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FOREIGN INVESTMENT IN SOCIALIST CUBA: UNCERTAIN REAL PROFITS FOR FOREIGN CAPITAL AND CONTINUED EXPLOITATION OF THE LABOR FORCE

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Cuba's socialist State is a text example of totalitarianism, oppression, discrimination and exploitation. As an ironic paradox, the Cuban regime exercises its absolute power over the working class with the complicity of foreign capitalists investing on the island in search of a quick profit.

Evolution of the Legal Framework

After Fidel Castro took power in 1959, foreign investment became practically inexistent in Cuba. In the eyes of the Cuban regime it was not necessary since Cuba was a special member of the Council for Mutual Economic Assistance (COMECON) from 1972 until its dissolution in 1991.

However, Law-Decree No. 50 of February 15 of 1982, resurrected foreign investment by regulating economic associations between Cuban and foreign enterprises. Due to some inherent problems related to mistrust, the first association did not materialize until 1990, one year after the fall of the Berlin Wall. The impact of the disappearance of its main trading partners proved disastrous for the Cuban economy.

The desire to attract foreign capital was reflected in the new Constitution of 1992, whose article 23 recognized the property of mixed enterprises and economic associations. On April 21 of 1994, the Ministry for Foreign Investment and Economic Collaboration (MINVEC) was established to promote and regulate these activities.

On September 5, 1995, Cuba's National Assembly promulgated a new Foreign Investment Law No. 77 that granted more security to foreign nationals willing to invest on the island. Later Decrees and Resolutions became part of that Law. After an initial flow of capital, the next twenty

years witnessed a dramatic net decrease in the number of established companies. It became obvious that the 1995 legislation was doing little in helping to alleviate the country's dismal economic situation.

Under President Raúl Castro, Cuba's National Assembly enacted Law No. 118 on 29 March 2014 intended to correct the disincentives present in past legislations. This paper intends to investigate to what extent the new law is likely to fulfill its objective of attracting a flow of needed foreign capital to the island. However, one aspect of the law has remained unchanged version after version; it is the method for hiring and paying domestic workers.

A Holistic Approach

Recent economic measures concerning foreign investment adopted by the Raúl Castro's regime should not be considered in isolation. This analysis adopts a holistic approach of the legislative process that took place between 29 May 2013 and 29 March 2014. In exactly ten months, the Cuban regime enacted four pieces of legislation intended to contribute in the effort to take the country out of the worse economic situation in the 55 years they have ruled the country. In chronological order, those measures related to attracting foreign investments, and providing them with a peaceful labor force, include:

29 May 2013: Modification of the Penal Code and Criminal Procedure.
19 September 2013: Special Development Zone of Mariel.
20 December 2013: New Labor Code.
29 March 2014: New Foreign Investment Law.

What has Changed or Remained Unchanged

The two most recent pieces of legislation concerning foreign investment include the Special Development Zone of Mariel and a new Foreign Investment Law. Both are supported by changes in the Penal Code and a new Labor Code, which help in fulfilling the objective of providing a peaceful labor force to foreign investors. Although an alleged increase in flexibility has been included in the new legislation, the following comparison Table shows timid concessions concerning capital and an unchanged total disregard for the needs of domestic workers. In plain language, the Cuban regime has given again "more of the same."

	Legislation			
	Law No. 77 of 9/5/1995	Law-Decree No. 313	Law No. 118 of	
	(Previous Foreign	of 9/19/2013	3/29/2014	
Feature of the	Investment Law)	(Special Development	(New Foreign	
legislation		Zone – Mariel)	Investment Law)	
Place of	Ministry for Foreign	Office of the Mariel	The Council of	
process	Investment and Economic	Development Special	Ministers, after	
initiation	Collaboration (MINVEC)	Zone (Art. 6, Art. 9))	consultation with the	
	(Art. 23.1)		Ministries of Foreign	
			Trade and Foreign	
			Investment (Art. 11)	

