

**DRAFT FUNDAMENTAL TRANSITIONAL LAW
OF THE
REPUBLIC OF CUBA**

WHEREAS: The Cuban people have the inalienable right to live in liberty, with dignity, and to have their rights as individuals respected.

WHEREAS: Every nation should adhere to the rule of law so as to promote an orderly society and protect the rights of its citizens within a democratic system.

WHEREAS: Taking into consideration this reality, and upon arrival of the moment in history longed for by the Cuban people, a transition is necessary to prepare the path for the work that the Cuban people must undertake to accomplish the establishment of democracy, and the rule of law.

WHEREAS: Once a Transition Government is put in place, one of its obligations is the reunification, and reconciliation of the Cuban family, wherever its members are located, in order to overcome the ideological conflicts which are sinister to the Nation's wellbeing.

WHEREAS: The task of the Transition Government of propitiating and promoting a program of reunification, solidarity, and reconciliation includes the responsibility to demand compliance with all the principles encompassed in the Universal Declaration of Human Rights, adopted by the United Nations in 1948, which was ratified by the Republic of Cuba.

WEHEREAS: It is necessary that the Transition Government implement laws which allow ample political, social, and economic reforms that bring the dynamic of progress to the country, and create conditions where the people can live in peace, enjoying freedom and economic prosperity.

WHEREAS: With the tacit consent of the Cuban people and interpreting their desire for freedom and pacific coexistence among all members of the Cuban family, it is

RESOLVED: To enact and require compliance with the following:

FUNDAMENTAL TRANSITIONAL LAW OF THE REPUBLIC OF CUBA

Title I Transition

Chapter I Definition, Periods and Validity

Article 1. Pursuant to this Fundamental Law, Transition is defined as the historic period of the Republic of Cuba which encompasses the moment when the events which will allow a change of the political status of the country to take place, until the establishment of a government legitimately elected by the people in elections that are general, free and transparent, which will be carried out upon completion of two years from the commencement of the Transition.

Article 2. Once the events which propitiate a change in the system that controlled the country since 1959 take place, the Transition will become effective with the creation of the Pro Unity National Council, whose goal is the organization of a National Transition Government and the National Elections Council.

Chapter II Aim of the Transition

Article 3. The aims of the Transition will be:

- a) To avoid an institutional gap in governance, keeping the order and stability that are necessary under the rule of Law.
- b) To state the doctrinal principles which will prevail in the country until the end of the Transition.
- c) To organize and establish the governmental infrastructure with the creation of the National Transition Government, which will be

in effect until the new government elected by the people takes office.

- d) Implementation of political reform in accordance with the regulations set forth in Title V of this Fundamental Law.
- e) Organize a nationwide educational-civic program to create awareness among the Cuban people about the political reforms and the constitutional future of the country.

Article 4. Insofar as the goals that the governmental infrastructure created during the Transition must accomplish, it is necessary to balance between the urgency of accomplishing such goals and the need to analyze and discuss in detail all the steps associated with the Transition, due to the importance of this process for the wellbeing of the country.

Chapter III

General and Doctrinal Principles which will be in effect during the Transition

Article 5. Cuba is a free, sovereign, independent and democratic Republic, whose sovereignty resides solely and exclusively within the Cuban people, and all governmental authority arises from them.

Article 6. The territory of the Republic is composed of the Island of Cuba and the Isle of Pines, as well as the other islands and adjacent keys, which together were under the sovereignty of Spain until the ratification of the Treaty of Paris, on December 10, 1898.

Article 7. The territory of the Republic is divided into the thirteen currently existing provinces.

Article 8. Taking into consideration that monism of a system infringes on the aspirations of the Cuban people to achieve a true democracy, any political-philosophical system which declares itself as the sole directing source and vanguard of the people and the State, is proscribed.

Article 9. In the Republic of Cuba, any attempt to impose a government by means that are not those determined by the will of the people through their vote, in an electoral process that is free and transparent, is proscribed. Those violating these principles will be prosecuted and tried pursuant to stipulations dictated by Law.

Article 10. Taking into consideration the historical circumstances which give rise to the Transition, as established by this Fundamental Law, the creation of the Pro Unity National Council, with the responsibility to appoint the National Transition Government, is excluded from the foregoing article.

Article 11. One of the first measures which should be taken by the National Transition Government is the implementation of a program of reunification, solidarity, and reconciliation of the Cuban people, putting into practice Jose Marti's doctrine of a "Cuba for all and for the good of all". All of the different components of the nation's population, whether residing inside or outside of the national territory, should participate in this program of reunification, solidarity, and reconciliation.

