

Changes to Cuba's Legal Infrastructure¹

OVERVIEW

This paper assumes that the necessary political and economic changes have already occurred and the trade embargo has been lifted, so that business activity in Cuba is not barred by political obstacles. Thus, we can now begin our examination of the changes to Cuba's legal system that will be necessary to support foreign trade and investment. We start with a general examination of the changes to the laws and legal institutions that will be necessary,² paying special attention to changes in the legal institutions, since legal reforms will only be successful if there are institutions in place to enforce the laws, resolve disputes, and fill in the details that the laws always leave open for case-by-case determination.³

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² We apply the term "legal institutions" to entities, individuals or groups of persons who perform tasks relating to the laws or the legal system. Legal institutions can be either public (governmental) or private (non-governmental). The public institutions of the legal system include legislative, administrative and judicial institutions. The private bar, professional associations, legal service providers, educational entities, and private dispute resolution mechanisms are the principal non-governmental legal institutions.

³ CHERYL W. GRAY ET AL., *EVOLVING LEGAL FRAMEWORKS FOR PRIVATE SECTOR DEVELOPMENT IN CENTRAL AND EASTERN EUROPE* 15 (World Bank Discussion Paper No. 209) (1993) [hereinafter GRAY ET AL.]. The authors of this study of legal changes in the former socialist nations of Central and Eastern Europe note that "[a]mong the biggest challenges now facing Central and Eastern Europe is that of building up the capacity of their judicial institutions to set legal standards, enforce the myriad of new laws now being adopted, and resolve economic disputes." *Id.* The same challenge is expected to be faced during Cuba's transition.

Cuba's current legal system is based on the concept of *socialist legality*, under which the legal system is a political instrument of the state and is used, not to provide predictable rules of behavior, but to further the building of Socialism.⁴ This means that Cuba's legal system must at all times apply the laws in accordance with the then-current interpretation of revolutionary goals and principles.⁵ This philosophy permeates Cuba's revolutionary laws, and governs the conduct of the individuals who are members of the legal system. A legal system based on this philosophy will likely provide the point of departure from which changes must start during the transition.

1. Current Status of Cuba's Legal System

During the first two decades of Cuba's Revolution (that is, in the period extending from 1959 to the enactment of the 1976 Constitution) there was a deliberate effort by the Cuban Government to dismantle the existing legal system, diminish the importance of the courts and replace them with ad-hoc "people's courts" and "revolutionary tribunals," and discourage the study and the practice of law.⁶ It has been only in the last decade, and particularly since the collapse of Socialism in Eastern Europe, that a significant effort has been undertaken to upgrade the qualifications and increase the numbers of those involved in the legal system.⁷

⁴ Debra Evenson, *Revolution in the Balance -- Law and Society in Contemporary Cuba* 2 (1994).

⁵ *Id.* at 68.

⁶ *Id.* at 11-13, 41-43, 65.

⁷ *Id.* at 75.

Our discussion assumes that at the start of Cuba's transition to a free-market society there still will be few legal institutions capable of supporting the massive legal changes that will be necessary to implement the transition. This assumption is based on the experience of the transitions in other socialist countries and on the information provided by those visiting Cuba and studying its current legal system.⁸ Law practice in Cuba is constrained by the inadequate number of legal professionals,⁹ the judiciary's lack of independence, the prohibition against the private practice of law, and the generally poor training of the practitioners.

The situation is not much better with respect to the laws. By and large, the laws in effect in Cuba now are obsolete (in that they do not represent currently accepted legal and business practices throughout the world) and so infused with socialist dogma that they would need to be replaced with suitable legislation at the earliest time practicable.

These shortcomings in the legal system may become serious obstacles to the progress of the transition, as well as to the ability -- and willingness -- of foreign investors to operate in Cuba. Cuba's transition government will need to give high priority to upgrading the legal system so that it is capable of keeping up with the pace of economic and political reforms.

⁸ It is reported that the judiciary in all the former socialist countries in Central and Eastern Europe lacks adequate training or experience to handle the legal issues that arise in market economies. GRAY ET AL., *supra* note 3, at 15. Those who have assessed current conditions in Cuba provide a similar assessment of Cuba's legal profession. *See, e.g.*, EVENSON, *supra* note 4, at 59.

⁹ Salas, for instance, reports that as of 1991 there were only 700 professional judges in Cuba. Luis P. Salas, *The Maintenance of Internal Order in Cuba: The Administration of Justice During the Special Period*, in TRANSITION IN CUBA -- NEW CHALLENGES FOR U.S. POLICY 5, 35 (Lisandro Perez ed., 1993) [hereinafter TRANSITION IN CUBA] at 237, 252. By comparison, Czechoslovakia, a country comparable in size and population to Cuba, had 1600 judges at the start of its transition to democracy in 1989. GRAY ET AL., *supra* note 3, at 63 n.42.

One of the laws that will need to be changed at the earliest practicable time is the Constitution. The Constitution is the law that defines the powers and duties of the different branches of government, establishes the scope and content of some of the other legislation that needs to be enacted, and provides a frame of reference to test the legitimacy of the government's acts.

Most likely, a permanent Constitution will be enacted after a Constitutional Convention, a process that could take two to three years or even longer.¹⁰ The transformation of Cuba's legal system can thus be divided conceptually into two stages, the "Pre-Constitution Period" and the "Post-Constitution Period." The Pre-Constitution Period is the time from the start of the transition to the enactment of a new Constitution. The Post-Constitution Period is the stage of the transition following the enactment of a new Constitution, a stage expected to extend until the economic recovery of the country is achieved.

Some of the laws and institutions that must be created in the Pre-Constitution Period will be permanent; others will be temporary measures, to be discontinued as the need for them ceases. In general, the legal system changes made before authoritative legal principles are established in a Constitution will likely be of a temporary nature and will be modified or superseded after the Constitution is enacted.

¹⁰ There is debate among scholars on whether post-communist Cuba should draft a new Constitution, re-adopt the 1940 Constitution, or combine the 1940 and 1992 Constitutions in some fashion. See Salas, *supra* note 9, at 261-62; Jorge Sanguinety, *The Transition Towards a Market Economy in Cuba: Its Legal and Managerial Dimensions*, in *TRANSITION IN CUBA*, *supra* note 9, at 463, 481-82; Jorge I. Dominguez, *The Transition to Somewhere: Cuba in the 1990s*, *id.*, at 5, 24-25. The author believes that enactment of a new Constitution that reflects Cuba's contemporary society is essential and inescapable.