Types of investments	Executive Committee of the Council of Ministers (Art. 23.5) - Joint ventures - Firms with only foreign capital - International economic association contract (Art.	Council of Ministers (Art. 11) By national and foreigner investors as users or license-holder (Art. 17, 23)	Depending on the investment: -the Council of State -the Council of Ministers -The State central administrative unit authorized (Art. 21.1-4) No change (Art. 13.1)
Areas open	All except health care, education and armed forces (Art. 10)	Those related to the development of the zone (Art. 5)	No change (Art. 11.1)
Labor hiring	Only one hiring state employment agency. It determines salaries and working conditions (Art. 33, 34)	No change (Art. 31, 32)	No change (Art. 30.1-30.4)
Labor salaries	Receive in Cuban pesos less than 2.5% of what foreign firm paid for them in US dollars to employment agency (Computed from official publications)	No apparent change	No apparent change
Creation of an incentive fund for workers	Yes (Art. 32)	In this case, the contributions are for the maintenance of the zone (Art. 44)	No change (Art. 29.1)
Foreign investors	Yes, in all forms	No change	No change
Cuban living abroad	Not mentioned	Yes, as foreigners, but not mentioned explicitly (Art. 23)	Yes, as foreigners but not mentioned explicitly (Art. 2.1)
Cubans living on the island	Not mentioned	Same as above (Art. 23)	Only in joint ventures of international economic associations (Art. 2.m)
Profit repatriation	Yes, without restrictions or payment, but only foreigners (Art. 8)	Not mentioned in the Law, but assumed to be the same as before	No change (Art. 9.1)
Fiscal obligations	- 30% of net returns (Art.39.a)- 50% in case of natural resource exploitation	-Exempt of fiscal obligations in several cases (Art. 57) -12% capital gains tax	- 15% of net returns (Art. 36.1) -50% in case of natural resource exploitation

	(Art. 39.b)	-1% payment of tax on sales or services -14% contribution to social security (Art. 58) (Council of Ministers' Law-Decree No. 316)	(Art. 36.4) - New several exemptions (Art. 36.2, 36.3, 36.4, 37.2, 38.2. 39) -Adds bonuses in specific cases (Art. 37.1, 38.1)
Conflict resolution Acquisition of	In People's Courts designated by the Government Council of Supreme Court (Art. 57, 58) After registration in the	-Cuban Arbitrage Court of International Commerce (Art. 45) -General Office Director (Art. 46) After authorization by	Depending on the case: -Economic chamber of Provincial People's Court (Art. 60.3, 60.4, 61) After registration in the
legal status	Cuban Chamber of Commerce (Art. 13.7)	Council of Ministers or the General Director of the Zone (Art. 24)	Commercial Register (Art. 14.6, 15.5, 16.2)
Protection against expropriation	Except for public good or social interest (Art. 3)	Not mentioned explicitly	No change. Now adds according to the Constitution, legislation in force, international agreements and due compensation from mutual agreement (Art. 4.1)

Unchanged Exploitation of Labor

As stated above, all matters related to the hiring, firing and compensation of the labor force have remained unchanged legislation after legislation. The purpose of this section is to show the extent to which domestic workers are exploited by the Cuban State with the complicity of foreign investors.

A System of One Employer

Cuba's government is the sole supplier of workers and the one that makes the decision about wages and salaries. Law-Decree No. 313 states that Cuban or foreign workers of the Mariel Zone must be permanent Cuban residents and must be hired by an employing entity designed to that effect by the Cuban State (Article 31). Article 32 specifies that the exceptions are technical and administrative personnel with prior authorization of the proper Cuban authorities. The Council of Ministers' Decree No. 316 that complements the law regulates every aspect of the relationship between the foreign entity and the Cuban labor force. Article 35 specifies that Cuban or foreign permanent residents must establish a relationship with the State employing agency before being eligible for work. The Table above confirms that the same rules applied in the previous and the new foreign investment laws.

With the closing of CUBALSE (Cuba al Servicio del Extranjero) in May of 2009, it appears that the main State employment agency is ACOREC (Agencia de Contratación a Representaciones Comerciales), or a hiring agency for foreign commercial entities.

