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SIMILARITIES, VARIATIONS, AND RESERVATIONS IN THE NICARAGUAN CONSTITUTIONAL PROCESS

The President of the Nicaraguan National Assembly, Comandante de la Revolución Carlos Núñez Téllez, informed that the first draft of the Nicaraguan Constitution has been elaborated, discussed, and presented by Nicaraguans without involvement from any foreign country.

This first draft offers hope to the Nicaraguan people in their daily fight to defend the right to construct a free, sovereign, and independent Homeland and strengthen the National Unity.

In order to create the first Constitutional Draft, a Special Constitutional Committee was formed, made up initially by 22 representatives of the seven political parties of the National Assembly, taking into account pluralism and proportional representation.

The Special Committee approved its internal rules as well as its work plan and methodology. Three Sub-Commissions were formed: The Sub-Commission on Constitutional Affairs, the Sub-Commission on the National Consultation, and the Sub-Commission of Foreign Affairs. The last of these dissolved in December of 1985 after it reported on the Constitutional process of different countries with different political systems. This work demonstrated the wide range of constitutional experiences that exist.

The Sub-Commission on Constitutional Affairs assumed the plan, the general lines, the form, and the contents of the first draft of the Magna Carta. These were approved by the Special Constitutional Committee with 10 titles, 28 chapters, 5 sections, and 221 articles.

Furthermore, it established that the character and nature of the Constitution would be general, principled, democratic, and modern in its three basic parts: The General Part, the Bill of Rights, and the Organizational Part.

The writing and approval of the project took into account methodology, flexibility, and the plans to further discuss the Draft in the Plenary of the National Assembly after the National Consultation. All of the political parties exercised the right to express disagreements or reservations about articles in the Draft, although the ultimate approval will take place in the discussion in the National Assembly. To prove this, the reservations and disagreements were left in as evidence in the meetings of the Special Constitutional Commission and the report of the President of the Special Constitutional Commission.

It was unanimously agreed to leave the writing of the Preamble for the final draft and recommend that all parties submit their proposals for the Preamble stating the philosophy of the Constitution, its reason for being, and its goals.

With respect to Title I, Fundamental Principles, reverence to the

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Heroes and Martyrs was approved with the understanding that once the Preamble is written, it will be examined to see if it remains as an article or if it will be included in the Preamble.

Title II, Chapter One, General Dispositions, faced reservations in reference to National Territory, given that the Conservative Democratic Party solicited the inclusion of the fundamental "UTI POSSI DETIS JURIS of 1821". This point was left pending until after the necessary consultations.

Title IV, National Economy, Chapter VI, the Budget of the Republic, consists of three articles. Only one of these was unanimously approved. The Conservative Democratic Party and the Popular Social Christian Party had reservations on the other two articles which deal with the exercising of the budget and the legislative participation in the budgetary process. The discussion was left pending. In the last case, both parties believe that the National Assembly must have the authority to control the budget.

In Title VI, Rights, Duties, and Guarantees of Nicaraguans, Chapter I, Individual and Civil Rights, on the inviolability of the Right to Life, the Conservative Democratic Party had reservations due to the fact that they believe the article should state the right to life from the moment of conception.

In Chapter II, the Right to Gather, the President of the Special Constitutional Commission expressed reservations. With respect to the suspension of Political Rights, the Conservative Democratic Party will introduce a series of articles about foreigners.

The Conservative Democratic Party and the Popular Social Christian Party expressed reservations in reference to religious objections to certain laws.

The Conservative Democratic Party disagreed on the point on social security and welfare until there is more information from the corresponding bodies.

The fundamental difference between matrimony and common unions, -- Chapter IV, Family Rights, will be discussed in the Plenary, due to a series of difference of opinions between members or the Special Constitutional Commission.

The Popular Social Christian party expressed reservations on Chapter VII, Education and Culture, on the point of Autonomy and Academic Freedom. In the final draft of the Constitution the Conservative Democratic Party will present additional duties in Chapter VII, Duties of Citizens.

