

POLITICAL CONSTITUTION OF SÃO TOMÉ AND PRÍNCIPE

*Adopted on 5 November 1975,
Amended on 10 September 1990 through Law 7/90*

...
Inspired by the historic necessity of promoting increasingly broader and responsible participation of the citizen in the various dominions of the national life, this present revision to the constitutional text, in addition to consecrating the principle that the monopoly of power does not constitute by itself sufficient guarantee of progress, represents the collective will of the São Toméans in giving their share of contribution to the universality of the fundamental rights and liberties of man.

...
In these terms, after approval by the National Popular Assembly, exercising the powers conferred upon it ... I [ie the President - ed] promulgate the following Constitution:

PART I: PRINCIPLES AND OBJECTIVES

Article 1: Democratic Republic of São Tomé and Príncipe

The Democratic Republic of São Tomé and Príncipe is a sovereign and independent state, pledged to the building of a free, just and interdependent society, to the defence of human rights and to the active solidarity among all people, and all peoples.

Article 6: State of democratic law

1. The Democratic Republic of São Tomé and Príncipe is a state of democratic law, based on the fundamental rights of the human being.
2. Political power belongs to the people who exercise it through universal, equal, direct and secret suffrage under the terms of the Constitution.

Article 7: Justice and legality

The state of democratic law implies the safeguard of justice and legality as fundamental values of collective life.

Article 8: Lay state

The Democratic Republic of São Tomé and Príncipe is a secular state, within it existing a separation of the state with respect to all religious institutions.

Article 10: Prime objectives of the state

The prime objectives of the state are to:

- a) Guarantee the national independence;
- b) Promote respect and the becoming effective of personal, economic, social, cultural and political rights of the citizens;
- c) Preserve the harmonious balance of nature and of the environment.

Article 12: International relations

1. The Democratic Republic of São Tomé and Príncipe is determined to contribute toward the safeguarding of universal peace, toward the establishment of equal rights and mutual respect for sovereignty among all the states and toward the social progress of humanity, on the basis of the principles of international law and peaceful coexistence.
2. The Democratic Republic of São Tomé and Príncipe proclaims its adherence to the Universal Declaration of Human Rights and to its principles and to the objectives of the Organization of African Unity and of the United Nations.

PART II: FUNDAMENTAL RIGHTS AND SOCIAL ORDER

TITLE 1: General Principles

Article 14: Principles of equality

1. All citizens are equal before the law, enjoy the same rights and are subject to the same obligations without distinction as to social or racial origin, sex, political tendency, religious belief or philosophical conviction.

2. Women are equal to men in rights and obligations, being guaranteed full participation in political, economic, social and cultural life.

Article 15: The citizen overseas

1. Every São Toméan citizen who resides or finds himself overseas enjoys the same rights and is subject to the same obligations as the other citizens, except for that which would be incompatible with absence from the country.
2. São Toméan citizens resident overseas enjoy the care and protection of the state.

Article 16: Foreigners in São Tomé and Príncipe

1. The foreigners and displaced persons who reside or find themselves in São Tomé and Príncipe enjoy the same rights and are subject to the same obligations as the São Toméan citizen, except in so far as are concerned political rights, the exercise of public office and other rights and obligations expressly reserved by law for the national citizen.
2. The exercise of public office will only be permitted to foreigners provided it has a predominantly technical character, except in the case of an international agreement or convention.

Article 17: Scope and meaning of rights

1. The rights consecrated in this Constitution do not exclude any which might be foreseen in laws or in rules of international law.
2. The precepts relative to fundamental rights are interpreted and integrated in harmony with the Universal Declaration of Human Rights.

Article 18: Restriction and suspension

1. The exercise of fundamental rights can only be restricted in cases foreseen in the Constitution and suspended during the existence of a state of siege or state of emergency declared in the terms of the Constitution and of the law.
2. No restriction or suspension of rights may be established for longer than strictly necessary.

Article 19: Access to the courts

Every citizen has the right of resorting to the courts against acts which violate his rights recognised by the Constitution and by the law, justice not being deniable for insufficiency of economic means.

Article 20: Obligations and limits to rights

The citizens have obligations with respect to society and the state, not being able to exercise their rights through violation of the rights of the other citizens, and not respecting the just demands of morality, of public order and of national independence defined in the law.