Monopolistic Decision-making

As Law No. 77 did before, Law-Decree No. 313 also enumerates the matters that concern the workers subject to Cuba's legislation, such a contracting, discipline, firing, vacations, social security and many others (Article 36). Article 37 describes the content of the contract between the foreign firm and the Cuban employment agency. Article 39 states that payment for the services rendered by the Cuban worker results from an agreement between the foreign investor and the Cuban agency. Articles 39-43 contain the regulations related to the firm's terminating an employee and the amount of money that must be paid to the Cuban employment agency. Article 44 clearly says that payment to the workers is done by the Cuban agency in Cuban pesos. Resolution No. 49/2013 of the Ministry of Labor and Social Security implements the Articles dealing with the payment of taxes. As shown in the Table above, the new foreign investment law keeps the monopolistic decision-making of the Cuban State present in previous legislations.

Method of Payment

All laws and law-decrees clearly specify that for Cuban workers and foreigners residing permanently in Cuba there is only one employer; that foreign enterprises will pay the employment agency in convertible currency, and the latter will pay the Cuban workers in national currency.

Numerical Magnitude of the Exploitation

If Karl Marx was searching for the most profitable example to illustrate his theory of surplus value, he would select the exploitation of Cuban workers by the socialist State in complicity with foreign capitalist firms. In numerical relative terms, the worker receives approximately less than 3% of what the foreign enterprise paid for him to the official Cuban Employment Agency. From numerous testimonies, I have selected one that would leave no doubts about the veracity of the former statement: the Government of Spain —one of the major participants.

Sponsored by the Economic and Commercial Office of the Embassy of Spain in Cuba, Gregorio Dávila Díaz wrote an article entitled "Cuba's Labor Market for Foreign Firms". The author explains that the salary is composed of three parts: the minimum wage approved by the MLSS; an increase that reflects the professional status (qualifications and experience); and a coefficient of unknown methodology that is applied depending on the category, as shown in the following table:

	Minimum Salary		Coefficient ^c	Minimum Salary	
Employee Category	(C. Peso) ^a	(\$ equiv) ^b		$(US\$)^d$	Emp. Agency
		_			(US\$) ^e
Non-qualified	150	5.66	1,7797	266.96	261.29

Low-qualified	205	7.74	1,6755	343.48	335.74
Medium-qualified	260	9.81	1,6157	420.08	410.27
High-qualified	335	12.64	1,5658	524.54	511.90
Executives	410	15.47	1,5342	629.02	613.55
Directors	435	16.42	1,5261	663.85	647.44
TOTAL ^f (per month)			2,780.20		
TOTAL ^g (per year)			33,362.37		

^a Amount paid in Cuban pesos by the Employing Agency to the worker.

At the current exchange rate of 26.5 Cuban Pesos per 1 US dollar, a non-qualified employee would receive US\$5.66/month (150/26.5), which is 2.14% (5.66/265) of what the enterprise paid for him/her at the salaries of the time. The percentage received by the workers increases slightly to a maximum of 2.47% for Directors, but it never reaches 2.5%.

Although it is impossible to predict how many workers will be hired under the two new initiatives, the study by Dávila Díaz mentioned above uses 24,190 workers being employed by foreign firms at the time of his study. Although the State agency receives other income from additional charges, the following Table quantifies the exploitation or workers at different levels of employment:

Level of employment ^a	Weighted monthly salaries per unit ^b	Income/year
1	398	4,777
25,000	9,952,525	119,430,300
30,000	11,913,030	143,316,360
35,000	13,933,535	167,202,420
40,000	15,924,040	191,088,480
45,000	17,914,545	217,974,540
50,000	19,905,050	238,860,600

^a Number of domestic workers employed at a particular point in time.

^b At the rate of 26.5 Cuban Pesos per 1 US dollar

⁽http://www.xe.com/currencyconverter/convert/?From=USD&To=CUP), last visited April 14, 2014.

^c A coefficient of unknown methodology intended to fill the gaps due to levels of degrees and experience.

^d Amount paid in US dollars by the foreign firm to the Employment Agency.

^e The difference in US dollars between what the Employment Agency receives from the foreign firm and the payment received by the worker.

^f Total amount per month assuming 1 employee per category only.

^g The same as in f on an annual basis.

