp. 56-57

³² Article 119 of the Treaty of Versailles: «Germany renounces in favour of the Principal Allied and Associated Powers all her rights and titles over her oversea possessions».

³³ This expression was used by Leopold II, King of Belgium, to refer to the African continent whose division was being debated during the Conference of Berlin. See A. ANGHIE, M. KOSKENNIEMI, A. ORFORD, *Imperialismo y Derecho internacional*, Bogotá, Siglo del Hombre Editores, 2016, p. 133. In the partition of Africa, Germany obtained a number of territories. In West Africa, it obtained Togoland (87,200 km²). This territory included the current territories of Togolose Republic and the Volta Region in the state of Ghana. In Central Africa, Germany obtained Cameroon (495,000 km²). In South West Africa, it had Namibia (835100 km²), officially known as German South West Africa. In East Africa, it obtained Tanganica (994,996 km²), officially known as German East Africa, which included the current states of

is precisely these principles that the internationalist doctrine has been gathering under the denomination of system or regime of mandates of the League of Nations. Although scholars agree that the regime was regulated in Articles 22³⁵ and 23³⁶, the truth is that

Tanzania, Burundi and Rwanda. J. R. DRINCOURT ÁLVAREZ, *Cit.*, p. 52; J. L. MIÈGE, *Expansión europea y descolonización de 1870 a nuestros días*, Barcelona, Editorial Labor, S.A., 1980, pp. 30ff.; *Cameroon*, London, Her Majesty Stationery Office, 1920, pp.13-18, available on the website of the World Digital Library: wdl.org; *Togoland*, London, Her Majesty Stationery Office, 1920, pp. 1-5, 13-22; *Tanganika (German East Africa)*, London, Her Majesty Stationery Office, 1920, pp. 27-35; *South-West Africa*, London, Her Majesty Stationery Office, 1920, pp. 11-16

On November 4th, 1911, Germany and France signed an international treaty. Under this agreement, France, forced of course, ceded to Germany a total of 250,000 km² separated from French Equatorial Africa (Afrique-Équatoriale Française). Under the name of Neukamerun, Germany annexed the new territories to its Cameroon, which became a colony of 790,000 km². See: G. N. ABAD, *Un guardia civil en la selva*. Barcelona, Editorial Ariel, 2008, p. 28; M. VILARÓ I GÜEL, *La internación de la SCHUTZTRUPPE, La Guinea Española en la Gran Guerra*, Madrid, Editorial Letras de Autor, June 2018, pp. 18-20

³⁴ In Oceania, Germany possessed a total of 93,777 km²: The Kaiser-Wilhelms-Land (70,110 km²), the Bismarck Archipelago (21,700 km²), the Caroline and Palau Islands (550 km²), the Marianas Islands (241 km²), the Marshall Islands (176 km²), and the Samoa Island (1000 km²). See: Former German possessions in Oceania, London, Her Majesty Stationery Office, pp. 1-14

³⁵ Article 22 of the Treaty of Versailles:

(1) «To those colonies and territories which as a consequence of the late war have ceased to be under the sovereignty of the States which formerly governed them and which are inhabited by peoples not yet able to stand by themselves under the strenuous conditions of the modern world, there should be applied the principle that the well-being and development of such peoples form a sacred trust of civilisation and that securities for the performance of this trust should be embodied in this Covenant.

(2) The best method of giving practical effect to this principle is that the tutelage of such peoples should be entrusted to advanced nations who by reason of their resources, their experience or their geographical position can best undertake this responsibility, and who are willing to accept it, and that this tutelage should be exercised by them as Mandatories on behalf of the League.

(3) The character of the mandate must differ according to the stage of the development of the people, the geographical situation of the territory, its economic conditions and other similar circumstances.

(4) Certain communities formerly belonging to the Turkish Empire have reached a stage of development where their existence as independent nations can be provisionally recognised subject to the rendering of administrative advice and assistance by a Mandatory until such time as they are able to stand alone. The wishes of these communities must be a principal consideration in the selection of the Mandatory.

(5) Other peoples, especially those of Central Africa, are at such a stage that the Mandatory must be responsible for the administration of the territory under conditions which will guarantee freedom of conscience and religion, subject only to the maintenance of public order and morals, the prohibition of abuses such as the slave trade, the arms traffic and the liquor traffic, and the prevention of the establishment of fortifications or military and naval bases and of military training of the natives for other than police purposes and the defence of territory, and will also secure equal opportunities for the trade and commerce of other Members of the League.

(6) There are territories, such as South-West Africa and certain of the South Pacific Islands, which, owing to the sparseness of their population, or their small size, or their remoteness from the centres of civilisation, or their geographical contiguity to the territory of the Mandatory, and other circumstances, can be best administered under the laws of the Mandatory as integral portions of its territory, subject to the safeguards above mentioned in the interests of the indigenous population.

the real *ratio legis* of the mandates can be better understood by relating the said provisions to the declarations made in some other provisions of the Pact, such as Article 118³⁷, the aforementioned Article 119, or Article 120³⁸.

(7) In every case of mandate, the Mandatory shall render to the Council an annual report in reference to the territory committed to its charge.

(8) The degree of authority, control, or administration to be exercised by the Mandatory shall, if not previously agreed upon by the Members of the League, be explicitly defined in each case by the Council.

(9) A permanent Commission shall be constituted to receive and examine the annual reports of the Mandatories and to advise the Council on all matters relating to the observance of the mandates».

³⁶ Article 23 of the Treaty of Versailles:

«Subject to and in accordance with the provisions of international conventions existing or hereafter to be agreed upon, the Members of the League:

(a) will endeavour to secure and maintain fair and humane conditions of labour for men, women, and children, both in their own countries and in all countries to which their commercial and industrial relations extend, and for that purpose will establish and maintain the necessary international organisations;

(b) undertake to secure just treatment of the native inhabitants of territories under their control;

(c) will entrust the League with the general supervision over the execution of agreements with regard to the traffic in women and children, and the traffic in opium and other dangerous drugs;

(d) will entrust the League with the general supervision of the trade in arms and ammunition with the countries in which the control of this traffic is necessary in the common interest;

(e) will make provision to secure and maintain freedom of communications and of transit and equitable treatment for the commerce of all Members of the League. In this connection, the special necessities of the regions devastated during the war of 1914-1918 shall be borne in mind;

(f) will endeavour to take steps in matters of international concern for the prevention and control of disease.»

³⁷ Article 118 of the Treaty of Versailles:

In territory outside her European frontiers as fixed by the present Treaty, Germany renounces all right, titles and privileges whatever in or over territory which belonged to her or to her allies, and all right, titles and privileges whatever their origin which she held as against the Allied and Associated Powers.

Germany hereby undertakes to recognise and to conform to the measures which may be taken now or in the future by the Principal Allied and Associated Powers, in agreement where necessary with third Powers, in order to carry the above stipulation into effect.

In particular Germany declares her acceptance of the following Articles relating to certain special subjects.

³⁸ Article 120 of the Treaty of Versailles: «All movable and immovable property in such territories belonging to the German Empire or to any German State shall pass to the Government exercising authority over such territories, on the terms laid down in Article 257 of Part IX (Financial Clauses) of the present Treaty. The decision of the local courts in any dispute as to the nature of such property shall be final».

In the Treaty of Versailles, all the aforementioned territories referred to were grouped into three categories. The doctrine usually refers to these three categories as mandate of type A, of type B, and of type C³⁹. The first group included the former colonies of the Ottoman Empire: Syria, Iraq (Mesopotamia), and Palestine. Syria was divided into two, Lebanon and Syria, and its administration was entrusted to France. The administration of Iraq and Palestine was entrusted to the United Kingdom. In fact, Palestine was also divided into two: Palestine and Transjordan. At first, the plan was to entrust the administration of Transjordan to the USA, but then this thought was abandoned because the USA did not adhere to the Treaty of Versailles and preferred to sign a separate peace treaty with Germany. The type B mandates included three German colonies in Africa: Togoland, Cameroon, and German East Africa. The latter was divided into two parts: Tanganyika and Rwanda-Urundi. The administration of Tanganyika was assigned to the United Kingdom, and that of Rwanda-Urundi to Belgium. The western vertical stripes of Togoland and Cameroon were assigned to the United Kingdom, while the remaining territories of both colonies were assigned to France. Finally, Namibia (German South West Africa) and the rest of the German colonies in the South Pacific were included in the type C mandates. To say that Namibia came under the administration of South Africa is the same as saying that it was assigned to the United Kingdom. The rest of the German territories in the Pacific were divided between the United Kingdom⁴⁰ and Japan⁴¹.

According to the third paragraph of Article 22, this classification of mandates was based on the particular circumstances of the territories concerned, mainly on their "level of development". It was recognized that the peoples of the type A mandates had reached a certain level of development which made it possible to recognize them "provisionally" as independent nations. Thus, the administering powers assisted them in

³⁹ J. R. DRINCOURT ÁLVAREZ, *Cit.*, p. 415-416; A. M. DE LA MUELA, *Emancipación de los pueblos coloniales y el derecho internacional (Lección inaugural del curso 1965-1966)*, in *Anales de la Universidad de Valencia*; Vol. XXXIX, nº de registro 804-65, 1965, pp. 30-45; J. L. MIÈGE, *Cit.*, pp. 130-132

⁴⁰ Australia took over the administration of Kaiser-Wilhelms-Land and the Bismark Archipelago. The island of Samoa remained under the administration of New Zealand. *Idem*

⁴¹ Before the end of the war, Japan occupied the Carolinas Islands, Palau Islands, Marianas Islands, and the Marshall Islands. The mandate system only came to confirm Japan as the administrator of those territories. *Idem*

the exercise of sovereignty until they achieved complete independence. Type B and C mandates fell on peoples whose level of development was judged to be very low. These peoples were not allowed to elect their representatives like those of the A mandates, but were subject to the administration of the mandataries assigned in the treaty.

According to Article 22, second paragraph, all these territories remained under the control and tutelage of the League of Nations; the managing countries were only "mandataries", that is, administrators delegated by the League itself. As such, their actions under the mandates were subject to certain prohibitions or guarantees considered indispensable for the good administration of the said territories. The first block of these guarantees addressed the security of the colonizers. Within this group of guarantees we can identify those aimed at ensuring peace and public order in the mandates. It was the case, for example, of the prohibition to sell weapons to the indigenous people, or the prohibition to give them military instruction for other purposes than the police or the defense of the territory (Art. 22.5). In order to promote external peace, that is, tranquility and good relations between the colonial powers, each leader, in the territories under his tutelage, in addition to abstaining from "establishing fortifications or military or naval bases" (Art. 22.5), had to ensure his partners the exercise of freedom of communication and transit (Art. 23.e). He was also required to give them fair treatment in trade matters (*idem*).

The second block of the principles of the mandates system was designed for the protection of the natives under guardianship. The express mention of such principles was made in the concept of *numerus apertus*, because the mandataries, in compliance with these commands, in addition to always seeking the "well-being and development of those peoples" (Art.22.1), could not go against the conventions adopted within the League of Nations system. Among the guarantees established in favour of the natives, one can mention the prohibition to sell alcohol to the natives (Art.22.5); the obligation to guarantee freedom of conscience and religion without other limitations than those that can be imposed by the maintenance of public order, morals and good customs (*idem*); the obligation to prohibit slave trade in the mandates (*idem*); and the obligation to give a «fair treatment» to the natives, guaranteeing fair and humane working conditions for them (Art.23. a, b). In connection with these last two guarantees, it was later established that forced labour could be used in the mandates under the strict

observation of two principles: the first reduced the use of forced labour only for «essential public works and services»⁴²; the second principle imposed the obligation to pay an "equitable remuneration" to the workers used for this type of work⁴³.

As a guarantee of the regime, Article 22.7 established that each mandatory state had to present an annual report to the Council on the state of management or administration of its assigned territories. Pursuant to Article 22, a Permanent Mandates Commission was created, acting as the main Council's technical assistant in the management and supervision of the mandate system. It examined the annual reports submitted by the mandataries, and submitted its observations and opinions to the Council.

Although one scholar has considered the mandate system as the first international regime for the protection of the rights of the colonized⁴⁴, the fact is that this regime, as clauses of a victor's justice, did not obey any other logic than that of making a defeated aggressor pay. Moreover, for a France from which Germany had taken territories in Europe (Alsace and Lorraine)⁴⁵ and in Africa (Neukamerun), the Treaty of Versailles represented the perfect opportunity not only to recover territories lost in the past, but also to return the same currency to the Germans, expelling them once and for all from the colonial enterprise. This revanchist background of the mandate regime was so evident that any attempt to hide it, ended up revealing contradictions between the provisions of the Covenant. For example, if the League of Nations was the real holder of the mandates as stated in Article 22 (2nd paragraph), then a logical-

⁴² «1° Le travail forcé ou obligatoire ne peut être autorisé que pour les travaux et services publics essentiels». See: BUREAU INTERNATIONAL DU TRAVAIL, *Travail forcé. Rapport et projet de questionnaire*, Genève, Conférence Internationale du Travail, Première Discussion (Douzième Session), 1929, p. 19; https://www.ilo.org/public/libdoc/ilo/1929/29B09_10_fren.pdf; BUREAU INTERNATIONAL DU TRAVAIL, *Travail Forcé. Rapport I*, Genève, Conférence Internationale du Travail, Deuxième Discussion (Quatorzième Session), 1930, p. IV;

https://www.ilo.org/public/libdoc/ilo/1930/30B09_5_fren.pdf

⁴³ «2° Le travail forcé ou obligatoire doit toujours recevoir une équitable rémunération». *Idem*.

⁴⁴ Y. G. CHOPO, y C. F. LIESA, *Los orígenes del Derecho internacional contemporáneo*, Zaragoza, Institución Fernando El Católico, 2015, p. 207

⁴⁵ The Franco-Prussian war ended with the impressive victory of Germany over France. On February 26th, 1871, in the Hall of the Mirrors of the Palace of Versailles, both countries signed a Preliminary Peace Treaty whose first article forced France to cede Alsace and Lorraine to Germany. This treaty can be consulted in full on the website dipublico.org, concretly at dipublico.org/16322/tratado-preliminar-de-paz-entre-francia-y-alemania-versalles-26-de-febrero-de-1871/

systematic interpretation of the Covenant requires us to defend that any renunciation of colonial rights imposed on the defeated should have been declared also in favour of the League itself, and not "in favour of the Allied Powers" as expressly established in Articles 118, 119 and 120.

As critics have argued, the mandate system, despite its humanitarian discourse, did not lead to an improvement in the reality of the affected colonized people⁴⁶. It is even evident that the Allies, while establishing the guiding principles of the mandate management, took little care to disguise the ethnocentric-Eurocentric principle inherited from classical colonialism. Similarly to it, the mandate system was built on the principle of inequality among peoples. It was based on the affirmation of the superiority of the West World over other peoples. The colonizing states were reaffirmed as "developed countries" or "advanced peoples". In reference to the peoples under their protection, fine discourse was preferred to frankness; it avoided references to "wild", "barbarian" or "primitive" peoples, and it spoke rather of "backward" peoples, that is, «peoples not yet able to stand by themselves»⁴⁷ (in French: «des peuples non encore capables de se diriger eux-mêmes»)⁴⁸. The peoples thus defined -the protected peoples- were excluded both from the international legal subjectivity and from the citizenship of the protector states.

The Treaty of Versailles adopted the altruistic argument to legitimize the mandates regime. The Allies -advanced peoples- were concerned with the protection of those considered to be backward peoples for no other purpose than to seek their welfare and development, guiding them towards their full realization. With this "sacred mission" of civilization, the so-called advanced peoples transmitted to the backward ones the education and skills necessary to achieve the capacity to organize and govern themselves "in the same way of the Western peoples".

The problem of this declared altruism was not due to the fact that it served to camouflage the imperialist ambitions of the mandate regime, but was also owed to the fact that it was adopted with absolute indifference regarding the opinion of the legally

⁴⁶ D. MAÚL, *Cit.*, p. 84

⁴⁷ The French version of the treaty can be consulted at: herodote.net/Textes/tVersailles1919.pdf.

⁴⁸ The English version of the treaty can be consulted at: loc.gov/law/help/us-treaties/bevans/m-ust000002-0043.pdf.

protected peoples. In Versailles, the Allies, as under classical colonialism, denied the decision-making power of the protected peoples; they decided on the assimilation and acculturation of the backward peoples, regardless of whether the latter wished to maintain their own cultures and traditional socio-political structures.

Stating that the mandates constituted the first colonial regime emanating from a plurinational decision, or that their effectiveness was their main innovation with respect to the past, are assertions whose meanings do not transcend from discourse to reality. If we focus only on the legal nature of the documents, perhaps it can be admitted that the regime of mandates was the first colonial tutelage established in an international convention. It is well known that no international treaties were adopted either at the Berlin Conference of 1885, or at the Brussels Anti-Slavery Conference of 1890. At both conferences, only General Acts whose effectiveness was subject to the signature of the documents by the states were adopted.

However, if we only focus on the content of the protection of the colonized established in the regime of mandates, or if we look at the negotiation process of the Peace Pact, it is clear that not only did the regime of mandates reproduce guarantees already established for the colonized in the Berlin and Brussels Acts, but that its adoption, in fact, does not merit consideration as a genuine multilateral agreement. It is true that more than twenty states sent their delegations to Versailles to negotiate world peace⁴⁹, but it is also true that the final resolutions emanating from these negotiations were adopted *en petit comité* by David Lloyd George, Georges Clemenceau and Woodrow Wilson, representatives of the United Kingdom, France and the United States respectively. Moreover, if we recall that the US lost its decision-making power in the Pact by resisting its signature, then it is perfectly possible to admit that the terms of the Versailles peace were decided between France and the United Kingdom. The rest of the national delegations were stone-cold guests. Even those allies considered to be "second class", such as Italy and Japan, had no great bargaining power. The cultural-racial

⁴⁹ According to the annex to the first part of the Treaty of Versailles (Articles 1 to 26), 31 states were signatories of the Covenant, including also some colonies of the British Empire: the United States, Belgium, Bolivia, Brazil, United Kingdom, Canada (UK Colony), Australia (UK Colony), South Africa, New Zealand (UK Colony), India (UK Colonial), China, Cuba, Ecuador, France, Greece, Guatemala, Japan, Italy, Honduras, Hedjaz, Haiti, Liberia, Nicaragua, Panama, Peru, Poland, Romania, Serbian-Croatian-Slovenian State, Siam, Czechoslovakia, Uruguay. See Treaty of Versailles at dipublico.org.

circumstances of the latter country were but another reason for the European powers to resist treating the Japanese as their "equals" within the League of Nations.

The ineffectiveness of the mandate system was but one inescapable consequence of all those factors that marked its adoption. If the colonialist ambitions of France and the United Kingdom were the main motives behind the mandate system, then it is easy to understand why the principles that constituted the mandates, despite their declared humanitarian guarantees, never endangered such a key colonial principle as the freedom enjoyed by the colonial powers in managing their so-called "non-metropolitan territories". In the system of control of the implementation of the mandate system, the discretion of so-called "mandataries" was imposed on the supervisory capacity of the so-called "mandating", the League of Nations. Article 22.7 imposed on the mandataries the obligation to send annual reports to the Council of the League, but it said nothing about the consequences of non-compliance with this obligation. The eighth section of the same article stated that it was up to the Council to determine the degree of authority, control or administration that the mandataries should exercise over the territories affected by the mandates. But if the Council was dominated and controlled by the same Allied states that were appointed as mandataries, how was it possible then to control the degree of power that the mandataries exercised over the legally protected? Perhaps this control gap could be filled, for example, by recognizing the binding nature of the reports and opinions of the Mandates Permanent Commission, and by subjecting this organ to the direction not of the Council but of the Assembly of the League. Unfortunately, Article 22.9 of the Covenant not only omitted the binding nature of the reports of the Mandates Commission, but also made that organ subject to the Council, a body controlled by the same colonial powers whose colonial administrations could be criticized in the reports and opinions issued by the Mandates Permanent Commission.

2. The ILO and the social question in the colonial space

The victory of the Allied Powers was a great joy for both the metropolitan and colonial working classes. Both collectives had supported their respective governments⁵⁰

⁵⁰ According to L. Miège, during the war, the French colonies provided 771,000 men to support the metropolis. Among these men, 184,000 were workers. Among the British colonies, Canada sent 600,000 men, Australia sent 450,000, New Zealand sent 200,000, and The India sent 953,374 men. Germany also

in the hope that the latter would, once the conflict was over, adopt protective international legislation favourable to the social demands then prevalent. Indeed, the Allies, through the Peace Treaty of Versailles, designed a new international legal framework which, by privileging the interests of the working class, came to dissipate the threat posed to the West by the triumph of the Russian Revolution of 1917⁵¹. According to the Allies, the projected «universal peace»⁵² could only be achieved on the basis of true «social justice»⁵³. For this purpose, the International Labour Organization (ILO) was created. The body, with its tripartite structure⁵⁴, would be responsible for elaborating conventions to harmonize national legislations through the successive approval of those social guarantees whose protection was non-negotiable in the area of employer-employee relations.

This harmonizing work of the ILO was based on the adoption of a series of social principles that, according to the same international legislator, were to guide the policy of the League of Nations. According to the treaty, these principles were the following: 1) labour should not be considered merely as a commodity or an article of commerce; 2) the right of association, insofar as it was not exercised for all objects contrary to the law, was recognized for both employees and employers; 3) the salary paid to workers should be adequate, that is, capable of assuring them a suitable standard of living in accordance with the circumstances of the time and of each country; 4) the daily working day was fixed at 8 hours, and the weekly one at 48 hours; 5) a minimum

recruited soldiers from its colonies: it recruited 20,000 men in Tanzania. See J. L. MIÈGE, *Cit.*, pp. 125-126

⁵¹ Scholars agree that the social guarantees of the Peace Treaty were a reaction against Bolchevism as established in Russia. See: D. MAUL, *Cit.*, p. 30, 49; Y. G. CHOPO, y C. F. LIESA, *Cit.*, p. 184; G. OESTREICH, *Storia dei diritti umani e delle libertà fondamentali*, a cura di Gustavo Gozzi, Roma-Bari, Editori Laterza, 2001, p. 131; G. RODGERS, L. SWEPSTON, E. LEE, *La Organización Internacional del Trabajo y la lucha por la justicia social, 1919-2009*, Ginebra, Oficina Internacional del Trabajo, 2009, pp. 3,4,5,6, available at:

https://www.ilo.org/wcmsp5/groups/public/@dgreports/@dcomm/@publ/documents/publication/wcms_104680.pdf

⁵² «Whereas the League of Nations has for its object the establishment of universal peace, and such a peace can be established only if it is based upon social justice (...).» See the Preamble of Part XIII of the Treaty of Versailles.

⁵³ *Idem*

⁵⁴ In the structure of the ILO the following were represented: the governments, the employers, and the workers. D. MAUL, *Cit.*, pp. 1, 24, 44

rest of 24 hours was established, which should include Sunday; 6) the elimination of child labour was declared, as well as the "obligation to introduce into the work of young people of both sexes the necessary limitations to enable them to continue their education and ensure their physical development"; 7) equal pay for men and women for work of equal value was declared; (8) it was declared that "the rules laid down in each country concerning working conditions shall ensure equal economic treatment for all workers legally resident in the country"; (9) it was established that "each State shall organize an inspection service in which women are present, in order to ensure the application of laws and regulations for the protection of workers".

Stating that the ILO's agenda of priorities was marked by a strong Eurocentrism⁵⁵ is an assertion that should be interpreted both from a national-state perspective and from a physical-territorial one. In other words, when it is said that the situation of the workers of the main European industrialized powers, including the USA, was always at the centre of the ILO's concerns, it is understood that not only did the reality of national workers from other distant states considered "second class" matter less, but that not much attention was paid to the reality of colonial workers who, although formally subject to the sovereignty of the so-called industrialized powers, lamented their sad fate in territories situated thousands and thousands miles away from the metropolises. But claiming that the Allied Powers "did not pay much attention to the reality of the colonial workers" should only be understood as a euphemism. If something was confirmed in Article 421⁵⁶ of the Peace Treaty, it was precisely the conscious and voluntary nature of the total omission of the situation of colonial workers not only at the Leeds meeting of 1916⁵⁷, but also during the five months of conferences

⁵⁵ *Ibidem*, pp. 77-79

⁵⁶ Article 421 of the Treaty of Versailles (Spanish version):

The Members engage to apply conventions which they have ratified in accordance with the provisions of this Part of the present Treaty to their colonies, protectorates and possessions which are not fully self-governing:

- (1) Except where owing to the local conditions the convention is inapplicable, or
- (2) Subject to such modifications as may be necessary to adapt the convention to local conditions.

And each of the Members shall notify to the International Labour Office the action taken in respect of each of its colonies, protectorates and possessions which are not fully self-governing.

⁵⁷ In 1916, the representatives of the allied governments and its respective workers' representations met in Leeds, a city located in the north of England. In that meeting, the workers' representatives, based on

and negotiations that preceded the signing of the Peace⁵⁸. As reflected in the essay by Barbara Bus and Josephine Maltby⁵⁹, the year 1919 was not the most appropriate time to consider the improvement of the working conditions of the colonized. If the latter had already been exploited during the period of economic stability preceding the war, their reality could only worsen in a post-war context in which the urgency of economic recovery would increase the fiscal pressure on the colonies to sustain the metropolitan treasures. In such a difficult economic context, the colonial powers did not hesitate to further armor their strong colonialist-exploiting will.

Article 421 of the Treaty could not better reflect the classic legislative tactic whereby colonial legislators, while regulating the rights of the colonized, always ended up invoking the local particularities of the colonies as the basis either for the extraordinary powers of the colonial governors or for special legislation that always ended up restricting the legal guarantees previously granted to the colonized. Article 421, after declaring that the ILO conventions would be extended to the colonies and protectorates, immediately established that the colonial powers, when ratifying a convention, could invoke the "local conditions", either to exclude their colonies from the application of the convention (Art.421.1), or to decide the adaptations that would govern the application of the convention in their non-metropolitan territories (Art.421.2).

Although it was Article 421 that expressly allowed the exclusion of the colonies from the social guarantees of the ILO, the truth is that the importance of such precept turned out to be secondary when it came to materialising such exclusion. The exclusion,

the support given by the workers to their governments, presented a document with some of the social guarantees that they wanted recognized in future international legislation once the war ended. Among these guarantees, they demanded: trade-union freedom, social security benefits, working hours, factories inspection service, health in the workplace, and labour migration. Certainly, all these matters affected also the labour of the colonized, but the truth is that, in the colonial space, the social question manifested itself mainly through two realities: slavery and forced labour. These two matters, despite the colonized workers' participation, were not included in the aforementioned document. See D. MAUL, *Cit.*, p. 25

⁵⁸ The Peace Conference lasted from its opening day on June 19th, 1919, until the signing of the Treaty on June 28th, 1919. *Idem*

⁵⁹ B. BUS Y J. MALTBY, *Taxation in West Africa: transforming the colonial subject into the "governable person"*, in *Critical perspective on accounting* (Academic Press), n° 15, 2004, pp. 5-34, available at www.elsevier.com/locate/cpa

just like the failure of the whole normative system of the League of Nations⁶⁰, was an effect of the sacralization of the principle of state sovereignty in the peace agreements. With Article 406 of the Covenant, that is, with the shielding of the conventional freedom of the states, the application of the colonial clause of Article 421 was practically reduced to the cases in which the colonial powers, coincidentally, ratified ILO conventions that directly affected the colonial social question.

The silence that surrounded the colonial question in the peace negotiations was interrupted only a few years after the signing of the Pact. The first major initiative in this regard was the negotiation of a convention on slavery, which was eventually adopted in September 1926. Following this document, in the period from 1930 to 1957, the ILO, always under the impetus of the United Kingdom, adopted several conventions that directly affected the labour contracts signed with native workers in non-metropolitan territories. The doctrine usually refers to these instruments under the labels of «indigenous labour code» («código de trabajo indígena»)⁶¹, «native labour code» («código del trabajo nativo»)⁶², or simply «colonial code» («código colonial»)⁶³. This code was composed of the following conventions: the Forced Labour Convention (No. 29 of 28/06/1930); the Old-Age Insurance (Agriculture) Convention (No. 36 of 08/06/1933); the Invalidity Insurance (Agriculture) Convention (No. 38 of June 8th, 1933); and the Indigenous Workers (Employment Contracts) Convention (No. 64 of 80/06/ 1939); the Penal Sanctions (Indigenous Workers) Convention (No. 65 of 08/06/1939); the Abolition of Penal Sanctions (Indigenous Workers) Convention, 1955 (No. 104 of 01/06/1955); and the Abolition of Forced Labour Convention (No. 105 of

⁶⁰ The over-protection of state sovereignty was one of the main reasons for the failure of the entire normative system of the League of Nations. See: A. P. SCHIOPPA, *Storia del diritto in Europa. Dal medioevo all'età contemporanea*, Bologna, Il Mulino, 2007, pp. 619-620; M^a R. M. ÁLVAREZ-PRIDA, *Salvador Madariaga y la política exterior española durante la II República*, en *Revista de investigaciones políticas y sociológicas*, nº 2 (Vol. 8), 2009, p. 91; A. ANGHIE, M. KOSKENNIEMI, y A. ORFORD, *Cit.*, p. 113; Y. G. CHOPO y C. R. F. LIESA, *Cit.*, p. 301; P. KERR, *Pacifism is not enough: nor patriotism either*, Oxford, Clarendon Press, 1935, p. 57, available at <https://babel.hathitrust.org/cgi/pt?id=mdp.39015069743477;view=1up;seq=1>; M. F. RODRÍGUEZ, E. P. RUBIO, Y L. M. PEÑAS, *Especialidad y excepcionalidad como recursos jurídicos*, Valladolid, Editores Valladolid, 2017, p. 284, available at: <http://www.omniamutantur.es/wp-content/uploads/ESPECIALIDAD-Y-EXCEPCIONALIDAD-1-334.pdf>

⁶¹ D. MAUL, *Cit.*, p. 87

⁶² G. RODGERS, L. SWEPSTON, y E. LEE, *Cit.*, p. 47

⁶³ L. R. PIÑERO, *El Código Colonial: La Organización Internacional del Trabajo y los "Trabajadores Indígenas" (1919-1957)*, in *Quaderni Fiorentini*, nº 33/34 (2004/2005), pp. 260-285

05/06/1957). Although conventions 36 and 38 were not designed strictly for indigenous workers, the fact is that their connection with the colonies was undeniable. In an eminently agricultural colonial economy, any international instrument that came to establish social guarantees in favour of agricultural workers, could not fail to generate some kind of hope in native workers.

As is well known, in the colonial space, the excesses or discriminations of the colonizers were manifested in two ways. The first was formal, and was represented by the legal-colonial orders that, starting from the assumption of the differential fact, designed a colonial reality on the basis of the differentiation between the colonizers as civilizers, and colonized as people to be civilized⁶⁴. The second way in which the colonial excesses were expressed was, precisely, through the non-compliance with or constant violation of those minimum rights and guarantees recognized to the natives by those exceptional regulations approved for the colonies. When the ILO's indigenous labour code is evaluated in this legal-colonial context, it can be observed that one cannot speak of its violation in the colonies during the first years of its adoption. As demonstrated through the chronology of ratifications of the code, most of the colonial powers not only delayed the entry into force of some conventions of the code, but never ratified those conventions that could have most affected their factual-colonial policies and methods. The only convention in the code that was ratified in time was that of 1930 on forced labour. The first colonial states to do so were the United Kingdom (29/08/1932)⁶⁵ and Spain (29/08/1932)⁶⁶. The rest of the states considerably delayed its entry into force: France ratified it seven years after its adoption (24/06/1937)⁶⁷; Belgium ratified it 14 years later (20/01/1944)⁶⁸; and Portugal, the most firm in its colonialist position, ratified it on 26th of June, 1956, that is, 26 years after its adoption..

In the ratification of the other conventions, the resistance of all the colonial states, including the United Kingdom, was clear. Conventions 104 and 105, excepting

⁶⁴ A. M. CARRASCO GONZÁLEZ, *El Estatuto del Indígena...*, *Cit.*, p. 15

⁶⁵ The chronology of the ratifications of the ILO conventions can be seen on the ILO official webpage: ilo.org/dyn/normlex/es/f?p=1000:1001::NO::

⁶⁶ *Idem*

⁶⁷ *Idem*

⁶⁸ *Idem*

Portugal, which ratified the former on April 12th, 1960⁶⁹, were not ratified by the colonial powers. Conventions 36 and 38, both dated June 8th, 1933⁷⁰, were ratified by the United Kingdom on July 18th, 1936⁷¹; France delayed their ratification until August 23th, 1939⁷². The rest of the colonial states did not ratify them. The same could be said regarding the Conventions 64 and 65, which were ratified only by the United Kingdom on August 24th, 1943⁷³, four years after their adoption on June 8th, 1939⁷⁴.

As it can be observed, and as we have already said, in the ratification of the ILO colonial code, the colonial clause of Article 421 lost almost all its importance. If we exclude the case of the ratification of Convention 29, where Spain stated that the application of such a norm in its colonies would be subject to adaptations, in the ratification of the rest of the conventions the colonial clause of Article 421 was not even activated. The colonial states used their conventional freedom under Article 106 to block or delay the application of all those colonial agreements that could have endangered their colonial interests.

3. The Slavery Convention of 1926 and the Forced Labour Convention of 1930 (No 29)

In the so-called «non-metropolitan territories», the social question mainly concerned two problems: slavery and forced labour⁷⁵. The eradication of the first problem necessarily implied adopting regulations that seriously addressed the latter (problem). In the colonial space, any abolitionist project that neglected the issue of forced labour could not avoid saving the practice of slavery under the camouflage of forced labour. This is how the very Temporary Slave Commission understood it when it

⁶⁹ *Idem*

⁷⁰ *Idem*

⁷¹ *Idem*

⁷² *Idem*

⁷³ *Idem*

⁷⁴ *Idem*

⁷⁵ J. GOUDAL, *La question du travail forcé devant la Conférence Internationale du Travail*, en *Revue Internationale du Travail* (Genève), n°5, Vol. XIX, 1929 (Mai), p. 649, <https://www.ilo.org/public/libdoc/ilo/P/09628/09628%281929-19-5%29647-665.pdf>

held that the abolition of the slave trade and slavery in the colonies did not end up freeing the native workers from the yoke of servile labour⁷⁶. Hence, the 1926 Convention insisted not only on the abolition of formal slavery, but also on the abolition of all other "similar practices" whose continued existence only made all the treaty's declarations *flatus vocis*.

The League of Nations first addressed the issue of slavery at its third Assembly in Geneva in 1922⁷⁷. Although New Zealand introduced the issue into the debate by expressly citing the situation then prevalent in Ethiopia⁷⁸, the truth is that the initiative of this British colony was but another step in the old struggle of Great Britain to extend abolitionism to all countries, mainly to the colonies of the industrialized countries. At the same session, the League Council drew up a questionnaire whose purpose was none other than to sound out what member states thought of the abolitionist proposal⁷⁹. Out of a total of 52 two states, only 15 bothered to reply to the questionnaire⁸⁰.

At the same session in 1922, consideration was given to the establishment of a special technical commission to prepare a report following a study on the state of slavery in the world. Although the presentation of such a report was planned for the next session of the Assembly in 1923, the aforementioned special commission, that is, the Temporary Slave Commission, was eventually established in June of 1924⁸¹, and its first

⁷⁶ «En effet, les travaux de la Commission Temporaire de l'Esclavage avaient révélé assez clairement que la suppression de l'esclavage et de la traite ne devait pas nécessairement mettre fin à toutes les situations de travail présentant un caractère servile et l'on est suffisamment convaincu que le travail forcé peut amener, et a amené en effet, des maux analogues à ceux qui sont entraînés par l'esclavage lui-même». BUREAU INTERNATIONAL DU TRAVAIL, *Travail forcé. Rapport et projet de questionnaire*, Genève, Conférence Internationale du Travail, Douzième Session, Première Discussion, 1929, p. 3

⁷⁷ R. C. REDMAN, *The League of Nations and the Right to be Free from Enslavement: The First Human Right to be Recognized as Customary International Law-Freedom: Beyond the United States*, en Chicago-Kent Law Review, Vol. 70, 1994, p. 778,

<https://scholarship.kentlaw.iit.edu/cklawreview/vol70/iss2/10>

⁷⁸ *Idem*

⁷⁹ *Idem*

⁸⁰ *Idem*

⁸¹ The date of the constitution of the Temporary Slave Commission can be consulted in the preamble of the Slavery Convention of 1926, available at the link:

ohchr.org/sp/professionalinterest/pages/slaveryconvention.aspx

meeting took place the following month⁸². At this first meeting, the Commission proposed a liberal system of getting information in order to prepare the pending report. In addition to its own research, it allowed not only governments but also organizations and individuals to send their reports⁸³.

The Commission presented its report at the League's 5th Assembly in Geneva in June 1925⁸⁴. At that meeting, the Commission, after having verified that classical slavery was still legal in certain states (for example, in the Arabian Peninsula)⁸⁵ and that similar practices⁸⁶ still existed in the colonies, proposed the elaboration of a convention for the abolition of slavery in all countries. The 6th Assembly accepted the proposal, and the draft was prepared by Lord Robert Cecil, a British jurist and diplomat with abolitionist convictions⁸⁷.

Robert Cecil's project was based on the defence of the abolition of both slavery and forced labour⁸⁸. Unfortunately, in the 1920s, such an abolitionist attitude by the British meant much progress for a community of states that was not yet prepared to end once and for all the slave labour regime still in place in the colonies. All states accepted the abolition of slavery, but only as a gradual process whose pace was marked by the specific circumstances of each territory⁸⁹. As a safeguard for this position of the states, the text of the convention would end up omitting a fixed time frame and admitting that slavery would be abolished "progressively".

The refusal of states to abolish forced labour was more logical. As it was said before, in the colonies of European states, although slavery had already been formally abolished, it survived practically under the cover of forced labour. So any attempt to abolish forced labour was not but an attack on the only instrument left to the colonial

⁸² R. C. REDMAN, *Cit.*, p. 778

⁸³ *Idem*

⁸⁴ *Idem*

⁸⁵ *Ibidem*, p. 779

⁸⁶ *Idem*

⁸⁷ *Idem*

⁸⁸ *Ibidem*, pp. 778-781

⁸⁹ *Idem*

states to extract maximum profit from their non-metropolitan territories⁹⁰. To hide such economic purposes, a classical principle of colonialism was rescued: the claim that the application of forced labour to colonizers was for no other objective or purpose than that of civilizational education⁹¹.

Since states did not accept the first draft in its integrity, it was necessary to prepare another draft in which the amendments and other comments made by states would be incorporated⁹². It was this new draft that would finally become the Slavery Convention of September 25th, 1926⁹³. This text could not, of course, go beyond the minimum standards that states were prepared to accept at the time. If we cast aside the fact that it was the first international document to establish the definitions of "slavery" and "slave trade", it can be said that the convention was hardly innovative be it with respect to the Acts of the Berlin (1885) and Brussels (1890) conferences or with respect to the regime of mandates. In the text, a categorical prohibition of slavery was missing. In Article 2.b)⁹⁴, the signatories did not commit themselves to "abolish" slavery, but to "endeavour", that is, to take steps and make efforts towards the abolition of slavery in their respective colonial territories. And as if that were not enough, the states did not commit themselves to seek the abolition of slavery in 5, 10 or 15 years: they simply committed themselves to do it "progressively and as soon as possible"; that is, without limits or deadlines. This was exactly similar to the commitments set out in the Berlin and Brussels Acts, and in the regime of mandates.

⁹⁰ It is a commonly held opinion that forced labour was used by the colonial powers as an instrument to yield maximum profit in their colonies. See D. MAÚL, *Cit.*, pp. 85-86

⁹¹ D. LUSTIG, *The Loss of Slavery as Humanitarian Cause? The League of Nations and the Case of Firestone in Liberia*, weblaw.haifa.ac.il/en/Events/IntlLborLaw/Documents/Doreen.pdf ; R. C. REDMAN, *Cit.*, pp. 780-781

⁹² R. C. REDMAN, *Cit.*, p. 780

⁹³ The Slavery Convention was adopted by the Assembly of the League of Nations in its 7th ordinary meeting. BUREAU INTERNATIONAL DU TRAVAIL, *Travail Forcé. Rapport et projet de questionnaire*, Genève, Conférence Internationale du Travail, Douzième Session, Première Discussion, 1929, p. 2, https://www.ilo.org/public/libdoc/ilo/1929/29B09_10_fren.pdf

⁹⁴ Art.2 of the Slavery Convention: «The High Contracting undertake each in respect of the territories placed under its sovereignty, jurisdiction, protection, suzerainty or tutelage, so far as they have not already taken the necessary steps: (a) To prevent and suppress the slave trade; (b) To bring about, progressively and as soon as possible, the complete abolition of slavery in all its forms»

In relation to forced labour, the convention, in its Article 5.2, included six principles that should govern the use of this institution: (1) forced labour, as a general rule, was only authorized "for public purposes"; (2) forced labour for private purposes was admitted on a transitory basis, that is, the colonial powers committed themselves to endeavouring to put an end to this practice "as soon as possible"; 3) the use of forced labour for private purposes would always be made on an exceptional basis, that is, when, through free and voluntary recruitment, it was not possible to obtain the quota of workers necessary to cover the service concerned; (4) the use of forced labour for private purposes was a matter for the Central Authorities of the territory concerned, that is, neither individuals nor private entities could make use of this type of work on their own; (5) workers affected by this exceptional measure would be entitled to "adequate remuneration"; and (6) the use of this measure could not impose a change in the worker's habitual residence.

The adoption of the 1926 Convention gave rise to some optimism in the Sixth Commission⁹⁵. The very effort made by states to adopt the convention was already an important step in the protection of human rights, especially those of colonized peoples⁹⁶. But the Commission's optimism was above all realistic, since, as has been seen, the 1926 Convention not only did not abolish slavery but even, in addressing the issue of forced labour, was more flexible with regard to the mandate regime, which did not allow the use of forced labour for private purposes as in the Convention, but only for «essential public services»⁹⁷.

Thus, in order to materialize the original abolitionist purpose of the Convention, the League's Assembly considered that it was necessary and urgent for the International Labour Office to prepare a report on the most appropriate methods or measures to prevent forced labour from degenerating into a practice similar to slavery⁹⁸. It also

⁹⁵ Some scholars refer to the Temporary Slave Commission as the Sixth Commission. D. LUSTIG, *Cit.*

⁹⁶ *Idem*

⁹⁷ BUREAU INTERNATIONAL DU TRAVAIL, *Travail forcé. Rapport et projet de questionnaire*, Genève, Conférence Internationale du Travail, Première Discussion (Douzième Session), 1929, p. 8,

⁹⁸ «L'Assemblée, Prenant acte des travaux entrepris par le Bureau international du Travail en accord avec la mission qui lui a été confiée et dans le cadre de sa constitution;

Considérant que ces études comprennent naturellement les problèmes du travail forcé;

invited and urged the states to continue to work towards the complete eradication of forced or compulsory labour.

A commission of experts on indigenous work was set up in connection with the study entrusted to the International Labour Office. Many members of this technical body were former members of the Mandates Permanent Commission and the of the Temporary Slave Commission⁹⁹.

The International Labour Conference first addressed the issue of forced labour at its twelfth session in Geneva in 1929¹⁰⁰. At that meeting, on the occasion of the presentation of its report, the Commission of Experts on Indigenous Labour shed some light on the meaning of some terms in colonial literature such as *forced labour*, *indigenous labour* or *indigenous people*. According to the Commission, although the real meaning of «travail forcé» was not applied only in the colonies, the fact was that such a term, for the purposes of the future Convention, came to mean the same thing as

Prie le Conseil d'informer le Conseil d'administration du Bureau international du Travail du vote de la convention relative à l'esclavage et d'attirer son attention sur l'importance que présentent les travaux entrepris par le Bureau en vue d'étudier les modalités les plus appropriées afin d'éviter que le travail forcé ou obligatoire n'amène une situation analogue à l'esclavage». *Ibidem*, pp. 1,3,6

⁹⁹ The members of this Commission of Indigenous Work were: General Freide d'Andrade (Member of the Mandates Permanent Commission, and of the Temporary Slave Commission; former General Governor of Mozambique, and former Portugal Minister of foreign affairs); M. Goh (Member of the Temporary Slave Commission and former General Director in Belgium Ministry of Colonies); Sir Charles Ernest Low (He was member of the Industrial Commission of the Indies, Secretary of the Government of the Indies for Commerce and Industry, Director of Agriculture of the Central Provinces of the Indies); Sir Frederick Lugard (Member of the Mandates Permanent Commission, and of the Temporary Slave Commission; former General Governor of Nigeria); M. Merlin (He served as: Honorary Governor General of Colonies, General Governor of French Congo, General Governor of French West Africa, Governor of French Indochina); Major Ostini (Former Deputy, Head of the Bureau des Ecoles Coloniales au Commissariat General de l'Emigration, Rome); M. Van Rens (Vice-President of the Mandates Permanent Commission, member of the Temporary Slave Commission, former Vice-President of the Council of the Netherlands East Indies, and former General Secretary of the Netherlands Colonial Institute); M. Sugimura (Representative of Japan at the 7th meeting of the Permanente Commission, Counsellor to the Assembly and Deputy Director of the Japanese Bureau of the League of Nations); M.H.M. Taberer (Head of the Indigenous Labour Recruitment Organization of the Chambre des Mines du Transvaal). The alternates to this Commission of Indigenous Work were: M. Camille Lejeune (Member of the Compagnie Nossibeenne d'Industries Agricoles in Madagascar); M. Saura del Pan (Consul of Spain in Oran and former Head of the Civil Affairs Section in the Direction of Morocco and Colonies), Freiherr von Rechenberg (former Governor of German East Africa); M.H.R. Joynt (Attaché au Secretariat Federal des Etats Malis); J. P. Chamberlain (Professor of International Law at Columbia University, USA)

¹⁰⁰ BUREAU INTERNATIONAL DU TRAVAIL, *Travail forcé. Rapport et projet de questionnaire*, Genève, Conference Internationale du Travail, Première Discussion (Douzième Session), 1929, https://www.ilo.org/public/libdoc/ilo/1929/29B09_10_fren.pdf

the expression «travail indigène», which, in turn, referred only and exclusively to the working conditions applied to those subjects who were under the domination and administration of foreign races («races étrangères»)¹⁰¹. This kind of semantic equalization between the syntagmas «travail forcé» and «travail indigène» was the product of an unquestionable truth established by the Commission of Experts on Indigenous Labour in its comparative study of the labour laws in force in the colonies.

Noting that forced labour was still a reality in the colonies, and having identified the principles that justified its application there, the Indigenous Labour Commission proceeded to sound out the views of states on the proposal to adopt a convention. The Committee prepared a *Questionnaire*¹⁰² with a total of 35 questions, each divided into several paragraphs which in turn constituted other questions¹⁰³. All these questions were grouped in two blocks, A and B. The first block, between the first and the twenty-ninth question, focused on the content of the future convention, and was collected under the heading «Questions relating to the adoption of a draft convention»¹⁰⁴. Block B, on the other hand, comprised the last six questions formulated in Roman numerals (from I to VI). And, as its title reads, «Questions relating to the adoption of recommendations» («Questions tendant à l'adoption de Recommandations»), it focused on the question of the adoption and effectiveness of recommendations for compliance with the convention.

¹⁰¹ «La question du travail forcé interesse principalement, mais non exclusivement, les conditions de travail de populations soumises à la domination et à l'administration de races étrangères. Ces populations sont fréquemment qualifiées du terme "indigènes" et leurs conditions de travail du terme "travail indigène"». *Ibidem*, p. 1

¹⁰² BUREAU INTERNATIONAL DU TRAVAIL, *Travail Forcé. Questionnaire I*, Genève; Conférence Internationale du Travail (Quatorzième Session), 1930, pp. 55 y ss, disponible en https://www.ilo.org/public/libdoc/ilo/1929/29B09_16_fren.pdf

¹⁰³ Question 1 of the *Questionnaire*:

«Estimez-vous que la Conférence internationale du Travail devrait adopter un projet de convention qui aurait pour objet de supprimer l'emploi du travail forcé ou obligatoire sous toutes ses formes?

Dans l'affirmative, estimez-vous qu'une période de transition serait nécessaire avant de réaliser complètement cette suppression?

Dans le cas où vous n'estimeriez pas possible d'adopter un projet de convention qui aurait pour objet de supprimer l'emploi du travail forcé ou obligatoire sous toutes ses formes, ou dans le cas où vous estimeriez qu'une telle suppression est possible, mais qu'une période de transition serait nécessaire avant de la réaliser,

Estimez-vous que la Conférence internationale du Travail devrait adopter un projet de convention qui aurait pour objet de limiter ou de réglementer l'emploi du travail forcé ou obligatoire?»

