

Fidel Castro proclaimed Cuba a socialist state in 1961, but it was not until 1976 that Cuba's constitutional framework was updated.<sup>117</sup> By the time a new constitution entered into existence in 1976,<sup>118</sup> there had been a delay of seventeen years from the date of the revolution to the enactment of the first new constitution in Cuba.<sup>119</sup> In October 1974, Castro appointed a commission to prepare a Socialist constitution that would "embody the goals of his revolution."<sup>120</sup> In February 1975 the First Congress of the Cuban Communist Party approved the commission's draft by an overwhelming majority and Castro promulgated the new constitution in the beginning of the following year.<sup>121</sup>

The rehabilitation of the legal profession in Cuba began in the 1970s. During this time, Castro announced that Cuba was entering a new and "more serious, profound phase" while admitting to mistakes of earlier "revolutionary zeal" and calling for a path of greater Marxist political fidelity.<sup>122</sup> Nevertheless, problems persisted in Castro's government. During the time, Maurice Zeitlin wrote that "Cuban revolutionaries had done little to establish institutions to guarantee that competing points of view could be heard within the revolutionary Socialist consensus."<sup>123</sup> René Dumont noted the lack of confidence at the popular base, the concentration of decision-making power at the top, and Castro's reluctance to delegate.<sup>124</sup> K.S. Karol, a Polish-British journalist, asserted in 1968 that all mass organizations in Cuba had ceased to exist except on paper.<sup>125</sup> These observations prompted the Cuban leadership to reconsider its previous attitudes.<sup>126</sup>

tional agrarian law in Peru). In Venezuela, the agrarian reform law occupies a rank below the Constitution, but above other legislation. See ALI JOSÉ VENTURINI, DERECHO AGRARIO VENEZOLANO 83 (1976).

117. D'Zurilla, *supra* note 32, at 1224.

118. CONSTITUCIÓN DE 1976 (Cuba) reprinted in V CONSTITUTIONS OF THE COUNTRIES OF THE WORLD (Albert Blaustein & Gisbert Flanz eds., 1996) [hereinafter 1976 CONSTITUTION]; see also Fournier F., *supra* note 48, at 95-96 (providing the text of Articles 21 through 25 dealing with property).

119. Nicholas J. Gutiérrez, The De-Constitutionalization of Property Rights: Castro's Systematic Assault on Private Ownership in Cuba 14 (Jan. 26, 1995) (Cuba Transition Workshop: Resolution of Property Claims in Cuba's Transition, sponsored by Shaw, Pittman, Potts & Trowbridge) (unpublished manuscript on file with author) [hereinafter Cuba Transition Workshop].

120. Wachs, *supra* note 35, at 546.

121. *Id.* at 546-47.

122. Bernstein, *supra* note 2, at 197.

123. CARMELO MESA-LAGO, CUBA IN THE 1970S: PRAGMATISM AND INSTITUTIONALIZATION 62 (1974) [hereinafter MESA-LAGO, PRAGMATISM].

124. *Id.* at 63.

125. *Id.*

126. *Id.*

In 1970, Castro began to criticize the excessive centralization and bureaucracy of government.<sup>127</sup> An Executive Committee was established in 1972, diminishing the Prime Minister's power.<sup>128</sup> In 1973, the judicial system was reorganized.<sup>129</sup> Such reforms ushered in what was called the "new phase of the Revolution."<sup>130</sup>

In response to these changes, the rehabilitation of Cuban lawyers commenced. Castro believed more jurists<sup>131</sup> would be needed "to play a more important role with the advancing perfection of our State."<sup>132</sup> Upon adoption of the 1976 Constitution, Castro noted the Cuban Socialist state "had assumed a definitive shape, and that the provisional period of the revolutionary process had come to an end."<sup>133</sup> Consolidation in Socialist states often means an increased reliance on the principle of law.<sup>134</sup> As such, the 1976 Constitution replaced the 1959 Fundamental Law, which the first revolutionary government had drafted immediately upon assuming power.<sup>135</sup>

The relegalization of Cuba may have been the product of Cuba's increased participation in international trade that in turn gave rise to the need to institutionalize governmental functions, rather than simply relying on a "cult of personalities."<sup>136</sup> This revival of the legal profession was not so much a return to the old system, but more of an outgrowth of a more advanced stage of socialist development in Cuba.<sup>137</sup> Moreover, theorists note that the Cuban Revolution, like the Russian and Chinese Revolutions before it, outgrew its early period of revolutionary "utopianism, nihilism, sacrifice and aversion to legality" and entered the next stage of Socialist development that featured "consolidation, rationalization, material incentives and endorsement of fundamental principles of law and legality."<sup>138</sup> Similarly, the rehabilitation of the legal community in Cuba was also the result of movement from one stage of Socialist development to the next.

127. *Id.* at 64.

128. *Id.* at 67.

129. *Id.* at 67-68.

130. *Id.* at 67.

131. During this time, the term "jurist" was used in favor of the term "lawyer" to avoid the widely-held disdain for the legal profession. Bernstein, *supra* note 2, at 197.

132. *Id.*

133. MESA-LAGO, PRAGMATISM, *supra* note 123, at 67.

134. *Id.*

135. *Id.*

136. Bernstein, *supra* note 2, at 203.

137. *Id.*

138. *Id.* at 203-04.

### 3. 1976 Constitution

The 1976 Constitution was primarily produced by a small group of government and Communist party appointees, despite strong declarations throughout the drafting process that all Cuban citizens were participating in the process.<sup>139</sup> In light of its roots, the 1976 Constitution can be seen as consistent with Cuban constitutional history from 1901 to 1976 in that the Constitution was handed down from the government and imposed on the people.<sup>140</sup>

In many respects, the 1976 Constitution is patterned on other Communist or Socialist constitutions.<sup>141</sup> However, it deviates from these constitutions in that it allows for more concentration of power in a single head of state and permits individuals to hold concurrent offices in the Council of State and the legislature.<sup>142</sup> Finally, in areas of civil, political, and cultural rights, the Cuban Constitution of 1976 remained very restrictive, bearing similarity to the 1936 Soviet Fundamental Law.<sup>143</sup> However, like most East European Socialist constitutions in effect during the period from 1960 to 1989, the Cuban Constitution departs from the Soviet Fundamental Law of 1936 by placing articles concerning the rights, duties, and guarantees of the individual early in the text, thereby giving them higher prominence.<sup>144</sup>

Because property relations pertain to the socioeconomic foundation of the state, they are treated in Chapter I of the Cuban Constitution rather than the section describing "fundamental rights" covered in Chapter VI.<sup>145</sup> Article 1 of the 1976 Constitution defined Cuba as a Socialist state of workers, peasants, and other manual and intellectual laborers.<sup>146</sup> Article 7 recognized the *Asociación Nacional de Agricultores Pequeños* (National Association of Small Producers) and other base groups.<sup>147</sup> Article 14 affirmed the social approach to Socialist

139. Linda B. Klein, *The Socialist Constitution of Cuba*, in CUBAN COMMUNISM 506, 522 (Louis Horowitz, ed., 1987).

140. *Id.* The main exception was the 1940 Constitution, which was drafted by a wholly independent assembly of popularly elected delegates from divergent groups. *Id.*

141. *Id.*

142. *Id.*

143. *Id.* at 523.

