

CUBAN LABOR LAW: ISSUES AND CHALLENGES

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Labor laws supposedly designed to safeguard the interests of Cuban workers has been one of the bulwarks of the political mythology of the Castro Revolution since the early 1960s. Such a mythification has served several purposes: (1) denigrate or deny any accomplishments of the Cuban Republics that predated the 1959 Revolution; (2) re-write Cuban history to convert what was essentially a middle-class revolution to one that was spearheaded by the traditional Marxist protagonists of peasants and workers; and (3) present a “progressive” labor policy that recognizes and guarantees basic labor rights albeit within the strict confines of a totalitarian system that selectively denies such rights at its discretion. The result is a body of propaganda that trumpets Cuba as the stereotypical “worker’s paradise.” Like so many other aspects of Cuban reality, when dogma and official statistics surrounding labor rights are peeled away, a very different reality is evident, where Cuban workers emerge as one of the most exploited and manipulated labor forces in the world. In any transition from totalitarianism to democracy, the role of workers and the rights to be afforded to the working class will be key issues facing legislators and policy-makers in the creation of a new Cuban society.

Presented in this essay is a brief survey of Cuban labor law during the Republican era (1902-1952), followed by an analysis of labor law as legislated and as practiced under the Castro regime, and concluding

with a discussion of issues facing drafters of new Cuban labor laws in a post-Castro Cuba. This analysis is not intended to serve as a blueprint for future policy makers, but rather as a point of initiation for a national debate that will allow Cubans to determine the morals, laws, culture and society that will comprise a new Cuban Republic. Ultimately, the Cuban people possess the sovereign right to determine such issues and the scope and quality of presentations and studies that have been completed through the Association for the Study of the Cuban Economy will serve as a potential resource during the transition process.

CUBAN LABOR LAW DURING THE REPUBLICAN ERA (1902-1952)

Constitutional Guarantees of Labor Rights

Since the establishment of the Cuban Republic in 1902, Cuban Constitutions and legislation have mirrored Cuban sociopolitical events, which at times have been turbulent. The constitutions of 1901, 1934, and 1935 all recognized and guaranteed basic civil rights that bear directly on labor rights, such as freedom of assembly and freedom of association.¹ However, the 1940 Constitution provides the most extensive treatment of labor rights within a Constitutional setting, continuing traditional provisions of civil, political, and procedural guarantees, but including extensive legislative provisions governing family, culture, property and work.² Such issues had not been addressed by earlier Constitutions.

1. “The Socialist Constitution of Cuba,” *Columbia Journal of Transnational Law* 17:45, p. 470, 1978.

2. *Id.*, at 470.

The 1940 Constitution recognized basic labor and economic guarantees, such as the right to work, a forty hour maximum work week, one month of annual vacations, minimum wages, equal pay for equal work, social security, the rights to form and join unions, and right to strike, and provided working women the right to paid maternity leave. These expansive rights were widely praised at the time by the Cuban Socialist Party, which had sent delegates to the constitutional assembly.³

Administrative Organization

The Secretariat of Labor was created in 1933 and its functions were identified as “the enforcement of social laws, services of social assistance, inspection of labor conditions and lodging, supervision of labor courts, supervision and control of ... social insurance ... and the supervision over compliance with international labor agreements.”⁴ Resolutions of the Secretary of Labor were enforced through “interventors,” who were appointed by the Executive Branch to private enterprises by the Secretariat of Labor. Interventors would ensure compliance with labor resolutions and those enterprises that did not comply were temporarily managed by interventors until labor practices were brought into compliance.⁵

The Secretariat of Labor was also advised by the Superior Labor Council, consisting of representatives from government, management and labor. Appeals in labor matters were heard by the Court of Constitutional and Social Guarantees.⁶

Labor problems were addressed by tripartite (government-employer-employee), bipartite (employer-employee), and governmental councils. For example, the Intelligence Commission of Port Workers had jurisdiction over labor matters within the maritime sec-

tor, and was composed of employers, employees and was presided over by a member of the judiciary.⁷