Article 12. As material evidence that the utmost obligation of the State is, and will always be, the respect, safeguarding and defense of the fundamental rights of the people, the Universal Declaration of Human Rights, adopted by the General Assembly of the United Nations, in Resolution number 216, of December 10, 1948, is immediately effective, with the force of law and of obligatory compliance throughout the whole national territory, as part of this Fundamental Law. Those who violate, and/or abuse these rights will be tried and penalized in accordance with the applicable Law. The Universal Declaration of Human Rights referred to above, is attached as part of this Fundamental Law.

Article 13. The National Transition Government, immediately after taking office, will decree the amnesty and unconditional freedom of all Cubans accused, tried or condemned for perpetrating so-called political crimes or acts against the security of the State.

Article 14. The National Transition Government guarantees the obligatory compliance with the following doctrinal principles:

- a) Freedom of expression in all its manifestations, as long as it does not threaten, in a clear and unequivocal way, the public order.
- b) Freedom of the press and repudiation of all types of censorship.
- c) Political freedom, which is the foundation of a true democracy. This freedom compels all Cubans, when qualified to do so, to participate in the electoral processes that are held.
- d) Freedom of religion, as long as it does not threaten morality or the public order.

- e) Personal security for all Cubans, including their person and surroundings, guaranteeing this way the right of all Cubans to be safe in their homes and at their places of work, which will not be subject to searches and seizures, unless authorized by a previously issued warrant.
- f) The right of all Cubans to live in and inhabit the houses where they are living with their respective families. The law about property, which shall be enacted, will regulate everything concerning this right.
- g) The right to free elementary and secondary education provided by the State, recognizing at the same time the right to obtain an education provided by private institutions to those who decide to receive it, and are able to pay for it.
- h) The right of the Cuban people to receive medical services necessary to safeguard their health at no cost, recognizing at the same time, the creation of clinics and private hospitals for those who want them and are able to pay for the services received.
- i) Acknowledgement of the right to private property, pursuant to the regulations which will be established by Law.
- j) Social Security for all Cubans, through the implementation of social aid, retirement, and pension programs.
- k) The prohibition of discrimination based on race, religion, sex, ideology, marital status, and sexual orientation. The law will regulate the penalties that such discrimination carries.
- l) The economy shall be based upon free enterprise and open markets, subject to legal regulation, this way propitiating the prosperity and economic wellbeing of the people.
- m) Promote foreign investment in the country. The Law will determine the requirements and obligations related to foreign investment in the country's economy.
- n) Freedom for all Cubans to travel inside and outside of the country, without irrational restrictions and pursuant to stipulations in the law of immigration.
- o) Creation of a Judicial Power absolutely independent and apolitical, in charge of the administration of justice.
- p) The prohibition of repressive entities, paramilitary groups, storm troops and any other paramilitary group. As a complement to this proscription, it is decreed that arbitrary detentions and the procedures used to justify them shall end.
- q) The right of all Cubans to gather in groups and in pacific ways to discuss issues that pertain to social coexistence.
- r) The right of all Cubans to become members, freely and without coercion, of the political parties and groups of their choice.

- s) The right of workers to become members of unions and the right of professionals to become members of professional associations, for the performance of their corresponding activities.
- t) The right of all Cubans to complain about measures taken by the State and to demand public information from the State.
- u) The right of all Cubans to due process of law in all legal proceedings.
- v) The other rights that this Fundamental Law and future laws establish.

Title II **Public Authorities During the Transition**

Chapter I **Pro-Unity National Council**

Article 15. The Pro-Unity National Council is hereby created and shall exist during the Transition period. The Pro-Unity National Council shall be comprised of members appointed by the dissidents, exiles, and members of the previous regime.

The members of the Pro-Unity National Council must solemnly swear their:

- a) Absolute adhesion, compliance and obedience to the Universal Declaration of Human Rights, proclaimed by the General Assembly of the United Nations in 1948.
- b) Support and unconditional participation in the political, economic and social reforms, to achieve a genuine and true democratization of the country.
- c) Absolute obedience and obligatory compliance with all provisions of this Fundamental Law.

Article 16. The Pro-Unity National Council will be comprised of fifteen members, proportionally selected from the groups cited in the foregoing article. In the process of selection of the members of the Pro-Unity National Council, members of the cited groups must carry out their mission with the highest patriotic motivation and taking into consideration their obligation and duty as Cubans to give their all out effort for the reconstruction of the country and the establishment of the rule of law.

Article 17. During the initial stage of the Transition, the duty of the members of the Pro-Unity National Council shall, in the first instance, be to appoint the persons who will carry out the positions of President and members of the Cabinet of the National Transition Government, and the creation of the National Elections Council.

Once the initial mission is accomplished, the responsibility of the Pro-Unity National Council will be to nominate the public officers specified in this Fundamental Law. The nominations should be submitted to the official authorities specified in this Fundamental Law as soon as possible, for the appropriate appointments. The decisions of the Pro-Unity National Council will be made by majority.

Article 18. As an additional function of the Pro-Unity National Council, its members must cooperate with the President of the Republic in the assessment of the current Supreme Court and Provincial Court Magistrates, in order to determine who will remain in their position during the Transition.

