

Constitutional reform: impact on oil companies in venezuela

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In date, October 14 of 2. 007, the Mix Commission of the National Assembly (AN) share the report of the 58 Articles that are going to be discussed in order to reform the present Constitution.

During this week, on the third session of parliamentary debates, delegates of the National Assembly are supposed to debate in detail the amendments. In that order, the approved articles are going to be voted in a planned referendum set for December 2 of 2. 007.

Of the 58 articles in the proposal, the most important according to the interest of the business are:

Article 21: Of the equal before the law

The proposal includes that no one can be discriminated based on his sexual orientation.

Article 64: Of the age to vote

The proposal reduced the minimum age required to vote, from 18 to 16 years old. It also allows foreign citizens on or after 16 years old and with more than 10 years in the Country to vote in Municipal and State elections.

Article 70: Of popular participation in public matters

The proposal includes certain modifications of Article 70 of the Constitution, which gathers the different means of popular participation in public matters.

The reform of the article claims the incorporation of new forms of civil participation that are only enunciated, therefore pending an accurate

interpretation of the new concepts by the Legislator. However, as the current article states, only decisions issued by Citizen Assemblies are to be considered binding.

The following figures are now foreseen: Councils of Popular Power (such as communal councils, labor councils, students councils and rural councils); companies of social “ direct” and “ indirect” production; communal financial organizations; voluntary workers; communal companies; free-lance producers associated, etc.

Article 87: Of the right and duty to work

The proposed Article 87 of the Carta Magna stipulates the right and duty to work. However, it now declares that people only can exercise work while being within the “ age of working”. Additionally, there is a clear intention to extend the protection of the State to the independent workers and non-subordinates by means of a Fund of Social Stability.

Also, the proposal declares that it will no longer be the employer but the State, who “ will guarantee that all labor centers abide to the safety conditions, hygiene, environment and social relations according to human dignity (...)”.

Article 90: Of the hours of work

The proposal reduces the diurnal day of work, from 8 to 6 hours and from 44 to 36 weekly hours of work. Night shifts are to be reduced from 7 to 6 hours per day and from 35 to 34 weekly hours of labor. The same article in the proposed reform states that the employer “ will have to arrange and

organize the mechanisms for the best utilization of the free time in benefit of the education, integral training, human, physical, spiritual, moral, cultural and technical development of the workers”.

Article 98: Of the Intellectual Property

The proposal eliminates the protection of the State on Intellectual Property. This means, that everyone can use author’s rights on any creation.

Article 115: Of the right of Property

While the current Constitution only refers, generically, to the “ right of property”, the new proposal recognizes the following types of property:

1. Public property: the State is the sole owner.
2. Social property: it is stipulated that this kind of property is owned by the people. However, it is subdivided in 2 categories:
 - The social indirect property, which is exercised by the State in representation of the community, and
 - The social direct property, which consists of the State assigning the exercise of property to an organized community.
3. Collective property: owned by cooperative associations.
4. Mixed property: which concerns the State, the social sector, the collective sector and the private sector.
5. Private property: concerns natural or juridical persons and is recognized on goods of use and consumption, and means of production legitimately acquired.

Finally, when it comes to expropriation, the article declares the possibility of the State occupying goods before a firm judgment and the respective just indemnification.

Article 302: Of the exploitation of Hydrocarbons

In the reform proposed of article 302 of the current Constitution, the State saves itself the activity of exploitation of the liquid, solid and gaseous hydrocarbons, as well as the developments, services and goods of public interest and of strategic character. Therefore, any activities related to hydrocarbon exploitation will have to be operated by mixed companies, in which the State stands as the principal shareholder.

In addition, it proposes to add a new paragraph, according to which “ the State will give preference to the use of national technology for the processing of the liquid, gaseous and solid hydrocarbons”.

Article 303: Of the non-privatization of companies with reserved activities

The proposal does not allow the partial or total Privatization of PDVSA or any company with reserve activities.

Article 307: Of large estates and productive lands

Although the proposal for article 307 of the Constitution foresees, primarily, issues regarding large estates and why they ought to be abolished, it includes a statement in which it establishes that “ the Law will create taxes on productive lands that are not used for agricultural or cattle production”. Additionally, it stipulates, “(...) to the purposes of guaranteeing the agricultural production, the State will protect and promote social property”.

Also, the proposal declares that it must be determined by means of Law the way in which large estates will be transferred to the property of the State, public entities, cooperative companies, communities or social organizations capable of administering lands. Thus, it does not contemplate the possibility of transferring large estates to the private sector.

Ultimately, it is contemplated that there will be confiscation of those properties in which owners execute irreparable acts of environmental destruction within their boundaries.

Article 318: Of the Central Bank of Venezuela

Although the current Constitution specifically declares in article 318 that the Central Bank of Venezuela is an institution with absolute autonomy, the proposal proclaims that the President of the Republic will also be entitled to address issues regarding monetary competence. Therefore, the Central Bank of Venezuela would be deprived of the autonomy to formulate and implement policies within its sphere of competence as the National Power gains control of the monetary system.

Additionally, the proposal includes that international reserves will be managed by the Central Bank of Venezuela but under the administration and direction of the President of the Republic.

Furthermore, the reform sustains that “ the monetary national system must tend to the achievement of the essential purposes of the socialist State and the well-being of the people over any other consideration”.

Article 337: Of the “ State of Exceptions”

The proposal eliminates the right to Judicial Protection and information during a "state of exception"..

Article 338: Of the "State of Exceptions"

In its original form, Article 338 states that a "state of exception" could be declared for 30 days and extended for a further 30. In the proposal, this "state of exception" could be extended as long as the president decided.