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Public rules about using and owning real estate in Cuba

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Making Cities Work

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Introduction

The discussion on urban land continues to be absent in most of the specialized Cuban literature about planning and economic policies, despite its relevance. In very thorough essays about the present challenges and future development of the Cuban economy, nothing is said about the need for adequate public land policies and the implementation of public value capture mechanisms as part of the economic development of the country. The issue is complex, there is a void of almost half a century of not dealing with land value, but these reasons are not sufficient to justify the continued lack of vision in this direction, all the more when the Cuban cities are in desperate need to reverse the deterioration and stagnation that affects them.

The Cuban state determines the general rules under which citizens and organisations may own and use real estate. These are rules about property rights and about the limitations - in compliance with aspects such as state security, environmental and heritage protection, economic development, social equity and human and civil rights - on exercising those rights. In doing this, the Cuban state is no different from other states: most states make such rules and enforce them when necessary. What is particular to Cuba is the content of those rules. In particular, the Cuban state has the monopoly to perform land development and management. There are public institutions to plan and deal with all of these aspects, and there are no recognised real estate markets in the country.

Another important aspect is the utmost importance given to planning. But in spite of this, Cuban urban planners have rarely been certain of what will be built and where. The main reason for this may be that, despite the numerous master plans to study and anticipate development trends, most of the decisions ultimately involve top officials who envision the projects and establish the investment priorities according to the public interests or needs and the historical moment, irrespective of the plans.

This article intends to give a clear picture of how things are done in the public sector, how the administration works, and under which legal framework. I will look at the physical planning system and its importance in the location and implementation of land use, investment projects and housing programs, and at the legal procedures that include licenses for construction, demolition, habitat and other licenses for heritage conservation and redevelopment.

I will analyze the difficulties faced by the Cuban planning and legal system with respect to land and urban development, in the attempt to understand the limits imposed by the government on land and urban development, and I will explore to what extent those limits are to blame for the increasing irregularities and violations at all levels of the formal procedures for land and property.

I will also introduce the public and personal rights concerning housing, buying and selling, permutes, donations and other tenure alternatives; and clarify the civil responsibilities, namely types of ownership, properties, property registers and so forth in order to expose the opportunities and accessibility of the system but also its limitations.

The Cuban administrative and planning system

The first article of the Cuban Constitution defines the Cuban state as a Socialist State of workers, independent and sovereign, organized with all and for the good of all, as a unitary and democratic Republic, for the satisfaction of political freedoms, social justice, individual and collective well being and human solidarity. The National Assembly of the Popular Power (parliament) is the legislative and elected organ, and is composed of deputies elected for five years by free, direct and secret vote. The State Council is the representative of the Assembly; it is elected every four years and it is authorized to adopt law decrees that can modify the laws passed by parliament.

The authority of the public administration entities derives from the Constitution. The government authorities are divided into three levels: national (Parliament), provincial (Provincial Administrative Councils) and municipal (Municipal Councils). At a more local level, there are responsibilities for the community based on organizations such as the District Representations, the Popular Councils¹ derived from the elected district representations, the Committees for the Defence of the Revolution (CDR's) and the Women Federation Committees. These organizations allow the direct participation of the population in the different priorities set by the government.

The central government agencies are the Council of Ministers and the Executive Committee. These dictate the decrees to regulate and guide the execution and implementation of the general laws and the ways to enact them. They also approve the prioritized and special development programs, revise and approve the yearly Plan of the Economy, which is then elaborated in detail by the Minister of Planning and Economy.

Parallel to the elected Administration Councils at provincial and municipal levels, there are Sectoral Directorates and National Institutes as technical arms of the different Ministries. This is a source of conflict in the setting of priorities and in the allocation and administration of resources, for these resources - instead of being distributed through the administration structure to the different levels - are in the hands of centralized programs which at that level cannot target all the population needs at the different scales.

The administrative structure is complemented with a planning system to guide the life of the whole country. There are two fundamental dimensions of planning clearly established, through the process of institutionalisation, since 1976. In the first place there is the planning of the economy - global, sectoral and mercantile (enterprises). And in the second place there is physical planning - territorial and urban - that should implement the different scales of economic planning in the physical space at national, provincial and municipal levels.

The National Institute of Physical Planning is one of the technical sections of the Ministry of Planning and Economy (MEP). It is the leading institution for all territorial and urban plans in the country, responsible for authorizing the land use - location decisions at macro and micro levels - and for urban development plans, for the location of all investments, for infrastructure

¹ Popular Council is considered the government grassroots level

construction and social priority programs, for protection of the environment² and other resources, among other aspects.

Since its creation in 1964, at first attached to the Construction Ministry, this institute has had to deal with the complex problems inherited from previous governments that paid little attention to urban and rural imbalance and other serious social problems in the country. It has been, since then, in charge of the elaboration of master plans for the urbanization of different regions and is in charge of promoting spatial order and equal social and economic development throughout the whole city system³. In 1978⁴ the Institute was placed under the responsibility of the Central Planning Board that afterwards became the Ministry of the Economy, as physical planning was ultimately conceived as the spatial materialization of economic programs.

In 1985 the Physical Planning system was extended to the municipal level, but these offices have never enjoyed the necessary economic and administrative autonomy⁵ to have a real say in the local development programs. The only exception of local autonomy in the country is the experience of the City Historians Office in the municipality of Old Havana.⁶

The Provincial government authorities play an important role, using the powers transferred directly from the central government. They authorize the investment in social services, the development of infrastructure projects, and they regulate the development and management of main infrastructure such as transport, water, telephone and electricity. They are expected to coordinate and consult with the sectoral bodies at provincial level; this is an important source of conflict as the sectors usually have their own plans and priorities which are not always in tune with the needs according to the provincial authorities. The provincial physical planning office is attached to the administration to develop the strategic planning and to enforce the

² Herrera, Castillo Jorge Luis. *The juridical Regulation of Urbanism and territorial order in Cuba*. PhD on Public Law. Universitat Pompeu Fabra. Catalonia. Spain. Law No. 81 of July 1997 for the Protection of the Environment and Rational Use of Natural Resources. Includes regulations linked with urban development such as the evaluation of environmental impacts and the environmental licence to proceed with any urban development.

³ García Pleyán, Carlos. *Transformations and vicissitudes of sustainable urban development in Cuba*. Institute of Physical Planning. May 2006

⁴ Ibid

⁵ Herrera, Castillo Jorge Luis. *The juridical Regulation of Urbanism and territorial order in Cuba*. PhD on Public Law. Universitat Pompeu Fabra. Catalonia. Spain. The Law decree 21 of the Council of Ministries of February 1978 established the Sets of regulations of the Physical Planning activity. The article 5 establishes that physical plans express the directives of social and economic plans in the physical and spatial dimension. The most important aspects of urbanism should be managed by the municipal levels, as the most legitimate urban order must be close to the needs of the people.

⁶ Robainas, Barcia Ayleen. *Roaming Old Havana*. Lecture at Toronto Architecture Faculty. The Historian's Office has a network of hotels and shops managed by *Habaguanex*, a business company created in 1993 thanks to a Law decree passed by the State Council. Part of the profits have provided for the rehabilitation of several buildings that hold offices and housing rented by *Fénix*, a real state company. Financial revenues rendered by those firms support an extensive comprehensive plan with a social and cultural vocation that benefits the weakest sectors: children, the elderly and the disabled living in the historic center. It is within this context that several social works promoted by the Office of the Historian such as housing, a maternal home and one for the elderly, a center of rehabilitation of disabled children, primary and secondary schools, trade teaching workshops and non-pollutant industries are contributing to cut down the strong impact that housing decay causes on the inhabitants. Another part of the strategy developed by the Office of the Historian is linked to an extensive plan for the rescue and revitalization of public spaces like squares, avenues, parks and gardens.

urban regulations, to approve the land use plans of the different municipalities, to issue building permits and to consult with other public agencies. There are other important agencies at the provincial level that issue the permits linked to land and building management, such as the environmental office, board of monuments, security, fire protection.

