

People's Assembly approves new constitution

The Mozambican parliament, the People's Assembly, met in extraordinary session from 5 October to 3 November – its longest ever sitting – to approve the country's new constitution.

The process of amending the constitution began in 1986, but after the Frelimo Party Fifth Congress in July 1989, the Frelimo leadership opted not so much for a series of amendments as for an entirely new constitution, radically altering the political system introduced at independence.

A first draft of the new constitution was unveiled by President Joaquim Chissano at a mass rally in Maputo on 9 January. (The text of this draft was published as a supplement to *Mozambiquefile* No. 163).

The draft was exhaustively debated in thousands of meetings up and down the country for a period of more than three months (April-July), and in the light of the discussion the Frelimo Central Committee rewrote the constitution, and then submitted it to the Assembly.

The Assembly went over the constitution with a fine comb, article by article, amending, deleting and adding clauses. Each article was voted on separately, and then the final document, consisting of 206 articles, was approved unanimously on 1 November by the 181 deputies present at the vote.

The following summarises the content of the constitution, and the debates in the Assembly.

The Political System

The constitution jettisons the one party state. The Mozambican people are to exercise political power through universal suffrage in periodic multi-party elections by secret ballot (general elections under the previous constitution were mainly through open rather than secret voting).

All political parties must be national in scope. Thus any regional or secessionist party would be unconstitutional.

The constitution forbids parties from advocating or resorting to the use of violence to alter the political and social order of the country. Political parties are also expected to have a democratic in-

ternal structure, to defend Mozambican national interests, and to contribute towards peace and stability.

The system adopted for presidential elections is that the winning candidate must gain more than half the votes cast. If no candidate achieves this, then a second ballot will be necessary between the two most successful candidates from the first round.

Up until now, there have been no presidential elections, since the 1975 constitution stated simply that the President of Frelimo was automatically the head of state.

The new constitution establishes that all candidates for the presidency must be Mozambican citizens born of a Mozambican mother or father: that is, no naturalised citizens can run for the presidency. Candidates must be at least 35 years old, and must be proposed by at least 5,000 voters, of whom at least 200 must come from



Teresa Veloso spoke against dropping the word "people's" from the country's name

each of the country's 11 provinces.

The President's term of office is for five years, and the same incumbent is restricted to a maximum of three consecutive terms of office.

Parliamentary elections will be held under a majority vote system, and not one of proportional representation. One deputy, Teresa Veloso, asked why the Frelimo Central Committee had come out against proportional representation.

President Joaquim Chissano replied that majority vote systems were simpler and easier to understand. "Under the conditions of our country, the complexities of proportional representation would create many difficulties", he said.

End of the "People's Republic"

The constitution renames the country: it is no longer a "People's Republic", but just a "Republic". Similarly, the parliament changes its name from "People's Assembly" to "Assembly of the Republic".

Sergio Vieira, director of the Centre of African Studies at Maputo's Eduardo Mondlane University, queried the change, and noted that in nine factories

where he had chaired discussion on the constitution, the overwhelming majority of participants had been against eliminating the word "People's".

Teresa Veloso also opposed the move, saying that in the meetings she had attended no-one had raised the issue. She argued that the original declaration of Mozambique as a "People's Republic" in 1975 had nothing to do with "communism or socialism".

The title was "not very important" in itself, she said, since a country could have the name without being a true People's Republic, but in Mozambique's case it had "emotional implications".

Security Minister Mariano Matsinhe supported the change, arguing that it corresponded to "domestic reality as well as to the world in which we live".

He said that the original intention in calling Mozambique a "people's" state was to indicate that it was under the control of "workers and peasants", and this excluded "certain parts" of Mozambican society.

Deputy Job Chambal claimed that the term "People's Republic" had deep "ideological connotations". By removing it "we are creating a space for all political forces". He suggested that the word "people's" should "remain in our hearts as a remembrance".

When a vote was taken on the matter, only three deputies voted in favour of retaining the "People's Republic".

Death penalty abolished

The constitution enshrines a "right to life", and makes it clear that this abolishes the death penalty.

This article also states that all Mozambican citizens have the right to "physical integrity", and that no-one may be subjected to torture or to cruel or inhuman treatment.

One deputy, Florinda Staupé, attempted to add a ban on abortion to this clause. Jorge Rebelo, head of the Frelimo ideology department, replied that it would be inappropriate to deal with abortion in the constitution. He said the matter should be regulated through ordinary legislation. Ms Staupé then withdrew her proposal.

