

FUNDAMENTAL LAW OF THE UNION COMOROS

Adopted on 23 December 2001

PREAMBLE

The people of the Comoros solemnly affirm their will:

To draw on Islam for continuous inspiration for the principles and rules governing the Union;

To guarantee the pursuit of a common destiny for Comorians;

To bestow on themselves new institutions founded on the legally constituted state and on democracy, respectful of good governance and guaranteeing the sharing of power between the

Union and the Islands that constitute it, in order to allow the latter to realise their legitimate aspirations, administer and manage freely and without hindrance their own affairs and promote their socio-economic development;

To mark their attachment to the principles and fundamental rights defined by the Charter of the United Nations, the Charter of the Organization of African Unity, the Charter of the Arab League of Nations, the Universal Declaration of Human Rights of the United Nations and the African Charter on Human and Peoples' Rights, as well as international conventions, notably those relating to the rights of children and women.

Proclaim:

- Solidarity between the Union and the Islands and between the Islands themselves;
- Equality of rights and duties for all the Islands;
- Equality of rights and duties for all without distinction of sex, origin, race, religion or belief;
- Equality of all before the law and the right of every accused person to be defended;
- Freedom and security of every individual on the sole condition that he or she does not commit any act liable to harm others;
- The right to multiple sources of information and a free press;
- Freedoms of expression, meeting, association and trade unionism with due respect for morals and public order;
- Freedom to do business, as well as the security of capital and investments;
- Inviolability of a person's home under conditions prescribed by law;
- Guarantee of ownership, except when public use or necessity have been established according to law and on condition of fair compensation;
- The right of all to health and education;
- The right of children and youth to be protected by the authorities against any form of abandonment, exploitation and violence;
- The right to a healthy environment and the duty of all to safeguard this environment.

This Preamble is an integral part of the Constitution.

TITLE I: THE UNION OF THE COMOROS

Article 1

The Union of the Comoros is a Republic, composed of the autonomous Islands of Mwali (Mohéli), Maoré (Mayotte), Ndzuwani (Anjouan) and N'gazidja (Grande Comore).

The national emblem shall be yellow, white, red, blue, a white crescent turned to the right and four white stars aligned from one end of the crescent to the other in an isosceles triangle on a green undercoat.

The national hymn shall be: Umodja Wa Massiwa.

The motto of the Union shall be "Unity-Solidarity-Development."

The official languages shall be the Shikomor, the national language, French and Arabic.

Article 2

An organic law shall define where Institutions of the Union have their seat.

Article 3

Sovereignty shall vest in the people which shall exercise it, in each island and in the Union as a whole, through its elected representatives or by referendum. No section of the people nor any individual may arrogate to itself, or to himself, the exercise thereof. No handover, no exchange, no territory adjunction is valid without the consent of concerned population.

Article 4

Under conditions determined by law, suffrage is universal, equal and secret. It can be direct or indirect. Under conditions determined by law, all Comorians of both sexes can vote in enjoyment of their civil and political rights.

Article 5

Comorian nationality is acquired, kept and lost in accordance with the law. No one who is Comorian by birth can be deprived of his or her nationality.

Article 6

Political parties and groups compete in the casting of votes, as well as in civic and political training of the people. They are formed and function freely, in accordance with the law of the Union. They must respect national unity and the sovereignty and inviolability of the borders of the Comoros, as recognised internationally, as well as the principles of democracy.

TITLE II: THE RESPECTIVE COMPETENCIES OF THE UNION AND THE ISLANDS

Article 7

With due respect for the unity of the Union and the inviolability of its borders as recognised internationally, every Island freely administers and manages its own affairs. Every Island freely establishes its Fundamental Law with due respect for the Constitution of the Union. Comorians have the same rights, freedoms and obligations everywhere in the Union. No authority can adopt measures that directly or indirectly hinder the freedom of movement and settlement of individuals, as well as the free movement of goods over the whole territory of Union. The Islands have an elected executive and Parliament as well as local communities endowed with a deliberating organ and an executive organ, both elected.

Article 8

Union law shall take precedence over the law of the islands; it shall be executed in the whole territory of the Comoros.

Article 9

The following matters shall fall within the exclusive jurisdiction of the Union: Religion, Nationality, Currency, Foreign Relations, Foreign Defence, national symbols.