Protection of Worker Rights

During the Republican era, labor was nationalized, meaning that Cubans were guaranteed at least 50% of the employment and salary of all businesses and 100% of the employment and salary of future enterprises. Three exemptions were established: (1) foreign technical/professional personnel (unless Cuban technicians/professionals were available); (2) veterans; and (3) owner representatives having administrative or supervisory functions.⁸ If employees had to be terminated from employment, foreign workers had to be fired before Cuban nationals and new positions had to be filled by Cuban citizens. By the 1950s, however, the Ministry of Labor modified and relaxed this strict policy to allow additional foreigners with specialized technical knowledge and experience to retain key positions, especially in areas where Cuban professional/technical schools could not keep up with labor demands.

Cuban workers were protected from arbitrary discharge and the law set forth detailed procedures and causes through which employees could be discharged. Examples of justified causes were unauthorized absence, incompetence/negligence, fraud/theft, divulging trade secrets, and decline in work performance.⁹ Causes for which an employer could not discharge an employee were maternity, transfer of the enterprise, military duty, and, in some sectors, mechanization.¹⁰ Certain classes of employees, such as domestic servants and some non-sugar agricultural workers, were exempted from these requirements. In practice, the process of discharging employees was slow and complicated, and consisted of filing of pa-

3. *Id.*, at 471.

4. Vidana, Evangelina, “Labor Legislation during the Republic of Cuba: 1902-1958,” Thesis, University of Miami, Florida, 1970.

5. *Id.*

6. *Id.*

7. *Id.*

8. *Id.*

9. *Id.*

10. *Id.*

pers by the employer, followed by an administrative stage and judicial stage. The ultimate decision was subject to appeal.¹¹

Cuban workers had the right to enter into labor contracts individually or collectively. Collective bargaining was well-protected and was recognized as a compulsory right by the 1940 Constitution. Collective agreements were registered with the Ministry of Labor, whereby they became enforceable.¹²

In 1933, the right of workers to organize into labor unions was established under Cuban law, abandoning the colonial-era Law of Association of 1888, and new regulations on labor unions were established. Only government employees were exempted from these provisions. The 1940 Constitution also guaranteed the right to unionize and labor unions could not be dissolved.¹³ Under the law, all labor leaders had to be Cuban citizens, delegates from the Secretariat of Labor could attend union meetings, union leaders had to be elected by ballot instead of by acclamation, and payment of union dues was compulsory.¹⁴ Unions were forbidden from participating in political activities.

The right of workers to strike was recognized under Cuban law, provided prior notice was given to the Secretariat of Labor. Labor disputes that could potentially lead to a strike had to be brought before Commissions for Social Cooperation,¹⁵ before exercising the right to strike. If the Commission ruled against the union, the strike was unauthorized and therefore illegal. The union had a right of appeal to the Supreme Court. General strikes and lockouts

were illegal, especially in such key sectors as electricity, water, telephone, and medical services.¹⁶

Under the 1940 Constitution, the State's key responsibility to workers was to provide and ensure favorable living and working conditions. As to living conditions, the State was to sponsor and develop housing for labor and was required to ensure the economic conditions necessary for a dignified standard of living, employment for the unemployed, nationalization of labor, non-discriminatory practices regarding sex, race, or class, non-monopolization, and equality in the application of social laws. Voluntary (uncompensated) work was expressly forbidden by law.

