



Reforming the Political Constitution in Panama: Challenges for a New Constitution

Luis Carlos Herrera

Researcher and Professor of the Faculty of Social Sciences of the Catholic University Santa María La Antigua (USMA), Member of the National Research System of Panama (SNI).

ORCID: <https://orcid.org/0000-0002-2410-7764>

Virginia Torres-Lista

Researcher and Professor at the Faculty of Social Sciences of the Catholic University Santa María La Antigua (USMA), Member of the National Research System of Panama (SNI).

ORCID: <https://orcid.org/0000-0002-0603-5111>

Markelda Montenegro

Lawyer, Researcher at the Social Sciences Scientific Research Center (CENICS). Associate Researcher at the Santa María La Antigua Catholic University (USMA)

ORCID: <https://orcid.org/0000-0003-1591-9231>

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Abstract

This study addresses the evolution of Panama's constitutions with the objective of identifying criteria to guide the public on the need for constitutional changes. In methodological terms, a qualitative approach is applied, involving a sociolegal document analysis of constitutional reform processes in Panama of two stages involving 1. A constitutional theoretical framework and 2. an analysis of constitutional reform processes in Panama. We start from the hypothesis that constitutional reform requires minimum conditions of citizen participation, trust in institutions, transparency and political and social consensus on subject matter to adopt changes to Panama's Political Constitution. The results identify seven minimum criteria to guide the decision to initiate the constitutional reform process, be it a constitutional act or a Parallel Constituent Assembly.

Keywords

state, constitutional reform, constitutional act, constituent assembly, citizen participation.

Statement of the problem

Panama has had four political constitutions (of 1904, 1941, 1946 and 1972), with the first three adopted under democratic systems and the last adopted during a military regime, in addition to five constitutional reforms occurring in 1978, 1983, 1993, 1994 and 2004.

Nevertheless, these reforms did not address the main contradictions of the Constitution (separation of powers, checks and balances, elimination of privileges and exaggerated presidentialism, among others), resulting in persistent public demand for a new social pact that would enshrine the interests of society and curb the excesses of power.

In turn, attempts to adopt a new Political Constitution have only sought to fulfil electoral promises while lacking any real political will to consider structural issues in an attempt to consolidate democracy.

In the 2014 and 2019 presidential elections, constitutional reforms were a recurrent topic of candidates' campaign promises. However, once they were in office, such issues were no longer high on the government's agenda, despite citizen demands.

The procedures and formalities of a constitutional reform process are at odds with the citizen's dilemma when it comes to making a decision, but how can a new constitution be achieved, despite the government's unwillingness? How can the right of citizen participation be exercised? What constitutional mechanisms are available to do so? How do we know if we truly need to carry out a constitutional reform?

Constitutional processes in Panama.

The antecedents of constitutionalism in Panama date to the colonial period, with the main constitution being the Cadiz Constitution of 1812, along with those from 1821 to Panama's independence from New Granada in 1903 (González, 2003).

During the Colombian era¹, Panama had eight national Constitutions (1821, 1830, 1832, 1843, 1853, 1853, 1858, 1863 and 1886); one as an independent isthmus (1841); one as a federated state (1855); and six provincial and six state constitutions (1863, 1865, 1868, 1870, 1873 and 1875) (Bernal, 2019).

These antecedents are important, particularly the Constitution of 1886, due to its influence on our first Constitution as a sovereign state, which is based on its general plan and the centralised system of government.

¹ After the independence from Spain on November 28, 1821, Panama of its own free will decided to adhere to the Gran Colombia project, which was part of it until November 3, 1903.

When Panama separated from Spain and joined Colombia, the Constitution of Cúcuta of 6 October 1821 was the first republican constitution in Panama. The Constitution of the United States of Colombia, promulgated in 1863 in Río Negro, established a federal system. Finally, the Constitution of 1886 reinstated centralism in Colombia and ended the Federal State of the Isthmus.

Once independence was proclaimed, a Constituent Assembly was convened, which gathered in January 1904 and concluded its work on 13 February of that year, drafting the first Panamanian constitution as a sovereign state, which was approved by the Executive on 15 February 1904.

The Constitution of 1904, which underwent four constitutional reforms, incorporated the principles of classical individualism and enshrined the protection of private property, the lives and honour of individuals, and individual rights and established a fundamentally laissez-faire state, i.e., a state without legal powers to regulate the economic life of the country. Moreover, it did not prohibit the death penalty. It established the age of majority as 21 and prohibited slavery (Bernal, 2019).

The Constitution of 1941, under the government of Dr. Arnulfo Arias, was met with questions and had little validity; according to Goytía, "it snatched the traditional exercise of sovereignty away from the people through the constituent act" (Goytía, 1987:406).

With the Constitution of 1946 of Dr. José Dolores Moscote, an educator, a jurist and one of the main proponents of Panamanian constitutionalism (Moscote, 1960), a democratic and progressive Constitution was achieved in terms of social rights, laying the foundations of a modern state and the social function of property.

The Political Constitution was approved during the military regime in 1972 and showed a break with constitutional principles and the rule of law with some social advances, which were widely questioned. According to Ricord, this Constitution of 1972 was "...a Constitution that was flawed in its origin, as it was not the result of the popular will, and flawed in its contents, as it was the expression of an autocratic, militarised and anti-national arrogance" (Ricord, 1987:358). It underwent reforms in 1983, 1993, 1994 and 2004, which did not achieve the desired changes in terms of strengthening democratic institutions.

Analysis of constitutional reform processes in Panama.