In relations to matters under shared jurisdictions between the Union and the Islands, the islands have the power to act as long and as far as the Union does not use its right to act. The Union intervenes only if it can be done more effectively than the Islands because: (a) the regulation of a matter by an island could affect the interests of other islands; (b) a question cannot be resolved by an island in isolation; (c) the maintenance of the legal, economic and social unity of the

Union requires it. In this case, the Islands / States have, according to the matters, the power to take the necessary measures for the execution of the fundamental principles and rules defined by the Union or to the achievement of the objectives set by the Union.

An organic law determines, as needed, the matters falling within the shared competence of the Union or shared skills of Islands/States and the modalities of its exercise.

The matters falling within the exclusive jurisdiction of the Islands/States are those not falling within the exclusive jurisdiction of the Union or the shared jurisdiction of the Island / States and of the Union.

Article 10

Peace treaties, commercial treaties, treaties or agreements relating to an international organisation, those that involve the finances of the Union, those that modify provisions of a legislative nature, those relating to the state of individuals, and those that include cession, exchange or addition of territory, can only be ratified or approved in virtue of a law. They come into effect only after having been ratified or approved.

If the Constitutional Court, on referral by the President of the Union, the Vice-Presidents, the President of the Union's Assembly or the Heads of the Islands Executive power, has declared that an international agreement contains a clause contrary to the Constitution, the authorisation to ratify or approve it can only be given after the Constitution has been revised. Treaties and agreements regularly ratified or approved take precedence over the laws of the Union and the Islands, as soon as they are published, subject to their application by the other party for every treaty or agreement.

Article 11

The Islands/States enjoy financial autonomy. They develop and manage freely their budget according to the principles applicable in the management of public finances. An organic law sets the share of public revenues before respectively return to the Union and the States/islands. This distribution is carried out in the framework of the annual Finance Act of the Union. Under the conditions laid down in the organic law, the Islands / states can create for the benefit of their budget taxes not provided for by the law of the Union.

TITLE III: THE INSTITUTIONS OF THE UNION

1: The Executive Power

Article 12

The President of the Union shall be the symbol of national unity. He shall be the guarantor of the inviolability of the borders as internationally recognized and of the sovereignty of the Union. He shall be the arbiter and the moderator of the proper functioning of the institutions. He shall be the highest representative of the Union in international relations.

The President of the Union shall determine and conduct the foreign policy. He shall accredit ambassadors and envoys extraordinary to foreign powers; foreign ambassadors and envoys extraordinary shall be accredited to him. He shall negotiate and ratify treaties.

The President of the Union shall be the Head of Government. In this capacity, he shall determine and conduct the policy of the Union. He shall have at his disposal the administration of the Union and shall have the power to make regulations. He shall make appointments to civil and military posts of the Union.

The President of the Union shall be the Commander-in-Chief of the Armies. He shall be responsible for external defense.

The President of the Union shall be vested with the power to grant pardons, this right is exercised without countersignature.

Article 13

There shall be a Presidential Council of the Union composed of the President of the Union and Vice-Presidents, one from each of the Island/States. The mandate of the Council members is four years. The Presidency rotates between the Islands; it is carried out for the term of office by the member coming from the island under which the function falls, while other members from the other islands carry out the function of Vice-Presidents.

The President of the Union and the Vice-Chairmen who make up the team with him are elected by the Assembly of the Union to the absolute majority of its members. Before entering in function, the President of the Union and the Vice-Presidents shall take an oath before the Constitutional Court according to the following formula in Comorian language [Text in shikomori].

The conditions of eligibility and the terms of the application of this Article are laid down by an organic law.

Article 14

In the event of vacancy of the Presidency of the Union for whatever cause or permanent impeachment ruled by the Constitutional Court seized by the two Vice-Presidents, election of the new President of the Union shall be organised within a maximum period of one month from the date of the finding of the vacancy or the definitive impeachment ruled by the Constitutional Court. The functions of the President of the Union are temporarily exercised by the older by age of the Vice-President. In the event of a vacancy or permanent impeachment of one of the Vice Presidents, its replacement is carried out according to the conditions laid down by the Fundamental Law of the Island / State. In the event of the absence or temporary impeachment, the President of the Union is deputised by the older by age of the Vice-Presidents.

