

# A comparative study of the constitution of Guinea-Bissau and Sao Tome and Principe since independence

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**Abstract:** As two Portuguese-speaking countries, Guinea-Bissau and Sao Tome and Principe have relatively similar historical backgrounds. The constitutions used by the two countries so far are the constitutions of 1999 and 2003 respectively. They have not been amended for nearly two decades. Through the horizontal and vertical comparisons of the constitutional development history of the two countries, the article explains in detail the constitutional process of the two countries and provides analysis ideas for the future development process of the constitutional revision of the two countries.

**Keywords:** democracy; constitutional comparison; Guinea-Bissau; Sao Tome and Principe; Portuguese-speaking countries

## 1. Introduction

Guinea-Bissau is located in western Africa and was a Portuguese colony in history. Until 1879, the Portuguese authorities divided Guinea Bissau from Cape Verde. Since then, Guinea Bissau has officially become a Portuguese colony, and a long period of resistance and independence has begun. By 1973, Guinea-Bissau's armed forces controlled about two-thirds of the country, and the first National People's Assembly was held on September 23. The Guinea-Bissau Republic was announced the next day and the constitution was promulgated. Guinea Bissau once promulgated a constitution on November 10, 1980, but it did not take effect. Therefore, this article regards the 1984 revised constitution as Guinea Bissau's second constitution. Subsequently, in 1991, 1993, and 1996, Guinea Bissau revised and promulgated the third, fourth, and fifth constitutions respectively. Until 1999, the sixth constitution was promulgated and is still in use today.

Sao Tome and Principe is an archipelago country located in the southeastern part of the Gulf of Guinea in Africa. It consists of the islands of Sao Tome and Principe and the surrounding 14 islands. Like Guinea, it is a country that was once colonized by Portugal, and its official language is Portuguese. Sao Tome and Principe was uninhabited until it was discovered by the Portuguese navigator in 1470. On July 12, 1975, Sao Tome and Principe ended the colonial rule of Portugal, gained independence and became a country with independent sovereignty. The first constitution was promulgated on November 5, 1975, and the second, third, and fourth constitutions were revised and promulgated in 1980, 1982, and 1987 respectively. In 1990, the new constitution was passed by a referendum and won 95.3% approval rate, this is the fifth constitution of Sao Tome and Principe. After the election in March 2002, the National Assembly announced the sixth constitutional amendment, which was promulgated in 2003 and is still in use today.

## 2. A constitutional comparison between the two countries

### 2.1 Comparison of the course of constitutional development

Guinea-Bissau independence predates Sao Tome and Principe. Its first constitution was born in 1973, and the first constitution of Sao Tome and Principe was born in 1975. The first constitutions of the two countries clearly stipulated the state system and government. In the first constitution, Guinea-Bissau mentioned that it was a one-party country, established the Republic of Guinea-Bissau and implemented

the socialist system. The first constitution of Sao Tome and Principe states that Sao Tome and Principe is a one-party ruling country, imitating the Soviet Union and Eastern European bloc in implementing centralized management, taking a non-capitalist road, and building socialism when the time is right. The highest authority is the People's Assembly, which is also the highest legislative body. The first constitution gave the president great powers, but not much real power over the prime minister and his council of ministers. At that time, the president exercised high political pressure and fully nationalized the economy. In 1980, he promulgated the second constitution to strengthen the president's real power, and then promulgated the third constitution in 1982, which further strengthened the power of the president and combined the president and the National Assembly. The term of office of the deputies was extended to five years, and at the same time, the control of the military was strengthened to increase the president's real power. Although the political environment in Sao Tome and Principe has gradually stabilized, the economic situation has continued to deteriorate. Therefore, the Parliament decided to implement constitutional reforms in October 1987 in an attempt to weaken the power of the president.

