

Rights *and* Development

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Monitoring the impact of the policies of the United States and international financial institutions on economic and social rights in Latin America and the Caribbean.

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The Struggle for Land in Brazil

On May 17, 2005, over 12,000 members and supporters of the *Movimento dos Trabalhadores Rurais Sem Terra* (MST) (Landless Rural Workers Movement) arrived in the capital city of Brasilia, after a 17 day, 230 km march to urge the government to quicken the pace of agrarian reform. The peasant mobilization represented a growing frustration with the federal government's performance in the settlement of rural families, particularly given the high expectations it generated. Indeed, land reform has long been a priority for the now ruling party, o *Partido dos Trabalhadores* (PT) (Workers Party), and was a cornerstone of the election platform of then presidential candidate Luis Inacio "Lula" da Silva. The President's strong personal interest notwithstanding, the political marginalization of the Ministry of Rural Development and the Institute for National Colonization and Agrarian Reform (INCRA), as well as chronic under-funding, has hampered serious efforts at agrarian reform to date.

In reaction to disappointing results in 2003, in which the government settled just over half of the annual target of 60,000 families, Lula's administration adopted the Second National Plan for Agrarian Reform in November 2003.¹ Under the plan, the government promised to settle 530,000 families before 2006, which was to be done by the settlement of 400,000 new families and the extension of land credit to 130,000 others.² The plan also called for the normalization of 500,000 families who had already settled land but had yet to receive titles.³ However, 2005 began with the cut of R\$2 billion (reais) from the budget of the Ministry of Rural Development (more than half of the expected R\$3.4 billion), largely to guarantee the interest payment on the country's external debt.⁴ It appears very unlikely that

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Over 12,000 rural activists and their supporters march to Brasilia, Brazil, to demand that the government step up the pace of agrarian reform.



Brazil

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President Lula will be able to meet the revised goals set forth in the plan. Indeed, many observers predict that he will have settled fewer families during his first term in office than did his predecessor, Fernando Enrique Cardoso.

Agrarian reform has long been on the national agenda as a means to address Brazil's notoriously high rate of land concentration.⁵ This inequality is due primarily to the issuance of land grants to influential families during the colonial period, which resulted in very large, and largely idle, holdings and the failure of adequate redistributive policies in subsequent years. Today, large estates of over 2,000 hectares account for only 0.8% of properties but 31.6% of the total surface area. Small farms, of less than 10 hectares, conversely make up 31.6% of all properties but only 1.8% of total land area.⁶ The lack of access to sufficient, productive land, and the necessary technical capacity, credit, infrastructure and market-access, is correlated with high rates of rural poverty. Although a longstanding problem, rural poverty has worsened for a variety of factors, including mechanization and the introduction of agrochemicals on many farms. Indeed, according to the 2000 census, approximately five million rural families live on less than two minimum monthly wages (then US\$185).⁷

The legal basis for agrarian reform was first established in the 1988 Constitution. Under the Constitution, the federal government is empowered to expropriate land which is "not performing its social function" upon payment of fair compensation.⁸ Land performs its social function, for the purposes of agrarian reform, if it is being put to "rational and adequate use,"⁹ the owners comply with environmental and labor laws, and the use of the land benefits both owners and laborers.¹⁰ According to INCRA, there are 120 million hectares classified as unproductive and amenable to immediate expropriation and redistribution to rural families.¹¹

As the colonization process managed by INCRA has been very slow to settle rural families, organizations such as the MST and rural trade unions have occupied land that they allege is not being put to adequate use. In those cases where private property is seized, the result is frequently a request by the landowner to the local court for an eviction order. Frequently, the landowner's significant economic and political clout means that an eviction order will

be issued regardless of the merits. In other cases, landowners simply take matters into their own hands and forcibly evict peasants by retaining a private militia or the police to attack the encampment. Once again, the landowner's influence usually ensures that few if any are tried or convicted for the criminal acts committed, contributing to a general state of impunity.

The *Comissão Pastoral da Terra* (CPT) (Pastoral Land Commission), which has been keeping track of rural conflicts for the last 20 years, estimates that in 2004 there were 1,801 land conflicts, with 39 persons murdered, 284 threatened with death and 421 jailed in the context of those conflicts.¹² Since 1985, the CPT estimates that 1,380 rural workers have been murdered in Brazil in disputes over land. However, only 77 cases have gone to trial and, of those, only 15 intellectual authors and 65 gunmen have been punished.¹³

The gravity of rural violence in Brazil made international headlines earlier this year when Sister Dorothy Stang, a nun and land activist originally from southern Ohio, was murdered by hired gunmen on February 12, 2005 in Anapu, Pará.¹⁴ Ms. Stang was well known in the region for confronting landowners who were illegally expropriating public land ("grilagem") for logging and, once cleared, crop cultivation or pasture. Beyond the environmental impact of the illegal expropriation, it generated violent conflict among peasant farmers ("posseiros") who were violently evicted from their small, untitled landholdings and forced to settle elsewhere. News of Dorothy Stang's death moved the federal government to act with unusual speed, dispatching a special police investigative unit and sending over 2,000 troops into the region to restore order and to put an end to a wave of violence that followed her death.¹⁵ Two gunmen accused of the crime, and the contractor who hired them, were rapidly apprehended by the police.¹⁶ A trial at the state level will commence in mid-October.¹⁷

While the murder of Dorothy Stang made the headlines of the national and international press, very little attention has been paid to the many Brazilians killed in the course of land conflicts both before and after her death. Indeed, just four months before the Stang murder, eighteen hired gunmen attacked the MST encampment, Terra Prometida, in Felizburgo, Minas Gerais in November 2004. The attack left 5 dead and nearly 20 wounded, including a 12-year-old boy. The gunmen subsequently set fire to the settlement's barracks, leaving over 100

families without shelter.¹⁸ In the two years preceding the attack, the MST had filed numerous complaints with the local police concerning the death threats they regularly received from local landowners, but to no avail. Further, of the 15 initially accused of taking part in the massacre, only one was eventually imprisoned. Adriano Chafik Luedy, who coordinated the massacre with his cousin Carlixto, has been detained after having been previously released for lack of evidence.¹⁹

