

ernment expropriation.<sup>285</sup> A special resolution exempted foreigners from the Article 15 prohibitions of agricultural land ownership where the foreign farmer occupied land equal to or less than the minimum.<sup>286</sup>

*d. Redistribution of Land and Indemnification of Owners*

Immediately after Castro's rise to power, Ernesto "Che" Guevarra, an early revolutionary leader, claimed that "[i]f Agrarian Reform were to have to pay indemnities to owners, it would take effort slowly and at great cost . . . peasants must engage in collective action and democratically demand that this principle be waived."<sup>287</sup> In 1960, Major Luís Borgés asserted that all he needed to do to expropriate land was to "sign a little paper."<sup>288</sup> Expropriations were carried out with no preconceived plan, and no one spoke of even the smallest indemnity.<sup>289</sup> By the end of 1960, the Castro government had taken more than \$25 billion of privately owned Cuban property and almost \$1 billion of property owned by U.S. citizens.<sup>290</sup>

According to agrarian reform legislation, the vital minimum of fertile, nonirrigated, rural land for a five person family was defined as two *caballerías*.<sup>291</sup> State lands, and any private lands qualifying for expropriation, were to be granted in full to cooperatives or distributed in two *caballería* lots to agrarian reform beneficiaries.<sup>292</sup> Benefi-

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Sólo los mexicanos por nacimiento o por naturalización y las sociedades mexicanas tienen derecho para adquirir el dominio de las tierras . . . El Estado podrá conceder el mismo derecho a los extranjeros, siempre que convengan ante la Secretaría de Relaciones en considerarse como nacionales respecto de dichos bienes y en no invocar, por lo mismo, la protección de sus gobiernos por lo que se refiere a aquéllos . . .

CONSTITUCIÓN tit. I, art. 1, § 27(I) (Mex.). In English, the provision reads:

Only Mexicans by birth or naturalization and Mexican societies [companies] have the right to acquire dominion [ownership] over the lands . . . The State [Mexico] may grant the same right to foreigners, provided they agree, before the Ministry of Foreign Relations, to consider themselves [like] nationals with respect to such property [beneficial agreements] and they do not invoke the protection of their governments against the same [aforementioned].

*Id.*

285. Agrarian Reform Law art. 15.

286. See Navarrete Acevedo, *supra* note 59, at 100 (citing Resolución No. 156 of Mar. 15, 1960).

287. DUMONT, *supra* note 237, at 27-28.

288. *Id.* at 29.

289. *Id.* at 29-30.

290. LAZO, *supra* note 38, at 240.

291. Agrarian Reform Law art. 16; see also Fournier F., *supra* note 48, at 84.

292. Agrarian Reform Law art. 17.

ciaries, be they cooperatives or individuals, were responsible for the appropriate taxes.<sup>293</sup> However, tenant farmers, sharecroppers, and squatters could receive the land free of charge up to the vital minimum.<sup>294</sup> If farm size exceeded the vital minimum but remained five *caballerías* or less, the first two were free of charge through the agrarian reform and the remaining portion could be purchased from the owner by way of a forced sale if on private land,<sup>295</sup> or could be granted free of charge if on state land.<sup>296</sup> Property greater than five *caballerías* was subject to distribution, after payment for any improvements in the land.<sup>297</sup>

Landowners who were subject to expropriation, such as those with more than thirty *caballerías*, were required to submit documentation of ownership for purposes of indemnification.<sup>298</sup> After a final award of a parcel to a beneficiary, the grant could be inscribed at the Rural Property Section of the Property Registries.<sup>299</sup> Any private land not in production two years after the date of the agrarian reform law was subject to expropriation.<sup>300</sup>

In theory, constitutional requirements for indemnification were to be followed. These requirements were based on sale value of the farms, as reflected in municipal assessment statements dated before October 10, 1958, with special provision for subsequent improvements.<sup>301</sup> Prior law had already given the State a preferential purchase right over real property and securities.<sup>302</sup> However, under the agrarian reform, capital gains in property, defined as the value above the amount originally invested, plus additional investment of capital or labor, were not fully paid.<sup>303</sup> Forty-five percent of the "unearned increment" was handed over to the State.<sup>304</sup> It was then

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293. *Id.* art. 17, para. 2.

294. *Id.* art. 16.

295. *Id.* art. 18.

296. *Id.* art. 21, para. 2.

297. *Id.* art. 56.

298. *Id.* art. 25.

299. *Id.* art. 28.

300. *Id.* transitory provision 7.

301. Agrarian Reform Law art. 29. Indemnification at cadastral or tax value has been used in many agrarian reform programs in Latin America. For example, Chile indemnified at the tax appraisal value of the property. See Joseph R. Thome, *Law, Conflict, and Change: Frei's Law and Allende's Agrarian Reform*, in *SEARCHING FOR AGRARIAN REFORM IN LATIN AMERICA* 188, 197 (William C. Thiesenhusen ed., 1989).

302. Agrarian Reform Law art. 57 (referring to Article 89 of the Organic Law of the Republic).

303. *Id.* art. 30.

304. *Id.*

transferred to INRA for the benefit of peasants, and then to the appropriate province, municipality or autonomous body.<sup>305</sup>

Indemnification was to be paid in agrarian reform bonds, a type of public security, with a floating interest rate capped at 4.5%.<sup>306</sup> These bonds were exempt from income tax for the first ten years, if invested in new industries,<sup>307</sup> and this opportunity was extended to heirs of owners.<sup>308</sup>

The tax basis for indemnification was the self-declared value owners had used for payment of property taxes.<sup>309</sup> This was the same method used by Guatemala, Bolivia,<sup>310</sup> and other Latin American countries.<sup>311</sup>

Despite the law's requirement of compensation, the Cuban government's agrarian reform program paid relatively low prices for the land they expropriated.<sup>312</sup> By 1961 the Cuban government had issued bonds for \$8,900,000 in compensation for 4,400,000 hectares of land.<sup>313</sup> The Venezuelan government, with a far less radical land reform (between 1960 and 1963), paid \$57,380,000 (roughly six times the Cuban amount) for 579,000 hectares.<sup>314</sup> This amounts to roughly about one seventh of the total land area for Venezuela of 88,205,000 hectares.<sup>315</sup>

#### e. Redistributed Agricultural Property

Property received under agrarian reform carried with it restrictions. It could not be used for commercial businesses, other than

305. *Id.*

306. *Id.* art. 31.