Chapter II National Transition Government

Article 19. The National Transition Government, of a unitarian nature, will be comprised of:

- a) The President of the National Transition Government hereinafter identified as President of the Republic.
- b) A Cabinet.
- c) The Advisory Legislative Council.
- d) Provincial Governors.

Article 20. Pursuant to Article 17 of this Fundamental Law, and taking into consideration the urgency of the situation, the first decisions that the members of the Pro-Unity National Council shall make is to appoint the President of the Republic and the members of the Cabinet.

Chapter III The President of the Republic

Article 21.- The requirements to become President of the Republic are the following:

- a) Be a Cuban by birth.
- b) Be at least forty (40) years old.

- c) Have his/her civil and political rights intact.
- d) Not be an active member of the Armed Forces.
- e) Take an oath in accordance with the requirements of Article 15.

Article 22. The attributions of the President of the Republic are:

- a) Always demonstrate his representation of the country for all effects.
- b) Direct, with the assistance of the Cabinet, the national program for the reunification, solidarity and reconciliation of the Cuban people.
- c) Sanction, enact, comply and make others comply with the Laws, Law Decrees, Rules and other measures approved by the Cabinet.
- d) Remove and accept the resignation of the members of the Cabinet, proceeding immediately to appoint their successors, after hearing recommendations from the Pro-Unity National Council.
- e) Direct diplomatic negotiations and execute the treaties with other nations approved by the Cabinet, which will not be valid without such approval.
- f) Appoint, with the approval of the Cabinet, the President, Magistrates and the Attorney General of the Supreme Court, pursuant to the nominations made by the Pro-Unity National Council.
- g) Appoint, with the approval of the Cabinet, the Provincial Governors, in accordance with the nominations of the Pro-Unity National Council.
- h) Appoint, with the approval of the Cabinet, the representatives of the Diplomatic Corps, in accordance with the recommendations from the Secretary of State.
- i) Appoint, with the approval of the Cabinet, the government officers necessary to fulfill the public positions designated by this Fundamental Law, whose appointments are attributed to the President of the Republic.
- j) Grant pardons, amnesties and unconditional freedom, pursuant to Article 13 of this Fundamental Law.
- k) Act as the Supreme Commander of the Armed Forces, and with the cooperation of the Secretary of Defense, organize the Armed Forces and appoint the commanders and officers of the same.
- l) Provide for the defense of the national territory and maintain the public order, without violating the fundamental rights of the people.
- m) Preside over Cabinet meetings and call ordinary and extraordinary meetings of the Cabinet, whenever he deems it appropriate, or when requested to do so by at least four members of the Cabinet.
- n) Request the necessary help from the international community for the country's reconstruction, and especially for building housing for the needy population.

Article 23. The President of the Republic may not leave the country without authorization from the Cabinet.

Article 24. The President of the Republic will hold his position until the new President takes office, who will be elected by the people in general elections which will be held during the Transition.

Article 25. The President of the Republic will be responsible before the Full Supreme Court sitting in the Court of Special Justice, for crimes of a common nature committed during the exercise of his position, but he cannot be tried, or detained without the agreement of the absolute majority of the Cabinet, and without the affirmative vote of two thirds of the total number of members that constitute the Full Supreme Court.

The other members of the National Transition Government mentioned in this Fundamental Law, will be subject to the same regulations set forth in this article.

Article 26. When the Presidency of the National Transition Government becomes vacant, the designation of a new President of the Republic will proceed as provided in Article 17 of this Fundamental Law. Until this designation becomes effective, and a new President is appointed, the position will be assumed temporarily by the Minister of State, if he fulfills the requirements needed to be the President of the Republic.

In case the Minister of State does not meet the requirements needed to become the President of the Republic, the position will be carried out by the Minister that meets the requirements, according to the hierarchical order set forth in the following article.

Chapter IV **The Cabinet**

Article 27. The Cabinet will be comprised of the following members, by hierarchical order:

- The Minister of State.
- The Minister of the Interior.
- The Minister of Justice.
- The Minister of Defense.
- The Minister of Public Finance.
- The Minister of Health.
- The Minister of Education.

The Minister of Agriculture.
The Minister of Commerce and Industry.
The Minister of Labor.
The Minister of Public Works.
The Minister of Communications.

Article 28. The requirements to become a member of the Cabinet of the National Transition Government are the same as those to become the President of the Republic, with the exception of age, which shall not be less than thirty five (35) years old.

