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## *Anatomy of the Bill on Agricultural Cooperatives*

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Among the attributes of the Cuban National Assembly (Asamblea Nacional del Poder Popular or ANPP) is to approve, modify or repeal laws. Legislation may be proposed by National Assembly Deputies, the Council of State, the Council of Ministers, National Assembly commissions, the governing bodies of the Federation of Cuban Workers (Central de Trabajadores de Cuba or CTC) and mass organizations, including the National Association of Small Farmers (Asociación Nacional de Agricultores Pequeños or ANAP), the Supreme Court, the Attorney General, and by petition of at least 10,000 voting citizens.

Neither the Cuban Communist Party (Partido Comunista de Cuba or PCC) nor the Union of Young Communists (Unión de Jóvenes Comunistas or UJC) has the right to propose legislation. However, general aspects of the need for new legislation or policy may emanate from Party Congresses. As I wrote in “The National Assembly and Political Representation:”

The party programs passed at the Congresses are supposed to set the parameters for government policy. However, these parameters are very broad and general. In some cases, for example, they set limits, such as the economic resolution passed in the 5th Party Congress in 1997. Referring to private economic activities among Cubans, the resolution did not mention middle-sized enterprises, which were not included in the subsequent legislation on the economy.<sup>1</sup> The people’s councils were called for in isolated rural areas in the program of the Third Party Congress in 1986,<sup>2</sup> and subsequently pilot projects were set up in a few locations in 1988, but when they were established throughout all of Cuba in the early 1990s, they bore little resemblance to what

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1. “Resolución Económica del V Congreso del Partido Comunista de Cuba,” *Granma*, November 7, 1997, 1-8.

2. *Resoluciones Aprobadas por el III Congreso del Partido Comunista de Cuba*, (La Habana: Editora Política, 1986), 18-21.

had been proposed in the 3rd Congress, and [President Fidel] Castro said as much during the debate on the People's Council law in the National Assembly in 2000. The constitutional amendments, passed in 1992, came in great part from the program passed in the 4th Party Congress in 1991, but with a lot of debate and many changes made during the Assembly plenary session . . . All proposed legislation is sent for consultation to the PCC as well as to government bodies, mass organizations, specialists, deputies, and sectors of the population.<sup>3</sup>

Proposals are initially circulated among Executive Committee of the Council of Ministers, to all the ministries, and to the provincial assembly administrative councils to gather and possibly include their opinions and suggestions. The Council of Ministers sends the bill to the National Assembly.

The National Assembly president then forwards the proposed legislation to the permanent National Assembly commission whose mission corresponds to the material included in the bill. It is also sent to the Constitutional and Juridical Affairs Commission, which determines the constitutionality of the project. The commissions can approve the project with or without amendments, and call for more consultation, recommend changes, or reject the bill. The National Assembly president subsequently sends a copy of the project to all National Assembly deputies at least twenty days prior to the assembly session where it will be considered, and has the option of organizing meetings with deputies in the provinces to explain the project and take into account their opinions.

As a final step before presentation to the National Assembly the commissions involved write evaluations (*dictámenes*) which are distributed to the deputies. During the Assembly session the bill is introduced by the leader of the organization or group proposing the legislation, and the *dictámenes* are read by the commission presidents, and both are then voted on (usually together) by the National Assembly.

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### *The Consultative Process for the Agricultural Cooperatives Bill<sup>4</sup>*

The Agrarian Reform law, passed in 1959, gave land to approximately 200,000 farmers who had previously worked it as sharecroppers (*parceros*) or renters, and began to organize them into agricultural cooperatives, which were called Credit and Service Cooperatives (*Cooperativas de Crédito y Ser-*

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3. Peter Roman, "The National Assembly and Political Representation," in *Cuban Socialism in a New Century: Adversity, Survival and Renewal*, ed. Max Azicri and Elsie Deal, Gainesville: University Press of Florida, 2004).

4. For a discussion of the consultative process preceding the Law on People's Councils in 2000, see Roman, "The National Assembly and Political Representation."

vicios or CCS). While the individual farmers continued to own the land privately, the state began to offer them collectively credits and services such as tractors and other implements. The first congress of farmers was held in May 1961, where it was decided to form the ANAP. The ANAP has officially represented Cuban farmers since 1968. In 1977 the Agricultural Production Cooperatives (Cooperativas de Producción Agropecuaria or CPA), in which the farmers owned the land collectively, were formed.

The ANAP is not part of the government and is self-financed. Ninety-nine percent of farmers who own land in cooperatives belong to the ANAP. They own about twenty six percent of the farmland, and produce forty percent of the Cuban agriculture products. Each cooperative is led by a general assembly, consisting of all of the members, which has maximum authority over the affairs of the cooperative.

In 1993 much of the rest of the farmland, which is state owned, was converted to Basic Units of Cooperative Production (Unidades Básicas de Producción Cooperativa or UBPC). This land was divided up and turned over to workers collectives in the form of long-term leases, with the state retaining ownership. While in some ways similar to the CPA and CCS, the main difference is that the state has greater control over production and those who work on the UBPC do not own the land. They are considered to be workers not farmers. Orlando Lugo Fonte, the President of ANAP, in an interview with me on December 28, 2000, explained that since the state owns the land, the UBPC are not considered to be agricultural cooperatives, where the land is owned by the farmers, do not belong to the ANAP, and are not covered by the laws regulating agricultural cooperatives.

