

GUIDE TO CUBAN LAW AND LEGAL RESEARCH

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INTRODUCTION

JULIENNE E. GRANT

Havana — “Paris of the Americas”— offers, throughout the year, its continental diversions, nightclubs, casinos, race tracks, a cultural life, fashionable beaches — all in the peculiar atmosphere of a colonial city and a modern metropolis. Beyond...the enchanted island: gorgeous Varadero, spas, all sorts of open-air sports, many interesting cities, etc. Easy, regular means of transportation by air, train and bus through incomparable landscapes.

“Cuba: The Tropical Holiday Isle,” brochure published by the Cuban Tourist Commission — Government Department, Havana, Cuba, circa 1949.

On June 5, 1949, my maternal grandparents and their three daughters boarded an Aerovías Q flight in Key West, Florida, bound for Havana, Cuba. The flight cost \$10.00 U.S. per person and lasted 30 minutes. Like many other Americans at that time, my grandparents were drawn to Cuba for its intriguing history, beautiful beaches, tropical weather and Havana’s dazzling nightlife. Indeed, my mother, who was then 13 years old, vividly recalls a visit to a glamorous Havana nightclub with her 16-year-old sister and my very liberal grandfather.

My grandfather's interest in Cuba continued after that memorable journey; in early February 1953, he purchased 200 shares of stock in the Cuban Atlantic Sugar Company² for a sum of about \$2,300.00 U.S. My grandfather was just one of countless U.S. citizens and corporations that invested in Cuba in the mid-20th century, intending to earn sizeable profits.³

Little did my relatives and other Americans realize what was brewing then in Cuba, and how they were contributing in their own way to the seeds of revolution. Some of those seeds were being planted in the late 1940s at the Universidad de La Habana where a law student, Fidel Castro Ruz, was becoming increasingly obsessed with radical politics.⁴ Newly introduced to various political and economic ideologies, Castro began to immerse himself in efforts that he believed would crush the political elite and lead to an egalitarian society—locally and regionally.⁵ Castro primarily blamed the United States for his own country's social and economic woes, as well as for those of Latin America in general.⁶

After graduating from law school, Castro continued his revolutionary leanings and dedicated himself to forcing out the corrupt Cuban dictator, Fulgencio Batista y Zaldívar, who had come to power in 1952 through a *coup d'état*. On July 26, 1953, just five months after my grandfather purchased his stock, Fidel (with his younger brother, Raúl, in tow) unsuccessfully led an attack on the Moncada military barracks in Santiago de Cuba. On trial for his role in the attack, Fidel eloquently defended himself and made his agenda clear; he wanted radical change in Cuba. In his now famous speech in court ("History Will Absolve Me"), Castro denounced the Batista regime as illegitimate and proclaimed his intent at Moncada had been to spark a populist movement:

Why were we sure of the people's support? When we speak of the people we are not talking about those who live in comfort, the conservative elements of the nation, who welcome any oppressive regime, any dictatorship, any despotism, prostrating themselves before the masters of the moment until they grind their foreheads into the ground. When we speak of struggle and we mention the people we mean the vast unredeemed masses, those to whom everyone makes promises and who are deceived by all; we mean the people who yearn for a better, more dignified and more just nation;...⁷

Although the Castro brothers and the other surviving Moncada rebels were sentenced to prison for the attack, Batista, under pressure, granted them clemency in May 1955.

Fidel and Raúl, though, did not abandon their goal of overthrowing the Batista government, which the United States heavily supported.⁸ They went into exile in Mexico, secured financial backing and arms, and then led a small group to Cuba in December 1956 on a refurbished boat called *Granma*. On board were about 80 men, including the Argentine physician and revolutionary, Ernesto "Che" Guevara. That effort failed, however, resulting in the deaths of most of the rebels in the hands of Batista forces. The few survivors, including the Castro brothers and Guevara, made their way to the Sierra Maestra mountains in southeastern Cuba.

² The Cuban Atlantic Sugar Co. was formed in 1935 by a group of U.S. banks that had purchased the assets of the bankrupt Cuba Cane Products Co. (formerly Cuba Cane Sugar Corp.). Hershey's sold its holdings in Cuba to Cuban Atlantic in 1946. The now defunct Wall Street brokerage firm Loeb, Rhoades & Co. acquired a controlling stake in 1956, but sold out before Fidel Castro took power in January 1959. For an in-depth overview of the pre-revolutionary Cuban sugar industry, see Mary Elizabeth Speck, *Let There be Candy for Everyone: the Politics of Sugar in Cuba, 1902–1952* (Dec. 2008) (unpublished Ph.D. dissertation, Stanford University).

³ See Eric N. Baklanoff, *A Bountiful Legacy: U.S. Investment and Economic Diversification in Cuba During the 1950s*, ASS'N FOR THE STUDY OF THE CUBAN ECON. (ASCE), 19 CUBA IN TRANSITION: PAPERS AND PROC. OF THE NINETEENETH ANN. MEETING, July 30–Aug. 1, 2009, at 330–331, <http://www.ascecuba.org/c/wp-content/uploads/2014/09/v19-baklanoff.pdf>.

⁴ Anthony DePalma, *Fidel Castro, Cuban Revolutionary Who Defied U.S., Dies at 90*, N.Y. TIMES, Nov. 26, 2016, <http://www.nytimes.com/2016/11/26/world/americas/fidel-castro-dies.html>.

⁵ Along with his involvement in university politics in the late 1940s, Fidel Castro participated in an abortive attempt to overthrow the Dominican Republic's Rafael Trujillo (the Cayo Confites Expedition, 1947) and in anti-government riots in Bogotá, Colombia (the 'Bogotazo,' 1948). For more on Fidel's university years, see FIDEL CASTRO & IGNACIO RAMONET, *FIDEL CASTRO: MY LIFE: A SPOKEN AUTOBIOGRAPHY* 83–103 (Andrew Hurley trans., Scribner 2007).

⁶ Tim Padgett, *Fidel Castro, 1926–2016*, TIME, Dec. 12, 2016, at 42; see also *Id.* at 123.

⁷ FIDEL CASTRO, *HISTORY WILL ABSOLVE ME* 23 (The Ctr. for Cuban Stud. Bilingual Ed., n.d.).

⁸ See Herbert L. Matthews, *Old Order in Cuba is Threatened By Forces of an Internal Revolt*, N.Y. TIMES, Feb. 26, 1957, at 13.

From there, Fidel expanded his “26th of July Movement” (named after the failed 1953 Moncada attack), attracting local resistance fighters. He directed two years of guerilla warfare against the Batista regime while crafting his own global image of a revolutionary.⁹ Castro also made it clear that, along with Batista, he viewed the United States as the Cuban people’s enemy. In a 1958 letter, Castro asserted, “When this war ends, a much longer and greater war will begin for me: the war I’m going to wage against them [the Americans]. I realize that is going to be my true destiny.”¹⁰

Castro and his rebels forced Batista to flee Cuba on January 1, 1959. The overthrow of Batista launched a complex and controversial experiment with socialism, first orchestrated by Fidel Castro, and now by Raúl. Although not openly embracing Marxist-Leninist ideology initially, Fidel began to align Cuba with the Soviet Union in the early 1960s. Castro also quickly started to wage his earlier-declared war against the United States, utilizing the Soviet Union as a “protective umbrella” of sorts to realize his ambitions.¹¹ In response to the United States’ reduction of Cuba’s sugar quota on July 6, 1960,¹² the Cuban government passed *Ley No. 851* (Law No. 851),¹³ which sanctioned the expropriation of all U.S.-owned businesses in Cuba. U.S.-Cuba relations further deteriorated with the formal break of diplomatic relations (Jan. 1961), the Bay of Pigs debacle (April 1961), the imposition of a complete U.S. trade embargo (Feb. 1962) and the Cuban missile crisis (Oct. 1962).

Some 50 years after the Cold War conflict between the United States and Cuba, President Barack Obama and Cuban leader Raúl Castro struck a deal in December 2014 to begin the process of normalizing relations between the two countries.¹⁴ The re-establishment of diplomatic relations was announced on July 1, 2015, and President Obama became the first sitting U.S. President to set foot on Cuban soil since 1928 when he visited Havana in March 2016. Cuba, an island that had been so enigmatic and even demonized, suddenly found itself in the international spotlight with much of the world clamoring to learn more about it, including its legal regime.

Law has indeed played an important role in revolutionary Cuba. Fidel Castro, a lawyer himself, was adept at using the legal system to rationalize and institutionalize the Revolution’s principles.¹⁵ At the core of the law’s role in this effort has been the concept of socialist legality.¹⁶ Pursuant to this concept, as author Debra Evenson explained in 2003, law performs a dynamic and positive function in creating socialism; law is effectively a transformative tool for contouring socialist behavior.¹⁷ Although law has indeed been utilized to create positive benefits in Cuba, such as universal health care and education, it has also notably been used to strip Cuban citizens of many basic human rights, such as free speech and a truly representative government.¹⁸

⁹ See, e.g., Herbert L. Matthews, *Cuban Rebel is Visited in Hideout*, N.Y. TIMES, Feb. 24, 1957, at 1.

¹⁰ Fidel Castro, Letter to Celia Sánchez, June 5, 1958. *Letter from Fidel to Celia (1958) (Fragment)*, FIDEL: SOLDADO DE LAS IDEAS (English-language content), <http://www.fidelcastro.cu/en/correspondencia/letter-fidel-celia-1958-fragment>. For more on this letter, see Juan Antonio Borrego Díaz, *La carta “testamento” de Fidel Castro*, GRANMA, Nov. 26, 2016, <http://www.granma.cu/cuba/2016-11-26/la-carta-testamento-de-fidel-castro-26-11-2016-15-11-47>.

¹¹ Jaime Suchlicki, Forward to *Fidel Castro on the United States, Selected Statements, 1958–2003* (Hans de Salas-del Valle ed., Inst. for Cuban & Cuban-Am. Studies, Occasional Paper Ser. Feb. 2003), <http://scholarlyrepository.miami.edu/iccaspapers/17>.

¹² Robert Young, *Ike Slashes Cuban Sugar Quota, Signs Bills and Cuts Off 700,000 Tons; Raps Castro Acts, Cites Increasing Commitments to Russia*, CHI. DAILY TRIB., July 7, 1960, at 1.

¹³ Ley No. 851, Ley de Nacionalización [LN] [Law No. 851, Law of Nationalization], July 6, 1960, Gaceta Oficial [GO], July 7, 1960. English translation at 55 AM. J. INT’L L. 822 (1960). The law vaguely referenced compensation for takings, which has never occurred. Ley No. 890 [Law No. 890], Oct. 13, 1960, Gaceta Oficial Extraordinaria [GOE], No. Anual 24, Oct. 15, 1960, subsequently mandated the confiscation and nationalization of all Cuban-owned businesses. See also Jose A. Ortiz, *The Illegal Expropriation of Property in Cuba: A Historical and Legal Analysis of the Takings and a Survey of Restitution Schemes for a Post-Socialist Cuba*, 22 LOY. L.A. INT’L & COMP. L. REV. 321 (2000); Matías F. Travieso-Díaz, *Resolving U.S. Expropriation Claims Against Cuba: A Very Modest Proposal*, 22 LAW & BUS. REV. AM. 3 (Winter 2016).

¹⁴ See Peter Baker, *U.S. to Restore Full Relations with Cuba, Erasing a Last Trace of Cold War Hostility*, N.Y. TIMES, Dec. 17, 2014, at A1, <https://www.nytimes.com/2014/12/18/world/americas/us-cuba-relations.html>.

¹⁵ See, e.g., Paul Bernstein, *Cuba: Last Look at an Alternative Legal System?*, 7 TEMP. INT’L & COMP. L. J. 191 (1993).

¹⁶ DEBRA EVENSON, LAW AND SOCIETY IN CONTEMPORARY CUBA 10 (Kluwer Law International 2003) (1994).

¹⁷ *Id.*

¹⁸ See, e.g., U.S. DEP’T OF STATE, BUREAU OF DEMOCRACY, HUMAN RIGHTS AND LABOR, CUBA 2015 HUMAN RIGHTS REPORT, <http://www.state.gov/documents/organization/253217.pdf>; HUMAN RIGHTS WATCH, WORLD REPORT 2017: CUBA, <https://www.hrw.org/world-report/2017/country-chapters/cuba>.

Despite the important role of law in Cuba, however, information about its multiple layers and components has been notably scarce, particularly for researchers who have little or no knowledge of Spanish. Recognizing the need for a current guide in English on researching Cuban law, 12 members of the Latin American Law Interest Group of the American Association of Law Libraries (AALL) set about compiling this Guide in the fall of 2015.¹⁹ Such a major project on Cuban law and legal bibliography in English had not been pursued since 1944, when Dr. Crawford M. Bishop and Anyda Marchant of the Law Library of Congress published a guide to the law and legal literature of Cuba, the Dominican Republic and Haiti.²⁰

As we started the project, though, none of us could have anticipated the challenges we eventually faced. To begin with, we discovered that access to Cuba-based websites is generally unpredictable; there are periodic outages, slow connections and sometimes broken links. The digital editions of Cuba's *Gaceta Oficial* (Official Gazette), for example, were not accessible when we started the project, but they suddenly became available in the spring of 2016, albeit in a cumbersome file format. We also discovered that Cuba's government is generally not well represented on the Web; neither the *Consejo de Estado* (Council of State) nor the *Consejo de Ministros* (Council of Ministers) has its own website, and some government entities have no Web presence at all. To add to the frustration, the government websites that do exist are notoriously inconsistent with information (lists of government officials, for instance), and currency indications are uncommon.

Perhaps the most challenging aspect of the project, however, was trying to make sense of Cuba's hodgepodge of legal instruments and identifying the most current versions of legislation. The 1976 Constitution (as amended to June 26, 2002) is the country's highest legal norm, but things get murky from there in terms of legal hierarchy.²¹ Adding to the difficulty is the absence of an official source for accessing the most current consolidated versions of Cuban statutory codes and regulations. Further complicating things is the *Partido Comunista de Cuba* (PCC) (Communist Party of Cuba), which operates as a parallel authority of sorts.²² In the United States, we are accustomed to a clear separation of powers between government branches, which doesn't exist in Cuba; the line between the legislative and executive powers in particular is blurred, as is the line between Cuba's government and the PCC.

The Guide is accordingly the fruit of a laborious journey—gathering, compiling and analyzing information from multiple primary and secondary sources. Divided into 12 topics, ranging from the legal system to the legal profession, the scope of the Guide is broad. However, this broad treatment is necessary for a jurisdiction like Cuba where government transparency is lacking, and there is no systematic codification of laws. It is often secondary sources, both in the field of law and outside of it, that can prove to be crucial in the research process. And even though the Guide's emphasis is on English-language material, many of the authors were compelled to discuss Spanish-language sources because there were no equivalents available in English.

As we worked on the project, we were also keenly aware of the outside factors affecting the Guide's content. Not only were there website access and currency issues, but the political landscape in Cuba was extremely fluid, as were U.S.-Cuba relations. During the final phase of compiling the Guide, for instance, Donald J. Trump was elected the 45th U.S. President and Fidel Castro died. In addition, 86-year-old Raúl Castro has proclaimed that his tenure as Cuba's chief executive will definitively end in 2018.²³ With so many variables affecting our targeted topics, the Guide must be viewed as a snapshot of Cuban law and research tools as they exist at the time of this writing. We publish the Guide now with the hope that it serves as a catalyst for further research on the Cuban legal system, and for collaborative efforts involving Cuban librarians and their colleagues overseas.

Before closing, I want to thank all of the authors, along with my co-editors, Dr. Marisol Florén-Romero (Florida International University) and Sergio D. Stone (Stanford University). Marisol, Sergio and I worked tirelessly on this project, reviewing and editing the various drafts, and extensively researching each section's topic ourselves.

¹⁹ The Latin American Law Interest Group functions under the auspices of AALL's Foreign, Comparative & International Law Special Interest Section (FCIL-SIS). See <http://www.aallnet.org/sections/fcil/cmtesgroups/Latin-American-Law> (last visited July 24, 2017).

²⁰ CRAWFORD M. BISHOP & ANYDA MARCHANT, A GUIDE TO THE LAW AND LEGAL LITERATURE OF CUBA, THE DOMINICAN REPUBLIC AND HAITI (1944), <http://hdl.handle.net/2027/mdp.39015079734367>.

²¹ See *infra* pp. 32–33, for a discussion of the hierarchy of Cuban legal instruments.

²² See Wilfredo Vallín & Ted A. Henken, *Politics and Government*, in CUBA 85, 108 (Ted A. Henken et al. eds., 2013).

²³ Damien Cave, *Raúl Castro Says His New 5-Year Term as Cuba's President Will Be His Last*, N.Y. TIMES, Feb. 24, 2013, at A5, <http://www.nytimes.com/2013/02/25/world/americas/raul-castro-to-step-down-as-cubas-president-in-2018.html>.

Marisol and Sergio, both native Spanish speakers, were also invaluable in providing accurate translations of some of the highly technical Spanish-language text we often encountered. It took collective knowledge, experience, a huge time commitment and three pairs of eyes to successfully pull this whole project together.

I also want to thank Roberto M. Rojas, a Cuban attorney who serendipitously (perhaps miraculously) appeared at my office door as we were finishing the Guide in January 2017. Roberto is an LL.M. student at Loyola University Chicago and was never too busy to answer the many questions I posed—in person and via e-mail. I also want to thank my mother, Ann L. Grant, for sharing memories of her family's 1949 visit to Cuba, and for locating the record of my grandfather's 1953 stock purchase. I was fortunate to have recently had the opportunity to take her back to Cuba so that she could see this fascinating country as it again sits on the brink of tremendous change.

LEGAL SYSTEM AND GOVERNMENT STRUCTURE

STEVEN ALEXANDRE DA COSTA AND JULIENNE E. GRANT

January 1, 1959. This date continues to define the modern Cuban nation and its people; for it was on this date that Fidel Castro's "26th of July Movement" succeeded in ousting the U.S.-backed authoritarian government of Fulgencio Batista. This defining moment in Cuban history is nonetheless gradually receding into the past and its effect on the country's legal and government institutions is arguably diminishing as well.

Cuba's legal system²⁴ and government framework, as they exist today, are as complex as the country itself. Like other national legal and political systems, Cuba's reflect its historical development and political domination by outside forces. Residual elements of the country's colonial history with Spain, for example, are still highly evident in its legal system, which adheres to the tenets of the civil law tradition.²⁵ Also prominent, however, are the influences of the former Soviet Union and the other socialist bloc countries *vis à vis* the concept of socialist legality. The failure of the Soviet and Eastern European socialist models, though, has left Cuba in a unique situation as it confronts a world markedly different from the decades when the Fidel Castro regime fervently applied principles of socialist law.²⁶

The purpose of this section is two-fold. First, is to provide an overview of Cuba's legal system as it exists today, placing it in historical context to gain a clearer understanding of its roots. The second objective is to present a brief synopsis of the structure of the Cuban government, which is loosely separated into three functional powers (executive, legislative and judicial). All of these powers are addressed more fully in later sections of this Guide. Part D below on the country's government structure also includes a description of the omnipotent and omnipresent *Partido Comunista de Cuba* (PCC) (Communist Party of Cuba). In essence, the PCC determines the overall direction of society, and the State provides the mechanism for implementing it.²⁷

²⁴ For purposes of this section, "...a legal system comprises a relatively effective mixture of rules and institutions that govern relations among individuals and groups in a society—typically the population of a nation-state or some other substantially autonomous polity entity—and that also regulate the role and powers of the government of that entity." There are perhaps as many as 400 individual legal systems in the world. JOHN W. HEAD, *GREAT LEGAL TRADITIONS* 6 (2011).

²⁵ Civil law is generally regarded as one of the main legal traditions extant in the world today. It has its roots in the Roman Republic and, in simple terms, rejects the notion of judge-made law, focusing instead on codified statutory law. *See generally* JOHN HENRY MERRYMAN & ROGELIO PÉREZ-PERDOMO, *THE CIVIL LAW TRADITION: AN INTRODUCTION TO THE LEGAL SYSTEMS OF EUROPE AND LATIN AMERICA* (3d ed. 2007).

²⁶ "...socialist law seeks to liquidate all capitalist and feudal forms of property ownership, to consolidate socialist economic relations, to lift relations within the family from their present level of capitalist or feudal decadence and to realign political power within the society. More than anything else, socialist law is seen as an instrument of social engineering." MARY ANN GLENDON ET AL., *COMPARATIVE LEGAL TRADITIONS: TEXT, MATERIALS AND CASES* 682 (1985).

²⁷ Harold J. Berman, Comment, *Impressions of Cuban Law*, 29 AM. J. COMP. L. 475, 481 (Summer 1980); CONSTITUCIÓN DE LA REPÚBLICA DE CUBA [CONST.], Feb. 24, 1976 (as amended to June 26, 2002), art. 5; *see also* MARY ANN GLENDON ET AL., *COMPARATIVE LEGAL TRADITIONS IN A NUTSHELL* 286 (1982). "The Communist Party's influence over the administration of law

A. HISTORICAL OVERVIEW

1. Pre-Revolutionary Period

Although the vast majority of Spain's colonies in Latin America achieved independence in the early nineteenth century, Cuba remained Spanish until 1898. Consequently, Cuba profited from the "codification movement and the flowering of Spanish scholarship that accompanied it."²⁸ Indeed, after Cuba lost its bid for independence in the Ten Years' War (1868–1878), Spain enacted a set of domestic legal codes that were thereafter directly applied in Cuba.²⁹ With the implementation of the 1889 *Código Civil Español* (Spanish Civil Code), the final in the series, "the laws of Cuba became practically the same as those of the mother country."³⁰

In 1899, the United States established a transitional military government in Cuba following the Spanish-American War, with the island heavily ensconced in the civil law tradition inherited from its former colonizer. An observer, in a 1903 edition of *The American Lawyer*, noted the profound Spanish influence on Cuba's legal system and asserted:

Of the laws of Cuba, it is probably enough to say that, upon our [the United States'] assumption of the control of the island, we found established there a system of laws and legal procedure which was as well adapted to the needs and conditions of the island as the common law of England is to that country, excepting its need of such changes as were to separate it from the governmental institution of Spain.³¹

The U.S. Military Government, however, did not assume a completely *laissez-faire* attitude towards Cuba's legal regime. A Cuban scholar, writing in retrospect, suggested that the U.S. Military Government overall "left the Spanish legal framework unchanged, but that it added advantages, such as habeas corpus, civil liberties, due process, and efficient administration of justice."³² During the U.S. occupation, a new Cuban Constitution was approved in 1901, which was directly inspired by the U.S. model and largely drafted by U.S. attorneys.³³ According to Debra Evenson, "...the presidential system of government and the principle of the separation of powers, patterned after that of the United States, were incorporated in the first Constitution of the republic in 1901."³⁴ She also added that U.S. jurisprudence influenced certain elements of Cuban criminal procedure.³⁵

Independent from Spain, Cuba adopted, amended and suspended a series of constitutions prior to the 1959 Revolution.³⁶ Each of these documents allowed for representative governments and the liberal protection of individual rights, but none successfully provided the framework for a stable, democratic state.³⁷ As Cuba headed towards revolution, its legal system exhibited some influences of U.S. law, but was still firmly rooted in Spanish law, with European civil law attributes.³⁸ Dr. Guillermo de Montagú, a Justice of the *Tribunal Supremo de Cuba* (Supreme Court of Cuba), explained in 1949:

in a socialist state is as dominant and pervasive as it is over law-making. That role may be reduced to the three basic functions of the party as political guardian, moral tutor, and keeper of the socialist legal conscience."

²⁸ MARCI HOFFMAN ED., "CUBA: INTRODUCTION," Foreign Law Guide, BrillOnline Reference Works, 2017 (country section updated March 1, 2013).

²⁹ The Codes were applied in the following order: Penal (1879); Mortgage (1880); Monarchical Constitution (1881); Civil Procedure (1885); Commercial (1886); Criminal Procedure (1888); and Civil (1889). Note, *Cuba's Legal System*, 11 AM. LAW. 205, 205 (May 1903).

³⁰ *Id.*

³¹ *Id.*

³² James H. Hitchman, *The Platt Amendment Revisited: A Bibliographical Survey*, 23 THE AMERICAS 343, 355 (April 1967) (citing RAMÓN INFESTA, *HISTORIA CONSTITUCIONAL DE CUBA* (1942)).

³³ Albert P. Blaustein, *The Influence of the United States Constitution Abroad*, 12 OKLA. C. U. L. REV. 435, 464 (Fall 1987); The 1901 Constitution also contained the Platt Amendment, which granted the United States an oversight role in Cuban affairs.

³⁴ EVENSON, *supra* note 16, at 3.

³⁵ *Id.*

³⁶ *Id.* For more on Cuban constitutional history, see the Guide's next section on "The Constitution."

³⁷ EVENSON, *supra* note 16, at 3.

³⁸ *Id.*; See also CUBA: A LEGAL GUIDE TO BUSINESS 4 (José R. Cot & Rolando Anillo eds., 2016); For an overview of Cuban legal history, see generally HOFFMAN ED., "CUBA," *supra* note 28.

The machinery for the administration of justice in Cuba was inherited originally from Spain. Some additions were acquired during military interventions by the United States, and further modifications have resulted from political liberty, from movements of spontaneous public opinion, and from adoption of new universal concepts.³⁹

This was the Cuban legal system that Fidel Castro and his “26th of July Movement” inherited upon taking power in January 1959.

2. Revolutionary Period

Cuba’s newly installed revolutionary government acted quickly and methodically to solidify its goals through the enactment of a series of decrees and laws. The *Ley Fundamental* (Fundamental Law) of 1959⁴⁰ was based on the 1940 Constitution and provided the legal and political framework for the creation of a revolutionary society; it was modified 19 times between May 7, 1959, and December 31, 1962.⁴¹ Concurrently, during the 1959 to 1963 period, over 100 new laws were passed,⁴² including those related to expropriation, nationalization, and agrarian and urban reform.⁴³ These laws were applied as a means of achieving a socialist state; that is, an egalitarian society of communal ownership where the economic levers are controlled by the State.⁴⁴ Writing in 1980, Professor Max Azicri asserted:

...during this process of social engineering the law constituted a creative tool in the hands of the revolutionary government, which needed effective mechanisms of social control, capable of achieving its developmental goals. Consequently, revolutionary laws were the initiators of profound societal transformation.⁴⁵

In the early years of the Revolution, the Castro regime established mass organizations to promote communal involvement,⁴⁶ and it also used its authority to create new types of courts—the *Tribunales Populares* (People’s Courts) and the *Tribunales Revolucionarios* (Revolutionary Courts). As Professor Luis Salas explained, two court systems emerged during this time period; one for ordinary civil and criminal cases, and another for politically sensitive cases.⁴⁷ The People’s Courts reflected Soviet influence and were instituted as a kind of populist form of justice with lay citizens serving as judges.⁴⁸ The Revolutionary Courts were established to try accused Batista collaborators.

Functioning alongside both the newly created laws and courts, however, were holdovers from the Spanish colonial era. Specifically, the 1885 *Código de Comercio Español* (Spanish Commercial Code) and the 1889 Civil Code were still in force, forming the backbone of Cuban private law.⁴⁹ Operating alongside the new courts was the old system of Spanish *audiencias* (audiences) and *juzgados correccionales* (correctional courts) that were organized hierarchically under the Cuban Supreme Court.⁵⁰ The revolutionary government soon recognized that the

³⁹ Guillermo de Montagú, *Judicial Organization in Cuba*, 32 J. AM. JUD. SOC. 166, 167 (April 1949).

⁴⁰ Ley Fundamental de la República [LF] [Fundamental Law of the Republic], Feb. 7, 1959, <http://biblio.juridicas.unam.mx/libros/6/2525/38.pdf>. English translation available in the *World Constitutions Illustrated* (WCI) database (William S. Hein & Co., Inc.).

⁴¹ Max Azicri, *Change and Institutionalization in the Revolutionary Process: The Cuban Legal System in the 1970s*, 6 REV. SOCIALIST L. 164, 167 (1980).

⁴² *Id.*

⁴³ *Id.* at 167–168. For an overview of these revolutionary laws, see Rolando Anillo, *Introduction to the Cuban Legal System*, in CUBA: A LEGAL GUIDE TO BUSINESS, *supra* note 38, at 6–10.

⁴⁴ For a Cuban explanation of socialism, see *Socialismo*, ECURED, <https://www.ecured.cu/Socialismo> (last visited July 24, 2017). See also CHRISTINE SYNOWICH, *THE CONCEPT OF SOCIALIST LAW* (1990).

⁴⁵ Azicri, *supra* note 41, at 165.

⁴⁶ Examples are the Federación de Mujeres Cubanas (FMC) (Federation of Cuban Women), the Comités de Defensa de la Revolución (CDR) (Committees for the Defense of the Revolution) and the Asociación Nacional de Agricultores Pequeños (ANAP) (National Association of Small Farmers).

⁴⁷ Luis Salas, *The Emergence and Decline of the Cuban Popular Tribunals*, 17 L. & SOC’Y REV. 587, 597 (1983).

⁴⁸ *Id.* at 588.

⁴⁹ Michael Bogdan, *Thirty Years of Cuban Revolutionary Law*, 15 REV. SOCIALIST L. 319, 320 (1989).

⁵⁰ MARJORIE S. ZATZ, *PRODUCING LEGALITY: LAW AND SOCIALISM IN CUBA* 72 (1994).

destruction of the old social order was occurring in a legal environment that was inadequate; more specifically, the country's legal system was a confusing blend of old and new laws—"a variegated legal mosaic."⁵¹

3. Institutionalization and the 1976 Constitution

The decade of the 1970s was accordingly dedicated to the institutionalization of the Cuban Revolution under the rubric of Marxist-Leninist ideology, with Soviet and Eastern European legal regimes serving as models.⁵² The primary goals for institutionalization were: 1) the establishment of a national political organization to serve as a framework for the institutionalization of the State; 2) the reorganization of the judicial system to operate within the philosophical and cultural parameters of a socialist polity; 3) the establishment of political and legal institutions that would structurally match; and 4) the fostering of a national consensus to support a new socialist constitution and judicial system.⁵³ The utopian goal of the Revolution, however, remained (and still remains) the realization of a communist state.⁵⁴

Under the direction of the *Comisión de Estudios Jurídicos* (Commission for Juridical Studies),⁵⁵ which was formed by the PCC, the judicial system was reorganized in 1973 (and again in 1977). A new criminal procedure code was also adopted in 1973 (superseded in 1977), as well as a family code in 1975.⁵⁶ The hallmark achievement of this period, however, was the drafting and adoption of the 1976 Constitution. The Constitution is explored more fully in the next section of this Guide, but essentially it designates the PCC as the driving force in society and the State, and it recognizes the concept of socialist legality as the nation's legal and political foundation. Socialist legality is a derivative of early Soviet legal doctrine and Marxist theory, and it assigns the legal system the role of political instrument.⁵⁷ Pursuant to socialist legality, law is a dynamic force in the socialist evolution towards communism, and it is the method by which the State governs. Professor Azicri summarized the 1976 Constitution as follows:

The 1976 Constitution is the foremost example of legal development in this period. It embraces, in its normative framework, the totality of Cuban society, providing a final identity to the political system in general and the judiciary in particular. Based on the principles of Marxism-Leninism (ideology and value system), the dictatorship of the proletariat (rationale for the allocation of political power), and democratic centralism (operational foundation for decision-making processes), Cuba's socialist Constitution seems to encompass the main political and social objectives intended during the institutionalization drive of the 1970s.⁵⁸

Institutionalization measures continued into the 1980s as the colonial era Spanish Civil Code from 1889 was finally replaced in 1987.⁵⁹ Professor Michael Bogdan observed that the *Código Civil de Cuba* (Cuban Civil Code), although displaying civil law roots, "is to be interpreted and applied in accordance with the political, social and economic fundamentals of the Cuban state, as expressed in the Constitution."⁶⁰ He also noted that Cuban rules on contracts, torts and inheritance cannot be the same as in market-oriented societies, and further, that the Cuban Civil Code reflects types of communal ownership not found in capitalist countries.⁶¹

Likewise, a new 1987 *Código Penal* (Criminal Code),⁶² which replaced an earlier 1979 version, reflects the powerful role of socialism in the Cuban legal regime. One of that Code's objectives is "to contribute to citizens'

⁵¹ Max Azicri, Review, *A Cuban Perspective on Socialist Legality*, 6 REV. SOCIALIST L. 203, 203 (1980).

⁵² See EVENSON, *supra* note 16, at 9. Concurrently noting, however, that these models were not simply copied.

⁵³ Azicri, *supra* note 41, at 172.

⁵⁴ MARINA GOLD, PEOPLE AND STATE IN SOCIALIST CUBA: IDEAS AND PRACTICES OF REVOLUTION 6 (2015); CONST. Preamble, art. 5; For a Cuban explanation of communism, see *Comunismo*, ECURED, <https://www.ecured.cu/Comunismo> (last visited July 24, 2017).

⁵⁵ See ZATZ, *supra* note 50, at 54.

⁵⁶ The history of the Cuban Codes is addressed in detail in the "Legislation and Codes" section of this Guide.

⁵⁷ See generally Frank Negron, *An Overview of Socialist Legality: From the Russkaia Pravda to Glasnost and Perestroika*, 1 ST. THOMAS L.F. 89 (1988).

⁵⁸ Azicri, *supra* note 41, at 179.

⁵⁹ Ley No. 59, CÓDIGO CIVIL [CÓD. CIVIL] [Law No. 59, CIVIL CODE], July 16, 1987, Gaceta Oficial Extraordinaria [GOE], No. 9, Oct. 15, 1987, <https://www.gacetaoficial.gob.cu/html/codigo%20civil%20lib1.html>.

⁶⁰ Bogdan, *supra* note 49, at 328 (citing Cód. CIVIL art. 2).

⁶¹ *Id.* at 328.

⁶² Ley No. 62, CÓDIGO PENAL [CÓD. PEN. 1987] [Law No. 62, CRIMINAL CODE], Dec. 29, 1987, Gaceta Oficial [GO], No. 3, Dec. 30, 1987.

formation of the conscious respect for socialist legality, and the realization of the requirements and correct observance of its coexistence with socialist norms.”⁶³ Also noteworthy in the 1987 Criminal Code is the so-called “*ley de peligrosidad*” (law of dangerousness), a punitive measure for purported criminal tendencies, as demonstrated by conduct deemed contradictory to socialist morals.⁶⁴ Through the use of civil law instruments, Cuba has thus effectively codified its allegiance to the application of socialist legality.

B. TRANSITION TO THE CURRENT LEGAL LANDSCAPE

At the dawn of the Cuban Revolution, Cuba’s legal system was based almost entirely on its Spanish heritage, which was rooted in the European civil law tradition. Fidel Castro and his “26th of July Movement” quickly uprooted that system, however, utilizing the law as a means to sweep out bourgeois elements and propel Cuba to a socialist state. Much was accomplished to that end in a relatively short period of time as the regime pushed its social experiment forward, making adjustments, alterations and even complete reversals away from unproven policies.⁶⁵ Indeed, as early as 1980, Professor Azicri dramatically proclaimed, “Historically, the Cuban case represents the first and only experience in the Western Hemisphere whereby a civil law jurisdiction has been transformed into a socialist one.”⁶⁶

Other academics during that same decade described the heavy influence of socialist legal doctrine on revolutionary Cuba’s young legal system, although not acknowledging a complete transition to socialist law. Marjorie S. Zatz studied foreign influences on Cuban law in the late 1980s, concluding that the two major influences were the Spanish-speaking and socialist worlds.⁶⁷ Similarly, Professor Bogdan, writing in 1989, asserted that the Cuban legal system had dual roots: the Spanish tradition harkening back to French and Roman law, as well as Soviet legal concepts and ideas.⁶⁸ These writings were published with a backdrop of a somewhat intense intellectual debate over the actual existence of socialist law as a separate legal tradition or family.⁶⁹

The demise of the Soviet bloc in 1989, and the dissolution of the Soviet Union in 1991, placed tremendous pressure on Cuba as it lost its primary trading partners, as well as its economic, political and juridical models. Affirming this loss, and as part of a set of constitutional amendments implemented in 1992, Cuba removed all references to the Soviet Union in its Constitution.⁷⁰ Reacting to the ensuing severe economic crisis (known as the “Special Period”), the Castro regime reversed course somewhat and used its socialist-inspired legal system to implement pro-market economic reforms during the 1990–1995 period.⁷¹ Fidel Castro, in essence, utilized elements of capitalism to save socialism.⁷²

The current progression of the Cuban economy is still in a state of significant flux, and Raúl Castro has continued with reforms to an even greater extreme. In 2011, under his leadership, there were two notable liberalizing decrees—the first, allowing for the private sales of automobiles and, perhaps even more surprising, another permitting private ownership and sales of homes.⁷³ Moreover, in 2014, a new foreign investment law was adopted,⁷⁴ and

⁶³ Cód. PEN. 1987 art. 1.1 (Julienne E. Grant trans.).

⁶⁴ *Id.* arts. 72–74.

⁶⁵ EVENSON, *supra* note 16, at 13.

⁶⁶ Azicri, *supra* note 51, at 203.

⁶⁷ ZATZ, *supra* note 50, at 140.

⁶⁸ Bogdan, *supra* note 49, at 319.

⁶⁹ See John Quigley, *Socialist Law and the Civil Law Tradition*, 37 AM. J. COMP. L. 781, 808 (1989) (concluding “Socialist law contains features that distinguish it from the legal systems of other countries of the civil law family. But those points of difference have not removed socialist law from the civil law tradition.”); Thomas H. Reynolds in 1992 followed the same line of thought. See Thomas H. Reynolds, *Socialist Legal Systems: Reflections on Their Emergence and Demise*, 20 INT’L J. LEGAL INFO. 215 (1992).

⁷⁰ Ley de Reforma Constitucional [LRC 1992] [Law of Constitutional Reform], July 12, 1992, Gaceta Oficial [GO], No. 7, Aug. 1, 1992.

⁷¹ See EVENSON, *supra* note 16, at 13; Oscar Espinosa Chepe & Ted A. Henken, *Economy*, in CUBA 135, 157 (Ted A. Henken et al. eds., 2013).

⁷² Chepe & Henken, *supra* note 71, at 157.

⁷³ Decreto No. 292 [Decree No. 292], Sept. 20, 2011, Gaceta Oficial Extraordinaria [GOE], No. 31, Sept. 27, 2011, abrogated by Decreto No. 320 [Decree No. 320], Dec. 18, 2013, Gaceta Oficial Extraordinaria [GOE], No. 46, Dec. 31, 2013; Decreto-Ley No. 288 [Decree-Law No. 288], Oct. 28, 2011, Gaceta Oficial Extraordinaria [GOE], No. 35, Nov. 2, 2011.

⁷⁴ See LIE 2014, *infra* note 331.

foreign capital was also on Raúl Castro's agenda at the 7th Congress of the PCC in April 2016. There, he stated, "Without underestimating in the slightest the obstacles presented by the U.S. blockade and its extraterritorial application, we must do away with archaic prejudices toward foreign investment and continue to advance with the formulation, design, and establishment of businesses."⁷⁵ These developments herald a clear move towards a more general liberalizing trend on the part of the Cuban government, at least in matters economic.

C. CURRENT LEGAL LANDSCAPE

Professor Juan Mendoza Díaz, Vice Dean at the Universidad de La Habana's law school, wrote the following in 2015 regarding Cuba's legal system:

There is no doubt that the radical transformations that the Cuban Revolution introduced in the areas of ownership, the economy, familial relations, and in many other areas, signify a substantial separation from the preceding capitalist legality. But this doesn't suggest, as Soviet doctrine claimed, that a new legal family emerged, separate and independent of the Roman-French root. That the assimilation of a new economic, political, and social system that is undoubtedly socialist, implies the creation of an independent system of law, isolated from the existing legal family, is an error of conceptualization.⁷⁶

Cuba's current legal regime is indeed based on the civil law tradition, but it operates under the broader rubric of a one-party socialist state of workers with a socialist constitution.⁷⁷ The Cuban Constitution itself explicitly states that "Cuba shall never return to capitalism."⁷⁸ This regime, however, quite obviously has inherent incompatibilities *vis à vis* the country's economic status and the revolutionary changes that are occurring in the world order beyond the island nation's borders. As the original "26th of July Movement" leaders hand the reins to a younger generation, it remains to be seen how Cuba's institutions and legal regime will continue to respond to the internal and external forces pushing for greater privatization and moves towards free(r) markets. More specifically, at issue is whether an unwavering adherence to socialist legality can successfully navigate the country going forward.

D. THE CUBAN GOVERNMENT: A BRIEF OVERVIEW

The 1976 Constitution (as amended to June 26, 2002) sets forth the structure of the Cuban government, which is divided into overlapping executive, legislative and judicial powers.⁷⁹ All of these powers are addressed in greater detail in other sections of the Guide. In basic terms, the sovereignty of the State resides in the people, from whom all state power emanates; this power is exercised directly, or indirectly by the *Asambleas del Poder Popular* (People's Assemblies) and other bodies of the State derived from them.⁸⁰ In practice, however, it is the 31-member *Consejo de Estado* (Council of State), an executive organ that is the "real decision-making institution in the Cuban government."⁸¹ Operating alongside the Cuban government, although not formally part of it, is the PCC, which contours domestic policy and clearly drives the country's governance.

⁷⁵ 7th PCC Congress Central Report, Presented by First Secretary Raúl Castro Ruz, CUBADEBATE (April 18, 2016), <http://en.cubadebate.cu/news/2016/04/18/7th-pcc-congress-central-report-presented-by-first-secretary-raul-castro-ruz/>.

⁷⁶ Juan Mendoza Díaz, *Administración de Justicia*, in EL DERECHO EN CUBA 173, 179 (Leonardo B. Pérez Gallardo coord., 2015) (Julienne E. Grant trans.).

⁷⁷ See http://www.cubagob.cu/des_soc/derecho.htm (last visited Aug. 1, 2017); CONST. arts. 1, 5; E-mail from Roberto M. Rojas, Cuban LL.M. student, Loyola U. Chicago School of Law, to Julienne E. Grant, Reference Librarian/Foreign & Int'l Research Specialist, Loyola U. Chicago School of Law Library (Jan. 30, 2017) (on file with Julienne E. Grant). "The Cuban legal system is completely civil law based, inherited from the Roman-French and with Germanic heritage (in the way of organizing the titles and chapters of the legal codes). The Constitution is socialist." (Julienne E. Grant trans.).

⁷⁸ CONST. art. 3.

⁷⁹ For a useful chart of the Cuban government, see Cot & Anillo eds., *supra* note 38, at 28. For in-depth discussions of Cuba's government powers, see the following sections of this Guide: "Executive Powers," "Legislation and Codes" and "The Judiciary."

⁸⁰ CONST. art. 3.

⁸¹ Vallín & Henken, *supra* note 22, at 101.

1. Executive Powers

- a. The Council of State is the highest representative of the Cuban government in national and international matters and is the executive organ of the *Asamblea Nacional del Poder Popular* (ANPP) (National Assembly of People's Power).⁸² The President of the Council of State, currently Raúl Castro, is the nation's chief executive. The Council of State represents the ANPP between meetings and has legislative power through the promulgation of *decretos-leyes* (decree-laws).⁸³ For more on the Council of State, see the later section of this Guide, "Executive Powers."
- b. The Council of Ministers ("The Cabinet") is accountable to the ANPP, but is nonetheless the highest-ranking executive and administrative body and constitutes the Government of the Republic.⁸⁴ Raúl Castro is the current President of the Council of Ministers. The Council's Executive Committee is responsible for "directing economic, monetary, and credit policy, drawing up the national budget, crafting foreign policy, engaging in international trade, providing for national defense and internal security, and protecting citizen rights, all duties theoretically subject to periodic review by the National Assembly."⁸⁵ Per Article 98(k) of the Constitution, the Council of Ministers has the authority to issue *decretos* (decrees). See also the Guide's "Executive Powers" section for information on the Council of Ministers.

2. Legislative Powers

The ANPP, now in the VIII *Legislatura* (2013–2018), is the "supreme organ of State power" per Article 69 of the Constitution. It is unicameral, meets twice annually for about a week each session, and currently consists of 612 representatives who serve for five years, but retain their regular employment.⁸⁶ Article 76 specifies that the ANPP has the power to issue *leyes* (laws), and the ANPP in theory has the power to revoke the Council of State's decree-laws.⁸⁷ Since Cuba is a one-party state, all representatives belong to the PCC. It should be noted that the lines between the PCC and all of the People's Assemblies (national, provincial and municipal) are blurred, and that proposed ANPP legislation "tends to follow resolutions passed by the PCC, and bills are reviewed by the PCC and other entities before being submitted to the ANPP."⁸⁸ For more on the ANPP's legislative process, see the Guide's later section on "Legislation and Codes."

The ANPP's website contains the names and photographs of ANPP members, the rosters of the various commissions and transcripts of speeches made during sessions.⁸⁹ The website of the Inter-Parliamentary Union has various statistics for Cuban National Assemblies from 1976 to 2008 that include breakdowns of membership by such characteristics as gender, age and profession.⁹⁰ There is a useful explanation of how Cuban elections work for all levels of the People's Assemblies in the 2013 title, *Cuba*, which is part of ABC-CLIO's Latin America in Focus series.⁹¹ *EcuRed* (Cuba's version of *Wikipedia*) has a lengthy article (in Spanish) on the Cuban electoral system that includes results from Cuban elections for various years.⁹²

⁸² CONST. art. 89.

⁸³ CONST. arts. 89, 90(c).

⁸⁴ CONST. arts. 95, 99.

⁸⁵ Vallín & Henken, *supra* note 22, at 102.

⁸⁶ CONST. arts. 72, 78; Martha Prieto Valdés, *Estructura del Estado, Jefatura y Organización de los Poderes*, in EL DERECHO EN CUBA 69, 77–78 (Leonardo B. Pérez Gallardo coord., 2015); *Diputados*, ASAMBLEA NACIONAL DEL PODER POPULAR REPÚBLICA DE CUBA, <http://www.parlamentocubano.cu/index.php/diputados/> (last visited Aug. 1, 2017).

⁸⁷ CONST. art. 76(ch).

⁸⁸ Peter Roman, *Introduction: Overview of Cuban Political Institutions*, 30 SOCIALISM AND DEMOCRACY 30, 34 (2016).

⁸⁹ See under the "Asamblea" tab for this information, <http://www.parlamentocubano.cu> (last visited Aug. 1, 2017).

⁹⁰ Cuba: Asamblea Nacional del Poder Popular (National Assembly of the People's Power), INTER-PARLIAMENTARY UNION, http://www.ipu.org/parline-e/reports/2079_arc.htm (last visited Aug. 1, 2017).

⁹¹ Vallín & Henken, *supra* note 22, at 108–112. For a uniquely Cuban perspective on the electoral process and the political system, see Lasonas Pipinis Velasco's interview with Raúl Castro's son, Alejandro Castro Espín, in *The Future of Cuba*, COUNTERPUNCH (Feb. 27, 2015), <http://www.counterpunch.org/2015/02/27/the-future-of-cuba/>.

⁹² *Sistema Electoral Cubana*, ECURED, https://www.ecured.cu/Sistema_electoral_cubano (last visited Aug. 1, 2017).

3. The Judiciary

Cuba's judiciary is subordinate to the ANPP and Council of State per Article 121 of the Constitution. It is nevertheless a significant player in a legal system wherein its function is "aimed at achievement of social justice."⁹³ The *Tribunal Supremo Popular* (People's Supreme Court) sits at the apex of the judicial system. Subordinate to the Supreme Court are the People's Provincial and Municipal Courts, and there is also an autonomous system of military courts.

Cuba is unique among Latin American countries in that it does not have a separate constitutional court or chamber; courts play no role in judicial review.⁹⁴ Another unique feature of the Cuban judiciary, more consistent with socialist models, is the use of lay judges who sit on panels in tandem with professional judges. Cuba also has a system of public prosecutors, including the nation's *Fiscalía General* (Office of the Attorney General). See the Guide's section on "The Judiciary" for more information on Cuba's court system and its personnel.

4. The Partido Comunista de Cuba (PCC) (Communist Party of Cuba)⁹⁵

The PCC "governs all aspects of the political system and it issues the guidelines for the work and direction of the nation."⁹⁶ Article 5 of the Cuban Constitution recognizes the PCC as the "superior leading force of the society and the State." At the top of its organizational structure are the Secretariat, the *Comité Central* (Central Committee) and the elite *Buró Político* (Politburo). Raúl Castro is currently the First Secretary of the Central Committee. Full membership lists of these organs are listed on the PCC's website.⁹⁷ There have been seven PCC Congresses convened since the Party's inception in 1965—the first held in 1975, and the most recent in 2016 attended by 1,000 delegates representing 670,000 PCC members.⁹⁸

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⁹³ HOFFMAN ED., "CUBA: LEGISLATION AND THE JUDICIAL SYSTEM," *supra* note 28.

⁹⁴ ÁNGEL R. OQUENDO, *LATIN AMERICAN LAW* 224 (3d ed. 2017).

⁹⁵ For an overview of the PCC, see Larry Catá Backer, *The Cuban Communist Party at the Center of Political and Economic Reform: Current Status and Future Reform*, 8 NW. INTERDISC. L. REV. 71 (2015); See also William M. LeoGrande, *The Cuban Communist Party and Electoral Politics: Adaptation, Succession, and Transition*, Prepared for the Cuba Transition Project, Inst. for Cuban and Cuban-Am. Studies, U. of Miami (2002), http://www.cubaverdad.net/data/the_cuban_communist_party_and_electoral_politics.pdf; *Historia del Partido Comunista de Cuba*, PARTIDO COMUNISTA DE CUBA, http://www.pcc.cu/i_historia.php (last visited Aug. 1, 2017).

⁹⁶ Vallín & Henken, *supra* note 22, at 108.

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⁹⁸ 7th PCC Congress Central Report, *supra* note 75.

