

AGRICULTURAL LAW DEVELOPMENTS IN CUBA: CHALLENGES AND OPPORTUNITIES

*Emiliano Lerda**

II.	Historical Background	477
A.	The Short and Sweet Story of Sugar in Cuba.....	477
B.	Prelude to the First Agrarian Reform in Cuba.....	478
C.	The First Law of Agrarian Reform.....	480
D.	The Second Agrarian Reform in Cuba.....	482
E.	Special Period: Agricultural Crisis Following the Fall of the Soviet Union.....	483
III.	Law Decree 259	487
IV.	Guidelines of the Cuban Communist Party.....	489
V.	Law Decree 300	493
	A. Article 1 494	
	B. Articles 2, 3, & 4	494
	C. Articles 5, 6, & 7	495
	D. Articles 8, 9, & 10	496
	E. Articles 11, 12, & 13.....	496
VI.	Law Decree 300 Analysis	497
	A. Policy Mechanics	498
	B. Policy Challenges	499
	C. Legal Challenges	502
	i. Housing and Improvements	502
	ii. Integration and Linkage of the New Recipient of the Usufruct	503
	iii. The Usufruct Contract.....	503

* LL.M. 2013, University of Arkansas School of Law, Graduate Program in Agricultural and Food Law; J.D. 2009, Drake University Law School. This Article grew out of the author's interest in Latin American agricultural law developments and Professor Neil Hamilton's visionary desire to open, grow, and develop legal academic scholarship exchanges between the United States and Cuba. The author would like to thank Professor Neil Hamilton for his guidance and encouragement, and for providing the opportunity to travel to and study in Cuba. The author would also like to thank Professor Susan Schneider and Professor Maritza McCormack for their continued support and guidance. All analysis and conclusions in this article are those of the author alone, and should not be attributed to any of the sources.

iv. Economic Considerations.....	504
v. Other Considerations.....	504
VII. Cuba's Uncertain Future.....	505
VIII. Conclusion.....	507

I. Introduction

There are common misconceptions of Cuba's success with urban and organic agricultural reform. There are people who think everyone should follow Cuba's lead in the development of an agricultural model that is environmentally friendly and sustainable.¹ Others believe Cuba is abandoning the socialist model that was introduced by the Revolution.² The reality is that Cuba is evolving; the Revolution is evolving.³ Cuba's environmentally-friendly agricultural development has been the result of a government that had no choice but to be resourceful and produce as much food as possible with little land, little money, and virtually no technological advances available. The reality is that Cuba is not leaving the Revolution behind; Cuba is advancing the Revolution, and adjusting the socialist model to take better advantage of the globalized economy.⁴

Cuba is evolving.⁵ Although the evolution that is taking place in Cuba may be perceived as small and insignificant for some people on the outside, it is large and noticeable those living in Cuba. For instance, on January 14, 2013, a new Cuban migration rule took effect, allowing most Cubans—those who are not considered vital professionals or may not be subject to a public interest exception—to travel more freely and for longer periods of time to other countries.⁶

1. See generally, e.g., Kathryn A. Peters, Note, *Creating a Sustainable Urban Agriculture Revolution*, 25 J. ENVTL. L. & LITIG. 203, 231–47 (2010) (discussing the successful development of urban agriculture in Cuba).

2. See Michelle Caruso-Cabrera, *Inside Cuba: Market Economy Takes Hold in Socialist State*, CNBC (Mar. 26, 2013), <http://www.cnbc.com/id/46855968>.

3. See generally Bill Faries, *Yoani Sanchez Sees Faster Change in Cuba Post-Chávez*, BLOOMBERG (Mar. 16, 2013), <http://www.bloomberg.com/news/2013-03-15/yoani-sanchez-sees-acclerating-change-in-cuba-post-chavez.html> (describing recent economic and legal reforms in Cuba).

4. See Caruso-Cabrera, *supra* note 2.

5. See Faries, *supra* note 3.

6. Consejo de Estado [State Council], *Decreto-Ley Numero 302* [Law Decree No. 302], 44 GACETA OFICIAL DE LA REPUBLICA DE CUBA, EDICIÓN ORDINARIA [OFFICIAL GAZETTE OF THE REPUBLIC OF CUBA, REG. ED.] 1357, 16 de Octubre de 2012 [Oct. 16, 2012] (translation on file with author); Consejo de Estado [State Council], *Decreto No. 305* [Decree No. 305], 44 GACETA OFICIAL DE LA REPUBLICA DE CUBA, EDICIÓN ORDINARIA [OFFICIAL GAZETTE OF THE REPUBLIC OF CUBA, REG. ED.] 1360, 16 de Octubre de 2012 [Oct. 16, 2012] (translation on file with author); PHILIP PETERS, LEXINGTON INST., MIGRATION POLICY REFORM: CUBA GETS STARTED, U.S. SHOULD FOLLOW 1, 2 (2012); Sarah Rainsford, *Cubans Set for Foreign Travel as Exit Permits Abolished*,

Other noticeable reforms in Cuba include recently passed regulations allowing for private parties to buy and sell cars and real estate.⁷ I traveled to Cuba in January 2012, and again in January 2013.⁸ I noticed significant but subtle changes and spoke with locals that also felt the changes in a very real way.⁹ I noticed transformation in their laws and regulations, but also in their everyday life.¹⁰ In 2012, I saw more cars from the 1940s and 1950s. In 2013, I noticed many newer Chinese cars on the streets. In January 2012, I noticed many signs and Revolutionary slogans painted all over the walls of La Havana.¹¹ The signs contained messages with “fighting words,” reminding people the Revolution is not over, and that the country needs to continue to fight for the Revolution.¹² Some of those signs are still up in a few places in Cuba. In 2013, however, I noticed a lot of walls were painted white or blue to cover those old slogans.¹³ They have new slogans now.¹⁴ The new slogans are reminding Cubans that all changes are for “more” Socialism and that the main battle today, more than ever, is the economic battle.¹⁵ It appears that some Cubans are uncomfortable with so many changes in

BBC NEWS (Jan. 14, 2013), <http://www.bbc.com/news/world-latin-america-21008571>; Mimi Whitemfield, *What's Behind Cuba's New Travel Policy?*, MIAMI HERALD, Jan. 17, 2013, <http://www.miamiherald.com/2013/01/17/3188193/whats-behind-cubas-new-travel.html>.

7. Nelson Acosta & Jeff Franks, *Cuba Gives Green Light to Buying, Selling Cars*, REUTERS (Sept. 29, 2011), <http://www.reuters.com/article/2011/09/29/uk-cuba-cars-idUSLNE78S01120110929>; Damien Cave, *Cuba to Allow Buying and Selling of Property, with Few Restrictions*, N.Y. TIMES, Nov. 3, 2011, http://www.nytimes.com/2011/11/04/world/americas/cubans-can-buy-and-sell-property-government-says.html?_r=0.

8. In January of 2012 and January of 2013, the author traveled to Cuba as a consultant with a delegation of law students led by Professor Neil Hamilton, Dwight D. Opperman Chair of Law, Professor of Law, and Director of the Agricultural Law Center at Drake University Law School.

9. See Interview with Anonymous Taxi Driver, Coco Taxi, in Havana, Cuba (Jan. 12, 2013). This conversation took place during a three-hour long expedition in a Coco Taxi throughout the city of Havana to photograph public billboards and signs. The Coco Taxi driver did not want to share his full name for purposes of this Article.

10. See, e.g., Victoria Burnett, *After Decades, Cuba Eases Travel Rules to Maintain Ties*, N.Y. TIMES, Jan. 13, 2013, <http://www.nytimes.com/2013/01/14/world/americas/new-rules-allow-cubans-to-keep-residency-amid-travel.html> (describing Cuba's new migration rules and their effect on Cubans). “Raúl Castro . . . is trying to revive the island's moribund economy by transferring a substantial chunk of it from state to private hands, with profound social and political implications.” Michael Reid, *Revolution in Retreat*, ECONOMIST, Mar. 24, 2012, <http://www.economist.com/node/21550418>.

11. See photos in Appendix A. The author took photographs from public billboards and signs in 2012 and 2013. These photographs show a stark contrast between the signs viewed in 2012 and those seen in 2013.

12. *Id.*

13. *Id.*

14. *Id.*

15. *Id.*

such a short period of time.¹⁶ As one “Coco Taxi” driver told me, “Fidel spent more than fifty years building something, and Raul has changed everything in two years.”¹⁷ There are other Cubans that are very happy to have greater freedom to travel or to start their own businesses.¹⁸ To enjoy these new benefits, however, Cubans need to have access to foreign currency.¹⁹ There is a large percentage of Cubans that still live on approximately twenty U.S. dollars per month.²⁰ Cubans with family abroad able to send them money, or those who have good jobs within the tourism industry can access foreign currency, and thus enjoy the benefits of the recent, slightly more liberal Cuban Government.²¹

Significant changes that relate back to the heart and soul of the Revolution in Cuba are the new legal changes taking place in their agricultural programs and land distribution models. Law Decree 259 was passed by Cuba’s State Council in July 2008,²² and Law Decree 300 was passed in September of 2012.²³ Both law decrees pertain to the grant of idle land to small farmers and legal entities for the sustainable production of food.²⁴ These law decrees are the principal subject of this Article. Will the latest changes in agricultural policy help Cuba avoid falling into an economic abyss?

In order to understand Cuba today, this Article will start by providing the reader with a summary of relevant historical events that provide important insight to understanding and analyzing the most recent developments in the Cuban agricultural system and its legal framework. Second, Law Decree 259 will be introduced and analyzed, followed by a review of the Constitution of the Republic of Cuba and an analysis of the Guidelines of Economic and Social Policies of the

16. Interview with Anonymous Taxi Driver, *supra* note 9.

17. *Id.*

18. See, e.g., Interview with Jesus Noguera, Tour Guide, Amistur Cuba S.A., in Havana, Cuba (Jan. 14, 2013). Mr. Noguera served as the tour guide of our delegation, and spoke about the benefits of new private opportunities and new flexibility to travel abroad.

19. See Antonio R. Zamora, *Cuba’s Business Enterprises: How Business is Conducted on the Island*, 15 FLA. J. INT’L L. 345, 348–49 (2003) (discussing Cuba’s dual economy and the importance of the free market system in supporting the socialist system).

20. See, e.g., Rainsford, *supra* note 6; Isbel Díaz Torres, *The Mean Salary of Cubans*, HAVANA TIMES (Aug. 6, 2013), <http://www.havanatimes.org/?p=97506>.

21. See Torres, *supra* note 20 (providing salary examples of two-currency system).

22. Consejo de Estado [State Council], *Decreto-Ley Numero 259* [Law Decree No. 259], 24 GACETA OFICIAL DE LA REPUBLICA DE CUBA, EXTRAORDINARIA [OFFICIAL GAZETTE OF THE REPUBLIC OF CUBA, EXTRAORDINARY ED.] 93, 11 de Julio de 2008 [July 11, 2008] [hereinafter *Law Decree No. 259*] (translation on file with author).

23. Consejo de Estado [State Council], *Decreto-Ley Numero 300* [Law Decree No. 300], 45 GACETA OFICIAL DE LA REPUBLICA DE CUBA, EDICIÓN ORDINARIA [OFFICIAL GAZETTE OF THE REPUBLIC OF CUBA, REG. ED.] 1389, 22 de Octubre de 2012 [Oct. 9, 2012] [hereinafter *Law Decree No. 300*] (translation on file with author).

24. *Law Decree No. 259*, *supra* note 22; *Law Decree No. 300*, *supra* note 23.

Party and Revolution (Guidelines) as approved by the Sixth Congress of the Communist Party of Cuba (CPC). The Guidelines provide the framework and strategic direction that gave birth to a new and improved version of Law Decree 259 in Law Decree 300. Law Decree 300 will be carefully examined article-by-article. Finally, this Article will explore new possible challenges and opportunities that the latest agricultural developments in Cuba will yield to both Cuba and the rest of the world.

