

COMMUNIST PARTY OF CUBA (PCC)

## New Constitution for Cuba

The Draft Constitution of Cuba, as approved by its National Assembly is now placed before the people for discussion and seeking their opinions. For this purpose, between August 13 and November 15, more than 135,000 meetings to be held in workplaces, schools, community centres, and abroad – which will be conducted by 7,600 two-person teams (15,000 citizens trained to lead the forums and register suggestions) throughout the country – are planned. Over one million copies of the draft Constitution were printed and distributed to the people to enable their participation in discussions.

As part of the preparations, a two-day national seminar on the Constitutional reform consultation process was held, in which more than 280 provincial representatives of the Party, the Young Communists League, mass organizations, the Union of Jurists, political leaders of the Ministries of the Revolutionary Armed Forces and the Interior, as well as the commission charged with Implementation and Development of Policy Guidelines, the National Electoral Commission, the Center for Socio-political Studies, and the Ministry of Foreign Relations participated.

This entire proposal to Draft a new constitution, is the result of an effort begun by a Work Group created by the Political Bureau of the PCC, on May 13, 2013, and led by First Secretary of the Party, Raúl Castro Ruz and is based on the relevant Legislative Foundations approved by it on June 29, 2014.

Explaining the necessity for a new Constitution, Raúl Castro, stated that it is needed for “. . . leaving behind the obstacles of the old mentality and forging a vision of the present and future of the homeland, with transformative intentionality and much political sensitivity, without abandoning for an instant, the legacy of Martí or the Marxist-Leninist doctrine that constitute the principal ideological foundation of our revolutionary process”.

The obligatory references in the preparation of the Draft Constitution were identified as:

The political thought of the historic leader of the Revolution, compañero Fidel Castro Ruz

Speeches and directives by Army General Raúl Castro Ruz

The Conceptualization of Cuba's Economic and Social Model of Socialist Development

The National Plan for Economic and Social Development through 2030: Vision of the Nation, Axes, and Strategic Sectors

The Economic and Social Policy Guidelines of the Party and the Revolution

The Party Work Objectives, approved by the First Party Congress

Apart from these, several constitutions were also consulted: “first from Latin American countries, among them Venezuela, Bolivia, and Ecuador, which represent the most advanced constitutional works in the region, as well as other constitutional models like those of Vietnam and China, nations which are constructing socialist societies with their own characteristics, as well as constitutional texts from other countries.”

Explaining the preparatory process, Council of State Secretary Homero Acosta stated: “In particular, this work required study of our constitutional history, especially the Constitution of 1940, the Fundamental Law of 1959, and the current Constitution of the Republic. This past June 2, in an extraordinary session, the National Assembly of People's Power established a Commission charged with preparing a first draft proposal of the Constitution of the Republic. The Commission has worked intensely throughout this period, taking as a reference the studies done previously, and after a broad debate has produced the text presented here. [On] July 2 and 3, of this year, the proposed first draft of the Constitution was presented by the Commission to the 7<sup>th</sup> Plenum of the Party Central Committee.” This draft was later placed for discussion in the National Assembly of Deputies, who have debated and accepted the draft for further discussions among the people of the country. Extracts from the Draft Constitution that is put before people for discussion:

## PRINCIPAL ELEMENTS THAT DISTINGUISH THE DRAFT

The text includes a preamble, 224 articles (87 more than the current Constitution), divided into 11 titles, 24 chapters, and 16 sections. Eleven articles in the current Constitution are maintained, 113 are modified, and 13 eliminated. The proposal is distinguished by its coherent, systematic structure, achieving a logical rearrangement of the content and avoiding the dispersion of elements. The language used is consistent with terminology that should characterize a constitutional text and fits our economic, political, and social reality. The wording of content in general terms provides for greater flexibility, durability, security, and applicability of the Constitution.

The Draft reaffirms the socialist character of our political, economic, and social system, as well as the leading role of the Communist Party of Cuba. The economic system that is reflected in the Draft maintains as essential principles the socialist ownership of the fundamental means of production by the entire people, and planning, to which is added, the recognition of the role of the market and new forms of non-state property, including private property. In a singular fashion, the inclusion of a wide range of rights stands out, in line with international instruments related to this issue which Cuba has signed.

Of special note are those related to the right to a defence, due process, and popular participation, while economic and social rights are re-formulated.