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THE CONSTITUTION

LYONETTE LOUIS-JACQUES

A. INTRODUCTION

Since gaining independence from Spain in 1898, Cuba has adopted a number of constitutions and constitutional laws. The 1901 Constitution was modeled after that of the United States. A 1933 provisional law superseded the 1901 Constitution, a constitutional law was issued in 1934, and in 1935 a *de facto* constitution

was adopted.⁹⁹ A *de jure* constitution followed five years later in 1940.¹⁰⁰ The 1940 Constitution was suspended in 1952, although some Cubans still consider it to be a legitimate and governing document.¹⁰¹ The 1959 *Ley Fundamental* (Fundamental Law) vested legislative power in a Council of Ministers.¹⁰² The current Constitution was adopted by referendum on February 15, 1976, and it went into effect on February 24, 1976. The 1976 Constitution established the National Assembly of People's Power (ANPP) as the supreme legislative body with the power to elect the Council of State.¹⁰³ The ANPP also decides on the constitutionality of legislation.¹⁰⁴ According to Professor Ángel R. Oquendo, "Cuba is the only jurisdiction in Latin America that has adopted this arrangement."¹⁰⁵ The 1976 Constitution was amended in 1978, 1992 and 2002.

B. THE 1976 CONSTITUTION AND ITS AMENDMENTS

In Cuba, the Constitution takes precedence over all other legislative instruments. *Leyes* (laws), *decretos-leyes* (decree-laws) and *decretos* (decrees) are all subordinate to the Constitution.¹⁰⁶ The Constitution is considered by some Cuban scholars to be a dynamic agent, a transformative document that not only sets forth legal norms, but also "creates the bases to propel [Cuba's] socialist society into the future," towards communism.¹⁰⁷

1. Drafting History

In 1969, the *Comisión de Estudios Jurídicos* (Commission for Juridical Studies) of the *Comité Central del Partido Comunista de Cuba* (Central Committee of the Communist Party of Cuba), chaired by Blas Roca Calderío, began work on a draft constitution for Cuba.¹⁰⁸ The Commission, comprising lawyers and academics, studied the legal systems of the Soviet Union and Eastern European countries to fashion the new Cuban socialist legal order. However, what emerged was not an exact copy of these other legal systems, but rather an innovative legal system with a uniquely Cuban imprint.¹⁰⁹ The draft constitution was published in *Granma*, the PCC's daily newspaper, for general discussion. This resulted in some major changes, among them more centralization of power and curtailment of judicial independence.¹¹⁰

⁹⁹ ROBERT L. MADDEX, *CONSTITUTIONS OF THE WORLD* 116 (3d ed. 2008).

¹⁰⁰ *Id.*

¹⁰¹ The Cuban Constitution of 1940 is "the only Cuban Constitution created by a constituent assembly that was broadly representative of the full range of Cuban political parties and social interests, including the PCC [Communist Party of Cuba]." It featured a bicameral legislature. It provided for freedom of expression, freedom of religion, freedom of peaceful assembly and political protest, and for judicial review of the constitutionality of legislative acts. The 1940 Constitution was considered progressive and 'truly Cuban.' Michael B. Wise, *Cuban Constitutionalism: Will There Be Changes?*, 51 DUQ. L. REV. 467, 471–475 (2013). See also Rudo Kemper, *Cuban Memories: The Cuban Constitution of 1940, then and today*, THE BLOG (U. of Miami Libraries Cuban Heritage Collection) (Oct. 14, 2010), <http://library.miami.edu/chc/2010/10/14/cuban-memories-the-cuban-constitution-of-1940-then-and-today/>; Nora Gámez Torres, *Opositor impulsa movimiento para reformar la constitución de Cuba*, EL NUEVO HERALD (June 4, 2014), <http://www.elnuevoherald.com/noticias/mundo/america-latina/article2035020.html>; Nora Gámez Torres, *New Movement Tackles Constitutional Changes in Cuba*, CUBA DEMOCRACIA Y VIDA (June 3, 2014), <http://www.cubademocraciayvida.org/web/print.asp?artID=25080> (reports on movement to hold a round-table discussion on whether or not to reform the current Constitution, reinstate the 1940 Constitution or create a new one).

¹⁰² LF art. 119.

¹⁰³ CONST. arts. 67, 68, 72.

¹⁰⁴ CONST. art. 75(c).

¹⁰⁵ OQUENDO, *supra* note 94, at 224.

¹⁰⁶ RUBENS MEDINA & CECILIA MEDINA-QUIROGA, *NOMENCLATURE & HIERARCHY: BASIC LATIN AMERICAN LEGAL SOURCES* 43–45 (1979). See also the discussion in the "Legislation and Codes" section of this Guide, *infra* p. 33.

¹⁰⁷ EVENSON, *supra* note 16, at 12.

¹⁰⁸ ZATZ, *supra* note 50, at 54.

¹⁰⁹ EVENSON, *supra* note 16, at 9.

¹¹⁰ For additional information about specific textual changes to the draft constitution, see Appendix D in JORGE I. DOMÍNGUEZ, *CUBA: ORDER AND REVOLUTION* 527–531 (1978).

2. Content

The 1976 Cuban Constitution (as amended to June 26, 2002) has a Preamble, 137 Articles (divided into 15 Chapters) and a “Special Provisions” section. The Preamble states that “We, Cuban Citizens” are guided by “the sociopolitical ideas of Marx, Engels, and Lenin,” and José Martí’s wish for a constitution that serves as a “tribute of Cubans to the full dignity of man.”¹¹¹ Article 1 declares that Cuba is a “socialist State of workers.” Article 3 asserts that socialism, “having demonstrated its ability to transform the country and create an entirely new and just society, shall be irrevocable, and Cuba shall never return to capitalism.” Article 5 establishes that the “Communist Party of Cuba, Martian and Marxist-Leninist, the organized vanguard of the Cuban nation, is the superior leading force of the society and the State.”

The current Constitution includes expansive rights provisions. Article 8 guarantees the right to freedom of religion, as well as separation of church and state. Article 9 guarantees the right to work, to human dignity, to health care, to culture and to housing. The peoples’ right to self-determination is covered in Article 12, and Articles 19 to 24 address property rights. Article 42’s equality provisions prohibit discrimination on the basis of race, skin color, sex, national origin, religion or belief, or anything offensive to human dignity. Article 43 guarantees rights to equal pay for equal work, health care and education, without discrimination. Specifically, it asserts, “Women and men enjoy equal economic, political, cultural, social, and familial rights.” Articles 50 and 51 specify that all citizens have rights to free health care and education, respectively. Article 53 guarantees the right to freedom of speech and of the press. Article 54 covers the rights of assembly and association. Article 55 guarantees freedom of conscience and religion.

However, several of these rights provisions are constrained. For example, free speech under Article 53 cannot be anti-socialist:

Citizens have freedom of speech and of the press in keeping with the objectives of socialist society. Material conditions for the exercise of that right are provided by the fact that the press, radio, television, movies and other organs of the mass media are State or social property and can never be private property. This assures their use at the exclusive service of the working people and in the interest of society.

Further, Article 62 generally curtails the listed rights and freedoms as follows:

None of the freedoms which are recognized for citizens can be exercised contrary to what is established in the Constitution and the law, or contrary to the existence and objectives of the socialist State, or contrary to the decision of the Cuban people to build socialism and communism. Violations of this principle can be punished by law.

Indeed, one author has stated, “The protection of rights afforded in the Constitution and the practices of the Cuban government...fall far short of international human rights norms.”¹¹²

There are also noteworthy omissions, duties and unique provisions in the Cuban Constitution. For example, the document lacks a writ of *amparo* provision—no remedy for individuals to protect constitutional rights.¹¹³ Article 36 provides for the right of a man and woman to marry, but excludes same-sex marriage rights. Article 42 omits the explicit prohibition of discrimination on the basis of sexual orientation or gender identity. In terms of duties, Article 38 states that it is a child’s duty to respect and help his/her parents. Article 65 makes military service compulsory, declaring, “Defense of the socialist homeland is the greatest honor and the supreme duty of every Cuban citizen.”

¹¹¹ The Preamble also mentions Fidel Castro and makes the Cuban Constitution one of the few constitutions that referred to a living figure until Castro’s death on Nov. 25, 2016. See Tom Ginsburg et al., “*We the Peoples*”: *The Global Origins of Constitutional Preambles*, 46 GEO. WASH. INT’L L. REV. 305, 315–316 (2013–2014).

¹¹² Wise, *supra* note 101, at 481. See also (on Article 62) ALLAN R. BREWER-CARÍAS, CONSTITUTIONAL PROTECTION OF HUMAN RIGHTS IN LATIN AMERICA: A COMPARATIVE STUDY OF AMPARO PROCEEDINGS 26 (2009). (“[T]his principle of the limitative character of rights can lead to extreme, dangerous situations such as the one that unfortunately still remains in the Constitution of Cuba, which leaves open an ‘unlimited’ possibility of limitations to human rights, founded on the preservation of principles that can only be determined by the established power, thus rendering the rights futile.”)

¹¹³ BREWER-CARÍAS, *supra* note 112, at 51–52. See also Julio César Guanche & Julio Antonio Fernández Estrada, *Rights and Guarantees in Cuba: Background and a Proposal* 20 (2013 SELA Conference), https://www.law.yale.edu/system/files/documents/pdf/sela/SELA13_GuancheFernandez_CV_Eng_20130501.pdf.

The Article 66 duty to obey the Constitution and laws seems to cast a general limitation on the rights and freedoms listed, although Article 3 uniquely grants Cuban citizens the right to overthrow the government.

Articles 11 and 12 contain key international law provisions. Article 11 states in part:

The Republic of Cuba repudiates and considers illegal and void any treaties, pacts or concessions entered into under inequitable conditions, or those disregarding or diminishing its sovereignty and territorial integrity.

The economic, diplomatic, and political relations with any other State shall never be negotiated under the aggression, intimidation or duress of a foreign power.

Article 12 sets forth Cuba's anti-imperialist and internationalist principles. It includes clauses condemning imperialism for being "the principal force of aggression and war and the enemy of the peoples," viewing such aggression as an "international crime," and asserting an "internationalist obligation to support the one attacked." While Cuba provides friendship and support to countries that respect sovereignty, it:

repudiates the direct or indirect intervention in the internal or external affairs of any State and, hence, armed aggression and economic blockade, as well as any other type of economic or political coercion, physical violence against persons residing in other countries, or other types of interference in, and threat to, the integrity of the States and the political, economic, and cultural components of the nations.¹¹⁴

3. Amendments

Article 137 describes the procedure for modifying Cuba's Constitution, although the document has not been frequently amended. That Article states:

This Constitution can only be modified by the National Assembly of People's Power, by means of resolutions adopted by roll-call vote by a majority of no less than two-thirds of the total number of members; except [where the modification] regards the political, social and economic system, whose irrevocable character is established in Article 3 of Chapter I, and the prohibition against negotiations under aggression, threats or coercion by a foreign power as established in Article 11.¹¹⁵

Amendments made in 1992 and 2002 made substantive changes.¹¹⁶ The 1992 amendments modified the 1976 Constitution to allow for private ownership of property (Articles 14 and 15); the elimination of the state monopoly on foreign trade (Article 18); and the establishment of quasi-private companies (Article 23). The amendments also improved religious freedom protections (Article 54, now 55).¹¹⁷

The 2002 *Ley de Reforma Constitucional* (Law of Constitutional Reform)¹¹⁸ amended Articles 3, 11 and 137, and added a "Special Provisions" section to make the socialist system irrevocable.¹¹⁹ Article 3 declares in the last paragraph:

Socialism and the social revolutionary political system instituted in this Constitution, proven by years of heroic resistance against all kinds of aggression and the economic war engaged by the government of the mightiest imperialistic power that has ever existed, and having demonstrated its ability to transform the country and create an entirely new and just society, shall be irrevocable, and Cuba shall never return to capitalism.

¹¹⁴ CONST. art. 12(e).

¹¹⁵ *Id.* art. 137.

¹¹⁶ There was a non-substantive 1978 amendment, the *Ley de Reforma Constitucional* [LRC 1978] [Law of Constitutional Reform]. It modified Article 10 to change the name of the Isle of the Pines to the Isle of the Young. See Anna I. Vellvé Torras, trans., *Law of Constitutional Reform* (June 28, 1978) (Cuba) (*World Constitutions Illustrated*, William S. Hein & Co., Inc., 2010).

¹¹⁷ Shari-Ellen Bourque, Note, *The Illegality of the Cuban Embargo in the Current International System*, 13 B.U. INT'L L. J. 191, 203–205 (1995). See also the Spanish-language text of the 1992 amendment, the *Ley de Reforma Constitucional* [LRC 1992] [Law of Constitutional Reform] via *HeinOnline's World Constitutions Illustrated*; EVENSON, *supra* note 16, at 18–19.

¹¹⁸ *Ley de Reforma Constitucional* [LRC 2002] [Law of Constitutional Reform], June 26, 2002, Gaceta Oficial [GO], No. 10, July 16, 2002.

¹¹⁹ See the Spanish-language text and English-language translation in *HeinOnline's World Constitutions Illustrated*.

The “Special Provisions” section of the Constitution states that, from June 15–18, 2002, the Cuban people expressed their unconditional support for the 2002 amendment that “sets forth the irrevocability of [the Cuban Constitution’s] socialist character, political system and social content as a worthy and categorical response to the exigencies and threats [made by] the imperialistic government of the United States [of America] on the 20 of May, 2002.” On May 20, 2002, U.S. President George W. Bush, in his remarks at the White House on the occasion of the 100th anniversary of Cuba’s official independence day, demanded political and economic reforms in Cuba—a regime change.¹²⁰ Professor Erik Luna suggested in 2004 that the 2002 national constitutional referendum also responded to the Varela Project, which called for democratic reforms in Cuba.¹²¹

C. FUTURE

The 1976 Constitution is now over 40 years old, but a new constitution or major revision requires a referendum vote with approval by a majority of eligible voters per Article 137. At the April 2016 7th Congress of the PCC, Raúl Castro announced that there would be major amendments to the Constitution. However, it is believed that the proposed changes will simply reaffirm the status quo.¹²² The amendments would “ratify the irrevocable nature of the political and social system endorsed in the current Constitution, which includes the PCC’s leadership role in our [Cuba’s] society.”¹²³ Cuban political activist Manuel Cuesta Morúa believes that citizens must fight for a referendum to make fundamental changes to the Constitution (including the Article 5 provision giving the PCC a leadership role).¹²⁴ However, he does not think the present government is ready to make structural changes.¹²⁵ Indeed, discussion of constitutional reform appears to have stalled.¹²⁶

D. CONSTITUTIONAL TEXTS

The best source for locating the texts of Cuban Constitutions (in both Spanish and English-language translation) is the subscription database, *World Constitutions Illustrated (WCI)*, available through *HeinOnline*. Additional sources for constitutional texts are listed below, including the subscription databases *LLMC Digital* and *Oxford Constitutions of the World*, along with several free websites.

1. Texts in Spanish

WCI contains Spanish-language texts in PDF format, beginning with the draft provisional constitution of Cuba of 1851. Many of the Spanish-language versions in *WCI* appear as they were published in Cuba’s official government gazette, the *Gaceta Oficial*. *LLMC Digital* has Cuban constitutional texts in Spanish from 1812, to the consolidated text of the 1976 Constitution (as amended to June 26, 2002). The collection is growing as part of LLMC’s Cuban Legal Patrimony Project. Free access to digitized constitutions will be available via the *Digital Library of the Caribbean (dLOC)*.

The original text in Spanish of the 1976 *Constitución de la República de Cuba* is published in the *Gaceta Oficial* of February 24, 1976, at page 3, and reprinted in the *Revista Cubana de Derecho* (Año 5, no. 11,

¹²⁰ EVENSON, *supra* note 16, at 19–21; Wise, *supra* note 101, at 484–485.

¹²¹ Erik Luna, *Cuban Criminal Justice and the Ideal of Good Governance*, 14 TRANSNAT’L L. & CONTEMP. PROBS. 529, 533, 559–560 (2004); For more information on the Proyecto Varela, see *Varela Project* (dated Jan. 22, 1998), MOVIMIENTO CRISTIANO LIBERACIÓN, <http://www.oswaldopaya.org/es/up/VARELA%20PROJECT.pdf>; *Cubans Petition for Democratic Reforms: 1998–2003*, GLOBAL NONVIOLENT ACTION DATABASE, SWARTHMORE COLLEGE, <http://nvdatabase.swarthmore.edu/content/cubans-petition-democratic-reforms-1998-2003>.

¹²² See Roberto Álvarez Quiñones, *What’s behind the changes to the Constitution?*, DIARIO DE CUBA (May 24, 2016), http://www.diariodecuba.com/cuba/1464093409_22588.html.

¹²³ *Id.*

¹²⁴ Rosa Tania Valdés, *Cuba: el dilema de un congreso de remiendo*, DIARIO LAS AMÉRICAS (April 18, 2016), <http://www.diariolasamericas.com/cuba-el-dilema-un-congreso-remiendo-n3756214>.

¹²⁵ *Id.*

¹²⁶ Bert Hoffmann, *Is Cuba’s reform going in reverse?*, THE CONVERSATION (Nov. 1, 2016), <http://theconversation.com/is-cubas-reform-going-in-reverse-67830>.

Enero-Junio) at page 135. The Spanish-language text (as amended to June 26, 2002) is also available on the website of the *Gaceta Oficial*.¹²⁷ The websites of *EcuRed* and *CUBANET* similarly include texts of the Constitution—the former, as amended to 1992, and the latter, as amended to 2002. The *Biblioteca Virtual Miguel de Cervantes*’ “*Constituciones hispanoamericanas*” site includes the Constitutions of 1901, 1934, 1940, 1959, 1976 and 1976, as amended to 2002, all in HTML format. Georgetown University’s free Web-based *Political Database of the Americas* has the original text of the 1976 Constitution, the consolidated version through 2002, as well as separate texts of the 1940 Constitution and the 2002 Law of Constitutional Reform. The *Iberius* website has the 1976 Constitution (as amended to June 26, 2002) in PDF format, as does the World Intellectual Property Organization’s *WIPO Lex* database. Also noteworthy is a recent Cuban news report indicating that an iLex Android app is in development that will allow users to download the text of the current Constitution to a mobile device.¹²⁸

2. Texts in English-Language Translation

Current and historical versions of the Cuban Constitution can be found in English-language translation in various sources. An English-language version of the original 1976 Constitution provided by the Cuban government is published in the *Revista Cubana de Derecho* (Año 5, no. 11, Enero-Junio) at page 181. *WCI* contains the original 1976 Constitution translated into English by the Center for Cuban Studies (1976), the Presidency of the Cuban National Assembly (1981, published with the permission of the Inter-Parliamentary Union) and Anna I. Vellvé Torras (2010, edited by Jefri Jay Ruchti). An English-language translation of the consolidated Spanish-language text, as published in an extraordinary edition of the *Gaceta Oficial* (No. 3, Jan. 31, 2003), is also available in *WCI*. The aforementioned translation is attributed to Ms. Vellvé Torras and William S. Hein & Co. *WCI* also includes English-language translations of several historical versions, including the 1940 text. *LLMC Digital* has the Cuban constitutional texts in English, such as the 1940 text, the 1959 Fundamental Law and the 1976 Constitution.

More easily accessible because it is freely available on the Web, and crawled by Google (also a development partner), is *Constitute: The World’s Constitutions to Read, Search, and Compare*. *Constitute* offers the 1976 Constitution (as amended to June 26, 2002) in HTML and PDF formats, translated by Pam Falk, Milagros M. Gavilan and Anna I. Vellvé Torras. The source of the text is Oxford University Press (OUP). OUP’s print *Constitutions of the Countries of the World* loose-leaf set, and online subscription product *Oxford Constitutions of the World (OCW)*, contain the 1976 Constitution (as amended to June 26, 2002) in English. The *OCW* constitutional texts are offered in HTML format. The *Comparative Constitutions Project* website has the text in English as amended to 1992. *ConstitutionNet* offers the text as amended to 2002, and the Universität Bern Institut für Öffentliches Recht’s *International Constitutional Law* site links to the text from *ConstitutionNet*. A print resource, *Constitutions of the Communist World* (W.B. Simons ed., Alphen aan den Rijn, Sijthoff, 1980), has the text of the original 1976 Constitution in English.

3. Locating Constitutional Texts in Libraries

Searching with keywords, uniform titles or Library of Congress Subject Headings (LC Subject Headings) in library catalogs will yield sources of the text of the current Cuban Constitution, as well as historical versions. An online catalog will allow limiting by language. Below are useful uniform titles for locating sources of texts of Cuban Constitutions in library catalogs. Part E below lists LC Subject Headings for books compiling Cuban Constitutions.

- Cuba. Constitución
- Cuba. Constitución (1901)
- Cuba. Constitución (1940)
- Cuba. Constitución (1976)

¹²⁷ The version on the *Gaceta Oficial*’s website also includes a useful historical chronology of the development of the current Constitution, beginning in 1975 (in Spanish).

¹²⁸ *Nueva aplicación ofrece información jurídica desde los celulares cubanos*, DIARIO DE CUBA (July 11, 2016), http://www.diariodecuba.com/cuba/1468238953_23753.html.

E. CONSTITUTIONAL COMMENTARIES

Commentaries on Cuban Constitutions and constitutional law are not plentiful, but they can be identified using standard sources. For periodical articles, finding tools such as the *Index to Legal Periodicals & Books*, *LegalTrac*, *Index to Foreign Legal Periodicals (IFLP)* and *Dialnet* may be used. Relevant journal articles may also be found in *Westlaw*, *Lexis* and *HeinOnline*, as well as Google Scholar and Bepress' "Law Commons" (part of the *Digital Commons Network*).¹²⁹ The *Social Science Research Network (SSRN)* is useful for locating working papers and newer publications. Non-law full-text databases, such as *JSTOR*, *Political Science Complete* and *SciELO* are also worth searching.

In addition to U.S. law reviews and non-law journals, such as *Cuban Studies*, articles on Cuban constitutional law have appeared in journals, such as *Anuario de Derecho Constitucional Latinoamericano*, *Boletín Mexicano de Derecho Comparado*, *Cuba in Transition*, *Cuestiones Constitucionales*, *Estudios Constitucionales*, *Revista Cubana de Derecho*, *Revista Hispano Cubana* and *Staat und Recht*. While Spanish and English are the main source languages, there are articles published in German and Russian as well. Topics of scholarly interest in the past decade include Cuban constitutionalism generally, historical constitutions and Cuban expropriation of private property. There are not many critical, scholarly, in-depth and current commentaries on Cuban constitutional law available in English. Sergio D. Stone's later section on "Secondary Sources" includes more detail on locating journal articles.

The following LC Subject Headings may be used to locate books that analyze the Cuban Constitution and constitutional law. In general, note that Cuba is part of the larger Caribbean and Latin American regions and some valuable works may not focus on Cuba specifically. A selected bibliography of secondary works on the Cuban Constitution and constitutional law and history (in Spanish and English) is included below in Part G.

- Communist countries
- Constitutional history—Cuba
- Constitutional history—Latin America
- Constitutional law—Caribbean
- Constitutional law—Communist countries
- Constitutional law—Cuba
- Constitutional law—Latin America
- Constitutions
- Constitutions—Caribbean area
- Constitutions—Latin America
- Cuba—Constitución
- Cuba—Constituciones
- Cuba—Constitution
- Cuba—Constitutional history
- Cuba—Historia constitucional
- Cuba—Constitutional law
- Cuba—Politics and government
- Reforma constitucional—Cuba

F. CURRENT AWARENESS

No single resource effectively tracks all new developments related to the Cuban Constitution. Comparative constitutional law sources, such as the *I-CONnect blog*, *ConstitutionNet* and the *International Journal of Constitutional Law* cover Cuba periodically. The *Sociedad Cubana de Derecho Constitucional y Administrativo* (Cuban Society of Constitutional and Administrative Law) hosts conferences in Cuba and contributes to publications

¹²⁹ See also The University of Chicago Law School's Chicago Unbound scholarship repository at <http://chicagounbound.uchicago.edu/>, which includes seven student research papers on Cuban constitutional topics. The student authors participated in the Law School's 2015 International Immersion Program (IIP).

on constitutional law topics.¹³⁰ There are Cuban newspapers and magazines, such as *Granma* and *Tribuna de La Habana*, and more general Latin American and Caribbean news sources, such as *NACLA Report on the Americas*, *Southern Pulse Info* and *The Latin Americanist*. In addition, researchers may check general world news sources and major international newspapers via the Web, as well as related Twitter feeds. Other sections of this Guide also list potential sources for following developments related to the Cuban Constitution and constitutional law.

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EXECUTIVE POWERS

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The executive powers of Cuba’s government are vested in the *Consejo de Estado* (Council of State) and the *Consejo de Ministros* (Council of Ministers). The 1976 Cuban Constitution (as amended to June 26, 2002) outlines the composition, powers and duties of both. The two Councils are tightly intertwined with overlap in their leadership. Indeed, the same individual is the President of the Council of State and the Council of Ministers (currently Raúl Castro).

Although inconsistent with socialist models, the concentration of this much power in one individual was consistent with Latin American practice at the time the Constitution was drafted.¹³¹ As Professor Jorge I. Domínguez wrote in 1978, the Cuban presidential system was essentially “a formalized version of the routinization of Fidel Castro’s charisma.”¹³² Consistent with socialist models, however, is the Constitution’s recognition of the *de facto* control of the Communist Party of Cuba (PCC).¹³³ Albeit not a formal part of the Cuban government structure, Article 5 of the Constitution specifies that the PCC is the “superior leading force of the society and the State.” As such, PCC membership is effectively a prerequisite for all government posts, including the Councils of State and Ministers.¹³⁴

A. THE COUNCIL OF STATE

Article 74 of the Constitution outlines the composition of the Council of State, which consists of a President, First Vice President, five Vice Presidents, a Secretary and 23 additional members. The same Article stipulates that the 31 members of the Council are elected by the National Assembly (ANPP) from among its own deputies, and that the Council’s President is the Head of State and Head of Government.

Per Article 89, the Council of State acts on behalf of the ANPP between legislative sessions. This includes issuing *decretos-leyes* (decree-laws) that are subject to the ANPP’s review.¹³⁵ Professor Andry Matilla Correa asserts that the Council of State’s decree-laws are similar in terms of legal effect to the *leyes* (laws) promulgated by the

¹³¹ DOMÍNGUEZ, *supra* note 110, at 244.

¹³² *Id.* at 243.

¹³³ L.B. Klein, Comment, *The Socialist Constitution of Cuba* (1976), 17 COLUM. J. TRANSNAT’L L. 451, 499 (1978).

¹³⁴ The PCC is the only legally recognized political party in Cuba, and the government has suppressed attempts to form other parties. See U.S. DEP’T OF STATE, BUREAU OF DEMOCRACY, HUMAN RIGHTS AND LABOR, *supra* note 18, at 1, 11, 20. See also CLIFFORD L. STATEN, *THE HISTORY OF CUBA* 9 (2d ed. 2015).

¹³⁵ CONST. art. 90(c). *But see* Vallín & Henken, *supra* note 22, at 101–102. The Council of State “is the real decision-making institution in the Cuban government, ruling largely through decree-laws that are invariably later ratified unanimously and perfunctorily by the National Assembly...In fact from its creation in 1976, [the National Assembly] has never once repealed a single decree-law or rejected a proposal set forth by the Council of State.”

ANPP.¹³⁶ In addition, Article 90 grants the Council the power to transmit instructions to the Attorney General, appoint (and remove) diplomats, grant pardons and ratify (and denounce) treaties.¹³⁷ Article 93(j) also empowers the Council of State to issue *acuerdos* (agreements), which are administrative in nature. All Council decisions are by majority vote as indicated in Article 91.

Article 93 lists the President of the Council's powers and duties. The President proposes the members of the Council of Ministers, as well as substitutes for any vacancies in that body, to the ANPP.¹³⁸ He may assume the direction of any Ministry, and he performs the "Supreme Command of all the armed institutions."¹³⁹ The President convenes the Council and organizes and presides over its meetings.¹⁴⁰ Further, the President signs the Council of State's decree-laws and other decisions, as well as any *disposiciones* (dispositions)¹⁴¹ that the Council of Ministers or its Executive Committee adopts; all of the aforementioned must be published in the *Gaceta Oficial*, also per Article 93.¹⁴² Article 93(k) includes a gap-filler provision for the Council's President, vesting him with "any other [powers] attributed to him by [the] Constitution or the laws."

The *Ley Electoral* (Electoral Law) of 1992¹⁴³ governs Cuban elections, including the election of the Council of State that occurs every five years, after the election of the ANPP's deputies. Articles 143 and 144 of the Electoral Law address more specifically the selection procedure for members and officers of the Council of State. Articles 160 and 161 of the Law also describe the procedure if a vacancy or vacancies occur. The Council of State elections, along with the selection of the ANPP's leaders, are completed on February 24—the date that commemorates the beginning of the Third War of Independence in 1895 under José Martí's leadership.¹⁴⁴

The *Comisión de Candidaturas Nacional* (National Candidacies Commission) organizes the elections for the Council of State and the ANPP's officers. Canadian journalist Arnold August has written extensively on elections in Cuba, and he has interviewed ANPP deputies about how these elections actually work. His 2013 book, *Cuba and its Neighbors: Democracy in Motion*, includes an interesting account of what transpired in early 2008 when Fidel Castro announced he would not run for the Council's presidency.¹⁴⁵

Raúl Castro succeeded his brother and was elected President of the Council on February 24, 2008; he was re-elected on February 24, 2013. Members of the Council are named on the ANPP's website, as well as on *Cubadebate*, *Wikipedia* (in English and Spanish), *EcuRed* and *Granma's* site, although the lists are inconsistent.¹⁴⁶ Some of the current members of the Council of State, according to the ANPP's site, are the President of the *Unión de Escritores y Artistas de Cuba* (UNEAC) (Union of Cuban Writers and Artists), the Dean of the Universidad de las Ciencias Informáticas and the General Secretary of the *Comité Nacional de la Federación de Mujeres Cubanas* (National Committee of the Federation of Cuban Women).¹⁴⁷ The site shows a total of 13 women serving on the Council, including a 24-year-old who also serves as President of the *Federación Estudiantil Universitaria* (FEU)

¹³⁶ Andry Matilla Correa, *Comentarios sobre las Fuentes del Derecho Administrativo Cubano (Excepto el Reglamento)*, in ARMANDO CASTANEDO ABAY et al., TEMAS DE DERECHO ADMINISTRATIVO CUBANO, 33, 71 (2004).

¹³⁷ CONST. art. 90(j),(k),(n),(o).

¹³⁸ CONST. art. 93(e),(f).

¹³⁹ CONST. art. 93(d),(h).

¹⁴⁰ CONST. art. 93(b). It is unclear, however, how the Council of State actually functions (how often it meets, its internal procedures, etc.). See EVENSON, *supra* note 16, at 30 n.56. See also Cuba Posible & Michael Fernández Pérez, *Una ley para hacer las leyes*, CUBA POSIBLE (Nov. 9, 2016), <https://cubaposible.com/una-ley-las-leyes-en-cuba/>. The procedural rules for approving decree-laws are not published.

¹⁴¹ *Disposición* is a general term for administrative provisions. See the discussion on administrative law in the "Legislation and Codes" section, *infra* pp. 32–33.

¹⁴² CONST. art. 93(k).

¹⁴³ Ley No. 72, Ley Electoral de 1992 [LE] [Law No. 72, Electoral Law of 1992], Oct. 29, 1992, *Gaceta Oficial* [GO], No. 9, Nov. 2, 1992, <https://www.gacetaoficial.gob.cu/html/ley%20electoral.html>.

¹⁴⁴ ARNOLD AUGUST, CUBA AND ITS NEIGHBORS: DEMOCRACY IN MOTION 148 (2013).

¹⁴⁵ *Id.* at 191–193; see also Arnold August, *Do the Cuban People Have the Right to Choose Their Leaders?*, TELESUR (March 17, 2016), <http://www.telesurtv.net/english/opinion/Do-the-Cuban-People-Have-the-Right-to-Choose-Their-Leaders-20160317-0056.html>.

¹⁴⁶ Interestingly, the Cuban government's official website does not list the members of the Council of State. See <http://www.cubagob.cu> (last visited July 24, 2017).

¹⁴⁷ <http://www.parlamentocubano.cu/index.php/consejo-de-estado/> (last visited July 24, 2017) (see under "Integrantes").

(Federation of University Students).¹⁴⁸ A browse through the list also reveals the considerable overlap between the membership of the Council of State and the PCC's *Buro Político* (Politburo).

Shortly after Raúl Castro was re-elected President of the Council in 2013, he announced that he would not be seeking re-election in 2018.¹⁴⁹ Castro had previously advocated for a two-term limit (totaling 10 years) for political offices, a proposal that was addressed at a January 2012 PCC national conference.¹⁵⁰ Several sources in 2013, including the *New York Times*, reported that Miguel Díaz-Canel Bermúdez, the Council's First Vice President, was the likely heir apparent.¹⁵¹ Various press reports have also indicated that a new electoral law is in the works, but the content is still nebulous.¹⁵² The 7th Congress of the PCC held in April 2016 apparently did not address a new electoral law.¹⁵³

There is seemingly strong citizen interest in a reform of Cuba's electoral system, as evidenced by an online forum hosted by the Cuban newspaper *Juventud Rebelde* in February 2015. In that discussion, which lasted over three hours, readers interacted with representatives of the *Comisión Electoral Nacional* (National Electoral Commission)—some rather boldly suggesting direct and secret voting for the election of ANPP delegates and the Council of State.¹⁵⁴ The *Unión Patriótica de Cuba* (UNPACU) (Patriotic Union of Cuba), a pro-democracy organization in Cuba, has also called on the government to reform the country's electoral law.¹⁵⁵ The U.S. State Department's annual *Country Reports on Human Rights Practices* have routinely condemned the Cuban government for denying its citizens the right to vote in fair and free elections.¹⁵⁶ Whether any changes to Cuba's electoral system will occur before the 2017-2018 elections remains to be seen.

B. THE COUNCIL OF MINISTERS

The role and structure of the Council of Ministers, which is essentially a cabinet, has changed over time. The 1940 Constitution, which described the Council of Ministers in Article XII, was suspended after the installation of Fidel Castro's revolutionary government in January 1959. The *Ley Fundamental* (Fundamental Law) went into effect on February 7, 1959, and Title 11 of the Law described the powers and duties of the Council of Ministers. Article 138 specified that a President should preside over the Council, and Article 135 stipulated that one Minister should be Prime Minister (Fidel Castro).

¹⁴⁸ See also Ismael Francisco & José Raúl Concepción, *Presidenta de la FEU elegida como miembro del Consejo de Estado*, CUBADEBATE (Dec. 29, 2015), <http://www.cubadebate.cu/fotorreportajes/2015/12/29/presidenta-de-la-feu-elegida-como-miembro-del-consejo-de-estado/#.VvL6H2dli5c>.

¹⁴⁹ Cave, *supra* at note 23.

¹⁵⁰ Juan O. Tamayo, *Partido Comunista aprueba apertura limitada*, EL NUEVO HERALD, Jan. 30, 2012, at 1A; see also Frank Jack Daniel, *Raul Castro says Cuba needs term limits for its leaders*, BUSINESS INSIDER (April 17, 2016), <http://www.businessinsider.com/r-castro-84-says-cubas-leaders-are-too-old-proposes-limits-2016-4>.

¹⁵¹ Damien Cave & Victoria Burnett, *As Castro Era Drifts to Close, a New Face Steps in at No. 2*, N.Y. TIMES, Feb. 27, 2013, <http://www.nytimes.com/2013/02/28/world/americas/as-castro-era-drifts-to-close-a-new-face-steps-in-at-no-2.html>; Miguel Díaz-Canel: meet the next President of Cuba, THE GUARDIAN, Feb. 25, 2013, <http://www.theguardian.com/world/shortcuts/2013/feb/25/miguel-diaz-canel-next-president-cuba>.

¹⁵² See, e.g., CUBA POSIBLE, *Una nueva ley electoral: instrumento para un consenso sobre la Cuba actual* (Cuaderno No. 14, June 2015), <https://cubaposible.com/wp-content/uploads/2016/09/Cuaderno-14.-Una-nueva-Ley-Electoral.-Instrumento-para-un-consenso-sobre-la-Cuba-actual-Cuba-Posible.pdf>; Carl Gershman, *What President Obama needs to say about Cuba's elections*, WASH. POST, Mar. 17, 2016, https://www.washingtonpost.com/opinions/what-president-obama-needs-to-say-about-cubas-elections/2016/03/17/f7860484-ea22-11e5-b0fd-073d5930a7b7_story.html.

¹⁵³ *Cubalex*: 'El PCC no responde a propuestas de la sociedad civil sobre nueva reforma electoral,' DIARIO DE CUBA (April 28, 2016), http://www.diariodecuba.com/derechos-humanos/1461836074_21992.html.

¹⁵⁴ *Concluyó entrevista on-line sobre el sistema electoral cubano*, DIARIO DE LA JUVENTUD REBELDE, Feb. 28, 2015, <http://www.juventudrebelde.cu/cuba/2015-02-28/que-desea-saber-sobre-el-sistema-electoral-cubano/>.

¹⁵⁵ Unión Patriótica de Cuba, *A Minimal Programme and Projections UNPACU: Say No to Misery and Repression; Say Yes to the New Cuba!* (May 6, 2016), <http://www.unpacu.org/a-minimal-programme-and-projections-unpacu/>.

¹⁵⁶ See, e.g., U.S. DEP'T OF STATE, BUREAU OF DEMOCRACY, HUMAN RIGHTS AND LABOR, *supra* note 18, at 1; U.S. DEP'T OF STATE, BUREAU OF DEMOCRACY, HUMAN RIGHTS AND LABOR, CUBA 2014 HUMAN RIGHTS REPORT 21, <http://www.state.gov/documents/organization/236892.pdf>.

The Fundamental Law concentrated both legislative and executive functions in the Council of Ministers. Under the Law, the Cuban President appointed and dismissed the members of the Council of Ministers, and the Council could pass legislation by a majority vote and amend the Constitution with a two-thirds majority.¹⁵⁷ Since that time, the Council's composition and functions have been altered numerous times, as explained (in Spanish) on the *EcuRed* website.¹⁵⁸ The Cuban Constitution and *Decreto-Ley No. 272* (Decree-Law No. 272) of July 10, 2010,¹⁵⁹ provide the current legal framework for the Council of Ministers.

Articles 95 to 100 of the Constitution address the basic functions and composition of the Council. The Council of Ministers, which is the executive-administrative organ of the State, is vested with regulatory power through Article 95 of the Constitution. Per Article 98, the Council also directs foreign policy and commerce, prepares legislative bills, provides national defense and approves treaties prior to submitting them to the Council of State for ratification.¹⁶⁰ As aforementioned, the President of the Council of State also serves as the President of the Council of Ministers.¹⁶¹ Decree-Law No. 272 extends the overlap in the two Councils' membership; the Council of State's First Vice President is also the First Vice President of the Council of Ministers.¹⁶²

Members of the Council of Ministers also include Vice Presidents, government ministers, a Secretary and "other members that the law determines."¹⁶³ Decree-Law No. 272 specifies that the Council's President may propose other Council members who are approved by either the ANPP or the Council of State.¹⁶⁴ Both the Constitution and the Decree-Law are silent on the numerical membership of the Council, as well as term lengths. Article 5 of the Decree-Law specifies that the Council approves its own schedule of meetings or meets as convened by the President. Article 6 stipulates that more than half of the Council members must be present for a quorum, including the President or a designated substitute.

As Cuba's supreme regulatory body, the Council of Ministers implements the ANPP's laws, and the decrees-laws of the Council of State per Article 98(j) of the Constitution. The Council achieves this by issuing *decretos* (decrees) and administrative provisions, pursuant to existing laws.¹⁶⁵ Decree-Law No. 272 also stipulates that the Council of Ministers transmits its administrative decisions in the forms of *reglamentos* (regulations) and *acuerdos* (agreements).¹⁶⁶ Professor Martha Prieto Valdés attests that, in practice, the Council of Ministers' *acuerdos* have the same legal effect as its *decretos*.¹⁶⁷ Both the Constitution and the Decree-Law indicate that the individual members of the Council promulgate *resoluciones* (resolutions) related to the affairs and tasks of their own ministry or agency.¹⁶⁸ The Decree-Law also stipulates that the individual members may issue *circulares* (circulars).¹⁶⁹ Cuba's complex web of administrative instruments is addressed more fully in the following section of the Guide on "Legislation and Codes."

The Council also has an Executive Committee, which consists of the Council's President, First Vice President, the Vice Presidents and other members designated by the President.¹⁷⁰ The Executive Committee decides on issues delegated to the entire Council between meetings.¹⁷¹ Article 9 of the Decree-Law states that

¹⁵⁷ LF arts. 123, 129, 232.

¹⁵⁸ *Consejo de Ministros de la República de Cuba*, ECURED, http://www.ecured.cu/Consejo_de_Ministros_de_la_Rep%C3%BAblica_de_Cuba (last visited July 24, 2017).

¹⁵⁹ Decreto-Ley No. 272, de la Organización y Funcionamiento del Consejo de Ministros [DLOFCM] [Decree-Law No. 272, on the Organization and Functioning of the Council of Ministers], July 16, 2010, Gaceta Oficial [GO], No. 33, Aug. 13, 2010, <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/85233/95357/F325297861/CUB85233.pdf>.

¹⁶⁰ CONST. art. 98(c),(ch),(d),(g),(h).

¹⁶¹ CONST. art. 96.

¹⁶² DLOFCM art. 4.

¹⁶³ CONST. art. 96.

¹⁶⁴ DLOFCM art. 4.

¹⁶⁵ CONST. art. 98(k).

¹⁶⁶ DLOFCM art. 30.

¹⁶⁷ Prieto Valdés, *supra* note 86, at 84.

¹⁶⁸ CONST. art. 100(a); DLOFCM art. 32.

¹⁶⁹ DLOFCM art. 32.

¹⁷⁰ CONST. art. 97.

¹⁷¹ *Id.*

the President calls the Committee's meetings, and Article 10 requires that more than half of the Committee be present, including the President or a named alternate, to constitute a quorum. The Decree-Law denotes additional responsibilities for the Council's President, including the execution of his decisions through *decretos presidenciales* (presidential decrees), *resoluciones* (resolutions) and *instrucciones* (instructions).¹⁷² Supplemental duties of the First Vice President, the other Vice Presidents and the Secretary are also specified in Decree-Law No. 272.¹⁷³

Members of the Council of Ministers are listed on several websites, including *Cubadebate*, *Wikipedia* (in English and Spanish), *EcuRed* and those of the ANPP and the Cuban government. It is unclear if any of these lists are regularly updated, as the names and membership numbers are somewhat inconsistent across the sites. As of this writing, the Cuban government's website shows July 2016 as the last update for its Council membership list. According to it, there are 33 members (including eight women), and the majority are government ministers (all with portfolios).¹⁷⁴ Along with Council President Raúl Castro and First Vice President Miguel Díaz-Canel Bermúdez, five Vice Presidents are listed; it is unclear if other members of the Council are also members of the Executive Committee.

C. FIDEL CASTRO'S ROLE: POST-2007

In Raúl Castro's inaugural speech in 2008, he indicated that he would consult with his brother on various matters, particularly those pertaining to defense, foreign policy and the country's development.¹⁷⁵ After Fidel's resignation, however, the extent of his involvement in the day-to-day operations of the Cuban government is unknown. *Granma* continued to regularly publish columns with his byline (*Reflexiones de Fidel*) (Fidel's Reflections) that addressed current events and that sought to "burnish the fading allure of the Cuban [R]evolution."¹⁷⁶ After President Barack Obama's historic visit to Cuba in March 2016, Fidel wrote a scathing letter to *Granma* adamantly proclaiming that "we do not need the empire to give us anything."¹⁷⁷

According to the *New York Times*, the elder Mr. Castro remained influential in the PCC after officially departing as head executive of the Cuban government.¹⁷⁸ Fidel spoke at the closing ceremony of the 7th Congress of the PCC where he backed the economic and social reforms that his younger brother had initiated.¹⁷⁹ Fidel's death at age 90 on November 25, 2016, however, leaves a revolutionary legacy that looms large, but perhaps may not survive the political, economic and social tides of change in Cuba.

D. RESEARCHING THE COUNCILS OF STATE AND MINISTERS IN SPANISH

The various legal instruments promulgated by both Councils are published in the *Gaceta Oficial*, which is available electronically back to 1991.¹⁸⁰ Print collections of earlier issues may be located via a search in *WorldCat*. The Council of Ministers' decree-laws are posted on the ANPP's website, covering 1977 (*Decreto-Ley No. 1*)

¹⁷² DLOFCM art. 31.

¹⁷³ DLOFCM arts. 22–24.

¹⁷⁴ <http://www.cubagob.cu> (last updated July 2016) (see under "Gobierno" then "Miembros").

¹⁷⁵ *Discurso pronunciado por el compañero Raúl Castro Ruz, Presidente de los Consejos de Estado y de Ministros, en las conclusiones de la sesión constitutiva de la VII Legislatura de la Asamblea Nacional del Poder Popular. Palacio de las Convenciones, La Habana, 24 de febrero de 2008, "Año 50 de la Revolución,"* <http://www.cuba.cu/gobierno/rauldiscursos/2008/esp/r240208e.html>.

¹⁷⁶ Ernesto Londoño, *Still Pondering U.S.-Cuba Relations, Fidel Castro Responds*, N.Y. TIMES, Oct. 14, 2014, http://www.nytimes.com/2014/10/15/opinion/still-pondering-us-cuba-relations-fidel-castro-responds.html?_r=0.

¹⁷⁷ Fidel Castro Ruz, *El hermano Obama*, GRANMA, March 28, 2016, <http://www.granma.cu/reflexiones-fidel/2016-03-28/el-hermano-obama-28-03-2016-01-03-16>.

¹⁷⁸ Azam Ahmed, *Fidel Castro Criticizes Barack Obama's Efforts to Change Cuba*, N.Y. TIMES, March 28, 2016, <http://www.nytimes.com/2016/03/29/world/americas/fidel-castro-criticizes-barack-obamas-efforts-to-change-cuba.html>.

¹⁷⁹ Victoria Burnett, *In Farewell, Fidel Castro Urges Party to Fulfill His Vision*, N.Y. TIMES, April 19, 2016, <http://www.nytimes.com/2016/04/20/world/americas/in-farewell-fidel-castro-urges-party-to-fulfill-vision-for-cuba.html>.

¹⁸⁰ <https://www.gacetaoficial.gob.cu/> (last visited July 24, 2017).

through 2015 (*Decreto-Ley No. 335*).¹⁸¹ *Wikipedia* and *EcuRed* contain entries for both Councils, although the sourcing is unclear. Collections of the Castro brothers' speeches and other pronouncements are posted on a number of websites that are listed in Part F below.

Cubadebate, which is described as a web forum for counteracting negative press on Cuba (“*Contra el Terrorismo Mediático*”), has information on both Councils and reports on Cuban government activities.¹⁸² *Granma* covers the activities of the Councils,¹⁸³ as do various other Cuban media outlets.¹⁸⁴ A cautionary note applies, however, as the Cuban government tightly controls the nation's press; Cuba ranked 173rd out of 180 on Reporters Without Borders' “2017 World Press Freedom Index.”¹⁸⁵ Spanish-language media outlets outside of Cuba, such as *teleSUR* (based in Caracas, Venezuela, but with participation of the Cuban government) and *El País* (Madrid, Spain) regularly cover events in Cuba.

The Cuban government's website provides information on government ministries and agencies, including the name of the corresponding minister or agency head, phone number, e-mail address and website link (if existent), as well as a description of each entity's functions.¹⁸⁶ The content, currency and overall utility of the available ministry websites vary significantly. The website of Cuba's *Ministerio de Relaciones Exteriores* (MINREX) (Ministry of Foreign Affairs) is perhaps the most populated with information, and MINREX itself has an active Twitter account with almost 45,000 followers.¹⁸⁷ The site also includes links to various Cuban government declarations pertaining to foreign relations.¹⁸⁸ The *Ministerio de Justicia* (MINJUS) (Ministry of Justice) site also offers a fair amount of information, including access to its *Revista Jurídica* (No. 3 of 2009 through No. 12 of 2013), as well as descriptions of MINJUS' mission, functions and structure.

E. RESEARCHING THE COUNCILS OF STATE AND MINISTERS IN ENGLISH

Wikipedia includes entries on both Councils, although the usual warning applies regarding the reliability of sources. Some Cuban media outlets provide information in English. *Granma*'s English-language website, for example, offers Cuban news and sections on various topics, such as “Obama in Cuba” and “Cuba vs. Blockade.”¹⁸⁹ A number of websites post collections of the Castro brothers' speeches and other pronouncements in English-language translation; these are also listed below in Part F. The *Agencia Cubana de Noticias* (Cuban News Agency) and Radio Havana Cuba (the Cuban government's international radio station) both have English-language websites.¹⁹⁰ The MINREX website is likewise available in English,¹⁹¹ and the *Cubadebate* website also translates some of its content into English.¹⁹²

Major U.S. and British news outlets, such as the *Miami Herald*, the *New York Times* and *The Guardian*, are currently reporting heavily on developments in Cuba. The English-language *Latin American Herald Tribune* (Caracas, Venezuela) covers events in Cuba. The *Havana Times* has Cuba-based writers and photographers, but is headquartered in Nicaragua. For additional sources of English-language news on the Cuban government, see the later sections of this Guide on “Online Resources” and “Non-Legal Resources.”

¹⁸¹ <http://www.parlamentocubano.cu/index.php/documentos-legales/> (last visited July 24, 2017).

¹⁸² <http://www.cubadebate.cu/> (last visited July 24, 2017).

¹⁸³ LANIC (Latin American Network Information Center) has a browsable and searchable index to *Granma* that covers 1965–1992, <http://lanic.utexas.edu/la/cb/cuba/granma/> (last visited July 24, 2017).

¹⁸⁴ See <http://www.cubadebate.cu/prensa-cuba/> (last visited July 24, 2017) for a list.

¹⁸⁵ Reporters Without Borders, *2017 World Press Freedom Index*, <https://rsf.org/en/ranking> (last visited July 29, 2017).

¹⁸⁶ <http://www.cubagob.cu/> (under “Gobierno” then “Administración Central del Estado”) (last update unknown).

¹⁸⁷ https://twitter.com/CubaMINREX?ref_src=twsrc%5Etfw (last visited July 24, 2017).

¹⁸⁸ <http://www.minrex.gob.cu/es/sala-de-prensa/declaraciones/declaraciones-del-gobierno-de-la-republica-de-cuba> (last visited July 24, 2017).