In practice, the death penalty has already been abandoned by Mozambican courts. The last execution, under Mozambique's 1979 security legislation, took place in 1986.

Freedom of the press

The first draft of the constitution, while guaranteeing freedom of expression, had made no specific mention of press freedoms. Mozambican journalists reacted by waging a vigorous campaign to secure

specific guarantees for the media in the country's basic law. This campaign included a three day seminar on the subject in May, and a petition, entitled "The right of the people to information", which was signed by 165 media professionals and delivered to President Chissano.

When the Central Committee redrafted the constitution, it included a lengthy article on press freedom that the Assembly then passed in its entirety.

The constitution now guarantees all citizens "the right to freedom of expression and freedom of the press, as well as the right to information". Freedom of expression includes the right to make one's opinions known through all legal means. Censorship is explicitly outlawed.

This article grants journalists access to sources,

and protects their independence. It also includes a right to set up "newspapers and other publications".

Mr Rebelo noted that, while the article allowed privately-owned print media, it said nothing about private radio or television stations. He said that there were individuals and organisations who have requested authorisation to set up such stations in Mozambique, and he briefed the Assembly on the arguments for and against this.

The main argument in favour was that Radio Mozambique can currently be heard in less than 40 per cent

of the country, while Mozambique's Experimental Television (TVE) only broadcasts in Maputo.

But Mr Rebelo also noted that private radio and television would be "extremely powerful organs, that could be used to promote regionalism, tribalism, racism, and religious intolerance, making the country unstable and difficult to govern".

Information Minister Teodato Hunguana, stressing that he was speaking as a deputy and a citizen rather than as a member of the government, expressed firm opposition to private radio or television stations at this stage in Mozambican history.

"Our historic task is to consolidate the Mozambican nation and state", he said, "and this process is not yet irreversible". The state needed to maintain radio and television exclusively in the public domain as tools in the task of nation-building.

Mr Hunguana could see no way of making competition in radio and television compatible with consolidating the nation. "Even allowing association of the private sector with the state does not appear prudent", he added.



Mariano Matsinhe: changing the name "corresponds to reality"

The incomplete coverage of the national territory by Mozambique's existing radio and television network should be solved through new investment, which the government was committed to.

Mr Hunguana warned that among those making proposals to set up private radio and television stations, "there are sharks. And they are not Mozambican sharks".

The constitution states that press freedom shall be regulated by law: this press law will be based on "respect for the constitution, for the dignity of the human person (i.e. libel laws), and for the imperatives of foreign policy and national defence".

The right to information, press freedom and the independence of the media are to be guaranteed by a new body, the Supreme Council for Mass Communication.

Rights and freedoms

For the first time, the right to strike is now constitutionally guaranteed, while employers' lockouts are forbidden. But the article on the right to strike warns that this may be curtailed in essential services.

The constitution stipulates that work is the right and duty of all citizens, regardless of sex, that citizens have the right to choose freely their profession, and that forced labour is forbidden (except in penal institutions).

One deputy, Julio Braga, tried to add a clause outlawing child labour. He wanted the constitution to make it illegal to employ anyone under the age of 18.

However, former agriculture minister João Ferreira pointed out that it was the norm for children to work at an early age in the Mozambican countryside, including in the harvesting of crops such as cotton, cashew nuts and copra.

"No law is going to stop children working in the fields in today's Mozambique", said Mr Ferreira. "Putting this into the constitution will give us problems. I'm not defending this situation, but it's a fact".

The assembly also passed an article giving workers the right to safety at work and hygienic working conditions. One deputy, Cacilda Banze, asked whether the state had the money to make the improvements that were demanded if this right was to be put into practice.

But another Assembly member, Ana Sansão Timane, retorted "It is not the state but the employers who must guarantee workers' safety, just as I have to ensure safe conditions in my house if I am employing a servant there".

The constitution also gives citizens the right to move freely round the country, and to live in any part of Mozambique. Up until now citizens have needed an official permit, known as a "guia de marcha" in order to move from one part of the country to another.

This article will render unconstitutional any repetition of the 1983 attempt to remove by force unemployed people from the cities.

A new article, inserted on the initiative of the Minister of Mineral Resources, John Kachamila, states that "all citizens have the right to live in a balanced environment, and the duty to defend it".