The Conservative Democratic Party expressed reservations over Chapter III, Executive Power, about the responsibility of the President, stating that the responsibilities defined in the Constitution of 1848 must be taken into account because it is more developed and defines the role of the President in relation to the other branches of the state. Furthermore, they believe that the principle of non-

reelection of the President and a clear definition of the legislative power. The Popular Social Christian Party also expressed reservations on this point.

In reference to the appointment of the Mayor of the city of Managua by the President of the Republic of Nicaragua, the Popular Social Christian Party had reservations due to the fact such a process contradicts the autonomous nature of the municipalities.

In reference to the State Ministries, the Conservative Democratic Party will introduce three articles about public officials.

Furthermore, about the Sandinista Armed Forces, reservations were expressed by the Popular Social Christian Party and the Conservative Democratic Party. In the final discussion, they will propose that the name be changed to the Defense Army of National Sovereignty.

The Sandinista Front for National Liberation expressed reservations as to the term and removal of judges, Chapter IV, Judicial Power. The Conservative Democratic Party expressed reservations on the unity and the exclusivity of jurisdiction.

In Title VII, Political Administrative Division, the FSLN had reservations about the concept of the Autonomy of Municipalities.

The President of the Special Constitutional Commission had reservations on the reform, the initiatives of Title IX, Constitutional Reforms. However, the points that cannot be subject to reform the popular nature of the Revolution, democracy, national defense, and the principles of anti-imperialism, non-alignment, anti-interventionism, and latinamericanism - were established.

The Conservative Democratic Party thought that the definition of conquests and achievements of the Revolution should be established first by consensus, and then the ones that cannot be subjected to reforms because they are principles of the Revolution should be defined.

All of these reservations will be debated on in the Plenary session of the Nicaraguan National Assembly with the support of the people from the Open Forums.

FUNDAMENTAL CONTENTS OF THE NEW CONSTITUTION

According to the consensus of the political parties represented in the National Assembly, the new political Constitution of Nicaragua must be general, principled, revolutionary, democratic, and modern in each of its three parts: the General Part, the Bill of Rights, and the Organizational Part.

The fundamental aspects of the Draft of the Magna Carta which was presented to the National Assembly on February 21 of this year by the Special Constitutional Commission are summarized below.

Fundamental Principles

In the chapter dedicated to the Fundamental Principles, gratitude, reverence, and respect to the Heroes and Martyrs of our Homeland is established along with the goal to educate present and future generations with their example of heroism and generosity.

Furthermore, it is indicated that "revolutionary power lies in the people workers of the city and of the country, women, youth professionals, technicians, intellectuals, artist, and religious people who make up the majority of the nation and guarantee the irreversible character of the National Democratic Revolution in Nicaragua".

In terms of the concept of democracy, the Constitutional Draft says that democracy is "the construction of a society with people's participation, where the right to vote and be elected is effective along with the rights to speech, to organize, to protest, and to housing, education, work, and healthcare. In conclusion, the right to live dignified".

The Draft talks of a democracy where all political, social and economic sectors of the country participate in forming the objectives and concrete goals to reestablish and develop the economy of the country and protect it against destruction and war in order to make happiness possible and eradicate misery, hunger, destruction, and unemployment, as well as promote the social development of Nicaragua.

With regards to political pluralism, the draft states that this is the existence and participation of all political organizations without ideological restrictions, except to those who advocate a return to somocismo.

As to a mixed economy, the Constitution says that this means an economic model where diverse forms of production exist, private, mixed, and cooperative, and all have the well being of the people as a principle objectives and reasonable margins of profit are established.

With regards to the independent foreign policy of the country, it is established that this means "non-alignment; a principle that guarantees independence from the hegemonic centers of power, peaceful coexistence between states, and solidarity with the countries in struggle against imperialism, colonialism, apartheid, and racism".