II. HISTORICAL BACKGROUND

A. *The Short and Sweet Story of Sugar in Cuba*

History repeats itself. This is an old, popular saying, but it is an old, popular saying for a reason. The history of Cuba and the struggles that Cuba has seen in what is arguably the most important part of their economy—agriculture—appear to be a cyclical occurrence. Christopher Columbus's mother-in-law owned a sugar plantation, and scholars believe that gave him the idea to bring sugar with him on his second voyage to the New World in 1493.²⁵ The weather and soil conditions in Cuba naturally played an important role in ensuring that sugar continued to be produced for self-consumption by early settlers.²⁶ Fast-forward approximately 300 years, and sugar was king in Cuba's agricultural production and exports.²⁷ Historians agree that it was a succession of significant historical events that made sugar king in Cuba.²⁸ First, the Spanish Crown liberalized the African slave trade, followed by an extension of the French Revolution that affected the world's largest sugar producer—which happened to be Cuba's neighbor—Santo Domingo.²⁹ But the most interesting historical occurrence that took place in the late eighteenth century and early nineteenth century was the independence movement from the Spanish Crown throughout Latin America.³⁰ Many loyalists arrived in Cuba looking for land and opportunities.³¹ Prior to the

25. See HUGH THOMAS, *CUBA OR THE PURSUIT OF FREEDOM* 28 n.8 (updated ed. 1998).

26. See *id.* at 30.

27. See generally *id.* at 61 (describing the rise in Cuban sugar exports in the late 1700s to early 1800s).

28. See generally, e.g., Carmen G. Gonzalez, *Seasons of Resistance: Sustainable Agriculture and Food Security in Cuba*, 16 TUL. ENVTL. L.J. 685, 689–92 (2003) (discussing the history and importance of sugar production in Cuba).

29. *Id.* at 690–91 (citing FRANKLIN W. KNIGHT, *SLAVE SOCIETY IN CUBA DURING THE NINETEENTH CENTURY* 10–12 (1970)); THOMAS, *supra* note 25, at 76–77.

30. See generally Gonzalez, *supra* note 28, at 690–92 (discussing the impact of the wars of independence on the development of Cuban sugar production).

31. See *id.* at 690 (citing KNIGHT, *supra* note 29, at 13).

land tenure reform, the Spanish Crown owned all land in Cuba.³² The increased demand, however, forced the Spanish Crown to give land to people in usufruct or mercedes (known as grants).³³ The land that was given in usufruct "could be inherited but not sold, sublet, or subdivided."³⁴ The usufructs were often made in the form of a circle, with a specific radius from a given point.³⁵ Given the specific production and marketing requirements of the land given in usufruct, historians describe this program not as a land grant program, but rather as a food program.³⁶ It all came to a head when the Spanish Crown began facing serious economic challenges due to the costs associated with the Napoleonic wars of the early 1800s.³⁷ The Spanish Crown gave people an opportunity to purchase the land in fee simple for a specified price.³⁸

Because Cuba was able to import food and other items at very low prices, economics provided little incentive for Cubans to produce and diversify their agricultural production.³⁹ Sugar plantations continued to expand, and in 1861, sugarcane accounted for over 25% of the cultivated land in Cuba.⁴⁰ Small farmers producing other fruits and vegetables were quickly displaced by the expansion of sugar fields.⁴¹ At the end of the nineteenth century, 16% of Cuba's farmers managed 70% of the agricultural land.⁴² The United States hastily became the main destination for Cuban sugar,⁴³ and sugar accounted for 82% of Cuba's export earnings in the first half of the twentieth century.⁴⁴

B. *Prelude to the First Agrarian Reform in Cuba*

Prior to the Revolution, sugar was king in Cuba.⁴⁵ The Cuban agricultural system was based primarily in the production of sugarcane.⁴⁶ The sugar mono-

32. *Id.* (citing KNIGHT, *supra* note 29, at 14).

33. *See id.*

34. *Id.*

35. THOMAS, *supra* note 25, at 19.

36. *Id.*

37. *See* Gonzalez, *supra* note 28, at 691 (citing KNIGHT, *supra* note 29 at 17-18).

38. *See id.*

39. *See id.* (citing KNIGHT, *supra* note 29, at 18; Max Zeuske, *Notas Retrospectivas Sobre la Sociedad Agraria Cubana en los Siglos XIX y XX* [Retrospective Notes on the Cuban Agrarian Society in the 19th and 20th Centuries], in LA ÚLTIMA REFORMA AGRARIA DEL SIGLO [THE LAST AGRARIAN REFORM OF THE LAST CENTURY], 23-24, 26 (Hans-Jürgen Burchardt ed., 2000)).

40. KNIGHT, *supra* note 29, at 40.

41. Gonzalez, *supra* note 28, at 691-92 (citing Zeuske, *supra* note 39, at 23-25).

42. *Id.* at 692; THOMAS, *supra* note 25, at 1562.

43. Gonzalez, *supra* note 28, at 692 (citing KNIGHT, *supra* note 29, at 40-45).

44. *See* THOMAS, *supra* note 25, at 1152.

45. Gonzalez, *supra* note 28, at 691-92.

culture became a defining feature of the Cuban economy in the late-eighteenth century through the mid-twentieth century.⁴⁷

During the 1950s, the social and economic crisis of Cuba resulted in a political crisis.⁴⁸ The crisis was also reflected in poor sugar production at that time and a decrease in per capita income.⁴⁹ This crisis generated a higher concentration of land ownership, and thus, the unrest of the lower income rural population.⁵⁰ The fight for the Revolution provided a timely opportunity for people in rural areas of Cuba to voice their anger and fight for their rights.⁵¹ The Revolution offered “campesinos” (peasants) the promise of equality.⁵² The main principle behind the “First Law of Agrarian Reform” was to grant ownership of land to those who worked it, thus creating a large number of small farmers.⁵³ Another important aspect of the “First Law of Agrarian Reform” was that it provided for the elimination of large farms ownership (also known as *latifundium*), and the return of foreign-owned property to the State.⁵⁴

The origins for the First Law of Agrarian Reform can be found in Law Number 3 of the Rebel Army, signed by Fidel Castro on October 10, 1958.⁵⁵ Law Number 3 of the Rebel Army was premised on the idea that land has a social function, as described in Article 87 of the 1940 Cuban Constitution.⁵⁶ Law Number 3 provided 26.5 hectares (1 hectare = 2.47 acres) of land to small far-

46. *See id.*

47. *Id.* at 689, 692 (discussing the origins and development of Cuba’s sugar monoculture).

48. José A. Garea Alonso, *Estudio de las Leyes de Reforma Agraria de 1959 y 1963. Resultados de su Aplicación en Cuanto al Uso Explotación de la Tierra. Cambios en la Sociedad Rural (1959–1964)* [Study of the Law of Agrarian Reform of 1959 and 1963. Results of Its Application Regarding Exploitation of the Land. Changes in Rural Society (1959–1964)], in TEMAS DE DERECHO AGRARIO CUBANO [CUBAN AGRICULTURAL LAW ISSUES] 101, 102 (Felix Varela ed., 2007).

49. *Id.*

50. *Id.*

51. *See id.*

52. *See generally id.* (discussing the development of peasant resistance and other forms of insurrection).

53. *Id.*

54. *See id.*; *see generally* Gonzalez, *supra* note 28, at 696–98 (discussing the reformation of *latifundia* to state farms).

55. *See* Garea Alonso, *supra* note 48, at 103; Leyes de la Revolución Dictadas en la Sierra Maestra [Laws of the Revolution Dictated in the Sierra Maestra], *Ley No. 3* [Law No. 3], Reforma Agraria [Agrarian Reform], 10 de Octubre de 1958 [Oct. 10, 1958] [hereinafter *Law No. 3*].

56. *See* Garea Alonso, *supra* note 48, at 103; *Law No. 3*, *supra* note 55; *see also* CONSTITUCIÓN DE LA REPUBLICA DE CUBA [CONST. OF THE REPUBLIC OF CUBA], art. 87 (1940).

mers with the possibility and right to acquire up to 67 hectares.⁵⁷ Law Number 3 also aimed at eradicating very small farm ownership, making “estates under 67 hectares indivisible.”⁵⁸ Finally, Law Number 3 obligated the government to provide “technical and material support” to small farmers.⁵⁹

In January 1959, the Revolutionary Government was established, along with the reestablishment of rights under the Cuban Constitution of 1940.⁶⁰ However, the Fundamental Law of the Republic of Cuba was also passed, establishing the Council of Ministers, bestowing on them the legislative faculties.⁶¹ Following the ratification of Law Number 3 by the Council of Ministers, Law Number 100 of the Revolutionary Government was promulgated on February 23, 1959.⁶² Eventually, the Revolutionary Government started taking land and property from foreign-owned entities as well as members of the Batista regime under Law Number 78.⁶³

C. The First Law of Agrarian Reform

The Agrarian Reform in Cuba was the first fundamental structural change that would affect a large number of citizens.⁶⁴ Many saw the implementation of the Agrarian Reform as a radical redistribution of wealth and the conditioning of all property as part of the social interest.⁶⁵ On May 17, 1959, in La Plata, the base of the Rebel Army, the First Law of Agrarian Reform was passed in the Republic of Cuba.⁶⁶ Fidel Castro supported the reform, saying: “A Revolution like this one was necessary to have Agrarian Reform. This measure is not only advisable for our people, but also advisable as well as the agricultural basis for industrial and economic change and as an example for all countries in Latin America.”⁶⁷

57. See Garea Alonso, *supra* note 48, at 103; *Law No. 3, supra* note 55.

58. Garea Alonso, *supra* note 48, at 103; *Law No. 3, supra* note 55.

59. Garea Alonso, *supra* note 48, at 103; *Law No. 3, supra* note 55.

60. Garea Alonso, *supra* note 48, at 105–06.

61. *Id.*; *Ley Fundamental de la Republica de Cuba* [Fundamental Law of the Republic of Cuba], GACETA OFICIAL DE LA REPUBLICA DE CUBA [OFFICIAL GAZETTE OF THE REPUBLIC OF CUBA], 7 de Febrero de 1959 [Feb. 7, 1959]; see Ignacio E. Sánchez, *Constitutional Protection of Cuban Property Rights*, 6 ASS’N FOR THE STUDY OF THE CUBAN ECON. 398, 402 (1996), available at <http://www.ascecuba.org/publications/proceedings/volume6/pdfs/50Sanchez.fm.pdf>.

62. Garea Alonso, *supra* note 48, at 104.

63. *See id.* at 105.

64. *See id.* at 106.

65. *See id.*

66. *Id.* at 107.

67. Fidel Castro, Address at Sierra Maestra Upon Signing the First Law of Agrarian Reform (May 17, 1959).

People of a lower socio-economic status saw the First Law of Agrarian Reform as a tool of economic independence, modernization, and social justice.⁶⁸ Those who lost everything due to the Revolution and the First Law of Agrarian Reform likely disagree with that premise.⁶⁹ The First Law of Agrarian Reform set out to eliminate the latifundium, diversify agricultural production to increase exports, and decrease the country's dependence on the sugarcane monoculture.⁷⁰ The Law also established that foreign individuals or corporations could not own natural resources.⁷¹

The First Law of Agrarian Reform was composed of nine chapters and sixty-seven articles.⁷² In accordance with the principle that "land belongs to the tiller," the First Law of Agrarian Reform, in Article 18, established the grant of land to those who previously worked it and to those who would like to work the land in order to provide for their family.⁷³ In Article 16, the First Law of Agrarian Reform established a "vital minimum" of twenty-seven hectares.⁷⁴ The Law also provided that all forms of absentee ownership be eliminated and forbade sharecropping agreements or any other types of rent/lease agreements.⁷⁵ Chapter 5 of the Law provided for the development of agricultural cooperatives, and assigned those cooperatives organized with state-owned land to be under the direction of the National Institute of Agrarian Reform (INRA).⁷⁶ Chapter 7 established the Land Tribunals.⁷⁷ The Land Tribunals were established to hear and resolve all the legal issues that would result from the application of this law, as well as any issues related to agricultural contracts and natural resources in gener-

68. See Garea Alonso, *supra* note 48, at 108 ("[The law's] objectives pursued conciliation of the interests of different social classes and groups interested in change . . .").