2. PRE-CONSTITUTION PERIOD LEGAL INSTITUTIONS

*a. Legislative Institutions.*¹¹ From the onset of the transition, there will need to be official rules to guide the activities of all sectors of society. The task of the Pre-Constitution Period legislative institutions will be to generate the necessary rules to meet this need.

No institutions capable of adequately fulfilling the legislative role exist in today's Cuba. Upon taking power in 1959, the Revolutionary Government immediately centralized the legislative power in the Chief Executive, rather than in the legislature.¹² The country was ruled by decree until enactment of the 1976 Constitution, which re-established a legislative system.¹³ However, the single-chamber legislature (the National Assembly of People's Power, or "National

¹¹ Legislative institutions are those entities responsible for the initiation, drafting, consideration, and enactment of the laws. The most prominent legislative institutions in democratic legal systems are the national, regional and local legislatures. However, executive bodies, and the population at large, can also act in a legislative capacity.

Executive bodies figure prominently in the enactment of a country's laws. The executive offices are often the initiators of legislation and are involved in the actual development, drafting, and lobbying toward enactment of many laws. To the extent that members of the executive branch act in this legislative capacity, they too are legislative institutions.

Where referenda are permitted, the People should also be considered a legislative institution. Through referenda, the citizens are able to initiate legislation and (assuming the requirements for putting such proposed legislation to a vote are satisfied) can have it enacted by direct popular vote. The citizenry may also be endowed with the power to approve important legislative proposals, such as amendments to the Constitution, put on the ballot by the legislature.

¹² William R. Baerg, Note, Judicial Institutionalization of the Revolution: The Legal Systems of the People's Republic of China and the Republic of Cuba, 15 *LOY. L.A. INT'L & COMP. L. J.* 233, 248 (December 1992) (citations omitted).

¹³ Marifeli Perez-Stable, *Legislative and Electoral Dynamics: Reforms and Options*, in *TRANSITION IN CUBA*, supra note 9, at 39, 43.

Assembly") that was created by the 1976 Constitution is not a true legislative body. The assemblymen are part-time non-professionals without a staff, selected through single-slate elections,¹⁴ who convene only twice a year for just four or five days at a time, and meet essentially to sign off on measures already approved by the Communist Party and the Council of State.¹⁵ Similarly, local assemblies fail to fulfill a representative role.¹⁶

Most likely, Cuba's transition government will dissolve the National Assembly.¹⁷ The initial legislative institution during the Pre-Constitution Period will be the executive power in control of the government. It will be incumbent on this executive body to issue the decrees and laws that are required to lend order to the transition during the Pre-Constitution Period. The executive's role in developing legislation during this period will ultimately be assumed by a permanent legislature, which may be elected at the same time as the country's new executive.

¹⁴ The 1992 amendment of the 1976 Constitution provides for the election by direct popular vote of the National Assembly and the provincial assemblies. Perez-Stable, *supra* note 13, at 48. However, the candidates for election to the National Assembly are selected by national and provincial candidacy commissions. No other candidates are allowed, and the people can vote only for the candidates selected by the commissions.

¹⁵ EVENSON, *supra* note 4, at 28; Perez-Stable, *supra* note 13, at 44.

¹⁶ Perez-Stable, *id.*

¹⁷ See Sanguinetti, *supra* note 10, at 496 n.40. Were the National Assembly to be retained during the part of the transition, it would need to be reconstituted and transformed into a full-time legislature invested with real powers.

*b. Administrative Institutions.*¹⁸ Executive agencies, ministries and departments must be created or reorganized during the Pre-Constitution Period to carry out and administer the executive's decrees. Cuba currently has a system of weak, limited-power ministries and agencies. Fidel Castro as Chief Executive "conducts the general policy of the state, organizes and conducts the work of the Government, controls the activities of the ministries and proposes the appointment or replacement of ministers. He can also at any time assume the leadership of any ministry or central agency"¹⁹ During the transition period and beyond, executive power needs to be decentralized, and agencies and ministries need to acquire a meaningful share of executive power, including, but not limited to, rule-making authority. Some agencies (such as those overseeing the workings of the government to prevent mismanagement and corruption) must in fact be fully independent and protected from the executive power in order to discharge their duties effectively.

¹⁸ Once laws are enacted, administrative institutions are responsible for promulgating and disseminating the laws to the public, and thereafter for applying the laws and ensuring that the population abides by them. The administration of the laws frequently entails drafting regulations that provide the details of the laws' implementation, and taking actions to ensure that the laws and regulations are observed by those subject to them. Executive departments and independent agencies normally exercise these regulatory functions.

Other administrative institutions involved in the execution of the laws are the law enforcement agencies, which are a variety of organizations charged with the day-to-day responsibility of ensuring that all citizens obey the laws. These organizations include, for example, police departments; investigative agencies; prosecutors, who act as attorneys for the State in bringing actions against private parties; and public defenders, employed by the State, who represent impecunious defendants.

¹⁹ Michael Bogdan, *Thirty Years of Cuban Revolutionary Law*, 15 REV. SOCIALIST L. 319, 326 (1989).

Law enforcement agencies will also have to be capable of applying the decrees and legislation that will be forthcoming during the Pre-Constitution Period. Cuba, like other Latin American countries, maintains an independent prosecutor's office (the "*fiscalia*"). Cuba's *fiscales* perform traditional prosecutorial tasks, and are also supposed to supervise "the legality of official acts generally."²⁰ There are, however, not enough *fiscales* in Cuba,²¹ and their expertise and professionalism are in need of improvement.²² Doubts have also been raised about the effectiveness of Cuba's *fiscalia* in enforcing compliance with the law by government officials.²³

It will be necessary to train a sufficient number of *fiscales* during the Pre-Constitution Period to enforce the laws against private citizens in a manner consistent with the laws and due process guarantees in effect at that time. The question whether the *fiscalia* or some other government instrumentality should perform the general governmental oversight function can best be resolved in the Post-Constitution Period, once the *fiscalia* has had the opportunity to demonstrate it is capable of performing such a difficult and sensitive task.²⁴

²⁰ Harold J. Berman and Van R. Whiting, Jr., *Impressions of Cuban Law*, 28 AM. J. COMP. L. 475, 480 (1980).

²¹ Salas, *supra* note 9, at 255.

²² See EVENSON, *supra* note 4, at 81.

²³ Berman and Whiting, *supra* note 20, at 480-81.

