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A text enriched by the contributions of the Cuban people

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The proposed Constitution of the Republic of Cuba was described as a text that has gained in quality in terms of its wording and content, enriched by the proposals emanating from the people, in the report presented December 21 by Homero Acosta, secretary of the Council of State, during the Second Ordinary Period of Sessions of the National Assembly of the People's Power's Ninth Legislature, on the results of the popular consultation process.

The resulting document is a genuine expression of the democratic and participatory nature of our socialist system. The broad popular participation in the process reflected the high degree of cultural and political education of the Cuban people and their commitment and majority identification with the perfecting of the country's political, economic and social system.

It also highlights the transparency, organization, responsibility and rigor with which the preparation and realization of the consultation assemblies on the draft Constitution were carried out, as well as the collection, processing and analysis of the population's proposals at all levels.

## **DEVELOPMENT AND RESULTS OF THE CONSULTATION**

As agreed by the National Assembly of People's Power in its ordinary session of July 21 and 22 this year, the draft Constitution of the Republic was submitted to a popular consultation process August 13 through November 15, 2018.

Prior to the consultation, working infrastructure was established to collect and process all the

information derived from it, and those responsible for chairing the assemblies were trained to ensure the smoothest process.

The popular consultation process saw:

- 133,681 meetings, of which:

79,947 were of the general population

45,452 were held among groups of workers

3,441 among campesinos

1,585 among university students

3,256 among high school students

- 8,945,521 people attended these meetings
- 1,706,872 comments were made, of which:

783,174 proposals

666,995 modifications

32,149 additions

45,548 deletions

38,482 requests for clarification

This information was processed according to each of the paragraphs of the document submitted for consultation, and those that were very similar were grouped into 9,595 standard proposals (each conformed of an average of 78 individual proposals).

Also evaluated were the 2,125 proposals submitted by the Ministry of Foreign Affairs (MINREX), received from Cubans residing abroad. Of these, 1,150 were modifications, 350 additions, 406 deletions and 219 requests for clarification. A total of 978 standard proposals were derived from these.

In total, the web page enabled by MINREX received 4,751 visits from 123 countries, although proposals were only registered from 58. The vast majority of these do not question the essence of the Cuban system.



The deputies to the National Assembly of People's Power undertook an exhaustive study of the changes to the document resulting from the popular consultation. **Photo:** Estudios Revolución

In the same way, opinions expressed through other channels, such as social networks, letters from the population, and others, were evaluated. Of special significance were those derived from analyzes conducted in law schools, scientific centers, the Academy of Sciences of Cuba and societies of the National Union of Jurists.

Among the spontaneous opinions collected about the process, 62% were favorable, 35% related to expectations, suggestions and concerns, and only 3% reflected criticisms.

The largest number of proposals made by the population focused on the following topics:

1. Marriage (Article 68 of the draft). A total of 192,408 proposals were made (24.57% of the total) in 88,066 meetings. The most significant were those calling for the wording of the current Constitution to be maintained, those related to same-sex couples and children, as well as the elimination of the proposed article.

2. On the President of the Republic. Different opinions were expressed, the most significant regarding:

a) Term limits (Article 121 of the draft), in 88,039 proposals (11.24% of the total) made in 65,803 meetings. The opinions, in a general sense, reject putting a limit on the number of terms of office an individual may serve as president (74,450), propose eliminating the paragraph, or substituting two terms for three.

b) The age limit of 60 years for presidential candidates (second paragraph of Article 122). There were 24,335 proposals (3.11% of the total), collected in 20,135 meetings. Most propose eliminating the paragraph, that no age limit should be applied, or raising the age limit.

c) Election of the President of the Republic (Article 121 of the draft). There were 16,716 proposals (2.13% of the total), in 12,804 meetings. The largest number proposed that the president be directly elected by voters (12,264 proposals).

d) The minimum age of 35 for presidential candidates (Article 122 of the draft). A total of 10,307 proposals were made (1.32% of the total), in 8,990 meetings. The majority views are either to raise this minimum age or remove it.

3. Work (Article 31 of the draft), with 51,414 proposals (6.56% of the total) in 40,420 meetings. Essentially, they demonstrate the interest in establishing its compulsory nature (46,968). Similarly, on Article 76 of the draft, regarding remuneration for work, 12,558 proposals (1.6% of the total) were made in 9,767 meetings, mainly linked to the need for salaries to reflect current prices, as well as doubts regarding the way in which the principle of socialist distribution will be guaranteed.

