With #OTRO18, Consenso Constitucional has been practically landing in the constitutional reform project in two ways: getting the horizontal participation of the majority of the civil society organizations and opening up the political game through the citizenry’s concrete political participation via proposals for reforms to electoral law and the Law of Association, to seek the legal participation of political parties. For our strategic proposal’s purposes, we must briefly analyze some the current Constitution’s limiting articles.

What does Article 3 of the Constitution say?
“In the Republic of Cuba sovereignty lies in the people, from who originates all the power of the State. That power is exercised directly or through the assemblies of People’s Power and other state bodies, which derive their authority from these assemblies, in the form and according to the norms established in the Constitution and by law. When no other recourse is possible, all citizens have the right to struggle through all means, including armed struggle, against anyone who tries to overthrow the political, social and economic order established in this Constitution. Socialism, as well as the revolutionary political and social system established by this Constitution, has been forged during years of heroic resistance to the aggression of every kind and economic war waged by the
governments of the most powerful imperialist state that has ever existed; it has demonstrated its ability to transform the nation and create an entirely new and just society, and is irrevocable: Cuba will never revert to capitalism.” This Article is part of the political regime’s keystones and is assumed to affect the remaining structure of the State and society, as well as the relationship between both of them with each other, and of both of them with the citizenry. Thus, we are talking about the seminal character they have and how specific constitutional concepts produce the Law and political acts. As far as the contractual nature of the Constitution and political legitimacy are concerned, this is fundamental because it regulates the basic issue of sovereignty, defines its essential source, and constructs a sort of pyramid that marks the possible and legitimate relationship between the citizenry and the State, via society. It also affects the rest of the constitutional articles and legality of acts both by the State and the citizenry. This Article should be concisely, briefly and clearly delimited to express the essential source of legitimacy and law, which might seem clear enough in its first paragraph, but the remaining paragraphs are in excess. They refer to elements that have no natural tie to the principal source of legitimacy and sovereignty; strictly, they limit any clear exercise of them so long as they fix a type of order that can be established by the sovereign that said Article theoretically and constitutionally acknowledges. It introduces mechanisms, both in principle and naturally, of defensive violence by which political and civil resolutions of conflicts are achieved via mechanisms that the sovereign may legitimately can and should establish. What is yet more serious as far as constitutional terms and techniques are concerned, the Article surreptitiously introduces a different and more superior source of legitimacy and source of law that is assumed to be above the citizenry—its appeal to a pre-established, revolutionary order that chronologically precedes the Constitution itself, takes sovereignty away from the State or establishes its sovereignty around its very existence, and not outside of it, as would be the case in a modern state with constitutional order. Thus, the citizenry’s sovereignty is destroyed and ends up being an aberration of all constitutional legitimacy: the sovereign is not a sovereign who changes the order or regime that he, as sovereign, gave himself. The Articles contains a double contradiction: in objecto and in subjecto. It is in objecto because the sovereign denies himself in his possible acts and in subjecto because the sovereign divides into an ephemeral entity and a superior who has rights that in essence are denied to him. In the end, the sovereign ceases existing in the very Article that recognizes his supreme legitimacy. This analysis requires and can be further developed, but it is important to point this out here, to show the connection between #OTRO18’s basic proposal, and to reveal how important it is for Consenso Constitucional to emphasize the need for consistent reforms to our legal and con-
Institutional order. It is very necessary for our goals: to strengthen the Culture of Law, the Law’s supremacy, and the relationship between political acts and the legal framework. In modern terms, it is important to go from the law to the deeds, that way avoiding going the reverse, from the deeds to the law, if at all possible.