The right to equality's content is further developed, incorporating, among other elements, the prohibition of discrimination based on gender identity, ethnic origin, and disability.

The possibility is established for persons to appeal to the courts to demand restitution of their rights or compensation for the damages or losses caused by any action or omission on the part of bodies, directors, officials, or employees of the state, in the improper exercise of their functions.

With respect to marriage, modified is the current concept that this is an agreement 'between a man and a woman', now defined as one 'between two persons'.

Referring to state bodies, an adequate balance between these is maintained, and added are the figures of President of the Republic, as head of state, and Prime Minister in charge of the Republic's government. Both are required to be deputies to the National Assembly of People's Power.

The Council of State maintains its character as the permanent body of the National Assembly of People's Power, with greater interaction with the Assembly stipulated, among other aspects, since the President, Vice President, and Secretary of the two bodies will be the same individuals.

An important novelty in terms of state bodies is the establishment of a National Electoral Council, a permanent institution devoted to this area, while the inclusion of the Comptroller General's Office in the Constitution has been achieved.

In terms of local bodies, Provincial Assemblies of People's Power are eliminated, and established is a provincial government composed of a governor and a council at this level.

Municipalities acquire a greater role on the basis of recognition of their autonomy, which they exercise in accordance with national interests.

The Municipal Administrative Council is reaffirmed as the body that directs municipal administration, under the leadership of a superintendent, a term proposed to replace those of 'president' and 'chief' currently used.

In terms of the electoral system, the right to vote for all Cubans who have reached 16 years of age was maintained, with the exceptions established by law.

Defence and national security appear as a title, in which the mission of the National Defence Council is defined, with the authority to carry out tasks in peacetime, the formal recognition of a 'disaster situation', and other situations of an exceptional nature.

Regarding mechanisms for constitutional reform, unlike current stipulations, those who are authorized to do so are identified, as are inalterable clauses.

Special, transitional, and final procedures are stipulated on the effect date of principal questions in the proposal, as well as the period within which complementary regulations are to be established, or current ones modified.

## POLITICAL FOUNDATIONS

The wording of the title is new, differentiating political foundations from those of an economic nature.

The definition of the Cuban state as a socialist state of law is intended to reaffirm the principle of constitutional supremacy and the rule of law, and to reinforce socialist institutionality.

The Communist Party of Cuba maintains its role as the leading force in society and the state, while its democratic character and permanent relationship with the people are emphasized. It is specified that the state recognizes and protects the functioning of associations established in accordance with the law.

Current stipulations regarding relations between the state and the church are maintained in their essence.

In terms of constitutional supremacy, established is the duty to abide by the Constitution, and that all dispositions and actions of state institutions, directors, functionaries, and employees must conform to what is stipulated, in accordance with the previous assertion regarding a socialist state of law.

The proposal includes the obligation of state institutions, their leaders, functionaries, and employees to respect and serve the people, maintaining close ties with the population and submitting to their control, via the means established in the Constitution and laws.

Regarding the essential responsibilities of the state, new items include:

Strengthen national unity;

Preserve national security;

Promote sustainable development that assures individual and collective prosperity, and work to reach greater levels of equity and social justice, as well as preserve and expand achievements of the Revolution;

Consolidate the ideology and ethics intrinsic to our socialist society;

Protect the nation's natural, historical, and cultural patrimony;

The principles of foreign policy were reaffirmed and others were incorporated, among these: the promotion of respect for international law and multi-polarity among states; condemnation of imperialism, fascism, colonialism or neo-colonialism in any of its manifestations; defence and protection of human rights and the repudiation of any manifestation of racism or discrimination; promotion of disarmament and the rejection of the proliferation and use of nuclear weapons, mass extermination, and others with similar effects that violate international humanitarian law; repudiation and condemnation of all forms of terrorism, in particular state terrorism; and protection and conservation of the environment and the struggle against climate change.