144. *Id.* at 506.

145. *Id.* at 508-09. This is the case in most Marxist-Leninist constitutions today. Klein, *supra* note 139, at 509 (noting that "in all socialist constitutions, structurally and ideologically property relations pertain to the socio-economic foundation of the state").

146. See Navarrete Acevedo, *supra* note 59, at 101 (discussing Article 1 of the 1976 Constitution).

147. See *id.* (discussing the National Association of Small Producers).

ownership of the means of production.<sup>148</sup> Article 15 defined Socialist state property, which included all land not belonging to small producers or cooperatives.<sup>149</sup> Articles 20 and 21 recognized the property rights of smallholders<sup>150</sup> to their lands, and ensured them the right to associate among themselves for agricultural production and obtaining credit and state services, and the right to sell land with prior state authorization.<sup>151</sup> Like the agrarian reform legislation, the 1976 Constitution also prohibited renting, sharecropping, mortgage credit, and

148. Article 14 provides the following: "[T]he Republic of Cuba rules the Socialist system of economy based on the people's Socialist ownership of the means of production." 1976 CONSTITUTION art. 14 (translation by author).

149. See Navarrete Acevedo, *supra* note 59, at 102. Article 15 provides the following: "[T]he socialist state property, which is the property of the entire people, becomes irreversibly established over the lands that do not belong to small farmers or to cooperatives formed by the same; over the subsoil, mines, the natural resources, and flora and fauna in the marine area over which it has jurisdiction; woods, waters, means of communication; over the sugar mills, factories, chief means of transportation; and over all those enterprises, banks, installations and properties that have been nationalized and expropriated from the imperialists, the landholders, and the bourgeoisie; as well as over the people's farms, factories, enterprises and economic, social, cultural and sports facilities built, fostered or purchased by the state in the future.

1976 CONSTITUTION art. 15 (translation by author); see also Shari-Ellen Bourque, Note, *The Illegality of the Cuban Embargo in the Current International System*, 18 B.U. INT'L L.J. 191, 204 (1995) (discussing Article 15); Sanchez, *supra* note 69, at 147. In the Soviet Constitution of 1936, even smallholdings belonged to the State. Klein, *The Socialist Constitution of Cuba*, in CUBAN COMMUNISM, *supra* note 139, at 509. The exemption in the Cuban Constitution reflects the continued existence of small farmers cultivating private property. *Id.* Nevertheless, it is apparent that the Cuban state viewed elimination of this remnant of capitalism as an immediate task in the construction of socialism. *Id.*

150. A smallholder is the owner or operator of a piece of land detached from a cottage, and cultivated to supplement his main income. WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 2149 (1976).

151. See Navarrete Acevedo, *supra* note 59, at 102; Fournier F., *supra* note 48, at 95. Article 20 provides the following:

- (1) The state recognizes the right of small farmers to own their lands and other means and implements of production, according to what the law stipulates.
- (2) Small farmers have the right to group themselves in the way and following the requirements prescribed by law both for the purpose of agricultural production and for obtaining state loans and services.
- (3) The establishment of agricultural cooperatives in the instances and ways prescribed by the law is authorized. Ownership of the cooperatives constitutes a form of collective ownership on the part of the peasants in those cooperatives.
- (4) The state supports the cooperative production of small farmers as well as that individual production which contributes to the growth of the national economy.
- (5) The state fosters the participation of small farmers, freely and voluntarily, in state projects and units of agricultural production.

1976 CONSTITUTION art. 20 (translation by author).

Article 21 provides the following:

other forms of implicit charges or partial transfers to individuals of the rights and actions emanating from smallholder property.<sup>152</sup>

The government also added Article 23 to the 1976 Constitution, providing the following: "The state recognizes the ownership of mixed enterprises, economic societies, and associations that are created according to law. The use, benefit, and sale of assets belonging to these entities are ruled by law and treaties as well as by their own statutes and regulations."<sup>153</sup> The government does not, however, have express constitutional power to authorize small private enterprise.<sup>154</sup>

Article 24 codifies the belief that land is only inheritable by the person who worked the land.<sup>155</sup> Finally, Article 25 of the 1976 Constitution provides for expropriation with compensation at something less than fair market value.<sup>156</sup>

(1) Small farmers have the right to sell their land with the previous authorization of the state agencies, as prescribed by law. In all cases, the state has the preferential right to purchase of the land while paying a fair price.

(2) Land leases, sharecropping, mortgages, and all other forms which entail a lien on the land or partial cession to private individuals of the rights and title to the land which is the property of the small farmers are all prohibited.

*Id.* art. 21 (translation by author).

152. See Navarrete Acevedo, *supra* note 59, at 102. To this end, Article 22 provides the following:

(1) The state guarantees the right to personal ownership of earnings and savings derived from one's own work, of the dwelling to which one has legal title and of the other possessions and objects which serve to satisfy one's material and cultural needs.

(2) Likewise, the state guarantees the right of citizens to ownership of their personal or family work tools, as long as these tools are not employed in exploiting the work of others.

1976 CONSTITUTION art. 22 (translation by author).

153. Bourque, *supra* note 149, at 205.

154. The Cuban Constitution differs in this respect from the 1936 Soviet Fundamental Law and many current socialist constitutions. Klein, *The Socialist Constitution of Cuba, in CUBAN COMMUNISM, supra* note 139, at 509.