**Another key Article**

#OTRO18 must also deal with Article 5: “The Communist Party of Cuba, a follower of Martí’s ideas and of Marxism-Leninism, and the organized vanguard of the Cuban nation, is the highest leading force of society and of the state, which organizes and guides the common effort toward the goals of the construction of socialism and the progress towards a communist society.” This Article is both structural and structuring. It is fundamental because it touches upon the topic of the essential pluralism of a democratic, fair, free and competitive electoral system and the law, one that makes possible the rationality of a citizen deliberation. It is the concrete proof and manifested will of a State different and above its society. It is doubly racist: it establishes legitimated superiority from within culture regarding diverse visions that make up the Cuban nationality and a hegemony anchored that situates a social minority far above the rest of society. This moral indecency should be dealt with in order to guarantee an electoral and constitutional reform consistent with the rights of the majority, fundamental freedoms, and the diversity expressed in the growing demands of Cuba’s citizenry. Their reformation is key to modernizing and democratizing the State. Citizens’ access to power cannot be mediated in an exclusive manner or ideologically represented from within the State. A government may be ideological, but not a State. Thus, it is important to ideologically unblock the Constitution in order to make it fully consider citizens. Nevertheless, in terms of minimal politics, one can carry out a broad reading of Article 5, to advance pluralism from the politically restrictive order the Constitution establishes. Using the constitutional and legal principle that whatever is not expressly prohibited, is permitted, it is possible to open up room for the game of political plurality in Cuba. Article 5 expressly states that the Communist Party is the “superior leading force,” not the only force. The historical practice of having one and only one party was never and is not constitutionally legitimated. Only the actual condition of party-State in the Communist satellite countries established the “right” of the existence of only the Communist Party, without and juridical or legal underpinnings, in nations that governed and govern themselves by a proletarian dictatorship. Since usucaption later grants a right to land occupied by custom, this “legalized” practice was extended to States. Yet, unlike usucaption, it never became a notarial act that certified and justified the right of the one and only party based on the political fact of their being only one party. Quite apart from the need to publically deal with Article 5 to reform the electoral system, there is also the
option of opening up to political plurality, with a Law of Association, which should also be reformed. One reform of Article 5 involves the elimination or reformulation of Article 62, which posits: “None of the freedoms which are recognized for citizens can be exercised contrary to what is established in the Constitution and by law, or contrary to the existence and objectives of the socialist state, or contrary to the decision of the Cuban people to build socialism and communism. Violations of this principle can be punished by law.”

**Constitutional reform**

According to Article 137 of the Constitution, [the Constitution] may only be reformed by the National Assembly of the People’s Power, via an agreement adopted through a nominal vote by a majority of no less than two thirds of the total number of members. This is unless it involves the political, social and economic system, whose irrevocable nature is established in Article 3 of Chapter 1, and the prohibition of negotiating under aggression, threat, or coercion of a foreign power, as is defined in Article 11. If the reform involves the membership and powers of the Assembly or its State Council, or rights or responsibilities consecrated in the Constitution, the reform additionally requires ratification via a favorable vote of the majority of those citizens with a right to vote in a referendum called by the Assembly itself.” Reforming Article 137 is crucial and requires a technical, constitutional, analysis from the perspective of jurisprudence, sources of sovereignty, and comparative law, to be able to make progress in a constitutional order that will return sovereignty to its legitimate sources, in order to recover or reinvent the State’s modern and democratic nature. One of the primary arguments is that this Article totally denies the basis and form in which sovereignty can be exercised according to Article 3. It states that sovereignty rests with the people who, nonetheless, are not constitutionally acknowledged for reforming the very same Constitution of which they are sovereign and master. The negation is even more obvious when one considers that Article 3 clearly establishes: “In the Republic of Cuba sovereignty lies in the people, from whom originates all the power of the State. That power is exercised directly or through the assemblies of People's Power....” The highlighted area has not garnered much attention in either the Regime’s propaganda nor in critical evaluations of the Cuban Constitution. I do not know if other constitutions are limiting on the issue of how those who official have power can exercise it, and if they recognize the possibility of the direct exercise of power by those who officially have power. This analysis and enlightenment concerning this contradiction would have fundamental consequences for the entire process of reconstructing the State, and legal and constitutional reforms, itself. How is it possible that Cuban citizens can exercise their power directly and not have acknowledged power or mechanisms for reforming the Constitution, which is the expression of that sovereign power?*
second argument involves us seeing the Constitution as a tree with logical branches, its articulations corresponding to an order that generates power and rights. Thus, Article 137 closes and limits a State power that is not defined in any of the Constitution’s Articles that precede Article 3 as defining the source of popular legitimacy and sovereignty. None of the elements and principles with which the Cuban State constitutionally protects itself precedes sovereign in the Constitution’s formulation. They succeed it but are not logically deduced from it, only to limit and deny it. Thus, Article 137 is unconstitutional both in and by principle, because it distances itself from the very exercise of sovereignty, not only the kind that can be exercised directly, but also from that which can be exercised through representation. Those elected by the people to represent them in the National Assembly cannot represent their ideas regarding change to a legal system that is supposed to be born by popular mandate. These musings on the protective articles are basic for a constitutional reform, whether it is posited globally or a more specific manner. Nevertheless, seen through the lens of Cuban political dynamics, what emerges is a general dilemma for all the political actors who are marking their practices and legitimating the historic road or path for evolution or change from the acts to the law, from a political reality to the legal and constitutional framework. In historical and political terms, this evolution reflects three essential issues having to do with the Cuban State’s legal system.