The Political Constitution of the Republic of Panama of 2004 incorporates all the reforms to the Constitution of 1972 into a single text (Panama, 2004). It contains a preamble that establishes its ideological-political orientation; a dogmatic section that considers social and cultural human rights and fundamental guarantees; an organic section that addresses the organic structure of the state, its functioning, and its attributions; and the Reform clause. It enshrines the classic separation of powers, safeguarding the principle that public power can only come from the people, and is exercised by the state through legislative, executive and judicial branches, which act separately and to a limited extent, but in harmonious

collaboration, and it also touches on other issues relevant to national life.

Although the constitutional reforms adopted in Panama originate in government initiatives and have been approved by a Constitutional Act, there are different proposals from civil society, which has endeavoured to make contributions based on a collective participatory construction of a new constitutional text, such as that presented by the University of Panama (*Universidad de Panamá - UP*) (IDEN, 1994); business sectors such as the Chamber of Commerce, Industries and Agriculture of Panama (*Cámara de Comercio, Industrias y Agricultura de Panamá - CCIAP*), the Panamanian Association of Business Executives (*Asociación Panameña de Ejecutivos de Empresa - APEDE*) .2018; the Special Commission (*Comisión Especial*) of 2012 and the National Coordination Council for Development (*Consejo de la Concertación Nacional para el Desarrollo - CCND*) (Comisión, 2012).

The CCIAP's reform proposal of September 2018 focuses on Articles 203, 204, 206, 214 and 160 of the Political Constitution of Panama, which concern the independence of new judges, the extension of their term from 10 to 20 years, their judicial function and the role of the National Assembly in hearing accusations or complaints brought against the president of the Republic and Supreme Court justices.

On 7 June 2019, the APEDE also held a forum titled "Proposals for the Modernisation of the State", which concluded that the reforms must strengthen institutions, achieve a true separation of power between the three branches of government, and establish modern and transparent state management that guarantees legal certainty, governability and an investment climate conducive to sustainable development. Its president, Mercedes Eleta, said at the time that the business sector should agree on a package of reforms (Arcia, 2018:4).

Another proposal for constitutional reform was put forth by the Commission of Distinguished Citizens appointed by the CCND and approved in 2012, which is an interesting contribution and serves as a basis for debates on the new reform proposal of 2019. The CCND is a space created by law, in which different social, political, economic and government actors discuss various problems and strategies for the country's development. However, ultimately, the CCND did not consider what the distinguished citizens proposed to introduce in the constitution, such as creating new titles and chapters, rearranging articles and improving ambiguous, confusing or contradictory wording or explicitly adopting the concept of the person, which is designed to incorporate the male and female genders, for a total of 25 articles (Arcia, 2018).

Among other aspects, they propose that the title "Panamanian State" be divided into three chapters: "Fundamental Provisions", "Supremacy of the Constitution and Application of the Law" and "International Treaties", as this title is not divided into chapters in the current Constitution.

In the title on Nationality and Foreigners, there are no structural changes, but Section III is renamed "Fundamental Rights and Duties". For the chapter on individual rights, a section is proposed to specifically address individual rights in

relation to the administration of justice.

With regard to the chapter on economic, social and cultural rights, the aim was to include new sections on the right to housing and the right to a university education, as well as to change the names used for culture (currently, "Right to Culture and Sport") and the agrarian regime (currently, "Rights of the Agricultural Producer").

The proposal is to bring together the Constitutional Jurisdiction, as well as the separation of political rights and duties and the Electoral Jurisdiction in a single title. The institution of the Ombudsman's Office, created in 1997, is also accorded constitutional status. Sánchez González notes that this introduces "the enrichment of the catalogue of fundamental rights and the exercise of the guarantee institutions" (Sánchez, 2007:31-34).

With regard to the Executive Branch and presidentialism, the aim is to reduce their excessive powers and introduce a vote of no confidence, which entails the loss of office for the public servant who is the target of the measure.

In the Judicial Branch, the "Principles" are arranged in one chapter, followed by the "Rights and Duties of the Public Servants of the Judicial Branch" and the establishment of local judges as part of the Judicial Branch. The number of Supreme Court justices is increased from nine to 12, their term of office is increased to 20 years and the requirements are modified to ensure better selection.

With regard to the National Assembly, the immediate re-election of deputies is prohibited, as is their ability to directly or indirectly control public resources for clientelist ends. A special chapter is also included on the comarcas of the indigenous peoples, which incorporates changes in the political division of the territories of the seven indigenous peoples (Ngäbe, Buglé, Guna, Emberá, Wounaan, Naso Teribe and Bri bri).

A new Title XIX is proposed, which deals specifically with the autonomous entities and reorganises the normative provisions that currently comprise the Title on constitutional reform as well as modifying the convening of the Parallel Constituent Assembly by popular initiative, which can be initiated by 15% of the members of the electoral register.

In the last constitutional reform of 2004, the issue of the Panama Canal was introduced for the creation of the Panama Canal Authority and its structure and powers. Prior to its approval by referendum, there was a transparent consultation and broad citizen participation, which offered many lessons.

In the periods of government between 2009 and 2021, there were three attempts at reform, and each time, the people reiterated their desires for a new constitutional text; which compasses different issues that should not be attributed to a single discipline, as interpreting social, political and economic realities requires a sociopolitical foundation, and the people must define the rules that govern them and how they want to change them and when.