Addressing the state of landlessness and the violence that so often accompanies it is complicated. At the conclusion of the national march, President Lula received the leadership of the MST to discuss the way forward on agrarian reform. After two long days, they agreed to seven points, including full compliance with the goals of the National Plan on Agrarian Reform for 2005, which includes settling 115,000 families in 2005 and a total of 400,000 families by the end of 2006. The government also agreed to provide the resources necessary to implement the plan, and to hire additional employees for INCRA. It is crucial that the government follow through with these basic promises if there is to be a significant reduction in rural poverty over the long term.



Rice is dried at an MST encampment in the northern state of Pará, Brazil, before it is processed and shipped to local markets.

Beyond these measures, however, the government must also increase state presence in rural areas, in the form of schools, health clinics and cooperative extension services that can provide needed technical assistance. Without comprehensive rural development and land reform policies, violent land conflicts will no doubt increase. Further, the government must insist that local police forces be responsive to the security of rural communities. The failure of the police to adequately investigate threats against the landless, if at all, and the failure of police to investigate crimes once committed contribute to the alarming level of impunity. 🌱

Endnotes

¹ See Global Justice, Human Rights in Brazil 2003 (2004), p. 46.

² See, Ministry of Rural Development, Second National Land Reform Plan (2003), foreword.

³ *Id.*

⁴ See, Comissão Pastoral da Terra (CPT), *Rumo À Terra Prometida*, available at <http://www.cpt.org.br>. However, it is important to note, that the Ministry of Rural Development often does not spend even half of its annual budget, which is attributable to a lack of sufficient personnel and technical capacity. The Ministry's institutional incapacity is itself a serious problem and impedes the implementation of its basic policies. Interview with Sergio Sauer, advisor to Senator Heloísa Helena, May 19, 2005.

⁵ The Ministry of Rural Development reports a Gini coefficient of 0.8, reflecting extreme concentration. Other studies put the figure at nearly 0.9, almost total concentration. See, e.g., Sauer, Sergio, *A Ticket to Land, The World Bank's Market-Based Land Reform in Brazil*, in *The Negative Impacts of World Bank Market Based Land Reform* (2002).

⁶ See National Plan, *supra* n. 2 at p. 11.

⁷ *Id.*

⁸ Article 184 of the Constitution provides, "It is within the power of the Union to expropriate on account of social interest, for purposes of agrarian reform, the rural property which is not performing its social function, against prior and fair compensation in agrarian debt bonds ..."

⁹ The question as to whether land is being put to rational and adequate use is almost always contentious. To make such a determination, an inspector verifies the extent to which the land is being developed. A property that utilizes a very small part of its lands or whose income is below the median is classified as unproductive and can be expropriated for agrarian reform. The current indicators of income and productivity have not been updated since

the 1970s, however, resulting in many unproductive farms being classified as productive. See Plinio Arruda Sampaio, *On Indices of Productivity*, available at <http://www.mstbrazil.org>.

¹⁰ Article 186 of the Constitution provides: "The social function is met when the rural property complies simultaneously with, according to the criteria and standards prescribed by law, the following requirements: 1) rational and adequate use; 2) adequate use of available natural resources and preservation of the environment; 3) compliance with the provisions that regulate labor relations; and 4) exploitation that favors the well-being of the owners and laborers."

¹¹ See Comissão Pastoral da Terra (CPT), *Conflictos no Campo Brasil 2004* (2005), p.36

¹² *Id.* at pp. 7-8.

¹³ Fórum Nacional pela Reforma Agrária e Justiça no Campo, *Reforma Agrária: Sustentabilidade Ambiental e Direitos Humanos*, available at http://www.abong.org.br/novosite/download/reforma_agraria.doc

¹⁴ See, e.g., Rohter, Larry, *Brazil Promises Crackdown After Nun's Shooting Death*, NY Times, Feb. 14, 2005, A3.

¹⁵ See Rohter, Larry, *Brazil: 2,000 Troops To Amazon Region*, NY Times, Feb. 17, 2005, A8.

¹⁶ See World Briefing, Americas, *Brazil: Four Charged in Nun's Death*, NY Times, Mar. 10, 2005, A12.

¹⁷ The Stang family, among others, requested that the case be removed from the state to the federal court system to ensure a fairer trial free from local influences. However, the case remains set to proceed at the state level.

¹⁸ See *Conflictos no Campo*, *supra* n. 11 at p.34.

¹⁹ Information from correspondence with Terra de Direitos on July 20, 2005.

Labor Updates

Guatemala: Labor Rights Violations Continue Unabated

THE RIGHTS OF workers are routinely violated in Guatemala. Although there have been some improvements over time, substandard laws and a culture of impunity have made it difficult to organize, to form a union or to bargain collectively in the country. Indeed, the U.S. State Department noted, “Labor leaders reported death threats and other acts of intimidation. [The] Special Prosecutor’s Office for Crimes against Trade Unionists and Journalists accepted 45 new union-related cases during the year, thereby raising the total caseload to over 200. Prosecutors secured only one conviction[.]”¹ Most recently, on July 25, 2005, members of the Union of Workers of the National Hypothecary Credit Bank, who have been engaged in a labor conflict with the employer since 170 members of the union were fired in 2002, found a funeral wreath and two placards bearing death threats in the entrance of the office of UNISTRAGUA, the union federation to which the workers belong.²

In an effort to encourage greater compliance with and enforcement of labor laws, WOLA and the U.S./Labor in the Americas Project (US/LEAP) jointly filed a petition with the Office of the U.S. Trade Representative (USTR) on December 13, 2004 invoking the worker rights language of the Generalized System of Preferences (GSP), a

unilateral trade program that provides preferential tariff treatment on selected imports to the U.S. from developing countries. Under the GSP, a country that is not “taking steps to afford internationally recognized worker rights” may be suspended from the program.