Article 29. The functions of the Cabinet are as follows:

a) Appoint the public officers as determined by the Fundamental Law and pursuant to the nominations made by the Pro-Unity National Council.

b) Cooperate with the President of the Republic in the national program for the reunification, solidarity and reconciliation of the Cuban people.

c) Approve, jointly with President of the Republic, the legislative measures recommended and redacted by the Legislative Advisory Council.

d) Approve the loans requested by the President of the Republic. For this decision, the favorable vote of two thirds of the Cabinet is required.

e) Approve, jointly with the President of the Republic, the proposals pertaining to the economy, recommended and written by the Legislative Advisory Council.

f) Establish the contributions and taxes of a national nature that are necessary to satisfy the needs of the State, including the reconstruction of the nation.

g) Approve the amnesties, pardons and unconditional releases decreed by the President of the Republic.

h) Approve the national budget.

Article 30. The President of the Republic will preside over Cabinet meetings . In his absence, the Minister of State will preside over Cabinet meetings.

Chapter V

The Legislative Advisory Council

Article 31. The Legislative Advisory Council is created, with authority to provide legal advice concerning legislative matters, which services will be rendered to the President of the Republic and the Cabinet.

Article 32. The members of the Legislative Advisory Council will represent the provinces, in proportion of three per each one of the thirteen that comprise the national territory. The members of the Legislative Advisory Council will be appointed by the corresponding governors, after hearing the recommendations of the Pro Unity National Council. The names of the nominees will be submitted to the President of the Republic to complete the appointment, with the approval of the Cabinet.

Article 33.- The requirements to be a member of the Legislative Advisory Council are the same as those to become a member of the Cabinet, with the exception of age, which shall be no less than thirty (30) years old.

Article 34. The functions of the Legislative Advisory Council are the enactment of Laws, Law Decrees, Rules and other legislative proposals of a national nature, which will be submitted to the Cabinet for approval and decreed by the President of the Republic.

Chapter VI

The Governors and Mayors

Article 35. Pursuant to the provisions in Article 22 (g), the Provincial Governors will be appointed by the President of the Republic, with the approval of the Cabinet. The nominations for candidates for Governor will be made by the Pro Unity National Council.

Article 36. The requirements to become Governor are the same as those to become President of the Republic, with the exception of age, which will be no less than thirty (30) years.

Article 37. Once the governors appointed by the President of the Republic take charge of their posts, they will have the responsibility to appoint the mayors of the cities encompassed within their respective provinces.

Article 38. The organization of the Provincial and Municipal regimes will be governed pursuant to the current Organic Law, provided that said Law is not contrary to this Fundamental Law.

Chapter VII

Validity of the National Transition Government

Article 39.- The members of the Pro Unity National Council and the National Transition Government mentioned in Title II, Chapters I, II, III, IV, V and VI, will cease in their positions the day when the officers elected by the Cuban people in the first general election take office, at the end of the Transition.

Article 40. If some of the positions of the National Transition Government are vacant during the transition, the successors will carry out their functions until the end of the period indicated in the foregoing article.

Title III

Judicial Power

Chapter I

Exercise of the Judicial Power

Article 41. The administration of justice during the Transition will be under the jurisdiction of the Supreme Court and other Courts existing before the operation of this Fundamental Law.

Chapter II

The Supreme Court of Justice

Article 42. The highest judicial authority of the Republic of Cuba is the Supreme Court, an entity whose existence and function during the Transition will be subject to provisions of this Fundamental Law.

Article 43. The Supreme Court will be comprised of fifteen (15) Magistrates who are members of the Full Court and distributed in different courts, as follows:

- a) Court of Constitutional Guaranties, comprised of fifteen (15) Magistrates who are members of the Full Court.
- b) Court of Cassation, comprised of seven (7) Magistrates.
- c) Special Court, comprised of five (5) Magistrates.
- d) Government Court, comprised of three (3) Magistrates.

Article 44. During the initial stage of the Transition mentioned in Article 18, the President of the Republic, in conjunction with the Minister of Justice and the Pro Unity National Council, will proceed to evaluate the Magistrates of the Supreme Court and the Provincial High Courts which were active in their posts before the enactment of this Fundamental Law. The purpose of this evaluation is to determine the legal intellect of these Magistrates, indispensable for the execution of their positions, and their behavior in the cases which have been submitted to their jurisdiction.

In accordance with the evaluation carried out, the President of the Republic, with the approval of the Cabinet and upon hearing the recommendations of the Pro Unity National Council, will appoint the Supreme Court and Provincial High Court Magistrates, including the Chief Magistrate of the Supreme Court, who will carry out their functions until the Magistrates appointed according to the new Constitution take office. If, according to the evaluation carried out, some of the current Magistrates of the Supreme Court and the Provincial High Courts do not comply with the requirements to be re-appointed, the vacant positions will be filled by candidates nominated by the Pro Unity National Council, who will be appointed by the President of the Republic, with the approval of the Cabinet.