The weakness of this system, according to Cuban and foreign experts, lies in the separation between physical master plans and economic master plans and also in the separation between physical master plans and investment projects prioritized by the top government. The physical plans have lacked flexibility in updating the proposed changes and have also lacked public visibility: they are left behind in their unreachable long term vision, while the real action develops as a practical answer to short term problems, which is the customary way of doing things in Cuba. In addition, the predominant use of the zoning tools was not worked out in detail through specific urban projects, insufficient attention was paid to existing cities and urban areas in contrast to the creation of new urban developments, and there was little implementation of what has been proposed by sectoral plans and other local programs.⁷ The actions taken under the sectoral plans often did not match the vision for the coherence of the urban and territorial order⁸, when the urgency to realise social and economic priorities (i.e. sectoral policies) led the central authorities to make decisions without the proper dialogue with the physical and urban planning authorities.

Another problem of the physical plans is the lack of coordination with a wider juridical framework. Even if they are approved as a law, they are not given authority to actually influence the political or institutional spheres, whose actions often go in another direction. On the other hand, physical plans are not submitted to public consultation – except when they are presented to the parliament: this reduces the commitment to implementing them and the respect that both the administration institutions and the citizens should grant them. Another important problem is the small say of the municipal level, seen as an object of planning and not a planning actor.⁹

Land planning tools

Master Plans

The implementation of the physical plan (1984-1990) did not achieve what was expected, as it did not anticipate the difficulties that were to follow. The economic basis of this plan – both when it was elaborated and when it was revised – assumed the continuation of the “traditional behaviour” of the national economy (characterized by a strong centralization and heavy capital

⁷ García Pleyán, Carlos. *Transformations and vicissitudes of sustainable urban development in Cuba*. Institute of Physical Planning. May 2006. Our urban development plans suffered two great weaknesses.

On the one hand, documents focused on defining the future model to be achieved, but not on the actions needed to accomplish it. On the other hand, the State, the sole recognized actor of urban transformation, played two contradictory roles: it was the investor /promoter and, at the same time, it reserved for itself the role of regulating and controlling the use of space.

Throughout the 80s an internal reflection on the limitations intrinsic to such approaches grew among professionals ... the major components of this national reflection may be summarized into five main axes: ...the technicist approach to planning, the project of city parts vis-à-vis the urban planning of big functional spots ... the concern with respect to rehabilitation and conservation of existing buildings... the acknowledgement of the obsolescence of the plan as document... the growing sensitivity for environmental preservation and for the strong aggressions suffered by both the rural environment and the urban milieu.

⁸ Herrera, Castillo Jorge Luis. *The juridical Regulation of Urbanism and territorial order in Cuba*. PhD on Public Law. Universitat Pompeu Fabra. Catalonia. Spain. The lack of juridical soundness of the physical planning system has produced two negative consequences: the null incidence of planning instruments on land use and their limited practical operativity.

⁹ Ibid

investment approach) of the last 30 years. The collapse of the Berlin Wall made clear that Cuban's economic situation was too much dependent on the socialist block, and that the Master Plan objectives would not be reached: but the specialists were aware that the problems with implementing the plans were there long before the crisis of the Socialist block.

Zoning Tool

Zoning is one of the most extensively used land tools in Cuba at territorial and city levels. A zoning tool should demarcate a city by ordinance into zones and should establish the regulations for land use, location of activities, bulk, height, alignment and shape of buildings within each zone. It should also establish the necessary road network. Zoning makes it possible to control, organize and structure urban growth, with the main aims of improving efficiency, of promoting agglomeration benefits, of specifying minimum health and safety requirements, and of avoiding the encroachment of incompatible uses.

According to these principles, land can be allocated for the following main purposes:

Land allocated for industrial purposes: The country has always granted utmost importance to the development of its industrial base.¹⁰ The overall policy followed the principle of placing new industrial investment in the less developed provinces and regions in order to de-concentrate and balance urban growth, but there were parallel trends for enlargement or remodelling of existing facilities near the most developed cities, either in the periphery or within urban areas. Other interests tended to locate the new capacities near the capital city where there is more experienced labour force.¹¹ In the last decade the trend has been to locate small and medium scale factories, technologically updated enterprises, and warehouses in small and medium size cities in order to favour their development and to stop the internal migration of the labour force towards the larger settlements. This became particularly important in order to face the growing territorial differences caused by the economic crisis over the last 15 years.¹²

Land allocated for social purposes: One of the roles of the administrations and planning authorities is to organize the system of settlements of towns and cities. The urban population of Cuba is concentrated in nine major cities which have over 100 thousand inhabitants. One of the most important policies has been to limit the growth of the capital city, trying to give a larger role to medium and small urban settlements, although the economic crisis of the 90s evidenced the failure of this policy as thousands of people migrated to the capital looking for more economic opportunities. Policies for the urban system incorporate the land allocation for housing, health, education, basic services and other social programs.¹³

Land for environmental purposes: It includes the preservation and development of natural reserves, coast lines and forests (as filters of the atmosphere and also reserves for wood production). It also protects the natural hydraulic resources.¹⁴

¹⁰ Monreal, Pedro. *The Cuban economy at the beginning of the XXI century*. Page 139.

¹¹ Figueras Miguel Alejandro. *Structural aspects of the Cuban economy*. Page 104.

¹² Idem, page 166.

¹³ Idem

¹⁴ Idem

Land allocated for economic purposes: This function covers the location of the leading economic activities in the last decades, such as tourism that has demanded a great amount of land for hotels and related services. It also includes other real estate clusters for foreign enterprises and joint ventures, such as the free zones¹⁵ and the development of commercial areas to capture foreign currency. The allocation of land for transport infrastructure - including roads and highways, ports and airports, the land for the construction of dams and aqueducts and for exploitation of mineral resources - is an important element of the strategy.¹⁶

Land allocated for agricultural development: The Ministry of Agriculture manages the land dedicated to agriculture, which is around 40% of the territory.¹⁷ The largest reserve of agricultural land is in the hands of the state in the form of state enterprises associated with farmers in the form of Basic Units of Cooperative Production, UBPC¹⁸. The remaining agricultural land belongs privately to the farmers, either independent or associated in cooperatives.

Land reserves: This includes areas that are neither used for agriculture nor for urban development but that could potentially be used for one of those purposes. Most of it lacks road and technical infrastructure and therefore would cost a lot to be developed, the agriculture potential depends on the soil quality and on the distance to natural or artificial hydraulic resources. In the capital city there are central areas with former industrial land that could be considered as a potential for future developments.

According to the land records in the Planning Directorate of Havana City, the gross zoning distribution of land use in 2004 is as follows:

Type of Zone	area (in hectares.)	%
- Housing	13 000	25.3
- Industry & Warehouse	3 500	6.9
- Recreation, Sport & Green Belt	8 580	16.7
- Transport & facilities	2 000	3.9
- Commercial, Health & Others	6 200	12.1
- Agricultural and others rural areas	18019	35.1
Total		100%

¹⁵ Everlenny, Omar. The Cuban economy at the beginning of the XXI century. Page 225. The free zones were created according to the law decree 165. The Wajay free zone with 21 hectares, 13000m2 of warehouses and 1000m2 of offices, Havana Berroa with 244 hectares, 41 616 m2 of warehouses and 4200 m2 of offices and Mariel with 553 hectares, 7000m2 of warehouses and 540 m2 of office space.