In particular, we highlighted the August 3, 2004 decision by Guatemala’s Constitutional Court that divested the Ministry of Labor of the authority to fine employers who have violated the labor code, creating a state of impunity for all such violations. Additionally, we noted with alarm the violent acts of repression against the leadership of SINTRANB, the union that represents the workers at Nobland, a garment factory that produces apparel for export to the U.S. The petition also took note that several promises by Guatemala to reform labor laws and procedures, made to the USTR in the context of prior GSP reviews, still remain unfulfilled.

No doubt given the sensitivity of the issue in the context of the debate on the DR-CAFTA, the USTR refused to make a decision whether to accept the petition. Instead, the USTR issued a notice on May 9 for the submission of 2005 GSP petitions—a transparent effort to delay a decision on the merits of the 2004 complaint until well into 2005, and

after the vote on the DR-CAFTA. On June 15, WOLA and U.S/LEAP re-filed the 2004 petition with a substantial update, noting that there had been no progress on labor law reform, against impunity, in restoring the ability of the Labor Ministry to levy sanctions against employers who violate the law, or in the Labor Ministry’s commitment to enforce existing labor laws. Now that both the U.S. and Guatemala have ratified DR-CAFTA, we hope to have a decision on the petitions shortly.³



Attempts by workers in Guatemala to exercise their right to freedom of association have resulted in threats and other forms of intimidation.

Mexico: Proposed Reform Would Have a “Chilling Effect” On Labor Organizing

BEGINNING IN the late 1980s, the PRI (Institutional Revolutionary Party) and various employers' associations began to put forward their vision of a “New Labor Culture” that emphasized productivity and flexibility. The first labor reform proposal oriented towards these goals was introduced in the late 1980s by the Mexican Employers Association (COPARMEX), but was ultimately rejected. After Vicente Fox Quesada of the center-right PAN (National Action Party) was elected president in 2000, Carlos Abascal Carranza, his Secretary of Labor (and former head of COPARMEX), began the process by which a new, comprehensive labor law reform proposal was developed. In July 2001, Secretary Abascal initiated talks between the Secretariat of Labor and Social Welfare (STPS), the Business

to sidetrack unions...The Abascal proposal would do nothing to increase transparency in union affairs [and] rejects independent unions' long-standing demand to list local unions and collective bargaining agreements in a public registry available to all citizens ...The Abascal proposal would also create enormous obstacles to workers' right to organize. First, it would tighten jurisdictional rules defining which labor organization can represent workers according to craft, enterprise and company. The effect would be to lock in bargaining monopoly by incumbent official unions and insulate them from challenges from independent unions. Finally, the Abascal proposal would require prior disclosure of the name and address of every worker

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Coordinating Council (CCE) and the labor unions with a commitment that no legislation would be introduced in the absence of a consensus. However, the labor reform proposal presented to Congress on December 12, 2002, with the full support of the Fox administration, was far from a consensus project.

The reforms, commonly known as the *Abascal Project*, would strengthen the system of corporatist control over labor, further stifling the rights of workers, while giving business the “flexibility” it has been demanding. Independent labor unions, academics and labor lawyers have criticized the Abascal Project harshly. Lance Compa, former Director of Labor Law and Economic Research at the Secretariat of the Commission for Labor Cooperation, established under the North American Agreement for Labor Cooperation (NAALC), summarized the principal objections in terms of freedom of association to the *Abascal Project*:

The proposal would tighten government control of union formation and collective bargaining while granting employers new unilateral powers

who joins an independent union, then have the federal or state labor board with jurisdiction in the matter investigate each worker's signature. ...[This] puts all workers at the risk of reprisals and would have a chilling effect on workers' freedom of association.⁴

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that its labor laws and regulations provide for high labor standards, consistent with high quality and productivity workplaces, and [that it] shall continue to strive to improve those standards in that light.”⁵

Unfortunately, the U.S. Secretary of Labor, who had up to April 17 to decide whether to accept the submission, has failed to act. Despite repeated requests by WOLA and the U.S. Congress, the NAO has refused to offer any relevant justification as to why the Labor Secretary has not responded in the time mandated by current regulations.

However, due to the stiff resistance to the *Abascal Project* in Mexico, and international pressure, the Ministry of Labor of Mexico recently

proposed a new, “light” labor reform.⁶ Although recognizing that the new reform bill did revise some prior proposals of concern to unions, the UNT (*Unión Nacional de Trabajadores*) and the FAT (*Frente Auténtico del Trabajo*) rejected the proposal, explaining that it did not respond to their central concerns related to the democratization of trade unionism in Mexico. In particular, they cited the absence of a public registry of unions and collective bargaining agreements, as well as the failure to modernize the labor justice system.⁷ Due to these and other continuing concerns, which were raised in the NAALC complaint, WOLA urges the U.S. NAO to closely monitor the labor law reform process in Mexico to ensure that any such reforms do not violate the obligations assumed by Mexico under NAFTA.