^b A unit is defined by the six employment categories. For simplicity purposes, the following distribution it is assumed: Non-qualified: 30%; Low-qualified: 20%; Medium-qualified: 20%; High-qualified: 15%; Executives: 10%; and Directors: 5%. For example, in the first case, for

Non-qualified workers the government receives US\$261.29, but it is assumed that only 30% belong in that category $(0.30 \times 261.29 = 78.39)$, and so forth.

The calculations reveal a startling result. The employment agency, by managing between 25,000 and 50,000 workers with the distribution of qualifications assumed, may obtain a net profit of between US\$119 and US\$239 million per year. The figure is rather conservative. After assuming that the average salary of a sales assistant was CP 382.01 monthly (identified in a salary table), two researchers² concluded that the State employment agency was receiving more than US\$1 net million per month for that category and around US\$256 million per year when all employees were considered. That figure was more than the annual flows of new foreign investments to Cuba during the period 1993-1998 (approximately US\$225 million). Obviously, at least at that time, the Cuban regime reaped more benefits from the exploitation of workers than from the value of new foreign investments arriving in the island. There are no reasons to believe that the situation will change under the new Law.

Providing a Peaceful Labor Force

Foreign investors are attracted by the Cuban labor force they will have at their disposal. It is a peaceful, disciplined, "tamed," and educated group of workers where strikes are unheard of and who will perform as best as they can to keep those jobs. A trouble-free workplace is without doubts an important incentive to invest in Socialist Cuba. Several factors contribute to that environment.

Only one Governmental Union

The Cuban workers have no support from their alleged union representative for it is part of the State. The Central de Trabajadores de Cuba (CTC - Cuba's Workers Central Union), the only recognized syndicate is not a legitimate workers' organization; it is an appendage of the government and the Communist Party.³ The reader is invited to seek an event showing CTC standing against the Cuban regime to defend one single worker. Furthermore, since the revolution took power in 1959, May 1st parades are demonstrations of workers' alleged unanimous support to the regime rather than an opportunity to present their demands. Not one in more than 55 years!

Ironically, Article 54 of the Constitution of 1976 (as amended in 1992)⁴ guarantees the rights of assembly, demonstration and association that are exercised by workers. The social and mass organizations have all the facilities they need to carry out those activities in which the members have full freedom of speech and opinion based on the unlimited right of initiative and criticism. Obviously, as in many other cases, Cuba is violating its own law.

Last October 21, the Cuban regime was seeking long prison terms against independent labor leaders Vladimir Morera and Jorge Ramírez Calderón, of the "Cuban Federation of Independent

Workers," an independent entity not recognized by the government. Although imprisoned since September 2012, the regime is asking for eight and five more years, respectively. The charges include disobedience, public disorder and contempt.⁵

A Modified Penal Legislation

On 29 May 2013, Cuba's Council of State enacted Law-Decree No. 310 that changes parts of the Penal Code and the Law of Criminal Procedure, published in the *Gaceta Oficial de la República de Cuba* on 25 June 2013. Its main purpose is to adapt the Code to the changing conditions due to the economic reforms that demand more emphasis in prevention and punishment of criminal activity. Article 87.1 allows the use of psychiatric confinement to those who require such treatment. Article 8.1 of the Law of Criminal Procedure maintains that municipal popular courts are allowed to determine the degree of propensity to commit a criminal act of a citizen and act consequently. Cuba is the only country in the world that lists such offence in its Penal Code.

Interesting enough, Article 8.1 extends to the political activity the old theory of deviance advanced by the Italian Cesare Lombroso. According to his theory of anthropological criminology, criminality is inherited and those "born criminal" could be identified by physical defects, which confirmed a criminal as savage or atavistic. In the case of Cuba, those "born criminals" are identified by the Committees for the Defense of the Revolution or the repressive forces who do not need to elaborate on complex anthropological theories. Needless to add that independent labor union leaders and dissidents have been sent to jail under Article 8.1.

A New Labor Code

The National Assembly approved a new Law of Labor Code on 20 December 2013 to replace the one enacted in 1984. In general, the new Code is very similar to the old one. It shows similar restrictions and its main purpose is to maintain the workers on line. The restrictive and repressive measures against workers mentioned in other parts of this paper constitute hard proofs of the regime's violations of its own Labor Code.