307. *Id.* art. 32.

308. *Id.*

309. *Id.* art. 29.

310. MENJIVAR, *supra* note 241, at 396.

311. Cuban legislation used the 1958 tax return as evidence of property value. Harper, *supra* note 266, at 777. Similarly, Peru used 1968 income tax returns to determine property value. *Id.* One commentator noted that "this system [was] naturally beneficial to the honest taxpayer, and detrimental to the dishonest one." *Id.*

312. MENJIVAR, *supra* note 241, at 406-07.

313. *Id.* at 407.

314. *Id.* at 407-08.

315. *Id.*

farmers' cooperatives.<sup>316</sup> Property could only be transferred by inheritance, sale to the State, or by a sale authorized by INRA.<sup>317</sup> The land could not be leased, mortgaged, or sharecropped, and no one else could be given a usufructuary interest in the land.<sup>318</sup> The only exception involved asset-based lending to small farmers from the State or from quasi-governmental institutions.<sup>319</sup>

The law also took steps to prevent fragmentation of land.<sup>320</sup> It mandated that when parcels did change hands, as in inheritance, the land could only pass in whole to a single heir.<sup>321</sup> Where more than one heir had a valid claim on the land, as described in Article 1067 of the Civil Code, then the lot was to be sold at auction to qualifying peasants or agricultural workers.<sup>322</sup> The proceeds were then to be divided among the heirs, assuming the heirs were also peasants or agricultural workers.<sup>323</sup>

Gender issues were also considered in the agrarian reform legislation. In cases of common law marriage, if the land was jointly occupied for at least one year, the community property legislation for stable, extramarital unions was applicable.<sup>324</sup>

CUBA COMPARED WITH OTHER JURISDICTIONS: AREA EXPROPRIATED						
Country	Period	No. of Years	Area Redistributed in Hectares (000)	Total Land Area (km <sup>2</sup> ) in the country	Percent of land redistributed (as % of total land area)	Average Redistributed in Hectares/year
Mexico	1915-1962	47	52,000	1,923,040	27	1,106,000
Bolivia	1952-1962	10	4400	1,084,390	4	440,000
Venezuela	1960-1963	3	579	882,050	1	193,000
Italy	1950-1958	8	750	294,020	3	94,000
Japan	1946-1949	3	2000	374,744	5	666,000
Guatemala	1953-1954	1.5	606	108,430	6	414,000
Cuba	1959-1961	2	4400	110,860	40	1,200,000

*Id.* at 406. CENTRAL INTELLIGENCE AGENCY, THE WORLD FACTBOOK 1993 47, 98, 193, 198, 159, 255, 410 (1993) (for total land area in the individual countries). 100 hectares = 1 square kilometer (km<sup>2</sup>).

316. Agrarian Reform Law art. 33.

317. *Id.* art. 34.

318. *Id.* These restrictions are typical in Latin America. See Hendrix, *supra* note 51, at 8-12.

319. Agrarian Reform Law art. 34, para. 2.

320. See generally Agrarian Reform Law.

321. *Id.* art. 35. See also Fournier F., *supra* note 48, at 88.

322. Agrarian Reform Law art. 35.

323. *Id.*

324. *Id.* art. 36. Compare with Hendrix, *supra* note 51, at 13-14 (discussing other Latin American jurisdictions).

*f. Agrarian Development Zones*

As a part of agrarian reform, INRA was granted the power to declare "agrarian development zones,"<sup>325</sup> with each zone considered a discrete administrative unit.<sup>326</sup> These zones could be subdivided into sections for better management.<sup>327</sup> A variety of factors were considered in delineating each zone, including the following: (1) areas best suited for property registration, population census, agricultural research, and surveying; (2) agrolological characteristics; (3) population centers or settlements, state aid centers, peasant farmers' associations, cooperatives, and local police stations; (4) hydrological resources; (5) small, supplementary rural industries; and (6) existing communications facilities.<sup>328</sup> State aid centers were to provide agricultural machinery, equipment, granaries, storehouses, warehouses, transportation, research facilities, electricity, and other assistance, such as schools with boarding facilities, rural maternity homes, first aid stations, dispensaries for medical and dental care, libraries, athletic facilities, and cultural outlets.<sup>329</sup>

The agrarian reform law expressly provided a stated preference for cooperatives, with management appointed by INRA.<sup>330</sup> On cooperatives, members were to personally work the land.<sup>331</sup>

*g. The National Agrarian Reform Institute*

INRA was charged with overseeing agrarian reform.<sup>332</sup> INRA was an autonomous entity with its own legal personality.<sup>333</sup> The Cuban Council of Ministers held the power to appoint INRA's president and an executive director.<sup>334</sup> Local committees, under the supervision of INRA, would be charged with enforcement.<sup>335</sup> INRA's powers included the following: (1) carrying out research; (2) proposing tax measures; (3) proposing tariff protections; (4) coordinating housing, health, and education improvement efforts within the rural population; (5) defining agrarian development zones; (6) directing the review

325. Agrarian Reform Law art. 37. See also Fournier F., *supra* note 48, at 88.

326. Agrarian Reform Law art. 42.

327. *Id.* art. 38.

328. *Id.* art. 40, paras. 1-6.

329. *Id.* art. 41.

330. *Id.* art. 43.

331. *Id.* art. 44.

332. *Id.* art. 48. See also CHIUMINATTO C., *supra* note 53, at 78.

333. Agrarian Reform Law art. 48.

334. *Id.* art. 48, para. 2.