## ECONOMIC FOUNDATIONS

Established as basic principles of the economic model are the socialist ownership by all the people of the fundamental means of production and the planned direction of the economy, currently cited in the constitutional text, to which is added the recognition of different forms of property, in accordance with the Conceptualization of the Cuban Economic and Social Model of Socialist Development and the Economic and Social Policy Guidelines of the Party and the Revolution. As a novel element, the market is taken into consideration and regulated, within the framework of economic planning, under the principle of avoiding the inequalities it generates and protecting the interests of our society. By defining the different types of property that can coexist in the economy (socialist of all the people; cooperative; mixed; that of political, mass and social organizations; private; and personal) it is recognized that there may be others, and that the state will promote those of a more social nature. In accordance with the Conceptualization of the Cuban Social and Economic Development Model and the Economic and Social Policy Guidelines of the Party and the Revolution, the concentration of property by non-state subjects is proscribed, as a foundation of the Cuban socialist system, and is established as a constitutional precept. Obligatory expropriation is maintained, although only for authorized reasons of public utility or social interest, and with due compensation and guarantees stipulated.

Regarding the socialist property of all the people, the essential assets included are listed, and their inalienable and un-encumberable nature established. The existence of others of this nature is recognized, and defined is the legal regimen for the transfer of property and other rights.

The statement that enterprises only respond to obligations with their financial resources is eliminated. Maintained is the premise that the state is not responsible for obligations assumed by enterprises, while enterprises are not responsible for those of the state.

While diverse forms of property within the economy are recognized, state enterprises are defined as the principal actors, and their autonomy is established as essential to their functioning.

Reaffirmed is the concept that the state directs, regulates, and supervises economic activity, and that planning is the central element in the system guiding economic and social development, with the purpose of facilitating economic activity, reconciling national, provincial, and citizens' interests.

In line with documents from the Seventh Party Congress, the participation of workers in the direction, regulation, and supervision of economic activity is emphasized.

It is recognized that the state guarantees foreign investment and ensures respect for the nation's sovereignty and the rational use of resources.

Regarding private ownership of land, a special regimen is maintained, stipulating that the sale or transfer of land is only permitted within the limits of the law, and without infringing on the state's preferential right to purchase it at a fair price.

Maintained are prohibitions on the renting, parcelling, mortgaging of land, or any other act that implies alienation or concession of land to private parties.

#### CITIZENSHIP

The fundamental change is that our non-recognition of dual citizenship is modified, and established instead is the principle of 'effective citizenship', which means that "Cuban citizens, within the national territory, are governed as such and cannot make use of a foreign citizenship".

#### RIGHTS, RESPONSIBILITIES, & GUARANTEES

In the drafting of this title, rights and responsibilities currently dispersed throughout the Constitution have been grouped together, and others are added to strengthen the regimen of guarantees for citizens and the duty of the state to protect these rights.

The new wording reflects rights recognized in different human rights conventions and protocols which we have signed, given the principles of our political system and without limiting our ability to protect ourselves from counterrevolutionary actions.

It is established that the rights of individuals are only limited by the rights of others, collective security, and precepts set in the country's legal order.

In terms of public health, the proposal reaffirms this as a right of all persons and that the state guarantees access, free of charge, to treatment, protection and recovery of one's health, and leaves to the law the specific services to be provided.

Regarding education, this is established as free of charge from pre-school through the undergraduate university level, and defined as secular and a right of all persons, as well as the responsibility of the state, society, and families.

Several new rights are noteworthy, basically in the area of justice and due process, such as *habeas corpus* (to prevent arbitrary detentions); protection for individuals arrested or imprisoned; the right of citizens to be informed of personal data in public archives and registers; and the reincorporation into society of imprisoned individuals upon their release, etc.

Also included is the right to participate in the nation's cultural and artistic life.

Established is the right of persons to be compensated for their work based on its quantity, complexity, quality, and results obtained.

The right to receive quality goods and services is incorporated, as well as the right to information about these, and to be attended in an appropriate manner.

Lastly, the civic and political rights and duties of citizens are cited, establishing mechanisms to appeal to the courts of justice to safeguard one's rights.

Given their importance, maintained are the principles that guide educational, cultural and scientific policy, emphasizing the significance of ethical, civic, and revolutionary values for new generations, as well as the protection the state provides to our cultural identity, patrimony, and the nation's artistic and historic wealth.

#### STATE STRUCTURE

This section governs issues related to higher bodies and other institutions of the state, as well as a number of questions regarding these.

**Chapter I:** Organization and functioning of state bodies. Reaffirms the current principles of socialist democracy which guide the selection of members of state bodies and the activities they carry out.