¹⁸⁹ <http://en.granma.cu/> (last visited July 24, 2017).

¹⁹⁰ <http://www.cubanews.acn.cu/> (last visited July 24, 2017); <http://www.radiohc.cu/en> (last visited July 24, 2017).

¹⁹¹ <http://www.minrex.gob.cu/en> (last visited July 24, 2017).

¹⁹² <http://en.cubadebate.cu/> (last visited July 24, 2017).

F. SOURCES FOR THE CASTROS' SPEECHES, INTERVIEWS AND WRITINGS

A search in *WorldCat* will yield multiple sources by and about the Castro brothers in both Spanish and English. Note that the *Oficina de Publicaciones del Consejo de Estado* (Council of State's Publications Office) has produced a number of works in Spanish and English by and about the Castros, along with informational resources on the Cuban government; many of these are available in U.S. libraries. For videos of the two brothers, a search in YouTube for "Fidel Castro" or "Raúl Castro" results in thousands of hits. Below are Web-based sources for transcripts of both Castro brothers' speeches, remarks and other commentary.

Cubadebate. *Artículos de Raúl Castro Ruz* (Raúl Castro Ruz's Articles). Accessed July 24, 2017. <http://www.cubadebate.cu/autor/raul-castro-ruz>.

Transcripts of speeches with some embedded videos. Coverage starts with Sept. 14, 2006. Spanish only.

Cubadebate. *Fidel: Soldado de las Ideas* (Fidel: Soldier of Ideas). Accessed July 24, 2017. <http://www.fidelcastro.cu/es/inicio> (Spanish); <http://www.fidelcastro.cu/en/inicio> (English).

Transcripts of speeches, interviews, press conferences, letters and other documents. Topical index of "Quotes" available in English and under "*Citas*" in Spanish. Coverage is pre- and post-1959. Spanish-language pages have more content.

Granma. *Reflexiones del Compañero Fidel* (Comrade Fidel's Reflections). Accessed July 24, 2017. <http://www.granma.cu/reflexiones-fidel> (Spanish); <http://en.granma.cu/reflections-of-fidel> (English).

First post on the English-language page ("Articles and Reflections by Fidel") is dated Jan. 6, 2011. The Spanish-language equivalent on *Granma's* main site has more content and starts with Dec. 14, 2009.

Latin American Network Information Center (LANIC). *Castro Speech Data Base*. Accessed July 24, 2017. <http://lanic.utexas.edu/la/cb/cuba/castro.html>.

English-language translations of speeches, interviews and press conferences. Based on the records of the United States' Foreign Broadcast Information Service (FBIS). Covers 1959–1996.

Ministerio de Relaciones Exteriores de Cuba. *Sala de Prensa* (Press Room). <http://www.minrex.gob.cu/es/sala-de-prensa> (Spanish); <http://www.minrex.gob.cu/en/sala-de-prensa> (English).

Click on "*Discursos e intervenciones*" for access to speeches and other materials related to the Castro brothers in Spanish and "Speeches and remarks" for English. Also available in both languages are transcripts and summaries of press conferences and statements of the Minister of Foreign Relations. For statements, select "*Declaraciones*" in Spanish and "Statements" in English. Spanish-language pages have more content.

Radio Reloj. *Discursos* (Speeches). Accessed July 24, 2017. <http://www.radioreloj.cu/es/category/discursos/>.

Transcripts of speeches and talks by various government and PCC officials, including Fidel and Raúl Castro, Miguel Díaz-Canel Bermúdez and José Ramón Machado Ventura. Coverage starts on January 28, 2013. Spanish only.

Radio Reloj. *Reflexiones de Fidel* (Fidel's Reflections). Accessed July 24, 2017. <http://www.radioreloj.cu/es/category/reflexiones-de-fidel/>.

Writings of Fidel Castro, including various letters. Coverage starts on April 4, 2013. Spanish only.

Sitio del Gobierno de Cuba. *Discursos e intervenciones del Comandante en Jefe Fidel Castro Ruz, Presidente del Consejo de Estado de la República de Cuba* (Speeches and remarks of Commander in Chief Fidel Castro Ruz, President of Cuba's Council of State). Accessed July 24, 2017. <http://www.cuba.cu/gobierno/discursos/index.html>.

Transcripts of speeches and writings, many with multilingual translations provided (including English). Covers 1959–2008.

Sitio del Gobierno de Cuba. *Discursos e intervenciones del Presidente de los Consejos de Estado y de Ministros de la República de Cuba General de Ejército Raúl Castro Ruz* (Speeches and remarks of Raúl Castro Ruz, President of Cuba's Councils of State and Ministers and Commander in Chief of the Army). Accessed July 24, 2017. <http://www.cuba.cu/gobierno/rauldiscursos/index2.html>.

Transcripts of speeches and writings, some with multilingual translations provided (including English). Coverage is 2008–2016.

LEGISLATION AND CODES

MARISOL FLORÉN-ROMERO AND CATE KELLETT

According to the 1976 Cuban Constitution (as amended to June 26, 2002), the *Asamblea Nacional del Poder Popular* (ANPP) (National Assembly of People's Power) is the unicameral legislative body¹⁹³ that represents the will of the Cuban people and is the supreme organ of state power.¹⁹⁴ Some of its powers include the ability to: amend the Constitution; declare war, make peace and set foreign policies; pass, repeal and amend laws; decide on the constitutionality of *leyes* (laws), *decretos-leyes* (decree-laws), *decretos* (decrees) and other regulations; debate and approve the national budget and other financial policies; and oversee the electoral processes of the provincial assemblies.¹⁹⁵

Prior to the 1992 constitutional amendments, members were selected by vote by the provincial assemblies.¹⁹⁶ Now the Constitution states that members must be elected through popular vote¹⁹⁷ for five-year terms.¹⁹⁸ The ANPP meets for two ordinary sessions a year, and in extraordinary session when convened by the Council of State, and members typically ratify government bills quickly.¹⁹⁹ The ANPP also elects from its members the entire body of the Council of State.²⁰⁰ Between sessions of the ANPP, the Council of State acts in its place.²⁰¹ Since the ANPP only meets a few times a year, the Council of State acts as the routine legislative decision maker most of the year.²⁰²

Bills may be introduced by: ANPP deputies; the Council of State; the Council of Ministers; ANPP commissions; the *Comité Nacional de la Central de Trabajadores de Cuba* (National Committee of the Cuban Central Labor Union) and the boards of other national social and mass organizations; the *Tribunal Supremo Popular* (People's Supreme Court), in matters concerning the administration of justice; the *Fiscalía General de la República* (Office of the Attorney General of the Republic), on matters within its competence; and citizens. However, in the latter case, at least 10,000 citizens must propose the initiative.²⁰³

Marjorie S. Zatz identifies three phases in the law-making process in Cuba: *anteproyecto*, *proyecto* and the *alta asesoría* phase.²⁰⁴ The draft of a preliminary bill is called an *anteproyecto*. The preliminary draft of the proposed law is submitted to the ANPP, which in turn distributes it for public discussion and debate to all relevant agencies, including law schools and social and mass organizations. The analysis, critiques and comments of the proposed legislation are compiled into written *dictámenes* (opinions) or *criterios* (views), and along with the draft of the proposed law, are sent to the ANPP where the different viewpoints are reconciled and a revised draft is submitted as a *proyecto* (bill).

C. Yoel Carrillo García describes this process in a different way.²⁰⁵ According to Carrillo García, the process starts when a bill is submitted to the President of the ANPP, who in turn sends it to the relevant ANPP commission or

¹⁹³ CONST. art. 70.

¹⁹⁴ CONST. art. 69.

¹⁹⁵ CUBA: A COUNTRY STUDY 233 (Rex A. Hudson ed., 4th ed. 2002), http://www.loc.gov/r/frd/cs/pdf/CS_Cuba.pdf.

¹⁹⁶ *Id.* at 234.

¹⁹⁷ CONST. art. 71.

¹⁹⁸ CONST. art. 72.

¹⁹⁹ Hudson ed., *supra* note 195, at 233.

²⁰⁰ CONST. art. 74.

²⁰¹ CONST. art. 89.

²⁰² Hudson ed., *supra* note 195, at 235.

²⁰³ CONST. art. 88.

²⁰⁴ ZATZ, *supra* note 50, at 60–65.

²⁰⁵ C. Yoel Carrillo García, *Régimen Político y Calidad de las Leyes en Cuba*, 128 BOLETÍN MEXICANO DE DERECHO COMPARADO, 650, 653. To Carrillo García, the Reglamento de la Asamblea Nacional del Poder Popular is an internal document of the National Assembly, and it only applies to bills. He understands that the great majority of the legal norms in Cuba (decree-laws, decrees, regulations and resolutions) are not subject to any publicly known law-making regulation; *see also* Cuba Posible & Michael Fernández Pérez, *supra* note 140; *see also* MEDINA & MEDINA-QUIROGA, *supra* note 106, at 44.

commissions. The commission may approve the bill, with or without amendments; it can decide if the bill needs to be submitted for public discussion and debate; or, it may return the project for further discussion or amendments. The *Comisión de Asuntos Constitucionales y Jurídicos* (Commission on Constitutional and Juridical Matters) studies the constitutionality of the bill, and after final approval of the text, the bill is finally placed on agenda. The agency or organization taking the legislative initiative is in charge of defending the bill on the floor of the ANPP. Laws are enacted by a simple majority of votes. Once the final text of the bill is approved, the new law is signed by the President and the Secretary of the ANPP, and published in the *Gaceta Oficial*. The legislative process is regulated by the *Reglamento de la Asamblea Nacional del Poder Popular* (Regulation of the National Assembly of People's Power) (Dec. 25, 1996).²⁰⁶

The agendas of the different sessions since 1976 are posted on the ANPP's main web page under the specific legislative term. Each legislative term lasts five years and is numbered consecutively. Currently, the ANPP is in its eighth legislative term (2013–2018). The first legislative term started on December 2, 1976, when the ANPP convened for the first time, and it lasted until 1981. During an ordinary legislative session, the ANPP discusses or approves proposals for the establishment of temporary or permanent legislative commissions; addresses legislative bills; appoints the heads of government offices; approves national social and economic guidelines and programs; provides follow-up to the implementation of PCC agreements; approves the national budget; and, it elects lay judges for the different chambers of the Supreme Court, among other duties as specified by the Constitution.²⁰⁷ The Council of State, or one third of the total number of deputies, may convene an extraordinary session of the ANPP to discuss specific issues. Such was the case in March 2014 when the ANPP convened in an extraordinary session to discuss the new foreign investment law, *Ley No. 118, Ley de Inversión Extranjera* (Law No. 118, Law on Foreign Investment).²⁰⁸

Cuba's taxonomy of legal instruments is complex and difficult to decipher. The 1976 Constitution names many of these types of norms, but others are mentioned in peripheral primary legislation and regulatory directives. The previous section of the Guide on "Executive Powers" discussed the main legal instruments that are explicitly named in the Constitution. In simple terms, the ANPP is empowered to issue *leyes* (laws).²⁰⁹ The Council of State has the authority to promulgate *decretos-leyes* (decree-laws) between sessions of the ANPP,²¹⁰ and it also ratifies *tratados internacionales* (international treaties) per Article 90(m). The Council of Ministers emits *decretos* (decrees) to implement laws and decree-laws.²¹¹ Laws, decree-laws and decrees are of a general character and scope.²¹² There is a panoply, however, of regulatory instruments that Cuban state organs utilize for administrative purposes.

The 2004 treatise, *Temas de Derecho Administrativo Cubano*, offers some clarification of these types of norms, as well as general insight into the complex topic of Cuban administrative law.²¹³ According to this work, along with multiple kinds of administrative norms, there are multiple direct and indirect sources of administrative law.²¹⁴ Simply put, however, national, provincial and municipal government bodies in Cuba have the constitutional authority to regulate the organization and functioning of the areas within their jurisdictional competence.²¹⁵ The regulatory instruments utilized for this purpose include *acuerdos* (agreements), *reglamentos* (regulations), *resoluciones* (resolutions), *instrucciones* (instructions), *órdenes* (orders) and *circulares* (circulars).

The ANPP, for example, issues *acuerdos* related to its own work, such as the election of lay judges.²¹⁶ *Reglamentos* are often attached to *decretos* as the regulations for a specific *ley* or *decreto-ley*, but they also

²⁰⁶ Reglamento de la Asamblea Nacional del Poder Popular [RANPP] [Regulation of the National Assembly of People's Power], Dec. 25, 1996, <http://www.parlamentocubano.cu/index.php/asamblea-nacional-del-poder-popular/> (last visited July 30, 2017).

²⁰⁷ CONST. art. 75; see also RANPP art. 4.

²⁰⁸ LIE 2014, *infra* note 331.

²⁰⁹ CONST. art. 75(b).

²¹⁰ CONST. art. 90(c).

²¹¹ CONST. art. 98(k).

²¹² Diego Fernando Cañizares Abeledo, *Acerca de la Facultad Reglamentaria de la Administración Estatal*, in ARMANDO CASTANEDO ABAY et al., TEMAS DE DERECHO ADMINISTRATIVO CUBANO, 220, 227 (2004).

²¹³ See ARMANDO CASTANEDO ABAY et al., TEMAS DE DERECHO ADMINISTRATIVO CUBANO (2004).

²¹⁴ See generally Matilla Correa, *supra* note 136, at 33–217.

²¹⁵ *Id.*

²¹⁶ The ANPP's *acuerdos* from the VIII Legislature are posted on the ANPP's website, <http://www.parlamentocubano.cu/index.php/acuerdos-viii-legislatura/> (last visited July 30, 2017).

appear autonomously.²¹⁷ Individual ministries and other state organs issue *resoluciones* related to their own entity's charges per Article 100(a) of the Constitution. Professor Matilla Correa, writing in the aforementioned treatise, bundles *instrucciones*, *órdenes* and *circulares* together under the broader heading of *disposiciones* (dispositions), which he explains are directed to subordinate bodies within an institutional hierarchy.²¹⁸ The term *disposición* also appears in the Constitution, and other Cuban legal academics use it as a generic term to refer to any type of administrative provision.²¹⁹

Along with the complexity of the various regulatory instruments, the absence of a compendium of Cuban administrative rules makes researching this area particularly difficult. Of some help, however, are the websites of state organs that include administrative provisions (and any primary legislation) relevant to their organizations. Examples of this are the websites of the Cuban Central Bank and the Ministry of Science, Technology and Environment.²²⁰ Researchers should also note that the introductory material to the texts of Cuban laws and regulatory pronouncements published in the *Gaceta Oficial* pinpoint the enabling legal power; that is, the specific legal norm, such as the Constitution, that the state organ is drawing upon to issue the particular document. There is not an identifiable administrative procedure act that governs how all Cuban state agencies propose and establish rules, so these enabling law citations vary. The introductory material also clearly identifies the piece of primary legislation that a *reglamento*, for example, is implementing.

Whether there is a hierarchy among all of the Cuban legal instruments mentioned above has been a somewhat contentious issue among scholars, according to the secondary literature. There is agreement that the Constitution is the highest law of the land, outweighing all of the aforementioned types of legal norms,²²¹ but there is no clear consensus whether there is a hierarchy among those. Authors such as Medina and Medina-Quiroga, writing in 1979, warranted the superiority of the Constitution above other legal sources, and stated that decrees are subordinate to laws and decree-laws.²²² Similarly, Álvarez Tabío in 1981, in his commentaries to the 1976 Constitution, and Whittles and Santos, in a footnote to a 2006 article, claimed that there is indeed a normative hierarchy.²²³ In contrast, however, Cuban scholar Bruzón Viltres noted that the 1976 Constitution, and subsequent constitutional reforms, did not provide principles on which to base the order of the sources of law; according to Bruzón Viltres, these principles were left undetermined.²²⁴ Professor Matilla Correa shares the view that there is no precise hierarchy, specifying that the Constitution provides no guidance on the role of treaties in the Cuban legal order.²²⁵ Other Cuban scholars similarly claim that there is no clearly defined hierarchical relationship between Cuba's legal instruments beyond the apex of the Constitution.²²⁶

²¹⁷ See HÉCTOR GARCINI GUERRA, *DERECHO ADMINISTRATIVO* (1982) for a comprehensive discussion of *reglamentos* (regulations) as a source of administrative law and the different types of *reglamentos* that are issued by government agencies.

²¹⁸ Matilla Correa, *supra* note 136, at 72.

²¹⁹ See, e.g., throughout *EL DERECHO EN CUBA* (Leonardo B. Pérez Gallardo coord., 2015).

²²⁰ <http://www.bc.gob.cu/English/home.asp> (last visited July 30, 2017) (under "Legal Framework," but the documents are all in Spanish); <http://www.citma.gob.cu/> (last visited July 30, 2017) (under "Marco Legal").

²²¹ The superiority of the Constitution is also implied in arts. 75(r)–(s).

²²² MEDINA & MEDINA-QUIROGA, *supra* note 106, at 45.

²²³ FERNANDO ÁLVAREZ TABÍO, *COMENTARIOS A LA CONSTITUCIÓN SOCIALISTA*, 257, 295, 297 (1981). Álvarez Tabío affirms that "in the hierarchy of legal sources we can establish the following legal order: Constitution, law, decree-law, decree and *disposiciones*"; he further affirms that decree-laws have not had the same ranking as the laws enacted by the National Assembly, and that decree-laws have a higher legal standing than decrees and *disposiciones* of the Council of Ministers; see also Daniel Whittle & Orlando Rey Santos, *Protecting Cuba's Environment: Efforts to Design and Implement Effective Environmental Laws and Policies in Cuba*, 37 CUBAN STUDIES, 73, 97 n.35 (2006).

²²⁴ Carlos Justo Bruzón Viltres, *Reforma Constitucional en Cuba: Un Camino para el Perfeccionamiento del Ordenamiento Jurídico?*, 20 ANUARIO DE DERECHO CONSTITUCIONAL LATINOAMERICANO 51 (2014); see also Carrillo García, *supra* note 205, at 623, 659. Carrillo states that "in practice what happens is that the Council of State not only regulates all types of social relations but also modifies and repeals through decree-laws, laws enacted by the National Assembly," at 660.

²²⁵ Matilla Correa, *supra* note 136, at 41, 153. For a prescriptive analysis of the relationship between treaties and Cuban domestic law, see Orisell Richards Martínez, *Una Mirada a los Presupuestos Teóricos para la Recepción de Tratados Internacionales en el Ordenamiento Jurídico Cubano*, 42 REVISTA DE DER. Y CIENCIAS POLÍTICAS, 117 (enero–junio 2012).

²²⁶ See ROBERTO DÍAZ SOTOLONGO, *LA CONSTITUCIÓN* 6 (2011); Juan R. P. Carrillo, *Hacia una Formulación Jurídico Normativa de las Fuentes del Derecho Agrario Cubano*, 2 CAMPO JURÍDICO, 49, 63 (2014), asserts that the non-existence in Cuba of a general rule explicitly defining the sources of law and their hierarchy, places Cuba in a *sui generis* situation with respect to other countries at the

Session Laws:

Laws passed by the Cuban National Assembly, and reports of legislative work, are found on the main page of the Cuban parliament. <http://www.parlamentocubano.cu/>.

Diario de Sesiones del Congreso de la República de Cuba. Senado. La Habana: Rambla y Bouza, 1902—v. 1 (no. 1); Oct. 1902—v. 62, 1930. Accessible in digital format in the *Digital Library of the Caribbean* (dLOC). <http://www.dloc.com/>.

Diario de Sesiones del Congreso de la República de Cuba. Cámara de Representantes. La Habana, 1902—v. 1. (no. 1); 1902—v. 95 (no. 7), 1957. Accessible in digital format on dLOC. <http://www.dloc.com/>.

Diario de Sesiones del Congreso de la República de Cuba. Cámara de Representantes. La Habana: Publicado por la Jefatura del Despacho, 1902—. Published in six volumes. Covers enacted laws from 1902 to 1927. This publication is a cumulative index of enacted laws, indicating the legislative session and date of publication in the *Gaceta Oficial*. Accessible in digital format on dLOC. <http://www.dloc.com/>.

A. OFFICIAL GAZETTE

According to the Constitution, all laws and related provisions must be published in the *Gaceta Oficial de la República de Cuba* (Official Gazette of the Republic of Cuba).²²⁷ This includes resolutions and regulations of general interest; decree-laws of the Council of State; decrees, resolutions and regulations issued by the Council of Ministers; laws of the ANPP; official notes of the Ministry of Foreign Affairs; and *instrucciones* (instructions), *resoluciones* (resolutions) and *acuerdos* (agreements) of the *Consejo de Gobierno del Tribunal Supremo Popular* (CGTSP) (Governing Council of the People's Supreme Court).²²⁸

During the U.S. military occupation (1899–1902), the *Gaceta de La Habana* (Gazette of Havana) was designated as the official gazette of the *Gobierno Militar de Cuba* (Military Government of Cuba).²²⁹ The Gazette included, not only military orders, but also the judgments of the Supreme Court.²³⁰ With the transfer of the U.S. Military Government to the new government of the Republic of Cuba, the *Gaceta de La Habana* became the *Gaceta Oficial de la República de Cuba*.²³¹

Laws enter into force on the date determined by the laws themselves. Decrees, resolutions and other norms enacted by the Council of Ministers enter into force on the third day following their publication in the *Gaceta Oficial*, if otherwise not determined by the laws themselves.²³² The Ministry of Justice publishes the *Gaceta Oficial* in print and offers online access, dating back to 1991.²³³ The *Gaceta* can be browsed by date, or by conducting a keyword search. The *Gaceta* is regulated by *Decreto No. 62, Normas para la Publicación en la Gaceta Oficial* (Decree No.

international level (Marisol Florén-Romero trans.), <http://www.fasb.edu.br/revista/index.php/campojuridico> (last visited July 30, 2017); see also C. Yoel Carillo García, *Régimen Político y Calidad de las Leyes en Cuba*, 128 BOLETÍN MEXICANO DE DERECHO COMPARADO, 623, 666 (2010); see also Matilla Correa, *supra* note 136, at 38.

²²⁷ CONST. art. 77.

²²⁸ CONST. arts. 77, 81(ch), 93(j); see also *Historia de la Gaceta Oficial de la República de Cuba*, GACETA OFICIAL DE LA REPÚBLICA DE CUBA, <https://www.gacetaoficial.gob.cu/html/historia.html> (last visited July 30, 2017).

²²⁹ Military Order No. 31a, March 31, 1899, in CUBA MILITARY GOVERNOR, 1899–1902 (Leonard Wood), CIVIL ORDERS AND CIRCULARS (Havana, 1899–1902).

²³⁰ Military Order No. 92, June 26, 1899, in CUBA MILITARY GOVERNOR, 1899–1902 (Leonard Wood), CIVIL ORDERS AND CIRCULARS (Havana, 1899–1902).

²³¹ Decreto No. 8, May 20, 1902, 4 REPÚBLICA DE CUBA, COLECCIÓN LEGISLATIVA: SECRETARÍA DE GOBERNACIÓN, DE 20 DE MAYO A 31 DE DICIEMBRE DE 1902, 3 (Rambla y Bouza 1907), and Decreto No. 63, June 30, 1902, 4 REPÚBLICA DE CUBA, COLECCIÓN LEGISLATIVA: SECRETARÍA DE GOBERNACIÓN, DE 20 DE MAYO A 31 DE DICIEMBRE DE 1902, 19 (Rambla y Bouza 1907).

²³² Decreto No. 62, Normas para la Publicación en la Gaceta Oficial [DNPGO] [Decree No. 62, Rules for Publication in the Official Gazette], Jan. 30, 1980, <http://juriscuba.com/wp-content/uploads/2015/10/Decreto-No.-062.pdf>.

²³³ GACETA OFICIAL DE LA REPÚBLICA DE CUBA, <http://www.gacetaoficial.cu/> (last visited July 30, 2017). At the time of this writing, each edition of the *Gaceta Oficial* posted on this website is only available as an RAR file. These are compressed files that must first be extracted to be open and read.

62, Rules for Publishing in the Official Gazette) (Jan. 30, 1980).²³⁴ There is no reference to the legal effect of the digital *Gaceta* in Decree No. 62.

The *Gaceta Oficial* is issued in print form:

Gaceta Oficial de la República de Cuba. La Habana. 1902– Año 1 (no. 1, July 1); 1902– “*Edición extraordinaria*,” “*Edición especial*” or “*Edición Extraordinaria especial*.” One of the most complete holdings in the United States is at the University of Texas at Austin, Benson Latin American Collection, covering 1906–1979.

Also available on microfilm:

Gaceta Oficial de la República de Cuba. La Habana. 1902– Año 1 (no. 1, July 1); 1902–.

The *Gaceta* was microfilmed by the Library of Congress, Photoduplication Service, 1974; covering 1902–1967, 35 mm. reels. Continued by the New York Public Library, covering 1958–1974; 441 microfilm reels, 35 mm.

As an online resource, the *Gaceta* can be found in digital format on *HathiTrust* and the website of the Ministry of Justice:

HathiTrust Digital Library. 1905 (Jan.–Feb.)–1919 (Jan.–Sept.). Incomplete, missing some years. Digitized from originals at the University of California and the University of Illinois at Urbana-Champaign libraries.

Gaceta Oficial de la República de Cuba. Publicación Digital. La Habana: Ministerio de Justicia, 1991–. <http://www.gacetaoficial.cu/>.

B. COMPILATIONS OF LAWS

1. Pre-1959

Pre-revolutionary laws are available through several multi-volume sets that compiled legislation, decrees, proclamations, resolutions and other types of laws into one publication. For example, *Colección Legislativa de la Isla de Cuba: Recopilación de Todas las Disposiciones Publicadas en la “Gaceta de La Habana”* (Legislative Collection of the Island of Cuba: Compilation of all the Laws Published in the “Gazette of Havana”), covered 1899–1902; *Colección Legislativa: Leyes, Tratados, Decretos y Resoluciones* covered laws, treaties, decrees and resolutions from 1899–1921; and *Leyes y Decretos de la República* covered laws and decrees from 1909–1926.²³⁵

The *Colegio de Abogados de La Habana* (Bar Association of Havana) printed decisions and legislation in its publication, *La Jurisprudencia al Día: Revista de Jurisprudencia y Legislación* (Current Jurisprudence: Journal of Decisions and Legislation), from 1912 to 1957. From 1913 to 1932, this title was published in three parts, covering decisions on: (1) criminal matters; (2) civil matters; and (3) property and contentious administrative matters. Starting in 1933, a fourth section was introduced on legislation. At the end of each year, a subject index was included.

Milo A. Borges published his *Compilación Ordenada y Completa de la Legislación Cubana de 1899 a 1950, ambos inclusive* (Complete and Orderly Compilation of Cuban Legislation from 1899 to 1950, inclusive) (2nd ed. La Habana, 1952) in three volumes, covering 1899 to 1936 and 1937 to 1950, with an alphabetical index. In 1960, Mariano Sánchez Roca and Juan Aromona Pérez continued Borges’ work by publishing a new volume covering 1951 to 1958.

2. Laws of the Revolution (Post-1959)

Beginning in 1959, a series of pamphlets publicizing the laws sanctioned by the new revolutionary government was published monthly under the general title *Folletos de Divulgación Legislativa* (Pamphlets of Legislative Disclosure). Each issue had a consecutive number, starting with issue no. 1, covering laws enacted from January 1, 1959. Issue no. 1 (Jan. 1, 1959) through issue no. 30 (April 1961) cover the *Leyes del Gobierno Provisional de la*

²³⁴ DNPGO, *supra* note 232.

²³⁵ REPÚBLICA DE CUBA, LEYES Y DECRETOS DE LA REPÚBLICA (1909–), vols. 16 to 58, <http://ufdc.ufl.edu/UF00072607/00042>.

Revolución (Laws of the Provisional Revolutionary Government). These pamphlets were labeled as *Leyes de la Revolución* (Laws of the Revolution). Some issues have a distinctive title, such as issue no. 2, which contains the text of the *Ley Fundamental de la República* (Fundamental Law of the Republic) that was promulgated on February 7, 1959; and issue no. 4 contains the criminal and criminal procedure laws enacted during the revolutionary period. Starting with issue no. 31 (April 1961), the title changed to *Leyes del Gobierno Revolucionario de Cuba* (Laws of the Revolutionary Government of Cuba). The final issue of the series was no. 61 (April–June 1966).

In 2007, Esteban M. Beruvides compiled and transcribed all the Cuban laws and decrees of the revolutionary government enacted in 1959 and 1960 in a three-volume set.²³⁶ The Ministry of Justice also published a set of laws, decree-laws, decrees and dispositions first published in the *Gaceta Oficial*, covering 1980 to 1989.²³⁷

Ángel A. Alfonso Seisdedos. *Índice y Extractos, Gaceta Oficial, República de Cuba, 1967–1972*. La Habana: Editorial Ciencias Sociales, 1987. Index and summaries of laws and other norms published in the *Gaceta Oficial* from 1967 to 1972.

Ángel A. Alfonso Seisdedos. *Índice y Extractos, Gaceta Oficial, República de Cuba, 1973–1976*. La Habana: Editorial Ciencias Sociales, 1989. Index and summaries of laws and other norms published in the *Gaceta Oficial* from 1973 to 1976.

República de Cuba. *Leyes, Decretos-Leyes, Decretos y Disposiciones Publicadas en la Gaceta Oficial de la República de Cuba*. La Habana: Depto. de Divulgación, Ministerio de Justicia, 1980–1989. Thirty-six issues were published.

C. CODES

The *Gaceta Oficial* portal provides online access to the main legislation and codes in Spanish. These include the *Código de la Familia* (Family Code); *Código Civil* (Civil Code); *Código Penal* (Criminal Code); *Código de Trabajo* (Labor Code); *Código de Comercio* (Commercial Code); *Ley de Procedimiento Penal* (Criminal Procedure Law); and the *Ley de Procedimiento Civil, Administrativo, Laboral y Económico* (Civil, Administrative, Labor and Economic Procedure Law), among others.²³⁸ The compilation of laws and codes available on this site is not comprehensive, and the versions are not necessarily the most current. For information on procedures in various matters of law, including civil, administrative, labor, economic and criminal, see the section on “The Judiciary” of this Guide, Part C. In the Cuban legal system, these are not enacted as codes.

The following subsections will describe the history and current status of the main Cuban Codes: Civil Code, Family Code, Code of Children and Youth, Commercial Code, Criminal Code, Labor Code, and Road Safety and Traffic Code.

a. Civil Code

The *Código Civil Español* (Spanish Civil Code) was enacted by Royal Decree on July 31, 1889, and was in force in Cuba just before the United States occupied the island on January 1, 1899. The U.S. Military Government ratified the Spanish Civil Code on January 1, 1899, and it continued to be in force for 80 years until July 16, 1987, when the National Assembly sanctioned a new *Código Civil* (Civil Code),²³⁹ which is still in force today. Over the years, one of the most important amendments that substantially modified the Code was the section on family and related matters. In 1975, this topic was removed from the Civil Code altogether and enacted as a separate code; that being, the *Código de la Familia* (Family Code). The current Civil Code has 547 Articles structured into five sections: preliminary provisions

²³⁶ ESTEBAN M. BERUVIDES, CUBA: LEYES Y DECRETOS (2007).

²³⁷ REPÚBLICA DE CUBA, LEYES, DECRETOS-LEYES, DECRETOS Y DISPOSICIONES, PUBLICADAS EN LA GACETA OFICIAL DE LA REPÚBLICA DE CUBA (1980 – 1989).

²³⁸ Legislación Cubana, GACETA OFICIAL DE LA REPÚBLICA DE CUBA, MINISTERIO DE JUSTICIA, https://www.gacetaoficial.gob.cu/html/legislacion_cubana.html (last visited July 30, 2017).

²³⁹ See CÓD. CIVIL, *supra* note 59; see also *Código Civil*, in CÓDIGO CIVIL Y LEYES CIVILES CUBANAS 17 (Ángel Carrasco Perera ed., 2000).

(covering Articles 1 to 21); Book One related to persons (Articles 22 to 126); Book Two on property rights (Articles 127 to 232); Book Three dealing with obligations and contracts (Articles 233 to 465); and Book Four on inheritance and succession (Articles 466 to 547).²⁴⁰ For a detailed commentary on the Civil Code, see *Comentarios al Código Civil Cubano* (Commentaries on the Cuban Civil Code) (Leonardo B. Pérez Gallardo ed., La Habana, 2014).

b. Family Code

The 1975 *Código de la Familia* (Family Code)²⁴¹ repealed several sections of the Civil Code concerning the personal and economic regimes of the family, as well as sections pertaining to marriage and divorce. The Family Code covers all matters relating to marriage, parent-child relationships, adoption, filiation, custody and alimony. It also regulates divorce. The procedures in family matters are regulated by *Instrucción del Tribunal Supremo Popular No. 216* (Instruction of the People's Supreme Court No. 216) (May 17, 2012).²⁴² The Center for Cuban Studies (New York City) later published an English-language translation of the Family Code. A comment at the beginning of the Code highlights the significance of the strengthening of essential principles for the advancement of the socialist revolution, family relations, marriage and gender equality.²⁴³

c. Code of Children and Youth

The 1978 *Código de la Niñez y la Juventud* (Code of Children and Youth)²⁴⁴ defines principles, policies, rights, and obligations of individuals and institutions responsible for the socialist education of the future generations. It addresses the needs of children and youth under 30 years of age in a socialist society. It sets out the rights and obligations in the areas of education, labor, health and culture, supporting active involvement of children and youth as they contribute to society.

d. Commercial Code

The *Código de Comercio* (Commercial Code)²⁴⁵ of 1886 is still in force today, although over the years the Code has been amended and different sections have been repealed. The sections on business organizations, commercial contracts, commercial intermediaries, bankruptcy, securities and maritime insurance are all still in force. *Ley No. 115, De la Navegación Marítima, Fluvial y Lacustre* (Law No. 115, On Maritime, River and Lake Navigation) (July 6, 2013) repealed whole sections of Book III of the Commercial Code, with the exception of marine insurance (Section III of Book III).²⁴⁶ Two other laws amended different sections of the Commercial Code: *Decreto-Ley No. 304* (Decree-Law No. 304)²⁴⁷ pertaining to commercial contracts regulating preliminary agreements, as well

²⁴⁰ See Leonardo B. Pérez Gallardo, *Código Civil y Algunas Leyes Complementarias*, in *EL DERECHO EN CUBA* 125 (Leonardo B. Pérez Gallardo coord., 2015).

²⁴¹ Ley No. 1289, CÓDIGO DE LA FAMILIA [CÓD. FAM.] [Law No. 1289, Family Code], Feb. 14, 1975, Gaceta Oficial [GO], No. 6, Feb. 15, 1975, <https://www.gacetaoficial.gob.cu/html/codigo%20de%20lafamilia.html>.

²⁴² Instrucción del Tribunal Supremo Popular No. 216, relativa al procedimiento familiar y la adopción de medidas cautelares [People's Supreme Court Instruction No. 216, relative to family procedure and the adoption of precautionary measures], May 17, 2012, Gaceta Oficial [GO], June 22, 2012.

²⁴³ CUBAN FAMILY CODE (Center for Cuban Studies, 1977); see the statement on the verso of the cover page, "Cubans are taking the provisions of the Family Code seriously, and the Code is helping to create one of the most basic conditions for further development of the Revolution, that of equality between men and women in all areas of Cuban life."

²⁴⁴ Ley No. 16, CÓDIGO DE LA NIÑEZ Y LA JUVENTUD [CÓD. NIN. JUV.] [Law No. 16, Code of Children and Youth], June 26, 1978, Gaceta Oficial [GO], June 30, 1978, <http://juriscuba.com/wp-content/uploads/2016/07/Ley-No.-016-C%C3%B3digo-de-la-Ni%C3%B1ez-y-la-Juventud.pdf>.

²⁴⁵ CÓDIGO COMERCIAL [CÓD. COM.] [Commercial Code], Real Decreto de 28 de enero de 1886; see also Raiza Fraga Martínez, *Los Sujetos del Derecho Mercantil en la Legislación Cubana*, 28 REVISTA ÁMBITO JURÍDICO (April 2016), http://www.ambito-juridico.com.br/site/index.php?n_link=revista_artigos_leitura&artigo_id=1067.

²⁴⁶ Ley No. 115, De la Navegación Marítima, Fluvial y Lacustre [LNMFL] [Law No. 115, On Maritime, River and Lake Navigation], July 6, 2013, Gaceta Oficial Extraordinaria [GOE], No. 34, Nov. 4, 2013.

²⁴⁷ Decreto-Ley No. 304, De la Contratación Económica, [DLCE] [Decree-Law No. 304, On Economic Contracting], Nov. 1, 2012, Gaceta Oficial [GO], No. 62, Dec. 27, 2012.

as the requirements for the formation of contracts; and *Decreto No. 310* (Decree No. 310)²⁴⁸ (supplementing Decree-Law No. 304) dealing with types of contracts.

Secondary sources discussing Cuban commercial law can be found on *vLex*, including Roberto Lemus Machado's *Las Sociedades Mercantiles: Tratamiento en el Ordenamiento Jurídico Cubano* (Commercial Companies: Their Treatment in the Cuban Legal System) (2012). *vLex* also includes Yohandra María Hernández García and José Augusto Ochoa del Río's *Marco Legal de las Sociedades Mercantiles en Cuba: Legalidad del Procedimiento de Transformación* (The Legal Framework of Commercial Companies in Cuba: Legality and Process of Transformation) (2012). For an annotated version of the Commercial Code, see *Código de Comercio: Anotado y Concordado: Promulgado por las Cortes Españolas en 1885 y Hecho Extensivo a Cuba en 1886* (Commercial Code: annotated and harmonized: enacted by the Spanish Courts in 1885 and extended to Cuba in 1886) (Cámara de Comercio, 2004).

e. Criminal Code

In 1987, a new *Código Penal* (Criminal Code) repealed the Criminal Code of 1979.²⁴⁹ The Code was amended by *Ley No. 87* (Law No. 87) (Feb. 16, 1999), modifying Articles 322 to 329, and *Decreto-Ley No. 316* (Decree-Law No. 316) (Dec. 7, 2013), regarding the prevention of acts of terrorism.²⁵⁰ The Criminal Code is divided into two Books. The First Book presents the general principles and concepts underlying criminal law; the criminal institution; the different types of criminal acts; grounds for excluding criminal responsibility; types of sanctions; and other general provisions on mitigating and aggravating circumstances of criminal responsibility. The Second Book lists all of the criminal offenses. It consists of 15 Titles, covering offenses such as crimes against the security of the State; the administration and public order; the national economy; life and physical integrity; individual rights; the normal development of sexual relations; and family, children and youth. The Criminal Code also contains special and final provisions.²⁵¹ For an annotated version of the Code, see Danilo Rivero García and María Caridad Bertot Yero, *Código Penal de la República de Cuba: Ley No. 62/87: Anotado con las Disposiciones del CGTSP* (Criminal Code of the Republic of Cuba: Law No. 62/87: Annotated with the Provisions of the CGTSP) (ONBC, 2013).

f. Labor Code

The *Código de Trabajo* (Labor Code) (Dec. 20, 2013) governs labor relations between employers within the national territory and national or foreign persons with permanent residency in the country.²⁵² The Code repealed the earlier Labor Code, *Ley No. 49* (Law No. 49) (Dec. 28, 1984), *Decreto-Ley No. 176* (Decree-Law No. 176) (Aug. 15, 1997) on the labor justice system and several Articles of the *Ley de Procedimiento Civil, Administrativo, Laboral y Económico* (Law No. 7, Civil, Administrative, Labor and Economic Procedure Law) (Aug. 19, 1977). More specifically, the new Labor Code modified Article 703 of the Civil, Administrative, Labor and Economic Procedure Law to exclude labor conflicts within government entities.

g. Road Safety and Traffic Code

The *Código de Seguridad Vial* (Road Safety and Traffic Code)²⁵³ defines professional drivers and the concept of the novice driver. The Code went into effect on March 16, 2011, and it refines and updates the existing

²⁴⁸ Decreto No. 310, De los Tipos de Contratos [DTC] [Decree No. 310, On the Types of Contracts], Dec. 17, 2012, Gaceta Oficial [GO], No. 62, Dec. 27, 2012.

²⁴⁹ See CÓD. PEN. 1987, *supra* note 62.

²⁵⁰ Decreto-Ley No. 316, Modificativo del Código Penal y de La Ley Contra Actos de Terrorismo [DLMCPLOCAT] [Decree-Law No. 316, Amending the Criminal Code and the Law Against Acts of Terrorism], Dec. 7, 2013, Gaceta Oficial Extraordinaria [GOE], No. 44, Dec. 19, 2013. See also JUDITH LÓPEZ SORIA, CÓDIGO PENAL CUBANO (2011), <http://www.onbc.cu/uploads/media/page/0001/01/c1d2d7c14b9828fba0f10ce964c876ff7cdf7905.pdf>.

²⁵¹ See EVENSON, *supra* note 16, at 170.

²⁵² Ley No. 116, CÓDIGO DE TRABAJO [CÓD. TRAB. 2013] [Law No. 116, Labor Code], Dec. 20, 2013, Gaceta Oficial Extraordinaria [GOE], No. 29, June 17, 2014.

²⁵³ Ley No. 109, CÓDIGO DE SEGURIDAD VIAL [CÓD. SEG. V.] [Law No. 109, Road Safety and Traffic Code], Aug. 1, 2010, Gaceta Oficial [GO], No. 40, Sept. 17, 2010, <http://www.juventudtecnica.cu/sites/default/files/gacetaoficial-cuba-40-2010-ley109-transito.pdf>.

Ley No. 60, Código de Vialidad y Tránsito (Law No. 60, Road and Traffic Safety Code) (Sept. 28, 1987). Special emphasis is given to the rights and duties of all road users, including pedestrians and passengers, who are not exempt from fines for violations of regulations. The Code establishes sanctions and amounts of fines for disobedience.

D. ENGLISH-LANGUAGE TRANSLATIONS OF CUBAN LAWS

Some English-language translations of Cuban legislation and Codes exist. In 1975, the Ministry of Justice published the Family Code in English.²⁵⁴ The Center for Cuban Studies also published an English-language version that was later digitized by the University of Florida for the *dLOC*.²⁵⁵ Some historical laws are available in English dating back to the Spanish-American War; online access to these is offered by various platforms, including *Google Books*, *HathiTrust*, *LLMC Digital* and *The Making of Modern Law: Foreign Primary Sources, 1600–1970*.

More recently, and coinciding with economic reforms, some government entities have provided English-language translations of laws pertaining to international investment, trade, customs and related topics. The *Cámara de Comercio de la República de Cuba* (Chamber of Commerce of the Republic of Cuba), for example, published bilingual editions of laws in its series *Colección Jurídica, on duty free zones and industrial parks, mining, foreign investment, taxation and customs*. There is currently no central portal or publisher that compiles such documents, so a basic Web search is often the best way to locate English-language translations online. *LLMC Digital* and *WorldCat* will also assist in identifying English-language translations of Cuban laws. In general, English-language translations of Cuban legislation are scarce and are primarily useful for reference purposes.

E. ONLINE RESOURCES FOR CODES AND LEGISLATION

There is no Cuban law guaranteeing the right of access to government information.²⁵⁶ However, as aforementioned, government institutions are publishing online and providing open access to the regulatory frameworks of the areas under their supervision. Nonetheless, caution should be observed because the most current and consolidated texts of laws and codes are not always provided. Often, several sources need to be reviewed to find the most current version of a law or a code posted online. The following is an overview of the legislation available on the *Gaceta Oficial* website. For other electronic collections of Cuban legislation, see the Guide's later section on "Online Resources" (Part C. Legislation).

Gaceta Oficial de la República de Cuba–Publicación Digital (Official Gazette of the Republic of Cuba–Digital Edition). https://www.gacetaoficial.gob.cu/html/legislacion_cubana.html.

The section on "*Legislación Cubana*" (Cuban Legislation) includes all Codes and procedure laws, along with other laws on fundamental matters, such as housing, immigration, the environment, foreign investment, labor, divorce and copyright. The page provides HTML and PDF versions of the Codes and laws. However, the two versions of the laws may differ from one another. The following Codes and procedure laws are found under "*Legislación Cubana*":

Ley No. 59, CÓDIGO CIVIL [CÓD. CIVIL] [Law No. 59, Civil Code], July 16, 1987, *Gaceta Oficial Extraordinaria* [GOE], No. 9, Oct. 15, 1987, as amended through *Decreto-Ley No. 140* [Decree-Law No. 140], Aug. 13, 1993, *Gaceta Oficial Extraordinaria* [GOE], No. 4, Aug. 13, 1993. The PDF version is the original text enacted in 1987, while the HTML version incorporates amendments to Decree-Law No. 140. <https://www.gacetaoficial.gob.cu/html/codigo%20civil%20lib1.html>.

CÓDIGO DE COMERCIO [CÓD. COM.] [Commercial Code] has no title page or date. It starts directly with Book 1 "Of merchants and commerce in general." It includes annotations and amendments introduced by *Ley No. 1298, Ley Orgánica del Banco Nacional de Cuba* [LOBNC] [Law No. 1298, Organic Law of

²⁵⁴ FAMILY CODE; LAW NO. 1289, OF FEB. 14, 1975; OFFICIAL GAZETTE, FEB. 15, 1975. (Pocket Ed. 1975).

²⁵⁵ CUBAN FAMILY CODE (1977), <http://ufdc.ufl.edu/AA00021904/00001>.

²⁵⁶ Marisol Florén-Romero, *Mapping the Digital Legal Information of Mexico, Central America, the Spanish Speaking Caribbean and Haiti*, 40 INT'L. J. LEGAL INFO. 417, 482 (2012).

the National Bank], Oct. 4, 1975, *Gaceta Oficial* [GO], No. 21, Oct. 6, 1975. PDF and HTML versions are the same. <https://www.gacetaoficial.gob.cu/html/codigocomerciorepublica.html>.

Ley No. 1289, CÓDIGO DE LA FAMILIA: Anotado y Concordado [CÓD. FAM.] [Law No. 1289, Family Code: Annotated and Harmonized], Feb. 14, 1975, amended to 1994, incorporating the changes introduced by *Decreto-Ley No. 154, del Divorcio Notarial* [DLDN] [Decree-Law No. 154, Notarial Divorce], Sept. 6, 1994, *Gaceta Oficial* [GO], No. 13, Sept. 19, 1994. The PDF version of the *Código de la Familia: Anotado y Concordado* is updated to 1985 by *Ley No. 51* [Law No. 51], July 15, 1985. <https://www.gacetaoficial.gob.cu/html/codigo%20de%20lafamilia.html>.

Ley No. 62, CÓDIGO PENAL [CÓD. PEN. 1987] [Law No. 62, Criminal Code], Dec. 29, 1987, as amended through *Ley No. 93, Ley Contra Actos de Terrorismo* [LCAT] [Law No. 93, Law Against Terrorism], Dec. 20, 2001, *Gaceta Oficial Extraordinaria* [GOE], No. 14, Dec. 24, 2001. HTML and PDF texts are the same. https://www.gacetaoficial.gob.cu/html/codigo_penal.html.

Ley No. 49, CÓDIGO DE TRABAJO [CÓD. TRAB. 1984] [Law No. 49, Labor Code], Dec. 28, 1984, in force on July 26, 1985, as amended to *Decreto-Ley No. 189* [Decree-Law No. 189], Dec. 4, 1998. Only the HTML version is available on the website of the *Gaceta Oficial*. This law is no longer in force, as it was abrogated by *Ley No. 116* [Law No. 116], Dec. 20, 2013. The current Code is not provided on this page.

Ley No. 7, Ley de Procedimiento Civil, Administrativo, Laboral y Económico [LPCALE] [Civil, Administrative, Labor and Economic Procedure Law], Aug. 19, 1977, as amended through *Decreto-Ley No. 227, del Patrimonio Estatal* [DLPE] [Decree-Law No. 227, on State Property], Jan. 8, 2002, *Gaceta Oficial* [GO], No. 2, Jan. 10, 2002. The PDF file is incomplete. https://www.gacetaoficial.gob.cu/html/ley_prociviladminlaboral.html.

Ley No. 5, Ley de Procedimiento Penal [LPP 1977] [Law No. 5, Law of Criminal Procedure], Aug. 13, 1977, as amended through *Decreto-Ley No. 208* [Decree-Law No. 208], Feb. 16, 2000, *Gaceta Oficial Extraordinaria* [GOE], No. 1, Feb. 17, 2000. HTML and PDF texts are the same. <https://www.gacetaoficial.gob.cu/html/procedimientopenal.html>.

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THE JUDICIARY

MARISOL FLORÉN-ROMERO

A. INTRODUCTION

Cuba's revolutionary government considered the judicial system as vital in consolidating the legitimacy and goals of the Revolution. Upon obtaining power, and as early as January 1, 1959, the revolutionary government adopted a series of measures and laws to support the country's transformation to the new social order. On February 7, 1959, the *Ley Fundamental* (Fundamental Law) was enacted. The Fundamental Law suspended the permanent tenure of office for the judiciary and permitted the removal of any *juez* (judge) or *Magistrado de Audiencia*²⁵⁷ for any reason.²⁵⁸ The Fundamental Law further authorized the Council of Ministers to directly appoint new judges.²⁵⁹

²⁵⁷ *Magistrado de Audiencia* was the title given to judges of the Cuban appellate courts and the Justices of the Cuban Supreme Court per the 1931 *Ley Orgánica del Poder Judicial de la República de Cuba* [LOPJRC] [Organic Law of the Judicial Power of the Republic of Cuba], art. 9. See ANDRÉS MARÍA LAZCANO Y MAZÓN, *LEY ORGÁNICA DEL PODER JUDICIAL DE LA REPÚBLICA DE CUBA* 26 (1931). Available on *LLMC Digital*.

²⁵⁸ Between 1959 and 1961, the entire judiciary was purged from top to bottom; many judges and justices were forced to resign or retire, and others resigned denouncing the violation of individual rights and constitutional guarantees as proclaimed by the Fundamental Law of 1959 in all its versions and successive amendments. [Notes from interview with Orlando Rivero, Cuban lawyer, former Professor of Civil Law at the Universidad de La Habana.]

