

Part III

The Cuban Constitution of 1940

Suggested Framework Modifications by Alfredo A. Cuzan

| Article | 1940 Constitution | Suggested Framework |
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| Regiment | unitary, presidential, bicameral | unitary, presidential, bicameral |
| Congress: mode of election | lower house elected from each of six provinces, one per 35,000 inhabitants, for four-year staggered terms, one-half renewed every two years, candidates must be at least 21 years of age | lower house elected from each of six provinces, one per 50,000 inhabitants, for a 3-year term, by proportional representation, with minimum threshold set at five percent of the vote; candidates must be 25 years of age |
| | upper house composed of nine senators from each of six provinces, for a total of 54, elected on same day, for a four year term; candidates must be at least 30 years old; minority parties allowed representation [subsequently interpreted by the electoral code so that six senators went to the majority party and three to minority parties] | upper house composed of six senators from each of six provinces, for a total of 36, for staggered, six-year terms, one senator elected from each province every year; candidates must be at least 30 years old |
| Congress: length of session | the congress will meet twice a year for no less than 60 days at a time nor more than 140 days in total | the congress will determine the frequency and length of its sessions, but in no case will meet less than half the calendar year |
| Congress: power of impeachment | lower house has the power to impeach the president by a vote of 2/3 of its membership; trial conducted in the senate, joined by members of the Supreme court, and presided by its chief justice [with verdict reached presumably by majority vote] | lower house has power to impeach the president by 3/5 vote; trial conducted in the senate, chief justice of the supreme court presiding, with 2/3 vote required for conviction |
| Congress: vote of confidence | either house, by a vote of an absolute majority of its membership, may register a vote of no-confidence in a cabinet minister or the whole cabinet, which requires immediate resignation by one or all, as the case may be | |
| Congress: Power of lower house | as priority in discussion and approval of the budget of the nation | all revenue and spending bills must be voted out of this chamber first; approves presidential appointments to the cabinet |
| Congress: Power of the Senate | approves heads of diplomatic missions and treaties with other nations negotiated by the president; approves all appointments to the Supreme Court and the Tribunal of Accounts | approves presidential appointments of heads and of diplomatic missions, other ambassadors, and treaties with other nations negotiated by the president; approves all appointments to the Supreme Court, the Constitutional Court, the Supreme Electoral Tribunal, the Tribunal of Accounts, the Central Bank, university boards of regents, other autonomous institutions established by law; and promotions in rank to general or its equivalent |
| Congress: overriding veto | by 2/3 vote of both houses | by 3/5 vote of both houses |
| President: Mode of election | may introduce bills in congress; can veto bills; * pocket * veto is not allowed: if the congress will adjourn less than ten days after submitting a bill to the president, and he intends to veto it, he must communicate to the congress his intentions within 48 hours, so that the congress may stay in session and vote to override; if the president does not inform the congress, the bill becomes law without his signature | can veto bills subject to override by congress; line-item veto is not allowed, the president must veto entire bill or not at all; neither is * pocket * veto permissible: any bill sent to the president less than ten days before the congress adjourns, which he neither signs nor vetoes, becomes law if, within three months of the new session of congress, it passes both houses by simple majority vote |
| President: Decree powers | to issue decrees and orders advisable for the purpose of executing the laws and for whatever is pertinent to the government and administration of the State, without in any case contravening what is established by law | to issue decrees and orders only for the purpose of executing laws duly enacted by congress, to implement judicial rulings, and what concerns the internal administration of the executive branch, narrowly construed, without in any case contravening what is established by law |

