

B. AFRICA

MOZAMBIQUE: PRESIDENT'S ADDRESS TO MAPUTO RALLY ON PROPOSALS FOR CONSTITUTIONAL REFORM

[1]

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Excerpts from first part of relay of speech by President Joaquim Chissano at a mass rally in Maputo (ME/0659 ii)

Long live Maputo residents! [crowd shouts: Long live!] Long live Matola residents! [crowd shouts: Long live!] Long live the Mozambican people! [crowd shouts: Long live!] The struggle continues! [crowd shouts: Continues!] Can we say the struggle continues? Can we say the struggle continues? [crowd shouts: We can!]

I ask you this because, one day, when I was visiting Molocue district, Zambezia Province. . . I first shouted: Long live Zambezia residents! I was not yet ready to say the struggle continues, but since the party secretary there said the struggle continues, and the people answered that it continues, I then gained courage. The people were organised so we could communicate better. This was followed by some noise in the background; people began to talk. I then decided to use the slogan the struggle continues to attract their attention. They answered: It continues. They then quieted down to listen to what I had to say. I spoke a little, and then I asked them to air their views. When they began to talk, they said - changes thought] it was an old man who spoke first.

The old man said: Comrade President, we are well. The problem we face here is that of the armed bandits, and, he said, he said a few other things. However, he continued and said: There is one thing we do not understand. You, Comrade President, came here, greeted us well, and then said the struggle continues. Why is that? Why should the struggle continue?

The old man was followed by a lady. The lady said: My heart is aching because of the words the struggle continues. Why should the struggle continue? The two went further. We have heard that there are contacts with the armed bandits through the governments of Kenya and Zimbabwe. What then is the problem? You are not here to tell us the struggle has ended? . . . The question had a lot of value. They said: Comrade President, explain why you are here. I explained. I told them: Everything depends on us. After explaining, I asked them: What then must we do? It was that very woman, who said that her heart was aching, who stood up and shouted: The struggle continues. . . We will have the opportunity to discuss this issue here, and when we go back to it, I shall explain to you the way I explained to her. It will then be up to you to tell me why you shout: The struggle continues! Perhaps, you will tell me the struggle has ended. It will all depend on us. . .

We arranged a meeting with the people. This meeting would have taken place at Chamanculo, at Chamanculo residential area. We then thought about the work we were carrying out in the party Political Bureau and the People's

Assembly standing committee. This work involved completing the draft proposal for revising the constitution, to be presented to the entire Mozambican people for discussion. . . I thought it proper that, when I meet the Maputo residents, I should have with me this proposal, which is why I suggested we postpone the Chamanculo meeting. I told him we would only meet when I had this document in my hand. I am glad to tell you that, today, I have this document in my hand. Here it is [applause]. . .

Drafting this proposal was delayed because it had to include the discussions we all had to prepare for the party's fifth congress. We held discussions at our workplaces and districts; we held these discussions during the congress' preparatory conference; we held topical discussions during the congress itself. The congress adopted decisions that had to guide us in drafting this proposal. It seemed easy at first; it seemed that, after the congress, we could just add two or three points to the proposal.

This was not the case. We found rich discussion, an examination of the country's situation, and a maturity in our people's population. We had to draft the proposal with great care. It is only today that we are able to present this proposal. It is not very late. We shall have all the time we need to hold discussions; we shall have all the time we need to bring together our views, because we need to agree fully. . . If we, the party and state leadership, are unable to draw a proper conclusion of what the people's desire is, we shall ask the entire population to vote on the proposal so that we can be certain that this is the constitution of the Mozambican people, for the Mozambican people, and by the Mozambican people [applause].