Article 15

The functions of President of the Union and of Vice President shall be incompatible with the exercise of any other elective mandate, any other political function, any public post, any public or private professional activity and any leadership function in a political party or group. Nevertheless, the President and the Vice-Presidents of the Union can be given responsibility for a ministerial department.

Article 16

The President of the Union, with the assistance of the two Vice-Presidents, shall appoint the Ministers and other members of the Government, as well as terminate their functions. The functions of Minister shall be incompatible with the exercise of any elective national mandate, any public post or any professional activity.

Article 17

The President of the Union shall promulgate the laws of the Union within fifteen days following the transmission to the Government of the finally adopted law. He may, before the expiry of this time limit, ask the Assembly of the Union, which shall decide by absolute majority, to reopen debate on a law or any of its articles. Such reopening of debate shall not be refused.

Article 18

The President of the Union shall establish an annual report on the state of the Union for the information of the Assembly of the Union, the Constitutional Court as well as the assemblies and executives of the islands.

2: The Legislative Power

Article 19

The Union's Assembly is the legislative organ of the Union. It passes laws and adopts the budget. The Union's Assembly is composed of thirty-three deputies elected for a mandate of five years.

Article 20

The Assembly of the Union is composed for half by representatives designated by the Assemblies of the Islands/states, namely five members by Island/state and for half by representatives elected by direct universal suffrage in the system of single member constituency majority voting in two rounds. The Electoral Law specifies the terms and conditions of the mode of voting as well as the electoral districts whose number may not be less than two by Island/State. Each list must contain an equal number of candidates from each of the islands / States.

The President of the Assembly of the Union is elected for the duration of the legislature. An organic law determines the conditions and the arrangements for the election of the members of the Assembly of the Union and of its President, the regime of ineligibilities and incompatibilities, as well as the allowances of Members of Parliament.

It specifies the conditions under which the people are elected to ensure, in the event of vacancy, the replacement of deputies until the general or partial renewal of the Assembly of the Union. The Assembly of the Union adopts, by a majority of two thirds of its members, its rules of procedure. Before the implementation of the latter, the Constitutional Court decides on its conformity with the Constitution.

Article 21

No member of the Assembly of the Union can be prosecuted, sought, arrested, detained or judged for opinions or votes made in carrying out his or her duties. No member of the Assembly of the Union can, for the duration of the sessions, be prosecuted or arrested in a criminal or civil matter without the authorisation of the Assembly, except in the case of *flagrante delicto*, authorised prosecution or final condemnation.

Article 22

No Member shall be elected with any binding mandate.

The right to vote of the Members of the Assembly of the Union shall be exercised in person.

Union legislation may in exceptional cases authorize voting by proxy. In that event, no member shall be given more than one proxy.

Article 23

The Assembly of the Union shall sit as of right in two ordinary sessions each year whose total duration shall not exceed six months. The days and hours of sittings shall be determined by the Rules of Procedure of the Assembly of the Union.

The Assembly of the Union shall meet in extraordinary session at the request of the President of the Union or of the absolute majority of the Deputies to debate a specific agenda. The extraordinary session shall be closed not later than fifteen days after the Assembly's first sitting.

Article 24

The sittings of the Assembly of the Union shall in principle be public, except in the cases provided for in the Rules of Procedure of the Assembly.

Article 25

Both the President of the Union and the Deputies shall have the right to initiate legislation. Government Bills shall be discussed in the Council of Ministers and shall be tabled in the Bureau of the Assembly of the Union.

The Deputies and the Government shall have the right of amendment.

Private Members' Bills and amendments introduced by Members of the Assembly of the Union shall not be admissible where their enactment would result in either a diminution of public revenue of the Union or the creation or increase of any public expenditure of the Union.

At the request of the Government or of the Assembly of the Union Government Bills and Private Members' Bills shall be referred for consideration to committees established by the Rules of Procedure of the Assembly of the Union or specially set up for this purpose.

Article 26

Laws of Parliament which are defined by the Constitution as being Institutional Laws shall be enacted and amended as provided for hereinafter.

A Government or Private Member's Bill shall not be debated and put to the vote in the Assembly of the Union until fifteen days have elapsed since the tabling thereof.