155. See Navarrete Acevedo, *supra* note 59, at 102. Article 24 provides the following:

The law regulates the right of citizens to inherit legal title to a place of residence and to other personal goods and chattels. The land owned by a small farmer may only be inherited by the heirs who are personally involved in its cultivation, save for the exceptions prescribed by law.

With regard to goods which are part of cooperatives, the law prescribes the conditions under which said goods may be inherited.

1976 CONSTITUTION art. 24 (translation by author).

156. Article 25 provides the following:

The expropriation of property for reasons of public benefit or social interest and with due compensation is authorized. The law establishes the method for the expropriation and the bases on which the need for and the usefulness of this action is to be determined, as well as the form of the compensation, considering the

During the 1970s and early 1980s, Castro was able to fulfill many of the guarantees contained in the 1976 charter. This was due in part to a huge annual foreign assistance package from the former Soviet Union.<sup>157</sup> However, in 1989, when the Communist bloc disintegrated and the Soviets canceled the Cuban subsidy, the government's ability to provide for the welfare of its citizens declined dramatically.<sup>158</sup> Without favorable trade agreements with Socialist nations, and with the continued trade embargo, Cuba's social and economic conditions deteriorated dramatically.<sup>159</sup> One commentator noted that "[a]lmost overnight, the island nation lost \$6 billion a year in economic aid, untold billions in military aid, and \$10 billion a year in trade."<sup>160</sup>

#### 4. The 1992 Constitution

By the time of the 1991 *Partido Comunista de Cuba* (Congress of the Cuban Communist Party) (PCC), the Soviet Union itself was in the process of disintegrating.<sup>161</sup> With the demise of Lenin's revolution, there was no longer any hope that Communist forces could wage a successful revolt against capitalism.<sup>162</sup> In Cuba itself, the PCC was faced with a failing economy with "irreversible difficulties" and "a society slipping further and further away from any possibility of economic prosperity."<sup>163</sup> Several political scandals led to purges of high government officials, and a "cleansing" of party organs.<sup>164</sup> Leadership also began to remove reformers from the party, including members of the Central Committee itself.<sup>165</sup> As food became less plentiful, demands for private farms increased in force.<sup>166</sup>

interests and economic and social needs of the person whose property has been expropriated.

1976 CONSTITUTION art. 25 (translation by author); see also Travieso-Díaz, *supra* note 24, at 233 (citing Article 25 of the 1976 Constitution).

157. Wachs, *supra* note 35, at 547-48.

158. *Id.*

159. *Id.*

160. William Deibler, *Helpless in Havana*, PITTSBURGH POST-GAZETTE, Mar. 6, 1994, at D4.

161. Juan M. del Aguila, *The Party, the Fourth Congress, and the Process of Counter-reform, in CUBA AT A CROSSROADS: POLITICS AND ECONOMICS AFTER THE FOURTH PARTY CONGRESS 19, 20* (Jorge F. Perez-Lopez ed., 1994).

162. *Id.*

163. *Id.*

164. *Id.* at 20-21.

165. *Id.* at 21.

166. ANDREAS OPPENHEIMER, *CASTRO'S FINAL HOUR: THE SECRET STORY BEHIND THE COMING DOWNFALL OF COMMUNIST CUBA* 302 (1992).

In this context, the Fourth Party Congress sought to renew the party. However, no dramatic changes along the lines of a "Cuban-style perestroika" occurred; the Fourth Party Congress simply restated its commitment to a single party.<sup>167</sup> In short, the masses could expect no fundamental economic or political reforms: capitalism would not return.<sup>168</sup> The top political leadership in the PCC controlled the preparations for the October 1991 Congress, preserving the unity and harmony of the party and meeting the demands of political leaders.<sup>169</sup> Fidel Castro proclaimed, "[T]here will not be a market economy, by whatever name; it has nothing to do with socialism. Our economy will be programmed and planned."<sup>170</sup> Subsequently, in 1992, a new Constitution was promulgated.<sup>171</sup>

The 1992 Constitution scales back on the scope of State ownership.<sup>172</sup> The new Constitution applies to only the "fundamental" means of production rather than all means of production, allowing for some private divestiture of state-owned assets.<sup>173</sup> In all other respects, however, the new constitution mirrors its predecessors. Articles 20, 21, and 22 of the 1976 Constitution correspond to Articles 19, 20, and 21 of the 1992 document.<sup>174</sup> Article 19 prohibits rental, sharecropping, mortgages or any other lien on agricultural property, and commits the state to support small farmers and private farming.<sup>175</sup> Article 20 pledges the state's support of agricultural cooperatives,<sup>176</sup> and Article 21 private personal property.<sup>177</sup> Other provisions protect mixed enterprise property<sup>178</sup> and provide for expropriation with compensa-

167. del Aguila, *supra* note 161, at 24-25.

168. *Id.* at 25.

169. *Id.* at 26.

170. *Id.* at 29.

171. 1992 CONSTITUTION. The constitutional changes were approved by the National Assembly as a result of recommendations made at the Fourth Party Congress in October 1991. See generally del Aguila, *supra* note 161, at 24-39. Major changes brought about in the new constitution included allowing private investment in certain state companies and permitting foreign ownership of property in joint venture enterprises. See Cameron, *supra* note 14, at 482.

172. Article 14 of the 1992 Constitution provides the following: "En la República de Cuba rige el sistema de economía basado en la propiedad Socialista de todo el pueblo sobre los medios fundamentales de producción y en la supresión de la explotación del hombre por el hombre . . ." 1992 CONSTITUTION art. 14.

173. *Id.* See also Willig Presentation, *supra* note 29.

174. Travieso-Díaz, *supra* note 24, at 229.

175. 1992 CONSTITUTION art. 19.

176. *Id.* art. 20.

177. *Id.* art. 21.

178. *Id.* art. 23.

tion.<sup>179</sup> Finally, the 1992 Constitution maintains the importance of the social function of land by asserting that land should belong to the person who works it.<sup>180</sup>

### 5. Summary

In summary, Cuba's several constitutions have preserved strong individual rights in property, beginning with the 1901 Constitution and carried through into the 1992 Constitution. The social function of land was acknowledged and incorporated into the 1940 Constitution. Civil Code legislation clearly expressed the need for compensation for public expropriation. In keeping with the spirit of this social function, Cuban law had evolved to a stage where all means of production were under state control, as presented in the 1976 Constitution. By 1992, however, there had been some retreat from this position, illustrated by changes in the new Constitution requiring only the fundamental means of production to rest in state hands.