²⁵⁹ LF art. 159. "Las personas designadas al amparo y durante el término de suspensión de la inamovilidad judicial y la del Ministerio Fiscal de fecha 10 de enero de 1959, acordada por el Consejo de Ministros y publicada en la Gaceta Oficial Extraordinaria de fecha 13 de enero del 1959 podrán continuar..."

Soon thereafter, a new type of court, *Tribunales Revolucionarios* (Revolutionary Courts), was established to try followers of the old regime. The Revolutionary Courts were placed under the control of the military and employed a summary proceeding that limited the defendants' rights to an effective defense. The Revolutionary Courts lasted only for a few months, until July 1959, and were reinstated later that same year and given jurisdiction over crimes designated as counter-revolutionary.

In 1962, the government established *Tribunales Populares* (People's Courts).²⁶⁰ The People's Courts were staffed by local lay persons who received legal instruction from law students or professors of law. People's Courts had jurisdiction over misdemeanors and family matters. Trials were open to the public. Revolutionary and People's Courts operated concurrently with the traditional ordinary court system. The ordinary courts remained unchanged in structure and jurisdiction until 1973. The changes in this initial post-1959 phase remained in place for 17 years until the adoption of the 1976 Constitution.

B. THE JUDICIARY

Current Legal Framework:

- CONSTITUCIÓN [CONST.], as amended to June 26, 2002, *Gaceta Oficial Extraordinaria* [GOE], No. 10, July 16, 2002; and *Gaceta Oficial Extraordinaria* [GOE], No. 3, Jan. 31, 2003, arts. 120–126.
- *Ley No. 82, Ley de los Tribunales Populares* [LTP 1997] [Law No. 82, Law of the People's Courts], July 11, 1997, *Gaceta Oficial Extraordinaria* [GOE], No. 8, July 14, 1997, abrogated *Ley No. 70, Ley de los Tribunales Populares* [LTP 1990] [Law No. 70, Law of the People's Courts], July 12, 1990. <http://www.parlamentocubano.cu/wp-content/uploads/2016/05/LEY-NO.-82-DE-LOS-TRIBUNALES-POPULARES.pdf>.
- *Reglamento de Ley de los Tribunales Populares* [RLTP] [Regulation of the Law of the People's Courts], *Gaceta Oficial* [GO], No. 7, Feb. 2, 1998, regulating *Ley No. 82, Ley de los Tribunales Populares*, July 11, 1997.

During the 1970s, Cuba began the reform of the judiciary with the enactment of *Ley No. 1250, Ley de Organización del Sistema Judicial* (Law No. 1250, Law on the Organization of the Judicial System) (June 23, 1973),²⁶¹ and a new law of criminal procedure, *Ley No. 1251, Ley de Procedimiento Penal* (Law No. 1251, Criminal Procedure Law) (June 25, 1973).²⁶² Law No. 1250 introduced fundamental changes to the judicial system, the office of the public prosecutors and the practice of law. The 1973 statute abolished the Revolutionary and People's Courts and unified the structure and organization of the courts. It provided four levels of jurisdiction: (1) community base courts; (2) provincial courts; (3) regional courts; and (4) at the national level, the Supreme Court. Judges were appointed for renewable terms of seven years (court presidents), five years (professional judges) and three years (lay judges).²⁶³

The *Oficina de la Fiscalía General* (Office of the Attorney General) was separated administratively from the judiciary and the law set out a new structure for its functions. The Supreme Court was given appellate review over all judicial proceedings, even those of military courts. Crimes against the security of the State were incorporated into the ordinary court system as special chambers, and special military chambers were also established in the provincial courts to hear and review such cases. The new court system maintained the model introduced by the People's Courts during the post-revolutionary stage of court panels composed of both lay and professional judges. This model emphasized the principle of participation of the people in the administration of justice.²⁶⁴

In 1976, a new constitution was adopted replacing the Fundamental Law of 1959 and its amendments. The 1976 Constitution provided for a new political administrative division of the country, which led to the establishment of 14 provinces and 169 municipalities, and reorganized government functions.²⁶⁵ Major changes were made to the

²⁶⁰ More than 2,200 People's Courts were established in the country. Juan Mendoza Díaz, *supra* note 76, at 182.

²⁶¹ *Ley No. 1250, Ley de Organización del Sistema Judicial* [LOSJ 1973] [Law No. 1250, Law on the Organization of the Judicial System], *Gaceta Oficial Extraordinaria* [GOE], No. 13, June 23, 1973.

²⁶² *Ley No. 1251, Ley de Procedimiento Penal* [LPP 1973] [Law No. 1251, Criminal Procedure Law], June 25, 1973, *Gaceta Oficial* [GO], No. 14, June 26, 1973.

²⁶³ LOSJ 1973 art. 85.

²⁶⁴ Mendoza Díaz, *supra* note 76, at 184.

²⁶⁵ CONST. arts. 100, 121; *see also* *Ley No. 1304, Ley de la División Político Administrativa* [LDPA] [Law No. 1304, Law on the Political Administrative Division], July 3, 1976, *Gaceta Oficial Extraordinaria* [GOE], No. 3, July 5, 1976.

laws in order to restructure the court system to conform to the new political administrative reorganization. Three new laws were enacted: *Ley No. 4, Ley de Organización del Sistema Judicial* (Law No. 4, Law on the Organization of the Judicial System) (Aug. 10, 1977); *Ley No. 5, Ley de Procedimiento Penal* (Law No. 5, Criminal Procedure Law) (Aug. 13, 1977); and *Ley No. 7, Ley de Procedimiento Civil, Administrativo y Laboral* (Law No. 7, Civil, Administrative and Labor Procedure Law) (Aug. 19, 1977).²⁶⁶

These laws enacted in 1977 introduced important changes in the administration of justice. The base and regional courts were merged into municipal courts to create a three-tier structure. The power to elect judges was transferred from the Council of Ministers to the corresponding legislative assemblies at the municipal, provincial and national levels.²⁶⁷ The composition of the bench was modified, along with judges' responsibilities. The mixed bench of professional and lay judges was now formalized into three-judge panels in municipal courts and five-judge panels in provincial courts and the Supreme Court. Labor disputes were integrated into the court system and the Office of the Attorney General gained further autonomy.²⁶⁸

The 1977 reforms endured until July 12, 1990, when a new law of the People's Courts was passed.²⁶⁹ Under this new law, there was another shift in the composition of the bench in provincial courts. The number of professional and lay judges in the provincial courts stayed the same as in municipal courts, except for complex criminal cases, where the previous composition of two lay and three professional judges remained in effect. The law also formalized the relationship between the Ministry of Justice and the courts. The Ministry of Justice was given authority over organizational and financial matters affecting the administration of the courts.

A few years later, in 1997, two new laws further advanced the reforms of the judiciary: *Ley No. 82, Ley de los Tribunales Populares* (Law No. 82, Law of the People's Courts), which denotes the structure of the court system in force today; and *Ley No. 83, Ley de la Fiscalía General de la República* (Law No. 83, Law of the Attorney General of the Republic), which regulates the structure and functions of the Office of the Attorney General.²⁷⁰

Law No. 82 reinstated tenure for professional judges and established governing councils at the level of provincial courts. The law also established a system of reporting, analysis and evaluation at all levels of the judiciary, and guidelines and procedures for disciplinary proceedings.²⁷¹ Significantly, the judiciary acquired autonomy from the Ministry of Justice, and the *Consejo de Gobierno del Tribunal Supremo Popular* (CGTSP) (Governing Council of the People's Supreme Court) became the authority responsible for the administration, organization and finances of the courts.²⁷²

1. Role of the Judiciary

From its earliest days, the revolutionary government used the courts as a means of re-educating the population politically. Courts were to "interpret and apply the laws in a manner consistent with the principles of

²⁶⁶ Ley No. 4, *Ley de Organización del Sistema Judicial* [LOSJ 1977] [Law No. 4, Law on the Organization of the Judicial System], Aug. 10, 1977, *Gaceta Oficial* [GO], No. 36, Aug. 25, 1977; Ley No. 5, *Ley de Procedimiento Penal* [LPP 1977] [Law No. 5, Criminal Procedure Law], Aug. 13, 1977, *Gaceta Oficial* [GO], Aug. 15, 1977; these two laws abrogated Ley No. 1250, June 23, 1973, and Ley No. 1251, June 25, 1973. Ley No. 7, *Ley de Procedimiento Civil, Administrativo y Laboral* [LPCAL] [Law No. 7, Civil, Administrative and Labor Procedure Law], Aug. 19, 1977, *Gaceta Oficial* [GO], Aug. 20, 1977 abrogated Ley No. 1261, *Ley de Procedimiento Civil y Administrativo* [LPCA] [Law No. 1261, Civil and Administrative Procedure Law], Jan. 4, 1974, which overturned the 1886 Spanish civil procedure law, *Ley de Enjuiciamiento Civil*.

²⁶⁷ LOSJ 1977 art. 75.

²⁶⁸ CONST. art. 131. Article 131 of the 1976 Constitution states that the Attorney General of the Republic is subordinate only to the National Assembly of People's Power and the Council of State and follows and executes direct instructions from the Council of State; see also Mendoza Díaz, *supra* note 76, at 184; see also ZATZ, *supra* note 50, at 77.

²⁶⁹ Ley No. 70, *Ley de los Tribunales Populares* [LTP 1990] [Law No. 70, Law of the People's Courts], July 12, 1990, *Gaceta Oficial Extraordinaria* [GOE], No. 25, July 24, 1990.

²⁷⁰ Ley No. 82, *Ley de los Tribunales Populares* [LTP 1997] [Law No. 82, Law of the People's Courts], July 11, 1997, *Gaceta Oficial Extraordinaria* [GOE], July 14, 1997, and Ley No. 83, *Ley de la Fiscalía General de la República* [LFGR] [Law No. 83, Law of the Attorney General of the Republic], July 11, 1997, *Gaceta Oficial Extraordinaria* [GOE], No. 8, July 14, 1997; these enacted laws were based on the 1992 constitutional reform.

²⁷¹ Reglamento de Ley de los Tribunales Populares [RLTP] [Regulation of the Law of the People's Courts], *Gaceta Oficial* [GO], No. 7, Feb. 2, 1998 (regulating Ley No. 82, *Ley de los Tribunales Populares*, July 11, 1997).

²⁷² Mendoza Díaz, *supra* note 76, at 185.

socialism.”²⁷³ The enacted statutes that reorganized the courts explicitly stated the courts’ principles and objectives: “observe and enforce socialist legality”; “prevent violations of the law and antisocial behaviors, repress and re-educate those who breach the law”; “raise the social legal consciousness,...formulating in their decisions the timely pronouncements to educate citizens in the conscious and voluntary observance of their duties.”²⁷⁴ The judicial function is, above all, a social function meant to promote the development of social consciousness in a socialist society.²⁷⁵

2. The System of Courts

The function of imparting justice emanates from the people, and is exercised in their name by the Supreme Court and the other courts that the law institutes.²⁷⁶ The courts are hierarchically subordinate to the National Assembly of People’s Power and the Council of State. (See [Chart No. 1](#), Structure of the Courts.)

a. People’s Municipal Courts

The *Tribunales Populares Municipales* (People’s Municipal Courts) are courts of first instance, the lowest courts within the system. They exercise jurisdiction over civil and criminal cases. Jurisdiction is exercised over civil cases in which the disputed amount does not exceed 1,000 Cuban pesos, family disputes, child support and probate actions, as well as appeals from decisions of labor councils.²⁷⁷ Their jurisdiction extends over criminal cases with maximum penalty not exceeding eight years and fines up to 1,000 *cuotas* (quotas).²⁷⁸ The municipal courts are not divided into *salas* (chambers), but specialized sections can be created when the volume or nature of the cases so require. A three-judge panel hears cases in the municipal courts. The panel is formed by two lay judges and one professional judge who presides over the panel.²⁷⁹

b. People’s Provincial Courts

The *Tribunales Populares Provinciales* (People’s Provincial Courts) are primary trial courts for more serious cases. These courts are structured into five divisions: (1) criminal; (2) civil and administrative; (3) labor; (4) economic; and (5) a division that deals with crimes “against the security of the State.”²⁸⁰ Provincial courts have civil jurisdiction over major civil cases (disputes with amount at issue greater than 10,000 Cuban pesos); breach of contract and civil liability; cases concerning business transactions; annulment of marriage; appeals from divorce decisions of the municipal courts; and custody cases.²⁸¹ Provincial courts also have jurisdiction over felony-level crimes with maximum penalty exceeding eight years and fines over 1,000 *cuotas*; economic lawsuits; cases involving business entities owned and controlled by the State; and commercial litigation among Cuban parties (excluding foreign or mixed-business entities).²⁸² Civil and administrative chambers hear administrative cases and disputes over property rights, among other issues. Provincial courts exercise appellate jurisdiction over

²⁷³ Gerard J. Clark, *The Legal Profession in Cuba*, 23 SUFFOLK TRANSNAT’L L. R. 413, 422 (2000).

²⁷⁴ LTP 1997 art. 4(a),(f),(h).

²⁷⁵ Bernstein, *supra* note 15, at 211.

²⁷⁶ CONST. art. 120.

²⁷⁷ Ley de Procedimiento Civil, Administrativo, Laboral y Económico [LPCALE] [Law No. 7, Civil, Administrative, Labor and Economic Procedure Law], Aug. 19, 1977, Gaceta Oficial [GO], Aug. 20, 1977, art. 5.

²⁷⁸ Ley No. 5, Ley de Procedimiento Penal [LPP 1977] [Law No. 5, Criminal Procedure Law], Aug. 13, 1977, art. 8, as modified by Decreto-Ley No. 310 [Decree-Law No. 310], Gaceta Oficial Extraordinaria [GOE], June 25, 2013. The Cuban legal system specifies that fines shall be determined based on *cuotas* (quotas). CÓD. PEN. 1987 art. 35.2, as amended to Ley No. 93 [Law No. 93], Feb. 16, 2001, establishes that *cuotas* for persons shall not be less than one Cuban peso or greater than 50 Cuban pesos. LÓPEZ SORIA, *supra* note 250, at 23, illustrates this concept with an example, “...if [the court determines] a fine of 500 quotas of 3.00 Cuban pesos for each quota imposed, the individual is required to pay the amount of 1.500.00 Cuban pesos,” <http://www.onbc.cu/uploads/media/page/0001/01/c1d2d7c14b9828fba0f10ce964c876ff7cdf7905.pdf>.

²⁷⁹ LTP 1997 art. 38.

²⁸⁰ LTP 1997 art. 32.

²⁸¹ LPCALE art. 6.

²⁸² LPP 1977 art. 9.

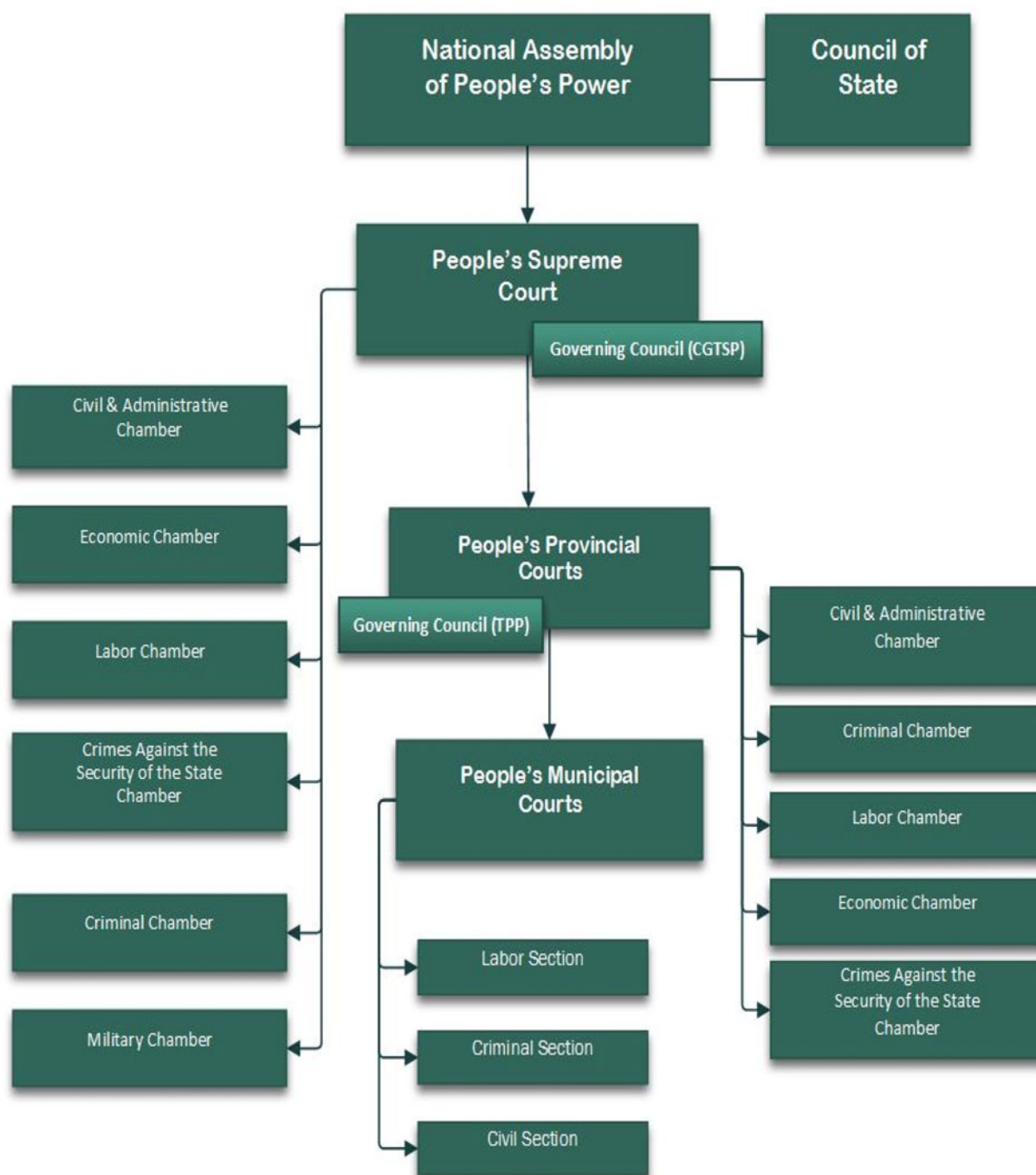


Chart No. 1, Structure of the Courts

Source: *Ley No. 82, Ley de Tribunales Populares* [LTP 1997] [Law No. 82, Law of the People's Courts], July 11, 1997, *Gaceta Oficial Extraordinaria* [GOE], No. 8, July 14, 1997.

the rulings of the municipal courts. Depending on the type of case, three-judge or five-judge panels preside. Three-judge panels consist of two lay judges and one professional judge, and the composition of five-judge panels is three professional judges and two lay judges.²⁸³

c. People's Supreme Court (TSP)

The *Tribunal Supremo Popular* (TSP) (People's Supreme Court) is the highest appellate level court, and the court of last resort. It has original and exclusive jurisdiction for some special cases, such as trying members of the Politburo of the PCC, Councils of State and Ministers, leadership of the National Assembly and Justices of the Supreme Court.²⁸⁴ It exercises appellate jurisdiction over all decisions of the provincial and military courts. The Supreme Court has a Governing Council and six judicial *salas* (chambers), similar to provincial courts, with the addition of a military division. These chambers are: (1) criminal; (2) civil and administrative; (3) labor; (4) economic; (5) crimes against the security of the State; and (6) military. The Supreme Court utilizes five-judge panels, as well as three-judge panels, depending on the complexity of the case, and the number of judges that heard the case at the provincial level.²⁸⁵ The five-judge panels are composed of three professional judges and two lay judges, and the three-judge panels consist of two professional judges and one lay judge.²⁸⁶

The plenary session of the Supreme Court is comprised of all the member Justices and the Attorney General of the Republic. Trials are open to the public. Final decisions are adopted by majority vote in secret deliberative sessions. Any Justice in the minority may write a dissenting opinion.

The President and Vice-Presidents of the Supreme Court are elected by the National Assembly upon nomination by the Council of State. The Presidents of the different chambers and professional judges of the Supreme Court are appointed by the National Assembly upon recommendation by the President of the Supreme Court.²⁸⁷ The judges serving in the military branch must hold military rank. The President and other professional and lay judges that constitute the military division of the Supreme Court are nominated by the National Assembly upon proposal of the Ministry of the Revolutionary Armed Forces and the President of the Supreme Court.²⁸⁸

i. Governing Council of the People's Supreme Court (CGTSP)

The members of the CGTSP are the President of the Supreme Court, the Vice-Presidents and the Presidents of each of the different chambers. The Minister of Justice and the Attorney General attend the sessions but have no voting power.²⁸⁹ The CGTSP is granted constitutional legislative initiative on matters related to the administration of justice, and regulatory and supervisory authority over the judicial activity of the entire court system.²⁹⁰ The functions of the CGTSP include providing instructions to courts on issues of general judicial practice, establishing a uniform interpretation and application of the law, and responding to inquiries from judges of the different courts, the Attorney General, and the Minister of Justice.²⁹¹ Lower courts are bound to apply those instructions to the cases pending before them.

d. Military Courts

Current Legal Framework:

- *Ley No. 97, Ley de los Tribunales Militares* [LTM 2002] [Law No. 97, Law of the Military Courts], Dec. 21, 2002, *Gaceta Oficial Extraordinaria* [GOE], No. 7, April 9, 2003, abrogated *Ley No. 3, Ley de los Tribunales Militares* [LTM 1977] [Law No. 3, Law of the Military Courts] Aug. 8, 1977, and *Decreto-Ley*

²⁸³ LTP 1997 art. 35(1); RLTP art. 39.

²⁸⁴ LPP arts. 385–397.

²⁸⁵ LTP 1997 art. 23(3),(4); RLTP arts. 18(1), 39.

²⁸⁶ LTP 1997 art. 23(3),(4).

²⁸⁷ LTP 1997 arts. 45(1) – 45(2).

²⁸⁸ *Id.* art. 45(3).

²⁸⁹ *Id.* art. 18.

²⁹⁰ CONST. art. 121.

²⁹¹ LTP 1997 art. 19.

No. 215 [Decreto-Ley No. 215], Dec. 22, 2000. <http://juriscuba.com/wp-content/uploads/2015/10/Ley-No.-097-De-los-Tribunales-Militares.pdf>.

- *Ley No. 101, Ley de la Fiscalía Militar* [LFM] [Law No. 101, Military Attorney General Law], June 10, 2006, *Gaceta Oficial Extraordinaria* [GOE], July 3, 2006. <http://juriscuba.com/wp-content/uploads/2015/10/Ley-No.-101-De-la-Fiscalia-Militar.pdf>.
- *Ley No. 6, Ley de Procedimiento Penal Militar* [LPPM] [Law No. 6, Military Criminal Procedure Law], Aug. 8, 1977, *Gaceta Oficial* [GO], No. 33, Aug. 18, 1977.

Cuba has a system of military courts that adjudicate offenses committed by members of the country's armed forces. The organization of the military courts corresponds to the territorial distribution of the armed forces. There are territorial and regional military courts. Territorial military courts use a panel of five judges comprised of three professional and two lay judges. A three-judge panel, with one professional judge and two lay judges, sits at the regional military courts.²⁹²

3. Judicial Review

The power of constitutional interpretation and control is exclusively assigned to the National Assembly of People's Power, which decides the constitutionality of laws, decree-laws, decrees and other general provisions.²⁹³ When the National Assembly is not in session, the Council of State is authorized to suspend those provisions of the Council of Ministers and the Local Assemblies of People's Power that do not conform to the Constitution or the laws.²⁹⁴ Under a socialist system, constitutional control may not be exercised by extra-parliamentary bodies.²⁹⁵

4. Court Decisions

Cuban courts follow the civil law tradition that recognizes the normative act as the main source of law.²⁹⁶ Nevertheless, Article 121 of the Cuban Constitution empowers the Supreme Court's Governing Council to rule on the basis of the experience of the courts with the purpose of establishing a uniform judicial practice in the interpretation and application of the law. When there is a conflict in interpretation or particular error among lower courts arising on appeal, the CGTSP may issue an *instrucción* (instruction) regarding the correct interpretation of a particular statute.²⁹⁷ Members of the governing councils of the courts, presidents of courts (including the territorial military courts), the Minister of Justice and Attorney General, may also submit inquiries to the CGTSP pertaining to the interpretation or application of the law. The CGTSP responds to these queries through *instrucciones* (instructions), *acuerdos* (agreements) and *dictámenes* (opinions). These responses are binding on lower courts and are considered formal sources of law among the judiciary and Cuban jurists. These provisions are published in the *Gaceta Oficial*.²⁹⁸

²⁹² Ley No. 97, *Ley de los Tribunales Militares* [LTM 2002] [Law No. 97, Law of Military Courts], Dec. 21, 2002, *Gaceta Oficial Extraordinaria* [GOE], No. 7, March 9, 2003, arts. 8.1, 15, 19.1.

²⁹³ CONST. art. 75(c).

²⁹⁴ CONST. art. 90(ñ).

²⁹⁵ Michael B. Wise, *Cuba and Judicial Review*, 7 SW. J. L. & TRADE AM. 247, 260 (2000); see Lissette Pérez Hernández, *El Control Constitucional de Leyes y Disposiciones Normativas en Cuba*, in LA JUSTICIA CONSTITUCIONAL EN IBEROAMÉRICA, CHILE, BOLIVIA, COLOMBIA Y CUBA 149 (Juan Manuel López Ulla ed., 2011); see also EVENSON, *supra* note 16, at 64.

²⁹⁶ Carlos Justo Bruzón Viltres & Iraida R. Tamayo Blanco, *La Jurisprudencia en Cuba: Reconocimiento Dentro del Sistema de Fuentes del Derecho y Posibles Consecuencias*, 47 BMDC 251, 280 (2014).

²⁹⁷ RLTP arts. 67–75; see also *Id.* at 270.

²⁹⁸ Mendoza Díaz, *supra* note 76, at 191; see also EVENSON, *supra* note 16, at 63–64 (discussing the power of judges to interpret the law and instructions provided by “the Supreme Court in a pamphlet issued in May 2002, entitled ‘The Importance of the Social Interest and Rationality in Judicial Decisions.’”).

a. Reporters

The official reporter of the decisions of the Supreme Court is the *Boletín del Tribunal Supremo Popular* (Bulletin of the People's Supreme Court). It was published from 1966 to 1970 as the *Boletín del Tribunal Supremo* (La Habana: Departamento de Reproducción de la Administración de Justicia, 1966–1970), and continued in 1974 as the *Boletín del Tribunal Supremo Popular* (La Habana: Sección de Divulgación del Departamento de Capacitación y Evaluación del Tribunal Supremo, Año 1, núm. 1, 1974–). The *Boletín* is available on *LLMC Digital* and in the *Digital Library of the Caribbean (dLOC)* from vol. 1 (1974) to vol. 12 (1985). This title is also accessible in electronic format from 1997 to 2013 on the homepage of the Universidad de La Habana's law school.²⁹⁹ In addition, the *Boletín* is available online on the homepage of the Supreme Court. Only the judgments of the Supreme Court are reported, and there are no English–language translations of those opinions.

Pre-1959 decisions of the Supreme Court can be found in *Jurisprudencia del Tribunal Supremo* (Supreme Court Jurisprudence) (La Habana: Imprenta de Rambla y Bouza, 1908–1919). Forty volumes were published under the supervision of the Ministry of Justice. This title served as the official reporter of the decisions of the Supreme Court, and it contained the full-text judgments in civil and criminal matters from 1899 to 1908. Decisions are organized in chronological order. All 40 volumes are available in *LLMC Digital*, the *dLOC* and *HathiTrust*.

Noteworthy are the digests of the rulings of the Cuban Supreme Court published by Ángel C. Betancourt, and continued later by Guillermo de Montagú. Betancourt's *Jurisprudencia Cubana* (La Habana: Impr. de Rambla, Bouza y ca., 1912–1929) includes rulings from 1899 to 1918, addressing cassation, constitutional law, civil and criminal matters, disputes over property rights and administrative law matters. This publication is available in the *dLOC*. Betancourt's digest was followed by Guillermo de Montagú's *Jurisprudencia del Tribunal Supremo de Cuba en Materia Civil, Hipotecaria, Contencioso-Administrativa y de Inconstitucionalidad, extractada y ordenada* (The Supreme Court of Cuba's Jurisprudence in Civil, Mortgage, Contentious-Administrative, and Unconstitutional Matters, summarized and arranged. La Habana: Cultural, 1941–1952). This title was published in six volumes and covers decisions from 1919 to 1948. The digest is organized in alphabetical order by topic and is accessible in electronic format on *LLMC Digital* and the *dLOC*.

The most comprehensive coverage of Cuban case law before 1960, however, was undertaken by the *Colegio de Abogados de La Habana* (Bar Association of Havana) in *La Jurisprudencia al Día: Revista de Jurisprudencia y Legislación* (Current Jurisprudence: Journal of Cases and Legislation) (La Habana: Órgano Oficial del Colegio de Abogados de La Habana, 1912–1957). This title covered decisions of the Supreme Court from 1909 to 1957. Decisions are organized in chronological order under five major subject areas: civil, criminal, property, administrative and constitutional matters. Decisions from 1913 to 1922 can be accessed online on *HathiTrust*.

Instrucciones, acuerdos and dictámenes of the CGTSP are published in the *Gaceta Oficial*, which is accessible online beginning in 1991.³⁰⁰ See Carlos Manuel Díaz and Yanet Alfaro Guillén, *Compilación de Disposiciones del CGTSP* (Ediciones ONBC, 2013), covering instructions, agreements and opinions from 1974 to 2012. Several Cuban legal periodicals include sections that discuss Supreme Court rulings and the CGTSP's *instrucciones*. These include *Cubalex*³⁰¹ and *Revista Cubana de Derecho*.³⁰²

C. PROCEDURES

The Cuban legal system has two main procedural laws: (1) *Ley de Procedimiento Penal* (Criminal Procedure Law), regulating criminal procedures; and (2) *Ley de Procedimiento Civil, Administrativo, Laboral y Económico* (Civil, Administrative, Labor and Economic Procedure Law), regulating all civil, administrative, labor and economic procedures. The economic procedural aspect was added to the 1977 Civil, Administrative and Labor Procedure Law

²⁹⁹ <http://www.lex.uh.cu/node/45> (last visited July 28, 2017).

³⁰⁰ <https://www.gacetaoficial.gob.cu> (last visited July 28, 2017).

³⁰¹ CUBALEX: REVISTA ELECTRÓNICA DE ESTUDIOS JURÍDICOS (La Habana: Editorial UNIJURIS, 1996–), online years 2012–2014 on the homepage of the Facultad de Derecho, Universidad de La Habana at <http://www.lex.uh.cu/node/46> (last visited July 28, 2017); also in *vLex*, see the sections on “Crónicas de Sentencias” and “La Palabra Judicial.”

³⁰² REVISTA CUBANA DE DERECHO (La Habana: Unión Nacional de Juristas de Cuba, 1991–), online starting at No. 32 (2008) at the Universidad de La Habana's Facultad de Derecho homepage, <http://www.lex.uh.cu/node/48> (last visited July 28, 2017); also in *vLex*, see the sections on “Comentarios de Sentencias” or “Crónicas de Legislación y Jurisprudencia.”

(Law No. 7) in the form of a decree-law in 2006 as indicated below. Law No. 7 is now referenced as the Civil, Administrative, Labor and Economic Procedure Law, or LPCALE.³⁰³

Current Legal Framework:

- *Ley No. 7, Ley de Procedimiento Civil, Administrativo, Laboral y Económico* [LPCALE] [Law No. 7, Civil, Administrative, Labor and Economic Procedure Law], Aug. 19, 1977, Gaceta Oficial [GO], Aug. 20, 1977, as amended by *Decreto-Ley No. 241* [Decree-Law No. 241], Gaceta Oficial Extraordinaria [GOE], No. 33, Sept. 27, 2006. <http://cubalegalinfo.com/lpcale-indice>.
- *Ley No. 5, Ley de Procedimiento Penal* [LPP 1977] [Law No. 5, Criminal Procedure Law], Aug. 13, 1977, as amended by *Decreto-Ley No. 310, Modificativo del Código Penal y de la Ley de Procedimiento Penal* [DLMCPLPP] [Decree-Law No. 310, amending the Criminal Code and the Criminal Procedure Law], May 29, 2013, Gaceta Oficial Extraordinaria [GOE], No. 18, June 25, 2013.

1. Civil and Administrative

The law in force regulating non-criminal proceedings in Cuba is *Ley No. 7, Ley de Procedimiento Civil, Administrativo, Laboral y Económico* (Law No. 7, Civil, Administrative, Labor and Economic Procedure Law). Law No. 7 repealed *Ley No. 1261, Ley de Procedimiento Civil y Administrativo* (Law No. 1261, Civil and Administrative Procedure Law) (Jan. 4, 1974), which in turn abrogated the 1886 civil procedure law inherited from the Spanish colonial administration. Though technically meant to be an abrogation, the new law did not significantly modify the Spanish procedure law. One minor change made was to expand the powers of judges by giving them the right to consider issues not asserted by the parties during trial.³⁰⁴

Additional Source:

CGTSP, *Instrucción No. 216* [Instruction No. 216], May 17, 2012, Gaceta Oficial [GO], No. 21, June. 22, 2012, on family proceedings and the adoption of precautionary injunctions, providing guidance on the intervention of third parties (such as grandparents), and the role of the public prosecutor in the process.

2. Labor

Workers in government entities can claim their labor and social security rights before the *Sistema de Justicia Laboral* (System of Labor Justice). The main entities for resolution of labor disputes within the Cuban system of labor justice are: (1) *Órganos de Justicia Laboral de Base* (Base Level Organs of Labor Justice) (OJLB); (2) People's Municipal Courts; and (3) the labor chamber of the Supreme Court. Labor disciplinary matters, as well as recognition and protection of labor and social security rights, are resolved by workplace hearing boards with right of appeal to the courts.³⁰⁵ The decisions of the Organs of Labor Justice for certain disciplinary measures established by law are final with no right of appeal. Workers or the administration can appeal the decisions of the OJLB to the corresponding municipal courts when the disciplinary measures involve certain conditions established by law, such as the transfer of the worker to another place with lower pay or different working conditions.³⁰⁶

³⁰³ DAMARYS N. NUÑEZ GARCÍA, *LEY DE PROCIDIMIENTO CIVIL, ADMINISTRATIVO, LABORAL Y ECONÓMICO* 3–4 (Ediciones ONBC, 2012), <http://www.onbc.cu/uploads/media/page/0001/01/d5f347efdcda7736e8e92406503109b535569ed5.pdf>. See also Pérez Gallardo, *supra* note 240, at 142.

³⁰⁴ Pérez Gallardo, *supra* note 240, at 144 (2015); see also Roberto de Jesús Peña Mulet, *Consideraciones para la Modernización del Proceso Civil Cubano*, 37–38 *ALEGATOS* 1, 1 (1998), <http://www.azc.uam.mx/publicaciones/alegatos/pdfs/34/37-10.pdf>.

³⁰⁵ Ley No. 116, *CÓDIGO DE TRABAJO* [CÓD. TRAB. 2013] [Law No. 116, Labor Code], Dec. 20, 2013, Gaceta Oficial Extraordinaria [GOE], No. 29, June 17, 2014, art. 167.

³⁰⁶ *Id.* art. 175.

The rulings of the People's Municipal Courts in disciplinary and labor rights matters are final and have no administrative or judicial remedy.³⁰⁷ Under certain conditions established by law, the parties may request a review before the Supreme Court.³⁰⁸

Additional Sources:

- *Ley No. 116, CÓDIGO DE TRABAJO* [CÓD. TRAB. 2013] [Law No. 116, Labor Code], Dec. 20, 2013, Gaceta Oficial Extraordinaria [GOE], No. 29, June 17, 2014. This Code repeals the following laws:
 - *Ley No. 49, CÓDIGO DE TRABAJO* [CÓD. TRAB. 1984] [Law No. 49, Labor Code], Dec. 28, 1984; *Decreto-Ley No. 176, Sistema del Juicio Laboral* [DLSJL] [Decree-Law No. 176, Labor Justice System], Aug. 15, 1997; and Articles 702, 704, 715, 716, 717 and the first paragraph of Article 736 of *Ley No. 7, Ley de Procedimiento Civil, Administrativo, Laboral y Económico* [LPCALE] [Law No. 7, Civil, Administrative, Labor and Economic Procedure Law], Aug. 19, 1977, and modifies Article 703 of the same law to exclude labor conflicts in government entities.
- *Decreto No. 326, Reglamento del Código de Trabajo* [RCT] [Decree No. 326, Regulation of the Labor Code], June 12, 2014, Gaceta Oficial Extraordinaria [GOE], No. 29, June 17, 2014.

3. Economic

In August 1991, the Council of State terminated the state arbitration system and established economic law chambers in the Supreme Court and the provincial courts, granting them exclusive jurisdiction over contract disputes previously handled by the *Órgano de Arbitraje Estatal* (OAE) (State Arbitration Organ). The Council of State granted these economic law chambers jurisdiction over economic disputes and environmental law matters.³⁰⁹ The courts continued applying the 1981 procedural norms established by the *Reglas de Procedimiento de Arbitraje Estatal* (Regulations for State Arbitration Procedure).³¹⁰ Conflicts arising between state enterprises in the pre-contractual phase were to be handled administratively by the relevant ministries.

In 2006, Law No. 7 was amended by Decree-Law No. 241, integrating into one law all civil, administrative, labor and economic procedures. The economic chambers of the courts were also given jurisdiction over claims resulting from international contracts with foreign companies, infringement of environmental regulations and claims related to shipping and transportation.³¹¹

4. Criminal

Current Legal Framework:

- *Ley No. 5, Ley de Procedimiento Penal* [LPP 1977] [Law No. 5, Criminal Procedure Law], Aug. 13, 1977, as amended by *Decreto-Ley No. 310, Modificativo del Código Penal y de la Ley de Procedimiento Penal* [DLMCPLPP] [Decree-Law No. 310, Amending the Criminal Code and the Criminal Procedure Law], May 29, 2013, Gaceta Oficial Extraordinaria [GOE], No. 18, June 25, 2013.
- CGTSP, *Instrucción No. 211* [Instruction No. 211], June 15, 2011, *Guía Metodológica para la Realización del Juicio Oral* (Methodological Guide for Oral Proceedings).³¹²

³⁰⁷ *Id.* art. 176.

³⁰⁸ *Id.* art. 178.

³⁰⁹ Decreto-Ley No. 129, de Extinción del Sistema de Arbitraje Estatal [DLESAE] [Decree-Law No. 129, Extinction of the State Arbitration System], Gaceta Oficial Extraordinaria [GOE], No. 9, Aug. 19, 1991, as amended by Decreto-Ley No. 241, Modifica la Ley de Procedimiento Civil, Administrativo, Laboral y Económico [DLMLPCALE] [Law No. 241, Amending the Law of Civil, Administrative, Labor and Economic Procedure], Sept. 26, 2006, Gaceta Oficial Extraordinaria [GOE], No. 33, Sept. 27, 2006, <http://juriscuba.com/wp-content/uploads/2015/10/Decreto-Ley-No.-241.pdf>.

³¹⁰ Decreto No. 89, Reglas de Procedimiento de Arbitraje Estatal [RPAE] [Decree No. 89, Regulations for State Arbitration Procedure], May 21, 1981, Gaceta Oficial [GO], No. 54, June 8, 1981.

³¹¹ Pérez Gallardo, *supra* note 240, at 144.

³¹² This manual introduces judges to the concepts and importance of the trial, as well as its principles. The manual also provides guidelines on the order in which the process unfolds, ending with the final recording of the debates.

- CGTSP, *Instrucción No. 208* [Instruction No. 208], April 26, 2011, *Metodología para la Redacción de Sentencias Penales del Procedimiento Ordinario de los Tribunales Provinciales Populares* (Instructions for Drafting Criminal Opinions for Ordinary Proceedings in the People's Provincial Courts).

Treatise:

- Rivero García, Danilo. *Estudios Sobre El Proceso Penal*. La Habana: Ediciones ONBC, 2014.

Under the Criminal Procedure Law, criminal proceedings are divided into two main parts: (1) the preparatory stage; and (2) the oral criminal trial and sentencing. During the preparatory stage, features of the inquisitorial system predominate, while the accusatorial system dominates the trial process.

Preparatory Phase

Once the instructor³¹³ exhausts all evidence-gathering in the investigative stage (pretrial phase), s/he will consider the investigation terminated and forward the dossier or *sumario* to the prosecutor.³¹⁴ The prosecutor then determines if the investigations provide sufficient grounds for the prosecution of the crime. If so, s/he is required to file the criminal action before the competent court. This pleading must be in writing in a draft form expressly described in the Criminal Procedure Law. That pleading, under the law, can take the form of *conclusiones provisionales* (provisional conclusions),³¹⁵ an *acusación* (indictment),³¹⁶ *conclusiones acusatorias* (accusatory conclusions)³¹⁷ or an *escrito de calificación* (written qualification).³¹⁸ If the court accepts the conclusions of the prosecutor, it opens the case for oral proceedings.³¹⁹

Oral Trial and Sentencing

Once the preliminary stage has been completed, a three-judge panel is formed to hear the charges against the defendant. The order and manner of procedure of this process is determined by the Code. The President Judge, rather than the defense attorney or prosecutor, calls witnesses and directs questioning. Once all the evidence has been presented, judges have asked all of their questions and closing arguments have been made, the judges retire to chambers to deliberate. The trial concludes with the sentencing stage during which the findings of fact and sanctions to be imposed must be considered. These findings must be arrived at by a majority of the court.³²⁰

The Criminal Procedure Law provides for: (1) the presumption of innocence, requiring that crimes be proven independently of the defendant's confession; (2) the public nature of court proceedings, except in cases in which the rights of the victim demand privacy; (3) the right to appoint or retain counsel; (4) the presence of the accused during the proceedings; and (5) the recognition of the privilege against self-incrimination.³²¹

5. Appellate Proceedings

Current Legal Framework:

- *Ley No. 5, Ley de Procedimiento Penal* [LPP 1977] [Law No. 5, Criminal Procedure Law], Aug. 13, 1977, as amended by *Decreto-Ley 310, Modificativo del Código Penal y de la Ley de Procedimiento Penal*

³¹³ Criminal investigations are carried out by police instructors under the supervision of public prosecutors.

³¹⁴ LPP 1977 art. 107.

³¹⁵ *Id.* art. 262.3c.

³¹⁶ *Id.* art. 272.

³¹⁷ *Id.* art. 275.

³¹⁸ *Id.* art. 278 – art. 280.

³¹⁹ *Id.* art. 281 – art. 283.

³²⁰ DANILO RIVERO GARCÍA, ESTUDIOS SOBRE EL PROCESO PENAL 82 (2014).

³²¹ Luis Salas, *The Judicial System of Postrevolutionary Cuba*, 8 NOVA L.J., 43, 61 (1983) (discussing innovations introduced by the Code of Criminal Procedure); see also ZATZ, *supra* note 50, 72–90, providing an overview of underlying principles and innovations in criminal procedure.

[DLMCPLPP] [Decree-Law 310, Amending the Criminal Code and the Criminal Procedure Law], May 29, 2013, Gaceta Oficial Extraordinaria [GOE], No. 18, June 25, 2013, *see* art. 58 – art. 66.

- CGTSP, *Instrucción No. 222* [Instruction No. 222], Aug. 29, 2013.
- *Ley No. 7, Ley de Procedimiento Civil, Administrativo, Laboral y Económico* [LPCALE] [Law No. 7, Civil, Administrative, Labor and Economic Procedure Law], Aug. 19, 1977, Gaceta Oficial [GO], Aug. 20, 1977, as amended by *Decreto-Ley No. 241* [Decree-Law No. 241], Gaceta Oficial Extraordinaria [GOE], No. 33, Sept. 27, 2006, *see* art. 601 – art. 640.

Appeals take place by *recurso de queja* (complaint), *súplica* (petition), appeal or cassation. Complaints are interlocutory appeals from decisions made during the preparatory phase, while petitions are interlocutory appeals from trial court decisions. Appeals from final decisions take the form of appeals or cassation, with the latter being the most common form of relief.³²²

6. Appeal in Cassation

Appeal in Cassation is a limited resource as it only allows review when the ruling or the resolution of a lower court contains a failure in the application or misinterpretation of the laws or mandatory instructions issued by the Supreme Court's Governing Council. Cassation authorizes only remedies to those exceptions provided by law.³²³

D. THE ATTORNEY GENERAL

Current Legal Framework:

- *Ley No. 83, de la Fiscalía General de la República* [LFGR] [Law No. 83, Law of the Attorney General of the Republic], July 11, 1997, Gaceta Oficial Extraordinaria [GOE], No. 8, July 14, 1997.
- *Reglamento de la Ley de la Fiscalía General de la República* [RLFGR 1998] [Regulation of the Law of the Attorney General of the Republic], Nov. 30, 1998, repealed *Reglamento de la Ley de la Fiscalía General de la República* [RLFGR 1978] [Regulation of the Law of the Attorney General of the Republic], March 24, 1978.

The main function of the Office of the Attorney General is to guarantee strict compliance with the Constitution and the laws by individuals, government agencies, and social and economic entities. The Attorney General represents the State in criminal prosecutions and has the authority to bring legal action against those who are in violation of the law.³²⁴ The Attorney General is involved in the prevention of crime and other antisocial conduct, and the development of citizens' legal awareness.³²⁵ Furthermore, the prosecutor represents the interests of the State before the courts in civil, administrative or economic matters, especially in civil proceedings when representing minors in family-related cases, such as filiation or suspension of parental rights, the disabled and individuals that are absent.³²⁶

The Office of the Attorney General is independent of the judiciary, subordinate only to the National Assembly and the Council of State. The Attorney General and the Vice-Attorney Generals are elected by the National Assembly.³²⁷ The Office is composed of: (1) the Attorney General who represents the State before the People's Supreme Court; (2) public prosecutors' offices before the provincial courts; (3) municipal offices of the public prosecutor; and (4) public prosecutors before the military courts.³²⁸ The Office has a website that is described in the "Online Resources" section of this Guide.

³²² LPP 1977 art. 58 – art. 66; *see also* Salas, *supra* note 321, at 62.

³²³ LPP 1977 art. 58 – art. 66; *see also* Carlos M. Díaz Tenreiro, *El Concepto de Infracción en el Recurso de Casación*, 11 REV. JUSTICIA Y DER. 3 (2008), <http://www.lex.uh.cu/sites/default/files/11JusticiaDerecho.pdf>.

³²⁴ CONST. art. 127.

³²⁵ LFGR art. 8(n).

³²⁶ *Id.* art. 18(d); *see also* LPCALE arts. 46, 47, 48; *see also* Mendoza Díaz, *supra* note 76, at 194.

³²⁷ CONST. art. 128.

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FOREIGN INVESTMENT LAW

JONATHAN PRATTER

Foreign investment presents a challenge to socialist orthodoxy. A system in which all the levers of the economy are in the hands of the State must nevertheless allow the reasonably free play of foreign private capital in the national economy. A socialist economy in a developing country like Cuba needs capital investment in infrastructure and in critical sectors, such as in Cuba's case, agriculture and tourism. As well, foreign investment produces what are called "spillover benefits," such as technology transfer, workforce training and managerial know-how.³²⁹

This section outlines the legal framework governing foreign investment in Cuba, focusing on the primary sources of law that establish that framework. The section also considers Cuba's position in the structure of international investment law, and additionally refers to the U.S. regime of economic sanctions against Cuba that has had a profound inhibiting effect on investment there.³³⁰

A. THE NATIONAL LEGAL FRAMEWORK

The key provision is *Ley No. 118, Ley de la Inversión Extranjera* (Law No. 118, Law on Foreign Investment) (March 29, 2014). Law No. 118 was published in an extraordinary edition of the *Gaceta Oficial* on April 16, 2014, along with a packet of *legislación complementaria* (supplementary legislation). This edition of the *Gaceta Oficial* can be found online in PDF at the *Cubadebate* website.³³¹ The website of the *Cámara de Comercio de la República de Cuba* (Chamber of Commerce of the Republic of Cuba) also provides a link to the same *Gaceta Oficial* edition, as well as access to an English-language translation of Law No. 118 of acceptable quality.³³²

Law No. 118 replaces the failed *Ley No. 77* (Law No. 77) on Foreign Investment of 1995,³³³ but takes on board a good many of its provisions, including those on investor protection. Law No. 118 is organized into 17 chapters. The critical ones are these:

- Ch. III: Investor Guarantees
- Ch. IV: Sectors for Foreign Investment and the Portfolio of [Investment] Opportunities
- Ch. V: Foreign Investment [Vehicles]
- Ch. VIII: Negotiation and Authorization of Foreign Investment
- Ch. XI: Labor Rules
- Ch. XII: Special Tax Rules
- Ch. XVII: Rules on Dispute Resolution

³²⁹ Magnus Blomström, *Host Country Benefits of Foreign Investment* (National Bureau of Economic Research Working Paper No. 3615, 1991), <http://www.nber.org/papers/w3615.pdf> (last visited July 24, 2017).

³³⁰ See generally Cot & Anillo eds., *supra* note 38. This handbook has chapters on both the legal framework for foreign investment in Cuba and on the U.S. sanctions regime. See also the document *CUBA—Investor Guide* (2016) from the Cámara de Comercio de la República de Cuba, http://www.camaracuba.cu/phocadownload/Negocios/Investor%20guide%202016_ENG_web.pdf (last visited July 24, 2017). Valuable insight from the political science and policy perspectives is in Omar E. Pérez Villanueva, *Foreign Direct Investment in Cuba: A Necessity and a Challenge*, in *A NEW CHAPTER IN US-CUBA RELATIONS* (Eric Hershberg & William M. LeoGrande eds., 2016).

³³¹ Ley No. 118, Ley de la Inversión Extranjera [LIE 2014] [Law No. 118, Law on Foreign Investment], March 29, 2014, *Gaceta Oficial Extraordinaria* [GOE], No. 20, April 16, 2014, http://www.cubadebate.cu/wp-content/uploads/2014/04/GO_X_20_2014_gaceta-ley-de-inversion-extranjera.pdf.

³³² *Inversión Extranjera en Cuba*, CÁMARA DE COMERCIO DE LA REPÚBLICA DE CUBA, <http://www.camaracuba.cu/index.php/es/negocios/inversion-extranjera-en-cuba> (last visited July 24, 2017).

³³³ Ley No. 77, Ley de la Inversión Extranjera [LIE 1995] [Law No. 77, Law on Foreign Investment], Sept. 5, 1995, *Gaceta Oficial Extraordinaria* [GOE], No. 3, Sept. 6, 1995. English translation available at 35 I.L.M. 343 (1996).

An innovation in Law No. 118 that has documentary significance is the *Cartera de Oportunidades de Inversión Extranjera* (Portfolio of Opportunities for Foreign Investment), which is called for in Article 11.2 of the Law. The 2016–2017 Portfolio was presented on November 1, 2016, at the *Feria Internacional de La Habana* (FIHAV) (Havana International Trade Fair), and it contains 395 proposed projects.³³⁴ The Portfolio describes investment opportunities across many sectors of the economy with contact information for each one. Spanish- and English-language editions of the 2016–2017 Portfolio are posted on the *Cámara de Comercio*'s website.³³⁵

The set of complementary legislation mentioned above includes *Decreto No. 325, Reglamento de la Ley de la Inversión Extranjera* (Decree No. 325, Regulation of the Law on Foreign Investment). The Decree is also published in the extraordinary edition of the *Gaceta Oficial* of April 16, 2014. Also pertinent to Cuba's foreign investment framework is *Decreto No. 327, Reglamento del Proceso Inversionista* (Decree No. 327, Regulation on the Investment Process). It was published in an extraordinary edition of the *Gaceta Oficial* on January 23, 2015, which is accessible via the *Cámara de Comercio*'s website.³³⁶ This decree, and its complementary norms, apply to both Cuban and foreign investors.³³⁷

Even before enacting the current regime for foreign investment, the Cuban government established a special economic zone for the Port of Mariel, 45 kilometers west of Havana.³³⁸ The main enactment is *Decreto-Ley No. 313, de la Zona Especial de Desarrollo Mariel* (Decree-Law No. 313, on the Mariel Special Development Zone). It is published in an extraordinary edition of the *Gaceta Oficial* for September 23, 2013, and is available in Spanish and English on the Mariel Special Development Zone's website.³³⁹ A packet of supplemental legislation, published in the same number of the *Gaceta Oficial*, accompanies the Decree-Law, including Decree No. 316. Spanish- and English-language versions of the Mariel Special Development Zone website also include FAQs, information on investing and contact information.³⁴⁰

In part because the current legal regime for foreign investment in Cuba is so recent, there is a distinct lack of discussion of it in the secondary literature. In fact, the best article available at the time of this writing is in a German law review.³⁴¹ There is a tendentious student note in a U.S. law review.³⁴² A paper on SSRN is of value.³⁴³ Law firms and accounting firms publish newsletters and other kinds of summaries on the investment climate in Cuba that are available on the Web, and which include an overview of the legal framework for investment.³⁴⁴ Other

³³⁴ Katherine Felipe González, *Prospects for Foreign Investment in Cuba*, GRANMA, Nov. 2, 2016, <http://en.granma.cu/cuba/2016-11-02/prospects-for-foreign-investment-in-cuba>.

³³⁵ CÁMARA DE COMERCIO DE LA REPÚBLICA DE CUBA, <http://www.camaracuba.cu/index.php/en/business/foreign-investment> (last visited July 24, 2017). English version under "Opportunities Folder, 2016."

³³⁶ Decreto No. 327, Reglamento del Proceso Inversionista [RPI] [Regulation on the Investment Process], *Gaceta Oficial Extraordinaria* [GOE], No. 5, Jan. 23, 2015, <http://www.camaracuba.cu/index.php/es/negocios/inversion-extranjera-en-cuba>.

³³⁷ *Cuba Updates its Investment Policies*, AGENCIA CUBANA DE NOTICIAS (Jan. 23, 2015), <http://www.cubanews.acn.cu/economy/2350-cuba-updates-its-investment-policies> (last visited July 24, 2017); Cynthia de la Cantera, *Official Gazette: Permits to Invest*, ONCUBA (Jan. 24, 2015), <http://oncubamagazine.com/economy-business/official-gazette-permits-to-invest/> (last visited July 24, 2017).

³³⁸ For background on the operation of the Zone, see Jesús V. Bu, Sr., *Cuba – Mariel Special Development Zone – 100 Questions and Answers* (April 2015), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2590962 (last visited July 24, 2017).

³³⁹ Spanish: <http://www.zedmariel.com>. Click "Documentos de Consulta." The English translation is available at [http://www.zedmariel.com/DOCUM/Decreto-Ley%20No.%20313\(ING\).pdf](http://www.zedmariel.com/DOCUM/Decreto-Ley%20No.%20313(ING).pdf) (last visited July 24, 2017). Decree No. 316, the regulation to the Decree-Law, is also included here in English translation.

³⁴⁰ http://www.zedmariel.com/pages/eng/Informacion_General.php (last visited July 24, 2017).

³⁴¹ Andreas Voß, *Das neue kubanische Auslandsinvestitionsrecht*, 2014 RECHT DER INTERNATIONALEN WIRTSCHAFT (RIW) 491.

³⁴² Alyssa Ortiz, *Cuba's New Foreign Investment Law Number 118: Can Tax Incentives Buy Foreign Investors' Trust and Be Justified in Increasing FDI?*, 21 LAW & BUS. REV. AM. 169 (2015).

³⁴³ K.M. Paparelli, *Reforming Foreign Investment Law in Cuba: What Does It Really Mean for Eager Investors?* Florida Bar Association, International Law Section Journal: INT'L L.Q. SPEC. "CUBA" ED. (2016), <https://ssrn.com/abstract=2678019> (last visited July 24, 2017).

³⁴⁴ See, e.g., EY [Cuba]-Caribbean Professional Services Ltd. (EY CPSL), *The Legal, Regulatory & Fiscal Framework for Foreign Investment in Cuba* (Aug. 2015), http://www.flandersinvestmentandtrade.com/export/sites/trade/files/news/357150820145013/357150820145013_1.pdf (last visited July 24, 2017).

Web-based sources for following foreign investment developments are *OnCuba*,³⁴⁵ *Cuba Standard*,³⁴⁶ *Cuba Business Report*,³⁴⁷ *Cuba Journal*,³⁴⁸ the blog of the U.S.-Cuba Trade and Economic Council³⁴⁹ and *Latin Lawyer*.³⁵⁰ Researchers will also want to be aware of the Association for the Study of the Cuban Economy (ASCE), which is headquartered in Bethesda, Maryland. ASCE's website provides access to a number of valuable papers pertaining to the topic of foreign investment in Cuba.³⁵¹

B. CUBA IN THE FRAMEWORK OF INTERNATIONAL INVESTMENT LAW

Cuba does not participate fully on the plane of international investment law, but it does not hold itself aloof either. On the one hand, Cuba is not a party to the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (Washington Convention).³⁵² On the other hand, Cuba participates in bilateral investment treaties (BITs), 40 of which are currently in force. Several important capital-exporting nations have entered into BITs with Cuba that are currently in force, including Chile, China, France, Germany, Mexico, Spain and the United Kingdom. Full information on Cuba's BIT relations is available at UNCTAD's *International Investment Agreements Navigator*.³⁵³

The provisions on the resolution of disputes that are found in BITs invariably call for binding arbitration as a last resort. This sets up a dissonance with Cuba's national law on foreign investment. The chapter on the settlement of disputes in Law No. 118 nowhere specifies arbitration as an available option. It is worth noting that Cuba is a party to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention).³⁵⁴ Counterintuitively, Cuba is not a party to the Inter-American Convention on International Commercial Arbitration.³⁵⁵

Cuban law does have a framework for international commercial arbitration. *Decreto-Ley No. 250* (Decree-Law No. 250) establishes the *Corte Cubana de Arbitraje Comercial Internacional* (Cuban Court of International Commercial Arbitration).³⁵⁶ Entities formed for the purpose of foreign investment, such as joint ventures, may participate as parties to an arbitration in the Court, but not, it appears, against the State. Basic information on international commercial arbitration in the Court, along with the Spanish-language text of the Decree-Law and related resolutions are available at the website of the *Cámara de Comercio*.³⁵⁷

Cuba has been the respondent in one investment arbitration, which arose under the Cuba-Italy BIT. However, the claimant was not an investor, but rather Italy itself, making this an unusual state-to-state investment arbitration. The award, in French, is available on the *italaw* website,³⁵⁸ and has been the subject of a thorough commentary.³⁵⁹

³⁴⁵ <http://oncubamagazine.com/en/> (last visited July 24, 2017).

³⁴⁶ <http://www.cubastandard.com> (last visited July 24, 2017).

³⁴⁷ <http://www.cubabusinessreport.com> (last visited July 24, 2017).

³⁴⁸ <http://cubajournal.co/> (last visited July 24, 2017).

³⁴⁹ <http://www.cubatrade.org> (last visited July 24, 2017).

³⁵⁰ <http://latinlawyer.com/> (last visited July 24, 2017).

³⁵¹ <http://www.ascecuba.org/publications/> (last visited July 24, 2017). The *Annual Proceedings* have a searchable database in Excel format. The entire website is searchable through a box at the bottom of the main web page.

³⁵² Washington, D.C., March 18, 1965, 575 U.N.T.S. 159, 17 U.S.T. 1270.

³⁵³ <http://investmentpolicyhub.unctad.org/IIA> (last visited July 24, 2017).

³⁵⁴ New York, June 10, 1958, 333 U.N.T.S. 38, 21 U.S.T. 2517.

³⁵⁵ Panama City, Jan. 30, 1975, O.A.S.T.S. No. 42, 14 I.L.M. 336.

³⁵⁶ Decreto-Ley No. 250, "De la Corte de Arbitraje Comercial Internacional" [DLCACI] [Decree-Law No. 250, "Of the International Commercial Arbitration Court"], July 30, 2007, Gaceta Oficial Extraordinaria [GOE], No. 37, July 31, 2007.

³⁵⁷ <http://www.camaracuba.cu/index.php/en/cuban-court-of-international-trade-arbitration/cuban-court-of-international-trade-arbitration> (last visited July 24, 2017).

³⁵⁸ <http://www.italaw.com> (last visited July 24, 2017). Search on "Cuba Italy."

³⁵⁹ Enrico Milano, *The Investment Arbitration between Italy and Cuba: The Application of Customary International Law under Scrutiny*, 11 L. & PRAC. INT'L CTS. & TRIBUNALS 499 (2012).

C. U.S. ECONOMIC SANCTIONS AND FOREIGN INVESTMENT IN CUBA

The United States has maintained punishing economic sanctions against Cuba for over 50 years. The sanctions prohibit U.S. persons from trading with or investing in Cuba, and have a degree of extraterritorial effect in that they attempt to impede third-country nationals from doing business in Cuba, as well.

The sanctions are enacted in a complex collection of statutes, administrative regulations and presidential executive orders. Rather than attempt to enumerate the components of the sanctions regime and their recent evolution under the Trump administration, reference is made to the websites of the Departments of the Treasury, Commerce and State, all of which have pages devoted to the Cuba sanctions.³⁶⁰

D. FUTURE

The Cuban economy is in transition. That is reflected by the new opening to foreign investment, as represented in Law No. 118 and the other elements of the new legal regime for foreign investment outlined here. The opening to foreign investment requires more than the enactment of laws. It depends on the concrete policies and actions of Cuba's leaders. Observers of developments in the Cuban economy will want to see that the government is serious about making foreign investment a driver of economic development that it has the potential to be.

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³⁶⁰ <https://www.treasury.gov/resource-center/sanctions/Programs/pages/cuba.aspx> (last visited Sept. 15, 2017); <https://www.bis.doc.gov/index.php/policy-guidance/country-guidance/sanctioned-destinations/cuba> (last visited Sept. 15, 2017); <https://www.state.gov/e/eb/tfs/spi/cuba/> (last visited Sept. 15, 2017).

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CUBA IN THE INTERNATIONAL ARENA

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A. INTRODUCTION

The following brief history of Cuba is written to focus on Cuba's foreign relations and international involvement, including the development and implementation of public international law.

Cuba, the successor state of Spain, was the last of the Spanish colonies to gain independence and did so with the assistance of the United States in the Spanish-American War (1898). Discussed in greater detail below, Cuba became an independent state with the Treaty of Paris at the end of the War. Although the United States remained in Cuba after the War ended in 1898 to oversee the transition to democracy, the United States withdrew from Cuba in 1902. Nonetheless, the Platt Amendment to the Cuban Constitution of 1901, and subsequent Agreements of 1903 and 1934, ensured that the United States would remain involved in Cuban politics for many decades and on Cuban soil indefinitely.

B. BRIEF HISTORY

1. Spanish Colonial Cuba (1492–1898)

When Christopher Columbus landed in Cuba on October 28, 1492, he believed the island was part of Asia, and he described the island's incredible beauty.³⁶¹ The island, however, was not explored by the Spanish until 1511.³⁶² The first established Spanish village, Baracoa, served as the seat of colonial government until it was moved to Santiago in 1515, and finally to *La Habana* (Havana) in 1538. Havana became the official capital of Cuba in 1607.³⁶³

During early Spanish colonial rule, Cuba was viewed by Spain as a purely economic holding of low importance.³⁶⁴ Minerals, sugarcane, tobacco and cattle were its primary economic resources.³⁶⁵ Because Spain limited trade among its colonies, and only sailed two convoys between Cuba and Seville annually, Cubans engaged in illicit, frequent and profitable trading.³⁶⁶ During this time, the Spanish Christianized the three native

³⁶¹ GRAHAM H. STUART, *CUBA AND ITS INTERNATIONAL RELATIONS* 7 (1923).

³⁶² *Id.* at 8.

³⁶³ Hudson ed., *supra* note 195, at 11.

³⁶⁴ STUART, *supra* note 361, at 9.

³⁶⁵ Hudson ed., *supra* note 195, at 13–14.

³⁶⁶ STUART, *supra* note 361, at 9.

populations of the island who, like native peoples throughout the Americas, died from disease and were enslaved to work in the mines or agricultural fields. Their numbers quickly diminished to the point of virtual extinction. Those who survived were absorbed into the Cuban identity.³⁶⁷

The island was difficult to protect. In the 16th century, the French burned Havana twice (1538 and 1555), and Englishman Sir Francis Drake threatened to do the same (1588). In response to marauding pirates, Philip II of Spain built two fortresses, *Castillo de la Real Fuerza* (1577) and *Castillo de los Tres Reyes Magos del Morro* (1589), at Havana to protect the island.³⁶⁸

The island did not begin to prosper until the 17th century. In the early 18th century, Cuba added shipbuilding to its short list of industries when over 100 vessels were constructed in Havana harbor.³⁶⁹ The British captured Havana and occupied Cuba from 1762 to 1763. During that brief time, the British dramatically improved Cuba's basic infrastructure, opened Cuba's ports to trade with the world and abolished the tobacco monopoly. In February 1763, Great Britain and Spain signed the Treaty of Paris returning Cuba to Spain in exchange for Florida. Despite resistance from the Cubans, Spain tried to rein in some of the openness allowed by the British. Spain eventually lowered export taxes, and in its famous 1778 Decree of Free Trade, opened all ports of Spanish America to trade freely with all 13 ports of the Iberian Peninsula.³⁷⁰

Spain's power and presence began to decline in the Americas at the end of the 18th century. In 1795, Spain ceded Santo Domingo to France and many refugees fled to Cuba. During the Napoleonic Wars, despite a wave of French nationalism resulting from recent emigration, Cuba did not waver in its allegiance to Spain, thus earning it the name, "Ever-Faithful Isle." The liberal Constitution of Cádiz (1812), which empowered Spaniards in the Americas, strengthened Cuba's allegiance to Spain. However, the crown repudiated the Constitution in 1814 and attempted to reduce Spain's holdings in the Americas once again to merely economic interests.³⁷¹ Spain monopolized Cuba's exports and imports and imposed hefty duties. The Constitution of Cádiz was re-implemented twice more,³⁷² but with its final reinstatement in 1836 to 1837, Cuba was denied representation in the Spanish *Cortes* (legislative assembly), causing much resentment in Cuba.³⁷³

Up until the Mexican War of Independence (1821) and the Monroe Doctrine (1823), the United States believed in a "no transfer" policy for Cuba and other colonies in the Americas (not even to the United States) for fear of European expansionism. However, at the same time, the United States began to realize that Cuba was a strategically and commercially important island. Prior to Cuba's first unsuccessful revolt (1848), the United States had offered to purchase Cuba from Spain for \$100 million. Spain replied that it would sooner see it sunk into the ocean than transfer the island. This repudiation provided the impetus for some Americans to join Cuban forces in their attempts to overthrow Spanish rule.³⁷⁴

Cubans began agitating for independence in the middle of the 19th century. Narciso López led unsuccessful insurrections in 1848 and 1851.³⁷⁵ Several incidents at that time, including the Spanish confiscation of cargo of a

³⁶⁷ Hudson ed., *supra* note 195, at 8. The Spanish Dominican friar, Bartolomé de las Casas, was a firm defender of the indigenous population and was horrified by the massacre of natives in the Americas. He was appointed the official "Protector of the Indians" by the Spanish crown and became an outspoken critic of their treatment in Cuba. See, e.g., *BREVÍSIMA RELACIÓN DE LA DESTRUCCIÓN DE LAS INDIAS* (1542), and *HISTORIA DE LAS INDIAS* (1561). See also *THE ONLY WAY* (Helen Rand Parish ed. & Francis R. Sullivan trans., 1992).

³⁶⁸ STUART, *supra* note 361, at 9.

³⁶⁹ *Id.*

³⁷⁰ STUART, *supra* note 361, at 9–10. See also Hudson ed., *supra* note 195, at 17 (more than 700 merchant ships visited Havana during the 11-month occupation by the British—more than had visited Havana in the entire preceding decade). See *Definitive Treaty of Peace between France, Great Britain and Spain*, Feb. 10, 1763, 42 Consol. T.S. 279, 3, COLECCIÓN DE LOS TRATADOS DE PAZ 177; *Decree of Free Trade, Reglamento de Libre Comercio* (Madrid, Oct. 12, 1778).

³⁷¹ STUART, *supra* note 361, at 12.

³⁷² M.C. Mirow, *The Cádiz Constitution in Cuba and Florida*, in *THE RISE OF CONSTITUTIONAL GOVERNMENT IN THE IBERIAN ATLANTIC WORLD: THE IMPACT OF THE CÁDIZ CONSTITUTION OF 1812* 195 (Scott Eastment & Natalia Sobrevilla Perea eds., 2015).

³⁷³ STUART, *supra* note 361, at 13; *Id.* at 199.

³⁷⁴ STUART, *supra* note 361, at 19; See also 6 DIGEST OF INTERNATIONAL LAW Sec. 950–952 (John Bassett Moore comp., 1906) for U.S. policy towards Cuba in relation to the Monroe Doctrine; includes extracts of presidential, congressional and diplomatic speeches and documents.

³⁷⁵ STUART, *supra* note 361, at 14.

U.S. cotton trade ship, led to the 1854 Ostend Manifesto. The Ostend Manifesto was a second offer to purchase Cuba from Spain for \$120 million, as well as a declaration that if Spain did not sell the island, the United States might be justified in taking it by force.³⁷⁶

On October 10, 1868, Carlos Manuel de Céspedes made the first Cuban cry for independence (*Grito de Yara*), accompanied by a list of grievances and demands. He immediately created a provisional government and the legislature promulgated a constitution the following year.³⁷⁷ Spain did not succumb, however, which resulted in the Ten Years' War (1868–1878).³⁷⁸

During the Ten Years' War, the United States sympathized with the insurgents, especially after the Spanish captured the merchant ship *Virginius* in 1873, which is now known to have been carrying weapons to the Cuban insurgents. Captain Joseph Fry and 52 crew members were tried, convicted and executed for piracy within days of their capture. The greatest punishment, according to the United States, should have been no more than the confiscation of cargo. The British successfully stopped the executions of the remaining crew, and the United States and Spain agreed to resolve the matter with reparations made to the families of the executed men, and the return of the remaining crew members to the United States.³⁷⁹

The Ten Years' War ended with the Treaty of Zanjón in February 1878. The Treaty of Zanjón granted amnesty to surviving rebels and abolished slavery. It provided for reciprocal observation of treaty obligations; peace, order and a liberal government in Cuba; and improvement of commercial facilities. The treaty gave Cubans representation in the Spanish *Cortes*, but still no independence.³⁸⁰

Other than the abolition of slavery, Cubans saw few improvements after the Ten Years' War ended. Spaniards controlled the island, and Cubans had no security or freedom of religion, press or speech. Cuba fell into an economic crisis following broken diplomatic relations with the United States, closing Cuba's principal market for sugar. Cubans revolted in 1895 and witnessed the death of one of the island's esteemed citizens, José Martí, during battle.³⁸¹ Leadership fell to the capable General Máximo Gómez and strategy focused on guerilla warfare.³⁸²

The United States initially did not intervene, but sympathies lay with the Cuban rebels. The United States eventually sent the USS *Maine* to Havana harbor in early 1898, where it exploded three weeks later killing 260 navy men. Although blame could never be affixed to the Spanish, the *Maine* was the excuse needed for the United States to intervene.³⁸³ The United States declared war on Spain in April 1898. The Spanish-American War ended in short order and Cuban independence was secured with the Treaty of Paris on December 10, 1898.³⁸⁴ The treaty mandated: (1) Spanish evacuation from Cuba, Puerto Rico and other Caribbean islands; (2) Spain's relinquishment of all sovereignty over Cuba; and (3) Spain's cession of Puerto Rico and another island to the United States. Cuba was thereafter placed into U.S. trusteeship on January 1, 1899.³⁸⁵

³⁷⁶ STUART, *supra* note 361, at 20; Hudson ed., *supra* note 195, at 20. The Ostend Manifesto (1854) was a confidential dispatch from three U.S. ambassadors in Europe to the U.S. Dept. of State suggesting that the United States would be justified in taking Cuba by force if Spain refused to sell. Northerners in the United States decried the Manifesto as an attempt to expand slavery, and it was eventually dismissed. Hudson ed., *supra* note 195, at 434.

³⁷⁷ STUART, *supra* note 361, at 14–15.

³⁷⁸ *Id.* at 15.

³⁷⁹ *Id.* at 21–22.

³⁸⁰ *Id.* at 15; Hudson ed., *supra* note 195, at 25–27. Slavery was abolished in Cuba by royal Spanish decree on Oct. 7, 1886. There were numerous slave uprisings during more than 450 years of slavery in Cuba. For more information on slavery in Cuba, see HUBERT H.S. AIMES, A HISTORY OF SLAVERY IN CUBA, 1511 TO 1868 (1907); LAIRD W. BERGAD, THE COMPARATIVE HISTORIES OF SLAVERY IN BRAZIL, CUBA, AND THE UNITED STATES (2007).

³⁸¹ Hudson ed., *supra* note 195, at 28–29. José Martí is often called the Apostle of the Cuban Revolution. He was a poet, lawyer, scholar and revolutionary. See, e.g., ALFRED J. LÓPEZ, JOSÉ MARTÍ: A REVOLUTIONARY LIFE (2014).

³⁸² STUART, *supra* note 361, at 24.

³⁸³ Hudson ed., *supra* note 195, at 32.

³⁸⁴ Treaty of Paris, Spain-U.S., Dec. 10, 1898, 30 Stat. 1754.

³⁸⁵ STUART, *supra* note 361, at 26.

During the time of Spanish rule, Spain entered into very few treaties specifically related to Cuba. The few Spanish treaties that did affect Cuba pertained to trade³⁸⁶ and immigration.³⁸⁷ After Cuban independence, Cuba's trade agreements with Spain were terminated and renegotiated.³⁸⁸

2. Cuban Independence to the Cuban Revolution (1899–1958)

Cuban independence began under U.S. protection and under the direction of U.S. military General Leonard Wood (1899–1902). During this three-year transition period, the United States oversaw the creation of a Cuban constitution and formations of a Cuban government, which looked remarkably like the government of the United States. On May 20, 1902, General Wood transferred all power to the democratically elected Cuban President, Tomás Estrada Palma, and the Cuban Congress.³⁸⁹

The Cuban economy was favorable at the time of independence. There was an infusion of foreign investment, an increase in trade (especially with the United States) and sugar prices were high. Cuba and the United States signed a treaty guaranteeing a 20 percent tariff preference for Cuban sugar exported to the United States and preferential treatment for U.S. products exported to Cuba.³⁹⁰

The Cuban Constitution of 1901 was approved simultaneously with the Platt Amendment.³⁹¹ The Platt Amendment (which remained in force until 1934, when abrogated) gave the United States power to “exercise the right to intervene for the preservation of Cuban independence, the maintenance of a government adequate for the protection of life, property, and individual liberty and for discharging the obligations with respect to Cuba imposed by the Treaty of Paris on the United States and undertaken by the Government of Cuba.”³⁹² A related Agreement for Coaling and Naval Stations (1903, continued by treaty in 1934), gave the United States a coaling and naval base at Guantánamo Bay, Cuba.³⁹³

Twenty-first century criticism of the Platt Amendment includes blaming the United States for perpetuating a “Platt Amendment Mentality” whereby Cubans lacked political responsibility. That the United States would intervene on Cuba's behalf in international or domestic conflicts arguably “encouraged an indolent attitude toward their own affairs and was not conducive to responsible self-government...which led them to rely upon the United States for guidance in their political decisions.”³⁹⁴

The United States' first intervention after Cuban independence occurred in 1906. Secretary of War William Howard Taft was dispatched by President Roosevelt to Cuba when democratically elected Cuban President Palma threatened to resign over a leftist uprising that would have sent Cuba into disorder. The United States stayed until the next elections in 1909. Two elections later, in 1917, U.S. Marines returned to Cuba to quell a revolution and restore the President. That same year, Cuba, following the United States, declared war on Germany and committed 10,000 men to the disposal of the U.S. military in Europe.³⁹⁵

³⁸⁶ See, e.g., Protocol between Spain and the United States to regulate Commerce between the United States, Cuba and Porto Rico, June 19, 1891, 175 Consol. T.S. 231, 11 Bevans 581.

³⁸⁷ See, e.g., Convention between China and Spain for Regulating the Emigration of Chinese Subjects to Cuba, Nov. 17, 1877, 152 Consol. T.S. 127.

³⁸⁸ See, e.g., Commercial Relations with Respect to Cuba and Puerto Rico, Jan. 11, 1895, and terminated on April 14, 1903, by treaty of July 3, 1902, 11 Bevans 595.

³⁸⁹ STUART, *supra* note 361, at 26. Hudson ed., *supra* note 195, at 33–34. See also 1 DIGEST OF INTERNATIONAL LAW 148–149 (Green Haywood Hackworth comp., 1940). Reprints of messages and decrees from U.S. officials. Sec. of War Taft addresses the lack of government in Cuba in 1906 and the decision to send U.S. troops per the Platt Amendment to bring order and oversee elections until withdrawn in 1909.

³⁹⁰ Hudson ed., *supra* note 195, at 34; Commercial Convention, Cuba-U.S., Dec. 2, 1902, 33 Stat. 2136, 1 Malloy 353.

³⁹¹ Army Appropriations Bill, 31 Stat. 895, 897 (1901). (Written by Senator Orville Platt, (R) Conn.). Proclamation on July 2, 1904, 33 Stat. 2248.

³⁹² Stuart, *supra* note 361, at 27.

³⁹³ See Agreement for the Lease to the United States of Lands in Cuba for Coaling and Naval Stations, Cuba-U.S., Feb. 23, 1903, 1 Malloy 358; Treaty of Relations, Cuba-U.S., May 29, 1934, 48 Stat. 1682.

³⁹⁴ Hudson ed., *supra* note 195, at 35.

³⁹⁵ STUART, *supra* note 361, at 33. Stuart concludes by positively assessing the Platt Amendment: “... as a practical working agreement, the Cubans concede that it has been fairly satisfactory....The privilege of acquiring naval bases has not been abused

Although democratically elected in 1924, General Machado y Morales faced student resistance when he decided to re-elect himself to a second term. Machado used force to put down the student rebellion, which resulted in the death of a student leader, Rafael Trejo, and eventual U.S. intervention. Mediation efforts in 1933 led by the U.S. ambassador, between President Machado and opposition leaders, were not successful. Cuban military factions forced the resignation of President Machado, and U.S. Ambassador Sumner Welles and the Cuban Army appointed Carlos Manuel de Céspedes y Quesada, son of Carlos Manuel de Céspedes (Cuba's first president in the 1860s rebellion), to succeed President Machado.³⁹⁶

President Céspedes y Quesada refused to nullify the Constitution of 1901, which led to the feeling, especially among student and leftist groups, that he was too closely aligned with the United States. In September 1933, he was quietly and successfully removed from office by a *coup d'état* led by Sergeant-Stenographer Fulgencio Batista y Zaldívar. Student groups resisted self-proclaimed Colonel Batista's power, and the *Directorio* (Directorate) appointed university professor, Dr. Ramón Grau San Martín, President of Cuba. The United States did not recognize Grau's presidency.³⁹⁷

Grau, with the support of the students, abrogated the Constitution of 1901 and the Platt Amendment in 1934. But Grau had no political experience and his government soon collapsed. Ambassador Welles and the Cuban Army restored President Batista to power. He appointed Carlos Mendieta as Cuba's provisional president. The United States recognized the presidency within days.³⁹⁸

The next decade saw the rise and fall of a half-dozen presidents, including Grau and Batista. In 1941, during a Batista presidency, Cuba declared war on the Axis powers and gained favor from the United States resulting in increased aid and trade.³⁹⁹ Batista again came to power in 1952 after another quiet and successful *coup d'état*.⁴⁰⁰ A fraudulent re-election in 1954, followed by unsuccessful student and leftist insurrections that left many dead, caused many Cubans to view President Batista as a dictator.⁴⁰¹ In December 1956, Fidel Castro, his younger brother, Raúl, and Che Guevara started a revolution of guerilla warfare⁴⁰² that eventually sent President Batista into exile on January 1, 1959.⁴⁰³

3. The Fidel Castro Years (1959–2006)

Fidel Castro initiated reforms throughout Cuban society and business. He was decisively anti-U.S. and refused to listen to U.S. protests or meet with the U.S. ambassador in 1959.⁴⁰⁴ In 1960, Cuba entered into a significant commercial treaty with the Soviet Union for the exchange of sugar for oil.⁴⁰⁵ The Cuban government also nationalized major foreign businesses, including the media, communications, transportation, banking and educational systems. This was followed by the expropriation of Cuban-owned businesses and foreign-owned land. In October 1960, the United States responded with an embargo on most exports to Cuba. In January 1961, the United States withdrew its ambassador and severed all diplomatic relations.⁴⁰⁶

Following the Bay of Pigs debacle (April 1961), the United States set about isolating Cuba. The United States backed the expulsion of Cuba from the Organization of American States (OAS) in January 1962, which

(Guantánamo is the only one now held)...and the United States has exercised its right to intervene only as a last resort...Cuba's future is before her and her success seems assured." *Id.* at 35.

³⁹⁶ Hudson ed., *supra* note 195, at 41–43.

³⁹⁷ *Id.* at 48.

³⁹⁸ *Id.* at 48–49. See Treaty of Relations, Cuba-U.S., May 29, 1934, 48 Stat. 1682.

³⁹⁹ *Id.* at 52.

⁴⁰⁰ *Id.* at 55.

⁴⁰¹ *Id.* at 58–60.

⁴⁰² *Id.* at 60.

⁴⁰³ *Id.* at 64.

⁴⁰⁴ *Id.* at 68.

⁴⁰⁵ *Id.* at 69.

⁴⁰⁶ *Id.* at 69–70.

led to several countries breaking diplomatic ties with Cuba. In 1964, after Cuba increased involvement in subversive activities in Latin America, the OAS countries (except for Mexico) suspended all trade and diplomatic relations with Cuba.⁴⁰⁷

The Bay of Pigs fiasco also led to stronger Cuba-Soviet Union ties. The Soviets increased aid to Cuba, and in 1962, surreptitiously brought nuclear missiles to Cuba leading to the famous Cuban Missile Crisis of October 1962.⁴⁰⁸ Soviet Prime Minister Khrushchev and U.S. President Kennedy did not consult Fidel Castro in their negotiations, which resulted in the unilateral withdrawal of Soviet missiles and bombers from the island. With his pride wounded, and the realization that he was a “mere pawn on the chessboard of international politics,” Castro “defiantly rejected the U.S.-Soviet understanding and publicly questioned Soviet willingness and determination to defend the Revolution.”⁴⁰⁹ Castro joined the Chinese in refusing to sign the 1963 Nuclear Test Ban Treaty, but eventually Castro’s relationship with the Soviet Union improved.⁴¹⁰

In the name of revolution, Cuba attempted to overthrow the Venezuelan government and intervened in conflicts in Guatemala and Bolivia in the 1960s. All of these efforts ended in disaster, which increased Cuban dependence on Soviet aid and decreased Fidel Castro’s notion that he would be able to successfully inspire revolution throughout Latin America.⁴¹¹

Castro’s revolution was renewed in the 1970s with the overthrow of Chile’s Allende government. Castro thereafter increased support to Central American revolts and African revolutions in Ethiopia and Angola. After Cuban-Soviet victories in Africa, Castro focused on Nicaragua and helped the Sandinistas overthrow the Somoza regime. This success led to further opposition support in Guatemala, El Salvador and Colombia.⁴¹²

Cuba was a founding member of the Non-Aligned Movement (1961), which focused on neutrality, anti-colonialism and building political and military cooperation among countries not aligned with the world’s political East and West blocs.⁴¹³ However, Cuba drew closer to the Soviet Union on many fronts, including trade and military support. Cuba supported the Soviet Union in Czechoslovakia in 1968, and by the early 1970s, Soviet military and economic aid to Cuba had increased significantly.⁴¹⁴ In 1972, Cuba became a member of the Council for Mutual Economic Assistance (CMEA or Comecon).⁴¹⁵ Nonetheless, by the late 1970s, Cuba and Fidel Castro emerged as leaders of the Non-Aligned Movement.⁴¹⁶ By the end of the 20th century, however, Cuba’s close relationship with the Soviet Union diminished its legitimacy in the Movement.⁴¹⁷

In what might appear to be random acts of international involvement, Cuba was strategic and opportunistic. For example, Cuba supported Argentina in 1982 during the Falkland/Malvinas War.⁴¹⁸ By the 1990s, Cuba focused its international relations on seven goals: (1) the survival of the Castro revolution; (2) increased power and influence; (3) close alliance with the Soviet Union until the collapse of communism; (4) anti-U.S. sentiment and decreased U.S. influence; (5) an increase in allies in the developing world; (6) a new economic order in the world; and (7) continued support of national liberation movements around the world.⁴¹⁹

⁴⁰⁷ *Id.* at 71. See OAS, Ser. C/II.8, Eighth Meeting of Consultation of Ministers of Foreign Affairs (Jan. 22–31, 1962). Cuba is a founding member of the OAS, and therefore as a signatory remains a member even though it was excluded from participation from 1962 until 2009. Cuba has voluntarily chosen to refrain from participation since 2009. See also DINAH SHELTON AND PAOLO WRIGHT-CAROZZA, REGIONAL PROTECTION OF HUMAN RIGHTS 65–66 (2013).

⁴⁰⁸ Hudson ed., *supra* note 195, at 71.

⁴⁰⁹ *Id.* at 72.

⁴¹⁰ *Id.* at 72. See Nuclear Test Ban Treaty, July 26, 1963, T.I.A.S. 5433.

⁴¹¹ Hudson ed., *supra* note 195, at 74.

⁴¹² *Id.* at 74–75.

⁴¹³ *Id.* at 76.

⁴¹⁴ *Id.* at 76.

⁴¹⁵ *Id.* at 77, 427. CMEA was an “intergovernmental council headquartered in Moscow...to promote the development of socialist countries and to further economic cooperation among member countries.” Members included Bulgaria, Czechoslovakia, Hungary, Poland, Romania, the USSR, the Mongolian People’s Republic, Vietnam and Cuba. CMEA was abolished with the fall of the Soviet Union, on Jan. 1, 1991.

⁴¹⁶ Hudson ed., *supra* note 195, at 81.

⁴¹⁷ *Id.* at 84.

⁴¹⁸ *Id.* at 82.

⁴¹⁹ *Id.* at 84.

Three significant events involving Cuba and the United States occurred in the 1990s:

1. After the Cuban riots of 1994, Cuba permitted citizens to flee the island. Thousands left by boat for the treacherous journey across the Florida Straits to the United States. Many were rescued by the U.S. Coast Guard in Guantánamo Bay until an agreement was reached in 1995 when they were accepted into the United States.⁴²⁰
2. On February 24, 1996, the Cuban Air Force shot down planes flown by unarmed Cuban dissidents from the United States who had been dropping antigovernment literature over the island in Cuban airspace.⁴²¹
3. In November 1999, Elián González, a five-year-old Cuban boy, was rescued after the boat he was in capsized in the Florida Straits. He was found clinging to a raft; his mother had drowned. He was brought to the United States and reunited with relatives in Miami while his father fought for his return to Cuba. The boy was eventually returned to Cuba after a dramatic and protracted legal battle, sparking a wave of anti-Castro sentiment throughout the Cuban-American community.⁴²²

These incidents caused the United States to begin to reconsider its policies toward Cuba. The 1990s also saw increased communication and cooperation between Cuba and the United States in areas of migration, search and rescue, and drug interdiction.⁴²³

The first decade of the 21st century saw a coalition of new Latin American governments reach out and become allies with Cuba. By 2009, Cuba had restored ties with every country in the Americas except the United States.⁴²⁴ Cuba also established deep ties with Hugo Chávez and Venezuela during this time. Venezuela provided discounted oil to Cuba in exchange for Cuba sending doctors to Venezuela.⁴²⁵

Cuba took the opportunity of U.S. involvement in the Middle East to take a stand against U.S. foreign policy. Although it was one of only two countries opposing the United States entering Kuwait in the first Gulf War, Cuba had many counterparts opposing the U.S. unilateral invasion of Iraq in 2003. Cuba also highlighted for the international community the seemingly unjust detention of U.S. prisoners of war on Cuban soil at the U.S. naval base at Guantánamo Bay.⁴²⁶

4. Raúl Castro (2006–present)

In 2006, Fidel Castro turned over provisional power to his younger brother, Raúl, due to extended illness and surgery.⁴²⁷ In 2008, the younger Castro was officially elected President of Cuba.⁴²⁸ Cuba under Raúl Castro has signed several important international human rights treaties, and the government commuted most death sentences to life imprisonment; it stopped short of officially abolishing the death penalty.⁴²⁹

Also in 2008, U.S. Senator and presidential candidate Barack Obama pledged to close the detention center at Guantánamo Bay, should he be elected president. Seven years after taking office, on February 23, 2016, President Obama again announced his plan to close down the Guantánamo facility, transfer detainees who were still there and accelerate the review process for remaining detainees.⁴³⁰

In the last decade, Cuba and U.S. relations have improved significantly. Although the U.S. embargo still exists (Congressional approval is required to lift it), travel restrictions have eased, and restrictions on remittances

⁴²⁰ *Id.* at 278.

⁴²¹ *Id.* at 278. This incident led to the arrest and conviction of five Cuban spies in the United States. See FERNANDO MORAIS, *THE LAST SOLDIERS OF THE COLD WAR: THE STORY OF THE CUBAN FIVE* (Robert Ballantyne & Alex Olegnowicz trans., Verso 2015) (2011); MARTÍN KOPPEL AND MARY-ALICE WATERS, *THE CUBAN FIVE: WHO THEY ARE, WHY THEY WERE FRAMED, WHY THEY SHOULD BE FREE* (2012).

⁴²² Hudson ed., *supra* note 195, at 278–279.

⁴²³ *Id.* at 279.

⁴²⁴ JULIA E. SWEIG, *CUBA: WHAT EVERYONE NEEDS TO KNOW* 197 (2009).

⁴²⁵ *Id.* at 200.

⁴²⁶ *Id.* at 205–206.

⁴²⁷ *Id.* at 208.

⁴²⁸ *Id.* at 214.

⁴²⁹ *Id.* at 216–217.

⁴³⁰ Barack Obama, *Remarks by the President on Plan to Close the Prison at Guantanamo Bay* (Feb. 23, 2016), <https://obamawhitehouse.archives.gov/the-press-office/2016/02/23/remarks-president-plan-close-prison-guantanamo-bay>.

have been removed.⁴³¹ On July 20, 2015, the United States and Cuba resumed diplomatic relations and re-established embassies in each country.⁴³² In March 2016, U.S. President Barack Obama visited Cuba and met with Cuban President Raúl Castro. This was the first visit to Cuba by a sitting U.S. President since 1928.

C. TREATIES

In 1960, shortly after the success of the Cuban Revolution, Cuba withdrew from the Inter-American Treaty of Reciprocal Assistance (Rio Treaty, 1947). That same year, Cuba terminated its agreement to the United States Mutual Defense Assistance Program. Cuba did not join the Nuclear Non-Proliferation Treaty (1968)—the only country in the Americas not to do so. It did, however, sign in 1975 the Treaty for the Prohibition of Nuclear Weapons in Latin America (1967). Cuba also agreed to inspections and safeguards under the International Atomic Energy Agency (IAEA) in 1980. Cuba has signed other selective multilateral treaties, including the Geneva Convention protecting war victims.⁴³³

Cuba's 1976 Constitution (as amended to June 26, 2002) abrogates, in Article 11, any treaties or agreements that were signed while in condition of inequality or that diminish its sovereignty and territorial integrity. Article 75(j) gives power to the National Assembly to approve peace treaties. Article 90(g) permits the Council of State to approve peace treaties while the National Assembly is in recess. Article 98(d) gives the Council of Ministers the power to approve international treaties and submit them for ratification by the Council of State. Article 90(o), charges the Council of State with ratifying or denouncing international treaties.⁴³⁴ Also relevant to the domestic legal framework for treaties is *Decreto-Ley No. 191, "De Los Tratados Internacionales"* (Decree-Law No. 191, "On International Treaties") (March 8, 1999).⁴³⁵

D. HUMAN RIGHTS

Cuba has a long history of human rights abuses as documented by various agencies, including:

- United Nations Commission on Human Rights⁴³⁶
- Inter-American Commission on Human Rights⁴³⁷
- U.S. Department of State⁴³⁸
- Amnesty International⁴³⁹
- Human Rights Watch⁴⁴⁰
- Freedom House⁴⁴¹

⁴³¹ Cuba, U.S. DEP'T OF STATE, (June 16, 2017), <http://travel.state.gov/content/passports/en/country/cuba.html>. See also *Frequently Asked Questions on President Trump's Cuba Announcement*, Dept. of the Treasury, Office of Foreign Assets Control (July 25, 2017), <https://cu.usembassy.gov/frequently-asked-questions-president-trumps-cuba-announcement-2/>.

⁴³² *A Guide to the United States' History of Recognition, Diplomatic, and Consular Relations, by Country, since 1776: Cuba*, U.S. DEP'T OF STATE, <https://history.state.gov/countries/cuba> (last visited July 26, 2017).

⁴³³ Hudson ed., *supra* note 195, at 307.

⁴³⁴ See CONST., *supra* note 27.

⁴³⁵ Decree-Law No. 191, "De Los Tratados Internacionales" [DLTI] [Decree-Law No. 191, "On International Treaties"], March 8, 1999, Gaceta Oficial [GO], No. 12, March 12, 1999. For more on this law, and its complementary regulations, see Richards Martínez, *supra* note 225.

⁴³⁶ Cuba, OFFICE OF THE U.N. HIGH COMM'R FOR HUMAN RIGHTS, <http://www.ohchr.org/EN/Countries/LACRegion/Pages/CUIndex.aspx> (last visited July 26, 2017).

⁴³⁷ INTER-AM. COMM'N ON HUMAN RIGHTS, ANNUAL REPORT, CHAPTER IV.B, CUBA (2016), <http://www.oas.org/en/iachr/docs/annual/2016/docs/InformeAnual2016cap.B.Cuba-en.pdf>.

⁴³⁸ U.S. DEP'T OF STATE, BUREAU OF DEMOCRACY, HUMAN RIGHTS AND LABOR, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 2016, <https://www.state.gov/documents/organization/265790.pdf>.

⁴³⁹ See, e.g., AMNESTY INTERNATIONAL, CUBA: THE HUMAN RIGHTS SITUATION (1990); AMNESTY INTERNATIONAL, ANNUAL REPORT: CUBA 2016/2017, <https://www.amnesty.org/en/countries/americas/cuba/report-cuba/>.

⁴⁴⁰ Cuba, HUMAN RIGHTS WATCH (2017), <https://www.hrw.org/americas/cuba>.

⁴⁴¹ Cuba, FREEDOM HOUSE (2017), <https://freedomhouse.org/country/cuba>.

Cuba, however, contends that its record of human rights is excellent when defined as providing its citizens with basic food, education and health care.⁴⁴²

The one-party, totalitarian model of Cuba's government is believed to be the source of Cuba's human rights abuses. Citizens who oppose the Cuban government risk loss of employment, harassment or imprisonment. There are hundreds of political prisoners in Cuban jails according to human rights observers, including the *Comisión Cubana de Derechos Humanos y Reconciliación Nacional* (Cuban Committee for Human Rights and National Reconciliation—CCDHRN), whose founder is a former political prisoner.⁴⁴³

Nonetheless, Cuba has signed many international human rights treaties including, most recently, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights (2008).⁴⁴⁴ Cuba has also signed all eight fundamental conventions of the International Labour Organization.⁴⁴⁵

In 1962, the government of Cuba was excluded as a participating member in the OAS. The Inter-American Commission on Human Rights (IACHR) issued seven reports on the condition of human rights in Cuba between 1962 and 1983, even though the IACHR was not permitted to visit Cuba to investigate allegations and complaints.⁴⁴⁶

The 2011 *Annual Report of the IACHR* includes a Country Report on Cuba wherein the IACHR reaffirmed its 1997 conclusion that the Cuban government has violated its citizens' human rights because the Cuban people are not permitted to exercise fundamental rights as established in the American Declaration of the Rights and Duties of Man. The primary violations pertain to restrictions on political rights, freedom of association, expression, movement and thought, along with an absence of elections and an independent judiciary. The *Report* also finds "severe repression of women, restrictions on human rights defenders and laws and practices that violate the rights of children and adolescents."⁴⁴⁷ The *Report* provides specific examples of cases where human rights have been violated. The Cuban government was sent the *Report* in November 2011 with a request for comment; Cuba did not respond. The IACHR also found that the U.S. embargo was detrimental to the Cuban people and recommended it be lifted.⁴⁴⁸ Many of the human rights concerns are reiterated in the 2014 and 2015 annual reports of the IACHR although advances are noted as well.⁴⁴⁹

E. INTERGOVERNMENTAL ORGANIZATIONS

Cuba is a member of several intergovernmental organizations:

- League of Nations: Cuba was an original signer of the Treaty of Versailles, ending WWI and creating the League of Nations (January 10, 1920).⁴⁵⁰
- United Nations (U.N.): Cuba is a founding member of the United Nations. The U.N. Charter was signed on June 26, 1945.⁴⁵¹ Cuba has appeared before the U.N. on many occasions and has garnered support in the U.N. General

⁴⁴² Hudson ed., *supra* note 195, at 353.

⁴⁴³ *Id.* See also RADIO MARTÍ, *Son 93 Los Presos Políticos en Cuba, Según Comisión de DDHH*, April 25, 2016, <http://www.martinoticias.com/a/cuba-lista-parcial-presos-politicos-ccdhrn/120528.html>.

⁴⁴⁴ *Treaties Ratification Status for Cuba*, U.N. OFFICE OF THE HIGH COMM'R FOR HUMAN RIGHTS, http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=44&Lang=EN (last visited July 26, 2017). Cuba has signed but not ratified the ICCPR and ICESCR.

⁴⁴⁵ *Ratifications for Cuba*, INT'L LABOUR ORG. (2016), http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11200:0::NO::P11200_COUNTRY_ID:102603.

⁴⁴⁶ INTER-AM. COMM'N ON HUMAN RIGHTS, COUNTRY REPORTS (2016), <http://www.oas.org/en/iachr/reports/country.asp>.

⁴⁴⁷ INTER-AM. COMM'N ON HUMAN RIGHTS, ANNUAL REPORT, CHAPTER IV, CUBA 2 (2011), <http://www.oas.org/en/iachr/docs/annual/2011/TOC.asp>.

⁴⁴⁸ *Id.*

⁴⁴⁹ INTER-AM. COMM'N ON HUMAN RIGHTS, ANNUAL REPORT, CHAPTER IV, CUBA (2014), <http://www.oas.org/en/iachr/docs/annual/2014/docs-en/Annual2014-chap4Cuba.pdf>; INTER-AM. COMM'N ON HUMAN RIGHTS, ANNUAL REPORT, CHAPTER IV, CUBA (2015), <http://www.oas.org/en/iachr/docs/annual/2015/doc-en/InformeAnual2015-Cap4-Cuba-EN.pdf>.

⁴⁵⁰ League of Nations, 2 Bevans 43, 58 (1919). The League of Nations dissolved in 1946. It was the precursor to the United Nations.

⁴⁵¹ *Member States*, UNITED NATIONS, <http://www.un.org/en/member-states/index.html> (last visited July 26, 2017).

Assembly for its resolutions condemning the U.S. embargo.⁴⁵² In October 2016, the vote was 191 in favor of Cuba, demanding an end to the embargo, with the United States and Israel abstaining.⁴⁵³

- Organization of American States (OAS): On June 3, 2009, the Ministers of Foreign Affairs of the Americas adopted resolution AG/RES. 2438 (XXXIX-O/09), resolving that the 1962 resolution, which excluded the government of Cuba from its participation in the inter-American system, ceases to have effect in the OAS. The 2009 resolution states that the participation of the Republic of Cuba in the OAS will be the result of a process of dialogue initiated at the request of the Cuban government, and in accordance with the practices, purposes and principles of the OAS.⁴⁵⁴ Up to now, Cuba has not rejoined the OAS as an active member.
- Non-Aligned Movement (NAM): Cuba is a founding member (1961) and one of 115 member states of the NAM. The NAM is premised upon, although not formally defined by, principles of non-alignment with world super powers, independence and anti-colonialism, peace and equality.⁴⁵⁵ Cuba chaired the NAM in 1979–1983 and 2006–2009. Although Cuba hosted the Non-Aligned Movement leaders in 2006 when it assumed the chair, Fidel Castro was too ill to make an appearance.⁴⁵⁶
- Association of Caribbean States (ACS): Cuba is a member of the ACS, a “forum for political dialogue that allows Members the opportunity to identify areas of common interest and concern that may be addressed at the regional level...”⁴⁵⁷ Current areas of concern are: (1) preservation and conservation of the Caribbean Sea; (2) tourism; (3) trade; (4) natural disasters; and (5) transportation.⁴⁵⁸ Cuba assumed the rotating presidency of the ACS in January 2016, and was also elected Chair of the Ministerial Council for 2016. The Seventh ACS Summit was held in Havana in June 2016.⁴⁵⁹
- Caribbean Community (CARICOM): Cuba is not a member or Associate Member of CARICOM.⁴⁶⁰

F. RESOURCES

Treaty Sources

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⁴⁵² SWEIG, *supra* note 424, at 195.