¹⁰⁴ «Questions tendant à l'adoption d'un projet de convention». *Ibidem*, p. 58

Focusing on the most controversial issues, that is, those that directly affected the freedom of action of the colonial states in their colonies, the following questions of the Questionnaire can be recalled. It should be noted that its translation into Spanish is neither complete nor literal, but rather semantic: is the approval of a convention necessary either to regulate and limit the use of forced labour or to suppress it in all its forms? (Q.1, parags. 1 & 4); is a transitional period necessary before the total elimination of forced labour? (Q.1, parags. 2 & 3); should the hypothetical convention abolish the colonial clause in Article 421 of the Peace Treaty? (Q.2); should cases of *force majeure* be excluded from the application of the future convention? (Q.4, para. 1); could the competent authorities impose or allow the use of forced labour for the benefit of individuals and private entities? (Q.8, para. 1); should the practice of using forced labour as a substitute for taxation be abolished as soon as possible? (Q.12, para. 1); should a procedure be established under which the forced labourers could lodge complaints about the working conditions under which they are providing services? (Q.13, para. "c"); should a body be established to monitor or ensure the implementation and enforcement of the regulation on the use of forced labour? (Q.14); should the illegal use of forced labour be criminalized? (Q.15); should the 8-hour daily working day or the 48-hour weekly working day be applied to forced labourers? (Q.20, para. 1); should forced labourers be paid more than the normal wage for overtime? (Ibid.); should forced labourers be paid the salary foreseen for the type of employment or service rendered? (P.22, para. "a"); should a permanent commission of experts on forced labour be established? (Q.29, para. 1); should the annual reports under Article 408 of the Peace Treaty be sent and examined by the said commission? (Q.29, para. 2).

As expected, Great Britain was the only colonial state to adhere to almost all the proposals in the questionnaire. It advocated the adoption of the draft convention for the abolition of forced labour, although it specified that such abolition could not be immediate but could be preceded by a transitional period¹⁰⁵ in which forced labour was to be used only by public authorities and only for public purposes¹⁰⁶. Furthermore, during this transitional period, a number of rights would be established to protect forced

¹⁰⁵ BUREAU INTERNATIONAL DU TRAVAIL, *Travail Forcé. Rapport I*, Genève, Conférence Internationale du Travail, Deuxième Discussion (Quatorzième Session), 1930, p. 15, available at https://www.ilo.org/public/libdoc/ilo/1930/30B09_5_fren.pdf

¹⁰⁶ *Ibidem*, p. 44

labourers. They would be entitled to an 8-hour daily working day and a 48-hour weekly working day¹⁰⁷; they would be paid the salary established for the type of work or service they were performing¹⁰⁸; they would be paid a higher amount for overtime performed¹⁰⁹; and they would be entitled to compensation in cases of occupational accidents or diseases¹¹⁰. Great Britain also accepted the whole system of control proposed in the questionnaire to ensure the effectiveness of all these rights of forced labourers. It defended the penalization of non-compliance with these guarantees¹¹¹, and defended the right of forced workers to file complaints for such violations¹¹². It also accepted the proposal to create a body responsible for ensuring compliance with the provisions of the convention¹¹³, in addition to admitting the establishment of a commission of experts on indigenous labour to examine the annual reports that the states were obligated to submit under Article 408 of the Peace Treaty¹¹⁴.

If there was one question that revealed the colonialist will of the United Kingdom, it was precisely question number 2 of the questionnaire. It was the most important question, since it aimed at the annulment of the so-called "colonial clause" in Article 421 of the Peace Pact. By answering this question in the affirmative, the colonial states would lose the freedom they had to decide not only which ILO conventions should be applied in their colonies, but also how they should be applied there. To save precisely this freedom of action, the United Kingdom responded to this question with some ambiguity. After applauding the initiative to annul the colonial clause in Article 421, it ended up defending not its annulment but its reformulation. It proposed a kind of list system¹¹⁵. That is to say, each colonizing state, at the time of ratifying the future convention, had to attach a series of lists indicating how the convention was to be applied in its colonies and protectorates. One list would indicate the colonies or

¹⁰⁷ *Ibidem*, p. 89

¹⁰⁸ *Ibidem*, p. 90

¹⁰⁹ *Idem*

¹¹⁰ *Idem*

¹¹¹ *Ibidem*, p. 57

¹¹² *Idem*

¹¹³ *Idem*

¹¹⁴ *Ibidem*, p. 110

¹¹⁵ *Ibidem*, p. 15

protectorates where the convention would enter into force immediately and without modifications; another list would indicate the colonies or protectorates where the entry into force of the convention would be delayed for a specified time; yet another list would indicate the colonies and protectorates where the convention would be applied immediately but subject to expressly indicated modifications; yet another list would indicate the colonies and protectorates where not only would the entry into force of the convention be delayed for a specified time, but also its validity would be subject to expressly indicated modifications. A final list, and the most important one, would indicate the colonies and protectorates where the ratifying state would reserve its freedom of decision.

Logically, this response by Great Britain to the second question of the questionnaire conditioned the effectiveness of all the other responses. What was the merit of adopting a convention with all the guarantees proposed in the questionnaire if, in the end, the colonial states retained their freedom to decide not only in which colonies such a convention should be applied, but also under what conditions it should be applied?

If the United Kingdom, which was more liberal, saved the colonial clause in Article 421 of the Peace Treaty and advocated the gradual abolition of forced labour, less could be hoped from the other colonizing states. Excepting Portugal, which rejected outright all the proposals in the questionnaire, alleging that the question of forced labour had already been sufficiently regulated in both the Peace Treaty and the 1926 Slavery Convention¹¹⁶, the position of the other colonial powers was almost the same as that of the United Kingdom regarding the first and second questions, the answers to which logically conditioned the rest of the proposals in the questionnaire.

Belgium admitted the adoption of a convention whose objective could not go beyond regulating and limiting the use of forced labour¹¹⁷. Spain and France gave their "yes" to the proposal to abolish forced labour, but, like Great Britain, defended the application of a transitional period which despite having to be minimal, as Spain

¹¹⁶ *Ibidem*, pp. 19, 21, 29, 46, 52, 58, 92, 110

¹¹⁷ *Ibidem*, p. 4

clarified¹¹⁸, was never expressly set. And, during this transitional period, the three colonial powers argued that forced labour would only be used for public services and purposes¹¹⁹. But, unlike Great Britain, they also admitted the forced recruitment of workers for those companies that, apart from being concessionaires of public services, worked under the control of the authorities¹²⁰.

With regard to question 12, which suggested the abolition of forced labour as a substitute for taxations, Belgium argued for a transitional period for such abolition¹²¹. Spain said yes to the proposal, but saved its "prestaciones personales", alleging that those were performed precisely to cover community services of public interest¹²². France admitted the fiscal nature of its "régime des prestations" but strongly denied that they constituted forced labour¹²³.

With regard to the other social guarantees applicable to forced labour, the other colonizing states gradually distinguished between those that should be regulated by the convention and those that should remain under the control of state competences. For example, Spain accepted that the convention could decide the following issues: the creation of a body to ensure compliance with the convention (P.14); the criminalization of the illegal use of forced labour (P.15); and the right of forced workers to receive the wage legally established for the work or service they perform [P.22(a)]. It also accepted that the convention should provide for the right of forced labourers to be covered, in the same way as free workers, by the provisions relating to compensation for occupational accidents or diseases [P.23(a)], compensation for the dependents of deceased or disabled workers [P.23(b)], and insurance for total or partial disability resulting from occupational accidents [P.23(c)]¹²⁴. On the other hand, it considered that the regulation of the right to exercise the right of complaint and grievance of forced labourers [P.13(c)]

¹¹⁸ «Il est hors de doute qu'une certaine période de transition serait nécessaire dans certains territoires déterminés, étant donné que la pratique du travail forcé ou obligatoire y a existé et y existe encore, période de transition dont la durée devrait être réduite au minimum possible [...]». *Ibidem*, p. 7

¹¹⁹ France spoke of «fins publiques», and Spain of «intérêt public». *Ibidem*, pp. 7-14.

¹²⁰ *Ibidem*, pp. 41-43

¹²¹ *Ibidem*, p. 49

¹²² *Idem*

¹²³ *Idem*

¹²⁴ *Ibidem*, pp. 55, 71

and the daily and weekly working hours of forced labourers were matters to be left for domestic law to deal with (P.20.1)¹²⁵. With regard to the proposal to establish a permanent commission of experts on forced labour, Spain maintained that it was too soon to answer the question before knowing the scope of regulation of the future convention¹²⁶.

France accepted the proposal to criminalize the illegal use of forced labour (P.15)¹²⁷, but then argued that it was a matter for national law to regulate the proposals: 13(c); 14; 20.1; 22(a); 23; 29¹²⁸. For its part, Belgium accepted the proposals of questions 14; 15; 20.1; and 22.a)¹²⁹. But it argued that the proposal in question 13 (c), that is, the exercise of the right of the forced workers to complain, and the proposal in question 29, that is, the establishment of a permanent commission of experts on forced labour, were matters for domestic legislation¹³⁰.

As stated earlier, if we only look at the issues whose regulation could have affected the freedom of action of the Allies in their colonies, it is confirmed that ILO Convention No. 29 on forced labour, like the Slavery Convention of 1926, and like the other conventions of the ILO colonial code, inherited the same gaps and shortcomings that marked the ineffectiveness of the colonial principles established in the Peace Treaty. Article 1, after establishing in its first point that the suppression of forced labour would take place within a transitory period, wanted (and only wanted) to transmit the sensation that this period would not remain indefinite as was done with the suppression of slavery in Article 2.b) of the 1926 Convention. Article 1.3 established that the Administration Council of the International Labour Office, five years after the entry into force of the Convention¹³¹, should issue a report from which it could decide either to propose the definitive abolition of forced labour to the International Labour Conference or to extend the transitional period. As can be observed, the euphemism of Article 1.3 is

¹²⁵ *Ibidem*, pp. 55, 70

¹²⁶ *Ibidem*, p. 109

¹²⁷ *Ibidem*, p. 56

¹²⁸ *Ibidem*, pp. 56, 71, 72, 109, 110

¹²⁹ *Ibidem*, p. 54, 69

¹³⁰ *Ibidem*, pp. 54, 109

¹³¹ See also Article 31 of the Convention

founded precisely on the fact that the passage of the five-year period did not necessarily imply the abolition of forced labour, but simply the assessment of that possibility. In other words, Article 1.3 of ILO Convention No. 29 did not set the transitional period within which the forced labour was to be abolished. But even if it had, there were Articles 26 and 28 to shield the freedom of the colonial powers. Article 26, like Article 9 of the 1926 Slavery Convention, saved the colonial clause of Article 421 of the Treaty of Versailles. And Article 28 of the Convention, like the second paragraph of Article 12 of the 1926 Convention, underlined the non-mandatory nature of the convention, that is, it was binding only on the states that had ratified it.

With regard to the rest of the content of the Convention, it can be said that the liberal position of Great Britain prevailed. It is therefore not surprising that the other colonial states, with the exception of Spain, ended up delaying the ratification of the convention for years. Article 1.2 made it clear that forced labour, during the established transitional period, would be used "by way of exception" and only for "public purposes". According to Article 9.(c), the principle of exceptionality was respected when the competent authorities resorted to forced labour only when "it had been impossible to secure voluntary workers for the performance of this service or work, despite the offer of wages and working conditions at least equal to those prevailing in the territory concerned for similar work or services". According to letters (a) and (b) of Article 9, when resorting to forced labour, the competent authorities, in order to respect the principle of "public utility", first had to ensure that the service or work to be performed, in addition to being "currently or imminently necessary", had to present a direct interest to the community upon which it was to be performed. The same requirements for proving the public utility of the work had to be applied also in cases of using forced labour as a substitute for a tax.

Article 2 established a list of types of labour that, although also of a coercive nature, were outside the scope of the Convention. They were, in particular: "(a) any work or service which is required by laws concerning the compulsory military service and which is of a purely military character; (b) any work or service which forms part of the normal civic obligations of citizens of a country which is fully self-governing; (c) any work or service which is required of an individual by virtue of a sentence of a court, provided that such work or service is carried out under the supervision and control of

the public authorities and that the individual is not transferred or made available to private individuals, companies or legal persons (d) any work or service exacted in cases of force majeure, that is to say, in cases of war, current or imminent disasters, such as fires, flood, starvation, earthquakes, epidemics and violent epizootic diseases, invasions of animals, insects or harmful plant pests, and in general, in all circumstances which endanger or threaten to endanger the life or normal conditions of existence of any part of the population; (e) small communal works, that is to say, the works done by the members of a community for the direct benefit of that community, works which may therefore be regarded as normal civic obligations incumbent on the members of the community, provided that the population itself or its direct representatives are entitled to decide on the need for such work”.

According to Article 3, in connection with Article 8, the competent authorities to decide on the use of forced labour were the civil authorities, whether they were metropolitan ones or the superior authorities of the territory in question. These higher authorities could delegate this power to the higher local authorities. As for the beneficiaries of forced labour, it was made clear that they could not be individuals, companies or private legal entities (arts. 4 and 6). In the case of such entities being concessionaires of public services, Article 5 prohibited the use of forced labour «for the production or the collection of products which such private individuals, companies or associations utilise or in which they trade».

ILO Convention No. 29, as a provision intended to prevent forced labour from degenerating into practices analogous to slavery¹³², surrounded the forced labourers with a series of rights that were no more than the minimum indispensable guarantees. It established the right of forced labourers to be paid the wage legally established for the employment performed (Art. 14.1); the right to be paid overtime in the same way as free workers in the territory concerned (Art. 13 .1); the right to the same working hours (daily and weekly) as for free workers in the territory concerned (idem); the right to a day of rest (Art.13.2); the right not to be obliged to work more than 60 days in a 12-month period (Art.12.1) and the right to be issued with a certificate proving the days actually worked as a forced labourer (Art.12.2). Article 21 also prohibited the use of forced labourers for underground works.

¹³² See Article 5.1 of the Convention.

Article 11 established a guarantee that would be effective a priori. It sought to protect the population of the affected territory from indiscriminate recruitment for forced labour. A list of exemptions was therefore established, including: women, persons under 18 years of age, persons over 45 years of age, teachers and their pupils, and all administrative staff in general. And to ensure that only the most physically fit individuals were recruited, the article further imposed that the workers recruited should undergo a prior medical examination to rule out the possibility that they were not carriers of any contagious disease or any abnormality that made them unfit for the required jobs. The same precept imposed that recruitment should not only be respectful of marital bonds and family relationships, but should also maintain, in each community, the number of adults and capable men indispensable for family and social life. With regard to the latter requirement, it was established that the percentage of capable men who could be recruited in each community could not exceed 25 per cent of the population.

Since the Convention was a set of minimum principles whose implementation was left to the national authorities (Art. 23.1), it was necessary to introduce principles whose aim was none other than to ensure the effectiveness of the entire regime of the Convention. It was stipulated that the High Parties, when issuing regulations to implement the Convention, should adopt some system of inspection and monitoring of the application of the provisions adopted in the field of forced labour; regulate the exercise of the right of forced workers to lodge complaints and claims with the competent authorities (Art. 23.2); and establish effective criminal sanctions for the illegal use of forced labour (Art. 25). The obligation of states to submit annual reports under Article 408 of the Constitution of the International Labour Organization was also re-emphasized¹³³.

4. Weimar and the new interwar social constitutionalism

4.1. A constitution born and marked by a context of war and revolution

¹³³ Article 22 of the ILO Constitution would correspond to Article 408 of the Versailles Treaty. It should be recalled that the ILO Constitution was inserted into the peace agreement as Part XIII.

Between August and September 1918, the capitulation that the German army commanders had already been considering for months became necessary¹³⁴. On August 14th, General Paul von Hindenburg (Chief of Staff) and General Erich Ludendorff, in a meeting held at their headquarters in Spa¹³⁵, acknowledged the futility of continuing the war¹³⁶. On September 27th, with the noble purpose of saving what was left of the Reich's army, they communicated to the imperial government the need to ask for an immediate armistice¹³⁷. However, despite such intensions, the officers of the Imperial Navy (*Kaiserliche Marine*), under the command of Admiral Reinhard Scheer, in an emboldened attempt to "save the honour of the imperial fleet," thought to deliver a last blow to the Allies, planning a risky operation that consisted in leaving from the port of Wilhelmshaven with the intention of attacking the British Royal Navy in the English Channel ports¹³⁸. Strategically speaking, such an offensive was complicated. Attempting an attack in a channel flanked on both sides by allied ports meant exposing oneself to double-front fire, a risk that made such an operation look, more than a military tactic, a suicidal act, which would logically lead to the insubordination of the sailors who, in addition to sympathizing with anarcho-socialist doctrines, were anxious for the war to end and for them to return home.

On October 29th, at the Wilhelmshaven naval base, sailors from the Thüringen and Helgoland ships, after disobeying orders from their superiors to sail towards the English Channel, took control of the ships and placed their officers under arrest¹³⁹. And although their disobedience was imitated by their comrades who were still on land, the mutiny was finally brought under control, and on November 1st the mutinous sailors - more than a thousand - were taken to the naval base of Kiel to be court-martialed¹⁴⁰. But

¹³⁴ M. FRÍAS NÚÑEZ, *Las democracias parlamentarias en el periodo de entreguerras*, Madrid, Ediciones Akal, 1990, pp. 39-40; F. CLAUDÍN, *La Revolución Alemana de 1918*, p. 2, available at: http://www.mediafire.com/?pdh2008cxxum81c/H16_Revolucion-Alemana.pdf/file ;

¹³⁵ Spa is a city located in the province of Liège, in the east of Belgium. During the First World War, the command of the German army established its base of operations there.

¹³⁶ J. M. ARANDA SARVISÉ, *La caída del II Reich alemán. La Revolución Alemana (1918-1919)*, conference held in November 2018, p. 7, pdf available at [researchGate](https://www.researchgate.net/publication/331111111)

¹³⁷ *Idem*

¹³⁸ J. IGNACIO RAMOS, *Bajo la bandera de la rebelión. Rosa Luxemburgo y la revolución alemana*, Madrid, Fundación Federico Engels, 2014, p. 195

¹³⁹ *Idem*

¹⁴⁰ *Idem*

the Kiel sailors, considering that the Wilhelmshaven mutineers acted in the interest of all, opposed their prosecution, and demanded the release of their companions¹⁴¹. Their officers rejected such a petition, and the sailors, on November 3rd, 1918, along with the shipyard workers of Kiel, organized a rally to discuss the measures to be taken for the release of their comrades¹⁴². Lieutenant Steinhäuser ordered the crowd to disband, but they refused to obey him, and so he ordered his soldiers to open fire on the demonstrators¹⁴³. The results of these shots-nine dead and 29 wounded- ended up lighting the flames of revolution.

On November 4th, the sailors elected their first councils, and rose up in rebellion¹⁴⁴. They arrested and disarmed their officers; they released their comrades; they occupied the ships and raised red flags on them; they occupied the prison, the station and other public buildings. The port stevedores, like the sailors, declared a general strike¹⁴⁵. The Berlin regiment mobilized a detachment of soldiers to suppress the uprising, but these soldiers were also disarmed and fraternized with the rebels. By the evening of the same day, Kiel was under the control of 40,000 sailors and insurgent soldiers.

Ever since the Allies had demanded the abdication of the Kaiser in order to sign the armistice, the German leaders had tried by all means to save the German monarchy. They initiated timid democratic reforms: Prince Max von Baden was appointed as Cancellor to begin peace negotiations, and the Imperial Army High Command, which had exercised a military dictatorship in Germany since the beginning of the conflict, transferred power to politicians assembled in the Reichstag. But the outbreak of the uprising in Kiel precipitated precisely that decision which they most wished to avoid. Faced with a revolt that was spreading like wildfire to other German cities, the German leaders had to choose between sacrificing the monarchy and avoiding the revolution, or saving the Kaiser and confronting the revolutionary masses in a civil war. The latter choice, of course, did not automatically mean the triumph of the revolutionaries.

¹⁴¹ *Idem*

¹⁴² *Ibidem*, p. 196

¹⁴³ *Idem*

¹⁴⁴ *Idem*

¹⁴⁵ *Ibidem*, p. 197

Although they had sailors and insurgent soldiers in their ranks, there was a possibility that they would be crushed by the ruling oligarchy, which still had on its side not only the military high command, but also a large part of the soldiers and of the German people. But despite this possible triumph of the government over the revolution, it was still very risky to opt for war. By sacrificing the monarchy, and approving the social reforms demanded by the masses, the dominant bourgeoisie could save the principles of liberalism, which constituted the basis and support of its social status. On the other hand, with a civil war, it risked losing everything; the victory of the revolutionaries would lead to an extreme situation as in the Russia of October 1917.

Since the Kiel uprising, the German Social Democratic Party (SPD) acted as an instrument of conciliation between the bourgeois-liberal ideology defended by the old ruling class and the socialism defended by the revolutionaries. On the one hand, the SPD, a defender of social change within the law, aligned itself with the military commanders and other conservatives to avoid a "Bolshevik" experience. But at the same time, as the representative and spokesman of much of the revolted working masses, the SPD exerted pressure on the government and demanded the abdication of the Kaiser as the main measure to prevent the fearsome revolution. On November 9th, 1918, all the forces of the German left-wing, that is, the SPD, the USP, the Spartacus League and the revolutionary delegates, organized a general strike that paralyzed the entire city of Berlin¹⁴⁶. At about noon, a crowd - including soldiers and workers - gathered in the vicinity of the Reichstag and demanded the abdication of the Kaiser, shouting «Out with the Kaiser! Out with the war! Long live the Republic!»¹⁴⁷ In the face of such mass agitation, the government's resolution could not be extended any longer. On the same day, the 9th, the abdication of the Kaiser took place, and the German Republic was proclaimed. Wilhelm II went into exile in the Netherlands¹⁴⁸, and the leader of the SPD, Friedrich Ebert, was appointed president. The following day, he formed a government which, in addition to maintaining the ministers of the previous government of Max von

¹⁴⁶ F. CLAUDÍN, *Cit.*, p. 5

¹⁴⁷ «¡Fuera el Káiser! ¡Fuera la guerra! ¡Viva la República!». See J. IGNACIO RAMOS, *Cit.*, p. 208; F. CLAUDÍN, *Cit.*, p. 3-5

¹⁴⁸ J. IGNACIO RAMOS, *Cit.*, p. 210

Baden¹⁴⁹, included three ministers of the Independent Social Democratic Party (USPD)¹⁵⁰.

On the same day that Ebert formed his government, November 10th, the Berlin Councils of Workers and Soldiers held a congress to elect the members of their Executive Committee¹⁵¹. Twenty members were appointed to this governing body of the Councils. Ten of the members were workers, and the other ten were soldiers¹⁵². Among the workers, five were members of the SPD, and the other five were divided between the USPD and the revolutionary delegates. This Executive Committee was called the Council of People's Commissars, and was chaired by Ebert, one of the five workers in the SPD¹⁵³.

It was (and is) quite logical that the German government, regardless of its ideological color, could do little or nothing about the euphemistically called "peace agreements". Germany, as the cause of the *iniustum bellum*, had no choice but to accept the terms of the victor's justice. Starting from this premise, it would not be wrong to maintain that after the signing of the armistice on November 11th, the Ebert government's main concern was not precisely the peace treaty that it knew would be imposed on it from the beginning, but the foundations on which the new German democracy that was about to be born should rest. With regard to what the cardinal principles of the future German Charter should be, German political opinion was polarised between the defenders of liberal conservatism on the right, and the defenders of Marxist progressivism on the left.

Naturally, the first ideological block was composed of all those subjects or groups whose economic or purchasing power could be negatively affected by the establishment of a planned and controlled economy. This was the case of large and medium-sized landowners, bankers, industrialists, media owners, liberal professionals – doctors, lawyers, architects, engineers, etc. – and, in short, the middle class in general.

¹⁴⁹ *Ibidem*, pp. 209, 223

¹⁵⁰ *Ibidem.*, p. 212

¹⁵¹ *Ibidem.*, p. 217

¹⁵² *Ibidem*, pp. 219-220

¹⁵³ *Ibidem*, p. 220

The old liberal order was also defended by other groups which, although they did not directly control the means of production, had achieved an affluent economic position either through the positions or ranks achieved within the structure of the Administration, as in the case of the judges and the military, or simply because of the privileges that had been granted to them within the established regime, as in the case of the religious. All these conservatives were divided into various parties: the German Democratic Party (DDP), the Catholic Centre Party (*Zentrum*), the German National People's Party (DNVP), and the German People's Party (DVP).

In 1914, only one party represented the German left: the SPD. Within it, two orientations could be distinguished: one with a tendency towards the right, led by men like Friedrich Ebert; another with a tendency towards the left, led by the likes of Hugo Haase, Karl Liebknecht, Rosa Luxemburg, etc. Within this last tendency, there were two wings: one opposed to war, led by Hugo Haase, and another revolutionary one led by Karl Liebknecht, Rosa Luxemburg and Clara Zetkin. The latter wing would later be renamed the Spartacus League in honour of Spartacus, the slave who made the military power of the Roman Empire tremble. Despite all these internal differences, in 1914, party discipline was imposed, and the SPD, in an act of patriotism, supported the war by voting to issue the bonds to finance the conflict. But such unity of vote would not be maintained until the end of the war. During the course of the war, internal ideological differences became increasingly pronounced: the right wing got increasingly closer to the liberal bourgeoisie, while the left wing remained faithful to the guidelines of the Second International. The definitive separation came in 1917, when the Reichstag had to renew its support for the conflict. While the moderates of the SPD voted for the continuation of the conflict, the radicals voted against it. The result of this break in voting unity was the formation of the aforementioned Independent Social Democratic Party of Germany (USPD), which thus took away the entire radical wing of the SPD.

As we have just seen, internal political cohesion was not the strong point of the Independent Social Democrats either. When Ebert proposed to the USPD to participate in his interim government formed on November 10th, Karl Liebknecht and Enrs Müller put forward six conditions to accept such a proposal¹⁵⁴: 1) the proclamation of the German Socialist Republic; 2) the transfer of legislative, executive and judicial power to

¹⁵⁴ *Ibidem*, p. 213

the elected representatives of the workers and soldiers; 3) the non-admission of bourgeois ministers to the provisional government; 4) the participation of USPD representatives limited to the time needed to conclude the armistice; 5) technical ministries under a purely political cabinet; and 6) parity between socialist parties in the cabinet. Although the Social Democrats rejected the first four conditions, Hugo Haase, president of the USPD, ended up accepting the SPD proposal, taking over the three ministries that were offered to him¹⁵⁵. Although this disparity of opinion between Haase and the Spartacus League supporters did not lead to a rupture at the time, it did reveal an internal ideological fissure that could lead to a definitive rupture as soon as the opportunity arose. This, precisely, took place between December 16th and 21st, 1918, when the General (or National) Congress of the Councils of Workers and Soldiers was held in Berlin¹⁵⁶. This macro-meeting was attended not only by delegates from the left but also by delegates from the German Democratic Party, a political formation of centre-left ideology. Following the figures presented by Ignacio Ramos¹⁵⁷, a total of 489 delegates attended the said congress¹⁵⁸: 405 representatives of the workers, and 84 representatives of the soldiers. Among the workers' delegates, 288 were from the SPD, 90 from the USPD (10 were Spartacus League supporters), 11 were from the united revolutionaries, 25 were from the DDP, and 75 were without a party.

The main issue addressed at this congress was the determination of a date for the holding of general elections for the formation of a constituent assembly¹⁵⁹. This question divided opinion among the Social Democrats, the Independents and the

¹⁵⁵ *Idem*

¹⁵⁶ J. ROLDÁN, *Weimar: tres momentos en el desarrollo político-filosófico en Alemania*, Marburgo, Editorial Tecnum Wissenschaftsverlag, 2016, p. 124; J. IGNACIO RAMOS, *Cit*, p. 232; F. CLAUDÍN, *Cit.*, p. 7; M. FRÍAS NÚÑEZ, *Cit*, p. 42; R. GIL ALBURQUERQUE, *El derecho del trabajo democrático en la República de Weimar*, Universidad de Castilla La Mancha, Facultad de Derecho y Ciencias Sociales de Ciudad Real, 2015, p. 309

¹⁵⁷ J. IGNACIO RAMOS, *Cit*, p. 232

¹⁵⁸ Scholars do not seem to agree either on the exact number of delegates attending the Congress or on the exact representation of the SPD at the Congress. According to Julián Roldán, among the 480 delegates attending the congress, 292 represented the SPD. According to Fernando Claudín, among the 480 delegates attending the congress, 292 were from the SPD and 94 were from the USPD. And, among the USPD delegates, there were 10 from the Spartacist League. According to Marcelo Núñez Frías, among the 487 persons who attended the said congress, there were 298 SPD delegates and 10 delegates from the Spartacist League. According to Manuel Aranda Sarvise, a total of 512 delegates attended the congress. See: M. FRÍAS NÚÑEZ, *Cit*, p. 42; J. M. ARANDA SARVISE, *Cit*, p. 9

¹⁵⁹ J. IGNACIO RAMOS, *Cit*, p. 230

Spartacus League supporters. The SPD, which had been campaigning since November for «reconciliation and unity»¹⁶⁰ and condemning «the war among brothers»¹⁶¹, once again spoke out against any revolutionary claims. For the Social Democrats, the only way to achieve socialism was through a democratic regime established in a constitution drawn up by a constituent assembly freely elected by the German people¹⁶². But the socialism advocated for by the Social Democrats was not of a Bolshevik type; it was not a matter of annihilating private property and establishing a planned national economy. Rather, it was a matter of expropriating and nationalizing certain specific services, those that are fundamental and necessary for all citizens, and of dignifying the working class through the adoption of a series of inviolable minimum social guarantees. In short, the socialism to which the Social Democrats referred to was nothing else than a liberalism respectful of an inviolable minimum of social guarantees.

The issue of the constituent assembly produced an irreconcilable division within the USPD. On the one hand, the moderates ended up supporting the formation of the constituent assembly, even though their proposal that the Councils should remain the supreme authority in legislative and executive matters was rejected by the SPD¹⁶³. For their part, the Spartacus League supporters opposed the holding of elections for the formation of a National Assembly, and opted for insurrection as the only method of establishing the dictatorship of the proletariat in the Russian style¹⁶⁴.

As was to be expected, the thesis of the majority of the SPD ended up prevailing at the congress. Extremisms were rejected, and elections to the constituent assembly were set for January 19th, 1919¹⁶⁵. This decision marked the definitive separation

¹⁶⁰ *Ibidem.*, p. 216-217, 230, 269

¹⁶¹ *Idem*

¹⁶² *Ibidem.*, p. 233

¹⁶³ *Idem*

¹⁶⁴ The decision to boycott the elections was not taken unanimously by all Spartacist League supporters. While members like Otto Rühle vigorously defended the revolution, others like Paul Levi or the intellectual Rosa Luxemburg warned about the risk involved in taking hasty decisions. The latter two, especially Luxemburg, warned that the idea of revolution had not gained solid roots among the working masses. That is why they supported participation in the elections, and defended the recourse to revolution only when circumstances advised it. Contrary to these prudential warnings from Luxemburg, the majority of the Spartacist League ended up voting for the boycott by 62 votes to 23. See J. IGNACIO RAMOS, *Cit.*, p. 253-266

¹⁶⁵ M. NÚÑEZ FRÍAS, *Cit.*, p. 42

between the other left wing supporters and the Spartacus League supporters, who, between December 30th, 1918 and January 1st, 1919, constituted an independent political formation under the name of the German Communist Party (KPD)¹⁶⁶. In the months following its constitution, the KPD devoted its efforts to boycotting the constitutional process. On January 4th, 1919, on the occasion of the dismissal of Eichhorn, the Berlin police chief and member of the USPD, two KPD leaders –Wilhelm Pieck and Karl Liebknecht–, the USPD president and the representatives of the revolutionary delegates called for demonstrations on the 5th and 6th of January. The supporters of these political formations, many of them armed and ready to take power, turned out in large numbers for these demonstrations, occupying numerous public buildings (the police prefecture, the telegraph office, the Reich printing, the Anhalt railway station and the railway direction building, etc.) and several newspaper offices (Büxenstein, Scherl, Ullstein, Mosso and the Vowärts, etc.). The crowd waited for their leaders' orders to act; but to their disappointment, indecision overtook their leaders, and the order to act was never given to the demonstrators, who gradually dispersed.

4.2. The Constitution of Weimar

As decided by the majority of the SPD at the national congress of the councils, general elections were held on January 19th, 1919, for the formation of the constituent assembly. For the first time in constitutional history, in a modern state, general elections were held on the basis of equality among all its citizens. In the elections of January, it was not the rich or the poor, the nobles or the commoners, or men or women who voted. In These elections expressed the will of one people, whose members were absolutely equal on the basis of only two objective criteria: being a German, and being over 20 years old. On this basis, a total of 30,524,848 voters (83% of those entitled to vote) participated in the elections.

The Reich was divided into 36 districts or constituencies. A total of 421 deputies were to be elected from these districts, at the rate of one deputy for every 150,000 inhabitants, and equating excesses of 75,000 inhabitants to that rate. The elections followed the closed list system, and the D'Hondt proportional system was applied in the final distribution of seats.

¹⁶⁶ P. BROUÉ, *Cit.*, pp. 136-146; J. M. ARANDA SARVISE, *Cit.*, p. 12

Ideologically speaking, at the centre of all political formations was the German Democratic Party (DDP: *Deutsche Demokratische Partei*), which counted among its members, Jews, craftsmen, small traders, landowners, liberal professionals, civil servants and professors. The DDP was progressive. Within a pluralistic republic, it advocated for more direct democracy at the cost of the power of parliament. And although it defended private property, it also admitted the nationalization of some large companies. To the right of the DDP, and close to it, was the Catholic Centre Party (*Zentrum*). It defended a modern federalism based on non-secular liberalism, which was nevertheless respectful of the freedom of the church from the state, equality between all religious denominations and religious teaching. The *Zentrum* was against the hegemony of Prussia, the centre of Protestantism.

On the far right were the German National People's Party (DNVP: *Deutschnationale Volkspartei*) and the German People's Party (DVP: *Deutsche Volkspartei*). Both formations represented the more conservative version of German liberalism. Among their followers were former members of the German Conservative Party and supporters of Bismark, bourgeois, large employers and industrialists, high commanders of the German army, some merchants and some intellectuals. Nostalgics of the German monarchy, they defended the establishment of a very strong president, the preservation of Prussia's integrity, contractual equality between employers and workers, and the protection of individual rights against the nationalisation of services.

To the left of the DDP, in order of proximity to it, were the already mentioned SPD, USPD and KPD. The position of the SPD was close to that of the DDP. The Social Democrats, in favour of a regime of reconciliation among the German people, advocated for a pluralistic democracy. They defended a constitution which, on the basis of a strong parliament, should start from the general rule of the protection of liberal rights and freedoms and end up defending minimum inviolable social guarantees. Among these, in addition to a series of labour rights, they defended economic planning and the nationalisation of those services considered necessary for all citizens.

Through the results of the elections, it could be seen how the conciliatory discourse of the political Centre was well accepted by the German people. The Social Democrats led in the results. The SPD obtained a bit more than the 35% of votes it had

obtained in the elections immediately prior to the First World War¹⁶⁷; it reached 37.9% of the vote and won 165 seats¹⁶⁸. The *Zentrum*, with its 19.7% of the vote, won a total of 91 seats¹⁶⁹. The DDP received 18.6 % of the vote and won 75 seats¹⁷⁰. The extreme right won a total of 63 seats: 44 deputies for the DNVP (10.3 % of the vote) and 19 deputies for the DVP (4.4 % of the vote). The USPD only got 22 seats (7.6% of the vote)¹⁷¹, and the KPD did not participate in the elections¹⁷².

The three winning parties, being ideologically close, formed the so-called Weimar *Koalition* (the Weimar Coalition)¹⁷³ with a majority of 331 seats out of a total of 421. The Social Democrats Ebert and Scheidemann were elected as President and Cancellor of the Reich, respectively¹⁷⁴. The government set February 6th as the opening date for the National Constituent Assembly, which was to function until the adoption of the final Charter on August 11th, 1919. The debates and the negotiations took place in eighty sessions. And although most of these sessions were held in the theater of the city of Weimar, chosen to avoid the revolutionary climate prevalent in Berlin, the Assembly met in the capital for the sessions held between May 12th and June 22th, subsequently returning to Weimar to conclude its work, and returning definitively to Berlin on September 30th.

The final text of the Weimar Constitution was, of course, only a reflection of the concessions made by the three coalition forces. In fact, it must be admitted that it should have not been difficult for the three parties to reach this agreement. After all, the political programmes of these formations were based, from the outset, on the defence or salvation of the main foundations of liberalism. So the concessions, while no less

¹⁶⁷ J. D. RESTREPO ZAPATA, *El Estado alemán durante la república de Weimar*, in TEMPUS: Revista de Historia General (Medellín), n° 1, 2015, p. 80

¹⁶⁸ M. NÚÑEZ FRÍAS, *Cit.*, p. 42; R. RÜRUP, *Génesis y fundamentos de la Constitución de Weimar*, in Ayer, n° 5, 1992, p. 141

¹⁶⁹ *Idem*

¹⁷⁰ *Idem*

¹⁷¹ *Idem*

¹⁷² *Idem*

¹⁷³ M. NÚÑEZ FRÍAS, *Cit.*, p. 42; W. JELLINEK, O. BÜHLER, C. MORTATI, *Cit.*, pp.11 y ss

¹⁷⁴ M. NÚÑEZ FRÍAS, *Cit.*, p. 42

important, had more to do with the nuances that differentiated the programmes of the parties in the coalition.

The Weimar Constitution was of medium length; it was composed of 181 articles divided into two parts. In the first part, Articles 1 to 108, the three branches of government were regulated, along with the form of the state, state administration and the distribution of powers between the Federation and the *Länder*. The second part (Articles 109 to 165), regulated the fundamental rights and duties of Germans. The remaining articles contained transitional and final provisions.

Between a quasi-absolute president defended by the right and strong parliamentarianism defended by the Social Democrats, the Weimar Constitution adopted an intermediate model. On the one hand, there was the President of the Reich, freely and directly elected by the people (Art.41), who could also vote to remove him before the end of his seven-year term (Art.43). On the other hand, there was the Reichstag (Parliament), also directly legitimated by the people. Between the two bodies was the Reich Government, consisting of a head, the Cancellor, and the ministers (Art. 52). Under Article 53, the members of the government were appointed and dismissed by the President. At the same time, Article 54 gave the Reichstag a similar power. According to this provision, the government members were required to resign as soon as the Reichstag withdrew its confidence from them. Moreover, the Reichstag could also cause the same dismissal of members of the Government on the basis of Article 59, that is, by bringing an accusation against them in the event of a punishable violation of the constitution or another law of the Empire.

In addition to his power to appoint and dismiss members of the Government and other civilian and military officials (Art. 46), the President was competent to conclude treaties with foreign countries (Art. 45), accredit and receive ambassadors (*idem*), declare war and conclude peace (*idem*), and grant pardons and amnesty (Art. 49). The Reich President further held the supreme command of the armed forces (Art. 47). The list of the President's powers concluded with his two most important competences: the power to dissolve the Reichstag only once for the same reason (Art.25) and the power to take any measures he considered necessary to restore security and public order in case those had been seriously disrupted (Art.48). In connection with the latter faculty, the President was able to suspend fundamental rights such as personal freedom (Art. 114),

the inviolability of the home (Art. 115) and of correspondence (Art. 117), freedom of expression in all its manifestations (Art. 118), the right to assemble peacefully without a declaration or special permission (Art. 123), the right to associate or to form associations and corporations for legal purposes (Art. 124), and the right of property (Art. 153).

The commitment of the Weimar Coalition also marked the entire catalogue of rights recognized in the second part of the Charter. Article 109, the first of the first section, not only declared the abolition of noble titles but also affirmed absolute equality between men and women in the exercise of their rights and duties. The Weimar Constitution thus became the first Western Charter to establish an inclusive definition of the term citizen, thereby suppressing all sexual, racial, patrimonial and educational criteria that had marked the definition of that term under liberal constitutionalism. In addition to universal suffrage, the main achievement of the German people, the old liberal rights mentioned in the immediately preceding paragraph were also recognized. The limitation of all these individual rights could be operated only by law.

In relation to the religious question, unlike the anticlericalism that the Spanish constitution of 1931 would adopt years later, the Weimar Coalition opted for a non-denominational state (Art.137) compatible with the old privileges of the church. Religious freedom was recognized, which in turn implied the freedom to join a religious denomination and the freedom to constitute one. Religious denominations acquired their legal personality in accordance with civil law. But in addition to this general legal personality, those religious denominations that had the status of public law corporations before the Weimar Constitution retained this status, and new ones that wanted the same recognition could apply for it. All denominations recognized as corporations under public law could participate in the exercise of tax authority. They could then, on the basis of tax rolls, levy taxes.

The union, association or federation of religious denominations was allowed. In these cases, if the original denominations were recognized as public law corporations, the macro entity resulting from the transformation also acquired the same recognition.

In the field of education, three types of schools were recognized: public, private and religious. In any of these, the admission or access of the students had to be done on

the basis of objective criteria that could never establish distinctions according to social origin. The subject of religion was declared mandatory in all schools, except for secular schools (Art. 149).

The influence of the Social Democrats was most noticeable in the list of principles relating to economic life. Although the starting point was the recognition of liberal freedoms and rights, the exercise of these was subject to the respect for supreme values such as justice and the obligation to ensure a dignified existence for all (Art.151). It is precisely these guiding principles that obliged the public authorities to intervene in the functioning of the economy as soon as private or particular interests clashed with the general interest. The Weimar Constitution established several mechanisms to protect this general interest. Among such mechanisms were the powers of public authorities to expropriate private property (Art. 153), to nationalize private enterprises (Art. 156), and to federate various enterprises (*idem*).

With the same purpose of guaranteeing social justice, the Weimar Constituent Assembly, based on the acceptance of social guarantees emanating from international regulations (Art. 162), established a minimum of indispensable social rights. Article 161 established an insurance system to protect the worker in cases of maternity, illness, old age, or any other contingency that could affect the worker's working capacity. Article 165 recognized, in addition to the equality between employers and workers in the regulation of working conditions, freedom of association for both groups. According to this precept, workers could form their company councils, which in turn could be federated either at the district level or at the state or federal level.

The last paragraph of Article 165 was only a timid consolation for the Independent Social Democratic Party, which had always defended, not a simple participation, but the attribution of executive and legislative power to the revolutionary councils. Unfortunately for the independents who remained outside the Weimar Coalition, their wishes did not go beyond the dream dimension.

CHAPTER 2

DECLARATION OF THE REPUBLIC IN THE STGG

SUMMARY: 2.1 Spanish liberal constitutionalism and the legal statute of the STGG 2.2. The Republic, a Messiah for the forgotten STGG? 2.2.1. *Native voices in the Republic* 2.2.2. *Voices of the colonial settlers in the Republic* 2.3. The investigations conducted by Ricardo Ferrer Barbero 2.4. The republican constituent assembly and the rights of the residents of the STGG

2.1. Spanish liberal constitutionalism and the legal statute of the Spanish Territories of the Gulf of Guinea

This section is intended to place the Spanish Gulf Territories in the parliamentary debates that took place in Spain throughout the 19th century. The aim is to address the legal statute of the residents [Spanish, native or foreign] of those territories throughout Spanish liberal constitutionalism. The question is fundamental not only to assert the discontinuity or rupture of the republican framers of the constitution with the preceding colonial model, which was the departure hypothesis of the present dissertation, but also to determine the degree of such rupture. The claim that the legal conditions of Guinea residents improved under the new regime can only be affirmed after obtaining a positive balance in the comparison between the liberal colonial constitution and the republican colonial constitution.

According to Bartolomé Clavero, after the Spanish framers of the constitution of 1837 adopted the principle of special legislation for the overseas, the issue of the residents' rights in these territories was marked by a complete *constitutional apartheid*¹⁷⁵. But if 1837 was the beginning of such constitutional *status* in Hispanic America, it was not so for Spanish Guinea. The invisibility of Spanish Guinea in the Spanish Constitutions dates back to the very origins of Spanish constitutionalism. The national task entrusted to the first Spanish framers of the constitution was so complex

¹⁷⁵ B. CLAVERO, *Bioko...*, *Cit.* p. 454

that their attention could not be diverted toward debates over territories that had not even been effectively occupied. In the Cadiz constituent assembly, America was at the center of the debates, and when the American deputies raised their voices in defense of the «children of Africa», they did not refer precisely to those of the *motherland*, but rather to their descendants living in the New World. Consequently, the exclusion of Guinea from the Cadiz Constitution, although true, was not by virtue of a decision expressly adopted by the Cadiz framers of the constitution as a result of a previously open debate. Instead, it resulted from a systematic and logical interpretation of the principles and rules adopted by the Cadiz constituent assembly regarding the trending issue of the overseas.

Article 1 of the Constitution of Cadiz began by defining the Spanish Nation as the «meeting of all Spaniards of both hemispheres»¹⁷⁶. The territories that made up that Nation were included in paragraph 1 of Article 10, which was debated in the sessions of September the 2nd and 3rd, 1811. They were precisely the only sessions of the Cadiz constituent assembly in which the Spanish Territories of the Gulf of Guinea were mentioned. The original text of Article 10, that is, Article 11¹⁷⁷ of the project drawn up by the constitutional commission, included a list of the main territories that the Nation included in Europe, America and Asia. No mention was made of Africa¹⁷⁸, because according to the constitutional commission, both the African territories, as well as the rest of the territories not mentioned, were included in the formula «adjacent lands and islands», used at the beginning of the precept. In fact, the commission would have

¹⁷⁶ The Portuguese framers of the Constitution of 1822 copied this precept almost literally. Article 20 of the Portuguese Constitution read: «*A Nação Portuguesa é a união de todos os Portugueses de ambos os hemisférios*».

¹⁷⁷ Article 11 of the constitutional project read as follows: «The Spanish territory includes in the Peninsula, with its adjacent lands and islands, Aragon, Asturias, Old Castilla, New Castilla, Catalonia, Cordoba, Extremadura, Galicia, Granada, Jaén, León, Murcia, Navarra, Vascongadas Provinces, Seville and Valencia, the Balearic Islands and the Canary Islands. In northern America, New Spain, with Nueva Galicia, Goatemala, internal provinces of the East, internal provinces of the West, island of Cuba, with the two Floridas, the Spanish part of the island of Santo Domingo and the island of Puerto Rico with the other adjacent to these and the continent in both sea. In South America, Nueva Granada, Venezuela, Peru, Chile, Río de la Plata province, and all adjacent islands in the Pacific and Atlantic. In Asia, the Philippine Islands and those that depend on their government». See *Diario de Sesiones de las Cortes*, Historical Series (hereinafter, D.S.C.G.) available at <https://app.congreso.es/estsesiones/> Cit., p. 1742

¹⁷⁸ We must insist that under Spanish liberal constitutionalism, the term Africa did not include the Canary Islands. For centuries, these were considered entirely Hispanized territories. Proof of this is that in the list included by the framers of the Cadiz Constitution, the Canary Islands are cited as territory of the Peninsula.

benefited from a brief semantic review to realize that the said formula did not provide much clarity on the issue. Because if *ad-iacere* is «lying or being next to», and if «being next to» implies "proximity" between the things under consideration, then it is clear that the distant Spanish Territories of the Gulf of Guinea were not adjacent to the Peninsula. At most, the formula would concern the areas of North Africa, that is to say, Ceuta, Melilla, and Alhucemas.

As soon as the commission read the formula, amendments were filed asking for more territories or cities to be added to the precept list. In relation to the African territories, Simón López requested that the expression «adjacent lands» be replaced with «And in Africa, the area of Ceuta and the three minor *presidiums* of Melilla, the Peñón and Alhucemas»¹⁷⁹. F. Javier Borrull's amendment¹⁸⁰ and M. Vicente Blas Garóz's amendment¹⁸¹ were similar. The only ones who defended the inclusion of the Spanish Territories of the Gulf of Guinea with the territories of North Africa were Vicente Terrero Monasterio and Antonio Samper. When the former asked that the precept mention two islands that Portugal ceded to Spain in Cape Verde¹⁸², he was actually thinking of Fernando Poo and Annobon, although he erroneously placed them among the islands of Cape Verde. Mr. Samper, meanwhile, maintained a stance that went from more to less. He began by defending the specific mention of Spanish Guinea in the precept, but ended up requesting that «adjacent lands» be replaced by «And in Africa, several possessions»¹⁸³. The final content of paragraph 1 of Article 10 was marked by

¹⁷⁹ See D.S.C.G., session of 02/09/1811, p.1743

¹⁸⁰ «[...] I ask that the following words be added to the article: "and in Africa, Ceuta, Melilla, the Peñón and Alhucemas ». *Ibidem*, p.1744

¹⁸¹ «I will make the point clear. If these possessions [referring to Ceuta, Melilla, the Peñón and Alhucemas] in question were in any of the three parts of the world that were cited, it could happen; but since they are only in Africa, I would like them to be stated». *Idem*

¹⁸² «[...] and I am not sure, but I have heard that in Cape Verde the Portuguese ceded two islands. If that is true, why don't they express themselves?». *Idem*, p.1743

¹⁸³ «[...] considering that Spain has on the Mediterranean coast of Africa, the city and the fortress of Ceuta, the cities of the three minor presidiums: Melilla, Peñón and Alhucemas, and also it retains the decree of ownership of the two islands of Fernando Póo and Annobón in the Gulf of Guinea, with 80 leagues of the mainland coast, that by 1778 in La Paz, Spain ceded to Portugal in compensation for the island of Santa Catalina, adjacent to Brazil, which was occupied by our weapons, commanded by the General D. Pedro Cevallos. According to this aspect, it seems that naming the three parts of the land in Europe, America and Asia in the article, on which Spain has domains; there is no reason to omit mentioning Africa [...]. Thus, it is appropriate that without partial demarcation, it is indicated, either at the

the influence of Mr. Samper's amendment and that of the President of the constitutional commission, who proposed the inclusion of the following expression: «and other possessions in Africa»¹⁸⁴.