Article 45. The requirements to become a Supreme Court Magistrate are the following:

- a) To be a Cuban by birth.
- b) To be forty (40) years old.
- c) To be in full exercise of his civil and political rights.
- d) To hold a law diploma from any official University in the country or abroad.
- e) To have performed, for at least ten years, the profession of lawyer, or having carried out, during the same period of time, functions as a judge.
- f) To solemnly and in writing swear absolute political independence and exclusive obedience to this Fundamental Law, and other laws that will be enacted.
- g) To have successfully passed the evaluation carried out by the President of the Republic, the Minister of Justice and the Pro Unity Council, pursuant to Article 18.

Article 46. The functions of the Supreme Court will be determined in accordance with the Courts that comprise it, as follows:

First Section: Court of Constitutional Guaranties

Article 47. The function of the Court of Constitutional Guaranties is to determine the instances where the Laws, Law Decrees, Decrees, Rules and government actions, that are in force and effect violate the provisions of this Fundamental Law. A petition for unconstitutionality presented by an affected party, shall be filed by such party within the term as determined by Law, and the one filed by public action shall be filed by no less than twenty five (25) citizens, and may be filed at any time. When deciding petitions alleging unconstitutionality, the Court of Constitutional Guaranties shall always resolve the substance of the claim, and shall specify a period to allow petitioners to amend any defects of form that a petition may contain.

Article 48. Once a Law, Law Decree, Decree, Rule, stipulation or act is held unconstitutional, it cannot be applied again in any way whatsoever, or used under any pretext.

Second Section: Cassation Court

Article 49. The attributions of the Cassation Court are the following:

- a) To rule upon the cassation motions filed.
- b) To rule upon questions of jurisdiction and authority of the Courts that are immediately inferior to it, or of those courts that don't have a superior court.
- c) Preside over lawsuits between the State, the Provinces and Municipalities.

Third Section: Special Court

Article 50. The functions of the Special Court are the following:

- a) To preside over cases filed against the President of the Republic and other members of the National Transition Government.
- b) To preside over cases alleging violations of human rights.

Fourth Section: Government Court

Article 51. The functions of the Government Court of the Supreme Court are as follows:

- a) Appoint, promote, transfer, suspend, correct and remove the members of the judiciary pursuant to the applicable laws, and accept resignations.
- b) Carry out the reforms of the judicial branch that are necessary, which reforms will be submitted to the consideration of the Cabinet for its approval and the approval of the President of the Republic.
- c) Appoint the Attorney General and the prosecutors of the other Courts.
- d) Create a Special Commission of Attorneys in charge of investigating the cases filed alleging violations of human rights.

The Chief Magistrate of the Supreme Court will request the Pro Unity National Council to nominate six lawyers that shall proportionally represent the three groups that comprise the Council. Once the nominations are received, the Magistrates comprising the Government Court will proceed to appoint the nominated persons.

The Government Court will regulate the process which will be followed by the Commission by means of an Internal Set of Rules.

Article 52. The Commission created pursuant to Article 51 (d) will have authority to:

- a) Subpoena witnesses and compel them to testify under oath; and
- b) The right to subpoena all the evidence necessary to adjudicate the cases brought before it.

Article 53. The destruction or concealment of evidence pertaining to the violation of human rights perpetrated during the previous regime is a felony.

Chapter III Provincial Courts

Article 54.- The Provincial Courts will operate and be regulated in the same manner as those that operated before the enactment of this Fundamental Law, so long as no mode of operation or procedures to the contrary are enacted pursuant to the reforms which will be carried out in compliance with Article 51 (b).

Article 55. The Magistrates of the Provincial Courts who were in office before the enactment of this Fundamental Law, will remain in their positions, pending the results of the evaluation carried out in compliance with Article 18.

Article 56. The requirements to become a Provincial Court Magistrate are the same as those to become a Supreme Court Magistrate, with the exception of age, which cannot be less than thirty five (35).

Chapter IV Public Prosecution

Article 57. The Ministry of Justice will be headed by the Supreme Court Prosecutor, who will have complete authority over this Ministry and over the other prosecutors of the Courts. All the prosecutors will be under the jurisdiction of the Ministry of Justice.

Article 58.- The Attorney General will be the legal representative of the State before the Court, and his functions, in addition to those established by law, include investigation of denunciations made against the President of the Republic and other officers of the National Transition Government.

Article 59. The requirements to become the Attorney General are the same as those to become a Court Magistrate.

Article 60. The requirements to become a Court Prosecutor are the same as those to become the Attorney General, with the exception of age, which cannot be less than thirty five (35).

Chapter V General Provisions Regarding the Administration of Justice.

Article 61. Justice will be administered without cost throughout the whole national territory.

Article 62. During the transition, the administration of justice will be carried out by the judges who carried out such functions before the enactment of this Fundamental Law.

The administration of justice during the Transition is subject to the evaluations and specific reforms carried out under Articles 18 and 51 (b).

Article 63. The ordinary courts will preside over all lawsuits, whether they are civil, criminal, or contentious-administrative.