¹⁶ Dominguez, Everlenny and Barberia. The Cuban Economy at the beginning of the XXI century. Page 17. That are after tourism and the family remittances , is the most important source of revenue.

¹⁷ Figueras Miguel Alejandro. *Structural aspects of the Cuban economy*. Page 53.

¹⁸ Dominguez, Everlenny and Barberia. The Cuban Economy at the beginning of the XXI century. Page 45

Note: 1he = 2,5 Acres

Even though the metropolitan Region has followed the zoning principles, Havana City itself shows many examples where the original zoning plans have been changed. In practice, the zoning plans are in need of updating according to new strategies. The main factors that have limited the effectiveness of the zoning tool in Havana during the last 20 years are:

Low implementation of urban plans for improving infrastructure and services in new areas and failure to establish a polycentric solution.

- Land for industrial projects has been supplied, but the majority of those projects have been developed outside the zoned areas. Around 46 % were relocated within the metropolitan region outside Havana City, due to the lack of amenities in the industrial zones.
- Modification of land allocation principles. The areas used for Warehouses and Support activities (not desirable in the city, because they require extensive land use and have low labour force density) were more than were zoned for these activities.
- Disregard of the standards established by the Master Plan for the underground water reserve. This location was supposed to be protected from any sort of construction because the area is the highest source of water for the city. Today, 750 hectares within this location have been built upon.
- Not respected balance between certain urban functions such as housing, services and basic infrastructure.

The causes of all those problems are linked with the underestimation of the positive effects of zoning on the side of the authorities, together with the over estimation on the side of the technical staff; the lack of integration and collaboration in the process of planning, investing and controlling development is to blame for some of the failures. The problems also have to do with the lack of more flexible zoning tools, which would allow adjustments during the implementation process. The effects of a strong sectoral framework and the consequences of the strong central decision-making process left no room for a comprehensive territorial analysis associated to the implementation stages.

Therefore, the plans were not fully implemented and were often modified, showing the need for more open planning methods, more inclusive, with a greater influence on the economic and political spheres and more receptive towards the public demands.

Strategic Planning Tool

At the end of the 1980s and early 90s, the national government requested Havana City's authorities and institutions in charge of land development and land use to introduce a Strategic Planning tool. The idea came partly to overcome the problems of the master plans, by reshaping planning in order to face the existing situation: reduce the imbalance of infrastructure and services, increase the effectiveness with which scarce resources are used, and improve the organizational and legislative structure of the decision-making process.

A Strategic Planning tool, based mainly on social, economic and environmental aims, requires an ensemble of selected actions in key areas with the inclusion of all social actors. It also requires setting up priorities, and planning and decision making that is responsive to these priorities.

The main functions of strategic planning were avoiding the over-centralized decision-making, encouraging guidance rather than restriction in planning, and providing a framework for local plans with a strategic platform and with economic support.

The main issues in Strategic Planning are setting the priority in infrastructure investment and determining the areas where growth and change should occur within a general context and with a clear mission. Strategic Planning applies also to renewal, upgrading and identification of older areas worth preserving.

Some of the above considerations have been applied, and some important lessons have been learned from using strategic planning in Havana. The obstacles to implementation made clear that one of the major problems was that the priorities for the City development are defined by the central government based on national priorities and not necessarily on territorial conditions. For example, there was considerable emphasis on the creation of new massive housing in the periphery versus the deficit of programs to repair and maintain the valuable existing stock; the area chosen for the development of tourism facilities and the scientific pole was a traditionally residential area with infrastructure for that scale of urbanisation which at present shows many signs of over saturation. The local planning agency is remote for the central government authorities, and the local government does not have the possibility of having its priorities adopted.

The existing gap between ministries and local agencies, between Central Government and Local Government, and between technicians and politicians, plus the practice of spending more resources on new projects than on the existing, and of wasting the limited resources in the haste to do things quickly: all these are some of the main constraints for good urban planning and management, with negative consequences on urban development.

Has land planning in Cuba been a successful tool for development?

Planning in Cuba has been a permanent and partially successful instrument in territorial and urban development, which at times has been detached from its connection with economic and legal fields. Planning has been used to support central decision making, rather than as an institutional mechanism to actively respond to the public demand.

One of the drawbacks of land planning and management, is that although land is a basic economic resource for the allocation and design of all activities, it has been seen as no more than providing physical space where to place industrial facilities, infrastructure, housing, tourism hotels, services and so on. The authorities are blind to the financial and economic potential that land offers, benefits that are possible even if markets are absent, even when land is not used for private benefit but for the whole of society and through state control.

As a result of ignoring the economic and financial importance of land, the City's administrations and planning agencies have often failed to ensure that attractive valuable farmland is protected or they have allowed inadequate uses which obstruct future development opportunities. They have also failed to promote better initiatives to build upon abandoned and poorly developed land in the city. As in most countries, the Cuban people are willing to accept limitations on their rights in regard to land as long as land-use planning benefits all, such as reducing congestion, minimizing urban sprawl, managing service allocation and density, producing a balance in services and amenities, and providing a reliable infrastructure network. But none of these has happened. Both the administration agencies and the planning authorities lack power, autonomy and an adequate framework of rules and regulations to transform the status quo.

The lack of success of land planning becomes even more remarkable if we take into account that the state controls most of the land in Cuba and determines how it should be used and by whom. But that power could be used better if some of it were decentralised, such as to municipal land control. The centrally initiated actions to promote urban and economic development should rely on the provincial and local institutional framework to make the right decisions. If these institutions are weak and sclerotic - like they are today - there will continue to be a huge inefficiency in city management and a wide gap between the central priorities and the local needs, because the demands will not be adequately approved and justified at the top level, and consequently they will not be reflected in the development of physical and economic planning.¹⁹

¹⁹ Bryan R. Roberts & Portes Alejandro. Coping with the free market city. Collective action in six Latin American cities at the end of the Twentieth Century. *Latin American Research Review*. Volume 41, 2006, page 58. The authors explain how the free market reform mark a shift from the old urban political economy to a new one in which the local government, the market and the NGO's become the providers of infrastructure and social services. This sort of action is not accepted by the Cuban authorities but they have already acknowledged the serious problems of having weak institutions very dependant of the central government, this is noted in the difference between Cuban cities that do better than others because they have better governance, stronger institutions, well targeted planning and so on. The authors also stress the importance of not loosing the scope of collective needs versus specific individual needs and the need to reinforce the relations of the decentralized structures with the state.

Problem of land management in Cuba	Principal Consequences
<ul style="list-style-type: none"> Limited vision of the potentials of land management for economic and urban development. 	<ul style="list-style-type: none"> Little economic opportunities derived from land development Land planning not well integrated with economic plans.
<ul style="list-style-type: none"> Lack of decentralization for decision making at the local level. Predominant top down approach. State reluctance to create semi public or non government associations, such as housing cooperatives. 	<ul style="list-style-type: none"> Increasing weakness of municipal and grassroots institutions. Apprehension and lack of motivation of the local authorities to assume challenges. Little community participation in decisions of land planning.
<ul style="list-style-type: none"> Distribution of central resources (construction materials and equipment) according to central priorities not always matching the strategies and needs of localities. Inexistence of other ways to access such resources. 	<ul style="list-style-type: none"> Limited administrative capacity to face the population needs. Deterioration of popular confidence in local state mechanisms. Reluctance to participate or become involved in the community caused by this lack of confidence.
<ul style="list-style-type: none"> Limited legal and fiscal instruments and excessive administrative bureaucracy. 	<ul style="list-style-type: none"> Weak juridical framework for land tenure. Excessive restrictions in the procedures to maintain or acquire a dwelling. Growing popular and public concern manifested in the adoption of informal survival strategies, clienteles favouritism and corruption. Proliferation of informal housing markets mainly for individual solutions.
<ul style="list-style-type: none"> State institutions aware of the land and building needs but unable to resolve them. 	<ul style="list-style-type: none"> Poor capacity to introduce mechanism to upgrade the relevance of location value, no use of different location advantages. Stagnation of urban development

The State's access to land

In Cuba, the legislation gives the state unlimited access to land. For more than four decades, the state has **property rights over land** - including social housing - which guarantee it control over most of the land. Where private property stands in the way of prioritized projects, the state can acquire the land, compensating the owner either with another land parcel or financially.