⁴⁵³ This was a break in the “no” vote the United States has always cast pertaining to the embargo. See Somini Sengupta & Rick Gladstone, *U.S. Abstains in U.N. Vote Condemning Cuban Embargo*, N.Y. TIMES, Oct. 26, 2016, <https://www.nytimes.com/2016/10/27/world/americas/united-nations-cuba-embargo.html>. See also U.N. Secretary-General, *Report of the Secretary-General on the necessity of ending the economic, commercial and financial embargo imposed by the United States of America against Cuba*, U.N. Doc. A/71/91 (July 21, 2016), http://www.un.org/ga/search/view_doc.asp?symbol=A/71/91.

⁴⁵⁴ ORGANIZATION OF AMERICAN STATES, MEMBERS (2016), http://www.oas.org/en/member_states/default.asp (last visited July 26, 2017). See also SHELTON AND WRIGHT-CAROZZA, *supra* note 407, at 66–67.

⁴⁵⁵ See *What is the NAM?*, 17th SUMMIT OF THE NON-ALIGNED MOVEMENT, <http://namvenezuela.org/?us%20portfolio=project-slider> (last visited Sept. 15, 2017). See also *Non-Aligned Movement*, NUCLEAR THREAT INITIATIVE, <http://www.nti.org/learn/treaties-and-regimes/non-aligned-movement-nam/> (last visited July 26, 2017).

⁴⁵⁶ SWEIG, *supra* note 424, at 209.

⁴⁵⁷ *About the ACS*, ASSOCIATION OF CARIBBEAN STATES, <http://www.acs-aec.org/index.php?q=about-the-ac> (last visited July 26, 2017).

⁴⁵⁸ *Id.*

⁴⁵⁹ ASSOCIATION OF CARIBBEAN STATES, <http://www.acs-aec.org/index.php?q=press-center/releases/2016/seventh-ac> (last visited July 26, 2017).

⁴⁶⁰ CARICOM, <http://www.caricom.org/> (last visited July 26, 2017).

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THE LEGAL PROFESSION

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A. INTRODUCTION

Since the 1959 Revolution, the practice of law in Cuba has experienced dramatic changes. Although the legal profession had enjoyed prestige during the years prior to the Fidel Castro regime, it was perceived as a bourgeois and unnecessary profession in Cuba's new revolutionary society.⁴⁶¹ By 1962, over 900 Cuban lawyers had fled the country,⁴⁶² and the Universidad de La Habana's School of Law had lost its status as an independent faculty within the University. Three years later, the number of enrolled law students in Cuba had dwindled to 343 (representing less than two percent of the island's total number of university students),⁴⁶³ and there were no law school graduates on the island during the 1964–1965 academic year.⁴⁶⁴

In 1965, however, the PCC formed the *Comisión de Estudios Jurídicos* (Commission for Juridical Studies) to examine the country's legal framework.⁴⁶⁵ As a result of the Commission's work, both the judicial system and the legal profession were recognized as important players in the country's transition to socialism.⁴⁶⁶ In a 1971 speech, Fidel Castro himself asserted:

The first truth is that capitalist legality must be destroyed. The second truth is that socialist legality must be established. We revolutionaries have two parts to play—destroyers of laws in accordance with the [first] phase of the revolution, and creators and defenders of laws in the other phase of the revolution. This is in full agreement with another law—the dialectical law of history. We must all, therefore, live through this very dialectical stage of first destroying and later creating. We inherit from the first phase a certain illegal spirit, which underrates laws and applies this underrating of laws to the revolution itself. Here it [c]an be plainly seen that the new society needs an intelligent and scientific order. Here it can be plainly seen that [sic] what role the jurists play, as creators, as advisors, as those who apply laws.⁴⁶⁷

After the tumultuous early years of the Revolution, the legal profession began making a comeback. In 1976, the law school at the Universidad de La Habana returned to its former status as an independent faculty,⁴⁶⁸ and by the 1989–1990 school year, there were about 3,750 law students enrolled at Cuban universities.⁴⁶⁹ Today, lawyers play an active role in Cuban society. Although the private practice of law is prohibited, attorneys work in a variety of settings—*bufetes colectivos* (collective law firms), government agencies, commercial enterprises and in the courts. There is also a small cadre of independent lawyers working without the approval of the Cuban government.

⁴⁶¹ EVENSON, *supra* note 16, at 69. For additional information on the Revolution's immediate impact on the legal profession, see Victoria Quintana, *Heirs of Martí: The Story of Cuban Lawyers*, 17 U. MIAMI INT'L & COMP. L. REV. 229, 254–260 (2010); and Alfred L. Padula, Jr., *The Fall of the Bourgeoisie: Cuba, 1959–1961* (Dec. 6, 1974) (unpublished Ph.D. dissertation, Univ. of New Mexico).

⁴⁶² John R. Burton, Chair, *Report of the Special Committee to Cooperate with Cuban Lawyers in Exile*, 87 ANN. REP. A.B.A. 305, 305 (1962). See also Dr. Agustín Cruz, *It Took Only Three Years: The Destruction of a Law Firm*, 50 A.B.A. J. 63 (Jan. 1964).

⁴⁶³ ROGELIO PÉREZ-PERDOMO, *LATIN AMERICAN LAWYERS* 107 (2006). Cf., During the 1958–1959 school year, there were 2,853 law students enrolled in Cuban law schools. DOMÍNGUEZ, *supra* note 110, at 257.

⁴⁶⁴ ZATZ, *supra* note 50, at 111–112 (citing Unión Nacional de Juristas Cubanas, *Tesis sobre la vida jurídica del país* 19–21 (1987)).

⁴⁶⁵ EVENSON, *supra* note 16, at 70.

⁴⁶⁶ *Id.*

⁴⁶⁷ Fidel Castro Ruz, Prime Minister of Cuba, 10th Anniversary—Interior Ministry (June 6, 1971) (English trans. available in the Castro Speech Data Base, Latin American Network Information Center (LANIC), <http://lanic.utexas.edu/project/castro/db/1971/19710607-1.html>); Original text in Spanish at <http://www.cuba.cu/gobierno/discursos/1971/esp/f060671e.html>.

⁴⁶⁸ EVENSON, *supra* note 16, at 71.

⁴⁶⁹ ZATZ *supra* note 50, at 113 (citing Universidad de La Habana Law School Dean Julio Fernández Bulté, May 22, 1989; Nov. 28, 1989). Also noteworthy was the gender distribution of law students at the Universidad de La Habana during the same school year (69.5 percent were women), at 114 (citing Dean Julio Fernández Bulté, Nov. 28, 1989).

The paragraphs below provide a composite sketch of the legal profession in Cuba, beginning with a historical background, followed by an overview of legal education, and then descriptions of the organizations that are so unique to the practice of law in Cuba—the *bufetes colectivos*, the *Organización Nacional de Bufetes Colectivos* (ONBC) (National Organization of Collective Law Firms) and the *Unión Nacional de Juristas Cubanas* (UNJC) (National Union of Cuban Jurists). Also addressed in this section are *abogados independientes* (independent lawyers), *jueces* (judges, both lay and professional), *fiscales* (public prosecutors) and *notarios* (civil law notaries), who likewise play an important role in Cuba's legal landscape. The information presented in this piece was primarily gleaned from sources published in Spanish, although there is also a body of work in English on this topic. A selected bibliography of relevant sources in Spanish and English follows the main text.

B. HISTORICAL BACKGROUND⁴⁷⁰

The legal profession in Cuba can be traced back to 1799 when the *Real Audiencia de Santo Domingo* (Royal Audience of Santo Domingo)⁴⁷¹ was transferred to Puerto Príncipe (now Camagüey). This transition occurred after the Peace of Basel was signed in 1795 whereby Spain ceded its part of the island of Hispaniola to France. In 1819, King Ferdinand VII of Spain ordered the establishment of *colegios de abogados* (bar associations) in Havana and Puerto Príncipe. The order dictated the number of associations and specified that each would be governed by its own rules requiring the Royal Audience's approval.

Cuba's first bar association was founded in 1831 in Puerto Príncipe, with its own bylaws inspired by the bar association of Madrid and a membership limited to 24 lawyers. In 1842, bar associations were founded in Santiago de Cuba and Trinidad-Remedios-Sancti Spíritus. The *Colegio de Abogados de La Habana* (Bar Association of Havana) was founded in 1852, although it was almost immediately closed by the island's Captain General, and it was not reinstated until 1879. The Spanish colonists generally viewed the Cuban bar associations with animosity as they were known for fostering liberal political ideology.⁴⁷²

The Cuban bar associations initially existed under Spain's legislative agenda, including the 1870 *Ley Orgánica del Poder Judicial* (Organic Law of Judicial Power).⁴⁷³ After the Spanish-American War, however, the U.S. Military Government in Cuba enacted Military Order No. 500 (Dec. 10, 1900) that effectively dissolved all of the island's bar associations.⁴⁷⁴ The Order was a repressive measure—a reaction to the Bar Association of Havana's protests of various decisions made by the caretaker U.S. government. During the following years, bar association membership was not a requisite for practicing law, and the courts assumed the functions that the associations themselves had performed relating to bar membership.

On January 27, 1909, during a second U.S. military intervention, the interim governor of Cuba repealed the 1870 Organic Law of Judicial Power that had existed under Spanish rule.⁴⁷⁵ The bar associations then assumed responsibility for ensuring the fulfillment of attorneys' duties and their effectiveness in court, as well as the order, decorum, fraternity and discipline among association members. The power to discipline attorneys was one of the most important powers granted to bar associations. In cases where an association was sanctioning an attorney through expulsion, the attorney was guaranteed the option of appealing to Cuba's Supreme Court.

⁴⁷⁰ The information in this section was primarily gleaned from *Orígenes de la Abogacía en Cuba*, ORGANIZACIÓN NACIONAL DE BUFETES COLECTIVOS, <http://www.onbc.cu/historia> (last visited July 26, 2017).

⁴⁷¹ Santo Domingo is now the capital and largest city in the Dominican Republic.

⁴⁷² A number of well-known figures in Cuba's 19th century fight for independence were members of the bar associations. See Clark, *supra* note 273, at 417.

⁴⁷³ See ALFONSO XII, REY DE ESPAÑA, LEY ORGÁNICA DEL PODER JUDICIAL DE 15 DE SETIEMBRE DE 1870 Y LEY ADICIONAL Á LA MISMA DE 14 DE OCTUBRE DE 1882 (Imprenta de E. de la Riva, 1882), <http://fama2.us.es/fde/ocr/2007/leyOrganicaPoderJudicial1870.pdf>.

⁴⁷⁴ The Order is reprinted in U.S. WAR DEP'T, DIV. OF INSULAR AFF., TRANSLATION OF THE LAW OF CRIMINAL PROCEDURE FOR CUBA AND PORTO RICO 332 (Frank L. Joannini trans., Gov. Printing Office 1901). A digital edition of this work is available in the Digital Library of the Caribbean (dLOC), <http://www.dloc.com>.

⁴⁷⁵ Decreto No. 127, "Ley Orgánica del Poder Judicial" [LOPJ] [Decree No. 127, "Organic Law of Judicial Power"], Jan. 27, 1909, Gaceta Oficial [GO], No. 27, Jan. 27, 1909.

More changes to law practice in Cuba were introduced in the 1940s. The new 1940 Cuban Constitution again established the requirement of compulsory bar association membership for attorneys per Article 70. Complementary pieces of legislation were *Decreto No. 781* (Decree No. 781) (March 15, 1944), and *Ley No. 4* (Law No. 4) (Nov. 13, 1944).⁴⁷⁶ In July 1948, Cuba's *Asamblea Nacional de Abogados* (National Assembly of Lawyers) adopted a uniform code of ethics for all of the country's bar associations. This code defined actions that were considered professional ethics violations and regulated relationships between lawyers, between lawyers and the courts and between lawyers and their clients. The code also specified that sanctions could be imposed for breaches of professional ethics. In March 1949, the *Junta de Gobierno* (Board of Government) of the Bar Association of Havana adopted its own rules, which the *Sala de Gobierno del Tribunal Supremo* (Government Chamber of the Supreme Court) approved in May of the same year.

On January 1, 1959, the revolutionary movement triumphed, bringing profound changes to Cuba's central government structure and the established social order, including the legal profession. The practice of law in revolutionary Cuba is addressed in detail below, along with a brief discussion of legal education.

C. LEGAL EDUCATION⁴⁷⁷

Legal education in Cuba is similar to that in Europe and the rest of Latin America. The student enters law school directly from high school, and the law degree is an undergraduate degree. When students finish high school in Cuba, they must take a university entrance exam, somewhat similar to the SAT in the United States. Depending on the score, the student can then enter into certain programs at a university. Students who do not pass the exam cannot pursue a university degree and must engage in technical tasks and/or jobs for which a formal college education is not required.

In Cuba, like in most continental European and Latin American countries, a law degree candidate must pass the coursework⁴⁷⁸ for the degree of *Licenciado en Derecho* (J.D. equivalent) and must then successfully pass the state exam or thesis option. The minimum score required for all coursework, as well as the state exam or thesis, is three points on a scale of one to five. There are awards for law students with high grades; specifically, the *Título de Oro* (Gold Prize) is awarded to university students with a GPA of 4.75 or higher out of 5.00.⁴⁷⁹ In addition, to qualify for the award, there is a specific requirement for participation in activities of the *Federación Estudiantil Universitaria* (FEU) (Federation of University Students), the *Unión de Jóvenes Comunistas* (Young Communists Union) and the PCC.⁴⁸⁰

A Cuban lawyer graduates from a law school belonging to the Cuban university system, the only existing on the island since January 1959. After recent educational reforms, it is also possible to graduate from municipal universities where there are *de facto* extensions of Cuban law schools.⁴⁸¹ If a Cuban lawyer has studied in a foreign country, s/he must receive official recognition of his/her law degree.⁴⁸² After passing all core subjects and the state exam or thesis option, the new law graduate is registered in the *Registro Central de Abogados* (Central Register of Attorneys). The Register is maintained by the Provincial Directorates of Justice, which are provincial

⁴⁷⁶ Ley No. 4 [Law No. 4], Nov. 13, 1944, Gaceta Oficial [GO], Nov. 17, 1944.

⁴⁷⁷ The information in this section was primarily derived from Joan Martínez-Evora, *Comentarios acerca del Ejercicio de la Abogacía y del Abogado en Cuba*, ASS'N FOR THE STUDY OF THE CUBAN ECON. (ASCE), 18 CUBA IN TRANSITION: PAPERS AND PROC. OF THE EIGHTEENTH ANN. MEETING, Aug. 5–7, 2008, at 218–222, <http://www.ascecuba.org/c/wp-content/uploads/2014/09/v18-martinez-zevora.pdf>.

⁴⁷⁸ For a description of law school coursework in Cuba, see Clark, *supra* note 273, at 427–428.

⁴⁷⁹ The Gold Prize is also awarded to university students who opted for science-related work and his/her research produced exceptional results. Martínez-Evora, *supra* note 477, at 218.

⁴⁸⁰ Daisy Valera, *Los títulos de oro en la universidad*, HAVANA TIMES (July 20, 2010), <http://www.havanatimes.org/sp/?p=6912>.

⁴⁸¹ For a list of websites of Cuban law schools, see Yasmin Morais, *A Guide to Legal Research in Cuba*, GLOBALEX (June 2015), <http://www.nyulawglobal.org/globalex/Cuba.html>.

⁴⁸² Decreto-Ley No. 81, “Sobre el Ejercicio de la Abogacía y la Organización Nacional de Bufetes Colectivos” [DLEAONBC] [Decree-Law No. 81, “On the Legal Profession and the National Organization of Collective Law Firms”], June 8, 1984, Gaceta Oficial [GO], No. 12, June 8, 1984, art. 3(a).

administrative organs of the Ministry of Justice. New law school graduates, who are primarily women,⁴⁸³ are first required to provide several years of legal social service (two years for men, and three years for women).⁴⁸⁴ Assignments for new lawyers are coordinated between law schools, various employers and government agencies.

Currently, the law schools in Cuba maintain cooperative ties with a number of foreign law schools.⁴⁸⁵ For example, there are ongoing relationships between the Universidad de La Habana's law faculty and law schools in Buenos Aires and La Plata, Argentina, as well as Barcelona, Castilla-La Mancha and Madrid, Spain, among others. These relationships range from academic exchanges, to the sharing of postgraduate courses. Although the United States has generally been excluded, there are currently exchange programs with some universities in the mainland United States and Puerto Rico.⁴⁸⁶

D. BUFETES COLECTIVOS (COLLECTIVE LAW FIRMS)⁴⁸⁷

On December 21, 1964, the Board of Government of the Bar Association of Havana proposed the creation of a group of lawyers called *bufetes colectivos* (collective law firms), based on the premise that every citizen would have access to justice through reduced rates, compared to those paid to lawyers in private practice. The *bufetes* would operate according to bylaws that the Board proposed to the Minister of Justice.

On January 22, 1965, the Minister of Justice, through *Resolución No. 18* (Resolution No. 18),⁴⁸⁸ approved the creation of the first *bufete colectivo* in Havana. The *bufete* was subject to the jurisdiction of the Bar Association of Havana under the guidance and supervision of the Minister of Justice. Cuba's Council of Ministers subsequently issued *Ley No. 1189* (Law No. 1189) (April 25, 1966), whereby registration in the Ministry of Justice's central registry of attorneys was required for professional practice, eliminating the compulsory licensing of attorneys by the bar associations.⁴⁸⁹ This measure, together with the creation of *bufetes colectivos*, was the first step in the elimination of private law practice in Cuba. Over time, *bufetes colectivos* became a single entity under the auspices of the Ministry of Justice.⁴⁹⁰

In 1973, the Council of Ministers issued *Ley No. 1250, Ley de Organización del Sistema Judicial* (Law No. 1250, Law on the Organization of the Judicial System).⁴⁹¹ This law eliminated private law practice, which definitively disappeared in Cuba in 1974. The 1977 *Ley No. 4, Ley de Organización del Sistema Judicial* (Law No. 4, Law on the Organization of the Judicial System) created a new structure for the *bufetes colectivos* that was defined in Article 146 as an "autonomous national institution, of social interest," governed by an internal regulation that required the approval of Cuba's Ministry of Justice.⁴⁹² Among other provisions, Law No. 4, which was in force

⁴⁸³ "...roughly 2/3 of all students attending law school in Cuba are women." Steven M. Harper, *Op-Ed: Here's What One U.S. Lawyer Learned About Cuba's Legal System*, CUBA JOURNAL (Nov. 10, 2015), <http://cubajournal.co/op-ed-heres-what-one-u-s-lawyer-learned-about-cubas-legal-system/>; "...about 70% of lawyers and law professors are women, and more than 70% of judges are women." Keiko Rose, "Gender Equality in Cuba: Constitutional Promises vs. Reality," Law School International Immersion Program Papers, No. 11 (2015) at 9, http://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=1014&context=international_immersion_program_papers.

⁴⁸⁴ E-mail from Roberto M. Rojas, Cuban LL.M. student, Loyola U. Chicago School of Law, to Julianne E. Grant, Reference Librarian/Foreign & Int'l Research Specialist, Loyola U. Chicago School of Law Library (Jan. 28, 2017) (on file with Julianne E. Grant); see also Rose, *supra* note 483, at 14 (young men are required to perform two years of social service and one year of military service, while young women perform three years of social service, and no military service).

⁴⁸⁵ But see Ryan Scoville, *International Law from a Cuban Perspective*, LAWFARE (Feb. 8, 2016), <https://www.lawfareblog.com/international-law-cuban-perspective> (describing Cuban legal academics as having "exceedingly limited contact with their overseas counterparts").

⁴⁸⁶ The law schools of the Universidad Interamericano de Puerto Rico (private) and the Universidad de Puerto Rico (public) share some educational and cultural activities with the Universidad de La Habana. The Puerto Rican Bar Association Student Chapter shares some activities with the UNJC on an annual basis.

⁴⁸⁷ ORGANIZACIÓN DE BUFETES COLECTIVOS, *supra* note 470.

⁴⁸⁸ Resolución No. 18, del Ministerio de Justicia [RMJ] [Resolution No. 18, of the Ministry of Justice], Jan. 22, 1965, Gaceta Oficial [GO], No. 3, Feb. 4, 1965.

⁴⁸⁹ Ley No. 1189 [Law No. 1189], April 25, 1966, *Leyes del Gobierno Revolucionario de Cuba* 61 (Abril-Junio 1966).

⁴⁹⁰ For a detailed overview of the *bufetes* in English, see Raymond J. Michalowski, *Between Citizens and the Socialist State: the Negotiation of Legal Practice in Socialist Cuba*, 29 LAW & SOC'Y REV. 65 (1995).

⁴⁹¹ See LOSJ 1973.

⁴⁹² See LOSJ 1977.

until the early 1980s, established who specifically could belong to *bufetes colectivos*. The current law regulating the *bufetes* is *Decreto-Ley No. 81* (Decree-Law No. 81) (June 8, 1984),⁴⁹³ and its associated regulation, *Resolución No. 142* (Resolution No. 142) (Dec. 18, 1984).⁴⁹⁴

Generally, the *bufetes* are regarded as socialism's answer to capitalist law practice and are prized as one of the most distinctive changes made during Fidel Castro's regime.⁴⁹⁵ In 2015, there were 186 *bufetes* in Cuba employing more than 4,000 people, with over 2,000 of those workers being lawyers.⁴⁹⁶ Attorneys in the *bufetes* met with more than one million people in 2014 for free initial consultations, and more than 300,000 of them subsequently contracted for legal services.⁴⁹⁷ There are predetermined fees for services in the *bufetes* that are set forth in the Ministry of Justice's *Resolución No. 211* (Resolution No. 211) (Oct. 27, 2004).⁴⁹⁸ The fees are moderate so that all citizens have access to legal services, and those unable to pay receive services without charge.⁴⁹⁹ Attorneys receive a percentage of any fees charged for his/her services.

Along with the general *bufetes*, there are *bufetes especializados* (specialized law firms). One of these firms offers services to foreigners and expatriate Cubans living abroad and has relationships with various foreign law firms.⁵⁰⁰ Another specialized *bufete* focuses on appellate work, including appeals to the criminal, military, civil and administrative, and economic chambers of the Cuban Supreme Court.⁵⁰¹ The Ministry of Justice's website offers links to other specialty boutique law firms that operate outside the *bufetes colectivos* framework.⁵⁰² The *Consultoría Jurídica Internacional* (International Legal Consultancy) is a civil society of legal services that specializes in international matters.⁵⁰³ The Conabi firm also focuses on international work, and the LEX S.A. and CLAIM S.A. law firms specialize in intellectual property; both of the latter have bilingual Spanish/English-language websites.⁵⁰⁴ Foreign lawyers may not practice in Cuba, but there are recent media reports of foreign lawyers who are serving as consultants on the island.⁵⁰⁵

⁴⁹³ DLEAONBC, *supra* note 482.

⁴⁹⁴ Resolución No. 142 [Resolution No. 142], Dec. 18, 1984, Gaceta Oficial Extraordinaria Especial [GOEE], No. 4, Dec. 18, 1984.

⁴⁹⁵ John Carro, *The Structure of Legal Education and the Practice of Law in Cuba*, 25 REV. DER. P.R. 89, 101 (1985–1986).

⁴⁹⁶ Yailin Orta Rivera, *Los abogados cubanos son defensores de la justicia social*, MESA REDONDA (Feb. 12, 2015), <http://mesaredonda.cubadebate.cu/mesa-redonda/2015/02/12/los-abogados-cubanos-son-defensores-de-la-justicia-social/>; in 2016, there were 187 *bufetes*, all with equal conditions. María Lucía Expósito, *Bufetes Colectivos cumplen más de cinco décadas*, GRANMA, Jan. 18, 2016, <http://www.granma.cu/cuba/2016-01-18/bufetes-colectivos-cumplen-mas-de-cinco-decadas-18-01-2016-23-01-26>.

⁴⁹⁷ Rivera, *supra* note 496.

⁴⁹⁸ Resolución No. 211 [Resolution No. 211], Oct. 13, 2004, Gaceta Oficial Extraordinaria [GOE], No. 13, Oct. 29, 2004.

⁴⁹⁹ Rivera, *supra* note 496. See also Yailin Orta Rivera, *Principios de actuación de la abogacía cubana*, MESA REDONDA (Feb. 11, 2015), <http://mesaredonda.cubadebate.cu/mesa-redonda/2015/02/11/principios-de-actuacion-de-la-abogacia-cubana/>.

⁵⁰⁰ *Bufete de Servicios Especializados*, ORGANIZACIÓN NACIONAL DE BUFETES COLECTIVOS, <http://www.onbc.cu/servicios-onbc> (last visited July 26, 2017).

⁵⁰¹ *Bufete Especializado en Recursos de Casación*, ORGANIZACIÓN NACIONAL DE BUFETES COLECTIVOS, <http://www.onbc.cu/servicios-onbc> (last visited July 26, 2017).

⁵⁰² See under “Servicios Legales,” <https://www.minjus.gob.cu/news.php> (last visited July 26, 2017). For additional information on Cuba's “independent” law offices, see EVENSON, *supra* note 16, at 86. These “independent” offices are linked to a government ministry or other Cuban entity.

⁵⁰³ See *¿Qué sabes de Consultoría Jurídica?*, MINISTERIO DE JUSTICIA, <https://www.minjus.gob.cu/news.php?readmore=156> (last visited July 26, 2017).

⁵⁰⁴ <http://www.lex-sa.com/eng/> (last visited July 26, 2017); <http://www.claim-sa.com/#claim> (last visited July 26, 2017).

⁵⁰⁵ See, e.g., Goyo G. Maestro, *Abogados se instalan en Cuba para asesorar empresas*, CARTAS DESDE CUBA (May 19, 2016), <http://cartasdesdecuba.com/abogados-se-instalan-en-cuba-para-asesorar-empresas/> (Q & A with Spanish lawyer José María Mohedano about his role as a legal consultant in Cuba for Spanish and other European companies that want to establish businesses on the island).

E. ORGANIZACIÓN NACIONAL DE BUFETES COLECTIVOS (ONBC) (NATIONAL ORGANIZATION OF COLLECTIVE LAW FIRMS)

On June 8, 1984, Cuba's Council of State enacted *Decreto-Ley No. 81, "Sobre el Ejercicio de la Abogacía y la Organización Nacional de Bufetes Colectivos"* (Decree-Law No. 81, "On the Legal Profession and the National Organization of Collective Law Firms").⁵⁰⁶ This Decree-Law created a new organization for Cuban lawyers, the *Organización Nacional de Bufetes Colectivos* (ONBC) (National Organization of Collective Law Firms). The ONBC was defined in Article 5 of Decree-Law No. 81 as an "autonomous national entity of social interest and professional character, with legal personality and its own patrimony, voluntarily integrated by lawyers."⁵⁰⁷ Structurally, the Decree-Law created an *Asamblea General* (General Assembly) as the organization's highest body, composed of delegates elected by various *bufetes* for a period of five years.⁵⁰⁸ The ONBC effectively serves a dual purpose; it is a combination bar association and central corporate headquarters for law practice in Cuba.⁵⁰⁹

In accordance with the law, the ONBC's General Assembly meets once a year. Among its functions are the election of the *Junta Directiva Nacional* (National Executive Committee), the approval of annual work and budget guidelines and the reinstatement of those members who had been separated under disciplinary action.⁵¹⁰ The National Executive Committee, composed of seven members (President, First Vice President, Vice President, Treasurer, Deputy Treasurer, Secretary and Deputy Secretary), is responsible for directing the work of the institution between sessions of the General Assembly.⁵¹¹

Decree-Law No. 81 designates the specific category of lawyers who can practice law within the ONBC, establishing five exceptions in which a lawyer who is not connected to the institution may practice. These exceptions include law faculty who want to practice outside the confines of teaching⁵¹² and attorneys who receive special permission from the Minister of Justice (similar to *pro ha vice* admission in the United States).⁵¹³ Attorneys belonging to the ONBC are categorized as members rather than employees and are subject to a labor and disciplinary regime different from lawyers who work in other organizations.

The ONBC has a well populated website that provides access to a variety of information, including the organization's history and a directory of its numerous offices across the island. Links to digitized materials from recent conferences, journals and bulletins, and various legal texts are also posted. There is a calendar of events, and a link for a *consulta gratuita* (free consultation). The ONBC also has a Facebook page and Twitter account.

F. UNIÓN NACIONAL DE JURISTAS DE CUBA (UNJC) (NATIONAL UNION OF CUBAN JURISTS)⁵¹⁴

The *Unión Nacional de Juristas de Cuba* (UNJC) (National Union of Cuban Jurists) is a non-profit and financially self-sufficient organization with non-governmental status and legal personality. It was formed on June 8, 1977, per Article 7 of the 1976 Cuban Constitution. The UNJC has about 16,000 Cuban jurists voluntarily associated with it, including university professors, researchers, lawyers, judges, prosecutors, notaries, consultants and advisors.⁵¹⁵

⁵⁰⁶ See DLEAONBC, *supra* note 482.

⁵⁰⁷ DLEAONBC art. 5 (Eduardo Colón-Semidey trans.).

⁵⁰⁸ DLEAONBC art. 7.

⁵⁰⁹ Clark, *supra* note 273, at 428.

⁵¹⁰ DLEAONBC arts. 8, 9.

⁵¹¹ DLEAONBC arts. 10, 11.

⁵¹² DLEAONBC art. 4(d).

⁵¹³ DLEAONBC art. 4(ch).

⁵¹⁴ The information in this section was primarily gleaned from the UNJC's website, <http://www.unjc.co.cu> (last visited July 26, 2017).

⁵¹⁵ ¿QUÉ ES LA UNJC?, UNIÓN NACIONAL DE JURISTAS DE CUBA, <https://www.unjc.co.cu/quienes-somos> (last visited July 26, 2017).

The UNJC is governed by its own rules and by the *Junta Directiva Nacional* (National Board) and the *Juntas Directivas Provinciales* (Provincial Directive Boards). All organs of the UNJC are composed of elected members. Every five years, the UNJC holds a congress at which members of its *Consejo Nacional* (National Council) and *Junta Directiva Nacional* (National Executive Board) are selected.

The UNJC website highlights the important role of the organization's *Sociedades Científicas* (Scientific Societies). The Societies are associations of national character with a common aim to contribute to the development of legal science and the practice of law, as well as professional development. The Societies sponsor conferences, seminars, workshops and symposia, which are co-sponsored by prestigious academic institutions and national and foreign professionals.

Lawyers who are members of the UNJC's Societies demonstrate exceptional professional performance and meet the general requirements for admission. For foreign specialists who contribute significantly to a Society's activities, there is the *miembro correspondiente* (correspondent member) category. The special category of *miembro de honor* (honorable member) is awarded to professionals, nationals or foreigners who have distinguished themselves for their contributions to the development of a Society's area of activity. Currently, numerous professionals in the United States and Europe belong to one of these special membership categories.

The following are the UNJC's Societies, which each have a web page within the UNJC site:

- *Sociedad Cubana de Ciencias Penales* (Cuban Society of Penal Sciences)
- *Sociedad Cubana de Derecho Civil y de Familia* (Cuban Society of Civil Law and Family)
- *Sociedad Cubana de Derecho Constitucional y Administrativo* (Cuban Society of Constitutional and Administrative Law)
- *Sociedad Cubana de Derecho Laboral y de Seguridad Social* (Cuban Society of Labour and Social Security Law)
- *Sociedad del Notariado Cubano* (Cuban Notaries Society)
- *Sociedad Cubana de Derecho Económico y Financiero* (Cuban Society of Economic and Financial Law)
- *Sociedad Cubana de Derecho Mercantil* (Cuban Society of Commercial Law)
- *Sociedad Cubana de Derecho Internacional* (Cuban Society of International Law)
- *Sociedad Cubana de Derecho e Informática* (Cuban Society of Law and Informatics)
- *Sociedad Cubana de Derecho Agrario* (Cuban Society of Agricultural Law)
- *Sociedad Cubana de Derecho Procesal* (Cuban Society of Procedural Law)

The UNJC publishes four journals. The titles listed below are followed by links to the most recent digital versions posted on the UNJC's website.

- *Revista Cubana de Derecho* (Cuban Law Review): <https://www.unjc.co.cu/sites/default/files/publicacion/RCD.pdf>
- *Revista Cubalex* (Cubalex Review): <https://www.unjc.co.cu/sites/default/files/publicacion/CUBALEX.pdf>
- *Colección Jurídica* (Law Collection): https://www.unjc.co.cu/sites/default/files/publicacion/COLECCION_JURIDICA.pdf
- *Boletín Jurídico* (Law Bulletin): https://www.unjc.co.cu/sites/default/files/publicacion/BOLETIN_JURIDICO.pdf

The UNJC also has two special projects of note:

- *Género y Derecho* (Gender and Law Initiative): <http://www.unjc.co.cu/proyectos/proyecto-g-nero>
- *ECOIURE* (Environmental Law Initiative): <http://www.unjc.co.cu/proyectos/proyecto-ecoiure>

Internationally, the UNJC is affiliated with the American Association of Jurists (AAJ), the International Association of Democratic Lawyers (IADL), the *Unión Iberoamericana de Colegios y Agrupaciones de Abogados* (UIBA) (Union of Ibero-American Bar Associations and Groups of Lawyers), the *Federación de Colegios de Abogados de Centroamérica y el Caribe* (Federation of Central American and Caribbean Bar Associations) and the *Fundación Interamericana de Abogados* (Inter-American Foundation of Lawyers).

G. ABOGADOS INDEPENDIENTES (INDEPENDENT LAWYERS)

In 2010, the *Ministerio de Trabajo y Seguridad Social* (Ministry of Labor and Social Security) released *Resolución No. 32* (Resolution No. 32) (Oct. 7, 2010), which specified 178 professions that could be practiced *por cuenta propia* (through self-employment).⁵¹⁶ The Ministry updated this list in 2011 with *Resolución No. 33* (Resolution No. 33) (Sept. 6, 2011) that added three types of jobs to the 2010 list.⁵¹⁷ Although such professionals as electricians and insurance agents can be self-employed, lawyers cannot. As such, *abogados independientes* practice at their own peril, and the repression of independent attorneys in Cuba has been well documented.⁵¹⁸

The independent law office that has perhaps garnered the most international media attention is Cubalex. Opened by Laritza Diversent Cambara in 2010,⁵¹⁹ the small Havana-based legal center offered free services and focused on human rights issues. The Cuban government denied Ms. Diversent's application to legalize Cubalex in July 2016,⁵²⁰ and state police ransacked its office several months later. Amnesty International posted an "Urgent Action" message on its website pertaining to Cubalex in November 2016: "Members of Cubalex, a Havana-based organization of human rights lawyers, have been subjected to months of harassment and intimidation by the Cuban authorities for their work."⁵²¹ Most of Cubalex's attorneys, including Ms. Diversent, are now residing in the United States after having received political asylum, and they plan to continue their work in exile.⁵²² Other groups of independent lawyers not recognized by the Cuban government are *Corriente Agramontista* (Current Agramontista) and the *Asociación Jurídica Cubana* (Cuban Juridical Association), each having websites with blogs.⁵²³

H. JUECES (JUDGES) AND FISCALES (PUBLIC PROSECUTORS)

1. Judges

There are two types of judges in Cuba: *jueces legos* (lay judges) and *jueces profesionales* (professional judges). According to *EcuRed*, for every 10,000 inhabitants on the island, there are 17 lay judges and one professional judge.⁵²⁴ Lay judges are citizens from all walks of life who are not practicing jurists. They are central to Cuba's judicial system, and they sit on panels at all court levels. *Ley No. 82* (Law No. 82) (July 11, 1997) sets forth the structure, functions and composition of Cuba's People's Courts.⁵²⁵ Military courts are covered separately

⁵¹⁶ Resolución No. 32, Reglamento del Ejercicio del Trabajo por Cuenta Propia [RETCP 2010] [Resolution No. 32, Regulation of Self-Employment], Oct. 7, 2010, Gaceta Oficial Extraordinaria [GOE], No. 12, Oct. 8, 2010.

⁵¹⁷ Resolución No. 33, Reglamento del Ejercicio del Trabajo por Cuenta Propia [RETCP 2011] [Resolution No. 33, Regulation of Self-Employment], Sept. 6, 2011, Gaceta Oficial Extraordinaria [GOE], No. 29, Sept. 7, 2011, http://www.cuba-debate.cu/wp-content/uploads/2011/09/go_x_029_2011_arrendamiento-viviendas.pdf.

⁵¹⁸ See, e.g., American Bar Association Rule of Law Letters: Cuba, http://www.americanbar.org/groups/human_rights/projects/rule_of_law_letter_archives.html (last visited July 26, 2017); "The Cuban Justice System is seriously corrupt," DIARIO DE CUBA (May 26, 2016), http://www.diariodecuba.com/cuba/1464289414_22659.html.

⁵¹⁹ See Paulo A. Paranagua, *Meet a Rare (and Banned) Independent Lawyer in Cuba*, WORLD CRUNCH (Sept. 11, 2015), <http://www.worldcrunch.com/culture-society/meet-a-rare-and-banned-independent-lawyer-in-cuba>.

⁵²⁰ *El Gobierno deniega la solicitud de la asociación Cubalex*, DIARIO DE CUBA (July 19, 2016), http://www.diariodecuba.com/derechos-humanos/1468955390_23969.html.

⁵²¹ *Urgent Action-Human Rights Lawyers Under Threat*, AMNESTY INTERNATIONAL (Nov. 18, 2016), <https://www.amnesty.org/en/documents/amr25/5156/2016/en/>.

⁵²² Mario J. Pentón, *Laritza Diversent and Cubalex Begin Their Life in Exile*, TRANSLATING CUBA (May 5, 2017), <http://translatingcuba.com/category/authors/cubalex/>.

⁵²³ Corriente Agramontista is named for Cuban revolutionary and lawyer Ignacio Agramonte Loynáz (1841–1873), <http://agramontista.blogspot.com> (last visited July 26, 2017); Asociación Jurídica Cubana, <https://ajudicuba.wordpress.com> (last visited July 26, 2017).

⁵²⁴ *Sistema Judicial en Cuba*, ECURED, https://www.ecured.cu/Sistema_Judicial_en_Cuba (last visited July 26, 2017).

⁵²⁵ See LTP 1997, *supra* note 270.

under *Ley No. 97* (Law No. 97) (Dec. 21, 2002).⁵²⁶ Per Article 124 of the Constitution, lay judges and professional judges “have equal rights and duties” in the courts. According to Marjorie S. Zatz, there is a dual intent behind using lay judges: “(1) to bring a *nonlegalist*, popular sense of justice and the reality of everyday life into the proceedings; and (2) to educate others in their [lay judges’] social circles about legal processes, what constitutes a crime, and the kinds of civil and labor problems that come up in court.”⁵²⁷

a. Requirements

Título Tercero (Title Three) of Law No. 82 lists the requirements for serving as judges at all levels of Cuba’s court system. According to Article 43.1, lay judges must maintain a good attitude towards work or activities of social interest, possess an adequate education, good morals and a favorable public image.⁵²⁸ Per Article 42.1, professional judges are required to have a Cuban law degree or a valid foreign law degree, be a Cuban citizen, and possess good morals and a favorable public image. Article 43.2 stipulates that to serve on the Supreme Court, lay judges must be at least 30 years old, while provincial court lay judges must have reached the age of 25, and municipal courts require lay judges to be at least 21 years old. In terms of experience, professional judges in the Supreme Court must have a minimum of 10 years’ experience as a jurist or law professor, while professional judges in the provincial courts need five years, and those in the municipal courts require two years.⁵²⁹ Candidates for most professional judge positions must also pass an exam administered by the *Consejo de Gobierno del Tribunal Supremo Popular* (CGTSP) (Governing Council of the People’s Supreme Court).⁵³⁰

b. Nominations and Elections

The processes for nominating and electing Cuban judges are also described in Law No. 82. Lay judge candidates are initially selected by assemblies in workplaces, neighborhoods, rural zones and university study centers, according to Article 50.3. Per Article 45.2, the professional judges in the Supreme Court are nominated by the President of the Court. The President of the Court also nominates the professional judges for the provincial courts as stipulated in Article 46.1. According to Article 46.2, professional judges in the municipal courts are first recommended by the president of the respective municipal assembly. Municipal assemblies elect municipal lay court judges, and provincial assemblies choose the corresponding municipal court professional judges and provincial lay and professional judges.⁵³¹ The National Assembly selects the judges that serve on the Supreme Court.⁵³² In December 2015, the National Assembly elected 285 lay judges for the Supreme Court for the 2016–2020 term—28 for the military chamber, and 257 for the other chambers.⁵³³

Professional judges are elected for life terms,⁵³⁴ and lay judges for a period of five years during which they work a maximum of 30 days annually.⁵³⁵ A citizen’s role as a lay judge is given priority with respect to his or her employment and social occupation. During his or her time assigned to a court, s/he retains the right to the enjoyment of benefits that would be available in the workplace during his or her absence.⁵³⁶ Law No. 82 also dictates how executive positions in the courts are selected, and it addresses how judicial demotions, promotions, transfers, suspensions, conflicts of interest and disciplinary actions are handled.

⁵²⁶ LTM 2002, *supra* note 292.

⁵²⁷ ZATZ, *supra* note 50, at 166.

⁵²⁸ According to three Supreme Court lay judges that Marjorie S. Zatz interviewed on November 27, 1989, this translates into an individual with a 9th grade education who “behaves her/himself well, is a good and disciplined worker, and is a revolutionary...” ZATZ, *supra* note 50, at 167.

⁵²⁹ LTP 1997 art. 42.2.

⁵³⁰ LTP 1997 art. 42.5.

⁵³¹ LTP 1997 arts. 46.1, 46.2, 49.1.

⁵³² LTP 1997 arts. 45.2, 49.1.

⁵³³ Lauren Céspedes Hernández, *Elección de jueces legos: pasos previos*, GRANMA, May 26, 2015, <http://www.granma.cu/cuba/2015-05-26/eleccion-de-jueces-legos-pasos-previos>.

⁵³⁴ LTP 1997 art. 52.1.

⁵³⁵ LTP 1997 arts. 52.2, 53.4.

⁵³⁶ LTP 1997 art. 53.1.

2. Public Prosecutors

Ley No. 83 (Law No. 83) (July 11, 1997)⁵³⁷ covers the nomination and election of public prosecutors, who must have a valid law degree, be a Cuban citizen, and possess good morals and a favorable public image per Article 30.1. The Cuban Attorney General, Vice-Attorney Generals and other prosecutors working in that office must be at least 30 years old, while other public prosecutors must have reached the age of 21.⁵³⁸ Per Article 29.1, the candidates for Cuban Attorney General and Vice-Attorney Generals are proposed by the President of the Council of State and are then elected by the National Assembly. Article 29.2 specifies that the prosecutors working in the Office of the Attorney General are proposed by the Attorney General and then designated by the Council of State. The Cuban Attorney General selects the public prosecutors working at the provincial and municipal courts.⁵³⁹ Law No. 83 also dictates how executive positions in the prosecutors' offices are selected, and it addresses how demotions, promotions, transfers, suspensions and disciplinary actions are handled. There are separate requirements for prosecutors working in the military courts that are specified in *Ley No. 101* (Law No. 101) (June 10, 2006).⁵⁴⁰

I. NOTARIOS (CIVIL LAW NOTARIES)

The role of *notarios* (notaries) in Cuba is similar to that in the rest of the Latin American nations, which primarily follow the civil law tradition.⁵⁴¹ The civil law *notario* generally has more significant responsibilities than notaries serving in common law jurisdictions. In civil law jurisdictions, the *notario* drafts legal instruments, authenticates documents that then have special evidentiary effects and s/he also serves as a kind of public records office.⁵⁴² According to Professor Pedro A. Malavet, the Latin notary more specifically "is a private legal professional to whom the state entrusts exclusively the public function of giving proper legal form and authenticating what would otherwise be a private transaction, making it a public act by memorializing it in a public document."⁵⁴³ *EcuRed* provides various entries related to the notarial practice in Cuba (see under "*Notario*," "*Derecho Notarial*," "*Actas Notariales*" and "*Fe Pública Notarial*"). Cuban *notarios* are not regulated by the ONBC.

Cuba's first law pertaining to notaries was a piece of Spanish legislation enacted in 1873 for Spain, Cuba and Puerto Rico.⁵⁴⁴ After the conclusion of the Spanish-American War, the United States allowed the law to remain in force in Cuba and Puerto Rico. In 1929, the Cuban Congress passed legislation creating a complete *Código Notarial* (Notarial Code).⁵⁴⁵ The Code was an attempt to unify Cuba's notarial regime, which had previously existed as a hodgepodge of various rules, Spanish royal orders and decrees, instructions, military orders and presidential decrees.⁵⁴⁶ Cuba's current notary law was enacted in 1984,⁵⁴⁷ but it has been overlaid numerous times with other legislation. The most recent identified collection of this legislation is a 2005 compilation published by the

⁵³⁷ See LFGR, *supra* note 270.

⁵³⁸ *Id.*

⁵³⁹ LFGR art. 29.3.

⁵⁴⁰ Ley No. 101, de la Fiscalía Militar [LFM] [Law No. 101, of the Military Attorney General], June 10, 2006, Gaceta Oficial Extraordinaria [GOE], No. 14, July 3, 2006, <http://juriscuba.com/wp-content/uploads/2015/10/Ley-No.-101-De-la-Fiscalia-Militar.pdf>.

⁵⁴¹ For a general overview of Latin American notaries, see Pedro A. Malavet, *Counsel for the Situation: The Latin Notary, a Historical and Comparative Model*, 19 HASTINGS INT'L & COMP. L. REV. 389 (Spring 1996).

⁵⁴² MERRYMAN & PÉREZ-PERDOMO, *supra* note 25, at 107.

⁵⁴³ Malavet, *supra* note 541, at 434.

⁵⁴⁴ Ley y Reglamento Orgánico del Notariado de las Islas de Cuba y Puerto-Rico [Law and Organic Regulation of Notaries on the Islands of Cuba and Puerto Rico], Oct. 29, 1873. For an English translation, see U.S. WAR DEP'T, DIV. OF CUSTOMS AND INSULAR AFF., TRANSLATION OF THE NOTARIAL LAWS IN FORCE IN CUBA AND PUERTO RICO (1899). Digitized copy available in the Digital Library of the Caribbean (dLOC), <http://www.dloc.com>.

⁵⁴⁵ CÓDIGO NOTARIAL [CÓD. NOT.] [Notarial Code], Feb. 20, 1929, Gaceta Oficial Extraordinaria [GOE], Feb. 28, 1929. The complete Code, along with an extensive historical introduction, is published in LEGISLACIÓN NOTARIAL DE CUBA CON DISPOSICIONES OFICIALES (concordadas y anotadas por Dr. Francisco Llaca y Argudín) (2d ed. 1931). Digitized copy available in the Digital Library of the Caribbean (dLOC), <http://www.dloc.com>.

⁵⁴⁶ LEGISLACIÓN NOTARIAL DE CUBA, *supra* note 545, at 10.

⁵⁴⁷ Ley No. 50, de Las Notarías Estatales [LNE] [Law No. 50, of State Notaries], Dec. 28, 1984, Gaceta Oficial [GO], No. 3, March 1, 1985, <http://juriscuba.com/wp-content/uploads/2015/10/Ley-No.-050-De-Notarías1.pdf>.

UNJC's Cuban Notaries Society posted on the website of the *Academia Notarial Americana* (American Notary Academy).⁵⁴⁸ Not included in this work are subsequent regulations, including the Ministry of Justice's *Resolución No. 250, Términos para la Prestación del Servicio Notarial* (Resolution No. 250, Terms for Rendering Notarial Service) (Nov. 30, 2015).⁵⁴⁹ There is also a 2015 compilation of the Ministry's dispositions related to *notarios* posted on the MINJUS website.⁵⁵⁰

To be appointed a *notario* in Cuba, an individual must be a Cuban citizen, *Licenciado o Doctor en Derecho* (must have a J.D., LL.M. or S.J.D./Ph.D. in Law), possess a good moral character and reputation, and be authorized by the Ministry of Justice.⁵⁵¹ Notaries cannot hold another position or job, through election or appointment, of inherent administrative and/or executive authority and/or duties.⁵⁵² Exceptions to the aforementioned are positions at the Ministry of Justice, educational or scientific posts and service as a delegate or deputy in the agencies of the National Assembly.⁵⁵³ In the latter two cases, if an individual is elected or appointed to executive positions in such agencies, they cannot practice as *notarios*.⁵⁵⁴ Leaders and officials of government agencies and institutions, their corporations and other government entities, cooperatives and social and mass organizations, will assist the *notario* in the performance of his/her duties, if necessary.⁵⁵⁵ Cuban ambassadors and consuls in foreign countries may serve as *notarios* inside their embassies or consulates.⁵⁵⁶

Noteworthy in the context of Cuban notaries is *Decreto-Ley No. 154, del Divorcio Notarial* (Decree-Law No. 154, Notarial Divorce) (Sept. 6, 1994).⁵⁵⁷ This decree-law authorizes the notary to perform divorces. The *notario* can determine alimony and child support after the divorce. If the *fiscal* (public prosecutor) is opposed to a divorce, and/or the *notario* finds irregularities, the procedure must be removed to an ordinary court.⁵⁵⁸

The Cuban *notario* is an entitled public official⁵⁵⁹ and must obey the law and follow the socialist legal order.⁵⁶⁰ A 2014 article posted on the *Cubainformación* website provides some insight into the *notario* profession in Cuba.⁵⁶¹ In the piece, a young *notaria* is interviewed about her profession, and she explains:

We authorize many documents. The *notario*—or *notaria*, the majority of us are young women—is an essential figure in the legal life of any country, and here in today's Cuba, with all of the changes made to the country's economic model, notarial work has become an essential function, one that gives public legitimacy to agreements and transactions.⁵⁶²

The *notaria* also describes the difficulty of the notarial exam, and she notes the increasing demand for notarial work now that Cubans are allowed to buy and sell real estate and automobiles.⁵⁶³ Despite the importance

⁵⁴⁸ See COMPILACIÓN DE DERECHO NOTARIAL (Leonardo B. Pérez Gallardo et al. comps., 2005), http://www.academianotarialamericana.org/base/leyes/cuba/ley-notarial_leyes_cuba.pdf.