In the area of benefits, the State was to contribute one third of the pension and retirement funds. It was also responsible for mediating conflicts between management and labor. The government recognized a maximum 8 hour workday, a maximum 44 hour workweek, one month paid vacation, 4 paid holidays, minimum salary, equal pay for equal work, collective bargaining, unionization, right to strike, and social security. Labor rights, including the right to work, were declared inalienable, and were to be safeguarded by the Constitutionally-created Tribunal of Constitutional and Social Guarantees.¹⁷

Social security guaranteed by the 1940 Constitution addressed risks of unemployment, labor accidents, illnesses, occupational diseases, labor maternity, old age, disability, retirement, and death.¹⁸ The protection against illnesses covered medical assistance free of charge. Social insurance for labor accidents and occupational diseases were paid for by the employer,

11. Id.

12. Id.

13. Id.

14. Id.

15. Prior to creation of the Commissions for Social Cooperation, Cuban legislation attempted to create two types of systems, both independent of the Ministry of Labor, one which provided for an employer-employee direct approach, and the other provided for a National Arbitration Commission. Both were subsequently declared unconstitutional and annulled in 1943. Vidana, Evangelina, "Labor Legislation during the Republic of Cuba: 1902-1958," Thesis, University of Miami, Florida, 1970.

16. Id.

17. Id.

18. Id.

while social insurance related to unemployment, old age and disability were paid equitably among the government, employer, and employee. Social insurance institutions were to be administered by organizations comprised of representatives elected by employers, employees, and by a government representative.¹⁹

Critiques of the Cuban Labor Code in Practice

Despite the extensive laws and rights protecting workers' interests, actual practice and experience differed from the ideal concepts enshrined in Cuban law. The Cuban labor movement passed through several phases during the Republican era. Only occupational accident compensation and social security measures for railway men and mineworkers were in place before 1933. The Machado Regime of the 1920s had been openly hostile to labor interests, resulting in murders of several labor leaders, strike-breaking by force, and outright bans on labor organizations.²⁰

However, as labor organizations grew in political power, successive governments sought labor support by passing the above-described comprehensive labor laws. Labor influence continued growing into the 1950s.²¹ By 1958, a million workers, approximately half of the Cuban labor force, belonged to a labor union.²² In 1938, the unions had been grouped together into a national confederation, the CTC (Cuban Confederation of Workers), composed of 32 industrial federations.²³ Government decrees usually settled labor disputes, and collective bargaining in

practice was infrequent, since all disputes had to be presented before the Ministry of Labor if a majority of the workers in the business chose the option. The Ministry of Labor was composed of political appointees and, especially in the 1940s, was filled with appointees friendly to labor unions.²⁴ One employer appeared before the labor courts sixty times without a favorable decision. Employers often complained of the difficulty in discharging employees.²⁵ For example, one company filed 200 applications to discharge employees for justifiable causes and failed each time.²⁶ Many foreign investors were aware of the protective labor laws and refused to invest in the Cuban economy, based on the experience of Cuban businesses.²⁷ The rigidity of labor legislation was also severely criticized in the World Bank's 1951 report on Cuba.²⁸

In addition, despite the labor guarantees, by the 1950s, a large portion of the Cuban population was either unemployed or partially employed, and were not unionized. During the five months of the sugar harvest, the unemployment rate was 8%, while during the rest of the year ("tiempo muerto") rose to as high as 32%.²⁹ For such workers, family ties and acquaintances were part of an informal social/economic network, which provided support where labor unions and the government could not or would not.³⁰

Originally, administrative enactment of worker rights was to be accomplished through a number of Constitutionally-created instruments for social reform and economic development, such as a national

19. Id.

20. Thomas, Hugh, *Cuba or The Pursuit of Freedom*, p. 1173, Da Capo Press, New York, 1998.

21. Id. at 1174.

22. Id. at 1178.

23. Id. at 1178-79.

24. Id. at 1174.

25. Id. at 1174.

26. Id. at 1176.

27. Id. at 1177.

28. Id. at 1177.

29. Id. at 1175.

30. Id. at 1175.

bank, and a program to achieve full employment. These far-reaching goals were not attained, however, in part due to delays in passing legislation enacting such rights and inability to enact legislation on the more ambitious goals, such as full employment, during the 12-year period when the 1940 Constitution was in effect.³¹

CUBAN LABOR LAW UNDER THE CASTRO REGIME (1959-PRESENT)