69. See Cuban-Americans: *The Miami Mirror*, ECONOMIST, Mar. 24, 2012, <http://www.economist.com/node/21550419> (describing the community of half a million Cubans that arrived in Miami within fifteen years of the Cuban Revolution and the political machine they built to overthrow the Castro brothers).

70. See generally Gonzalez, *supra* note 28, at 696, 703–04 (describing the reform efforts of the revolutionary government).

71. See Tatiana Gil Rodríguez, *Procesos de Reforma Agraria en Cuba* [Processes of Agrarian Reform in Cuba], TEMAS SOBRE LEGISLACIÓN AGRARIA [ISSUES OF AGRARIAN LEGISLATION] 56, 65 (Felix Varela ed., 2007) (discussing the ban on foreign ownership of rural lands).

72. *Id.* at 64.

73. Garea Alonso, *supra* note 48, at 110.

74. Gil Rodríguez, *supra* note 71, at 65.

75. See *id.* at 66.

76. Garea Alonso, *supra* note 48, at 112.

77. *Id.* at 113.

al.⁷⁸ INRA was charged with writing all the regulations related to these Land Tribunals.⁷⁹

D. *The Second Agrarian Reform in Cuba*

Between 1961, when the application of the First Law of Agrarian Reform was considered done, and 1963, when the new Law of Agrarian Reform was promulgated, a series of important events took place.⁸⁰ Internally, Cuba was dealing with counter-revolutionary groups, economic challenges, and a mass exodus of citizens.⁸¹ Externally, Cuba was facing increasing pressures from the United States and other countries.⁸² The pressure came economically in the form of an economic embargo, and politically with the failed invasion of the Bay of Pigs.⁸³ It was within this context that Fidel Castro deepened the initial Revolutionary reforms.⁸⁴ In April 1961, Fidel declared the socialist character of the Revolution, nationalized the banks, took control of all commerce, and centralized all sectors of the economy under government control.⁸⁵ The Cuban government saw the agricultural bourgeoisie as a threat to the Revolution.⁸⁶ The radical change in land tenancy in the form of the Second Law of Agrarian reform came on October 3, 1963.⁸⁷ The main purpose behind the passage of the Second Law of Agrarian Reform was to eliminate the last economic base and the last political allies of the counter-revolutionary movement in Cuba.⁸⁸

The Second Law of Agrarian Reform provided the nationalization and seizure by the government of all farms larger than sixty-seven hectares.⁸⁹ There were exceptions carved out for land owned and farmed by several brothers, with a per capita area not to exceed sixty-seven hectares, and for those farms with above average levels of production and a favorable disposition towards coopera-

78. *Id.*; see also PROMULGACIÓN DE LA LEY DE REFORMA AGRARIA [PROMULGATION OF THE LAW OF AGRARIAN REFORM], ch. 7, art. 54, 17 de Mayo de 1959 [May 17, 1959] [hereinafter PROMULGATION OF THE LAW OF AGRARIAN REFORM].

79. Garea Alonso, *supra* note 48, at 113; PROMULGATION OF THE LAW OF AGRARIAN REFORM, *supra* note 78, at ch. 7, art. 54.

80. Garea Alonso, *supra* note 48, at 126.

81. *Id.*

82. *Id.*

83. *See id.*

84. *See id.*

85. *Id.* at 126–27.

86. *See* Gil Rodríguez, *supra* note 71, at 75.

87. *Id.*

88. *See generally* THOMAS, *supra* note 25, at 1439 (describing political implications of the second agrarian reform).

89. Gonzalez, *supra* note 28, at 698–99; *see also* Gil Rodríguez, *supra* note 71, at 75.

tion with the government.⁹⁰ Within forty-eight hours of its promulgation, the Second Law of Agrarian Reform affected 9000 farms.⁹¹ In this instance, the expropriation was not just of the area of land in excess of sixty-seven hectares, but of the entire farm with all properties included.⁹² Cuban scholars argue that these changes were not necessarily made because of the economic status of the bourgeoisie of Cuban agriculture; instead, they argue it was because the bourgeoisie adopted a counter-revolutionary position.⁹³ Scholars argue that, had the bourgeoisie of the agricultural sector been nationalistic, they would have been able to find their place in the new socio-economic regime.⁹⁴

Following the First Law of Agrarian Reform, the Cuban government controlled 44% of the agricultural lands in Cuba, while the private sector controlled 56%.⁹⁵ Within forty-eight hours of the passage of the Second Law of Agrarian Reform, the Cuban government controlled 70% of all agricultural land in Cuba, and the private sector possessed almost 30%.⁹⁶ Of the 30% that was privately owned, 100% were farms smaller than 67 hectares.⁹⁷ The process of Agrarian Reform in Cuba was seen not just as an economic model change, but also as a change in the social structure of the country.⁹⁸

E. *Special Period: Agricultural Crisis Following the Fall of the Soviet Union*

The main characteristics of Cuban agriculture from 1959 until approximately 1991 were primarily based on government owned and operated lands.⁹⁹ The original idea behind the need for Agrarian Reform was to diversify Cuba's agriculture.¹⁰⁰ However, the economic realities of the country required the government to change its position on the need for diversification of the agricultural

90. Garea Alonso, *supra* note 48, at 129; Gil Rodríguez, *supra* note 71, at 75.

91. Garea Alonso, *supra* note 48, at 129.

92. *See id.*

93. *See id.*

94. *Id.*

95. *Id.* at 130.

96. Gonzalez, *supra* note 28, at 699.

97. Garea Alonso, *supra* note 48, at 130.

98. Gil Rodríguez, *supra* note 71, at 77.

99. *See* VICTOR M. FIGUEROA ALBELO & ALBERTO AVERHOFF CASAMAYOR, LA AGRICULTURA CUBANA Y LA REFORMA AGRARIA DE 1993 [AGRICULTURE IN CUBA AND THE AGRARIAN REFORM OF 1993], at 60 (2001), available at <ftp://ftp.fao.org/docrep/fao/004/y2519t/y2519t00.pdf>.

100. *See generally* Gonzalez, *supra* note 28, at 699–700 (2003) (citations omitted) (discussing reasons behind the change to state owned farms).

sector.¹⁰¹ Under internal economic pressures and external pressure from their new biggest trading partner and supporter, the Union of Soviet Socialist Republics (USSR or Soviet Union), Cuba changed their agricultural strategy and decided to invest in the development of sugar production for exports.¹⁰² Once again, sugar was king in Cuba. The significant increase in government control of farmland that resulted after the Second Law of Agrarian Reform of 1963 gave the Cuban government the ability to divert more farmland to the production of sugar.¹⁰³ Following the first two laws of agrarian reform there were three forms of land tenure in Cuba: private farms (smaller than sixty-seven hectares each), state farms, and cooperatives of small private farmers.¹⁰⁴

In 1991, the Soviet Union was dissolved, resulting in the commencement of the “Special Period in Peacetime” (Special Period) for Cuba.¹⁰⁵ Almost overnight, Cuba’s foreign trade dropped by approximately eighty-five percent and the country’s economy shrank by thirty-eight percent.¹⁰⁶ In the 1990s, Cuba saw more changes in the ownership structure of the land as a result of the fall of the Soviet Union, Cuba’s most significant trading partner.¹⁰⁷ These changes can be considered the third agrarian reform.¹⁰⁸ The serious economic and social crisis that Cuba faced due to the fall of the Soviet Union ushered in a period of significant economic reforms towards a more liberalized system.¹⁰⁹ Law Decree 125 was passed in 1991; it established that state-owned land could be given in usufruct.¹¹⁰ On August 13, 1993, the State Council promulgated Law Decree 140,

101. Andrew Zimbalist & Susan Eckstein, *Patterns of Cuban Development: The First Twenty-Five Years*, 15 *WORLD DEV.* 5, 7 (1987).

102. Gonzalez, *supra* note 28, at 699; Zimbalist & Eckstein, *supra* note 101, at 7.

103. Gonzalez, *supra* note 28, at 700–01 (citing Zimbalist & Eckstein, *supra* note 101, at 8).

104. *See id.* at 701–03 (discussing the three forms of land tenure).

105. Colin Crawford, *Necessity Makes the Frog Jump: Land-Use Planning and Urban Agriculture in Cuba*, 16 *TUL. ENVTL. L.J.* 733, 735, 744–45 (2003) (discussing the challenges Cuba faced immediately following the collapse of the Soviet Union); *see also* Gonzalez, *supra* note 28, at 712.

106. Juan O. Tamayo, *How Will the Venezuela-Cuba Link Fare After Chávez’s Death?*, *MIAMI HERALD*, Mar. 5, 2013, <http://www.miamiherald.com/2013/03/05/3268483/how-will-the-venezuela-cuba-link.html>.

107. *See generally* Gonzalez, *supra* note 28, at 712–18 (discussing the decentralization of agricultural production and transformation of state farms following the collapse of the Soviet Union).

108. *Id.*

109. *See generally id.* at 712–28 (discussing the reforms undertaken during the Special Period and their impact).

110. Consejo de Estado [State Council], *Decreto-Ley Numero 125: Régimen de Posesión, Propiedad y Herencia de la Tierra y Bienes Agropecuarios* [Law Decree No. 125: Regime of Possession, Property and Inheritance of Land and Agricultural Assets], *GACETA OFICIAL DE LA*

which authorizes the free circulation of convertible currency, including U.S. dollars.¹¹¹ On September 8, 1993, the State Council also passed Law Decree 141, authorizing self-employment in a limited number of lines of business.¹¹² While not all changes were strictly related to agriculture, the government of Cuba realized once again that agriculture plays a major role in providing food, employment, and economic development opportunities for the people of Cuba.¹¹³

On September 20, 1993, the State Council enacted Law Decree 142, providing for the creation of a new form of agricultural cooperatives called Basic Units of Cooperative Production (Unidades Basicas de Produccion Cooperativa—or UBPC).¹¹⁴ The state granted agricultural land in usufruct to UBPCs.¹¹⁵ UBPCs quickly became the more efficient and effective organizational structures, compared to the older model under the Agricultural Production Cooperatives (CPAs).¹¹⁶ Law Decree 142 also changed the total state control on most agricultural lands of Cuba.¹¹⁷ In less than a year from the creation of UBPCs, the state granted 50% of state controlled land in usufruct, gave 93.5% of the state controlled sugarcane area to sugarcane-production UBPCs, and gave 29% of the state non-sugarcane area to non-sugarcane UBPCs.¹¹⁸

These policy changes were aimed at addressing the serious problems experienced by the Cuban people on a daily basis when looking for employment

REPUBLICA DE CUBA [OFFICIAL GAZETTE OF THE REPUBLIC OF CUBA], 30 de Enero de 1991 [Jan. 30, 1991]; see also *Law Decree No. 300*, *supra* note 23, at pmb1. (citing *Law Decree No. 125* as authority for promulgation of regulations for granting of usufruct on state land).

111. Consejo de Estado [State Council], *Decreto Ley Numero 140* [Law Decree No. 140], GACETA OFICIAL DE LA REPUBLICA DE CUBA [OFFICIAL GAZETTE OF THE REPUBLIC OF CUBA], 13 de Agosto de 1993 [Aug. 13, 1993] [hereinafter *Law Decree No. 140*]; José Alvarez, *Whither Goes Cuba? Prospects for Economic & Social Development Part II of II: Cuba's Future and Its Impact on U.S. Trade and Investment: Policy Prescriptions for the Cuban Agriculture of the Future*, 14 TRANSNAT'L L. & CONTEMP. PROBS. 719, 737 tbl. 1 (2004).

112. Consejo de Estado [State Council], *Decreto Ley Numero 141* [Law Decree No. 141], GACETA OFICIAL DE LA REPUBLICA DE CUBA [OFFICIAL GAZETTE OF THE REPUBLIC OF CUBA], 8 de Septiembre de 1993 [Sept. 8, 1993]; Alvarez, *supra* note 111, at 737 tbl. 1.