**Chapter II:** National Assembly of People's Power and Council of State. The National Assembly retains its status as the supreme body of the state and the only one with constitutional and legislative power in the country. Its leadership remains the responsibility of a President, Vice President and a Secretary, and maintains, generally speaking, the same authorities recognized in the current Constitution, and introduces a few new ones, including those to: interpret the Constitution, giving the constitutional text greater durability and scope without the need to resort to reform processes to resolve given situations that may arise; establish or remove taxes, an authority that given its importance should be the purview of this body, as in other countries; approve territorial plans for administrative hierarchies, special regulatory systems for municipalities or other demarcations and districts. The election and designation of the fundamental positions of the state and the government continues as a responsibility of the National Assembly. Added in the proposal are the election of the President and Vice President of the Republic, members of the National Electoral Council, as well as the appointment of a Prime Minister and Provincial Governors, among others. With the proposed concept of the Council of State, under the same leadership as the National Assembly of People's Power, the goal is to achieve a more effective link between the two bodies and to facilitate continuity in the exercise of their authorities. It is specified that the Council of State will be composed of the President, Vice President and Secretary of the National Assembly of People's Power, which is empowered to select the rest of the members that comprise it. In search of an adequate balance in the conducting of supervision and a more effective counterweight in the state's higher bodies, it is established that members of the Council of State may not hold positions on the Council of Ministers or at the leadership level in judicial, electoral, or state control bodies.

The Council of State's current authorities remain essentially the same, and others have been conferred.

The document indicates that decree-laws enacted and agreements reached by the Council of State are subject to ratification by the National Assembly of People's Power, in its next session.

**Chapter III:** President and Vice President of the Republic. The President of the Republic is the head of state, elected by the National Assembly of People's Power from among its deputies, for a period of five years.

This person may hold the position for two consecutive terms, following which he or she may not serve in this role again.

The President of the Republic must obtain the favourable vote of the absolute majority of deputies, and requirements to assume this responsibility include having reached 35 years of age, being in full possession of civil and political rights, being a Cuban citizen by birth and not holding any other citizenship.

Additionally, it is stipulated that an individual may have reached no more than 60 years of age prior to a first term as President.

The Vice President of the Republic is elected in the same manner and for the same term as the President, and substitutes the President in the event of his or her absence, illness, or death. If this office is vacated, the National Assembly of People's Power elects a substitute. In the event of the definitive absence of both the President and the Vice President of the Republic, the National Assembly elects substitutes, and in the interim before this election is held, the President of the National Assembly assumes the office of President of the Republic temporarily.

**Chapter IV:** Government of the Republic. The Council of Ministers maintains its status as the highest executive and administrative body, constituting the Government of the Republic. It will include a Prime Minister, who leads the Council, deputy prime ministers, ministers, a secretary, and other members determined by law. Between meetings, the Council's Executive Committee may make decisions on issues within the authority of the Council of Ministers.

The Council of Ministers' authorities, as is the case with bodies previously mentioned, remain essentially the same.

The new Constitution establishes that the Prime Minister is designated by the National Assembly of People's Power, at the proposal of the President of the Republic, for a period of five years, and with the favourable vote of the absolute majority of the deputies.

**Chapter V: Laws.** Added to those who currently have legislative initiative are the President of the Republic; the Office of the Comptroller General of the Republic; and the National Electoral Council, in areas of their authority. This title also governs issues related to the effect date and publication of legal norms.

**Chapter VI: Courts of Justice.** The new wording reinforces the operational independence of courts and judges in their work to impart justice. Maintained is the requirement that the Supreme People's Court renders an account of its work to the National Assembly of People's Power, in the established manner and frequency. It is maintained that magistrates and lay judges of the Supreme People's Court are elected by the National Assembly of People's Power or the Council of State. The law regarding the election of other judges is left to the law.

**Chapter VII: Attorney General of the Republic Office.** One of the most significant changes concerns the fundamental mission of the Attorney General's Office, which prioritizes "the management of criminal investigations and taking public criminal action on behalf of the State", without ignoring its role in ensuring compliance with the Constitution, laws, and other legal provisions.

Also specified as a novel element is that the Attorney General is directly subordinate to the President of the Republic.

**Chapter VIII: Office of the Comptroller General of the Republic.** The main mission of this office is that of superior evaluation of administrative management, and ensuring the correct, transparent administration of public funds. The Office of the Comptroller General is also subordinated to the President of the Republic.