We have come here today with this in mind. We shall speak about various issues here. I know that, in our city or in our two cities, Maputo and Matola, there is tension, agitation, and provocation; we have this atmosphere; we have discontent, genuine, real, honest discontent. However, there is also discontent caused and incited by petty interests. This is the atmosphere. We know to distinguish people's interests; we know to distinguish genuine, real and correct feelings; they exist, no matter how difficult it is for us to accept. We must recognise they exist and find solutions. We know we have real problems to face and resolve, but we cannot close our eyes to petty interests that contravene even the workers' interests; using those same workers; exploiting their ignorance and suffering; exploiting the shortages faced by workers and the people, in general. We know this is the situation.

I would like to repeat that the real, honest, and genuine problems we face must be viewed with awareness and in a different manner, no matter how difficult this is for us. We must remember there are people who want us to act against ourselves. I shall return to this issue later. Should we stop moving forward to resolve problems with our struggle to build the nation, temporary problems that will not end our problems once and for all? I think that is not the way. We have one way: the party fifth congress decisions. Instruments are required to

solve the problems we presented in preparing the fifth congress; they require instruments that involve the entire population; they require instruments to define the duties of all of us, the rulers and the ruled. We require instruments to define our limits.

The constitution stands as the principal instrument and needs to be clear. That is why, after the congress, after one month of truly-needed good rest, we devoted ourselves to studying and drafting the constitutional proposal. We will soon see here that many of the problems we have discussed have a foundation or a place in the constitution. Their solution depends on this constitution; thus, the constitution will be my first point of discussion.

The second point concerning us in the country is the peace problem. I will briefly discuss the problem of the search for peace and will report our progress so far. . . Afterwards, I want to talk again about the fifth congress decisions so we can touch on this city's current situation. When I speak about the constitution, I will briefly refer to strikes. Let us, therefore, be patient. There may be people who came here just to hear something about strikes. . .

I will not detail the constitution's full content since it would be like reading the whole constitution. The proposal has 150 articles; each article is important. I can try to highlight some of the constitution's principal points; however, this does not mean other points in the constitution are less important. . . I will only mention a few of the main points. First, people's sovereignty. The draft proposal on the revision of the constitution, which as of now we are submitting to popular debate, specifically enshrines one of the fundamental principles of democracy, namely the principle that sovereignty lies with the people. This principle enshrines a Mozambican reality which has been exercised for almost 15 years of national independence. What is people's sovereignty, and what does it mean? How is it or should it be exercised? To speak of people's sovereignty is to say that the Mozambican people have the capacity for self-determination and to take their fate into their own hands. This means that the Mozambican people must be what they want to be, rather than what others want them to be. . .

However, as we can see in Maputo city today, there are people who don't have a deep knowledge of their rights and who seek to express their views in a clandestine manner. The wider the doors are opened to them, the more clandestine these people want to become. Right now at this rally, some of them are hiding over there, whispering, when in fact they have the right to sovereignty. In the past, some of them expressed their views by using bullets, and today there are many who use sticks and stones. Maybe they are not aware that ours is a sovereign people. So, this is what we want to clarify. The people are sovereign, and we are going to show how sovereignty can be exercised so that the interests of all our people and social classes can be taken into consideration, protected, and promoted. . .

So, this principle of people's sovereignty will be clearly enshrined in our constitution. The constitution will give it a new meaning. Therefore, we are proposing that in the future our people's sovereignty should be widened and deepened even further. From the outset, sovereignty will be evident in

that it will be possible for people to choose directly their representatives for political power. To date the people have been choosing their representatives indirectly, and there are only a few cases in which the people choose their representatives directly.

Therefore, we propose that the possibility of people being able to choose directly their representatives for political power should be enshrined in the constitution. This will mean a deepening of people's sovereignty: The people will be entirely free to elect directly their deputies to the People's Assembly, as well as the President of the Republic.

In the past, the Central Committee elected the Frelimo Party Chairman, and the latter automatically became the President of the Republic. This was a valid principle during our first years of independence. However, we realise that our people are today more politically mature and that we can therefore take a great leap forward in the exercise of our democracy. We propose that the President of the Republic be directly elected.

