



To encourage all citizens

## **VARELA PROJECT**

The Constitution of the Republic of Cuba grants the right of a citizen to present for consideration amendments into the laws.

We introduce to the people of Cuba the VARELA PROJECT

The project proposes amendments to some of the laws so that through this way advance towards improvement of a society. The VARELA PROJECT would like to change into laws what are already determined as rights in the Constitution of the Republic of Cuba and which are not being fulfilled.

This project is addressed to open opportunities for a free and responsible participation for all citizens in the political and economical life of our society.

We propose all citizens to support the petition for a Referendum so they, as a nation, decide about this first step of setting an opening. Article 88g of the Constitution of the Republic gives the citizens the right to fulfill this petition. We hope that the government will respect such right.

The VARELA PROJECT would convert into law, the right of freedom of speech, the freedom of press and freedom of enterprise. Also a citizen's right to own enterprises, something that at present is a privilege only for foreigners. It also proposes for consideration an amendment to Electoral Law No. 72, since the same is unconstitutional. In addition there is a petition of political amnesty for political prisoners and new elections.

The VARELA PROJECT is a path for Cubans to go through it in truth and the right in solidarity and to see their dreams come true. Father Varela was the man who taught us to think as Cubans, he implanted the first seed in our minds of awareness, of freedom, and of sovereignty as right of the people. That is why this project bears his name.

Oswaldo Payá Sardiñas

Miguel Saludes García

Juan Antonio Rodríguez Avila

Antonio Ramón Díaz Sánchez

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## THE VARELA PROJECT

### FOUNDATIONS:

The Constitution of the Republic guarantees its citizens the right to propose changes in its legal system and it also provides the procedures whereby, through popular vote, the people may decide, through the exercise of their sovereign democracy, as to whether changes should be made and, if so, the extent and content thereof. The value of the current state of law is that these contain in themselves the key to amending that system of law, in order that the laws tailor themselves to the needs and demands of society and this can only happen if the people, who are legitimately empowered to do so, are capable of turning that key.

This method of civil action is the connection, *par excellence*, between the will of the people and the political and legal structures of a society that truly enjoys democracy. The operation of this connection is symbolic of the capacity for peaceful and gradual evolution of society, of its capacity to adapt and to progressively advance in an harmonious and integral development, in raising the quality of life.

We, therefore, propose to make changes within the constraints of law. The law is always preferable and it must operate to the common good and to the integral development of the person. There are, however, differing views in our society on which changes are necessary in political, social and economic circles and even opposing opinions on the relevance of such changes.

The answer is not always simple and requires good faith and a reasonable stance by all Cubans.

The question then is, are these changes necessary?

The answer to that question is the key to everything else. But a wise and fair answer can only be given by a self-governing people in a fair voting process, i.e., in a referendum.

The question still remains, why? Why these proposals?

In answer to these questions, the people avail themselves of the necessary legal tools to have greater participation in the decisions that affect them, in determining the direction to be taken by our country and in the construction of a better society, all of which is achieved through the exercise of their rights, by the exertion of solidarity and by performance of their duties.

On the basis of the foregoing, it is the people themselves who decide whether or not changes are appropriate and who are called upon to assume the roles of protagonist and subject of their history.

We are not tendering a draft or model of a new social order; we are instead proposing the first step toward the creation of new and improved conditions pursuant to law, so that all Cubans, working as one, can create and develop their own social model in accordance with their free will, taking as a point of departure the spiritual values of our Country and building on our own historical experience.

The signing of this petition does not by any means signify the support of, or joining, any association or group, nor does it imply the reaching of commitments with the persons who drafted it and propose it. When a Cuban signs this petition calling for the holding of an open voting process, he or she is making use of the rights granted to them by the present

Constitution of petitioning the redress of grievances and thereby freely and jointly taking part in the improvement of our society and in solving the problems being suffered by our people and in the creation of a better for our children, here, in our own Homeland.

THE FIVE PROPOSALS are self-explanatory.

#### THE RIGHTS TO FREE SPEECH AND FREE ASSOCIATION:

These rights have existed — as have all other human rights — before anyone ever formulated them or wrote them down. You and all of your peers are entitled to these rights because you are people you are human beings. These rights were not created by laws, although the latter must guarantee the former. The exercise of the rights to freedom of speech and to freedom of association is the embodiment of participation by the citizen in society in a dignified and responsible manner. When the proposal emphasizes that the laws must guarantee these rights without sacrificing respect for human dignity, human rights or the common well being, we do so to forestall any fear that may have been instilled against the freedom of speech or the freedom of association, inasmuch as no one can exercise their rights if by doing so they trample human dignity and the rights of others or jeopardize the common good. Moreover, no one can claim to defend the common good by curtailing the exercise of these rights, because pursuit of the common good entails striving for living conditions within society wherein people can develop to full potential and this is not possible unless human rights are respected and guaranteed.