Mr Kachamila said that Mozambique is not immune to ecological concerns, and cited the desertification that results from the removal of tree cover, coastal erosion, and the pollution of Mozambican

rivers by countries further upstream.

He warned that the rising sea levels likely to result from global warming could have a dramatic effect on Mozambique, since much of the population is concentrated in a narrow coastal plain.

Mr Rebelo supported Mr Kachamila, and said that factories dumping pollutants in rivers in and around Maputo were severely worsening people's living conditions.

Mr Ferreira attacked the use of pesticides to spray cotton grown by multinational companies, while ignoring

peasant fields - but the peasants then had to fetch their drinking water from rivers contaminated by those same pesticides.

But Foreign Minister Pascoal Mocumbi expressed doubts, pointing out that most environmental damage was caused by industrialised countries. Mozambique was "not responsible" for environmental crisis.

"If we use firewood, it's because we have no other fuel", said Dr Mocumbi, warning that the cutting down of trees for fuelwood was likely to increase as a result of the Gulf crisis.

In the event, the new article was passed by 168 votes to one with five abstentions.

Economic policy

The draft presented by the Central Committee stated baldly that the Mozambican economic order shall rest on "a market economy".

But the governor of the Bank of Mozambique, Eneas Comiche, called for this to be removed, arguing that it was not normal to enshrine any specific economic model into a country's constitution. He



Teodoro Hunguana: no to private radio or television stations

pointed out that "there is no such thing as a pure market economy", and warned against expecting that "the simple play of market forces will result in equitable development".

He dismissed the idea that a market economy was "the remedy for all evils", and noted that the mere privatisation of state-owned property was not sufficient to establish a market economy.

Sergio Vieira supported Mr Comiche, and said that "no state abstains from guiding and stimulating the country's economy, through some form of political and economic plan".

The Assembly accepted these points and reworded the article, adopting a more nuanced position on the role of the market, which also stressed the role of the workforce and of state intervention. The text as finally approved describes the Mozambican economy as resting on "the value of labour, on market forces, on the initiative of economic agents, on the participation of all types of property, and on the action of the state to regulate and promote economic and social growth and development".

The constitution also states that the economy consists of four complementary property regimes – state ownership, cooperatives, private property and joint ventures.

Ownership of land

The January draft had abandoned the state monopoly on land ownership. It declared that land "may be transferred to individual or collective entities".

This was an extremely controversial point in the nationwide debate, since it implied that land could be bought and sold, with the possible creation of latifundia. Peasants were suspicious that the best land would end up in the hands of rich farmers while they would be marginalised.

Under this popular pressure, the Frelimo Party reversed its position, and the second draft reverted to the existing land law, whereby all land is state property, and the state attributes titles for its use.

As passed by the Assembly, the constitution states that land may not be sold, mortgaged or alienated in any other way. It adds that the use of land is the right of all Mozambican citizens, and that this right will be regulated by the state to the benefit of the direct producers. In attributing land titles, the state will recognise rights of inheritance and occupancy.

Land rights are not to be used "so as to favour situations of economic domination or privilege to the detriment of the majority of citizens".

Nationality and Vasco da Gama

The lengthiest and most intense debates at the Assembly were on a subject that to outsiders might appear uncontroversial – the definition of who is a Mozambican.

The constitution recognises two forms of Mozambican nationality – "nationality by origin" and "acquired nationality", i.e. naturalisation. It was the definition of "nationality by origin" that provoked the polemic. For this definition is not merely geographic, but also political, and historical in nature.

Two quite separate historical starting points from which nationality should be viewed were proposed. Some deputies took their point of departure as the start of the Portuguese conquest, with the landings by Vasco da Gama on the Mozambican coast in the late 15th century. But for President Chissano and many others, a much more relevant historical reference point was the struggle for independence waged by Frelimo in the 1960s and early 70s.

The draft presented by the Central Committee, and which was in the end substantially adopted by the Assembly, was a transcription of much of the 1975 nationality

law. While most of those who qualify for "nationality by origin" do so by virtue of their birth in Mozambique to Mozambican parents, others achieve this status through the role they played during the liberation struggle, or through the simple fact of living in Mozambique at the time of independence, and opting for Mozambican rather than Portuguese nationality (this was the case with many white Mozambicans born in the country but to Portuguese parents).