These are proposals that the people, as a sovereign grouping, have the right to reject, or to choose another form of elections. This president standing here and called Joaquim Chissano feels at ease anywhere in the country, but this doesn't mean he should not permit this democratic right to be widened so that can be a clearly free, direct, and conscientious choice.

The same applies to People's Assembly deputies: They are elected by electoral conferences, but we now propose they be elected directly. We will deal with this later.

We also want to establish another important way of exercising sovereignty: the referendum. I learned how people feel during rallies like this one, or even larger ones, which took a long time to prepare, particularly the ones in provinces and districts where I heard the people's response. We could have held this type of referendum. We ask people at a referendum to raise specific issues. It's not a question of electing people but, rather, of deciding matters of primary interest to the country. That is when we ask the people's opinion, and they say yes or no. It is a form of democracy. . . We have already involved the Mozambican people in discussing important issues and laws in various phases of our lives. We now wish to transform this practice into a constitutional principle. . .

The second point is democracy. We state in the constitution's first article that ours is a democratic state. Frelimo adopted this during the years of national liberation; we attained it in our liberated areas and were able to extend it to the country as a whole, from Rovuma River to Maputo River. Democracy means a government of the people; it means power is in the hands of the people. It has a very simple meaning when we talk about it. . .

Plans should be made to permit the people's continued participation in leading the nation so a person can be permanently sovereign instead of exercising this right only temporarily or sporadically. This constitutional proposal upholds democracy as a principle that ought to be maintained and as a practice that should be developed. The people's assemblies, organs elected by citizens, will continue to play an important role in exercising democracy. Social organisations will also play an important role because we want them to promote everyone to participate in public life.

The third point is social justice. The draft proposal on revising the constitution defines our state as a state of social justice. I again call your attention to what I will say, since it involves current events. It has always been our concern, both in the party and at state level, that we should adopt a policy that benefits the people first and foremost. Our strength and power lies with the people; the people are the *raison d'être* of our entire struggle, and they are always on our minds when we exercise power on their behalf. The state, which is the main instrument of power, should regard the people as the main benefactor in its duties. In conducting its affairs, we want the state to consider the situation of the less privileged of our people and that the latter should not be left unattended.

The constitution states all this, and it was not written the day before yesterday or because of the railway and other strikes... Our development is currently characterised by enormous shortcomings and difficulties, which will take years to solve. The shortcomings our people face today are also felt in countries that have been independent longer than we have. Almost all African countries have an economic recovery programme where difficulties of various types are felt. They have enormous, overall difficulties. We must be committed to solving our difficulties.

It would be a miracle, and let's hope miracles still happen, if we could solve these difficulties at the drop of a hat. It was here, in this square, from that Executive Council building, that we said we would introduce the PRE [economic rehabilitation programme]. Only three years later, we are trying to assess the results and the path to be followed. Before even a year was up everybody was applauding the PRE. What did they think we were talking about when we said the PRE was a difficult task? This question was even more pertinent when the PRE was faced with internal and external factors, beyond our control, and was being implemented in a country faced with general destabilisation.

A state of social justice should create conditions to solve the fundamental problems of most citizens. Numerous draft proposal articles aim to safeguard the interests of the majority of the people, namely the literacy campaign and education, health and sanitation, and labour and social security. It would be insufficient to have it all stated in the constitution or protected by law; yet, the constitution must deal with it and see that those interests are safeguarded by law because positive results will come forth gradually. There will be obstacles to overcome and thorns in our flesh that we must bear if we cannot get rid of them. We require time, patience, unselfishness, and, often, heroism to do all this. Only patriotism will make it possible to achieve all this...

Above all, this must be a state guaranteeing its citizens that the nation's principal resources will be used in the interests of the whole community. This includes my car. If you find my car is not being used to serve the interests of the whole community, you can take it away and give me a bicycle instead. You can remove me if you find the palace in which you have placed me is not serving the interests of the whole community...