The Socialist Constitution

When the Castro regime seized power in 1959, Fidel Castro suspended the 1940 Constitution and enacted the Fundamental Law of 1959, which nonetheless included many of the socioeconomic rights of the 1940 Constitution. Similarly, the socialist Constitution of 1976 includes several of the social and economic rights of the 1940 Constitution, although on the premise that such rights are reality and not just ideals to be pursued.³² Although the most recent Cuban Constitution (1992) lists such rights, it suffers from the Castro regime's disregard for the rule of law, an official practice that has been in place since the regime's seizure of power in 1959. Like other totalitarian governments, Cuba's laws are purposefully vague on key issues, to allow ample state control and discretion. Many laws that are on the books are simply disregarded or are subject to exceptions grounded on the overriding principle of absolute control over Cuban society by the regime.

The Cuban socialist constitution is a radical departure from pre-existing legal norms in Cuba. First, unlike the 1940 Constitution, which was the last legitimate political expression of the Cuban people, both the 1976 and 1992 constitutions were drafted and approved by the Castro regime with virtually no public participation or consent. Second, all constitutional guarantees are subordinated to the dictates and dis-

cretion of the State. Third, as the means of production are state-owned, all workers are employees of the state, the same entity supposedly responsible for guaranteeing worker rights. The result of these factors is that current Cuban labor law primarily imposes requirements on the Cuban state's workers/employees and any of the rights and privileges that are afforded to Cuban workers are subject to suspension and broad interpretation by Cuban courts.

This problem is further compounded by the fact that there is no independent judiciary, as the Cuban courts are subordinate to the National Assembly and the Council of State, of which Castro is president.³³ Article 123 of the Constitution provides that a key purpose of the judiciary is to educate citizens on socialism, a goal inconsistent with the judicial concept of neutrality. Therefore, any Cuban worker seeking legal redress against his employer — the Cuban State — faces a judge committed to ideological conformity with the State.

All these principles are consistent with the Stalinist model that has been in place in Cuba since the 1960s. As the Castro regime consolidated its power by adopting this model, a new concept of labor relations arose, which consists of the following features:

- Work is a right, duty and source of pride for each citizen;
- Non-paid voluntary work is an essential element;
- Brigades and other forms of militarized labor are utilized;
- Self-employment is discouraged through official policy;
- Workers are subjected to intensive social mobilization through propaganda and coercion; and

31. Former President Fulgencio Batista's coup in 1952 suspended the 1940 Constitution, replacing it with the Constitutional Law of 1952, which recognized many of the socioeconomic rights that had been guaranteed under its predecessor. Although the 1940 Constitution was briefly reinstated by the Batista regime after election of Fulgencio Batista to the presidency in 1955, constitutional guarantees were suspended thereafter and remained suspended through 1958.

32. "The Socialist Constitution of Cuba," *Columbia Journal of Transnational Law* 17:45, p. 470, 1978.

33. Hernández, Esperanza and Truyol, Berta, "Out in Left Field: Cuba's Post-Cold War Strikeout," 18 *Fordham Int'l L.J.* 15, 1994.

- Strikes are prohibited and voluntary collective bargaining does not exist.³⁴

These key points of the Stalinist model are incorporated into the Constitution and into Cuba's Labor Code. Article 45 of the Constitution provides that work in socialist society is a right as well as a duty. It further officially declares the elimination of unemployment. Most importantly, Cuban workers must participate in uncompensated "voluntary" work, usually in the form of field labor. On its face, this voluntary work requirement is a legal fiction, as it is a constitutionally-created obligation on every Cuban citizen.

Article 53 provides for freedom of speech and of the press so long as they conform with the goals of socialist society. Article 54 also seemingly guarantees the right of assembly, protest, and association to all workers. Article 46 guarantees a right to leisure time, an 8 hour work day and annual paid vacations. Articles 47 and 48 provide for social security to disabled workers, sick workers and the elderly. Article 49 provides for compensation for job related injuries, and guarantees worker safety.