First: in Cuba, political will and actions have never been constructed fundamentally on the base offered by bureaucratic institutions and even the Constitution. The State’s practices were marked by the government’s needs and integrated into a self-styled, unquestionable Revolution as the source of law. Without institutionalism, there was no way to measure the effectiveness of public policies or delimiting responsibilities, legality, and action areas. In this way, the State simply acted and complicated the dynamics in all spheres of social life. In the destructive contrast between the Regime’s “spontaneous” action and reality, the political practice employed represents deeds, not laws. Thus, politics inevitably leads to urgency and not to orderly acts contrasted with and through the law. This is how actions were in the era of stagnation, and this is how actions are beginning to go in the era of opening: the practice as an element of action, and not of law.

Second: the divorce of the Cuban Constitution from social reality. None of the Constitution’s Articles can be respected if Cuba needed and need to have a social, economic, and cultural life. This is an essential political fact that must be understood if one is to comprehend the dynamics of the Revolution and power over the last 56 years, which is to tolerate marginal criminality as an instrument of survival for all actors in Cuban society. The cost has been the sacrifice of institutionalism, but this has also fed the
need to link institutions and the Constitution to the actual country.

Third and last: the social legitimacy of all actors, both State and non-State, would allow a return to a debate regarding universal values and the basic work of social legitimation necessary to promote constitutional reform at the margins of the Constitution, just as the government does. The question here is: why are the unconstitutional reforms the government enacts legitimate, and those that society proposed by civil society not?

Minimum and maximum agendas
This last issue is fundamental in the strategy and tactics we are deploying through Consenso Constitucional and #OTRO18: to socially and politically move within the institutional gaps created by the current Constitution and laws, in order to strengthen the scenarios in the direction of making large, impactful, constitutional reforms. For this purpose, we work employing two agendas that precede constitutional reform: the reformation of the electoral system. They are the Minimum Agenda and the Maximum Agenda. The first proposes a series of minimal reforms to the electoral system also using associational spaces allowed by current law, this for the purpose of opening up and legitimating the game of politics for society. It is essential to offer up these minimal reforms in a series, for consideration by electoral system and political theory experts and specialists, with a view to situating them in the broader perspective of constitutional reform. A second step is to turn them in a legal political agenda for citizen deliberation within civil society and, later, Constitutional Initiative Tables (MICs), with citizens, throughout the entire country. For this phase, we hope to have and competently handle deliberative democracy’s most rigorous techniques and tools. That way, the process can be sociologically measured by not only political but also scientific criteria. The deliberative survey would thus have an essential role in generalizing the process at a more public level. We will begin with the Minimum Agenda, in February, before the March meeting in Pittsburgh, by creating a civil society forum to hold a structured conversation with social and political actors and multipliers, to dialog about this minimum agenda. Later, we will reinstate the MICs with a double agenda: deliberative democracy exercises and the practical use of its tools, in order to deliberate the Minimum Agenda with the citizenry. This enriched minimum agenda will become the #OTRO18’s Minimum Project for Reforms to the Electoral System. Two processes will be going on parallel to the MIC’s: the deliberative survey, whose content must be created, and the collecting of signatures via Urna Transparente, to seek legitimate and legalized** support for the universal guarantees established for all plural and competitive electoral systems and the proposals collected by the Minimum Project. The results of the deliberative survey and the signatures will be presented in two, parallel scenarios: in international spaces and in those involving internal politics—the National
Assembly’s Judicial and Constitutional Commission, the National Electoral Commission, at all its levels, and at the Assemblies of the People’s Power at both the municipal and provincial levels.