Law 36 on agricultural cooperatives was passed in 1982. The need for agricultural cooperatives to improve the organization of production and the relations with the state sector, and to encourage all private farmers to join cooperatives, was included in very general terms in the resolution on economic plans passed by the Third Congress of the PCC in 1986.<sup>5</sup> Subsequently new rules regulating the cooperatives were passed by the Council of Ministers, mainly dealing with the CPA. Responding to pressure from the ANAP in 1996, the Council of Ministers issued new regulations giving more state aid and benefits to the CCS who met certain criteria (called CCS fortalecidas), by having the state sell them resources such as machines and tools to be used collectively, authorizing the CCS to hire contracted labor including an economist and vendor for their products, holding collectively owned land, and having bank accounts. However, Cuban agronomist Niurka Pérez Rojas, in an interview with me on November 25, 2001, told me that these regulations did

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5. *Resoluciones Aprobadas por el III Congreso del Partido Comunista de Cuba*, (La Habana: Editora Política, 1986), 57.

not sufficiently meet the needs of the cooperatives, which consequently lead to the demand for a new law.

The proposed new legislation on agricultural cooperatives to replace Law 36 was drafted by ANAP at its ninth congress in May 2000 and passed by the National Assembly in November 2002. During the debate at the ANAP congress, the delegates (elected by members of Cuba's agricultural cooperatives) discussed the problem that Law 36 dealt mainly with the CPA and largely ignored the CCS. Sixty-five articles dealt with the CPA and only seven with the CCS. It was felt that a new law needed to differentiate clearly between the two types of cooperatives, and treat them equally. Furthermore the process of strengthening the CCS needed stronger legal backing.

The delegates also pointed out that the old law did not adequately take into account the new economic characteristics and changes that had occurred over the previous twenty years, especially with the disappearance of the Soviet Union and the initiation of the "Special Period" in Cuba in the early 1990s to deal with the ensuing economic crisis. They brought up many practices that they felt were necessary for the operation of their cooperatives that they were already doing or that were necessary to do, but which contradicted Law 36. These included the products that were allowed to be sold in the free market, the election of the president of the cooperative, housing, and profits.

After analyzing the inapplicability of Law 36, the delegates passed a motion calling on the ANAP leadership to draft and propose to the National Assembly a new law on agricultural cooperatives to substitute for Law 36. In June 2000 the leadership of the National Assembly met with the leadership of ANAP to coordinate subsequent steps to be taken. By the end of the year 2000 the national leadership of the ANAP made an agreement with the National Assembly to draw up a new law, to be presented to the Assembly in its December 2001 session.<sup>6</sup>

ANAP formed a task force composed of members of the ANAP leadership and lawyers (led by José Garea Alonso, an ANAP legal counsel), and representatives of the Ministry of Sugar (Ministerio de Azúcar or MINAZ) and the Ministry of Agriculture (Ministerio de Agricultura or MINAG). It first consulted with the leadership of the Communist Party regarding the scope and extent of the project.

The task force composed a first draft, which established that all the agricultural cooperatives are founded on socialist principals, which were designed to avoid the possibilities of exploitation of labor. These principals, as outlined by Lugo Fonte at the meeting of National Assembly deputies in Pinar del Río Province on December 5, 2001, are "voluntarism, mutual aid,

6. José M. Garea Alonso, "El ejercicio de la democracia en Cuba en el proceso de elaboración, discusión y aprobación de las Leyes por el Parlamento," paper presented to the Congreso Internacional de Derecho Agrario, Holguín, Cuba, October 2002, 8.

contributions to the development of the national economy, cooperative discipline, collective decision-making, territorial rights and the welfare of the cooperators and their families.”

This first draft was sent to forty presidents of cooperatives and ANAP’s provincial bureaus in Havana Province, Matanzas, Sancti Spiritus and Ciego de Ávila for opinions and suggestions for revisions. These bureaus met with provincial representatives of MINAZ and MINAG, and on the basis of their suggestions the commission drew up a second version of the proposed law. This version was sent for review to between twenty-five and thirty cooperative members (CPA and CCS) in each province, who went over it article by article. Based on their criteria for changes a third version was drafted by the commission, and was sent to central government agencies connected with this project, including MINAZ and MINAG, who are in charge of the land and agricultural production; the Central Bank of Cuba, the Ministry of Finance and Prices (Ministerio de Finanzas y Precios or MINFAP), the Ministry of Economy and Planning, and the Ministry of Labor and Social Security, regarding financial and labor issues; the Housing Ministry and the Housing Institute; and the Ministry of Armed Forces. These government agencies requested more than fifty changes.

Using a table, which contained the suggestions from the ministries regarding each article, the task force drafted the fourth version of the proposed law. This was forwarded to the provincial assemblies and their administrative councils for suggestions. This version also went to the PCC, which sent to its provincial bureaus for comments and suggestions, which were sent to the party’s Central Committee. The PCC then called a meeting with Lugo Fonte and two ANAP attorneys, and two members of the PCC Political Bureau, to discuss all the opinions gathered by the party. Lugo Fonte told me that nothing was imposed by the party, and that ANAP had rejected some proposals made by the party representatives.

Based on suggestions made by the provincial governments and the PCC, the task force prepared the fifth version. From September to October 2001, it was sent for comments to the Secretary of the Council of Ministers Carlos Lage Dávila, who in turn dispatched it for consultation to each government minister, all the central state bodies, and other institutions, such as the national meeting of Cuban Jurists. Based on the 150 proposals and suggestions gathered during this round, together with adjustments made according to guidelines set forth by the Ministers of MINAG, MINAZ, and MINFAP, a sixth version was written, approved by the Council of Ministers and sent to National Assembly President Ricardo Alarcón for consideration by the ANPP. Alarcón consigned the proposal to the Assembly Commissions on Productive Activity, presided over by Leonardo Martínez, and on Constitu-

tional and Juridical Affairs (regarding its constitutionality), presided over by Victor Toledo (the director of the University of Havana Law School). Also a working group was constituted composed of the presidents and other deputies and auxiliary personnel from these commissions, and ANAP leaders plus some presidents of agricultural cooperatives.

A copy of the proposed law was sent to all National Assembly deputies, who were asked to consult with their constituents, especially with farmers in rural areas. For example a deputy from the Commission on Local Government (Organos Locales del Poder Popular or OLPP) told me that in her municipality she met with the twenty-three presidents of the cooperatives together with the local ANAP leadership, followed by meetings with cooperative presidents and farmers in the rest of the province.

