



A CRITICAL LOOK AT THE COMORIAN CONSTITUTION OF 2001

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Abstract : The article examines the political instability and centrifugal tendencies in the Republic of Comoros since its independence in 1975. It highlights the multiple changes of government and numerous coups d'état that have hindered the socio-economic development of the country. Additionally, it sheds light on the separatist tensions among the islands comprising the Union of Comoros, particularly the secessions of Anjouan and Mohéli. Finally, it analyzes the weaknesses of the 2001 Union of Comoros Constitution, including its limited constitutive nature, the functioning of the federal executive, and the composition of the federal assembly

Keywords : Comorian Constitution, democracy, decentralization, Constitutional Court, political instability, centralization, control mechanisms.

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1 Introduction

What fate for the Moon Islands, another name given to the Comoros archipelago located 200 kilometers northwest of Madagascar, spread over 1,870 square kilometers, populated by 630,000 inhabitants of African origin, nearly 97% of whom are Muslims and subject to Koranic law. In the eyes of the international community, the Republic of the Comoros has always had a bad press¹. Since gaining independence in 1975, the Republic of the Comoros has been plagued by persistent political instability, marked by frequent changes of

¹ André Oraison, The Essential Characteristics of the Constitution of the Union of the Comoros, 2005, p. 1



government and repeated coups. This instability is also accompanied by centrifugal tensions, with islands often expressing a stronger sense of belonging to their own entity than to the Comorian whole. After a long period, a new constitution was born, the « 2001 Constitution ». It is based on democratic principles, affirming the fundamental rights of citizens and guaranteeing a pluralistic political system. This shows that the Union of the Comoros is committed to respecting human rights, as they are universally recognized.² This article analyses these political challenges and examines the shortcomings of the 2001 Constitution of the Union of the Comoros, which attempts to reconcile the aspirations of the different islands while maintaining the unity of the country.

2 Political instability and centrifugal forces

The Republic of the Comoros has been marked, since its origins, by extremely strong political instability. The Comoros changed its national flag five times and its Constitution six times between 1975 and 2001 and no less than nineteen coups d'état or attempted **putschs** took place between 1975 and 1999. In addition to this political instability, there is a certain lack of cohesion in the islands that make up the Union of the Comoros. The feeling of belonging to the Comorian group is often weaker than the feeling of belonging to a specific island.

2.1 Political instability

Despite democratic progress, the Comorian Constitution has failed to prevent the chronic political instability that has characterized the country.

It is worth briefly retracing the chaotic path of the young Comorian state since its independence in 1975. On 3 august 1975, President Abdullah was overthrown in a putsch that brought Prince Jaffar to power. On 2 january 1976, Prince Jaffar was replaced as head of the country by Ali Soilihi, the real instigator of the putsch of the previous year. On may 13, 1978, Ali Soilihi was overthrown by a putsch. Former President Abdullah returned to power and Ali Soilihi was assassinated some time later. On 26 november 1989, President Abdullah was shot dead in obscure circumstances during a conflict between him and the head of his praetorian guard, Bob Denard³. A French military intervention led to the departure of Bob Denard and allowed Saïd Mohamed Djohar, then president of the Supreme Court, to assume the interim presidency of the Comoros, to which he was elected in 1991.

On 28 september 1995, President Djohar was overthrown in a putsch, once again carried out by Bob Denard and his mercenaries. On 4 october 1995, France launched a new military intervention on the island of Grande-Comore and put an end to the putsch⁴. President Djohar will not be reinstated in his duties⁵. The new President, Mohamed Abdoukarim Taki, who died in 1998, was replaced by Tadjidine ben Saïd Massonde. Finally, on 30 april 1999, Colonel Azali Assoumani, Chief of Staff of the Army, overthrew President Tadjidine and his government.

² Issa Saïd, *The Contributions of the Constitutional Reforms of the Comoros*, 2010, p. 3

³ The mercenary Bob Denard was involved in all the putschs from 1976 to 1995

⁴ Operation Azalea. Elements of the French special forces seized the two airfields on the island, thus allowing the transport of larger intervention units by plane from Mayotte.

⁵ Brought to Reunion Island, he was not able to return to the Comoros until January 1996 and was unable to stand for the presidential elections (a new law setting an age limit that he had already exceeded).

Political crises and frequent changes of government have hampered socio-economic development and undermined citizens' trust in institutions.