TITLE 2: Personal Rights

Article 21: Right to life

1. Human life is inviolable.
2. Under no circumstances shall the death penalty be used.

Article 22: Right to personal integrity

1. The moral and physical integrity of the people is inviolable.
2. No one may be submitted to torture or to cruel, inhuman or degrading treatment or punishment.

Article 23: Right to identity and privacy

Personal identity and the confidentiality of the intimacy of private and family life are inviolable.

Article 24: Inviolability of the home and of correspondence

1. The home and the secrecy of correspondence and of private means of communication are inviolable.
2. Entrance into the home of citizens against their will only may be ordered by competent judicial authority, in the cases and manner prescribed by the law.

Article 25: Family, marriage and relationships

1. All have the right to form a family and to enter into matrimony in conditions of full equality.
2. The law regulates the requirements and effects of marriage and of its dissolution, by death or divorce, independent from the form in which it was celebrated.
3. Spouses have equal rights with respect to civil or political competency and to the maintenance and education of their children.
4. Children born out of wedlock cannot, for that reason, be the object of any discrimination.

5. Parents have the right and duty of educating and maintaining their children.

Article 26: Freedom of conscience, religion and worship

1. Freedom of conscience, religion and worship is inviolable.
2. No one may be persecuted, deprived of right or exempted from civic obligations or duties because of his convictions or practice of religion.
3. No one may be questioned by any authority about his convictions or religious practices except for the collection of statistical data not individually identifiable nor be prejudiced for refusing to answer.
4. Religious confessions are free in worship, in education and in their organisation.

Article 27: Freedom of cultural creation

Intellectual, artistic and scientific creation are free.

Article 28: Freedom of expression and information

1. All have the right to freely express and divulge their thinking by word, by image or by any other means.
2. Infractions committed in the exercise of this right remain subject to the general principles of criminal law, their appreciation being within the competence of the courts.

Article 29: Freedom of the press

1. Freedom of the press is guaranteed in the Democratic Republic of São Tomé and Príncipe, within the terms of the law.
2. The state guarantees a public service press independent of the interests of economic and political groups.

Article 30: The right to learn and the freedom to teach

1. The right to learn and the freedom to teach are guaranteed.
2. The state may not reserve for itself the right to plan education and culture according to any philosophical, political, ideological or religious policies.

Article 31: Freedom to choose a profession

All have the right to freely choose a profession or a type of work, with the exception of the legal restrictions imposed by the collective interest or inherent to the profession.

Article 32: Right of relocation and immigration

1. To all citizens the right is guaranteed to freely relocate and establish themselves in any part of the national territory.
2. To all is guaranteed the right to emigrate or to leave the national territory and the right to return.

Article 33: Right to assemble and to demonstrate

1. All citizens have the right to assemble, peacefully and without arms, even in places open to the public.
2. The right to demonstrate is recognised for all citizens, within the terms of the law.

Article 34: Freedom of association

1. The citizens have the right to, freely and without dependence on any authorisation, form associations, so long as they are not contrary to the penal law or do not question the constitution and national independence.
2. Associations pursue their ends freely.
3. No one can be obliged to take part in an association nor be compelled by any means to remain in one.

Article 35: Personal freedom and security

1. All have the right to personal freedom and to personal security.
2. No one may be deprived of freedom, except in cases provided for by law and always by decision or with the review of the appropriate court.

Article 36: Application of the penal law

1. No one may be sentenced criminally except by virtue of prior law which declares punishable the action or omission nor suffer security measures whose purposes are not fixed in prior law.
2. However, penal laws are applied retroactively when their content is more favourable to the accused or to the sentenced.

Article 37: Limits of sentences and of security measures

1. There may be no punishments nor security measures which deprive or restrict liberty which are of a perpetual, unlimited duration or undefined nature.
2. Sentences are not subject to commutation.
3. No sentence presumes the loss of any civil, professional or political rights.

Article 38: Habeas corpus

1. In case of imprisonment or illegal detention resulting from the abuse of power, the citizen has the right of recourse to the provision of habeas corpus.
2. The provision of *habeas corpus* is lodged before the court and its procedure is fixed by the law.