A Flagrant Discrimination

Most Cubans on the island resent the reenactment of the scene that took place in 1977 and subsequent years when the Cuban regime, short of needed cash, rolled the red carpet to returning Cuban exiles full of presents and cash for their families and friends. The new Law of Foreign Investment, not only exploits Cuban workers with the complicity of foreign firms, but discriminates against them by not allowing the same privilege granted to their compatriots living abroad.

Protests have already been heard. Nueva Trova star Silvio Rodríguez, a long-time supporter of the regime, expressed frustration in his blog about the exclusion of Cuban residents from bigger-stakes business. And he asks the embarrassing question: "When will we, who stayed in Cuba to defend the Revolution, enjoy the same rights?" I believe Mr. Rodríguez, who is said to have personally delivered every December a \$1-million dollar gift to Fidel Castro from his royalties

earned abroad, deserves an answer: Never, unless he tries investing in a single venture of those called street "timbiriches" that sell some type of food of dubious origin, fix flat tires or something similar. Needless to say, he will not need the money from family members abroad. The reason is simple: The regime he has been defending for so many years does not want Cubans to accumulate wealth. That is something reserved only for foreigners, selected government officials and their relatives and, of course, Cuban nationals living in foreign lands.

Breaking Current International Agreements

It is not difficult to imagine that the practices described above must break a multitude of international treaties and conventions.¹¹

Organization/ Treaty or Convention	Violation of the Mandate
CO29 – Forced Labor	Cuba has used forced and compulsory labor by sending workers
Convention, 1930	to permanent agricultural camps as a means of political coercion
(No. 29), and C105 –	and education and punishment for holding expressing opposing
Abolition of Forced Labor	political views. In addition, labor mobilizations to work in
Convention, 1957 (No. 105).	specific agricultural development projects also violate these
ILO C029 and C105.	Conventions.
CO87 – Freedom of	Article 1)g) of the new Labor Code grants the workers "the
Association and Protection to	
	right to associate themselves voluntarily and establish Unions."
Organize Convention, 1948	In practice, it is not allowed.
(No. 87)	Cub a violate athis Commention that much it is deductions from
CO95 – Protection of Wages	Cuba violates this Convention that prohibits deductions from
Convention, 1949 (No. 05)	wages with a view to insuring a direct or indirect payment for
	obtaining or retaining employment made to a state intermediary
COOR Dight to Organiza and	agency.
CO98 – Right to Organize and	Collective bargaining is nonexistent in Cuba.
Collective Bargaining	
Convention, 1949 (No. 98)	Described in the considerant and the forming automotive Color
CO111 – Discrimination	By selecting the workers to supply to foreign enterprises, Cuba
(Employment and	does not follow the mandate of equality of opportunity or
Occupation) Convention,	treatment in employment and occupation.
1958 (No. 111)	
CO122 – Employment Policy	Cuba's policy is of selecting who works where, regardless of
Convention, 1964 (No. 122)	skills or endowments, and transfers are not the result of the will
THE LET SECTION OF THE PROPERTY OF THE PROPERT	of the worker.
The Universal Declaration of	Nonexistent in Cuba are: the right to work; free choice of
Human Rights (Article 23)	employment; just and favorable working conditions; protection
	against unemployment; the right to equal pay for equal work;
	just and favorable remuneration; and the right to form and join
	trade unions.

A democratic Cuba cannot ignore that a notorious and public felony has been committed, and that rewarding the investors by granting them an advantage in time and cost of the investment ("a foot in the door") would be sending the wrong signal to newcomers.¹²

At this point, it is necessary to mention that Spain, Canada, Italy, France and other countries that have appeared at the top of the list of countries with the largest number of joint ventures on the island, have enacted legislation to protect their workers from the illegal and repressive practices in their countries, including those of foreign investors. Readers should be aware of the fact that many of the Cuban-Americans considering investing in Cuba who have become citizens of Spain, are now part of the European Union's policy towards the Cuban regime, doubling their legal and moral responsibility in this issue.

The World Knows, but is not Acting

Cuban workers and the organizations representing them have raised their opposition to this state of affairs. Every year, the ILO receives complaints regarding the abuses that the Cuban regime exerts over Cuban workers. ¹⁴ Conferences –like those of the Working Group on Best Business Practices in Cuba—have been held to make the world opinion aware of these unfair practices. ¹⁵

From Cuba, the clandestine documentary entitled *Bajo el cielo cubano* [Under Cuban skies]¹⁶, contains accusations made in 2010 by independent labor leaders in Cuba of the exploitation of Cuban workers in general and in hotels operated by foreign firms in particular. Independent labor organizations have been fighting to gain a space but its leaders end up in jail most of the times.¹⁷ This is an example of how the holistic approach works.

A Closer Look at the Tempting Proposition

At first sight, both investment projects appear to offer a profitable opportunity. However, Cuba's past performance seems to indicate that an abrupt positive response could result in a serious financial setback for the foreign firms. Here are some of the facts:¹⁸

- In 2002, as the government attempted an increase in the role of central planning, about 200 foreign firms decided to close down and leave the country. Explicit in the new legislation is the fact that Cuba remains committed to socialism and central planning.
- That situation had originated two years before. In 1999, Cuba had 217 mixed enterprises from Venezuela, Spain, Canada and Italy. By 2001, the number had decreased to 141, for a net loss of 76 firms.
- Those that survived and remained on the island were victims of unfulfilled financial needs from 2008 to 2010. Tension developed between the governments of Spain and Cuba because of the impact on about 300 of Spain's businesses.
- Lack of payments is a chronic habit in most of Cuba's transactions. Unavailable cash slows the process, resulting in complaints or closings.
- The likelihood of shifting investment priorities is always a threat, and the firms that are not included are pushed to the sides and practically ignored.
- At present, Cuba is undergoing a process of currency consolidation. The unknown plans create uncertainty. Firms with some degree of risk aversion should at least wait until the

- process is completed. (As of this date, April 26, 2014 no known changes have been made.)
- Rampant corruption at all levels is not a healthy investing environment. Raúl Castro himself has referred on several occasions that it is the revolution's worst enemy. 19
- Corruption and/or other charges have landed several foreign investors in jail. British entrepreneur Stephen Purvis spent 15 months in a Cuban prison. Canadian businessman Cy Tokmakjian has been jailed since September 2011, without being charged until recenly. Another famous case was that of the Chilean Max Marambio, who developed a business with Fidel Castro. Since the government is involved in an anti-corruption campaign, foreign investors are likely to be offered opportunities that may land them in jail.
- All disputes are of the incumbency of the Cuban authorities. There is no possibility to take them to an international court of law.
- Moody's Investors Service, the famous international financial firm that ranks the creditworthiness of borrowers by measuring expected investor loss in the event of default, downgraded the Cuban regime on April 23, 2014. Moody's based its decision to lower Cuba's credit rating on the increased risk of economic collapse of Venezuela, a key Cuban ally. It also considered potential domestic shocks from a disorderly political transition which translates into uncertainty about the future state of Cuba's economy.²⁰
- At the end of April 2014, Peter King, an important member of the Canadian Parliament, based on the case of his constituent Cy Tokmakjian, alerted potential investors of the dangers of doing business with the Cuban regime. Mr. Tokmakjian is being blackmailed. The Cuban regime is requesting his assets to free him. Mr. King stated that "the international financial community should think twice about the blandishments made by Cuban ministers, diplomats and trade officials to make them invest."²¹

Testimonies of Former Investors

Some of the disappointing results have been documented. Here is a very small sample:²²

- French entrepreneur Michel Villand established a chain of bakeries called "Pain de Paris", later expropriated by the Cuban government. In his book *My associate Fidel*, he denounces that his Cuban partners defrauded him by keeping two sets of books, then offered a ridiculous low sum for his stake.
- Cuba jailed executives of the British investment and trading firm Coral Capital Group Ltd on unspecified fraud charges. They were found guilty of minor charges last June and released for time served, more than a year later. Instead of deporting, the new law intends to find executives criminally liable.
- Cuba has closed more joint ventures than it has opened since the beginning of the economic reforms started in 2011. In 2013, the Anglo-Dutch consumer goods group "Unilever" ended a 15-year joint venture after failing to resolve a dispute with the government over who would have the controlling interest.