Reforms to the Constitution cannot favour certain political or economic interests without considering the visions, ideas, aspirations and

structural and cultural needs of society, or else they are doomed to fail; all ideas are important. "The inadequacies and shortcomings of the ideas of reform and revolution must be overcome through the notion of 'metamorphosis', which combines conservation and transformation" (Hollande and Morin, 2012:74).

The motivations for introducing constitutional reforms may be different in each society. Those carried out in Panama in 1978 responded to political and economic interests, seeking democratic openness where the people felt that their rights as citizens were being respected, allowing the formation of opposition political parties and establishing that the president would be elected for a period of five years by direct popular majority vote and could not be re-elected for two consecutive presidential terms. In 1978, during the dictatorship, the National Council of Legislation (comprised of four local representatives, one representative of the Guna Yala Comarca and two elected legislators) was also given the highest authority over the National Assembly.

In the reform proposals of the National Concertation Council for Development of 2012, the people's desire for reform is recognised as a response to the accumulation of powers in the three branches of government, particularly in Articles 183, 310, 318 and 325, which refer to matters decided by the president alone; Articles 184, 142, 144 and 281, which indicate which powers are exercised with the participation of the minister of the branch; and Article 200, which refers to the power of the Cabinet Council. There are other powers of the executive at the municipal level according to Article 249 and at the provincial level according to Article 252.

In relation to the Legislative Branch, citizens are concerned about different aspects, including its legislative, judicial and administrative functions; whether it should be truly independent and autonomous; whether the manner of ratifying civil servants and electing and disciplining judges should be modified; and whether Article 155 on immunities and privileges, as well as Article 159 and subsequent articles that refer to its functions, should be amended.

As for the Judicial Branch, there are persistent demands from society regarding the need to revise Article 214, concerning the allocation of funds in the General State Budget, which should have a minimum percentage that enables the needs of the justice system to be met, as well as Article 203, which deals with the way in which Supreme Court justices are selected and disciplined.

The analysis of the Panamanian experience allows us to demonstrate the hypothesis on determining the basic aspects that facilitate the approval of constitutional reform processes by the people, including citizen participation; transparency; consensus on issues in the constitutional text to strengthen the democratic institutional framework; constitutional control; the strengthening

of horizontal control mechanisms; accountability and individual, political, social, cultural and environmental rights and guarantees.

In 1983, during the military regime, a constitutional reform on the excessive power of security forces was introduced and the separation of powers was expanded. The executive branch was granted the power to nominate judges who would subsequently be ratified by the Legislative Assembly, among other issues.

The Constitutional Acts of 1993 and 1994 are reforms passed under democratic governments that include the abolition of the army in the Republic of Panama and the creation of an administrative civil service.

The constitutional reform of 2004 concerning the Title of the Panama Canal was carried out under the procedure of a Constitutional Act approved by two different consecutive assemblies and by the people in a referendum.

The Political Constitution of Panama itself indicates the procedure for its reform, which we find in two articles in Title XIII. Article 313 establishes the Constitutional Act as the mechanism for proposing reforms, the initiative corresponding to the National Assembly, the Cabinet Council or the Supreme Court of Justice, while Article 314 indicates the procedure through a Parallel Constituent Assembly, with three options.

Article 313, paragraphs 1 and 2 indicate the two ways in which the Constitutional Act may be carried out.

1. Through a Constitutional Act approved by two different consecutive assemblies.
2. Through a Constitutional Act approved by two consecutive legislatures of the same assembly, which must be ratified in a referendum, to be held between the fourth and sixth months after the second round of approval by the second legislature.

The last constitutional reform of 2004 was achieved through Article 313, paragraph 2: The reforms were approved in two different assemblies, with the first occurring during the government of former president Mireya Moscoso and the second occurring during the subsequent government of former president Martín Torrijos, whereby the people participated in a referendum for its ratification, as per the Constitution.

With regard to the Parallel Constituent Assembly procedure, Article 314 offers three options:

- 1) By decision of the Executive Branch, ratification by an absolute majority of the Legislative Branch;
- 2) By the Legislative Branch, with a favourable vote of two-thirds of its members;
- 3) By popular initiative, which must be accompanied by the signatures of at least 20 percent of the members of the Electoral Register corresponding to 31 December of the year preceding the request.

In October 2021, a proposal for constitutional reform was presented by the Executive Branch through a Constitutional Act, which was widely rejected by the people, along with a call for a Parallel Constituent Assembly as a popular initiative,

