

# When The Comorian Constitution Produces Human Rights Innovations?

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## Abstract

My general aim is to try to understand what the 2018 constitution brings as a novelty in the matter of Human Rights. Before the adoption of the 2018 constitution, the old constitutional texts only proclaimed in the preambles a limited list of rights and freedoms as well as "the attachment of the Comorian people to the fundamental principles and rights as defined by the United Nations Charter, the Charter of the Organization of African Unity, the Arab League Pact, the United Nations Universal Declaration of Human Rights and the African Charter on Human and People's Rights, as well as international conventions, particularly those relating to the rights of the child and of women", without having the measures for its application.

However, the issue of human rights and freedoms has always provoked debate in Comorian society. The issues raised are related to serious violations of these rights and freedoms. But today, the actors involved in the debate are demanding "the respect and protection of Human Rights". In this regard, a new constitution was adopted in 2018 to implement the recommendations made by a dozen Comorian men and women during the National Conferences.

Thus, the 2018 constitution sets out a long list of rights and freedoms. These rights and freedoms of the new constitution are provided for by international human rights conventions. These proclaimed rights and freedoms are classified according to the Rights, Individual, Political, Social and Economic Freedoms. The new constitution also proclaims guarantees of various levels for the protection of rights and freedoms "at the top of the building by the judge". It provides for the superiority of international law over domestic law and reflects the responsibility of the State in the respect of these human rights.

**KEYWORDS: revision, Constitution, Human Rights, Law, Freedom, Innovation, Comoros**

## INTRODUCTION

Human rights appear as "innate rights, inherent to the individual, which he possesses independently of any recognition by a political authority"<sup>1</sup>. They are rights "declared at the national and then international level, and protected in particular by the jurisdictional way"<sup>2</sup>.

The conception of human rights as they are affirmed at the international level in the Declaration of Human Rights of 1948, concretized in the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, are classified by generation. These are civil and political rights, economic and social rights and then people's rights, including environmental rights, right to development ... human rights are based mainly on rights and freedoms. We quote for example: in principle of equality, the right to life, the prohibition of slavery, freedom of association, the right to a fair trial, the right to come and go, the freedom of assembly, of association, the right to unionize, the right to education, the right to work, the right to public service, the right to vote...

By its establishment, the constitution appears as a collective agreement that limits the freedom of action of the rulers and proclaims the rights and freedom of citizens. Certainly, "when a society questions itself, when it

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<sup>1</sup> Caroline Sägesser, Human Rights, CRISP, 2009, No73, PP.9 - 96, p.11.

<sup>2</sup> Glossary of legal terms, 28th edition, Dalloz, 2015-2016, P.406.

questions itself, it reforms itself, it questions its constitution"<sup>3</sup>. Thus, the constitution passes by the necessity of revision. This is how the constitution adapts to the demands of the generation of the moment.

Indeed, the question of constitutional revision arose the day after the organization of the National Conferences of the Comoros in order to take stock of the country's forty-two years of independence and the fifteen years following the Fomboni Framework Agreement. An assessment was requested by the August 11 Movement. The new text of 2018 wants to respond to the claims made by the Workshops of the National Conferences, where dozens of men and women raised debates on issues affecting the development of the country in general, including "the issue of human rights and freedoms. It was stressed that human rights and freedoms seem to be considerably violated. It was requested however the respect and the protection of these human rights.

In fact, the new constitution seems to make a progress on the subject of human rights. A very broad list of rights and freedoms has been proclaimed. In addition, it guarantees in several levels a protection of these rights. To what extent could the 2018 Constitution contain progress in the field of human rights?

To answer this question, in this study, we will first present the condition of human rights before the constitutional reform of 2018 (I), before making an analysis on the place of these rights in this constitutional revision (II).

### **I. The status of human rights before the 2018 constitutional reform.**

Prior to the 2018 constitution, the old constitutional texts proclaimed only a limited list of human rights and the people's commitment to international human rights (A). As a result, the country had significant human rights violations (B).

#### **A. Limited recognition of human rights**

The proclamation of rights and freedoms can be seen as the central issue around the recognition of human rights. The rule of law adheres to this reading of the recognition of human rights. It consists in the rule of law to adopt constitutional and legislative rules which are the expression of the consecration of the fundamental rights and liberties. It does not simply mean the proclamation of rights and freedoms, but essentially translates measures of respect and provisions for the protection of these rights and freedoms.

However, before the adoption of the 2018 constitution, the legal status of human rights was based on the previous constitutional text, which marked the commitment of the Union of the Comoros to human rights "as defined by the Charter of the United Nations, the Charter of the Organization of African Unity the Pact of the Arab League, the Universal Declaration of Human Rights of the United Nations and the African Charter on Human and People's Rights, as well as the international conventions, in particular those relating to the rights of the child and of women" and without having concrete measures for its application. The preamble to the fundamental law also proclaimed a certain number of rights and freedoms, the list of which is very limited. But this recognition of human rights, which remains limited, has consequences that need to be noted.