Despite these guarantees, Article 62 provides that none of the liberties guaranteed under the Constitution "can be exercised against the Constitution and Cuban laws, nor against the socialist state." Article 62 therefore acts as a catch-all provision where any Cuban seeking to assert a legal right is subject to unlimited state discretion in determining whether such an act is "against the socialist state." This applies to any workers who attempt to organize independent labor unions or seek to assert other essential labor rights, such as the right to safe working conditions.

Labor Code

In 1984, the National Assembly of People's Power proposed and adopted a Labor Code governing all labor matters.³⁵ A review of the Cuban Labor Code's provisions demonstrate that 21% of its articles are focused on establishing requirements and duties of Cuban workers, including disciplinary actions and "voluntary" work requirements. The Labor Code creates a reward/disciplinary system to motivate workers to perform their duties.³⁶ Rewards consist of moral and material awards, such as public recognition and access to scarce goods and services.³⁷ Pursuant to the Code, Cuban workers are obligated to (1) be regular and punctual in attendance; (2) make fullest use of the work day; (3) fulfill requirements of their occupation; (4) abide by occupational health and safety regulations; (5) care for socialist property; and (6) perform other duties required by law.³⁸

The Cuban Labor Code creates several administrative structures primarily oriented toward governing and managing workers. Evaluation Committees set forth work requirements for Cuban workers, technical norms, and means by which workers are evaluated. Labor councils address labor disputes and Wage Committees set worker wages for specific sectors. The Law for Labor Justice (1992) adds additional disciplinary measures to enforce compliance with labor requirements.³⁹

An added component to the above work/disciplinary requirements is the aspect of ideological control. All Cuban workers have an official work record that tracks and evaluates the "ideological integration" of each worker.⁴⁰ Therefore, any workers who fail to demonstrate adequate levels of commitment to the Castro Revolution, or who fail to participate in such

34. Córdova, Efrén, "Legal Changes in the Area of Labor Relations," *Cuba in Transition—Volume 3*, Association for the Study of the Cuban Economy, Washington, 1993.

35. Pérez-López, Jorge F., "Cuba's Thrust to Attract Foreign Investment: A Special Labor Regime for Joint Ventures in International Tourism," *University of Miami Inter-American Law Review*, 24:2, page 261, 1992.

36. *Id.* at 268-69.

37. *Id.*

38. *Id.*

39. Córdova, Efrén, *Op. Cit.*

40. Hernandez, Esperanza and Truyol, Berta, "Out in Left Field: Cuba's Post-Cold War Strikeout," 18 *Fordham Int'l L.J.* 15, 1994.

events as state-sponsored rallies, can face disciplinary actions, demotions, or other professional setbacks.

A compounding issue is the fact that suitability for employment is vaguely defined in the Labor Code as that “set of qualities that a worker must possess [to] make him or her apt, given work requirements, for a specific observation or post.”⁴¹ Unfortunately, the specific qualities that make a worker suitable or apt are not defined anywhere in the Code. The result is that such ambiguous legislation lends itself for use as a repressive instrument, wherein a worker who is not deemed to be ideologically committed to socialism may find himself or herself terminated under this broad and vague language. Again, the law is another tool of control rather than a source of protection for the Cuban worker.

Worker Rights

Under the current legal structure of Cuba, the State occupies the dual role of employer and guarantor of worker rights. More importantly, the State decides where and when people work, whether they receive promotions, and whether they may even purchase appliances at workplace credit unions.⁴² While the State occupies the unique role of sole employer in Cuba, it also has broad discretion in determining the extent and operation of constitutionally guaranteed worker rights.

Many of the Constitutional guarantees provided in earlier constitutions are disregarded by the current legal system. Despite constitutional guarantees, rights to freedom of assembly and association are essentially non-existent. Workers can be forced to work 10, 12 or 14 hours a day, in violation of pre-1959 limits to eight hour workdays⁴³ and in violation of international norms.⁴⁴

The Secretary General of the Cuban Confederation of Workers has lauded workers who labored 18 hours a day as exemplary models of the ideal Cuban worker.⁴⁵ Sugar harvests frequently require 14 to 16 hour workdays.⁴⁶

One of the greatest omissions in current Cuban labor law is the complete absence of the right to strike. This right has been proscribed by the Castro regime, perhaps in recognition of the political success of strikes in the struggle against the Batista dictatorship. Similarly, as to collective bargaining, labor agreements with state-run enterprises are not subject to negotiation.