The legislation gives the state the right to develop all the land under its control and limits the use of land of other owners. The state has also the possibility to change land use of privately owned land for the general social purpose. The state institutions representing the collective rights and interests of society modify the exercise of property rights held by others.²⁰ At the beginning of the revolution, the state introduced new land uses, that private owners found less attractive from the financial perspective but which were considered necessary to realise social priorities.

Another rule establishes **that the state has the right to control land and buildings for development assistance**: this is used to guarantee the location and equal distribution of basic services such as health and education, for all the population. In the Cuban case, the state did not have to acquire most of these land and buildings because they were abandoned by the Cuban Diaspora. In the land registers, the state is registered as the owner of the land and buildings. For this purpose, the state developed a cartographic data base and expanded the planning institutional framework to the municipal level.

The last form of public land control is in order to reserve land for future developments and city growth and it is strongly addressed in the different master plans. It is called **land protection for development** and controls the land designation for parks, housing and green areas.

The overall legal rules are determined by the Ministry of Justice, but the different legislations and regulations are the responsibility of different central, provincial and local institutions. For example, the Ministry of Culture passes the laws and regulations for the protection of cultural heritage, there is a provincial culture directorate which deals with such issues at that level, and finally there is the municipal network of museum and culture offices at local level.

Central government agencies that control land can be divided into three main categories (the division defines to a large extent what they can and cannot do), and each has its own sort of powers over land.

- Entities with a social role: The scope of their works is determined by subsidies. They are very dependent on an annual budget from the central government and are very limited in what they can do concerning land and buildings. They can perform certain maintenance works, but not major investments.
- Entities with an economic role: This category includes enterprises and institutions with great relevance in the macroeconomic life of the country. It includes production entities, such as factories, construction companies, army enterprises, infrastructure monopolies such as electricity, telephone, water, sewerage, railways, etc. This group has more national assets under its responsibility and it has a relative autonomy to decide what to do with the land and buildings assigned to it by the central government. These enterprises generally operate with national currency, but there are combinations with the third group, and for certain projects they operate with hard currency. The revenues generated go for the most part to the central government account.
- Entities with a revenue creating role: This includes the enterprises created or authorized by the government to generate hard currency that goes to the central

²⁰ Needham 2006 chapter 5 page 76

government account, leaving a percentage for enterprise capitalization, specific financial resources that will allow entities to replace obsolete technology and / or acquire new equipment to ensure its operational capacity. These enterprises can assume the role and mechanisms of a private society or a capitalist enterprise that allows them to acquire equipment and new technology, independent of central state controls, sometimes import and export independently. They have the right to develop projects with land and buildings according to previous valuations and negotiations with the government. They can associate with foreign companies and other private investors previously approved by the top authorities.

There are five central state institutions that control and regulate land and properties:

- Ministry of Agriculture: Elaborates the rural cadastre and assigns land for rural development.
- Ministry of Justice: Organizes the legal system of the country, its principles and policies. Establishes the possibilities and restrictions of state institutions to control state assets including land and buildings assigned to them, and establishes the rights on land and buildings for public agencies and individuals.

Ministry of Planning and Economy: Elaborates the Annual Plan of the Economy following the directions and priorities of the Executive Council of Ministers. The Institute of Physical Planning controls the urban plan and issues the general policies and guidelines for territorial and urban development. This institute coordinates the Master Plans for the whole country provinces, reviews with the other planning agencies the urban regulations, the issuing of land use permits and project approvals. All investment projects and the different sectors of the economy consult with it.

Ministry of Construction: Dictates the construction ordinances, the norms for construction techniques and materials. One branch is the National Housing Institute that determines the housing policies according to central government directions. It has a board of experts to revise important investment projects.

Ministry of Hydraulic Resources: Of recent creation, this ministry deals with the protection of land with water reserves and the allocation of hydraulic and sanitation infrastructure.

Limits to the types and exercise of property rights

As mentioned previously, since the first year of the revolution, most of the land and buildings property has been owned by the state²¹, and land and buildings in private ownership have been subject to many legal limitations. The laws governing property are not concentrated in one legislation but are dispersed between the Constitution, the Civil Code, and other legal documents which determine the policies, scope and character of these rights for entities and individuals.

In its general dispositions, the Constitution states the fundamental principle defining property as: *Socialism is the ruling economic system based on the socialist property of all the people over*

²¹ The first laws issued by the revolution affected the ruling system of private property. The Law 26 of 1959 against eviction, the Law 135 of 1959 lowering rent, the Law 218

*the production means and instruments and based on the suppression of the exploitation of men by men.*²²

The Constitution states the main general policies to protect the environment, the natural resources and the land reserves. It forbids the transmission of property that belongs to the socialist state to other juridical or natural persons, with the exception of cases that help the country's development objectives without affecting its political, social and economic principles.

As part of its almost unlimited property rights, the state recognises the public property²³ of the political and social mass organizations, the property of agrarian cooperatives, the private property of farmers and the personal property of individuals, and makes rules for all of these. It also establishes the rights of inheritance and allows the expropriation and confiscation for social benefit or for other reasons, with compensation for damages.

In July 1992, the Cuban parliament approved a Law of Constitutional Reform²⁴. The Constitution was modified and approved by popular consensus. The modifications were intended to widen the representation of Cuban democratic entities so as to improve their structures and prerogatives at the different levels, to establish new methods for the parliamentary elections, to regulate the administration procedures at municipal level, to guarantee the rights and freedoms of Cuban and foreign citizens in the country, and other institutional aspects. Articles 15 to 23 contained the issues concerning property rights: state property, state administration rights, rural private property and association rights for rural landowners, personal property, organizations' property, joint ventures, properties of societies and other economic associations.

In the Cuban case these issues are regulated by law. The limits usually answer to the public interest or special requirements to avoid conflicts of interest among the private actors. Some of the limitations are the following:

Limits to protect the public interest: They have the objective of guaranteeing the preservation of a general social order, for example, urbanism, environmental protection, cultural heritage, and national security priorities.

There are mechanisms whose application radically affects the exercise of property rights such as obligatory expropriation, which in the specialized literature also appears as extinguishing the property and not exactly limiting it, as it implies the removal of the property right in exchange for its legal value. Another form is the confiscation or embargo that puts limits to the private property right as its application is a punitive action transferring the property to the state without any pecuniary compensation to the owner.

It is important to understand that the government considers that limits to personal property are necessary to maintain the social order and to allow the social and economic strategies of socialism, with overall impacts that are considered above the individual or personal strategies.

Limits to protect private interests: They are intended to diminish or cancel the conflicts derived from the exercise of real rights among individuals, such as the conflicts between neighbors.

²² Official Newsletter of the Republic of Cuba. Ministry of Justice. January 2003.