But several deputies wanted a much greater stress on criteria of blood links and birthplace. Retired General Americo Mpfumo put it at its bluntest: he said that nationality "by origin" should take as its reference point "the descendants of those living in the country at the time of the discoveries" (the Portuguese term for the voyages of Vasco da Gama and other 15th century adventurers).

Gen Mpfumo proposed that a prerequisite for nationality by origin should be Mozambican ancestry for at least three generations.



Americo Mpfumo wanted to tighten the definition of "nationality by origin"

One fear expressed by Gen Mpfumo and those who seconded him was that, unless restrictions were placed on nationality, then the door would be open for former Portuguese settlers to return and claim Mozambican nationality. Teodato Hunguana noted the broad definition of nationality found a welcome among former residents of Mozambique now living in South Africa. He said that some of these Portuguese had already taken back houses and companies in Mozambique "with the complicity of some of us".

Gen Mpfumo declared that he would not accept a situation where "the son of Cardiga" could come back and claim Mozambican nationality. (Cardiga was an infamous settler landowner, who played a central role in the desperate ultra-right uprising in Maputo on 7 September 1974).

Supporting Gen Mpfumo was the Chief of Staff of the Armed Forces, Lt-Gen Antonio Hama Thai who declared bluntly that "Mozambicans by origin are all those who were called natives in the colonial epoch".

Sergio Vieira opposed the idea of establishing lengthy family trees as a criterion for nationality. He said this was quite unrealistic, given the various waves of migration that have characterised Mozambican history.

Since some of the arguments could have racial overtones, the debate became fairly tense. Finance Minister Abdul Magid Osman, who is a Mozambican of Asian ancestry, declared he had no intention of voting for a law that would limit his rights. But he added that "whether we are first or second class citizens, as Mozambicans we shall continue working for this country".

Defence Minister Gen Alberto Chipande noted that racial "complexes" were lurking behind much of the debate. "We must overcome preconceptions of black and white, and be Mozambicans", he said. "Whites and mulattoes must get rid of the spirit of superiority, and blacks must get rid of the spirit of inferiority". He called for support for the Central Committee's position.

President Chissano stressed that the Central Committee had two main concerns: to avoid any situation of double nationality, and to ensure that all those who are already Mozambicans under the existing law would maintain their nationality.

He reminded the Assembly that attempts to restrict "nationality by origin" might discriminate, not only against white or Asian Mozambicans, but

against hundreds of thousands of black Mozambicans living in neighbouring countries.

Several days later this same issue was reopened by Transport Minister Armando Guebuza, who had been absent on government business when the matter was initially discussed. He criticised the definition of the first category of people who qualify for "nationality by origin", namely individuals born in Mozambique of a father or mother also born in the country. He attempted to insert a definition of a Mozambican as someone "born of a Mozambican father or mother who in their turn are descendants of people born in Mozambique".

His proposal was seconded by Security Minister Mariano Matsinhe, but President Chissano criticised their formulation, asking just how far back along his family tree would a citizen have to go

to prove that he was a real Mozambican. Great-grandfather, perhaps?

"I don't know where my grandfather was born", mused Mr Chissano. "But I can probably find out. But I don't know about my great-grandfather".

Mr Matsinhe then suggested that the qualification should be that at least one parent and one grandparent should have been born in Mozambique. He hastened to reassure "our white and mulatto countrymen" that no-one was planning to deprive them of their nationality.

Mr Chissano pointed out that the whole issue had already been thoroughly discussed by the Frelimo Party Central Committee. Mr Guebuza and Mr Matsinhe are members not only of the Central Committee, but also of its Political Bureau.

The President noted that rummaging around in people's ancestries would be problematic given family links that go over borders into countries such as Zimbabwe, South Africa or Malawi.

Eventually Assembly chairman Marcelino dos Santos ruled that it was not permissible to go back over matters already covered in the debate. He put his ruling to the vote, and it was carried by 110 votes to one with 71 abstentions.

On naturalisation, the Assembly voted to tighten the residence requirement. Whereas the existing nationality law allowed for the naturalisation of foreigners over 18 years old who had lived in Mozambique for at least five years, the Constitution doubles the requirement to ten years.

Women's emancipation

The constitution proclaims equality between the sexes. "Men and women shall be equal before the



Sergio Vieira: "unrealistic" to use family trees as a basis for nationality

Assembly chairman Marcelino dos Santos puts his signature to the new constitution after the final vote has been taken (Tempo/Naita Ussene)



law in all spheres of political, economic, social and cultural life", proclaims one article, while discrimination based on sex is specifically outlawed.