Institutional Laws shall be passed by a majority of two thirds of the Members of the Assembly.

At the request of all the Deputies from one island the debate on the Act must be reopened.

The Laws shall be promulgated after the Constitutional Court has declared their conformity with the Constitution.

Article 27

The Assembly of the Union shall adopt the Finance Bills with a two-thirds majority.

Should the Assembly of the Union fail to reach a decision within sixty days, the provisions of the Bill may be brought into force by Ordinance.

3: The Judicial Power

Article 28

The judicial power is independent of the legislative and executive powers. Judges are only subject, in carrying out their duties, to the authority of the law. Magistrates cannot be removed from office.

The President of the Union is the guarantor of the independence of the judiciary. He is assisted by the Higher Council of Magistrates. An organic law organises the judiciary in the Union and the Islands.

Article 29

The Supreme Court shall be the highest judicial authority of the Union in criminal and private law cases, administrative and auditing matters of the Union and the islands. The decisions of the Supreme Court shall not be subject to appeal and shall be binding on the executive power, the legislative power and all authorities in the territory of the Union. An Institutional Act shall determine the composition as well as the rules for the functioning of the Supreme Court.

TITLE IV: THE CONSTITUTIONAL COURT

Article 30

The Constitutional Court shall rule on the constitutionality of the statutes of the Union and the islands. It shall monitor the proper conduct of the electoral operations in the islands as well as at Union level, including referendums; it shall rule on electoral disputes. Finally, it shall guarantee the fundamental rights of the individual and public liberties.

The Constitutional Court shall guarantee the distribution of powers between the Union and the islands. It shall be competent to rule on the conflicts of jurisdiction between two or several institutions of the Union, between the Union and the islands, and among the islands themselves. Every citizen may request a ruling of the Constitutional Court on the constitutionality of statutes, either directly or by way of objecting to the application of an allegedly unconstitutional statute before a court of the Union or of an island in a case involving him. The court shall stay the proceedings until the Constitutional Court has given its ruling, which it shall do within thirty days.

Article 31

The President of the Union, the Vice-Presidents of the Union, the President of the Union's Assembly as well as the Executive Heads of the Islands each appoint one member of the Constitutional Court.

Article 32

The members of the Constitutional Court must have high moral standards and great integrity as well as a recognised competence in the legal, administrative, economic or social domains. They must give proof of at least fifteen years of professional experience. They are appointed for a mandate of six years, renewable. The President of the Constitutional Court is chosen by his peers for a mandate of six years that is renewable. The members of the Constitutional Court are irremovable. Except in the case of *flagrante delicto*, they cannot be prosecuted or arrested without the authorisation of the High Court. The duties of a member of the Constitutional Court are incompatible with the position of a member of the institutions of the Union or the Islands, as well as with any public office or professional activity.

Article 33

An organic law determines the rules governing the organisation and operation of the Constitutional Court, the procedure followed before the Court and notably the conditions, modes and time limits for submitting cases, as well as the status, immunities and disciplinary system of its members.

Article 34

A provision declared unconstitutional is null and void and cannot be applied. There is no appeal possible against the decisions of the Constitutional Court. They are imposed on every authority as well as on the courts over the whole territory of the Union.

TITLE V: THE REVISION OF THE CONSTITUTION

Article 35

Revision of the Constitution should be initiated jointly by the President of the Union and members of the Union Assembly. To be adopted, the draft or proposal of revision must be approved by two thirds of the total number of members of the Union Assembly and by two-thirds of the total members of the Assemblies of Islands.

No revision procedure may be initiated or continued when it undermines the unity of the territory and the inviolability of internationally recognized borders of the Union. The form of the organisation of the Union, as provided by this Constitution, may not be revised.

TITLE VI: TRANSITIONAL PROVISIONS

Article 36

The institutions of the Union provided for in this Constitution shall be implemented in accordance with the framework of the General Agreement on National Reconciliation (signed in Fomboni, February 17, 2001).

Article 37

The Maoré institutions shall be implemented within a period not exceeding six months from the day ending the situation that prevents this island to join the Union of the Islands. This Constitution will be revised to integrate the institutional consequences of Maoré return within the Union of the Comoros Islands.