²³ The public property is a synonym of state property. In Cuba there is a strong influence of the state over the whole of the civil society and mass organizations which are state controlled. This has also happened with trade unions movements and political activists that are very subservient of the state administration.

²⁴ Official Newsletter of the Republic of Cuba. Ministry of Justice. January 2003.

Types of property that can be owned publicly and privately

In Cuba there is both public and private property, although the latter is restricted in order to favour collective interests over individual ones. Both types of property are subject to legal limitations, in order to realise the harmonic development of collective interests through the actions of public institutions representing the government. Outside these limitations and conceptually, the owner of property has rights which are absolute, protected against outsiders, respected, opposable, and with rights of exclusion.²⁵

The Cuban system stresses the importance of state property as a means of exercising control over those fundamental assets and resources which are necessary for the development of society. The state represents the organized community²⁶. The concept of fundamental assets includes almost all land and buildings used for economic activities and services, from the most strategic objectives to the minor services.

The following assets are considered **state or public property**. They cannot be offered as guarantee or be mortgaged in any way unless the law authorizes it:

- a) All land that is not owned by individual farmers or agrarian cooperatives, underground resources, mines, marine natural resources, woods, wetlands, water sources and communication networks.
- b) Sugar cane factories, industrial areas, transportation means, enterprises, banks, constructions and equipment nationalized and expropriated from imperialists, landowners and bourgeoisie. Also the factories, enterprises and other economic, social, cultural and sport installations built by the state and also the ones planned for future construction or acquisition.
- c) All assets located on the territory of the Republic that do not belong to any legal or natural person.

The Civil Code details **other forms of property**:

- a) Property of the political, social and community organizations:
All the assets granted to them for the fulfilment of their objectives. This can be buildings, transportation means and other equipment. These properties cannot be taxed or confiscated.
- b) Property of the Agrarian Cooperatives:
Its owners can possess, use and dispose of the assets included in the property such as:
: Rural land for farming

: Production instruments and means
: Housing and other constructions
: Cultural, recreational and other assets acquired and contributed by the cooperative members individually or collectively.
The farm land owned by the cooperative can only be sold to the state or to other cooperatives and cannot be taxed or mortgaged. It can also be transferred to another owner with the approval of the state entities and according to the legal dispositions established for such a case.

²⁵ “Los derechos de anomia social en el enfoque jurídico de la propiedad individual. Consideraciones sobre la propiedad vivienda”. Lic Osmin Gálvez, Organización Nacional de Bufetes Colectivos, la Habana, Cuba, 2000.

²⁶ Marta Fernández Martínez, “Apuntes sobre la propiedad y los derechos reales en Cuba”. 2004

c) Property of individual farmers:

This was regulated in one of the first laws of the revolution as part of the Agrarian Reform. It includes the property and assets that help increase the production of consumer goods from the agricultural areas and that contribute to the national economic development. The types of property considered are:

: Privately owned rural land.

: Buildings and installations, production instruments and other equipment.

The small farmers that act as private entrepreneurs can sell their land to the state or they can join with the agrarian cooperatives or state agriculture enterprises. They also have the possibility to sell their land, permute or pass the title to other small farmers. In all cases the state must give approval through the competent entity and according to the law. In the case of sales, the state has the preference to acquire the land, paying a legal price. The small farmers cannot rent their land to others, make partnerships outside the established legal cooperatives or use land as mortgage or take any legal act that implies taxes or concession of rights to other individuals. In the case of breaking the law, the land as well as the production means, could be confiscated by the state.

d) Other forms of property considered by the law are :

: Property of anonymous societies, foundations and associations

: Property of Joint Ventures with national or international partners²⁷.

In these cases, the law has specific regulations and statutes including those in the Civil Code.

e) Personal property

In Cuba the concept of personal property includes one house, the possibility of a second house on the beach or in the countryside, empty plots of land and other valuable assets which require a property title. Personal property also includes the revenues and saving accounts derived from honest work, and other assets and objects necessary for the satisfaction of material and cultural needs. In the case of urban land, the owner may execute construction works, excavations, or grow agricultural products, always respecting the limitations expressed in the law, especially architectural and urban codes that limit construction height and boundaries, or environmental and heritage protection laws.

The table below shows which type of property may be owned by which type of actor:

Property → Actors ↓	Land	Vacant Land	Buildings	Factories	Enterpri ses	Transport means	Housing	Second house	Work instruments	Other

²⁷ Herrera, Castillo Jorge Luis. *The juridical Regulation of Urbanism and territorial order in Cuba*. PhD on Public Law. Universitat Pompeu Fabra. Catalonia. Spain. The Law of foreign investment was passed on September 1995 substituting the Law Decree No 50 of 1982 which allowed the Economic Association between Cuban and Foreign Companies. From the article 16 to the 18 this law includes aspects of real estate property and regulations for its use for tourism and other businesses. The article 35 establishes that real estate enterprises can build, rehabilitate or remodel existing buildings or urbanize land for tourism purposes ...

State entities	X	X	X	X	X	X	X	X	X	X	
Public organizations	X	--	X	--	X	X	--	X	X limited	X	
Agricultural cooperatives	X	X	X	--	X	X	X	X	X	X	
Individual farmer	X	--	--	--	--	X limited	X	--	X	X	
Individuals of families	X limited	X	--	--	--	X limited	X One house	X One house	X limited	X	
Sociedades	--	--	X	--	--	X	X	--	X limited	X	
Joint ventures and Holdings	Surface rights					X limited	Surface rights				X
NGOs, foundations, societies						X limited					X

The X on the table means the legal recognition of the property, registered and certified according to the law. The limited condition is subject to certain quantities authorized by the government, such as cars, trucks and second homes where the possession of only one is allowed.

The state institutions are directly responsible and have unlimited power over the property assigned to them according to the law. The other actors are limited in the use and amount of property that they are allowed to control.

The Constitution and the Civil Code regulate expropriation for reasons of public good or social interest with the necessary compensations. Personal property can also be confiscated by the state, and the law establishes the extent to which this is possible in the case of illegal enrichment and ostentation of this enrichment, illegal acquisition of property and illegal economic activities, in which cases no compensation is offered.

Property acquisition and transfer

The Civil Code regulates the acquisition and transmission of personal property rights in the following forms:

- Buying-selling
- Donation
- Inheritance
- Testament
- Permute
- Renting
- Temporary use

Private persons are allowed to transfer ownership by buying-selling, permutates and donations.

The right of buying & selling:

The price for this operation is established in the official regulations, and only when regulations do not establish such conditions may the parties negotiate and agree upon a price. The buying and selling of buildings becomes official through a public document validated by the fulfillment of certain legal requirements.

In the case of housing, the law declares that buying and selling is not possible between individuals. In all cases, the Municipal Housing Directorate that represents the state, acquires the property and then pays the legal price to the owner. The only person who has the right to buy is someone who has been living in the property for more than five years, which is the minimum period established to have legal rights. A buyer pays the legal price to the government as a monthly rent until it finally acquires the property. In this case, the role of the state agency is to act as intermediary in the buying/selling process, making sure that the prices are the ones established by the housing regulations. When the owners are leaving the property for good and no one has the right to occupy it, then it immediately passes to the central housing stock for future distribution.

The state recognizes the right of inheritance with or without testament, property transmission and donations of housing and other personal property. But in the case of housing property, those who inherit must live in the building, otherwise the state becomes the owner and the beneficiaries will pay the established amount. Farm land and other facilities built on it can be inherited even if the beneficiaries are not living in it but this is only for cases of rural property and there are certain exceptions stated by the law for cases of state interest.

These types of property transfers are summarized in the table below.

Type of transfer → Type of property↓	Buying-selling	Permute	Donation	Testament	Expropriation	Confiscation
• State land	No	Yes	No	No	No	No
• Private land	Yes, but only to the state	Yes	Yes	No	Yes	yes
• State buildings	No	yes	No	No	No	No
• State housing	Yes	yes	yes	No	No	No
• Private housing	No, except to the state	yes	yes	yes	yes	yes
• Rented housing	No	yes	No	Yes	Yes	Yes
• Rooms and accessories	Yes	yes	Yes	Yes	Yes	Yes
• Cars and vehicles	Yes (only cars from before 1959) No (other assets)	Yes (require special approval)	Yes	Yes	Yes	Yes
• Other personal property	Yes	yes	Yes	Yes	No	No

The right of usufruct or surface:

The state can grant this type of right over land under its control. It can also grant in usufruct other resources and buildings such as production means, industrial or recreational facilities, vacant land or other property according to the law. Land parcels can be granted in usufruct to natural or juridical persons to build housing or other constructions – kiosks, garages, storing facilities - or to use for agriculture. However, if the land is personal property, the owner is not legally allowed to give it in usufruct under any circumstances.

The right of usufruct can have a fiscal burden or be free of charge. The state can grant it to diplomatic missions or to other foreign institutions so they can build or use existing buildings for embassies, consulates or their functionaries' residences, as well as other facilities. Other international agencies and institutions can receive similar authorizations, for example to accommodate offices of foreign associations or joint ventures.²⁸

²⁸ Amparado a través de la Ley No 77 de la Inversión Extranjera

The right of surface or usufruct is given for not more than 50 years. It can be extended for another 25 years if the owner makes the application before the lease term ends. These rights can be transferred unless a specific law says to the contrary.

The right of usufruct or surface expires in the following circumstances:

- Extinction of the legal person that owns it;
- Violation of the law or legal terms under which it was granted;
- If the right is not exercised during the first two years after its concession, unless the law establishes a different term and
- If the buildings or facilities are destroyed, with the exception of their reconstruction or repairs in the term established or according to the juridical sentence.

After the term ends, the constructions and facilities will return to the original owner
which is always the state.

In the case of a joint venture or a holding with a foreign investor, there will be a financial compensation for the asset's increased value.

Housing property in Cuba

The right to shelter appears in article 9 c) of the Constitution, stating that the government will work to secure that every family has a comfortable house. The particular aspects of the law declare that housing is not a purely individual property, as the whole family is entitled to it. The Constitution recognizes the limitations of the state housing production when it says that the state *works to* accomplish the right to shelter, not saying that the state *guarantees* it.

In Cuba, **real estate property** such as land and buildings connecting with shelter is classified under **personal property**, probably to avoid the semantic similarity with market economies where land and building ownership can be privately owned by other than natural persons. Other assets also fall under this category, such as savings accounts, art, furniture, cars, boats and fire arms. There is a set of regulations for every case, with specific norms and limitations for its use, buying and selling.²⁹

Besides the Constitution, the other important juridical document to regulate housing and construction is the General Housing Law first published in 1985, after the Law 48 of 1984 was approved in the parliament³⁰. In those years the country aspired to increase the construction of new housing, expecting to have solved the problem by the beginning of the new millennium. To that purpose, article 8 of the law defined the microbrigades as a popular participation mechanism to produce housing and other social constructions.³¹ There are other regulations and norms concerning housing, issued by the National Housing Institute and the planning authorities. It is evident that the legal responsibility for housing is divided among many state entities and is basically controlled by administrative procedures.³² This leaves little space for personal responsibility over property.

29 Ver "Apuntes sobre la propiedad y los derechos reales en Cuba" Dra. Marta Fernández Martínez.

³⁰ Dávalos, Rodolfo. *The New Housing Law*. Ciencias Sociales. 1990.

³¹ Herrera, Castillo Jorge Luis. *The juridical Regulation of Urbanism and territorial order in Cuba*. PhD on Public Law. Universitat Pompeu Fabra. Catalonia. Spain. The houses produced by the microbrigade are distributed to the workers in public assemblies. By agreement of the Ministries Council in May 1989 the microbrigades would donate 40% of their production to the government stock.

³² Ibid.

The studies made at the beginning of the 1980s by the urban planning offices revealed that the amount of housing produced with self-help techniques largely outnumbered the amount produced by the state³³. The Law was modified in 1988 and the National Institute of Housing produced the norms for self help construction and conservation activities that, instead of helping, considerably limited and marginalized that type of construction³⁴. In 2004³⁵ the Housing Law was again modified, to add new regulations concerning, among other issues, the property rights of families and individuals.

The article 64 of the Housing Law refers to the use of housing and the satisfaction of housing needs. It also regulates the powers of the owner to freely determine who are the other occupants and also his right to force them to leave. The other occupants can be related to the owner or not, and can be accepted as long as they are not illegal occupants. The article 65 clarifies the possibilities and limitations of the owner to transfer his powers to use the property to:

Ascendants and descendants

- Wife and children born of that union in marriage, as long as she is responsible for them and has no other place of residence.
- Mother with small children that have been living there for more than three years and have no other residence
- Elderly person in similar condition to the above
- Any other case that the authorities may find appropriate

The temporary rules established by the Housing Law include other regulations for occupants who were previously owners, family members who made expansions to the dwelling or contributed to its acquisition or repairs, among other possibilities.

The first contradiction found in the possibilities for ownership is that the law supposedly grants the title of the dwelling to the family as a whole, but in practice it belongs to those who legitimately acquired the building, through state designation, through permute or through a donation or testament. Therefore in truth the powers over the housing are given to the owner and co-owners and not to all family members. The constitution, of course, talks of the family conceptually, to reinforce the idea that it is the most important cell of the society, although this may literally contradict the article 65.

Another contradiction emerges from the limitations and powers of the owner to evict undesired occupants. Serious conflicts may appear if, upon the refusal of undesired occupants

³³ Baroni, Sergio. *Towards a culture of the territory*. Habanaecópolis. 2003. At the beginning of the 80s a detailed analysis of the Population and Housing Survey of 1981 revealed that the state had built, during the previous decade, a little over a third of the total amount of housing.

³⁴ Herrera, Castillo Jorge Luis. *The juridical Regulation of Urbanism and territorial order in Cuba*. PhD on Public Law. Universitat Pompeu Fabra. Catalonia. Spain. The self help regulations established the selection of families that would have to present a certificate in order to receive the construction license and the state credit to buy materials and land. Land is acquired according to article 17 where the municipal authorities can grant surface rights of vacant plots to individuals and families for the construction of their housing. Another part of that policy restricted the self help construction of new units because the production of materials could only cover the ones under construction process. The restrictions of these regulations are one of the main causes for the illegality and irregularities in housing production in the last years.

³⁵ See other details in the chapter of La Permuta: an effective instrument for residential transactions in Cuba.

to move out, the owner makes use of the mechanisms established in the Law, enforced by the Municipal Housing Directorate, only to perceive that the sanctions are totally irrelevant, consisting only of a salary discount of 30% during three months and 50% if the undesired occupant continues to refuse to move. The way out is usually to enforce the eviction, something which only takes place in case of an anti-social situation between the implicated, a very probable scenario after all polite and legal solutions have been exhausted.

The third contradiction has to do with internal disputes, or other conflicts of interest arising from the use of the dwelling by different family generations, with different life styles, rhythms and interests. This situation is most common in Cuba because the housing shortage forces entire families to live in the same house or apartment, in most cases sharing very small living areas. The commonest solution is that the tenant (when this is not the owner) applies for a *permuta*, something that is possible even without the approval of the owner. The family will then have up to three permute options after which, if the discrepancies continue, the municipal authorities can proceed to a compulsory swap.