113. See Alvarez, *supra* note 111, at 737 tbl. 1 (listing agricultural policy reforms in chronological order).

114. Consejo de Estado [State Council], *Decreto-Ley Numero 142: Sobre las Unidades Basicas de Producción Cooperativa* [Law Decree No. 142: *On the Basic Units of Cooperative Production*], GACETA OFICIAL DE LA REPUBLICA DE CUBA, EXTRAORDINARIA [OFFICIAL GAZETTE OF THE REPUBLIC OF CUBA, EXTRAORDINARY], 15, 20 de Septiembre de 1993 [Sept. 20, 1993], [hereinafter *Law Decree No. 142*]; Alvarez, *supra* note 111, at 721, 737 tbl. 1.

115. *Law Decree No. 142*, *supra* note 114, at 15; Alvarez, *supra* note 111, at 721, 737 tbl. 1.

116. See Alvarez, *supra* note 111, at 721.

117. *Id.* at 737 tbl. 1.

118. *Id.* at 721.

and food.¹¹⁹ It was during this crisis that Cuban people started selling any surplus food produced on their own farms, or even in their own backyards at black markets.¹²⁰ Even though prior to Law Decree 140 it was illegal for Cubans to possess or use convertible currency, many people who had access to convertible currency used it on the black markets to buy food.¹²¹ Approximately one year after the State Council passed Law Decrees 140, 141, and 142, the Council of Ministers passed Law Decree 191, allowing for the creation of free agricultural markets throughout the country.¹²² These free agricultural markets provided independent farmers and cooperative members with an outlet where they could sell their surplus product to the general public at prices determined by supply and demand.¹²³ Farmers could only bring their products to the markets once they had fulfilled the required quota for the state.¹²⁴

There are several factors that led to the creation of Law Decree 259.¹²⁵ Some of these events took place in the early 1980s.¹²⁶ There are two primary elements. First, the legal norms promulgated did not provide any incentives for agricultural production.¹²⁷ There was disproportionate enforcement and application of the laws and requirements therein between the large state-run agricultural entities and the small individual farmers.¹²⁸ Large state-run farming operations were paying low wages to agricultural workers and had virtually no negative consequences for low or no productivity.¹²⁹ Small farmers suffered severe ad-

119. See Gonzalez, *supra* note 28, at 719 (describing conditions leading to increased reliance upon black market trade).

120. Gonzalez, *supra* note 28, at 721, 732 (discussing the role of black markets in the Special Period).

121. Law Decree No. 140, *supra* note 111; Alvarez, *supra* note 111, at 737 tbl. 1.

122. Alvarez, *supra* note 111, at 737 tbl. 1; Consejo de Ministros [Council of Ministers], *Decreto Numero 191: Reglamento General de las Cooperativas de Producción Agropecuaria* [Decree No. 191: General Rules of the Agricultural Production Cooperatives], GACETA OFICIAL DE LA REPUBLICA DE CUBA, EDICIÓN ESPECIAL [OFFICIAL GAZETTE OF THE REPUBLIC OF CUBA, SPECIAL ED.], 19 de Septiembre de 1994 [Sept. 19, 1994].

123. Alvarez, *supra* note 111, at 721, 737 tbl. 1.

124. *Id.* The author compiled a wealth of information from a series of seminars and conferences with numerous legal professionals and scholars from the Union Nacional de Juristas de Cuba (National Union of Jurists of Cuba), Sociedad Cubana de Derecho Agrario (Cuban Society of Agricultural Law), Asociación Nacional de Agricultores Pequeños (National Association of Small Farmers), and agricultural law professors from the University of La Habana in Havana, Cuba during the trips that took place in January of 2012, 2013, and 2014. The author has a record of these seminars and conferences in his personal notes. Personal Notes of Emiliano Lerda, (2012–2014) [hereinafter Personal Notes] (on file with author).

125. Personal Notes, *supra* note 124.

126. *Id.*

127. *Id.*

128. *Id.*

129. *Id.*

ministrative sanctions, however, whenever they were not able to comply with all of the requirements set forth in the regulations.¹³⁰ The gravest administrative sanction was the experimentation of the land and other agricultural goods and means of production.¹³¹ Another phenomenon was the movement of small farmers to join CPAs simply to receive the social security benefits, resulting in the weakening of the labor force of the entity.¹³² This was one of the reasons that caused CPAs to become inefficient and unproductive.¹³³ Another aggravating factor was the severe and sudden loss of support from the Soviet Union in the early 1990s, which resulted in a lack of tractors, trucks, fuel, and other supplies.¹³⁴ People started producing food in their backyards to be able to feed their families, and perhaps even some neighbors.¹³⁵ All of these factors drove the government to look for alternatives.¹³⁶ Granting idle land controlled by the government in usufruct was a model that offered hope for better food production, better employment opportunities, and better economic benefits to individuals as well as to the Cuban government.¹³⁷ Law Decree 259 represented a promising solution to the desperate conditions in Cuba from the 1990s and early first decade of the twenty-first century caused by the inability of state-controlled agricultural companies to put their land into production.¹³⁸

III. LAW DECREE 259

On July 11, 2008, Law Decree 259 was adopted by the Cuban State Council.¹³⁹ Law Decree 259 provides that idle land controlled by the State can be granted in usufruct to individual farmers, as well as to legal entities.¹⁴⁰ Law Decree 259 recognized Cuba's high level of dependency on imported food, and the crude reality that government-run farms are not productive, resulting in a significant amount of idle land.¹⁴¹ Cuban scholars have estimated the amount of idle

130. *Id.*

131. *Id.*

132. *Id.*

133. *Id.*

134. *Id.*

135. *Id.*

136. *Id.*

137. *Id.*

138. *Id.*

139. *Law Decree No. 259, supra* note 22.

140. *Id.* at arts. 1, 9.

141. ARMANDO NOVA GONZÁLEZ, CUBA STUDY GRP., CUBAN AGRICULTURE AND THE CURRENT ECONOMIC TRANSFORMATION PROCESS, FROM THE ISLAND 3 (2012), *available at* http://www.cubastudygroup.org/index.cfm/files/serve?File_id=9e06d123-22d1-40b6-b71A-bd6601599d91.

land owned by the government at approximately two million hectares.¹⁴² Law Decree 259 provided for the grant of 13.42 hectares in usufruct for a period of ten years (renewable for the same term of years), with the possibility of increasing the area in usufruct up to 40.26 hectares.¹⁴³ The usufruct for legal entities could last for twenty-five years with the possibility of renewing it for another twenty-five years successively.¹⁴⁴

From the very beginning, Law Decree 259 had several restrictions that created insecurity with potential recipients of land in usufruct.¹⁴⁵ The most prevalent problems scholars have identified with Law Decree 259 have to do with the length of the usufruct, the amount of land that can be obtained, and the lack of protections offered to the beneficiary with regards to building their own home and making other improvements.¹⁴⁶ Law Decree 300 has resolved some of these problems, but several serious challenges still need to be addressed.¹⁴⁷ Based on the relative success experienced by UBPCs and other privately run cooperatives, many expected that Law Decree 259 would significantly increase domestic food production in Cuba.¹⁴⁸ During 2009 and 2010, however, the level of agricultural production in Cuba remained stable, or in some cases, decreased.¹⁴⁹ In 2011, the National Office of Statistics anticipated a growth in agricultural production, but there was a decrease in the supply of food for human consumption which resulted in an increase in food prices.¹⁵⁰ Law Decree 259 offered a promising alternative to the traditional agricultural model in Cuba that would yield more farms in the hands of private owners with the technical support of different cooperatives.¹⁵¹ Law Decree 259 established the foundation for an idea that was later updated and improved by Law Decree 300. To better understand the evolution of Law Decree 259 into Law Decree 300, we must understand the guiding and leadership role played by the Cuban Communist Party in establishing the vision and guiding principles for the politics and policies of the country. The Cuban Communist Party lays out the vision for the country through a set of social and economic guidelines.

142. *Id.* at 2.

143. *Law Decree No. 259, supra* note 22, at arts. 2, 6.

144. *Id.* at art. 2.

145. NOVA GONZÁLEZ, *supra* note 141, at 3.

146. *Id.*

147. *See* discussion *infra* Part VI.C.

148. *See, e.g.,* NOVA GONZÁLEZ, *supra* note 141, at 3.

149. *Id.* at 4.

150. *See id.*, at 2, 4 tbl. 1 (anticipating an increase in imports of food for human consumption in 2011, despite expectations that production would increase through expanded implementation of usufruct contracts).

151. *Id.* at 3.

IV. GUIDELINES OF THE CUBAN COMMUNIST PARTY

The structure of the Cuban government is very unique. On one hand, Chapter 1, Article 1 of the Constitution of the Republic of Cuba says that it is a country “organized with all and for the good of all, as a united and democratic republic, for the enjoyment of political freedom, social justice, individual and collective well-being and human solidarity.”¹⁵² Article 3 also lays out the important role that people play in the sovereignty of the country.¹⁵³ In 2002, however, Article 3 of the Constitution of the Republic of Cuba was amended to make socialism irrevocable and declared that Cuba will never become a capitalist country.¹⁵⁴ Additionally, Article 5 establishes the CPC as the “highest leading force of society and of the state, which organizes and guides the common effort toward the goals of the construction of socialism and the progress toward a communist society.”¹⁵⁵

The CPC is charged with laying out the strategic plan for the entire country.¹⁵⁶ The strategic plan comes in the form of guidelines that are discussed and approved by the CPC in their irregularly-held congresses.¹⁵⁷ The first Congress

152. CONSTITUCIÓN DE LA REPUBLICA DE CUBA [CONST. OF THE REPUBLIC OF CUBA], ch. 1, art. 1 (1992).

153. *Id.* at ch. 1, art. 3.

154. CONSTITUCIÓN DE LA REPUBLICA DE CUBA [CONST. OF THE REPUBLIC OF CUBA], ch. 1, art. 3 (2002). Article 3 of Chapter 1 of the Constitution of the Republic of Cuba was amended to read as follows:

In the Republic of Cuba, the sovereignty resides in the people, from whom all of the power of the State emanates. That power is exercised directly or through the Assemblies of the People’s Power and other organs of the State derived from them, in the manner and according to the rules established in the Constitution and the laws.

All citizens have the right to fight, using all means, including armed struggle, when no other recourse is possible, against anyone attempting to overthrow the political, social, and economic order established by this Constitution.

Socialism and the social revolutionary political system instituted in this Constitution, proven by years of heroic resistance against all kind 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.

Id.

155. CONSTITUCIÓN DE LA REPUBLICA DE CUBA [CONST. OF THE REPUBLIC OF CUBA], ch. 1, art. 5 (1992).

156. Personal Notes, *supra* note 124.

157. See *Congresos del Partido Comunista de Cuba* [Congresses of the Communist Party of Cuba], PARTIDO COMUNISTA DE CUBA [COMMUNIST PARTY OF CUBA],

of the Cuban Communist Party was held in 1975.¹⁵⁸ Successive congresses were to be held every five to six years thereafter.¹⁵⁹ Between April 16 and 19, 2011, the CPC held their Sixth Congress and approved a new set of guidelines,¹⁶⁰ which are called the “Guidelines of the Economic and Social Politics of the Party and Revolution.”¹⁶¹ These Guidelines set forth by the Communist Party provide the direction for all governmental bodies that issue laws, rules, and regulations.¹⁶²

The Guidelines include twelve sections or areas of economic and social policies.¹⁶³ The areas range from tourism to the economic management model, as well as to housing, investment, and transportation policies.¹⁶⁴ Section 7 deals with Cuba’s agro-industrial policies.¹⁶⁵ It offers thirty-eight general guidelines pertaining to this topic.¹⁶⁶ The vast majority of the thirty-eight agro-industrial guidelines provide directives related to the increase of production, increase of exports, the decrease of imports, the strengthening of the agricultural infrastructure, and the need to manage a decentralization of the agricultural system.¹⁶⁷ The agro-industrial guidelines also cover, to a lesser extent, topics like sugarcane production, environmental protection, conservation, and fishery.¹⁶⁸ The need to decrease the country’s dependence on foreign food imports seems to be the number one concern of the CPC and their guidelines.¹⁶⁹ Cuba currently imports ap-

http://www.pcc.cu/cong_asamb.php (last updated Mar. 1, 2014) [hereinafter COMMUNIST PARTY OF CUBA] (providing links to information from the various congresses).