²⁴ Public defenders will also be needed from the start of the Pre-Constitution Period to represent indigent defendants in actions brought against them by the State. Cuba currently makes public defenders available to the accused; however, the defenders' willingness to adequately represent their clients has been questioned by many observers. Salas, *supra* note 9, at n.138. See also Baerg, *supra* note 12, at 268 ("Cuban lawyers are not expected to defend the interests of their client . . ."). Any system of public defenders in a post-communist Cuba must be operated in a way that comports with democratic notions of fairness of the accused, and the interests of defendants must be vigorously advocated by their counsel.

Other law enforcement agencies, such as the police forces, will also play a crucial role in the implementation of laws. The probability of unrest and violence during the transition makes it necessary that adequate number of trained internal order forces, particularly police, be available to ensure domestic tranquillity. One of the great challenges of the transition government during the Pre-Constitution Period will be to retrain and enlarge the roster of internal order personnel, and ensure that they are capable of maintaining law and order while exercising proper respect for due process and individuals' rights.

Currently, Cuba's public order forces operate within the Ministry of the Interior (MININT) and are divided into three groups, each under a separate Vice-Minister: the "internal order" forces (the police, firefighters and corrections personnel); the "security" forces (counter-intelligence and state security); and "intelligence" forces (foreign intelligence).²⁵ In addition, in 1991 the Cuban Government created the Unified Vigilance and Protection System (*Servicio Unico de Vigilancia y Proteccion*, or SUVP.)²⁶

While the internal order forces will need to be enlarged and bolstered, the security and intelligence organizations that comprise the balance of the MININT personnel, as well as the SUVP and other para-military organizations, will need to be disbanded at the start of the transition, and their members disarmed. Their very existence would threaten the survival of the transition and would be intolerable to many citizens.

²⁵ Salas, *supra* note 9, at 245.

²⁶ The SUVP recruits from non-governmental entities and the population at large; its purposes are to combat crime, suppress anti-revolutionary activities, and perform other security functions at a grass-roots level. *Id.* at 247-49.

c. *Judicial Institutions.*²⁷ There will be an immediate need in the transition for institutions that can enforce legal rights and settle disputes. Currently, the judiciary in Cuba is subservient to the executive and has little independent power.²⁸ During the transition, it will be necessary to enact laws reorganizing the judiciary and making it independent of the executive and legislative branches, establishing new courts, instituting an expeditious process for appointing new judges and other personnel involved in the administration of justice, and retraining existing judicial personnel.

²⁷ The judicial institutions of a legal system are those directly responsible for interpreting the laws, applying them to specific situations, and enforcing the laws. The principal judicial institutions are the courts, which are bodies charged with the duty of resolving disputes as to whether the laws are valid and how the laws should be applied to specific situations.

In those countries where the right to trial by jury exists, juries are also an important part of the court system. Juries are panels of citizens who are chosen on a case-by-case basis to hear the evidence and make findings as to the facts in dispute. Where juries are not used, the court retains the fact-finding role.

In addition to the members of the courts (judges) and their direct staffs, court systems usually include a number of "adjuncts." While their specific titles vary from system to system, court adjuncts are functionaries who are delegated some of the powers vested in the judges. In the United States court system, for example, the principal court adjuncts are the magistrates, masters, referees, sheriffs, and marshals.

Judicial institutions may also exist within executive departments and other administrative agencies. Administrative tribunals and boards enforce proposed actions by the agencies against private parties, and hear petitions by private parties seeking redress from actions by the agencies. In many legal systems, those seeking to appeal from actions by a governmental agency or department are required to pursue all available remedies within the agency before bringing an action in a court of general jurisdiction or an appellate court.

²⁸ In the 1976 Constitution, the courts were declared subordinate to the National Assembly (Art. 122). Max Azicri, *Change and Institutionalization in the Revolutionary Process: The Cuban Legal System in the 1970s*, 6 REV. SOCIALIST L. 164, 167 (March 1980). Article 121 of the 1992 Constitution declares that the courts are subordinate to both the National Assembly and to the Council of State.

Many lawsuits can be expected to be initiated during the transition.²⁹ The growing caseload may require that temporary judicial institutions be deployed during the Pre-Constitution Period to handle some of the more frequently litigated matters. For example, special courts could be instituted for handling routine legal proceedings and adjudicating property ownership disputes where the amount in controversy is below a certain limit, or if the dispute involves residential property.³⁰ However, most of the judicial institutions that will need to be established during the Pre-Constitution Period will be of a permanent nature. Principal among these judicial institutions are the national, provincial and local court systems. These institutions will be the arbiters of public and private civil disputes, and of criminal prosecutions.

Cuba currently has a unified national court system consisting of three levels. At the highest level is the People's Supreme Court, which is divided into six different chambers: (1) criminal, (2) civil and administrative, (3) labor, (4) state security, (5) military and (6) economic.³¹ The Supreme Court oversees the operation of the entire court system, but it lacks power to

²⁹ It has been reported that in 1991 alone 700,000 new lawsuits were filed in Hungary and 121,000 in Czechoslovakia. GRAY ET AL., *supra* note 3, at 58, 86. Cuba could experience a similar surge in litigation during the transition. Unless extraordinary measures are taken to expedite judicial proceedings, there could be lengthy delays in the adjudication of cases.

³⁰ The resolution of claims arising from the expropriation of property during the revolution will perhaps be the among the most vexing problems of the transition.

³¹ Ley de Organizacion del Poder Judicial, Law No. 1250, published June 23, 1973. This law was amended first by the Ley de Organizacion del Sistema Judicial, Law No. 4, published August 25, 1977, and subsequently by the Ley Sobre los Tribunales Populares, Law No. 70, published July 24, 1990. The economic chambers of the Supreme Court and the Provincial Courts were established by Legislative Decree 129, De Extincion del Sistema de Arbitraje Estatal, published August 19, 1991.

review the actions of the executive and legislative branches."³² The next level of courts is the People's Provincial Courts, one of which is located in each of the fourteen provinces. The Provincial Courts have initial jurisdiction over certain crimes and serve as courts of appeal for the third and lowest layer of courts, the People's Municipal Courts. The 169 Municipal Courts are the principal trial courts in the Cuban judicial system, and have initial jurisdiction over civil and minor criminal matters.

In the early phase of Cuba's transition, the structure of the existing court system may not need to be altered substantially. It contains, at least in principle, the framework for a functioning system. Long-term court reform will undoubtedly be needed, but would be better addressed in the new Constitution and implementing legislation enacted during the Post-Constitution Period.