4. The Provincial Government (Article 165 of the draft). There were 25,650 proposals (3.28% of the total) in 18,455 meetings, mainly focused on changing the proposed title of Governor to that of President, Head or other. Also, on the means of appointing the Governor (Article 170 of the draft), 16,188 proposals were made (2.07% of the total) in 12,847 meetings. Most proposed that the Governor be elected directly, by the people, or by the Municipal Assemblies of People's Power, or the Provincial Council.

5. The right to legal assistance in one's defense (subsection f) of Article 48 of the draft). There were 18,283 proposals made related to this topic (2.33% of the total), in 15,132 meetings. In essence, it was requested that individuals have the right to legal assistance from the very moment of their arrest.

6. The right to decent housing (Article 82 of the draft). On this subject, there were 15,398 proposals (1.97% of the total), made in 13,182 meetings. The main comments were to propose changing the term "decent" for "habitable" (5,835), and doubts as to what is considered decent housing.

In the case of Cubans residing abroad, the main proposals related to the request that they be guaranteed equality in the enjoyment of their rights and duties, in particular their right to vote, and recognition of their total working time in Cuba, or another country, for the purposes of social security.

## **PROCESSING AND ANALYSIS OF THE PROPOSALS**

In order to analyze each of the proposals, on September 28, in the presence of Army General Raúl Castro, a Working Group was created conformed of 30 compañeros, of whom nine were members of and two advisers to the Constitution Drafting Commission, while 19 represented other institutions.

The Group was structured into seven subgroups. The proposals according to each title of the draft text were distributed among six of these groups, while the other was in charge of information technology support. A central group was also organized, responsible for analyzing the proposals of the subgroups, preparing the final report and presenting it to the Constitution of the Republic Drafting Commission.

Based on rigorous scientific methods, which can be audited, the processing of the information resulting from the national debate began as soon as the National Processing Team received the first set of data, on October 5, 2018, and ended on November 15. It was a principle of the Group's work to evaluate each of the proposals presented, and to substantiate the decision proposed in this regard.

Of the 9,595 standard proposals received, the Group proposed that the Drafting Commission accept 4,809, representing 50.1%, some with a direct reflection in the text, although not necessarily with the same wording or in the same article that was proposed; while others were

already contemplated in some way within the draft; and a considerable number, due to their content, will be taken into account in subsequent legislative processes, which reflects the broad extent of this process.

It was proposed not to accept 4,786, or 49.9% of these proposals, some of which are inadmissible from a legal point of view; but to a greater extent, because they do not contribute to the text or refer to specific aspects or wording that are irrelevant; while a significantly smaller number are incompatible with our principles.

Meanwhile, of the 978 standard proposals stemming from the consultation of Cubans residing abroad, it was suggested to accept 391, representing 40%, many of them coinciding with the proposals considered to be included in the processing undertaken.

During the analysis, which studied each and every proposal, it was necessary to consult MINREX, the Ministry of Labor and Social Security, the Office of Attention to Religious Affairs of the Communist Party of Cuba (PCC) Central Committee, the Ministries of the Interior and Agriculture, as well as the University of Havana's Law School, and other specialists in different fields.

The result of the detailed analysis of the proposals was presented to the Constitution Drafting Commission, which, headed by its President, Army General Raúl Castro Ruz, Party First Secretary, met between November 16 and 21 of the present year.

From the profound and extensive debates held by the Commission on each of the issues, a new version of the Draft Constitution was elaborated and analyzed in detail in the 8th Plenum of the Communist Party of Cuba's Central Committee, December 11 and 12.

The proposed new project includes approximately 760 changes, including additions and deletions of articles, phrases, words, and others.