The most controversial part of the law is the limitation (also imposed by the Civil Code and its special dispositions) that real estate property may be transferred only between family members or other individuals. The obligatory mediation of a state authority for any donation, permute and buying or selling is a clear evidence of this limitation.³⁶

The buying-selling of housing property is particularly confusing. In the Civil Code, article 334, it appears that the seller must pass the property to the buyer who will pay the legal price in money.³⁷ The Law of 1985 established the method to come up with a legal price, specifying that any speculation, enrichment or profit-making-pretension, or any violation of the law would be punished by the confiscation of the dwelling. In practice, the price agreed might not be the same as the legal price, but the price agreed between the buyer and seller must appear in the contract before the notary: so the parties are compelled to lie. From 1987 onwards, the resolution No 59 of the National Institute of Housing established that the state has first call on all purchases, and given the housing shortage it always does that. In the Law of 1985 there are a series of impositions that further limit the transactions.³⁸

In the case of donations, the process requires the monitoring by the municipal housing authorities - DMV - as an essential requisite for the legal validity of the transfer. The number of participants in a donation is limited to relatives and ex-husband or wives, if they have children in common and if the marriage lasted for more than two years. The donation can take place between not related individuals, but in such cases they need evidence that they lived in the same dwelling for more than ten years. The present legal rules limit the donation when the owner is a potential migrant leaving the country. In such cases the other occupants not only have to prove that they have lived in the dwelling for more than ten years, but they must also pay the dwelling's legal price to the government after the donator leaves the country. In the case of large or very valuable properties, the state can declare its interest in buying it in order to use it for a specific social or cultural use. In that case, the occupants will receive other dwelling offers.

In the case of inheritance, the house can be transferred if it is already occupied by the individual who inherits the property. However, although the inheritance rights are acknowledged, any other occupants have the right to continue there, unless the individual

36 Los actos de compra-venta, permuta y donación se regulan en el Libro 3ro del Código Civil en la parte De las Obligaciones y los Contratos. En el 4to se trata el derecho de Sucesiones, donde se regulan las formas de heredar, la suceción testada y la intestada o por ley.

³⁷ Any buying selling operation must take place through a state agency if wants to be legal, it is the public agency the one to determine the price. For example in the case of housing the state agencies are the Municipal Housing authorities and the Community architect.

³⁸ In the Law of Urban Reform of 1966 and in the Housing Law of 1985.

inheriting decides to sell the property to the government, in which case the occupants can buy it from the government for its legal price, paying a monthly amount of money. If the testament states that the property is divided among family members, in case of death or migration their half will immediately go to the government.

In the cases where the government confiscates a property and assigns it to a new owner, that person will make a new contract with the municipal authorities and pay the legal price to the bank in order to own the property.

With the successive modifications to the housing regulations, the government intended to exclude market mechanisms as far as possible.³⁹ But these efforts have had the opposite consequence because the discretionary attitude of the administrative authorities and the legal restrictions, have caused the proliferation of an informal residential market. The economic opening of the 1990s brought more confusion to the existing housing legal framework. This framework was designed around the subsidized and centralized vision of the government. Suddenly however, market instruments were applied to government investments, and the impacts on the Cuban society were evident, despite the official reflections that these were unwanted changes but necessary to deal with the crisis.⁴⁰ The government undoubtedly respected its own political and ideological principles, because as soon as the economic *recovery* started⁴¹, all the policies and development programs have returned to an even stronger centralization.

Legal experts recognize that ownership of housing in theory gives the possibility to make decisions with the property. However in practical life these decisions face many restrictions which lead to actions that happen inside or outside the law according to the difficulties found in the way. Whenever the law is not flexible or comprehensive enough, individuals simply break it. The norms and regulations limiting the owners' possibilities are generating violations of the law and disruption to the public order with some records of anti-social behaviour and crime.⁴²

The informal processes with buying and selling, and financial transactions through the *permuta* instrument, are evidence of these distortions, and they demonstrate how inhabitants and families work to solve their domestic problems outside the legal frameworks, running the risk of legal sanctions.

The negative consequences of the limitations imposed by the law on the exercise of the property rights over housing considerably limit the interests and benefits derived from ownership to the point where there is almost no difference from not being an owner. Accepting the concepts and principles of the socialist society, there are no justifiable reasons for such property limitations as long as they do not affect the public or collective interests.

The constant modifications to the laws, law decrees, resolutions, instructions, and other legal acts; the retro-active character of some of the legal measures; the lack of clear limits and precision in the legal processes; the arbitrary institutional behavior in the face of conflicts with individuals and enterprises in real estate and economic issues; all these have created an

³⁹ Milan, G. 1997

⁴⁰ Núñez, Ricardo. *La Permuta: an effective instruments for residential transactions in Cuba.*

⁴¹ García Pleyán, Carlos. *Transformations and vicissitudes of sustainable urban development in Cuba.* Physical Planning Institute. May 2006. The economic "recovery" of the country in the middle of the first decade of the 21st Century, mainly the trading and financial agreements with Venezuela and China, ..., have allowed a recovery of resources and prior development paradigms, and have given way to a true process of re-centralization.

⁴² "Los procesos de anomia social en el enfoque jurídico de la propiedad individual. Consideraciones sobre la propiedad vivienda". lic. Osmin Gálvez Anillo, Abogado de la Organización Nacional de Bufetes Colectivos, Tesis Maestría, Habana, 2000, pag 35

environment of distrust, insecurity, lack of discipline and disbelief in the performance of state administration.

Property registers

The property registers are the public⁴³, legal, organized references and legal guarantees of the origin and current status of all real property, and they are invaluable instruments for social and historical research. They also allow transparency and credibility about the real estate property owned by public and private agents, and they protect their titles and real rights before juridical claims.

The first property register of Cuba was established under Spanish Law, which was extended to the island in October 1893. After the triumph of the revolution, the Law of Urban Reform of 1960 eliminated the renting and sub-renting of urban properties, passed the property of absent owners to their actual occupants, eliminated the property taxes and controlled the amount of rent that occupants should pay to the state. The government decided to eliminate the obligation to inscribe the new titles in the Property Registers.⁴⁴ Nevertheless, the authorities created a specialized section in the Property Register for those who wished to pay the legal price for their house according to the Law of Urban Reform.⁴⁵

In the case of rural properties, granted to the farmers according to the first and second laws of Urban Reform, the government created a special section within the property register, but that regulation was not carefully enforced and many titles were not duly inscribed.⁴⁶

- The government gave powers to the Ministry of Justice to divide or merge the Property Registers and also to modify the procedures. This was the genesis of the five existing property registers namely:⁴⁷
- Register of urban parcels
- Register of rural land
- Register of vehicles⁴⁸
- Register of ships
- Register of housing

The reference to property registers in the Civil Code is very general. In 1977, maintaining the Property Register was transferred to the Municipal Administration Entities, while the Ministry of Justice determined the processes which must be followed. In 1989, the Housing Property Register became part of the National Institute of Housing, although registrations stayed at the local level. This lack of stability does not fulfill the need for a unique land and urban legislation to give solidity and coherence to all issues regarding real estate property.

⁴³ Ver a Jerónimo Gonzalez y Núñez Lagos

⁴⁴ Herrera, Castillo Jorge Luis. *The juridical Regulation of Urbanism and territorial order in Cuba*. PhD on Public Law. Universitat Pompeu Fabra. Catalonia. Spain. The law of urban reform transferred the property of many buildings to new owners contributing to the disarticulation of the property register.