Article 39: Guarantees of criminal procedure

1. Criminal procedure will assure all the fair trial guarantees.
2. Every accused is presumed innocent until proven guilty, being tried in the shortest time compatible with fair trial guarantees.
3. The accused has the right to choose defence counsel and to be assisted by him in all the acts of the trial, the law specifying the instances and the aspects in which that assistance is obligatory.
4. Every instruction is within the competence of a Magistrate, who may, within the terms of the law, delegate to other entities the practice of instructional acts which do not directly affect fundamental rights.
5. Criminal procedure has an accusatory structure with the hearing of the trial and the instructional acts subordinated to the principle of cross-examination.
6. All evidence obtained through torture, coercion or offence to the physical or moral integrity of the person, abusive intromission into private life, in the home, in correspondence or in telecommunications are null.
7. No case may be removed from the court whose competence has been established in prior law.

Article 40: Extradition and expulsion

1. The extradition and the expulsion of São Toméan citizens from the national territory are not allowed.
2. Extradition for political motives is not permitted, nor for crimes which carry the death penalty according to the law of the petitioning state.
3. The expulsion of foreigners who have obtained residency authorisation, may only be determined by judicial authority, the law assuring expeditious means of decision.
4. Asylum is granted to foreigners persecuted or gravely threatened with persecution, by virtue of their activity in favour of democratic rights.

TITLE 3: Social Rights and Economic, Social and Cultural Order

Article 41: Right to work

1. All have the right to work.
2. The obligation to work is inseparable from the right to work.
3. It is incumbent upon the state to ensure equality of opportunity in the choice of profession or type of work and conditions so that access to any position, work or professional category is not blocked or limited.
4. The right to exercise professions is guaranteed in the conditions obtaining in the law.

Article 42: Rights of workers

1. All the workers have rights:
 - a) To recompense for work, according to quantity, nature and quality, observing the principal of equal salary for equal work, so as to guarantee a deserved living;
 - b) To labour-union freedom, as a means of promoting their unity, defending their legitimate rights and protecting their interests;
 - c) To the organisation of work in socially dignifying conditions, in order to facilitate personal accomplishment;
 - d) To be able to perform work in hygienic and safe conditions;
 - e) To a maximum limit to the work day, to weekly rest and to periodic paid holidays;
 - f) To strike, under terms to be regulated by law, taking into account the interests of the workers and of the national economy.

[There is no sub-article (2) – ed]

Article 43: Social security

1. The state guarantees to every citizen, through the social security system, the right to protection in illness, handicap, widowhood, orphan hood and other instances prescribed by law.

2. The organisation of the system of social security of the state does not prejudice the existence of private institutions, with the implementation in mind of the objectives of social security.

Article 44: Co-operatives

1. The right of free establishment of co-operatives is guaranteed.
2. The state stimulates, and supports the creation and the activity of co-operatives.

Article 45: Intellectual property

The state protects the inherent rights to intellectual property, including the rights of the author.

Article 46: Private property

1. The right to private property and to its transfer in life or through death is guaranteed to all, in accordance with the law.
2. Requisition and expropriation for public use may only be effected as based on the law.

Article 47: Private enterprises

1. The state oversees the respect for the law by private enterprises and protects the economically and socially viable small and medium enterprises.
2. The state may authorise foreign investment, provided it is useful to the economic and social development of the country.

Article 48: Housing and environment

1. All have the right to housing and to an environment of human life and the duty to defend it.
2. It is incumbent upon the state to plan and execute a housing policy inserted in the plans for zoning of the territory.

Article 49: Right to health care

1. All have the right to health care and the duty to defend it.
2. In accordance with the national system of health, it is incumbent upon the state to promote the public health which has as objectives the physical and mental well-being of the population and their balanced fitting into the socio-ecological environment in which they live.
3. The exercise of private medical practice is permitted, under the conditions fixed by law.

Article 50: Family

1. As the fundamental element of the society, the family has the right to the protection of the society and of the state.
2. It is incumbent, especially upon the state:
 - a) To promote the social and economic independence of family tenant farmers;
 - b) To promote the creation of a national network of maternal infant assistance;
 - c) To co-operate with parents in the education of their children.

Article 51: Childhood

Children have the right to the respect and the protection of the society and of the state, with a view towards their complete development.

Article 52: Youth

The youth, especially the young workers, enjoy special protection in order to render effective their economic, social and cultural rights.

Article 53: Senior citizens

Persons of advanced age have the right to satisfactory family life and economic security.