#### **B. The effects of the limited recognition**

If the day after independence, the constituents attached the Comorian people to the fundamental rights and freedoms as recognized by international law, but no measures were taken for their implementation, the country recorded major difficulties in terms of human rights and freedoms. The lack of respect for human rights has sparked debate in Comorian society. "Serious and systematic violations of human rights" persisted under the previous regimes<sup>4</sup>. The failure to respect the international conventions to which Comoros adheres and the abuses carried out by police officers or gendarmerie agents in arrests and searches made without a warrant were discussed. Also noted were "abuses perpetrated by the road brigade and often accused of being corrupt, arbitrary arrest and

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<sup>3</sup> Najib Ba Mohammed, "the constitution of 2011 and the new challenges", Journal of Law and Economics, 2013, University Sidi Mohamed Ben Abdellah-Fez, pp.27 - 36.

<sup>4</sup> Committee of Steering of National Conferences, The 42 years of independence : Assessment and Prospects, reference document, Moroni,2018,p.53.

detention of free radio hosts and political opponents,"<sup>5</sup> trampling of freedom of expression, the issue of the death penalty, violation of children's rights..<sup>6</sup>.

## **II. Human rights in the constitutional revision of 2018**

The new text has very considerable innovations in the field of human rights because it provides answers to the questions raised by the debates of the National Conferences that took place in February 2018 in Moroni. Given the lack of respect for fundamental rights and freedoms, it was requested by the workshops of the said National Conferences to define in the fundamental law the "fundamental rights and freedoms of citizens". It is necessary to "constitutionalize the content of the Rights and Freedoms in their details". In fact, the new revision of the constitution advances in the theory of the consecration of fundamental rights and freedom. This consecration concerns the enunciation of human rights (A) and the consolidation of the guarantees of these rights (B).

### **A. The enunciation of rights and freedoms**

The 2018 constitutional text follows the tradition of the preambles of the former fundamental laws of the different regimes of Comorian politics by reaffirming the commitment of the Union of the Comoros to the principles of fundamental rights as defined by international human rights law. From its preamble, the Comorian people are bound by "the charter of the United Nations, that of the Organization of African Unity, the Pact of the Arab League, the Universal Declaration of Human Rights of the United Nations and the African Charter on Human and People's Rights, as well as international conventions, particularly those relating to the rights of the child and of women".

The new Constitution constitutes a considerable advance in the field of human rights because it provides for a wide range of areas in this area. The constitutional revision of 2018 makes the Comorian constitution, "a constitution of human rights", is devoted in title2 (Rights and duties of citizens), a special chapter, entitled: "Rights, Individual, Political, Social and Economic Freedoms".

#### **1. Individual rights and freedom**

Article 2 provides for the inviolability of the integrity and morality of the human person. It states that "no one shall be subjected to torture or to cruel, degrading or inhuman treatment or punishment". Article 21 enshrines the right to freedom. It guarantees the freedom of thought and expression, association, intellectual, artistic and cultural creation, demonstration and other freedoms enshrined in the Constitution, laws and international law received in the internal legal order. It "guarantees freedom of information, communication and press under the conditions established by law" (art. 28). It recognizes that all citizens have the freedom to come and go, except within the limits of the law" (art. 31). It provides that no Comorian may be extradited or expelled from his country" (Art. 23). The constitution states in article 22 that "all citizens enjoy the right to freedom and security. It specifies that "no one may be deprived of his or her liberty in whole or in part," except in cases provided for by law or by a court decision.

Comorians benefit from the status of the civil service. Thus, Article 24 shows that "all citizens have the right of access to the administration and the public service under conditions of equality, in accordance with the provisions of the law. However, article 25 states that "no one can be forced to perform a job". Through article 26, "the home is inviolable, except in the cases provided for by the law". The right to instruction, education, teaching and culture is guaranteed to all Comorians (art. 29). The state protects the rights of women, children, young people and the disabled (art. 30).

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<sup>5</sup> Ibid

<sup>6</sup> Ibid

## **2. Political rights**

In terms of political rights, Title 2 contains several articles relating to political rights. Thus, article 32 proclaims that "all citizens have the right to participate in political life, directly or through freely elected representatives. Article 34 specifies that "the Union of the Comoros recognizes and guarantees the right of access of youth and women to political bodies of local and national representation. In addition, Article 33 emphasizes that "all citizens have the right of access, under conditions of equality and freedom, to public functions and elective office, under the conditions established by law. The constitution recognizes the constitution of political parties and groupings. Thus, article 35 shows that "political parties and groups contribute to the expression of suffrage, as well as to the civic and political education of the people. They are formed and carry out their activities freely in accordance with the law. They are called upon to respect national unity, sovereignty and the intangibility of "borders, as internationally recognized, as well as the principles of democracy. The same article does not authorize the creation of insular, regional or local political parties, or those of a paramilitary nature or those that use subversive means. The political opposition is affirmed. It exercises its activities freely. A law determines the status of the opposition

## **3. Economic and social rights**

Like political rights, economic and social rights are also proclaimed by the constitution. The right to work is recognized for all citizens. The state must create the necessary conditions for its exercise (art. 37). The constitution reserves for "all citizens the right to job security and to receive remuneration commensurate with the quantity and quality of the work performed" (art. 38). The right to strike is recognized, but a law determines the conditions for its exercise (art. 41). Under article 39, the creation of trade unions and professional associations is recognized for all workers to defend their interests and rights. The right to health is proclaimed. The State must guarantee the participation of the community in the various health services (art.42). The right to education is provided for in article 44. Thus, "the State shall determine an educational policy aimed at the progressive elimination of illiteracy, lifelong learning, creativity, the integration of schools into the community and the civic education of the elderly". The right to the environment is recognized for all citizens. Thus, "the State and the communities must adopt policies for the defense and protection of the environment with the collaboration of environmental protection associations, and ensure the rational use of all natural resources" (art. 43).

## **B. The constitution of guarantees of Rights and Freedoms**

Even if stated by the rule of law in the constitution, rights and freedoms "would have little meaning if they were not effectively guaranteed<sup>7</sup>. Thus, "the rule of law guarantees at all levels a protection to these Rights at the top of the edifice by the judge"<sup>8</sup>. Thus, the guarantee appears at the level of the constitution, which recognizes the superiority of international law over domestic law and provides for the responsibility of the State for human rights.

### **1 The superiority of international law over domestic law**

The preamble of the last constitution reaffirms the "attachment of the Comorian people to the charter of the United Nations, that of the Organization of African Unity, the Pact of the Arab League, the Universal Declaration of Human Rights of the United Nations and the African Charter of Human and People's Rights, as well as international conventions, particularly those relating to the rights of the child and of women", the new text of 2018 adds in its article 12 that "the treaties or agreements regularly ratified or approved have, upon their publication, an authority superior to that of the laws of the Union, subject, for each agreement or treaty, to its application by the other party". From this point of view, the State assumes its responsibility for human rights.

### **2. The responsibility of the State in the respect of Human Rights**

Several provisions provide for the responsibility of the State to respect human rights. Thus, Article 8 stipulates: "the State's mission is to guarantee respect for human rights and to ensure that all citizens can fully

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<sup>7</sup> Karel Vasak, the international dimensions of human rights, Unesco, 1978, p.6.

<sup>8</sup> Eric Oliva, Constitutional Law, Dalloz, Paris, 2006, p34.

exercise their rights and fundamental freedoms". Article 11 states that "the Union of the Comoros undertakes to provide international organizations, in particular the United Nations, the African Union and the League of Arab States, with all necessary collaboration to ensure ... respect for human rights and fundamental freedoms. The same article adds: "the Union of the Comoros undertakes to strengthen and support cooperation actions in favor of the respect of human rights". Through Article 13, "the State recognizes the inviolability of the rights and freedoms enshrined in the Constitution and guarantees their protection. Thus, Article 19 states that "rights and freedoms and guarantees may not be suspended except in the event of a declaration of a state of siege or emergency, in accordance with the provisions of the Constitution.

### 3. Jurisdictional protection of rights and freedoms

The jurisdictional protection of rights and freedoms is provided for in Article 15. Thus, it is "guaranteed to all citizens the right of access to justice and defense, as well as the right to obtain decisions from the courts within a reasonable time". The constitution provides for the independence of the judiciary. Article 94 states that "the judiciary is independent of the legislative and executive powers. The same article adds that "judicial power is exercised by the supreme court and the other courts and tribunals. It also provides that the judge is not subject in the exercise of their functions, that to the authority of the law.

### CONCLUSION

If the new text constitutes a step forward in terms of human rights, it is to meet the requirements of modern generations, recommendations from the National Conferences, held from 18 to 22 January 2007. The Constitution of 2018 is part of a new generation of constitution that introduces a new vision of Human Rights. By recognizing the rights and freedoms proclaimed by international human rights law and by insisting on the guarantees of their implementation, the new constitution wants to be a true charter of rights and freedoms. What is impressive in the area of rights and freedoms is that the adoption of the 2018 constitution marks a break with previous constitutional texts. Does Comorian society seem satisfied with the changes brought about by this new constitution?

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