Colombia: ILO Mission to Investigate Attacks against Unionists

THE YEAR 2004 saw an alarming increase in attacks against trade unionists, which were documented by the Medellín-based *Escuela Nacional Sindical* (ENS) in its annual human rights report on the situation of Colombian trade unionists. ENS found an overall increase in the number of violations against trade unionists, including an increase in the number of homicides over the previous year, from 91 to 94 (3%), and a sharp rise in the number of death threats during the same time, from 296 to 445 (50%). According to the report, the Colombian government was directly responsible for 12 percent of all human rights violations against unionists, including arbitrary detention, break-ins and at least three assassinations.⁸

The ENS mid-year report for 2005 reflects a decline in the number of trade unionists assassinated, 29, which stood at 54 at the same time last year.⁹ However, other violations, such as death threats against trade unionists, continued apace, reflecting, according to ENS, a change in tactics by the responsible parties, primarily the paramilitaries. Given the need to demonstrate their will to negotiate and disarm, the paramilitaries have opted to threaten trade unionists and their families—an

act which has the same impact but which provokes less concern from the international community.¹⁰

In Colombia, most human rights cases are not investigated or prosecuted, allowing the situation of impunity to continue. In response to a May 2004 request for information by ENS about the state of investigations into 90 assassinations of trade unionists in 2003, the Federal Attorney General’s Office reported having knowledge of only 33 cases, and acknowledged having opened an investigation in only 63 percent. A more shocking example of impunity for the murders of trade unionists is detailed in a report by the Human Rights Observatory of the Office of the Vice President, which notes that for the 1,981 assassinations of trade unionists since 1992 recognized by the government, only 31 persons, linked to 19 cases, were jailed for their crimes.¹¹

Aside from the still remarkable levels of violence, Colombian trade unionists also confront serious legal and practical barriers to the exercise of their labor rights. As the ILO’s Committee of Experts has repeatedly found, Colombian legislation restricts union freedom by prohibiting strikes by

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confederations and federations; extending the concept of public services in order to curtail the right to strike for workers engaged in a greater range of activities, such as oil extraction (this enables employers to fire workers that participate in such strikes); and granting the Labor Ministry the ability to require compulsory arbitration of disputes when a strike extends beyond the 60 days permitted by the Labor Code.¹²

Given the ongoing labor rights violations in Colombia, the ILO Committee on Freedom of Association “condemned once again in the strongest terms” the acts of violence and “expressed the firm hope that ... real progress would be observed ... in order to overcome all obstacles to the full exercise of freedom of association” during the 93rd Conference of Labor in Geneva in June.¹³ Given the current situation, the Committee accepted the invitation of the Colombian government to send a tripartite high-level mission to Colombia, which

would be headed by the President of the Committee on Freedom of Association and accompanied by representatives of the Employer and Worker Groups of the Commission of the Application of Standards. The purpose of the mission will be to examine all issues relative to the application of ILO Convention 87, which refers to freedom of association and the right to form a union.¹⁴

The high-level mission falls short of a Commission of Inquiry, the ILO’s highest-level investigative procedure, which “is generally set up when a member state is accused of committing persistent and serious violations and has repeatedly refused to address them.”¹⁵ Although the facts certainly warrant such intervention, it is hoped that the mission will contribute to the improvement of laws and practices that frustrate the free association of trade unionists and will bring much-needed attention to the crisis of impunity in Colombia. 🌿

Endnotes

¹ U.S. Department of State, Country Report on Human Rights Practices—Guatemala, (Feb. 28, 2005).

² Three other incidents are worth note: On January 7, 2005, Leonel García Acuna, leader of the Municipal Workers of San Miguel Pochuta, was chased by four gunmen after filing a complaint with labor inspectors about being fired along with the other founding members of the union. On February 28, 2005, Luis Aruturo Quinteros Chinchilla, the secretary general of the Chiquimulilla Street Vendors Union was shot and killed by the mayor following a dispute between the mayor and the union. On March 19, 2005, members of the Antigua Street Vendors Union were brutally beaten by member of the Municipal Tourism Police of Antigua. Despite these numerous acts of violence and murder, the U.S. Trade Representative reported in its February 2005 “CAFTA Facts” that there had been no acts of violence against trade unionists in Guatemala since 2002.

³ Both the 2004 and 2005 GSP petitions are available online at www.wola.org.

⁴ See Compa, Lance, *Justice for All: The Struggle for Workers Rights in Mexico*, AFL-CIO Solidarity Center (2003), p. 18, www.solidarity-center.org.

⁵ See NAALC, available at <http://www.dol.gov/ILAB/regs/naalc/naalc.htm>.

⁶ Guadalupe Cadena, *Propone la STPS Proyecto Light de Reforma Laboral*, El Financiero, Aug. 25, 2005.

⁷ Guadalupe Cadena, *Tropieza el Proyecto de Reforma Laboral de la STPS*, El Financiero, Aug. 29, 2005.

⁸ Escuela Nacional Sindical, Informe Sobre La Violación A Los Derechos Humanos De Los Sindicalistas Colombianos (Enero 1º–31 De Diciembre 2004), pp. 3-4.

⁹ Escuela Nacional Sindical, Violaciones A La Vida, A La Libertad Y A La Integridad De Los Trabajadores Sindicalizados En Colombia (1 de Enero -10 de Junio de 2005), p. 2.

¹⁰ *Id.* at 4.

¹¹ ENS 2004, *supra* at n.8, p. 13-14.

¹² See, e.g., CEACR: Individual Observation concerning Convention No. 87, Freedom of Association and Protection of the Right to Organise, 1948 (2005); CEACR: Individual Observation concerning Convention No. 98, Freedom of Association and Protection of the Right to Organise, 1948 (2004).

¹³ International Labor Conference, 93rd Session, Report of the Committee on the Application of Standards (2005), Part 2. p. 32.

¹⁴ *Id.*

¹⁵ See ILO, International Labor Standards – Complaints at <http://www.ilo.org/public/english/standards/norm/applying/complaints.htm>.