It is also mentioned in this chapter of fundamental principles that "the basis for our anti-imperialism is the historic struggle for the independence and sovereignty of the Homeland. For this reason, we affirm our right to self-determination and we reject the unjust trade relations that damage developing countries and use Latin American countries as geopolitical reserves for military, political, and economic interventions against the legitimate sovereign rights

of people.

Other fundamental principles stated in the Draft include:

"Latinoamericanism-the ideas for Bolivar and Sandino to unite Latin American countries to strengthen our countries".

"The principle of non -intervention in the internal affairs of other countries".

"Defense of the Homeland -the participation of all people in - the defense of the nation in the struggle to maintain peace- an indispensable base for the economic and social development of - the country".

"Sovereignty resides in the people, the legitimate owners of the nation, the land, and the natural resources which are to be used for the social progress of the country and social well being for all Nicaraguans".

General Dispositions

With respect to the state and forms of government, the Draft establishes that Nicaragua is a free, sovereign, and independent state that is a democratic, participatory, representative, and non-aligned Republic. The Legislative Branch, the Executive Branch, the Judicial Branch, and the Electoral Branch are functions of the government.

Rights of the people

"The right to struggle for the defense of the Homeland and peace for the integral development of the nation is a right of all Nicaraguans".

"The Nicaraguan People have the right to self-determination in - political, economic, social, and cultural life".

"In Nicaragua, city and country workers, women, youth, patriotic producers, agricultural and industrial workers, artisans, professionals, technicians, intellectuals, artists and religious people have the right to create organizations with the purpose of participating in the construction of a new society".

In respect to human rights, the Document declares that the State will guarantee unrestricted respect, promotion, protection, and incorporation of Human Rights as an integral part of the Fundamental Statutes stated in the Universal Declaration of Human Rights of the United Nations Organization, in the American Declaration of Rights and Duties of Man and the American Convention of Human Rights of the Organization of American States.

National Economy

This chapter explains that the economy of the country is a strengthening factor for national sovereignty, the consolidation of democracy, and the fulfillment of the material and spiritual needs of the people.

Furthermore, it is indicated that the administration of the economy corresponds to the state as well the planning, conducting, and orientation of economic activity in order to guarantee national development.

Agrarian Reform

The Agrarian Reform is a fundamental instrument of the economy and of the revolutionary transformations. It guarantees the active participation of peasants in the economic and social development of the country".

Agrarian Reform will guarantee property to efficient agricultural producers as instruments of their work, as established by law".

The participation of agricultural workers and producers is established through the law itself, the State bodies related to the law, and popular organizations."

Foreign Investment

In Chapter V of the Draft states that "foreign investment will play a role complementary to internal economic policies. Furthermore, it must contribute to the development of the country, adjust itself to the law, and not harm national sovereignty".

National Defense

In this part, the document expresses that "the character of national defense is defined by the will for peace of the Nicaraguan people and their firm decision to permanently defend the vital interests of the nation and the conquests of the Revolution, "and no" after that all classes and sectors of Nicaraguan society are the social basis for this national defense".

Rights, Duties, and Guarantees of Citizens

In this chapter, all the rights, duties, and guarantees that traditionally appear in Constitutions of the Western Hemisphere are stated, such as, freedom of thought and religion, procedural and

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penal guarantees, recourse of Habeas Corpus and "Amparo", prohibition of infamous punishment, with respect to physical, mental, and moral integrity, etc., as well as a restatement of what appears in the Fundamental Statute of the Republic of Nicaragua and in the Rights and Guarantees of the Nicaraguan People.

Political Rights

Here it is established that those national or nationalized Nicaraguan citizens who are 16 years or older will enjoy full political rights and all citizens have the right to vote and be elected.

Also stated are the right to organize political party, the right to asylum, etc.

Social Rights

"All people, be they individuals or the collective body, have the right to practice their religious beliefs in public or in private, including prayer, teaching, and celebration of rituals"

Also given are rights to information, social security, protection of combatents, food, healthcare, and housing rights, among others.