Fourth is the state's objectives. The draft project on revising the constitution defines the state's fundamental objectives. Those objectives are:

First, to defend our independence and sovereignty. Political independence, territorial integrity, and the right to make our own decisions are priceless gains which we achieved through much sacrifice that we must constantly defend;

Second, consolidating national unity is another state objective. National unity is achieved after a long process and is no easy task that has no deadlines. National unity is necessary to affirm our Mozambican identity and consolidate our people's unity. We are on the right path, and we must continue down that path. We must affirm unity and eliminate disunifying factors. Revising the constitution helps fulfil that need;

Third, another objective of the state is to defend human rights and uphold citizens' equality before the law. We are concerned about human rights to the extent that they are the people's rights. We are also placing greater emphasis on the citizens' rights as individuals and people. We want the constitution to expand those rights. We will discuss the issue of rights later;

Fourth, the state wants to build a society based on social justice and to create material and social wellbeing for its citizens;

Fifth, the state wants to strengthen democracy, freedom, and social, as well as individual, stability. Social stability is still difficult to achieve because of armed bandit destabilisation; nonetheless, it is a state objective.

Sixth, economic development and scientific, as well as technical, progress;

Seventh, the need to affirm the Mozambican personality and the freely and democratically-accepted cultural, social, and traditional values; and

Eighth, establishing and developing friendly co-operation with other peoples and states.

Fifth is the legal state. Our experience in building the state shows we must perfect state institutions and make them conform more to the law. This means state and other workers must obey the law and use it as a reference. We know the ongoing strikes have, to a certain extent, been caused by certain officials not observing the law. [applause] They do not act within the law; they forget the law gives them permanent guidelines... If authority is effectively and opportunely applied by each responsible official within the established norms, our institutions will gain prestige, the state will be strengthened, and the citizens will be happy. This is why all citizens must be concerned with legal control over administration, and this must not be restricted to direct or indirect fiscal work alone.

The citizen's complaint must be established. The citizen must also have an administrative recourse to administrative acts violating his rights. This is included in the constitutional proposals [applause].

Developing democracy presupposes developing the legal state... Many do not like him, but he is a Mozambican. Let me say, our brother Dhlakama, the head of the so-called Renamo, does not want to hear anything about the legal state or respect it. I will return to this issue later. This is just to show you that all our lives fall under the constitution. Participating in discussions is valuable because you do not have to say: No, we do not want Dhlakama because he kills, he just kills. Someone will come along tomorrow who does not kill but is

equally evil and kills in other ways. [applause]. We must look to our laws, our constitution, and our sovereign right to make decisions to justify saying: No!...

We have equal rights, equal duties, and non-discrimination... We have freedom of speech, freedom of assembly, and freedom of association. We have the right to elect and be elected. We have the protection of marriage, protection of family, protection of motherhood, and protection of children. The protection of motherhood at our hospital has, unfortunately, left a lot to be desired over the past two days. The protection of children has left a lot to be desired over the past few days at our central hospital.

We have rights and duties... Let's start with the right to life. This means our courts will no longer apply a capital sentence; this means they will no longer apply the death sentence [applause]. Adopting this right results from our awareness about the importance of human life. We have been following this practice over the past few years, although we had not yet officially abolished the death sentence. We have not been applying it. We had to have all this incorporated into the law. It all depends on you. You can say: If we abolish the death sentence, people will take advantage. It will all depend on you. We are just proposing to abolish it. We propose to adopt the right to life for all Mozambican citizens. There are countries that abolished the death sentence and decided to bring it back. We didn't have it after independence, but our foreign enemies forced us to introduce it. Today, with our maturity and growth, we believe we can abolish it. We will find other ways.

Another right we intend to introduce is the right to physical integrity, the right not to be subjected to torture, cruelty or inhuman treatment. This aims to offer the human being his dignity and respect. We abolished the flogging law. We are now going to consecrate the citizen's physical integrity rights, not only his physical integrity but also his moral integrity. In that way, we will consecrate the citizen's right to honour, to a good name and reputation, to defend his public image, and to privacy... Protecting the citizen's honour means he has the right not to be offended or to be disrespected.

We heard about this issue of man's dignity in various districts. I was very touched at the rally I led in the Gile district of Zambezia Province, when I saw the way illiterate and hungry people, even desperate people, maintained their dignity. They accused armed bandits of disrespect. They did not accuse the armed bandits of stealing but of disrespect. It was very touching, and it must be mentioned in the constitution.

The equality of man and woman before the law in every field of political, economic, social and cultural life is another right that has been proposed for inclusion in the constitution.

One of the pillars of the legal state is the citizens' right to access to and use of tribunals against those acts violating their rights, as enshrined in the constitution and the law. This ensures all those who feel their fundamental rights have been harmed can use judicial organs to seek compensation. We consecrate the right to present petitions, complaints, or demands to any authority to restore violated rights. The principle of not heeding illegal orders completes this set of rights; this applies to orders given by certain workers to other

workers. It is illegal to prevent someone who is willing to work from working; it is illegal to obstruct that person's path, particularly in a violent way; that is illegal. It is also illegal for a senior worker to give illegal orders to a subordinate. We want to consecrate the right not to heed illegal orders.

To avoid abuses and authoritarian behaviour - [changes thought] perhaps you do not like this. The proposal for revising the constitution also consecrates the citizen's right to contest those administrative acts affecting his rights. In that way, we can gather and strengthen our experience in developing public functions. One constitutional right involves the state compensating an illegal act by its agents. There are many more similar rights.

We have religious freedom; I said earlier I would expand on this. It grants citizens the right to profess a religious belief or not. It grants religious denominations the freedom to pursue their objectives and possess the means towards this direction. Religious denominations need churches, mosques, seminaries. They need facilities for religious instruction. They need residential houses to carry out their tasks. They need all the facilities - Bibles, Korans and rosaries - they need all these facilities. Freedom of religion, although already incorporated into the previous constitution, will now be broadened, that is, if you so wish, or if we so wish. I support this idea, which is why I propose this, but I can change my view if you convince me, so that we can have a common stand.

There is a right to property. The constitutional proposal provides for establishing just compensation for property expropriated for public utility or interest. This must be carried out within the law. There is a right to property; there is also a right to inheritance.

Another important right and duty of the citizen is work. It is equally associated to the freedom to choose a profession. The freedom to choose a profession is an important principle that implies free initiative and the possibility of individual accomplishment. Other rights regarding work and incorporated into the draft constitution are the rights to just remuneration, rest, holiday, hygiene at work, and protection against arbitrary sacking. People can only be sacked within the law...

A new right is incorporated into the constitutional proposal that is not contained in the constitution now being revised, namely the right to join and participate in trade union organisations and the right to strike. It is a right that is now incorporated into the constitution. We will now have the right to strike. We will expand on this topic later since it is a current topic.

In brief, the above-mentioned are the rights detailed in the proposed constitutional revisions.

Today, there is a right to strike just because silence gives consent. The constitution is quiet on strikes, and, as such it, it seems to have consented. However, this right is not enshrined in our current constitution. This is why our strikes are the crudest strikes I have ever witnessed. This is because there is no law. It is not the strikers' fault; the problem is there is no law; it is not incorporated into the constitution.

Along with rights, we have individual guarantees; we need guarantees. The draft constitution contains a chapter specifically devoted to the citizen's guarantees. Although we

were satisfied with the series of rights and fundamental liberties incorporated into the draft constitution, we felt it was equally necessary to introduce a series of citizen guarantees, guarantees on the full exercise of their rights and liberties. These guarantees define state action for citizens, as we mentioned earlier. . . I will mention some of these guarantees.

First, we have the guarantee of a citizen under a penal process. The draft constitution gives special attention to the individual physical liberty of a citizen by establishing a series of guarantees that must be observed by police and judicial authorities. No-one can be arrested and tried outside the terms of the law. This means the law must be observed by our authorities so that citizens are not deprived of their liberty. . .