⁵⁴⁹ Resolución No. 250, Términos para la Prestación del Servicio Notarial [RTPSN] [Resolution No. 250, Terms for the Rendering of Notarial Service], Nov. 30, 2015, Gaceta Oficial Extraordinaria [GOE], No. 38, Dec. 3, 2015, <http://juriscuba.com/organismos-estatales-2/justicia/resolucion-no-2502015/>.

⁵⁵⁰ COMPILACIÓN DISPOSICIONES DE LA DIRECCIÓN AÑO 2015: ACTIVIDAD NOTARIAL (Olga Lidia Pérez Díaz comp., 2015), <https://www.minjus.gob.cu/downloads/compilacion2015.pdf>.

⁵⁵¹ LNE art. 8.

⁵⁵² LNE art. 9

⁵⁵³ *Id.*

⁵⁵⁴ *Id.*

⁵⁵⁵ *Id.* art. 5.

⁵⁵⁶ *Id.* art. 2.

⁵⁵⁷ Decreto-Ley No. 154, del Divorcio Notarial [DLDN] [Decree-Law No. 154, Notarial Divorce], Sept. 6, 1994, Gaceta Oficial [GO], No. 13, Sept. 19, 1994, <http://www.ramajudicial.pr/EvaluacionFuncionNotarial/pdf/Cuba-LEY-80-de-notariales-estatales.pdf> (at p. 29).

⁵⁵⁸ DLDN arts. 5–12.

⁵⁵⁹ LNE art. 1.

⁵⁶⁰ LNE art. 4.

⁵⁶¹ *Notarías en Cuba: reportaje a fondo*, CUBAINFORMACIÓN (March 18, 2014), <http://www.cubainformacion.tv/index.php/economia/55404-notarias-en-cuba-reportaje-a-fondo>.

⁵⁶² *Id.* (Julienne E. Grant trans.).

⁵⁶³ *Id.* See *supra* note 73 for the citations to the decree-laws allowing real estate and automobile sales.

and necessity of the *notario* in Cuban society, however, the same article explains how some citizens have been frustrated by long delays and incompetence when utilizing *notarios*.⁵⁶⁴ The aforementioned Resolution No. 250 of 2015 seems to address such complaints by specifying temporal requirements for rendering various types of legal documents. Other sources of information on *notarios* are included in the bibliography below.

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⁵⁶⁴ *Notarías en Cuba*, *supra* note 561.

SECONDARY SOURCES

SERGIO D. STONE

Cuba has a long history of secondary legal literature from colonial times to the present. From 1917 to 1934 nearly 140 law books were printed in Cuba, and 150 law-related titles were published from 1947 to 1950.⁵⁶⁵ Tracking Cuban legal commentary historically is complicated by the fact that the vast majority of legal journals, publications and publishers active before 1959 did not survive the early years of the Cuban Revolution. Little continuity exists between the two periods. In addition, Cuba's socialist economy, coupled with U.S. sanctions, have severely limited interactions between Cuban and U.S. legal scholars—the result being a dearth of English-language treatises devoted to Cuban law since 1959.

A. REFERENCE SOURCES

1. Encyclopedias

A review of bibliographic sources reveals the existence of one legal encyclopedia published in Cuba, Esteban Rodríguez Herrera's *Enciclopedia Cubana Jurídico-Administrativa* (Encyclopedia of Cuban Administrative Law) from 1933. However, catalog records from U.S. libraries indicate that only the first volume of this work was completed.

La Enciclopedia de Cuba,⁵⁶⁶ published in Puerto Rico, provides lists of important laws and presidential decrees passed for selected years from independence until the early 1950s. These legislative lists are found in Volumes 13 and 14, titled *Gobiernos Republicanos*.

2. Legal Dictionaries

Prior to 1959, a handful of general legal dictionaries and dictionaries dedicated to case law, constitutional law and legislation were published on the island. Charles Szladits' *Bibliography on Foreign and Comparative Law* lauded the *Diccionario de Comercio y Derecho en Inglés y Español*⁵⁶⁷ (Spanish and English Legal and Commercial Dictionary, 2nd edition), edited by Juan de Dios Tejada y Sáinz as “the most extensive dictionary of its kind.”⁵⁶⁸

Since 1959, very few bilingual law dictionaries have been published in Cuba. However, three Spanish-language legal dictionaries have appeared in the last decade:

- Carmen Elena Tapia Sánchez and Juan Enrique Tapia Sánchez. *Diccionario de Citas del Pensamiento Jurídico Martiano*. Santa Clara, Cuba: Editorial Capiro, 2005.
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⁵⁶⁵ JOSÉ G. RICARDO, LA IMPRENTA EN CUBA 152, 213–214 (1989).

⁵⁶⁶ LA ENCICLOPEDIA DE CUBA (Gastón Baquera & Vicente Báez eds., 2d ed. 1975).

⁵⁶⁷ SPANISH AND ENGLISH LEGAL AND COMMERCIAL DICTIONARY: A REVISION AND ENLARGEMENT OF THE LAW TRANSLATOR'S REFERENCE GLOSSARY/DICCIONARIO DE COMERCIO Y DERECHO EN INGLÉS Y ESPAÑOL: UNA AMPLIACIÓN DE LA EDICIÓN ORIGINAL DEL GLOSARIO PRÁCTICO DEL TRADUCTOR LEGAL (Juan de Dios Tejada y Sáinz ed., 2d ed. 1945).

⁵⁶⁸ CHARLES SZLADITS, *On Comparative Law and Related Subjects in General*, in A BIBLIOGRAPHY ON FOREIGN AND COMPARATIVE LAW: BOOKS AND ARTICLES IN ENGLISH 32–33 (1955).

B. PRE-1959 TREATISES

1. Bibliographies

The leading bibliographic source for secondary legal materials predating the Cuban Revolution is Crawford M. Bishop and Anyda Marchant, *A Guide to the Law and Legal Literature of Cuba, the Dominican Republic and Haiti*, Washington, D.C.: The Library of Congress, 1944. The guide presents materials arranged in over two dozen legal topics. Each subject starts with an introductory historical essay, followed by analysis of major pieces of legislation, and then a detailed discussion of relevant journals, reports and treatises. This comprehensive and magisterial work should be the starting point for any investigation of 20th century Cuban law, or considered as a source for providing historical context for the current Cuban legal system.

Another helpful bibliography is contained in Alberto Villón-Galdames' dissertation, *Una Introducción a la Bibliografía Jurídica Latino-americana* (An Introduction to Latin American Legal Bibliography), University of Michigan, 1959. The section on Cuba appears on pages 217–241. Contents are arranged alphabetically by author and law periodical title. The bibliography also includes brief annotations in Spanish or English for selected titles.

Armando González's chapter on Cuban law materials in *Cuban Acquisitions and Bibliography*⁵⁶⁹ covers 1868–1968. González highlights major compilations of statutes and jurisprudence, especially for the republican period. He also points out authors of leading works on civil law and other topics.

2. Cuban Publishers

Before 1959, well over 50 different printers and presses were engaged in publishing legal books and journals. This author's review of bibliographic sources has identified the following eight printing presses as leading legal publishing entities from 1898 to 1959.

- Carasa y Cía
- Editorial Lex
- Imprentas C. Martínez y Cía
- Imprenta y Papelería de Rambla, Bouza y Cía
- Imprenta El Siglo XX
- Imprenta P. Fernández
- Jesús Montero Editor, La Habana
- Librería Cervantes

For example, the influential treatises on private international law by Antonio Sánchez de Bustamante y Sirvén were published by Carasa y Cía and Imprenta El Siglo XX. Jesús Montero Editor released the multi-volume legal book series *Biblioteca Jurídica de Autores Cubanos y Extranjeros* (Legal Library of Cuban and Foreign Authors).

3. Online Sources for Treatises

Various commercial databases and free online repositories provide citations and full-text access to a wide array of pre-1959 secondary sources.

The *HathiTrust*⁵⁷⁰ online repository contains over 100 digitized Cuban law treatises and compilations of laws and jurisprudence. The majority of full-text titles are those from the colonial period and republican era texts published before 1923. The more recently published titles are not available in full text due to copyright restrictions.

LLMC Digital currently contains around 40 full-text treatises on Cuban law from independence to the late 1920s. Many of these books are legal codes, although a few titles are doctrinal works on specific areas of law. *LLMC Digital* is in the first stages of developing a major collection of digitized Cuban legal materials sourced primarily from the University of Michigan Law Library, University of Florida's

⁵⁶⁹ Armando E. González, *Legal Materials*, in CUBAN ACQUISITIONS AND BIBLIOGRAPHY: PROCEEDINGS AND WORKING PAPERS OF AN INTERNATIONAL CONFERENCE HELD AT THE LIBRARY OF CONGRESS, April 13–15, 1970 (Earl J. Pariseau ed., 1970).

⁵⁷⁰ <https://www.hathitrust.org/> (last visited July 25, 2017).

main library, University of Miami, Library of Congress, Columbia University and the Biblioteca Nacional de Cuba José Martí.⁵⁷¹

Gale Cengage's *The Making of Modern Law: Foreign Primary Sources, 1600–1970* database includes around 30 titles covering Cuban legislation and treatises from the late 19th century to the 1920s. A handful of these are English-language books that are primarily translations of statutes.

The *Handbook of Latin American Studies*⁵⁷² is a free online database of bibliographic records maintained by the Library of Congress. It contains an extensive collection of citations of pre-1959 legal titles, including treatises, journal articles and government reports in Spanish and English.

Florida International University's (FIU) Mario Díaz Cruz Collection provides a fascinating glimpse into the practice of law before the Castro regime. Mario Díaz Cruz was a prominent attorney and professor of law at the Universidad de La Habana, focusing on commercial law, contracts, property and constitutional law.⁵⁷³ He left Cuba in the early years of the Revolution, bringing his law library with him to the United States. Out of nearly 2,300 titles in the Díaz Cruz Collection, 380 were published in Cuba.⁵⁷⁴ The remaining books in the Collection were published overseas and cover law from the United States, France, Italy, Spain and numerous Latin American countries. This suggests that republican era Cuban law practitioners regularly consulted scholarship and primary sources from other civil law jurisdictions. The FIU Law Library has posted online high quality scans of two dozen Cuban law titles from the Díaz Cruz Collection.⁵⁷⁵

C. POST-1959 TREATISES

1. Bibliographies

Bruce Zagaris and Jay Rosenthal. "A Selected Bibliography of the Cuban Legal System, 1959–1983," 15 *Lawyer of the Americas* 545 (Winter 1984). Republished in the *Modern Legal Systems Cyclopedia*. This article includes citations to legislation and secondary sources in English.

Kate Wallach. *Union List of Basic Latin American Legal Materials*. Published for the American Association of Law Libraries (AALL) by F. B. Rothman (1971). A brief four-page section on Cuba lists citations to compilations of Cuban statutes by subject in Spanish and English held in U.S. libraries.

Rolando A. Alum. *A Selected Bibliography on Cuban Constitutional Law: 1812–1973, With Annotations*. University of Pittsburgh. Center for Latin American Studies, 1973. Helpful for historical purposes, but written before the adoption of the 1976 Cuban Constitution.

Jean Lisbonne's chapter on Cuba in the *International Encyclopedia of Comparative Law*, Tübingen: J.C.B Mohr Siebeck (Victor Knapp, ed. 1979), provides short introductions to various areas of law. The material is current only through 1977.

2. Cuban Publishers

After the Cuban Revolution, the legal publishing environment changed dramatically. Below is a list of legal publishers active in Cuba during the last 55 years. Among the leading publishers in recent years are Félix Varela, Editora ONBC and Editorial Ciencias Sociales, along with the university presses.

- Cámara de Comercio de la República de Cuba
- Ediciones ENSPES, La Habana, Ministerio de Educación Superior
- Ediciones Universidad de Camagüey
- Editora ONBC, Organización Nacional de Bufetes Colectivos (1992-current)

⁵⁷¹ LLMC Digital, *LLMC Digitizing Cuban Primary Legal Sources* (Oct. 18, 2016), <http://llmc.com/newsstory.aspx?news=76>.

⁵⁷² <http://lcweb2.loc.gov/hlas/> (last visited July 25, 2017).

⁵⁷³ Matthew C. Mirow, *Comparative Law in Miami: Mario Díaz Cruz and the Comparative Juridical Review*, 85 *REVUE DE DROIT INTERNATIONAL ET DE DROIT COMPARÉ* 213, 217 (2008).

⁵⁷⁴ See Excel file of collection holdings provided by the Florida International University Law Library (on file with author).

⁵⁷⁵ Cuban Law Collection, http://ecollections.law.fiu.edu/cuban_law/ (last visited July 25, 2017).

- Editorial Ácana, Camagüey (1991–current)
- Editorial Ciencias Sociales (1970s–current)
- Editorial Félix Varela (1992–current)
- Editorial Librería Martí
- Editorial ORBE
- Editorial Oriente (Santiago de Cuba)
- Editorial Pueblo y Educación
- Editorial UNIJURIS
- Editorial Universitaria (1980s–current)
- Facultad de Derecho, Universidad de La Habana
- Instituto Cubano del Libro (1960s–current)
- Ministerio del Interior
- Ruth Casa Editorial, La Habana
- Tribunal Supremo Popular
- Unión Nacional de Juristas de Cuba (1977–current)
- Universidad de Holguín
- Universidad de Oriente, Santiago de Cuba

3. Spanish Publishers

After Cuban independence, publishers in Spain continued to commission titles devoted to Cuban law. This trend continues to the present day. In particular, Editorial Académica Española, Editorial Dykinson, J.M. Bosch Editor, Reus and Tirant lo Blanch publish treatises on Cuban law.⁵⁷⁶

4. Online Sources

There are a number of online sources, free and subscription-based, that provide the full texts of Cuban legal treatises.

The Universidad de La Habana's School of Law has created an online compendium of PDFs of recently published treatises arranged according to the following subjects: civil and family law, legal history and theory, criminology, penal law and international law. From the law school's home page, select "*publicaciones*" (publications) and then "*libros jurídicos*"⁵⁷⁷ (legal books).

An excellent source for identifying doctrinal legal treatises written by Cuban scholars is the *Revista Cubana de Derecho*⁵⁷⁸ (Cuban Journal of Law) published by the *Unión Nacional de Juristas de Cuba* (UNJC) (National Union of Cuban Jurists). The Universidad de La Habana's School of Law has posted issues online from 2008 to current. Usually published in the January–June issue of each year, the section titled "*Premio Nacional de Derecho Carlos Manuel de Céspedes*" (Carlos Manuel Céspedes National Law Prize) recognizes a leading legal scholar working in Cuba. The accompanying text lists major publications authored by the prize winners.

The *Revista Cubana de Derecho* also includes a "*Notas Bibliográficas*" (Bibliographic Notes) section, compiled by Cuban legal academics, in each issue that lists leading texts by topic. For instance, Issue 32 (July–Dec. 2008) provided a list of Cuban administrative law books, many of which date from before the 1959 Revolution. The journal also publishes *Recensiones de Libros* (Book Reviews) of recently published titles. Lastly, *Publicaciones Recibidas* (Publications Received) also lists recently published Cuban legal titles, as well as books covering Latin American and Spanish law.

The subscription database *vLex* offers two legal journals and over 70 treatises on Cuban law online in full text. *vLex* includes books from Cuban and Spanish publishers, such as Dykinson, Bosch and Editorial Académica

⁵⁷⁶ Representative recent titles include LEONARDO B. PÉREZ GALLARDO coord., *EL DERECHO EN CUBA* (2015); RAFAEL-ANDRÉS VELÁZQUEZ PÉREZ, *INVERSIONES EXTRANJERAS SOSTENIBLES: UN ANÁLISIS ALTERNATIVO DEL DERECHO INTERNACIONAL DE INVERSIONES ENFOCADOS SOBRE CUBA* (2015).

⁵⁷⁷ <http://www.lex.uh.cu/node/34> (last visited July 25, 2017).

⁵⁷⁸ <http://www.lex.uh.cu/node/48> (last visited July 25, 2017).

Española. The overwhelming majority of books on vLex were published in the last five years and cover a wide range of topics, including agricultural law, commercial law, constitutional law, criminal law, urban planning, environmental law and family law.

D. PRE-1959 JOURNALS

During the late colonial and republican eras, over 30 legal journals were published in Cuba. Among the most prominent journals were the *Revista Cubana de Derecho*, published by Imprenta de F. Verdugo from 1929 to 1959, and *Revista de Derecho Internacional: Órgano del Instituto Americano de Derecho Internacional*. The *Revista Cubana de Derecho* included supplemental publications pertaining to doctrine, legislation and jurisprudence. Antonio Sánchez de Bustamante y Sirvén served on the editorial board of the *Revista de Derecho Internacional*.⁵⁷⁹

Below are listed colonial and republican era Cuban legal journals held by U.S. libraries with indications if they are available online in full text. Dates are approximations based on a review of OCLC's *WorldCat* and other online library catalogs.

- *Anuario de la Facultad de Ciencias Sociales y Derecho Público* (1950–1956)
 - Universidad de La Habana
- *Anuario de la Sociedad Cubana de Derecho Internacional* (1917–1949)
 - Available online at *HathiTrust*, 1917–1922.
- *Enquiridión* (1953–1955)
 - Criminal law journal
- *Impuestos del Estado* (1936–1960)
 - Taxation journal
- *Oriente: Revista General del Derecho* (1932–1933)
 - Santiago de Cuba
- *Repertorio Judicial* (1925–1960)
 - Colegio de Abogados de La Habana
- *Revista Cubana de Derecho* (1941–1959)
 - Imprenta de F. Verdugo
- *Revista Cubana de Derecho. Sección de Legislación* (1926–1936)
- *Revista Cubana de Derecho. Sección Doctrinal* (1929–1937)
 - Imprenta de F. Verdugo
- *Revista Cubana de Derecho Índices de la Jurisprudencia Penal* (1929–1931)
- *Revista Cubana de Derecho Público* (1951–?)
- *Revista de Derecho y Ciencias Sociales: Publicación Universitaria de Estudiantes* (1942–?)
- *Revista de Derecho Internacional: Órgano del Instituto Americano de Derecho Internacional* (1922–1949)
 - *HathiTrust* has full-text 1922 Volumes 1 & 2. Snippets from 1923–1940.
- *Revista de Jurisprudencia. Ciencia.-Literatura.-Variedades* (1856–1858)
 - Continued as *Revista de Jurisprudencia y Administración y de Comercio* (1959–1962)
 - Available online at *HathiTrust*, 1856–1862.
- *Revista de los Estudiantes de Derecho* (1916–1918)
- *Revista del Colegio de Abogados de La Habana* (1938–1951)
- *Revista del Foro* (1893–1916)
 - *HathiTrust* has the 1894 issue.
- *Revista General de Derecho* (1883–1893)
 - Colegio de Abogados de La Habana
- *Revista Juridical. Colegio de Notarios de La Habana* (1912–1914)
 - Notaries
- *Revista Penal, Santiago de Cuba* (1932–1942)
- *Revista Penal de La Habana* (1938–1944)

⁵⁷⁹ BISHOP & MARCHANT, *supra* note 20, at 12.

- *Revista Trimestral de Derecho Privado* (1924–1928)
 - Available on *LLMC Digital*.
- *Verbum : Órgano Oficial de la Asociación de Estudiantes de Derecho, Universidad de La Habana* (1937–1937)
 - Reprinted in 2001.
 - No full text (search only capability) on *HathiTrust*.

E. POST-1959 JOURNALS

1. English-Language Journals

Although only a small number of English-language books devoted to Cuban law have been published, U.S. law review articles focusing on Cuban law are published with some frequency. Over the last three decades, hundreds of articles have appeared in U.S. academic law journals analyzing Cuba's legal system, human rights violations and the U.S. economic embargo.

As foreign investment increases, law journals from commercial publishers will undoubtedly expand their coverage of Cuban legal developments. Journals such as *Latin Lawyer* and *Corporate Counsel* (particularly its "Focus Latin America" quarterly supplement) will most likely turn their attention to Cuban legal developments as commercial rapprochement between the United States and Cuba deepens.

a. Bar Journals

The Cuban American Bar Association, based in Miami, has published articles on legal and political changes in Cuba and amendments to the Cuban Assets Control Regulations for many years. The majority of articles appear in its magazine, *CABA Briefs*. State bar journals occasionally publish articles on attorney visits to Cuba and people-to-people exchanges.⁵⁸⁰

2. Spanish-Language Journals

A number of contemporary Latin American and Spanish scholars study Cuban law and publish in journals from Latin America and the Iberian Peninsula. Access to this literature can be found in the *Index to Foreign Legal Periodicals (IFLP)* on *HeinOnline* and online academic journal repositories based in Spain and Latin America, such as *Dialnet*, *Latindex* and *Redalyc*.

*Dialnet*⁵⁸¹ (Universidad de La Rioja, Spain) provides selected full texts of articles, search functionality in English and selected abstracts in English. The site does not include any Cuban legal journals.

Latindex,⁵⁸² maintained by the Universidad Nacional Autónoma de México (UNAM) is an index of Latin American, Spanish and Portuguese periodical titles offering content similar to *Ulrich's Periodicals Directory*. *Latindex* provides bibliographic information for three Cuban legal journals: *Revista Cubana de Derecho*, *Revista Cubana de Derecho Ambiental* (Ministry of Science, Technology and Environment) and *Anuario del Centro de Investigaciones Jurídicas* (published by the Ministry of Justice's Center for Legal Research). *Latindex* lacks an English-language search interface and does not provide the full texts of articles or table of contents information.

*Redalyc*⁵⁸³ (*Red de Revistas Científicas de América Latina y el Caribe, España y Portugal*), maintained by the Universidad Autónoma del Estado de México offers selected full texts of articles and many abstracts in English and Spanish. *Redalyc* does not include any Cuban law journals.

⁵⁸⁰ Examples of recent state bar journal articles: Thomas Bauer et al., *Cuba's Legal Composite: A Blend of the Familiar and the Foreign*, 69 BENCH & B. MINN. 24 (Jan. 2012); Jared Carter, *Vermont and Cuba: An Unlikely Cultural and Legal Connection*, 37 VT. B. J. 22 (Winter 2012) (discussing the Cuban Law CLE program sponsored by Burlington College and the Vermont Bar Association).

⁵⁸¹ <https://dialnet.unirioja.es/> (last visited July 25, 2017).

⁵⁸² <http://www.latindex.org/> (last visited July 25, 2017).

⁵⁸³ <http://www.redalyc.org/home.oa> (last visited July 25, 2017).

3. Journals Available in Full Text or Indexed Online

The *Revista Cubana de Derecho*⁵⁸⁴ (1972–current) is the most prominent doctrinal legal journal published in Cuba. Originally established in 1972, it has been under the editorial control of the UNJC since 1977. It is indexed in the *Index to Foreign Legal Periodicals (IFLP)*, starting from 1987. Full-text articles are available on vLex, 2005–current. The *Revista* is also available online via the website of the School of Law of the Universidad de La Habana.

a. Other Cuban Law Journals Available Online

*Boletines del Tribunal Supremo*⁵⁸⁵

Cubalex: Revista Electrónica de Estudios Jurídicos (1996–current). Edited by *Unión Nacional de Juristas de Cuba* and published by Editorial UNIJURIS. Available on vLex and online 2012–2014.⁵⁸⁶

Justicia y Derecho, revista del Tribunal Supremo Popular de la República de Cuba (2003–current). Available online 2003–2013 through the Universidad de La Habana website.⁵⁸⁷

Legalidad Socialista: Boletín de Información Jurídica Editado por la Fiscalía General de la República (1978–current). Available online 2004–current.⁵⁸⁸ According to the newspaper *Juventud Rebelde*, the journal was renamed *Legalidad, Derecho y Sociedad* (Legality, Law and Society) in 2014.⁵⁸⁹ Available online 2010–2014.⁵⁹⁰

Revista Jurídica. Ministry of Justice (1983–current). Available online 2009–2013.⁵⁹¹

4. Other Cuban Law Journals with Print Holdings in U.S. Libraries

- *Anuario del Centro de Investigaciones Jurídicas* (2003–current)
 - Ministry of Justice's Center for Legal Research
- *Boletín del Tribunal Supremo Popular* (1974–current)
- *Boletín Oficial Registro Mercantil Central* (2005–current)
- *Boletín ONBC* (2000–?)
- *Cuaderno de Legalidad Socialista* (1983–?)
 - Fiscalía General de la República de Cuba, Centro de Documentación Técnica Jurídica
- *Divulgación Jurídica* (1983–?)
 - Ministry of Justice
- *El Jurista: Órgano de la Unión Nacional de Juristas de Cuba* (1988–?)
- *Información Jurídica* (1975–1976)
 - Continued by *Revista de Información Jurídica* (Fiscalía General de la República de Cuba).
- *Revista de Derecho Económico* (1988–?)
 - Sistema de Arbitraje Estatal
- *Revista Jurídica* (1984–current)
 - Departamento de Divulgación del Ministerio de Justicia de la República de Cuba
- *Temas de Derecho* (1987–?)
 - Ministry of Justice

⁵⁸⁴ <http://www.lex.uh.cu/node/48> (last visited July 25, 2017).

⁵⁸⁵ <http://www.lex.uh.cu/node/45> (last visited July 25, 2017).

⁵⁸⁶ <http://www.lex.uh.cu/node/46> (last visited July 25, 2017).

⁵⁸⁷ <http://www.lex.uh.cu/node/47> (last visited July 25, 2017).

⁵⁸⁸ <http://www.fgr.cu/es/publicaciones> (last visited July 25, 2017).

⁵⁸⁹ Susana Gómez Bugallo, *Una Fiscalía aún más del pueblo*, JUVENTUD REBELDE, Nov. 10, 2014, <http://www.juventudrebelde.cu/cuba/2014-11-10/una-fiscalia-aun-mas-del-pueblo/>.

⁵⁹⁰ <http://www.proyesc.cu/rcda/inicio.php> (last visited July 25, 2017).

⁵⁹¹ http://www.minjus.cu/viewpage.php?page_id=17 (last visited July 25, 2017).

F. RESEARCHING U.S. SANCTIONS AND THE ECONOMIC BOYCOTT OF CUBA

Despite the recent normalization of relations between the governments of the United States and Cuba, American investors in Cuba must continue to abide by the Trading With the Enemy Act, the Cuban Liberty and Democratic Solidarity Act of 1996, Cuban Assets Control Regulations and relevant Export Control Regulations. The U.S. executive branch is incrementally relaxing Commerce and Treasury Department regulations related to Cuba; however, a complete repeal of trade restrictions will require new Congressional legislation.

Creighton University School of Law's 2007 *Report on the Resolution of Outstanding Property Claims Between Cuba and the United States*⁵⁹² provides a helpful introduction to the legal issues involving the expropriation and nationalization of property during the early years of the Cuban Revolution.

Recent editions of Practising Law Institute's *Coping with U.S. Export Controls* have included chapters on Cuba.⁵⁹³ Bloomberg BNA's *Export Reference Library* offers a current awareness service that tracks amendments to the Cuban Assets Control Regulations and the Export Control Regulations.

There are a number of general export control treatises that address Cuba in some detail:

- John R. Liebman, Roszel Cathcart Thomsen, and James E. Bartlett. *United States Export Controls*. Law Journal Press (7th ed. 2013).
- Lillian V. Blageff. *Corporate Counsel's Guide to Economic Sanctions and Embargoes*. West (2007). Available on *Westlaw*; originally a Business Law Inc. publication.
- Lillian V. Blageff. *Corporate Counsel's Guide to Export Controls*. West (2nd ed. 2011). Available on *Westlaw*; originally a Business Law Inc. publication.
- Eric L. Hirschhorn. *The Export Control and Embargo Handbook*. Oxford University Press (3rd ed. 2010).

G. CUBAN LAW COURSES AND INITIATIVES AT U.S. LAW SCHOOLS

In recent years, U.S. law schools have started offering courses and seminars on Cuban law. Pedro Freyre and Augusto Maxwell of Columbia Law School teach "Cuba: Law, Policy and Transition." The University of Miami recently offered "Cuban Civil Law: Myth or Reality?"⁵⁹⁴ In addition, Southern Illinois University School of Law offers "Legal Globalization and Comparative Law: Cuba."⁵⁹⁵

Columbia Law School inaugurated in 2015 the Cuba Capacity Building Project to "foster the development of the legal institutions necessary for Cuba to transition to a more market-based economy."⁵⁹⁶ The Cuba initiative is directed by Adjunct Senior Research Scholar Natalia Delgado.

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⁵⁹² MICHAEL J. KELLY ET AL., REPORT ON THE RESOLUTION OF OUTSTANDING PROPERTY CLAIMS BETWEEN CUBA & THE UNITED STATES (2007), http://works.bepress.com/michael_kelly/2/.

⁵⁹³ PETER L. FLANAGAN ET AL., COPING WITH U.S. EXPORT CONTROLS AND SANCTIONS (Commercial Law and Practice Course Handbook Ser. No. A-985, 2015).

⁵⁹⁴ https://lawapps2.law.miami.edu/clink/course.aspx?cof_id=1127 (last visited July 25, 2017).

⁵⁹⁵ http://www.law.siu.edu/_common/documents/courses/sp14-syllabi/legal-globalization-cuba-s14.pdf (last visited July 25, 2017).

⁵⁹⁶ https://www.law.columbia.edu/media_inquiries/news_events/2015/june2015/cuba-capacity-conference-2015 (last visited July 25, 2017).

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ONLINE RESOURCES

JOOTAEK LEE

Listed below, primarily organized by topic, are selected commercial and free Web-based resources that contain information on Cuba. Although this compilation was crafted to emphasize law-related sources, it also includes websites for general background information and statistics, human rights research in the Cuban context and current awareness. Both Spanish- and English-language sources are listed.

This collection of resources does not constitute an exhaustive list, but rather an attempt to recognize core sources.⁵⁹⁷ As such, note that the following section on "Non-Legal Resources" also contains an annotated list of sites that provide information related to Cuban law and legal developments. In addition, other sections of this Guide reference potentially valuable online sources that may not be listed below. As previously noted, the availability of Cuba-based websites may be intermittent and their overall reliability uncertain.

A. BACKGROUND INFORMATION AND STATISTICS

There are multiple online sources where researchers can obtain factual background information on Cuba. Listed here are the *CIA World Factbook* and the *Economist Intelligence Unit* (EIU), which are among the most well-known sites that provide country information. Cuba's national statistics agency also has a useful website, although information there is available exclusively in Spanish.

- *CIA World Factbook* (U.S. Central Intelligence Agency)
<https://www.cia.gov/library/publications/the-world-factbook/geos/cu.html>
This source provides U.S. government profiles of countries and territories around the world. The *Factbook* includes information on Cuba's geography, population, government, legal system, economy, energy, transportation, communications, etc. A brief history of Cuba, beginning with the arrival of Columbus, is also offered.

⁵⁹⁷ For an exhaustive directory of Cuba-related organizations around the globe that includes Web addresses, see *Country-Related Organizations*, in CUBA 499–529 (Ted A. Henken, et al. eds., 2013).

- *Economic Intelligence Unit* (EIU) (The Economist Group)

<http://country.eiu.com/cuba>

The EIU, which is part of the United Kingdom's Economist Group, provides a constant flow of analysis and forecasts on more than 195 countries and six key industries. The site is designed to help executives make informed business decisions through dependable intelligence and customized research. For Cuba, the EIU offers basic data, fact sheets, and information on politics, the economy and investment risks, along with various reports and analysis. Recent articles mainly focus on Cuba's relationship with the United States.

- *Oficina Nacional de Estadística e Información* (National Statistics and Information Office, Republic of Cuba)

<http://www.one.cu>

This government agency's website is designed to help and support Cuban government functions, such as the establishment of policies and plans in political, economic, social and environmental areas. Like the U.S. Census Bureau, this agency provides data and statistics for multiple sectors, including finance, employment and wages, construction and investment, transport, health and tourism. Data from Cuba's provinces is also provided.

B. RESEARCH GUIDES

Online legal research guides provide great starting points for foreign law investigations. Generally created by law librarians, these guides often provide introductory material, explanations of a jurisdiction's legal system, suggested research strategies and keywords, and links to primary laws and selected secondary sources. The following electronic guides offer direction for researching Cuban law—aggregating and describing available print and online tools.

- *Foreign Law Guide* (Brill)

<http://referenceworks.brillonline.com/browse/foreign-law-guide>

This subscription database is a staple in the area of foreign legal research. Included are brief overviews of the legal systems of about 190 jurisdictions, as well as lists of each jurisdiction's codes, court reports and other significant legal literature. Even if the entry for Cuba has not been updated since 2013, and does not reflect the recent recovery of U.S.-Cuba relations, it does offer a useful overview of the country's legal system and a helpful summary of Cuban law by topic.

- *GlobaLex* (New York University Hauser Global Law School Program)

<http://www.nyulawglobal.org/globalex/Cuba.html>

GlobaLex is a free legal database that provides foreign, comparative and international law research guides. *GlobaLex*'s articles are generally updated every two years, and as more authors contribute, it becomes more comprehensive. "A Guide to Legal Research in Cuba," published in 2015 by Yasmin Morais, provides a brief legal history, a short bibliography and links to journals, newspapers, blogs and other useful resources.

- *Guide to Law Online: Nations* (Law Library of Congress)

<https://www.loc.gov/law/help/guide/nations/cuba.php>

This free website provides links to a collection of foreign legal research guides for about 240 countries, including Cuba. Each guide is divided into categories, such as "Constitution," Executive," "Judicial" and "General Sources." Numerous links are listed, but the country entries lack detailed information, such as research strategies, key terms and historical background. The Cuba guide includes links to various versions of the Constitution, selected legislation and a number of government agencies.

C. LEGISLATION

The following list includes online sources for locating official texts of Cuban laws, as well as unofficial English-language translations. Not included in this list is GLIN (*Global Legal Information Network*), a free database that once provided an excellent English-language digest of Cuban laws (1976–1999); it is unknown whether this valuable source, formerly hosted by the Law Library of Congress, will reappear in any form.⁵⁹⁸ For an alternative

⁵⁹⁸ There is currently an initiative for a GLIN 2. See <http://www.glinf.org/> (last visited Aug. 2, 2017).

source of historical legislation, see the description in this section for *LLMC Digital* under the heading “Other Subscription-Based Legal Databases.”

- *Asamblea Nacional del Poder Popular* (National Assembly of People’s Power, Republic of Cuba)
<http://www.parlamentocubano.cu>
 The official website of Cuba’s unicameral legislative body provides the texts of selected laws. Under the category of “*Labor Legislativo*” (Legislative Work), the “*Documentos Legales*” (Legal Documents) link provides access to *leyes* (laws) approved by the National Assembly and *decretos-leyes* (decree-laws) approved by the Council of State. As of this writing, coverage of *leyes* begins with the First Ordinary Legislature (July 1977) (*Ley No. 1*), and ends with the Eighth Legislature (Dec. 2015) (*Ley No. 120*). Coverage of *decretos-leyes* starts in February 1977 (*Decreto-Ley No. 1*), and ends in November 2015 (*Decreto-Ley No. 335*).
- *Gaceta Oficial* (Official Gazette) (Ministry of Justice, Republic of Cuba)
<http://www.gacetaoficial.cu>
 The *Gaceta Oficial de la República de Cuba* is the Cuban government’s official legislative gazette. It includes laws, decree-laws, decrees and administrative provisions issued by the executive and legislative powers, along with various Supreme Court documents. Issues dating back to January 2, 1991 are posted online, but it should be noted that access to this site in the past has been unreliable and still remains cumbersome; issues of the *Gaceta* are available as RAR compressed files, rather than in digital PDF format. The “*Legislación Cubana*” (Cuban Legislation) link on the left side of the homepage leads to the current Constitution, as well as Cuban Codes and individual laws available in PDF and HTML formats.⁵⁹⁹ Individual laws posted here include *Ley No. 81*, *Ley de Medio Ambiente* (Law No. 81, Environmental Law), *Ley No. 72*, *Ley Electoral* (Law No. 72, Electoral Law) and *Decreto-Ley No. 71*, *Decreto-Ley Sobre el Arrendamiento de Viviendas* (Decreto-Ley No. 71, Decree-Law on Rental Housing).
- *Global-Regulation* (Global-Regulation Inc.)
<https://www.global-regulation.com/>
 This recently launched subscription database provides access to the laws of about 71 countries. As of this writing, 79 Cuban laws are available in the vernacular (with links to the original source) and in English translation (by machine). The database doesn’t currently contain the texts of the Cuban Codes.
- *Juriscuba* (Lic. Walfrido Sebastián Quiñones Bencomo)
<http://juriscuba.com/legislacion-2/leyes/>
Juriscuba is a repository and portal for Cuban legal information and resources. It provides access to legislation, including laws, decree-laws, decrees and instructions of the Cuban Supreme Court’s Governing Council (CGTSP) (1974–current). The site, which attributes ownership to an attorney based in Mérida, Yucatán, México, also offers links to the websites of the country’s main legal institutions (including contact information for Notaries and Civil Registry Offices). In addition, the most current versions of the *Código de Trabajo* (Labor Code) and the Civil, Administrative, Labor and Economic Procedure Law are posted here. There is no information regarding the overall currency of the site, however.
- *NatLaw World* (National Law Center for Inter-American Free Trade)
<http://www.natlaw.com/natlaw-world>
 This database contains laws, regulations, case law and secondary sources related to trade and investment for countries in the Americas. Most of the materials are in Spanish, but many English-language translations are available. Access to the majority of the database’s content is by subscription, although some free materials are offered. Non-subscribers may purchase English-language translations of individual documents. Within “Browse NatLaw Database,” select “Filter by Country,” and then Cuba. The search yields 492 documents, as of this writing.
- *NATLEX* (International Labour Organization)
<https://perma.cc/8YLY-2HNK>
 The International Labour Organization (ILO) populates and maintains NATLEX, which is a database of country-specific labor legislation. Full texts or abstracts of the laws are included, and in some instances, translations in English. As of this writing, under the heading of “Cuba,” there are 235 records arranged by subject, including

⁵⁹⁹ The PDF and HTML versions are not necessarily the same. See the Guide’s earlier section on “Legislation and Codes” for information on the currency of the Codes posted on the *Gaceta*’s website.

freedom of association, elimination of child labor, employment policy, conditions of employment, occupational safety and health, and social security. Most of these documents are only available in Spanish.

- *UNESCO Database of Cultural Heritage Laws* (U.N. Educational, Scientific and Cultural Organization)
<http://www.unesco.org/culture/natlaws/>

This free database covers cultural heritage laws from about 195 countries, important international instruments and documents, and a glossary. Nineteen Cuban documents are available, including several English-language translations. *Ley No. 1, Ley de Protección al Patrimonio Cultural* (Law No. 1, Law on the Protection of Cultural Heritage) (1977), for example, is accessible in Spanish and in an unofficial English-language translation. Coverage for Cuban materials spans from 1976 to 2008.

- *WIPO Lex* (World Intellectual Property Organization)
<http://www.wipo.int/wipolex/en/>

This free database covers intellectual property laws from about 200 countries, related treaties from WIPO and the U.N., and a glossary. WIPO and WTO members are required to submit their intellectual property-related laws to designated authorities, and then *WIPO Lex* administrators compile and organize them. Sometimes, laws are directly submitted to the database administrators. About 65 Cuban laws are available in Spanish, including *Ley No. 14, Ley del Derecho de Autor* (Law No. 14, Law on Copyright) (as amended in 1994).

- *WorldLII* (World Legal Information Institute)
<http://www.worldlii.org/cu/>

Several non-profit regional legal information initiatives created and now maintain *WorldLII*, which is a free website. The site offers legal subject-based links for individual countries. Unfortunately, much of the entry for Cuba focuses on the *Global Legal Information Network* (GLIN). Although GLIN's links are broken, the lists for 2002 to 2008 are helpful for identifying laws, decree-laws, decrees, resolutions and other legal sources by title.

D. NEWS AND CURRENT AWARENESS SOURCES

Although the Cuban press is highly restricted and controlled,⁶⁰⁰ there are numerous Cuban newspaper websites that can be valuable for locating information on legal developments. Along with the sources listed below, worth mentioning here are the national newspapers *Granma*, *Juventud Rebelde* and *Trabajadores*, which all have multilingual or bilingual websites.⁶⁰¹ Also noteworthy is Dow Jones' subscription database *Factiva*, which will search the Web content of a variety of regional Cuban newspapers, including *Escambray* (Sancti Spiritus), *Invasor* (Ciego de Ávila) and *Sierra Maestra* (Santiago de Cuba). Utilizing a free Web-based news aggregator like *Google News*⁶⁰² is also an excellent way of tracking legal and political developments on the island as reported through international media.

- *Cuba News* (*Westlaw*)

The content of the *Cuba News* database in *Westlaw* is provided by NewsRoom. The English-language service provides business and economic information relating to various topics, including banking, biotechnology, e-commerce, manufacturing, oil and gas exploration, real estate, telecom and tourism. Coverage of this writing spans from January 1, 2001, to January 1, 2014.

- *Cubadebate* (*Círculo de Periodistas Cubanos contra el Terrorismo*) (Circle of Cuban Journalists against Terrorism)
<http://www.cubadebate.cu/>

Organized by Cuban journalists, this website is designed to provide an exchange for information on subversive actions and defamatory campaigns against Cuba. While this database may reflect a country bias, it contains a garden variety of news and opinions on politics, the economy, culture, health, science and technology, the

⁶⁰⁰ See FREEDOM HOUSE, *Freedom of the Press 2017: Cuba*, <https://freedomhouse.org/report/freedom-press/2017/cuba> (last visited Aug. 21, 2017).

⁶⁰¹ For a comprehensive list of Cuban newspapers, see <http://www.onlinenewspapers.com/cuba.htm> (last visited Aug. 21, 2017).

⁶⁰² <http://news.google.com> (last visited Aug. 21, 2017).

environment, media, military and intelligence, and society. Some of the website's content is translated into English and archived.

- *CubaNet* (CubaNet News, Inc.)

<https://www.cubanet.org>

This nonprofit digital media organization seeks to realize the rights and well-being of Cuban citizens. Based in Coral Gables, Florida, *CubaNet* has provided news, reports and documents related to Cuba since 1994. The website, which is in Spanish, offers free daily e-mail updates, a searchable news archive and a small collection of IGO and NGO materials pertaining to Cuba.

- *Global Legal Monitor* (Law Library of Congress)

<http://www.loc.gov/law/foreign-news/>

This free online publication, compiled by Law Library of Congress personnel, provides legal news and developments relating to foreign countries, including Cuba. The site is browsable by jurisdiction, and regular updates are available via RSS feed and e-mail.

E. INDEXES

Online legal indexes are effective tools for locating law-related articles. Fee-based electronic indexes, such as those listed below, may be useful in identifying both scholarly and practitioner-oriented articles about Cuba.

- *Index to Foreign Legal Periodicals (IFLP)* (American Association of Law Libraries)

<https://www.law.berkeley.edu/library/iflp/>

IFLP, which is available via *HeinOnline*, indexes over 500 legal journals published worldwide. Most indexed articles on Cuba are published in the *Revista Cubana de Derecho* and in U.S. law journals. At the time of this writing, there are 345 articles related to Cuba listed in the *Index*. The majority of these are in Spanish.

- *Index to Legal Periodicals Retrospective* and *Index to Legal Periodicals & Books Full Text* (EBSCO, H.W. Wilson)

<https://www.ebscohost.com/academic/index-to-legal-periodicals-retrospective;>

<https://www.ebscohost.com/academic/index-to-legal-periodicals-and-books-full-text>

Covering 1908 to 1981, the *Index to Legal Periodicals Retrospective* is an archival database that indexes over 800 legal periodicals published in the United States, Canada, Great Britain, Ireland, Australia and New Zealand. Post-1981 legal articles are picked up by the *Index to Legal Periodicals & Books* that covers more than 1,000 publications. As of this writing, in both databases combined, there are about 220 articles on Cuba-related topics.

- *LegalTrac* (Gale Cengage)

<http://www.gale.com/c/legaltrac>

This database allows users to search more than 875 titles, including academic law reviews and journals, specialty law and bar association publications, and legal newspapers. Coverage starts in 1980. As of this writing, there are references and some full-text links to about 45 articles under “Cuba” as an indexing term. Most of these articles appear in U.S. periodicals.

F. OTHER SUBSCRIPTION-BASED LEGAL DATABASES

The short list below includes two resources that are useful for historical research: *LLMC Digital* and the *Making of Modern Law: Foreign Primary Sources, 1600–1970*. Relevant for more current information are several collections in *HeinOnline*, along with the well-known *vLex*, which is a multilingual database of legal texts. Not listed under this category are the major online U.S. legal databases, *Lexis* and *Westlaw*. Collectively, these services offer minimal coverage of Cuba, except for articles appearing in law review and news databases.

- *HeinOnline* (William S. Hein & Co., Inc.)

<http://home.heinonline.org/>

HeinOnline offers a variety of source-specific digitized collections, including the *Law Journal Library*. Within this collection are more than 2,300 law and law-related periodicals. Coverage begins in most instances with first issues. A search on “Cuba” in the title field yields over 500 articles, as of this writing. Another valuable database in *HeinOnline* that is mentioned elsewhere in this Guide is *World Constitutions Illustrated*.

- *LLMC Digital* (Law Library Microform Consortium)

<http://llmc.com/>

This subscription database contains numerous Cuban historical materials, including constitutions, legislative acts and codes, and treatises. LLMC is currently involved in a project to augment this collection—the Cuban Legal Patrimony Project, which is based on LLMC’s successful Haiti Legal Patrimony Project. The initiative is designed to provide an offsite digital safe haven for Cuban legal materials.⁶⁰³ As of October 2016, LLMC had finished digitizing about 20 percent of a planned 1,000 or more titles.⁶⁰⁴

- *The Making of Modern Law: Foreign Primary Sources, 1600–1970* (Gale Cengage)

<http://www.gale.com/moml-foreign-primary-sources-part-i/>

This subscription database contains historical sources from the law libraries of Yale, Harvard and George Washington University. It contains legislative acts, codes, regulations, journals and commentaries mostly from European countries. There is, however, a small collection of historical Cuban Codes and laws, primarily published in the 19th century.

- *vLex* (vLex Networks S.L.)

<http://us.vlex.com/>

vLex is a commercial legal database specifically focused on foreign and international law. Based in Barcelona, Spain, *vLex* is particularly strong for European countries and several Latin American nations. A selection of Cuban Codes and individual *leyes* is included, along with a collection of articles and treatises pertaining to Cuba. Journals covered include the *Revista Cubana de Derecho* (2006–2016) and *Revista Cubalex* (2012–2014). Access to recent issues (current year only) of the *Gaceta Oficial* is also provided.

G. OTHER FREE WEBSITES AND REPOSITORIES

The following websites are accessible without a subscription. There are several U.S. academic research initiatives on the list, along with some Cuba-based sites.

- *Centro de Gestión Documental* (Cuban Ministry of Foreign Affairs)

<http://archivo.cubaminrex.cu/publicaciones/2013>

The Ministry of Foreign Affairs’ Document Center is located in Havana. It is an archive of materials related to Cuba’s diplomatic affairs, with coverage beginning in 1899. Some useful information about the Center’s projects and a handful of documents are available on the Center’s website under the “*Publicaciones*” (Publications) and “*Patrimonia*” (Heritage) headings. Of particular note are the Ministry’s annual reports (“*Memorias*”) (Reports) that are available in PDF format (2010–2015, as of this writing).

- *Cuba Transition Project* (Institute for Cuban & Cuban-American Studies, University of Miami)

<http://ctp.iccas.miami.edu/default.htm>

The Project was launched in 2002 to study and make recommendations for the reconstruction of a post-Castro Cuba. Available on the bilingual versions of the website are various articles, seminar videos, research studies, human rights reports and databases. There are individual databases containing records for Cuban political prisoners and foreign investors, although it is unclear when these were compiled and last updated.

- *Cuban Research Institute* (Florida International University)

<https://cri.fiu.edu>

The Institute’s website is densely populated with information on Cuba, U.S.-Cuba relations and the Cuban-American community. Within the “Research” section are “Commissioned Reports” (in English and Spanish) on a wide variety of topics, as well as links to *Hemisphere* magazine in PDF format. Under the heading “Cuba Resources and Links” are links to the websites of various Cuban civil organizations, government agencies, online journals and magazines, political organizations, news agencies and research centers.

- *Digital Library of the Caribbean (dLOC)* (Florida International University and Partners)

<http://dloc.com>

The *dLOC* offers a wide variety of materials relating to Caribbean culture and history. According to the database description, *dLOC* includes about 2.6 million pages of news articles, government documents, scientific data and

⁶⁰³ LLMC Digitizing Cuban Primary Legal Sources, *supra* note 571.

⁶⁰⁴ *Id.*

maps, oral histories, literature, musical expressions, artifacts, etc.⁶⁰⁵ A search on the general subject heading of “Cuba” yields thousands of items. Some of the specific subject headings related to Cuba are: Cuba—History—1959–1990, and Cuba–Guantánamo Bay Naval Base. The dLOC also has a separate “Cuban Law Collection” with historical and current materials. Cuba’s national library, the Biblioteca Nacional de Cuba José Martí, is a partner and contributing library, as is LLMC.