#### TERRITORIAL ORGANIZATION OF THE STATE

Maintained are current regulations on the country's political-administrative divisions, and added is the possibility of approving subordinate administrative regimes and special regulatory systems for municipalities or other territorial demarcations, as well as administrative districts. The Municipality is defined as the primary, fundamental political unit of national organization, and its autonomy is recognized, which includes the election of its own authorities, the ability to make decisions regarding the use of resources, and the exercise of its competencies in accordance with the Constitution and the law.

#### LOCAL BODIES OF PEOPLE'S POWER

The main modification is the elimination of Provincial Assemblies of People's Power and the establishment of a provincial government consisting of a Governor and a Council.

The provincial government has as its fundamental mission working to promote the economic and social development of its territory, serving as coordinator between the central government and municipalities, which involves the direction, supervision, orientation, and a contribution to reconciling the interests of the province and its municipalities, along with exercising the authorities it is granted in the Constitution and by law.

The Provincial Council is defined as a collegial, deliberative body, presided by the Governor, with presidents of Municipal Assemblies of People's Power as members, plus the superintendents of Municipal Administrative Councils, and others as determined by law.

The Governor is the highest executive administrative leader of the province, named by the National Assembly of People's Power, for a five year term, in accordance with principles established by the Council of Ministers, to organize and direct the provincial administration which has its own administrative structure.

The proposal includes the figure of a Deputy Governor, designated by the Council of Ministers, for the same term as the provincial governor.

It is proposed that elections for Municipal Assemblies take place every five years.

Likewise stated is that Municipal Assemblies have the responsibility of guaranteeing the right of citizens in the locality to petition and to participate.

Regarding Municipal Administrative Councils, the proposal specifies that its members are designated by the Municipal Assembly of People's Power to which it is subordinated. It is collegial in nature and is charged with directing the administration at this level. Noteworthy is the new figure of Superintendent, who is responsible for leading the Council.

#### ELECTORAL SYSTEM

Voting is defined as a right and responsibility of all citizens, and reaffirms its nature as free, equal, direct, and secret. Eligibility is maintained at 16 years of age.

The National Electoral Council is established as the permanent state body charged with the fundamental mission of organizing, directing, and supervising elections, popular consultations, plebiscites, and referendums that may be convoked, as well as resolving any complaints in this arena.

The National Electoral Council will have autonomy and only respond to the National Assembly of People's Power. Once an electoral process is concluded, the Council reports the results to the nation.

#### NATIONAL DEFENCE & SECURITY

The National Defence Council is defined as the highest state body charged with the fundamental mission of organizing, directing, and preparing – in peacetime – the country's defence, and added is the responsibility to ensure adherence to approved laws related to the defence and security of the nation, which implies the authority to maintain its activity at all times.

During exceptional and disaster situations, this Council directs the country and assumes the authorities that are conferred on state and government bodies, with the exception of the National Assembly's constituent authority.

This body will be headed by the President of the Republic, who will in turn designate a vice president and other members as determined by law.

This title also establishes that the state's armed forces are the Revolutionary Armed Forces and the armed formations of the Ministry of the Interior, which, in order to fulfil their duties, have the participation of military and civilian personnel.

#### CONSTITUTIONAL REFORM

Reiterated is the stipulation that the Constitution can only be reformed by the National Assembly of People's Power via approval expressed in a roll call vote, by a two thirds majority of its member deputies.

Those with the authority to initiate a proposal for constitutional reform are designated as: the President of the Republic; the Council of State; the Council of Ministers; National Assembly deputies, via a proposal signed by no less than two thirds of its members; and citizens by way of a petition directed to the National Assembly of People's Power, signed before the National Electoral Council by at least 50,000 eligible voters.

When the proposed reform refers to the membership or authorities of the National Assembly of People's Power or the Council of State; to the authorities or term in office of the President of the Republic; or rights, duties, and guarantees established in the Constitution, additionally required is approval by the majority of the nation's eligible voters in a referendum called for this purpose.

***Maintained in the text is the stipulation that the irrevocability of the country's socialism and our political, social, and economic system is not subject to reform, and neither is the prohibition on negotiating under force, threat, or coercion on the part of a foreign power.***