Official labor unions are controlled by the State and therefore do not oppose these violations of internationally-recognized labor rights. Cuban labor unions are integrated into the government’s network of mass organizations, such as youth groups, women’s groups, and professional organizations. Adopting the totalitarian model utilized in other socialist dictatorships, each sector of Cuban society is pooled into large mass organizations which orient that sector and collect information for the state regarding its constituency. The absolute control of the Cuban Communist Party is enshrined in the bylaws of the Cuban Workers’ Central (CTC) which provides that the labor movement recognizes the commanding role of the Party. The result is that unions are reshaped into sources of labor discipline, socialist emulation, voluntary work and social mobilization.

As a consequence, the Castro regime also suppresses all efforts to create independent labor unions. During the “Special Period” after the collapse of Soviet Communism, several independent labor organizations evolved among them the Consejo Unitario de Trabajadores Cubanos, Confederación de Trabajadores Democráticos de Cuba, Confederación de Trabaja-

41. Pérez-López, Jorge F. Op. Cit. at 264.

42. Hernandez, Esperanza and Truyol, Berta, “Out in Left Field: Cuba’s Post-Cold War Strikeout,” 18 Fordham Int’l L.J. 15, 1994.

43. The current Cuban Constitution also includes a right to an eight hour workday.

44. Córdova, Efrén. Op. Cit.

45. Id.

46. Id.

dores Libres de Cuba, and others.⁴⁷ Leaders of these organizations have been persecuted, arrested, incarcerated or subjected to mob violence. Despite repression, similar groups are showing recent signs of growth throughout the island. However, they still remain small, isolated, weakly organized and easily infiltrated by Cuban state security.

Independent labor organizations within the island have successfully criticized the Castro regime for the following deficiencies: prohibition of strikes and other forms of peaceful labor protest, poor safety conditions, indiscriminate firing and discrimination for political and ideological reasons, being forced to engage in non-labor related activities of primarily ideological content, political activities during the workday, no independent labor, and violation of privacy rights due to investigations and searches of residences of workers.⁴⁸

In the growing tourist sector, manipulation of workers by the regime is perhaps most evident. Foreign-managed enterprises cannot directly contract with Cuban workers. Rather, they must hire official state worker service agencies, who then contract Cuban workers. Foreign enterprises, in any sector, must pay worker salaries in dollars to the Cuban state, which then pays Cuban workers in almost worthless Cuban pesos. The result is that Cuban workers are paid at a fraction of the value of the labor they provide to foreign entities. For this reason, the average monthly income of the Cuban worker is approximately ten dollars.

In summary, the legal concepts expressed in the current Cuban Constitution are not applied. Through exceptions and broad discretion, the regime exempts itself from having to comply with its own laws, often sacrificing what few rights it supposedly guarantees to workers. The Cuban Labor Code is primarily designed as a means to control and manage Cuban

workers and basic rights, such as unionization and striking, are omitted from Cuban law. Any future government must reincorporate such basic laws into new legislation, so that Cuban workers may enjoy the same protections and rights enjoyed by workers in Western democracies.

PROPOSALS FOR LABOR LAW IN A POST-CASTRO CUBA

New Cuban labor legislation should meet several essential criteria during the transition from totalitarianism to democracy: (1) transparency; (2) flexibility; and (3) balance of interests. During the transition period, labor laws must be clearly defined for the benefit of both employers and employees. Such transparency will fully advise employees of their rights while ensuring employers and potential investors of labor requirements. Labor laws should also be flexible, to reflect changing conditions of the Cuban economy. Lastly, drafting of labor laws should provide ample opportunity for participation by all sectors of Cuban society.