335. *Id.* art. 52.

of land distribution, the establishment of state aid offices, and the conveyancing of lands; (7) carrying out development plans; (8) drafting regulations for cooperatives; (9) direct training in cooperatives; (10) managing resettlements, land awards, distribution and other aspects of the agrarian reform; (11) establishing its own budget and administering its own funds; (12) performing its own agricultural census every five years; (13) establishing internal rules; and (14) linking with international associations where appropriate.<sup>336</sup> On the other hand, the agrarian reform law did not apply to rural property occupied by tenant farmers and squatters that<sup>337</sup> Additionally, the Revolutionary Army was given a coordinating role in the functioning of INRA.<sup>338</sup>

INRA also managed aspects of agricultural credit and extension. It was charged with establishing a credit department<sup>339</sup> and contributing to efforts for the coordination of policy with the agricultural division of the Agricultural and Industrial Development Bank of Cuba.<sup>340</sup> For its part, the State was charged with helping INRA provide agricultural and livestock development units throughout the country to provide access to the following: (1) equipment and machinery; (2) agronomical or zoological research; and (3) technical assistance.<sup>341</sup>

In 1966, property belonging to smallholders no longer capable of farming due to age or disability was transferred to INRA under special rules.<sup>342</sup> The smallholder was allowed to remain in any housing on the premises (if that were the owner's only home), along with a small plot of land ten meters around the home, for the purpose of self-consumption gardening.<sup>343</sup> This occupation of land was considered a gratuitous usufructuary interest.<sup>344</sup> In return, the smallholder received a stipend from the government.<sup>345</sup> These stipend benefits could be passed on through inheritance to a spouse, companion, or other family member who was incapacitated, lacked means for living, or lived with the decedent.<sup>346</sup>

336. *Id.* art. 48, paras. 1-14.

337. *Id.* art. 58.

338. *Id.* final provision 4.

339. *Id.* art. 49.

340. *Id.*

341. *Id.* art. 50(a)-(c).

342. See Navarrete Acevedo, *supra* note 59, at 100-01 (citing Resolución No. 120 (April 20, 1966) (Cuba) [hereinafter Resolución No. 120]).

343. *Id.* at 100 (discussing the effect of Resolución No. 120).

344. *Id.*

345. *Id.* at 100-01.

346. *Id.* (citing Resolución No. 177 (Nov. 30, 1967) (Cuba) [hereinafter Resolución No. 177]).

Furthermore, *tribunales de tierra* (special land tribunals) were permitted to address claims arising from the agrarian reform legislation, as well as other issues related to agricultural contracts and rural property.<sup>347</sup> Special resolution gave INRA the power to authorize sales, grants, cession, alienation, or transfer of any agricultural property.<sup>348</sup> Additionally, the state was required to establish forest reserves and national parks, with a view towards soil conservation and preservation of forests.<sup>349</sup>

#### *h. Individual Versus Collective Ownership*

##### *i.—Historic Background*

Law Number 3 of the Sierra Maestra, dated October 10, 1958, did not address cooperatives or state farms.<sup>350</sup> Subsequently, under the agrarian reform law, farmers began to organize into farmer associations. Groups were often encouraged to sell property to the government and join the state farms.<sup>351</sup> By 1978, 137,000 small private farmers remained, on an average farm size of 12.6 hectares; this represented about 20% of total crop and pasture land or 1,736,816 hectares.<sup>352</sup>

As a result, Cuba had a higher degree of collectivization than most Socialist countries.<sup>353</sup> Cuban agricultural cooperatives (similar to the Russian *kolkhozy*) were converted into state farms (similar to the Russian *sovkhoby*) by mid-1962.<sup>354</sup> Nevertheless, workers were allowed to retain a small portion of land for individual self-production.<sup>355</sup> In 1967, however, this practice was stopped, reportedly because workers spent more time on their individual plots than on state land.<sup>356</sup>

347. Agrarian Reform Law art. 54. In fact, these tribunals never came into existence. See Navarrete Acevedo, *supra* note 59, at 101.

348. See Navarrete Acevedo, *supra* note 59, at 99-100 (citing Resolución No. 113 (Dec. 31, 1959) (Cuba) [hereinafter Resolución No. 113]).

349. Agrarian Reform Law art. 55.

350. LAZO, *supra* note 38, at 242.

351. Rathbone, *Farmland*, *supra* note 251, at 2.

352. *Id.*

353. Carmelo Mesa-Lago, *The Revolutionary Offensive*, in CUBAN COMMUNISM, *supra* note 139, at 75.

354. *Id.*

355. Within the Socialist block, most land was held as *kolkhozy*, except in Poland and Yugoslavia, where the majority of land was still held by private farmers. See *id.*

356. *Id.*

In the old Soviet Union, small garden plots accounted for almost a third of total agricultural production.<sup>357</sup> There is anecdotal evidence from Cuba that small private plots might have made similar contributions.<sup>358</sup> One estimate in 1963 placed work productivity on state farms at half that of private farms.<sup>359</sup>

Collectivization in Cuba was encouraged in part because of the belief that centralization of machines would ensure full employment.<sup>360</sup> Consultants claimed that small farmer production had failed in Bolivia and Mexico while the International Food and Agriculture Organization of the United Nations (FAO) asserted small producers had restricted modernization in Jamaica.<sup>361</sup> Cuba was thus encouraged to collectivize production.<sup>362</sup>

After 1974, with government encouragement and incentives, organization of *Cooperativas de Producción Agropecuaria* (agricultural production cooperatives) (CPAs) increased.<sup>363</sup> From 1977 to 1984, the number of CPA's ballooned from 44 to 1414.<sup>364</sup> Membership jumped from 365 to 72,500, and the area of land used by CPAs increased from 6052 hectares to 1,083,292 hectares.<sup>365</sup>

In 1989, CPAs accounted for 7.8% of Cuban land (868,200 hectares) and was comprised of 1353 associations, representing 64,000

357. William C. Thiesenhusen, Presentation on Private Property Conversion in Russia Before the Organization of American States Conference on Tenure Change in Formerly Socialist Economies (Sept. 18, 1992) (notes from presentation on file with author) [hereinafter Thiesenhusen Presentation].

358. For a general discussion of the increasing role of small private farming in Cuba, see Carmen Diana Deere, *Socialism on One Island? Cuba's National Food Program and Its Prospects for Food Security*, 124 INST. OF SOC. STUD. WORKING PAPER SERIES 38, 39 (1992).

359. DUMONT, *supra* note 237, at 74.

360. *Id.* at 54.

361. *Id.* at 32-33.

362. *Id.*

DISTRIBUTION OF AGRARIAN REFORM PROPERTY IN MAY 1961	
Granjas del Pueblo (state farms)	2,433,449 hectares
Cane cooperatives	809,119 hectares
Private Property	1,196,311 hectares
Total area affected by the Agrarian Reform	4,438,879 hectares

MENIVAR, *supra* note 241, at 407.