It is not clear from the reading of Articles 1 and 10 of the Constitution that Spanish Guinea was excluded. Article 1 proclaimed the unity of the Spanish Nation; and Guinea, while a Spanish possession in Africa, was included in the expression «with the other possessions of Africa», finally adopted in paragraph 1 of Article 10. But, unfortunately, Articles 1 and 10 were only generic principles whose true *ratio legis* would be deduced from other constitutional precepts that represented the core of the regulation of the overseas issue. The first of these was Article 5. According to its first paragraph, «all free men born in the domains of Spain as well as their children» were Spanish. *In claris non fit interpretatio*. In a society where some people could be owned by others, a principle on which the colonial productive system stood by then, it was no trivial matter that the Cadiz framers of the constitution insisted on the legal distinction between holders and the possessed. In *Roman Paladin*, Article 5 merely paid tribute to one of the most abominable restrictions that human dignity has suffered throughout history: slavery. The transition of it to freedom, that is, from being a thing to being a person was dependent upon the requirement to be Spanish. This was recalled in the fourth paragraph of the precept, which recognized as Spaniards the «freemen since they acquired freedom in Spain».

Article 5, despite introducing an important aspect, was an elegant way of introducing the principles of Articles 18 and 22, which represented the true axes around which the colonial regime of the Cadiz Constitution revolved. According to Article 18, «Spanish citizens are those citizens who by both lines bring their origin from the Spanish domains of both hemispheres, and are approaching any town of the same domains». This is the last and the most important of the filters established by the Cadiz framers of the constitution to distinguish the true holders of national sovereignty. The wording of the precept established a clear delimitation between “*Spanish*”, a generic

end of the article or in conjunction with the Canary Islands, «and in Africa, several possessions». *Ibidem*, session of 03/09/1811, p.1748

¹⁸⁴ *Idem*

term that, except for the slaves of Article 5.1, was applicable [or applied] to all the subjects of the empire, and “*Spanish citizen*”, an excluding [and exclusive] term that could never be applied to the so-called “*brown castes*”, that is to say, Americans of African descent.

In the session of September 15th, 1811¹⁸⁵, Evaristo Pérez de Castro recalled the background that led to the exclusion of the “children of Africa” by the constitutional commission. According to the commission only citizens were entitled to active and passive suffrage. But among Spanish citizens two groups were distinguished, according to the way they obtained citizenship. On the one hand, there are those citizens who do not require an additional act by an authority to be recognized as such. They acquire their status by the very fact of being born into the «citizen families»; they are the «*naturals*» according to Article 29¹⁸⁶. On the other hand, there is the group of those who become citizens with the passage of time; some may acquire such a condition with the mere passage of time (Art. 5.3); others, however, need a nature letter issued by the Courts under Article 5.2. It is in this last group that castes fit in, although the procedure for their “*naturalization*” was subject to the special regime of Article 22.

The fulfillment of the requirements of this precept implied, for the castes, a titanic effort in a socio-economic context that was not favourable to them. One deputy said that the difficulties involved in overcoming the requirements of the precept would make the caste naturalization procedure impracticable¹⁸⁷. Certainly, it was difficult to go through the filter of Article 22, but the real reason for the ineffectiveness of this precept should be sought in the *legis ratio* that motivated the precept. The *naturalization* procedure of Article 22 was not intended as a right enforceable by castes; it was conceived in the framework of a series of measures that, in the words of Mr. Castillo¹⁸⁸,

¹⁸⁵ D.S.C.G., session of 15/09/1811, p. 1860

¹⁸⁶ Article 29 of the Cadiz Constitution: «This basis is the population composed of the “naturals” who, on both lines, originate in the Spanish domains, and those who have obtained the charter of citizenship from the Courts, as well as those included in Art. 21»

¹⁸⁷ Mr. Leiva said: «The great difficulties [of Article 22 of the constitution of Cádiz] are confused with the impossibility [...] The *Cortes* have to qualify to give the charter [of citizenship]. Here is another very burdensome condition [...] For these and other observations, I have believed that the article, far from fostering the hopes of the natives of Africa, was the best means of distressing them and leaving them reduced to their nullity». *Ibidem*, session of 06/09/1811, pp. 1785-1786

¹⁸⁸ *Ibidem*, session of 11/09/1811, p.1816

was intended to «wipe away the tears» of the children of Africa. Article 22 was a sample of generosity, a mercy¹⁸⁹ whose concession would not depend on the fulfillment of the requirements of the precept, but on the discretionary appraisal of the Courts. This was demonstrated when Mr. García Herreros (supported by others such as Mr. Muñoz Torrero), claiming his «qualified services to the fatherland», requested that all castes that had served in the army acquire citizenship *ipso facto*. The constitutional commission had no legal arguments to distort the proposal of Herreros; it just limited itself to rejecting it, thus confirming the exclusion of all those castes that constituted the base of the imperial army¹⁹⁰. It was thus revealed that, although it was difficult to overcome the requirements of Article 22, it was much more difficult to obtain the approval of the *Cortes* required by Article 5.2 of the Constitution.

On September 4th, 1811, in the midst of the constituent assembly, Mr. Alcocer wondered why the African origin of the castes had served to justify their exclusion, while the Africans of the *motherland* were considered "Spanish"¹⁹¹. In the same vein, Gonzalo Ballano argued that «[...] until the Constitution of 1858 were Spaniards: “all persons born in the domains of Spain»¹⁹². As we have seen so far, this stance could be based on the solemn declaration of Article 1, and on the inclusion of Spanish Guinea in the open clause of Article 10, paragraph 1 *in fine*: «[...] and the Canary Islands with the other possessions of Africa». But the truth is that, until 1959¹⁹³, neither were the

¹⁸⁹ C. PETIT, *Negros y mulatos. Españoles de ambos hemisferios*, Constitutional History (Electronic Journal of Constitutional History), N° 15, 2014, p.172

¹⁹⁰ See D.S.C.G., session of 17/01/1812; J. M^a FRADERA, *Colonias para después...*, *Cit.*, p.86

¹⁹¹ «Why then, should it be demanded in castes? What basis is there for such an origin to harm them? Is it because they are from Africa? No, because this part of the world does not detract from the others, and we have territories in them, whose natives are Spanish». See D.S.C.G., session of 04/09/1811, p. 1762

¹⁹² See F. BALLANO GONZALO, *Cit.*, p.389. It should be noted that in Spanish liberal constitutionalism there is no constitutional text approved in 1858. Thus, it may be a forgivable mistake of the author, who perhaps intended to refer to the *non nata* constitution of 1856; or it may be that what the author had in mind was the colonial Organic Statute of 1858.

¹⁹³ It was a law of June 1959 that incorporated Guinea as a province of Spain. Since then people of Guinea acquired Spanish citizenship and were able to appoint attorneys in the Spanish Courts. Before 1959, natives of Guinea were neither foreigners, nor were they Spanish citizens. They were simply subjects of the Spanish monarchy or, if a euphemism is preferred, they were Spanish, but of a "second category". Regarding the changes that this provincialization of Spanish Guinea implied,; A. M. CARRASCO GONZÁLEZ, *Cit.*, p.18; A. OBIANG BIKÓ, *Guinea Ecuatorial: del colonialismo español al descubrimiento del petróleo*, Madrid, Sial Ediciones, 2016, pp. 99-133; D. NDONGO BIDYOGO, *Historia y tragedia...*, *Cit.*, pp. 79-95; F. GONZALO BALLANO, *Aquél negrito del África tropical: el colonialismo español en Guinea (1778-1968)*, Madrid, Sial Ediciones, 2014, pp. 528 and following; M. DE CASTRO, y

Spanish Territories of the Gulf of Guinea considered part of the Spanish national territory, nor were political rights recognized to the inhabitants of those territories. The Cadiz framers of the constitution did not need to resort to an express exclusion; a correct use of terminology and its silence were enough.

Indeed, the exclusion of Guinea from the Cadiz Constitution was not based only on the fact that African colonies were not referred to as "Ultramar". As stated above, the exclusion of Guinea must be understood in light of the historical context surrounding the STGG, not only during the meetings of the constituent assembly, but also throughout the entire life-span of the Cadiz Constitution. In other words, the legal and factual apartheid that characterized the situation of Spanish Guinea in the first half of the 19th century cannot be understood without going back to the *prima ratio* that justified the Spanish presence in that part of the Gulf of Biafra. The scholars on Guinean history, whether colonialist or anti-colonialist, identify economic motives in the real *ratio* of the Spanish-Portuguese agreements of 1777 and 1778¹⁹⁴. When Spain received Guinea from Portugal, it was not driven by its magnanimity towards the natives of these lands. Its intention was not to civilize the natives of these lands, or to make that piece of African land part of Spain. Slaves were the mainstay of the economy of the Spanish colonies in America¹⁹⁵, and Guinea was thought to be a source of self-sufficiency in terms of slave labour. It was for this purpose that "El Conde de Argelejo" commanded the first expedition sent in April of 1778 to effectively occupy the newly acquired territories in Africa¹⁹⁶. However, Argelejos and his men were unable to complete the

D. NDONGO BIDYOGO, *España en Guinea Ecuatorial...*, *Cit.*, 192 and following; O. NEGRÍN FAJARDO, *Historia de la educación en Guinea Ecuatorial. El modelo educativo colonial español*, Madrid, UNED, 1993, pp.142 and following.

¹⁹⁴ M^a DOLORES GARCÍA CANTÚS, *Fernando Poo: Una aventura colonial en el África occidental (1778-1900)*, Universidad de Valencia, Facultat de Geografia i Historia, Departament d'història contemporània, Tesis Doctoral, 2004, p. 17; D. NDONGO BIDYOGO, *Historia y Tragedia de Guinea Ecuatorial...*, *Cit.*, p. 21; M. DE CASTRO y D. NDONGO, *Cit.*, pp. 2, 29; J. SANT GISBERT, *El modelo colonial y sus contradicciones: Fernando Póo, 1900-1936*, *Afro-Hispanic Review*, n^o 2, 2009; F. BALLANO GONZALO, *Cit.*, pp. 58 y ss; I. K. SUNDIATA, *Cit.*, pp. 20 y ss).

¹⁹⁵ *Idem*

¹⁹⁶ After the ratification of the Treaty of El Pardo, Conde de Argelejos commanded the first expedition sent by the Spanish government to occupy the territories recently received from Portugal. The expedition was composed of three frigates called: Soledad, Santa Catalina y Santiago. The expedition left from the port of Montevideo, Buenos Aires, on April 17th, 1778. To know more about the expedition: J. R. CERVERA PERRY, *La expedición del Conde de Argelejos a Fernando Poo, primera presencia naval española en el golfo de Guinea (1778-1783)*, en *Revista de historia naval*, n^o26, 2008, pp. 123-132; M. DE

mission, and since the failure of that expedition, the territories remained abandoned. But this abandonment should not be interpreted as forgetfulness, because, although no permanent settlement was established in the colony, arrangements and activities relating to the slave trade were carried out.

As stated above, the Royal Decree of February 28th, 1789, liberalized the slave trade between Africa and America¹⁹⁷. However, Spanish slave traders did not enjoy this freedom for long, because, as soon as Great Britain abolished the slave trade in its colonies in 1807, it started an abolitionist campaign, pressuring the other colonial states to take steps in the same direction. It signed two abolitionist treaties with Spain: one in 1817, and the other in 1835¹⁹⁸. The implementation of the first agreement was entrusted to two mixed commissions. One of these resided in Habana, Cuba; the other was based in Freetown, capital of Sierra Leone -a British colony.

According to Castro Antolín¹⁹⁹, "the unhealthy climate in Sierra Leone forced the two Spanish commissioners to return to the mainland within a few months" of arriving in Freetown, and Spain proposed that the Freetown headquarters be moved either to the Canary Islands or to the Cape Verde Islands. Great Britain did not accept either of the two proposed new seats, and it preferred for Fernando Poo to be the new seat of the mixed court of Sierra Leone. It was precisely for this purpose that William F. Owen occupied the island of Fernando Póo on October 27th, 1827, and founded what would later become the capital of the Spanish Territories in the Gulf of Guinea. The

CASTRO y M^a L. DE LA CALLE, *Origen de la colonización española de Guinea Ecuatorial (1777-1860)*, Valladolid, Universidad de Valladolid, 1992, pp. 29-49; M. DE CASTRO y D. NDONGO, *Cit.*, pp. 29-49

¹⁹⁷ M. DE CASTRO y D. NDONGO, *Cit.*, pp.71-98

¹⁹⁸ *Tratado entre S. M. el Rey de España y de las Indias, y S. M. el Rey del Reino Unido de la Gran Bretaña e Irlanda, para la abolición del tráfico de negros, concluido y firmado en Madrid en 23 de septiembre de 1817*, Madrid, Imprenta Real, 1817, available at : books.google.es/books?id=8WOoWh6_MK4C&printsec=frontcover&hl=gs_ge_summary_r&cad=0#v=onepage&q&f=false; M. LUCENA SALMORAL, *Leyes para esclavos: El Ordenamiento jurídico sobre la condición, tratamiento, defensa y represión de los esclavos en las colonias de la América española*, Madrid, Fundación Ignacio Larramendi, 2005, pp. 1236-1249; I. ROLDÁN DE MONTAUD, *La diplomacia británica y a abolición de tráfico de esclavos cubanos: una nueva aportación*, Quinto Centenario, n° 2, 1981, pp. 219-250; M. DE CASTRO y D. NDONGO, *Cit.*, pp. 38 ff.

¹⁹⁹ M. DE CASTRO y D. NDONGO, *Cit.*, p. 39

English captain named the new British settlement "Clarence"²⁰⁰, in honour of the Duke of Clarence.

Formally, the English settlement lasted until 1835, and during that period, the English were very active, chasing and capturing all the ships suspected of black trafficking on the West African Coast. But despite the efforts of the English, the truth is that not only did the trade continue, but the numbers of ships involved and of slaves shipped to America remained considerable. According to Ballano Gonzalo, in the early 19th century, there were more than 70 companies involved in the trade. According to Sundiata, in the period from 1819 to 1826, the mixed commission captured 69 slave ships. Among these, there was no shortage of Spanish ships²⁰¹. Between 1821 and 1830, always according to Sundiata, an average of 12,500 slaves were exported per year²⁰².

As stated above, a historical interpretation of Article 5.1 of the CPME corroborates the exclusion of Guinea from the constitutional regime of Cadiz, while invalidating any argument to the contrary. To state that the Cadiz Constitution recognised the natives of Guinea as Spaniards is the same as admitting that the Cadiz Assembly was not very interested in the economic stability of Ultramar, an assertion that is not very sustainable if we point out that the stability of the national public treasury was largely due to the economic growth of the Overseas provinces, especially Cuba. Around 1812, Cuba was just beginning its economical growth, and the least that could be expected from the first Spanish constituent assembly was the adoption of principles not contrary to, but in favour of such economic growth. And recognizing the status of Spaniards to the natives of the STGG, would have been contrary resolution to this economic purpose, because such a decision of the constituents of Cadiz would have deprived the overseas provinces of the use of the human force coming from those African territories.

²⁰⁰ D. NDONGO BIDYOGO, *Historia y tragedia de Guinea Ecuatorial*, Cit., p. 29; G. SANZ CASAS, *Política colonial...*, Cit., p. 26, F. MADRID, Cit., p. 18; I. K. SUNDIATA, Cit., p. 23; M^a. D. GARCÍA CANTÚS, Cit., p. 18; M. DE CASTRO y D. NDONGO, Cit., p. 41

²⁰¹ Among the slave ships captured between 1827 and 1830, we can identify the following Spanish ships: el Mosquito (With 126 slaves), el Emprendedor (with 3 slaves), and el Bolívar (with 429 slaves). See I. K. SUNDIATA, Cit., p. 32

²⁰² *Ibidem*, p.23

Therefore, statements such as those that defend that the natives of Guinea were Spanish in 1812, are contrary to the *ratio legis* of Art. 5.1 CPME; it would be incongruous to admit that this precept denied humanity to the slaves in the Overseas Provinces, while accepting that it recognised it to the natives in the African possessions-territories acquired as a source of self-sufficiency of that slave labour necessary for the development of Spanish American territories²⁰³. What logic could there be in recognising the status of Spaniards to the Africans of Guinea when they were stripped of it as soon as they were captured and landed as slaves on the American coast? The first Portuguese constituent assembly seemed to defy this logic. Article 38.IV²⁰⁴ of the Portuguese Constitution of 1822, as an exception to the general representation base established in Article 37²⁰⁵, guaranteed one deputy for each of its possessions in Africa and Asia, regardless of the number of inhabitants of those territories. Thus, if it is admitted that the first Portuguese constitution was able to extend political rights to its overseas territories where its slaves came from, why is it not possible to appreciate the same logic when Ballano Gonzalo states that the natives of Guinea were Spanish until 1858? The answer is quite simple. Article 38.IV of the Portuguese Constitution was not intended for the native Africans²⁰⁶. For the first Portuguese constituent assembly, the expression "comunidade portuguesa" of Angola and Benguela, that is, the Portuguese community residing in those African territories, did not refer to black but to white people²⁰⁷. In other words, the single deputy who could be designated by both territories, was not elected by the 202,660 free men residing there according to the census of

²⁰³ M^a D. GARCÍA CANTÚS, *Cit.*, p.17; D. NDONGO BIDYOGO, *Historia y Tragedia de Guinea Ecuatorial...*, *Cit.*, p. 21; M. DE CASTRO Y D. NDONGO, *Cit.*, p. 2, 29; J. SANT GISBERT, *Cit.*, p. 3; F. BALLANO GONZALO, *Cit.*, pp. 58 y ss; I. K. SUNDIATA, *Cit.*, pp.20 ff.

²⁰⁴ Art.38.IV: «A disposição do artigo antecedente tem as excepções seguintes: I..., II..., III..., IV.- Pelo que respeita: 1º - ao reino de Angola e Benguela; 2º - às ilhas de Cabo Verde com Bissau e Cacheu; 3º - às de S. Tomé e Príncipe e suas dependências; 4º - a Moçambique e suas dependências; 5º - aos Estados de Goa; 6º - aos estabelecimentos de Macau, Solor e Timor, cada um destes distritos formará uma divisão, e dará pelo menos un Deputado, qualquer que seja o número dos seus habitantes livres». This text is available at <https://www.fd.unl.pt/Anexos/Investigacao/7511.pdf>

²⁰⁵ Article 37 of the Portuguese Constitution of 1922: «As eleições se farão por divisões eleitorais. Cada divisão se formará de modo, que lhe correspondam três até seis Deputados, regulando-se o número destes na razão de um por cada trinta mil habitantes livres; podendo contudo cada divisão admitir o aumento ou diminuição de quinze mil, de maneira que a divisão, que tiver entre 75 000 e 105 000, dará três Deputados; entre 105 000 e 135 000 dará quatro; entre 135 000 a 165 000 dará cinco; entre 165 000 e 195 000 dará seis Deputados».

²⁰⁶ C. NOGUEIRA DA SILVA, *Cit.*, pp. 176 y ss

²⁰⁷ *Idem*

1819²⁰⁸; he was elected only by the 2068 white men living there. He was designated to represent white people's interests.

It can thus be observed that Article 38.IV of the Portuguese Constitution actually did not run contrary to the logical-historical interpretation we made of Article 5.1 CPME. In other words, the Portuguese did not deny humanity to the slaves of their overseas territories and then recognised it to the Africans. If the rights were denied to the "children of Africa" living in the Americas, it was more logical to deny them to their ancestors living in the motherland, Africa.

While there already was a white population in the Portuguese colonies in Africa since the beginning of the 19th century, the reality was quite different in the STGG. Since the failure of the expedition of Conde de Argelejos, the Spanish possessions in the Gulf of Guinea remained practically unoccupied until 1858²⁰⁹. By 1812, the city of Santa Isabel, the capital of the colony, did not even exist. The presence of some Catalan trading houses in the area was owed to no reason but to take part in the slave trade²¹⁰. Faced with territories in these conditions, the framers of the Cadiz Constitution could not have taken a better decision than remain silent. In 1812, the Spanish presence in the Gulf of Guinea was not scarce; it was simply non-existent. Consequently, casting anti-colonialist sensationalism aside, to argue that the territories of the Gulf of Guinea were marginalized by the constituent assembly of Cadiz is an assertion that should only be sustained if, in 1812, there already existed an effective and real link between the metropolis and these territories. To confirm that someone has been discriminated against or marginalized, it is necessary to prove that they believe or claim to be part of the decision from which they have been excluded. It would be incongruous to speak of discrimination or marginalization towards a subject who neither accepts nor feels identified with the reality from which he is excluded. In 1812, neither did Spain consider Guineas an integral part of its national territory, nor were the natives of Guinea

²⁰⁸ *Idem*

²⁰⁹ Scholars agree that the effective occupation of the STGG by Spain occurred in 1858, thanks to the expedition commanded by Carlos Chacón. F. BALLANO GONZALO, *Cit.*, pp. 78-79; I. K. SUNDIATA, *Cit.*, p. 48-49; D. NDONGO BIDYOGO, *Cit.*, pp. 29-30; M. DE CASTRO y D. NDONGO, *Cit.*, p. 55; C. O. Nvé Oyana, *Conflictología política y la justicia social en Guinea Ecuatorial: los procesos de transformación hacia una cultura de paz en la democracia guineana*, Tesis doctoral, Universidad de Granada, 2015, p. 177

²¹⁰ M. DE CASTRO y D. NDONGO, *Cit.*, pp. 36, 37, 38

even aware of being subject to Spanish sovereignty. Consequently, rather than a discriminatory decision, we believe that the silence of the constituent assembly in Cadiz was a decision both logical and pragmatic.

The historical circumstances that surrounded the debates that took place in the constituent assembly of Cadiz require us to carry out a cautious evaluation of the resulting constitution. Affirming that Spanish constitutional history starts with the Cadiz Constitution, or that the Cadiz constituent assembly initiated the first debate on «Spain's political soul» (“*alma política de España*”)²¹¹, are two statements that, *per se*, evoke the importance of the task that the framers of the Cadiz Constitution had to deal with²¹². The French framers of the Constitution of 1804 could look at the path already traced by their predecessors. The Cadiz Assembly, in contrast, did not have a national point of reference to look to. It had to refound the Spanish political model, building a constitutional state under a socio-historical reality that was alien to legal-constitutional practice.

Indeed, a constitution is not abstracted from its surrounding reality; it is the result of a decision by a people afflicted by concrete problems and concerns in a concrete historical context. According to Mr. Kenneth²¹³, a constitution is but a reflection of the ideological forces that dominate that context. For Farias Garcia, «a constitution is a political adjustment of reality»²¹⁴. That was indeed the task of the Cadiz constituent assembly: to configure a popular pact not from the imaginary realm but making a political adjustment of the socio-historical reality of the Spanish people. And in the process of this political adjustment, the Cadiz constituent assembly had to face an important dilemma. One part of the ideological forces was represented by the absolutists, defenders of political immobilism. For this ideological bloc, the future constitution had to reproduce the existing socio-political institutions. As the pre-Napoleonic codes of the enlightened monarchs, it was simply a matter of constitutionalising categories of the *Ancien Regime*. Opposed to this position were the

²¹¹ P. FARIAS GARCÍA, *Breve historia constitucional de España (1808-1978)*, Madrid, Editorial Latina, 1981, p. 22

²¹² The French Constitution of 1804 was preceded by five constitutions: those of 1791, 1793, 1795, 1799 and 1802.

²¹³ K. C. WHEARE, *Las constituciones modernas*, Barcelona, Editorial Labor, 1971, pp. 1 y ss

²¹⁴ «(...) una constitución es un ajuste político de la realidad». P. FARIAS GARCÍA, *Cit.*, p. 24

progressives, that is, the liberals. They saw in the future constitution the opportunity to establish a new order on the basis of the noble principles of unity and equality among all Spaniards. There were two ways out of the dilemma: either one position was adopted to the exclusion of the other, or an eclectic decision was made by combining absolutism-the past almost- and liberalism -the imminent future, or the present almost.

When we look at how the colonial issue was regulated in the Cadiz Constitution, we can point out that the gradual formula used by the framers of the constitution to define the new sovereignty holder combined colonial principles with those of the new liberal state. If greed established inequality in Peninsula-Overseas relationships, the Independence War was the first incident that questioned this scheme of relations. Those who had always been subject to a *sui generis* regime, that is, the Americans, were no longer subject to it when they had to take up arms and fight, on an equal footing, together with the peninsula, to defend the same nation. The blood spilled in the conflict was neither that of peninsulars nor of Americans: it was that of a united people who fought for and to regain their sovereignty. Formalizing inequality after the war would have meant hurting that sense of unity generated by the conflict -a decision not in the least prudent in a historical context marked by fear of the ghost of Toussaint Louverture²¹⁵. The identification of the Americans with the national conflict could not but impose a revision of the old principles on which the Metropolis-Ultramar relations were built, and terms such as "Spanish people" or "Spanish nation" acquired meanings more akin to the unity and equality between the two hemispheres. It is in this sense that Article 1 of the CPME came to declare that "the Spanish nation is the meeting of all Spaniards in both hemispheres". But the second decade of the 19th century was far from offering the propitious context to defend *a pedem litterae* the principle of unity proclaimed in Article 1 of the CPME. The Industrial Revolution that had begun in Great Britain was to extend to other parts of Europe, and the colonial powers were just beginning their preparations for a new wave of exploration that would lead to further imperial expansion. In such a situation, a literal interpretation of the declaration of Article 1 of the CPME would have meant turning the old state of affairs upside down.

²¹⁵ C. NOGUEIRA DA SILVA, *Cit.*, p. 337; D. LOSURDO, *Cit.*, pp. 151-152; J. M^a FRADERA, *La Nación Imperial (1750-1918)*, Barcelona, Editorial Edhasa, Vol. I, 2015, p. 83

Recognizing political rights for the 15 or 16 million free men living in Ultramar²¹⁶, more than signifying unity and equality between the two hemispheres, would have meant subjecting the destinies of the peninsulars to Ultramar decisions. As J. Bentham would later recall, the hegemony of the motherland over its wards would have been replaced by the hegemony of the latter over the former²¹⁷. Such a state of affairs would not have helped much a metropolis whose three quarters of metal came from the empire²¹⁸. It was therefore urgent to clarify the meaning of the declaration in Article 1 of the CPME, and the Cadiz framers of the constitution found no better formula than to resort to a deductive-restrictive method for the attribution of citizenship. The generic declaration of Article 1 was redefined until it reached its most restrictive meaning. From the unity declared in Article 1, it went on to recognize slavery in Article 5.1, and ended up excluding "las castas" in Articles 18 and 22. One third of the American population was thus excluded from the right to citizenship, and the dominance of the metropolis over Ultramar was thus guaranteed in parliament. The result of this whole operation was a text which, despite its revolutionary character, did not completely bury the principles of the missionary discourse of classical Spanish colonialism, but camouflaged them within the new liberal-progressive discourse. According to Bentham, the constituent assembly of Cadiz sought to bring together two incompatible realities under a common regime, and the result was, therefore, a text whose integrating discourse was no more than mere fiction²¹⁹. Bentham did not hesitate in asserting that the Cadiz Constitution was a colonial text²²⁰.

²¹⁶ The deputy Guridi y Alcocer says that the population of Spanish Ultramar was of 15 million in 1811. Joseph Fradera also recognized this figure. Pedro Farias García says that the population of Ultramar was of 14 million in 1811. According to José Beye Cisneros, deputy for Nueva España (México under colonial regime), from the 16 million living in Ultramar in 1811, 10 million were *castas*. See J. M.^a FRADERA, *Gobernar Colonias*, Barcelona, Editorial Península, 1999, p. 55; P. FARIAS GARCÍA, *Cit.*, p. 24; D.S.C.G, sessions of 25/01/1811 and 06/09/1811, pp. 434, 1789, respectively.

²¹⁷ C. R. BRAUN, *Constitucionalismo y Colonialismo, "Libraos de Ultramar": Bentham frente a España y sus colonias*, Revista de Historia Económica –Journal of Iberian and Latin American Economic History, nº 3, 1985, pp. 507

²¹⁸ P. FARIAS GARCÍA, *Cit.*, p. 25

²¹⁹ B. CLAVERO, *¡Libraos de Ultramar! El fruto podrido de Cádiz*, en Revista de Estudios Políticos (Nueva Época), nº 97, 1997, p. 49

²²⁰ *Idem*

According to Josep Fradera, utopianism marked the liberal project from the beginning²²¹; the unity and equality between the metropolis and Ultramar were declared at a time when the peninsulars, whether conservative or liberal, were not yet prepared [psychically] to assume the scope of their own declarations²²². The exceptions in Articles 5, 18, 22 and 29 of the CPME established the red line between utopia/equality and reality/inequality. According to Nogueira Da Silva²²³, although the discourse of the civilizational mission did not appear expressly in the constitutions, it did inspire all liberal constitutionalism. For Bartolomé Clavero, the Constitution of Cadiz constitutionalised the principles of traditional colonialism²²⁴.

Following what we have discussed in the present section, we can conclude by admitting that the Constitution of Cadiz was not only colonialist, but also, as Petit has claimed, it «was a racist experiment» («fue una experiencia racista»)²²⁵. However, this criticism must be understood in the sense of subtracting, but without taking away all the merit from the Cadiz text. It is just as true to affirm that the Cadiz framers of the constitution constitutionalized *imperial centralism*²²⁶ as it is to assert that the CPME, was the first and only attempt, in Spanish colonial history, to extend or bring liberal representative institutions closer to colonial reality. Did the American people deserve more deputies in the Cadiz Parliament? They were, but at least they were represented in that institution. Did they always see their claims frustrated in the Cadiz Parliament? They did, but at least their problems were debated in that institution. Such evidences, although minimal, would not be repeated since that solemn declaration established in the second additional article of the Constitution of 1837: "The Overseas Provinces shall be governed by special laws". Since 1837, the General Directorate of Ultramar became the main seat of debate and decision on Ultramar issues.

²²¹ J. M^a FRADERA, *Colonias para después de un Imperio*, Barcelona, Editorial Bellaterra, 2005, pp. 62-63

²²² *Idem*

²²³ C. NOGUEIRA DA SILVA, *Cit.*, pp. 296 y ss

²²⁴ «Es fácil caracterizarla [la Gaditana] sin necesidad siquiera de meternos en mayores complicaciones: se trata del colonialismo tradicional, sólo que en el nuevo contexto constitucional. Aquí no hay vuelta de tuerca. No hay abstracción teórica ni cancelación práctica de la presencia indígena». See B. CLAVERO, *Cit.*, n^o 97, 1997, p. 56

²²⁵ C. PETIT, *Negros y Mulatos. Españoles de ambos hemisferios*, en *Historia Constitucional (Revista Electrónica de Historia Constitucional)*, n^o 15, 2014, p. 157; J. M^a FRADERA, *Gobernar Colonias...*, *Cit.*, pp. 54, 55, 63.

²²⁶ J. M^a FRADERA, *Colonias par después de un imperio...*, *Cit.*, p. 70

The Republic, a Messiah for the forgotten Spanish Territories of the Gulf of Guinea?

On the afternoon of April 14th, 1931, Spain proclaimed the Republic. Although it was not a particularly unusual event, since this was the Second Republic, it was a relevant historical fact for everybody. On that afternoon, the president of the provisional government, Niceto Alcalá Zamora, sent a radiogram to the colonial government stressing the peaceful environment that had surrounded the events²²⁷. As public officials, the colonial authorities were left with few options against the range of action of the metropolitan government. Either they abided by the new regime, or they resigned²²⁸. The next day, at 1:30 pm, the Colonial Board of Authorities (*Junta de Autoridades*²²⁹) gathered in an extraordinary session, and issued a statement of adherence to the new regime in the following terms: «Received radiogram Your. E. N° 25. - The Board of Authorities gathered and unanimously agreed to respect and abide by the new regime, and send Your government respectful regards and an offer of collaboration, congratulating You that such a trascendental event was carried out without any violence or struggles, as a legal act of popular will»²³⁰. Two days later, in a public gathering

²²⁷«The President of the Republic to the Governor of Guinea.- It it my pleasure to inform Your E. that the government of the Republic, without any incident, and with the enthusiastic applause of the people and loyal and respectful cooperation from the army, the civil guard, and the forces of public order, has taken power this afternoon, without any clashes with the extinguishig regime; on the contrary, after respectful conference with the former State Minister who represented such regime[...]». See the General Archive of Alcalá de Henares Administration (from now onwards: AGA), BOX G-1898 (81/8167), File N° 2; Radiogram N° 25 dated 4/04/1931.

²²⁸The *Guinea Española* (Colonial Journal), N° 657C (April 19), 1931, p. 122 *in fine*.

²²⁹The Board of Colonial Authorities gathered all the representatives of the main colonial institutions: the Governor General, the President of the Council of Neighbours, the President of the Indigenous Patronate (who was the Bishop, apostolic vicar of the colony), the President of the Official Chamber of Agriculture, and the Chief Officers of the different Colonial Services. In the extraordinary session that took place on April 15th, 1931, the following were present: Don Miguel Núñez de Prado, acting as Governor General of the colonies; Don Pedro García Amilivia, as President of the Santa Isabel Council of Neighbours; and Don Marqués de Castro Pinó, as Vice-president in charge of the Official Chamber of Agriculture. Strangely enough, the Bishop of the colony, who was the President of the Indigenous Patronate, was not present.

²³⁰*Ibidem*, Acta de la Junta Extraordinaria de autoridades coloniales (Proceedings of the Extraordinary Meeting of colonial authorities) dated 14/04/1931 (Doc. N° 128)

organized to such an effect in the city of Santa Isabel²³¹, Don Pedro Amilivia, as president of the Council of Neighbours of the capital, read a letter that concluded with the following words: «I hope that it will continue this way [referring to the atmosphere of peace that surrounded the events in the metropolis] until its complete evolution, keeping in mind that the new regime has freedom as a banner, justice as its creed and its rule the rights of man, it will study colonial problems fondly and with due will, cooperating in the achievement of a colony of richness and splendour, as part of an even richer and splendid homeland»²³². It is reasonable to think that such statement sprang from the depths of Amilivia's heart. In other words, in Amilivia's speech we can sense his belief that colonial administrators had foreseen the Republic as a warrant of essential values for the progress and development of the peoples, even the colonized ones. However, it is also possible that we are dealing with a purely protocolar speech created by some [monarchist] colonial officials who, afraid of losing their privileges, were searching to fit in a Republic that was breaking with the past. The latter interpretation appears more plausible, taking into account that the outbreak of the Civil War revealed the ambiguous character of this speech. Once the uprising was declared, the authorities and civil servants joined the so-called "movement for the salvation of Spain"²³³, thus confirming the opportunistic nature of the statements and oaths with

²³¹The city of Santa Isabel was founded by Englishmen around 1827. It was initially called Port Clarence, or Clarence City. It is located on the northernmost part of an island named Fernando Póo by the Spaniards, a territory that had been given to Spain by Portugal through the San Idelfonso and el Pardo Treaties in 1777 and 1778, respectively. Carlos de Chacón y Michelena named this city Santa Isabel when Fernando Póo was effectively occupied by Spain in 1858. Although independence did not change the hegemony of the island, nor establish a new capital for the new independent state, it did assign new names. Nowadays, Fernando Póo is called Bioko island, and the former city of Santa Isabel is Malabo. Information on the founding of Santa Isabel and the English settlement in Fernando Póo can be found in: I.K. SUNDIATA, *From Slaving to Neoslavery. The Bight of Biafra and Fernando Po in the Era of Abolition, 1827-1930*, Madison (Wisconsin), The University of Wisconsin Press, 1996, p.1 ff.

²³²AGA, BOX G-1898 (81/8167), File N° 2, Statement Issued by the Council of Neighbours of Santa Isabel dated 17/04/1931.

²³³For information on conflict development in the colonies refer to: M. A. POZANCO, *Guinea Mártir: narraciones, notas y comentarios de un condenado a muerte*, Madrid, Colección Actualidad Eds., 1937; AGA, BOX G-1901 (81/8170), File N° 1-1, date: 16/01/1937, Letter from the Governor to the Secretary General; AGA, BOX G-1930 (81/8199), File N° 3, date: 28/02/1938. Statement on the taking of the city of Bata; D. NDONGOBIDYOGO, *Historia y Tragedia de Guinea Ecuatorial*, Madrid, Cambio 16 Eds., 1977, p. 46-48.

which many of those officials had expressed their adherence to the Republic²³⁴. But, although it was difficult to ascertain the sincerity of the speech of colonial officials, it was not difficult at all to determine what the advent of the new regime meant to the rest of civilians residing in the colony. They listened to the republican discourse with the same hope and expectation that oppressed people would feel upon the announcement of the arrival of a long-awaited redeemer.

Logically, Spanish Guinea was not monolithic in legal terms. Colonial reality was always characterized by legal pluralism. Spanish metropolitan law applied to Spaniards and other Europeans residing in the colony. To the Africans, whether native of Guinea or coming from neighbouring colonies, a legal regime inspired by the principles of the statute for minors applied. Such a regime combined elements of civilized law and elements of local “customary law.” This *sui generis* legal regime did not apply to the emancipated, the colonized inhabitants or “*colonizados*”, who could prove through a test of acculturation that they had achieved a considerable level in the process of cultural assimilation inherent to colonization. This pluralism of the colonial legal subject shaped a plural social reality within the same geographical context, as in the *Ancien Regime*²³⁵. When the Republic was declared, society in Spanish Guinea was characterized by the existence of social groups that were clearly differentiated by their own realities.

²³⁴In addition to the depositions of high authorities, all Service Directors and officers had to “voluntarily” promise adhesion to the Republic. The following formula was used for such a purpose: « I promise, on my honour, to serve the Republic faithfully and well, to obey its laws, and to defend it with weapons». Refer to AGA, G-1898 (81/8167), File N° 2, Radiogram N° 139, date: 27/04/1931

²³⁵ It is almost a unanimous view among historians that a legal regime very close to *Ancien Regime* law was applied in the colonies. For more information on this point refer to: E. CARLES, *Misioneros, negreros y Esclavos: notas de un viaje a Fernando Poo*, Valencia, Colección Cuaderno de Cultura (bi-monthly publication); LV. Col. Section: Sensational Reports), 1932, pp. 37-38; A. CARRASCO GÓNZALEZ, *Estatuto del Indígena en Guinea Española: nacionalidad y capacidad*, e-Legal History, N° 12, 2011, pp.10, 14, 15; A. A. CASSI, *Ultramar. L'invenzione europea del nuovo mondo*, Roma, Editori Laterza, 2007, pp. 13-14; J. M^a FRADERA, *La Nación Imperial (1750-1918)*, Barcelona, Edhasa Editors, Vol. I y II, 2015, pp. 89, 807; L. MARTONE, *Diritto d'Oltramare. Legge e ordine per le colonie del Regno d'Italia*, Milano, Editore Giuffrè, 2008, pp. 1-44; C. NOGUEIRA DA SILVA, *Constitucionalismo e imperio. A cidadania no Ultramar português*, Coimbra, Edições Almeida, SA, 2009, pp. 202, 329 *in fine*; C. SCHMITT, *El Nomos de la Tierra*, Buenos Aires (Argentina) Struhart & Cía. Editors, 2005, p. 67-133; J. STUART MILL, *Representative Government (1861)*, Kitchener (Ontario, Canadá), Batoche Books Limited, 2001, Chapter 18, pp. 197-214

Europeans, as civilized subjects who exported their culture and civilization, lived a colonial reality characterized by rights and privileges; whereas the emancipated, as formal recipients of civilized law, although also subject to certain rights and privileges, faced a reality that was different from that of Europeans. The non-emancipated were treated as children or minors, therefore facing a reality marked by deprivations and limitations proper to a group of people whose capacity to act was understood to be inferior or strongly limited. In a fragmented society such as the one described above, it is convenient to point out that the republican discourse could only generate *hopes and expectations*, in the plural form, and not in the singular one. The plurality of statutes that differentiated colonial subjects makes it difficult, if not impossible, to think that the Republic would mean the same to a diversity of subjects whose colonial circumstances were completely different. The varied and diverse collective groups residing in the colony agreed in their belief that the Republic would bring prosperity, and approved of reforms that were legal and fair. What they did not agree upon was the extent and meaning of such long-expected reforms. The following paragraphs offer a quick overview of the written messages that civil colonial residents sent to the newly proclaimed Republic. The purpose of this overview is not to verify if such writings coincided in their aims, but rather, to determine whether, in their diversity, they all aimed towards the same purpose: that of establishing a colonial regime in Spanish Guinea more akin to the democratic values that characterized the new regime.

2.2.1. Native voices in the Republic

The *Guinea Española*, the most important journal of colonial Guinea, in its issue of August 9th, 1931²³⁶, included the transcript of a conversation between a master and his servant²³⁷, on the occasion of the proclamation of the new regime. In the dialogue,

²³⁶The *Guinea Española*, Nº 673C dated August 9, 1931, pp.255-256

²³⁷During the colonial period, the word *criado* was used to refer to natives hired for domestic help. A royal decree on April 1st, 1863 also used the term *servientes* (servants) to refer to this kind of workers. In contrast, the word *amo* (master) was used to refer to the employer in this type of work relations. During the time the island of Fernando Póo had been formally occupied by the English (1827-1835), English terminology was obviously introduced to refer to work relations; ever since, there has been a certain degree of syncretism between Spanish and English terminology related to work. As a result, we frequently find Guinean writings and literary documents where terms such as *masa* (a variation of the

the master uses examples of the local regime in order to explain the rule of alternation of power, the main characteristic of the newly declared Republic in the metropolis: «It is the same thing that happens with the Council of Neighbours and with the Chamber of Agriculture, etc., where the head or president is elected only for a couple of years; after which another person is chosen. The Priests also have the same republican regime: a Superior is chosen for several years, and then another one is appointed» «It is true. I like it» replies the servant. Surely, this optimism in the native's answer must have been based on something else than his mere belief in the principle of power alternation. It is true that the Crown, as the Executive Head, was interested in exerting a certain degree of ideological control on Metropolitan Heads of Government. This, however, does not lessen the fact that during the years of Spanish liberal constitutionalism, there were indeed cases of progressive governments, even if they were only moderately so²³⁸. They had even proclaimed a First Republic that lasted almost two years (11/02/1873 - 29/12/1874). The fact remains that all these metropolitan changes, as Mr. Guerra del Río would very appropriately recall in the republican constitutions²³⁹, had little or no effect on Spanish Guinea, a territory whose residents continued to undergo the arbitrariness of a *de-facto* military regime. In addition, the practice of the alternation of power principle was not completely foreign to the colonial context. The transcription of the master's dialogue shows this very clearly; it was not only applied to the presidency or representation of very important colonial organizations such as the Council of Neighbours (City Councils) and the Official Chamber of Agriculture²⁴⁰, it also affected

English word *master* used in the English colonies) or *boy* are used to refer respectively to the employer and the worker in domestic-work relations. On this particular, and only for illustrative purposes, refer to: F. B. GONZALO, *Aquél negrito de África tropical: el colonialismo español en Guinea (1778-1968)*, Madrid, SIAL Ediciones, 2014, pp.73-74; M^a D. GARCÍA CANTÚS, *Fernando Poo: Una aventura colonial en el África occidental (1778-1900)*, Universidad de Valencia, Facultat de Geografia i Història, Departament d'història contemporània, Doctoral Dissertation, 2004, pp. 433 ff.

²³⁸ Six *Carta magnas* preceded the Republican Constitution. In addition to the progressive constitutional projects from 1856 and 1873, two of the preceding constitutions were the result of the work of progressives: the *Constitución Gaditana* (Constitution of Cadiz) in 1812, and another one in 1869. For a quick review on Spanish constitutionalism, refer to: J. SOLÉ TURA & E. AJA, *Constituciones y periodos constituyentes en España (1808-1936)*, Madrid, Siglo XXI Editors, 2009; P. FARIAS GARCÍA, *Breve historia constitucional de España (1808-1978)*, Madrid, Editorial Latina, S.A., 1981.

²³⁹Refer to: *Diario de Sesiones de las Cortes* (Diary of Court Sessions), Historical Series available online at <https://app.congreso.es/estsesiones/>, session date: 01/12/1931, p. 2754

²⁴⁰ The Official Chamber of Agriculture was created in 1906. It was a public institution created to care for the interests of the main cocoa producers in the colony against custom regulations in the metropolis,

the Governor's office, which, except for the cases of Ángel Barrera and Núñez del Prado²⁴¹, was renovated every two years²⁴².

It can thus be inferred that the republican principle of the alternation of power of metropolitan and colonial authorities was not very relevant to natives in the colony. The Guinean natives were interested in improving their own situation or colonial reality; they were interested in a metropolitan regime that would guarantee that fair colonial regime they had never known before, and that they so badly yearned for²⁴³. They cared more for the real effects of the long-awaited reforms, rather than the fact that they were being approved or implemented by the same authority, or by a succession of different authorities through time. Therefore, the republican discourse captivated the natives, not so much for its principle of alternation of power, but for the guarantee of justice that the whole cluster of democratic values offered.

As a regime which aimed at accelerating the «suppression of injustice, the purging of responsibilities, and the re-establishment of the law»²⁴⁴, the Republic was

and deceitful manouvering by the metropolitan cocoa industry to force price reduction of cocoa produced in the colony. Refer to: J. SANTGISBERT, *El modelo económico colonial y sus contradicciones: Fernando Poo, 1900-1936*, Afro-Hispanic Review, Nº 2, 2009, pp. 57-80

²⁴¹Ángel Barrera y Luyando was Governor General of Spanish Guinea on two occasions. The first time was from September 1906 to February 1907. During this period, he acted as Interim Governor. The second period of his colonial office was the longest one in the colonial history of Guinea, extending from 10/09/1910 (date of his appointment) to 16/06/1925 (end of period and final return). Miguel Núñez de Prado Subielas was the second long-lasting governor in the colony, his office beginning on 21/12/1925 (date of his appointment) until 19/04/1931 (end of period and final return). On this topic refer to: G. ÁLVAREZ CHILLIDA, *Los Gobernadores de Fernando Poo (1858-1930)*, in L. JEAN-PHILIPPE, *L'État dans ses colonies: les administrateurs de l'Empire espagnol au XIX siècle*, Madrid, Collection of the Casa de Velázquez, 2015, p. 159; G. N. ABAD, *Un guardia civil en la selva*, Barcelona, Ariel Editors, 2008, p.19; M. VILARÓ I GÜEL, *La internación de la SCHUTZTRUPPE: la Guinea Española en la Gran Guerra*, Madrid, Editorial Letras de Autor, 2018, pp.31-36

²⁴²Article 4 of the Organic Statute of 1858, the first of its kind in the colony, established a three-year period for the office of Governor General of the colony. The next Organic Statute from 1868 reduced the duration to only two years (Art. 4). The remaining Colonial Statutes (in 1872, 1880, 1888, 1904, 1931, two statutes in 1935, and the last one in 1938) all adhered to the two-year period in their temporary and derogatory dispositions. For more information refer to: A. MIRANDA JUNCO, *Leyes coloniales: legislación de los territorios españoles del Golfo de Guinea*, Madrid, Imprenta Sucesores de Rivadeneyra, 1945, pp. 24, 58, 64, 71, 84, 142, 808, 936, 966, 1142.

²⁴³«For many years, and up to present days, justice between blacks and blonds has been and still is scarce». See AGA, BOX Nº 157 (81/6426), writing from Río Benito naturals dated 02/09/1931.

²⁴⁴N. ALCALÁ ZAMORA, *Discurso de declaración de la República de 14 de abril de 1931*, Cuadernos Republicanos, Nº 42, April 2000, pp.7-8

bound to affect the state of mind of Guinean natives, whose territories, according to the provisional government, had to be a reflection of republican democratic values²⁴⁵. The natives of Guinea, relying specifically on those democratic and humanitarian values, projected their hope into a new (and future) colonial reality free from all the arbitrariness they had suffered during the previous regime. In a letter signed by a group of natives, including a certain Alfredo Mata, one can read: «[...] We [...] cannot miss this opportune occasion to humbly and trustfully approach Your E., in the assurance that our needs will be tended to, given the righteousness and fairness that characterize the regime and the characters who fortunately guide the destiny of our beloved nation today»²⁴⁶. The inhabitants of Rio Benito had also written a similar statement²⁴⁷: «[...] As a result of the implementation of the Republic in Spain, our faith in progress has increased more and more, with the help expected from the Spanish nation, in the conviction that this new regime will bring optimal benefits and freedom of ideas, within the legal framework, and taking into account its main motto: justice, solidarity and equal rights»²⁴⁸. Similar statements can be found in all the written messages addressed to the Republic by natives, which expressed their hope and expectation regarding the new regime for the native people of Guinea²⁴⁹.

²⁴⁵«The trascendental changes occurred in our legal regime as a result of the advent of the Republic were to be expected, and have reached the colonial regime of territories belonging to the sovereignty located in the continent and the islands of Guinea [...]». See: The Decree of July 22nd, 1931 in: A. MIRANDA JUNCO, *Leyes Coloniales: Legislación de los territorios españoles del Golfo de Guinea*, Madrid, Imprenta Sucesores de Rivadeneyra, 1945, pp. 806-808

²⁴⁶AGA, BOX N° 157 (81/6426), Writing by Alfredo Mata and others, dated September 4th, 1931

²⁴⁷A territory located in the continental part of Spanish Guinea, presently known by the name of Mbini.