Foreign Aid Updates

U.S. Suspends Economic Development Assistance to Countries that Refuse to Sign “Article 98” Agreements

IN THE CONTEXT of this year’s foreign aid debate, the U.S. Congress is considering renewing a provision to ban economic aid to countries that have accepted the jurisdiction of the International Criminal Court (ICC). The House of Representatives, in its version of the Foreign Operations Appropriation Act of 2006 (H.R. 3057), has already approved cutting off Economic Support Funds (ESF) to countries that have ratified the ICC but have not agreed to recognize U.S. citizens as “immune” from the Court’s jurisdiction. The Senate did not include an economic aid ban in its version of the Act. If the ban is included in the final foreign aid bill, it will mark the second year in which the U.S. government fails to contribute to important development initiatives in Latin America. In so doing, the U.S. government will continue to lose both respect and credibility on foreign policy in the region.

The International Criminal Court (ICC), established by the Rome Statute and now ratified by 99 countries, has jurisdiction to prosecute individuals for genocide, war crimes and crimes against humanity. Former President Bill Clinton signed the Rome Statute as one of his last acts in office but the Bush Administration later rescinded his signature in May 2002. One of the reasons the Administration offered for so doing was its concern that U.S. military personnel and other U.S. citizens could be subjected to politically motivated prosecutions before the tribunal. Further, rigorous due process provisions should safeguard against unfounded prosecutions. The Rome Statute also ensures that home countries would have the

first opportunity to bring human rights abusers to justice. The Bush Administration discounts these safeguards; instead it has engaged in an aggressive campaign to obtain bilateral Article 98 agreements, or “immunity agreements, from countries that have ratified the Rome Statute.

The U.S. argues that Article 98(2) of the Rome Statute tolerates such immunity agreements, which require a country to turn over a U.S. citizen sought by the ICC to the United States. The legal validity of these immunity agreements is highly dubious but as yet untested. Nevertheless, the U.S. campaign has continued even though the resulting agreements have been widely condemned.

One measure the U.S. has undertaken to punish recalcitrant governments is to suspend military assistance. In 2002, the U.S. Congress passed the “American Service-Members Protection Act” (ASPA). The Act provides that if a country is party to the Rome Statute and has not signed an Article 98 agreement, the following types of military assistance may be suspended: International Military Education and Training, Foreign Military Financing, Excess Defense Articles and non-drug Emergency Drawdown Authority funds. Anti-drug aid through a variety of programs, such as International Narcotics and Law Enforcement, Defense Department aid, and counter-narcotics drawdowns, can still be delivered.

In 2004, the Administration decided that further punishment was necessary to coerce governments to sign Article 98 agreements. The Consolidated Appropriations Act of 2005, passed on December 8, 2004, contained new language

that suspended Economic Support Funds (ESF), to countries that had ratified the Rome Treaty and had not yet signed an Article 98 agreement with the United States. In Latin America, it meant that Barbados, Bolivia, Brazil, Ecuador, Paraguay, Peru, St. Vincent and the Grenadines, Trinidad and Tobago, Uruguay, and Venezuela would lose any allocated ESF funds, on top of the military assistance already denied by the ASPA.¹

In its 2005 budget justification, the U.S. State Department allocated \$45.5 million in ESF assistance to “noncompliant” countries for the following initiatives:

- ▶ Strengthening democratic local governance and civil society participation in Bolivia, Ecuador, Paraguay, Peru and the Caribbean
- ▶ Strengthening judicial systems in Ecuador, Peru and Venezuela
- ▶ Fighting corruption in Ecuador, Peru and the Caribbean
- ▶ Supporting free and fair elections in Ecuador
- ▶ Encouraging civil-military dialogues in Paraguay and increasing civilian control over the military in Peru
- ▶ Protecting the environment in Paraguay and

promoting biodiversity through strengthening natural resource management in Ecuador

- ▶ Promoting the Peru-Ecuador peace process by helping to implement the border integration portion of the peace settlement
- ▶ Improving more equitable macro-economic growth and developing strong and sustainable micro-financing in Bolivia and Ecuador

Despite the suspension of military and economic aid, no Latin American country has yet reversed course and signed an Article 98 agreement. If anything, such policies only serve to widen the divide between the U.S. and Latin America, which increasingly feels that the U.S. is unresponsive to its interests.² This problem will only become more acute as additional countries in the hemisphere adopt the Rome Statute. Indeed, the Dominican Republic ratified the Rome Statute on May 12, 2005, and Mexico, an important economic and political ally, is expected to ratify later this year. With 21 Latin American nations to be party to the Rome Statute by the end of 2005, the U.S. should not jeopardize these relationships and, in so doing, undermine its stated foreign policy goals over questionable objections to the International Criminal Court.

Social Investment Fund Could Increase Needed Economic Development Aid

AMONG THE most pressing issues facing Latin America today are poverty, income inequality and unemployment.³ According to the Economic Commission for Latin America and the Caribbean (ECLAC), of the total population of Latin America, a projected 43.2 percent (224 million) lived in poverty in 2004, and, of that, 18.9 percent (98 million) lived in extreme poverty.⁴ In 2004, open unemployment in the region was estimated at 10.4 percent, a slight drop over the previous year.⁵ However, there was an increase in the informal sector at the same time, which rose to 46.7 percent in 2003.⁶ In spite of this dire economic reality, the U.S. government has chosen to reduce economic aid to the region.

U.S. policymakers have taken the position that “trade, not aid” is the solution for the region’s development needs. Certainly, improved access to U.S. markets and the reduction of subsidies

would help, though that alone is not enough. Nor is it what the U.S. Trade Representative is doing. The U.S. has been reluctant to seriously reduce agricultural subsidies, tariffs, and non-tariff barriers, in round after round of negotiations at the World Trade Organization, nor has it addressed these concerns in bilateral trade agreements, such as the recently passed Dominican Republic - Central America Free Trade Agreement (DR-CAFTA), where the reduction of most U.S. agricultural subsidies was not even up for discussion. Moreover, the U.S. deprived Central American sugar of any meaningful access to its market.