## B. The Agrarian Reform and Rural Land Ownership

### 1. Context for Reform: Prerevolutionary Agriculture

Land tenure was cited as a constraint to development in the 1950s by proponents of agrarian reform.<sup>181</sup> Cuban peasants were well or-

179. *Id.* art. 25. Furthermore, Article 60 of the 1992 Constitution permits confiscation of property. *Id.* art. 60.

180. *Id.* art. 24.

181. VICENTE CASANOVA, *supra* note 55, at 173-74; Valdés García, *Antecedentes, supra* note 60, at 173-74. As illustrated by the chart below, over half of the land in Cuba was held by landowners holding over 100 hectares of land and 20% of land area was held by very large estates in holdings over 5000 hectares in size. This backdrop provided a basis for reform efforts in the land tenure system.

DISTRIBUTION OF LAND IN CUBA: 1946				
Range (in hectares)	Number of Units	Percent of total units	Hectares	Percent of land area
Less than 0.4	1148	0.7	280	0.0
0.4 to 0.5	1877	1.2	1399	0.0
1.0 to 4.9	29,170	18.2	84,354	0.9
5.0 to 9.9	30,305	18.9	210,706	2.3
10.0 to 24.9	48,778	30.5	725,071	8.0
25.0 to 49.9	23,901	14.9	789,715	8.7
50.0 to 74.9	8157	5.1	488,648	5.4
75.0 to 99.9	3853	2.4	329,681	3.6
100.0 to 499.9	10,433	6.5	2,193,600	24.2
500.0 to 999.9	1442	0.9	992,531	10.9
1000.0 to 4999.9	780	0.5	1,443,500	15.9
More than 5000.0	114	0.1	1,817,602	20.0

ganized to oppose the government and demand expropriation.<sup>182</sup> In addition, demands for expropriation also came from the middle class who felt excluded from economic participation due to massive foreign ownership.<sup>183</sup> For these individuals, upward mobility meant only government service, because private industry was in the hands of foreigners who also occupied most of the best jobs.<sup>184</sup> Perceived to be chronically high, unemployment was a serious problem of the pre-revolutionary economic system.<sup>185</sup> These factors contributed to the change in government and the demand for agrarian reform.<sup>186</sup>

Nevertheless, prior to the Castro revolution, Cuba's economic picture was not as exaggerated as in other countries in Latin America. In terms of land distribution, Cuba was typical of other Latin Ameri-

Memoria del Censo Agrícola Nacional 1946 [National Agricultural Census Survey 1946] 84 (1951) (on file with the Land Tenure Center Library, University of Wisconsin).

182. Their high degree of organization is demonstrated, for example, in the creation in 1958 of the Agriculture Bureau (*Buro Agrario*) dedicated to the study of the agricultural problems of the peasantry, along with the Eastern Peasant Federation (*Federación Campesina de Oriente*) and the Regional Peasant Committee (*Comité Regional Campesino*). See Navarrete Acevedo, *supra* note 59, at 79-80.

183. See VALDÉS GARCÍA, *SOCIALIZACIÓN* *supra* note 60, at 4; see also Nelson R. Amaro, *Mass and Class in the Origins of the Cuban Revolution*, in *CUBAN COMMUNISM*, *supra* note 139, at 23. In the first months following the revolution, 90% of the population supported the new government. *Id.* at 25. In 1962, support for the new government remained high. *Id.* at 16. In one survey, 80% of Afro-Cubans and 67% of whites favored the revolution. *Id.* at 16 (discussing Maurice Zeitlin's 1962 study entitled *Economic Insecurity and the Political Attitudes of Cuban Workers*). Support for the revolution was strongest among blacks who had worked nine months or less before the revolution. *Id.* (citing the figure as 91%).

184. See Fournier F., *supra* note 48, at 77.

185. See Brian H. Pollitt & G.B. Hagelberg, *The Cuban Sugar Economy in the Soviet Era and After*, CENTER FOR DEVELOPMENT STUDIES OCCASIONAL PAPER NO. 11 (June 1995) (on file with the Land Tenure Center Library, University of Wisconsin).

186. See *id.* (discussing the unpleasant conditions for peasants that prompted the infant guerrilla government to pass a law stating that the land should be assigned to those who work it).

can countries.<sup>187</sup> Cuba was near the top of many countries in terms of

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INEQUALITY IN THE DISTRIBUTION OF LAND IN VARIOUS COUNTRIES			
Country	Year	Gini Coefficient	Data Source
VERY HIGH INEQUALITY (Gini above 75)			
Uruguay	1967	98.95	Jarvis at 16.
Uruguay	1980	84	<i>Id.</i>
Guatemala*	1950	97.64	<i>Id.</i> at 9.
Paraguay*	1956	95.60	<i>Id.</i> at 14.
Paraguay	1981	94	Thiesenhusen at 9.
Colombia*	1960	94.4	Jarvis at 5.
Chile*	1964	91.67	<i>Id.</i> at 4.
Ecuador	1954	88.46	<i>Id.</i> at 7.
Nicaragua	1967	86.15	<i>Id.</i> at 17.
Brazil*	1965	83.50	Jarvis at 3.
Brazil	1980	86	Thiesenhusen at 9.
Panama	1981	84	<i>Id.</i>
Saudi Arabia	1983	83	Thiesenhusen at 9.
Cuba	1946	80.61	Census
Kenya	1981	77	Thiesenhusen at 9.
HIGH INEQUALITY (51 to 75)			
Colombia	1984	70	<i>Id.</i>
Dominican Republic	1981	70	<i>Id.</i>
Ecuador	1987	69	<i>Id.</i>
Grenada	1981	69	<i>Id.</i>
Costa Rica	1960	66.39	Jarvis at 6.
Chile	1987	64	Thiesenhusen at 9.
Honduras	1981	64	<i>Id.</i>
Yemen	1982	64	<i>Id.</i>
Sri Lanka	1982	62	<i>Id.</i>
Peru	1984	61	<i>Id.</i>
Nepal	1982	60	<i>Id.</i>
Uganda	1984	59	<i>Id.</i>
Turkey	1980	58	<i>Id.</i>
Jordan	1983	57	<i>Id.</i>
Pakistan	1980	54	<i>Id.</i>
Panama	1960	53.66	Jarvis at 13.
Philippines	1981	53	Thiesenhusen at 9.
MEDIUM INEQUALITY (40 to 50)			
Bahrain	1980	50	<i>Id.</i>
Bangladesh	1980	50	<i>Id.</i>
Morocco	1982	47	<i>Id.</i>
Togo	1983	45	<i>Id.</i>
Ghana	1984	44	<i>Id.</i>
LOW INEQUALITY (below 40)			
Malawi	1981	36	<i>Id.</i>
Mauritania	1981	36	<i>Id.</i>
Egypt	1984	35	<i>Id.</i>
Niger	1981	32	<i>Id.</i>
Korea, Republic of	1980	30	<i>Id.</i>