158. Jeff Franks, *Cuban Communist Party Congress Looks to Future*, REUTERS (Apr. 13, 2011), <http://www.reuters.com/article/2011/04/13/us-cuba-congress-idUSTRE73C6ZB20110413>.

159. See COMMUNIST PARTY OF CUBA, *supra* note 157; see also *Castro Calls Rare Cuba Communist Party Congress*, BBC (Nov. 9, 2010), <http://www.bbc.com/news/world-latin-america-11713417?>.

160. MARK P. SULLIVAN, CONG. RESEARCH SERV., R41617, CUBA: ISSUES FOR THE 112TH CONGRESS 7 (2012); see COMMUNIST PARTY OF CUBA, *supra* note 157; see VI CONGRESO DEL PARTIDO COMUNISTA DE CUBA [VI CONGRESS OF THE COMMUNIST PARTY OF CUBA], LINEAMIENTOS DE LA POLÍTICA ECONÓMICA Y SOCIAL DEL PARTIDO Y LA REVOLUCIÓN [GUIDELINES OF THE ECONOMIC AND SOCIAL POLICIES OF THE PARTY AND REVOLUTION] (2011) [hereinafter GUIDELINES] (translation on file with author), available at <http://www.cubadebate.cu/wp-content/uploads/2011/05/folleto-lineamientos-vi-cong.pdf>.

161. GUIDELINES, *supra* note 160.

162. Personal Notes, *supra* note 124.

163. See GUIDELINES, *supra* note 160, at 2–3.

164. *Id.*

165. *Id.* at 27–31, paras. 177–214.

166. *Id.*

167. See *id.*

168. See *id.*

169. See *id.*

proximately eighty percent of its food.¹⁷⁰ The United States and China are two of Cuba's biggest suppliers of food and agricultural products.¹⁷¹

The use of science and technology to increase efficiency and productivity is mentioned several times throughout the Guidelines.¹⁷² The success Cuba experienced through the use of non-state owned agricultural cooperatives such as UBPCs, and the relative success experienced from the granting of small tracts of idle land in usufruct to individual farmers through Law Decree 259, is evidenced by the emphasis placed on the many guidelines giving directives on the need for continued expansion of the decentralization and diversification of agricultural production.¹⁷³ For instance, Guideline Number 189 directs the Cuban government to grant land in usufruct to generate similar productive results to those achieved by the current cooperatives and farmers.¹⁷⁴ Guideline Number 189 also calls on the government to make the necessary modifications to Law Decree 259 to ensure the sustained exploitation of the lands given in usufruct.¹⁷⁵

The Guidelines also address the serious infrastructural needs facing the agricultural system in Cuba.¹⁷⁶ Infrastructural needs include better collection, distribution, storage, and marketing systems for agricultural products to avoid losses; assurances of quality; safety; and efficient distribution of agricultural goods and products throughout the country.¹⁷⁷ Other infrastructural needs mentioned in the Guidelines include financial support, as well as insurance coverage for farmers and cooperatives.¹⁷⁸ In addition, the Guidelines identify an infrastructural need to increase the rural population and develop programs that will attract and keep young people in agricultural occupations in rural areas.¹⁷⁹

Another aspect of the Guidelines worth mentioning is the direction given to the production of sugarcane.¹⁸⁰ There are several guidelines calling for a gradual increase in the production of sugarcane and its byproducts.¹⁸¹ The Guide-

170. FOREIGN AGRIC. SERV., USDA, CUBA'S FOOD & AGRICULTURE SITUATION REPORT 29 (2008), available at <http://thecubaneconomy.com/wp-content/uploads/2012/02/Cuba's-Food-Agriculture-Situation-Report-USDA-2008.pdf>.

171. *Id.* at 61, app. 2, tbl. 2; see generally U.S.-CUBA TRADE & ECON. COUNCIL, INC., 2012-2001 U.S. EXPORT STATISTICS FOR CUBA (2013), available at <http://cubatrade.org/CubaExportStats.pdf>.

172. See, e.g., GUIDELINES, *supra* note 160, at 22-24, 28-31.

173. *Id.* at 23-31, paras. 184-211; Personal Notes, *supra* note 124.

174. GUIDELINES, *supra* note 160, at 29, para. 189.

175. *Id.*

176. See *id.* at 28.

177. *Id.* at 28, paras. 182-83.

178. *Id.* at 30, para. 203.

179. *Id.* at 30, paras. 197-98.

180. See *id.* at 31.

181. *Id.* at 31, paras. 209-12.

lines also express an interest in exporting sugar to provide the country with an additional revenue source.¹⁸² In 2011 and 2012, Cuba was the third largest exporter of sugar to China.¹⁸³ Even though global sugar production has increased dramatically in the last four to five years, even outpacing the level of consumption, production was expected to remain flat in 2012 and 2013 while sugar consumption is expected to continue to rise.¹⁸⁴ Cuba remains one of the top ten exporters of sugar in the world, even after the fall of the Soviet Union, Cuba's move towards a policy and strategy of diversification in Cuban agriculture, and the end of Cuba's sugar monoculture in the early 1990s.¹⁸⁵

Finally, the Guidelines include a few directives regarding conservation and environmental stewardship.¹⁸⁶ Many scholars praise the success of Cuba's organic and environmentally-friendly agricultural development that emerged from the Special Period.¹⁸⁷ There are several guidelines requesting the increase of productivity in order to reduce imports and increase exports, and these guidelines specifically request the use of any science and technology available to achieve a higher level of productivity.¹⁸⁸ Guideline Number 187 directs the government to "[d]evelop sustainable agriculture in harmony with the environment, conducive to the efficient use of plant and animal genetic resources, including seeds, varieties, technological discipline, plant protection, and [to] promot[e] the production and use of organic fertilizers, biofertilizers[,] and biopesticides."¹⁸⁹ Cuba seems to have found equilibrium in their new agricultural system. Only time will tell whether the opening of their economy to a more market-oriented socialist economy will upset that equilibrium.

Building on the new agricultural production and land distribution program established by Law Decree 259 was a vehicle that gave the Cuban government an opportunity to tackle several economic and social needs at once. As a response to the guidelines approved by the CPC in 2011, the State Council passed Law Decree 300, an evolution of Law Decree 259.

182. *Id.* at 31, para. 211.

183. FOREIGN AGRIC. SERV., USDA, SUGAR: WORLD MARKETS AND TRADE 2 (2012), available at <http://usda01.library.cornell.edu/usda/fas/sugar/2010s/2012/sugar-11-20-2012.pdf>.

184. *Id.* at 1.

185. *See id.* at 4.

186. GUIDELINES, *supra* note 160, at 29, paras. 187–89.

187. *See, e.g.,* Peters, *supra* note 1, at 231.

188. *See* GUIDELINES, *supra* note 160, at 28–31.

189. *Id.* at 29, para. 187.

V. LAW DECREE 300

Law Decree 259 laid out the foundation for Law Decree 300, which was promulgated on September 20, 2012 by the Cuban State Council.¹⁹⁰ Law Decree 300 addresses several shortcomings that became evident following the implementation of Law Decree 259.¹⁹¹ The leadership of the CPC realized that Law Decree 259 had a lot of potential, but needed to be improved and enhanced to provide better incentives and protections for individuals interested in taking advantage of the opportunity.¹⁹² Law Decree 300 became the instrument of choice to address almost every single agricultural need outlined by the CPC Guidelines.¹⁹³ Law Decree 300 provides five final provisions in the last section.¹⁹⁴ The first final provision directs the Council of Ministers to dictate the rules and regulations for the implementation of Law Decree 300 within thirty days of the law going into force.¹⁹⁵ The third final provision of Law Decree 300 provides that the Ministry of Agriculture will work jointly with the National Institute of Physical Planning to stipulate procedures for the construction, reconstruction, expansion, remodeling, and legalization of improvements on any land granted in usufruct.¹⁹⁶ Accordingly, on September 25, 2012, the Cuban Council of Ministers adopted a companion decree—Law Decree 304—to provide the rules and regulations for the implementation of Law Decree 300.¹⁹⁷

Law Decree 300 provides several promising policy benefits for Cuba. For instance, it provides for an environmentally-friendly, decentralized productive agricultural framework, and an opportunity for local food production to be safely consumed by locals, obviating to a certain extent the need for infrastructural investments on transportation and storage.¹⁹⁸ This is also an opportunity to help decrease the country's reliance on foreign food imports.¹⁹⁹ Law Decree 300 provides attractive incentives to young people and others who have not lived in

190. *Law Decree No. 300*, *supra* note 23.

191. Personal Notes, *supra* note 124.

192. *Id.*

193. *Id.*

194. *Law Decree No. 300*, *supra* note 23.

195. *Id.*

196. *Id.*

197. Consejo de Ministros [Council of Ministers], *Decreto-Ley Numero 304* [Law Decree No. 304], 45 GACETA OFICIAL DE LA REPUBLICA DE CUBA, EDICION ORDINARIA [OFFICIAL GAZETTE OF THE REPUBLIC OF CUBA, REG. ED.] 1393, 22 de Octubre de 2012 [Oct. 22, 2012] [hereinafter *Law Decree No. 304*] (translation on file with author).

198. *See generally* *Law Decree No. 300*, *supra* note 23.

199. *See id.*

rural communities to leave the city and pursue a new career in farming.²⁰⁰ In order to successfully reach these policy objectives, however, Law Decree 300 will need to overcome several important legal challenges likely to be a problem as the government commences the implementation phases of granting idle land in usufruct to individuals or legal entities.²⁰¹

Prior to engaging in a detailed analysis of Law Decrees 300 and 304, this Article will explain the articles of Law Decree 300. Law Decree 300 is composed of thirteen articles.²⁰²

A. Article 1

Law Decree 300, Article 1, Section 1, provides for the granting of state-owned idle land in free usufruct for a specified period of time to legal entities and individuals, to “be exploited rationally and sustainably” based on the soil characteristics.²⁰³ The usufruct over a specific tract of land can only be granted to one individual or legal entity and cannot be transferred to third parties, unless the individual dies.²⁰⁴

B. Articles 2, 3, & 4

Article 2 describes what is to be considered state-controlled idle land, and Article 3 creates a pool of idle land.²⁰⁵ Article 4 deals with improvements.²⁰⁶ Buildings, including the home of the beneficiary, are considered improvements.²⁰⁷ This is an advancement over Law Decree 259.²⁰⁸ Article 4 provides more and better protections for the beneficiary of the new law.²⁰⁹ Existing improvements on land granted in usufruct can be bought from the state by the usufructuary.²¹⁰ Prior to making any improvements, the usufructuary must obtain permission from the Municipal Department of Physical Planning.²¹¹ Failure to

200. *Id.*; see also GUIDELINES, *supra* note 160, at 30, para. 198 (emphasizing usufruct contracts as an employment opportunity for young people).

201. See discussion *infra* Part VI.C.

202. Law Decree No. 300, *supra* note 23.

203. *Id.* at art 1.1

204. *Id.* at art. 1.3.

205. *Id.* at arts. 2–3.

206. *Id.* at art. 4.

207. *Id.* at arts. 4.1(a), (c).

208. Compare *id.* at art. 4 with Law Decree No. 259, *supra* note 22, at art. 8.

209. Law Decree No. 300, *supra* note 23, at arts. 4.2–5.

210. *Id.* at art. 4.2.