²⁴⁸See AGA, BOX, N° 157 (81/6426), writing signed by Río Benito naturals, dated September 2nd, 1932.

²⁴⁹A person named Ricardo Burnley ended his brief addressed to the new regime with the following words:

«I salute in the person of Your E. the new Spain, The Republic Spain, and we wish that our colony would also become a new colony, a Republic colony, and that things would change as they have changed in mother Spain». See: *Ibidem*, “Memorium del alma indígena” by Claudio Ricardo Burnley, addressed to Ricardo Ferrer, commissioner and auditing officer appointed by the Republic to investigate the accusations against Núñez de Prado’s office. The *fernandinos*, a group of people that represented native bourgeoisie, also addressed the Republic: «Since our island Fernando Póo shared the balm of Freedom under the protection of a Republic, we beg for and wish that the antidote spread throughout all the provinces of our glorious Spain will cross the seas and reach us, so that we will not find ourselves oppressed by unbearable laws imposed by men who cast the first stone and then hide cowardly. We want to be truly Spanish republicans in body and soul, and, although we are but a few, we wish to contribute with all our efforts to the progress of our Government of the Republic. Hence, we raise our voices claiming for justice and equality in all aspects pertaining the law and its regulations, so that we can proclaim our love from the last

Gonzalo Álvarez Chillida has shown how the discourse of some Guinean historians has shaped the origins of Guinean nationalism around the bad attitude of the indigenous chiefs of Mikomeseng²⁵⁰, who wrote the mythical protest manifesto of 1948²⁵¹. The open and straightforward style of the writings addressed to the Republic shows a boldness which excludes, however, any interpretation from a nationalist perspective. The natives identified themselves with the Republic; their writings did not include or manifest hatred towards the motherland in any way. On the contrary, in order to express their love for Spain they included metaphors related to a child's love for his mother or father. Autochthonous people considered themselves the sons and daughters of territories which, together with the metropolitan ones, belonged to the great nation called Spain. Alfredo Mata and others pointed out that they addressed the Republic as «*children*» addressing their «*common mother Spain*»²⁵². The natives of Río Benito, in contrast, chose to identify Spain with the father figure: «[...] Allow us to express frankly, as children would to their father, our complaints and aspirations, which we have long wanted to remedy during the previous government, without any response»²⁵³. Some of the messages which did not have headings manifesting this love for Spain, would nevertheless include them in the signatures at the bottom of the page. The letter of the '*fernandinos*', for example, ended with the following words: « I sign in the name of all the *fernandinos* who love their country»²⁵⁴.

corner of our land and from the depths of our beings, shouting: "Long live the Republic", as there is nothing that will make a man more worthy and faithful than justice and freedom of speech, independently of colour, opulence, or creed. I sign in the name of all the *fernandinos* who love our country». Refer to: AGA, BOX G-1799 (81/8068), file N° 2, writing by the *fernandinos* with the heading: "Voces de Ultramar. Más vale tarde que nunca". Other native writings can be found in: AGA, BOX G-1759 (81/8028), File N° 2, dated 28/08/1931, entitled: "Proposiciones de los hijos del país. Los Bubis"; writing dated 02/09/1931 signed by native chiefs in Rio Benito; writing dated 18/09 /1931 signed by other tribal chiefs of continental Guinea.

²⁵⁰City in the continental part of Equatorial Guinea. It is located at an equidistant point in the northern border of the frontier with the Republic of Cameroon. During colonial years, it was the third most important city in the colony after Bata by the time of the declaration of the Republic.

²⁵¹G. ÁLVAREZ CHILLIDA, *La Protesta de los Jefes en 1948. Una tradición oral nacionalista en Guinea Ecuatorial*, Éndoxa Journal: Philosophical Series (UNED), N° 37, 2016, pp.121-147

²⁵²«[...]We, as sons of the [colony] and, therefore, of our common mother, Spain[...]» AGA, BOX N° 157 (81/6426), *Cit.*

²⁵³*Idem*

²⁵⁴AGA, BOX G-1799 (81/8068), Fil N° 2, writing by the *fernandinos* entitled: "Voces de Ultramar. Más vale tarde que nunca"

In his speech for the proclamation of the Republic, Niceto Alcalá Zamora stated: «We are all sure that Spain is completely loved in all the regions [...]»²⁵⁵. In the preceding paragraph, the sentiment of love for Spain on the part of natives of Spanish Guinea is confirmed. However, an equally important aspect must be added: the accusations of natives rise precisely to counteract Alcalá Zamora's presumption regarding the full nature of this love professed for the motherland. In native discourse, love toward Spain, as any other feeling, is not static or immutable and it is subject to ups and downs. It is a love that needs to be worked on, cared for, enlivened. Arbitrary decisions, or as the *fernandinos* called them, those «unbearable laws»²⁵⁶ that colonized people had been enduring under the extinct monarchy, undermined the integrity of their love toward the motherland. In order to recover love for the Republic, steps had to be taken to attend to complaints and overcome injustice through the approval of a series of reforms aimed at re-establishing freedom, as well as social justice and equality between the Europeans and the natives. Claudio Burnley noted in his *Memorium del alma indígena*: «[...] The colony in its majority (not to say the totality) has been wounded in its love for colonizing Spain, ever since the island was delivered until the current change of regime, that we all trust will be the one which, with its diplomacy, will heal the wounds inflicted by the previous regime on the heart of the indigenous»²⁵⁷. The *fernandinos* expressed it even more clearly:«[...] We raise our voices asking for justice and equality in all aspects pertaining to the law and its regulations, so that we can proclaim our love from the last corner of our land and from the depths of our being, shouting: “Long live the Republic”; as there is nothing that will make a man as worthy and faithful than justice and freedom of speech, independently of colour, opulence, or creed.»²⁵⁸

This identification of natives with the mother country should not be interpreted as an abandonment of their ethnic-cultural identities. On the contrary, they are highlighted in some of their writings. For example, the *Bubis* called their writing:

²⁵⁵N. ALCALÁ ZAMORA, *Cit.*, pp. 7-8

²⁵⁶*Cit.*, *vid.*, quotation 28

²⁵⁷AGA, BOX N° 157 (81/6426), “Memorium del alma indígena” by Claudio Burnley

²⁵⁸*Cit.*, *vid.*, quote 28

«*Proposiciones de los hijos del país. Los Bubis*»²⁵⁹ (Propositions from the sons of the country: the Bubis). The *fernandinos* and the natives of Río Benito also identified themselves as such in their writings. But again, it should be noted that this undertone, apparently regionalistic, should not be interpreted from a separatist perspective. The natives were simply raising their voices as collective groups with their own ethnic and cultural identities within the group of peoples who composed the colonies in the Gulf of Guinea. When one reads the statement of each collective, one can verify that the reforms they requested were for their own ethnic group, but also for the rest of the peoples of Spanish Guinea. In the letter from the *Bubis* there are only two petitions made in their own name and in their favour: they request permission for hiring workers in the continent, and they insist on the suppression of «personal services»²⁶⁰ for the *Bubis*. The remaining and most important requests are formulated in a general way without any distinction made between its beneficiaries. For example, in the same letter by the *Bubis*, one can read: «The reason why we are not being properly instructed and educated is to keep individuals doing rustic work ». The correct phrasing of the statement would be: “the reason why we do not receive proper instruction is because they need individuals available for rustic work.” If we start from the premise that the subject in the letter refers to the *Bubis*, we would easily think that when they write: “we are not being properly educated”, they refer only to their own people. But, even if we accept this interpretation, the letter clearly supports education for all the natives of the continent. For example, when they denounce the recruitment of labourers: «the so-called recruitment of labourers from Bata must be stopped; they should be first educated in arts, and the rest». Here, the words *and the rest* should be interpreted as *and other fields of knowledge*. Such an interpretation can be inferred from the subsequent lines in the text, where they specifically request a school for Santa Isabel, where they could be instructed in subjects such as arts and other fields of knowledge. They particularly list subjects such as: philosophy, medicine, botanics, physics, chemistry and law. The list ends with an *et cetera*. This implies that they see no limit in the knowledge that should be given to the native. Both propositions ask for the same things. In the first one, they argue that the colonizer has never been interested in

²⁵⁹AGA, BOX G-1759 (81/8028), File N° 2, writing dated 28/08/1931 entitled: “Propositions of the sons of the country. The Bubis.”

²⁶⁰The name given in Guinea to forced labour for public purposes and for the benefit of the community

properly instructing the *Bubis*, so that they could hire them as the labour they needed for their farms. In other words, only adequate instruction would free the *Bubis* from rustic work. But they want the same thing for continental workers. Stopping the recruitment, and demanding that labourers be instructed in letters and other knowledge, is nothing other than to desire their transformation into knowledgeable subjects with a versatile education that can be used in fields other than the farms. But the letter of the *Bubis* goes further in defending the rights of continental people. They write frankly against the exploitation of workers once brought to the island: «[...] because once recruited and sent to these lands, they are used as machinery for their work and, naturally, a machine wears with usage, it breaks down, and it ends up falling apart over time if there is no good repairwork; what we imply with these words is that there are thousands and thousands of workers who left their families and were never able to see them again, for lack of sound medical repair». In summary, in the letter from the *Bubis*, except for the very few requests on behalf of their own people, the rest of important requests are made on behalf of natives without any distinction based on region or ethnicity. They ask for integral education for the naturals, for justice independent of race, for salary equity between blacks and whites with the same preparation and profession, for a raise of salary for workers, for lower taxes, etc. What has been stated here concerning the writings by the *Bubis* is also valid for the interpretation of a certain regionalistic undertone found in the writings of naturals from Río Benito. For example, they ask for the recognition of their political rights. They base their request on the fact that they consider themselves more civilized; and here, we must point out that by *civilized* they mean *instructed*. In other words, they are not asking for political rights based solely on the fact that their towns are located on the coast, but because they consider that most peoples on the coasts have a degree of instruction that enables them to know and understand the significance and extent of the faculties involved in political rights. Since they ask for these rights because they consider themselves already sufficiently educated, they would not deny them to other ethnic groups that may already have the same level of education, as the *fernandinos* would, especially the Jones²⁶¹.

²⁶¹ In colonial Guinea there existed a native bourgeoisie to which the *fernandinos* belonged. Among them, Maximiliano Cipriano Jones stood out as a man well-known for his loyalty and adhesion to the colonial government. By 1931, many members of this family not only had already been granted university degrees by metropolitan universities (such as Barcelona, for instance), but they had also been emancipated. For

From a strictly colonial perspective, the request for equality by natives in their writings was fairly utopian. According to Anne Orford, Antony Anghie, and Martii Koskenniemi²⁶², the successive waves of colonial expansion that took place between the end of the 19th century and the beginnings of the 20th century were justified on the grounds of colonial classic philosophy; a certain degree of terminological “varnish” was used, but it did not affect the meaning, nor the essential contents of the principles derived from the great debate on the topic of the Indies²⁶³. An analysis of the final position that such historical debate generated confirms Orford’s words when she points out that «the support of imperialism is the civilized/uncivilized distinction»²⁶⁴. To consider Indians as equal to the Europeans would mean to recognize the validity of a culture outside Europe. To accept the legal capacity of Indians would imply to respect them as lords and owners of their territories, and that these could not be considered *res nullius*²⁶⁵, susceptible to appropriation by the *occupatio*. It has been proven then, that with the principle of equality, the permanence of Europeans in those strange and far-away territories would have been unsustainable. It was necessary to elaborate on arguments to justify such permanence, and there was not a better one than the defense of inequality between Europeans and Indians. In order to deny Indians their humane quality, the defenders of the conquest resorted to Aristotle’s arguments in his ontological support of slavery²⁶⁶. Sepúlveda denied the existence of any quality that

more information refer to: I. K. SUNDIATA, *From Slaving to Neoslavery. The Bight of Biafra and Fernando Poo in the Era of Abolition, 1827-1930*, Madison (Wisconsin), The University of Wisconsin Press, 1996, pp. 158 ff.

²⁶² ANGHIE Antony, KOSKENNIEMI Martii, and ORFORD Anne, *Imperialismo y Derecho internacional*, Bogotá (Colombia), Siglo del Hombre Editores, 2016

²⁶³In truth, this idea of the inmutability of the principles of colonialism is not exclusive to Koskenniemi and his fellow believers. It can also be found in the writings of other authors: L. BACCELLI, *Bartolomé de Las Casas. La conquista senza fondamento*, Milano, Feltrinelli Editore, 2016, p. 89; A. A. CASSI, *op. cit.*, pp. 42-43, 143-144; G. GOZZI, *Diritti e civiltà. Storia e filosofia del diritto internazionale*, Bologna, Il Mulino, 2010, pp. 158-159; L. NUZZO, *Cit.*, p. 477, etc.

²⁶⁴A. ANGHIE, M. KOSKENNIEMI, A. ORFORD, *Cit.*, p. 102

²⁶⁵A. A. CASSI, *Ultramar. L’invenzione europea del nuovo mondo*, Roma, Editori Laterza, 2007, p. 5; S. ROMANO, *Corso di diritto coloniale impartito nel R. Istituto di scienze C. Alfieri di Firenze*, Università degli studi di Ferrara, ATHENAEUM, 1918, pp. 40 and following; J. M^a FRADERA, *La nación imperial (1750-1918)*, Barcelona, Editorial Edhasa, Vol. I, 2015, pp. 135, 149; J. A. R. DRINCOURT ÁLVAREZ, *Constitucionalismo y Colonialismo*, Valencia, Editorial Tirant lo Blanch, 2019, pp. 51-52; A. ANGHIE, M. KOSKENNIEMI, A. ORFORD, *Cit.*, p. 110

²⁶⁶ According to Aristotle, some men are born free and other men are born slaves. The former are socially superior, and the latter are socially inferior. As a matter of fact, the philosopher does not refer to mere social determination of roles given at birth, but rather to a natural selection that affects even the

would imply their rationality; he defined them as people without any culture, science, written system, or written laws, a people without history²⁶⁷. Indians are beasts, barbarians, an inferior race born to be enslaved, as the Greek philosopher sustained²⁶⁸. Diego de Covarrubias said that they were irrational, stupid beings incapable of governing themselves²⁶⁹. Gonzalo Fernández was even more direct and called them “animals”²⁷⁰.

Opposing this view of slavery, there was another more humanitarian position held by the Dominicans. Fray Montesinos is considered the creator of this approach, but Las Casas and Francisco de Vitoria were its main exponents. Las Casas did not hesitate in resorting to arguments from the *ius commune* to oppose those of Sepúlveda and his fellow believers. To Las Casas, *humanity* and *rationality* were sufficient arguments to support the freedom of men. He stated that Indians, as rational beings, were free men by nature. Any restriction on their liberty was accidental and never natural. To deny this premise was to incur in a *contradictio in terminis*; because, if God had created all men equal, to His own image and likeness, it was not possible to say that, by nature, some of them were free and others slaves, as Aristotles sustained²⁷¹. Vitoria arrived to similar conclusions and maintained that Indians were

psychological and physiological abilities of individuals. The slave lacks reasoning ability from birth, because he is only born with aptitudes that instinctively allow him only to understand and obey orders. Since he is a moving *good*, «an animated possession» comparable to a domestic animal, nature has endowed him with a body with the necessary strength for society’s hardest and most backbreaking work. On the contrary, free men, the masters, can only give orders and commands. Since they are endowed with reason, nature gives them an *ad hoc* body for the noble offices; nature even wants to make the bodies of free men and slaves differ: some are strong, for the necessary jobs; others erect, and useless for those hard matters, but useful for political deeds. In Aristotelian theory, the natural choice of roles is bound by race. Some races are superior and noble, and cannot undergo slavery; in other words, they are races of free men. Aristotles adheres to Plato’s (his teacher) idea, that the Greeks ought not to be submitted to slavery. In contrast, there are races which are inferior, these are the races of slaves; such is the case of the so-called barbarians. See: ARISTÓTELES, *La Política*, translation by Manuela García Valdés, Madrid, Editorial Gredos, S.A., 1988, Book I, On Slavery, pp. 53-64

²⁶⁷ J. S. HERCEG, *Filosofía de (para) conquista. Eurocentrismo y colonialismo en la conquista por el nuevomundo*, Atenea (Concepción), N° 503, 2011, p. 170

²⁶⁸ A. A. CASSI, *Cit.*, p. 23, 101

²⁶⁹ *Ibidem*, p. 104

²⁷⁰ *Ibidem*, p. 102

²⁷¹ «[...] in natura pari Deus non fecit unum alterius servum, sed par omnibus liberum concessit arbitrium». See: L. BACCELLI, *Op. Cit.*, p. 101; G. GOZZI, *Cit.*, pp. 30 and following.

rational persons and not barbarians, although they were rational “in their own way”²⁷². Indians had their own lords and chiefs, their own structure of norms. According to Vitoria, Indians were entitled to their lands and had the same rights as Spaniards in the Peninsula²⁷³. There is certain ambivalence in the position of these so-called defenders of the Indians, or theologians of freedom. Sepúlveda and his fellow believers defined Indians as animals and beasts. As such, their lands were *res nullius*, that is, nobody’s property, and liable of occupation by the first discoverer. On the contrary, the theologians of freedom started out with a defense of an apparent equality between Spaniards and Indians, but in the end, they adopted a paternalistic attitude that deep-down recognized the inequality between both groups. Indians were considered rational beings according to the Dominican fathers, but their rationality was limited, and needed some kind of guardianship, which was to be exercised by the Spaniards²⁷⁴.

The coming of the Republic stirred a bold attitude in the personality of natives. For them, the declaration of the new regime was an opportunity to speak out the truths they had never dared say aloud before. But the progressivist discourse of the natives does not mean they were naive. They trusted and believed in the republican discourse, they projected their illusions, and dreamt of improvement. But they were also realistic people; they knew perfectly well what they could dream of, and how far they could project their expectations. The writings of natives reflect this realism, assuming their role in the civilization process. Alfredo Mata and colleagues admitted that they observed the Republic from their «low and humble position»²⁷⁵. Even more straightforward were the naturals of Río Benito, who raised no objection in recognizing and manifesting their colonized condition: «[...] We do not mean by this, Mr. Commissioner²⁷⁶, that we pretend total equality banishing our obligation for respect and consideration toward the Europeans, and, above all, the Spaniards, for having colonized us; thanks to them we can identify our rights and obligations nowadays»²⁷⁷. On their

²⁷²J. S. HERCEG, *Cit.*, p. 173

²⁷³L. BACCELLI, *Cit.*, p.55; G. GOZZI, *Cit.*, pp.26-29

²⁷⁴*Ibidem* L. BACCELLI, p. 198; A. A. CASSI, *Op. Cit.*, p. 143

²⁷⁵AGA, BOX N° 157 (81/6426), *Cit.*

²⁷⁶They refer to Don Ricardo Ferrer Barbero, Auditor appointed by the Republic to investigate all the accusations made against Núñez de Prado’s office during the colony.

²⁷⁷AGA, BOX N° 157 (81/6426), *Cit.*

part, the *Bubis* asked for more civilization: « Why doesn't Spain even want to civilize us as other nations that own neighbouring colonies do with their subjects?»²⁷⁸. Surely, the *Bubis* would have changed their discourse had they known that the situation in the nearby colonies was almost the same as that which they were living in Spanish Guinea.

With this quick overview of the debate on the matter of the Indies, we have been able to prove that colonialism, or imperialism even, is maintained thanks to the acknowledgment of the principle of inequality among peoples. The colonizer had this moral duty weighing upon him, and could not appear indifferent to the state of underdevelopment of the uncivilized world. He had to act; he had to civilize it. Here, *to civilize* meant the same as *to colonize*, which in turn meant: to instruct, to educate²⁷⁹, or to humanize. By presenting colonization as a generous and altruistic act, the people that were being civilized were left with no other option than that of feeling grateful, and they had to manifest this gratitude through their docility toward the colonizing action. As shown here, the process of civilization involves acculturation: the “superior values”, those of the colonizers, will absorb the “inferior values”, those of the colonized. The opposite dualities -Christian/barbarian, superior race/inferior race, educated/savage, law/custom, European/Indian- are but a way of defining unequal relations. On the one hand, there was a subject who was the bearer and transmitter of superior values; on the other hand, there was another subject who was the recipient of such values. Therefore, when the natives of Guinea accepted their condition as colonized, as we can see in their writings, they were also accepting the principle of inequality that was the foundation of all colonial theory. By accepting such inequality, all the requests for equality became dismissable, unless understood as legal reforms aimed at improving the situation of natives, even if they did not result in absolute equality, as shown in the writing by the naturals of Río Benito.

2.2.2. *Voices of the colonial settlers before the Republic*

²⁷⁸AGA, BOX G-1759 (81/8028), File N° 2, *Cit.*

²⁷⁹«[...] to colonize is to educate, to make peoples out of savage tribes [...]». See AGA, BOX G-1930 (81/8200), File N° 2, Memories of Diego Saavedra entitled: “*Posesiones Españolas del Golfo de Guinea, 1906*” (Spanish Possessions of the Gulf of Guinea, 1906).

The new regime also received complaints from the settlers residing in the colony. Their writings repeated the irregularities and accusations that had been already made two years before the declaration of the Republic, through a campaign led by a newspaper called El PROGRESO²⁸⁰, against the colonial office of Don Miguel Núñez de Prado. One of the main characteristics of the discourse of settlers was the personification of every irregularity in the persona of the highest colonial authority. In almost every²⁸¹ written statement by colonial settlers, accusations and irregularities referred to one name and only one: Núñez de Prado. According to the people who signed the accusations, the arrival of this Governor to the colony²⁸² meant the establishment of a colonial regime that could only be described as: slavery²⁸³, cruelty, despotism²⁸⁴, arbitrariness, corruption, and benefits to friends²⁸⁵. When reading the

²⁸⁰El PROGRESO was a newspaper printed in Barcelona between the years 1906 and 1933. The founder was Alejandro Lerrox García, leader of the Radical Republican Party. See: AGA, BOX G-212 (81/6481), File N° 199/11, El PROGRESO, October 24, 1930, article entitled: «LA IMPUNIDAD Y LOS PRIVILEGIOS DEL DICTADOR DE FERNANDO POO» (Impunity and privileges of the dictator of Fernando Póo).

²⁸¹There were very few writings by the Spaniards with accusations of colonial injustice that were not linked to the persona of the Governor General. Among them, see: AGA, BOX (81/6469), File N° 186/2, *Carta al Pte. del Gobierno* (Letter to the President of the Government) dated 17/05/1931, signed by H. Saenz Marcotegui, Jesús Álvarez, Juan M. Capdevielle, Miguel Lanza; *Carta al Pte. del Gobierno* dated 18/05/1931

²⁸²Núñez de Prado took possession of his office in the colony on February 8th, 1926. See: G. A. CHILLIDA, *Los gobernadores de Fernando Poo* (the governors of Fernando Poo), *Cit.*, pg.149

²⁸³«Slavery and dealing of blacks has been reestablished in our colony during the office of the present governor [referring to Núñez de Prado]». See AGA, BOX G-197 (81/6466), Report of Fernando Avendaño of 23/06/1930.

²⁸⁴Another letter described Núñez de Prado's government as « An absurd, despotic, personalistic government, during which people have been offended by law; where virtue and laws have been mocked according to the whims of a scheming concubine who owns the governor's authority, as an example of scandal and discredit of our race for the civilized world, and also for the uncivil and uncivilized blacks of our colonial territories. It is a summary and a result of the absolutism and swindling from *Plaza de Oriente*, amazingly embodied in the palatine person of Conde de Jornada and Núñez de Prado ». See AGA, BOX G-168 (81/6437), writing dated 10/06/1931 signed by the Spaniards residing in the colony.

²⁸⁵«All business transactions were decided by a group of hangers-on and scheming favourites. [...]». See: AGA, BOX G-179 (81/6448), writing signed by Spanish settlers resident in the colony. « In our last colony, from the beginning of 1926, all kind of crimes have been committed by general Núñez de Prado, his beloved María Bau, families and friends; and he is, however, the only governor with complaints about the previous situation. To what do we owe the exceptions made with this general? » See AGA, BOX G-197(81/6466), N° 7127, (Barcelona, September 7, 1930) El PROGRESO, article entitled: «LE

different letters from colonial settlers, the first impression we get is that arbitrary actions were pointed out mainly because they had been carried out with either the implied or the manifest consent on the part of Núñez de Prado, and not because they constituted irregularities against the law *per se*. Here lies the first difference between the discourse of Spaniards and the discourse of natives. With an exception made of the written statement by Río Benito naturals, where a great part of the responsibility falls on the sous-governor of Bata, Don Emilio García Loygorri, the complaints in the remaining letters are not about a specific colonial officer or authority. The discourse of natives is not directed against an individual, but against the whole system, understood as the colonial model that was being applied. In the discourse of the settlers, on the other hand, every arbitrary act mentioned revolves around Núñez de Prado. If, as the Spaniards maintain, slavery and abusive power have returned to the colony with Núñez de Prado, it is only by terminating his office that injustice will disappear.

From 1880 to 1930, the island of Fernando Póo changed from a commercial colony to an agricultural-commercial colony²⁸⁶. During the years of this transformation, colonial settlers faced three main difficulties from the financial point of view: the customs' rights to get their products to the metropolis, the lack of financial support, and the lack of labour²⁸⁷. While the first two problems would be dealt with with the passage of time, the labour problem or lack of manual workers remained, and it characterized the years of Spanish colonization in Guinea. Since the local population was small, local economy depended mainly on workers from the English colonies in the western African coasts (Liberia, the Kru Coast, Sierra Leone,

INTERESA AL GOBIERNO LA PACIFICACIÓN DE LOS ESPÍRITUS EN FERNANDO POO» (The government is interested in calming minds down in Fernando Póo).

²⁸⁶During the British settlement of the island Fernando Póo, the main commercial activity was bartering. Englishmen received local products such as ivory, leather, fine woods, palm oil, yam, and others from the natives, and then exported these goods to the metropolis. In exchange, they gave to the native goods such as: tobacco, fabrics, shoes, rum, iron, knives, gunpowder, etc. The English formally abandoned the island in 1835. The few Englishmen left, as well as the freed slaves that came from their colonies, continued bartering. It was only during the eighties, in the 19th century, that bartering would be gradually replaced by agricultural activity. English freemen, as well as the few Spaniards residing in the colony, gradually became farmers. On this economical transformation that took place in the colony during the 19th century, refer to: G. SANZ CASAS, *Política colonial y organización del trabajo en la isla de Fernando Poo: 1880-1930* (Colonial policy and organization of work in the island of Fernando Poo: 1880-1930), doctoral thesis, University of Barcelona (School of Geography and History, Department of Cultural Anthropology), November, 1983, pp. 12 and following; I. K. SUNDIATA, *Cit.*, pp. 59-90

²⁸⁷G. SANZ CASAS, *Política colonial y organización...*, *Cit.*, pp. 208-209

the Gold Coast –present-day Ghana–, Lagos, and Calabar)²⁸⁸. But the settlers of Fernando Póo, instead of attracting more workers, behaved in such a way that scared labour away. In 1898, the Consul General of Britain visited Fernando Póo to investigate several complaints from colonial subjects who claimed they were being treated as slaves by their masters²⁸⁹. Once he had confirmed the veracity of the accusations, the British diplomat demanded a solemn promise from colonial authorities that they would respect the contracts signed with their labourers and abide by them in the future. But promises made to colonial authorities were merely words. The farmers continued to disregard the contracts they had signed; men such as William Vivour and Manuel Balboa continued mistreating their workers, and Spanish authorities were satisfied with penalizing the employers with meager fines, even in those cases where workers had died as a result of wrongful treatment. In January 1900, a group of nearly 600 Nigerian workers got together in front of the Governor's residence to protest against mistreatment and failure to fulfill contract obligations on the part of their employers²⁹⁰. The Governor did nothing about the complaints of the workers who were manifesting. On the contrary, he banished them from the colony on the grounds that their boldness to manifest was dangerous to colonial public order. After countless accusations for breaching working contracts²⁹¹, and in view of the persistently passive

²⁸⁸ *Idem*

²⁸⁹ I. K. SUNDIATA, *Op. Cit.*, pp. 132-133

²⁹⁰ Sanz Casas mentions a strike of about 600 workers. Sundiata y SantGisbert, on the other hand, talk about 450 workers. See: G. SANZ CASAS, *op. cit.*, p. 170; I. K. SUNDIATA, *Op. Cit.*, p.134; J. SANTIAGUEZ, *El modelo económico colonial y sus contradicciones: Fernando Poo, 1900-1936* (The colonial economic model and its contradictions), *Afro-Hispanic Review*, N° 2, 2009, p. 65

²⁹¹ In Fernando Póo, during the end of the 19th century and the first decades of the 20th century, the workers would undergo all kinds of injustices and failure to adhere to contract obligations, ranging from the denial of freedom to make contracts to physical abuse. The British consuls in Fernando Póo received very many accusations from their subjects. In 1912, a subject from Sierra Leone escaped and sought refuge in a British ship, the *Dwarf*, because of abusive treatment from his employer, Mr. Joseph Dougan. The British consul of Calabar went to Fernando Póo with a British officer to investigate the fact; as a matter of fact, he confirmed the worker's accusations after visiting several farms in the Spanish colony. Again in 1913, the British consul general in Monrovia complained that their British colonial subjects working in Fernando Póo were being enslaved. In the same year, vice-consul Smallbones filed a complaint in defense of Samuel Kinson, a British colonial subject who had been retained against his will after termination of his contract in Fernando Póo. The diplomat also filed complaints in the case of several subjects from Sierra Leona who had stolen a ship to escape Fernando Póo. In their attempt to escape, they were captured at sea by the Germans and returned to the island, where they were imprisoned. In 1914, the vice-consul filed another complaint against a certain Nicoll, who had whipped his worker and left him with partial paralysis. Nicoll was fined with 1500 *pesetas*, and underwent trial before the Gran Canarias tribunal. In addition to mistreatment and being retained against their will, failure to comply

attitude of Spanish colonial authorities, the British forbade their colonial subjects to go to the Spanish colony to work²⁹².

From the preceding paragraphs we can infer that the discourse of colonial settlers accusing Núñez de Prado of bringing back slavery and arbitrariness to the colony is unfounded. Slavery and the labour recruiting regime, mistreatment and unfulfillment of obligations, abusive use of personal services, and the use of *de facto* power on the part of the Governor were common practices before, and also after, Núñez de Prado's office. In May 1933, two years after the substitution of Núñez de Prado, the Indigenous Patronate sent a written report²⁹³ to the metropolitan Government, which included a quick appraisal of colonial reality in Guinea. According to the Patronate, the colonial regime in force in Guinea had been characterized until then by its «lack of responsibility», «disorder», «incapacity», and «lack of ethics». This critical undertone in the writing from the Patronate will continue appearing in other writings, both local²⁹⁴ and international²⁹⁵.

with salary payment was also very frequent. In other words, all kinds of failure to comply with work obligations took place. On this topic, refer to: I. K. SUNDIATA, *Op. Cit.*, pp. 136 ff.

²⁹²G. SANZ CASAS, *Política colonial y Organización...*, p. 208; J. SANTGISBERT, *Cit.*, p.25

²⁹³AGA, BOX G-1799 (81/8068), File 21-0, writing from the Indigenous Patronate in May, 1933

²⁹⁴«It is painful to say that the indigenous worker in our territories has been, and still is, submitted to a certain degree of exploitation that the *Curaduría* (guardianship) has not been able to mitigate». See: AGA, BOX N° 86 (81/6355), Project for the reform of Justice Administration dated 28/03/1934, signed by Don José M^o Martínez (former head of the colonial section of the General Directorate of Morocco and the Colonies-GDMC) and Don Eugenio de Arizcun (Magistrate and former member of the Committee for Judicial Matters of the GDMC)

²⁹⁵In May 1936, an official document had included the translation into Spanish of a section in an English magazine which reported the practice of slavery in Spanish Guinea: «British subjects have known freedom from slavery for about a hundred years: the world, through its representative body, the Society of Nations, has shown its contempt for nations that still follow such despicable business. Liberia and Abissinia have been summoned for this; however, almost nothing has been said about what Spain is doing with slavery inside its territories in the Gulf of Guinea. Little publicity has been given to illegal activities carried out by people hired by Spain to forcefully recruit men from other parts of Nigeria [...] We cannot deny the fact that this practice has been authorized by the authorities [...]». See: AGA, BOX G-1759 (81/8028), File N° 6, Translation of a fragment of N° 104 of the British magazine «The West African Review». In another document, we can read further accusations on the part of the British press: «They recruited a great number of liberian nationals. Later, the news about brutality and conditions similar to slavery slowly spread through Western Africa. News were heard about workers subject to their employers' will, and employers prone to use the whipcord to impose their authority. Workers are whipped, and sold or exchanged without their knowledge or consent. In several cases, the employers refused to pay their workers, and sometimes their salaries were confiscated as a result of the hard fines received [...]». «The inhumane reality of Fernando Póo must be known. But Spain is a colonial power and a European

Another characteristic that has to be emphasized in the discourse of colonial settlers is its lack of internal cohesion. Once again, there is a criss-cross of native voices with those of the European settlers. When the writings of naturals are analyzed, there is only one argumentative line. The writings of natives are not contradictory. On the contrary, they complement each other. Native people do not have several truths; they have only one truth: that they are subject to discrimination. In contrast, in the discourse of the settlers, there are two opposing views: those of the detractors of Núñez de Prado, on the one hand, and those of his defenders, on the other²⁹⁶. Without attempting to verify which of the two versions of the Europeans is true, we do have to point out that there exist certain clues to indicate that this polarity in the discourse was probably more a result of differences among the settlers themselves, than an attempt at objectively defending colonial justice or legality.

As with any new governor, the arrival of Núñez de Prado to the colony generated great expectations²⁹⁷. The Official Chamber of Agriculture received the new governor well, and made him honorary president of the organization²⁹⁸. The press also had good words for him; they even talked about “The Defender of Núñez de Prado”²⁹⁹, in sarcastic reference to the colonial newspaper “El Defensor de Guinea”³⁰⁰ (The

state, and that explains it». See: AGA, BOX G-1759 (81/8028), File N° 6, writing dated 27/05/1936, which translates into Spanish several fragments published in British periodical publications, *The Morning Post* among them.

²⁹⁶There were also signed statements defending Núñez de Prado’s office. Some of them can be found in: AGA, BOX G-197(81/6466), File 183/10, writing dated 10/04/1930 signed by a group of foreigners; writing dated 14/04/1930 signed by some German residents of the colony; anonymous writing dated 15/04/1930 addressed to the President of the Council of Ministers; writing dated 12/10/1930 signed by a group of foreigners.

²⁹⁷G. NERÍN ABAD, *Un guardia civil en la selva*, Barcelona, Editorial Ariel, 2008, p. 153

²⁹⁸*Ibidem*, p. 157

²⁹⁹AGA, BOX G-1915 (81/8184), File N° 2, writing entitled: «EL DEFENSOR DE NÚÑEZ DE PRADO» (The defender of Núñez de Prado)

³⁰⁰The *Defensor de Guinea* (the Defender of Guinea) was a newspaper published in Spanish Guinea. According to Carlos González Echegaray, its publication began on May 1st, 1930. It was a newspaper close to the colonial regime published by the post office every two weeks. According to the colonial newspaper the *Guinea Española* (N° 738, 06/11/ 1932), the *Defensor de Guinea* announced on October 30th, 1932 that it would stop its publications. According to Carlos González Echegaray, the *Defensor de Guinea* was active until N° 423 in 1934, although the autor maintains that additional issues were also published in 1936. On this particular, refer to: AGA, BOX G-195 (81/6464), writing dated 14/05/1930 by the General Directorate of Morocco and the Colonies accepting the publication of the newspaper “*El Defensor del Pueblo*”; *La Guinea Española*, N° 738, November 6th, 1932, p. 351; C. GONZÁLEZ ECHEGARAY, *History of the Press in Equatorial Guinea in the 20th Century: Periodicals Published in*

Defender of Guinea). The missionaries also got along well with the Governor. But this understanding between the colonial officers and the Governor would not last until the end of his office. According to Nerín³⁰¹, an internal conflict among the members of the Chamber of Agriculture was to divide the positions of the colonial settlers on Núñez de Prado's office. Some of them supported the Governor -surely those who had benefited from his administration. Others rose as his opponents and, as we have seen so far, started to bring to light his arbitrariness and irregularities during his office as Governor. As exemplified above, during Angel Barrera's period, the Governor who was in office before Núñez de Prado, there had also been arbitrary acts and irregularities. He banished from the colony the Nigerian workers who protested because of unfulfilled work obligations; he imposed on the *Bubis* personal services to particulars³⁰²; he subdued many continental tribes *manu militari*³⁰³; he used forced labour [without pay or retribution to workers] to clear the land, and for construction and maintenance of official infrastructure in the continent³⁰⁴. In addition to this, during Barrera's office, the British Consul complained that their colonial subjects in Fernando Póo were being treated as slaves, and, for the same reasons as the British, the Liberian government suspended, several times, the treaty for the provision of workers that they had signed with Spain³⁰⁵. Since these arbitrary actions were beneficial to the farmers who belonged to the Official Chamber of Agriculture, there was not a single complaint on the part of the members of this organization. On the contrary, Barrera

Equatorial Guinea 1901-2000, Cambridge University Press, 2016, pp. 7-29, available at <https://static.cambridge.org/resource/id/urn:cambridge.org:id:binary:20170706045628693-0728:S026667311500001X:S026667311500001Xsup001.pdf>

³⁰¹G. NERÍN ABAD, *Un guardia civil...*, *Cit.* pp. 210 and following

³⁰²C. PETIT CALVO, *Detrimentum Rei Publicae*, in J. M^a PORTILLO VALDÉS and J. M^a INURRITEGUI RODRÍGUEZ, *Constitución en España: orígenes y destinos*, Madrid, Editorial Centro de Estudios Políticos y Constitucionales, 1998, pp. 425-427; G. SANZ CASAS, *Cit.*, pp. 220-221

³⁰³See the subjugation of members of the *Osumu* tribe in Río Muni, in: G. NERÍN ABAD, *Cit.*, pp.125-140

³⁰⁴*Ibidem*, pp. 71-76

³⁰⁵In 1914, the Republic of Liberia signed an international treaty with Spain which allowed the farmers of Spanish Guinea to hire workers from that African state. Such treaty was in effect from 1914 until 1927. But during the duration of this treaty, the Liberian government almost ended it on three occasions (in 1919, in 1923, and in 1925), because Spanish farmers frequently failed to comply with their obligations. On this particular topic refer to: I. K. SUNDIATA, *Op. Cit.*, p.139; J. SANTGISBERT, *El modelo colonial y sus contradicciones: Fernando Po, 1900-1936*, *Afro-Hispanic Review*, N^o 2 (Volume 28), 2009, pp. 57-80

was named “adoptive son of the colony”, and they built him a statue³⁰⁶ in the middle of “Plaza España”³⁰⁷ in Santa Isabel. The only voices that rose against Barrera’s office were those of the missionaries; and it was not because they wanted to defend colonial legality, but because they felt their quota of power was being endangered during Barrera’s office³⁰⁸. Indeed, the same missionaries who had complained about irregularities during Barrera’s period failed to see arbitrariness under Núñez de Prado, even when a campaign in the media revealed several concrete cases of his abuse of power³⁰⁹.

From the beginning, the objectivity of European discourse was questioned with the classic “*your word is as good as mine*” that divided their writings. In addition to this, neither the content nor the extent of the accusations in their writings helped corroborate the objectivity and impartiality of their intent. In the written statements of Núñez de Prado’s adversaries, he was profiled as a petty tyrant who exerted his authority with no limits at all. He assigned lands to his friends in an irregular way, and manipulated road construction plans at will to benefit friends and acquaintances (the Cabestany case³¹⁰); friends who had been judged and imprisoned continued to receive

³⁰⁶M. VILARÓ I GÜELL, *La internación de la SCHUTZTRUPPE. La Guinea Española en la Gran Guerra*, Madrid, Editorial Letras de Autor, 2018, p. 36

³⁰⁷ *Plaza España* was the most important square in Santa Isabel during the colonial period. It is located right in front of the former residence of the colonial Governor. Nowadays, it is called *Plaza de la Catedral*.

³⁰⁸ On the tension between the missionaries and Ángel Berrera, refer to: G. ÁLVAREZ CHILLIDA, *Misión católica y poder colonial en la Guinea española bajo el gobernador general Ángel Barrera (1910-1925)*, in X. HUETZ DE LEMPS, G. ÁLVAREZ CHILLIDA y MARÍA-DOLORES ELIZALDE, *Gobernar colonias, administrar almas, Poder colonial y órdenes religiosas en los tiempos ibéricos (1808-1930)*, Colección de la Casa Velázquez, 2018, Chapter II, pp. 181-206, available online: <https://books.openedition.org/cvz/6350?lang=es>

³⁰⁹The truth is that the metropolitan Government was well-aware of irregularities during Núñez de Prado’s office. Apparently, what worried the Central Government were not the accusations against its arbitrariness, but the fact that the Governor was doing it so openly. As a matter of fact, when the press started revealing public and manifest cases of abuse of power, they sent a message to the Governor asking him for more discretion.

See: AGA, BOX N° 197 (81/6466), File N° 183/10, message with the heading «CONFIDENTIAL» dated 03/03/1930, addressed to Núñez de Prado from Madrid.

³¹⁰ Mr. Cabestany was a friend of Núñez de Prado. In fact, he accompanied the governor on his first trip to Río Muni, the continental part of the colony. The governor was accused of making many concessions in favour of Cabestany, even if he did not fulfil the legal requirements to be granted concessions. In addition to this, when planning road maps in that part of the colony, Núñez de Prado manipulated the project so that the lands assigned to his friend would have easy access to the roads. See: AGA BOX G-

their salaries after their suspension as government officials, and enjoyed innumerable exit permits (case of Luis Mezquida Estillas³¹¹); he ordered arbitrary destitutions and exiled his adversaries (case of Juan Galán Prolongo³¹²); he forced civil officers to resign against their will (case of Julio Arenillas Álvarez, etc.); he manipulated the results of tendering processes in favour of friends; and he constantly interfered in judicial independence. For more information on this topic, the reader can refer to the lengthy list of cases mentioned by the plaintiffs in the documents that are being quoted. When these claims are reviewed, it becomes particularly difficult to disqualify Gustau Nerin's position when he maintains that Spanish settlers only complained to the Republic about Núñez de Prado's corruption against the Spaniards³¹³. As shown, all the victims or beneficiaries of the long list of arbitrary acts on the part of the Governor are Spaniards. The Spaniards clearly reacted against injustice or violent and inhumane treatment when they occurred against white Spanish people. As for the situation of foreigners and natives, it seems that they opted for silence or invisibility in their writings. What appears to be missing is a general and categorical rejection of Núñez de Prado's irregularities, regardless of race or country of origin of the people affected by them.

The only accusation by the Spaniards that can be understood as favouring African natives is when they attack the slave-like recruiting system of workers taking place under Núñez de Prado's office³¹⁴. However, we insist once more that Núñez de Prado did not create the recruitment of workers, nor did it disappear with the Governor's destitution.

197 (81/6466), File Nº 183/10, EL PROGRESO newspaper, Nº 7002, April 8th, 1930, article entitled: «FERNANDO PÓO DURANTE EL MANDO DE NÚÑEZ DE PRADO» (Fernando Póo during Núñez de Prado's Office).

³¹¹Luis Mezquida Estillas was an officer of the Treasury in the colonies, who was processed and sentenced for a case of corruption. While in prison, he continued to receive his salary, which was an illegal practice. Furthermore, he was frequently seen walking on the streets, allegedly enjoying exit permits. See: *ibidem*, Message with the heading «CONFIDENTIAL» dated March 3rd, 1930, addressed to Núñez de Prado from Madrid.

³¹²Juan Galán Prolongo was a Commander of the Civil Guard. Apparently, he did not agree with Núñez de Prado's ways. He was arbitrarily dismissed by the Governor, regardless of the fact that military authorities in the Canary Islands had declared such destitution inadmissible. See: *Ibidem*, Report of Fernando Avendaño addressed to the President of the Council of Ministers.

³¹³G. NERÍN ABAD, *Un guardia civil...*, *Cit.* p. 217-218

³¹⁴AGA, BOX G-197 (81/6466), *Cit.*

In their discourse, the natives assumed their role in the colonizing process. However, the discourse of Spaniards reinforced their own position. If imperialism or colonialism implied a clear distinction between the civilized or the colonizers, and the uncivilized or the colonized³¹⁵, then, it is easy to understand why Spaniards rose against a government whose office seemed not to respect the elemental principle, the *sanctussanctorum* of *ius commune*³¹⁶, created to “bring civilization” to the so-called barbarians. In their writings, Spaniards rose to defend the “prestige of the white race”, and attacked any behaviour or actions that contradicted the colonizer/colonized distinction. But, what did “*the prestige of the white race*” mean? Or, put differently: Which actions discredited the white race? A report addressed to the Government in 1929 stated that «the white race is being discredited among indigenous people, because of violent actions against a great number of prestigious whites carried-out publicly by black soldiers, such as incarcerations and exile, all of them considered unfair and illegal when superior authorities are called upon»³¹⁷. In the same vein, Avendaño’s report stated: «The prestige of Spain in the colony has been greatly affected, mainly in two ways: the first one, the measures against whites; the second one, the specific behaviour of individuals who exercise authority. The white race has been discredited vis a vis indigenous groups by sending white persons to prisons for blacks; making Indians testify against whites, instructed by the police to say whether or not they had seen a given paper, and making them understand that the luck of whites depended on their testimonies, as shown in the accompanying documents; leading the Spaniards arrested and handcuffed by black soldiers of the colonial guard, amid their rejoicing before a spectacle they had never seen before »³¹⁸. In truth, in the statements transcribed above, we can see that the Spaniards did not specifically defend formal segregation based on race. That is, they accepted that whites and [emancipated] blacks

³¹⁵A. M. CARRASCO GONZÁLEZ, *Op. Cit.*, p.15; ANGHIE ANTONY, KOSKENNIEMI MARTII, and ORFORD ANNE, *Op. Cit.*, p. 102

³¹⁶Clavero also uses the term “*ius commune*” [“colonial”, in this case] to refer to those principles around which all the theory of philosophy or colonialism was built, and which appeared, *mutatis mutandis*, in every colonial model. Refer to: B. CLAVERO, *Bioko, 1837-1876: Constitucionalismo de Europa en África, derecho internacional consuetudinario del trabajo mediante*, Quaderni Fiorentini, N° 35, 2006, p. 513

³¹⁷AGA, BOX G-197 (81/6466), Report dated 05/06/1929 addressed to the metropolitan government.

³¹⁸*Ibidem*, Report by Fernando Avendaño dated 23/06/1930 addressed to the President of the Council of Ministers.

were to be considered equal before the law, but they argued that the law should be applied in such a way that the “prestige of the white race”³¹⁹ would remain unblemished; understanding “prestige” as the good reputation or impolite image that the colonized should always have of the culture and race of the colonizer.

According to Domenico Losurdo³²⁰, the first model of the «Racial State»³²¹ emerged from the American Revolution. The fathers of American independence defended freedom, not for all the races residing on American soil, but only for the white race. In the young American state, the difference between a black slave and a freed black was only a nuance. The single difference among them was that the latter carried an emancipation letter, and nothing else. They both remained under a regime of exclusion that would last beyond the Civil War, affecting blacks equally in the north as well as in the south, and stretching its influence beyond World War II. Undoubtedly, the situation of natives in the Spanish Guinea of the thirties was different than the situation of blacks in the United States at the end of the 18th and 19th centuries, or in the middle of the 20th century. But, with a deeper analysis of the transcripts above, the comparison yields coincidences between what the Fathers of the American nation understood by “enforcing the supremacy” of the white race, and what Spanish settlers understood by “maintaining the prestige” of the white race in the colony. Spanish colonial settlers accused Núñez de Prado of using the same despotic and inhumane methods with whites as those used with natives³²²; they denounced that blacks and whites were sent to the same prison, that accused whites were arrested and led by black soldiers of the Colonial Guard, that whites were being processed and condemned on the testimony of blacks, etc. All of these were measures of segregation that had already

³¹⁹«[...] [Núñez de Prado] treats blacks and whites equally, that is to say, despotically, without taking into account the natural differences among those who, even if they are equal before the law, are different in terms of culture and awareness of their offence. *Ibidem*, N° 6986 of EL PROGRESO dated 20/03/1930 (Barcelona), article entitled: «EL GENERAL NÚÑEZ DE PRADO EN FERNANDO POO» (General Núñez de Prado in Fernando Póo)

³²⁰D. LOSURDO, *Controistoria del liberalismo*, Roma, Laterza, 2006

³²¹*Ibidem*, p. 150

³²²«[...] [Núñez de Prado] treats blacks and whites equally, that is to say, despotically, without taking into account the natural differences among those who, even if considered equal before the law, are different in terms of their culture and awareness of their offence. *Ibidem*, Note 65, N° 6986 of EL PROGRESO dated 20/03/1930 (Barcelona), article entitled: «EL GENERAL NÚÑEZ DE PRADO EN FERNANDO POO» (General Núñez de Prado in Fernando Póo)

been upheld and adopted in the United States, as shown in Losurdo's analysis in his *Controhistoria del liberalismo*.