socioeconomic indicators, with a large middle class and very progressive social legislation for workers and unions.<sup>188</sup> At the same time, "Cuban labor laws, rigidly enforced, were more advanced in almost every respect [in comparison to] those in the United States."<sup>189</sup> Agricultural workers were also well paid.<sup>190</sup> According to the International Labor Organization, the average wage in 1958 was \$3 per eight hour day.<sup>191</sup> When adjusted for purchasing power, this compares favorably with Belgium (\$2.70), Denmark (\$2.86), France (\$2.73), West Germany (\$2.73), and the United States (\$4.06).<sup>192</sup> These same statistics disclosed that Cuban workers received 66.6% of the gross national income compared with 57.2% for Argentina, 47.9% for Brazil, and 70.1% for the United States.<sup>193</sup>

With the possible exception of Venezuela, Cuba had attained the highest standard of living of any semi-tropical or tropical country in the world by the mid 1950s.<sup>194</sup> By 1956, the U.S. Department of Commerce concluded that the Cuban national income had reached levels that gave the Cuban people one of the highest standards of living in Latin America.<sup>195</sup> A 1951 World Bank report noted that the standard of living for farmers, agricultural laborers, industrial workers, storekeepers, and others were all higher than the standard for corresponding groups in other tropical countries and in nearly all other Latin American countries.<sup>196</sup> Although the report did not say there was no dire poverty in Cuba, it did assert that in comparative terms Cubans were better off than their counterparts abroad.<sup>197</sup>

Countries marked with an asterisk indicate reduced reliability of calculation due to the data sets. Gini coefficient is defined as a measure of inequality in distribution. It ranges from zero to one: the closer the value to 1, the greater the inequality. Gini coefficients calculated by Marco Castillo, Research Assistant, Land Tenure Center, University of Wisconsin (1995). WILLIAM C. THIESENHUSEN, *BROKEN PROMISES: AGRARIAN REFORM AND THE LATIN AMERICAN CAMPESINO* 9 (1995). Data from Kenna Jarvis, *Country by Country Land Distribution Percentages in Latin America (1971)* (on file with the Land Tenure Center Library, University of Wisconsin). National Agricultural Census Survey 1946, *supra* note 181, at 84.

188. Thompson, *supra* note 3, at 36.

189. LAZO, *supra* note 38, at 97.

190. *Id.*

191. *Id.* at 97-98.

192. *Id.* at 98.

193. *Id.*

194. *Id.* at 96.

195. *Id.* (citing U.S. DEP'T OF COMMERCE, *INVESTMENT IN CUBA* 184 (1956)).

196. *Id.* at 96-97 (discussing the Economic and Technical Mission of the International Bank for Reconstruction and Development's 1951 Report on Cuba).

197. *Id.* at 97.

In the areas of education and literacy, Cuba was also near the top in Latin America.<sup>198</sup> Cuba was first in the region in terms of the percent of national income spent on education.<sup>199</sup> It was less expensive to obtain a college education in Cuba than in the United States.<sup>200</sup> Similarly, compared with the United States, Cuba had twice as many physicians and surgeons—and twice as many teachers—in relation to its population.<sup>201</sup> Its infant and adult mortality rates were lower than the United States.<sup>202</sup> Food was abundant and the island was nearly disease-free.<sup>203</sup> No nation except the United States had as many television sets per capita as Cuba.<sup>204</sup>

The positive condition of the Cuban economy relative to other countries in the region was not well understood. Pre-Castro Cuba is often depicted as a country in which a wealthy few exploited illiterate and poverty-stricken masses and where large farms were becoming larger, with the small farmers getting pushed out of the market, a view underscored by Columbia University Professor C. Wright Mills.<sup>205</sup> Eleanor Roosevelt asserted that "perhaps a Socialist government would be the best solution [for Cuba]."<sup>206</sup> President John F. Kennedy remarked:

I think that there is not a country in the world, including all the regions of Africa and including any country under colonial domination, where the economic colonization, the humiliation, the exploitation have been worse than those which ravaged Cuba, the result, in part, of the policy of my country, during the regime of Batista. I think that we spawned, constructed, entirely fabricated without knowing it, the Castro movement. I think that the accumulation of such errors has endangered all of Latin America . . . . I will tell you something else: In a certain sense, it is as though Batista were the incarnation of some of the sins committed by the United States. Now, we must pay for those sins . . . .<sup>207</sup>

198. *Id.* at 106.

199. *Id.*

200. *Id.*

201. *Id.* at 107.

202. *Id.*

203. *Id.*

204. *Id.*

205. *Id.* at 96 (discussing comments made by Professor Mills after a 1959-1960 visit to Cuba).

206. *Id.*

207. *Id.* at 94 (quoting President Kennedy's remarks published in the *New York Times*, Dec. 11, 1963).

Despite Kennedy's remark, the United States had supported Cuba for years by purchasing sugar at considerably above world market prices.<sup>208</sup> In 1958, only about five percent of invested capital in Cuba was from the United States.<sup>209</sup> During the 1950s, there was a marked trend in Cuba away from American ownership in favor of national ownership of sugar mills.<sup>210</sup> In 1958, Cuban-owned mills accounted for sixty-two percent of the total sugar production, while in 1939 the figure was only twenty-two percent.<sup>211</sup> Despite this fact, U.S. private capital and technology served as the "principal contributing factor in making Cuba the most industrialized country in Latin America in ratio to population, and in raising its living standards to one of the highest."<sup>212</sup> In this context, it appears Kennedy and others were mistaken about the economic state of affairs in Cuba, perhaps reflecting the success of Castro's propaganda campaign.<sup>213</sup>

Nevertheless, before the 1959 agrarian reform, Cuban agriculture did suffer from wealth concentrations.<sup>214</sup> During the period between 1940 and 1959, Cuba tripled its national income.<sup>215</sup> Tourism was becoming an increasingly important source of income for the island.<sup>216</sup> Yet a 1951 World Bank report indicated that reform of the agriculture sector was urgent: if measures to reform the sector were not implemented, the chances for an institutional takeover provoked by the right or left would increase.<sup>217</sup> Owners of 46% of the land comprised 1.5% of the general population, while 70% of farms occupied less than

208. *Id.* at 108.