Article 64. The ordinary jurisdiction will be the only competent jurisdiction to preside over cases involving crimes committed by

civilians, and the military will try its members for crimes committed by them within the military zone, and also when the latter are accused, jointly with civilians, of crimes committed in actions involving military service.

Article 65. When a crime has been committed, or is committed by members of the Armed Forces and the victim is a civilian and the Judges and Courts of ordinary jurisdiction decide that they are competent to preside over a matter because they determine that the matter does not involve a crime or violation committed during acts of service, the Supreme Court of Justice will resolve which one of the two jurisdictions shall have jurisdiction to proceed with the case.

Article 66. Court orders issued in lawsuits in which the State is the plaintiff or the defendant, must be complied with, except in the case of material impossibility recognized by the Court that issued the relevant order. In such case, the Court will determine the indemnification to be given to the affected party, who will be paid with funds available from the current fiscal year, or if funds are unavailable, with funds budgeted in the following fiscal year.

Article 67. The Courts of the Armed Forces will be regulated in accordance with what the Minister of Defense dictates, subject to the approval of the Cabinet.

Article 68. The Criminal Procedural Law shall be adjusted to set forth the necessary guaranties for every crime to be proven, independent of the defendant's testimony, or the testimony of his spouse or relatives until the fourth degree of consanguinity and second of affinity.

Article 69. Nobody shall be prosecuted or sentenced, other than by a Judge of a competent Court, with the guaranties and formalities set forth in this Fundamental Law and other laws. There will be not a judgment passed against a person in contempt of court, and nobody will be condemned in a criminal case without the opportunity to be heard or due process. Neither will a person be obligated to testify against himself, nor against his spouse or relative within the fourth degree of consanguinity and second of affinity. All defendants have the right to a defense attorney selected by them. In the event that the defendant does not have the resources to hire defense counsel, the State will provide the services of a court appointed lawyer.

Article 70. The judges or Magistrates who refuse to review petitions for *habeas corpus*, or comply with any mandates related to such

proceedings, will be removed from their position by the Government Court of the Supreme Court.

Title IV Defense of the National Territory

Article 71. The defense of the national territory is the sole and exclusive responsibility of the Armed Forces, constituted by the Army, the Navy, the Air Force, and the Coastguard.

Article 72. The Armed Forces will be under the jurisdiction of the Secretary of Defense, and its Commander in Chief will be the President of the Republic.

Article 73. The active members of the Armed Forces may not be part of the National Transition Government, nor can they carry out positions in public office that are only for civilians.

Article 74. The officers and their subordinates in the Armed Forces who are active upon the enactment of this Fundamental Law, will be kept in active service as long as they have not been involved in the violation of human rights, and have not been voluntary accomplices conscious of their criminal responsibilities for such violations.

They can also be kept in active service as long as they are willing to adhere to this Fundamental Law.

Article 75. Maintaining public order in the cities and towns will be the responsibility of the members of the Police, which will be under the jurisdiction of the Minister of the Interior.

Article 76. Repressive organizations, paramilitary groups, and storm troops are proscribed in the whole national territory.

Title V Political Reform

Chapter I: General Provisions

Article 77. Pursuant to the provisions in Article 3 (d) of this Fundamental Law, it is decreed to implement a political reform which makes viable the reinstatement of a true and genuine democracy in Cuba, founded on the sovereign power of the people.

Article 78. The political reform process will be the responsibility of the National Elections Council, which will be created as provided in this Fundamental Law. This process will take place during the initial stage of the Transition.

Article 79. The political reform process shall be carried out in an orderly fashion and in the following order:

- a) Creation of the National Election Council.
- b) Organization of a Population Census.
- c) Formation of political parties and groups.
- d) Announcing and holding of general elections.

Chapter II: National Elections Council

Article 80. The National Elections Council will be unitarian in nature and comprised of fifteen (15) members, which will be proportionally selected by the same groups that make up the Pro Unity National Council, that is, the dissidents, the exiles and members of the previous regime.

Article 81. The requirements to become a member of the National Elections Council are the same as specified in Chapter 1, Article 15 of this Fundamental Law.

Article 82. To guarantee the transparency of the agreements, decisions, and measures carried out by the National Elections Council, the participation of international observers selected by the United Nations, the Organization of American States, and the European Community, is permitted and recommended.

Article 83. The creation of the National Elections Council will take place immediately after this Fundamental Law is enacted.

Article 84. Members of the National Elections Council, if they deem appropriate, can appoint provincial delegates to supervise the political reform process in their respective provinces.

The Council will determine the way in which the delegations will be constituted.

Article 85. It will be the responsibility of the National Elections Council to carry out the following measures in the following order:

- a) Devising the security measures which shall be put in place by the agents of public order during the census and electoral processes.
- b) Approval and issuance of the identity card which will be given to those who have the right to vote, which document must be shown upon exercising this right.
- c) Organization and execution of the population census.
- d) Announcement and approval of the formation of political parties and groups.
- e) Once the political parties and groups are formed and duly registered, the National Elections Council will proceed to organize and carry out general elections in which the new national, provincial, and municipal governments will be elected.