The main focus during the Pre-Constitution Period will most likely be on upgrading the qualification of the individuals who staff the court system. In particular, the Pre-Constitution Period should be devoted to training and commissioning a sufficient number of competent judges and court adjuncts (magistrates, masters, marshals, etc.) to effectively operate the system and restore its credibility.³³

³² Salas, *supra* note 9, at 251.

³³ Cuba now uses lay judges who serve at all levels of the judicial system, including the Supreme Court. EVENSON, *supra* note 4, at 75-77. Lay judges should eventually be eliminated, but may need to be retained during the early phase of the transition to alleviate the shortage of trained judges.

*d. Non-Governmental Law Professionals.*³⁴ In addition to the courts and other public institutions, Cuba will need private individuals and organizations who can operate successfully within the legal system. Indications from those who have recently visited Cuba are that there are inadequate numbers of lawyers, and those that exist are ill-prepared for the tasks they must undertake in a free-market system.³⁵

There are no independent law practitioners in Cuba. Under a 1973 law that reorganized the judicial system, all attorneys wishing to engage in private practice must join lawyers' collectives (*Bufetes Colectivos de Abogados*), defined as "autonomous institutions under the

³⁴ The non-governmental law-related institutions of the legal system include professionals and professional organizations, educational institutions, and private dispute-resolution mechanisms. Lawyers in private practice, working individually or as part of a group, are the most visible non-governmental legal professionals. Lawyers act on behalf of their clients in litigation, private business transactions, dealings with the government, and other matters.

Lawyers' associations or "bars," both mandatory and voluntary, also play a significant role in the legal systems of democratic societies. Mandatory bars are professional organizations to which attorneys must belong in order to be able to practice. Voluntary bar associations offer attorneys opportunities for professional development and the means to engage in a variety of private activities. These associations also further the interests of their members before the government.

In addition to attorneys, there are several other types of private legal professionals. Paralegals perform a wide variety of tasks in support of the work of attorneys. Court reporters transcribe legal proceedings and create a permanent record that can thereafter be reviewed and cited. Publishers of legal materials (books, magazines and journals) provide the means for the dissemination and discussion of legal developments. Notaries perform a number of formal tasks including certifying the authenticity of documents and signatures, administering oaths, and in some countries drafting legal instruments and performing marriages.

Other legal service providers include individuals and organizations that conduct legal research (including in recent years those that maintain on-line computer databases); those who conduct searches of title to property; those that accomplish routine filings such as corporate forms; and those that prepare tax returns.

³⁵ EVENSON, *supra* note 4, at 59.

supervision of the Ministry of Justice."³⁶ Attorneys in Cuba work for state enterprises or in government offices; teach at the law schools; or are part of the staff of one of the *bufetes colectivos*.³⁷ As of 1992, 1,855 lawyers were licensed to practice law in 250 lawyers collectives nationwide.³⁸ The *bufetes colectivos* handle large numbers of cases annually, most of which are divorce and probate proceedings.³⁹

It does not appear that the practicing experience of Cuban lawyers, both within and outside the *bufetes colectivos*, will have prepared them to function effectively in a free-market society, since commercial areas of practice such as business law and tax law are non-existent in the *bufetes colectivos*.⁴⁰ The only legal practitioners who have acquired experience that could be relevant in a free-market economy are those working as legal advisors at ministries, state agencies and commercial enterprises. These attorneys give legal advice to the agencies or enterprises that employ them, assist in the negotiation and drafting of contracts, and provide other services of the type provided by in-house counsel to corporations in Western countries. Legal advisors, however, are "almost universally criticized for lack of preparation and skill."⁴¹

³⁶ Bogdan, *supra* note 19, at 324.

³⁷ Azicri, *supra* note 28, at 168.

³⁸ Salas, *supra* note 9, at 256.

³⁹ *Id.*

⁴⁰ Bogdan, *supra* note 19, at 325.

⁴¹ Evenson, *supra* note 4, at 54.

*e. Educational Institutions.*⁴² Evenson reports that in 1988 there were 3,500 students enrolled in the four existing Cuban law schools (Havana, Santiago de Cuba, Villa Clara and Camaguey).⁴³ However, only a relatively small number of lawyers (under 2,000 as of 1992) are practicing in *bufetes colectivos*. It is unclear how many of the rest of the Cuban law school graduates are currently practicing law. For all indications, the training that is currently given in law schools will be inadequate for the practice of law in a post-transition Cuba.⁴⁴

During the Pre-Constitution Period, very high priority must be given to creating new law schools and other legal training institutions, reshaping law school curricula, and helping reestablish the private practice of law. Law students and lawyers will have to be trained in disciplines that have application in free-market systems -- contracts, corporate law, securities, labor law, tax, bankruptcy, commercial transactions, banking, real estate, intellectual property,

⁴² Educational legal institutions are a basic element of any legal system, for the system is dependent on such institutions for the supply of competent and adequately trained professionals. Attorneys, paralegals, court reporters, and other legal personnel are taught and trained in these institutions.

Law schools are the main type of educational institution in the legal system. The law schools' primary objective is the training of lawyers. They also serve as centers of legal research, debate and scholarly writing, and often represent the leading edge of the legal system. The law schools also supply voluntary legal services to the community, such as providing representation to indigent clients.

Paralegals, court reporters and other providers of legal services do not receive the same level of education as lawyers do, but the educational institutions they attend must still provide the requisite training in the tasks their students will be called upon to complete.

⁴³ EVENSON, *supra* note 4, at 56.

⁴⁴ Reforms to the system of legal education were instituted in 1982-83, and further reforms were scheduled for 1990-91, but were not implemented. EVENSON, *supra* note 4, at 55-56.

antitrust, and civil litigation. Private firms will also need to be established, so that legal representation is available to individuals and entities in their private and public transactions.

One issue calling for early resolution will be whether attorneys licensed in other countries will be allowed to practice in Cuba, and if so under what conditions. Obviously, the availability of experienced, foreign-trained legal counsel would help expedite many transactions, but there may be resistance within the island's legal community to allow foreign lawyers to assume some of the functions of the local bar.

*f. Private Alternative Dispute Resolution Institutions and Mechanisms.*⁴⁵ There will be a place in a post-revolutionary Cuba for alternative dispute resolution methods.⁴⁶ The anticipated

⁴⁵ Parties who wish to resolve their disputes outside the judicial process may ask the court to refer a matter to arbitration, mediation, conciliation, mini-trial or other extra-judicial proceedings. (In some cases, a court may on its own motion order the parties to undergo an alternative resolution process.) These alternatives to full scale litigation, collectively known as alternative dispute resolution (ADR) methods, are often favored for their speed, relative informality, and lower cost.