⁴⁵ Ibid

⁴⁶ Ibid. The Law of Agrarian Reform of May 1959 expropriated all farms beyond the 30 land cavalries. The second Law of Agrarian Reform of October 1963 reduced the extension to 5 land cavalries, expropriating farms larger than that. In parallel both laws gave the land to the farmers in concept of small property, rent, or in partnership with the state, giving birth to the concept of *small farmers*.

⁴⁷ Ibid. There are five property registers: the real estate property, the vacant plots properties, the Basic assets (buildings of public institutions and enterprises), the land property and the Heritage property.

⁴⁸ In the case of vehicles only own owner is allowed.

In conclusion, between 1959 and 1989 there were successive changes to the institutional framework connected to the property register, and this hindered the regulation, consolidation and updating of the property inscriptions.⁴⁹ The main problems at the beginning of the 1990s were:

- Fragmentation between different administrative agencies
- Diversity and inconsistency of norms and procedures
- Titles without the necessary information
- Lack of updating of limits and borders of rural and urban properties
- Permanent changes of the powers and responsibilities of the register controller

The economic reforms of the 1990s opened a new situation for property rights and property registers, as the foreign companies demand information about the legal situation of properties - land, buildings, copyrights, and patents - before starting any negotiation. The Cuban government proceeded to update the registers, returning the operative procedures to the Ministry of Justice, starting with public properties and at the end of 1998 with housing properties as well.

This reunion of all aspects concerning the functioning and control of registers under the Ministry of Justice has helped develop a more comprehensive and systematic approach to the different sections of the register. One of the first steps has been to declare the obligatory inscription of all buildings and assets, starting with the ones owned by the Central Public Administration (OACE), through the creation of the Directorate of Mercantile and Patrimony property. In 2001 the Ministry of Justice issued the resolution 212, with a requirement to register real estate titles and other rights over real estate owned by the state. A few months later the resolution 39 of 2002 was issued to regulate the registration of personal property including real estate. Finally in 2003 both resolutions were merged to produce the 247 resolution, which regulates the inscription of buildings, titles and real rights in a unique Property Register.

In 2006, three years after the 247 resolution, there had been little progress. There are many institutional difficulties in filling the gaps left by more than 4 decades of neglect in register activities. It is extremely difficult to reconstruct the history of the many state owners of buildings, and what is even more difficult, is reconstructing the credibility of an institution so diminished in its functions and responsibilities by the authorities, and creating the necessary professional and technical capacities. With personal and housing properties, the work shows even less progress.⁵⁰

At the present moment (2008) the updating of property registers is in the following situation:

- Inclusion of all properties in the territorial cadastre
- Inclusion of cases of property transferred before a notary
- Inclusion of personal property if the individual or family presents all necessary titles
- Inclusion of all new construction
- Inclusion of all state property and joint ventures

⁴⁹ Tesis de Maestría “El sistema de ordenación jurídica de la propiedad inmueble en Cuba, Facultad de Derecho, Universidad de la Habana, Cuba, 2001

⁵⁰ From Havana’s 15 municipalities, only three have been able to start the updating of registers.

Public and private documents to be included in the property register:

1. Disposition declaring the nationalization and confiscation of assets in favor of the state
2. Administrative resolutions to declare built patrimony as state property
3. Copy of notaries documents showing the authorization of the Ministries Council for the transmission of property to international economic associations
4. Contracts and juridical acts including the transmission of real estate property to natural or legal persons connected with joint ventures or other businesses with foreign participation
5. Titles granted after the 1960 Urban Reform
6. Public Documents authorized before notaries
7. Juridical resolutions recognizing real estate property
8. Documents about land repartition
9. Certificates issued by the land tenure register
10. Procedures that declare the owner's legal incapability to manage his real estate property
11. Buying and selling contracts deposited with the Cuban Bank

The following real estate rights are also registered:

1. Tenure contracts important for the country's economic development
2. Rent contracts for state housing
3. Legal documents of mortgages authorized by the Law decree No 214
4. Usufruct right's concessions
5. Perpetual usufruct concession for social housing
6. Rights on the use of roof tops for housing construction according to the General Housing Law
7. Limits of the property in relation to the neighbors
8. Usufruct of:
 - a.) Government owned land and buildings
 - b) Rooms, accessories and other spaces used for dwelling purposes

Despite the recent efforts there are many shortcomings in the updating of property registers:

- The new regulatory context is not supported by legal instruments. The Mortgage Law from republican times is still legally binding and no other law has replaced it.
- The information of the urban cadastre is not updated
- There is a vast gap of 45 years in the property register

- The inscription of temporary uses in the register is very imprecise, contrary to the nature of a property register.
- There are procedures that violate the legitimacy of property. It is not reasonable to issue a title and then deny its validity.⁵¹
- It is necessary to rebuild the trust of government and people in the institution of the registers.
- In the case of urban and rural land registers, the measurements and boundaries are not included, or in the best cases they are described, but are not updated.
- Existing buildings that do not comply with the requirements imposed by the municipal physical planning and housing offices are not inscribed in the Housing Register.

Improvement could be achieved by:

- Abolish the administrative procedure for registering housing properties, leaving the process in the hands of legal professionals
- Reduce the special regulations⁵² in the present registration procedures for state property
- Make irregularities with the real estate registrations a violation which is penalized by the law
- Improve the technological and professional levels of the cadastre and property register teams.

Conclusions

- The Cuban revolution in 1959 completely reversed the existing legal structure of the country. Land and building property became one of the first targets of the revolutionary activities, with the declaration of socialist property and the first laws of Agrarian and Urban reform.
- The public administration was also gradually transformed in correspondence with the political and economic changes. After the 1976 Constitution, the government adopted a top down model with organizations at national, provincial and municipal levels. From the very beginning, centralized planning became the most important instrument for economic and physical development.

⁵¹ This contradiction takes place when a building asset that belongs to a state institution is for example handed to one or a group of people as housing and in time that land use is reversed by another state institution that passes to control the building.

⁵² The Special Regulations refer to those determined by public entities below ministry level

- The Cuban juridical framework is fragmented between different documents – Constitution, Civil Code, Construction ordinances, Parliament law decrees - and also between the institutions of the public administration - Provincial and Municipal authorities, Ministry of Justice and other sectors and specialized institutes. This creates a disarticulated and bureaucratic situation which lacks credibility and transparency, producing distrust of the state mechanisms.
- The strong subordination of physical planning and economic planning to the operational wishes of the top authorities produces hasty variations in most programs. This undermines the authority of urban and territorial planning, which has not been supported by a stable legislation for urban and territorial regulation. The Urban Planning mechanism is weak at municipal level and local institutions have little power.
- The strong government control over land and building properties has been an advantage in eliminating speculation and in developing social priorities in the whole country. The government not only makes policies and rules but also gets involved in the details of local plans and projects. This is very desirable if the planning is in tune with the needs at local level and if the projects are well chosen and ready to go. It is also very good to monitor the results of good and bad choices in planning and project development. It can also be very problematic though when the authorities' priority is different from that of the locality, because the last usually know what they need and are ready to implement.
- The issues concerning real estate and private property are becoming more important, in particular after the economic opening in the 1990's that introduced new laws and regulations for joint ventures and the authorization of the hard currency, small businesses and rent. Housing property is particularly important as, despite many efforts, the government has not been able to remove its shortage.

The return to strong centralization and top government special programs reinforces the need for a legitimate legal framework that coordinates and articulates the different ramifications of law, protects the civil rights, and authenticates real and personal property. The urbanism law - land, construction ordinances and design codes, environmental issues, national security, foreign investment - is a very important domain as it regulates the physical scenario of all human actions.