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## Panama to Amend Constitution

*by LADB Staff*

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Panama's president-elect has already set about establishing an ambitious legislative agenda, even though he does not take office until September. Martin Torrijos has asked legislators in his Partido Revolucionario Democrático (PRD) to introduce legislation to enable changes to the Constitution that would affect all three branches of national government the executive, judicial, and legislative.

He later told the media he wants to modernize the state with amendments to the 1972 Constitution. "There is a degree of maturity and the minimum degree of consensus [necessary] for us to initiate this reform process right now, which addresses the concerns and initiatives the people desire most." Torrijos said he thought the short time left in the legislative session, just until the end of June, was time enough to get the job done. "We have the time needed, we have the rest of the month for this initiative that will give the president [Mireya Moscoso] the possibility to contribute to it and, if necessary, to call extraordinary sessions," he enthused.

On Sept. 1, a new Asamblea Legislativa (AL) whose deputies will be those elected in the May 2 vote that elected Torrijos begins (see NotiCen, 2004-05-06). The president-elect invited Moscoso to help enact an initiative "that brings together all the main concerns of an important percentage of Panamanian society." After a meeting of president and president-elect on June 21, Torrijos announced Moscoso's support and her commitment to get the project going regardless of the legislative term. "President Moscoso agreed to call extraordinary sessions after July 5," said Torrijos, in the event that all business pertaining to the reforms was not concluded by the end of June. The plan envisioned three legislative debates in two different legislatures, the present one and the newly elected one.

The president-elect was not just being courteous in including Moscoso and the present legislature. The Constitution stipulates that constitutional changes must be passed by an absolute majority in two successive legislatures, and then ratified by referendum. Misgivings Torrijos also let it be known that his constitutional-reform package, while not written in stone, was the product of two years of consultative work within the PRD and other groups, including jurists. The comment was taken to signal flexibility on issues about which concerns or disagreements have been expressed.

Moscoso herself had misgivings regarding some of the points. One concern was on the size of the Asamblea Legislativa. The Torrijos plan limits membership to 67. At present, there are 78 legislators. Another issue was that of "prior control" of the Tribunal Electoral by the Controlaria. That is a provision by which the Controlaria is able to control the actions of the TE through its power of the purse. The slate of reforms also lists limiting "preventive detention" to 24 hours, reducing from two to one the number of alternates per legislator, eliminating one of two vice presidents of the republic, and creating an Accounting Court (Tribunal de Cuentas).

Another change would give constitutional rank to the Defensoria del Pueblo. Also, under the reforms, no one who had been convicted of certain serious crimes within the previous five years could be elected legislator, judge, or comptroller. Nor, under the reforms, could a president choose as a candidate for magistrate any Cabinet minister or deputy. "I'm not interested in having any magistrate in the Corte Suprema at the service of my personal interests because I don't have them nor will I be having them," Torrijos explained. The Corte Suprema becomes, under the reforms, the body that decides questions of immunity from prosecution for legislators.

Under the present Constitution, the legislators themselves make the call. As the June 30 deadline for the demise of the current five-year Asamblea term drew nearer, additional voices began to be heard in protest of the reforms. On June 28, the Junta Directiva of the Asamblea received a report enumerating the concerns of more than 80 Panamanian organizations representing a wide spectrum of viewpoints. Anticipating popular discord and objections, Torrijos had proposed a Constituent Assembly, but organizations objected that to convene it required the agreement of 25% of the electorate.

Besides criticism of what was in the reform package, at least 14 union, industrial, and university groups issued a joint complaint for what was not in it. "Some reforms are insufficient if we compare them with the demands of modernization of the Panamanian state that have been proposed by several national sectors," read the complaint.

A thumbs down for the reforms came from organized labor as the secretary general of the Confederacion Nacional de Unidad Sindical Independiente (CONUSI) Gabriel Castillo called them "patches" demonstrating little more than political opportunism. He characterized the one-day review in the AL as entirely inadequate, because the country needs a "radical reform" that establishes an altogether new Constitution. Discontent rose above the level of documents and reports as organizations announced mobilizations against the reforms.

The Asociacion Nacional por la Vida (Anavi) accused Torrijos of "taking advantage of the extreme weakness of the outgoing government." Anavi is an umbrella for 35 popular-sector organizations. "The reforms have been agreed to secretly between the president-elect and the outgoing president. Only two people will decide the future destiny of three million," went the Anavi argument.

### *An inside game*

From other quarters, accusations of cronyism have been leveled. According to reports, the reforms were the result of work done in the offices of a PRD-connected law firm, Morgan y Morgan, under the direction of a close Torrijos collaborator, Carlos Ernesto Gonzalez Ramirez. Insiders who had access to the work done at the law firm have pointed to language in the texts that they said was designed to tailor certain public offices to particular favored individuals. The bill introduced in the AL listed 39 separate reforms and set off intense internal lobbying and extraordinary sessions.

Legislator Jose Luis Fabrega said the tone of the negotiations revealed that even the political class did not "understand the reach of those reforms," but, in his judgment, "they go far beyond regulating control of the TE or determining whether there should be more or fewer legislators."

Fabrega noted "a strange rush to approve these reforms as written." But he wants to see the bill go to debate anyway, "because it is the opportunity to introduce the Constituent Assembly as the method to make more profound constitutional changes."

Legislator Teresita de Arias disagreed with Fabrega's premise, but agreed on the legislative process. "The bill has been amply considered at the national level. The discrepancies are not fundamental. There is consensus that they are not cosmetic reforms. Whoever has something to change can do so in the debates," she said. AL vice president Hector Aparicio had other bones to pick. He said even though the bill "has things totally acceptable to the citizenry," there was a fatal flaw in that in the next Asamblea, the PRD will dominate, leaving any opposition defenseless. While deputies argue ways and means, others outside the process continue to challenge its constitutionality.

Legal scholar Miguel Antonio Bernal said that if Moscoso called an extraordinary session on July 5, a lawsuit would follow. Bernal said that Article 308 of the Constitution establishes that there are to be two Asambleas in different periods, and two debates in one Asamblea with the referendum, but the extraordinary session does not constitute a separate period; therefore, the Constitution would be violated by this expedient. Furthermore, Article 143 establishes the convocation of extraordinary sessions as exclusive to the executive branch, but "they cannot initiate a reform in a normal period and terminate it in an extraordinary [period] because there is a procedural taint," said the scholar.

Perhaps with an eye toward avoiding the legal challenge, Moscoso waited until the close of the regular session of the AL before calling for an extraordinary session from July 5 to July 20 at which all the requisite debates are to take place, AL president Jacobo Salas announced on July 1. He said the 15 days would be devoted exclusively to meeting the requirements for reforming the Constitution. If that session is insufficient, another will be called. The regular session ended leaving no evidence that the issue had been brought up. That would appear to meet Bernal's interpretation of Article 143, but it is not clear that it meets the standard of 308.

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