In an arbitration, the parties or an outside entity designate one or more persons known as the "arbitrators" to decide the case, and agree to be bound by the arbitrators' decision. The arbitrators usually render a decision or "award" after a more or less abbreviated presentation of evidence by the parties.

Mediation involves meetings by the parties with a court-appointed intermediary or "mediator," usually without a formal presentation of evidence. The mediator is not expected to make a determination of the parties' rights, and if he does the parties are not bound by his conclusions. Conciliation is analogous to mediation, except that it is undertaken privately by the parties and can follow any agreed-upon format.

In a mini-trial, the parties agree to formally present their positions and supporting evidence in the presence of a neutral "advisor." The advisor guides the parties through their presentations with questions, but is not required to render any ruling on the matter. The parties to mini-trials are usually business entities, and high level officers or executives of the entities who have the authority to settle the matter on behalf of their organizations attend the mini-trial so

court backlogs during the Pre-Constitution Period will encourage parties to resort voluntarily to alternative dispute resolution techniques and avoid the potential for protracted and unsatisfactory litigation in the national court system. ADR methods could be used in Cuba to resolve commercial disputes between private parties or between such parties and government agencies. Successful use of ADR methods would instill confidence in foreign investors that their rights could be meaningfully asserted and protected. During the Pre-Constitution Period, therefore, the transition government should rule that the results from alternative dispute resolution proceedings are legally binding and enforceable, and should define the methods for enforcing such determinations through the court system.

they can assess the strength of their case and proceed to settlement or further litigation, as they choose.

⁴⁶ Until 1991, Cuba had an arbitration system to resolve disputes between state enterprises. See Enrique Dahl and Alejandro M. Garro, *Cuba's System of International Commercial Arbitration: A Convergence of Soviet and Latin American Trends*, 15 LAW. AM. 441 (1984). This system was entrusted to the Organo de Arbitraje Estatal, an agency which resolved inter-enterprise contractual disputes, promulgated economic regulations and provided consultation and advice to enterprises and national economic planning units. EVENSON, *supra* note 4, at 206. The inter-enterprise arbitration system was abolished in 1990 and replaced in 1991 with the newly created economic chambers in the Supreme Court and the Provincial Courts. *Id.* at 210.

Cuba also currently has a non-governmental form of foreign trade arbitration. See Bogdan, *supra* note 19, at 324. See also Paul Bernstein, *Cuba: Last Look at an Alternative Legal System?*, 7 TEMP. INT'L & COMP. L. J. 191, 202 (Fall 1993) ("Arbitration continues to play an important role in resolving disputes arising from the growing presence of joint ventures with foreign partners . . .").

3. POST-CONSTITUTION PERIOD LEGAL INSTITUTIONS

The Post-Constitution Period will mark the most critical stage in the process of changing Cuba's legal institutions. While many changes will be made before the new Constitution is enacted, the expectations of the Cuban people, as well as those of the international community, will be highest during the Post-Constitution Period.

As discussed above, the Pre-Constitution Period will most likely involve governance from the top down, through decrees issued by the Executive. The Post-Constitution Period will provide the first opportunity in the transition for democratic governance principles to be put into practice. Accordingly, it will be essential that the overhaul of the legal institutions be successfully completed during this period.

a. Legislative and Executive Institutions. The powers of the legislative and executive branches of government will be defined in the new Constitution. It will be the task of the framers of the Constitution to decide on the form, composition, term of service and method of election of the national and provincial legislatures.⁴⁷ Whatever their structure, the Post-Constitution legislative institutions should have their members chosen through free elections that allow a multiplicity of political parties and a diversity of political positions. The legislatures must also be granted all necessary powers to propose, consider, debate and enact legislation. The Post-Constitution legislative institutions must be truly independent of the executive branch, and must

⁴⁷ One question that will certainly be debated is whether Cuba should retain the current unicameral structure of the national legislature, or should revert to the bicameral system that existed prior to the 1959 revolution and which was copied from the United States model.

be accountable to the People through the electorate's power to recall legislators whose performance is unsatisfactory.

The Constitution will probably limit the legislative powers of the Executive.

Nevertheless, the Chief Executive, along with his cabinet and advisers, will continue to be a major source of legislative proposals. The Executive will also retain limited law-making and rule-making responsibilities, such as negotiation of agreements with other countries, issuance of executive decrees implementing existing laws, and development of detailed regulations through its administrative agencies or departments. Exercise of these law-making functions should be subject to review by the courts and to modification or overturn by the legislature.

b. Judicial Institutions. As discussed above, enactment of the Constitution should provide the framework for the institution of comprehensive long-term court reforms. It is at this time that the jurisdictions of the various courts should be delineated, court procedures and rules of practice defined, and the processes for selecting, promoting, and removing the members of the judiciary established. Also, any needed changes in the structure of the judicial system should be addressed at this time.

One structural change that should take place is the permanent establishment of courts of limited jurisdiction to handle specialized matters. A Constitutional Court, for example, could be created to review the validity of acts by the Executive or the legislature under the Constitution.⁴⁸ Civil service and military courts may be required to hear cases arising in the context of those

⁴⁸ Judicial review over the actions of other branches of government has been implemented in the former socialist countries of Central and Eastern Europe through the establishment of separate Constitutional Courts. GRAY ET AL., *supra* note 3, at 2-3.

public services. Tax courts with jurisdiction over the interpretation and application of the tax codes will need to be established. Administrative courts should be set in place to adjudicate disputes between private parties and executive agencies or departments. In addition, bankruptcy, intellectual property and antitrust courts should be established if this has not been done in the Pre-Constitution Period.