Furthermore, in addition to it being a human right, it is also necessary that independent organizations exist in any given society — whether these be of a temporary or permanent nature — in order that citizens may defend their own interests by voicing opinions and taking part in State decisions and, indeed, in all matters within the society, by contributing their efforts and initiatives at all levels of endeavor. Pluralism cannot be imposed by decree, although it must be respected and guaranteed by the law of the land, because it is a truism that not all people think alike on all matters in general or in any particular aspect of the whole, yet everyone has the right to associate and to express themselves, in accordance with their own thoughts and interest, without having any one nullify those rights because of their ideas or for any other reason. If laws were to guarantee freedom of speech and of association, they would better reflect the Constitution, the fact that there is a diversity of opinion in society would be acknowledged, criticism would be given greater latitude, creativity and discussion would be made possible, democracy would have greater participation, freedom would be exercised by the people and, therefore, the very underpinnings of National Independence would be strengthened.

#### AMNESTY:

The fact that there are people in prison in our country for political reasons responds as much to the commission of state crimes by persons who violated the law as to abuse or power, arbitrariness and to violations of law by governmental authorities. Many have been held for exercising Human Rights that are not presently recognized by present law. This measure is not a revision; it is a measure of renewal of an entire society that becomes aware of this need. Reconciliation cannot be imposed by law but, if it is desired by our people, and our people so demand in the Referendum, through approval of an amnesty, this act of forgiveness and justice would open up a new phase for a community that is desirous of overcoming everything that was negative in the past and giving itself an opportunity for a re-birth. If we Cubans cannot now reach an agreement on the past, we must reach an agreement on the future, so that this becomes one of peace, brotherhood and freedom, for the good of our children and our posterity.

#### THE RIGHT OF CUBANS TO ORGANIZE COMPANIES:

Through the approval of this proposal greater participation by the citizenship in the task of satisfying the needs for goods and services of the population is achieved, thereby freeing the capacity of human beings to strive at raising their standard and quality of life, the undoing of the bonds of dependency of people and families and contributing to the national development.

The exercise of this right, within such regulatory parameters as are established by law, aimed at improving the common good, will be a determining factor in overcoming the insecurity and instability in the economic activities of citizens and will, to a great extent, do away with the misuse, misappropriation and theft by government officers and employees, privileges through abuse of power, excessive dependency and speculation and many other causes for the chasm – heretofore incurable – between workers who try to make ends meet with a meager salary and those in positions of power who through speculation or misuse of authority enjoy a much higher standard of living. The opening up of this line of opportunity will serve as a stimulus for leaving behind non-productivity, overly costly neglect, and unemployment of all types and the quagmire of poverty, which is enveloping more and more Cubans because they are left without other options or because they receive a salary that is of little real value. This poverty and the lack of choices is one of the causes that spur the emigration of many Cubans. This is a phenomenon that causes so many disruptions to Cuban families. Thereafter, the national currency – together with worker's salaries – would begin to take on its real value.

The satisfaction of the consumer needs of the people and the control and democratic ownership of the means of production by workers does not mean state ownership, which is only one rather than the only form of social ownership. The long periods of scarcity, inefficiency and precariousness that we have lived through demonstrate that an opening of participation to the citizenship in the economic activities of the Country is necessary and that private enterprise and private ownership is needed. This opening must guarantee the rights of Cubans to form private companies under private as well as cooperative ownership and also under mixed ownership between the Government and private workers. Is this more difficult to achieve as a right for Cubans and among Cubans than it has been to grant foreign enterprises the right not only to participate but to hold – in certain cases – complete ownership of an enterprise, as provided by the law that regulates foreign investment?

The Law could harmonize citizen participation responsibly and creatively in terms of economic activity through social orientation of private enterprise in regard to the consumer, humanization of employment, with guaranteed employment for workers and with social guarantees. In this manner, the Government could count on greater resources to guarantee non-revenue public health, education and other social services, without depending on foreign aid, and would deliver same not in the role of a paternalistic structure but rather as the administrator of public largesse, that nurtures itself from citizen contributions, responsibly exercising their rights and acting in solidarity.

#### A NEW ELECTORAL LAW:

In order to fully understand this proposal, it is necessary to focus on the two key elements of electoral processes:

1. Electoral slates or nomination of candidates, that is, the manner of determining who will be the candidates for office among whom the voters will elect their representatives, whether as delegates or as representatives.
2. Elections. We recommend a review of the present Electoral Law, if it does not live up to its own basic purposes and to analyze this proposal before making a decision.