211. *Id.* at art. 4.3.

request permission could be grounds for termination.²¹² Any improvement made by the usufructuary cannot be sold or given in usufruct to third parties, unless they are inherited with the usufruct.²¹³ If the usufruct has ended, all improvements, made or bought, will be appraised, and the government will provide compensation.²¹⁴

C. Articles 5, 6, & 7

Article 5 outlines that land which is part of the future plans for city development can be given in usufruct, but usufructuaries cannot make improvements to that land.²¹⁵ Land that is part of state planning and for the development of commercial and genetic cattle breeding can only be given to legal entities, UBPCs, and CPAs.²¹⁶ Article 6 provides a list of different land types that cannot be given in usufruct.²¹⁷ The list includes two new categories that were not included in Law Decree 259.²¹⁸ One category concerns land located within the Coastal Zone and the Sea Shore Protected Zone.²¹⁹ The other protects land in forest belts along dams and rivers.²²⁰ Article 7 also ushers in a new improvement—an increase in the amount of land that can be given in usufruct as compared to Law Decree 259. The maximum amount of land that an individual who owns no other type of land may receive is 13.42 hectares.²²¹ Individuals who already possess land in any other character and who are also part of a state-controlled farm or a UBPC can be incremented up to 67.10 hectares (compared to 40.26 hectares maximum under Law Decree 259),²²² as long as they are adjacent parcels or within a five kilometer radius of the existing property.²²³ Any additional land given to an individual or entity will be contingent upon maintaining continuous full production of the existing land.²²⁴ The land given to a usufructuary is determined based on the type of agricultural production that will be car-

212. *Id.* at art. 12(h).

213. *Id.* at arts. 4.4–4.5.

214. *Id.* at art. 4.5.

215. *Id.* at art. 5.1.

216. *Id.* at art. 5.2.

217. *Id.* at art. 6.

218. Compare *id.* with Law Decree No. 259, *supra* note 22, at art. 12.

219. Law Decree No. 300, *supra* note 23, at art. 6(e).

220. *Id.* at art. 6(f).

221. *Id.* at art. 7.1.

222. Compare *id.* at art. 7.2, with Law Decree No. 259, *supra* note 22, at art. 6.

223. Law Decree No. 300, *supra* note 23, at art. 7.2.

224. *Id.* at art. 7.3.

ried out and the soil's capacity for that activity, as well as the usufructuary's ability and resources to maintain that land in production.²²⁵

D. Articles 8, 9, & 10

Article 8 establishes the length of usufructs.²²⁶ For individuals, the usufruct will be granted for a period of ten years, although it can be renewed indefinitely for the same term of years.²²⁷ Legal entities may receive a usufruct for twenty-five years, but it may only be extendable for another twenty-five years.²²⁸ The term of usufructs over land that may be used for city development or any other state planned development will vary in length based on the time in which activities related to the planned development are expected to take place.²²⁹

Article 9 establishes who can request idle land in usufruct.²³⁰ Law Decree 300 provides that authorized state-controlled farms, UBPCs, CPAs, and authorized Service and Credit Cooperatives (CCSs) may request idle land in usufruct.²³¹ Article 9 provides that legal entities may request land in usufruct even if they are not planning to engage in agricultural production of any kind, but instead plan to use it to produce food for workers, members, and other individuals associated with the legal entity.²³² Finally, Article 9 specifies that only individuals who reside in Cuba and have the mental and physical capacity to work the land may request land in usufruct.²³³

Article 10 creates a requirement that all individuals shall be linked through contracts with state-controlled farms, UBPCs, CPAs, and CCSs to acquire inputs, services, and marketing for their produce.²³⁴ Seeking these services from other sources is grounds for termination of the usufruct.²³⁵

E. Articles 11, 12, & 13

Article 11 stipulates that a recipient of the usufruct may join a state-controlled farm as a worker or as a member of a UBPC or CPA.²³⁶ In doing so,

225. *Id.* at art. 7.4.

226. *Id.* at art. 8.1.

227. *Id.*

228. *Id.*

229. *Id.* at arts. 5.1, 8.2.

230. *Id.* at art. 9.

231. *Id.* at art. 9.1(a).

232. *Id.* at art. 9.1(b).

233. *Id.* at art. 9.1(c).

234. *Id.* at art. 10.

235. *Id.* at art. 12(o).

236. *Id.* at art. 11.

however, the usufructuary gives up their right to the usufruct and the improvements therein to the legal entity they are joining.²³⁷ The legal entity is required to compensate the usufructuary for the improvements on the land, based on the appraised value.²³⁸

Article 12 lays out all the grounds for termination of a usufruct contract.²³⁹ There are sixteen grounds that can bring about the extinction of a usufruct.²⁴⁰ The usufructuary must begin productively working the land within a period of six months after the usufruct is obtained.²⁴¹ The usufructuary cannot make any improvements without prior authorization from the government.²⁴² The usufruct can also be lost if the government determines that the usufructuary is using the land in “irrational or unsustainable ways,” or violating the laws regarding the “protection and conservation of natural resources and the environment.”²⁴³ Article 12 also provides that a usufruct contract will be extinguished if the usufructuary does not fulfill the entailment requirements set forth under Article 10.²⁴⁴ Finally, the last clause of Article 12 provides that the usufruct may be terminated for any public use need as determined by the Ministry of Agriculture or higher government agencies.²⁴⁵

Article 13 simply notifies the beneficiaries that they will be subject to taxes as determined by the tax legislation.²⁴⁶

VI. LAW DECREE 300 ANALYSIS

In 2008, Law Decree 259 introduced a new agricultural legal framework for the Cuban Government, focusing on reducing Cuba’s dependency on food imports while increasing its ability to provide locally produced healthy food for the people of Cuba.²⁴⁷ On September 20, 2012, the Cuban State Council approved Law Decree 300.²⁴⁸ Shortly after Law Decree 300 was passed, the Council of Ministers approved Law Decree 304 with the rules and regulations for the

237. *Id.*

238. *Id.*

239. *Id.* at art. 12.

240. *Id.*

241. *Id.* at art. 12(g).

242. *Id.* at art. 12(h).

243. *Id.* at arts. 12(j), (k).

244. *Id.* at art. 12(o); *see also*, notes 234–35, *supra*.

245. *Law Decree No. 300*, *supra* note 23, at art. 12(p).

246. *Id.* at art. 13.

247. *See generally Law Decree No. 259*, *supra* note 22 (setting forth the legal framework).

248. *See Law Decree No. 300*, *supra* note 23.

implementation of Law Decree 300.²⁴⁹ Finally, the Ministry of Agriculture and the National Institute of Physical Planning passed Joint Resolution 1/2012 on October 19, 2012 to establish “procedures for the construction, reconstruction, remodeling, expansion, and the legalization of the improvements on land granted in usufruct.”²⁵⁰ The State Council, in response to the direction and objectives set out in the agricultural Guidelines of the CPC in their sixth Congress, passed Law Decree 300 in 2012.²⁵¹

This Article will, first, offer the reader a brief summary of the procedural mechanics an interested party must follow to request and receive a tract of land in usufruct and, secondly, evaluate Law Decree 300’s potential to help the country’s weakened economy and its challenges in terms of broad-based policy. Finally, this Article will analyze the practical legal challenges that will need to be taken into consideration as Cuban legal experts continue to make improvements for a possible future version of Law Decree 300.

A. Policy Mechanics

Individuals or legal entities interested in requesting land from the government in usufruct may do so in writing by either requesting a specific tract of land, or requesting any tract of idle land available to be granted in usufruct.²⁵² The request must be made before the Municipal Director of the National Center of Land Control.²⁵³ For those with a specific tract of land in mind, the Municipal Director will determine whether the land is private or state-controlled; additionally, the land must be registered in the Pool of Idle Land.²⁵⁴ If the land is privately owned, it cannot be given in usufruct.²⁵⁵ If owned by the government, then the municipality must determine if there is a superseding governmental interest to develop that land.²⁵⁶ If the government owns the land and there are no immediate plans to develop or utilize that land, the municipality must register it in the Pool of Idle Land, and the land can then be granted in usufruct to the farmer request-

249. See *Law Decree No. 304*, *supra* note 197.

250. Ministerio de la Agricultura y Instituto Nacional de Planificación Física. [Ministry of Agric. & Nat’l Inst. of Physical Planning], Resolución Conjunta No. 1/2012 [*Joint Res. No. 1/2012*], 45 GACETA OFICIAL DE LA REPUBLICA DE CUBA, EDICION ORDINARIA [OFFICIAL GAZETTE OF THE REPUBLIC OF CUBA, REG. ED.] 1401, 22 de Octubre de 2012 [Oct. 22, 2012] [hereinafter *Joint Res. No. 1/2012*] (translation on file with author).

251. See *Law Decree No. 300*, *supra* note 23; see GUIDELINES, *supra* note 160, at 27–31.

252. See *Law Decree No. 304*, *supra* note 197, at art. 7; Personal Notes, *supra* note 124.

253. *Law Decree No. 304*, *supra* note 197, at art. 7.

254. *Id.* at arts. 3.2, 8.1; Personal Notes, *supra* note 124.

255. Personal Notes, *supra* note 124.

256. *Id.*

ing it.²⁵⁷ For those interested in taking advantage of Law Decree 300 but who have no specific tract of land in mind, the Municipal Director can help find an appropriate tract of land based on the intended agricultural production, the condition of the soil, and availability.²⁵⁸ If the Municipal Director recommends approval of the usufruct, the application is sent to the Provincial Director of the Ministry of Agriculture, who reviews the application and ultimately issues an approval resolution with information about the identity of the one requesting the usufruct, the entity granting the land, the size of the area in hectares, the boundaries and location of the land, the type of production that will be carried out, and the length of the usufruct.²⁵⁹ Not all land tracts have been divided, measured, and registered in the Pool of Idle Land by the government.²⁶⁰ If the land to be granted in usufruct has not been measured, divided or subdivided, and registered at the time the request is made, the Municipal Director is in charge of sending experts to measure and mark the boundaries of the tract.²⁶¹ However, there may not be fences available to mark the boundaries of specific tracts of land.²⁶² Therefore, in many instances, the property boundaries may be marked with a stake or a rock, or any other item that provides the owner with a visible marker.²⁶³ While there is an appeal procedure established by Decree 304 to appeal denials, there is currently no legal framework or procedure to settle disputes that may arise in the event that more than one individual requests the same tract of land in part or in whole.²⁶⁴

B. Policy Challenges

During their 2011 Congress, the leadership of the CPC saw an opportunity to broaden the reach of Law Decree 259, and used it as a vehicle to address other economic and systematic concerns facing the country—namely, the lack of adequate and up-to-date infrastructure, over-crowding of urban areas with the corresponding serious decreases in rural population, lack of employment opportunities for unemployed Cubans, environmental preservation, and the need for a productive and sustainable agricultural model.²⁶⁵ Can Law Decree 300 deliver on all these fronts? Only time will tell. Granting government-controlled idle land in usufruct to individuals and legal entities, such as UBPCs, could certainly help the

257. *Id.*

258. *Law Decree No. 304*, *supra* note 197, at art. 7; *Personal Notes*, *supra* note 124.

259. *Law Decree No. 304*, *supra* note 197, at art. 11.1.

260. *See id.*; *Personal Notes*, *supra* note 124.

261. *Law Decree No. 304*, *supra* note 197, at art. 2.

262. *Personal Notes*, *supra* note 124.

263. *Id.*

264. *Law Decree No. 304*, *supra* note 197, at art. 12; *Personal Notes*, *supra* note 124.