363. See Asesores para el Avance Social et al., Perfil de Proyecto: El Cambio en el Manejo de las Empresas Agropecuarias en Cuba: De Empresas Estatales a Cooperativas (1995) (on file with the Land Tenure Center Library, University of Wisconsin) [hereinafter Cuba Project Paper] (stating that CPAs are regulated under Ley 36 of July 1992).

364. Rathbone, *Farmland*, *supra* note 251, at 2.

365. *Id.*

workers.<sup>366</sup> The average farm had 647 hectares with 47 workers.<sup>367</sup> CPAs mainly engaged in export crops, usually sugar (43% of CPA land and labor), tobacco (10% of CPA land and 15% of CPA labor), and coffee (15% of CPA land and 13% of CPA labor).<sup>368</sup>

CPA membership was divided between "contributory members"—those who had donated property—and "noncontributory members"—those who had not donated any property to the CPA.<sup>369</sup> Many noncontributing members were family members of the contributing membership.<sup>370</sup> In fact, few CPA members were outsiders.<sup>371</sup> Those outsiders who did become members usually represented a specialized trade or skill. Nationwide, about thirty-eight percent of membership was classified as "contributory."<sup>372</sup>

Members were encouraged to contribute assets to the association and were compensated for that contribution.<sup>373</sup> Contributions could take the form of cattle, machinery, or other assets. All contributions were valued carefully.<sup>374</sup> Compensation was paid over a five to seven year period, with twenty-five to thirty percent of a CPA's net profits

366. *Id.* at 3.

367. *Id.*

368. *Id.*

AGRARIAN REFORM AND GROUP FARMING AS A RESULT OF AGRARIAN REFORMS IN LATIN AMERICA, VARIOUS RECENT YEARS					
General Data on Group Farming in the Caribbean and Central America					
	El Salvador	Honduras	Nicaragua	Guatemala	Dominican Republic
Number of Group Farms	317	1939	1110	67	131
Total Area (hectares)	214,049	294,424	448,104	NA	61,499
Number of members	31,359	48,129	22,823	2993	15,676
Type of Enterprise	Cooperativas (1st phase of agrarian reform)	Asentamientos, Cooperativas, Empresas Agrarias	Cooperativas Agrarias Sandinastas (CAS)	Cooperativas de Padre Girón and others	Asentamientos Colectivos
Date	1985	1985	1985	1987	1983

J. David Stanfield & Malcolm Childress, *The Viability of Group Farming Ownership Models for Central America: A Comparison of the Honduran and Salvadoran Cases* (1989) at 3 (unpublished manuscript on file with the Land Tenure Center Library, University of Wisconsin).

369. Rathbone, *Farmland*, *supra* note 251, at 3.

370. *Id.*

371. *Id.*

372. *Id.*

373. *Id.*

374. *Id.*

being set aside specifically for compensation purposes.<sup>375</sup> In response to the 1974 initiative by the government, by 1981, sixty-four percent of CPA land had been contributed by members, and twenty percent by the state (representing a conversion of state farms into CPAs).<sup>376</sup>

CPAs were difficult to classify as either private or public, because they displayed characteristics of both. In terms of public characteristics, the CPAs shared similarities with public entities that had an organizational structure resembling public entities and specialized labor brigades.<sup>377</sup> In addition, CPA property was not inheritable, and was required to produce a state-determined output.<sup>378</sup> Statutes classified them as privately owned and they had the right to divide or merge with other CPAs.<sup>379</sup> Furthermore, CPA members were free to enter and leave.<sup>380</sup> Still, the main deterrent to leaving the CPA was the inability to take any property upon departure, except for contributory property for which the worker had not received any compensation.<sup>381</sup> As a result, the CPAs were a hybrid of public and private interests.<sup>382</sup> Nevertheless, first generation workers tended to classify themselves with the private sector, while second generation workers identified more with wage workers on state farms.<sup>383</sup>

Similarly, in 1992, Cuba's private agriculture sector was small. Only about 9.7% of total island land and just 3% of the agricultural workforce were employed in private sector agriculture.<sup>384</sup> Farmers in this sector were often elderly, with their children only rarely following in their footsteps.<sup>385</sup> There was no formal pension arrangement, and farmers received only limited health benefits.<sup>386</sup> In retirement, farmers could elect to sell the family farm to a state or association, in effect establishing a funding mechanism for retirement or health expenses.<sup>387</sup> To overcome some of these obstacles, most small farmers joined a *Cooperativas de Crédito y Servicio* (Credit and Service Coop-

375. *Id.*

376. *Id.*

377. *Id.*

378. *Id.*

379. *Id.*

380. *Id.*

381. *Id.*

382. *Id.*

383. *Id.* at 4.

384. *Id.*

385. *Id.*

386. *Id.*

387. *Id.*

erative) (CCS).<sup>388</sup> These cooperatives served as a conduit for receipt of state inputs and technical assistance.<sup>389</sup> Farmers not members of a CCS were typically dispersed subsistence farmers.<sup>390</sup>

In 1989, CCS members held about 7.6% of national land, about 833,100 hectares.<sup>391</sup> These farms produced tobacco and specialized crops like vegetables (especially tomatoes), coffee, and bananas.<sup>392</sup> Production was marketed to the state through negotiated quotas, and land, equipment, and produce remained privately held.<sup>393</sup> Members shared some installations and services.<sup>394</sup> That same year, dispersed private farms occupied only 2.2% of Cuban territory, approximately 249,000 hectares, mainly in the eastern half of the country.<sup>395</sup> These were generally self-sufficient farms engaged in growing a range of crops and livestock.<sup>396</sup>

#### ii.—The Second Agrarian Reform Law (1963)

The second agrarian reform law<sup>397</sup> had its roots in the continued conflict with Cuban owners of large estates and the United States boycott.<sup>398</sup> Despite the efforts of the initial reform law, a poor asset distribution continued, with seven percent of farmers each owning seventy-six hectares constituting forty-seven percent of all private landholdings.<sup>399</sup> About twenty-five percent of all cultivable land on the island still remained in the hands of about one percent of the population at the end of the first agrarian reform law.<sup>400</sup>

This legislation sought to: (a) advance further the dismantling of large estates; (b) reduce the maximum landholdings per person to five *caballerías*; (c) proclaim the expropriation of all farms above the size

388. *Id.*

389. *Id.*

390. *Id.*

391. *Id.*

392. *Id.*

393. *Id.*

394. *Id.*

395. *Id.* at 5.