According to present law, candidates for delegates to the Popular Government Municipal Assemblies are nominated by votes in public assemblies of the electorate in the corresponding districts. The candidates for delegates to the Provincial Assemblies and candidates for representatives to the National Assembly of the Popular Government, however, are nominated by each Municipal Assembly of the Popular Government on the basis of proposals to the corresponding Municipal Candidates Commission, which in turn receive proposals from the Provincial and National Candidates Commission. Therefore, pursuant to present law, voters do not directly take part in the nomination of candidates to either Provincial Assembly Delegate or of the candidates for Representative in the Popular Government National Assembly, moreover, only one candidate is nominated for every

position as Delegate to the Provincial Assemblies and one candidate for every seat as Representative in the Popular Government National Assembly. For example, if one municipality is entitled to five representatives in the Popular Government National Assembly, only five candidates will appear on the electoral ballot and each voter may only vote for one, for some, for none or for all five. Voters cannot choose their five representatives from a larger number of candidates. The same situation occurs if the Municipality is divided into districts; there will only be one candidate for every position for representative.

In elections for Delegates to the Municipal Assemblies voters for every circumscription elect their Delegate by voting for only one candidate, the one that they choose among several who run for delegate from that circumspection. As we have seen, in provincial and national elections there is only one candidate for each position, at the rate of one per circumspection [district], therefore, in every municipality there is an equal number of candidates for Provincial Delegates as there are districts within that municipality for provincial elections and an equal number of candidates for representatives in the Assembly as there are districts as there are in that municipality for national elections.

What is the nature of our petition?

Our petition is that the candidates for Delegates to the Municipal Assembly, the candidates to Delegates to the Provincial Assembly and the candidates for Representatives to the National Assembly be nominated, i.e., that they be proposed and selected directly by the voters of the corresponding district, through the signatures of their supporters, without intermediaries and only in that manner.

That there be several candidates for each of the positions for Delegate in the Provincial Assemblies and for each Representative seat in the National Assembly, in such a manner that the voters of every district have the option of choosing the candidates of their choice among several persons, a possibility which is not offered by the present law. That the electors of any given district elect only their Delegate to the Municipal Assembly, their Delegate to the Provincial Assembly and their Representative to the Popular Government National Assembly, and only one in every case, so that every electee can be responsible to the constituents that elected them.

That with all due respect for order, and for the decision of voters, these should be able to meet among themselves with all prospective candidates, candidates, Delegates and Representatives and with the voters, without overseers, in democratic meetings and they should also be able to use the communications media – which are owned by the government and should, therefore, be at the disposal of the free expression of the citizenship. Through the enactment of this proposal, we would make headway along the road to a Participating Democracy, relying on one of its basic tenets: citizen participation in the selection of their own representatives and in the decision-making process of the different bodies within the Popular Government. (See addendum: Presentation made to the Popular Government National Assembly showing that the Electoral Law, Law 72, violates the Cuban Constitution.

LEGAL GROUNDS:

“I WANT FOR THE PRIMARY LAW OF OUR REPUBLIC TO BE THE BELIEF OF CUBANS IN HUMAN DIGNITY”

This declaration by Cuban citizens in the preamble to the Constitution of the Republic – inherited from our Apostle and recipient of the love bestowed upon him by so many good Cubans of all times – cries out to liberty, to democracy, to justice and to solidarity, and decrees same in an impressive manner. The Law must not betray, but must instead consecrate these values that come from the spirit and will of our people.

These values are proclaimed in Article One of the Constitution.

Article 1. "Cuba is a Socialist State of independent and sovereign workers, organized by all for the good of all, as a unitary and democratic republic, for the enjoyment of political freedom, social justice, individual and collective well-being and human solidarity."

This Article defines the fundamental principles and qualities of this Socialist State of workers and, on the basis of this definition, the remaining articles of the Constitution should be equally coherent, as should the laws, which embody these principles and qualities and put them into effect.

From a legalistic perspective, this proposal is supported by this first principle, by the Constitution taken as a whole and by the utterance of José Martí, as embodied in the preamble.

We pursue the perfecting of Cuban laws so that, in what should be an ascending process, these laws allow the organization of the State to a greater degree, to the fullest extent, which is to say without exceptions, for the good of all, that is, with equal rights and well-being, in a democracy, in the enjoyment of political freedom and social justice in the truest sense. Laws should relate in their spirit and in their words to those expressed in the Constitution.

This is not the case of a philosophical argument or of a problem of interpretation, but rather the demand, through legal means, of rights that we all have as persons and, moreover, that the Constitution clearly describes. Therefore, laws should be amended so that they guarantee those rights. Additionally, since the most legitimate basis for deciding what to do about these laws is the will of the people, democratically expressed in a widespread voting process, we propose this Referendum.

First of all, it is necessary for those citizens, who, after studying this proposal, consider freely and conscientiously that they wish to support it, to sign the petition addressed to the Popular Government National Assembly. The present Constitution guarantees the right of each person to sign this petition. Therefore, no citizen, government officer or institution can obstruct that endeavor or take reprisals against them for doing so. Whoever does so violates both the Constitution and the law and could, therefore, be made to answer to competent authorities, which also have the obligation of protecting citizens and guaranteeing them the right to exercise their constitutional prerogatives.