2.3. The investigations conducted by Ricardo Ferrer Barbero

The Republic, as a regime that set out to meet all the demands for justice made by both the Spanish and the colonial subjects, appointed a commission to investigate *in situ* all the facts and irregularities denounced by the colonials in their writings addressed to the new regime. This commission was headed by a very Catholic military man, Ricardo Ferrer Barbero, a Brigade Auditor in the army. Although it was mainly the denunciations of the colonials that motivated the appointment of Barbero's team, it should be noted that its mission was not only to investigate the cases denounced, but also to carry out an inspection of the functioning of the different services of the colonial Administration.

Barbero, as soon as he arrived in the colony, began to make inspection visits to various services of the colony. José Domínguez Manresa, then interim Governor, issued a proclamation for the residents of the colony to formulate the complaints or claims they considered appropriate. In addition to all the denunciations that had already been made two years earlier through the Catalan newspaper *El Progreso*, others were made. About 23 files were opened to clarify the facts reported. In the preceding section, many of the complaints filed against the Núñez de Prado Administration were reviewed. But the objective of this section was not so much to delve into the content of these writings, as to highlight the clash between the egalitarian-integrating discourse of the natives' writings and the separatist discourse of the Spaniards' writings. Before turning to the results of Mr. Barbero's investigations, it is worth recalling, albeit in general terms, the content of all these allegations. This time, however, the main differences revealed in the previous section are ignored.

With regard to the colonial social question, the writings of the residents of Guinea strongly condemned the slave system used in the recruitment of braceros from mainland Guinea. The Agricultural Chamber of Fernando Póo, in line with the brief submitted by its Peninsular Board in its complaint to the DGMC on May 17th, 1931, requested that a detailed investigation be carried out into the way in which recruitment was taking place in the colony, and that all responsibilities based on both the violence

applied in the direct acts of recruitment and the economic motives behind the whole practice be purged. With regard to the latter, it should not be forgotten that the recruitment was structured as a network of commissions that extended from high authorities - lieutenant-governors and captains of the colonial guard - to the last colonial guard in charge of physically carrying out the recruitment.

Recruitment, though cruel and inhumane, was actually not the main affliction of colonial workers. This method of forced recruitment, as a reaction against the resistance of the natives to sign contracts with the farmers, was not but a consequence of what was the real cause of the natives' refusal: the systematic violation by the employers of the timid labour guarantees in force. Thus, as the republican commissioner would later reason in his report, any serious attempt to establish or promote a system of voluntary labour recruitment necessarily involved not only setting up more dignified working conditions, but also ensuring that they were strictly observed. This was the understanding of the natives of Guinea, who, in their writings, did not limit themselves to criticizing the recruit, but demanded improvements in working conditions. They demanded a salary increase in view of the high cost of living on the island; they frankly denounced the mistreatment of their braceros by their employers (or their foremen); and they denounced the fact that some employers used braceros without formal contracts in order to avoid fulfilling their contractual obligations.

Along with the social question, the complaints of the colonials also addressed the issue of property. They denounced the fraudulent practice through which many farmers requested lands in the name of their white employees and then kept themselves the said land. In relation to this type of practice, the Official Agriculture Chamber proposed that land concessions to Europeans should cease until further notice. In relation to indigenous property, the need to strengthen its protection from the ambitions of white settlers was stressed. The chamber demanded that the arbitrary expropriations of indigenous lands be stopped; and it called for the restitution of all property expropriated from natives as a result of fraudulent contracts imposed on them by white Europeans. And since the payment of contributions was one of the main reasons that pushed the natives to lease their lands to Europeans, it was requested that taxes be lowered, and that arrears of contributions from rural and urban properties prior to April 14th, 1931, be condoned.

The writings of the colonials also criticised other aspects such as the functionality of some institutions, the judicial and penitentiary system, and health care. In relation to the first point, they proposed the reform of institutions such as the Curaduría Colonial, the Patronato de Indígenas, and the Neighborhood Councils. In relation to the Neighborhood Councils, the Official Agricultural Chamber proposed that its members be elected. In the area of justice, the Bubis distrusted the impartiality of the Curator in resolving disputes between white employers and native workers, and asked that such disputes be resolved by an Indigenous Tribunal. With regard to the prison system, there were allegations of corrupt practices encouraged by the Chief of Police such as the redemption of sentences for payment of certain amounts, or the transfer of prisoners to farmers in exchange for payment of debts arising from the stay of the transferred prisoners under public facilities. In the area of health, the Bubis denounced both the lack of medical equipment or furniture and the high cost of health services.

On the basis of all these complaints, the ones mentioned here plus those mentioned in the previous section, the republican commissioner, acting as an Instructing Judge, set in motion an investigation process that led to the opening of more than twenty files. Among these, due to its singular importance, it is worth recalling, even if only in summary, the macro file on the recruitment, processed between July 13th and September 16th, 1931. Based on the content of the Chamber's complaint on the one hand, and the interrogations conducted by the Commissioner on the other, the recruitment procedure can be summarized as follows.

Núñez de Prado's term in office was marked by a crisis of braceros. As mentioned in the previous section, when the General arrived in the colony on February 8th, 1926, not only had Great Britain prohibited its colonial subjects from going to work at Fernando Póo, but Liberia had just suspended for the third time the agreement for the transfer of braceros that it had signed with Spain in 1914. So Núñez de Prado, as the maximum "responsible for the security and conservation of order" in the colony, had no choice but to try to save the colonial economy, making use of the very broad "inherent faculties" of his condition as "Vice-Royal Patron" in the colony. When he judged it convenient, and almost always at the request of the Agricultural Chamber, he extended authorizations to certain commercial houses and to certain officers (Julián Ayala Larrazabal, Captain of the Civil Guard; Eugenio Touchard Pérez, Captain of the

Colonial Guard; and Enrique Mene Jiménez, Lieutenant of the Colonial Guard; Tomás Buiza Martos, Captain of the Colonial Guard) to recruit braceros from mainland Guinea. In such an assignment, the recruiters, always wielding the cover of the authority of the GG, not only used tactics of attracting or capturing the will of the natives (giving the natives and their village chiefs fabrics, tobacco, liquor and other gifts; and paying the dowry to the natives who wanted to marry), but also incurred in a number of excesses and irregularities such as the payment or collection of substantial illegal commissions, releasing prisoners on condition that they send them as braceros to Fernando Póo, using the colonial guard as an instrument of intimidation towards the natives, shooting and beating resistant natives, driving them handcuffed or tied to their shipments to the island, recruiting braceros from school classrooms, neglecting food or security obligations to braceros who performed "prestaciones personales" in public projects, and using "moral or spiritual" intimidation of braceros. The latter practice, it was said, was attributed to the missionaries, who also needed workers for their farms both on the island and on the mainland.

In order to clarify all these facts, the republican commissioner undertook various legal proceedings. He took statements from civil servants, members of the colonial military corps, businessmen, missionaries, liberal professionals and native people. He also compared the testimonies of some of the accused to identify the contradictions in their declarations; he ordered the issuance of reports or documents by public or private agencies; and he carried out ocular inspections of some of the premises and farms where the braceros were working. As it could not be otherwise, throughout all these investigations, the commissioner was confronted with two versions of the facts. The first, logically, was the one defended by the then president of the Agricultural Chamber, Teodomiro Avendaño. In addition to corroborating the above-mentioned facts denounced by the agency he represented, he maintained that from all these irregularities, without excluding the responsibility of their material authors, that incurred by Governor Núñez de Prado should also be deduced, for, even though he did not receive commissions like the lieutenant-governors and others involved, he constituted the cover under which such irregularities were perpetrated. Avendaño insisted that such complicity of the GG was deduced not only from his passivity in the face of the excesses of those under his authority, but also from his express confession. According to the president of the Agricultural Chamber, the GG, during a ceremony in the metropolis,

had recognized that the forced recruitment of braceros from continental Guinea was a necessary measure to save colonial agriculture.

In addition to Avendaño's statement, we must recall other statements made by witnesses who, without assuming the full content of the Agriculture Chamber writing, admitted the veracity of different facts among those corroborated by Avendaño. For example, Teodoro Pérez Prado, despite having said that he did not know if the Colonial Guard was used for the recruitment, maintained that braceros were recruited from Mikomeseng, and that many of the recruiters were in possession of letters signed by the Governor. He also admitted that Captain Ayala practiced the recruiting. José Diácono Morales (Colonial Curator in 1926) said that he did not know if the Colonial Guard was used for recruitment, but he did say that he heard that Captain Buiza Martós recruited the natives against their will, and that Captain Ayala recruited braceros for the Agricultural Chamber; he also admitted that Ayala, from Mikomeseng, recruited native people coming from French Cameroon; and that all these natives were sent to Fernando Póo escorted by the Colonial Guard. Ramón Jutglar (a Claretian missionary), after defending that the missionaries never recruited braceros for commercial purposes but to send them to their farms in Fernando Póo, said he had heard rumours that Captains Ayala and Buiza had used violence to recruit braceros. Father Leoncio Fernández Galilea acknowledged that the missionaries also recruited braceros for their farms, but he clarified that they did not use "spiritual coercion" as they were accused of, but rather a kind of campaign or propaganda on behalf of their farms. The priest Leoncio also acknowledged that Ayala and other recruiters not only used the Colonial Guard for recruitment, but that the latter sometimes used canes and beatings to overcome native resistance. In addition to this type of mistreatment that Father Leoncio spoke of, lawyer Federico de Arriaga, like Ernesto Ruiz Tejero, claimed to have witnessed the braceros being led away in handcuffs to be shipped to the island.

Some testimonies also confirmed the facts denounced by the Agriculture Chamber in relation to the native workers recruited for public works. José Castro Fernández said that two natives, who were of course compulsorily recruited, died of starvation during the construction of a stretch of road between Niefang and Evinayong.

He acknowledged that between 1926 and 1928 the Colonial Guard was used for recruitment, and mentioned Loygorri (Lieutenant Governor of Bata), Enrique Mene, and

Julián Ayala as accomplices in this practice. He maintained that the latter used to release prisoners in a prison located on the aforementioned stretch of track and send them as braceros to Fernando Póo. In the same vein, Francisco Castellón Díaz said that two natives died during the construction of a bridge in Ebibeyín. From the testimony of Avelino Zorilla Contreras -also from the testimony of the lawyer Federico de Arriaga- it is revealed that the braceros were not paid in some of these public works.

In relation to the complaint against Ayala for recruiting students in the schools, Laureano Muañache, a native teacher, maintained that, on one occasion, a pupil named Esono Mitogo escaped from the classroom and left with Captain Julián Ayala. For his part, Jose Perez Guillen, a recruiter for the branch of the Mallo commercial house in Bata, acknowledged that not only had he hired minors on some occasions, but that the Delegate of Rio Benito, a certain Manuel Perez Fortea, had helped him to get the passports to ship those minors to the island.

Although the defense of the accused officers opposed the above statements, it should be noted that such opposition should not be confused with the absolute denial of all the facts attributed to them. Julián Ayala, for example, frankly acknowledged that between 1921 and 1928 they embarked nearly 6000 braceros for the island. But, contrary to the accusations, he maintained that in such an enterprise they did not use the Colonial Guard, nor did they apply violence or coercion on the natives; rather they captured the will of the natives with persuasion and gifts. He also denied that among such braceros there were minors recruited from schools, or convicts released from public prisons. The captain acknowledged that the Agriculture Chamber hired him as a recruiter, but clarified that, for such services, his remuneration was not per each worker as held by the accusers, but a fixed amount for each service rendered. He also denied that he had used braceros to carry out public works, or that he had charged commissions to private recruiters.

Captain Eugenio Touchard, despite having assumed the line of defence of Ayala, admitted that on one occasion a Colonial Guard shot at the residents of a village in Evinayong, causing some deaths and injuries. Touchard explained that the guard's reaction was in revenge for one of his comrades who had been executed by the villagers.

For his part, Lieutenant Enrique Mene, charged with the death by starvation of two indigenous persons employed in public works carried out under his jurisdiction, acknowledged the veracity of the facts, but insisted that such deaths could only have occurred not because the braceros had not received their corresponding food rations, but because of the negligence of José Castro, foreman in charge of the direct supervision of the works. Mene stressed that all the braceros were voluntarily hired, and that, with the exception of an expedition from Buiza in 1926, they were never subjected to violence or coercion.

Along with these two versions, that is, that of the complainants on the one hand, and that of the accused on the other, there was a third: that of the braceros themselves. On August 20th, 1931, the Commissioner, accompanied by Pedro Agustín Ordóñez (Colonial Curator), José García (a Corporal of the Colonial Guard) and Juan Capote Jonson (native interpreter), made an inspection visit to the bunkhouse of the Fernando Póo Court. At the bunkhouse, there was an expedition of 242 braceros just arrived from Bata. From the testimonies of almost all of these braceros, it was clear that they had never accepted to go to the island voluntarily. A certain Ebanga Ebang said that, although he was given an advance of 300 pesetas, an amount he left to his family, he never wanted to go to Fernando Póo. Engono Olomo also said he had not wanted to go to the island. A certain Engonga claimed that he was hit by 25 sticks before being forced into the car. Esono Obama claimed he was taken away because he slept with the wife of his neighbour. In short, almost all the braceros questioned denied having accepted voluntarily to be hired. In addition to this visit, the Commissioner made another one at the Libanio Vaz Surra farm. Interestingly, all the braceros on that farm said they were very happy with the treatment they received from their employer.

Once he had undertaken all the legal proceedings he considered necessary, Ricardo Ferrer issued his report on September 16th, 1931. In the sixteen "resultando" of his report, the Commissioner listed the facts that should be considered proven thanks to all the investigations carried out. In the only "considerando" of the resolution, he formulated his proposals both for the determination of the responsibilities of the accused and for a future reform of the recruitment system in force in the colony.

The Commissioner's conclusions revealed the complicity of all the colonial agents in the practice of recruitment. In this, somehow, missionaries, liberal

professionals, commercial houses, public officials, and elements of the military class were involved. Among the latter, a number of names were repeated, including those of Julián Ayala Larrazabal (Captain of the Colonial Guard), Enrique Mene Jiménez (Lieutenant of the Colonial Guard), Eugenio Touchard Pérez (Lieutenant of the Colonial Guard), Tomás Buiza Martos (Captain of the Colonial Guard), Joaquín Fernández Trujillo (Lieutenant Colonel), Carlos Tovar de Revilla (Colonel of the Colonial Guard), Nicolás Navas, Rafael Carrasco Engaña, Gabine Asenjo, Francisco Millet Jiménez, and Cabo Cebral. Except for the first three officers who did testify, and Carlos Tovar Revilla who was already dead at the time, the other officers were not able to testify during the Commissioner's proceedings, since they were in the Peninsula at the time the file was being processed. The same applies to the GG, who, as soon as the Republic was proclaimed, travelled to the metropolis to place himself at the disposal of the decisions of the new regime.

From Barbero's conclusions, the following facts that had been previously denounced by the Agriculture Chamber were also confirmed: the use of propaganda by Emilio García Loygorri (Lieutenant Governor of Bata) and by David Carrill (Lieutenant Governor of Elobey) to attract indigenous people; the charging by both Lieutenant Governors of commissions from the practice of recruiting; the use of the Colonial Guard in recruiting; the use of coercion by the Guard to overcome the resistance of the recruited; the charging by Ayala of a fixed amount as a recruiter hired by the Agriculture Chamber; the charging by the rest of the officers of commissions for each recruited *bracero*; the murder of Ondo Esono by the native Corporal Jhoni Eju; the death of two natives in a landslide during a public work carried out without technical direction; the death from starvation of two natives employed in a public work carried out by Lieutenant Enrique Mene; and the death of a native due to the ingestion of alcohol.

2.4. The republican constituent assembly and the rights of the residents in the Spanish Territories of the Gulf of Guinea

«Until today, the most elementary laws concerning individual freedom have not been applied in Guinea; there you have always been subjected to a military and colonization regime that has reached not only the indigenous people but also the

Spaniards who reside in Guinea. That is why we want the Constitution to state that these individual rights we grant to all Spaniards will also be respected in those territories»³²³. How eloquent were those words pronounced by a deputy of the Radical Republican Party (hereinafter, RRP) in that session of the constituent assembly of December 1st, 1931! Such a speech, in addition to summarizing the constitutional exceptionality that had characterized Guinea's situation until then, came to put the republican framers of the constitution in trouble. Although they were clear about the abandonment of the inhumane and discriminatory principles of Spanish liberal constitutionalism, they now specifically faced a sensitive issue from the past and there were only two options, without any possibility for a third option. Either they accepted the amendment of Mr. Guerra de Río and his party, thus confirming once more the firm break with the past, or they rejected it turning everything that had been declared in the colonial organic statute of July 22nd, 1931, which established that the rights and liberties of Spaniards and foreigners residing in the colony would be regulated by the republican constitution, into «rhetorical statements»³²⁴.

The first suspicion of what the stance would be on this issue arose when Article 8 of the Magna Carta was discussed. And, as had happened before in the Constitution of Cadiz, the territorial issue once more introduced the name of Africa in the republican constituent assembly. According to the original text of the statement, «the Spanish state, within its current territorial limits, which cannot be reduced, will be integrated by Municipalities, joined in provinces directly linked to the Central Power»³²⁵. Antonio Jaén Morente, deputy of the RRP, after requesting that the expression «directly

³²³ See intervention of D. Rafael Guerra de Río in D.S.C.G., session of 01/12/1931, p. 2754

³²⁴ D. Luis Jiménez de Asúa was the president of the drafting commission of the project of the republican constitution. In the session of the constituent assembly of August 27th, 1931, he read the presentation speech. According to his speech, the expression «mere declarations» was used for the first time by the German framers of the Constitution of Weimar, and it was to distinguish between «true declarations of rights», that is, freedoms and rights armored with constitutional guarantees, from simple declarations without constitutional guarantees, referred to as «mere declarations». See this presentation speech about the republican constitution in *Diario de Sesiones de las Cortes*, session of 27/08/1931, p. 646. Also in E. AJA y J. SOLÉ TURA, *Constituciones y periodos constituyentes en España (1808-1936)*, Madrid, Editorial Siglo XXI, 2009, pp. 105 ff.

³²⁵ See *Diario de Sesiones*, session of 22/09/1931, p. 1041

linked»³²⁶ be eliminated, made some proposals in relation to the African possessions³²⁷. He proposed the constitution of the «province of Africa»³²⁸, composed of the territories of Moroccan northwest Africa, that is, Ceuta and Melilla. Jaén explained: «I truly ask that these Spanish provinces be constituted civilly, and I do not ask that they be a miniature of Spanish provinces, nor do I request that they have a governor, or an audience, or even an Episcopal seat; I ask that they be soldered to the historical continuity of Spain, that they truly will be called a province, because that will mark the destinies and future behavior of Spain»³²⁹. Did he have any past experience in mind? Was he perhaps referring to the former overseas provinces? We will avoid any conclusions not expressly pronounced by Jaén, but the questions no doubt invite reflection. Nevertheless, apart from the suspicions about past frauds that might have been suggested in this speech, it is important to underline that it was not exempt from ambiguity, or even contradictions. Jaén started with the acceptance of the Peninsula as a framework for the political limits of Spain to end with a position that struggled with this initial idea. Full provincialization meant that the territories in question and their inhabitants came to merge, or as Jaén himself said, came to be welded to the Peninsula in a single regime of rights and freedoms, with the inevitable consequence of widening

³²⁶Jaén considered that the expression was contrary to the spirit of autonomy of the Magna Carta, and proposed a new writing for the precept in the following terms: «The Spanish State will be composed of Municipalities, provinces and regions that constitute a regime of autonomy». *Ibidem*, p.1059

³²⁷The Europeanisation or Hispanisation of the Canary Islands was not questioned either in the constituent assembly of Cadiz or in subsequent constituent assemblies. Whenever they stated "Spanish Possessions in Africa" or "Spanish Territories in Africa", the Canary Islands were not included; only the possessions of the North, those of West Africa and those of the Gulf of Guinea. Mr. Valle said in the session of the constituent assembly of December 1st, 1931: «[...] I just want that to be recorded as an authentic interpretation of the amendment [he referred to the amendment presented by the RRP, according to which the Africans territories would be subject to special laws], which does not refer to the Canary Islands». See *Diario de Sesiones*, cit. p. 2754. See also B. CLAVERO, *Bioko...*, op. cit., p. 452

³²⁸«The territories of the Moroccan African Northwest that Spain has in full right will have an organization similar to the peninsular, becoming a new province that may be called the province of Africa» See *Diario de Sesiones*, cit. p.1059. «I honestly wanted the province of Africa to be created, but unfortunately the Commission has not understood, including all the places we have there in complete sovereignty, having a feeling of following a modern policy». See *Diario de Sesiones*, session of 06/11/1931, p. 2203

³²⁹ See *Diario de Sesiones*, session of 22/09/1931, cit., pg.1060

the old political boundaries of Spain. Thus, either the old political boundaries of Spain were admitted, or the provincialization of the African territories in question was defended. Both ideas were irreconcilable.

In relation to the statute of Guinea and other Spanish possessions in Africa, Jaén³³⁰ and his fellow believers insisted on the amendment presented by their political background. The RRP defended the principle of special legislation contained in the Constitution of 1837, but proposed that such a regime be compatible with the respect of the constitutional rights of residents in the colony³³¹. Surely, this amendment of the radicals would not have changed much in relation to the colonial regime adopted by the Cadiz Constitution, because when Santiago Alba Bonifaz³³² asked what “residents of the colony” the amendment referred to, Mr. Guerra del Río did not hesitate to answer: «to the Spaniards»³³³. Therefore, the radicals sought to recognize rights for one group of residents and deny rights for another group. This is also what people from Cadiz did, but with a difference. The people from Cadiz excluded slaves (Art.5.1) and castes (Art.18), but at least they recognized rights for the Indians. Radical Republicans, in contrast, did not even consider the possibility of extending constitutional rights to the few Guinean natives already emancipated³³⁴.

³³⁰ The Jaén amendment read as follows: «The colonies are also part of the Nation. Their regime is entrusted to special laws and decrees of the Government, but within the fundamental unity of our legislation and with the human character that distinguishes it, preparing as much as possible, for an autonomous administration». See *Diario cit.*, session of 22/09/1931, p. 1060.

³³¹ «Spanish territories of West Africa are part of the nation. They will be governed by special laws, but residents in these territories will benefit from the individual rights established in Title III of this constitution. As supplementary law, the general law of the metropolis will apply». See *Diario de Sesiones de las Cortes*, session of 01/12/1931, cit., p. 1060; see also AGA, BOX N° 156(81/6425), Amendment proposed by the RRP.

³³² « I believe that there is nothing more sensitive in countries of the colony or protectorate than to make this definition. At least, I would not dare [...] whatever it is, there are at least two different populations: the Spanish and that of the country. Who is the Commission referring to, the Spaniards or the natives? » See *Diario de Sesiones, cit.* p. 2754

³³³ *Idem*

³³⁴ In colonial Guinea, there was a native bourgeoisie; it consisted of the *fernandinos*. Among them, Maximiliano Cipriano Jones stood out as a man known for his loyalty and adherence to the colonial regime. By 1931, many members of his family not only already had university studies from metropolitan

In the final version of Article 8,³³⁵ the influence of Jaén Morente's amendment on the first part of the provision was noted. The expression “directly linked” was deleted, and the first paragraph of the precept was modified almost similarly to that proposed by the radical deputy. In relation to the other amendments presented by the radicals regarding Spanish possessions in Africa, the Commission just added a second paragraph, according to which, an autonomy regime was established for the territories of North Africa, that is to say, Ceuta and Melilla. Nothing was said about Spanish Guinea or about Western Sahara.

The merit of the additional article proposed by the RRP was not due to its content. Five months before the radicals defended their amendment, the Provisional Government had adopted a colonial decree with almost the same content as the radicals' proposal. In the RCS of July 22nd, in addition to declaring the need for republican democratic values to permeate the new colonial regime, it introduced provisions that extended constitutional guarantees to colonial Guinea. The RCS declared respect for the principle of the independence of the judiciary (Article 2, paragraph 1) and declared the application of metropolitan standards in the administration of justice (Article 6). Article 7 declared the extension to the colony of constitutional rights and freedoms, beginning with freedom of conscience and worship. In short, the differences between the RCS and the RRP amendment were minimal. The amendment of the RRP was based on the general recognition of the principle of special legislation to end up proposing the respect of constitutional guarantees as an exception within the specialty of the colonial regime. According to the colonial statute, however, it seems [only seems] to be the opposite. In RCS, the mention of special or adapted legislation is almost always introduced by the grammar particle "except for", and always after previous general declarations of rights. With such discursive style, it seemed that it was the principle of special legislation that was introduced as an exception to a colonial regime erected on the general respect of

universities (Barcelona, for example), but had agreed to emancipation. More information is available on: I. K. SUNDIATA, *From Slaving to Neoslavery. The Bight of Biafra and Fernando Poo in the Era of Abolition, 1827-1930*, Madison (Wisconsin), The University of Wisconsin Press, 1996, p.158

³³⁵ Art.8 of the RSC: «The Spanish State, within the irreducible limits of its current territory, will be made up of joint Municipalities in provinces and regions that constitute a regime of autonomy. (Paragraph 2) The sovereign territories of North Africa will be organized in an autonomous regime in direct relation with the Central Government».

constitutional guarantees. The main difference between the amendment of the RRP and the RCS was in relation to the beneficiaries of the established legal guarantees. Article 7 of the RCS extended constitutional rights to Spaniards and foreigners residing in the colony. The radicals, in contrast, only wanted to guarantee the rights of the Spaniards. If we omit this last difference, it can be perfectly concluded that the radicals called for the *constitutionalization* of the principles previously included in the Colonial Statute approved by the Provisional Government. Precisely, it is in this coincidence of positions that the merit of the PRR initiative can be found. The decree of July 22nd, as the colonial provision, did not require the approval of the *Cortes* to extend its validity after the approval of the new Magna Carta³³⁶. But its close connection with the position of the radicals, led the republican framers of the constitution to pronounce themselves on its content during the debate on the amendment of the RRP. In other words, the republican framers of the constitution, in valuing the amendment of the radicals, also did so although unconsciously, with the colonial statute of July 22nd. In this valuation process, the republican constituent assembly should have admitted the amendment, at least out of discursive coherence. After all, we insist, it was about confirming and constitutionalizing that legal guarantee previously declared in the colonial statute. Unfortunately, reality was very different. The republican constituent assembly rejected the colonial regime proposed by the radicals, and the question of the colonies was conspicuously absent from the final text of the constitution approved on December 9th, 1931.

³³⁶ All the regulations approved by the provisional republican government had to go through the “democratic filter”; this means that the approval of the *Cortes* was required to extend their validity after the approval of the new Magna Carta. The principles of these provisional decrees, in addition to being constitutionalized, inspired and became new laws after the constitution. When the Government considered it necessary, and with the prior approval of the *Cortes*, completely maintained the content of some preconstitutional provision. It was the case of the Defense Law of the Republic of October 21st, whose extended term Azaña defended the day before the approval of the constitution. The preconstitutional colonial dispositions were the only norms that did not go through such a “democratic filter” to have their term extended after the approval of the new Magna Carta. The Republic respected the old colonial principle, according to which the colonial legislator was not the Metropolitan Parliament, but the Government. Undoubtedly, colonial issues were debated in the *Cortes*, but the decision of those issues emanated from the Executive, which did not require any approval of Parliament for such decisions.

If the silence on the colonial issue in the republican constitution was criticized, the colonialist arguments put forward by the republican framers of the constitution to justify their decision should be much more so. Towards the middle of the 19th century, during the meeting of the *Cortes*, a Spanish deputy expressed himself frankly about the situation of the rights of Spaniards residing in Cuba: «[...] In Spain, there is a constitutional freedom, a great freedom, as S.S³³⁷. has to recognize, and that freedom can be enjoyed by Spanish citizens residing in Cuba, taking into consideration leaving from that exceptional state of a war area[...]»³³⁸. If we change Cuba for Guinea in this fragment, the result is almost equal to the speech given by the Republicans. If in 1866 P. Antonio de Alarcón Ariza defined Cuba as a territory in a «special position»³³⁹, that is to say, in an «exceptional state of a war area»; in 1931, Santiago Alba³⁴⁰ changed only one word to define the colonies as territories in a «special situation» [and not position, as Alarcón said]. But the Republicans were a little sensitive; they preferred euphemisms and avoided explicitly comparing the colonial situation with that of an area in a state of war, as the liberals did. Alcalá Zamora stated that «the colonial territories are not in a state of war», but he admitted that the civilizing mission was carried out under «singular circumstances» in those territories. These are the circumstances that imposed the use of more demanding and different methods from the metropolitan ones in order to the

³³⁷ Sus Señorías

³³⁸ Continuation of the fragment: «[...] Well, in Cuba, there are certain number of Spaniards camped there, cultivating sugar and tobacco, because it suits them to grow them, because it gives them to live and provides them with great profits, and to acquire them they deprive themselves of what is enjoyed here, which is the freedom that I have referred to. The island of Cuba is in a special position, like a border space, like a citadel, I said it once, and I repeat it today. Cubans are not free because of their location, because of a good government side in Cuba; but nonetheless, they are free citizens». See *Diario de Sesiones de las Cortes*, session of 09/07/1866; R. M^a LABRA, *La colonización en la historia, Tomo I*, Madrid, Editor el Libro de Oro, 1877, p.63. «*Nelle terre d'oltramare vigeva un costante stato di guerra*». See G. GOZZI, *Diritti e civiltà. Storia e filosofia del diritto internazionale*, Bologna, Il Mulino, 2010, p. 144

³³⁹ *Idem*

³⁴⁰ «[...] I believe that the authorities of Fernando Póo, due to the special situation in that territory, must have a wide range of means, which cannot be submitted to the regime of the Peninsula. I understand, without digging deeper into the problem, that a definition of such a gender in the Constitution is not necessary and that, like almost all unnecessary things in it, it would be harmful and disturbing in practice». See Mr. Alba's speech in: D.S.D.G., session of 01/12/1931, p. 2755

maintenance of colonial public order. As it can be seen, in some colonies described [the same as the Cuba of 1866], the attribution of rights and liberties to the residents would have only worsened the delicate situation that already characterized the colonial public order. Thus, as a general rule, the denial of political rights was linked to this special situation of the colonies. But unlike Article 7 of the RCS, the limitation of rights defended by the framers of the constitution did not discriminate between natives, Spaniards and foreigners; rather, it affected everyone who came into contact with the described «special situation» of the colonies. In other words, the limitation of rights, as Alcalá Zamora recalled, was linked not so much to people, as to the territory. And as soon as those affected people lost direct contact with that «special situation» of the colony, they could re-exercise their constitutional rights and guarantees that had been suspended while they remained in the colonial space.

CHAPTER 3

THE REPUBLICAN COLONIAL STATUTE

SUMMARY: 3.1. Short introduction 3.2. The monarchy and the profitability of the STGG 3.3. Administration of the STGG: bodies and territorial organization 3.4. Legislative competences of the GG 3.5. Sanctioning competences of the GG 3.6. Diplomatic competences 3.7. Other directive competences

3.1. Short introduction

According to Fradera³⁴¹, vocabulary was one of the first breaking points between the framers of the Cadiz Constitution (*el Constituyente gaditano*) and pre-liberal colonialism. With the framers of the Cadiz Constitution, words like *empire*, *colonies*, *dominions*, and *possessions*, were changed to words or phrases such as: *territories of both hemispheres*, *overseas territories*, *overseas provinces*, or simply, *overseas*. Cristina Nogueira³⁴², stressing the effects of Cadiz on the Portuguese framers of the Constitution of 1922, reminds us that the term *overseas* did not include the territories controlled by Portugal in Africa. However, both constitutions used terminology from classic colonialism to refer to Africa. The African territories were *properties*, *possessions*, *dominions*, *grounds*, *departments*, *colonies*, or simply *territories*, in the best of cases. As a matter of fact, until it was declared a province³⁴³ in 1959³⁴⁴, Spanish

³⁴¹ J. M^a FRADERA, *Colonas para después de un imperio*, Barcelona, Editorial Bellaterra, 2005, p. 62

³⁴² C. NOGUEIRA DA SILVA, *Constitucionalismo e imperio. A cidadania no Ultramar português*, Coimbra, Edições Almeida, SA, 2009, p. 384

³⁴³ A. MIAJA DE LA MUELA, *Emancipación de los pueblos coloniales y el derecho internacional. Lección inaugural del curso de 1965-1966*, Anales de la Universidad de Valencia, Vol. XXXIX, 1965, pp.102-116

³⁴⁴ Guinea was incorporated as a Spanish province by law in June 1959. Since then, the inhabitants of Guinea were granted Spanish citizenship and could designate Members of the Parliament in the Spanish Cortes. Before 1959, Guinean natives were neither foreigners nor Spanish citizens. They were simply subjects of the Spanish monarchy, or, euphemistically, “second class” Spaniards. On the changes that happened when Spanish Guinea became a province, refer to: A. M. CARRASCO GONZÁLEZ, *Estatuto del Indígena en la Guinea Española: nacionalidad, ciudadanía y capacidad*, e-Legal History, N^o 12, 2011,

Guinea had always been considered a possession³⁴⁵, a colony. As such, its administration was marginal to the sequence of constitutional regimes in the metropolis, and it always followed its own colonial statutes³⁴⁶. As soon as it managed to, the Republic prepared a new statute for the colony, which was approved by Decree on July 22nd, 1931. The statute, like those that had preceded it, was a kind of mini-colonial constitution. Hence, its fourteen "Bases", that is, its articles, rather than exhausting the regulation of the matters dealt with therein, condensed a series of guiding principles whose content was to be drawn not only from the [colonial] legislation that would be approved in the future, but also from all the preceding legislation whose validity was maintained by the Republic. With regard to the latter point, it should be recalled that the republican legislator, unlike his predecessors who did so expressly, did not declare the total or partial repeal of the previous statute of 1904. Consequently, the provisions of the latter, together with the Statute of Colonial Officials of December 8th, 1931, the Decree creating the posts of Territorial Administrators of May 6th, 1934, the Statute of Local Administration of April 13th, 1935, the Statute of Local Administration of November 14th, 1935 and all the reforms of the DGMC, etc., constitute the main complementary sources for the purposes of the study carried out in this chapter. In order to facilitate the

p. 18; A. OBIANGBIKÓ, *Guinea Ecuatorial: del colonialismo español al descubrimiento del petróleo*, Madrid, Sial Ediciones, 2016, pp. 99-133; D. NDONGO BIDYOGO, *Historia y tragedia de Guinea Ecuatorial*, Madrid, Editorial Cambio 16, 1977, pp. 79-95; F. GONZALO BALLANO, *Aquel negrito del África tropical: el colonialismo español en Guinea (1778-1968)*, Madrid, Sial Ediciones, 2014, pp. 528 and following; M. DE CASTRO y D. NDONGO, *España en Guinea Ecuatorial: construcción del Desencuentro*, Madrid, Sequitur, 1998, pp. 192 and following; O. NEGRÍN FAJARDO, *Historia de la educación en Guinea Ecuatorial. El modelo educativo colonial español*, Madrid, UNED, 1993, pp.142 ff.

³⁴⁵The first colonial statute of Guinea began with a statement that summarized almost all the terminology used by classic colonialism to refer to African territories: «Since 1778, when Spain obtained its present *possessions*, Fernando Póo and Annodon, expanded in 1843 with the island of Corisco and its dependencies of Elobey, and more recently with the territory of Cabo San Juan, several expeditions have been attempted to effectively establish *national property* on those *domains*, but all attempts have failed as a result of a variety of accidents with a common cause». See: A. MIRANDA JUNCO, *Cit.*, p. 23

³⁴⁶In the years between 1778 and 1945, the period of the legal compilation of Miranda Junco, a total of ten statutes followed one another in Colonial Guinea. Six of them preceded the republican regime: in 1858 (R.D December 13th, 1858), in 1868 (D. November 12th, 1868), in 1872 (R.D. October 26th, 1872), in 1880 (R.D. November 26th, 1880), in 1888 (R.D. February 17th, 1888), and in 1904 (R.D. July 11th, 1904). During the Republic, three organic statutes followed: one in 1931 (Decree of July 22nd, 1931) and two in 1935 (Decrees of April 13th, and November 11th, 1935). The latter was really a combination of the Decree of 1931 and the norms of organization for territorial administration. After the fall of the Republic, Franco and followers approved their first colonial organic statute on August 27th, 1938. All the provisions can be found in: A. MIRANDA JUNCO, *Cit.*, pp. 23-26, 57-59, 63-66, 70-71, 82-84, 138-142

citation of the Decree of July 22th, 1931, in the lines that follow, it will be referred to as the Republican Colonial Statute, abbreviated as RCS.

3.2. The monarchy and the profitability of the STGG

In the 16th and 17th centuries, the civilizing discourse of missionaries was used to justify the occupation of territories in the new world. But, in the following centuries, the discourse of the conquerors became more consistent with the real purpose of the discovery of new lands beyond the old continent³⁴⁷. According to Nogueira Da Silva, during the 18th century, the matter of the legitimacy of conquest, which had always been at the core of colonial debate, changed into a new worry: the question of the profitability of the colonies³⁴⁸. Arthur Girault³⁴⁹ emphasized that the success of a colonial project, that is, the achievement of profit, depended mainly on politics and on the configuration of the colonial regime. In other words, there existed a cause-effect relationship between a colonial regime and the success of a colonial project. Only colonial policies or colonial institutions adapted to the singularities of the colony could lead to the success of a colonial project.

The explanatory statements (hereinafter, ES) of the pre-republican statutes reveal this economic-utilitarian character that marks the colonial discourse from the end of the 18th century. The Spanish colonial legislator, in the PGs of the 1858 statute, said that the Government, despite the difficulties and effort involved in the civilization of the forgotten territories of Guinea, had the «determined will to overcome them, without going back to necessary sacrifices and for which he hopes to get rewards»³⁵⁰. As Arthur would insist³⁵¹ in his principles of colonization, the success of overcoming

³⁴⁷ A great deal of historians believe that the big colonial enterprise was driven by financial goals and purposes. To illustrate this refer to: A. A. CASSI, *Cit.*, p. 10; L. BACCELLI, *Cit.*, p. 180; G. GOZZI, *Cit.*, p. 13; A. CAMPOS SERRANO, *Cit.*, p. 866; A. ANGHIE, M. KOSKENNIEMI, A. ORFORD, *Cit.* pp. 25, 26, 109, 149

³⁴⁸ C. NOGUEIRA DA SILVA, *Cit.*, p. 67

³⁴⁹ S. EL MECHAT, *Sur les Principes de colonisation d'Arthur Girault (1895)*, *Revue Historique*, N° 657, 2011, pp. 124-125

³⁵⁰ A. MIRANDA JUNCO, *Cit.*, p. 23

³⁵¹ S. EL MECHAT, *Cit.*, pp. 124-125

the obstacles posed to the Spanish Government, on the one hand, and that of «obtaining the reward» on the other hand, necessarily passed through establishing a regime and *ad hoc* institutions in the colony. This was recognized by the legislator himself in 1858, when he insisted that it was «essential to provide those islands with the authorities and officials that are the first foundation of any administration, not forgetting that it must keep perfect harmony with the special conditions of the country. In Fernando Póo and adjacent islands, where needs are scarce, it would be useless to apply institutions that involve higher degrees of civilization, as it would be inconvenient not to establish them in more advanced villages»³⁵². The five subsequent statutes did not fail to insist on the same economic aspect of the civilizing mission. We can borrow the words of the 1904 colonial legislator and conclude that all the colonial reforms that were approved in Guinea until the Republic were «aimed at transforming the Spanish territories of the Gulf of Guinea into a commercial exploitation, whose positive right, far from hindering the influx of people and capital, serves as an incentive to such essential colonizing elements, constituting with them the foundation of the prosperity and wealth of that country»³⁵³.

In the early twentieth century, where a quasi-slave labour regime was still in force in the colonies, the purpose of setting up a positive right that encouraged the influx of investors and other people into colonial Guinea was hardly reconcilable with the idea of improving the labour conditions of the workers. As it is well known, the colony of Guinea was always seen as a hostile territory for the health of Westerners³⁵⁴. And as such, it was not an attractive destination for those Europeans who enjoyed minimal economic stability in the metropolis³⁵⁵. Those who had nothing to lose in the metropolis or those investors with a "crow spirit," as Francisco Madrid would say, went to the colony³⁵⁶. Logically, if something pushed these adventurers³⁵⁷ into the

³⁵² A. MIRANDA JUNCO, *Cit.*, p. 24

³⁵³ *Ibidem*, p. 138

³⁵⁴ G. SANZ CASAS, *Política colonial y organización del trabajo ...*, *Cit.*, p.37

³⁵⁵ E. CABANELLAS, *Cit.*, p. 9

³⁵⁶ F. MADRID, *Cit.*, pp. 81-82

³⁵⁷ It is almost an unanimous opinion among historians that only adventurers went to the colonies: G. NERÍN, *Un guardia ...*, *Cit.*, pp. 227-228; E. CABANELLAS, *Cit.*, pp. 9-12; J. STUART MILL, *Representative Government (1861)*, Kitchener (Ontario, Canadá), Batoche Books Limited, 2001, Chapter 18, pp. 197-214

colony, it was their hope for an easy and quick fortune; but a quick and easy fortune was not achieved precisely with a positive right that guaranteed workers all their breaks and other labour rights³⁵⁸. Ricardo Ferrer investigated the labour regime in force in the colony at the time of the proclamation of the Republic, and his report³⁵⁹ could not have been more critical of the reality of African workers. According to the republican auditor, the colonial regime in force until then, by giving priority to the «economic factor» over the human and moral ones, led to the *dehumanization* of the native worker, who was reduced to the status of «an accessory thing to property», a simple «instrument» for maximizing the benefits of farmers. Mr. Sostoa, the first republican governor in the colony, would arrive at the same conclusions. After the observations made during his first tour of the colonial territories, he pronounced himself with less euphemisms than Mr. Ferrer, and compared the regime of recruitment of workers in force in the colony with a «slave market in which it is marketed with human merchandise according to the law of supply and demand»³⁶⁰.

It seems that the Republican Colonial Statute started from a new consideration of colonial values. Initially, it was not about giving up the economic purposes of colonization. In fact, when Article 13 of the Republican Colonial Statute argued that «[...] an economic policy will be undertaken that tends to increase revenues [...]»³⁶¹, it was only declaring precisely that plan to turn Guinea into a profitable colony, although this time with an important nuance. In the preceding statutes, the economic factor appeared as the center of the entire colonial project, and the law did not obey another purpose than that of attracting capital and investors. In contrast, in the Republican Colonial Statute, the economic objective was set as another means at the service of the human factor, the true ultimate goal of the colonial project. When the republicans

³⁵⁸ Lenin said that «the financial capital does not want freedom but domination». See: V. I. LENIN, *Obras, Volume V (1913-1916)*, Moscow, Editorial Progreso, 1973, pp. 157 ff.

<https://www.marxists.org/espanol/lenin/obras/oe12/lenin-obrasescogidas05-12.pdf>

³⁵⁹ AGA N° 146 (81/6415), file n° 133/2, writing dated 04/06/1932 by which the DGMC sends to the Governor the conclusions of the report of Ricardo Ferrer, auditor of the Republic.

³⁶⁰ AGA G-1928 (81/8197), file n° 2, diary of the Governor's trip, day 16/04/1932, visit to the Curatorship's Delegation in Bata.

³⁶¹ The entire precept said: «Based on the study of the production of the colony and the competition of its foreign counterparts in Spain, an economic policy will be undertaken that tends to increase revenues, progressively reducing the subsidy of the Metropolis until achieving the leveling of the Budget». See A.MIRANDA JUNCO, *Cit.*, p. 808

declared that the new colonial regime in Guinea had to be the reflection of republican principles³⁶², they barely affirmed that *humanization* and *dignification* that until then had been lacking in the treatment of African workers in the colony.

If the reports of the republicans could have been biased by the very fact of assessing the colonial management of the recently fallen monarchy, the same did not happen, however, with the opinion of international observers. The League of Nations, after having adopted the Slavery Convention in 1926, and during the negotiation of the Forced Labour Convention (ILO Convention No.29), appointed three experts to investigate allegations of slave practices in Liberia. According to this Commission's report of September 8th, 1930, in Liberia, although slavery had disappeared according to the classic definition established in Article 1.1 of the Convention of 1926, it was still a reality under other similar forms as described in Article 2.b) of the same Convention. Precisely, among these slavery practices, the Commission, between pages 52 and 72 of its report, analyzed the issue of the recruitment of Liberian workers for Fernando Póo. According to the Commission's report, after the end of the 1914 agreement between Spain and Liberia, the sending of Liberian braceros to Fernando Póo continued but under procedures and practices that were increasingly illegal. Still according to the Commission, a Liberian native called Hoto, chief of a certain Liberian village, travelled to Fernando Póo to observe the working conditions of his countrymen. Once on the island, he was forbidden from seeing the braceros; but, by chance, he met and talked to one of his countrymen, who described the working conditions on the island's farms as a "woe", that is, a real affliction. Once back in Liberia, Mr. Hoto flatly refused to continue

³⁶² «The repercussions of the transcendental modification to our entire legal regime that the advent of the Republic implies had to reach the colonial regime of the territories that, being an integral part of the sovereignty, are situated in the islands and mainland of Guinea. It was therefore necessary to introduce modifications to the Statute of 1904 under that progressive regime. Such modifications responded to the guidelines whose very enumeration explains the article that follows them: greater breadth of individual freedom in all its manifestations, beginning by conscience; the gradual democratization of the institutions and of the exercise of authority by them, with a prudently staggered influence of citizens in the exercise of the consultative function, which should not be limited to the Board of Authorities; wide decentralization that grants freedom to the colonial regime, even given the greater facilities to communicate with the metropolis; effective and direct inspection of the meticulous interference and lack of data and agility of the centre; a decrease in peninsular subsidies and the development of the peculiar and strengthened Treasury of Guinea, selection of personnel, closing the way to appetites and systems more discredited than any in years. Such norms, whose justification does not seem necessary, because their declaration suffices, inspire reform. And by virtue of this, the provisional Government of the Republic decrees: [...]». See A. MIRANDA JUNCO, *Cit.*, p. 806

sending his countrymen to Fernando Póo. And, because of this decision, he was arrested and imprisoned; and the soldiers forcibly recruited several boys from the village. This testimony of Mr. Hoto is only one of several ones reflected in the report of the Commission known as the "Christy Commission", in honour of its president, Dr. Cuthbert Christy.

Administration of the STGG: bodies and territorial organization

It is no coincidence that Guinea's first colonial statute dates back to 1858. As scholars rightly claim, this was the year in which Spain effectively occupied the STGG. But this takeover should not be confused with the awakening of a real interest in Guinea. In the period from 1858 to 1904, the Government tried various tactics to promote the influx of settlers into Guinea. It offered free tickets for those who wanted to leave for the colony; it offered concessions free of contributions for a determined period; it offered subsidies for economic activity; it subsidized practically all the colonial activity of the missionaries; it tried penitentiary colonization by offering freedom to political prisoners in exchange for them going to work for five years in Guinea; it facilitated access to property to those prisoners in order to encourage their settlement in the colony. The legal equality declared in the 1868 statute can also be understood in this sense, since it did not cease to be attractive to foreigners. In spite of all these incentives, and although some commercial houses (especially Catalan ones) settled in the colony, the truth is that, by 1904, the Spanish presence not only remained insignificant, but also concentrated mainly on Fernando Póo, and more specifically in Santa Isabel.

The pre-republican legislator could not have been more aware of and coherent with the aforementioned real panorama of colonial settlements. The 1904 statute moved away from any illusory pretense of establishing a complex administrative division over a colony where more than half of its extension remained practically unoccupied. The Decree of February 22nd, 1907, in application of 1 of the colonial charter, reduced the STGG to four districts whose demarcational division was merely intended to faithfully reflect the Spanish settlements in the colony. Fernando Póo, the first district, was divided into four demarcations: Concepción, Moka, San Carlos and Basilé. Santa Isabel,

the capital of the colony, was included in Concepción. The district of Elobey was divided into three demarcations: Cabo San Juan, Elobey and Asobla. The district of Elobey included the two islands with the same name and the one of Corisco. In contrast, in continental Guinea, the district of Nueva Bata was constituted-a small coastal strip that was divided into three demarcations: Campo, Nueva Bata and Benito. The district of Annobón was not divided into demarcations. With the exception of the districts of Nueva Bata and Elobey, which remained under the control of two lieutenant-Governors, in the remaining districts Government Delegates were established. These, depending on their jurisdictions, were under the orders of either the General Governor or the Lieutenant-governors.

The state of the settlements established in the colony underwent a remarkable change in the period from 1900 to the advent of the Republic. Under the mandates of Ángel Barrera and Miguel Núñez de Prado, the occupation of continental Guinea was promoted. Through the so-called "punishment expeditions", several peoples of the continent were subjected, thus allowing the penetration of civilizational action into points until then unexplored. In the islands, the establishment of new colonial settlements was manifested in the successive creation of new Neighbourhood Councils such as that of Annobón in 1909, that of Batete in 1909, that of Laka in 1927, or that of East Basakato in 1929. In the mainland, the new settlements coincided with the creation of new Colonial Guard posts in some areas of the interior such as Niefang, Evinayong, Ayene, Mikomiseng, etc.