It maintains the 11 titles of the original draft, although the order of some has varied:

- Title I Political Foundations
- Title II Economic Foundations
- Title III Principles of Educational, Scientific and Cultural Policy (formerly Title V)
- Title IV Citizenship (formerly Title III)
- Title V Rights, Responsibilities, and Guarantees (formerly Title IV, with changes to the names of chapters II, III, IV and VI)
- Title VI Structure of the State (Chapter V Laws, is now no. VIII, the last of this Title, with two new sections. Its name was also changed to Legal Provisions)
- Title VII Territorial Organization of the State
- Title VIII Local People's Power Bodies
- Title IX Electoral System
- Title X Defense and National Security
- Title XI Constitutional Reform (Maintained are the 24 chapters, with 18 sections, two more than the original draft, on incorporating two sections into Chapter VIII of Title VI. Contains 229 articles, of which eight are new)

In the Preamble of the draft text approved by the National Assembly, eight paragraphs have been modified and four new ones included; and of the 224 articles it contains, suggested were

changes to 134, or 59.8%, the elimination of three (Articles 4, 18 and 30, although the content of the first and the last are integrated in other precepts), representing 1.3%; while 87, or 38.8%, remain unchanged. All this data belies the claim of some that the opinions of the people would not be taken into account.

## **SIGNIFICANT CHANGES AND MOST DISCUSSED ISSUES**

- Preamble:

Some adjustments were made to its content, especially the inclusion of reference to the clandestine struggle; proletarian internationalism and note that “Cuba will never return to capitalism as a regime based on the exploitation of man by man, and that only in socialism and communism do human beings attain their full dignity.”

There were broad requests, although not reflected in the draft, for the mention of many heroes (Che, Camilo, Carlos Manuel de Céspedes, Mella, Villena...), and other passages of our history.

- Political Foundations:

In the first chapter, Fundamental Principles, there were changes in the order of articles, mainly because the former Article 10 (on popular sovereignty) is now Article 3.

One issue debated in the Working Group was the question of replacing the name given to national symbols, in particular the national flag and anthem (Article 2, formerly 4), which it was proposed not to accept, in correspondence with the name recognized in the current constitutional text, and traditional.

In Article 5, referring to the Party, this was defined as the leading political force of society and the State, and mention of communism was included. In Articles 7 and 8, it is clear that the Party, like the rest of the mass organizations, is obliged to comply with the Constitution and the law.

Only 0.03% of the opinions gathered questioned the role of this organization.

Article 18 of the draft text, regarding supranational entities, was eliminated, considering that such a process is not visible in the immediate term, and because part of its content could be included in subsection d) of Article 16, on Latin American integration.

- Economic Foundations:

Two new articles were incorporated, one on worker participation in the “processes of planning, regulation, management and control of the economy” (Article 20); and the other on the role of science, technology and innovation in the economic and social development of the country (Article 21).

Regarding the different forms of property, the wording on private ownership was improved to make explicit that this includes Cuban and foreign individuals and legal entities, playing a complementary role in the economy. Likewise, added among the forms of ownership relating to institutions and associative entities, is that of churches, foundations and other associations.

Regarding the socialist property of the entire people, it is specified that the Council of State has the power to transfer rights that do not imply ownership over property in the public domain (Article 23), and included among these are mineral deposits and beaches.

Within this form of property, also defined was the inclusion of other heritage assets, of a strategic nature for the economic and social development of the country, including “the main infrastructures, industries and economic and social facilities,” ownership over which may be transferred only in exceptional cases, by the Council of Ministers, provided that they are destined for the economic and social development of the country.

Another modification is to the content of Article 22 (current Article 30), which in its new wording specifies the regulation by the State of the concentration of property by non-state legal entities and individuals, and includes that related to a fairer redistribution of wealth, an aspect on which many different opinions were expressed, and with which a large number of proposals are addressed.

In Article 31, despite the high number of proposals (46,968) to include the obligation to work, it was agreed to suggest not to accept this concept, as it is contrary to our international principles and commitments. However, the text recognizes work as a “social duty.”

In turn, it was specified as part of this precept that paid employment should be the main source of income, in order to establish this in a more progressive way, and in line with the current reality.

Among the general elements recognized in the draft text are the socialist character of our economic system, the role of the State in the management, regulation and control of the economy, the socialist ownership of the people over the fundamental means of production, and recognition of the market, socialist planning, worker participation in economic processes, the role of socialist state enterprises, private property of a complementary character, and the role of foreign investment.

- Principles of Educational, Scientific and Cultural Policy

It is noted that educational, scientific and cultural policy is also based on innovation; the concept that “creative and research activity in science is free,” present in the current Constitution, was reinserted, as it corresponded with essential principles for the development of that activity; and in terms of artistic creation and forms of expression, the text specifies that artistic content must respect the principles of State cultural policy.