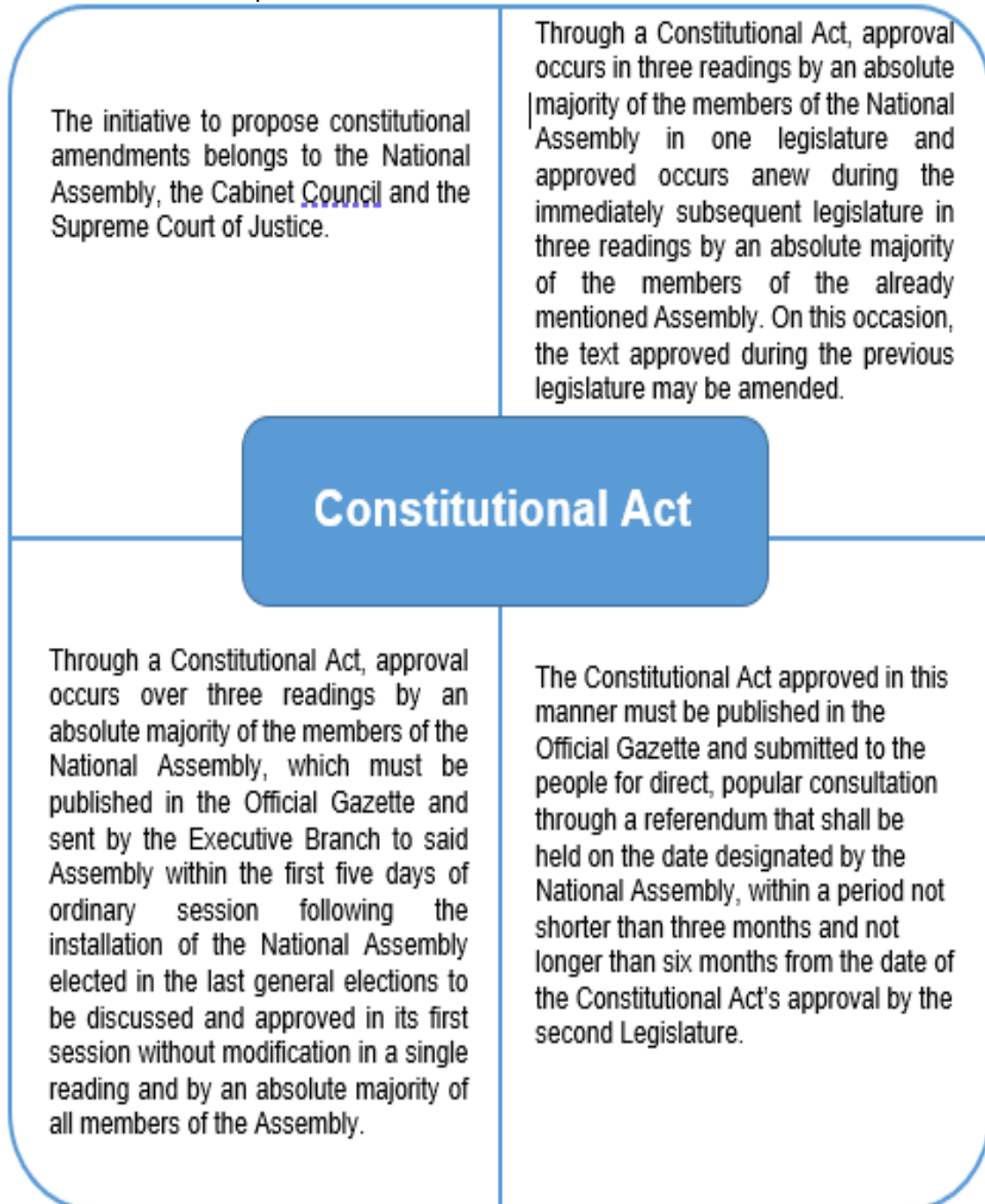
which is in the preliminary stage of collecting signatures, as established in the Constitution.

When citizens' demands are ignored, people's faith in their institutions to decide what to do, how to do it and what the priorities are begins to erode.

Charts 1 and 2 show the two mechanisms for constitutional reforms of the aforementioned articles, through a Constitutional Act or a Parallel Constituent Assembly.

Chart 1.

Constitutional reform procedure in Article 313.



Source. Prepared by the authors based on the Political Constitution of Panama.

In Chart 1, we can see that unlike the Parallel Constituent Assembly, in

which popular initiative can play a role, in the Constitutional Act, the private initiative to call for constitutional reforms is a power of the three branches of government, in the case of the Executive Branch through the Cabinet Council (the president with all ministers), and the Judicial Branch (the Supreme Court of Justice, comprising nine justices).

In the first case, popular approval is not required, while in the second option for a Constitutional Act, it must be approved by an absolute majority of members in two different legislature periods (71 deputies), and the intervention of the people is allowed through popular consultation in a referendum, in which they only vote on whether or not they agree with the reform; under this mechanism, there is little or almost no possibility of including the will of the people in the constitutional text of the reforms.

As detailed in Chart 2, if the decision to reform the constitution is made through the Parallel Constituent Assembly, in accordance with Article 314, there are three options for which the power to convene is held by two branches of government, while the third is held by the people.