At the end of 1987, Sao Tome and Principe promulgated the fourth constitution, stipulating that the president shall be elected by voting to elect the head of state; the national assembly shall be elected by secret voting; different political views within the same party are allowed to exist, and factional struggles are minimized. In January 1988, the post of Prime Minister was re-established. Compared to Sao Tome and Principe, after the first constitution was promulgated in 1973, the government developed the national economy. By 1979, Guinea Bissau's gross national product reached 140 million U.S. dollars, and its industrial output value was approximately 9 million U.S. dollars per capita. Income increased to \$170. However, due to the President's political indifference to the control of the political power and the attempt to monopolize the power, he had deviations in the formulation of the economic development route, which led to the extreme deterioration of Guinea-Bissau's economic situation in 1980. Coupled with successive years of natural disasters, the agricultural output value was straight-line. The decline has made the economy worse. These economic and social problems caused many political and social contradictions in Guinea-Bissau, which led to a military coup. At the end of 1980, a constitution was promulgated in the hope of rectifying economic and social issues, but the constitution did not take effect. Coincidentally, Sao Tome and Principe also revised the constitution in 1980, but this constitution was passed and took effect and became the second part of Sao Tome and Principe constitution. In 1982, the leader of Guinea-Bissau's military coup reorganized the cabinet and competed for power with the new prime minister. At the same time, Sao Tome and Principe amended the constitution in 1982 with the purpose of strengthening the power of the president. Both attach great importance to the control and consolidation of political power. Guinea Bissau issued its second constitution in 1984, which was two years away from the third constitution of Sao Tome and Principe. This constitutional amendment has learned some lessons. Unlike Sao Tome and Principe, Guinea-Bissau did not overemphasize the power of the president in this constitutional revision, stipulating that Guinea-Bissau is a democratic, secular, and unified anti-imperialist and anti-colonial sovereign republic. This constitutional amendment clearly stated that the National People's Assembly is the highest authority of the country, and the Chairman of the State Council is the head of state, head of government and commander-in-chief of the armed forces. However, at this time, there is still a country led by an independent party. With the pace of amendments to the constitution, the government of Guinea was reorganized at the same time. After realizing the complex structure of its government, it began to reduce the number of ministers and recruit high-quality civil servants. Enter the government department, trying to use some fresh blood to establish a social goal where no one is exploiting people. But even so, these changes have allowed the president to bring many confidants and supporters into the government department, which has further consolidated his political status. As the head of state of Guinea-Bissau, he also served as the head of government and the supreme commander of the armed forces, which is not much different from the president of Sao Tome and Principe at the time. Although on the surface there is no way to maintain power in the Constitution by extending the length of employment, but in essence it is still a heavy control of state power. At this time, the president was still the general secretary of the Independence Party of Guinea and Cape Verde. It can be seen that the military power, political power, and economic development power of the entire country are firmly in the hands of one person.

In the mid to late 1980s, the Guinea-Bissau government accelerated the process of economic liberalization. In the first half of 1989, a six-member constitutional amendment committee was formed, and preparations for the election of the new chairman of the Congress and the head of government began in January 1991. Decided to deepen democracy and open multi-party politics, and promulgated the third constitution of Guinea-Bissau in May 1991. This constitutional amendment officially ended the history of Guinea-Bissau's one-party system and passed the law establishing a multi-party system. In February 1993, the National People's Assembly of Guinea-Bissau passed a resolution again to promote the

transformation of Guinea-Bissau into a pluralistic democracy through legislation. From the fourth constitution, we can see that Guinea-Bissau's political system changes have also led to changes in government departments, which have a great impact on Guinea-Bissau's political stability and economic development. In May 1996, the opposition parties asked for a vote to remove the government. Guinea-Bissau revised the constitution again at the end of November. This is also the fifth constitution of Guinea-Bissau. Compared with the 1991 Constitution, 31 articles have been added this time, and some contents have also been deleted accordingly, which more specifically protects and restricts the rights and obligations of citizens and the contents of the development of the national economy and political parties.