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| President: budget power | Sixty days before it is due to take effect, he presents the house with a budget; the congress may not increase funding of any existing services beyond what is planned by the executive; nor may it abolish any * permanent * tax without enacting another in its place or reducing expenditures proportionately | the President is required to submit a proposed budget nine months before the start of the new fiscal year, but it is up to the congress to decide what, if any, of the president's plan to adopt in one or more revenue and expenditure bills; there are no restrictions on congressional authority to increase or decrease taxes or expenditures |
| Cabinet | President * freely * appoints and removes members of the cabinet, including a prime minister who represents the government to congress, the cabinet is responsible to congress, and members of the cabinet, individually and collectively, are subject to a vote of no confidence by either house of congress, which requires their resignation; members of congress may serve in the cabinet, and vote in their respective chambers | President appoints, with approval of the lower house, members of the cabinet, and is free to remove them; no member of congress may serve in the cabinet without resigning his seat first |
| Supreme court: mode of appointment | members of the court appointed by the President from a list of three names proposed by an electoral college appointed for the purpose by the supreme court, the president, and the law faculty of the University of Havana; chief justice and chiefs of sections shall be appointed by the president on proposal of the full bench of the supreme court with approval of the senate | appointed by the president with the approval of the senate |
| Supreme court: qualifying age and length of term | must be 40 years old; appointed for life | must be 50 years old, appointed by the president with senate approval; nine members appointed for staggered terms of nine years, with reappointment possible for another term (plus a chief justice, who is appointed for life); mandatory retirement at 70 |
| Constitutional Court | Supreme court doubles as constitutional court in one of its sections | a separate institution, appointed in the same manner and length of term as the supreme court |
| Supreme Electoral Tribunal | composed of three justices of the supreme court and two from the Havana court of appeals, named for a period of four years by the full bench of their respective courts | a separate institution, governed by a nine-member board appointed by the constitutional court for the same length of term and rules for staggering appointments as those applicable to itself |
| Tribunal of accounts | composed of seven members, four attorneys and three accountants (or business professors); the supreme court appoints two of the lawyers members, the president and senate one lawyer and one accountant each, and the university council one accountant or professor of business; appointed for a term of eight years; lawyers must be 40 years old and accountants 35 | composed of nine members, six certified public accountants or university professors of business and three attorneys, appointed by the president with approval of the senate, for staggered terms of nine years, with reappointment possible for another term, for a maximum length of service of 18 years; must be 40 years old |
| Central Bank | a National Bank of Cuba will be established; at the time of its creation, the State may require that existing banks contribute to its capital; those who comply with this requirement will be represented in its board of directors | a central bank is charged with safeguarding the value of the currency so that it is not eroded by inflation; it will be governed by a nine-member board appointed by the president with the consent of the senate, for staggered, nine-year terms, with one third of the membership renewable every three years, with reappointment possible for another term, for a maximum length for tenure of 18 years; must be 40 years old |
| Provincial government | an elected governor and a provincial council composed of all the mayors of the province; fiscal powers are subject to conditions, such as, in certain cases, approval by the Tribunal de Cuentas or popular referendum | an elected governor and an elected assembly, elected concurrently for a three-year term; each province will draw up its own governing charter, subject to approval by the senate; complete fiscal autonomy, except for periodic audits by the Tribunal de Cuentas, laws designed to insure financial transparency and protect creditors in case of default, and prohibition of taxes levied on imports, exports, or taxes and regulations that discriminate between products produced or sold within and those without the province; provincial elections held on a year different from that of any other level (except the senate) |

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| Local Government | the municipality is an autonomous entity; it can draw up its own charter, as long as it fits one of three possible models (commission, council-manager or mayor-council) subject to approval by referendum; fiscal powers are subject to restrictions similar to those imposed on the provinces; municipal elections will be held on a day different from that of general elections | the municipality is an autonomous entity; it can draw up its own charter subject to approval by the provincial assembly; complete fiscal autonomy, except for the same restrictions applicable to the provinces; elections held on a year different from that of any other level (except the senate) |
| Constitutional amendment | two ways to enact most reforms to the constitution: (a) by petition from at least 100,000 voters, whereupon the congress will meet in joint session and within thirty days convoke the election of a constituent assembly or a referendum; (b) by congressional initiative, by petition from at least one-fourth of the joint membership of congress, whereupon it takes a 2/3 vote of congress,. Meeting jointly, during three sessions in a row; certain reforms, such as one negating national sovereignty, or removing prohibition against reelection or extending the term of office are even more difficult to pass | two ways to enact constitutional amendments: (a) * from above *: a two-thirds vote of both houses of congress, followed by a popular referendum, with a two-thirds margin required for enactment; (b) * from below *: two-thirds of the provincial assemblies endorse a proposed amendment by a two-thirds vote of their respective memberships, followed by a popular referendum, with two-thirds vote required for enactment |