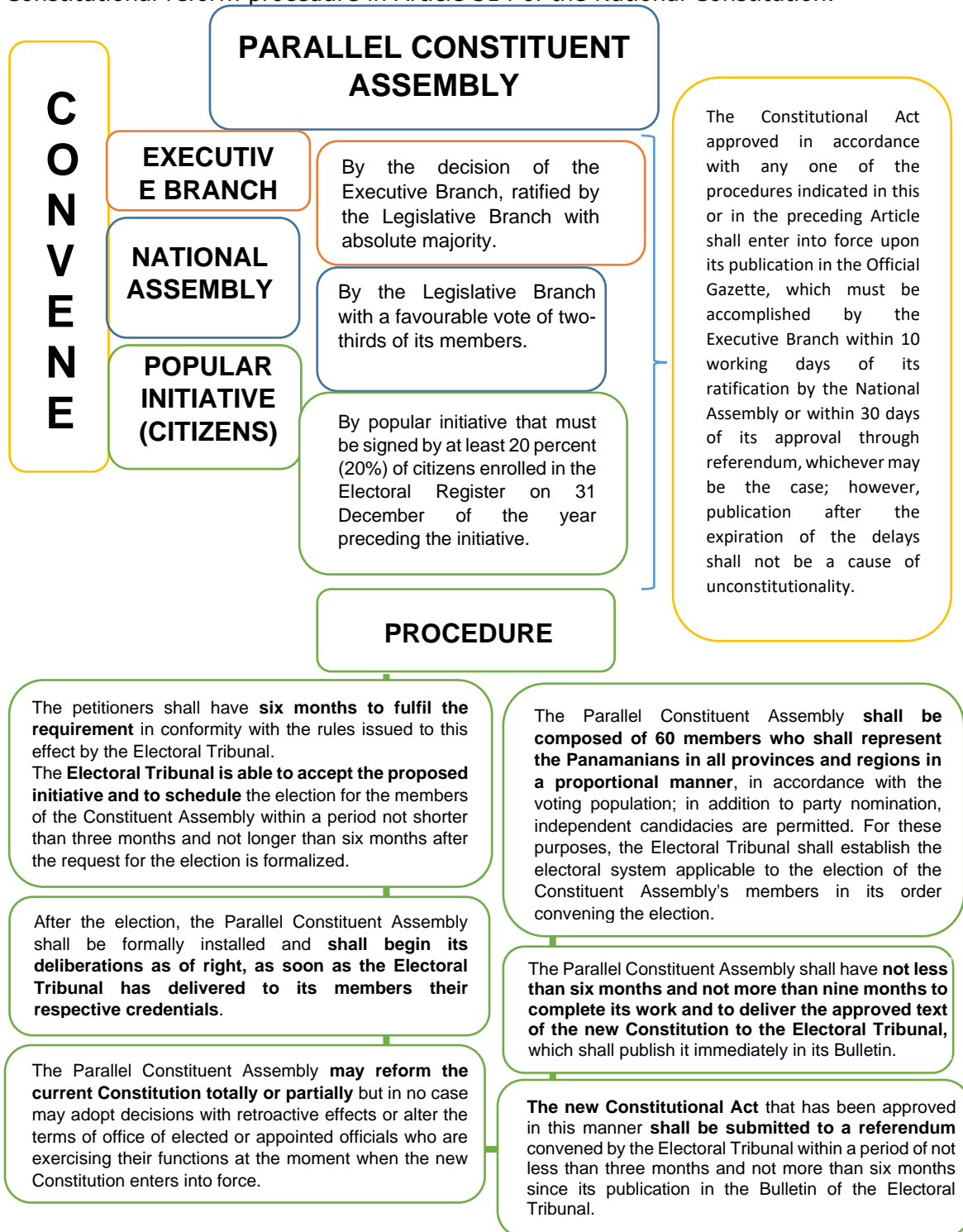
When the initiative comes from the Executive Branch, it must be ratified by the absolute majority of the Legislative Assembly; if the initiative comes from the Legislative Branch, it must have the vote of two-thirds of its members; and in the third, which corresponds to the people, a popular initiative must be accompanied by the signatures of at least 20% of the citizens in the Electoral Register as of 31 December of the year preceding the request.

Unlike the previous process, the Parallel Constituent Assembly must always be submitted for popular approval through a referendum. Once the signatures to convene the constituent assembly by popular initiative have been obtained, the Electoral Tribunal must accept it and call for the election of constituents within a period of no less than three months and no more than six months from the formalisation of the request.

As part of the act of convocation, the Electoral Tribunal must establish the electoral system applicable to the election of constituents with a proportional representation of all territories (Panama's population is distributed among 10 provinces and six indigenous comarcas) according to their electoral population, with both candidates nominated by political parties and independent candidates.

Once the constituents have received their credentials, they will be installed and begin their deliberations as of right to produce a new Constitution, and the time period is set to between six and nine months. This provision is clear regarding the power of the Constituent Assembly to totally or partially reform the current Constitution, but it prohibits retroactivity in the decisions it adopts, which forbids it from altering the terms of the office of elected or appointed officials.

Chart 2.
Constitutional reform procedure in Article 314 of the National Constitution.



In Panama, the first time an attempt was made to ask the people which procedure to choose for constitutional reform, it was presented by former President Juan Carlos Varela before the plenary of the National Assembly on 2 January 2019 during his final report to the country, in which he announced his consultation with the justices of the Electoral Tribunal to authorise the inclusion of a fifth ballot paper in the general elections on 5 May 2019 for citizens to decide whether they wanted constitutional reforms and the path to do so.

Although the consultation proposal was not binding, the government, through the Cabinet Council, approved Draft Law No. 001-19 of 8 January 2019, which empowers the Electoral Tribunal to include an additional ballot paper to consult the voters and ask them two questions. This initiative was ultimately unsuccessful because it was directed more towards fulfilling the election promise contained in the Government Plan and was not based on the political will to reform the constitution and place the crucial decision in the hands of the people.

The ballot asked two questions:

1. Do you agree that a Constituent Assembly should be convened to adopt a new constitution?

2. Do you agree that the consultation should take place through a Parallel Constituent Assembly, in accordance with Article 314 of the current Constitution? The question proposes the constitutional procedure and the aim of the consultation, i.e., citizens express whether or not they agree with convening a Constituent Assembly to adopt a new constitution.

Question 2 refers to the Parallel Constituent Assembly but does not mention that there are three options in Article 314; in any event, it would at least have to list them, which means that this consultation creates more doubt than possibilities of reflecting the will of the people.

With the arrival of the new government of Cortizo Cohen, which also considers the political proposal for constitutional reforms, the executive branch does not exercise its power of initiative for constitutional reforms and decides to accept—without any changes—the proposal made by the CCND, an organisation for dialogue and social coordination created by Law 20 of 2008, bearing in mind that the proposal was analysed in its plenary sessions on 30 May and 10 June 2019 and approved by consensus among the 22 sectors represented in this organisation (the CCND).