Family Rights

In this chapter, it states that the family is the natural and fundamental nucleus of society and has the right to state protection. Furthermore, the rights of Nicaraguans to form a family through marriage or a common union is recognized.

In reference to parental Authority over children, it is established that it will be equally shared by the father and the mother.

Economic Rights

It is established in the Draft that all workers have the right to participate in the construction, control, and execution of all economic and social measures that the State promotes. It will strive to guarantee the harmonious participation of all productive forces and a just distribution of the national product with the goal of guaranteeing a dignified material life for all people.

Labor Rights

Qualifying work as a right and a social responsibility, the Docu-

ment notes that all workers through their organizations have the right to use the diverse forms of participation in their enterprises. Also recognized is the right to strike, to union freedom, and to union autonomy.

Education and Culture

Between other aspects, it is established that state centers of education will be secular, that religious education will not be mandatory in private schools, and that academic autonomy and freedom will be guaranteed in the universities.

Legislative Power

Indicating that the legislative function will be exercised by the National Assembly, this chapter incorporates everything that appears in the Fundamental Statutes of the Republic and in the General Statutes of the National Assembly and restates that representatives will be elected by popular, secret, and direct vote according to a system of proportional representation.

Executive Power

In terms of Executive Power, the Draft states that it will be exercised by the President of the Republic, who is also the Chief of State and the Chief of the Armed Forces. There will be a Vice President to substitute in case of temporary or permanent absence.

The qualifications to be President and Vice President are to be of Nicaraguan nationality, to be at least 25 years old, and to be of secular status. The President's term will be 6 years, starting from the inauguration before the National Assembly.

Included in the responsibility of the President is the right to declare a State of Emergency in case of international war, invasion, natural disaster, or when the defense of peace and national security are endangered. In this case, the President can suspend specified rights, duties, and constitutional guarantees, but never 68 articles of the new Magna Carta. In other words, one-third of the Articles are considered to be vital rights of the Nicaraguan people.

Other Dispositions

In addition, the Draft will contemplate other dispositions relative to the Judicial Branch, the recourse of unconstitutionality, the Electoral Branch, the political-administrative division of the

country, the autonomy of the ethnic groups of the Atlantic Coast, and Constitutional reform.

THE OPEN FORUMS

The National Assembly will carry out a popular consultation of the first Draft of the Political Constitution of Nicaragua through Open Forums with social and religious sectors of the country during the months between March and May of this year.

The Open Forums were practiced in colonial times and according to historians, were true democratic institutions which promoted material development of the culture.

The spirit of nationalism and the desire for independence existed in the Open Forums. Open Forums were called by city authorities.

The Forums were popular before independence and from these Forums the first governing bodies were formed.

In 1979, the year of the Revolutionary Triumph, municipal leaders were elected in Open Forums.

Taking into account the origin and the importance of these meetings in the history of the country, the Open Forums, as a form of direct democracy, strengthen the patriotic education of the people, and gather their opinions and ideas for the Magna Carta, and unite the representatives of each party in the National Assembly with their constituencies.

Eighty Open Forum assemblies will be carried out throughout the nation. Each one will be led by a President and 2 Secretaries. The President will explain the objectives and rules and will moderate the meeting. The Secretary will record the results. National Assembly representatives of the region where each Open Forum is held will be present at the respective meetings.

The seriousness of the Open Forums will be respected. There will be no Party propagandizing. Guides or outlines will be created taking into account the areas of conflict between the parties so that the citizens can give their opinions on such areas.

The President of the National Assembly in his role as the President of the Constitutional Commission will coordinate the preparation and development of the Open Forums in conjunction with the different sectors. Furthermore, the Executive Branch will dictate resolutions so that the Open Forums will have the support and contributions of respective authorities.

The cost for this is approximately \$300,000. Fundraising is being carried out internationally with governments, parties, and non-governmental organizations.