



**GRUPO DE DOMINICANOS PROFESIONALES EN WASHINGTON, DC
GDP-WASH**

**REFORMING THE DOMINICAN CONSTITUTION: LESSONS FROM OTHER LATIN
AMERICAN COUNTRIES AND FROM EARLIER REFORMS**

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SUMMARY REPORT

On September 18, 2006, the Group of Dominican Professionals in Washington, DC (“GDP-WASH” and the “Group”) organized a panel presentation on the Constitutional reform in the Dominican Republic, “Reforming the Dominican Constitution: Lessons from other Latin American Countries and from Earlier Reforms.” The event was held at the Enrique V. Iglesias Conference Center of the Inter-American Development Bank, on the occasion of Dominican Week in the United States 2006.

The panelists were Professor Jonathan Hartlyn, of the Department of Political Science at the University of North Carolina at Chapel Hill, North Carolina, U.S.A.; Mr. Daniel Erikson, Director of Caribbean Programs at the Inter-American Dialogue in Washington, DC, U.S.A.; and Dr. Cristina Aguiar, Director of the Diplomatic and Consular School of the State Secretariat of Foreign Relations in the Dominican Republic. Ambassador Roberto Alvarez, Permanent Representative of the Dominican Republic to the Organization of American States, was the panel moderator. Dr. Roberto Saladin, Alternate Executive Director for the Dominican Republic at the Inter-American Development Bank, made welcoming remarks. Lorena Perez, GDP-WASH’s President, also welcomed the audience to the panel presentation organized by the Group.

The panelists discussed three major aspects about constitutional reform: the current trend in Latin America, whether there was a real need for a constitutional reform in the Dominican Republic, and the process entailed in reforming the Dominican Constitution – including positive criticism regarding the existing mechanism. A transcript of the presentations of each of the panelists is attached hereto. What follows is a summary of the presentations made by the panelists.

1. Constitutional reform: the trend in Latin America

One of the panelists remarked that one of the favorite pastimes of Latin American politicians is to reform their Constitutions while they are in office. Since independence, there have been more than 250 constitutions throughout Latin America. The Colombian Constitution is the most stable in Latin America, with 13 changes since its independence in 1810. The Dominican Republic is one of the countries with the most constitutional reforms in Latin America, with 30 reforms. The panelists stated that the review of different reforms and changes in Latin America highlight diverse motivations as well as diverse types of reform. One such type of reform, which the Dominican Republic is familiar with, is narrow political calculation, typically by the incumbent politician. This type of reform, where the incumbent has sought a further election term, has occurred in Peru, in Brazil, in Venezuela and in Colombia, as well as in the Dominican Republic in 2002. In Argentina in 1994, then-President Menem sought his immediate reelection and opted to negotiate with the radicals; there was a *núcleo de coincidencias básicas* which guaranteed



Menem his immediate reelection and radicals thought guaranteed them a number of measures that would be to their benefit, most of which have largely been sidelined.

One political scientist has estimated that there have been over 60 constitutional reforms and electoral reforms in Argentina at the national level and at the provincial level, oriented toward trying to provide the incumbent with additional electoral advantage; so that is one kind that is, unfortunately, common.

Another type of reform is that motivated by democratic disenchantment, which often triggers off significant overhauls to the Constitutional text. Some examples of this type of reform are the modification to the Colombian Constitution in 1991, the reform to the Venezuelan Constitution under the administration of President Chavez, and the reform to the Bolivian Constitution under President Evo Morales. Typically, these reforms are carried out through Constituent Assemblies, which are elected, and are widely considered the most participatory process, democratically more inclusionary; clearly, on balance, participatory processes that are to be preferred. Although much depends on the nature of the election rules, the political make-up of the Assembly and the short-term dynamics.

The constitutional reform in Colombia incorporated new text with new types of rights such as greater judicial autonomy, decentralization, popular election of governors, and *amparo* rights. The Venezuelan Constitutional reform also instituted a host of new rights under President Chavez, which did not exist in the previous Constitution.

Sometimes, however, a constitutional reform process may appear to be primarily about democratic inclusion, yet strategic short-term calculation is clearly a significant part of the story. One of the speakers argued that this is the case with President Chavez in Venezuela, where constitutional reform ends up facilitating power concentration and the elimination of effective accountability.

Other times, as the case in Colombia in 1991, Constituent Assemblies or other reform processes may involve extensive bargaining. Extensive bargaining does have its virtues, but as one of the speakers pointed out, coherence is rarely one of those virtues.