ADR methods such as arbitration, mediation, conciliation and mini-trials should achieve widespread use in civil litigation in the Post-Constitution Period. As court referrals and supervision become more frequent, alternative methods of resolving disputes will often be favored because they will save courts' and parties' resources during a time when they are at their scarcest. By sanctioning and even ordering the use of such mechanisms, courts will reassure the foreign business community that resorting to non-judicial determinations is a binding and efficient way of resolving disputes in Cuba.

c. Non-Governmental Law-Related Institutions. In the Post-Constitution Period, legal professionals and other legal personnel will likely band together in voluntary or mandatory organizations of individuals engaged in similar lines of work. Cuba currently has two non-governmental legal professional organizations: the National Union of Cuban Jurists (*Union Nacional de Juristas Cubanos*, or UNJC) and the National Organization of Lawyers' Collectives (*Organizacion Nacional de Bufetes Colectivos*, or ONBC). Approximately 85 percent of Cuba's jurists belong to the UNJC, which functions as a national bar association.⁴⁹ The ONBC is an autonomous, self-sustaining institution that regulates the conduct of lawyers practicing in bufetes

⁴⁹ EVENSON, *supra* note 4, at 58.

colectivos, administers the code of ethics that governs their activities, and is empowered to impose penalties on lawyers who violate ethical standards.⁵⁰ The ONBC carries out a number of other activities, such as sponsoring conferences on legal issues and establishing commissions to make legislative proposals for the government's consideration.⁵¹

These already-established professional associations, particularly the UNJC, could perhaps be preserved during the transition. However, in order for them to play a meaningful role in a post-transition environment, they must focus on furthering the professional development of their members and establishing and enforcing standards of practice. Membership should be open to all members of the bar, and the organizations should not impose restrictions on the flow of information and ideas in the programs they sponsor.

4. Survey of Laws that Need to be Enacted During the Pre-Constitution Period

A number of papers have been written on the legal changes that will need to be instituted during Cuba's transition to a free-market society.⁵² Previous analyses do not seek to differentiate between the legal changes that will be required in the early stages of the process and those that will be appropriate when the transition has progressed towards the recovery phase and a new Constitution has been enacted. The discussion that follows will attempt to identify, to the

⁵⁰ Salas, *supra* note 9, at 256 and n.131.

⁵¹ EVENSON, *supra* note 4, at 51.

⁵² See, e.g., Matias F. Travieso-Diaz and Stephan M. Bleisteiner, Some Lessons for Cuba from the Legal Changes in Eastern Europe, 3 U. MIAMI YEARBOOK INT'L L. ____ (1996); Nestor Cruz, Legal Issues Raised by the Transition: Cuba from Marxism to Democracy, 199? - 200?, in CUBA IN TRANSITION -- PAPERS AND PROCEEDINGS OF THE SECOND ANNUAL MEETING OF THE ASSOCIATION FOR THE STUDY OF THE CUBAN ECONOMY 51 (1992) [hereinafter "ASCE-2"].

greatest extent possible, which of the law changes must be made early and which can be -- or need to be -- deferred until the later stages of the transition.

a. Transitory Laws. It will be necessary to implement certain temporary legal measures during the Pre-Constitution Period of Cuba's transition. They will include provisional constitutional statutes, laws to maintain public order and stability, public welfare provisions, and legislation to execute the initial economic changes of the transition.

Constitutional Acts. A crucial change that needs to be made at the earliest possible time is the establishment of a constitutional framework for the transition. Some analysts advocate a return to Cuba's 1940 Constitution, the last constitution enacted prior to Cuba's 1959 revolution, which some believe is still in effect.⁵³ However, even those who advocate returning to the 1940 Constitution recognize that many provisions of that Constitution may be inappropriate for a post-transition Cuba, such as Art. 15, which would deny Cuban citizenship to exiles who have become naturalized U.S. citizens.⁵⁴ In fact, the 1940 Constitution contains a number of provisions that would hinder the transition, such as interventionist policies in the sugar industry (e.g., Art. 275), expansive labor rules (Arts. 60 through 85), and restrictions on the ability of foreign nationals to own land (Art. 90).

On the other hand, the current 1992 Constitution is an unsuitable document which -- for both political and legal reasons -- would not provide a good foundation on which to base a market transition. As long as the 1992 Constitution is kept in effect, it will need to be amended

⁵³ Jose D. Acosta, *El Marco Juridico-Institucional de un Gobierno Provisional de Unidad Nacional en Cuba*, in ASCE-2, supra note 52, at 78.

⁵⁴ *Id.* at 82.

to, among other things, remove all socialist dogma, reinstitute private property rights, and expressly guarantee private ownership of property and its protection from expropriation without compensation.⁵⁵

The form and content of a constitution are important subjects for debate. Legal scholars, political scientists and others may differ, for example, on what topics need to be addressed in a constitution, and what the appropriate level of detail in those discussions should be. (Cuba's 1940 Constitution encompassed 286 articles and dealt in varying detail with a broad range of subjects; the U.S. Constitution, by contrast, has only 7 articles.) These issues and others attendant to the enactment of a constitution should not be decided hastily at the start of the transition, but should be the subject of extended debate over many months.

In the meantime, the Cuban transition government would probably issue one or more "Constitutional Acts" -- a series of statutes that replace, over a short period, the 1992 Constitution and temporarily fill the place of a permanent Constitution. Such Acts would provide the legal framework for the transition until a Constitutional Convention could be assembled and a new constitution enacted. The Acts would draw their authority from the emergency powers of the provisional government, not on the constitutional powers of the People. Constitutional acts have been used in Hungary, Czechoslovakia, Poland, and Bulgaria pending the enactment of new constitutions.⁵⁶

⁵⁵ See Travieso-Diaz and Bleisteiner, *supra* note 52, at 5-10.

⁵⁶ GRAY ET AL., *supra* note 3, at 24.

The Constitutional Acts promulgated by Cuba's transition government might contain, for example: (a) a proclamation of the existence of three separate and independent branches of government, i.e., the executive branch, the legislature, and the judiciary; (b) a declaration of the rights (human, economic, social and political) of all juridical persons; (c) a definition of the process for establishing a democratic government through free, general elections; (d) a prescription of the process and timing for assembling a Constitutional Convention and enacting a permanent Constitution; (e) an enumeration of the powers of the provincial and local governments and their relation to those of the central government; (f) provisions for the initial restructuring of the judiciary; and (g) a broad identification of the tasks that the transition government must accomplish, and a vesting of power in existing or newly created agencies to accomplish those tasks.⁵⁷ The Constitutional Acts would be repealed by the new Constitution.

Whatever their form, the constitutional documents that guide the transition must also address fundamental issues such as reinstating human rights and the rule of law, guaranteeing property rights, and declaring the country's adherence to free-market principles, while at the same time expressing a commitment to some form of social "safety net."