In November and December 2001 meetings were held in the provinces with National Assembly deputies to explain the project and take their opinions and criticisms into account. Participating in these meeting were the ANPP President, Vice President and Secretary, Martinez and Toledo from the Assembly commissions, directors and lawyers from ANAP (including Lugo Fonte and Garea) and representatives from MINAG and MINAZ).

On December 14, 2001 the Assembly working group met to analyze all the proposals and opinions, both written and verbal, emanating from these meetings. I attended this meeting, and the discussion was very contentious. A deputy from Matanzas told those present that if the certain issues, especially housing, which had been debated by the deputies, were not settled, the bill as written was unacceptable and submitting it to the National Assembly for the December 2001 session as had been planned, would create a bombshell which would “explode in their faces.”

The Cuban National Assembly operates on the basis on consultation and consensus prior to submission to the National Assembly session for a final vote. Taking into account the dissatisfaction with the bill, the number, magnitude, importance and far-reaching consequences of the proposed changes, it was felt that farmers, deputies and government ministries should evaluate them to reach consensus. Therefore the Commission on Productive Activities and ANAP decided on December 16 that the project should not be presented to the December ANPP session, but rather, in an attempt to resolve contentious issues, should be sent out for further commentary and discussion.

Shortly thereafter a new version incorporating more than fifty changes was sent to all cooperative farmers: two of the “whereas” clauses, nine of the chapters and forty-four articles were modified, and four articles, one general disposition and one transitory disposition were added. From January 15 through April 2002, meetings to discuss the project were held with farmers in all of Cuba’s agricultural cooperatives. A new version, based on the farmers’

inputs, modified thirty of the articles and added a new article. Furthermore, farmers' suggestions not relating directly to the proposed law but rather to raising efficiency in agricultural production, were compiled.

In May and June 2002 this version was sent to all the deputies and another round of meetings was held with them in the provinces. It was also sent again to the central state organs, and political and mass organizations. The task force subsequently approved modifying three "whereas" clauses, fifteen articles, added a new special disposition and eliminated another. On November 1, 2002 the Commissions on Productive Activities and on Constitutional and Juridical Affairs approved this version with five changes, which were included in the dictamen submitted to the Assembly plenary session. On November 2, 2002 session of the National Assembly, Commission President Leonardo Martinez presented the dictamen, and Lugo Fonte presented the proposed law, which were debated and, with minor modifications, approved unanimously.

The new law deals with both the CPA and the CCS in an integral way, but recognizes the differences and distinctions. It regulates the portion of production determined and contracted by the state and that which can be sold in private markets. It defines percentages and distribution of profits, allowing for the distribution of up to seventy percent of the profits to long-time members. It mandates setting aside part of the profits for contingency funds to deal with emergencies such as natural disasters. It regulates the relationship of the cooperatives with the central and local governments and with the ANAP. It defines the leadership structure within each cooperative, and the resolution of conflicts. It regulates the employment, labor rights and social security of hired workers, their incorporation as members of the cooperatives, and their share of the profits. It defines the process of formation and dissolution of cooperatives.

### **Inputs by Deputies and Cooperative Farmers**

In December 2001 I attended the meetings with deputies where the Agricultural Cooperative Bill was discussed in the following provinces: Havana, City of Havana, Pinar del Rio, and Matanzas. I was also given the tape recordings made of the meetings in Camagüey Province held on November 30, 2001. In June 2002 I attended a meeting with deputies in Camagüey which included deputies from Sancti Spiritus Province, and was given the tapes of the meetings held that month in Santiago and Holguin Provinces. I was also given the minutes of general assembly meetings held at five CPA and one CCS in Pinar del Rio and Havana Provinces. In each meeting many deputies and farmers spoke, showing no hesitation in voicing their concerns and disagreements. Those who participated demonstrated a thorough knowledge of both the text of the existing Law 36 and the new proposed legislation.

Some of the most contentious topics debated by the deputies and cooperative farmers during the meetings in the provinces were housing, roads, hired labor, distribution of profits, and control over production. To be sure the debates and changes made in the bill do not include all topics covered nor all revisions made as a result of deputies' and farmers' inputs.

The failure to resolve these differences, prior to the December 2001 Assembly session when the bill was scheduled to be voted on, especially regarding illegal housing, led to the decision to postpone the final vote. During his December 2001 interview with me, Lugo explained the housing problem under existing and proposed law.

In the CCS all housing that is constructed on a farmer's land belongs to the farmer, who owns the land and all its installations. He can allow that housing be build on his land for his children and blood relatives who work on the farm. But his child may not necessarily work on the farm, but rather in a refinery or a bank. So the farmer could be the owner of ten illegal houses on his farm, and there is no way to legalize this housing. It could be that his child is divorced and his former wife remains living in the housing and marries another man who has nothing to do with the farm, and that is illegal. This must be modified. What is the problem in the CPA? The CPA cannot give land to construct housing to someone who does not belong to the CPA. The land can be used to construct housing for the cooperators, who do not become owners of this house with a title until they have lived there and paid for it for twenty years. The problem arises when someone leaves the cooperative but keeps the housing. He lives there but does not work in the cooperative anymore. He should not just be thrown out of his home. Other housing must be found. What was being discussed with the deputies is the person who leaves the cooperative, and goes to work elsewhere, but tries to remain owner of his house. The new proposal allows the relative who leaves the CCS to keep his home, but with different rights and prerogatives as compared to the farmers. In the case of the CPA, the cooperative recuperates this housing. If a person leaves the cooperative an inferior house would have to be built for him on another part of the cooperative's land.