According to the 1st Base of the RCS, "the islands of Fernando Póo, Annobón, Corisco, Elobey Grande, Elobey Chico and the continental territory will continue to be called Spanish Territories of the Gulf of Guinea". The Republic thus maintained the official name introduced by the previous statute, which remained in force until the provincialization of the territories in 1959. But, unlike the previous legislator, the republicans divided the colony into two districts: Fernando Póo and Mainland Guinea. According to the Decree of April 13th, 1935, Fernando Póo was divided into Santa Isabel, San Carlos and Basakato del Este. For its part, continental Guinea, being more extensive, was divided into ten districts: Bata, Benito River (now known as Mbini), Kogo, Niefang, Mikomiseng, Ebebiyín, Evinayong, N'Sork, Akurenam, Annobón. The

territorial demarcation of Kogo also included the three smaller islands: Corisco, Elobey Grande, and Elobey Chico.

At the head of the entire colonial administration was the figure of the GG, the highest representative of the Republic in the colony. As such, the RCS stated that "all the officials of the colony will be subordinated to him [...]" (Art.2). The republicans thus respected a key principle of the colonial *ius commune*: if the IG was the axis of the colony, the rest of the organs and institutions constituted nothing more than an auxiliary structure that revolved around him. Their appointment was made freely by the Council of Ministers, at the proposal of the President (Art. 2). As the precedent one, the RCS omitted not only the duration of the GG's mandate, but also the military nature of that position. But, unlike the 1904 statute, in the RCS such silence was interpreted differently depending on the subjects that were silenced. In the case of the duration of the office, although it seems logical to admit that the republicans maintained the biennial mandate established in the previous statutes, practice revealed that the republicans opted for even a shorter mandate. In the six years in which the Republic was in force in the STGG (14/04/1931- 14/10/1936), with the exception of those who held the position of "interim governor", there were four successive official governors, and none of them ever served two years in office. Regarding the military nature of the GG's position, the silence of the RCS expressed a clear rejection of the past. It was the Republic that appointed the first civilian governor of the colony: it was the aforementioned Gustavo de Sostoa Sthamer, who, unfortunately, would end up being murdered by the Corporal Restituto Castilla on the island of Annbón on November 14th, 1932. In spite of this tragic incident, and although the two following governors came from the military, the Republic did not completely renounce to continue appointing civilians at the head of the colonial government. In fact, both the last republican GG, Luis Sánchez-Guerra Sáinz, and the last Lieutenant-Governor, Miguel Hernández Porcel, did not have military careers: the former was a civil engineer, and the latter an agricultural engineer.

With regards to the team of civil servants who assisted the GG in the management of the colony, the statute of colonial civil servants, in application of the RCS, established a civil service classification both according to the type of appointment and the requirements for access to the various posts in the Administration. Based on

these classification criteria, and respecting the administrative hierarchy, we can distinguish the General Secretary and the Lieutenant-governors. Before the approval of the Statute of the Local Administration of April 13th, 1935, all these positions were freely appointed by the President of the Council of Ministers (Base 3 of the the Statute of the Local Administration and Article 2.2 of the EGFC). After the mentioned reform, access to the post of Secretary became by merit-based competition among civil servants who, besides being lawyers of the Administration, could not be more than 45 years old (Base 3 of). Also, following the same reform of 1935, the Secretary, in addition to his former function of replacing the Governor in his absences and illnesses, formally became the Head of all the administrative services of the colony. In relation to the position of Lieutenant-governor, the 1935 reform made only one correction to the RCS. Although the Republic had always appointed one Lieutenant-governor for mainland Guinea, the 3rd Base of the RCS, in speaking of "Lieutenant-governors" in the plural, seemed to suggest the continuity of the previous practice of appointing a Lieutenant-governor based in Bata and another one based in Elobey. The 1935 reform reconciled form and reality in this respect, establishing a single Lieutenant-governor for the entire continental part of the colony (Base 4 of the Local Administration Statute).

A second civil service block brought together all those administrators whose positions, due to their specialty, required to be held by individuals from "bodies or careers established in Spain". Within this group, some were appointed by the free election of the President of the Council of Ministers (or by the DGMC), at the proposal of their respective bodies of origin. Examples include the Chief of the Governmental Police, the Chief of the Colonial Guard, and the Captain of the Port of Santa Isabel. Other officials from the same group were required to take up their posts only by way of competition. This was the case of the so-called Heads of Colonial Services (Head or Director of the Health Service, Head of the Agricultural Service, Head of the Forestry Service, Head or Director of the Main Administration of the Treasury and Customs, Education Inspector, etc.).

A third group of civil servants included all those whose posts required the possession of a professional qualification. They were appointed by the President of the Council of Ministers (or by the DGMC) by competition or by examination. Examples of this type of civil servant include: the Judge of First Instance and Investigation of Santa

Isabel; the Property Registrar; doctors, pharmacists, nurses and other technical assistants in the health service.

3.4. Legislative competences of the GG

According to Article 2 of the RCS, the GG will publish, execute and make all the provisions emanating from the Government of the Republic be executed and will issue the necessary instructions for its immediate and due compliance». In accordance with these statements, Article 14 of the RCS conferred to the Central Executive the regulatory power and the power to adapt the laws to the particularities of the colonial territories. As extracted from all these provisions, the Metropolitan Executive was the colonial legislator; it was up to the governor to decide only the details regarding the application of norms previously approved by the metropolis. But this distribution of competences between the central Government and the GG should be considered only at the formal level, since the critics of colonialism precisely agree on considering the colonial governors as the true legislators of the colonies. In other words, once the colonial norms were approved, the Central Executives left their execution and application under the absolute control of the colonial governors.

According to Article 1 of the colonial statute of 1888, the GG «will be responsible for the conservation and defense of said possessions. To this end, they will enjoy the attributions, both ordinary and extraordinary, that the laws in force confer to the Overseas Superior Authorities»³⁶³. It seems that for the colonial legislator it was insufficient to speak only of "ordinary and extraordinary powers", and that he had to include an interpretative criterion, explaining that the scope of these powers was the same as that of the powers of the Overseas Superior authorities. And what powers or faculties did the Overseas Superiors develop? Josep Fradera has done a lot of research on Spanish constitutionalism overseas, and his definition of Overseas Governors is not precisely that of territorial administrators who were limited to enforcing and applying metropolitan laws. According to Fradera, the Governor developed very wide powers in the colonies; he concentrated the three powers. His power was so absolute that it was

³⁶³ A. MIRANDA JUNCO, *Cit.*, p. 83

almost impossible to distinguish any longer laws outside his will³⁶⁴. According to Bartolomé Clavero³⁶⁵, the act of leaving in the hands of the central executive the approval of the special laws for the Overseas was already arbitrary. But such arbitrariness could even be considered mild compared to that produced at the moment of applying such special laws. The colony was considered a large family, a space on which the Governor's leftover power was projected, the *paterfamilias*³⁶⁶. He decided what rules should be applied in the colony, how to interpret them and how to apply them; he decided on the modifications he considered convenient without even having to retouch the letter of the law³⁶⁷. In short, as Clavero well recalls, the Governor's powers could not be reduced in writing. Petit³⁶⁸ has also written about the powers of the colonial Governors, and he has seen in them the main cause of the ineffectiveness of the constitutional rights recognized to residents [native, Spanish and foreign] in Spanish Guinea.

The absolutism of the colonial governors was not a peculiarity of Spanish colonialism. When Clavero speaks of a «colonial *ius commune*»³⁶⁹, he refers precisely to those principles upon which the theory or philosophy of colonialism was erected, and which were present, *mutatis mutandis*, in all colonization systems. In the *Travail sur l'Algérie* by Alexis Tocqueville³⁷⁰, it can be seen that the situation of colonial Algeria

³⁶⁴ Since the Spanish Constitution of 1937, the principle of special legislation for the overseas provinces was adopted. Additional article 2 read: "The overseas provinces will be governed by special laws." Fradera criticizes both the discriminatory nature of this provision, and the lack of willingness on the part of the Spanish Government to enforce the few laws that were passed overseas. He said: «It was not like that, not even the sad consolation was given to the colonies: they were left without "laws", at the expense of the arbitrariness of the General Capitals. [...] Most briefly: the special laws were the absence of special laws». See: J.Mª FRADERA, *Colonias para después de un imperio*, Barcelona, Editorial Bellaterra, 2005, pp.163-164. In another work of his, speaking of the same principle of special legislation, he said: «[...] Special laws that were in addition to the inhibition of the unlimited power of the General Captains in the three overseas possessions. Special laws were, in fact, the absence of special or ordinary laws adapted to the specialty of the colonies [...]». J. Mª FRADERA, *Gobernar Colonias*, Barcelona, 1999, Editorial Península, p. 93

³⁶⁵ B. CLAVERO, *Bioko, 1837-1876...., Cit.*, pp. 440, 532

³⁶⁶ *Ibidem* pp. 487, 492, 530

³⁶⁷ *Ibidem* p. 529

³⁶⁸ C. PETIT, *Cit.*, p. 439

³⁶⁹ B. CLAVERO, *Bioko, 1837-1876...., Cit.*, pp. 513, 515

³⁷⁰ A. TOCQUEVILLE, *Travail sur l'Argérie (1841)*, Université du Québec à Chicoutimi, Les Classiques des Sciences Sociales

was not very different from that of the Spanish colonies. In Algeria, there was a right of exception; the colonial Administration, whether civil or military, was oppressive³⁷¹. There were no constitutional freedoms³⁷²; but even if minimum rights were recognized, their exercise always impacted against the absolute power of the Governor³⁷³, who carried the highest command of the military forces, judged supremely as the king in the metropolis³⁷⁴, and exercised regulatory power, approving provisions in cases of urgency and need. According to Tocqueville, although the exercise of this regulatory power was foreseen as an exception, in practice it became the general rule, thus erecting the governors into the true colonial legislators³⁷⁵. According to Pierre Guillaume³⁷⁶, in the French colonies, the governor was the «responsable du maintien de l'ordre»³⁷⁷, and as such was the depositary of the powers of the Republic. As chief executive, he had the armed forces; he appointed, suspended and ceased officials. As the holder of the legislative power, he could prevent the application of metropolitan laws in the colony, and he exercised the regulatory power by issuing provisions that were considered a «véritable législation spécifique»³⁷⁸. He also controlled the judiciary. Guillaume insists that this absolutism of colonial governors was common to all colonial empires: «Cette concentration de l'autorité aux mains du haut personage responsable se trouve dans tous les empires coloniaux»³⁷⁹.

The republicans also considered appropriate to ensure some freedom of action to Fernando Póo's GG, in those cases where public order or security in the colony was

http://classiques.uqac.ca/classiques/De_tocqueville_alexis/de_colonie_algerie/travail_sur_algerie/travail_sur_algerie.html

³⁷¹ *Ibidem* p. 41

³⁷² *Ibidem* pp. 41, 42

³⁷³ *Ibidem* p. 42

³⁷⁴ «En Algérie c'est le gouverneur général qui juge souverainement les conflits, de même que le roi le fait en France». *Ibidem*, p. 46

³⁷⁵ *Ibidem*, pp. 38-39

³⁷⁶ P. GUILLAUM, *Le Monde Colonial. XIX-XX Siècle*, Paris, Librairie Armand Collin, 1974

³⁷⁷ «Nous avons vu que, responsable du maintien de l'ordre, le gouverneur a, dans tous les empires coloniaux, un très large pouvoir réglementaire, qui lui permet, d'une part de ne pas étendre automatiquement à son territoire les lois métropolitaines, d'autre part d'édicter une véritable législation spécifique». *Ibidem*, p. 158

³⁷⁸ *Idem*

³⁷⁹ *Ibidem*, p. 140

endangered. To this end, the third paragraph of Article 2 of the RCS stipulated that the GG «will take whatever measures it deems necessary to preserve the security of the territories, and would inform about them»³⁸⁰. It was logical that this provision be inspired by the wording of Article 4.3³⁸¹ of the statute of 1904, and not the equivalent precepts of the statutes prior to 1904. If the colonial regime had to be a reflection of republican principles and values as the PG of the RCS, then it was convenient to avoid the use of expressions that were irreconcilable with the principles of republican democracy. Terms such as "discretionary powers", "extraordinary powers" or "powers of the Overseas Superiors", all of them employed in the statutes prior to 1904, evoked the described factual and absolute power that the colonial governors always held, and that was contrary to the spirit of freedom that inspired the Spanish framers of the Constitution of 1931. But the fact that the republicans had avoided authoritarian terminology in the terms of the third paragraph of Article 2 of the RCS did not automatically imply a restrictive interpretation of the margin of discretion that Fernando Póo's GG had in order to save the colonial public order. On the contrary, the powers that this precept recognized to the republican colonial governors were the same as those exercised by the previous governors based on the "extraordinary powers" expressly recognized by the previous statutes. Proof of this was that after Mr. Ferrer's information³⁸² confirmed the arbitrary nature denounced under the Núñez de Prado regime, the Republic determined the responsibility of some collaborators of Núñez de Prado³⁸³, but never his own³⁸⁴. As the republican auditor rightly reasoned in the information processed³⁸⁵, Núñez de Prado, as the head responsible for the colony's

³⁸⁰ A. MIRANDA JUNCO, *Cit.*, p. 807

³⁸¹ *Ibidem*, p. 139

³⁸² In the colony, this term referred to the files processed either to investigate an administrative irregularity, or to investigate a crime. So "opening information" was synonymous with "opening a file."

³⁸³ Some of those who were dismissed because of such investigations were: García Loygorri, deputy governor of Bata, accused of being involved in the recruitment of workers; David Carillo; Enrique Mené, accused of killing two indigenous people, Mr. Touchard. See G. NERÍN, *Un Guardia Civil en la selva...*, *Cit.*, pp. 229-230

³⁸⁴ According to Nerín, after the proclamation of the Republic, Núñez de Prado was summoned to Madrid, and as soon as the Governor expressed his firm joining of the new regime, the left did everything to hide the scandals of the Governor in the colony, and the Presidency of the Republic itself intervened to paralyze all the files processed against the Governor. See *Ibidem*, pp. 228-229. This same stance of Nerín can be found in F. GONZALO BALLANO, *Cit.*, p. 386

³⁸⁵ AGA G-179 (81/6448) file processed between 07/08/1931 and 22/08/1931 to investigate the interference of Núñez de Prado in the operation of the colonial administration.

security and peace, had recognized special powers that, precisely, protected many of the measures and decisions he adopted during his colonial term.

On November 2nd, 1932³⁸⁶, Mr. Rubio made a request in the *Cortes* in the name and defense of Dr. Juan García Bote, an official from colonial Guinea, who according to the deputy had been a victim of the arbitrary powers of Gustavo de Sostoa, former GG of the colony. The underlying issue would continue to reveal the broad powers held by the GG in relation to the application of colonial norms. According to Article 12³⁸⁷ of the statute of colonial officials, they had a right to a 6-month permit for every 18 months of service in the colony. In February 1932, the General Directorate of Morocco and the Colonies would adopt a provision according to which, «license granted by the civil servant statute in its Article 12 may not be enjoyed restrictively, unless, in the GG's opinion, colonial administrative needs are covered and the number of absent officials cannot exceed one third of those assigned to each service». On August 7th, 1932, Dr. Juan Bote published an article in the colonial newspaper "*Defensor de Guinea*", underlining the contradiction between the standards in question. The Governor considered that article as an injury to his person. So, in addition to complaining to the newspaper's director for publishing the article, he called the board of authorities to discuss the case. Most authorities considered that Dr. Juan Bote's criticism was against a provision, and not against anyone. But, despite that opinion of the Board, the Governor, alleging service needs, ordered the transfer of the doctor to the Niefang health station³⁸⁸. It seems that, legally, the vacancy of Niefang should not have been filled by Dr. Bote, since being this a second-rate hospital, it should have been filled rather by a doctor of the same category, and not by a first-class doctor as Mr. Bote. Despite this irregularity

³⁸⁶ See D.S.C.G., issue dated 02/11/1932, p. 9223 ff.

³⁸⁷ «Every official shall have, every eighteen months, the right to six months of statutory license, which shall include the time necessary to travel to and from Spain».

The official will receive the full salary and bonus during the six-month statutory license. These licenses may be extended for two months in case of illness fully proven to the satisfaction of the General Directorate of Morocco and Colonies, in such a way that, if denied, the official may present himself at his working place at the end of the six months of non-extended license.

By permanent special delegation of the General Directorate, the Governor General will be empowered to grant these regulatory licenses that will be requested through the Director of Service and along with his report. These licenses can only be given if the civil officer has been working for eighteen full months». See A. MIRANDA JUNCO, *Cit.*, p. 822

³⁸⁸ It is a city of the interior of the continental part of Equatorial Guinea. It is located 70 km from Bata, capital of the Continental Region. During the colonial period, it became known as Sevilla de Niefang.

and despite the availability of doctors, the Governor sent him to the hospital. The doctor appealed the decision of the GG to the DGMC³⁸⁹, but the Directorate responded by saying that they could not do anything against the decision already taken by the GG. For all those reasons, Mr. Rubio requested that the parliament declare the primacy of the statute of the officials over the aforementioned provision of the DGMC. He denounced this provision, alleging that it would grant “excessive powers” to the Governor, leaving the exercise of the right recognized in Article 12 of the statute of officials to his discretion. Unfortunately, Mr. Rubio's request not only was not accepted by the parliament, but did not even open a debate that deserved the attention of the *Cortes*.

As stated before, this absolute control that Governors had over the effectiveness of the colonial norm, was not only exercised at the moment of applying the norm within the colonial territory; they also exercised it at the moment of its approval. When an approved norm in the metropolis could imply an alteration of the tranquility and the state of things in force in the colony, the GG could prevent its extension to the colony. For example, colonial governors denied the application of the Criminal Code of 1929³⁹⁰ to the colonies, of the International Convention for the Suppression of the Traffic in Women of the Full Age (Geneva, 11/10/1933)³⁹¹, and the statute of German refugees who did not enjoy the protection of the Reich (Geneva, 04/07/1936)³⁹². The other possibility was to admit the extension of such norm to the colony, but only after establishing the new particular conditions that would govern its local application. This was the case of ILO Convention n° 29 (Convention on Forced Labour of 1930), whose

³⁸⁹ The General Directorate of Morocco and Colonies was created in 1925. It was an Administration dependent on the Spanish Executive. It operated as a link between the Central Government and the colonial administrations. See: J. ALVARADO PLANAS Y J. C. DOMÍNGUEZ NAFRÍA, *La Administración del Protectorado Español en Marruecos*, Madrid, BOE, 2014, pp. 120-125; A. MIRANDA JUNCO, *Cit.*, pp. 619-620, Royal Decree of December 15th, 1925, creating the General Directorate of Morocco and Colonies.

³⁹⁰ «Of course, its application with different reforms is proposed, but accepting some precepts and not others, dismantling the code, means removing structure and harmony, [...] it would turn it into one of those compilations of past legal times that lacked unity». See AGA G-211(81/6480), file n° 198/3, resolution of the 08/06/1929 of the Assembly of Judiciary Affairs of DGMC.

³⁹¹ AGA N° 86 (81/6355), report n° 508 of the Governor, dated 16/07/1934

³⁹² *Ibidem*, statement released by the Colonial Government's Sub-secretary, dated 10/10/1936

application in the colony, according to colonial authorities, required a transitional period longer than that planned for the metropolis³⁹³.

After all that has been stated in the preceding paragraphs about the normative power of the GG, the conclusion is similar to the initial statement. If Article 14 and the second paragraph of Article 2 erected the Central Executive as the formal colonial legislator, paragraph 3 of the same Article 2 gave the GG absolute control over the application of the colonial legal regime. That formula had its logic. As was stated in the republican constituent assembly, in the colony, security and public order were in a delicate situation. Linking the GG to a formalism that emanated thousands of miles away from the colony, only subtracted the immediacy that should characterize the actions of the GG to preserve peace within the colonial territory. The GG was the *paterfamilias* of the great colonial family; he knew the colonial reality *in situ*. So, if he was responsible for maintaining the colonial public order, it was necessary to allow him «a wide range of means» as Mr. Alba would later say in the republican constituent assembly³⁹⁴. Precisely, thanks to this «wide range of means», the 3rd paragraph of Article 2 of the RCS was recognized. But the ambiguity of this provision only made the distinction between the will of the GG and the colonial norms difficult. Paragraph 3 of Article 2 did not specify what «necessary measures» the GG could adopt; it merely included a timid guarantee, stating that the measures adopted be communicated to the Central Government. Nevertheless, this communication would not result in a revision, modification, suspension or annulment of the decisions already taken by the colonial Principal. What, then, would this communication duty serve? As one can see with such disposition in hand, the GG was erected as the true colonial legislator. He freely valued when peace and public order were endangered in the colony, and could take all the measures that seemed most convenient to him. He could use both his regulatory power and his factual power to modify existing regulations; he could suspend their application

³⁹³ «[...] The backwardness of the indigenous must be the reason why the transition period leading to the absolute suppression of compulsory labour is not as short as in the metropolis, and that in some cases, the law does not have the restricted application that was desired for the improvement and progress in general of that native population, notifying to Your E. that in regard to the Government of Guinea, efforts are made to remunerate the work of the indigenous person even in those cases where it is forced; also, our colonial action cannot avoid the pace of the other colonizing countries in West Africa, whose procedures, by the way, in regard to the treatment of the indigenous, are not better than ours, - are often even worse - [...]» See AGA G-1910(81/8179), file n° 5, dated 15/07/1932 released by Colonies Section of the GDMC

³⁹⁴ See D.S.C.G., session of 01/12/1931, p. 2754

and compliance with them³⁹⁵; and could deny the extension to the colony of metropolitan norms and international agreements ratified by Spain.

3.5. Sanctioning competences

According to the statute of 1904, the GG could both suspend the civil servants appointed by the Central Government, giving latter and immediate account (Art.4.9º)³⁹⁶, and «dictate commands to correct legal faults, maintain public peace and for purposes of police and good government within the limits, in the penalty, indicated by the Ministry of State» (Art.4.12º)³⁹⁷. The RCS only reproduced the provision of Article 4.9 of the preceding statute. But, in addition to this, the last paragraph of Article 14 of the RCS stated that «unless expressly provided otherwise, no appeal shall be allowed against resolutions of the Governor [...]»³⁹⁸. The statute of April 13th, 1935, the first recasting of the RCS, not only failed to remedy that omission, but expressly maintained the validity of the recast statute as far as it was compatible with the new text. The same can be said of the second recasting operated by the Decree of November 14th, 1935, which, after reproducing the RCS in its entirety, ended up declaring its repeal³⁹⁹. Despite this (conscious) silence of the republican legislator, the sanctioning power of the republican governors was beyond doubt. The republican governors, as the monarchical ones, not only applied or executed the sanctions established by the Central Government, but also had the power to issue provisions establishing sanctions ranging from a simple fine to expulsion from the colony, including the closure of establishments, the confiscation of goods, the withdrawal of commercial authorizations, the prohibition of hiring braceros, or imprisonment.

³⁹⁵ Article 4 of the colonial Organic Statute of 1904, among the faculties recognized by the GG was that of «2nd Suspend the publication and compliance with provisions that the State Ministry communicates, when his judgment could cause damage to the general interests of the Nation or the specials of the territories of its command that will give, without loss of moment, reasoned account to the Ministry», and that of «4th Propose the pardon of all kinds of penalties and suspend the execution of death». Both provisions were assumed by the Republican colonial Statute, since it did not specifically repeal the 1904 Statute.

³⁹⁶ A. MIRANDA JUNCO, *Cit.*, p. 139

³⁹⁷ *Idem*

³⁹⁸ *Ibidem*, p. 808

³⁹⁹ *Ibidem*, p. 966

Although the sanctioning power of the governors was already implicitly protected by the discretionary power granted to them by Article 2 of the RCS in order to preserve colonial public order, it is clear from the interpretation of the central authorities that this power was based on the principle of delegation of powers from the President to the colonial governor. On September 29th, 1934, pressured perhaps by the writings submitted to the Parliament by Julio Morano Dávila⁴⁰⁰ and Juan Palomino⁴⁰¹ in defense

⁴⁰⁰ The content of the letter read by Dávila in the Parliament session of April 3rd, 1934: «Los territorios españoles del Golfo de Guinea dependen directa y exclusivamente en su régimen y administración de la Dirección General de Marruecos y Colonias, teniendo al frente de las posesiones a un gobernador general libremente nombrado, con amplísimas y discrecionales facultades para el gobierno de las colonias. Pero lo que no puede consentirse es que abusando el representante del Poder central de unas facultades no regladas ocasione perjuicios irreparables a los españoles que han tenido el patriotismo de llevar a nuestras posesiones sus familias e intereses, que han montado un negocio, para contemplar cómo un gobernador, porque sí, impone multas caprichosas, decreta el comiso de mercancías, arruina, en suma, a industriales que no han cometido más delito que discrepar de las ideas políticas del Gobierno. [Otro párrafo] En el “Boletín Oficial” de los territorios españoles del Golfo de Guinea se publicó el día 1º de Octubre un decreto, firmado por el gobernador general Sr. Lluesma, reglamentando la venta de bebidas alcohólicas. [*idem*] Dicho decreto fue recibido con desagrado por todo el comercio de la colonia porque él vino a causar grandes perjuicios y ningún beneficio para España ni para el indígena [*idem*] Desde esta época empieza para un súbdito español residente en Santa Isabel, de Fernando Póo, D. Jesús Requena, un calvario que, desgraciadamente para él, aún no ha terminado. Antes de publicarse el decreto de referencia, a primeros de Septiembre, se pretendió aplicarlo arbitrariamente a D. Jesús Requena, para lo cual, al llegar su primer pedido de vino en los primeros días de Septiembre e ir a recogerlo al puerto, se encontró con que en la Aduana había orden de la Policía de incautación por orden gubernativa. Tras largo calvario se consiguió que al fin el gobernador permitiera la retirada del vino, pero negándose a dar permiso de venta del mismo. Por carecer del permiso no pudo venderse el vino hasta que el gobernador, un mes más tarde, lo autorizó, después de haberle causado perjuicios irreparables por la pérdida de pedidos importantes que el Sr. Requena no pudo servir [*idem*] Desde primeros de Enero del año en curso el establecimiento de D. Jesús Requena continuamente vigilado por la Policía, dándose el caso que los mismos vigilantes pretendían se les vendiera a ellos vino sin autorización, para hacerle faltar al reglamento. El día 30 de Enero, a las doce del día, media hora después de haber cerrado el Establecimiento y a unos 200 metros del mismo, la Policía pregunta a unos indígenas si habían bebido vino; éstos contestan que habían bebido una botella, y a las pocas horas, sin llamar al Sr. Requena a declarar, sin averiguar la verdad de lo ocurrido, el gobernador decreta la clausura del establecimiento y el decomiso de todas las importantes mercancías que en él había, que pasan de 100.000 pesetas. [*idem*] Contra tan arbitraria resolución don Jesús Requena, sin que hasta la fecha se haya resuelto el recurso, existiendo el temor de que en la actualidad, como consecuencia del clima de los trópicos, la mercancía esté averiada y totalmente inservible. [*idem*] Como por las razones expuestas el excelentísimo Sr. Presidente del Consejo comprenderá que, dada la cuantía del comiso, el asunto sale de la esfera gubernativa para entrar en la política, ya que hay motivos fundados para creer [que] se trata de una venganza política, es por lo que el Diputado que suscribe solicita del Excmo. Sr. Presidente del Consejo de Ministros reclame del Gobierno general de Golfo de Guinea los expedientes gubernativos que hagan referencia a D. Jesús Requena y los ponga a la disposición de la Cámara y del firmante para su estudio inmediato. [Pie del escrito] Palacio de las Cortes, a 3 de abril de 1934 — Julio Moreno Dávila». See D.S.C.G., session of 04/04/1934, pp. 520-521. This letter is also mentioned in AGA N° 88 (81/6357), a document issued by the President of the Council of Ministers through the DGMC the April 10th, 1934

⁴⁰¹ «Que se digne disponer lo necesario para que por los servicios correspondientes de la Dirección de su digno cargo se remita, con la urgencia posible, a la Cámara el expediente relativo a las protestas que se

of Jesús Requena, a settler who had been sanctioned by Governor Lluesma for non-compliance with the regulations on the sale of alcoholic beverages, the General Inspection of Colonies issued a proposed resolution⁴⁰² of the appeal submitted by the sanctioned before President of the Government⁴⁰³. In this provisional resolution, the General Inspection did not limit itself to affirming the sanctioning power of the GG, but also, while destroying the legal arguments alleged by the appellant, could not help but once again clear up any doubts that Requena and others might still have had about the true meaning of key colonial principles such as the regulatory power of the President in colonial matters, the principle of adaptation of the metropolitan laws to the colonial reality, the faculty of the GG to execute the President's regulations and to issue provisional and urgent ordinances, and the special interpretation of the constitutional guarantees in the colonial space. Before going into the reasoning of the General Inspection, it is appropriate to recall first not only the facts alleged by the appellant but also the legal basis of his claims.

According to Requena's version⁴⁰⁴, the sequence of events that resulted in the imposition of the appealed sanctions is as follows. Between October 5th and 10th, 1933, Requena went to the Customs Office to withdraw an order for wine that had arrived from the Peninsula. But the public agents, obeying an order given by the Governor the

han suscitado contra el decreto publicado por el gobernador general de los Territorios españoles del Golfo de Guinea en el "Boletín Oficial" de fecha de 1º de Octubre de 1933, reglamentando la venta de bebidas alcohólicas en dichos territorios, así como las siguientes informaciones: [otro párrafo] 1ª Si, de conformidad con lo que dispone la ley de 26 de Mayo de 1933, antes de dictarse y aplicarse [el] decreto de referencia, se solicitó informe del Instituto Nacional del Vino y de la Dirección general de Comercio y Política Arancelaria. [*idem*] 2ª Qué elementos informativos sirvieron de base al señor gobernador general para llegar a la conclusión de que se imponían las medidas contenidas en la citada disposición. [*idem*] 3ª Si antes de la vigencia de este decreto se procedió a la aplicación de alguna de las medidas en él contenidas contra algún individuo español establecido en dichas Colonias [*idem*] 4ª Consumo, durante el último quinquenio, de vinos y bebidas alcohólicas en Fernando Póo. [*idem*] 5ª Posibilidades que tiene la Colonia sobre el consumo de vinos y bebidas alcohólicas [*idem*] 6ª Efecto de carácter social, sanitario y económico que ha producido la aplicación del mencionado decreto, según los informes oficiales. [*idem*] 7ª Restricción que se ha operado en el consumo del "tope" como consecuencia de las medidas adoptadas [*idem*] 8ª Ordenanzas adoptadas por el señor gobernador general para la aplicación de su decreto. [pie del escrito] Palacio del Congreso, 31 de Marzo de 1934.— Juan J. Palomino». See D. S.C.G., session of 10/04/1934. The same writing is also mentioned in AGA N° 88 (81/6357), a writing of 26/04/1934, originated from the Presidency of Council of Ministers, DGMC, Section of Colonies.

⁴⁰² AGA N° 88 (81/6357), writing issued by the Colonies Inspection of the Colonies (Administrative and Commercial Section) on September 29th, 1934

⁴⁰³ Requena's appeal was admitted on August 13th, 1934.

⁴⁰⁴ AGA N° 88 (81/6357), a writing of 11/09/1934, by Requena

5th of October, refused to consign the products to Requena, arguing that he had no authorization to import wine into the colony. Requena ask the Governor to show him the regulations prescribing the said authorization. The GG responded with evasions, so the settler had no choice but to apply for the authorization. But the General Secretary of colonial government told him the requested permission could not be issued unless Requena signed a document renouncing his right to continue importing wine in the future. Although Requena refused to sign such a document, the colonial government finally granted the said permission on October 9th, 1933. But, because the granted authorization only allowed Requena to collect the ordered product but not to sell it, he requested a new permit that would be issued on October 31th, 1933. But before it was issued, Requena was required to submit "in advance" to the new regulations on the sale of alcoholic beverages approved by the GG the September 25th, 1933⁴⁰⁵, whose Article 1 established that it would come into force on December 31st, 1933. In accordance with this same provision, the appellant obtained the renewal of his sales permit on December 27th, 1933, five days after applying for it. It seems that the Governor did not give up on all the frustrated attempts to sanction Requena, and ordered that his establishment be always monitored in order to be able to sanction him at the slightest violation of the rules. And indeed, on January 29th, 1934, Requena was fined with 500 pesetas for selling alcoholic beverages after 6 p.m. The next day, at 12 o'clock according to the writing of the deputy Morano Dávila, the GG declared the closed of Requena's shop,

⁴⁰⁵ The content of the regulation can be summarised as follows. According to Article 1 of this bylaw, from December 31th, 1933, all authorizations granted until then for the sale of alcoholic beverages should be extinguished. From the same date, according to Article 2, new authorisations began to be granted annually (they expired on December 31st of each year) both for bars and for other establishments authorized to sell wine and other alcoholic beverages. Regarding the bars, the decree, apart from prohibiting the sale of alcohol to be consumed outside the establishment (Article 2.I.a), prohibited its sale both to the unemancipated indigenous (natives and foreign) and the drunks or alcoholic (Article 2I.b and c). Regarding the other establishments authorized to sell wine and other alcoholic beverages, it was forbidden to consume alcohol indoor (Article 2.II.a), and it was mandatory to get an authorization from the Governmental Police to dispatch alcohol to the indigenous (native or foreign), whether emancipated or non-emancipated (Article 2.II.b and c). As can be observed, Article 2, in addition to denying the presumed legal equality between white settlers and emancipated natives, undermined the effectiveness of the prohibition of the preceding provision, since the unemancipated, if not in bars, could perfectly well acquire alcohol in those other establishments allowed to sell alcoholic beverages. For these establishments, exceptuating the obligation of being in possession of the public authorization, it was only mandatory to exhibit a monthly inventory of both the "alcoholic stocks" and the sales made. Article 3 prohibited the Customs Office from delivering alcoholic products to consignees without the required authorizations. The violation of the provisions of this decree was generally punished by the confiscation of all "alcoholic genera"; and if the offender did not have authorization to sell alcohol, he could also be expelled from the colony.

and all the commercial genre inside was confiscated. Requena appealed before the President of the Council of Ministers, who admitted his appeal on August 13th, 1934⁴⁰⁶.

In his appeal, Requena attacked the Governor's resolution with three main legal arguments: he argued that the sanctions were inappropriate because the closing hour of the commercial premises was 8 p. m. according to the local regulation; he referred to the anti-democratic nature of both the regulatory power of the President in colonial matters and the unlimited sanctioning powers of the GG; and, finally, he denounced the fact that he was punished with the maximum sanctions while other offenders were either fined between 25 and 75 pesetas or were simply pardoned as in the case of Mr. Peraita. If one of these legal bases should be considered to be completely inappropriate, it is precisely the first one. Because, according to the same regulation alleged by Requena, that is, the regulations establishing the closing hours of commercial premises⁴⁰⁷, the dispensing of alcoholic beverages after 5 p.m. was to be punished with a fine of 500 pesetas the first time, with a fine of 1000 pesetas the second time, and with the closure of premises the third time (Art.1, Art.4 and Art.5). Consequently, if the GG's decision was unfounded with regard to the closure of the appellant's premises (because this was the appellant's first infringement), it was not, however, unfounded with regard to the imposition of the fine of 500 pesetas.

As for his attack on the undemocratic nature of the regulatory powers of the President and the Governor in colonial matters, the appellant's legal arguments did not detract from the merits. Requena understood that the rights and duties of Spanish residents in the colony, as legal guarantees «regulated by the Constitution of the Spanish Republic [...]» (See the first sentence of Art. 7 of the RCS), should also be subject to a systematic-constitutional interpretation. Thus, he argued that Article 44 of the RCS⁴⁰⁸,

⁴⁰⁶ AGA N° 88 (81/6357), file n° 75/9, the appeal submitted by Requena to the President of the Council of Ministers on September 11th, 1934

⁴⁰⁷ The Decree of 22/03/1926 (BOC de 01/04/1926) can be read in: A. MIRANDA JUNCO, *Cit.* p. 624; AGA G-1900 (81/8169), file n° 2

⁴⁰⁸ Article 44 of the Spanish Republic Constitution: «Toda la riqueza del país, sea quien fuere su dueño, está subordinada a los intereses de la economía nacional y afecta al sostenimiento de las cargas públicas, con arreglo a la Constitución y a las leyes. [Otro párrafo] La propiedad de toda clase de bienes podrá ser objeto de expropiación forzosa por causa de utilidad social mediante adecuada indemnización, a menos que disponga otra cosa una ley aprobada por los votos de la mayoría absoluta de las Cortes. [*idem*] Con los mismos requisitos la propiedad podrá ser socializada. [*idem*] Los servicios públicos y las explotaciones que afecten al interés común pueden ser nacionalizados en los casos en que la necesidad

whose second paragraph held that citizens could be deprived of their property only through an expropriation procedure that, based only on "a cause of public utility", should establish «adequate compensation». He argued that legislative power, as an exclusive attribution of the people, could only be exercised by Parliament, the real holder of sovereignty according to Article 51 of the RCS⁴⁰⁹. Based on these premises, Requena argued that Article 2 of the ECR, even when it seemed to suggest the contrary, never intended the attribution to the GG of legislative powers that could derogate from constitutional provisions. On the contrary, he argued that the GG's regulatory power, being a delegated and provisional power as established in Article 14 of the ECR, not only could not establish "penalties of the confiscation of properties" -as prohibited by Article 44 of the RCS *in fine*-, but that its exercise was subject both to the approval of the central power and to the requirement of the existence of a prior law whose delegation limits could not be violated by the GG. Based on all of these arguments, Requena asked not only for all of the sanctions to be lifted but also for compensation for the economic damages suffered⁴¹⁰.

If the merit of Requena's reasoning was due to his democratic approach, that of the argument of the Inspection was due to its purely colonialist tone. The Inspection's speech solemnly reaffirmed the special character of any colonial legal order⁴¹¹. In its

social así lo exija. [*idem*] El Estado podrá intervenir por ley la explotación y coordinación de industrias y empresas cuando así lo exigieran la racionalización de la producción y los intereses de la economía nacional. [*idem*] En ningún caso se impondrá la pena de confiscación de bienes».

⁴⁰⁹ Article 51 of the Spanish Republic Constitution: «La potestad legislativa reside en el pueblo, que la ejerce por medio de las Cortes o Congreso de los Diputados».

⁴¹⁰ «Suplico A .V.S. que teniendo por presentado este escrito con los documentos que se acompañan y con él por impugnadas las imputaciones que se me hacen en el expediente objeto de ese recurso, se sirva dictar resolución declarando haber lugar al de alzada que intereso y en su virtud, anular la resolución recurrida dictada por el Gobernador General de las Posesiones españolas del Golfo de Guinea en 30 de mayo de 1934, y acordar en consecuencia se levante y deje sin efecto el decomiso de los productos alcohólicos de mi propiedad que tenía almacenados y de los que se incautó el Gobernador dejándolos a mi disposición e indemnizándome de las pérdidas que haya sufrido, pues procede así en justicia que espero alcanzar de V.S. en Madrid a 11 de septiembre de 1934». See AGA N° 88 (81/6357), file n° 75/9, the appeal submitted by Requena to the President of the Council of Ministers on September 11th, 1934.

⁴¹¹ «[...] No existe colonia alguna en donde tengan efectividad todas las leyes metropolitanas con carácter general, porque el régimen de las Colonias exige una legislación especial y adecuada a las peculiaridades del país, siendo de advertir que aun en Colonias pertenecientes a una misma nación, es distinta la legislación por exigirlo así sus especiales características, en razón a lo variable de las razas, costumbres, condiciones geográficas y factores políticos que por su extraordinaria importancia precisan tener en cuenta. [Otro párrafo] Y así se comprende, por lo que se refiere a nuestra colonia que a las disposiciones de toda índole que diariamente aparecen en la Gaceta de Madrid, no pueda dárseles vigencia en aquellos,

discourse, colonial reality was conceived from its most absolute estrangement from metropolitan reality. Between the metropolitan world and the colonial world, there was a vacuum, a distance whose insuperable condition depended not only on physical-geographical factors, but also on racial, cultural, political, social and economic factors⁴¹². On the basis of the assumption of this mutual exclusion between both realities, the Inspection rejected any thesis in favour of conceiving the colonial territory as a legally assimilated space⁴¹³. For the central body, the metropolitan norm, a product of the conditioning factors of the metropolitan reality, could only be applied in the colonial territories after going through a process of adaptation to local circumstances and particularities⁴¹⁴. But, due to the copious regulations that were approved in the metropolis, and due to the absolute impossibility of all these legal provisions to be adapted daily in the colonial space, it was logical and reasonable to conceive the colonial geography as a space where the full application of a metropolitan provision not only had to be in very specific and studied cases but also had to be conceived as a rare exception to what the general principle applicable in the matter was: the non-application of metropolitan law in the colonial territory, that is, its adaptation to colonial reality. Based on this reasoning, the Inspection considered that any kind of systematic-constitutional interpretation of the rights in Base 7 of the RCS⁴¹⁵ was erroneous.

en atención a la absoluta imposibilidad de acompasar y adaptar diariamente en forma copiosísima y constante una legislación inadecuada (un ejemplo de ello es la copiosísima legislación social), por hallarse la colonia en un estado embrionario desde los puntos de vista social, cultural y de iniciación de los intereses materiales de los indígenas. [*idem*] Por ello, se presentan en el régimen y gobierno de las Posesiones de Guinea tres modalidades distintas en lo que se refieren a las materias que han de ser objeto de disposiciones adecuadas: primero, aplicación en la Colonia de la legislación metropolitana; segundo, adaptación de la misma a las conveniencias de régimen colonial; tercero, inaplicación absoluta de las disposiciones de la metrópoli. [*idem*] Ante estas consideraciones, resulta evidente que en momentos de urgencia que solo al Gobierno Central corresponde apreciar, puede ser preciso dictar disposiciones provisionales que no por tener este carácter han de carecer de efectividad a ponerse en vigor. [*idem*] Cuestión esta, la legislativa, de la mayor importancia en un régimen colonial en donde precisa efectuar un detenidísimo estudio sobre cualquier cuestión para el aprovechamiento, adaptación o exclusión de los preceptos establecidos en las disposiciones metropolitanas, y que en relación con las cuestiones que se plantean en este expediente, es de gran interés tener en cuenta.» *Idem*

⁴¹² *Idem*

⁴¹³ *Idem*

⁴¹⁴ *Idem*

⁴¹⁵ «[...] Por lo expuesto, estima el infrascrito [se refiere al Inspector General de Colonias] que en los repetidos titulados “Fundamentos de Derecho” [se refiere a los esgrimidos por el recurrente], se da a la base 7ª del Decreto de 22 de julio de 1931, respecto a los derechos y deberes de los españoles, una interpretación que no puede tener otro alcance que el determinado taxativamente en las últimas palabras

According to the governmental organ, the guiding principle of Base 7 of the RCS, or in other words, its true *ratio legis*, was not found in the main proposition of the first paragraph, which stated that «the rights and duties of Spaniards and foreigners [...] shall be regulated by the Constitution [...]», but in the subordinate proposition with which the paragraph ended: «[...] except for the adaptations that at the proposal of the Governor are agreed upon by the Government»⁴¹⁶. Thus, contrary to the understanding of Requena and of some other deluded settlers, the scope and content of the rights of the settlers were defined not in the metropolitan legislation or jurisprudence, but in the regulations approved by the Central Executive and the GG. In other words, the Republic, like the extinct monarchy, left the rights of the colonials under the absolute control of the colonial head.

With regard to the appellant's criticism or complaints against the new regulations on the sale of alcoholic beverages in particular, and against the GG's power to impose sanctions in general, the General Inspection began by warning that the ban on selling alcohol to unemancipated colonisers was not an isolated instance of Spanish colonialism, but a commitment made by the colonial powers under the Treaty of Saint-Germain of the 10th of September, 1919⁴¹⁷. As such, the new colonial regulation of 1933, similarly to equivalent regulations in other colonies⁴¹⁸, had only established more effective measures for the materialization of that international obligation, which, by the way, had a clear economic background. As was deduced both from the explanatory statement of the regulation and from the words of the Inspection⁴¹⁹, in an economy

de la misma, esto es, “salvo las adaptaciones que a propuesta del Gobernador se aprueben por el Gobierno”». *Idem*

⁴¹⁶ *Idem*

⁴¹⁷ In fact, the Treaty of Saint-Germain referred to Article 22 of the Treaty of Versailles, which prohibited the sale of alcohol to natives of the territories under mandate. The Treaty of Versailles can be consulted at dipublico.org/3671/tratado-de-saint-germain-en-laye-1919.

⁴¹⁸ In order to prove that Spain was not the only colonizer country forbidding alcohol for the non-emancipated indigenous, the General Inspection referred to some laws on alcohol issues applied in some foreign colonies like Tanganika, Togo, Eritrea, Somalia and Madagascar. See AGA N° 88 (81/6357), file n° 75/9, proposal resolution issued by the General Inspection with regards to the appeal filed by Requena against the sanctions imposed on him by the GG.

⁴¹⁹ «Además de ser manifiesta la decadencia de la raza indígena como consecuencia del abuso a que les lleva su afición al alcohol y que determina su progresivo aniquilamiento, necesita nuestra Colonia para su explotación disponer de un número suficiente de braceros indígenas, lo cual constituye uno de los problemas de mayor gravedad que precisa resolver en aquellos territorios, habiendo constituido hasta el día la falta de un reglamento de bebidas alcohólicas (en confirmación de medidas adoptadas en todas

marked by the problem of labour force, such as Guinea's, a lack of control over the sale of alcoholic beverages only made matters worse. The «progressive annihilation»⁴²⁰ of the natives resulting from their fondness for alcohol, in addition to frustrating the objectives of the colonial mission "to ensure the health and general well-being of the natives", not only reduced the scarce local labour force, but also made it difficult to hire foreign colonial subjects, whose governments were increasingly demanding the prohibition of alcohol sales to their wards⁴²¹. Given this state of affairs, it was therefore urgent that legal measures be adopted by the Central Executive, which, as the exclusive legislator on colonial matters according to Article 14 of the RCS, could choose between approving a regulation, establishing sanctions that could guarantee respect for the prohibition on selling alcohol to the emancipated, or, when it considered it convenient for the «better government» of the colony, delegate the exercise of its regulatory power either to the General Inspection or to the Governor of the STGG⁴²². Based on this argumentation, the Inspection, despite having rejected all the legal grounds of the appellant, ended up proposing to the President the reduction of the responsibility of Mr. Requena⁴²³.

As was reaffirmed in the Requena case, the sanctioning power of the Governor, whether exercised through the «provisional and urgent ordinances» of Article 14 of the RCS, or through their ordinary faculty of executing the provisions issued by the Central Executive, as a delegation of powers received from the President, was absolute, unless a limit had been established in the express delegation. But, despite its absolute nature, its

épocas) un obstáculo para encontrar soluciones adecuadas que permitan celebrar convenios con las demás Colonias africanas y que sea garantía de la seguridad que aquellas autoridades imponen respecto a la protección del indígena». See AGA N° 88 (81/6357), file n° 75/9, a writing of 06/03/1934, from the Presidency of the Government, DGMC, Section of Colonies

⁴²⁰ *Idem*

⁴²¹ *Idem*

⁴²² «Siendo de la competencia del Gobierno Central la función adaptadora de las leyes, y estando a su cargo el régimen colonial, es facultad del Gobierno, en los casos de urgencia, la reglamentaria, aun sin la previa adaptación, como asimismo delegar ésta en el Gobernador general cuando así convenga al mejor gobierno de aquellos territorios». See AGA N° 88 (81/6357), file n° 75/9, proposal resolution issued by the General Inspection with regards to the appeal filed by Requena against the sanctions imposed on him by the GG.

⁴²³ «Como resumen de cuanto se expone en lo que antecede, el funcionario que tiene el honor de informar a V. E. es de [del] parecer que debe considerarse establecida en el citado artículo 4° de Reglamento una imposición de sanciones progresiva en tres grados, y considerar incurso al señor Requena en la responsabilidad menor. V.E., no obstante, resolverá». *Idem*

exercise, at least formally, was subject to some complementary principles which, without diminishing the power of the GG, introduced some nuances to its scope. Among these principles, we can begin by recalling the optional nature of the intervention of the GG in the sanctioning of minor offences of civil servants, the exclusive competence of the GG in the sanctioning of serious and very serious offences of the civil servants, the requirement of processing a file for the definitive separation of the civil servant, and the establishment of an appeal against serious and very serious sanctions. All these principles were recognised in the Colonial Civil Servants Statute approved on December 8th, 1931.

According to Article 20.1 of the Statute of the Colonial Civil Servants, immediate superiors were competent to admonish or apply «private repression» to all their subordinates having committed a conduct defined as minor fault according to Article 19.1 of the said statute. That is: «Delay in the performance of the duties assigned to him without appreciable disruption of service; the excusable negligence or carelessness; and non-repetitive failure to attend service without just cause»⁴²⁴. For their part, the GG, in order to punish serious offences⁴²⁵, could choose among the following three corrections: «public repression; a fine of one to fifteen days' salary; suspension from work and a salary of one month to one year» (Article 20.2, 3 and 4)⁴²⁶. The "definitive separation from service" (Article 20.5), the maximum correction that the General Government could impose, was reserved for conduct such as «abandonment of the service, those [faults] contrary to professional secrecy, the insubordination under the form of individual or collective threat, the knowingly issuing of official reports that are manifestly false due to negligence or inexcusable ignorance, or the adoption of manifestly unjust agreements, faults of probity and those that constitute crimes» (Article 19.3).