The proposal includes a number of issues contained in another proposal for a Constitutional Act drafted by a Special Commission of Distinguished Citizens and approved in 2012 by the plenary of the CCND, but which was rejected by the people.

On 15 July 2019, the Cabinet Council receives the reforms and makes its express recommendation that this unchanged text be submitted to the National Assembly, to serve as the basis for a broad popular consultation, as established in Cabinet Resolution No. 62 of 16 July 2019 and, in the same, authorises the Minister of the Presidency to submit the CCND's Proposal for a Draft Constitutional Act to the National Assembly.

This way of making far-reaching decisions within the state is precisely the result of the presidentialist system present in the constitution and in the majority of Latin American countries, which restricts possibilities for intervention by citizens, who must be responsible for deciding how, when and which constitutional changes correspond to the interests of the population and will result in a new social pact for a modern, transparent, participatory and accountable state, with checks and balances against excesses of power and corruption and that is respectful of human rights and has a clear separation of powers.

This attempt in 2019 to approve Legislative Act No. 1 “Reforming the Political Constitution of the Republic of Panama”, among other things, is striking in that it does not include important issues that are minimum requirements for the population in terms of priority individual and social rights, such as the rights to work, education, health, security and social assistance, and the strengthening of horizontal control mechanisms to prevent the exercise of excessive power. Ultimately, it is a political electoral exercise, without any scientific examination involving constitutional law and the social sciences, and lacking broad citizen participation. For example, it contains a proposal for a new article on the subject of human rights, which does not recognise that the state is obliged to guarantee them, and instead shifts to promoting these rights, which is contrary to the international commitments pledged to.

When submitting the proposal for constitutional reforms in the first debate, the Government, Justice and Constitutional Affairs Committee of the National Assembly, which is responsible for the issue, decided to hold nationwide consultations in response to citizens’ outcry about the lack of participation and issues that must be addressed. A period of consultations was approved as an opportunity to collectively rethink the country in an attempt to compensate for the lack of information available to the population, but the people’s reaction was one of rejection.

The visits of deputies from the Commission of the National Assembly to different parts of the country make it clear that the right to citizen participation is a key element in all laws, and it cannot be denied that when it comes to adopting the most important law of a state, it is unacceptable to disregard its mandate.

For all the shortcomings that can be attributed to this consultation mechanism, the following proposals are considered and approved in the first legislature on 28 October 2019:

- The National Assembly may increase expenditures foreseen in the Draft Budget and include new expenditures; currently they may not.
- Deputies can be re-elected for only one consecutive term.
- Deputies are investigated by the Attorney General of the Administration and tried in the first instance by Supreme Court justices.
- The post of Senior Special Prosecutor is created to investigate the Attorney General of the Administration and the Nation as appointed by the National Assembly.
- At least 6% of gross domestic product is earmarked for education.
- A Social Security Fund (the CSS in Panama) is accorded constitutional status.
- Equal pay and equal work for people with disabilities are guaranteed.
- A Constitutional Court is created.
- Judges are given a 15-year appointment and must be at least 45 years of age and have at least 15 years of experience.
- Supreme Court justices are investigated by the Attorney General of the Nation or deputy prosecutor and, if charged, will be prosecuted by the Constitutional Court.
- A budget of at least 6% of central government current revenues to municipalities is established.
- The National Assembly may cast a vote of no confidence in ministers and may even request the removal of ministers from office by the president.

The people's rejection of the proposed constitutional reforms, in all of the provinces, led to the decision by the President of the Republic on 23 December to announce the withdrawal of the proposals to the country by means of a Cabinet Resolution and the signing of a Memorandum of Understanding with the United Nations Development Programme (UNDP), which will be responsible for the design and development of dialogue through consultations that must comply with three fundamental principles: inclusion, territorialisation, transparency and accountability.

This constitutional reform process was shelved due to the seriousness of the impacts of the COVID-19 pandemic, but popular sentiment is that it is a reform model that continues to favour impunity, corruption and discrimination and does not represent substantial changes that would guarantee a true balance between the branches of government and improve people's living conditions.

Due to corruption, there is an increasing loss of trust in institutions and in the democratic system. The Odebrecht construction company scandals in Latin America exposed the collusion of high-level government officials and business people involved in corruption and the illicit appropriation of state resources, most of whom have gone unpunished; the people are still waiting to see the weight of justice fall on those responsible.

In the Latin American countries, distrust in the democratic system grows even more when power is abused and attempts are made to ignore the rule of law to retain power; as Lagos notes: "To remain in power is one of the most perverse evils of Latin American democracies, with weak states such as those in the region; they run the risk of corruption and an erosion of democracy, as has been proved in many cases" (Lagos, 2018).

It is crucial to understand and decide which of the constitutional reform options and procedures are the most favourable for society, regardless of whether they are partial or total reforms, and to agree on their substance is one of the most important tasks for the exercise of citizens' power; however, doing so also implies that the state will guarantee minimum conditions for broad citizen participation, create trust through transparent actions to achieve political and social agreement, and define the political system that society requires.

Today, social networks have become platforms whereby citizens, and in particular young people, express their discontent with democracy and public services, among others, but the most traditional forms of citizen participation and mobilisation are civil society organisations, religious and community groups and family and trade associations. They also participate in protests and demonstrations by communities, trade unions, students and professional associations, which usually end in agreements (LAPOP, 2010).