- Citizenship

The most important addition to the text was the clarification that the acquisition of a further citizenship does not imply the loss of Cuban citizenship, in response to 1,309 proposals from the population in this regard (Article 36, formerly Article 35).

- Rights, Responsibilities, and Guarantees

In the chapter on General Provisions, a new Article (40) was included to recognize human dignity as people’s supreme value.

In the precept referring to equality (Article 42, formerly Article 40), due to popular requests (1,266 proposals), the right of all “to enjoy the same public spaces and service establishments,” was included, which resolves concerns regarding access to beaches, hotels or other sites.

The concept that people “receive equal pay for work of equal value,” (former Article 76) was moved to Article 42, with the change that people “receive equal pay for equal work,” and it was added “without any discrimination.” Thus the phrase acquired true meaning and any doubts regarding its interpretation were addressed.

In Chapter II, with the new title of “Rights,” all rights, whatever their nature (individual, civil, political, economic, social, etc.) are gathered, a change intended to avoid doubts as regards their classification.

With regard to freedom of the press (Article 55, formerly Article 60), in the second paragraph, it was specified that the fundamental means of communication are the socialist property of the entire people or “of political, social and mass organizations.” In addition, that under no circumstances may they be the object of private property.

Added as a material guarantee to the right to work (Article 64, formerly Article 75) was the State’s responsibility to organize “institutions and services that assist working families to carry out their responsibilities,” an aspect that offers a response of a general nature to insistence that childcare centers or other facilities be explicitly mentioned.

Another aspect of the draft text that did not change was related to the principle of socialist distribution (Article 65, formerly Article 76), although there are differing opinions among academics, and a claim that this principle is not supported by the current economic reality and therefore should be deleted. However, as a principle that is intrinsic to socialist society, we must assume and defend it.

The right to social security (Article 68, formerly Article 79) was extended to recognize the protection not only of maternity and paternity but also of “grandparents or other relatives of the minor, according to his/her care and attention.” This is in line with current regulations and responds to the opinions of the population.

The right to “decent” housing was modified (Article 71, formerly Article 82), regarding which there were many doubts and observations. Instead of the latter term, the concept of “adequate” housing was used, and the right to a “safe and healthy habitat” extended, which offers greater precision and entails not only a physical space and a roof over one’s head, but the wider environment in which dwellings are located, and their main characteristics.

In the right to public health (Article 72, formerly Article 83), the responsibility of the State was made more explicit, adding that services should be of “quality,” and incorporating as a guarantee the creation of a “health system at all levels, accessible to the entire population,” and the development of “programs for health prevention and education, to which society and families contribute.”

Regarding education (Article 73, formerly Article 84), it was added in terms of the responsibility of the State that services must be of quality, and its free nature extended from “early childhood to postgraduate university education,” in response to 1,507 proposals from the population.

The guarantees to put this right into effect were also extended, among them the possibility



offered by “the broad system of educational institutions and the possibility of studying at any stage of life.”

A new chapter on Families (Chapter III), was inserted, similar to the current constitutional text and with the objective of visualizing the importance of this issue in society.

It is worth noting the new regulation that appears in Article 81 (formerly Article 67), which establishes the right of persons to establish a family, whatever its form of organization, and the definition that these are constituted “through legal or de facto ties.”

According to data from the 2012 Census, 5,476,734 people (over 15 years old) are in stable relationships. Of these, 48% are common-law unions, and 52% are married.

In order to respond to the views regarding the content of Article 68, mention of the individuals that conform a marriage was eliminated. In its place, the new Article 82 establishes that marriage is a social and legal institution, and one of the forms of organization of families, thus leaving it to the law to establish its subsequent development.

Coupled with this, the Eleventh Transitional Provision establishes that within two years of the new Constitution’s entry into force, the National Assembly will arrange to initiate a process of popular consultation and referendum on the draft Family Code, which should include the definition of marriage. The intention is not to include in the constitutional text the subjects of this institution, and achieve its definition in a referendum vote on the aforementioned Code.

A necessary balance has been sought, as the Constitution of the Republic must generate consensus in society.

Article 82 took into account both the views of people in favor of same-sex marriage, and those who do not support it. Here there are no winners or losers.