Several legal sources exist for the creation of new labor legislation. A primary source is the fifty-year legislative legacy of the Republican era. While many provisions in earlier legislation, as seen in Cuban Constitutions and Cuban Labor Codes, now seem antiquated and not in conformity with current international standards,⁴⁹ Cuba nonetheless had a highly developed system of substantive and procedural laws that can provide a starting point for discussion. The object here will be not to blindly follow and adopt legal precedents that have not been in effect for almost fifty years, but rather serve as a framework within which to adopt new legal principles.

Another source for legal guidance is the International Labor Organization (ILO), created to promote worldwide labor standards.⁵⁰ Founded in 1919 as a component of the League of Nations, the ILO is now

47. Brito, Joel, "El Sindicalismo en la Cuba de Hoy," CEON, Colección Actualidad, Vol. 1, Num. 1, August 1999.

48. Id.

49. Such as the stringent standards for dismissing employees, criticized even during the Republican era.

50. Erickson, Christopher L., and Mitchell, Daniel J.B. "Labor Standards in International Trade Agreements, the Current Debate," *Labor Law Journal*, p. 764, 1996.

affiliated with the United Nations. The ILO can provide technical assistance in developing labor legislation. The ILO consults with developing countries in creating new legislation that permits such nations to compete in the global economy while ensuring adequate protection of worker's rights. The ILO advocates for such basic labor standards as: right of association, right to unionize and collective bargaining, free choice of employment, prohibitions on child labor, non-discrimination in employment, adequate wages, limits on working hours, health care, social security and occupational safety and health protection. The ILO may provide technical assistance to the new Cuban government and may also investigate complaints of violations of labor standards and assist a Cuban Ministry of Labor in ensuring adequate protection of Cuban worker rights.

In addition, as Cuba transitions into a participant of the international free market economy, it will no doubt enter into new agreements with trading partners. Such trade agreements often include provisions relating to worker rights and labor rights, with varying degrees of specificity and enforceability.⁵¹ Although the issue of inclusion of labor standards into trading agreements is contested, trading partners may seek minimum labor standards applicable to each signatory. Foreign labor unions may play a key role in insisting upon such standards.

Multilateral Human Rights Conventions also provide a source for discussion of labor rights. The United Nations Universal Declaration of Human Rights and its Bill of Rights recognize such basic rights as rights of association and trade union organizing and bargaining, favorable wages and working conditions, and prohibitions against forced labor, child labor and discrimination.⁵²

Lastly, voluntary labor codes adopted by multinational enterprises may provide another source of norms for labor practice in Cuba. Such codes have

been promoted by non-governmental organizations, industry associations, and individual companies with the purpose of standardizing labor practices and rights in the international economy. Of course, the key deficiency with such codes is that they are not enforceable and are subject to changes in corporate policy.

A review of the above sources suggests the following unconditional basic labor rights should be guaranteed to Cuban workers during the transition period to democracy and free market participation:

- Right of Association;
- Right to independent unions;
- Right to strike;
- Collective bargaining;
- Prohibition against forced labor;
- Prohibition against discrimination;
- Minimum health and safety requirements; and
- Limits on work hours and work weeks.

Other rights, such as wage levels, access to medical services, social security, worker's compensation for on the job injuries, should be guaranteed to Cuban workers, though the ability of the state to provide such benefits will be conditioned on the status of the economy and on Cuba's level of development. Creation and maintenance of pension plans and tax structures to supplement and support a social safety net will be an essential component of drafting new Cuban labor legislation.⁵³

The form in which these rights will be incorporated into Cuban legislation is dependent on the prevailing concept of the relationship between the State and the individual. Unlike the United States, Cuban legal and social norms have accepted (and insisted upon) a large role for the state. Prior to the Castro Revolu-

51. Compa, Lance, "Labor Rights and Labor Standards in International Trade," *Law and Policy in International Business*, vol. 25, p. 179, 1993.