209. *Id.* at 98.

210. *Id.* at 99.

211. *Id.*

212. *Id.* at 108.

213. *Id.* at 96, 116, 151-53.

214. Fournier F., *supra* note 48, at 77. In summary:

Tomas Estrada Palma was elected the first Cuban president [but was replaced by the Liberal president Jose Miguel Gomez in 1909]. The Gomez presidency established a pattern of graft, corruption, and social injustice toward Afro-Cubans that succeeding presidents and dictators followed. Cuba continued to attract American investment, and this investment combined with the growing sugar industry, tourism, and gambling, caused the economy to prosper. [This prosperity benefited only a few Cubans, primarily politicians and their relatives]. In 1958, following a prolonged period of exile and guerrilla warfare against the Cuban government . . . Fidel Castro [supplanted] the longtime dictator Fulgencio Batista.

3 NEW ENCYCLOPEDIA BRITANNICA 772, 773 (Philip W. Goetz ed., 15th ed. 1988).

215. Amaro, *supra* note 183, at 20.

216. *Id.*

217. MESA-LAGO, LABOR FORCE, *supra* note 86, at 32.

12% of the island.<sup>218</sup> Sharecropping, tenant farming, and illicit farming by squatters were common, leading to complaints about social justice and questions about efficiency in production.<sup>219</sup> A 1957 survey by the Catholic University Association found that the peasant class expected its economic problems to be resolved politically, equating the ultimate economic power with the highest political authority.<sup>220</sup> Peasants began to question the nation's legal order, because the legal structures they identified with political power supported the elite groups.<sup>221</sup>

The new Organic Law echoed the Constitution of 1940 in prohibiting large landholdings. Both permitted subsequent legislation to abolish them.<sup>222</sup> In this context, the agrarian reform sought to approximate the technical advantages of large-scale production through cooperatives, while taking advantage of the intensive cultivation practices found on smaller farms.<sup>223</sup>

Studies carried out by the United Nations noted the extremes in property distribution and the plight of the poor.<sup>224</sup> The United Nations report looked to diversify agricultural production and promote productivity, especially for export crops.<sup>225</sup> Further, the study looked for increased standards of living for Cuban nationals.<sup>226</sup> The review singled out resource concentration as the major impediment and

218. Ley de Reforma Agraria, whereas cls. 7, 8 (G.O. Edición Extraordinaria especial, June 3, 1959) (Cuba) [hereinafter Agrarian Reform Law]; see also Amaro, *supra* note 183, at 13 (noting that before the Castro revolution of 1959, Cuba marked with a general malaise of class disequilibrium).

LAND DISTRIBUTION AT THE TIME OF THE FIRST AGRARIAN REFORM LAW (1959)				
Farm Size	Property Owners	Percentage of Property Owners	Area (Caballerías)	Percentage of Total Area
Up to 5 Caballerías	20,229	66.2	46,842	7.4
From 5 to 30 Caballerías	7485	24.4	122,314	19.2
More than 30 Caballerías	2873	9.4	465,994	73.4
Totals	30,587	100	635,150	100

Navarrete Acevedo, *supra* note 59, at 85 (sworn declarations of property owners). 1 caballería = 13.4 hectares = 33 acres.

219. Agrarian Reform Law whereas cl. 5.

220. Amaro, *supra* note 183, at 16.

221. *Id.*

222. Agrarian Reform Law whereas cl. 5.

223. *Id.* whereas cl. 13.

224. See VICENTE CASANOVA, *supra* note 55, at 173-74.

225. *Id.*

226. *Id.*

called for land reform.<sup>227</sup> It should be noted that poverty was an increasing problem by the time of the Revolution; unemployment and underemployment had increased throughout the 1940s and 1950s, reaching a combined total of thirty percent of the labor force by 1956-57.<sup>228</sup>

The Batista government recognized that tenant smallholders and holders of precarious title had been excluded from participation in the benefits of the established rural economy and promulgated Decree Law No. 247 to protect their interests.<sup>229</sup> In 1952, the Cuban government launched a new program to force landowners to allow current occupants to rent the land.<sup>230</sup> This new legislation was passed in the belief that land access and security for smallholders would stimulate and promote production.<sup>231</sup> At that time, it was recognized that "private property [was] subject to restrictions dictated by considerations of national necessity."<sup>232</sup> The authors of the law understood that the existing legislation

had not been adequate to prevent the eviction of the peasants and their families from the lands cultivated by them, so that a state of unrest in public opinion and disturbances of public order [had] occurred in the areas of conflict, to the detriment of agricultural production and national supplies, so that the usefulness of the estates concerned [had] been impaired, and the inalienable right to work and to a decent subsistence, vouchsafed to citizens under the Basic Law, [had] been prejudiced.<sup>233</sup>

Rental of these private properties was stipulated by law to be at a rate of not more than five percent of its sale value, as recorded by the Government.<sup>234</sup> Thus, restrictions on the use of private property began before the Castro government's coming to power.<sup>235</sup> Further, as

227. *Id.*; see also Fournier F., *supra* note 48, at 77-78 (discussing reform proposals after the promulgation of Law No. 3).

228. MESA-LAGO, LABOR FORCE, *supra* note 86, at 28.

229. See Decreto Ley No. 247 whereas cl. 2 (G.O. No. 171, July 23, 1952) (Cuba), translated in Food and Agriculture Organization of the United Nations (on file with the Land Tenure Center Library, University of Wisconsin) [hereinafter Decree Law No. 247].

230. See *id.* The compulsory nature of this rental obligation is found in Article 6. *Id.*

231. *Id.* whereas cl. 2.

232. *Id.* whereas cl. 3.

233. *Id.* whereas cl. 4.

234. *Id.* art. 3.