When I asked Lugo why the deputies representing farming districts were so angry, he responded that the farmers had committed what were considered to be illegal acts because the old law did not permit them to make so called illegal housing legal. Adding to difficulties were the large number of illegal houses. Lugo stated that even though such "illegal houses" were widespread and large in numbers, the problem was not dealt with in the proposed new law, because a law on agricultural cooperatives cannot legislate regarding housing, since it is not a housing law. The lawyer for ANAP, José Garea, told me that much of the illegal housing had been constructed by people who

were not members of the cooperatives and without the permission of the land owners in the case of the CCS, and without the authorization of the general assemblies of the CPA. When I asked him why the cooperative members complained about tearing them down, he replied that the illegal housing usually belonged to their relatives and friends. When, at the December 14, 2001 meeting, held to consider deputies' suggestions, it was suggested that therefore this issue should not be included in the new legislation, Commission President Martinez replied that this was impossible since the housing issue had already been discussed with the deputies. Lugo also informed the meeting that the Political Bureau of the PCC had requested that the housing issue be dealt with in the new legislation.

The deputy from the OLPP Commission told me that in her meetings with cooperative leaders and farmers they wanted to be able to construct not only their own homes but also offices and dwelling for family doctors. They also called for eliminating the contradiction between the section on housing and the existing housing law regarding dwellings within the jurisdiction of the cooperative. Much of the older housing on cooperatives was labeled "illegal" due to lack of legal documents and because they were categorized as unfit huts (*bohios*). The farmers claimed that despite the fact these were being improved they were still considered to be illegal, and therefore they demanded that the law contain a process to legalize these dwellings.

During the meeting in Matanzas Province on December 7, 2001 with deputies to debate the proposed law, one deputy stated the following:

There is a tragedy for us in the province; it regards illegal constructions in the cooperatives. We must specify in a temporary regulation what steps will be taken to confront the magnitude of this problem. The law should deal with what happens when those living in housing on land belonging to a cooperative no longer are connected to the cooperative because of emigration or working in another sector. This mess exists in the whole country and affects us greatly in our province. The law should also deal with construction of private housing. Suppose I live in a cooperative and my brother wants to construct a house. Who authorizes this? The cooperative's general assembly? The local government? I believe that the cooperative cannot give permission to anyone who is not a member. If the cooperative authorizes construction by non-members, the cooperatives will be finished. Permission to build given by the president of the cooperative has no legal backing. Therefore we have no legal document which enables us to legalize the housing and the person living there is an illegal occupant. We must find a way to legalize this housing. All housing should follow the policy drawn up by the National Housing Institute. Nobody should be able to just give a person a piece of paper with permission to construct.

In a meeting with deputies held in Camagüey Province on November 30, 2001, a deputy from Santa Cruz del Sur Municipality, referring to the CCS fortalecidas, requested that the new law “legalize housing built for contracted workers. Sometimes that housing needs to be built on land not belonging to a private farmer but rather held in usufruct, that is owned by the state but used by the cooperative farmers. Legalizing this housing guarantees that the contracted workers will stay.” Another deputy added that under present law housing built for relatives and other cooperative members could be legalized, but not for a medical doctor or an accountant. Still another added that the CCS fortalecidas are going to need many workers, since the family members and members are not enough. “We need economists, tractor drivers, truck drivers, teachers, medical doctors. This housing is constructed on state owned land held in usufruct, and we must find a legal solution for this problem.”

At meetings held with cooperative farmers in Pinar del Rio Province, at the CPA Eliseo Caamaño (February 2, 2002), the CPA Rafael Morales (March 15, 2002), and the CPA Carlos Baliño (March 16, 2002), to discuss the pending legislation, farmers’ proposals regarding home ownership were included in later versions. They suggested that the sentence concluding Article 41, “The cooperative concedes to them the surface rights,” for those own houses located on cooperatives, be added to Article 42, applying it to those buying their houses on installment plans, who should also be given surface rights and title of ownership when they finish paying for them.<sup>7</sup>

As a result of these interventions and similar ones by deputies in other provinces in winter 2001 and spring 2002, changes in the proposed legislation were made regarding housing. One important addition granted cooperative members title to surface rights to enable them to obtain ownership of the housing situated on this land. The General Assemblies’ right to approve new housing occupants was eliminated. The CCS were allowed to construct housing for temporary and permanent workers. In cases where cooperatives were being dissolved the provincial housing authority was included on the commission to carry out the liquidation of the assets in the cases where housing was located on land. The final version of the legislation as submitted to the National Assembly in November 2002 contained following changes (bold means additions, [deletions] are within brackets):

Article 2.- Agricultural Property: The land, animals, installations, area under cultivation, equipment and other means and instruments of the cooperative earmarked for agricultural production, as well as housing connected to and

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7. *Acta Nro. 2, Asamblea General (extraordinaria), CPA Eliseo Caamaño*, February 2, 2002, 3; *Acta Extraordinaria, CPA Rafael Morales*, March 15, 2002, 3; *Acta, Asamblea General (extraordinaria), CPA Carlos Baliño*, 3.

the basic components of the cooperatives, as long as its property is not transferred to its occupants.

Article 41.- Housing located on land pertaining to the CPA, continues being personal property of the cooperative member and its legal occupant, who maintain the rights established in the relevant legislation. The cooperative concedes to them the surface rights.

Article 42.- Houses constructed or acquired by the cooperative on connected land or as part of its basic structure, are occupied by cooperative members by agreement of the General Assembly of the cooperative, who have the right to acquire their property by means of payment of its legal [just] price, once the period of stay as established by the relevant legislation has elapsed. The cooperative concedes to its members the surface rights with title to ownership of these houses.

Article 43.- In spite of what is stipulated in this section regarding ownership of houses, exchange or ceding of any other right [and the incorporation of new occupants], should be previously approved by the General Assembly without violating (*sin perjuicio*) the fulfillment of established legal procedures. When it concerns hereditary transmission it will conform to what is stipulated in relevant legislation.

Article 44.- The CCS can construct housing for their salaried workers on land on which the state previously has conceded to them surface rights in accordance with the regulations dictated by the competent state organism. These houses have the characteristics of being connected to the cooperatives or being part of its basic structure (*médios básicos*).