⁴²⁴ A. MIRADA JUNCO, *Cit.*, p. 823

⁴²⁵ Article 19.2 of the Statute of Colonial Public Officials: «La indisciplina contra los superiores, la desconsideración a éstos o a público en actos de servicio, los altercados o pependencias dentro de las oficinas, aunque no constituyan delito ni falta punible; las informalidades o el retraso en el despacho de los asuntos, cuando perturbe sensiblemente el servicio, y la de negarse a prestar servicio extraordinario en los casos en que lo ordenen por escrito los superiores». *Idem*

⁴²⁶ *Idem*

Private repression was applied in writing, and had to be recorded in the service file of the sanctioned civil servant. The repetition of a minor offence motivated the intervention of the GG through the application of public repression. For their part, with the third public repression, and with the third fine imposed on them, an official had to be referred for dismissal or definitive separation. According to Article 20, administrative corrections were perfectly compatible with sanctions of another nature derived from the qualification of the facts before other jurisdictional orders. In other words, the official, for the same facts, could be subjected to both administrative and judicial proceedings. In either case, with the proceedings ongoing, the GG could suspend the official from employment and salary. However, if it was inconvenient due to the familiar circumstances and burdens of the official, the GG could only suspend 50% of his salary during the processing of the case. Once the procedure was completed, if the irregularity of the official was not proven, he had to be reinstated in his post and all the amounts of his salary that had been lost during the procedure had to be reimbursed. If, on the other hand, the official's fault was proven, he was to be permanently removed from his post without the possibility of returning to work in the colonial administration. In the latter case, the dismissed official could, within two months of receiving the final decision, lodge an appeal either with the President of the Council of Ministers or with the General Inspection of Colonies.

Although the Statute of Civil Servants was already applicable to the entire colonial administration, some sectoral regulations were aimed at alleviating the workload of the GG, freeing him from the arduous task of having to deal with sanctioning all minor offences committed by all civil servants. For example, Article 9 of the bylaws of the General Hospital of Santa Isabel established that the Director of the establishment, in addition to being obliged to inform his superiors of the faults committed by the hospital staff, could punish the faults of the indigenous personnel, imposing fines whose amounts had to be proportional to the nature of the faults sanctioned⁴²⁷. The same can be said of the Provisional Ordinances of the Direccion of Health of July 6th, 1934, whose Article 9 allowed the Chief of the Health Service not

⁴²⁷ Article 9 of the Regulation (Reglamento) of Santa Isabel General Hospital: «Tendrá el deber de dar cuenta a la superioridad de las faltas cometidas por el personal europeo e indígena en el cumplimiento de sus funciones, para que la superioridad proponga las sanciones que crea oportunas. Respecto del personal indígena estará facultado para imponer multas cuya cuantía dependerá de la falta cometida, dando cuenta de las sanciones impuestas y su causa a la jefatura de servicio». See AGA G-1830 (81/8099), file n° 23

only to propose to the GG the sanctions applicable to violations of the provision, but also to impose sanctions that could not exceed one day's salary for European staff⁴²⁸.

Another normative block that introduced important nuances with respect to the sanctioning power of the GG was the regulation of the so-called "indigenous work". Since the first regulation of indigenous labour in 1906⁴²⁹, a special jurisdiction was established under the responsibility of the Colonial Curator, who would be responsible not only for resolving disputes arising from labour contracts between Europeans and indigenous peoples (Art.4), but also for applying the sanctions established by law in this regard. The system of sanctions established in this first regulation was very simple. In relation to the worker's breaches, Article 71 established that the Curator was to sanction them "prudentially". With regard to the escape of braceros, the only offence individualized by the 1906 legislator, a penalty of 10 days' imprisonment was established for the first commission (Art.72), and, for the first recidivism, as long as the former employer refused to continue employing the sanctioned worker, they should be used in forced labour in public works for half the salary (Art.74). With regard to employers, the law referred to two breaches. On the one hand, Article 73 imposed a fine of 500 pesetas on any owner who did not inform the Curator of a worker who had escaped from another farm and had taken refuge in his. On the other hand, a fine of 100 pesetas was imposed on any owner who had applied violence or corporal punishment to the worker (Art.69). In addition, Article 75.6 authorized the termination of the contract in the event that such violent acts had resulted in the permanent or temporary incapacity of the bracero to work, and that the employer was thus convicted by a final judgement. The markedly inhumane and slavery-like nature of this last provision should be noted. It is clear from its interpretation that the bracero could not be free from the contract even if he suffered systematic mistreatment which, although sanctioned by the Curator, did not result in permanent or transitory incapacity, could cause other, no less important, injuries. Moreover, the requirement of a final sentence did not help much in this release of the bracero. Logically, among the most important evidence available to the judge to convict the abuser were the testimonies of the abused man's companions. But how were they going to testify against an employer who threatened to retaliate?

⁴²⁸ *Idem*

⁴²⁹ See the Royal Order of August 6th, 1906, in A. MIRANDA JUNCO, *Cit.*, pp. 205-212

The 1913 Indigenous Labour Regulations⁴³⁰ introduced significant reforms to the regime of penalties described above. According to Article 3 (paragraph 5), the Curator, after ascertaining the truth of a claim made by a bracero for non-payment of all or part of his wages, shall impose on the employer a fine of 50 pesetas, which was increased to 100 pesetas for the first repeat offence and 200 pesetas for subsequent offences. If this situation of non-payment of wages is recorded for three months, Article 2 (paragraph 7) provides that the contracts between the braceros concerned and the employer shall be considered canceled; the braceros shall be taken from the employer and the Curator «shall proceed to initiate the corresponding demand before the Court [...]». In addition to these measures for non-payment of wages, the decree of 1913 also redesigned the system of sanctions for mistreatment. Under Article 4, the initial fine of 100 pesetas applied to the ill-treatment of braceros was increased by 150 pesetas for the first repeat offence and by 250 pesetas for the second. From the third recidivism, that is, the fourth time of committing maltreatment, two cases could be distinguished depending on whether the offender was the owner himself or an employee of his. In the latter case, the farmer had to choose between dismissing the offender or facing the removal of his braceros. But if the owner was the offender, on the fourth occasion, he would be punished with a fine of 250 pesetas and would be admonished seriously. However, if he kept maintaining this conduct, the braceros were taken away from him. For the application of all corrections for ill-treatment, the Curator had to process a file whose conclusion had to include all the mitigating or aggravating circumstances involved. For example, if it turned out that the ill-treatment was caused by a fault of the worker, and that it consisted only of a slap or a hit without consequences, the Curator, in addition to applying the above-mentioned scale of fines, would punish the bracero with five days in prison and a reduction of his salary during the days he was locked up. If, however, the investigation showed that the employer acted with cruelty and, that the mistreatment caused injuries on the worker, the Curator, apart from taking away the braceros from the employer who also had to take care of the injured bracero, would initiate the appropriate legal action and request the appropriate compensation for the bracero.

⁴³⁰ See the Decree of July 27th, 1913, (BOC 15/08/1913) in A. MIRANDA JUNCO, *Cit.*, pp. 392-397

For their part, the misdemeanours of the braceros were punished by imprisonment graduated as follows. For «refusing to work without just cause», the bracero was imprisoned from 5 to 20 days (Art.5.a); for «leaving the farm without permission» or «contumacious disobedience», he was imprisoned from 5 to 30 days (Art.5.b and c); for «insubordination accompanied by assault on persons or property», he was imprisoned from 30 to 60 days (Art.5.d); and for «failing to comply with a court order», he was imprisoned from 10 to 15 days (Art.5.e). .d); for making «unjustified complaints that are proven to be false», he was imprisoned from 15 to 30 days; and for «inciting other braceros to abandon their work, either on their farm or on other farms», he was imprisoned from 5 to 90 days. Logically, during the days that the bracero was «detained in the barracks», not only did he have to be employed in public works without remuneration, but he would not receive his earnings from his employer, nor would such days of detention count towards the duration of the contract. Furthermore, in the event that the aggression perpetrated by the bracero had resulted in injury or damage to property, he would be placed at the disposal of the judge.

Both employers and workers could appeal the decisions of the Curator to the GG. In the case of employers, such an appeal had to be made within 5 days of notification of the decision. In the case of braceros, this deadline was of 8 days.

Until the fall of the Republic in the colony on October 14th, 1936, the main reforms experienced by the described sanctioning regime of the 1913 regulation only affected the graduation of the fines for mistreatments. Thus, a Royal Order of June 15th, 1929⁴³¹, established the following scale of fines: for the first infraction, it established a fine of 100 to 250 pesetas; for the second time, the fine was 250 to 500 pesetas; and for the third and successive times, the fine was 500 to 1000 pesetas. The 1935 labour regulations kept all this previous regime intact until June 28th, 1936, when a new GG ordinance considerably increased the scale of fines for maltreatments. According to Article 1 of the ordinance, mistreatment was punished by a fine of 1000 to 2500 pesetas the first time; for the second and successive times, the fine was 2500 to 10,000 pesetas. Article 2 of the ordinance established the subsidiary liability of employers for the offences committed by their employees. Article 3 made it clear that all the above-

⁴³¹ A. MIRANDA JUNCO, *Cit.*, pp. 729-730

mentioned fines were applicable without prejudice to the penalties derived from the penal qualification of the sanctioned facts.

As can be seen from our review of the sanctioning regime for «indigenous work», the share of power exercised by the Curator in the sanctioning regime in force in the colony was not negligible. Under the control of the defender of the rights of the unemancipated, there was the decision ranging from from the imposition of fines of insignificant amounts to the «prohibition to contract with indigenous people» or «the expulsion from the colony», which implied the exclusion of the exercise of legal freedoms. But once again we must insist that such special jurisdiction of the Curator could never mean the diminishing of the power of the General Governor, who remained free to sanction any labour failure that he might have known of either personally or by denunciation of colonists or colonisers. But the authority of the GG was even more evident in the procedure for the application of these sanctions by the Curator, who, despite being the holder of the jurisdiction, was no more than a mere «provisional decision-maker». In other words, the Curator did not enjoy the same freedom to punish the minor offences of the employers as he did to impose the more serious sanctions. While he could inform the GG *a posteriori* of the fines he had imposed on the employers, in the case of sanctions such as the withdrawal of braceros or expulsion from the colony, he had to comply with such an obligation of communication *a priori*. In other words, if the Curator considered that the proven misconduct of an employer should be punished with the withdrawal of braceros or with the expulsion of the employer from the colony, he made such proposals in the conclusions of the file that he later had to submit to the GG for a final decision. Just as an example, we refer to the information or files processed for the withdrawal of the authorization to recruit braceros from the European Arnol Wutow⁴³²; for the withdrawal of the authorization to hire

⁴³²AGA G-1856 (81/8125), bundle I/file n° 23, writing by the Patronato (25/09/1931) fining Arnold Wutow with 500 pesetas and asking the Governor to take away from him the authorization to hire braceros

braceros from the company Druman S.A.⁴³³; and for the expulsion of Paulino Aramburuzabala from the colony⁴³⁴.

After all that has been said in this section, we will conclude by adding a last faculty in which the exercise of the Governor's sanctioning power could also be manifested. Although the Inspection of Colonies did not pronounce itself on this aspect in the Requena case, practice revealed that the GG, despite exercising such power as a delegate of the President, could in turn delegate its exercise not only to the colonial officials who strictly represented the colonial government (Secretary General, Deputy Governor of Bata, Territorial Administrators), but even to any other high official. But unlike the delegation made to the GG, which was absolute, the sub-delegation that the GG could make to their subordinates was limited to the imposition of minor corrections.

3.6. Diplomatic competences

As rightly recalled by Drincourt Álvarez, the expression "colonial state", or if preferred in the plural, "colonial states", should never be confused with colonial territories. The latter, unlike protectorates that were constituted on the basis of the principle of assisted sovereignty, were considered "integral parts" of the respective colonizing powers -the real colonial states. Any negotiation or relationship established

⁴³³ AGA G-1856 (81/8125), bundle I/file n° 23, resolution of June 10th, 1935, through which the permission to hire braceros was withdrawn from the Druman Company

⁴³⁴ Paulino Aramburuzabala, a foreman in the farm of Santa María, property of the commercial house called Casa Caifier, put Etogo Mba to work while he was sick. According to the worker, Paulino punched him in the side. The worker was hospitalized at Santa Isabel. The doctors determined that the worker suffered from bronchial-pulmonary difficulty. These symptoms, according to the doctors, could be caused by a hit in the side. Based on the medical resolution, the Curador, after having processed a sanctioning file, punished Paulino with a fine of 250 pesetas, and asked the Governor to expel the sanctioned from the colony. The Judge of Santa Isabel, despite having ordered the investigation of the facts, ended up acquitting Paulino for the absence of witnesses. Based on this judicial sentence, Paulino acted against the decision of the Curator before the Governor, who finally accepted the legal basis argued by Paulino, and released him from the payment of the imposed fine. The file of Paulino case can be read in: AGA G-1856 (81/8125), File on the death of Etogo Mba: medical statement issued by the hospital of Santa Isabel (23/10/1933), confirming symptoms of mistreatment on Etogo Mbá; resolution issued by the Judge of Santa Isabel (24/10/1933), ordering the investigation on the death of Otago Mba; resolution issued by the Curador (writing n° 240 de 28/10/1933) punishing Paulino with a fine of 250 pesetas and encouraging his expulsion from the colony; sentence issued by the Judge of Santa Isabel (21/11/1934), acquitting Paulino of a misdemeanor for maltreatment; the appeal writing (23/11/1934) by Paulino against the Curator resolution; the Governor resolution (14/12/1934) releasing Paulino from the fine of 250 pesetas imposed by the Curator.

between two or more colonial authorities was understood to be carried out on behalf of their respective metropolitan governments. The 2nd Base of the ECR allowed the GG, in colonial matters, to establish contact with the local authorities of the neighbouring colonies. On the basis of this provision, the republican governors, like the monarchical ones, negotiated agreements and treaties with the neighbouring colonials that were later ratified by the respective metropolitan Executives. For example, in 1931, an official delegation went from Fernando Póo to São Tomé and Príncipe, a Portuguese dominion, to study *in situ* the possibility of hiring braceros from that Portuguese colony. In 1933, the General Government placed Mr. Antonio Nombela at the head of an official commission that was to leave for Yaoundé with the aim of negotiating with that colony a treaty of assignment of braceros. The negotiations would result in a treaty signed between the Spanish Government and the French Government on January 8th, 1934.

3.7. Other direction competencies

As the top leader of the colonial administration, the Governor was also given a series of powers ranging from inspectioning faculties to budgetary ones. As the highest supervisor of the functioning of the colonial administration, he could [and had to, at least once a month] bring together all the heads of colonial public services in order to hear their reports (Art.5). If the local needs observed in the reports or in the inspection visits so required, he could propose the creation or constitution of the relevant public agencies (Art.8). In terms of budgets, the RCS established that he "will formulate the annual draft budget of income and expenditure of the colony and propose the alteration of the credits of the same"; order the expenditure and arrange the payments, subjected to the budget and the rest of the regulations (Art.2). His approval was also necessary for the effectiveness of the agreements adopted by a Neighborhood Council concerning the municipal budgets (Base 8).

EPILOGUE

THE CIVIL WAR IN THE STGG: PERHAPS INSIGNIFICANT, BUT A DOCUMENTED EPISODE

SUMMARY: I. Short Introduction II. From July 18th, 1936, to September 19th, 1936: the efforts of Luis Sánchez Guerra to maintain colonial public order III. From September 19th to October 14th, 1936: the fall of the Republic in the Republic. IV. From the conquest of Bata to the first colonial statute approved by the Franco Regime in 1938 V. Final considerations

I. A short introduction

In 1938, in the STGG, in official public documents, as postscript, it was written: «II triumphal year» («II año triunfal»)⁴³⁵. In 1939, the postscript was turned into «III triumphal year» («III año triunfal»)⁴³⁶. From these postscripts, it can be deduced that if 1939 meant the beginning of Franco's rule in the metropolis, it did not mean, however, its beginning in Spanish Guinea. On October 15th, 1936, at 12 a.m., a group of rebels, from the ship of *Ciudad de Mahón* anchored in the waters of the port of Bata, sent a message to Santa Isabel confirming the conquest of that capital of the mainland part of the Spanish colony: «Bata taken, *Fernando Póo*⁴³⁷ sunk, no news»⁴³⁸. The joy caused by this message confirmed the fall of a Republic that, five years earlier, had inspired illusions and hopes in the hearts of the inhabitants of the STGG. The civil war had no

⁴³⁵ AGA G-1859 (81/8128), a writing by the General Governor of July 7th, 1938; CAJA G-1864 (81/8133), files numbers 4 and 5. In all these files we can find several documents with this signature at the bottom.

⁴³⁶ *Idem*

⁴³⁷ In this chapter, the name *Fernando Póo* written in italics refers not to the island where the colonial capital was located, but to a Spanish ship.

⁴³⁸ «Bata tomada; Fernando Poo hundido; sin novedad». See *LA GUINEA ESPAÑOLA*, n° 943, 10/18/1936, first page

violent episode in the STGG like those in the metropolis⁴³⁹. But the blood spilled by the few fallen in the colony, being appreciated as that spilled in the metropolitan land, is also worthy of a historiographic memory, even if it is very brief. This is mainly the purpose of this epilogue. The following lines try to offer a quick overview of the evolution of the Spanish Civil War in the STGG from the beginning of conflict on July 17th, to the conquest of Bata on October 14th, 1936.

II. From July 18th to September 19th, 1936: the efforts of Sánchez Guerra to maintain colonial public order

First of all, it is useful to identify, even briefly, the status of the STGG at the time of the outbreak of the conflict. Given that the reliability of the colonial censuses has always been questioned⁴⁴⁰, the following data on the population of colonial Guinea in 1936 should not be interpreted beyond its guiding character. According to a report by Juan Ramírez Dampierre⁴⁴¹, then Portuguese consul in the colony, in 1936, the number of Europeans living in Fernando Póo amounted to 2000: 1500 Spaniards, a few hundred Portuguese, a few English and German citizens. In relation to the native population, Dampierre speaks of some 157,000 inhabitants, of which 155,000 were in the mainland part. Pozanco, for his part, says that the colony had 160,000 inhabitants. Among these, 2000 Europeans lived in the island of Fernando Póo⁴⁴². Like Dampierre, Pozanco does not make an approximation of the white population of mainland Guinea, but he claims that 90% of the Spanish residents in this part of the colony ran away to Cameroon on the October 14th, 1936⁴⁴³. Pozanco speaks of a total of 146 Spaniards who were repatriated from the neighbouring French colonies⁴⁴⁴. If we take into account that six among the repatriated Spaniards traveled with their families, and if we estimate, at

⁴³⁹ G. NERÍN, *Un guardia civil en la selva*, *Cit.*, pp. 234-240

⁴⁴⁰ G. SANZ CASAS, *Política colonial...*, *Cit.*, pp. 32, 226; I. K. SUNDIATA, *Cit.*, p. 154; B. BUS y J. MALTBY, *Cit.*, pp. 13-15; *LA GUINEA ESPAÑOLA*, n° 801 of 01/21/1934, p. 19

⁴⁴¹ M. BURGOS MADROÑERO, *Cit.*, pp. 90-91

⁴⁴² Togores Sánchez also says that 2000 whites were living in Fernando Póo in 1936. See L. E. TOGORES SÁNCHEZ, *Cit.*, p. 46

⁴⁴³ M. ÁNGEL POZANCO, *Cit.*, p. 164

⁴⁴⁴ *Ibidem*, pp. 178-181

minimum, that each of those families would be composed by a father, a mother and a son, then the total of 146 repatriated could rise to 158 persons. If we add the remaining 10% (that was around 17 or 18 persons) to the 158 repatriated (which were 90% of the Spaniards living in mainland Guinea), plus some Germans, French or Portuguese settled in Bata, we can estimate that the white population in mainland Guinea was of about two or three hundred persons.

As main territorial authorities, in Fernando Póo, apart from the General Governor, Luis Sánchez Guerra⁴⁴⁵, we can mention Carlos Vázquez Ruiz, General Secretary of the Colonial Government, Luis Ayuso Sánchez, Territorial Administrator of Santa Isabel⁴⁴⁶ and chief of the Guardia Colonial in the island, and Mariano Pérez Gonzalo, Chief Inspector of the Governmental Police⁴⁴⁷. In the mainland part, we can distinguish Miguel Hernández Porcel as Sub-governor⁴⁴⁸, Miguel Ángel Pozanco as his secretary⁴⁴⁹, Emilio García Loygorri as Territorial Administrator of Bata, Captain Morales Fernández as the Chief of the Guardia Colonial in Bata, and Enrique Oliveda as Territorial Administrator of Kogo.

The fact that the unity of colonial politics prevailed in the colony did not automatically mean that the colonists were unaware of politics. It is true that the colonists, while remaining in the colonial space, lacked political rights, but they did identify with the political ideologies prevailing in the metropolis. The political agitation that took place in the capital city because of the general elections of February 1936, accentuated the partisan sympathies of the colonists, who, as in the metropolis, were grouped in two ideological blocs. On the one hand, a base of the Frente Popular (FP)

⁴⁴⁵ Luis Sánchez-Guerra Sáinz was the son of José Sánchez-Guerra, a conservative politician who acted as minister of development between 1907 and 1909. He got his bachelor's degree in civil engineering in 1914. He worked on the project for the construction of the port of Alicante in the metropolitan land, and the port of Santa Isabel in the STGG. On September 7th, 1935, he was appointed as General Governor of the STGG. See M. ÁNGEL POZANCO, *Cit.*, p. 84; M. BURGOS MADROÑERO, *Cit.*, p. 89; *LA GUINEA ESPAÑOLA*, n° 887 of 15/09/1935, p. 265; *LA GUINEA ESPAÑOLA*, n° 898 of 01/12/1935, p. 359; Decree of September 7th, 1935, appointing Luis Sánchez-Guerra as General Governor of the STGG, available at boe.es/datos/pdfs/BOE/1935/251/A01946-01946.pdf

⁴⁴⁶ *LA GUINEA ESPAÑOLA*, n° 884 of 25/08/1935, p. 342; J. L. VILA-SAN JUAN, *Cit.*, pp. 175-188

⁴⁴⁷ AGA N° 110 (81/6379), file n° 97/5, a writting (n° 695, 18/08/1935) from the General Government of the STGG to Colonies General Inspection; *LA GUINEA ESPAÑOLA*, n° 884, *Cit.*, p. 342

⁴⁴⁸ *LA GUINEA ESPAÑOLA*, n° 896 of 17/11/1935, p. 342

⁴⁴⁹ M. ÁNGEL POZANCO, *Cit.* p. 84

was formed in Santa Isabel, and had 150 members⁴⁵⁰. On the other hand, the right-wingers, including the religious, also grouped together in a similar movement. The tensions existing between the two groups in the metropolis, and the rumor of an imminent rebellion planned by the native people⁴⁵¹, put the General Governor on alert. On June 5th, Luis Sánchez Guerra, after have declared the state of exception, requested reinforcements from Madrid⁴⁵². They sent him the cruiser *Méndez Núñez*, which, under the command of Captain Matres García, arrived in Santa Isabel on June 24th⁴⁵³. The cruiser would remain in the island until it found its way back to the metropolis on July 21th, 1936⁴⁵⁴.

From the beginning, Sánchez Guerra acted as an impartial judge between the two colonial ideological groups⁴⁵⁵. He always tried to avoid that the ideological differences, combined with personal quarrels already existing among the colonists, could be turned into in a conflict between the two ideological blocs, which would not help to protect the unity and prestige of the white race before the eyes of the colonized⁴⁵⁶. In order to guarantee such an order, the Governor was willing to punish any conduct or manifestation, whether from the right or the left, that would go against their pacifying purposes⁴⁵⁷. For example, when the news of Calvo Sotelo's murder was known in the colony, the right-wing settlers, both lays and clericals, in addition to devoting some prayer for his soul, organized a public meeting⁴⁵⁸. The Governor imposed a fine of 50 pesetas on each of the organizers of the meeting⁴⁵⁹.

⁴⁵⁰ J. L. VILA-SAN JUAN, *Cit.*, pp. 175-188; D. NDONGO BIDYOGO, *Historia y Tragedia de Guinea Ecuatorial (2nd revised and expanded edition)*, *Cit.*, p. 70

⁴⁵¹ D. NDONGO BIDYOGO, *Historia y Tragedia de Guinea Ecuatorial (2nd revised and expanded edition)*, p. 70; M. BURGOS MADROÑERO, *Cit.*, p. 89

⁴⁵² J. L. VILA-SAN JUAN, *Cit.*, pp. 175-188; D. NDONGO BIDYOGO, *Historia y Tragedia de Guinea Ecuatorial (2nd revised and expanded edition)*, *Cit.*, p. 70; L. E. TOGORES SÁNCHEZ, *Cit.* pp. 47-48

⁴⁵³ *Idem*

⁴⁵⁴ J. L. VILA-SAN JUAN, *Cit.*, pp. 175-188

⁴⁵⁵ M. BURGOS MADROÑERO, *Cit.*, pp. 93-94; L. E. TOGORES SÁNCHEZ, *Cit.*, p. 51

⁴⁵⁶ M. BURGOS MADROÑERO, *Cit.*, p. 104; G. NERÍN, *Un guardia civil en la selva...*, *Cit.*, pp. 234-240

⁴⁵⁷ G. NERÍN, *Un guardia civil en la selva...*, *Cit.*, pp. 234-240

⁴⁵⁸ D. NDONGO BIDYOGO, *Historia y tragedia de Guinea Ecuatorial (2nd revised and expanded edition)...*, *Cit.*, p. 70

⁴⁵⁹ *Idem*

When the outbreak of the rebellion became known in the colony, the normal situation did not seem to change till the middle of August⁴⁶⁰. And although the Governor declared a state of exception, he never stopped believing in the loyalty of his officers to continue maintaining public order in the colony⁴⁶¹. Indeed, because of his confidence in his officers, the Governor considered it unnecessary for the *Méndez Núñez* cruise ship to remain in Santa Isabel, and advised the sailors to return to the metropolis where they would be of great help to the regime in controlling the incipient uprising. The cruise left for the metropolis at the beginning of August 1936⁴⁶²; and, halfway through its journey, specifically in Dakar (French Senegal), it received orders from Madrid to return to Santa Isabel⁴⁶³. It seems that the regime of Madrid knew that some of the sailors in the cruiser sympathized with the rebellion and therefore preferred for them to remain in the colony⁴⁶⁴. The *Méndez Núñez* arrived back in Santa Isabel on August 14th⁴⁶⁵, and its sailors soon returned to their social life in the colony, for the Governor allowed them to carry out a normal life in the city⁴⁶⁶. According to a report by Ramírez Dampierre, it seems that the presence of the sailors in the city provoked the agitation of the Frente Popular supporters, who wrote to the Governor expressing their discontent with the stay of the sailors in Santa Isabel. Dampierre maintains that because of this attitude of the Frente Popular supporters, the Governor sanctioned them with a fine of 500 pesetas. But since they were unable to pay it, some of their goods were seized and then sold in a public auction⁴⁶⁷.

⁴⁶⁰ J. L. VILA-SAN JUAN, *Cit.*, pp. 175-188; D. NDONGO BIDYOGO, *Historia y tragedia de Guinea Ecuatorial (2nd revised and expanded edition)...*, *Cit.*, p. 71

⁴⁶¹ M. ÁNGEL POZANCO, *Cit.*, p. 104

⁴⁶² D. NDONGO BIDYOGO, *Historia y tragedia de Guinea Ecuatorial (2nd revised and expanded edition)...*, *Cit.*, p. 70

⁴⁶³ *Idem*

⁴⁶⁴ According to Villa San Juan, the *Méndez Núñez* cruise left for the colony on July 21th, 1936. On its way back to the Peninsula, on July 28th, 1936, it made a stop in Freetown, the capital of Sierra Leona, a British colony in the West African Coast. And, while staying there, the ship received a telegram from the rebels of Canarias. In the telegram, the rebels invited the cruise sailors to join the rebellion. But the Madrid Government found out about the said telegram, and it decided to keep the cruise far from the metropolis, ordering it back to Fernando Póo. See J. L. VILA-SAN JUAN, *Cit.*, pp. 175-188

⁴⁶⁵ M. BURGOS MADROÑERO, *Cit.*, pp. 93-96; J. L. VILA-SAN JUAN, *Cit.*, pp. 175-188; D. NDONGO BIDYOGO, *Historia y tragedia de Guinea Ecuatorial (2nd revised and expanded edition)...*, *Cit.*, p. 70

⁴⁶⁶ *Idem*

⁴⁶⁷ *Idem*

Since the ship's presence caused much agitation in the colonial capital, Sánchez Guerra considered the return of the cruise ship to the metropolis. But before its departure, the Governor asked those sailors who sympathized with the rebellion to voluntarily manifest themselves⁴⁶⁸. Seventeen officers were disembarked, taken to the district of San Carlos (50 km from Santa Isabel), and relocated in the house of the Territorial Administrator of the district.

On August 30th, 1936, the day the *Méndez Núñez* was to leave for Las Palmas to fight the rebels, the sailors realized that the ship's best gunner was among the 17 who were confined to San Carlos. Sánchez Guerra, seeing how his hands were tied, sent a boat to bring the aforementioned gunner back. But the boat, which should have returned on the same day, that is, August 30th, did not do so until September 6th⁴⁶⁹. According to the statement that was later made by the crew of the boat at the police station, once the officer got on board, he threatened the crew with a gun and forced them to take him to Victoria, a city in British Cameroon⁴⁷⁰. The rest of the officers confined in San Carlos also escaped in the same way, helped by the Territorial Administrator of the district. And from Cameroon, they traveled to Las Palmas to join the other rebels⁴⁷¹. According to the same report by Dampierre, it seems that the Territorial Administrator of the Ebebiyin district also fled to Cameroon from where he traveled to join the rebels as well.

The maintenance of colonial public order did not depend exclusively on political-military factors. It was also influenced by economic factors. The course of the conflict over time affected the communications between the metropolis and the colony, and the voyages of the ships connecting the two territories became increasingly irregular. Such a situation predicted a future shortage of consumer goods, giving rise to an economic situation that enabled some commercial companies, both Spanish and foreign, to speculate on the prices of much-needed products⁴⁷². To prevent such speculation, the Governor, by an ordinance approved on August 15th, 1936 (BOC of

⁴⁶⁸ *Idem*

⁴⁶⁹ *Idem*

⁴⁷⁰ *Idem*

⁴⁷¹ *Idem*

⁴⁷² M. ÁNGEL POZANCO, *Cit.*, p. 115

August 15th, 1936)⁴⁷³, provided for the creation of a Committee of Subsistence (Junta de Subsistencia), a body whose main functions, according to the same provision, were: to ration the workers available among the colonial farmers; to control and regulate the prices of products; and to propose any other measures deemed "appropriate" for the maintenance of the stability of colonial economic activity during the course of the war. The president of the aforementioned Subsistence Committee was the General Secretary of the Colonial Government. Other members of the Committee included: the president of the Official Agricultural Chamber of Commerce and Industry; the president of the Council of Neighbors of Santa Isabel; the Colonial Curator; the Director of Colonial Health Service; and the Chief Administrator of the Treasury and Customs. In addition, the Assistant to the Navy acted as secretary of the Committee.

In mainland Guinea, there was another Subsistence Committee composed of the following members: Villalobos (president), Serra Companys, Rafael Iranzo, and Jose Lozano Alonso⁴⁷⁴.

A month after the adoption of the above-mentioned ordinance, and as a complement to it, the GG adopted another ordinance on September 14th (BOC 15/09/1936)⁴⁷⁵. This provision was based on the identification of goods that were to be considered basic necessities. This category excluded goods such as chocolates, olives, variants, desserts, spices, bottled water, branded wines, liqueurs, aperitifs, soft drinks, etc. (Article 3). Within 48 hours, they were required to inform the Committee not only of the quantities of rice and fish ordered from the metropolis (Art. 6) but also of the products that arrived at their warehouses (Art. 2). Every Saturday, they were required to send the Committee an inventory of the products sold during the week, indicating the balance of stock (Art. 1). The ordinance established that, per week, it could not be sold to the same buyer, whether an individual person or a society, quantities over one sack of rice, one bundle of fish and one can of palm oil. To make sales above these limits, or to raise the price of the products, a reasoned request had to be addressed to the Subsistence Board (Arts. 4 and 5). The omission of this request, or the falsification of inventories or

⁴⁷³ Ordinance approved by the General Governor on August 15th, 1936, in A. MIRANDA JUNCO, *Cit.*, p. 1010

⁴⁷⁴ M. ÁNGEL POZANCO, *Cit.*, p. 115

⁴⁷⁵ See the Ordinance approved by the GG on September 14th, 1936, in A. MIRANDA JUNCO, *Cit.*, p. 2020.

other communications imposed by the provision, was to be punished by a fine of 10,000 pesetas and the seizure of the goods (Art. 3).

As the highest representative of the unity of colonial policy, Luis Sánchez Guerra did not fail to call for peace among all the colonists, making them aware of the common danger that the divisions manifested among the colonists would represent⁴⁷⁶. But, as a republican, he always remained willing to support the legitimate regime to overcome that crisis faced in the metropolis. Thus, the Governor, appealing to his humanist and solidarity sentiment, invited the residents of the colony –officials, individuals, Spaniards, natives, or foreigners– to subscribe economic contributions to support the republican army⁴⁷⁷. In early September, the ship *Ciudad de Ibiza* arrived at the colony bringing correspondence, medicine and food products. On its return to the metropolis, in addition to the sums collected from subscriptions opened both in the island and in mainland Guinea, several fruits and tropical products were sent to support the national army⁴⁷⁸.

III. From September 19th to October 14th, 1936: the fall of the Republic in the Republic in the STGG

⁴⁷⁶ «El Excmo. Sr. Gobernador General, ante las circunstancias tristes por las que atraviesa nuestra Patria, ha dirigido unas palabras llenas de actualidad, encaminadas a recomendar a todos el sentimiento práctico de la paz, tanto más que apreciar aquí, en un país netamente colonial y donde toda la manifestación que tienda a alterarla sobre ser estéril, sería perjudicial para todos». See *LA GUINEA ESPAÑOLA*, nº 941 of 23/08/1936, p. 270

⁴⁷⁷ «Suplicado. Por iniciativa de varios funcionarios públicos que han acordado ceder un día de sus haberes totales para la suscripción abierta por el Gobierno de Madrid, para la Junta Nacional de Socorros, se advierte a cuantos funcionarios y particulares deseen engrosar dicha suscripción, que en la Secretaría General del Gobierno, se recibirán las cantidades que se aporten hasta el día antes de la salida para la Península del primer correo. [penultimate paragraph] Santa Isabel, 1º de septiembre de 1936. [Pie del escrito] EL GOBERNADOR GENERAL». See *LA GUINEA ESPAÑOLA*, nº 938 of 06/09/1936, p. 286

«Suplicado. Abierta por el Gobierno de la República una suscripción encaminada al socorro de las víctimas de la tragedia que se está desarrollando en la Península, este Gobierno General es para de todos los que, lejos de ella, sienten angustia en su corazón de españoles, que acudan a engrosarla prescindiendo de toda clase de sentimientos que no sean los humanitarios que se invocan; extendiéndose el llamamiento a los extranjeros residentes en la Colonia que desarrollan en ella su industria o su comercio y que sienten exaltados sus anhelos de fraternidad internacional [another paragraph] Las aportaciones a la suscripción se reciben en la Secretaría General del Gobierno. [*Idem*] Santa Isabel, 5 de septiembre de 1936 [Footnote] EL GOBERNADOR GENERAL». See *LA GUINEA ESPAÑOLA*, nº 939 of 13/09/1936, p. 294.

⁴⁷⁸ M. ÁNGEL POZANCO, *Cit.*, p. 114

The conflict broke out in Spanish Guinea with a two-month delay: from July 17th to September 19th, 1936. Such a delay, more than a fleeting achievement of the efforts deployed by the Governor to maintain pacifism or racial unity in the colony, must be understood as a lapse of observation and maturation of ideological-partisan sympathies. The fact that, before September 18th, the colonial religious referred to the rebellious as rebels («rebeldes»), factious («facciosos»), or enemies («enemigos»)⁴⁷⁹, could never signify or be confused with a tenuous "republicanization" of the colonial religious class. Like its counterpart in the metropolis, and despite the fact that the Republic was flexible with its colonial privileges⁴⁸⁰, it never stopped dreaming of the restoration of that monarchy that had made it the maximum guarantor of the catholicization and moralization of the natives of Guinea⁴⁸¹. As such, the rebellion of July 17th, as an uprising against a regime which the religious always defined as corrupting Catholic values, could only signify joy and hope for the colonial religious class. But even if they sympathized with the rebellion from the beginning, it was not prudent to reveal these sympathies early on. After all, it was an incipient movement whose final outcome was still marked by uncertainty, and any rapid crushing by the Republic would have led to some retaliation against the rebel sympathizers in the colony. That is precisely why the religious, before September 19th, that is, before the conquest of the island of Fernando Póo by the rebels, held a protocolary speech in defense of the legitimate regime. The Claretian magazine *La Guinea Española* reveals precisely this shift in the discourse of the colonial clerics since September 19th. Before such date, the magazine speaks of "our troops" («nuestras tropas»)⁴⁸² to refer to the republican army. After September 19th, those who were defined as the "enemies", the rebels, came to be hailed with all kinds of titles: heroes, Spain's saviors («Salvadores de España»)⁴⁸³, savior army («Ejército Salvador»)⁴⁸⁴, savior movement («Movimiento

⁴⁷⁹ *LA GUINEA ESPAÑOLA*, n° 938 of 06/09/1936, pp. 286-287

⁴⁸⁰ D. NDONGO BIDDYOGO, *Historia y tragedia de Guinea Ecuatorial (2nd revised and expanded edition)...*, *Cit.*, p. 70-72

⁴⁸¹ G. ÁLVAREZ CHILLIDA, *Misión Católica y poder colonial...*, *Cit.*, p. 181

⁴⁸² *LA GUINEA ESPAÑOLA*, n° 938 of 06/09/1936, pp. 286-287

⁴⁸³ *LA GUINEA ESPAÑOLA*, n° 941 of 27/09/1936, p. 301-302; *LA GUINEA ESPAÑOLA*, n° 943 of 11/10/1936, p. 318; *LA GUINEA ESPAÑOLA*, n° 944 of 18/10/1936, p. 321; *LA GUINEA ESPAÑOLA*, n° 949 of 22/11/1936, p. 366; etc.

⁴⁸⁴ *Idem*

Salvador»⁴⁸⁵, nationalist troops («tropas nacionalistas»)⁴⁸⁶, etc. For their part, those who were formerly "our troops," the Republican soldiers, were renamed as "the reds" («los rojos») or "the Marxists" («los marxistas»)⁴⁸⁷.

On September 18th, 1936, according to Pozanco⁴⁸⁸, the Subgovernor of Bata, Mr. Porcel, received two radiograms separated by only a half-hour interval. In the first one, Sánchez Guerra informed him that he had submitted his resignation as General Governor of the colony, and this had been accepted by Madrid⁴⁸⁹. In the second radiogram, he urged Porcel to hand over the command to Don Emilio García Loygorri, the Territorial Administrator of Bata⁴⁹⁰. Porcel's refusal to comply with the second radiogram⁴⁹¹ originated a third radiogram from Santa Isabel in which he was reminded of the urgency with which he had to leave the command of the Subgovernment under pain of being attacked by individuals on board of the ship Fernando Póo whose arrival in Bata was imminent⁴⁹².

Porcel's resistance to handing over his command was not unfounded in a context marked by great uncertainty and incommunication as was the case in the colony at that time. Porcel went to Douala, a city in French Cameroon. From there he contacted the Colonies General Inspection (Inspección General de Colonias), thus avoiding that his message be intercepted by Fernando Póo's authorities⁴⁹³. The General Inspection of

⁴⁸⁵ *Idem*

⁴⁸⁶ *Idem*

⁴⁸⁷ *LA GUINEA ESPAÑOLA*, n° 938, *Cit.*, p. 287

⁴⁸⁸ M. ÁNGEL POZANCO, *Cit.*, pp. 84, 162-163;

⁴⁸⁹ «Admitídome dimisión y llamado urgentemente redacción presupuesto partiré Península. Designado gobernador Lluesma llegara próximo correo». M. ÁNGEL POZANCO, *Cit.*, p. 119

⁴⁹⁰ «Admitida dimisión todos los cargos políticos designado desempeñar interinamente gobierno general procede entregue mando administrador territorial Bata Loygorri haciéndolo conocer capitán Guardia Colonial que inmediatamente declarara estado de guerra». M. ÁNGEL POZANCO, *Cit.*, p. 119

⁴⁹¹ «Por lealtad a la República y a vucencia imposible entregar mando autoridades indícame cuyos antecedentes sospechosos conoce vucencia. A pesar destitución que me anuncia propóngole continuar interinamente mando Guinea continental hasta la llegada de Lluesma». *Ibidem*, p. 120

⁴⁹² «Entregue mando a quien le parezca, pero urge lo haga inmediatamente declarando estado guerra. Tripulación Fernando Poo armada y exaltada pretende asesinaros autoridades políticas lisa y llamante». *Idem*

⁴⁹³ *Ibidem*, pp. 123, 126

Colonies not only kept Porcel in his governmental position, but further praised his cautious action in the face of uncertainty about the veracity of all those radiograms⁴⁹⁴.

Indeed, as Porcel's confirmed suspicions pointed out, the islanders had joined the Burgos regime. In the early morning of September 19th⁴⁹⁵, a group of rebels, under the command of the Chief of the Guardia Colonial, Luis Serrano, and the Territorial Administrator, Luis Ayuso, carried out a military coup, removing Luis Sánchez Guerra as Governor, and temporarily appointing a medical landowner based in the colony⁴⁹⁶. According to Pozanco –and later Togores Sánchez⁴⁹⁷– this would be the same Estanislao Lluesma y García⁴⁹⁸, who was also named as such in the radiograms mentioned above. On the morning of the 19th, through the manager of a Portuguese trading house, an encrypted radio was sent to Lisbon, and from there to the Peninsula⁴⁹⁹. A certain Mr. Farina took the message to Burgos, from where Luis Serrano was ordered to take immediate charge of the colonial government⁵⁰⁰.

As soon as he was erected as the colonial head, Serrano set out to work. At about 9 a.m. on the same day, the two-color flag was raised as the maximum expression of the triumph of the rebels over the colonial capital. First it was in the City Hall, that is, in the building of the Santa Isabel Neighborhood Council; then it was in the Palace of the General Government⁵⁰¹. Serrano dictated a command extending to the colonials the state of war⁵⁰² already previously declared by the regime of Burgos by virtue of a command of July 28th, 1936, dictated by Miguel Cabanellas, president of the National Defence

⁴⁹⁴ *Idem*

⁴⁹⁵ *LA GUINEA ESPAÑOLA*, nº 941, *Cit.*, p. 301; D. NDONGO BIDYOGO, *Historia y tragedia de Guinea Ecuatorial (2nd revised and expanded edition)...*, *Cit.*, p. 70; L. E. TOGORES SÁNCHEZ, *Cit.*, pp. 49-50; M. BURGOS MADROÑERO, *Cit.*, pp. 89- 98; J. L. VILA- SAN JUAN, *Cit.*, p. 175-188;

⁴⁹⁶ D. NDONGO BIDYOGO, *Historia y tragedia de Guinea Ecuatorial (2nd revised and expanded edition)...*, *Cit.*, p. 70; J. L. VILA- SAN JUAN, *Cit.*, p. 175-188

⁴⁹⁷ L. E. TOGORES SÁNCHEZ, *Cit.*, pp. 50

⁴⁹⁸ M. ÁNGEL POZANCO, *Cit.*, p. 119

⁴⁹⁹ J. L. VILA- SAN JUAN, *Cit.*, pp.175-188; J. C. DÍAZ LORENZO, *Cit.*

⁵⁰⁰ *Idem*

⁵⁰¹ M. BURGOS MADROÑERO, *Cit.*, p. 98; *LA GUINEA ESPAÑOLA*, nº 941, *Cit.*, p. 301

⁵⁰² AGA G-1930 (81/8199), file nº 3, a document entitled “Expedición militar a Guinea”; *LA GUINEA ESPAÑOLA*, nº 941, *Cit.*, p. 301; *LA GUINEA ESPAÑOLA*, nº948, *Cit.*, p. 358; D. NDONGO BIDYOGO, *Historia y tragedia de Guinea Ecuatorial (2nd revised and expanded edition), Cit.*, p. 70

Board («Junta de Defensa Nacional»)⁵⁰³. He then ordered a search of their homes and the arrest of all the members and supporters of the Frente Popular⁵⁰⁴. This operation was carried out without resistance from the suspects, although there was a shot that resulted in a wound in the leg of one of the arrested⁵⁰⁵. In his report of September 23th, 1936, Ramírez Dampierre speaks of a total of forty arrested⁵⁰⁶. These included the Portuguese diplomat, in addition to three Portuguese, half a dozen officials of the General Secretariat of the Government, four officials of the Finance Administration, three of the Post Office, two blacks natives, the harbor master, and several private individuals⁵⁰⁷.

Ensuring the conquest of the island did not depend only on cleaning the streets of the Frente Popular supporters. In addition to placing men of trust in certain colonial institutions, it also depended on responding to the demands of key colonial bodies such as the Cámara Agrícola of Fernando Póo, an organization whose members⁵⁰⁸ had always distinguished themselves as faithful defenders of the monarchical regime. Serrano appointed Don Rafael Mur as the new Territorial Administrator of San Carlos⁵⁰⁹, and José González Ramos as the new Captain of the port of Santa Isabel⁵¹⁰. And to the

⁵⁰³ The National Defence Board had its equivalent in the colony, known as the Junta de Defensa Colonial Nacionalista. The members of this colonial organ were: Luis Serrano (Gobernador General), Carlos Vázquez (Secretario General.), Luis Ayuso Sánchez (Administrador. Territorial de Santa Isabel, Delegado del orden público y Jefe de la Movilización Civil), Enrique Pueyo (Capitán de la Guardia Colonial), Joaquín Gamir (Jefe de la Agrupación Nacionalista). *LA GUINEA ESPAÑOLA*, n° 941, *Cit.*, p. 302

⁵⁰⁴ D. NDONGO BIDYOGO, *Historia y tragedia de Guinea Ecuatorial (2nd revised and expanded edition)*..., *Cit.*, p. 70; *LA GUINEA ESPAÑOLA*, n° 941, *Cit.*, p. 301

⁵⁰⁵ M. BURGOS MADROÑERO, *Cit.*, p. 97-98; J. L. VILA-SAN JUAN, *Cit.*, pp. 175-188; L. E. TOGORES SÁNCHEZ, *Cit.*, pp. 50-51

⁵⁰⁶ M. BURGOS MADROÑERO, *Cit.*, pp. 98-9

⁵⁰⁷ *Idem*

⁵⁰⁸ When the rebellion broke out in the colony, the Executive Board of the Cámara Agrícola was composed of the following members: Potau y Doménech (President), Alfonso Casajuana (First Vice-president), Antonia Lolorens (2nd Vice-president), Caifer S.A., (Treasurer), Suárez Hermanos (Accountant), Compañía Colonial de África (Secretary), Joaquín Mallo (Vocal), y Pérez e Hijo (Vocal). The plenary of the body was composed of: Pedro García Amilivia, Pérez y C^{ía}. Limitada, Izaguirre y C^{ía}. Limitada, José Bros, Calvo Hermanos, Eladio Dahoz, Puig Mayol, Banco Exterior de España, José Walter Dougan (a *fernandino*), Wilwardo Jones (a *fernandino*), Jorge Da Costa Cravid (Portuguese), W.A. Moritz (a German comercial house), Jhon Holt Limitada. See *LA GUINEA ESPAÑOLA*, n° 941, *Cit.*, pp. 301-302

⁵⁰⁹ *Ibidem*, p. 301

⁵¹⁰ *Ibidem*, p. 302

satisfaction of the Cámara Agrícola, he re-established its Statute of 1928, a norm so highly praised not only by the great farmers of the colony, but also by the Claretians⁵¹¹.

Throughout the course of the war in colonial Guinea, if anyone always foresaw the uprising of the islanders, it was precisely the Subgovernor of Bata, Mr. Porcel. When the news of the uprising was known in the colony, the convinced republican, always distrusting the loyalty of the colonial officers towards the Republic, advised Sánchez Guerra to replace them all⁵¹². Unfortunately, the Governor trusted the loyalty of the officers⁵¹³, and Porcel had to try to maintain order in mainland Guinea by taking whatever measures his limited powers allowed him. In addition to the state of alarm already declared by the GG, Porcel banned meetings, prohibited the use of radio-telephone devices, and put the republicans in the continent on alert, organizing there a branch of the Frente Popular⁵¹⁴. It can be seen, then, that the uprising of the islanders on September 19th, more than a surprise for the Subgovernor of Bata, was a corroboration of what had always been his suspicions regarding the upper class of the colonial military.

As soon as it was known in Bata that the island had been taken over by the rebellion's sympathizers, Porcel met with prominent members of the mainland branch of the Frente Popular such as Alejandro Torres Garcia (leader of the FP branch in Bata), Rafael Iranzo, Isidro Alvarez Martinez, Emilio Fontannet Monfort (Instructor of the Guardia Colonial), and Migue Angel Pozanco, secretary to the Subgovernor. If there was one thing that was beyond doubt in that small crisis committee, it was the loyalty of these subjects to the legitimate regime. They decided the destitution of all the officers - suspects-, and Porcel declared the state of war in mainland Guinea⁵¹⁵. He also reinforced all the other preventive measures already taken since the outbreak of the conflict.