235. Decree Law No. 247 and its restrictions were promulgated in 1952, while the Revolution did not occur until 1959. Decree Law No. 247.

subleasing was also prohibited, restrictions on the ownership rights of beneficiaries also predated the 1959 revolution.<sup>236</sup>

Although many Latin American governments maintained similar restrictions on land, revolutions did not occur in these countries. In contrast, the Batista government's failure to extend land reform likely led to its overthrow. Subsequent agrarian reform legislation should be properly understood as an extension of earlier policy, rather than a revolutionary reversal of law. From a 1990s perspective, Batista deserves some credit for his consideration of the poor. On the other hand, critics of Castro cannot hearken back to a golden age of property rights prior to Castro when property rights were absolute.

## 2. The 1959 Agrarian Reform Law

### a. Farm Sizes and Expropriation

By May 1961 more than forty percent of land that had been in private hands was expropriated, representing some four million hectares of land.<sup>237</sup> Unlike the Mexican agrarian reform, which allowed owners to retain the best land, the Cuban nationalization included land in the most fertile areas.<sup>238</sup>

Large farms were prohibited under the reform law.<sup>239</sup> In general, each person, either natural or juridical, was limited to thirty *caballerías* of land.<sup>240</sup> Any excess could be expropriated for distribution to landless peasants.<sup>241</sup> Exceptions to this rule were introduced for the

236. *Id.* art. 15.

237. RENÉ DUMONT, CUBA: SOCIALISM AND DEVELOPMENT 60 (1970).

238. *Id.*

239. Agrarian Reform Law art. 1. See also CHIUMINATTO C., *supra* note 53, at 39.

240. Agrarian Reform Law art. 1. Limitations on land size are typical in Latin American agrarian reform legislation. See, e.g., 1992 CONSTITUCIÓN tit. 1, art. 1, § 27 (XV) (Mex.).

241. Agrarian Reform Law art. 1. The law affected certain areas of land, as described below:

LANDS AFFECTED FOR REDISTRIBUTION	
Specific Article from the Agrarian Reform Law of 1959	Properties Affected
Article 1	Land above the maximum limit of 30 <i>Caballerías</i> for any natural or legal person.
Articles 3 and 4	State, Province, or Municipal land, except those dedicated for forest reserves, social goals or public or service establishments.
Article 11	Property less than 30 <i>Caballerías</i> if it was subject to rental agreements, sharecropping or squatting.
Article 13	Sugar cane properties belonging to foreign interests or belonging to persons owning processing plants.
Transitory provisions	Property uncultivated within 2 years of the new legislation.



following: (a) high yield sugar cane plantations,<sup>242</sup> (b) cattle production meeting minimum standards set by the Agrarian Reform Institute,<sup>243</sup> (c) high yield rice plantations,<sup>244</sup> and (d) produce or stock that required land areas larger than thirty *caballerías* for efficient production from a technical and economic vantage.<sup>245</sup> The law specified an absolute size limit of one hundred *caballerías* for properties falling into the first three of these exceptions.<sup>246</sup> Any excess beyond one hundred *caballerías* could be expropriated.<sup>247</sup> As for the fourth exception, the National Agrarian Reform Institute (INRA) was empowered to monitor the farm to insure production was maintained.<sup>248</sup> Other land was exempt entirely: cooperative land, land owned by states, provinces or municipalities, national forest reserves, and rural community land for social welfare, education, health or other similar purposes.<sup>249</sup>

Sharecropping and land rental were expressly forbidden.<sup>250</sup> Farms of thirty *caballerías* or less and with no leases, subleases, sharecropping, or squatting were not in danger of expropriation.<sup>251</sup> On farms of thirty *caballerías* or less, expropriation remained a threat if the land was leased, subleased or sharecropped, or occupied by squatters.<sup>252</sup>

Expropriation of excess land was priority ranked.<sup>253</sup> First, expropriation began only on state lands and private lands where farmers were working the land with leases, subleases, sharecropping or squat-

RAFAEL MENJIVAR, *REFORMA AGRARIA: GUATEMALA, BOLIVIA, CUBA* 390-91 (1969).

242. Agrarian Reform Law art. 2(a) (defining high yield sugar cane as "not less than 50% more than the average natural production" based on the last harvest's figures).

243. *Id.* art. 2(b).

244. *Id.* art. 2(c) (defining high yield rice plantations as those on which production was "no less than 50% more than the average natural production" based on the last harvest's figures).

245. *Id.*

246. *Id.* art. 2, para. 2.

247. *Id.*

248. *Id.* art. 3, para. 4.

249. *Id.* art. 4.

250. *Id.* art. 11.

251. *Id.* art. 6. There is evidence that, in practice, all property over five *caballerías* was expropriated. John P. Rathbone, *Private Property Rights in Cuba* (1992): *Farmland*, LA SOCIEDAD ECONOMICA DE AMIGOS DEL PAIS BULLETIN (La Sociedad Economica, London, England), Apr. 8, 1992, at 2 [hereinafter Rathbone, *Farmland*].

252. Agrarian Reform Law art. 6. See also Resolución No. 283/86 whereas cl. 1 (G.O., July 31, 1986) (Cuba) [Resolution No. 283/86] (citing 1992 CONSTITUTION art. 14).

253. *Id.* art. 5.

ting.<sup>254</sup> Once this source of land was exhausted, then expropriation could proceed to farm areas exceeding the maximum size limits.<sup>255</sup> The law also provided that, when in doubt, the law should be construed in favor of the person working the land.<sup>256</sup>

Under the second Agrarian Reform Law, agricultural properties larger than five *caballerías* were subject to expropriation.<sup>257</sup> Special rules were set up to allow for the voluntary sale of property to the state, for persons preferring a process other than forced expropriation.<sup>258</sup> Similarly, special rules allowed for indemnification of smallholders of five *caballerías* or less who were affected by the agrarian reform law and who relied on rental income from that plot as their only means of income.<sup>259</sup> In cases of forced expropriation, INRA was charged with carrying out the appropriate procedures until a land court could be organized.<sup>260</sup>

Other takings of land came from nationalization. In February 1960, Cuba entered into a trade agreement with the Soviet Union allowing Cuba to receive Soviet crude oil.<sup>261</sup> At that time, the Cuban government owed the American refineries about \$60 million.<sup>262</sup> Ernesto "Che" Guevarra, then President of the National Bank, notified

SOURCES OF LAND EXPROPRIATED FOR THE AGRARIAN REFORM (1959-1961)

Legal Instrument	Caballerías	Hectares	Percent
Agrarian reform law	89,358	1,199,184	27.0
<i>Ley de Recuperación de Bienes Malversados</i>	12,162	163,214	3.7
Donations to INRA	24,038	322,590	7.3
Voluntary sales	43,350	581,757	13.1
Nationalization Law 851	94,008	1,261,587	28.4
Nationalization Law 890	67,850	910,547	20.5
Modifications to art. 24, <i>Ley Fundamental</i>	N.A.	N.A.	N.A.
TOTALS:	330,766	4,438,879	100

MENJIVAR, *supra* note 241, at 405-06. Modifications to Article 24 were made in December 1959 to permit the confiscation of property of Cubans who had participated in the Bay of Pigs invasion. 1959 Fundamental Law.