The findings of the Survey on Constitutional Reforms conducted by the International Centre for Political and Social Studies (*Centro Internacional de Estudios Políticos y Sociales - CIEPS*) (CIEPS, 2019) supports the hypothesis on the need for citizen participation, trust in institutions, transparency and basic minimum

social and political conditions to achieve a consensus agenda on constitutional matters. Four relevant aspects of the public's feelings have been identified: 1. The vast majority of the population wants the Constitution to change; 2. There is enormous distrust towards the actors who have hitherto played a leading role in the constitutional reform process; 3. The priority of the new Constitution must be poverty; and 4. Panamanian citizens have high expectations and hopes for the reforms.

The results of the respondents' answers yield the following data:

- 88.2% of people want constitutional reforms.
- 35.3% favour partial reform.
- 53.7% favour total reform.
- 37.1% of people with a household income of less than \$400 per month favour partial reforms and 49.1% favour total reform.
- 55.3% believe it is the people who should lead the constitutional reform process.
- 39.9% indicate that the most important issue of constitutional reform is "defending the poor", which can be interpreted in different ways.

According to the survey, the majority of Panamanians (88.2%) want constitutional reforms. This finding coincides with our argument for the need to guarantee citizen participation and transparency, which involves consultation and achieving synergy and consensus with all sectors, as constitutional issues have been identified by the population, which form the starting point of the constitutional reform approval process. Ultimately, we all aspire to strengthen democracy, guarantee the fundamental rights of people, balance the powers of the state and adopt mechanisms to check and counterbalance abuses of power and acts of corruption, among others.

A significant proportion of people demonstrate a lack of trust in the key actors of public and private constitutional reform processes, which is a vital aspect to address and which gives citizens a leading role when constitutional changes are required.

This study allows us to conclude that we can draw lessons from the different failed constitutional reform processes and that in all of these cases, when the right of the people to choose the constitution they want is ignored, when there is no citizen participation and when the consensus of the will of the people—the substance of which becomes the minimum agenda prior to the selection of the constitutional procedure—is not respected, the answer is a resounding rejection, with no further discussion of its favourable aspects.

Minimum criteria for citizen approval of constitutional reforms.

This investigation confirms the need to maintain minimum conditions that create trust in the institutions responsible for coordinating these constitutional reform processes to guarantee true citizen participation, in which citizens have access to all information in a transparent manner and the necessary guidance to offer their opinion on a constitutional issue, whether it involves a Constitutional Act or a Parallel Constituent Assembly, in accordance with the procedure established in

Articles 313 and 314 of the Political Constitution.

The means to achieve the drafting of a constitutional text must have a sociological, constitutionalist and multidisciplinary approach, involving all sectors in the design of the vision of the country and providing the population with all information required to achieve a new social pact in the constitutional text, one that responds to the desires of the people.

We identify a number of elements that can guide the citizen when it is necessary to adopt a new Constitution, and we call these elements the seven constitutional reform criteria (7 CRC). They make it possible to determine whether these political and social conditions exist and on which issues we can achieve a consensus that will facilitate constitutional reforms and debate, although they are not limited to this proposal. The elements are as follows:

1. The origin of the current Constitution.
2. The separation of powers.
3. Institutional structure.
4. New forms of national and global social and economic organisation.
5. Mechanisms for popular participation.
6. Accountability and corruption.
7. Human rights, equality, nondiscrimination and sustainability.

From each of these criteria, we can identify the social reality, and the criteria make it possible to guide the citizen, mindful of ideological, political and socioeconomic elements, control mechanisms and fundamental principles.

On the origins of the current Constitution.

The origins of the current Constitution of 1972 are not democratic; it was approved during the military regime, the philosophy and orientation of which was aimed at legitimising the coup d'état, an exceptional situation where the real power resided in the barracks, as we have noted in previous papers. Its legislative adjustments in different periods (1978, 1983, 1993, 1994, and 2004) do not negate its origins, nor the ideology with which it was designed, and a comprehensive review of its contents is required. In the case of Panama, this is the first consensus underpinning the decision, although other factors are linked to consolidating the power of political parties in the branches of government, problems of governability and the need to modernise the state, which can be expanded based on whether there is a total or partial reform and the impact of political forces in society.

The separation of powers.

One way to prevent the abuse of power and authoritarian governments is the constitutional principle of a separation of powers in the three branches of government. One of the main concerns of the population is excessive presidentialism and political interference in other branches, which precludes the existence of checks and balances. These harmful practices undermine autonomy, including concessions by the executive in favour of the legislature, such as the so-called perks or privileges of proceedings, and in the Judicial Branch, the way judges

are elected, the lack of prosecution of deputies in any number of serious cases of corruption, negligent injuries or other allegations, and the granting of sentences that do not correspond to the seriousness of crimes.

No less important is the institutional practice of adopting regulations on key issues through Executive Decrees to circumvent the intervention of the Legislative Branch.

Institutional structure.

Examining whether the institutional structure and its functions and attributions fulfil the requirements demanded by society and whether it has the necessary autonomy to provide answers is part of the civic exercise that we must carry out when thinking about constitutional reform.

In the Constitution, we have the most important institutions, but the structure of the state has been transformed by the law. Thus, through legislation, our country has made many changes, giving it more prerogative and weakening those that have the power to exercise checks and balances governed by constitutional provisions and cannot incorporate new responsibilities required by society.

In this respect, it is urgently necessary to review the institutional structure, as has been demanded by the people, to strengthen control mechanisms, provide them with sufficient autonomy and strengthen their responsibilities (the Office of the Comptroller General of the Republic, Ombudsman's Office, and National Authority for Transparency and Access to Information).

The people continue to distrust institutions, which is exacerbated by the rise and magnitude of corruption cases of recent governments, the most serious of which is the corruption and bribery scheme of the Odebrecht company, where none of the control mechanisms reacted, most having been subordinated to political power and economic interests. The results of the 2019 Global Corruption Barometer – Latin America and the Caribbean show that in the case of Panama, 53% of Panamanians believe that corruption has worsened, and 90% consider corruption to be a major problem for the country (Internacional, 2019).

New forms of national and global social organisation.

Other social realities must be accorded constitutional status as issues that guarantee the right to peace, social justice and a form of government that makes it possible to legislate on matters arising in globalised contexts of profound and persistent social inequality.

Changes in traditional institutions such as the family, the coresponsibility of the family, the state and the market, social groups, human rights and gender equality, the creation of indigenous comarcas, constitutional frameworks to guarantee a true decentralisation of the state, the strengthening of local government, migration as a global problem, climate change, food security and

community justice are some of the minimum issues involved in this debate.

Mechanisms for popular participation.

It is essential to guarantee different mechanisms for popular participation. In Panama, legislation provides for the right to citizen participation in decision-making and the right to receive clear, timely and transparent information. In the constitutional reform process of 2019, disregarding this right resulted in rejection.

Accountability and corruption.

Governments that lack accountability and are not transparent open the door to acts of corruption, not only stealing state resources, but also undermining the principles and morals of society and the likelihood of the population receiving benefits of social investments that guarantee a dignified life and greater opportunities.

In 2002, Panama passed the Law on Transparency in Public Administration, which establishes the Habeas Data Action (Ley No 6, 2002.). On this issue, there is abundant evidence of an absence of accountability and transparency, which are a prelude to corruption, as demonstrated by the cases of misappropriation of state resources heard in the courts, involving authorities at the highest level and representatives of political and economic power. A culture of accountability is a priority in public administration, with guiding principles to promote it and administrative, civil and criminal consequences for those who commit acts of corruption.

Human rights, equality, nondiscrimination and sustainability.

The principles of inequality and nondiscrimination are a right, the result of historical struggles in different eras and of different social groups, especially women's movements at the international level, a victory enshrined in constitutions and adopted in international instruments ratified by states; nevertheless, the reality is that they are the most violated rights. It is a persistent issue, and one that must be debated as part of a constitutional change that leaves no room for doubt as to the obligation of all public and private institutions and state authorities to fulfil this right at the individual and collective levels.

In the different proposals that exist, we have seen fundamental elements of what would be a new constitutional design to begin the consultation process, as the constitutionalist Adames indicates, "The proposals must seek the best governance of the system and of the country. Reforms that are likely to increase ungovernability or upset the necessary balance between the branches of government should not be adopted" (Adames, 2015:28).

These are merely a rough outline of minimum criteria that can guide the people in the reform process; there are many arguments in the theory and in the experiences of constitutional reform in the region that shed light on which structural

issues of democracy and the state should be addressed.

Social peace depends on citizens trusting their institutions. We cannot think about moving forward with constitutions rooted in conceptions of the previous century; it is time to define a model of society and the state for this century.

The people have the sovereign power to change the constitution and to decide why changes should be made, what issues are important for strengthening democratic institutions and the rule of law, how constitutional reforms should be made, how people participate and why they should participate, and the implications of a constitutional change for the exercise of fundamental social, political and economic rights.

This study concludes that a Political Constitution must emerge from the will of the people, with citizen participation and transparency, to enshrine democratic values, national identity, principles, history and social, political, economic, cultural and environmental rights to successfully establish a modern state structure where human rights, freedoms, social justice, equality and nondiscrimination are respected with a true separation of powers and institutions that exercise checks and balances against possible abuses, arbitrariness and acts of corruption.

Conclusions

Previous experience with constitutional reforms in Panama through the formalities enshrined in the Constitution—a Constitutional Act or Parallel Constituent Assembly—have offered us lessons on the need to guarantee that minimum conditions are in place before they can be approved.

A transparent process that involves all social actors and promotes citizen participation is crucial to achieving popular approval. Such a process guarantees the legitimacy of the reform process and prevents the failure of well-intentioned efforts plagued by errors due to attempts to favour political interests or sectors that seek to maintain privileges.

The decision regarding the best procedure for approving the Constitution we need in Panama belongs to the people. The process of modernising the democratic institutional framework, the functioning of the state, the separation of powers, the political and social system, control mechanisms and human rights will only be achieved if the will of the people is respected.

One of the lessons learned from previous constitutional reform processes is that, insofar as communication and dissemination strategies are applied in a simple and clear manner to citizens and transparent debate is promoted, social and political consensus on the issues of constitutional change can be achieved in less time.

The present investigation identifies seven minimum criteria needed to inform the constitutional reform process, whether it involves a Constitutional Act or a Parallel Constituent Assembly, guided by constitutionalist thinking and the multidisciplinary advice of social scientists, civil society, leaders of social movements and the broadest possible citizen consultation such that the citizen can

clearly understand the following: What elements identify the need for constitutional change? How can the inclusion of relevant issues into constitutional text be influenced? How does the adoption of a constitutional reform through a Constitutional Act or Parallel Constituent Assembly impact the lives of people and society?

If there is a desire for profound changes in the state and in democratic institutions, decisions that belong to everyone cannot be placed solely in the hands of political and economic forces.

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