2.2 Existence of centrifugal tendencies

The Republic of the Comoros has also been marked, since its origins, by the existence of centrifugal forces that can go as far as separatism. Each of the islands that make it up (Grande-Comore, Anjouan and Mohéli) has a marked individuality and the feeling of belonging to one of the islands is often much stronger than the feeling of belonging to the Comorian whole. This trend has been evident since the birth of the Comorian State. As the overseas territory of the Comoros was the subject of a referendum on self-determination on 22 december 1974, the islands of Grande-Comore, Anjouan and Mohéli voted in favour of independence, while the island of Mayotte voted in favour of remaining within the French Republic⁶. Mayotte voted against independence by a majority of 63.82% of the votes. The other three islands (Anjouan, Mohéli and Grande-Comore) voted in favour of independence with a majority of 94.56% of the votes. The question then was whether it was appropriate to assess the results at the level of the overseas territory of the Comoros as a whole, in which case the whole would become independent, or to assess the results island by island, in which case only the islands of Anjouan, Grande-Comore and Mohéli would become independent, Mayotte remaining within the Republic. It is the second solution that is adopted by the French state authorities. On the problems of international law generated by this situation. This was one of the major components of the Comoros Archipelago, which refused a common destiny with the other three islands.

This trend manifested itself again in extreme form in 1997. Anjouan, the second largest island of the Islamic Republic of the Comoros in terms of area, population and economic importance, was in a state of secession in 1997. Under the impetus of Sheikh Abdallah Ibrahim, it unilaterally declared its independence on 3 August 1997. On 11 august 1997, it was the turn of the island of Mohéli to proclaim its independence (it would reintegrate into the Federal Republic of the Comoros the following year).

At the beginning of september 1997, an attempt by the federal army to land in Anjouan to re-establish the authority of the Islamic Republic of the Comoros ended in failure⁷. A severe blockade of the island (food and oil) was then put in place by the central government (it was not lifted until four years later). In a referendum held on 26 october 1997, the new government in Anjouan approved independence. The following year, on 25 february 1998, Anjouan adopted a Constitution. The first sentence of the preamble to this Constitution reads as follows : « Anjouan, one of the islands of the Comoros archipelago, is a sovereign state »⁸. Anjouan therefore wants to be independent and the word « Comoros », which appears only once in the text of the Constitution, has only a geographical meaning here.

In this context, the need for a new political pact between the islands is felt if a break-up of the Islamic Republic of the Comoros is to be avoided. This new political pact cannot ignore the aspirations of the islands and must establish effective federalism if the islands are to remain

⁶ Mita Manouvel, « Politics and Law in the Resolutions of the United Nations General Assembly. The question of the island of Mayotte », RGDIP, vol. 109, 2005/3, p. 643-663.

⁷ About forty killed and a hundred prisoners among the federal forces, about ten killed among the separatists, according to the newspaper Le Monde of September 9, 1997.

⁸ Text of the Constitution on the official website of the island of Anjouan: www.Anjouan.net

within a single political entity. It was the awareness of this need that led to the adoption of the Constitution of 23 december 2001.

3 Weaknesses of the Constitution of the Union of the Comoros of 23 December 2001

The genesis of the Constitution of 23 december 2001 is to be found in the attempts at national reconciliation. A first attempt at reconciliation between the parties under the aegis of the Organization of African Unity (OAU) failed in december 1979. A new attempt at conciliation under the aegis of the OAU, the United Nations and the League of Arab states led to the « Antananarivo Agreements » signed on 23 April 1999. It is a question of defining a new Comorian entity and of providing for the transitional stage that must lead to it. Finally, the Anjouan delegation refused to ratify the « Antananarivo Accords ». On april 30, the putsch of Colonel Assoumani Azali seemed to add to the confusion⁹.

Nevertheless, on 17 February 2001, a « Framework Agreement for National Reconciliation » was signed in Fomboni¹⁰ between the Government of the day, the Comorian opposition and representatives of the various islands. The purpose of this Fomboni framework agreement, concluded under the aegis of the OAU and the International Organization of Francophonie¹¹, is to establish new institutions to be defined by a new constitutional text. The agreement was signed by Lieutenant Colonel Saïd Abeid on behalf of Anjouan¹².