396. *Id.*

397. See MENJIVAR, *supra* note 241, at 409 (discussing Segundo Ley de Reforma Agraria (Oct. 3, 1963) (Cuba) [Second Agrarian Reform Law]).

398. For example, the fourth whereas clause of the Second Agrarian Reform Law specifically refers to *imperialismo yanqui* (yankee imperialism) and *burgueses rurales* (rural bourgeois). *Id.* at 410. The use of this language underscores the distinctly political, rather than economic or technical, nature of the second agrarian reform.

399. Fournier F., *supra* note 48, at 92.

400. *Id.*

per person limit of five *caballerías*, unlike the first agrarian reform law which allowed for the continuation of some larger farms.<sup>401</sup>

The new legislation was in some degree a response to a deterioration in Cuban-U.S. relations.<sup>402</sup> The law mandated the expropriation of all farms larger than five *caballerías*.<sup>403</sup> However, the same two exceptions from expropriation for larger farms applied; cooperatives where land per person remained five *caballerías* or less and high productivity farms were exempt from expropriation.<sup>404</sup>

The second agrarian reform law resulted in the following reforms: (a) state agricultural ownership of fertile lands increased to 70%; (b) remnant large estates from the first Agrarian Reform Law were eliminated; (c) the "Socialist agricultural transformation" was viewed as complete.<sup>405</sup>

#### iii.—New Liberalizations

From 1982 to September 1995, 212 foreign investors had formed joint venture companies with local participation,<sup>406</sup> representing about \$2 billion in foreign investment into Cuba.<sup>407</sup> The U.S.-Cuba Trade and Economic Council calculated that, as of August 1995, approximately \$4.9 billion in foreign investment had been announced, of

401. Navarrete Acevedo, *supra* note 59, at 97.

402. See MENJIVAR, *supra* note 241, at 410 (discussing the Cuban missile crisis of October 1962). According to Carlos Rafael Rodríguez, "Diferir la segunda reforma agraria hubiera sido comprometer por mucho tiempo el desarrollo agropecuario de Cuba." *Id.* In translation this provision reads: "To defer the second agrarian reform would compromise, for too long, the development [unfolding] of Cuban agricultural concerns." *Id.*

403. Navarrete Acevedo, *supra* note 59, at 97.

404. *Id.* at 98.

405. *Id.* at 99.

DISTRIBUTION OF AGRARIAN REFORM LAND: STATE VS. PRIVATE OWNERSHIP			
Year	1959: After the first agrarian reform law	1963: Before the second agrarian reform law	1963: After the second agrarian reform law
Percent State Ownership of Land	40	52	71
Percent Private Sector Ownership of Land	60	48	29

OSCAR TRINCHET VIERA, LA COOPERATIVIZACIÓN DE LA TIERRA EN EL AGRO CUBANO 24 (1984).

406. Castro Says Approval of Investments Will be 'Flexible' but Subject to Scrutiny, *supra* note 17.

407. Douglas Farah, *Havana Swings Its Doors Open Wider*, INT'L HERALD TRIB., Sept. 6, 1995, available in LEXIS, News Library, 1ht File [hereinafter Farah, *Havana*]. Prior to 1982, no foreign investments were permitted in Cuba. See Lionel Martin, *Cuba to Free Up Investment Laws*, GUYANA CHRON., Sept. 4, 1995, at 8; José de Cordoba, *Cuba Will Allow Foreigners to Own 100% of Firms*, WALL ST. J., Sept. 5, 1995, at A11.

which \$556 million had been formally committed.<sup>408</sup> Presently, a Mexican joint venture is fixing Cuba's telephone system, French and Russian companies are completing the Jaragua nuclear power plant, and other long-term infrastructure projects are advancing with foreign financing.<sup>409</sup> Japanese cars, British gasoline stations, and Spanish hotels have become common across Cuba.<sup>410</sup>

In this spirit, the Cuban government has dramatically altered its philosophy and approach towards state farms and CPAs.<sup>411</sup> However, Cuban historian Carmelo Mesa-Lago suggests that the new liberalizations are perhaps best understood as measures to perfect socialism, rather than a wholesale move to capitalism. Today, tensions within the government are increasing because moderate reformers, who do not advocate capitalism but want to introduce market mechanisms, are opposed by orthodox hard-liners who resist these crucial changes.<sup>412</sup>

"Castro permitted some limited market-oriented reforms to be enacted in mid-1993," Mesa-Lago says, "but he apparently is trying to halt further change . . . [t]he pressure from below for reforms has been enormous but Fidel has been reluctant to make domestic changes because he is afraid changes will lead to what happened in Eastern Europe."<sup>413</sup> Despite additional reforms in 1995, the Cuban government clearly indicated that the new provisions did not mean Cuba was in the process of giving up its Marxist revolution.<sup>414</sup>

408. Douglas Farah, *Foreign Investors Finding Cuba More Comfortable - With U.S. Away*, WASH. POST, Sept. 12, 1995, at A14 [hereinafter Farah, *Foreign Investors*].

409. *Id.*

410. John Rice, *Cuba Debates Foreign Investment*, AUSTIN AM.-STATESMAN, Sept. 5, 1995, at A5, available in 1995 WL 6103917.

411. Mimi Whitefield, *Cuba Turns State-Owned Farms into Private Operations*, LAS VEGAS REV.-J., Nov. 25, 1993 at 8C; Mimi Whitefield, *Cuba Relaxes Farm Rules to Boost Food Production*, MORNING NEWS TRIB. (Tacoma, Washington), Sept. 16, 1993, at C7, available in 1993 WL 8762437. For other changes in the banking sector, see Dalia Acosta, *Economy—Cuba: No Readjustment Without Banking Reform*, Inter Press Service, Jan. 2, 1996, available in LEXIS, News Library, Wires File.