Public Safety and Order Statutes. A top priority for the transition administration will be to keep peace and maintain public order, for in the absence of internal peace a successful transition will become difficult, if not impossible, and foreign trade and investment will likely be throttled. If the transition government is not strong or does not have appropriate institutions and

⁵⁷ For an example of the types of provision that could be included in the Constitutional Acts, see ALBERT P. BLAUSTEIN, CONSTITUTION OF THE REPUBLIC OF CUBA -- A PROPOSED DRAFT, (Endowment for Cuban Am. Studies, Cuban Am. Nat'l Foundation, The Cuba Paper Series, 1993).

mechanisms to maintain order, lawlessness may result.⁵⁸ The criminal laws must provide appropriate sanctions for anti-social behavior, while at the same time preserving individual due process rights.

Legislation must also be enacted during the early phase of the transition to reorganize and scale down the Armed Forces, bolster the effectiveness of the Police, dissolve all paramilitary groups, and take control of the vast arsenal of weapons now in the hands of individuals. Legislation will also be needed defining the actions to be taken against former government officials for criminal acts they may have committed while in office.

Public Welfare Measures. The governments of virtually all countries that have made a transition from Socialism to a free-market system have been besieged by popular demands for the preservation of the social safety net that had been previously provided to the population at little or no cost.⁵⁹ Cuba has developed probably the most extensive safety net of any socialist country.⁶⁰ Even today, as the economy crumbles and Cubans face increased

⁵⁸ Sanguinetti, *supra* note 10, at 471.

⁵⁹ In response to these demands, most Central and Eastern European countries have included express commitments to some form of safety net in their constitutions. For example, Romania and Bulgaria declare in their constitutions the citizens' right to free education and medical care. GRAY ET AL., *supra* note 3, at 2.

⁶⁰ Mesa-Lago points out that at the beginning of the 1990s Cuba had the most comprehensive, generous and costly "social safety net" in the socialist world and in Latin America. Carmelo Mesa-Lago, *The Social Net in the Two Cuban Transitions*, in *TRANSITION IN CUBA*, *supra* note 9, at 601, 604.

hardship in every aspect of their lives, Cuba's top government leaders point to free education, free health care, and other social benefits as the key accomplishments of the Revolution.⁶¹

The transition government in Cuba will be faced with the difficult task of reconciling the need to revitalize the country's economy with the likely popular demand for the continuation of benefits such as free education, health care, and social security payments. Thus, among the first pieces of legislation that must be enacted during the transition is one that defines the extent to which free public education and health care will continue to be provided.

Guaranteeing an adequate supply of food to the population is yet another essential task that the transition government in Cuba must accomplish from the start. Laws and decrees intended to stimulate the production of food and to ensure the efficient and equitable distribution of food among the population must be at the top of the agenda of Cuba's transition government.

⁶¹ Thus, in a June 30, 1994 address to the National Family Doctor Congress, Fidel Castro stated that despite other changes that have needed to be made during the current economic crisis, "[t]here are two sacred things, two sacred achievements that should be maintained at all costs and under any circumstances, just as we developed and created them -- the right to health and to education." *Castro on Protection of Family Doctor Program* (RADIO REBELDE, Jun. 30, 1994), available in F.B.I.S. (LAT-94-127), Jul. 1, 1994, at 3. However, there are strong indications that Cuba's safety net is unraveling as a result of the country's economic crisis. See *Health Care for Cubans May Be Free, But Drugs Are Running Short*, ASSOCIATED PRESS, Jun. 29, 1994; Roman Orozco, *Journalist Views "Desperate" Situation*, CAMBIO (Madrid), Jun. 27, 1994, at 44-47; Christopher Marquis, *Cuba's Health Care System, Once Exemplary, Is Now Collapsing*, MIAMI HERALD, June 22, 1994. In the area of education, starting with the 1994-95 academic year, there was an end to the free lunches offered in the country's schools, and the stipends the government used to provide to college students will be replaced with loans. In addition, entrance fees will be charged at cultural events, museums and galleries, and sporting events and facilities. *Cuba Will Begin to Charge for Items, Services that Used to be Free*, MIAMI HERALD, Jul. 9, 1994, at 18A.

Economic Reform Legislation. As in other former socialist countries, it will be necessary to establish economic legality in Cuba through an unambiguous declaration of adherence to free-market principles and the enunciation of a clear and sufficient set of economic rules.⁶² Accordingly, legislation that supports economic legality within a free-market context must be enacted early in the transition.

The principal temporary laws that will need to be enacted during the early phase of Cuba's market transition in order to support economic reforms include: (a) a constitutional declaration of property rights; (b) legislation to initiate the process of privatization of state-owned enterprises; and (c) laws dealing at a general level with the property claims issue. Additional laws and decrees must be enacted to implement the economic reforms themselves.

b. High Priority Permanent Laws. Cuba will be in immediate need of permanent laws to implement the economic reconstruction of the country, foster trade with other nations, and encourage foreign investment. Areas of legal change affecting business that need to be addressed as early in the transition as possible include at a minimum the following codes and statutes:

1. Bankruptcy Code
2. Corporations Code
3. Foreign Investment Code
4. Intellectual Property Protection Codes
5. Labor Code
6. Tax Codes

⁶² See generally John M. Litwack, *Legality and Market Reform in Soviet-Type Economies*, 5 J. ECON. PERSP., Fall 1991, at 77.

7. Trade Regulation and Anti-Monopolies Codes.

5. Survey Of Laws That Need To Be Enacted During The Post-Constitution Period

The laws that need to be enacted during the Post-Constitution period of the transition include: (a) those necessary to implement economic reforms; and (b) those that provide a permanent legal framework for a free-market Cuba. The laws enacted during this period would build upon, supplement, and in some instances supersede, those enacted at the earlier, Pre-Constitution stage.

a. Laws Needed To Implement Economic Reforms. The legal changes needed to support economic measures depend to a large degree on the economic program that is being implemented. Economists are generally divided between those favoring a big bang -- a set of drastic reforms instituted all at once, as was done in Poland -- and those proposing a more gradual approach.⁶³ A case has also been made for a "minimum bang," i.e., a minimum package of essential reforms. Clague defines such a minimum package of reforms to include: taking measures to restore macroeconomic balance to the economy; setting rules for the operation of the new private sector; implementing price reforms; and restructuring the state sector.⁶⁴

⁶³ For a summary description of both approaches, see Rolando H. Castaneda, *Cuba: Una Opcion por la Libertad, el Desarrollo y la Paz Social (Propuesta de Lineamientos Estrategicos para la Completa Transformacion de la Economia Socialista a una Economia Social de Mercado)*, in *CUBA IN TRANSITION -- PAPERS AND PROCEEDINGS OF THE FIRST ANNUAL MEETING OF THE ASSOCIATION FOR THE STUDY OF THE CUBAN ECONOMY* 257 (1991).