In 1999, Guinea-Bissau had another military coup and the July constitutional amendment was passed. This is Guinea-Bissau's sixth constitution and the current constitution. However, between 2002 and 2003, Guinea-Bissau had a situation where the Constitution lost its legal effect due to political and military struggles. In 2003, it also signed a temporary constitutional "Political Transition Charter" to determine the election of parliament and president. The main principle of Guinea-Bissau's current constitution is that all citizens are equal before the law. Citizens enjoy the same rights and perform corresponding obligations; discrimination against citizens of different races, genders, and religions is strictly prohibited; Guinea-Bissau implements a semi-presidential system. The president is the head of state and the prime minister is the head of government. Parliamentary elections, presidential appointments; the president's term of office is five years and can be re-elected once, etc.

At this time, I will review the road to constitutional amendment of Sao Tome and Principe. After the promulgation of the fourth constitution at the end of 1987, the country implemented a multi-party democracy. In August 1990, the National Assembly decided to implement a multi-party system. The President of the Republic is elected by a referendum. The term of office of the president is five years, and he can serve up to two terms. This is the fifth constitution of Sao Tome and Principe. Similar to the third constitutional amendment in Guinea-Bissau in 1991, the two countries ended their one-party governance at this point in time and began to implement multi-party politics. Between 1991 and 2000, Sao Tome and Principe had a total of eight rotations. The core members of the government, although in 1992 they began to notice that the president, the prime minister, and the power between the government and the parliament should be restricted and balanced, the power of the president still far exceeds that of the prime minister and the government.

In December 2002, the National Assembly approved a constitutional amendment to restrict the president's executive power and strengthen the parliamentary status. The sixth constitution of Sao Tome and Principe was promulgated in 2003 and has been applied to this day. The current constitution stipulates that Sao Tome and Principe is a multi-party democratic country. The president is directly elected, the prime minister is elected by the parliament, and the president is appointed. He is responsible for both the parliament and the president. However, in 2003, Sao Tome and Principe faced a military coup again, and the constitution was useless. It can be seen that although the Constitution of Sao Tome and Principe was defined as the fundamental law of the country, it would still be affected by issues such as factional or partisan struggle. A prime minister who has spent his full term in office. Therefore, paying attention to the power restriction and balance between the president and the prime minister has become one of the key points of the constitution of Sao Tome and Principe.

## ***2.2 Other aspects of the constitution are compared***

Guinea-Bissau's current constitution emphasizes that the sovereignty of the country belongs to the people and allows the establishment of political parties. Foreigners living in Guinea-Bissau enjoy the same rights and duties as citizens, except for political rights. The constitution and laws related to fundamental rights must be consistent with the Universal Declaration of Human Rights. The death penalty cannot be applied under any circumstances, and there must be no forced or indefinite deprivation of liberty. Compared with the original constitution, the current constitution more specifically expresses the expectations and constraints on the country's economic development, party system, etc., and also more meticulously protects the rights of citizens. In 1996, Article 29 added the provisions of the Universal Declaration of Human Rights for the first time, and Article 31 added new content regarding the state of emergency declaration and the requirements for entering a state of emergency. In fact, it can be seen from the above that the 1996 constitution has undergone major changes compared to 1991, covering a wide range of content, and there are still many amendments that cannot be listed in this article, but you can feel the constitution's impact on human rights and national economic development. They have become more specific and pay more attention to it, especially the detailed explanation of the problem of Guinea-Bissau's entering a state of emergency. It also shows that Guinea-Bissau recognizes that if you want to develop, you must stabilize the people's mind and political situation and ensure the

status of the constitution in the country.