Article 81.- To carry out the liquidation of the assets of a cooperative in process of being dissolved a Liquidation Commission with representation from...the Provincial Housing Authority when there is housing on connected lands...

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### *Final Stipulations*

FOURTH: The National Housing Institute together with the Ministry of Agriculture and the Ministry of Sugar taking into account the opinion of the National Association of Small Farmers, will decree within ninety (90) days, after the publication of the present law in the Official Gazette, the Regulations for the solution of the illegal houses constructed on land belonging to or in usufruct to the cooperatives of agricultural production and to the small farmers.<sup>8</sup>

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8. Asamblea Nacional del Poder Popular, *Proyecto, Ley de Cooperativas Agropecuarias*, November 2001, 14 (my translation); Asamblea Nacional del Poder Popular, *Proyecto, Ley de Cooperativas de Producción Agropecuaria y de Crédito y Servicios*(Law #95), November 2002, 16, 28, 30 (my translation).

At the December 16 meeting of the Commission on Productive Activities, in his announcement as to why the submission of the bill for consideration by the ANPP plenary session was being postponed, Garea read aloud this newly added fourth disposition and added, "Tomorrow at 5 PM we will meet with the President of the Housing Institute, with the participation of the Ministers of Agriculture and of Sugar, in order to begin specifying this obligation that the law is imposing on these organisms in order to begin to work on solutions."

Another hotly debated issue concerned road construction and maintenance on the cooperative farms. In the version sent to the deputies in November 2001, in the section titled "Relations with the local organs of People's Power," Article 23 stated: "The cooperatives and the local organs of People's Power will be able to offer mutual collaboration for the construction and repair of roads and rural projects which benefit the community or the cooperative in conformity with the relevant legal stipulations and with what is stipulated in the regulations."<sup>9</sup>

Lugo told me:

The principal roads for the cooperatives are the responsibility of MINAG, but for rural roads it depends on their usage. Those used to transport cane are repaired by MINAZ. If it is an internal road within the cooperative the cooperative pays. What is debated is that the cooperatives do not want to pay for the maintenance of these internal roads. This is very expensive and earnings do not provide enough funds to pay for these internal roads, and I am in agreement with them. We are working to change this aspect.

At the meeting with deputies in Camagüey Province on November 30, 2001 deputies insisted that MINAZ and MINAG build and maintain all internal roads for the cooperatives. They were told that the state would provide machinery and materials but that the cooperatives would have to build and finance the roads out of their profits since the internal roads were only for the use of the farmers. One deputy stated that in the proposed law Article 23 was not clear as to what constituted an internal road used to transport agricultural production. He noted the serious problem of who was responsible for maintaining it in conditions for it to be used to fulfill the fundamental mission of the cooperative, which includes production as well as transport. Article 23 did not clearly define the cooperation or the help to be provided by the local government.

Other deputies at the meeting pointed out that Camagüey is a very extensive province in territory and in agricultural production. Large investments are made in agricultural development, and, above all, in milk production. To

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9. Asamblea Nacional del Poder Popular, *Proyecto, Ley de Cooperativas Agropecuarias*, November 2001, 11 (my translation).

transport the milk the internal roads must be financed by the state. They argued that the government cannot avoid this, since it is essential for agricultural production. Only the state is able to do this. They pointed out that road repair is among the problems most frequently brought to the attention of the municipal assembly delegates by their farmer constituents.

Garea, speaking as the ANAP representative, responded that Article 20 refers to collaboration by the state for the development and strengthening of the agricultural cooperatives. With regards to their relations with local governments, cooperatives help in repairing country roads that serve small settlements, and the local governments help the cooperatives to resolve problems related to transporting their production. However, the exact forms of collaboration and the procedures should be specified in the regulations drawn up after the law is passed.

In the session held with deputies in Camagüey Province on June 4, 2002, a deputy who was also president of the Florencia Municipal Assembly complained that a major problem for the cooperatives was the lack of resources to fix the roads. The Camagüey Provincial Assembly President agreed:

In some cases it is better not to produce sugar cane than have to pay to maintain the roads. If the cooperatives have to maintain them then the price of sugar must be adjusted so that the harvest can finance the roads. Sugar cane production is the objective, it must be transported on these roads and it must finance road repair. It is in the interest of the state to transport the cane to the railroads. There are now parts of the roads which have been abandoned and are impassable. This must change because in this way we are creating a new culture which holds that if one considers it to be the state's responsibility then it is not mine. The people always had kept their roads clean, fixed up the sides of the roads, which now we are abandoning. I am not speaking of major highways.

In the final version the word "rural" was removed at the request of a deputy from Havana Province and reference to road construction was eliminated, presumably to provide more flexibility in relation to state aid. The article reads as follows:

Article 23.- "The cooperatives and the Local Organs of People's Power will be able to offer mutual collaboration for the construction of [and repair of roads and rural] projects which benefit the community or the cooperative in conformity with the relevant legal stipulations and with what is stipulated in the regulations."<sup>10</sup>

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10. Asamblea Nacional del Poder Popular, *Proyecto, Ley de Cooperativas de Producción Agropecuaria y de Crédito y Servicios* (Law #95), November 2002, 11 (my translation).

Another issue that was extensively debated during the meetings with deputies and farmers concerned articles dealing with relations with the state. As a result input by deputies and farmers the help the state offers in terms of constitution, development and strengthening of the cooperatives was defined more precisely and expanded (Article 18).<sup>11</sup>

Deputies and farmers debated articles which required certain production to be determined by and contracted to be sold to the state instead of being sold privately. I asked Lugo whether this did not limit the cooperatives' autonomy, he replied, "No, because that is what we have been doing in practice. For example, we cannot let milk be sold at market prices, since Cuba guarantees milk for all children at a minimum price. The farmer can consume personally what he wants and the rest is sold to the state. The same goes for tobacco, honey, coffee, all of which are for export."