265. *See GUIDELINES*, *supra* note 160, at 27–31.

government achieve a greater level of food production while embarking on a more decentralized agricultural production system which could serve as the springboard for alternative economic models in Cuba.²⁶⁶ Cuba will have to face the challenges of working with inadequate roads and storage facilities, poor transportation with scarce technology, and little financial support from the government.²⁶⁷

First, can Law Decree 300 help Cuba reduce their reliance on food imports? Cuba currently imports approximately eighty percent of its food.²⁶⁸ It is not realistic to expect Law Decree 300 or any other agricultural program Cuba can offer to completely eliminate its dependence on foreign food imports to feed the eleven million people living in Cuba.²⁶⁹ However, the new model introduced by Law Decree 259 and further developed by Law Decree 300 will help increase access to food and thus decrease the country's reliance on foreign food imports.²⁷⁰ The extent to which it will help will depend on several factors, both internal and external. Internally, Cuba has geographic realities that act as a fundamental limiting factor on agricultural production.²⁷¹ In addition, Cuba has serious internal economic challenges with a two-currency system that is heavily reliant on a few foreign partners like Venezuela, as well as the tourism industry, to subsidize the socialist government.²⁷² As the relationship with the United States continues to improve and the relationship with Venezuela continues to be increasingly uncertain following the death of Hugo Chávez, Cuba has little choice but to be extremely creative and try a new and unproven agricultural system.²⁷³

Second, can Law Decree 300 thrive in the current condition of Cuba's infrastructure? Law Decree 300 requires farmers to supply an agreed upon amount

266. See *id.*

267. Joaquín Pujol, *The Cuban Economy and Reforms*, ASS'N FOR THE STUDY OF THE CUBAN ECON. (WASH., D.C.), Sept. 2011, at 11, available at <http://www.ascecuba.org/publications/newsletter/NI20110903.pdf> (discussing the greatest perceived economic challenges facing the Cuban government); see generally Paul Meo, *Change in Cuba? The 2011 ASCE Conference*, ASS'N FOR THE STUDY OF THE CUBAN ECON. (WASH., D.C.), Sept. 2011, at 6–10, available at <http://www.ascecuba.org/publications/newsletter/NI20110903.pdf> (describing recent reforms and challenges to their implementation and effectiveness).

268. FOREIGN AGRIC. SERV., *supra* note 170, at 29.

269. Pujol, *supra* note 267, at 11.

270. See *Law Decree No. 259*, *supra* note 22; *Law Decree No. 300*, *supra* note 23; Jacob Shkolnick, Note, *Sin Embargo: The Cuban Agricultural Revolution and What It Means for the United States*, 17 *DRAKE J. AGRIC. L.* 683, 701–03 (2012).

271. See FOREIGN AGRIC. SERV., *supra* note 170, at 8–13.

272. See Crystal Jamison, Comment and Casenote, *Family Tradition: Cuban Policy Reform as Raul Castro Takes the Reigns*, 15 *LAW & BUS. REV. AM.* 891, 908–10 (2009) (discussing challenges resulting from Cuba's two-currency system); see also Pujol, *supra* note 267, at 11–12.

273. See Tamayo, *supra* note 106.

of agricultural products to the government.²⁷⁴ The farmer in most cases can sell the surplus production independently and directly to the consumer at market prices set by supply and demand.²⁷⁵ The Cuban government will still need to deal with storage and distribution problems that will occur when trying to bring produce to urban areas or different points of sale across the country.²⁷⁶ The more land given in usufruct, however, and the more land that becomes productive, the more likely it is that people will be able to access locally produced food.²⁷⁷ Another potential problem with regards to the poor infrastructure in Cuba will be getting farmers and cooperatives the necessary assistance in terms of inputs and technology.²⁷⁸

Third, will Law Decree 300 help decentralize and diversify Cuba's agricultural production? The guidelines of the CPC emphasize the need to adopt a new management model that will include greater participation by local municipalities, and the need for agricultural structures that are not run by the state to better utilize the market of free competition and to increase efficiency.²⁷⁹ Law Decree 300 provides individuals who may not otherwise consider farming as a career with an opportunity to start a family operation.²⁸⁰ The more efficient farmers become, the more opportunities they will have to sell their produce at market prices to local consumers.²⁸¹ There is a real incentive for farmers to negotiate a reasonable production agreement with the government and to produce more than what is required by the agreement in order to sell the excess produce at the local level or directly to consumers.

Finally, the leadership of the CPC approved several guidelines that call for the development of policies that will encourage the development of sustainable agriculture that promotes the use of bio-fertilizers and pesticides.²⁸² Law Decree 300 is an excellent experiment of an environmentally-friendly, sustainable, organic agricultural production model. Currently, farmers have no choice but to use bio-fertilizer and pesticides on their farms.²⁸³ Farmers also have little to no

274. *Law Decree No. 300*, *supra* note 23, at art. 7.3.

275. Personal Notes, *supra* note 124; *see also* Jamison, *supra* note 272, at 899–900.

276. *See* GUIDELINES, *supra* note 160, at 28–29, paras. 185–86.

277. *See* Jamison, *supra* note 272, at 900 (describing the decentralization of the Cuban agrarian sector and benefits for farmers and society).

278. *See id.* at 900–01 (discussing efforts to promote agricultural development).

279. *See, e.g.*, GUIDELINES, *supra* note 160, at 30, para. 205.

280. *See id.* at 30, para. 198.

281. *See* Jamison, *supra* note 272, at 900 (describing Raul Castro's attempt to incentivize the efficiency of farmers).

282. *E.g.*, GUIDELINES, *supra* note 160, at 29, para. 187.

283. *See* Jamison, *supra* note 272, at 900 (describing initiatives to promote sustainable practices) (quoting Melissa Penn, *The Dynamic Debut of Raul Castro: Picking up the Pieces of Cuba Beneath the Rubble of Fidel*, COUNCIL ON HEMISPHERIC AFFAIRS (Nov. 4, 2008), <http://www.coha.org>).

technology or machinery available to aid in their agricultural operations.²⁸⁴ Given the overall circumstances of the country, the agricultural system has to be extremely resourceful to make the most efficient and productive agricultural system possible with very little access to the technology, machinery, and other scientific advances available to everyday mainstream agricultural production operations throughout the world.²⁸⁵

C. Legal Challenges

The legal challenges ahead for Law Decree 300 can be grouped into the following areas: (i) housing and improvements; (ii) integration of the new recipient of the usufruct; (iii) usufruct contracts; (iv) economic; and (v) other. Law Decree 304 establishes the rules and regulations for the implementation of Law Decree 300.²⁸⁶

i. Housing and Improvements

Law Decree 304 stipulates that the area authorized for the construction or extension of improvements shall not exceed one percent of the total area of the land granted in usufruct.²⁸⁷ This restriction will likely present serious challenges for agricultural operations with livestock and other structure-intensive agricultural practices.²⁸⁸ Furthermore, it is not clear what would happen to those who obtain land in usufruct that already has structures exceeding one percent of the total area granted in usufruct.²⁸⁹ Perhaps the most problematic area of Law Decree 300 that needs further improvement and development is the rights of the individual or legal entity regarding improvements and houses. Cuba's Civil Code provides that a house is personal property.²⁹⁰ A designation of personal property gives the owner certain rights over the use, disposition, and transmission of the property.²⁹¹ Law Decree 300, however, establishes under Article 4.1 that a house

coha.org/the-dynamic-debut-of-raul-castro-picking-up-the-broken-pieces-of-storm-battered-but-now-oil-rich-cuba-and-moving-ahead-with-mixed-prospects/).

284. See Jamison, *supra* note 272, at 900; see also Miguel A. Altieri, *The Paradox of Cuban Agriculture*, MONTHLY REV. (Jan. 2012), <http://monthlyreview.org/2012/01/01/the-paradox-of-cuban-agriculture>.

285. See Jamison, *supra* note 272, at 899–900; see also Penn, *supra* note 283.

286. Law Decree No. 304, *supra* note 197.

287. *Id.* at art. 22.2.

288. Personal Notes, *supra* note 124.

289. See Law Decree No. 304, *supra* note 197, at arts. 22–25.

290. Personal Notes, *supra* note 124.

291. *Id.*

built by the usufructuary is an improvement, not personal property.²⁹² The owner of the house has no rights over improvements on the land, and because the house is an improvement based on Law Decree 300, the beneficiary has no rights over that house.²⁹³ The usufructuary will not be able to transfer the house to their heirs or dispose of the house as they are now permitted to under a new law, which allows Cubans to buy and sell real estate.²⁹⁴ This is a serious legal concern that must be addressed in the future, before it becomes a legal quagmire when Cubans try to buy, sell, or transfer ownership of a house built on land given in usufruct by the government.²⁹⁵ Another concern is what to do when the person receiving the land in usufruct does not want to take the land with existing improvements or buildings on it.²⁹⁶ Who will be responsible for eliminating the improvements, and who will cover the costs associated with clearing the improvements from the land? Finally, Law Decree 300 does not provide for any programs to assist individual farmers in obtaining the necessary materials to build homes.²⁹⁷

ii. *Integration and Linkage of the New Recipient of the Usufruct*

With regards to the integration and linkage of the new recipient of the usufruct, the legal concern which needs to be addressed is a requirement that an individual must receive the inputs and other product marketing services from a state-owned farm, UBPC, CPA, or CCS.²⁹⁸ This framework and legal requirement assumes there will be a state-owned farm, UBPC, CPA, or CCS near the land granted in usufruct.²⁹⁹ What happens in those areas where there are no UBPCs, CPAs, CCSs, or state-controlled farming operations nearby?

iii. *The Usufruct Contract*

Chapter V, Articles 14 through 17 of Law Decree 304 provides the rules and regulations for usufruct contracts.³⁰⁰ However, there is no mention of how or where any lawsuit arising out of the usufruct contract will be litigated.³⁰¹

292. *Id.*; see also Law Decree No. 300, *supra* note 23, at art. 4.1(c).

293. Personal Notes, *supra* note 124; see also Law Decree No. 300, *supra* note 23, at art. 4.4.

294. Personal Notes, *supra* note 124.

295. *Id.*

296. *Id.*

297. *Id.*

298. Law Decree No. 300, *supra* note 23, at art. 10; Personal Notes, *supra* note 124.

299. See Law Decree No. 300, *supra* note 23.

300. Law Decree No. 304, *supra* note 197, at arts. 14–17.

iv. *Economic Considerations*

The principal economic concern arising from Law Decree 300 is related to the house or improvement valuation process. The valuation process can be used to reimburse an individual for the house or improvements built on the land they are using in usufruct.³⁰² If either party terminates the usufruct, the individual is entitled to receive fair compensation for the improvements they made on the land.³⁰³ However, the only tool currently available for the Ministry of Agriculture to appraise properties and improvements is based on Resolution 602/90, adopted on September 25, 1990.³⁰⁴ Resolution 602/90 has a list of prices for the Ministry of Agriculture to use when buying agricultural land, forests, and houses in rural areas.³⁰⁵ The biggest problem with Resolution 602/90 is the extraordinarily low and outdated prices contained therein.³⁰⁶ The possibility of not being able to receive fair compensation for a house or other improvements can be a deterrent for individuals interested in requesting land in usufruct with the idea of building a house or making other improvements on the land.

v. *Other Considerations*

Other elements of Law Decree 300 that will need further development in the future include the need to define a process on how to handle multiple requests from more than one individual over the same tract of land, in whole or in part.³⁰⁷ Finally, Law Decree 300, Article 12, subsection k provides that repeated infractions of the legal rules regarding the protection of natural resources and the environment will be grounds for termination of the usufruct contract.³⁰⁸ However, there is no specific number of infractions established to trigger the need to terminate the usufruct.³⁰⁹ The process by which the Municipal Director is to be notified is also currently unknown.³¹⁰ These are all areas that will require additional attention by Cuban legal experts in the near future. As land tenure continues to

301. *See id.*

302. *Law Decree No. 300, supra* note 23, at art. 4.5.

303. *Id.*

304. *See Resolución No. 602/90* [Resolution No. 602/90], 25 de Septiembre de 1990 [Sept. 25, 1990], available at http://www.actaf.co.cu/index.php?option=com_mtree&task=att_download&link_id=144&cf_id=24.

305. *Id.*

306. *Id.*

307. *See Law Decree No. 300, supra* note 23, at art. 1.3. "Usufruct over the same land cannot be given to more than one natural person or legal entity . . ." *Id.*

308. *Id.* at art. 12(k).