We respect the right of people to refuse to sign this proposal, indeed, of refusing to read it. That is why it will only be given to people who have the right to vote, after the contents hereof is explained to them and after having consented to receiving these documents. The person who receives them will decide, after having read them, whether to sign them or not. In both cases the documents will be returned to the person who delivered them, for the purpose of making sure that all signed documents are delivered to the office of the Popular Government National Assembly. This proposal does not challenge the laws or the Socialist government; it does not go against the determinations of the Cuban people or against the provisions of the Constitution. It is a petition that proposes changes in the laws and, in so doing, without violating any article thereof, finds support in the rights granted to all of us by that same Constitution. Moreover, that same Constitution contains the possibility of being amended in part and even in its entirety. In this regard, Article 137 provides the means to amend it. This proposal, however, does not seek to amend the Constitution but rather to change the laws enacted thereunder that are aimed at guaranteeing the rights proclaimed by the Constitution. To this end, we recommend that the Constitution of the Republic be studied and taken as a whole.

Furthermore, we hold the position that the following provisions support this proposal:

Article 63. All citizens have the right to present grievances and petitions to government authorities and to receive the appropriate attention or response within a reasonable term, pursuant to law.

Article 88. Competent initiatives of law:

Parr. g), by citizens. In this case, it shall be absolutely necessary that this initiative be exercised by at least 10,000 citizens having the right to vote.

Article 75. The Popular Government National Assembly shall have the power to:

Parr. b), to pass, amend or repeal laws and to submit same to public referendum whenever it deems appropriate to do so, taking into consideration the nature of the legislation in question;

Parr. t), to grant amnesties;

Parr. u), to order the holding of referendums in the cases provided in the Constitution and in such other cases that the Assembly itself deems appropriate;

Article 53. The rights citizens to the freedom of speech and of press are acknowledged in keeping with the objectives of a socialist society. The material conditions for the exercise thereof are given by the fact the press, radio, television, motion pictures and other mass communications media are state or social property and may in no case be subject to private ownership, which insures its use exclusively to the service of the working public and to the interest of society. The law regulates the exercise of these liberties.

(These mass communications media are paid for or supported by all citizens, therefore, the law should guarantee all citizens and all opinions access thereto, instead of being the exclusive prerogative of a party, of the Government or of the opinions or doctrines of a given few, or even of the government) (editor's note).

Article 54. The rights of assembly, expression and association are exercised by manual workers and intellectuals, peasants, women, students and other sectors of the working public, for the purpose of which they have the necessary means.

Mass and social organizations have the necessary means to conduct such activities wherein members enjoy the broadest freedom of speech and opinion.

Article 66. Strict compliance with the Constitution and with the laws is the inexcusable duty of all citizens.

Article 9. The State:

Parr. a) Carries out the will of the working public and guarantees the liberty and full dignity of man, the enjoyment of his rights, the exercise and compliance of his duties and the integral development of his personality.

Article 41. All citizens enjoy equal rights and are subject to the same duties.

Article 42. Discrimination on the basis of race, skin color, sex, national origin, religious beliefs and on any other grounds that is injurious to human dignity, are prohibited by law.

State institutions shall educate everyone, from the earliest ages, in the principle of the equality of human beings.

NOTE: The reader should finish reading Articles 9, 75 and 88, which have not been copied herein in their entirety due to space limitations. For a more complete understanding of the legal bases of this proposal, we also recommend study of the following articles of the Constitution:

Articles 15, 16, 17, 21 and 23.

Articles 10, 41, 42, 43, 55 and 64.

Articles 68, 70, 71 and 84.

We also recommend the reading of the Penal Code, which contains the following articles:

Chapter 5. Crimes against the right to assembly, expression, association, grievance and petition.

Article 292.

1. Whomsoever violates the following provisions of law shall be punished by deprivation of liberty for three months to one year or to a fine or 300 quotas, or both:

Parr. c) Impedes or obstructs a person from filing grievances or petitions to public authorities.

2. If the violation is committed by a public officer accompanied by abuse of his/her position, the deprivation of liberty shall be increased to six months to two years or a fine of 500 quotas.

(The petition denominated Varela Project was drafted by citizen Oswaldo José Payá Sardiñas. Address: Peñón 221, between Monasterio and the City Hall of Cerro C, Havana. The Varela Project does not belong to any particular organization; it is a demand by all Cuban citizens who wish to participate therein. The overwhelming majority of non-governmental organizations within Cuba back the Varela Project and call upon all citizens to sign this petition calling for a Referendum)

Referendum: a direct vote by citizens for the ratification or rejection of one or more laws.