Another perspective on why Latin American countries historically like to change their constitutions was given by one of the panelists: he explained that historically, there are four main reasons for changing constitutions in Latin America, namely, power, money, politics and the pursuit of good governance. The first reason is the same as the narrow political calculation explained above, where sometimes presidents want to be re-elected. Regarding money, many constitutions lay out certain controls over the use of natural resources, or over questions of taxation, or over budgetary processes within the government; issues over which many leaders wish to have greater control. One constitutional reform that has been endlessly debated in a neighboring country is that of Mexico, where the constitution prohibits foreign investment in the petroleum sector, and there have been some steps taken to change that. Regarding politics, sometimes there are constitutional reforms that are put up simply to bolster the fortunes of the ruling party, whether or not they are actually enacted. And lastly, good governance, enhancing quality of democracy: this should clearly be the goal and often what you have is a number of these different factors that need to be taken into account. If you do not get the politics right, you will never arrive at a constitution that gets to good governance. Thus, there are some compromises that have to be made along the way.



One of the panelists indicated that though reforming constitutions may be a difficult – though not impossible – task, making reformed constitutions stay put and remain over a reasonable period of time in Latin America, seems to be an even more difficult task. The panelists discussed whether constitutional changes were needed at this point, or whether changes in existing laws of creation of new ones, or changes in attitudes and behaviors, would suffice.

2. Real need for a Constitutional reform at this time in the Dominican Republic

Regarding the issue of whether or not there is a real need at this time for a constitutional reform in the Dominican Republic, the panelists agreed that the Dominican Republic is better off retaining its present Constitution than poorly reforming it. One of the panelists opined that the Dominican Republic today is not in a crisis due to issues of Constitutional design. Another panelist indicated that many of the main issues facing the Dominican Republic, like many other countries in Latin America, are not constitutional problems per se and as such, cannot be resolved by reforming the Constitution. Issues of the rule of law, the ability of the judicial system to work adequately, having a police and justice system that works, are all extremely crucial issues that will not be fixed by reforming the Constitution. He stated that the same goes for issues of economic prosperity as whole, including better health care, educational and social goods in the Dominican Republic; all issues that will not materialize immediately just by being included in the Dominican Constitution.

All three panelists agreed, however, that President Fernandez's ability to change the constitution has been enhanced by the fact that the Dominican Liberation Party won a majority in Congress. However, the panelists indicated that one always has to be realistic about what a Constitution can actually achieve; as one of them said, Constitutions are really intended to structure and constrain government, and it really should not be a to-do list for the governments or something that can guarantee things that the State is simply not able to offer.

Among the aspects of the Constitution that would need to be reformed in the panelists' view, the discussion focused on two aspects: greater consolidation of the local democratic institutions; and stronger participation from the civil society and other sectors. Other aspects that were discussed were President Fernandez's intention to engage the Dominican *diáspora* in a more robust way in the Dominican Republic; and better training for congress members so they are more effective regarding their functions.

a. Strengthening of the local democratic institutions. One of the panelists indicated that any political reform that imposes as a requirement state oversight and enforcement should require first that that state institution be effective, professional and autonomous. He stated that to institute a whole series of measures that are to be carried out by state institutions which are not that way, you re opening yourself up to a number of significant risks.

The panelist cited as an example of existing issues to be addressed, the current Dominican electoral administration with regard to the way in which the *Junta Central Electoral* ("JCE") is selected. He explained that the current selection procedure is the narrowest mechanism that exists anywhere in Latin America. He recommended improving this mechanism. He also criticized the regulatory, administrative and judicial functions combined in the JCE, resulting in a JCE that is the judge of its own actions – the unappealable arbiter of decisions with regard to



electoral matters; in this regard, he recommended separating the judicial function from the administrative and regulatory functions.

b. Stronger civil society participation. All three panelists agreed that the Constitutional reform should include civil society participation. They even went further to recommend the inclusion of the civil society and other sectors regarding this reform. In this regard, one panelist indicated that in general often times, those who object the loudest are those who were not consulted. He said that it often makes sense to have a more widely consultative process, because often when people complain about the results, it is simply because they were not heard; and after all, the Constitution is a document that will govern the entire country and not just the politicians or the economic elite, and to hear what people have to say about how they are governed, is a good exercise in and of itself.