A basic goal in this strategy is to get the Proyecto Mínimo into the public agenda in 2016. For this purpose, we will attempt to hold a Consultative Civil Plebiscite by the end of 2016 or in early 2017. It will offer up the Proyecto Mínimo for popular consideration. The basic purpose of this is that the next electoral laws guarantee three basic demands: plurality in political society, competition in the political system, and the direct election of the President of the Republic. The introduction of a socially supported Proyecto Mínimo into the public agenda makes possible citizen deliberation of the Maximum Agenda, in which larger constitutional reform is posited. The timeline for this deliberative process will be determined by the dynamics and options we achieve with the Proyecto Mínimo, Consenso Constitucional and #OTRO18. This last item is essential to making a difference and getting democratic, political associations and organizations to craft a shared proposal for change via those who decide to participate in the electoral process. This would not be a mere reproduction of the political system. This is about them mobilizing ideas, concepts and projects on behalf of a pluralistic electoral system as the result of citizen conversation.

Finally, #OTRO18 understands that without citizen mobilization there will not be the support needed if we want to make a difference. Among other possible options different organizations have offered for this purpose, we have created what we are calling Redes por el Voto Plurales [Networks for Pluralistic Voting]. This is for the purpose of making possible citizen participation through their ideas and support. We are also creating a Group of International Observers to participate in different electoral processes around the world, to gather their experi-

- Employment in these territories have been.
- How are we beginning to work with these candidates? We have been training them on deliberative democracy’s techniques so they can be interacting with the voters and generating a citizen identity in terms of political practices; helping them prepare proposals and public agendas regarding problems specific to their communities, and connecting them with the pre-reform Minimum Agenda, which we will turn into a Proyecto Mínimo, as a common and shared proposal on behalf of all the independent candidates who participate in Consenso Constitucional and #OTRO18. This last item is essential to making a difference and getting democratic, political associations and organizations to craft a shared proposal for change via those who decide to participate in the electoral process. This would not be a mere reproduction of the political system. This is about them mobilizing ideas, concepts and projects on behalf of a pluralistic electoral system as the result of citizen conversation. Finally, #OTRO18 understands that without citizen mobilization there will not be the support needed if we want to make a difference. Among other possible options different organizations have offered for this purpose, we have created what we are calling Redes por el Voto Plurales [Networks for Pluralistic Voting]. This is for the purpose of making possible citizen participation through their ideas and support. We are also creating a Group of International Observers to participate in different electoral processes around the world, to gather their experi-

ences regarding different, pluralistic, electoral systems. This narrative describes a strategy that *Consenso Constitucional* is either already deploying or planning for the reform of our political system and the reinvention of a modern State based on a State of Law, fundamental freedoms, and deliberative democracy as the grease and tools for a strong democracy. *Consenso Constitucional* keeps working.

**Editor’s Notes:**

* Article 137 already establishes a mechanism for direct exercise, as it subordinates the substantial reforms to the Constitution to popular referendum, thanks to the fact the classic expression of said exercise is the popular vote, by which both representatives are elected to the National Assembly, and delegates to the Municipal Assemblies. The latter approve or reject the candidacies of the former. Dictator Fidel Castro, himself, stated explicitly how the people could revoke “irrevocable” socialism (Cf. *Biografía a dos voces*, Debate, 2006, página 555).

** The National Assembly’s (AN) Constitutional and Legal Issues Commission already made clear that current Law does not acknowledge “the collection of signatures, no matter how many, to promote an legal initiative,” in its response to the Varela Project on November 1, 2002.