• Several diplomats who requested anonymity have revealed serious accusations: "The communist government sometimes lets investment proposals die on the shelf without explanations.... In the end, the entire law remains discretionary." "If a venture is successful, the government often wants a bigger stake. It welcomes foreign financing, but once a project is operational it wants to take charge." "Use the foreigners where it suits you. Spit them out as soon as their usefulness is over."

Goals versus Reality

Foreign Trade minister Rodrigo Malmierca has recognized that Cuba needs an annual investment of US\$ 2,500 million US dollars to make its economy rebound.²³ He did not explain its feasibility or the procedure used to calculate that figure. Another Cuban economist did provide a more realistic scenario.

Juan Triana, former director of the University of Havana's Center for the Study of the Cuban Economy (CEEC), during a public debate sponsored by *Temas* magazine, stated the following: "Cuba needs to increase by almost 15% its rate of gross capital formation, its investment rate, to be able to later achieve an annual average gross rate of 4%. It will take 25 years for this country to double its Gross Internal Product (PIB). You don't need a scientist or a doctor to calculate that. I will die and my son will retire before that is achieved. To understand what we are talking about here, such high growth rates are neither an aspiration nor a goal or a luxury; it is this country's necessity, if not, we will continue postponing the wellbeing of present and future generations."²⁴

Two Considerations about the Future

The new Law of Foreign Investment reiterates the commitment of the Cuban regime to respect the property rights of investors. However, Article 27 of the Mariel Special Zone law makes clear the possibility of revoking the authorization for the following reasons: the lack of fulfillment of the essential obligations; for causes of public order or national security; reasons of social interest or public good; and any other reason is clearly stated in the authorization's resolution. The foreign investment law has similar clauses. Previous track records on that regard make it difficult to believe the promise of no expropriation. Furthermore, the reference to compensation is not clear enough and the law states that any conflict has to be solved under the tutelage of Cuban institutions.

One could only speculate about what will happen to these investments when the rule of law is finally established in Cuba. The judicial system will be overwhelmed with legal demands resulting from more than 55 years of arbitrary and abusive actions. The foreign firms that have conspired with the Cuban State to deprive workers of their rights might be on the defendants' seat. It would only be fair that the exploited workers receive their "day in Court" for what was robbed from them. Such claims will have a legal base because the countries investing in today's

Cuba are signatories of the Conventions sponsored by the International Labor Organization and the United Nations.

A legal analysis by Alberto Luzarraga was published back in 2001.²⁵ In essence, the author argues that the structure of the documents signed by the investor and the Cuban State is such that "they are null and void from inception due to the fact that they are based on an illicit cause, namely: to make the Cuban workforce an object of commerce in bulk and to defraud the Cuban worker of most of his wages."

If Cuban-Americans, either as individual citizens or corporations, make the decision to invest, in addition to the potential legal problem they may face, they will be helping in the exploitation of their own people. The Cuban regime will not hesitate in stealing their hard-earned money in foreign lands, as it did with their properties at the beginning of the revolution for which compensation has yet to be paid.

NOTES

¹ http://www.icex.es/servicios/documentacion/documentoselaborados/icex/pdfs/cuba% 20mercado% 20laboral.pdf.

² M.F. Travieso-Díaz and Jorge F. Pérez-López. 2001. "La inversión extranjera en Cuba: Pasado, presente y futuro." In M. Martín, M. García, F.J. Sáez (Eds.) *La actual economía cubana a debate – Homenaje a Julián Alienes Urosa*. Granada: Universidad, p. 149.

³ Efrén Córdova and Eduardo García Moure, *Modern slavery: Labor conditions in Cuba*, ICCAS Occasional Paper Series, University of Miami, April 2000 (http://www6.miami.edu/iccas/laborENG.pdf).

⁴ http://www.constitutionnet.org/files/Cuba%20Constitution.pdf.

⁵ http://www.capitolhillcubans.com/2013/10/cuban-labor-leaders-face-long-prison.html

⁶ Cesare Lombroso (1835-1909) was an Italian criminologist and physician.