Targeted economic assistance for such things as education, health, infrastructure and rural development is essential to promote the creation of equitable, sustainable economic development.⁷

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However, the data on U.S. economic aid to Latin America shows a gradual decline, while U.S. military aid to the region has risen at an alarming pace.⁸ In fact, if historic economic aid levels are adjusted to current dollars, economic aid to Latin America peaked at roughly \$3 billion—in 1985.⁹ In the Administration's FY'06 proposed budget, core development funding to Latin America was cut by over 12 percent,¹⁰ marking the third consecutive year of proposed cuts in development funding to the region.¹¹

Recognizing the need for continued economic aid to Latin America, Congressman Robert Menendez introduced the *Social Investment and Economic Development Fund for the Americas Act* (H.R. 953) on February 17, 2005. A companion bill, S. 628, was subsequently introduced by Senator Christopher Dodd of Connecticut. The legislation, which is currently co-sponsored by 30 representatives, would begin to address the current shortfall in needed funding by directing an additional \$500 million in economic aid to the region each year for five years. The legislation would establish two funds, one administered by the U.S. Agency for International Development (USAID) and the other by the Inter-American Development Bank (IDB). Each fund would be operated and administered consistent with the following guidelines:

Assistance should be used to foster increased economic opportunity by:

- ① nurturing public-private partnerships and micro-enterprise development;
- ② improving the quality of life and investing in human capital, specifically targeting education, health and disease prevention, and housing;
- ③ strengthening the rule of law through improved efficiency and transparency in government services; and
- ④ reducing poverty and eliminating the exclusion of marginalized populations, including people of African descent, indigenous groups, women, and people with disabilities.

The bills establish a technical review committee at USAID and the IDB to review the projects proposed and to make recommendations with respect to the guidelines to be used in evaluating project proposals and the suitability of the proposed projects for funding. Importantly, the Senate bill also establishes consultative committees where members of civil society in any country receiving funds would have a right to review all project proposals and have a voice in funding decisions. The House bill was approved without amendment by the Western Hemisphere Subcommittee and sent to the full House International Relations Committee on June 29. It is expected that the bill will face some resistance at the full committee level, however, particularly as to funding levels and oversight. 🌿

Endnotes

- 1 The complete text of 574(a)(Limitation on economic support fund assistance for certain foreign governments that are parties to the International Criminal Court) is available online at http://frwebgate.access.gpo.gov/cgi-bin/getpage.cgi?dbname=2004_record&page=H10294&position=all.
- 2 See, e.g., DeCórdoba, José, et. al., *Despite Cafta, U.S. Clout Wanes in Latin America*, WSJ, July 29, 2005, A11.
- 3 In response, the Fourth Summit of the Americas, to be held in Mar del Plata, Argentina in November 2005, has adopted as its organizing theme *Creating Work to Confront Poverty and Strengthen Democratic Governability*. See Summit of the Americas website at <http://www.cumbresdelasamericas.org>.
- 4 ECLAC, *Social Panorama of Latin America—2004*, p. 7.
- 5 OIT, *Panorama Laboral America Latina y El Caribe*, (2004), p. v.
- 6 *Id.* at vi.
- 7 Indeed, as the World Bank recently pointed out in its publication, *DR-CAFTA: Challenges and Opportunities for Central America*, “The benefits from DR-CAFTA will depend on the ability of Central American economies to pursue a complimentary policy agenda...DR-CAFTA by itself is unlikely to lead to substantial

development gains without parallel efforts in certain key areas.” See, World Bank, *DR-CAFTA: Challenges and Opportunities for Central America* (2005), p. 174.

- 8 Indeed, for much of the last 25 years, total economic aid has been roughly two to three times greater than total military aid. Military and economic aid to the region is now funded at roughly equal levels, due largely to the immense sums invested in Plan Colombia and other regional counter-narcotics programs. See Isacson, Adam, et al., *Blurring the Lines: Trends in U.S. military programs with Latin America* (LAWG, CIP & WOLA), p.10.
- 9 The number is based on author's calculations, using historic economic aid figures published in US-AID's “Green Book” and adjusting them to 2005 dollars.
- 10 Congressional Record, H 5293, June 28, 2005.
- 11 We do recognize that Honduras and Nicaragua each signed a compact with the Millennium Challenge Corporation in 2005. Although we do not discount aid from the Millennium Challenge Account, we note that not all countries in Latin America, such as Costa Rica, are eligible for such aid.

Trade Updates

The Dominican Republic-Central America Free Trade Agreement Passes by a Razor-Thin Margin

ALTHOUGH CERTAIN to impact the lives of millions of Central Americans, the Dominican Republic-Central America Free Trade Agreement (DR-CAFTA) is of little economic significance to the United States. Exports to this small regional market, described as economically equivalent to Tampa, FL and its suburbs,¹ are projected to increase only slightly upon full implementation, by \$2.7 billion (14.8 percent of U.S. exports to Central America and 0.2 percent of global U.S. exports).² Similarly, imports to the United States from the region are expected to increase by roughly \$2.8 billion, with minimal impact to the U.S. economy outside of targeted sectors such as sugar and apparel manufacturing.³ Indeed, the U.S. International Trade Commission projected that the agreement, once fully implemented, will have a 0.01 percent impact on the U.S. GDP.⁴ Nevertheless, DR-CAFTA evolved into a highly contentious referendum on the future of U.S. trade policy by opponents and proponents alike.

For and Against

The majority of the congressional opponents of the trade agreement were concerned about the consequences of weak labor and environmental language on the livelihoods of Central Americans. Others, however, were opposed to increased Central American exports of sugar and apparel to the U.S. The intensity of the debate was also motivated by the loss of hundreds of thousands of well-paying U.S. manufacturing jobs to Mexico after the implementation of the North American Free Trade Agreement (NAFTA) and fears about the impact of Chinese imports on those manufacturing jobs that remain. Together, these factors brought many supporters of past trade agreements, including the pro-free trade New Democrats, and several Republicans, to oppose the pact. In fact, roughly 180 Democrats and 20 to 30 Republicans had formally announced their opposition to the agreement in the weeks heading up to the vote.