412. Deibler, *supra* note 160, at D4. GERALYN PYE, from the Flinders University of South Australia, argues that there has been a considerable amount of self-criticism and reform in Cuba in recent years. See GERALYN PYE, *Cuba Since the Fourth Congress*, Paper Presented at the Latin American Studies Association Meeting, Washington, D.C. 2 (Sept. 28-30, 1995) (on file with author) [hereinafter LASA Meeting]. Cuban rhetoric continues to reaffirm a commitment to Marxism-Leninism. *Id.* But in practice, Marxism-Leninism is defined increasingly broadly, and Cuban policy more and more represents a pragmatic response to the severe economic difficulties it has encountered since the mid-1980's. *Id.*

413. Deibler, *supra* note 160, at D4.

414. Farah, *Havana*, *supra* note 407, at A14.

Specifically with regard to the 1995 Foreign Investment Law, Ernesto Melendez, Minister of Foreign Investment, stated, "This law regulates and opens broad avenues for foreign investment. But it is not inspired by neoliberalism, and its goal is not a transition to capitalism."<sup>415</sup> Osvaldo Martinez, who sponsored the law as chairman of the Economic Committee, claimed, "This is an opening to defend and develop socialism," and not one that is inspired by capitalist economics.<sup>416</sup> On this same legislation, Fidel Castro classified the law as "broad and quite radical," aimed at adapting the Cuban economy to the "new realities of today's world."<sup>417</sup> However, Castro emphasized that "[t]hat does not mean in any way a return to capitalism, much less beginning a crazy race in that direction."<sup>418</sup> John Kavulich, president of the U.S.-Cuba Trade and Economic Council, asserted that the new foreign investment law is a "transitional document" and James Whisehand, a Miami attorney and author of a Cuba business newsletter characterized the law as a "zig-zag motion with a net forward gain towards more free-market activity."<sup>419</sup>

Since September 1993, about eighty percent of the state farms have been broken into *unidades básicas de producción cooperativa* (basic units of cooperative production) (UBPC).<sup>420</sup> In short, the Cuban leadership has abandoned its previous ideological commitment to state farms as the preferred form of Socialist agricultural production.<sup>421</sup> However, the extent of change to the basic philosophy is debatable.<sup>422</sup>

415. Douglas Farah, *Cuba Approves Law Promoting Foreign Interest*, L.A. TIMES, Sept. 6, 1995, at D1 [hereinafter Farah, *Cuba*].

416. Rice, *supra* note 410, at A5.

417. *Cubans to Discuss New Investment Law*, UPI, Aug. 31, 1995, available in LEXIS News Library, UPI File.

418. *Id.*

419. de Cordoba, *supra* note 407, at A11.

420. Nahela Becerril Albarran & Victor Figueroa Albelo, *Tenencia de la Tierra y Cooperativización Agrícola en Cuba* (May 12, 1994) (unpublished manuscript on file with the Land Tenure Center Library, University of Wisconsin) (citing Decreto Ley No. 142 (Sept. 20, 1993) (Cuba) [hereinafter Decree Law No. 142]). Cuba Project Paper, *supra* note 363, at 1. Messina Presentation, *supra* note 11.

421. Deere Testimony, *supra* note 16, at 2; Indeed, the legislation itself notes that Articles 15 and 17 of the Constitution allow for Socialist state property to be transferred to legal entities or individuals on an exceptional basis, and it is this authority that creates the UBPC's. See Decree Law No. 142, whereas cl. 1.

422. Victor Figueroa Albelo, *Rural Development and Cooperatives Group*, Universidad Central de las Villas, *Hacia una Fórmula Cooperativa del Sector Estatal Agrícola en Cuba iii* (Jan. 15, 1995) (unpublished manuscript on file with the Land Tenure Center Library, University of Wisconsin). GERALYN PYE argues that it is difficult to identify a clear direction in Cuban policy over the past few years. See Pye, *supra* note 412, at 2.

Articles 14, 15, and 17 of the 1992 Constitution allow for state lands to be transferred to the private sector.<sup>423</sup> The resulting new UBPC is a type of cooperative designed to replace the state farm sector.<sup>424</sup> An estimated 4000 cooperatives will be created out of 385 former state farms affecting 82.3% of national agriculture lands or 500,000 workers.<sup>425</sup> By May of 1995, state farms accounted for only 25% of Cuban territory, while UBPCs held 55% of the land.<sup>426</sup>

Another initiative within the rubric of dismantling state farms is a land access program that would provide landless peasants, or groups who organize as a UBPC, with the opportunity to use former state farms.<sup>427</sup> The land can be used for subsistence farms or for tobacco production. Further use possibilities include coffee, vegetables, or other products.<sup>428</sup> Self-consumption lots were originally half a hectare (twelve *cordeles*) in size, although this has been reduced to a quarter of a hectare (six *cordeles*). In 1993 and 1994, 2000 new small cooperatives were brought into this system,<sup>429</sup> about 1556 of these in the sugar sector, representing about eighty thousand cooperative farmers.<sup>430</sup> Still other state lands are being incorporated into existing CPAs.<sup>431</sup>

There were six legislative objectives underlying the creation of the UBPCs.<sup>432</sup> First, UBPCs were created to affect the relationship between the farmer and results. Second, UBPCs aimed to ensure self-sustaining agricultural production for the farmer, his family, and the community. Third, the UBPCs were created to improve worker life and housing conditions. Fourth, UBPCs aimed to encourage strong association of increased quality of life and personal income with work results. Fifth, development of self-management for the UBPC was an-

423. Figueroa Albelo, *supra* note 422, at 3 (citing Decree Law No. 142, whereas cl. 1 and the 1992 CONSTITUTION).

424. Figueroa Albelo, *supra* note 422, at 1.

425. *Id.* at 3.

426. Jennifer Abbassi, Lessons from the Farmers Markets in Cuba, Then (1980-1986) and Now, Paper Presented at the LASA Meeting, *supra* note 412, at 8.

427. Figueroa Albelo, *supra* note 422, at 1; Beatriz Díaz, Biotecnología Agrícola: Estudio de Caso en Cuba, Paper Presented at the LASA Meeting, *supra* note 412, at 14. A number of local economists note an increase in the number of young people returning to the land. See Abbassi, *supra* note 426, at 14.

428. Figueroa Albelo, *supra* note 422, at 2.

429. *Id.*

430. *Id.*

431. *Id.*

432. Lupo Nuñez Rodríguez, Asociación Nacional de Economistas de Cuba, Evolución de la Organización Empresarial Agropecuaria en la Cuba Revolucionaria, Presentation at the LASA Meeting, *supra* note 412, at 13.

anticipated. Sixth, UBPCs were developed with the idea of voluntary participation by workers.

By the end of 1993 the new UBPC sector already encompassed about 26.5% of national lands.<sup>433</sup> State agricultural enterprises still held about 47.5% of lands, with about 8.5% of lands in other state entities.<sup>434</sup> CPAs accounted for 8% of land, with independent farmers occupying about 10.5% of the island.<sup>435</sup> However, the distribution has not been uniform nationally. For example, the Havana Province contained CPAs and peasants on about 40% of its lands, with UBPC's and the Ejército Juvenil del Trabajo (Young Worker's Army) (EJT) on the remaining 60%.<sup>436</sup>

UBPCs are allowed a high degree of self-management through a general assembly of its members and an elected administration board.<sup>437</sup> The *asamblea general* (the general assembly) is the highest decision-making authority of the UBPC.<sup>438</sup> The *junta administracion* (the administrative board) is the executive and administrative organ of the UBPC.<sup>439</sup> The administrator is the highest legal representative

433. Figueroa Albelo, *supra* note 422, at 4.

DISTRIBUTION OF UBPCs AS OF JUNE 1995			
Type of UBPC	Number of Cooperatives	Number of Members	Areas received in usufruct (in hectares)
Sugar Cane	1296	133,685	1,680,000
Non-Sugar Cane	1558	132,087	1,510,000
Total	2854	265,772	3,190,000

Díaz, *supra* note 427, at 3.

434. Figueroa Albelo, *supra* note 422, at 4.

435. *Id.*

436. *Id.*

TENURE FORM	1977		1987	
	Number of Units	Areas (Hectares)	Number of units	Area (Hectares)
I. State Businesses		8,351,700		8,671,400
II. Cooperative Property (CPA)	296	45,200	1418	985,000
III. Usufruct (CPS, Ind.)	0	0		89,000
IV. Economic Parcel				
A. Employed Worker	0	0	31,912	89,300
B. Other Private	0	0	22,771	77,800
Total		10,381,500		11,071,400

Becerril Albarran & Figueroa Albelo, *supra* note 420, at 26. The total line reflects total agricultural land area, not necessarily the column total.

437. Díaz, *supra* note 427, at 2.

438. Figueroa Albelo, *supra* note 422, at 24. The General Assembly, Administrative Board, and Administrator positions were created by Resolución No. 354/93, arts. 6, 10-13 (Sept. 28, 1993) (Cuba) [hereinafter Resolución No. 354/93].

439. Figueroa Albelo, *supra* note 422, at 4.



of the UBPC and ensures compliance with the General Assembly and the Administrative Board Decisions.<sup>440</sup> They select their own members, establish capitalization requirements, elect four managers, set self-consumption levels, and make other relevant management decisions.<sup>441</sup> Land assets of the UBPC remain state property.<sup>442</sup> Yet, the UBPCs maintain an indefinite usufructuary interest<sup>443</sup> in the land,<sup>444</sup> an interest typically inscribed at the official registry.<sup>445</sup> With this type of property interest, UBPC members (*ubepecistas*) effectively manage a voluntary, private cooperative, and own what they produce.<sup>446</sup>

The UBPC is a "social and economic organization" made up of workers with autonomous power, and with its own juridical personality.<sup>447</sup> In this sense, the UBPC manages the factors of production on its own behalf. This includes internal organization of labor, contracting of any outside labor needed, negotiation of credit with banking officials, designation of any self-consumption levels, and setting of organizational structure and remuneration.<sup>448</sup>

440. *Id.*

441. *Id.*

442. *Id.* at 20.

443. Decree Law 142 art. 2(a); Díaz, *supra* note 427, at 25 (citing Acuerdo del Buro Político (Sept. 10, 1993) (Cuba) [hereinafter Political Bureau Agreement]).

444. Figueroa Albelo, *supra* note 422, at 20 (citing Decree Law No. 142 art. 2).

445. *Id.*

446. Deere Testimony, *supra* note 16, at 5.

447. Decree Law No. 142, art. 2; Resolution No. 354/93 art. 1; Becerril Albarran & Figueroa Albelo, *supra* note 420, at 17; Figueroa Albelo, *supra* note 422, at 24. The exact nature of the UBPC legal personality is at this stage still evolving. See José Luis Martín Romero, Los Sindicatos Cubanos Ante la Crisis Actual, Paper Presented at the LASA Meeting, *supra* note 412, at 8.

LISTING OF PUBLIC VERSUS PRIVATE CHARACTERISTICS OF THE UBPCs.	
Public Characteristics	Private Characteristics
The mother state enterprise retains ownership over the land.	UBPCs can own nonland property.
The mother state enterprise retains the exclusive rights to sale of inputs to the UBPCs, and to purchase of UBPC outputs, at price levels which are centrally controlled.	Autonomous management of production
UBPCs must seek optimal levels of production, not optimal economic behavior.	Members retain benefits of increased productivity.
The state provides subsidized credit opportunities for UBPCs.	Invests collective capital.

See Deere Testimony, *supra* note 16, at 5, 11.

448. Figueroa Albelo, *supra* note 422, at 25; Becerril Albarran & Figueroa Albelo, *supra* note 420, at 17.

There are several external problems facing UBPCs in Cuba.<sup>449</sup> Water and land quality depend on whatever the State provides.<sup>450</sup> The amount and disposition of cooperative credit and the amount of existing debt are also problems.<sup>451</sup> In addition, there are difficulties in assuring a favorable and stable market for production.<sup>452</sup> Finally, cooperative regulatory legislation can limit decentralized and flexible development by requiring a specific organizational structure.<sup>453</sup>

The relationship between the UBPC and the state has changed dramatically under the new arrangement.<sup>454</sup> Many legal restrictions in management decision-making have been removed.<sup>455</sup> Still, despite legal autonomy from the state, the UBPCs remain dependent on the state for credit access and usufructuary rights.<sup>456</sup> These factors limit the commercial autonomy of the new cooperatives.<sup>457</sup>

Further, the functions of the UBPC are redefined through political processes.<sup>458</sup> Ministries of Sugar and Agriculture continue to have some organizational and directional oversight over the UBPCs.<sup>459</sup> Additional regulations from the Ministry of Sugar (MINAZ) and the Ministry of Agriculture (MINAG) further circumscribe UBPC activity.<sup>460</sup> External economic relationships between UBPCs are nearly impossible, as any such transactions would require prior approval from the state.<sup>461</sup>

UBPCs have been extended through much of the sugar cane industry. Between September and December of 1993, 1556 sugar cane UBPCs were organized, accounting for about ninety percent of the land previously in the hands of state sugar entities *complejos*

449. Cuba Project Paper, *supra* note 363, at 3.

450. *Id.*

451. *Id.*

452. *Id.*

453. *Id.* See also Nuñez Rodriguez, *supra* note 432, at 15.

454. Figueroa Albelo, *supra* note 422, at 26.

455. *Id.*

456. *Id.*

457. *Id.* The July 7, 1995 issue of the periodical Bohemia reports that self-management still has not been achieved. *Id.* There is still no autonomy, Bohemia argues. *Id.* In this regard, UBPCs are "autonomous to lose and pay" and UBPCs are still under the "lense of paternalism." See Nuñez Rodriguez, *supra* note 432, at 15.

458. Figueroa Albelo, *supra* note 422, at 27 (citing Political Bureau Agreement).

459. Figueroa Albelo, *supra* note 422, at 27 (citing El Acuerdo No. 2708 del Comité Ejecutivo del Consejo de Ministros (Sept. 21, 1993) (Cuba) [Agreement No. 2708 from the Executive Committee of the Council of Ministers] [hereinafter Agreement No. 2708]).

460. Figueroa Albelo, *supra* note 422, at 27-28.

461. Agreement No. 2708 7th cl.

*agroindustriales* (CAIs).<sup>462</sup> Mixed cultivation state enterprises are now experimenting with the new organizational structure of UBPC. By January 1994, 816 UBPCs with 81,000 members had been organized.<sup>463</sup> The UBPC structure has been extended to dairy and livestock production in the province of Holguin since January 1994, and the province of Havana since March 1994.<sup>464</sup>

There are also several problems associated with UBPCs in Cuba.<sup>465</sup> First, joint owners often rank consumption needs over cooperative capital and skill investment. Second, there is no practical need or legal mechanism (like commercial or business shares) to assure that a joint owner will recoup future investments made into the enterprise. These problems may translate into low levels of investment and gradual reduction in the viability of the productive unit. Third, production cooperatives frequently limit hand labor or wage participation by family members of the joint owners. There are few clear inheritance rules, and restrictions on family participation are creating dissatisfaction among joint owners. Finally, lack of incentives and adequate supervision mechanisms mean lower joint labor productivity. Traditional problems of free riders in cooperative arrangements thus emerge.

Organized labor in Cuba has also identified the following problems associated with the UBPC structure: (1) the lack of autonomy in decision-making for the UBPC; (2) the fact that UBPC administrative decisions effectively go beyond just day to day matters, and

462. Deere Testimony, *supra* note 16, at 5.

463. *Id.* at 6.

464. *Id.*

DISTRIBUTION OF NON-SUGAR CANE UBPCs: JUNE 1995	
Type of Agriculture	Number of Cooperatives
Various Produce	356
Cattle	728
Citric Products and Fruit	110
Apiculture	71
Coffee	204
Tobacco	70
Rice	15
Mixed	2
Forest	2
TOTAL	1558

Díaz, *supra* note 427, at 3.

465. Cuba Project Paper, *supra* note 363, at 2-3.

include, for example, personnel policy; (3) many UBPC decisions are made without any state intervention from government.<sup>466</sup>

Another liberalization in the agriculture sector involves the farmers' markets.<sup>467</sup> In these markets, which had officially existed until 1985,<sup>468</sup> surplus agricultural produce—production above and beyond production quotas—could be sold privately.<sup>469</sup> These markets were reopened in the autumn of 1994.<sup>470</sup> Although undocumented, there is speculation that this policy change is a result of military pressure to address the underlying causes of public unrest in Cuba.<sup>471</sup> Reopening the markets has had the effect of "bleaching the black market"—that is making legal what was previously illegal.<sup>472</sup> Since the change, the value of the Cuban peso rose from 140 pesos to the U.S. dollar (before the change in 1994) to about 40 or 50 pesos to the dollar in early 1995,<sup>473</sup> and 10 pesos to the dollar in early September 1995.<sup>474</sup> It is not clear whether re-opening the markets has actually increased food production; some experts speculate that food production is being diverted from the quota system to the farmers markets.<sup>475</sup> In practice, production quotas that had been imposed on farms were not being met.<sup>476</sup> Nevertheless, more food appeared in May 1995 than had been available twelve or fifteen months earlier.<sup>477</sup> While some have suspected military participation in the production of food, the level of

466. Martín Romero, *supra* note 447, at 8.

467. See generally Abbassi, *supra* note 426, at 14.

468. The *mercados libres campesinos* (free peasant markets) were eliminated in mid-1986. Sergio G. Roca, *Reflections on Economic Policy in Cuba's Food Program*, in CUBA AT A CROSSROADS, *supra* note 161, at 94-95, 110. In October 1991 the issue of free peasant markets was again presented to the Communist Party. *Id.* At the Fourth Party Congress, the Party rejected the reinstatement of the markets. *Id.*

469. Messina Presentation, *supra* note 11.

470. *Id.* Abbassi, *supra* note 426, at 14.

471. Messina Presentation, *supra* note 11.

472. *Id.* President Castro has noted that the dollar was in circulation even before it was decriminalized because tips were paid in dollars or people received dollars through relatives. Remarks by Cuban President Fidel Castro to the National Assembly of the People's Government, ANPP (radio broadcast, Cuban TV, Tele Rebelde, Havana, Sept. 4, 1995), in BBC Summary of World Broadcasts, Sept. 7, 1995, available in LEXIS, News Library, Bbcwb File [hereinafter *Castro's Remarks*]. The dollar was circulating and "all we did was legalize something that was already taking place." *Id.*

473. Messina Presentation, *supra* note 11. Since July 1993, the government has authorized the free circulation of the dollar. See Farah, *Cuba*, *supra* note 415, at D1.

474. *Cubans to Discuss New Investment Law*, *supra* note 417.

475. Messina Presentation, *supra* note 11.

476. *Id.*

477. *Id.*