One of the key guarantees in this regard is the principle that citizens suspected of having committed a crime enjoy the right of innocence until they are finally sentenced by a court. In other words, when a citizen is suspected of having committed a crime, it is up to the police and the so-called public ministry, the Attorney-General's Office, to investigate thoroughly and to collect every bit of proof to prove the citizen has really committed the crime. It is not up to the citizen to prove his innocence; the prosecutor must prove the citizen is guilty. The citizen cannot judge himself; as such, he cannot and does not have to prove his innocence. The prosecutor must prove someone has stolen, committed murder, or broken the law. It is not up to the citizen to prove his innocence. All a citizen can do is shout: I am innocent! It is not up to the citizen to prove his innocence. This is called presuming the accused's innocence.

The draft constitution also stipulates that the penal code cannot be retroactive. The draft constitution stipulates that no one can be charged for an act not considered a crime at the time it was executed. For example, it is not a crime to cough, as you are now doing. However, should we decide to make it a crime tomorrow, we are not going to charge those who coughed today [audience laughs]. . .

The right to defence is reaffirmed in the draft constitution. We want to ensure the right to defence is fully realised, rather than just a mere written promise or ink on the paper and a paper in the drawer. We propose the state should be responsible for guaranteeing that citizens involved in a criminal process should be technically assisted by a jurist, a judicial technician, or a legal defender who can defend them correctly. The state must also ensure that less fortunate citizens are not denied access to justice just because they lack sufficient funds.

Other fundamental guarantees of the penal process include: defining preventive arrests: creating ways to prevent illegal arrests due to the abuse of power, also called habeas corpus; and prohibiting extradition or expulsion of Mozambican citizens from the national territory. These are guarantees we will have the opportunity to study and deepen during our popular debate. It is important our citizens know they have these guarantees.

We would also like to point out the state must guarantee the inviolability of domicile; correspondence, such as mail and letters; and private communication, such as telephone calls made by citizens, unless this is clearly unauthorised by law. Obtaining these guarantees will lead us to a state of rule of law. . .

Judicial organs will play an important role in guaranteeing citizens' rights and liberties, including courts, the republic's Attorney-General's office, and criminal investigation organs. We recently created top judicial organs: the Supreme People's Court and the republic's Attorney-General, which were already incorporated into the present constitution. . . We now establish that a career judge can only be relieved from his post under conditions that are clearly defined by law, to protect his independence and his exclusive adherence to the law.

The draft constitution also provides for establishing different categories of courts, in addition to those for civil and criminal jurisdiction. The draft constitution provides for an administrative court, military courts, and customs and fiscal courts. The administrative court will be important since citizens will be able to contest acts of any administrative element violating their rights.

Taxpayers, citizens who regularly pay their taxes, will also be guaranteed that public spending, along state budget guidelines, will be inspected by the administrative court. We will discover many things when this occurs. However, it is necessary to work to allow the administrative court to operate. It is important to guarantee that public spending, along state budget guidelines, are carried out correctly. They must be inspected by the administrative court.

Regarding the control of general laws, the draft constitution underlines the role of the Attorney-General's office, which has the constitutional prerogative to exercise control over legal interpretation, detentions, criminal investigation, and general action. . .

The state has the task of guaranteeing and boosting the country's economic activity by either participating directly in economic activities through its own investment or mobilising and encouraging citizens to engage in activities that contribute towards resolving the principal problems facing the people. The state alone should not be left to do everything.

The right to property is also incorporated into the draft constitution.

The draft constitution also defines different types of production in the country's development. It reaffirms the importance of agriculture, and, within this sector, it stresses the role of the family sector and rural development in the country's economic growth strategy. State property, associated forms of production, and private property are equally incorporated into the draft constitution. The spirit of initiative and small-scale production are stressed in the draft constitution in the light of our country's condition.

Regarding state economic organisation, the draft constitution defines fields of public economic activity. It states the economy's public strategic sectors are under state control to ensure their active role in the economy and to safeguard political power [to be continued].