In general, stated another panelist, changes to formal rules and procedures can unquestionably be beneficial and can institute dramatic improvements when they are combined with, *inter alia*, encouragement and monitoring from actors in the civil society. During the questions from the audience, this panelist indicated that one needs to be mindful that such a strong independent civil society that will enrich democracy may be hard to find in a country with high levels of inequality and a lot of poverty. He asked whether instead a stronger democracy would enable a more independent strong civil society, and answered that in his opinion, there is a need to create a “virtuous circle” where improved institutions, improved parties, a stronger civil society and a more independent media can all begin to try to interact with each other and move the country away from certain kinds of “vicious cycles” that it is in.

c. Other issues. At the end of their presentations, the panelists answered various questions made by the audience. Two of those questions revolved around the impact of globalization in the constitutional reform process, and the lack of training of some members of the Dominican Congress. On the impact of globalization on the reform process, the panelists approached the question in three different ways. One panelist indicated that the constitutional reforms in this regard should allow for more active citizen participation and citizens’ access to information such as information regarding environmental protection, as set forth in the *cláusulas democráticas* contained in many legal instruments that seek to guarantee respect for the constitutional order by the recipients of loans and other facilities given by international financial institutions. Another panelist approached the question from the angle of President Fernandez’s intention to engage the Dominican *diáspora* in a more robust way in the Dominican Republic. He indicated that in many Latin American countries, and in particular in the Caribbean countries, this initiative presents a challenge: many of their citizens with great skills and talents live outside the region, and while somehow engaging the talents of the *diáspora* without creating a type of moral hazard where you have people living outside the country who can make political decisions for people who are still living in the country. That is something that needs to be looked at very closely. The third panelist approached the issue from the perspective of Dominican citizenship, and indicated that one of the most difficult challenges the Dominican Republic will face will be to define who is a Dominican citizen – a difficult issue because it involves delicate relations with its neighbor Haiti. He continued saying that this speaks to the broader issue of globalization, international human rights, international treaties and how to balance the complicated internal politics between the Dominican relationship with Haiti and the Dominican Republic’s obligations under international treaties.



On the lack of training of some members of the Dominican Congress, one of the panelists said that this is a human capital development issue, and not a reform issue. He indicated that much can be done not just in the Dominican Republic, but also in the rest of the hemisphere, in terms of giving adequate training and staffing to new Congress members so they may be as effective as possible in terms of representing their constituents.

3. Process entailed in reforming the Dominican Constitution

The panelists spoke about the process involved in the reform of the Dominican Constitution. One speaker indicated that the general consultations currently undergoing in the Dominican Republic seek an answer on how to achieve the Constitutional reform – either using the current mechanisms provided for in the 1966 Constitution, which gives Congress the initiative and entire control over the process, or a Constituent Assembly, which President Fernandez has openly said he would prefer. The speaker said that consensus has been building in that direction and that the best way to adopt the draft proposal prepared by the Commission on Constitutional Reform appointed by President Fernandez in July of 2006 may be through a Constituent Assembly – although at this time there is no definite or fixed position on this matter.

Another speaker observed that if the Dominican Republic was going to follow the route of a Constituent Assembly to reform the Constitution, the relationship between Congress and the Constituent Assembly had to be made very clear, as well as the powers that the Constituent Assembly may assume. He explained that the two Latin American countries where Congresses were replaced were Venezuela and Colombia, and in those cases, the Constituent Assemblies assumed *poder originario* – something that the Bolivian constituent assembly, Evo Morales has recently informed, is now also going to do. He continued to indicate that in the case of Argentina in 1994, the relationship was clear: the Constituent Assembly was elected to reform certain articles of the Constitution, and there was no question that it could assume *poderes originarios* and tell Congress “we are the more direct voice of the people than you are, we can shut you down”. However, he continued, this is what happened in Colombia and in Venezuela: the Constituent Assemblies shut the Congresses down – and that seems to be the goal in Bolivia.

A member of the audience reminded the panelists that the Dominican Constitution already establishes, in articles 116 through 120, the process for reforming it, and that those articles do not mention the creation of a Constitutional Assembly. One of the panelists said that the constitutional reform should enable the actors engaged in these reforms to set aside their immediate short-term interests, operate as if there were behind a veil of ignorance and did not know who was going to be in power subsequently or not and therefore allow them to think in the long term for the good of the country and think of a reform that could last and not one that would be reformed a few years later.

Conclusion

The panelists agreed in that changes to the formal rules and procedures may unquestionably be beneficial and may also institute dramatic improvements in the Dominican Republic. They indicated that the benefits and improvements resulting from those changes will be even stronger if political leadership, encouragement and monitoring from actors in civil society, and changes in the behaviors and attitudes of the constituents so they will truly abide by the Constitution and the existing laws, are involved in the process.