Article 54: Education

1. Education, as a right recognised to all the citizens, strives for the complete formation of man and his active participation in the community.
2. It is the responsibility of the state to promote the elimination of illiteracy and permanent education, in accordance with a national system of instruction.
3. The state ensures basic compulsory and free education.
4. The state gradually promotes the possibility of equal access to the other levels of education.
5. Education is permitted through private institutions, in the terms of the law.

Article 55: Culture and sport

1. Conditions will be created so that all citizens may have access to culture and are encouraged to participate actively in its creation and dissemination.
2. The state preserves, defends and esteems the cultural patrimony of the São Toméan people.
3. It is incumbent upon the state to encourage and promote the practice and spreading of sports and of physical culture.

TITLE 4: Civil-political Rights and Obligations

Article 56: Participation in public life

All citizens have the right to take part in public life and in the management of the affairs of the country, directly or by means of freely elected representatives.

Article 57: Right to suffrage

All citizens of more than eighteen years have the right of suffrage, excepting incompetence as provided in the general law.

Article 58: Right to access to public office

All citizens have the right of access, in conditions of equality and liberty, to public office.

Article 59: Right of petition

All citizens have the right to present, individually or collectively, to the organs of political power or to any authorities petitions, representations, protests or complaints for the defence of their rights in the Constitution, in the laws or for the general interest.

Article 60: Right of indemnity

Every citizen has the right to be indemnified for damage caused by illegal and harmful actions to his legitimate rights and interests, whether from state organs, social organisations or whether from public officials.

Article 61: Civic organisations

The state supports and protects the social organisations recognised by law which, in correspondence with specific interests, frame and encourage the civic participation of the citizens.

Article 62: Political organisations

1. Every citizen may form or participate in political organisations recognised by law which encompass the free and plural participation of the citizens in public life.
2. Special laws shall regulate the formation of political parties.

Article 63: National defence obligations

1. It is the honour and the supreme duty of the citizen to participate in the defence of the sovereignty, independence and territorial integrity of the state.
2. Every citizen has the duty of rendering military service under the terms of the law.
3. Treason to the Fatherland is a crime punishable by the most grave penalties.

Article 64: Taxes

1. All citizens have the obligation of contributing to the public expenditures, under the terms of the law.
2. The taxes seek to satisfy the financial needs of the state and a just distribution of income.

PART III: ORGANISATION OF POLITICAL POWER

TITLE 1: General Principles

Article 65: Political participation of the citizens

The participation and direct and active involvement of the citizens in public life constitutes a fundamental condition of the unity of the Republic.

...

TITLE 2: President of the Republic

...

Article 76: Competence

The President of the Republic is charged with:

- ...
p) Declaring a state of siege and of emergency;

...
TITLE 3: National Assembly

...
Article 86: Competence

The National Assembly is charged with:

- ...
m) Authorising the President of the Republic to declare a state of siege or of emergency;

...
TITLE 4: Government

...
Article 99: Competence

It is the duty of the government to:

- ...
e) Negotiate and conclude treaties and international conventions;
f) Take legislative initiative before the National Assembly;

...
TITLE 5: The Courts

Article 103: Jurisdictional function

...
2. In the administration of justice it is incumbent upon the courts to assure the defence of the legally protected rights and interests of the citizens, to settle public and private conflicts of interest and to repress the violation of the laws.

...
Article 104: Independence

The courts are independent and are subject only to the laws.

...
Article 106: Hearing of the courts

The hearings of the courts are public except when the court itself decides to the contrary, in a well-founded decision, in order to safeguard the dignity of the individuals and of the public morals or to guarantee their normal operation.

...
Article 111: Oversight of constitutionality

1. In the deeds submitted to judgment, the courts cannot apply norms which infringe upon what is provided in the Constitution or in the principles consecrated therein.
2. The question of unconstitutionality may be raised obligingly by the court, by the Justice Department or by any of the parties.
3. Once a question of unconstitutionality is admitted, the case goes to the National Assembly, which will decide.
4. The decisions taken on the matter of unconstitutionality by the National Assembly shall have general binding force ...

...
PART VI: CONSTITUTIONAL REVISION

Article 122: Time and initiative of the revision

1. The Constitution may be revised at any time, by initiative of three-quarters of the Deputies to the National Assembly in exercise of their functions.

...
Article 123: Approval of the amendments

1. Any amendment of the Constitution is approved by a two-thirds majority of the Deputies to the National Assembly in exercise of their functions.
 2. The National Assembly may propose to the President of the Republic the subjection of any amendment to popular referendum.
- ...