309. *See id.*

310. *See id.*

evolve in Cuba, legal scholars should expect to see further developments with regards to the granting of land in usufruct.

VII. CUBA'S UNCERTAIN FUTURE

Cuba's reforms under the leadership of Raul Castro may need to pick up the pace and increase in depth.³¹¹ On March 5, 2013, Hugo Rafael Chávez Frías (Hugo Chávez) died from an unspecified form of cancer.³¹² His death brought a great deal of uncertainty to Venezuela, as well as to the entire Caribbean and Latin American region.³¹³ Hugo Chávez's close relationship with the Castro brothers has provided Cuba with a political ally and financial sponsor that allowed the economically challenged island to continue to survive.³¹⁴ Through a program called "Petrocaribe," Venezuela has provided Cuba with approximately 100,000 barrels of oil per day (satisfying approximately two-thirds of its consumption needs) at prices well below market value, and in exchange accepting Cuban doctors to serve in low-income communities of Venezuela as part of payment.³¹⁵ The assistance from Venezuela includes not only providing Cuba with oil, but also providing Cuba with the currency it requires to purchase and import other goods to meet the needs of the country.³¹⁶

Venezuela is Cuba's largest trading partner and has accounted for more than twenty percent of Cuba's overall economic activity.³¹⁷ Analysts agree that Cuba's dependency on Venezuela's financial support is not as great as it was with the former Soviet Union at the time of its demise in the early 1990s.³¹⁸ However, most analysts also agree that a reduction or elimination of Venezuela's financial aid could potentially be far more catastrophic for the island given the extremely weak condition of the Cuban economy and overall poor production infrastructure.³¹⁹ On the other hand, it is possible that a reduction of foreign aid could also result in a much faster and more meaningful change in policies, open-

311. See Pujol, *supra* note 267, at 12 (discussing Raul Castro's slow start at making reforms).

312. William Neuman, *Chávez Dies, Leaving Sharp Divisions in Venezuela*, N.Y. TIMES, Mar. 5, 2013, http://www.nytimes.com/2013/03/06/world/americas/hugo-chavez-of-venezuela-dies.html?pagewanted=all&_r=1&.

313. *Id.*

314. See, e.g., Tamayo, *supra* note 106 (discussing Cuba's economic reliance on Venezuela).

315. Faries, *supra* note 3; Tamayo, *supra* note 106.

316. Tamayo, *supra* note 106.

317. *Id.*

318. See, e.g., *id.* (citing a report by the Economist Intelligence Unit).

319. See, e.g., *id.*

ing Cuba to a free market economy.³²⁰ The “good news” for Cuba is that Chávez’s “hand-picked successor,” Nicolas Maduro, won the election on April 14, 2013.³²¹ Maduro faces a very difficult economic condition in his own country, but Cuba’s financial aid will likely survive other austerity measures or cuts to foreign aid.³²² The alliance between Cuba and Venezuela will be very important for Maduro as he establishes himself as the rightful political successor of Chávez in the eyes of the Venezuelan people, and the rest of the world.³²³ The macro political analysis for Maduro may change, however, after the Castro brothers die or transition out of power. The analysis may also change if internal political pressures, coupled with a more serious economic crisis in Venezuela, force Maduro’s hand and require him to cut his losses on a losing bet to keep Cuba alive.³²⁴ Cuba also has very strong relationships with other important trading partners like China, Brazil, Argentina, and other South American countries that may be able to help ameliorate the crisis.³²⁵

The U.S. Embargo is another important policy that will affect Cuba’s future in many ways. The Embargo is also slowly evolving, but experts predict that it will not be lifted in the near future.³²⁶ Some agricultural groups in the United States have recognized the tremendous economic opportunity that lifting the Embargo would provide to American businesses.³²⁷ Starting in 2001, after President Clinton signed the Trade Sanctions Reform and Export Enhancement Act of 2000 into law, American businesses were allowed to sell agricultural and medical products to Cuba, but could be paid with cash only.³²⁸ Cuba is currently importing corn, soybeans, chickens, and other food products from the United States.³²⁹

320. See generally Meo, *supra* note 267, at 8–10.

321. Risa Grais-Targow & Heather Berkman, *For Friends of Chávez, There's Good News and Bad News*, FOREIGN POL’Y (Mar. 13, 2013), http://blog.foreignpolicy.com/posts/2013/03/13/for_friends_of_chavez_there_s_good_news_and_bad_news; Juan Forero, *Nicolas Maduro Narrowly Wins Presidential Election in Venezuela*, WASH. POST, Apr. 14, 2013, http://www.washingtonpost.com/world/hugo-chavez-heir-nicolas-maduro-leads-in-polls-ahead-of-vote/2013/04/14/334cd2ba-a54b-11e2-9e1c-bb0fb0c2edd9_story.html.

322. See Grais-Targow & Berkman, *supra* note 321; Tamayo, *supra* note 106.

323. Grais-Targow & Berkman, *supra* note 321.

324. *Id.*

325. FOREIGN AGRIC. SERV., *supra* note 170, at 61, app. 2, tbl. 2.

326. See Michael Brush, *Time to Invest in Cuba?*, MSN MONEY (Jan. 22, 2013), <http://money.msn.com/investing/time-to-invest-in-cuba> (citing Cuban experts on the issue).

327. E.g., Christy M. DeMelfi, Note, *Nothing but the Facts: An In-Depth Analysis of the Effects of Economic Sanctions Against Cuba*, 5 J. INT’L BUS. & L. 137, 165 (2006) (discussing the business benefits that can result from ending the embargo); Shkolnick, *supra* note 270, at 703.

328. 22 U.S.C. §§ 7201–7211 (2012); 2001 *Commercial Highlights*, U.S.-CUBA TRADE & ECON. COUNCIL, INC., <http://www.cubatrade.org/2001hlights.html> (last visited April 9, 2014).

329. FOREIGN AGRIC. SERV., *supra* note 170, at 62, app. 2, tbl. 3.

The United States is Cuba's most important supplier of agricultural imports.³³⁰ The Cuban people continue to ask for the lifting of the Embargo because they are the ones suffering from its consequences.³³¹ American farmers and businesses have also asked the U.S. government to lift the Embargo.³³² However, lifting the Embargo has the potential to pose substantial challenges to the Cuban government, as well as to Cuba's socialist economic system.³³³ It is difficult to predict how lifting the Embargo would affect Cuba's new usufruct land tenure and distribution.³³⁴ Lifting the Embargo has the potential to accelerate changes in the Cuban economic system, moving it toward a more liberal market economy.³³⁵

VIII. CONCLUSION

Raul Castro's efforts to reform the economic system in Cuba have been met with a great deal of internal resistance from long-standing members and leaders of the Cuban Communist Party because new liberal economic reforms could weaken their political power and control.³³⁶ However, some analysts have criticized Castro's reforming efforts as too mild, too slow, and too late to meaningfully help with Cuba's serious economic challenges.³³⁷

While experts disagree on when Cuba will move toward a market economy, they all seem to agree that it will inevitably move in that direction.³³⁸ Law Decree 300 is another step on the government's road to the decentralization and the quasi-privatization of property.³³⁹ There will be two major competing elements affecting the future of agriculture in Cuba. On one hand, the government is realizing that a socialist country in a globalized economy must adjust and adapt the traditional socialist model to take advantage of the modernized and capitalist world, which is an absolute necessity to sustain the welfare programs of a socialist system. The Cuban government will also experience significant market pres-

330. *Id.* at 61, app. 2, tbl. 2.

331. Personal Notes, *supra* note 124.

332. See DeMelfi, *supra* note 327, at 163–64 (summarizing the primary policy arguments on why the Embargo should be lifted and advocating for its removal).

333. See *id.* at 164.

334. See Shkolnick, *supra* note 270, at 701–02 (discussing the potential for U.S. and Cuban agricultural relations resulting from Cuba's reforms).

335. See generally Meo, *supra* note 267, at 8–10.

336. Faries, *supra* note 3.

337. Pujol, *supra* note 267, at 13.

338. See DeMelfi, *supra* note 327, at 164–66.

339. See Francisco López Segrera, *The Cuban Revolution: Historical Roots, Current Situation, Scenarios, and Alternatives*, 38 *LATIN AM. PERSP.* 3, 13–16 (2011) (discussing policy proposals for the new Cuban economic model, including measures adopted in Law Decree No. 300).

tures to return to a more export-oriented, import-reliant model.³⁴⁰ On the other hand, small farmers will see significant challenges if they have to compete with imported food and agricultural products produced by large farmers using the latest biotechnology and machinery. The global market pressures will demand more productivity and efficiency from Cuban farmers. Even if Cuban produce is sold domestically, it will be difficult to remain isolated from the competition because cheaper products in large quantities could be imported from elsewhere, namely the United States. Cuban agriculture will find it difficult to ignore the efficiency and effectiveness of biotechnology and the latest scientific and technological advances by modern agriculture used around the world. In order to compete, both internally and externally, Cuba may have no choice but to rely on science and the economies of large-scale production. Whether the large-scale efficiencies and production will come from large individual farmers, small farmers associated through a cooperative, or large state-controlled farms remains to be seen. If the former ends up being the case, it is possible that Cuba will return to a primarily monoculture agricultural system due to its geographic location, as well as its soil and weather characteristics. The larger the farm operation, the more efficient and biotechnology-reliant farmers will become.³⁴¹

Many scholars have wondered whether Cuba's current agricultural development and embrace of sustainable and organic agricultural practices was purely based on the economic realities the country has faced over the past two decades, or because Cuba has truly learned to value environmentally-friendly and sustainable agricultural techniques. The realities of the global market will soon knock on Cuba's door with significant investment opportunities that will be too good to turn down. Whether we like it or not, at the end of the day, sugar may not be king, but money is.

Cuba is evolving. Some people think recent changes are not substantial enough, while others think the changes are too many, too quickly. The United States should consider taking a step back, lifting the Embargo, and letting Cubans decide the right time, place, and manner for their continued evolution. However, there is bad news for people who are uncomfortable with the changes introduced by Raul Castro thus far: this is just the beginning.

340. Alvarez, *supra* note 111, at 732.

341. See generally CARL F. JORDAN, CAN ORGANIC AGRICULTURE FEED THE WORLD?, UNIV. OF GA. 8 (2008), available at http://www.springvalleyecofarms.org:8090/UserFiles/File/Can%20Organic%20Ag%20Feed%20the%20World_08132009.pdf (discussing farming corporations and barriers to the adoption of sustainable practices).

Appendix A



Lerda Appendix Photo 1 Caption:

This photo was taken in January of 2012. The bridge pictured is located at the intersection of Avenida Rancho Boyeros and Avenida San Francisco and can be seen driving from Jose Marti International Airport towards Old Havana. The sign posted on the bridge reads: "Everything for the Revolution."



Lerda Appendix Photo 2 Caption:

This photo was taken in January of 2013. The bridge pictured is located at the intersection of Avenida Rancho Boyeros and Avenida San Francisco and can be seen driving from Jose Marti International Airport towards Old Havana. The same bridge pictured in January of 2012 had sign that read "Everything for the Revolution."



Lerda Appendix Photo 3 Caption:

This photo was taken in January of 2012 on a rural road outside of Havana. This sign reads: "In Combat!" Signs with fighting words such as these ones are becoming harder to find in Havana. The old signs are being replaced with more youthful signs with positive messages reinforcing the idea that all changes in Cuba are for more Socialism.



Lerda Appendix Photo 4 Caption:

This photo was taken in January of 2012 in a major road of Havana. The freshly painted sign reads: "The changes in Cuba are for more Socialism."



Lerda Appendix Photo 5 Caption:

This photo was taken in January of 2012. This sign can be found along Avenida Rancho Boyeros in Havana. The youthful and positive sign reads: "The changes in Cuba are for more Socialism."



Lerda Appendix Photo 6 Caption:

This photo was taken in January of 2012. This painted wall can be found near Revolution Square in Havana. The words that can still be seen underneath the fresh coat of blue paint are: "Next to Fidel . . . Revolution."