⁷ http://en.wikipedia.org/wiki/Cesare_Lombroso.

⁸ See, for example, http://www.hrw.org/reports/1999/cuba/Cuba996-01.htm and http://www.refworld.org/docid/3ae6a85f0.html.

⁹ http://cartasdesdecuba.com/sube-la-temperatura/

 $^{^{10}} http://www.cuba standard.com/2014/04/01/cuban-emigres-may-get-green-light-for-investments/2014/04/01/cuban-emigres-may-get-green-light-for-investments/2014/04/01/cuban-emigres-may-get-green-light-for-investments/2014/04/01/cuban-emigres-may-get-green-light-for-investments/2014/04/01/cuban-emigres-may-get-green-light-for-investments/2014/04/01/cuban-emigres-may-get-green-light-for-investments/2014/04/01/cuban-emigres-may-get-green-light-for-investments/2014/04/01/cuban-emigres-may-get-green-light-for-investments/2014/04/01/cuban-emigres-may-get-green-light-for-investments/2014/04/01/cuban-emigres-may-get-green-light-for-investments/2014/04/01/cuban-emigres-may-get-green-light-for-investments/2014/04/01/cuban-emigres-may-get-green-light-for-investments/2014/04/01/cuban-emigres-may-get-green-light-for-investments/2014/04/01/cuban-emigres-may-get-green-light-green-l$

¹¹ For a comprehensive treatment of this subject, see the 2013 Annual Report by the Centro Nacional de Capacitación Sindical y Laboral, Coalición Sindical Independiente de Cuba, Grupo Internacional para la Responsabilidad Social Corporativa en Cuba, entitled *Situación Laboral en*

Cuba – Violaciones Cometidas por el Gobierno Cubano, Miami, Florida, September 2013, pp. 27-32...

¹² Alberto Luzárraga, "Socialist Cuba – The nullity of the foreign investment contracts due to an illicit cause: to defraud the Cuban worker," ASCE 11 (2001): 250-257.

¹³ See Spain's Penal Code at http://www.wipo.int/wipolex/en/details.jsp?id=1399; Canada's Labor Code at http://laws-lois.justice.gc.ca/eng/acts/L-2/. French labor law relating to doing business in France is at http://www.ssalt.org/pdfs/France/France_French_Labor_Law.pdf.

¹⁴ See, for example, http://www.cubanet.org/sindical/docs/d06080101e.shtml; http://www.sigloxxi.org/Archivo/oit.htm; http://www.ilo.org/Search3/search.do;jsessionid=07BD26148B9AE52D5FDE5047DD48E958?s earchWhat=denuncian+a+Cuba.

¹⁵ http://pdf.usaid.gov/pdf_docs/PDABT912.pdf.

¹⁶ The documentary can be seen at http://undercubanskies.com/Spanish/index.html.

¹⁷ http://freetradeunionism.org/archives/ituc-cites-cubas-2009-labor-union-violations/.

¹⁸ Part of this information appears in the article "Empresas mixtas en Cuba: incógnitas y urgencias" by Emilio Morales, *Café Fuerte* (cafefuerte.com/cuba8477-empresas-mixtas-en-cuba-incognitas-y-urgencias/)

 $^{^{19}}$ See, for example, http://www.powerlineblog.com/archives/2013/07/raul-castro-asks-whats-wrong-with-you-cubans.php.

 $^{^{20}\} https://www.moodys.com/research/Moodys-Downgrades-Cubas-Rating-to-Caa2-Outlook-Stable--PR_297308.$

²¹ See https://us-mg204.mail.yahoo.com/neo/launch?.partner=sbc&.rand=2qfmeuto269gb#mail; and http://www.huffingtonpost.ca/peter-kent/cuba-business_b_5228281.html. The latter has the suggestive title of "Cuba is open for business that might land you in jail."

²² The following stories were released by Reuters on 1 April 2014.

²³ The statement has appeared multiple times in the media. See, for example, Spain's *El Mundo* newspaper of March 30, 2014 at http://www.elmundo.es/america/2014/03/29/5336edd0268e3eab068b456e.html.

²⁴ *Ibid*.

²⁵ Luzarraga, *Ibid*.