52. *Id.*

53. Travieso-Díaz, Matías F., *The Laws and Legal System of a Free-Market Cuba: A Prospectus for Business*, p. 171.

tion, the Cuban state certainly played a central role in society and expected the state to provide a social safety net, as seen in the expansive rights accorded to workers in the 1940 Constitution and earlier legislation. After more than forty years of a centralized State system, Cubans on the island will no doubt expect continuity in minimum social benefits, among which are social security, free access to health care, and free education. This has been the experience of those Central and Eastern European countries, which chose, or were forced to preserve, well-developed but costly social safety nets.⁵⁴ Of course, such benefits are never “free,” and any new Cuban government will need to develop the proper tax structure and policies to permit the existence of even the most basic of these benefits.

Such a pressing societal need will have to be balanced against competing needs of attracting investment and growing the economy. Labor laws and regulations impose costs on employers.⁵⁵ During a transition, the new Cuban government will have to consider the trade-offs between providing worker benefits and social safety nets to promote social stability, while cutting operational costs to employers.⁵⁶ In the area of foreign investment, an extensive (and expensive) social safety net may also discourage foreign investment, as in East Germany after its reunification with West Germany.⁵⁷

During the transition away from a centralized economic and political system, Cuba will require a massive capital investment, in such basic areas as its infrastructure and communications, as well as a perhaps greater investment in the Cuban people, to provide them with the proper education, training,

and job skills necessary for a competitive economy. Such training may be provided by state programs or by state-employer joint programs, perhaps in exchange for tax credits.

The role of foreign labor in rebuilding Cuba must also be debated. The new Cuban government may be pressured to place restrictions on the ability of enterprises to hire foreign workers, through such measures as work permits and quotas.⁵⁸ Such restrictions are also consistent with Cuba’s tradition of nationalized labor. Many countries have also adopted such measures,⁵⁹ such as Costa Rica where no more than 10% of employees of an enterprise may be foreigners. However, during the transition period, any such restrictions should be liberalized to permit new investors to freely choose qualified employees, especially in areas where employees with technical skills will be in short supply.⁶⁰

Other issues during the transition era will center on the status of employees of former state-owned enterprises. Legislation and guidelines will need to be developed to determine which employees will be transferred to newly-privatized enterprises, and how employees who lose their jobs will be compensated.⁶¹

These issues and challenges will be faced by a Cuban society burdened by decades of totalitarian control, where civic debate and public participation have been non-existent. Many cultural features of totalitarian control, such as intolerance and inability to compromise, may have a negative impact on consensus-building. Nonetheless, these barriers will have to be faced by the Cuban people as they reshape Cuba with new laws, new goals, and new life. At the center

54. Travieso-Díaz, Matías F., “Recommended Features of a Foreign Investment Code for Cuba’s Free Market Transition,” 21 N.C. J. Int’l L. & Com. Reg. 511, 1996.

55. Id.

56. Id.

57. Travieso-Díaz, Matías F., *The Laws and Legal System of a Free-Market Cuba: A Prospectus for Business*, p. 172.

58. Travieso-Díaz, Matías F., “Recommended Features of a Foreign Investment Code for Cuba’s Free Market Transition,” 21 N.C. J. Int’l L. & Com. Reg. 511, 1996.

59. Id.

60. Id.

61. Travieso-Díaz, Matías F., *The Laws and Legal System of a Free-Market Cuba: A Prospectus for Business*, p. 171.

of the physical and spiritual reconstruction of Cuba will be Cuban workers, whose rights and privileges will be debated by policy makers and legislators. Cuban workers' interests must be seriously considered in the formulation of new laws but must be balanced against competing national interests of economic

growth and stability. The debate, though long and difficult, should be anticipated with research on the above issues so that Cuba may strive to attain José Martí's goal of existing "with all, for the good of all."⁶²

62. José Martí (1853-1895), Cuban statesman, journalist, poet and lawyer, is considered by many Cubans to be an intellectual and spiritual guiding force for Cuban nationalism and Cuban identity.