⁵¹¹ *Ibidem*, p. 301

⁵¹² M. ÁNGEL. POZANCO, *Cit.*, p. 104-105

⁵¹³ *Idem*

⁵¹⁴ *Idem*

⁵¹⁵ *LA GUINEA ESPAÑOLA*, nº 948, *Cit.*, p. 358

Porcel's resolve to arrest the religious and other "blue" sympathizers must be situated after some events that occurred between September 22th and 23th, 1936. A group of island rebels that disembarked in Kogo, probably on September 22th, after easily taking the city, went to the neighbouring city of Rio Benito, which they also took easily, thanks to the collaboration of García Loygorri (Territorial Administrator of Bata) and Pedro Fuster (Forestry Engineer)⁵¹⁶. In these operations, some republicans were taken hostage⁵¹⁷. Raimundo del Pozo and some other republicans managed to flee into the forest⁵¹⁸. For his part, the Subgovernor of Bata, aware of these events, ordered the arrest of all the Territorial Administrators and others suspected of supporting the right-wing⁵¹⁹. Pozanco speaks of a total of 23 arrested, including Captain Morales Fernández, head of the Guardia Colonial in Bata, and Lieutenant Pichel⁵²⁰.

On September 23th, the rebels and the Republic supporters in Bata went out to meet each other⁵²¹. The rebels left Rio Benito for Bata; the republicans took the same route but in the opposite direction. Both armies, according to Ndongo Bidyogo, met at Comandachina, near the Ekuku River⁵²². The confrontation resulted in the death of two native colonial guards, one on each side⁵²³. The two sides, after the surrender of the rebels, and as a chivalrous act, proceeded to exchange prisoners⁵²⁴. The rebels had taken 12 hostages, while the republicans had 23. After the exchange, the republicans allowed

⁵¹⁶ M. ÁNGEL. POZANCO, *Cit.*, p. 129; AGA G-1901 (81/8170), file nº 1-1, a writing of 16/01/1937. In this document, the General Governor informed the DGMC about the names of some of those who supported the rebellion in mainland Guinea.

⁵¹⁷ Some of the Republicans who were taken as prisoners were: Esteban Cruz, Luis Martínez, Gil, Vicente Gómez, Carlos Padrón, Laureano Rodríguez, entre otros. M. ÁNGEL. POZANCO, *Cit.*, p. 129

⁵¹⁸ *Idem*

⁵¹⁹ *LA GUINEA ESPAÑOLA*, nº 948, *Cit.*, p. 358

⁵²⁰ M. ÁNGEL. POZANCO, *Cit.*, p. 129

⁵²¹ *LA GUINEA ESPAÑOLA*, nº 948, *Cit.*, p. 358; D. NDONGO BIDYOGO, *Historia y tragedia de Guinea Ecuatorial (2nd revised and expanded edition)...*, *Cit.*, p. 71; M. BURGOS MADROÑERO, *Cit.*, p. 89; M. ÁNGEL. POZANCO, *Cit.*, p. 139

⁵²² D. NDONGO BIDYOGO, *Historia y tragedia de Guinea Ecuatorial (2nd revised and expanded edition)...*, *Cit.*, p. 71-72; M. ÁNGEL. POZANCO, *Cit.*, p. 129

⁵²³ D. NDONGO BIDYOGO, *Historia y tragedia de Guinea Ecuatorial (2nd revised and expanded edition)...*, *Cit.*, p. 72; J. C. DÍAZ LORENZO, *Cit.*; M. ÁNGEL. POZANCO, *Cit.*, p. 129; L. E. TOGORES SÁNCHEZ, *Cit.*, pp. 50-51; G. NERÍN, *Cit.*, pp. 234-240

⁵²⁴ D. NDONGO BIDYOGO, *Historia y tragedia de Guinea Ecuatorial (2nd revised and expanded edition)...*, *Cit.*, p.72; *LA GUINEA ESPAÑOLA*, nº 948, *Cit.*, p. 358

the rebels to leave Rio Benito for Gabon and Cameroon, from where they moved to Fernando Póo⁵²⁵. According to Togores Sánchez, a German ship called Wakama and a Swedish ship called Aodrin took the rebels to the neighbouring French colonies⁵²⁶.

The rebels' interest in controlling mainland Guinea had an eminently economic component. It is well known that neither the geographical situation of the colony nor its scarce population (native or white) could carry any kind of strategic interest. The war cost both sides money⁵²⁷, and the occupation of the colony could mean some kind of relief in this sense. According to an analysis carried out by the rebels on September 23th, 1936, it was necessary to occupy not only Fernando Póo, but also mainland Guinea. With the control of both territories, the Burgos regime estimated that some 70 million pesetas would be secured annually for their cause⁵²⁸, a figure that included, in addition to the 5 million pesetas estimated to be in the local Branch of the Banco Exterior de España, the 24 million pesetas annually derived from the sale of cocoa, the 6.5 million pesetas derived from coffee, and the 30 million pesetas annually derived from the sale to the Germans of the wood of the Okume in mainland Guinea⁵²⁹. Thus, the failure of the first attempt of the rebels to take mainland Guinea, more than an abandonment of their claims, meant only a pause to prepare for the next attempt⁵³⁰. For their part, the republicans in Bata, rather than attempting a counterattack or a reconquest of Fernando Póo, focused their efforts on strengthening their capacity to repel the next conquest attempts by the islanders.

The *Fernando Póo*, a ship under the control of the Republic, was scheduled to arrive at the colony on September 30th. The Subgovernor of Bata sent a three-person commission⁵³¹ to Cameroon so it could establish contact with the ship in order to

⁵²⁵ J. C. DÍAZ LORENZO, *Cit.*, J. L. VILA-SAN JUAN, *Cit.*, pp. 175-188; L. E. TOGORES SÁNCHEZ, *Cit.*, pp. 50-51

⁵²⁶ L. E. TOGORES SÁNCHEZ, *Cit.*, pp. 50-51

⁵²⁷ According to *La Guinea Española*, the war cost 20 million of pesetas daily. See *LA GUINEA ESPAÑOLA*, nº 953 of 20/12/1936, p. 395

⁵²⁸ L. E. TOGORES SÁNCHEZ, *Cit.*, pp. 51-52

⁵²⁹ *Idem*

⁵³⁰ *LA GUINEA ESPAÑOLA*, nº 954 of 19/12/1936, p. 408

⁵³¹ The three commissioners were: Miguel Ángel Pozanco, Francisco Padrón Melián y Manuel Julián Guinot. M. ÁNGEL POZANCO, *Cit.*, p. 140

prevent it from falling into the hands of the islanders⁵³². Meanwhile, a rumour was circulating on the island: it was believed that 300 armed communists would arrive on board of the ship to support the colonial republicans⁵³³. So the islanders devised a plan to take over the ship. On September 30th, when the arrival of the ship due on that same day was imminent, they telegraphed the ship warning that the mainlanders were the rebels⁵³⁴. In view of the uncertainty generated by the contradiction between the telegrams coming from both colonial territories, the ship contacted Madrid, which confirmed that the islanders were the rebels. Consequently, the ship finally headed for mainland Guinea, arriving in Bata on the 30th. But, to the disgrace of the republicans, the ship brought on board only six rifles and a handgun, which was the normal armament of a ship of this type⁵³⁵. Porcel, refusing to give up, sent another commission⁵³⁶ to Cameroon in order to obtain arms assistance which, unfortunately, would not be provided.

Faced with the difficulty of obtaining reinforcements from the metropolis, or weapons from the authorities of the neighbouring French colonies, the Subgovernor of Bata could not afford any surprises within his jurisdiction. As a result, he tightened control. The month of October saw new waves of arrests of suspects, including mainly religious people. Between October 3rd and 5th, the religious were brought to Bata from different parts of the mainland (Río Benito, Nkué, and Evinayong)⁵³⁷. According to La

⁵³² The telegram sent by Porcel to the commission read: «Capitán Comité Republica vapor español Fernando Poo. Os comunica Pozanco secretario del subgobierno Bata para manifestaros orden Subgobernador Porcel que isla Fernando Poo declarose facciosa bajo mando teniente coronel Serrano. Ayer 23 barco pequeño desembarcación tomando Kogo Rio Benito, incautándose estación radio Bolondo aprisionando telegrafistas varios más, intentando dirigirse Bata, conteniéndoles tres kilómetros Bolondo. Advertidos nosotros movimiento anteriormente, declaróse estado guerra, cese capitán, tenientes, Guardia Colonia. Precisamos urgente auxilio vuestro, diríjense toda máquina Bata». See M. ÁNGEL POZANCO, *Cit.*, p. 143; D. NDONGO BIDYOGO, *Historia y tragedia de Guinea Ecuatorial (2ª revisada y ampliada)*..., *Cit.*, p. 71

⁵³³ M. BURGOS MADROÑERO, *Cit.*, pp. 95-96

⁵³⁴ D. NDONGO BIDYOGO *Historia y tragedia de Guinea Ecuatorial (2nd revised and expanded edition)*..., *Cit.*, pp. 70-73; J. L. VILA- SAN JUAN, *Cit.*, pp. 175-188; J. C. DÍAZ LORENZO, *Cit.*

⁵³⁵ M. ÁNGEL POZANCO, *Cit.*, p. 147; J. L. VILA- SAN JUAN, *Cit.*, pp. 175-188

⁵³⁶ The members of that new commission were: Miguel Ángel Pozanco, Manuel Julián Guinot, Francisco Melián and José Pinilla Calvete. *Ibidem*, p. 148-152

⁵³⁷ Between October 1st and 3rd, 1936, the Republicans Generoso Rey, Sánchez, López Cano, and Jiménez arrested the missionaries from Bata, Nkué and Evinayong. Thoses from Río Benito were arrested on

Guinea Española, a total of 17 religious were arrested: 13 priests and 4 fellow missionaries⁵³⁸. On the 6th, they were locked up in the ALENA⁵³⁹ Commercial House; but on October 13th, along with two employees of the Abascal Commercial House⁵⁴⁰, they were locked up in the *Fernando Póo* ship which was in the Bay of Bata⁵⁴¹. According to La Guinea Española, in addition to the arrest of the religious, the buildings of the Catholic Mission in Bata were occupied⁵⁴², and the church of Bata was closed⁵⁴³. Faced with all these measures, many rebellion supporters in Bata –wood exporters, farmers and industrialists– fled to the neighbouring French colonies (Gabon and Cameroon), from where they moved to the rebel side, to the island⁵⁴⁴. The farms and other businesses abandoned by all these blue sympathizers were later managed by an Economic Control Committee, created for that purpose⁵⁴⁵.

As mentioned earlier, on the island, the efforts of the rebels, in addition to arresting the republicans as the latter were doing with the rebels in Bata⁵⁴⁶, concentrated on devising a new plan to take mainland Guinea. For this second attempt, the islanders counted on reinforcements from the metropolis. On October 4th, from Las Palmas, on board of the ship *Ciudad de Mahón*⁵⁴⁷, in addition to the crew, "hundreds of well armed men" departed for such a mission⁵⁴⁸. The preference for the indeterminate expression

October 5th, 1936. See *LA GUINEA ESPAÑOLA*, n° 952, 13/12/1936, p. 390; *LA GUINEA ESPAÑOLA*, n° 948, *Cit.*, p. 358

⁵³⁸ *LA GUINEA ESPAÑOLA*, n° 948, *Cit.*, p. 358. *LA GUINEA ESPAÑOLA*, n° 944 of 25/10/1936, pp. 332

⁵³⁹ *LA GUINEA ESPAÑOLA*, n° 948, *Cit.*, p. 358; *LA GUINEA ESPAÑOLA*, n° 944, *Cit.*, p. 332; *LA GUINEA ESPAÑOLA*, n° 946 of 01/11/1936, pp. 332

⁵⁴⁰ *LA GUINEA ESPAÑOLA*, n° 954 of 27/12/1936, p. 406

⁵⁴¹ *LA GUINEA ESPAÑOLA*, n° 953 of 20/12/1936, p. 395; *LA GUINEA ESPAÑOLA*, n° 948, *Cit.*, p. 358; M. ÁNGEL POZANCO, *Cit.*, p. 158

⁵⁴² *LA GUINEA ESPAÑOLA*, n° 948, *Cit.*, p. 358

⁵⁴³ *Idem*

⁵⁴⁴ *LA GUINEA ESPAÑOLA*, n° 954, *Cit.*, p. 407-408; D. NDONGO BIDYOGO, *Historia y tragedia de Guinea Ecuatorial (2nd revised and expanded edition)...*, *Cit.*, p. 72; J. L. VILA- SAN JUAN, *Cit.*, pp. 175-188; B. WHARTON, *Cit.*

⁵⁴⁵ M. ÁNGEL POZANCO, *Cit.*, p. 131

⁵⁴⁶ *Ibidem*, p. 134

⁵⁴⁷ The *Ciudad de Mahón* was a ship of the Spanish Marine. When the Civil War broke out, the ship was in Las Palmas. So, from the beginning of the conflict, the ship was under the control of the rebels. See M. BURGOS MADROÑERO, *Cit.*, p. 89; J. C. DÍAZ LORENZO, *Cit.*; M. VALVERDE ESPÍN, *Cit.*

⁵⁴⁸ *Idem*

"hundreds of men", rather than generate uncertainty in the reader, should be understood here as an attempt to objectify a historical fact that divides the opinion of scholars. According to Ramirez Dampierre, the Ciudad de Mahón had 700 men on board, including 300 Moors⁵⁴⁹. La Guinea Española agrees with the Portuguese diplomat on the total number of men, but does not specify the origin of the men⁵⁵⁰. Togores Sánchez also agrees with this total⁵⁵¹. However, according to Burgos Madroñero, there were 500 men on board of the ship⁵⁵². According to Pozanco, the Ciudad Mahón expedition was composed by 450 Moors, 300 Falangist militiamen from the Canary Islands, and perhaps a hundred "colonial fascists". The fascists, logically, would have embarked from Santa Isabel⁵⁵³. Vila-San Juan speaks of 200 volunteers without specifying their origin⁵⁵⁴. Juan Lorenzo, for his part, speaks of 488 men, among whom he admits that there were shooters from Ifni, but without specifying how many⁵⁵⁵. Donato Ndongo seems to be more cautious, and he speaks of a Moorish expedition, but without specifying figures. Regardless of the exact number of the expedition members, scholars do agree that there were hundreds of men, and that the expedition was commanded by Spanish officers⁵⁵⁶. They also agree that during the journey from Las Palmas to Spanish Guinea, the rebels tried to disguise the identification of the ship, changing its colour⁵⁵⁷ and converting the name of *Ciudad de Mahón* into *Ciudad de Macao*⁵⁵⁸.

⁵⁴⁹ M. BURGOS MADROÑERO, *Cit.*, p. 101-103

⁵⁵⁰ *LA GUINEA ESPAÑOLA*, n° 943, *Cit.*, p. 321

⁵⁵¹ L. E. TOGORES SÁNCHEZ, *Cit.*, p. 52

⁵⁵² M. BURGOS MADROÑERO, *Cit.*, p. 89-90

⁵⁵³ M. ÁNGEL POZANCO, *Cit.*, pp. 166-167

⁵⁵⁴ J. L. VILA-SAN JUAN, *Cit.*, pp. 175-188

⁵⁵⁵ J. C. DÍAZ LORENZO, *Cit.*

⁵⁵⁶ Some names of the *Ciudad de Mahón* expedition were: Fernando Belén (lieutenant of the ship under whose command the expedition was sent); Edmundo Hernández Medina y Juan Fontán Lobe (infantry captains); Diego Alcalá, Gabriel Moreno Ruiz y Evaristo Cabrera Martín (lieutenants; Jaime León Verdeta, Carlos de la Peña Díaz, Juan Guerra del Río y Luis Machado Martín (second lieutenants); Cárdenas López (medical lieutenant); José González García, lieutenant in command of an artillery detachment made up of 2 non-commissioned officers, 6 corporals and 43 gunners. Regarding those names, see J. C. DÍAZ LORENZO, *Cit.*

⁵⁵⁷ M. ÁNGEL POZANCO, *Cit.*, p. 161

⁵⁵⁸ J. C. DÍAZ LORENZO, *Cit.*; M. VALVERDE ESPÍN, *Cit.*

On the same day that the *Ciudad de Mahón* departed from Las Palmas, on October 4th, the German consul in the colony arrived in Bata to apologize and intercede for the safety of his compatriots who had fled to Santa Isabel and wished to return to Bata to continue their business, but needed guarantees of safety⁵⁵⁹. The acceptance of the diplomat's apology by the authorities in Bata, although somewhat imprudent, was not illogical. Porcel could be aware that the Germans were supporting the rebels; but the suspension of communications between the metropolis and the colony, and the lack of livelihoods that would result from the prolongation of such a state of affairs, could have led the Subgovernor to believe in the sincerity of the German diplomat's apology. After all, the revival of economic activity by the German settlers during the national conflict could bring some relief in terms of food imports.

On October 14th, 1936⁵⁶⁰, at 8 a.m. according to *La Guinea Española*⁵⁶¹, the *Ciudad de Mahón* was approaching the bay of Bata where the *Fernando Póo* was anchored and converted into a prison for the religious and other supporters of the rebels. Due to the disguise under which the ship was presented, the republicans believed that it would be the ship that was bringing back the German colonists. Instead, it was the beginning of the end of the resistance of the republicans in mainland Guinea. As soon as the *Ciudad de Mahón* approached the *Fernando Póo*, it fired two cannon shots against it, causing significant damage that would later lead to her sinking⁵⁶². Faced with such bombardments, and with the landing of the well-armed rebels, the republicans, having insufficient weapons to face the rebels, had no choice but to flee to the neighbouring French colonies, Gabon and Cameroon⁵⁶³. According to Pozanco, nearly 90% of the white population in Bata fled to French Cameroon⁵⁶⁴, and the rebels occupied the city.

⁵⁵⁹ *Ibidem*, p. 159

⁵⁶⁰ *LA GUINEA ESPAÑOLA*, n° 944, 25/10/1936, p. 335; *LA GUINEA ESPAÑOLA*, n° 948, *Cit.*, p. 358; *LA GUINEA ESPAÑOLA*, n° 954, *Cit.* pp. 405-406; M. ÁNGEL POZANCO, *Cit.*, p. 162;

⁵⁶¹ *LA GUINEA ESPAÑOLA*, n° 948, *Cit.*, p. 358

⁵⁶² G. NERÍN, *Un guardia civil en la selva*, *Cit.*, p. 240

⁵⁶³ M. ÁNGEL POZANCO, *Cit.*, p. 163; D. NDONGO BIDYOGO, *Historia y tragedia de Guinea Ecuatorial (2nd revised and expanded edition)...*, *Cit.*, p. 70-72; M. BURGOS MADROÑERO, *Cit.*, p. 90; G. NERÍN, *Un guardia civil en la selva*, *Cit.*, p. 240; J. NÚÑEZ, *Cit.*

⁵⁶⁴ M. ÁNGEL POZANCO, *Cit.*, p. 163

During the escape, Luis Cruz, teller of the office of the Spanish Bank in Bata, took with him 700,000 pesetas⁵⁶⁵.

The conquest of mainland Guinea left the following numbers of dead and wounded. On the part of the rebels, the following can be enumerated: an employee of the Commercial House Guerrero, Pérez y Ortiz, three missionaries (Acacio Ferraz, Ángel Roig, Félix del Hoyo)⁵⁶⁶, and five sailors from the *Ciudad de Mahón* (Luis Rodríguez, Lorenzo Frías Cabrera, Juan M. Sánchez Martín, Santana Bautista, Antonio Suárez Navarro)⁵⁶⁷. These sailors died in the sinking of the *Fernando Póo* while trying to save the missionaries locked up in the ship. Also, on the part of the rebels, four missionaries and an employee of the *Casa Abascal*⁵⁶⁸ were injured during the bombing of the *Fernando Póo*. For their part, the republicans lost, among others: Alejandro Torres García, Caparrós, and some crew members of the *Fernando Póo* ship⁵⁶⁹.

On October 15th, 1936, after leaving a contingent of 200 expeditionaries in Bata⁵⁷⁰, the *Ciudad de Mahón* ship set sail for Santa Isabel, taking with it 50 prisoners⁵⁷¹, among whom were, according to Pozanco⁵⁷², Pasajes (captain of the *Fernando Póo* ship), Francisco Pérez (telegrapher of the same ship) and a certain Muñoz (first officer of the ship). The *Ciudad de Mahón* arrived at Santa Isabel the next day⁵⁷³, and the expedition members were received as "heroes" with great joy and ovations⁵⁷⁴. On October 19th, a mass was celebrated for the souls of the other fallen "heroes" in Bata⁵⁷⁵. The *Ciudad de Mahón* remained in Santa Isabel until its definitive

⁵⁶⁵ M. ÁNGEL POZANCO, *Cit.*, p. 162; M. BURGOS MADROÑERO, *Cit.*, p. 104; *LA GUINEA ESPAÑOLA*, n° 951, de 06/12/1936, p. 384

⁵⁶⁶ *LA GUINEA ESPAÑOLA*, n° 943, 18/10/1936, p. 321; *LA GUINEA ESPAÑOLA*, n° 944, 25/10/1936, p. 335

⁵⁶⁷ *LA GUINEA ESPAÑOLA*, n° 944, *Cit.*, p. 335; M. ÁNGEL POZANCO, *Cit.*, p. 165

⁵⁶⁸ *LA GUINEA ESPAÑOLA*, n° 948, *Cit.*, p. 358

⁵⁶⁹ According to Pozanco, Caparrós was assassinated on board of the *Ciudad de Mahón*, on its way back to Santa Isabel. See M. ÁNGEL POZANCO, *Cit.*, p. 165

⁵⁷⁰ M. BURGOS MADROÑERO, *Cit.*, p. 102; J. C. DÍAZ LORENZO, *Cit.*; *LA GUINEA ESPAÑOLA*, n° 944, *Cit.*, p. 335

⁵⁷¹ M. BURGOS MADROÑERO, *Cit.*, p. 103

⁵⁷² M. ÁNGEL POZANCO, *Cit.*, pp. 165-166

⁵⁷³ *LA GUINEA ESPAÑOLA*, n° 944, *Cit.*, p. 334

⁵⁷⁴ *Ibidem*, p. 335

⁵⁷⁵ *LA GUINEA ESPAÑOLA*, n° 944, *Cit.*, p. 335; M. BURGOS MADROÑERO, *Cit.*, p. 102

return to Canarias on January 23th, 1937. 500 men from the ship's expedition remained as a garrison in the colonial capital⁵⁷⁶.

IV. From the conquest of Bata to the first colonial statute approved by the Franco Regime in 1938

With the conquest of Bata, it can be said that Franco's regime took control of the entire colony. But it was not until August 27th, 1938⁵⁷⁷, when the new regime approved its first colonial statute, that substantial legal reforms could be discussed. With only three months of war, a belief in the definitive victory of the rebels was no more than dreamlike and illusory. It is precisely for that reason that the timid colonial reforms approved to the said date, rather than initiating a process of adaptation of colonial law to the principles of the new regime, constituted an emergency regime subject mainly to three purposes: to ensure the conquest of the STGG; to avoid a shortage of basic necessities in the colony while the conflict lasted; and to contribute, as little as possible, to the sustenance or victory of the savior movement of Spain (“Movimiento Salvador de España”), that is, the rebellion.

Regarding the first purpose, a process of ideological cleansing was set in motion in the colonial administration. All officials - whether arrested or on the run - who had supported the Republic⁵⁷⁸ were dismissed, and their properties, along with those of other republican businessmen in the colony, were seized⁵⁷⁹. Since October 20th, 1936, all officials, in order to avoid the general suspension of salaries, had to publicly declare their support for the rebellion, being necessary to swear not only not to have risen against the Movimiento salvador, but also to have supported it since its outbreak in the

⁵⁷⁶ *LA GUINEA ESPAÑOLA*, n° 944, *Cit.*, p. 335

⁵⁷⁷ Decree of August 27th, 1938 (BOC 01/10/1938) in A. MIRANDA JUNCO, *Cit.*, pp. 1139-1142

⁵⁷⁸ Ordinance of October 15th, 1936. *Ibidem.* p. 1026

⁵⁷⁹ See the ordinance of October 18th, 1936, the ordinance of April 5th, 1937 (BOC 15 /04/1937), and the ordinance of June 10th, 1937 (BOC 15/06/1937). *Ibidem*, pp. 1026, 1051-1052, 1063-1065

Idem

colony⁵⁸⁰. In the specific case of Bata, the focus of the last republican resistance, all officials were dismissed until the individual responsibilities of each of them were purged⁵⁸¹.

Along with the ideological purge in the administration, controls were adopted over the colonials' communications with the outside world. Under an ordinance of March 24th, 1937 (BOC 01/04/1937)⁵⁸², any holder of a radioreceptor device was required to make a declaration in the office of the Intervention of the Radiotelegraphic Service within 15 days. This service, in turn, had to send the declaration to the Police Headquarters, the Territorial Administration, or to the Guardia Colonial branch where the person concerned was domiciled⁵⁸³. The task of these institutions was to subject the person concerned to an ideological filter; they had to issue a report on the conduct and background of the person regarding the Movimiento salvador⁵⁸⁴. If the report was unfavourable, the radioreceptor device, logically, was seized and sealed. In the opposite case, the Radio Intervention Service, with the approval of the Governor, and only after the interested had paid a fee between 25 (in the case of devices installed at home) and 100 pesetas (in the case of devices installed in public establishments), had to issue the corresponding license, which was renewable in January of each year⁵⁸⁵. Logically, being a law adopted in a period of exception, failure to comply with its provisions was draconianly punished. Violators were punished with fines ranging from 1000 to 10,000 pesetas.

Prior to the establishment of control over the use of radio devices, under an ordinance of November 17th, 1936 (BOC of 13/01/1937), a register of all correspondence entering and leaving the colonial territory had been generally declared. Although this measure was justified on the grounds of preventing the flight of values

⁵⁸⁰ Officials were required to take oath in the following terms: «X (nombre del funcionario), español, funcionario del Estado, declara bajo palabra de honor y jura ante Dios no haber hecho armas contra el Movimiento salvador de España, al que ha servido fielmente y sin interrupción desde su iniciación en estos territorios, ofreciendo al nuevo régimen establecido su adhesión incondicional, prometiendo por su honor y jurando ante Dios su fidelidad más absoluta y leal al mismo». *Idem*

⁵⁸¹ Ordinance of October 15th, 1936. *Ibidem*. p. 1026

⁵⁸² *Ibidem*, pp. 1048-1049

⁵⁸³ *Idem*

⁵⁸⁴ *Idem*

⁵⁸⁵ *Idem*

from the colony, there is no doubt that it was also a useful mechanism for sabotaging any attempts at communication between potential republican sympathizers in the colony and those outside, that is, those in the Peninsula or those refugees in the French colonies following the taking of Bata.

In order to avoid shortages of consumer products during the conflict, or to prevent speculation on such products, a price freeze was decreed for those items considered to be «basic necessities»⁵⁸⁶. The merchants were obligated to establish in their establishments a list including all the prices of their products. The modification of these prices without the approval of the GG was punished the first time as an administrative infraction with a fine from 1000 to 10,000 pesetas. Recidivism was considered a crime of aiding the rebellion against the Movimiento salvador, and was judged according to the military code.

In addition to price control, other measures were taken. When it was deemed necessary, commissions were sent to purchase products in French Cameroon. The increase in the production of local agricultural products such as bananas and malanga, also considered necessary for the feeding of the natives, was also encouraged. By an ordinance of February 15th, 1937 (BOC of 01/03/1937)⁵⁸⁷, the farmers (European and native) and the chiefs of native villages, within the totality of the hectares granted to them, had to dedicate an extension for the cultivation of the mentioned products. A Cultivation Committee was established to assess, direct and coordinate the introduction of the cultivation of any other useful items for the feeding of the native workers. The farms seized from the colonial republicans were placed under the management and administration of the Cámara Agrícola in the island and under the management of Sindicato Maderero in mainland Guinea⁵⁸⁸.

Finally, and as mentioned above, Franco's colonialists, just like Sánchez Guerra with the republican army before the outbreak of the conflict in the colony, wanted to contribute with their grain of sand to the success of the cause of rebellion. To this end, several collections were organized. In addition to extending the application of the day of

⁵⁸⁶ Command of February 2nd, 1937 (BOC de 15/02/1937). *Ibidem*, pp. 1039-1040

⁵⁸⁷ *Ibidem*, p. 1032

⁵⁸⁸ Ordinance of November 15th, 1936 (BOC de 15/11/1936). *Ibidem*, pp. 1031-32

«plato único»⁵⁸⁹ to the colony, some individuals organized subscriptions both in the island and in the continent. The Club Atlético of Santa Isabel organized a raffle in favour of the army of the rebels. In Bata, under the direction of Luis Ayuso and Enrique de Oliveda (former delegate of Kogo), the Agrupación Nacionalista was created, which, by means of an open subscription in benefit of Franco's army, came to collect a sum of 150,000 pesetas⁵⁹⁰. In addition to these initiatives, the Cámara Agrícola and the Sindicato Maderero of mainland Guinea allocated 20% of the colonial production of the years 1936 and 1937 to the cause of the rebels.

V. Final considerations

The uprising in Fernando Póo dismantles any opinion or belief that the settlers were apolitical. It is true that they were deprived of their political rights and public freedoms; it is true that they were able to express a certain apathy towards those political debates that took place in the parliament of a metropoli that not only was located more than two thousand kilometers away from the STGG, but also paid no attention to the colony. But such facts did not eliminate the ideological-political sympathies of the colonials. The fact that the monarchical colonists had expressed their adherence to the Republic, more than an act of renunciation of their monarchical ideology in favour of the alleged unity of colonial politics, was nothing but a manifestation of political opportunism. In the face of a majority of the Spanish people who had resolved to constitute themselves into a Republic, the defence of monarchism by a handful of colonists abandoned more than two thousand miles away from the Peninsula could only be a Quixotic manifestation. The colonists understood this realism at first, and sought to fit into the new regime, thus managing to save both their jobs and their other colonial privileges. But, as it could not be otherwise, such adherence to the Republic, as an ideological camouflage, could only subsist until a new contingency displaced republicanism from its hegemony on the metropolitan political map. Precisely, the uprising of July 17th, for the right-wing settlers, meant hope in a new metropolitan political map; and although they did not join the movement in its first days, it was very

⁵⁸⁹ AGA G-1910 (81/8179), file n° 4

⁵⁹⁰ *LA GUINEA ESPAÑOLA*, n° 949 of 22/11/1936, p. 336

probable that they would end up doing so as soon as the incipient uprising acquired seriousness.

But the uprising of insulars on September 19th, 1936, apart from confirming the opportunism that marked the adhesion of many colonists to the Republic, also reveals the generous treatment of the republicans towards the monarchist colonists. A Republic that was born with a vocation of permanence could not place the stability of its institutions in the hands of monarchical officials. In the colonial context, this negligence was more accentuated. In the STGG, the republicans, apart from replacing a few governors, did not seek to apply an ideological cleansing in all the main colonial public institutions. Everything remained almost as it was. Even when men like Loygorri and others had been expressly accused of being monarchists, the Republicans did nothing. They simply transferred them from one institution to another, but without taking away much of their former power. Even when the uprising broke out in the colony, and despite Porcel having constantly warned Sánchez Guerra about it, the Governor continued to believe in the loyalty of these former monarchist officials who would later end up delivering the military coup.

Certainly, the fate of the STGG depended on the final destiny of the metropolis. Thus, the fact that the conflict had broken out in the colony with a two-month delay, the efforts of Sánchez Guerra to maintain the peace in the colony during the two months prior to the islanders' rebellion, the Governor's confidence in the loyalty of his officers to the Republic, or the resistance of the republicans in mainland Guinea, were nothing but contingent circumstances without substantial importance. In other words, the war could have ended up either with the two districts of the colony ideologically separated; or the republicans could have ended up reconquering the island; or the uprising could simply not have extended to the colony. In any of those cases, the colony would not have been free from the Franco regime as long as it had ended up imposing itself on the Peninsula. Starting from this premise, from the course of the war in the colony, it is only possible to extract mere observations without them trying to explain or reason the fall of the Republic in the colony, a question whose answer can only be extracted from a general evaluation of the whole republican regime.

A first observation to be drawn from the course of the war in the colony, is the complete lack of nationalistic sentiment among the natives of the STGG. The

widespread rumor that the natives were planning a revolt against the white people in the colony, although unfounded, was not illogical at all. For a tiny colony that had never been the focus of metropolitan attention, the outbreak of war only further accentuated that isolation to which the settlers were already accustomed. The difficulty in the communications between the metropolis and the colony, the scarce weaponry available to the colonists, the reduced number of white people, and the ideological differences, constituted a favourable context that the native majority, with a nationalist conscience, could take advantage of to start a revolt against the colonizers. But, fortunately for the latter, such scenario did not occur and was not about to.

From the course of the conflict in the colony, one can also point to the manipulation of the natives in favour of the ideologies in dispute. The two native guards who died in the confrontations that took place near the Ekuku River did not fall precisely because they identified with the right or the left. In Bolondo, in Ekuku, the two groups of native guards which fought each other, had only one reason to be involved in that war: obeying their superiors' commands.

Finally, from the course of the conflict in the colony, one can also note the corroboration not only of the opportunism that characterized the oath that many islanders took to the Republic, but also of the favourable treatment that the republicans gave their ideological adversaries in the colonial space. The fact that the island joined the rebellion two months after its outbreak, only confirms the words of the Portuguese consul in the colony when he stated that the right-wing supporters were the majority in the colony. The fact that the rebellion was started by the high colonial military class only confirms the fact that the Republic, at least in the colonial space, was not interested in carrying out an ideological cleansing of the main public institutions of the colony. The conquest of the entire colony by the rebels later demonstrated that the right wing would not return the same favour to the republicans. As soon as the rebels took control of the entire colony, they set in motion a process of ideological cleansing that affected the entire colonial administration.

CONCLUSION

If anything has always marked colonial philosophy, it is precisely its ambivalence. Throughout the process of colonization, iusnaturalistic principles such as equality, freedom, justice, became perfectly compatible with its most irreconcilable realities such as slavery, the slave trade, or forced labor. The fact that the young Spanish Republic raised the flag of equality and justice, or intoned the freedom anthem, did not make it anti-colonial. On August 28th, 1931, at the opening of the Constitutional Assembly, Jiménez de Asúa, president of the Constitutional Commission, by reproducing the same philosophy that inspired the protection of the rights declared in the Weimar Constitution, insisted on the main difference between "mere declamations of rights" and "true declarations of rights". According to Asúa, while "mere declamations" don't transcend the discourse, "the true declarations of rights", armoured with a series of constitutional guarantees, are born to become reality in the citizens day-to-day life. Stating that the colony had to reflect democratic republican values as declared in the explanatory memorandum of the first Republican Colonial Statute, was only a "rights declamation". But making this statement become a "true rights declaration" was a real challenge for the Republicans. It meant not only undertaking a real legal reforming action, but also questioning the basis of the colonial ius commune. How was it possible to guarantee individual freedom in all its manifestations in the colony? How was it possible guarantee at the same time both the natives religious freedom and their christianization and spanishization? How was it possible to guarantee at the same time

both the natives labour freedom and the colonial principle according to which the work was established as the main instrument for the civilization of the so-called "primitives"? How was it possible to combine the decentralization and democratization of the colonial institutions with the absolute power recognised to the General Governor to guarantee the public order and security in the colony?

Faced with such dilemmas, the Republicans were somewhat ambiguous. They adopted lukewarm institutional reforms, which did not affect the colonialism foundations. Constitutional rights were recognised to the Spaniards and foreign residents in the colony, but the effectiveness of those legal guarantees remained subjected to the colonial local circumstances. It was established that GG, in the exercise of his functions, should be subject to the legal provisions in force, but, right away, He was empowered with an unlimited freedom not only to assess when the colonial public order was in danger, but also to decide on the most appropriate means to guarantee the security in the colony.

The ambivalence of the republican reforms regarding to natives people was also important. The Republic that defined itself as a democracy "of all kind of workers" (art.1 CE'31) was, however, not congruent when it had to decide on the ratification of all the conventions on colonial issue adopted within the System of the League of Nations. During the Republic validity in the colonies, from 1931 to 1936, the republicans ratified only two conventions related to the colonial issue: the Slavery Convention of 1926 and the Forced Labour Convention of 1930. But, in addition to the minimal and transitory character of the said conventions, the Spanish Monarchy, based on art.421 of the Treaty of Versailles, denied the extension of the Slavery Convention to the Protectorate of Marocco. The Republic not only did not abolish this declaration, but did something similar with the application of Forced Labour Convention in the SSTTGG. As said above, the General Directorate of Morocco and Colonies decided that the abolition of forced labour in the colonies could not be but gradually, and subjected to undetermine transisional period.

At the local level, the Republicans approved labor reforms. But such reforms were only a dead letter. In order to end the forced recruitment of braceros, they created a Working Bourse, a system of voluntary registration and placement of braceros. As a measure to protect native property from some farmers' greed, all farm leasing between

white settlers and natives were suspended. The sanctions on workers mistreatment were considerably increased. Despite all these measures, the colonial reality of native people remained the same as under the Monarchy. The exploitation of black by white, the braceros mistreatment, the workers forced recruitment, the fraudulent foreclosure of native property, etc., continued being day-to-day facts in the colony. And faced with such a reality, the State and the colonial authorities kept being passive, despite the local and international critic and denounces.

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- Escrito (nº240) de 28/10/1933 por el que el Curador imponía una multa de 500 pesetas a Paulino por la muerte de Etogo Mbá y proponía su expulsión de la colonia
- Sentencia de 21/11/1934 por la que el Juez Municipal de Santa Isabel

CAJA G-1878 (81/8147):

- Convenio de contratación de braceros cameruneses firmado en Yaundé el 8 de enero de 1934.

CAJA G-1898 (81/8167):

- Expediente nº 2:
 - Radiograma nº25 de 14/04/1931. Niceto Alcalá Zamora comunica la declaración de la República a las autoridades de los TTEEGG
 - Comunicado de 17/04/1931, del Consejo de Vecinos de Santa Isabel: se expresa la adhesión al nuevo régimen.
 - Radiograma nº139 de 27/04/1931. Sobre el juramento de lealtad a la República.

CAJA G-1900 (81/8169):

- Expte. nº 2:
 - Decreto de 22 de marzo de 1926: reglamento de apertura y cierre de establecimientos comerciales

CAJA G-1901 (81/8170):

- Expte. nº 1-1:
 - Escrito de 16/01/1937, del GG al Secretario General de la DGMC: se del estallido de la Guerra Civil en los TTEEGG

CAJA G-1910 (81/8179):

- Expte. nº 1-1:

- Escrito de 16/01/193 por el que el GG comunicaba a la DGMC los nombres de los que apoyaron la rebelión en Bata
- Expte. nº 5:
 - Escrito de 15/07/1932 emitido por la Sección Colonias de la DGMC proponiendo un plazo transitorio largo para la aplicación del convenio nº 29 de la OIT sobre el trabajo forzoso.

CAJA G-1915 (81/8184):

- Expte. nº 2:
 - Escrito titulado “EL DEFENSOR DE NÚÑEZ DE PRADO”

CAJA G-1928 (81/8197):

- Expte. nº 2:
 - Diario de la gira del GG Gustavo de Sostoa Sthamer, del día 16/04/1932, Visita a la Delegación de la Curaduría en Bata.

CAJA G-1930 (81/8199):

- Expte. nº 3:
 - Comunicado de 28/02/1938: Se habla sobre la toma de la ciudad de Bata por los sublevados de la isla
 - Documento titulado “Expedición Militar a Guinea”: Sobre la Guerra Civil en los TTEEGG

CAJA G-1931 (81/8200):

- Expte. nº 2:
 - Memoria de Diego Saavedra, titulada “Posesiones Españolas del Golfo de Guinea, 1906”

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- 3 de septiembre de 1811, p. 1748
- 4 de septiembre de 1811, p.1762

- 6 de septiembre de 1811, pp.1785-1786
- 11 de septiembre de 1811, p. 1816
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IV. MAGAZINES OR JOURNALS:

- **La Guinea Española:**
 - N° 657C 19 de abril de 1931, p. 122
 - N° 671 de 26 de julio de 1931, p. 239
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 - N° 680 de 27 de septiembre de 1931, p. 310
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- N° 896 de 17 de noviembre de 1935
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 - N° 941 de 27 de septiembre de 1936 pp. 301-302
 - N° 943 de 18 de octubre de 1936, página de portada, p. 321
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- **Diario ABC:**
 - N° de 7 de mayo de 1933, p. 53:
 - Decreto de mayo de 1933 por el que se nombra Gobernador general de los TTEEGG a Estanislao Lluesma y García
 - N° de martes 10/09/1935, p. 24:
 - Dimisión de Ángel Manzaneque Feltrer como Gobernador de los TTEEGG
 - Nombramiento de Luis Sánchez Guerra como Gobernador de los TTEEGG
- **Diario Oficial (Diario Mexicano):**
 - N° 30 (TOMO V) de 5 de febrero de 1917, pp. 149-161: Texto original de la Constitución de los Estados Unidos de México de 1917

- **El Progreso:**

- N° de 8 de abril de 1930, artículo titulado “FERNANDO PÓO DURANTE EL MANDO DE NÚÑEZ DE PRADO”
- N° de 10 de junio de 1930, artículo titulado “LE INTERESA AL GOBIERNO LA PACIFICACIÓN DE LOS ESPÍRITUS EN FERNANDO POO”
- N° de 24 de octubre de 1930, artículo titulado “LA IMPUNIDAD Y LOS PRIVILEGIOS DEL DICTADOR DE FERNANDO PÓO”

- **La Gaceta de Madrid:**

- N° 218 de 6 de agosto de 1931, p. 995:
 - Decreto de 4 de agosto de 1931 por el que se admite la dimisión de Miguel Núñez de Prado como Gobernador general de los TTEEGG
 - Decreto de 4 de agosto de 1931 por que se nombra a Gustavo de Sostoa y Sthamer como Gobernador general de los TTEEGG
- N° 251 de 8 de septiembre de 1935, p. 1946:
 - Decreto de 7 de septiembre de 1935 por el que se admite la dimisión de Ángel Manzaneque Feltrer Decreto de 7 de septiembre de 1935 por el que se nombra Gobernador general de los TTEEGG a Luis Sánchez Guerra y Sáinz
- N° de 310 de 6 de junio de noviembre de 1935, p. 1052:
 - Orden de 4 de noviembre de 1935 por la que se nombra Migue Hernández Porcel como Subgobernador de la Guinea continental en los TTEEGG

- **La LUZ (Diario de la República):**

- N° 269 de 15 de noviembre de 1932, pp. 15-16

IV. NORMATIVE APPENDIX:

- **Constitución Política de la Monarquía Española de 19 de marzo de 1812:**
 - ✓ Artículo 1: «La Nación española es la reunión de todos los españoles de ambos hemisferios»
 - ✓ Artículo 5: «Son españoles: Primero. Todos los hombres libres nacidos y avecindados en los dominios de las Españas, y los hijos de éstos. [párrafo siguiente] Segundo. Los extranjeros que hayan obtenido de las Cortes cartas de naturaleza. [*idem*] Tercero. Los que sin ella lleven diez años de vecindad, ganada según la ley en cualquier pueblo de la Monarquía. [*idem*] Cuarto. Los libertos desde que adquieran la libertad en las Españas»
 - ✓ Artículo 10, párrafo 1º: «El territorio español comprende en la Península con sus posesiones e islas adyacentes, Aragón, Asturias, Castilla la Vieja, Castilla la Nueva, Cataluña, Córdoba, Extremadura, Galicia, Granada, Jaén, León, Molina, Murcia, Navarra, Provincias Vascongadas, Sevilla y Valencia, las islas Baleares y las Canarias con las demás posesiones de África.»
 - ✓ Artículo 18: «Son ciudadanos aquellos españoles que por ambas líneas traen su origen de los dominios españoles de ambos hemisferios, y están, avecindados en cualquier pueblo de los mismos dominios.»
 - ✓ Artículo 22: «A los españoles que por cualquiera línea son habidos y reputados por originarios del África, les queda abierta la puerta de la virtud y del merecimiento para ser ciudadanos: en su consecuencia, las Cortes concederán carta de ciudadano a los que hicieren servicios calificados a la Patria, o a los que se distinguan por su talento, aplicación y conducta, con la condición de que sean hijos de legítimo matrimonio de padres ingenuos; de que estén casados con mujer ingenua, y avecindados en los dominios de las Españas, y de que ejerzan alguna profesión, oficio o industria útil con un capital propio».

- ✓ Art.29: «Esta base es la población compuesta de los “naturales” que por ambas líneas sean originarios de los dominios españoles, y de aquellos que hayan obtenido de las Cortes carta de ciudadano, como también de los comprendidos en el Art.21»
- **Constitución española de 9 de diciembre de 1931:**
 - ✓ Artículo 8: «El Estado español, dentro de los límites irreductibles de su territorio actual, estará integrado por Municipios mancomunados en provincias y por las regiones que se constituyen en régimen de autonomía. (Párrafo 2º) Los territorios de soberanía de norte de África se organizarán en régimen autónomo en relación directa con el Poder Central».
 - ✓ Artículo 44: «Toda la riqueza del país, sea quien fuere su dueño, está subordinada a los intereses de la economía nacional y afecta al sostenimiento de las cargas públicas, con arreglo a la Constitución y a las leyes. [Otro párrafo] La propiedad de toda clase de bienes podrá ser objeto de expropiación forzosa por causa de utilidad social mediante adecuada indemnización, a menos que disponga otra cosa una ley aprobada por los votos de la mayoría absoluta de las Cortes. [*idem*] Con los mismos requisitos la propiedad podrá ser socializada. [*idem*] Los servicios públicos y las explotaciones que afecten al interés común pueden ser nacionalizados en los casos en que la necesidad social así lo exija. [*idem*] El Estado podrá intervenir por ley la explotación y coordinación de industrias y empresas cuando así lo exigieran la racionalización de la producción y los intereses de la economía nacional. [*idem*] En ningún caso se impondrá la pena de confiscación de bienes».
 - ✓ Artículo 51: «La potestad legislativa reside en el pueblo, que la ejerce por medio de las Cortes o Congreso de los Diputados».
- **Principales disposiciones coloniales (Compilación de Agustín Miranda Junco):**
 - ✓ Real Decreto de 13 de diciembre de 1858 (Gaceta del 15 de diciembre): primer estatuto colonial de los TTEEGG
 - ✓ Decreto de 12 de noviembre de 1868 (Gaceta de 13 de noviembre de 1868): segundo estatuto colonial de los TTEEGG

- ✓ Real Decreto de 26 de octubre de 1872 (Gaceta del 28 de octubre): tercer estatuto colonial
- ✓ Real Decreto de 26 de noviembre de 1880 (Gaceta de 28 de noviembre): cuarto estatuto colonial
- ✓ Real Decreto de 17 de febrero de 1888 (Gaceta de 26 de febrero): quinto estatuto colonial
- ✓ Real Decreto de 11 de julio de 1904, BOC de 15 de enero de 1909: sexto estatuto colonial
- ✓ Real Orden de 6 de agosto de 1906, BOC de junio de 1908: primer reglamento general sobre el trabajo indígena
- ✓ Decreto de 27 de julio de 1913, BOC del 15 de agosto de 1913: segundo reglamento sobre el trabajo indígena
- ✓ Real Decreto-Ley de 15 de diciembre de 1925 (Gaceta de 17 de diciembre): creación de la Dirección General de Marruecos y Colonias.
- ✓ Real Orden de 15 de junio de 1929, BOC de 15 de julio de 1929: agrava las sanciones por las faltas de malos tratos sobre braceros
- ✓ Decreto de 18 de junio de 1931 (BOC de 15 de agosto) por el que se reorganiza la Dirección General de Marruecos y Colonias
- ✓ Decreto de 22 de julio de 1931 (BOC de 10 de septiembre de 1931): Primer Estatuto colonial republicano
- ✓ Decreto de 8 de diciembre de 1931 (BOC de 15 de enero de 1932): Estatuto general del personal a servicio de la Administración de los territorios españoles del golfo de Guinea
- ✓ Decreto de 19 de julio de 1934 (Gaceta de 20 de julio) por el que se suprime la Dirección General de Marruecos y Colonias
- ✓ Decreto de 26 de julio de 1934 (BOC de 15 de septiembre de 1934) por el que se crea la Inspección General de Colonias en sustitución de la antigua Dirección General de Marruecos y Colonias
- ✓ Decreto de 12 de febrero de 1935, BOC de mayo de 1935: reglamento provisional del trabajo indígena
- ✓ Decreto de 13 de abril de 1935 (BOC de 15 de agosto de 1935): segundo estatuto colonial republicano
- ✓ Decreto de 11 de noviembre de 1935 (BOC de 15 de diciembre de 1935): tercer estatuto colonial republicano

- ✓ Ordenanza de 28 de junio de 1936, BOC de 1 de julio de 1936: agrava las sanciones por maltratos a braceros
- ✓ Decreto de 3 de julio de 1936 (BOC de 15 de septiembre de 1936) por el que se restablece la DGMC