Article 86. Members of the National Elections Council should carry out their mission with utmost patriotic motivation and taking into consideration the obligation and duty that they have, as Cubans, to focus all of their efforts on the political reconstruction of the country and on the sovereignty of the Law, keeping in mind Jose Marti's principle that "The Homeland is the altar, not the pedestal."

Article 87. The Cabinet will establish the budget for the National Elections Council.

Chapter III: Population Census

Article 88. The organization and execution of the population census will take place immediately after the members of the National Elections Council take office.

Article 89. The objectives of the population census will be the following:

- a) To determine the total population of the Cuban people, including those residing within the country, as well of those residing abroad.
- b) To determine the total voting age population residing in the country and abroad.
- c) Issuance of the identity documents which will be used by Cubans of voting age when they exercise their right to vote.

Article 90. Regarding the voters registry, all Cubans by birth or by naturalization from both genders, who have achieved eighteen (18)

years of age, that reside in the country or abroad, and have registered to vote, shall have that right, except the following:

- a) The persons who had significant involvement in the violation of human rights, and/or acted, voluntarily and conscious of their criminal responsibility, as accomplices of such violations.
- b) Likewise, the officers of the previous regime who refuse to solemnly and in writing swear adhesion, support and unconditional participation in the social, political and economical reforms desired by the Cuban people, to attain the true and genuine democratization of the country, as well as total obedience and compliance with the provisions of this Fundamental Law.
- c) The mentally incapable, based on a previous legal declaration of incapability.
- d) Cubans by naturalization who have lost their Cuban citizenship by legal decree or by accepting official positions in their countries of origin.
- e) Those legally incapable because of crimes committed.

Article 91. To register for the population census, Cubans living on the Island must register at the City Hall in the city where they reside. The City Halls will be the only entities legally authorized to carry out the registry process for the population census.

For Cubans residing in places that are far from the corresponding city offices, the National Elections Council will appoint delegates who will travel to such distant locations to conduct the registry process.

Article 92. Cubans residing abroad shall go to the Cuban consular offices existing in the cities where they reside.

In the case of Cubans who live in cities that don't have Cuban consular offices, or in countries that don't have diplomatic relations with Cuba, the National Transition Government will request help from the corresponding governments to designate official facilities where Cubans can go to register for the population census. The staff in charge of the registry in these cases will be the Cubans appointed by the National Elections Council, and the expenses incurred to carry out this registration will be paid by the National Transition Government.

Article 93. The National Elections Council will authorize those charged with maintaining the public order to act so as to guarantee the right of Cubans to register in the population census, including the safety of Cubans seeking to register. Measures taken by those charged with

maintaining public order, shall not violate or ignore this Fundamental Law or human rights.

Article 94. The National Elections Council will carry out the population census during an irrevocable term, which shall commence no more than ninety days after the creation of the census.

Article 95. Members of the National Elections Council will be accountable to the Special Court of the Supreme Court, and subject to prosecution for perpetrating, while exercising their positions, crimes of a common nature, violation of this Fundamental Law, or violation of other laws.

Article 96. Members of the National Elections Council removed from their positions in accordance with the foregoing article and/or by resignation, will be replaced by persons appointed by the groups which nominate the member or members removed, or those that left the position by resignation.

Article 97. The decisions of the National Elections Council can be appealed by way of cassation before the Supreme Court.

Chapter IV: Formation of Political Parties

Article 98. In accordance with the Universal Declaration of Human Rights and Article 14 (r) of this Fundamental Law, all Cubans have the right to freely and without pressure associate with the political parties and groups of their choice.

Article 99. The National Elections Council will indicate and ensure that the formation of political parties and groups shall be made freely, without the intervention of the Government.

Article 100. As an exception to the foregoing article, the following are proscribed and declared illicit:

- a) Political parties or groups comprised on the basis of race, sex or class.
- b) Political parties or groups that are against democratic and representative type government, and those that promote, as instruments of political change, violence, terrorism, or commit serious

felonies which risk the safety or wellbeing of citizens and/or attempt against the sovereignty of the nation and the people.

Article 101. Once the political parties or groups are organized, they will proceed to register with the National Elections Council. Lack of registration with the National Elections Council shall render such political parties or groups illegal. The registration will be accomplished by providing the duly legalized by-laws of the political party or group.

Article 102. Once organized and duly registered, the political parties and groups can, freely and in accordance with their respective by-laws, appoint the candidates who shall represent them in the electoral process.

The nominations shall be registered with the National Elections Council.

Article 103. Members of the political parties and groups can conduct meetings and public gatherings, as long as they are conducted within the scope of the law, the fundamental rights of the citizenry are respected, and peace and public order are not endangered.