- *EcuRed*
http://www.ecured.cu/index.php/Lo_que_EcuRed_no_es
EcuRed is a Cuban *Wikipedia*-like encyclopedia launched in 2010. *EcuRed*’s sponsorship is not entirely clear, but it is seemingly controlled by the Cuban government.⁶⁰⁶ Although entries are written with an obvious bias, *EcuRed* can be a useful starting point to structuralize and understand Cuban legal terms and sources. See, for example, the entries on “*derecho*” (law) and “*doctrina*” (doctrine).
- *Fiscalía General de la República de Cuba* (Office of the Attorney General of the Republic of Cuba)
<http://www.fgr.cu/es>
 According to its website, one of the primary missions of the Office of the Attorney General is to ensure that state agencies, economic and social organizations, and citizens comply with the Constitution, laws and other legal provisions.⁶⁰⁷ The site includes a *Biblioteca Virtual* (Virtual Library), as well as a separate link to a compilation of “*Publicaciones*.” The latter includes the *Revista de la Fiscalía General* (Journal of the Office of the Attorney General) and bulletins and newsletters of regional public prosecutors’ offices. The main site additionally provides links to a small collection of “*Normas Jurídicas*” (Legal Norms), a glossary and a historical overview of the *Fiscalía*.
- *HathiTrust Digital Library* (HathiTrust)
<https://www.hathitrust.org>
 This digital library, which has both subscription and free content, is maintained by HathiTrust, a partnership of over 150 academic and research institutions. Under various subject headings related to Cuba, there are currently more than 19,000 items in various languages, including English. About 4,000 of these are available in “full view” (*i.e.*, open access).
- *Martí Noticias* (U.S. Broadcasting Board of Governors, Office of Cuba Broadcasting)
<http://www.martinoticias.com>
Martí Noticias is the Web component of “*los Martí*,”—the others being *Radio Martí* and *Televisión Martí*. All are based in Miami and are funded by the U.S. government. Broadcasts and Web-based information are in Spanish for a Cuban audience. *Martí Noticias* posts general Cuban news, as well as opinion pieces. Video footage and a live feed from *Televisión Martí* are also accessible on the site.
- *Partido Comunista de Cuba* (PCC) (Communist Party of Cuba) (Editora Política del CCPCC)
<http://www.pcc.cu/>
 The PCC’s website is heavily populated with information. The site provides an overview of the Party’s history, biographies of individuals historically important to the organization and membership lists for the Central Committee, Secretariat and the Politburo. Documents from all seven PCC Congresses are available, as well as the PCC’s *estatutos* (statutes) and *reglamentos* (regulations). Although current news is posted on the site, it is unclear when the full site was last updated.
- *Universidad de La Habana Facultad de Derecho* (Universidad de La Habana Law School)
<http://www.lex.uh.cu>
 This is the website of the law school of the Universidad de La Habana, the oldest university in Cuba. The website includes a section on “*Publicaciones*” that provides full-text access to articles, law books and legal journals in PDF format. The articles and books are organized by topic, such as “*Civil y Familia*” (Civil and Family) and “*Penal y Criminología*” (Crime and Criminology). A selection of journal issues is also posted, including

⁶⁰⁵ DIGITAL LIBRARY OF THE CARIBBEAN, <http://dloc.com/dloc1/about> (last visited Aug. 21, 2017).

⁶⁰⁶ See Rich Potter, *Cuba’s EcuRed: a socialist Wikipedia?*, TRANS[D]UCE (Dec. 30, 2010), <https://transdeuce.wordpress.com/2010/12/30/cubas-ecured-a-socialist-wikipedia/>; see also Rafael Rojas, *Policías del Recuerdo*, EL PAÍS, Jan. 21, 2011, http://elpais.com/diario/2011/01/21/opinion/1295564404_850215.html.

⁶⁰⁷ *Misión y Funciones de la Fiscalía*, FISCALÍA GENERAL DE LA REPÚBLICA DE CUBA, <http://www.fgr.cu/es/mision-y-funciones-de-la-fiscalia> (last updated Aug. 21, 2017).

several of *Justicia y Derecho* and *Revista Cubana de Derecho*. The site also provides the names and e-mail addresses of law faculty members.

H. HUMAN RIGHTS

Cuba has been routinely condemned for human rights abuses, ranging from restrictions on free speech and assembly, to arbitrary arrests and detentions.⁶⁰⁸ Whether Fidel Castro's death on November 25, 2016, will have any influence on the country's human rights situation remains to be seen.⁶⁰⁹ The following list primarily includes international NGOs that monitor and report on national human rights conditions. Also listed is a Cuban NGO that is dedicated to improving human rights conditions locally and disseminating information globally.

- *Amnesty International*
<https://www.amnesty.org/en/countries/americas/cuba/>
 Amnesty International, headquartered in London, England, is an NGO striving for the improvement of human rights worldwide through investigation and exposure of facts.⁶¹⁰ Amnesty is also associated with the U.N. through its ECOSOC special consultative status. Amnesty's page on Cuba offers access to news, commentary, the organization's annual investigative report, and research findings and briefings.
- *Country Reports on Human Rights Practices* (U.S. Department of State)
<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2015&dldid=253005#wrapper>
 The U.S. Department of State annually publishes reports on human rights conditions in U.N. member states and countries that receive U.S. financial assistance. Reports on Cuba examine the country's human rights conditions in depth. These studies treat such matters as the arbitrary deprivation of law, detention conditions, arbitrary arrests, criminal procedures, worker rights, transparency and other absences of civil liberties and political rights.
- *Cubalex*
<https://centrocubalex.com/>
 The *Centro de Información Legal Cubalex* was a non-governmental center for free legal information and advice in Havana that specialized in human rights matters. In September 2016, the Cuban police and other government officials burst into the Cubalex offices without a search warrant, confiscated work materials and files, and detained several employees.⁶¹¹ Most of Cubalex's attorneys are now living in exile in the United States. The organization's website, however, is still online, and archived blog posts are accessible. The most recent posting, as of this writing, is dated May 11, 2017.
- *Las Damas de Blanco* (Ladies in White)
<http://www.damasdeblanco.com/>
 Formed in April 2003, *Las Damas de Blanco* is a group of Cuban women who are fighting for the release of their family members imprisoned for political reasons. The website contains documents, news articles, profiles of the group's members and information on how to support the organization.
- *Freedom House*
<https://freedomhouse.org>
 Freedom House is a U.S. non-profit that strives for freedom and democracy worldwide. Based in Washington, D. C., Freedom House produces a variety of reports that include scores and ratings for individual countries in such areas as freedom of the press, Internet freedom and the political environment. The best method for identifying relevant reports and other materials on Cuba is to utilize the website's search box.
- *Human Rights Watch*
<https://www.hrw.org/americas/cuba>
 Established in 1978, Human Rights Watch is an NGO headquartered in New York City, with ties to the U.N.

⁶⁰⁸ See AMNESTY INTERNATIONAL, *supra* note 439; HUMAN RIGHTS WATCH (2017), *supra* note 440.

⁶⁰⁹ See Christine Armario & Anita Snow, *Imagining Cuba's Human Rights Situation after Fidel Castro*, BOSTON HERALD (Nov. 27, 2016), http://www.bostonherald.com/news/international/2016/11/imagining_cubas_human_rights_situation_after_fidel_castro.

⁶¹⁰ *Who We Are*, AMNESTY INTERNATIONAL, <https://www.amnesty.org/en/who-we-are> (last visited Aug. 21, 2017).

⁶¹¹ *Amnistía Internacional llama a una "acción urgente" para proteger a Cubalex*, CUBANET (Nov. 21, 2016), <https://www.cubanet.org/noticias/amnistia-internacional-llama-a-una-accion-urgente-para-proteger-a-cubalex/>.

through its ECOSOC special consultative status. Human Rights Watch investigates human rights conditions and situations in about 90 countries, including Cuba. Its page dedicated to Cuba features news releases and links to various reports, including the organization's annual *World Report*.

- *Inter-American Commission on Human Rights* (IACHR) (Organization of the American States)

<http://www.oas.org/en/iachr/>

Despite being a founding member of the OAS, Cuba has had a contentious relationship with the organization since the early 1960s; Cuba's membership in the OAS was suspended from 1962 until 2009. The IACHR is a principle organ of the OAS and is part of the inter-American human rights system. As such, the Commission has regularly reported on the status of human rights in Cuba. Specific reports on Cuba were produced in 1962, 1963, 1967, 1970, 1979 and 1983, and the IACHR's annual reports have also covered Cuba. The aforementioned documents are available on the IACHR site, along with other information related to Cuba, such as IACHR precautionary measures. In July 2016, for example, the IACHR requested the adoption of precautionary measures for two human rights defenders in Cuba.⁶¹²

- *Office of the U.N. High Commissioner for Human Rights* (OHCHR) (United Nations)

<http://www.ohchr.org/>

The OHCHR is an organ under the umbrella of the U.N. Secretariat. Its website maintains a number of useful databases that include a wide variety of international instruments, documents and reports. Especially, the *Universal Human Rights Index* (under the "Publications and Resources" heading) provides U.N.-based, country-specific human rights information. About 675 documents related to Cuba are contained in this database, as of this writing. The OHCHR website also includes a summary page on Cuba that includes links to relevant publications, press releases and treaty information.

- *Refworld* (U.N. High Commissioner for Refugees)

<http://www.refworld.org/cgi-bin/texis/vtx/rwmain?page=search&skip=0&query=&coi=CUB>

Refworld is a well-developed online database that focuses on human rights in the context of refugee and asylum law. The content includes treaties, *travaux préparatoires*, domestic laws and cases, country profiles, reports and commentaries. Researchers can browse by country. For Cuba, the database contains numerous documents published by such organizations as the Immigration and Refugee Board of Canada and Reporters Without Borders. Most materials are available in English.

NON-LEGAL SOURCES⁶¹³

IRENE KRAFT

As highlighted in previous sections, finding authoritative information on Cuban law, particularly in English, is a challenge. As such, it is worthwhile and often necessary to consult sources broadly and well beyond the boundaries of legal literature. The purpose of this section is to present a selection of resources that, at first glance, may seem unlikely as sources of Cuban legal information. These unlikely sources, however, may be extremely useful to introduce, understand or clarify specific legal subjects.

A. ACADEMIC JOURNALS

There are numerous English- and Spanish-language periodicals that cover different aspects of Cuban, Caribbean, Latin American and Hispanic studies. Legal analysis and commentary on Cuba in these journals, however, is scarce; research on culture, economics and politics predominates. In spite of this emphasis, however,

⁶¹² INTER-AM. COMM'N ON HUMAN RIGHTS, Resolution 37/2016 (July 3, 2016), <http://www.oas.org/es/cidh/decisiones/pdf/2016/MC236-16-ES.pdf>.

⁶¹³ Compiled by Irene Kraft, Library, Archives and Legacy Officer, International Criminal Court. The views and opinions expressed are solely of the author and do not necessarily reflect those of the institution.

it is worthwhile reviewing the following titles, particularly for contextual information on legal reform and its impact on Cuban society.

1. *América Latina Hoy*
<http://americo.usal.es/iberoame/americalatinahoy>
 Published three times per year by the Instituto de Iberoamérica of the Universidad de Salamanca in Spain, this journal is available open source on *Redalyc*.⁶¹⁴ It covers political and social developments in Latin America and includes articles on Cuba with some contextual information on legal frameworks and reforms.
2. *Cuban Studies*
<http://www.upress.pitt.edu/renderHtmlPage.aspx?srcHtml=htmlSourceFiles/Series/cuban.htm>
 The University of Pittsburgh Press publishes this annual multidisciplinary journal. It occasionally includes a Spanish- or English-language article that provides legal analysis or context on a specific law-related subject.
3. *International Journal of Cuban Studies*
<http://cubastudies.org/the-international-journal-of-cuban-studies/>
 Published by the International Institute for the Study of Cuba (Tring, England), this quarterly journal rarely includes articles of a legal nature. The publication, however, offers a wide range of analysis and commentary on ongoing political developments and reform in Cuba that may provide useful contextual information.
4. *Novedades en Población*
<http://www.cedem.uh.cu/revista>
 The *Centro de Estudios Demográficos* (Center of Demographic Studies) of the Universidad de La Habana publishes this semiannual journal. It is available open source on *SciELO*,⁶¹⁵ and it includes articles on demography and related subjects (e.g., migration, ethnicity and abortion) that often refer to the current and historical legal framework in Cuba.
5. *Revista Cubana de Salud Pública*
<http://www.revsaludpublica.sld.cu/index.php/spu>
 Published by Cuba's *Centro Nacional de Información de Ciencias Médicas* (National Medical Sciences Information Center), and available open source on *SciELO*, this journal contains articles on a wide range of public health issues, such as public health policy and reform. The *Revista*, which is distributed quarterly, occasionally includes a legal analysis of a particular health care or bioethical subject.

B. ACADEMIC INITIATIVES AND RESEARCH INSTITUTIONS

There are a number of academic and autonomous research institutions located around the world that focus on Latin America, including Cuba. Listed below are several of these organizations' online initiatives and websites that would likely prove useful for Cuban legal research.

1. *Consejo Latinoamericano de Ciencias Sociales* (CLACSO) <http://www.clacso.org.ar/index.php?id idioma=ing>
 Although focusing mainly on social policy, CLACSO (Latin American Council of Social Sciences) compiles and provides access to a wealth of open-source academic publications from Latin America, Europe and North America. While patience is required to navigate the portal, consult this UNESCO-associated international NGO for historical, current contextual and legal information on Cuba. CLACSO is based in Buenos Aires, Argentina.
2. *Facultad Latinoamericana de Ciencias Sociales* (FLACSO) <http://www.revflacso.uh.cu/index.php/flacso/about>
 FLACSO (Latin American Social Sciences Institute), which is headquartered in San José, Costa Rica, is

⁶¹⁴ Redalyc – *Sistema de Información Científica Redalyc, Red de Revistas Científicas de América Latina y el Caribe, España y Portugal*, <http://www.redalyc.org> (last visited July 26, 2017).

⁶¹⁵ SciELO – Scientific Electronic Library Online, <http://scielo.org/php/index.php> (last visited July 26, 2017).

an autonomous IGO dedicated to the promotion of the social sciences in Latin America and the Caribbean. FLACSO has a program office in Cuba, mainly dedicated to researching Cuban society and social development. As such, its focus on law or law-related subjects is limited. However, quality contextual information is published and made available through its journal *Estudios del Desarrollo Social: Cuba y América Latina*, which is published triannually.

3. *Latin American Network Information Center (LANIC)*

<http://lanic.utexas.edu/la/cb/cuba/>

Although seemingly no longer updated (July 2015 is the most recent update as of this writing), LANIC still constitutes a valuable repository of introductory sources for any research on Cuba. The portal is part of the Teresa Lozano Long Institute of Latin American Studies, the Benson Latin American Collection and the University of Texas Libraries at the University of Texas at Austin.

4. *Political Database of the Americas*

<http://pdba.georgetown.edu/>

While not as comprehensive on Cuba as on other jurisdictions, and somewhat outdated, this portal remains a useful starting point for understanding government structures and political systems in the Americas, including Cuba. The database is compiled and maintained by Georgetown University's Center for Latin American Studies.

C. ARCHIVAL COLLECTIONS

A legacy from colonial times, public archival institutions have a long-standing tradition in Cuba. Information on available archives and presumably valuable collections is scarce, however, particularly for legal and law-related archives. Two obvious starting points for any archival research are indicated below.

1. *Archivo Nacional de la República de Cuba*

<http://www.arnac.cu>

Founded in 1840, the *Archivo Nacional* (National Archive) stores several collections of interest for legal historians; for example, one relating to land tenancy. Unfortunately, these collections are not digitized and the institutional website is intermittently available. Thus, onsite research is required. The National Archive is part of the *Sistema Nacional de Archivos* (National System of Archives) that functions under the auspices of the Ministry of Science, Technology and Environment (CITMA).

2. *Cuban Heritage Collection*

<http://merrick.library.miami.edu/digitalprojects/chc.php>

The University of Miami Cuban Heritage Collection includes several digitized archival collections of interest to legal historians, including personal documents of Cuban lawyers, the *Junta Provincial de Patronato de Matanzas Records* (Matanzas Provincial Board of Apprenticeship Records) and newspaper clippings relating to Cuban law in the Rosa Ravelo Collection.

D. BLOGS

Since Yoani Sánchez discovered blogging as a powerful tool to circumvent government-imposed limits to freedom of speech nearly 10 years ago, blogs have enjoyed a particular prominence as a source of Cuba-based dissenting public opinion and regime criticism. Blogs are also used by the Cuban government and regime-friendly voices to portray a positive image of Cuba. Unlike U.S.-based bloggers, who tend to concentrate on U.S.-Cuba relations and regime criticism, the Cuban blogging landscape is the best thermometer for the state of affairs in Cuba, including controversial issues at a local level. Blog posts often refer to planned, postponed and overdue policy and legal reforms that are affecting life on the island and may not be hitting the headlines elsewhere. While there is a wealth of interesting blogs, two portals help to find law-related posts.

1. *14ymedio*

<http://www.14ymedio.com/>

After her success with her own blog, *Generación Y*, Yoani Sánchez co-founded *14ymedio* as a platform for regime-critical Cuba-based journalists to voice their opinions. This site links to numerous blogs, has its own Twitter account, is regularly updated and is also available in English.

2. *Translating Cuba*

<http://translatingcuba.com/>

A very useful resource for non-Spanish speakers, this site translates blog entries from a broad spectrum of prominent Cuba-based bloggers, and there is a significant wealth of views on Cuban law and legal reform. This source also serves as a unified search interface for locating current opinions from what are described as “independent” (*i.e.*, not government-sponsored) posts.

E. CUBAN STATE AGENCIES

The official websites of individual ministries (if available) will sometimes provide access to sector-specific legislation. Additionally, there are noteworthy stand-alone government-sponsored websites that may prove useful for locating subject-specific information.

1. *Agencia de Energía Nuclear y Tecnologías de Avanzada*

<http://www.aenta.cu/marco-legal/>

The website of the *Agencia de Energía Nuclear y Tecnologías de Avanzada* (Agency for Nuclear Energy and Enabling Technologies) includes legislation and information in Spanish on the regulation of nuclear energy, nuclear waste, health and safety, and related activities.

2. *Agencia de Medioambiente*

<http://www.medioambiente.cu/index.php/legislacionambiental>

The comprehensive site includes environment-related legislation and regulations. This is an excellent portal, hosted by Cuba's *Agencia de Medioambiente* (Agency for the Environment), which unfortunately has no equivalent in English.

3. *Banco Central de Cuba*

<http://www.bc.gob.cu/English/home.asp>

The *Banco Central de Cuba* (BCC) (Central Bank of Cuba) was created by *Decreto-Ley No. 172* (Decree-Law No. 172) of May 28, 1997.⁶¹⁶ The BCC is the governing authority of Cuba's banking system, and it is responsible for implementing the country's monetary policy. The BCC's well-populated website has an English-language equivalent, although the content of the *Manual de Regulaciones Bancarias* (Bank Regulations Handbook) is only available there in Spanish. The site also posts the current exchange rates for the Cuban peso and the “convertible” Cuban peso, which is pegged 1:1 to the U.S. dollar.

4. *Cámara de Comercio de la República de Cuba*

<http://www.camaracuba.cu/index.php/es/>

The website of the *Cámara de Comercio de la República de Cuba* (Chamber of Commerce of the Republic of Cuba) contains information on regulations pertaining to foreign investment and trade with Cuba. The site also includes specific information, for example, on requesting work permits for foreign nationals. Some original legislation is quoted or available in full text, including a selection of English and other language translations. It is worth navigating both the English- and Spanish-language versions of the site as they differ in content.

5. *Centro Nacional de Información de Ciencias Médicas*

<http://temas.sld.cu/vigilanciaensalud/recursos-de-informacion/reglamentos-sanitarios-2/>

Temas de Salud (Health Topics) is a portal created by the Ministry of Health to aid and inform health care professionals. It comprises a wide range of useful resources, including an overview of the regulatory framework of the Cuban health care system under the heading “*Vigilancia en Salud Pública*” (Public Health Surveillance). A minimal amount of information, particularly relating to travel safety and epidemiological control, is available in English.

⁶¹⁶ Decreto-Ley No. 172, del Banco Central de Cuba [DLBCC] [Decree-Law No. 172, Cuban Central Bank], May 28, 1997, Gaceta Oficial Extraordinaria [GOE], No. 4, May 28, 1997.

6. *Ministerio de Relaciones Exteriores de Cuba—Derechos Humanos*

<http://www.minrex.gob.cu/es/paginas-especiales/derechos-humanos>

Cuba's Ministry of Foreign Affairs (MINREX) has a web page dedicated to communicating the government's official stance on human rights in Cuba, some of which is available in English. While the accuracy of the information may be subject to debate, the outline of government policy and regulation on specific human rights abuses, such as human smuggling and sexual abuse, may prove valuable.

F. MAGAZINES

1. *ReVista*

<http://revista.drclas.harvard.edu/>

ReVista: Harvard Review of Latin America is published three times a year by the David Rockefeller Center for Latin American Studies. It alternates themed issues with those dedicated to a particular Latin American country. While the special issue on Cuba dates back to the year 2000, articles and references to Cuba are recurrent.

2. *Temas*

<http://temas.cult.cu/>

The moderate and intellectually-flavored Cuba-based magazine *Temas* frequently includes a legal article in its quarterly issues. Subjects and points of view can be varied; recent examples include a debate on the need for constitutional reform and a discussion of Cuba's weak private property rights. This quarterly publication is freely accessible online in PDF format, beginning with the July–September 1995 issue.

3. *Vitral*

<http://www.vitral.org/>

Cuba-based *Vitral* defines itself as a Catholic sociocultural magazine. It is the official publication of the *Diócesis de Pinar del Río* (Diocese of Pinar del Río). Besides that, it is also an influential independent voice that expresses concern for political, economic and legal affairs on the island. It is worth sifting through some of the more spiritual content to find the articles covering legal reform and analysis. As of this writing, the April–June 2017 issue (no. 126) is available on the Diocese's website, which also includes an index to all published issues.

G. NEWSPAPERS AND OTHER ONLINE MEDIA

1. National Media

There are numerous local, regional and national print newspapers in Cuba, some of which have an online presence. Based on the currency, content and site stability of their digital versions, they are not primarily considered to be relevant for following legal events. Besides those mentioned in the earlier entry on "Blogs," two Cuba-based news sources worth highlighting are indicated below. Cuban Television's *Mesa Redonda* (Round Table) program is also listed, as its panel discussions sometimes address legal topics.

a. *Agencia Cubana de Noticias*

<http://www.cubanews.acn.cu/>

The *Agencia Cubana de Noticias* (ACN) (Cuban News Agency) provides official information in English on national and international events. While the tone is propagandistic throughout, Cuba's participation in international fora, including the signing of any international agreements, is prominently covered. Note that NewsBank's subscription database *Access World News* currently covers ACN content in English from 1997 through 2015.

b. *Granma*

<http://en.granma.cu/>

The official newspaper of the PCC and undisputable voice of the Castro regime, *Granma* is the channel by which official government announcements are normally made public. Despite this, it is the most reliable source for information on expected and implemented legal reforms. It is published online and in print and has an international edition in several languages, including

English. It is worth consulting the different versions as content varies. Digitized *Granma* archives for the 1965–1992 period are available on LANIC.⁶¹⁷

c. *Mesa Redonda*

<http://mesaredonda.cubadebate.cu>

Mesa Redonda (Round Table) is a television program produced by *Televisión Cubana* (Cuban Television) that airs on weekday evenings. Each segment focuses on a selected topic, and a moderator leads a discussion among invited guests. Topics are of local and international interest, and have sometimes included legal themes. Posted on the *Mesa Redonda* website are taped videos of programs, as well as detailed written summaries of the segments (Spanish only). The site may be searched by keyword to retrieve archived programs. *Mesa Redonda* has active Facebook and Twitter accounts, along with an e-mail alert service.

2. International Media

Cuban news is covered by almost all leading international media. Additionally, there is a wide range of regime-critical news portals based in the United States that follow events in Cuba. In both instances, however, the focus is notably political. Therefore, instead of producing a comprehensive list, a selection of sample useful sources across the print, Web and broadcast spectrum are highlighted below.

a. *Diario de Cuba*

<http://www.diariodecuba.com/cuba>

This site provides news and analysis of current events in Cuba in both English and Spanish. The *Diario* was founded in 2009 in Madrid by a group of Cuban-born journalists, intellectuals and artists.⁶¹⁸ The website is based and registered in Spain.

b. *Havana Times*

<http://www.havanatimes.org/>

This regime-critical site includes Cuban news coverage from Cuban and non-Cuban sources in both English and Spanish. While the selection of news items and interviewees is varied in terms of subject matter, legal issues are covered. The *Times* is edited in Nicaragua, but most of the contributors reside in Cuba.

c. *Latin American Herald Tribune*

<http://www.laht.com/index.asp>

The *Tribune*, which is based in Caracas, Venezuela, is a good starting point for news in English for all the countries in the region, including Cuba.

d. *Miami Herald*

<http://www.miamiherald.com/cuba>

The *Herald* provides coverage of Cuban current affairs in English from a regime-critical perspective. The newspaper is owned by the McClatchy Company, based in Sacramento, California.

e. *Le Monde diplomatique - English Edition*

<http://mondediplo.com/>

While articles on Cuba may not be included frequently in this Paris-based publication, they are analytical and insightful. A subscription is required for both the print and electronic versions.

f. *teleSUR*

<http://www.telesurty.net/english/>

La Nueva Televisión del Sur (New Television of the South) is a pan-Latin American television station based in Caracas, Venezuela. Founded in 2005, the station is sponsored by the governments of Venezuela, Cuba, Ecuador, Nicaragua, Uruguay and Bolivia. Although the station has had its share of criticism for leftist leanings, its bilingual website can be a valuable source for information on Cuba.

⁶¹⁷ Latin American Network Information Center, *Granma Archives Index*, <http://lanic.utexas.edu/la/cb/cuba/granma/> (last visited July 26, 2017).

⁶¹⁸ For an in-depth interview with the *Diario*'s editor-in-chief, see Yusimi Rodríguez, *Interview with Diario de Cuba Editor Pablo Díaz*, HAVANA TIMES (Oct. 14, 2014), <http://www.havanatimes.org/?p=106723>.

CUBAN LEGAL MATERIALS IN U.S. AND CANADIAN LIBRARIES

YASMIN MORAIS

This compilation was created to assist researchers of Cuban law to identify rich collections of primary and secondary sources in libraries throughout the United States and Canada. The libraries included in the listing are a mix of academic, public, government and presidential libraries. Within the category of academic libraries are main libraries, special collections and law libraries. A number of libraries have several sub-collections of Cuban law, as well as relevant resources from other disciplines. Adding to the breadth of the collections are presidential speeches, oral histories, maps and government documents.

This list did not result from a strict empirical survey of libraries. The methodology for selection was based on a combination of the following:

- 1) Conducting searches of library catalogs, using a combination of call number (“Cuban law” falls under the Library of Congress Class KGN), keyword and subject searching. (Variations in library catalog interfaces did not allow for search consistency across institutions);
- 2) Reviewing the collection development policies of libraries (where available);
- 3) Searches on OCLC’s *WorldCat* to determine holdings; and
- 4) Phone calls and e-mails to foreign, comparative and international law (FCIL) librarians, reference librarians, collection development librarians and cataloging librarians.

The criterion of relevancy was considered and account was taken of libraries that include a good mix of pre-Revolution and more current titles, although there were no specific date ranges set.⁶¹⁹ A cut-off point of at least 80 relevant titles was established, however, so libraries with collections falling below that threshold were not included.

The libraries are listed in alphabetical order under the two main headings of “U.S. Libraries” and “Canadian Libraries.” Example titles from each collection are included in the descriptions. Following the main list is a selected bibliography of materials that provide historical context for both Cuban and general Latin American law collections in U.S. libraries.

A. U.S. LIBRARIES

Catholic University of America, Judge Kathryn J. DuFour Law Library (Washington, D.C.)

A search of this library’s catalog yielded over 158 titles related to Cuban law. There was a good mix of current titles and historical materials in both English and Spanish. The collection also includes several Congressional hearings, such as “United States-Cuba Economic Relations” (2003); “Status of United States Trade with Cuba” (2012); “Human Rights Violations” (2015); and “Resolving Issues with Confiscated Property” (2016). The Library also has the *Ley de minas* (2002), *Ley de los tribunales militares* (1979), and various editions of the Cuban Constitution.

The John K. Mullen Library, which is the University’s main library, likewise has a collection of Cuban legal materials.

⁶¹⁹ It should be noted that the U.S. trade embargo, which includes educational materials and books, has severely limited U.S. libraries’ access to Cuban materials. There is at least one vendor, however, that is offering U.S. libraries selected purchase and approval plans for Cuban legal materials—RettaLibros, based in Montevideo, Uruguay. For a list of book vendors offering Cuban materials generally, see the Seminar for the Acquisition of Latin American Library Materials (SALALM) website, <http://salalm.org/booksellers/vendorcontactinfo/> (last visited July 24, 2017).

Columbia University, Arthur W. Diamond Law Library (New York, NY)

The Arthur W. Diamond Law Library has developed the Schiller system, a call number (SP.CU) that is used to identify foreign law. The Schiller system is used alongside the Library of Congress KGN Class. There are approximately 800 titles on Cuban law, which makes this collection significant. The Library's collection includes materials on Cuban constitutional law, criminal procedure and the Mariel detainees. There are a number of translations (Spanish to English) of historical materials as well.

Some items of interest are: *Decreto-Ley No. 302, modificativo de la ley No. 1312, "Ley de migración" de 20 de septiembre de 1976* (2013); *La redacción de la sentencia penal y el recurso de casación* (2008); and *Arbitraje internacional y medios alternativos de solución de litigios: retos y realidades* (2010). The latter two titles are secondary sources.

Florida International University Law Library (Miami, FL)

This law library's resources include the Mario Díaz Cruz Collection, which contains materials from the law firm library of Cuban lawyer Mario Díaz Cruz, who practiced law in Havana from 1915 to 1958. The Law Library acquired the Collection in 2007. It is a rich resource that includes compilations of Cuban laws and decisions of Cuba's Supreme Court, such as *La Jurisprudencia al Día* (1913–1959); *Colección Legislativa* (1899–1959); *Revista Cubana de Derecho* (1929–1957); *Revista del Colegio de Abogados* (1938–1947); *Oriente: Revista General de Derecho* (1932 and 1933); *Colección de Circulares Expedidas por la Real Audiencia Pretoria/de La Habana* (1865–1971); and *Órdenes Civiles* from the U.S. Military Government (1899–1903).

FIU's main campus library (Green Library) has sub-collections, such as the Cuban Living History Project, Cuban Archives and the Guantánamo Bay Collection.

Fordham University, T.J. & Nancy Maloney Law School Library (New York, NY)

Fordham's Law School Library has over 400 titles related to Cuba. Included are the five-volume *Revista trimestral de derecho privado* (1924–1928); *Código de comercio vigente en la República de Cuba* (1909); *Código civil* (1916); *Códigos de Cuba* (2nd ed. annotated) (1919); *Legislación hipotecaria vigente en la República de Cuba* (1909); *Ley electoral de Cuba de septiembre 11 de 1908*; and the *Código electoral* (1940).

George Washington University, Jacob Burns Law Library (Washington, D.C.)

The Jacob Burns Law Library has over 400 titles related to Cuba. A significant number of these are historical codes and other materials from the late 19th and early 20th centuries, particularly in the areas of constitutional, railroad, property and copyright law. There are fewer contemporary titles. Some examples of materials from the collection are: *Translation of the municipal and provincial laws in force in the island of Cuba* (1899), which was published by the U.S. Government Printing Office; *El derecho de la mujer casada* (1945); *El espíritu de la constitución cubana de 1940* (1974); *La situación de los derechos humanos en Cuba: séptimo informe* (1983); and *Derecho procesal civil* (1985). There are also a number of human rights reports published by the Organization of American States (OAS).

Harvard Law School Library (Cambridge, MA)

A review of the Harvard Law School Library's "Collection Development Country List" revealed that an 'A' ranking has been assigned to Cuba, which means that the Library extensively collects and preserves resources from this jurisdiction.⁶²⁰ A search of the catalog yielded approximately 2,275 items, of which 98 are statutes and codes, 96 focus on criminal law, 87 focus on constitutional law and 59 relate to civil procedure. Of these items, 1,721 are in Spanish, 512 are in English, with French and German rounding out the top four languages at 28 and 14, respectively.

⁶²⁰ Harvard Law School Library Collections, *Collection Development Country List*, HARVARD LAW SCHOOL, <http://hls.harvard.edu/library/about-the-library/harvard-law-school-library-collections/> (last visited July 24, 2017).

Most of these materials are pre-Revolution. Currently, the Library acquires most of its Cuban materials from the Uruguayan book vendor RettaLibros.⁶²¹

A sampling of items within the statutes and codes section includes: *Ley de organización del sistema judicial (concordada y actualizada)* (1987); *Comentarios de la ley de los delitos militares* (1982); *Disposiciones legales sobre control estatal* (1989); *Tarifas notariales* (1990); *Ley de inovaciones y racionalizaciones: su reglamento* (1987), and the *Constitución de la República de Cuba* (2015). The last item was published by the ONBC (*Organización Nacional de Bufetes Colectivos*). More recent general titles are: *Estudios sobre el proceso penal* (2014); *Cien problemas de la prueba judicial en lo civil* (2014); *Seguridad social* (2014); and *Abogacía y derecho: gestión de conflictos jurídicos* (2015).

John F. Kennedy Presidential Library and Museum (Boston, MA)

The John F. Kennedy Presidential Library and Museum is a resource for primary source materials in all formats that document the life and career of President Kennedy. Its holdings include the presidential papers of John F. Kennedy, as well as documents related to Robert F. Kennedy and other family members. There are over 400 other collections of personal papers and records from officials, staff, authors and institutions from the Kennedy administration era. The Library also has a large oral history collection and includes sub-collections on the Bay of Pigs Invasion, the Cold War and the Cuban Missile Crisis. The holdings in this library are useful for obtaining personal perspectives on the historical issues that shaped the Cuban legal system from 1959 onward.

LA Law Library (Los Angeles, CA)

The LA Law Library is the second largest public law library in the United States, and it has one of the country's largest foreign and international law collections. A search of its catalog returned 827 titles related to Cuban law. Some titles in the collection are: *Constitución (1976) de la República de Cuba* (1992); *Principal Provisions of Cuban Tax Law* (1962); *Cuban Industrial Property Law* (1936); *Legislación de minerales combustibles de Cuba* (1958–); *Ley de asociaciones y su reglamento* (1989); and *Ley de los tribunales militares* (1977).

The Library also holds copies of the *Gaceta Oficial de la República de Cuba* (1958–1967, including the “*Edición extraordinaria*,” “*Edición especial*” and “*Edición Extraordinaria especial*”). Also held are the 1980 to 1989 editions of *Leyes, decretos-leyes, decretos y disposiciones, publicada en la Gaceta Oficial de la República de Cuba*.

Law Library of Congress (Washington, D.C.)

The Law Library of Congress is the largest law library in the world, with approximately 2.9 million volumes.⁶²² Its Cuban law collection is substantial, and many of the titles are in Spanish. However, the collection also includes English-language titles that have been published outside of Cuba.

The Library currently receives the *Gaceta Oficial*, although the archival collection is incomplete. Other primary documents include the *Código Civil de la República de Cuba: Ley no. 59/1987 de 16 de Julio: anotado y concordado* (2011); *Código Penal de la República de Cuba: Ley no. 62/87: anotado con las disposiciones del CGTSP* (2009); *Código de Familia* (2002); *Ley de Procedimiento Civil, Administrativo, Laboral y Económico* (2012); *Derecho y Medio Ambiente* (2012); and *Análisis de la Constitución Cubana y Otros Ensayos* (2010). One fairly recent title available in English is *Raúl Castro and the New Cuba: A Close-Up View of Change* (2011).

For more details on the Law Library's collection of Cuban materials, see Gustavo Guerra's *In Custodia Legis* blog contribution of March 17, 2015.⁶²³

⁶²¹ E-mail from J. Bridget Reischer, Collection Development Librarian for Foreign and Int'l Law, Harvard Law School Library, to Julienne E. Grant, Reference Librarian/Foreign & Int'l Research Specialist, Loyola U. Chicago School of Law Library, Jan. 20, 2017 (on file with Julienne E. Grant).

⁶²² *About the Law Collections*, LIBRARY OF CONGRESS, <http://www.loc.gov/law/about/collections.php> (last updated Sept. 22, 2015).

⁶²³ Gustavo Guerra, *Cuban Law—Global Legal Collection Highlights*, IN CUSTODIA LEGIS (March 17, 2015), <http://blogs.loc.gov/law/2015/03/cuban-law-global-legal-collection-highlights/>.

New York Public Library (New York, NY)

The New York Public Library is a premier research library for Cuban law. Its extensive collection is a mix of historical materials and contemporary writings on the Cuban legal, political and social systems. There are approximately 358 titles on Cuban law, and the collection includes U.S. Congressional hearings and committee reports. Other important titles are: *Cuban Oil Laws* (1959); *Informe Relativo a la Segunda Conferencia de la paz, reunida en El Haya en 1907* (1908); *New Constitutional Laws for Cuba. Text of the recent measures for the self-government of the island, with comments thereon* (1897); and *Ordenanzas municipales de la ciudad de La Habana* (1855).

New York University Law Library (New York, NY)

A search in JULIUS, the NYU Law Library's online catalog, yields over 400 titles related to Cuban law in both English and Spanish. Among the translated works are *Law and the Organization of the Judicial System of the Republic of Cuba* (1978) and the historical *Railroad Law* (1902). There are also a few titles on Cuban banking law, such as *Cuba: Money and Banking* (2010). The Library also has the *Report on the Resolution of Outstanding Property Claims Between Cuba and the United States* (2007).

Northwestern University, Pritzker Legal Research Center (Chicago, IL)

The Pritzker Legal Research Center has approximately 381 titles pertaining to Cuban law. Included in the collection are U.S. Congressional hearings: "Promoting American Agricultural and Medical Exports to Cuba" (Dec. 11, 2007), and "Future of Property Rights in Cuba" (June 18, 2015). Another noteworthy title is *The Cuban Embargo: Policy Outlook After 50 years* (2014).

The Ohio State University, Moritz Law Library (Columbus, OH)

The Moritz Law Library collection has about 157 relevant titles. There are various codes, as well as a four-volume constitutional law treatise. Some notable titles are: *Ley de Organización del Sistema Judicial* (1979); *Leyes de la Revolución* (1959); *Seis Leyes de la Revolución* (1976); *Código de la Niñez y la Juventud* (1978); and *Ley de la Maternidad de la Trabajadora* (1975).

Organization of American States (OAS), Columbus Memorial Library (Washington, D.C.)

The Columbus Memorial Library serves as an information center and repository for the OAS. Although Cuba's OAS membership was suspended for more than 50 years, the Library nonetheless has a large collection related to Cuba; a search in the online catalog yielded over 250 items. In addition to inter-American reports on human rights, some notable titles held at the Library are: *Situation of Women in Cuba's Prisons* (2003); *Cuba y su Derecho a la Libertad* (1986); *Historia del Estado y el Derecho en Cuba* (1985); and *Cuba, Estados Unidos y el Derecho Internacional Contemporánea* (1983).

Tulane University, Latin American Library (New Orleans, LA)

The Latin American Library was established in 1924 and is a unit of Tulane University's Howard Tilton Memorial Library. It has holdings of approximately 500,000 volumes, including Latin American government publications. A search for Cuban law titles returned 88 records. Among these were: *Statements and Documents Relative to the Isle of Pines Treaty between the United States and Cuba* (1925); and *Translation of the Notarial Laws in Force in Cuba and Puerto Rico* (1888). See also the entry below for Tulane's Law Library.

Tulane University Law Library (New Orleans, LA)

The Tulane University Law Library has approximately 177 titles related to Cuban law. Some of these titles are: *Jurisprudencia cubana* (1912); *Sucesiones testada e intestada* (1947–1949); *Código notarial* (1930); *Compilación ordenada y completa de la legislación cubana de 1899 a 1950, ambos inclusive* (1952); *Derecho*

internacional privado (1976); *La protección al derecho de propiedad y de posesión* (1983); *Código civil y leyes civiles cubanas* (2000); and *Los hijos ilegítimos* (1941).

More recent titles include: *The Laws and Legal System of a Free-Market Cuba: A Prospectus for Business* (1997); *Cuban Environmental Law: the Framework Environmental Law and An Index of Cuban Environmental Legislation* (1999) (a publication of Tulane Law School); and Debra Evenson's *Law and Society in Contemporary Cuba* (2003).

University of Florida, George A. Smathers Libraries (Gainesville, FL)

The George A. Smathers Libraries at the University of Florida includes the Latin American and Caribbean Collection (approximately 500,000 volumes), which is ranked among the largest and best in the United States. The Lawton Chiles Legal Information Center at the Levin College of Law complements the Collection, with over 370 titles on Cuban law. Some noteworthy titles are: *Diario de sesiones del Congreso de la República de Cuba: Cámara de Representantes, 1902–1927*; *Diario de sesiones del Congreso de la República de Cuba: Senado, 1902–1930*; *Repertorio judicial; revista bimestral fundada bajo los auspicios del Colegio de Abogados de La Habana* (microfilm, 1925–1935); and *Bibliografía cubana de los siglos XVII y XVIII* (1927).

Also worthy of mention is the University of Florida's P.K. Yonge Library of Florida History, which houses the Spanish Colonial Records microfilm collection.⁶²⁴

University of Miami Libraries (Miami, FL)

The University of Miami Law Library has approximately 700 relevant titles, and it houses one of the largest Cuban law collections in the country. The Cuban Heritage Collection, with approximately 1,000 titles, is a distinctive collection in the main Otto G. Richter Library. The Cuban Heritage Collection "collects, preserves, and provides access to primary and secondary sources of enduring historical research and artifactual value which relate to Cuba and the Cuban diaspora from Colonial times to the present."⁶²⁵ Approximately 100 of the pre-1923 law-related books are only held in the Cuban Heritage Collection, and they will be scanned as part of LLMC's Cuba digitization project.

University of Michigan Law Library (Ann Arbor, MI)

A search of the University of Michigan Law Library's catalog yielded over 700 titles pertaining to Cuban law. Some of the historical materials include: *Diario de sesiones de la Convención Constituyente de la Isla de Cuba* (1900–1901); *Diario de sesiones de la Convención Constituyente de 1940* (1940); *Gaceta Oficial de la República de Cuba*, 30 jun. 1902–29 (Sucesor de *Gaceta de La Habana*.), v.1–27; *Jurisprudencia del Tribunal Supremo (TS)*, 1899–1908, (Habana, Imp. Rambla, 1908–19); and *Primer Congreso jurídico nacional, 27–30 diciembre 1916, Trabajos y acuerdos*, v.1–3, Habana, Imp. "La Universal" (1918).

University of Pennsylvania, Biddle Law Library (Philadelphia, PA)

The Biddle Law Library collection on Cuba numbers approximately 600 items, including several titles on Cuban customs law, such as the *English Translation of Customs Tariff of Cuba: as published in the Official Gazette of October 20, 1927*. Also included are: *Ley de minas* (2000); *Regulaciones sobre agencias de viajes en Cuba* (2000); *Manual de jurisprudencia hipotecaria y notarial* (1891); *Ley hipotecaria* (1999); *Ley de seguridad social: reglamento, disposiciones complementarias* (1987); and *Ley de asociaciones y su reglamento* (1988).

⁶²⁴ See *Spanish Colonial Records on Microfilm at the University of Florida*, P.K. YONGE LIBRARY OF FLORIDA HISTORY, UNIVERSITY OF FLORIDA DIGITAL COLLECTIONS, GEORGE A. SMATHERS LIBRARIES, <http://www.library.ufl.edu/spec/pkyonge/Microfilm/SpanHoldings.html> (last visited July 27, 2017).

⁶²⁵ Cuban Heritage Center, *Collections Overview*, UNIVERSITY OF MIAMI LIBRARIES, <http://library.miami.edu/chc/collections/> (last visited July 27, 2017).

University of Texas Libraries (Austin, TX)

The University of Texas Libraries house a number of rich collections, including the Nettie Lee Benson Latin American Collection. The Benson Collection has approximately 970,000 books, periodicals and microforms, including its archival collection. The Benson Collection is complemented by materials in the Teresa Lozano Long Institute for Latin American Studies, which has a number of early books published in the Americas. Some notable titles in the Benson Collection related to Cuba are: *Protección del patrimonio cultural: compilación de textos legislativos* (2002); *Instrumentos internacionales sobre derechos humanos ratificados por Cuba* (2001); *Sistema de justicia y procedimiento penal en Cuba* (2001); and *Código de vialidad y tránsito* (1999).

In addition to the Benson Collection, the Tarlton Law Library has approximately 80 titles pertaining to Cuba that include: *The Electoral Law of Cuba of April 1, 1908* (1908); *Translation of the Municipal and Provincial Laws in Force in the Island of Cuba* (1899); *Ley de las notarias estatales* (1985); *Leyes del pueblo, Cuba 1959–1985* (1985); and *Legislación obrera de la República de Cuba: publicación* (1919).

Yale University, Lillian Goldman Law Library (New Haven, CT)

The collection of Cuban law resources at the Lillian Goldman Law Library ranks among the largest in the United States, with approximately 750 titles, excluding electronic resources. Some titles of interest are: *Principios fundamentales del derecho hereditario* (1937); and *Ley de la inversión extranjera en Cuba: texto de la ley, comentarios* (1995). Library Director Teresa Miguel-Stearns travelled to Havana in June 2016 and purchased 70 new titles to add to the collection.⁶²⁶ These additions included: *Cuba y sus jueces: rectificaciones oportunas* (1895); *13 leyes de gobierno revolucionario* (1960?); and *Comentarios a las leyes de marcas y patentes* (1917).⁶²⁷

B. CANADIAN LIBRARIES

In compiling the list of Canadian libraries with sizeable Cuban law collections, a review was conducted of the catalogs of several academic law libraries. There were also e-mail and telephone communications with librarians, as well as the use of chat reference features, where available. Despite being a part of the large University of Toronto Libraries system, a Bora Laskin Law Library staff member confirmed that the Library does not collect extensively in the area of Cuban law.⁶²⁸ The University of Toronto's main Robarts Library, though, has an extensive collection of general works on Cuba. Other academic law libraries that were researched include those of Dalhousie University, Simon Fraser University, McMaster University and the University of Calgary. However, like the University of Toronto, their general collections on Cuba are sizeable, but limited in terms of law-related resources. Carleton University, McGill University and the University of Ottawa are therefore included in the following list, based on the sizes of their Cuban law collections.

Carleton University, MacOdrum Law Library (Ottawa, Ontario)

The MacOdrum Law Library at Carleton University has approximately 141 titles pertaining to Cuban law, scattered over specializations such as constitutional, slavery, mining, water, railroad, patent, military and medical law, among others. Some interesting titles in the collection are: *Translation of the Proposed Constitution for*

⁶²⁶ Teresa Miguel-Stearns, *Cuban Chronicles: Segunda Parte (A Bibliophile's Shopping Guide to Havana)*, 31 FCIL NEWSLETTER (Foreign, Comp., and Int'l L. Special Int. Sec., Am. Assoc. of L. Libr.), Feb. 2017, at 8, <http://www.aallnet.org/sections/fcil/newsletters/vol31/feb2017.pdf>. This is an interesting account of Ms. Miguel-Stearns' experience in Havana purchasing books for the Lillian Goldman Law Library with two local representatives of RettaLibros.

⁶²⁷ Mike Widener, Rare Book Librarian, *Recent Acquisitions in Cuban Law*, RARE BOOKS BLOG, LILLIAN GOLDMAN LAW LIBRARY (Nov. 15, 2016), <http://library.law.yale.edu/blogs/rare-books/2016-11>.

⁶²⁸ E-mail from Gian Medves, Interim Chief Librarian, Bora Laskin Law Library, Faculty of Law, U. of Toronto, to Yasmin Morais, Cataloging Librarian, Charles N. and Hilda H.M. Mason Law Library, David A. Clarke School of Law, U. of the District of Columbia, Nov. 15, 2016 (on file with author).

Cuba, the Official Acceptance of the Platt Amendment, and the Electoral Law (1901); *Trading under the Laws of Cuba* (1927); *Instrucción sobre el procedimiento administrativo para la cobranza de créditos a favor de la Hacienda* (1855); *Arancel de costas procesales de todos los juzgados y tribunales del territorio de la Audiencia pre-torial de la Habana* (1854); *Esclavitud y sociedad: notas y documentos para la historia de la esclavitud negra en Cuba* (1986); and *La mujer en Cuba Socialista* (1977).

McGill University, Nahum Gelber Law Library (Montréal, Québec)

A search of the Nahum Gelber Law Library catalog yielded approximately 153 titles covering Cuban constitutional law, eminent domain, electoral law and mining law, as well as current materials related to digital media. Some of the titles in the collection are: *Translation of the Mortgage Law for Cuba, Puerto Rico and the Philippines* (1893); *Translation of the Law of Eminent Domain extended to Cuba and Porto Rico by royal decree of June 13, 1884 and regulations for its application*; *Cuban Family Code* (1977); *Ley del divorcio con disolución del vínculo matrimonial* (1942); and *Ordenanzas rurales de la isla de Cuba* (1857).

University of Ottawa, Brian Dickson Law Library (Ottawa, Ontario)

The Brian Dickson Law Library has approximately 260 titles on Cuban law, covering a broad array of topics, such as constitutional, harbor, mining and banking law. There are also titles related to maternity leave, local government, forestry and foreign investment. The strongest areas appear to be constitutional (45 titles), criminal (24 titles), commercial (20 titles) and civil law (17 titles). Some titles of interest are: *Estatutos y reglamento del Banco Español de la Habana* (1856); *El Procedimiento Correccional en Cuba: Compilación de Disposiciones Oficiales Concordadas y Anotadas* (1929); *Working Woman Maternity Law: Law No. 1263 of January 14, 1974* (1975); *Ley del Presupuesto del estado para el año 1978* (1977), and *Las empresas mixtas: regulación juridical* (1993).

C. SELECTED BIBLIOGRAPHY

The following are selected resources that provide historical context for Cuban legal bibliography and library collections, as well as general collections of Latin American law that may include Cuban materials.

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