During the November 30, 2001 meeting with deputies in Camagüey Province a deputy from Waymar Municipality, where the main production is milk, complained that this article lacked percentages of the production which the CCS were required to sell to the state, and that the state should regulate what percentage it is going to give to the cooperatives in terms of resources (Article 16 parts d and e). Another deputy, and also Garea, said specifying such percentages was not a good idea since national requirements differed depending on the crops, and this suggestion was rejected.

Referring to Article 16 part j, the deputy from Waymar stated that it should specify genetics when referring to zoology, since the milk producing cooperatives in the area deal with insemination of cows. A deputy from Camagüey Municipality suggested that in Article 16 part d, following the words "national requirements" it should state "subject to the complementary regulations of the MINAG and other organisms of the state administration." Another referred to Article 22, which allowed for the immediate sale of "agricultural products" (*producciones agropecuarias*) which are at risk of spoilage. This deputy argued that this formulation incorrectly included livestock breeding, and thus should be rephrased as "agrarian products" (*producciones agrícolas*) referring only to spoilage in crop cultivation, because livestock and milk products are contracted as part of the national requirements and should be treated differently than tomatoes or yucca, for example. These suggestions were included in the final draft approved by the ANPP.

A deputy in this meeting suggested that in Article 10 the law should explain the steps to determine and authorize the "social objective" for each cooperative, which defines its authorized productive and service activities. The theme of giving individual cooperatives a say in determining its social

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11. Asamblea Nacional del Poder Popular, *Proyecto, Ley de Cooperativas de Producción Agropecuaria y de Crédito y Servicios* (Law #95), November 2002, 9.

objective was also brought up at the meetings with farmers. At the meeting on March 29, 2002 of the CPA Héroes de Yaguajay in Havana Province, one stated that “The social objective should result from something official and the cooperative should approve the objective in its assembly, not like it is now, where the state authority approves it.”<sup>12</sup>

During the December 7, 2001 meeting in the City of Havana Province, a women deputy suggested that in Article 16 the cooperatives and the state carry out a policy regarding species and varieties of seeds. She also recommended that Article 20 part b include technical assistance for environmental sanitation and matters relating to soil. In the version sent to the deputies prior to the meeting held in Camagüey Province on July 7, 2002, Article 16 part d had been changed to read, “Sell products contracted as decided (según se determina). A deputy from Camagüey Municipality complained that they had not included suggestions made in the November 30 meeting, that it should state “as decided by state organisms,” which he claimed would make it much clearer. If left as written, without specifying who decides, it would be weak. These suggestions were also included in the final draft.

Complaints registered by farmers at the meetings held on February 2, 2002 (CPA Eliseo Camaño) and on March 15, 2002 (CPA Rafael Morales), involved the language in Article 19 part b. He pointed out that the cooperatives’ general assemblies, rather than MINAG and MINAZ “approve” production plans.<sup>13</sup> The language was modified by adding that the approval process would involve the general assemblies of the cooperatives. The language was also changed in Article 16 part c, from having the cooperatives “propose” rather than “submit” their production plans to MINAG and MINAZ. In relationship to this article, a farmer at the March 16, 2002 general assembly of CPA Carlos Baliño, proposed “that the state guarantee to supply us with the minimum of supplies necessary in order to guarantee that we will meet the conditions necessary to fulfil the contracts.”<sup>14</sup>

Other changes in the bill which resulted from commentaries and suggestions made by the deputies basically, according to Garea speaking to deputies in Santiago Province in June 2002, cleared up concepts of production contracted by state enterprises, in the sense that it not be conditioned by national requirements, and thereby freeing up more production to be marketed as decided by the cooperatives. The changes also included defining the power of each cooperative, with the approval of its general assembly and of MINAG and MINAZ, to determine its social objective; modifying the approval process for production plans and programs for the development of the coopera-

12. *Acta No. 3, Asamblea General, CPA Héroes de Yaguajay*, March 29, 2002, 2.

13. *Acta No. 2, Asamblea General, CPA Eliseo Caamaño*, 3; *Acta Extraordinaria, Asamblea General, CPA Rafael Morales*, 3.

14. *Acta, Asamblea General Extraordinaria, CPA Carlos Baliño*, 3 (my translation).

tives, to include both the ministries involved in production and the cooperatives, and not just the former; specifying that cooperatives, besides their contractual relations with state enterprises to receive productive resources and supplies assigned by the state, can acquire directly from state organizations other products and services which are necessary for the fulfillment of their economic and social activities. The following are excerpts from the final version of the bill highlighting some of these revisions:

Article 2.- Mandated production [production contracted for national requirements]: those agricultural and forest productions, whose cost and destination is determined by the State to cover part of the basic needs of the national economy and which are contracted with the cooperatives with this objective [whose transaction with and sale to corresponding state entities, has the characteristic of being a mandate].

Other agricultural and forest productions: those [not destined to fulfill national requirements] which the cooperatives can [contract to or] sell to state entities or to others who have been authorized, offer at the Agricultural Markets, or designate for their own use or that of other cooperatives.

Social Objective: encompasses the fundamental line of production, other agricultural and forest production and other legitimate activities of a productive nature or of services and commercialization linked to agricultural production, which have been properly authorized for the cooperatives.

Article 16.- The cooperatives, object of this law as productive entities, are inserted in the system of the country's primary organizations of the country's agricultural production and have the following obligations with the state:

c).- Elaborate and propose [submit] for approval annual production plans and [medium and long term] development plans;

d).- Sell the mandated products as determined by the competent organism [Contract with and sell to state entities production set by the national requirements (balance nacional)];

e).- Contract with, acquire [receive] and utilize rationally supplies (insumos) and other productive and financial resources [allocated by the state].