In addition to the content mentioned above, the current constitution of Sao Tome and Principe also adds content such as compliance with the Universal Declaration of Human Rights and emphasis on the status of women. In the "2017 World Freedom Report", Sao Tome and Principe's level rose from one to seven, only eight points lower than the United States. The constitution also stipulates social rights and cultural order. For example, Article 42 stipulates that all workers have the right to organize trade unions and unite to defend their rights; and Sao Tome and Principe also pay special attention to the growth, upbringing and development of children in the constitution.<sup>[5]</sup>The Constitution of Sao Tome and Principe also stipulates and perfects the protection of children's rights and improves the policy of preferential treatment for children. The purpose is to provide wider protection of children's socio-economic rights. Therefore, in terms of human rights, the Sao Tome and Principe government and constitutional regulations are far beyond Guinea-Bissau.

After 1985, Sao Tome and Principe gradually liberalized the economy. Therefore, the 1987 amendment mentioned the legal behavior of private enterprises. In subsequent amendments, the economic development of small and medium-sized enterprises was protected and the concept of entrepreneurship was strengthened. Compared with the 1990 constitution, Sao Tome's current constitution has added 31 articles. In addition to the above contents, the acceptance of international law and international conventions has been added to Article 13. The general international laws and regulations have become part of the laws of Sao Tome and Principe, you can see Sao Tome and Principe actively want to integrate into the international community, and regard the content of international law and international conventions as very important binding standards. In Article 70, Article 71 added the content and requirements of the referendum vote, and also added the proposal that the vote cannot continue to be vetoed by voters in the same legislative assembly unless re-election permission is obtained from the National Assembly or until the government resigns. It shows that Sao Tome and Principe has worked hard to learn lessons from the social contradictions caused by the excessive power of the president in history. Since the 2003 Constitutional Amendment, the power of the President of Sao Tome and Principe has been weakened. In the Constitution, the power of the parliament, the prime minister and the government has also been clearly felt. The situation of excessive presidential power or dictatorship no longer exists. The general legal system has been greatly improved. In 2018, the Secretary-General of the United Nations publicly praised the various parties and political groups of Sao Tome and Principe for being able to resolve political disputes under the framework of the Constitution. Restricting the power of the President, on the other hand, has also caused the President to lose some of his powers. Nowadays, President Sao Tome and Principe said that "the power of the President is now limited to the power to sign documents issued by the National Assembly and the Prime Minister."

Comparing the current constitutions of Guinea-Bissau and Sao Tome and Principe, both countries have made great improvements to their old constitutions, focusing on human rights, social and economic development, and cultural and educational development. However, the author believes that Sao Tome and Principe are more specifically embodied in the current constitution for the restrictions on the president's duties and powers, as well as the requirements for the review and revision of the constitution.

### 3. Conclusions

Generally speaking, Guinea-Bissau and Sao Tome and Principe's constitutional revision and development paths have similarities and differ according to the national conditions of each country, but they are indeed full of hardships and setbacks. The development of the constitution is actually a process of dynamic balance. Summarizing the experience of Guinea-Bee and Sao Tome and Principe's constitutional revision process is not only beneficial to the country, but also to other African countries. Therefore, properly handling the balance between political parties is the top priority for a country to amend the constitution. Only when the relationship between political parties is stable can a consensus on the amendment of the constitution be reached; secondly, the amendment of the constitution cannot be separated from the stable development of the economy. Since independence, Guinea-Bissau and Sao Tome and Principe have repeatedly caused constitutional conflicts due to economic emergencies, which led to constitutional amendments. Therefore, economic development is also one of the important factors affecting constitutional amendments; Third, the constitution cannot be deeply rooted in people's hearts by merely revising the constitution. More attention should be paid to the promotion of the constitutional culture of the constitution as the fundamental law of the country. Only by revising and perfecting the constitution that conforms to the country's history and national conditions can the advantages of democratic politics be fully utilized. In the future, Guinea and Sao Tome's constitutional revision and

improvement will not be smooth, but now the democratic constitutional framework of the two countries has been established. Therefore, the two countries should follow the public opinion and the direction of the times to deepen the democratic constitutional framework to gain true democracy. The advantages and benefits that politics brings to the country.

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