What was expressed in the draft is our general will, but this was not the time to establish it as there was no consensus. But we maintain the intention to achieve this in the future. The Family Code will be put to the vote because it is the most democratic way of defining it.

At the same time, Article 82 itself recognizes de facto unions and provides for legislation to regulate the conditions and circumstances in which these are configured, as well as the rights and obligations deriving from them. These unions could be of heterosexual or same-sex couples, but their subjects are also omitted in the Constitution text.

Families are not only bound through marriage, some are constituted in legal acts such as marriage or adoption, but there are also de facto families based on consensual unions.

In this chapter dedicated to families (Article 86, former Article 72), the rights of children and adolescents are broadened, considering them full subjects of rights as established in the Convention on the Rights of the Child. A new Article (87) also recognizes the role of young people in society.

The protection and exercise of rights by older persons (Article 88, formerly Article 73) and persons with disabilities (Article 89, formerly Article 74) is also underlined.

In Chapter IV of Title V, on Duties (Article 90, former Article 91), the fundamental change is the incorporation of respect and protection of national symbols, as well as the duty to protect flora

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and fauna, responding to a widespread demand to regulate the protection of animals.

In a new Chapter VI on Guarantee of Rights, the entire system of guarantees that was dispersed across different articles of the draft text is grouped together. Two new articles are incorporated: Article 92, regarding judicial protection, and Article 93, recognizing alternative methods of conflict resolution (arbitration, mediation, etc.).

The principle of Due Process (former Article 48), saw an important modification, on dividing the general issues related to any matter (Article 94), and those related to the criminal procedure itself (Article 95).

Legal assistance in criminal proceedings was highly requested from the moment of arrest. This was a widely debated topic and consensus was reached that it would be provided from the beginning of the process, leaving the specifics to the law.

Incorporated into Article 99 (formerly Article 94) was the possibility of recourse to the courts in the event of the violation of constitutional rights, not only by the State or its representatives, but also by individuals and non-state entities. Likewise, it is left to the law to define these constitutional rights and the subsequent procedure.

- Structure of the State

In general, the same wording was maintained, with some very specific changes. In this Title, there are four aspects related to the figure of the President of the Republic, on which people expressed the most opinions (term of office, minimum and maximum ages, as well as his/her popular election). These remain as they were in the draft text, in accordance with the decisions of the Party Congresses, and its First National Conference.

- Territorial Organization of the State

There were no major changes to this Title. In Article 169 (formerly Article 164), the faculty of municipalities to dictate agreements and regulatory provisions for the exercise of their powers was specified, as one of the issues arising from municipal autonomy.

- Local People's Power Bodies

The most important change in this Title was regarding the election of Provincial Governors and Vice Governors (Article 175, formerly Article 170). The proposal that they be elected by delegates of the respective Municipal Assemblies of People's Power (AMPP) was accepted, at the proposal of the President of the Republic, with which a popular demand is also partly accepted.

The other important change lies in incorporating AMPP vice presidents as members of the Provincial Council (Article 182, formerly Article 177), as well as eliminating the mention of other members. Regarding this Title, some views questioned the titles of "Governor" and "Intendant." However, it was considered that there were no compelling reasons to change them.

- Electoral System and Defense and National Security

There were no noteworthy changes.

- Constitutional Reform

In Article 227 (formerly Article 222), referring to reform initiative, the National Council of the Cuban Workers' Federation, and the national directorates of the other mass and social organizations were included as subjects, in correspondence to their legislative initiative and the role they play within the Cuban political system.

The intangibility clauses provided for in Article 229 (formerly Article 224) were maintained, with the irrevocability of the socialist system defined more generally, without specifying the components that constitute it.

In the supplementary provisions of the draft (Special, Transitional, and Final), a new provision was added, which is now the Fifth, relating to the President's proposal of Provincial Governor and Vice Governor candidates. The wording of the Tenth provision (now the Eleventh) was adjusted as already expressed, and the Twelfth was eliminated.

The Secretary of the Council of State, Homero Acosta, on concluding the presentation of the draft Constitution, acknowledged that "If we have come this far, it is because we have a helmsman who steered us to safe harbor. That helmsman is Raúl Castro, a modest man who knows how to listen."

**Source:** Report to the National Assembly of People's Power on the outcome of the popular consultation on the draft Constitution of the Republic of Cuba

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