The new Constitution of the Comoros, provided for by the Fomboni Agreement, was adopted by referendum on december 23, 2001, with a majority of 76.99% of the votes. Colonel Azali Assoumani became the elected President of the Comoros on April 14, 2002. The island institutions were also established. Mohamed Bacar was elected President of Anjouan on march 31, 2002, Mohamed Fazul was elected President of Mohéli on april 7, 2002, and Abdou Soule Elbak was elected President of Grande Comore on may 19, 2002.

Arising from a compromise between the various Comorian factions, the new Constitution of the Union of Comoros of december 23, 2001 reflects the relative nature of national reconciliation. It may indeed appear, in some respects, to restore only a minimal unity among the islands that form the Union of Comoros. This is shown by the relatively non-constituent nature of the Constitution, the particular functioning of the federal executive, and the strange method of appointing the Federal Assembly.

3.1 Relatively Non-constituent Nature of the Constitution

The Constitution of the Union of Comoros is short and obscure. It is short, in that it comprises only 37 articles whereas the 1996 Constitution had 73. It is obscure, in that it refers no less

⁹ The new Comorian central government was not initially recognised by the international community, nor was the separatist government in Anjouan.

¹⁰ That is to say, in the capital of the island of Mohéli, the terrain probably seems more "neutral" than a city in Anjouan or Grande-Comore.

¹¹ Also involved in the drafting of the Framework Agreement was the Ambassador of France to the Comoros, as a representative of the European Union.

¹² The new power of the island of Anjouan did not escape political convulsions either, and Colonel Saïd Abeid was overthrown on 9 August 2001 by a military committee led by Commander Mohamed Bacar.

than twelve times to future organic laws to define central balances that are usually regulated by the text of a constitution itself. This is the case for determining the seat of institutions and the share of public revenues to be allocated to the Union and the islands, and especially for determining the distribution of powers between the Union and the islands.

Indeed, little progress is made in the reading of the constitutional text on the relations between the three islands and the Union, which appears particularly harmful when it comes to a text intended to define their reciprocal relations. There is an exclusive competence of the Union in matters of « religion, nationality, currency, foreign relations, external defense, and national symbols », but the conditions for application and the modalities for implementing this exclusive competence are referred to in the organic law. There are shared competences between the Union and the islands on which the Constitution is silent and which must also be defined by organic law¹³. Finally, matters not falling within the exclusive competence of the Union or the shared competence of the islands fall within the exclusive competence of the islands.

The discussion of the organic law distributing competences between the central government and the island governments proved to be particularly difficult. The government project was radically modified by the Federal Assembly, and the final text was only adopted on march 1, 2005, after a first version, voted on november 19, 2004, was referred to the Constitutional Court by the Executive. Despite the adoption of the organic law, one of the main stumbling blocks remained the definition of what constitutes internal and external defense. Indeed, if the gendarmerie is considered a force for internal defense and depends on each island, nothing prevents Anjouan and Grande Comore from having armed forces superior to those of the federal army¹⁴. The Union of Comoros seems to belong, in this field as in others, more to the confederation than to the federation.

3.2 Functioning of the Federal Executive

The presidency of the Union is « rotating », with each island holding it for a period of four years. A newly elected president therefore knows that he will not be able to run again until twelve years later¹⁵. One may wonder if this provision, apparently legally well-balanced, is not politically a permanent invitation to a putsch. Note that the President and the two Vice-Presidents cannot be from the same island. Although not a constitutional requirement, ministers of state represent their island in the Government.

Cabinet meetings are usually held in Moroni, the federal capital, but also in Mutsamudu, the capital of Anjouan, and in Fomboni, the capital of Mohéli. These « ambulatory » Cabinet meetings seem to aim to demonstrate, if only symbolically, the presence of the federal state in

¹³ Article 9 of the 2001 Constitution sets out only one principle on the subject of shared competences: "The Union shall intervene only if it can do so more effectively than the islands". This principle of subsidiarity, which is in itself as political as it is technical, can only be implemented in a complex and subjective way. It is therefore likely to be a permanent source of conflict between the Union and the islands.

¹⁴ It should be noted, in this context, that, since 1997, the federal army had never been able to redeploy to Anjouan. It was only able to do so in March 2008 in the wake of Tanzanian and Sudanese detachments, during the so-called "Democracy in the Comoros" operation organized by the African Union

¹⁵ Such, at least, is the spirit of the text. In his letter, the text of Article 13 of the Constitution is much more ambiguous. He states it as follows: "The presidency rotates between the islands. The President and the Vice-Presidents are elected together by direct universal suffrage in one round for a term of four (4) years, renewable in accordance with the rotation between the islands... »

the archipelago's islands (primarily Anjouan). In the same vein and to assert an enhanced presence of the federal government in Anjouan and Mohéli, the two federal Vice-Presidents, in addition to their ministerial functions, are responsible for coordinating the Union's administrative services at the level of the islands from which they originate. It should be noted, finally, that as long as the Anjouan crisis lasted, the effectiveness of the federal executive was mainly limited to the territory of Grande Comore. The latter island having its own autonomous government, the coexistence of the two executives, the federal and the autonomous, could generate serious conflicts of competence.

3.3 Composition of the Federal Assembly

The one who makes the law knows better than anyone how it should be executed and interpreted¹⁶. According to article 20, paragraph one of the Constitution, "the Assembly of the Union consists of representatives appointed by the Assemblies of the islands, at a rate of five deputies per island and eighteen representatives elected by direct universal suffrage in a two-round majority voting system..."¹⁷. We can see the characteristic elements of a classic federal system: the appointment of part of the legislative power by the federated States and the appointment of another part of the legislative power by universal suffrage within the federation. But the peculiarity of this Constitution is that both elements are brought together within a single assembly and not within two separate assemblies.

Such a « unicameral federal system » poses problems. Moreover, the designation of representatives elected by direct universal suffrage is provided for within the framework of a majority voting system within island-defined constituencies. Grande Comore thus has nine constituencies, Anjouan has seven, and Mohéli has two. This results in a total of 33 deputies (15 appointed by the island parliaments and 18 elected by universal suffrage), with 7 deputies from Mohéli, 12 from Anjouan, and 14 from Grande Comore. In these conditions, it is difficult to achieve positive majorities at the national level. Grande Comore and Anjouan, each with more than a third of the deputies, can oppose any organic law that does not suit them. For the adoption of simple laws, however, Mohéli finds itself in the position of arbitrator in the event of opposition between Grande Comore and Anjouan. It is clear that for the 18 deputies elected by universal suffrage, only a system of proportional representation on a national scale would have been able to reflect a political will common to the whole country.

The situation could be different if national-scale political parties were established in each of the islands. This does not seem to be the case, as shown by the results of the first elections to the National Assembly on April 18 and 25, 2004. The electoral competition pitted, on one side, the « Convention for the Renewal of the Comoros »¹⁸, favorable to a more centralized government, and, on the other, the « Camp of Autonomous Islands »¹⁹, antagonistic, as its name indicates, to a too centralized power. The « Camp of Autonomous Islands » won 12 out of 18 seats. The distribution is indicative of the political divide between the islands. The « Camp of Autonomous Islands » prevailed in Anjouan and Mohéli (all seats), while the « Convention for the Renewal of the Comoros » prevailed in Grande Comore (two-thirds of the seats).

¹⁶ Jean-Jacques Rousseau, *On the social contract or principles of political law*, 1762, p. 57

¹⁷ The second paragraph specifies that the number of electoral districts may not be less than two per island.

¹⁸ President Azali's party. President Azali is from Grande-Comore.

¹⁹ It is not formally a party but a coalition of opposition parties, organized by the Presidents of the three federated islands and opposed to President Azali.

The 2001 Constitution maintains a fragile balance between the desires of each island, achieving this at the cost of a relative paralysis of the Executive. Nevertheless, the Constitution allowed for a democratic transfer of power in May 2006 between the outgoing President Azali Assoumani, who, according to the Constitution, could not run again, and his successor Ahmed Abdallah Mohamed Sambi²⁰.

The new President, who had until then accommodated the December 23, 2001 Constitution, believes that the success of the military intervention on the island of Anjouan in March 2008 has created a new political situation that must be reflected in a modification of the Constitution.

4 Conclusion

In conclusion, the article highlights the challenges facing the Republic of the Comoros in terms of political stability and national unity. Despite attempts at reconciliation and the adoption of new constitutions, separatist tensions persist and hinder the democratic functioning of the country. To ensure a stable and prosperous future, it is necessary to find a balance between the interests of the different islands while strengthening federal institutions to ensure national unity and cohesion.

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²⁰ Elected with 58.02% of the vote in the presidential election of 14 May 2006