Proponents of the agreement, on the other hand, argued that the benefits of trade would promote democracy and provide a necessary check on political instability and, consequently, radical

populism in the region. The argument was given its first, high-level articulation by Commerce Secretary Carlos Gutierrez, who argued before the Council on the Americas on May 3, 2005 that the opponents of CAFTA in Central America were “communists” and were the same as those who “opposed democracy and liberty 25 years ago.” The possible election of Daniel Ortega as President of Nicaragua was frequently marshaled as an argument in support of the agreement, despite the fact that Mr. Ortega is unpopular among many in the Sandinista party and his candidacy is not even assured.⁵ The claim most frequently heard in the weeks leading up to the vote, and eventually parroted by the Washington Post’s editorial page,⁶ was that CAFTA’s passage was essential to prevent President Hugo Chavez of

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As the trade agreement is being negotiated, diverse civil society organizations take to the streets of Lima to voice their concerns.

Trade Updates

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Venezuela from exporting his “Bolivarian revolution” to Central America. This claim was made most plainly by Rep. Kirk of Illinois on July 20, when he suggested on the House floor that “we can either send exports to Central America or troops. Next week, let us enact a free trade agreement with Central America to lock in democratic growth and stability, and let us make sure that President Hugo Chavez’s Venezuelan agents find no fertile ground in America’s backyard.”⁷

The Vote

On June 30, the Senate approved DR-CAFTA by 54-45, marking the closest vote on a trade bill in that chamber post-NAFTA.⁸ The slim margin was due in part to the Administration’s reluctance to agree to Democratic proposals to strengthen the labor chapter and to give the International Labor Organization a substantial role in monitoring labor rights compliance in the region.⁹ In the end, the Administration’s promise to allocate funds, albeit vastly insufficient, for environmental and labor initiatives in the region, equally insufficient funds

toward rural development, and additional deals on sugar and textiles, attracted enough votes to ensure passage of the agreement.

On July 27, the U.S. House of Representatives passed DR-CAFTA by 217-215, with two abstentions (both of whom had previously announced their intention to reject the agreement). Although opponents of the trade agreement had secured a 180-175 victory at the close of the 15 minute voting period, the House majority suspended the rules and held the vote open for almost an hour in order to twist the arms of reluctant Republicans. Indeed, Rep. Jim Kolbe was heard to say that the Republican leadership would “twist some Republican arms until they break in a thousand pieces.”¹⁰ The outcome was the result of unprecedented lobbying by the Administration, including a personal visit by the President to Congress on the same day. The Republican leadership also brokered several deals with recalcitrant members of their party, including promises that ranged from taking a hard line on Chinese textile imports, to renegotiating “pockets and linings rules” with Central American nations (to protect the US textile industry), to allocating additional funding for highway projects.

In the end, the Administration’s promise to allocate funds, albeit vastly insufficient, for environmental and labor initiatives in the region, equally insufficient funds toward rural development, and additional deals on sugar and textiles, attracted enough votes to ensure passage of the agreement.

Negotiations for the Andean Free Trade Agreement Continue

THE NEGOTIATIONS for an Andean Free Trade Agreement (AFTA) including Colombia, Peru and Ecuador have advanced little since their commencement in Cartagena, Colombia in May 2004. After more than a year of talks, the parties have come to full agreement on only four of twenty-two negotiating issues. Of those still left unresolved are highly sensitive issues, such as agricultural trade and intellectual property protection, where the parties remain very far apart. The recent passage of DR-CAFTA may lend some new momentum to the AFTA negotiations, as the U.S. appears to have been waiting to see if the U.S. Congress would accept the terms of

DR-CAFTA before making any promises with the Andean countries. However, the razor-thin passage of the Central American pact demonstrated strong resistance to such agreements among members of the U.S. Congress, resistance which may intensify with the potential addition of much larger economies to the expanding free trade bloc in the Americas.¹¹

On the question of agricultural trade, resistance to the agreement’s terms continues to grow among agricultural trade associations and small and family farmers in the Andean region.¹² The Andean governments are also displaying a growing sense of exasperation over the failure of the U.S. to make

any new proposals that respond to regional concerns on market access, anti-dumping mechanisms, and the gradual phase-out of tariffs on sensitive products. Other, non-tariff agricultural issues, such as establishing a permanent committee on sanitary and phytosanitary measures, have been slow to progress—advancing only slightly during the July 2005 round in Miami. Further, U.S. demands to eliminate price stabilization mechanisms to offset the effects of dumping, such as the current Andean price band (“*franja de precios*”), and the refusal to accept any safeguard that lasts beyond the implementation period of the agreement, have only galvanized opposition in the agricultural community.

It is not only the Andean farmers that are concerned about the impact of the agreement on their livelihood. The United Nations recently weighed in on the AFTA, publishing a critical report authored by researchers from several agencies, including the UNDP, FAO, UNICEF and ECLAC. In evaluating Ecuador’s agricultural sector under the terms of a free trade agreement with the United States, the report concluded that “The Ecuadorian agricultural sector loses in any scenario. This includes the improbable case in which the U.S. eliminates subsidies, supports and maintains its tariffs at zero. The net effect is marginally negative, but will impact especially subsistence and medium size producers in rice, corn (white and hard), meat and some dairy products.”¹³ In a more likely scenario, where tariffs are eliminated but subsidies and supports are maintained, the report anticipates that the rural sector will be hit harder in terms of the gross value of its production and much worse in terms of employment.¹⁴

Beyond agriculture, negotiations on intellectual property have nearly reached an impasse over the issue of patent protections. To date, the U.S. has demanded that the Andean nations agree to data exclusivity provisions of five years for pharmaceuticals, to be implemented immediately. The effect of this provision would be to bar generic

drug manufacturers from using existing test data from the name brand producer to demonstrate the safety of a chemically equivalent generic drug, which makes the marketing of generics all but impossible. The Andeans in turn have proposed data exclusivity for three years, to be implemented in 2014. The U.S. is also demanding the extension of patent terms that result from delays in the marketing approval process if the delays extend beyond four years. While appearing technical, the impact of these provisions could seriously affect public health in the Andean region.