Article 19.- It is the responsibility of the Ministries of Agriculture and Sugar [in accordance with the fundamental type of production of each cooperative]:

a) To authorize [approve] the social objective of the cooperative as proposed by the General Assembly taking into account the opinion of the National Association of Small Farmers, and oversee its fulfillment;

b) To approve [and control] together with the cooperative production plans and development programs of the cooperatives, as well as controlling its implementation;

c) To establish the state policy and decree the regulations for the designation and acquisition of supplies and other resources of production destined for production, internal consumption and social projects of the cooperatives, and oversee their implementation [To designate the supplies and resources of production].

Article 20.- The relations of the cooperatives with the state enterprises are contractual with the goal of [contracting with and] selling mandated products [according to national requirements], other products mutually agreed upon, [contract with] and receive supplies and resources for production and other [assigned] productive resources necessary to fulfill its economic and social activities [and the sale of others in the free market, as well as lending technical, agricultural and other services demanded by the cooperatives].<sup>15</sup>

Deputies and farmers sought changes in the articles on the distribution of profits. According to Lugo, “The new law states that the person with more seniority gets a higher percentage of the profits. A farmer who has worked twenty years on the cooperative has contributed more than a new member to the creation of capital on the cooperative. At first there was some rejection of this new proposal by some very good and very rich cooperatives, but not the majority.”

In the new legislation up to 70 percent of the profits may be distributed to the cooperative members (an increase from the 50 percent in the previous legislation) if the reserve fund for contingencies has been funded.

Both deputies and farmers demanded that the reserve fund for emergencies be set at a percentage of a cooperative’s assets, and in the final version this was set at ten percent. They also insisted that in order to distribute up to seventy percent of the profits to the farmers, at least half of the contingency fund must have been financed, and that at least 50 percent be distributed. These changes were accepted in the final version.

The original version of the bill increased the profits distributed to those farmers with at least five years seniority to encourage them to remain, and to reward retired founders of the cooperative who had contributed land or other items, such as machinery to the cooperative (jubilados aportadores). At the March 29, 2002 general assembly at CPA Héroes de Yaguajay a farmer complained about unequal distribution of profits based on seniority, stating that it should be equal for all farmers.<sup>16</sup> During the March 15 CPA Rafael Morales general assembly a farmer proposed that the reward be given to all retired members, and not just jubilados aportadores, since all retirees “had contrib-

15. Asamblea Nacional del Poder Popular, *Proyecto, Ley de Cooperativas Agropecuarias*, November 2001, 7, 9, 10, (my translation); Asamblea Nacional del Poder Popular, *Proyecto, Ley de Cooperativas de Producción Agropecuaria y de Crédito y Servicios*(Law #95), November 2002, 3, 9-10 (my translation).

16. *Acta No. 3 Asamblea General, CPA Héroes de Yaguajay*, 2.

uted to the economic stability, to the creation of its assets.”<sup>17</sup> The language was subsequently changed to include all retired founders of the cooperative.

Debates involved workers contracted by the CPA and the CCS, Some of whom are needed only a few months per year. Lugo told me:

The CPA has contracted workers who have to work for a relatively short trial period. If they want to be members they must be brought immediately to the general assembly of the cooperative. There are many members of the cooperatives who do not want them to become members, because if they are not members they cannot share in the cooperatives’ profits. But this is exploitation. The new version of the bill states they must be considered for membership by the general assembly within three months, and, if accepted, have a right to share the profits from the first day of employment prior to becoming members. There was protest on these matters from the deputies. There are many members who have a lot of money and don’t want to share this with non-members, but that is exploitation which cannot be permitted. In the general sense sharing profits in this manner has been accepted. There was also discussion regarding the distribution of profit. In the CCS *fortalecida* the contracted labor also shares in the profits. But some of the farmers hired labor on their own, and these workers did not receive social security, maternity benefits, or accident insurance, as do other Cuban workers. The Revolution cannot permit this. The new law says that in the CCS only the cooperative, and not individual farmers, can hire labor. The farmer who uses the labor, pays the worker and also pays the CCS for the workers’ social security and taxes for the use of the labor power. Thus the contracted worker will have pension rights and disability insurance. This covers about 100,000 workers. This has not been a problem with the CPA which pays social security for all members and contracted workers.

Those workers hired by the CPAs who become members were granted the right to receive part of the profits, starting from their first day on the job. The original bill’s language granted profit sharing to all workers contracted by the cooperatives, but farmers objected to including short-term workers (such as during the harvest) who do not become members. Several farmers emphasized this point at the March 7, 2002 CPA Niceto Pérez general assembly. One pointed out that some hired workers come to their province during their vacations and work for one or two months and then disappear. Another argued that allowing short term workers to share in the profits constituted a disincentive for the cooperators, by granting the former excessive rights without the obligation owed to the cooperative and to ANAP. A third farmer added that if approved as written no worker would be motivated to become a cooperator.<sup>18</sup> In the March 16, 2002 general assembly at CPA Carlos Baliño

17. *Acta Extraordinaria, CPA Rafael Morales*, 2 (my translation).

18. *Acta No. 2, Asamblea General, CPA Niceto Pérez*, March 7, 2002, 4.

in Havana Province, a farmer argued that short term contracted workers should not share in the profits, since by law they work eight hour days and would not have the same love as the cooperators who work ten or twelve or more hours since their work is for their own benefit.<sup>19</sup>

In all versions of the bill contracted workers and all CPA and CCS members are covered as all other workers in Cuba by existing legislation regarding retirement age (60 for men, 55 for women), social security and disability insurance.

The following excerpts indicated the changes made in these areas:

Article 2.- Reserve fund to cover contingencies: a compulsory financial fund, not for distribution, which each cooperative should create and maintain, to come from its profits, whose total cost should not be inferior to ten percent of [be in direct relation to] the value of its assets, which is destined exclusively to resolve difficult economic situations, due to natural catastrophes or other causes not covered by insurance [to guarantee the economic life of the cooperative].

Article 51.- When the cooperative has completed the payment of goods produced by the cooperative, distributed to the cooperators, and has constituted more than half of [stabilized] the reserve fund to cover contingencies, it can distribute more than fifty percent, up to seventy percent of the profits [among cooperators and workers].