But this principle is weakened when it comes to naturalisation. The Central Committee's draft allows a foreign woman who has married a Mozambican man to acquire Mozambican nationality. But no such right is granted to foreign men marrying Mozambican women.

Alcinda Abreu, the Deputy General Secretary of the Mozambican Youth Organisation (OJM) described the article as sexist, pointing out that it effectively discriminated against women.

"You deputies who wear trousers", she said, addressing the men in the Assembly, "should know that Mozambican women don't need guardians".

Those who argued in favour of the article "say they want to defend me. But I can tell you I'm quite capable of defending myself. You are against women's equality", she accused.

Those who argued in favour of not allowing foreign husbands to obtain Mozambican nationality claimed that this was necessary in order to safeguard the interests of the country, or alternatively that in Mozambican society it is the man who leads the household and it is "too soon for men and women to have the same rights" in the home.

Sergio Vieira ridiculed the first position. He pointed out the absurdity of preventing Mozambican women from marrying foreigners on the grounds of avoiding penetration by foreign capital, when this was already perfectly possible by normal economic means such as the creation of joint ventures.

The second position received its most sophisticated defence from former education minister Graca Machel. Describing herself as "a conservative, but not a reactionary", she argued that, while equality between men and women was a principle defended

by Frelimo, "there is a culture, a practice, a lifestyle, that conflicts with this principle".

She claimed that allowing foreign husbands to take Mozambican nationality would be highly sensitive "within the family", and could not bring herself to support such a proposal. This was a struggle that would have to be waged within families, and it would take many years.

Mr Chissano threw his weight behind Alcinda Abreu's position, and suggested a wording whereby any foreigner married to a Mozambican of either sex would have the right to acquire Mozambican nationality.

But when this proposal was put to the vote it received 88 votes in its favour to 57 against with 38 abstentions. Since any constitutional proposal or amendment requires a two thirds majority of all 249 deputies to the Assembly - that is, 167 votes - the anti-sexist position on nationality failed to enter the country's basic law.

Chissano signs the constitution into law

The Assembly, having already voted on the Constitution article by article, finally voted unanimously in favour of the entire document as amended on 2 November. In a solemn ceremony the following day, Mr Chissano and Mr dos Santos put their signatures on the constitution, ordering its publication, and thus its passage into law. It is to take effect as from 30 November.

Mr Chissano declared that, with the approval of the pluralist constitution, there now was not the slightest justification for the use of violence in pursuit of political ends.

He stressed that the constitution established all the conditions "that allow the free and peaceful clash of political opinions", leaving it up to citizens to decide "whether to accept or reject them, through periodic elections".

"There is now no pretext for anyone, for any individual, or group to impose their programmes or ideas by force, unless their only goals are the destruction of the country and the suffering of the people", he said.

The Mozambican people, continued Mr Chissano, accepted that "various political formations can organise themselves, can peacefully spread their political message, defend their ideas, put forward their candidates for the elected bodies of state". But they should do so "without resorting to violence, respecting the democratic order, and submitting to the popular vote".

"The Mozambican people never wanted war", said the President. "Much less do they accept that men who are children of the same motherland should continue senselessly to bring war to their country".

He stressed the democratic way in which the draft constitution had been discussed by Mozambicans throughout the country, and that even those who had taken up arms against the government had been given an opportunity to take part. "We invited members of Renamo to participate fully in the debate as long as they abandoned violence, respected law and order, and accepted the principle of the democratically expressed sovereignty of the people".

"Democracy is not a finished system", said Mr Chissano. "Perhaps it never will be. There will always be something to perfect, new needs, more advanced ideas".

A step forward had been taken "but we can only progress further if violence and war no longer mutilate our nation, if freedom also brings the possibility of working, creating and producing in peace".

The President called for "respect and tolerance, and social harmony, never forgetting that, in the final analysis, political debate aims to help solve the problems of the people, aims to unite and consolidate the nation, aims to develop the country".

"The adoption of the constitution does not, in itself, resolve our problems", he warned. Now it was necessary to ensure that all Mozambican citizens knew and understood the constitution.

The wide-ranging extension of individual rights in the new constitution was "an important gain for all citizens", he said. But it was not enough simply to have such rights written down.

He urged that action be taken to ensure that "respect for the constitution and the laws becomes an integral part of our daily lives, and of our institutions".