⁶⁴ Christopher Clague, *The Journey to a Market Economy*, in *THE EMERGENCE OF MARKET ECONOMIES IN EASTERN EUROPE* 8-10 (Christopher Clague and Gordon C. Rausser eds., 1992); see also, Jorge Perez-Lopez, *Learning from Others: Economic Reform Experiences in*

The legal measures that should be taken during the early phase of the transition should support at least a "minimum bang." These include: (a) tax codes and regulations, with accompanying rules and tax collection mechanisms; (b) a Foreign Investment Code that encourages the entry of foreign capital; (c) labor laws that provide for freedom of hiring of labor and provide continued worker security in old age and disability; and (d) laws establishing a minimum social safety net. To the extent that some of these crucial legal changes could not be completed during the Pre-Constitution Period, they should be finalized after the new Constitution is enacted.

b. Development Of A Legal Framework For A Free-Market Cuba. Many laws need to be enacted during the Post-Constitution Period to provide an adequate legal framework for a free-market, democratic society in Cuba. These include, among others, the following new or revised laws and codes affecting foreign trade and investment:

1. Accounting Standards, Financial Reporting, and Auditing Laws
2. Administrative Law
3. Aliens, Nationality and Immigration Laws
4. Banking Law
5. Civil Law
6. Commercial Law
7. Customs Law
8. Environmental Law

Eastern Europe, Latin America, and China, in TRANSITION IN CUBA, supra note 9, at 367, 393.

9. Judicial Reform Law
10. Insurance Law
11. Land Use Law
12. Maritime and Fisheries Laws
13. Mining Law
14. Occupational Health and Safety Law
15. Public Contracts Law
16. Securities Law
17. Social Security Law
18. Sugar Law
19. Telecommunications Law
20. Transportation Laws.

This partial enumeration of the new laws that need to be enacted during the transition serves to illustrate the daunting legislative task that lies ahead for the transition government and the importance of developing quickly the legal infrastructure to support the drafting, public debate, approval and implementation of all this legislation.

Several of these laws can and probably should be passed before the new Constitution is enacted. Others (e.g., the new banking laws) may be enacted early but may not be capable of full implementation for several years, if the experience in Eastern Europe serves as a guide.⁶⁵ Cuba

⁶⁵ Travieso-Diaz and Bleisteiner, *supra* note 52, at 31-34. *See also*, Jan Svejnar and Jorge Perez-Lopez, *A Strategy for the Economic Transformation of Cuba Based on the East European Experience*, in *CUBA AFTER THE COLD WAR* 323, 330-31 (Carmelo Mesa-Lago ed., 1993).

currently has no facilities for commercial banking, so its rebuilding of a banking system will have to start from a "quasi zero" base and may not be accomplished in the first few years of the transition.⁶⁶

Implementation of changes in other areas of the law may be delayed due to economic necessity. For example, Cuba, like virtually all former communist countries in Eastern Europe, suffers from the absence of a true governmental commitment to protecting the environment, a lack of enforcement of existing environmental laws, and the press of financial constraints. These problems have caused a growing environmental crisis in Cuba which will call for legislative remedies during and after the transition.⁶⁷

The transition government in Cuba will surely recognize the need for swift enactment and enforcement of environmental protection laws and regulations. On the other hand, there will be significant pressure on the government to facilitate economic reconstruction by increasing the output of industries, such as sugar, whose operations have serious environmental impacts (e.g., through the use of chemical fertilizers, herbicides and pesticides).⁶⁸ There will also be pressure to encourage foreign investment by minimizing environmental requirements and liabilities, and

⁶⁶ Alberto Luzarraga, *Anticipating the New Cuba Financial Structure*, in *Anticipating the New Cuba Conference*, New York, March 17-18, 1994.

⁶⁷ JOSE R. ORO, *THE POISONING OF PARADISE: THE ENVIRONMENTAL CRISIS IN CUBA* 8-13 (1992); Maria Dolores Espino, *Environmental Deterioration and Protection in Socialist Cuba*, in ASCE-2, *supra* note 52, at 326-342. Recent reports indicate that the environmental degradation that is taking place in Cuba is severe and may take many years to reverse. Francisco Garcia Azuero, *Cuba's Environmental Damage Will Take Years to Fix, Some Fear*, *MIAMI HERALD*, February 18, 1994, at 12A.

⁶⁸ Espino, *supra* note 68, at 340.

opposition to devoting limited governmental resources to environmental reclamation projects. As a result of the clash between these conflicting needs, it is quite possible that comprehensive environmental legislation may not be fully implemented until several years into the transition, when the economy has stabilized and recovery is on its way.

6. A Checklist for Business on Cuba's Legal Infrastructure

Implementation of the necessary changes to Cuba's legal institutions must be at the core of Cuba's market transition. The Russian reform experience is an example of the risks of attempting a transition without a sufficient system of laws, institutions, and trained personnel to implement the changes.⁶⁹ Moreover, in light of the widespread disregard for the law that has developed in Cuba in the last few years as a result of the deterioration of living conditions, it is essential that a strong legal system be developed to re-instill in the population the degree of respect for the laws without which true democracy cannot exist.⁷⁰

It should be recognized, however, that the transition government in Cuba will have its hands full keeping order in the country and preventing an economic disaster. Enacting the needed legislation and instituting the required changes to the legal system in a short time frame may be beyond the transition government's capabilities.

⁶⁹ Legal uncertainty is consistently cited first among the most significant barriers to investing in Russia. DAVID E. BIRENBAUM, *BUSINESS VENTURES IN EASTERN EUROPE AND RUSSIA* 2-6 & n.3 (2d. ed. Supp. 1994).

⁷⁰ Again, the example of the current Russian situation is instructive. It is widely reported that crime and corruption have increased since the collapse of the Soviet Union, partly because there was a widespread disregard for the law in Soviet society, and insufficient steps have been taken to re-establish a strong and effective legal system. BIRENBAUM, *supra* note 70, at 2-10.

Accordingly, the foreign business community should work with the governments of interested countries and international lending institutions such as the World Bank to provide technical assistance to Cuba in the development of a minimum legal reform package that will sustain the transition process and permit the safe entry of foreign capital into the island. Whether or not this assistance is provided, however, business concerns outside Cuba need to remain aware of the legal system changes that take place during the transition period and must press the Cuban government for the institution of changes to the country's laws and legal system along the lines described in this paper.