254. Agrarian Reform Law art. 5(a).

255. *Id.* art. 5.

256. *Id.* art. 64.

257. MENJIVAR, *supra* note 241, at 409.

258. See Navarrete Acevedo, *supra* note 59, at 99 (citing Resolución No. 178 (Nov. 30, 1967) [hereinafter Resolución No. 178]).

259. *Id.* at 100 (citing Resolución No. 266 (Aug. 29, 1961) (Cuba) as modified by Resolución No. 178 (Nov. 30, 1967) (Cuba) [hereinafter Resolución 178]).

260. *Id.* at 101 (citing Ley No. 588 (Oct. 1959) (Cuba) [hereinafter Law No. 588]).

261. LAZO, *supra* note 38, at 226.

262. *Id.*

the refineries that they would have to process the Soviet crude oil.<sup>263</sup> When they refused, the Cuban government not only canceled the prior \$60 million debt, but also seized their facilities, valued at the time at about \$140 million.<sup>264</sup>

In July 1960 Nationalization Law Number 851 was passed in response to the sugar quota cancellation by the U.S. State Department.<sup>265</sup> Compensation was paid in bonds to be backed, ironically, by proceeds from future sugar purchases from the United States.<sup>266</sup> Presumably, this amount would be zero.<sup>267</sup> The United States classified this nationalization as a confiscatory action.<sup>268</sup> In fact, Castro had expected the cancellation of the sugar quota for some time, and "Che" Guevarra had urged the United States to make the move "the sooner the better."<sup>269</sup> Nationalization Law No. 890 affected any lands belonging to foreigners or Cuban citizens not previously affected, particularly sugar cane engineers, the majority of whom were U.S. citizens.<sup>270</sup>

The *Ley de Recuperación de Bienes Malversados* (Law to Recover Usurped Properties) provided for confiscation of properties of national patrimony that the new government thought had been usurped by functionaries of the outgoing Batista government.<sup>271</sup> From 1952 to 1959, Batista and many of his officials had become wealthy, and the new law was directed at recovery of those assets.<sup>272</sup> For these properties, there was no compensation or indemnification. As a result of this law, about \$200 million worth of property was confiscated from Batista government officials and their alleged support-

263. *Id.*

264. *Id.*

265. See MENJIVAR, *supra* note 241, at 404 (discussing Ley de Nacionalización 851 of July 1960).

266. See George R. Harper, *Cuban and Peruvian Agrarian Reforms: At the Crossroads*, 24 U. MIAMI L. REV. 763, 764 (1970).

267. *Id.* at 765.

268. *Id.*

269. LAZO, *supra* note 38, at 228.

270. Harper, *supra* note 266, at 765.

271. Consuegra-Barquín, *supra* note 109, at 900. See also Resolución No. 776 (Oct. 7, 1960) (G.O., Oct. 14, 1960) (Cuba) (citing Ley No. 879 (Sept. 24, 1960) (G.O., Sept. 28, 1960) (Cuba)); MENJIVAR, *supra* note 241, at 403 (citing Ley de Recuperación de Bienes Malversados (Nov. 13, 1959) (Cuba) [hereinafter Law of the Recovery of Misappropriated Goods]).

272. Consuegra-Barquín, *supra* note 109, at 900.

ers.<sup>273</sup> This amount corresponded to about four percent of lands nationalized.<sup>274</sup>

#### b. Rules for Expropriation of Sugar Plantations

Legislation required that sugar plantation ownership be recorded within a year of the 1959 law.<sup>275</sup> However, all stockholders had to be Cuban citizens.<sup>276</sup> Further, shareholders could not be owners, stockholders, or officers in any company engaged in sugar manufacturing.<sup>277</sup> Presumably, this restraint was to avoid conflicts of interest or transfer pricing, defined as the ability to avoid taxes by over-invoicing intercompany accounts carried out by a foreign parent company of a domestic subsidiary.<sup>278</sup> Companies not in compliance could be subjected to expropriation of their land.<sup>279</sup> Stockholders who did not meet the new requirements were given a year to sell their interests on terms approved by INRA.<sup>280</sup> More broadly, no unregistered corporation of any sort could hold agricultural land.<sup>281</sup> Already registered companies could, of course, own land, subject to the size limits.<sup>282</sup> To prevent companies from moving land around to avoid the risk of expropriation, transfer of company-held agricultural property to another company was forbidden.<sup>283</sup>

#### c. Citizen Ownership Requirements

Agrarian legislation provided that only Cuban citizens and companies formed by Cubans could acquire rural property from 1959 onward, unless exempted by INRA, which could permit foreign corporate ownership.<sup>284</sup> Similarly, non-Cuban citizens could not acquire rural property through inheritance; such land was subject to gov-

273. See Travieso-Díaz, *supra* note 24, at 234 (1995) (citing MICHAEL W. GORDON, *THE CUBAN NATIONALIZATIONS: THE DEMISE OF FOREIGN PRIVATE PROPERTY* 73 (1976)).

274. DUMONT, *supra* note 237, at 60.

275. Agrarian Reform Law art. 12.

276. *Id.* art. 12(b).

277. *Id.* art. 12(c).

278. For a discussion of transfer pricing abuses, especially among international corporations in Latin America, see Steven E. Hendrix, *A Review of Argentine and Ecuadorian Tax Law Regarding Transfer Pricing and Recommendations for Improving Ecuador's Approach*, 20 U. MIAMI INTER-AM. L. REV. 283, 284-90 (1989).

279. Agrarian Reform Law art. 12.

280. *Id.* art. 13.

281. *Id.* art. 14.

282. *Id.*

283. *Id.*

284. *Id.* art. 15. The present Mexican constitution is quite similar in text, providing the following: