

## **Legal Changes in the Area of Labor Relations**

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### **I. The Present System**

Any discussions of the labor law and labor relations problems that may arise in Castro's Cuba, should begin by defining the nature of the existing industrial relations systems. Until two years ago, that definition was a relatively simple one: the Cuban system was a prime example, or perhaps as I have argued on other occasions, an exacerbated version of the Stalinist model. This characterization is still valid for 95 percent of economic activities, but coexists now with another completely different system applicable to the tourist industry and a few other sectors of the economy. Reference will be made first in this paper to the main system and some information will be given at the end about the other less important regulations.

According to the Stalinist model, the actors of industrial relations, i.e. the employers and the workers organizations, lose their autonomy and become entirely subordinated to the State and the communist party. Employers are nothing more than subservient bureaucrats who adhere to government policies and follow the instructions of the planning agency. Labor unions are deprived of the right to draw up their by laws and programs of action and become organs of the state and transmission belts of the communist party.

Other features of the Stalinist model are:

1. Work is right, a duty and a source of pride for every citizen.
2. Non-paid voluntary work for the benefit of society is regarded as an important element of the system.
3. Brigades, micro-brigades, and other forms of militarizing labor are widely used.
4. Self-employment is looked upon with disapproval as all production efforts are supposed to be carried out for the government.
5. Workers are constantly subjected to an intensive system of social mobilization intended to maintain the "heroic" tempo of the revolution.
6. Strikes are prohibited and free and voluntary collective bargaining disappears. The Cuban system embodies all these essential elements of the Stalinist Model and adds a few other features aimed at further strengthening the totalitarian character of the regime. Voluntary work was elevated to the category of a constitutional principle and its practice has been much more widespread under Castro than under Stalin. The latter praised stakhanovites and encouraged other workers to follow their example. In Cuba two-thirds of the labor force participated in the 1989 voluntary work celebration of the Bolshevik Revolution, a remarkable record of participation in a non-paid labor exercise. It seems needless to add that to secure such a record unions are mandated by the party to guarantee a certain quota of voluntary work and to press the workers to do it under the threat of losing their prospects of promotion, transfer or new employment as well as the vouchers or certificates that enable them to acquire certain consumer goods.

Various kinds of forced labor have been instituted, including the Vagrancy Law, the use of military conscripts to perform economic tasks, the use of prison labor and the compulsory combination of production work and studies at all levels of education.

In recent years, both the pseudo-voluntary work and the massive use of forced labor have been geared towards the food program, agricultural mobilizations and the digging of so-called "people's tunnels."

Self-employment was considered as an illegal activity punishable by the State. The Fourth Congress of the Cuban Communist Party (PCC) authorized certain forms of self-employment related to minor services, but ratified the PCC's opposition to all other forms of working of oneself including the free peasants markets that had thrived in the early 1980's. However, in September 1993 the government authorized self-employment in a specific list of activities, which was later considerably shortened.

The militarization of labor has grown beyond brigades and micro-brigades to encompass contingents, rapid squads for the defense of the revolution, workers' guards, workers' militias and growing use of military methods in the production process, particularly of the sugar industry.

Although Castro has kept the support of sizeable portions of the labor force, there is no doubt that the number of disgruntled workers has increased at a rapid pace over the last two years. To hold in check that part of the population opposed to the regime, Castro has stiffened the disciplinary measures and substantially enlarged the system of penalties. There is probably no other country in the world in which the number of disciplinary measures is as lengthy and harsh as the list contained in the Cuban Labor Code of 1984, the sectoral disciplinary codes, and the recent "Ley de Organos de Base de Justicia Laboral" (1992)

Equally stringent are the provisions concerning conditions of work. The practice of extending working hours has been constant throughout the 34 years of revolution. Using sometimes the socialist emulation system, invoking on other occasions the need for compulsory overtime without extra pay or relying on the frequent exhortations of the "Maximum Leader," Cuban workers are frequently obliged to work 10, 12 or 14 hours a day. In glaring violation of the 8-hour work-day enshrined in the Constitution and in international conventions. On January 25, 1993, the Secretary General of the Cuban Confederation of Workers (CTC) mentioned workers who labor 18 hours as an example to be followed. One month later, the Minister for the Sugar Industry spoke of the need to work 14 or 16 hours in order to save the 1993 harvest. For undernourished and exhausted workers, these are indeed intolerable burdens which were added to the other duties regarding their respective mass organizations, the rites and ceremonies of the revolution, military exercises and militia activities.

Cuban workers and people in general, including children belonging to the Pioneers Union, have few choices left other than complying with the government's requests. Castro has stepped up all sorts of repressive mechanisms, thus perfecting the totalitarian nature of the Stalinist model. Using the school record, the labor record ("expediente laboral") and neighborhood records (the reports of the Committees for the Defense of the Revolution), the government keeps track of the ideological attitudes of people and forces upon them the most adverse working and living conditions. The quid-pro-quo is represented by the social safety net that until recently guaranteed a social salary, education, health care and retirement benefits.

Various forms of discrimination are also used to punish those who do not conform to the government line. There is discrimination in employment and promotion, discrimination in access to housing and consumer goods, discrimination in the authorizations to travel abroad and discrimination against those who apply for emigration. Together with the constant harassment of dissidents and advocates of human rights, all this represents an all-out effort to control the minds and activities of the people.

In the area of collective labor relations, the Cuban government has suppressed all recent attempts to create independent unions. Leaders and organizers of those unions (CGTC, CSTC and CGTCI) have been persecuted, intimidated, incarcerated or victimized by mobs of Castro's followers. While

in other Socialist countries, labor acquire a semblance of self/control, in Cuba the by-laws of the CTC state that the labor movement, deliberately recognizes the commanding role of the communist party and indicates that the PCC is "The Vanguard and Supreme Organization of the Working Class". More than in any other Socialist country, Cuban labor unions have turned into emasculated mass organizations devoted to the promotion of labor discipline, socialist emulation, voluntary work, and the personality cult of Castro. Though they may conclude labor agreements with managers of state enterprises, they are unable to negotiate the contents of those agreements, whose main purpose is to secure the fulfillment of the productions quotas fixed by the planning agency. While there have been some cases of sabotage and worker resistance is widespread, no union has ever been able to declare a strike, nor have they ever dare to express disagreement with government policies.

The paragraph above contain a sketchy description of present-day labor relations in Cuba, a description that interested participants can read with more details in two recent books written by the author of this paper. The labor relations system thus described applies to the vast majority of economic activities in Cuba since many years ago; in fact, since the inception of the Stalinist Model. As mentioned earlier, there are however some sectors of economic activities, chiefly represented by the tourist industry and some joint (government-foreign capitalist) ventures in the textile, oil and transportation industries for which the Castro regime has enacted a different system specifically designed to entice foreign investors. The new approach started in 1982 with Decree Law 50, followed by Decree 122 of 1990, applicable to the tourist industry. Ironically, some aspects of this particular system can be regarded as neo-liberal in character and perhaps more favorable to business than most of the other neo-liberal schemes proposed in market economies. There are, for instance, provisions on flexibilization and deregulation, controversial issues indeed which are now hotly contested by unions in many countries. Example of these provisions are the facilities granted to foreign investors to use different kinds of employment contracts, to exert strict control on the personnel, to ease regulations concerning termination of employment, to repatriate profits, to bring their own middle and high level management and to free such firms from the risk of having to deal with aggressive, militant unions. Castro's officials figured that these concessions, together with the low level of wages prevailing in the island and the guarantee that no authorization will be given to form independent unions, will be enough to attract the Canadian, Mexican, Spanish, French and other investors interested in doing business with Cuba.

## **II. The Future Legal Framework**

This duality approaches - the Castro Stalinist and the Castro neo-liberal- poses some legal problems for the reentry of U.S. based business into Cuba. While the Castro Stalinist System governing labor-management relations should be entirely dismantled and replaced by a labor legislation suitable to a democratic society, the neo-liberal benefits already granted to foreign investors may deserve a different treatment. It is clear that none of these benefits should be regarded as privileges exclusively reserved to corporations that were willing to collaborate with the Castro regime. If there are, however, elements of flexibilization which may be deemed appropriate for the revival of the Cuban economy, those elements should be granted to all foreign investors on equal footing and not only to the beneficiaries of Castro's largesse. Moreover, both the enacted legislation regarding joint ventures and the statutes governing the tourist industry should be thoroughly revised as they include certain provisions which are unfair or excessively rigorous as regards to treatments of Cuban workers. Flexibility with respect to the typology of employment contracts and in connection with the valid causes for dismissals, including reasons connected with the economic and technical requirements of the firm, might be retained, but hours of work, minimum wages, safety and health, freedom of association, voluntary collective bargaining and the right to strike, must be recognized and regulated in the light of what are now internationally

recognized fair labor standards. It may be recalled in this connection that this is at least what the U.S. government has been doing since 1974-1984 through its generalized system of commercial preferences.