Chapter V: General Elections

Article 104. Once political parties and groups are formed in accordance with this Fundamental Law, the National Elections Council will proceed to announce general elections for the people to elect a new government.

Article 105. The general elections shall take place one hundred and twenty (120) days after the deadline for the registration of political parties and groups set by the National Elections Council.

Article 106. The general elections shall be universal, equal, direct, and secret elections. When announcing general elections, the National Elections Council will specify the officers that shall be elected, which are the following:

- I.- One President and one Vice President of the Republic, elected for a period of four years.
- II.- The members of the Senate, based upon six senators per province, each one elected for a period of four years.
- III.- The members of the House of Representatives, which will be comprised of one Representative per each thirty thousand inhabitants.

The Representatives will be elected by province, for a period of four years.

IV.- The Governors of Provinces.

V.- The Mayors.

Article 107. The requirements to become President and Vice president of the Republic are the same as those specified in this Fundamental Law to become President of the National Transition Government.

Article 108. The requirements to become members of the House of Representatives are the same as those specified in Article 33 of this Fundamental Law to become a member of the Advisory Legislative Council, with the following variations:

- a) Be at least twenty five (25) years old; and
- b) Be a legal resident of the Province from which he was elected.

Article 109. The requirements to become a member of the Senate are the same as those specified in Article 28 of this Fundamental Law, with the following variations:

- a) Be at least thirty (30) years old; and
- b) Be a legal resident of the Province from which he was elected.

Article 110. The officers of the new government mentioned in the foregoing article and elected by the people, will be seated in office thirty (30) days after the general elections are carried out.

Article 111. The political liberties enacted in this Fundamental Law and to which all Cubans are entitled, create as a right, duty and function, the universal obligation to vote, equally and in secret.

Pursuant to the foregoing, everyone who fails to vote in the general elections organized and held by the National Elections Council, except those that were granted a legitimate waiver by the appropriate authority, will lose his ability to occupy any public office during the time set forth by Law.

Article 112. The people of Cuba in general and the nation at large have the historical duty to cooperate actively and in an exemplary way with the political reform process set forth by this Fundamental Law.

Article 113. The Armed Forces and the Police are obligated to comply with the orders of the National Elections Council, with respect to maintaining the public order during the general elections.

Article 114. Once the newly elected government takes office, it will proceed to convoke a Constitutional Assembly, during which it will be determined whether to reinstate the 1940 constitution, or write a new constitution.

Article 115. The National Transition Government will end upon installation of the new government elected by the people.

TRANSITORY DISPOSITIONS

FIRST: This Fundamental Law shall be enacted by the Pro Unity National Council with the tacit consent of the Cuban people.

SECOND: This Fundamental Transition Law shall be in force from the date of its publication in the Official Gazette, and shall remain in force until the enactment of a Constitution.

THIRD: The President of the Republic, with the approval of the Cabinet, will appoint a special committee of attorneys with expertise in the field of real estate, with the aim of carrying out the pertinent research and studies to facilitate the enactment of a special law to resolve all claims and issues related to the properties and assets confiscated by the previous regime since January 1st, 1959. The committee will be comprised of attorneys designated by the Pro Unity National Council, proportionally representing the three groups that comprise the Council.

FOURTH: The *Asamblea Nacional del Poder Popular*, the *Organos Locales del Poder Popular* and the *Consejo de Estado* are dissolved.

FIFTH: The following are abolished upon enactment of this Fundamental Law:

- a) The Constitution of 2019.
- b) The Law, Law Decrees, Decrees, Rules and other dispositions which propitiate and impose the leadership of the Communist Party.
- c) The Laws, Law Decrees, Decrees, Procedures, Rules, and other dispositions that oppose or obstruct the operation of this Fundamental Law or violate the provisions of the Universal Declaration of Human Rights, or the provisions of the International Pact of Civil and Political Rights.

SIXTH: Current existing laws are valid as long as they are not contrary to this Fundamental Law, or are not abolished by the National Transition Government.

SEVENTH: All individuals, who at the moment that this Fundamental Law is enacted, are employed in the public sector, as well as the officers of government agencies, shall remain in their positions, as long as they satisfy the following requirements;

- a) They were not significantly involved in the violation of human rights, and/or did not act voluntarily and conscious of their criminal responsibility, as accomplices of such violations.
- b) Solemnly and in writing swear adhesion, support and unconditional participation in the social, political and economic reforms longed for by the Cuban people to attain the genuine and true democratization of the country, as well as total obedience and compliance with this Fundamental Law.
- c) Cooperate with the National Transition Government in the program for reunification, solidarity and reconciliation of the Cuban people.

EIGHTH: The Treaties and Conventions agreed to by the Republic of Cuba shall remain valid, as long as the National Transition Government does not order the contrary.