In July, for example, thousands of Peruvians marched through the capital of Lima to protest the negotiations of the AFTA, concerned that the pact could put affordable medicines out of reach for the majority of the poor.¹⁵ The public outcry followed a visit by UN Special Rapporteur for Health, Paul Hunt, who warned that the agreement would put medicines out of reach for millions and urged the United States not to pressure Peru into a trade pact. “I am concerned because the free trade negotiations between the U.S. and Peru could create a greater protection for patents than those that are currently required under the rules of the WTO. Greater patent protection could restrict governments from taking actions to protect the right to health in the future.”¹⁶

In particular, the Special Rapporteur was concerned that the trade agreement would result in “WTO-plus” restrictions, including new regulations on patent and registration that impede access to essential medicines.


“The Special Rapporteur is concerned that the agreement might allow for the grant of a five-year patent-like monopoly for drugs that are not patented by the original manufacturer. He is also concerned that the agreement might allow companies to apply for a new 20-year patent for each “new use” of a product, and that it might propose the establishment of a

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If these provisions were introduced and implemented, they would significantly impede access to affordable essential medicines for some individuals and groups, including antiretrovirals for people living with HIV/AIDS. Such provisions would undermine the consensus reached at the WTO on the need to balance the protection of intellectual property and the protection of public health.”¹⁷

national drug regulatory body to monitor the enforcement of drug patents, including by delaying or blocking generic medicines. If these provisions were introduced and implemented, they would significantly impede access to affordable essential medicines for some individuals and groups, including antiretrovirals for people living with HIV/AIDS. Such provisions would undermine the consensus reached at the WTO on the need to balance

the protection of intellectual property and the protection of public health.”¹⁷

Similarly, the Health Ministry of Peru made public a report on the potential effects of the trade agreement on June 2, 2005. The study indicated that 700,000 to 900,000 people would be excluded from access to medicines unless the budget of the Ministry of Health were increased.¹⁸ 

Endnotes

¹ See Andrews, Edmund, *House Approves Free Trade Pact*, NY Times, July 28, 2005.

² See US International Trade Commission, *U.S.-Central America-Dominican Republic Free Trade Agreement: Potential Economywide and Selected Sectoral Effects* (Aug. 2004), p. xxii, available at <http://hotdocs.usitc.gov/docs/pubs/2104f/pub3717.pdf>

³ *Id.*

⁴ *Id.* at 73.

⁵ Indeed, Ortega's name was mentioned 12 times during the Senate's June 30th debate on the trade agreement. See Anderson, Sarah, *The Ortega Free Trade Fear Factor*, available at www.com-mondreams.org.

⁶ Editorial, *The Stakes in CAFTA*, Washington Post, July 26, 2005 A18.

⁷ See Congressional Record, H6111, July 20, 2005.

⁸ Technically, the Senate vote on June 30 was procedurally out of order, as the House must first vote on all legislation with revenue provisions. The Senate voted a second time on July 28, with the additional “yes” vote of Sen. Lieberman, who failed to vote in June, bringing the final tally to 55-45. The Administration apparently believed that a prior Senate “approval” would give needed momentum to the House, which at the time opposed the agreement by a considerable margin.

⁹ See AFL-CIO, *Latest Administration Labor Promises Do Nothing to Fix the Flaws of CAFTA*, available at www.aflcio.org/global-economy.

¹⁰ Blustein, Paul, *CAFTA's Upshot More Political Than Economic*, Washington Post, July 27, 2005, D1.

¹¹ See King, Neil, et. al., *Cafta Vote Clouds Prospects for Other Trade Deals*, Wall St. J., July 29, 2005, A1.

¹² In Colombia, for example, the Sociedad de Agricultores de Colombia (SAC) has repeatedly expressed its frustration with past U.S. offers. The president of the SAC, Rafael Mejia, called the latest offer “troubling” and evidence that “they (the U.S..) do not want to open their agricultural sector and that we open ours.” He added that “Cafta was the excuse to stall the FTA negotiations.” Now that this excuse no longer exists, “the U.S. must make concrete proposals if we are to advance.” *Luego de la Aprobación del Cafta, debe Agilizarse la Negociación del TLC*, El Tiempo, July 28, 2005. Others agricultural trade associations, such as Conveagro, of Peru, has demanded the suspension of the talks and requested compensation for products that would be affected by the trade agreement.

¹³ See, CEPAL, *Los Impactos diferenciados del Tratado de Libre Comercio Ecuador—Estados Unidos de Norte America sobre la Agricultura de Ecuador* (Jan. 5, 2005).

¹⁴ *Id.*

¹⁵ See, e.g., Reuters, *Thousands of Peruvians Protest U.S. Trade Pact*, July 13, 2005.

¹⁶ Manrique, Rosanna, *ONU Demanda Proteger la Salud Pública en Negociaciones del TLC*, La Republica (Peru), July 14, 2005.

¹⁷ United Nations Economic and Social Council, *Right of Everyone to Enjoyment of the Highest Attainable Standard of Physical and Mental Health*, E/CN.4/2005/51/Add.3 (Feb. 4, 2005). Para. 48.

¹⁸ Ministerio de Salud del Peru, *Evaluación de los Potenciales Efectos Sobre Acceso a Medicamentos del Tratado de Libre Comercio que Sse Negocia con los Esrados Unidos de America*, (April 2005).

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