Article 53.- These cooperatives also dedicate part of their profits to rewards the retired contributors and founders, depending on years of work and merits earned.

Article 65.- Workers who become members of the CPA, have the right to the participation in the profits from the first day of their incorporation as workers.<sup>20</sup>

During a heated debate in Pinar del Rio Province in December 2001 the stand taken by some deputies that the UBPC be included in the legislation was rejected. One deputy argued that the UBPC, while having distinctive origins and characteristics, are based on the principle of cooperative production. "Why then," he asked, "if we are dealing with a law on cooperatives, do we not include them in this law in a separate chapter? It seems to me that due to the importance of the UBPC, due to extraordinary importance in production within the country such as with sugar cane, they should not be excluded." Another responded that since the UBPC does not own the land, but rather

19. *Acta Asamblea General (extraordinaria) CPA Carlos Baliño*, 3.

20. Asamblea Nacional del Poder Popular, *Proyecto, Ley de Cooperativas Agropecuarias*, November 2001, 8, 16, 19 (my translation); Asamblea Nacional del Poder Popular, *Proyecto, Ley de Cooperativas de Producción Agropecuaria y de Crédito y Servicios* (Law #95), November 2002, 3, 18-19, 23 (my translation).

uses state owned land, the farmers were workers, analogous to factory workers, rather than cooperating farmers.

The issue of the UBPC came up at meeting in Holguin Province in June 2002 during the discussion of the bill's title. A woman from Manzanillo Municipality argued that the title "Agricultural Cooperatives Law" implies that it includes the UBPC, which are not covered in the law, even though Article 3 of the version sent to the deputies in May 2002 defined the CPA and the CCS as the cooperatives covered by the new law. A deputy from Las Tunas suggested that the law's title include both "Agricultural Production Cooperatives and Service and Credit Cooperatives." The topic of the title was also brought up at the meeting in Santiago Province in June 2002. A deputy from San Luis Municipality reiterated that the title had been discussed in the whole country. He said that the original title, "Law on Agricultural Cooperatives" sounded to many farmers as if it only concerned the CPA, and did not cover the CCS. There was also worry expressed that without more clarity in the title, farmers would incorrectly suppose that the UBPC were also covered. In the final version, as recommended in the dictamen issued by the Productive Activity and Constitutional Affairs Commissions, passed by the ANPP the title was changed to "Law of Agricultural Production and of Credit and Service Cooperatives."

At the November 2, 2002 plenary session of the ANPP the Commissions' dictamen contained four suggested changes, all of which were accepted. The most important ones were the new title, changing "Contracted production" to "Mandated production", and the inclusion of the Provincial Housing Authority in the commissions overseeing the dissolution of cooperatives.

In the Assembly debate, a deputy asked that to Article 16 (obligations that cooperatives have with the state) part d (regarding sale of mandated production to the state), add that it be "determined by the organisms of the Central State Administration." He argued that what is most important is "the control that should be exercised regarding the fulfillment of the contracts in order to avoid diversion of products to destinations other than those projected. One should ask if the mandated production is done . . . with attention paid to soil quality, the existence or non-existence of an irrigation system, seed quality, or does empiricism prevail?" This change was accepted, with the addition of "determined by the competent organism" added to Article 16 part d.

A deputy pointed out that since in the dictamen "contracted production" was changed to "mandated production" in Article 2, the same change should be done in all the other articles where "contracted production" appears, namely Articles 8, 9, 16, 19, and 20. This change was accepted.

The suggestion by another deputy that the paragraph in Article 22 regarding cooperatives directly supplying agricultural productions to social institu-

tions, specify “commerce and gastronomy.” This was not accepted, as Lugo responded that this was too limiting, leaving out, for instance, education and health centers.

Much of the rest of the debate concerned prices, transport, and the role of middlemen in the sale of agricultural products in private agricultural markets, items that were not covered in the pending legislation. It was only concerning these items that President Fidel Castro spoke. The bill passed by a unanimous vote.<sup>21</sup>

In conclusion, the main parts of the process involved consultation and consensus. ANAP was the major player in drafting the legislation. Modifications came from consultations with ministers, specialists, the PCC, but mainly from deputies and cooperative farmers during meetings held in the provinces, who were not hesitant to voice their opposition to certain part of the bill. Of course, the suggested modifications had to be accepted by leadership from ANAP and the Productive Affairs Commission. When consensus was not achieved prior to submitting the bill to the plenary session in December 2001, ANAP and the Productive Affairs Commission decided to withdraw the bill and dispatch it for more consultation with farmers, deputies and state organs. The recommendations for changes in the Commissions’ dictamen came mainly from suggestions made by deputies during the consultation process. The plenary session debate did not involve much substance, since most of the contentious issues had been dealt with previously. Clearly opposition by deputies to certain parts of the bill had been voiced, heard, taken into account and, overall, had been effective. By the time the bill was submitted consensus had been achieved which accounts for the unanimous vote. Neither the PCC nor President Castro played an important role during the whole legislative process.

It should be noted that not every bill passed by the ANPP goes through this lengthy consultation process. It is also important to point out that when consultation does take place, it usually involves those groups and sectors of the population linked to proposed legislation.

Not only did suggestions made by deputies and farmers contribute to important changes made in the final version of the bill, but the debates also demonstrated that these participants had studied the bill, and were familiar and knowledgeable regarding its content. I noticed the same when deputies were debating the Law Against Terrorism passed in 2001. Compare this with the United States Congress whose members passed the Patriot Act in 2001 without having read it, and passed the 2005 budget (over 1000 pages weigh-

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21. *Acta: Asamblea Nacional del Poder Popular, Noveno Período Ordinario de Sesiones: Quinta Legislatura*, November 2, 2002, 1-22 (my translation).

ing fourteen pounds) the day after receiving it at the end of November 2004, admittedly and obviously without having time to read it.