

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.

Divisions Emerge Over The Future Of Free Trade

Over the last few years, Latin American support for free trade, including the Free Trade Area of the Americas (FTAA), has declined. The FTAA, launched at the first Summit of the Americas in Miami in 1994, would set new rules on trade in goods and services, investments, and many other trade-related subjects. With the trade agreement stalled, the Bush Administration has pressed for bilateral agreements on a country-by-country basis, looking for the best deals it can get before fast-track negotiating authority expires in 2007. Hoping to resuscitate the moribund agreement, the U.S. tried to use the Fourth Summit of the Americas, a meeting of the presidents of the Americas in the resort city of Mar del Plata, Argentina, in November 2005, to kick-start the negotiations.

Official Dissent and Public Protest

The insistence of the U.S., and allies such as Chile and Mexico, to set a firm date on the re-initiation of negotiations was viewed by many as both premature and unresponsive to the issues to be addressed at the Summit. Thus, the Summit quickly became bogged down in a highly polarized debate on the merits and timing of the FTAA. For Miguel Insulza, the Secretary General of the Organization of American States (OAS), the issue of the trade agreement “should never have been brought up at the summit,” as the issue threatened to derail a “meeting convened for something else.” Others, including Summit host Nestor Kirchner, President of

—continued on the following page

IN THIS ISSUE

Labor Update 6

Oil and Human Rights in the Ecuadorian Amazon..... 8

Foreign Aid Update 11

Gunmen in Sister Dorothy Stang Murder Tried and Sentenced 13

USTR Obstacle to Progress on Labor Rights in Andean Region... 14

JEFF YOGT



Nobel Peace Prize laureate Adolfo Esquivel marches against the FTAA in Mar del Plata, Argentina.



Trade

continued from the previous page

Argentina, were less reserved in their criticism. At the inaugural ceremony, Kirchner explained to the audience (and directed to President Bush) that “[w]e will not be served by just any integration, but one that recognizes the diversities.” One diplomat attending the summit, speaking anonymously, summed up the Latin American response: “We’ve almost all of us been down that road, and it didn’t work. The U.S. continues to see things one way, but most of the rest of the hemisphere has moved on and is heading in another direction.”

Elsewhere in Mar del Plata, tens of thousands of opponents to U.S. foreign policy toward Latin America attended the Third People’s Summit (Tercer Cumbre de los Pueblos), which brought together organizations and individuals from around the world to discuss alternative economic and social policies. At the conclusion of the popular summit,

“We’ve almost all of us been down that road, and it didn’t work. The U.S. continues to see things one way, but most of the rest of the hemisphere has moved on and is heading in another direction.” —President Nestor Kirchner

participants marched through the Mar del Plata streets in opposition to U.S. policy initiatives. Following the march, Venezuela’s President Hugo Chávez addressed the crowd assembled in the municipal soccer stadium, declaring, albeit prematurely, the death of the FTAA. The popular protests, together with the official repudiation of the U.S. agenda at the Summit, turned into a significant public relations debacle for the Bush Administration.

Saving Face at the 2005 Summit

In order to “save” the Summit and emerge with a Final Declaration, a deal was struck whereby no unified position on the FTAA resulted. Instead, the region’s emergent trade blocs separately stated their positions. Mercosur (Brazil, Argentina, Uruguay and Paraguay) decided to reject further negotiations until real progress is made on the reduction of U.S. and European agricultural subsidies in the WTO

Doha Round. The other position, promoted by the U.S. and allied countries, expressed their interest in moving forward with the agreement immediately. Venezuela’s Hugo Chávez rejected the FTAA outright and instead promoted his own trade project – the Alternativa Bolivariana para América Latina y El Caribe (ALBA).

Election Cycle Roughens the Road

Since the conclusion of the Summit, several countries have elected presidents who ran on platforms that explicitly rejected such agreements. Bolivia’s President Evo Morales dismissed the possibility of negotiating a trade agreement with the U.S. (see below). Ollanta Humala, who faces former president Alan García in a run-off election in June, declared that he would suspend the agreement already negotiated between Peru and the U.S. if elected. Alan García has called for a renegotiation of the agreement if elected. In Costa Rica, Congressman Ottón

Solís, who ran on an election platform that called for the renegotiation of DR-CAFTA, came from nowhere to nearly defeat former president Óscar Arias, a vigorous supporter of such trade agreements. Furthermore, recent opinion polls in Colombia, Ecuador and Peru show declining popular support for the FTAA. President Bachelet of Chile has been the only one of the few recently elected presidents in South America to openly support the FTAA, albeit an “FTAA-light.”

Colombia and Peru—One step forward, two steps back?

The U.S. recently concluded negotiations for bilateral free trade agreements with Peru on December 7, 2005, and with Colombia on February 27, 2006. While it appeared earlier that Ecuador might finalize an agreement this year, many are skeptical that an agreement can or will be reached (see below). The U.S.-Peru and U.S.-Colombia FTAs follow on the

heels of the Dominican Republic-Central America Free Trade Agreement (DR-CAFTA), which narrowly passed in the U.S. Congress in 2005, due to strong objections over the labor rights provisions, among others. It is unclear when these agreements, which in most respects are identical to or surpass DR-CAFTA, will come up for a vote in the U.S. in 2006. The shortened U.S. legislative calendar, due to the mid-term elections, means that most legislative work will have to be done before the summer recess. Only the Peru FTA has any real chance at consideration. Also, most members of the U.S. Congress will not likely want to engage in another bruising trade fight so close to their election campaigns. Thus, most are resigned to a vote on the agreements in 2007, although a lame duck vote in November or December 2006 is a possibility.

Some members of the U.S. Congress, including Representatives Sander Levin (D-MI) and Charles Rangel (D-NY), who sit on the influential House Ways and Means Committee, have already announced a bitter fight if the labor chapter of the Peru agreement is not vastly improved. In an effort to mend fences following the CAFTA vote, or at least to give the appearance of doing so, U.S. Trade Representative (USTR) Robert Portman promised to consult with Congress and to take into account its concerns in future trade deals. However, the US-Peru Labor Chapter employs the same standards that provoked the ire of Congress in 2005. Principal among them is that the agreement does not require that domestic labor laws comply with the international standards established by the International Labor Organization (ILO). Rather, the agreement contains a commitment only to “strive to ensure” compliance with the ILO Core Labor Standards, set forth in the ILO Declaration on the Fundamental Principles and Rights at Work. This commitment is not subject to the enforcement mechanisms of the agreement. Congressional opponents find the language especially appalling given that Peru’s president, Alejandro Toledo, made public statements last year in support of a trade agreement that would include an enforceable commitment to comply with ILO core labor standards.

Bolivia Upturns the Table

Although the U.S. initially intended to include Bolivia in negotiations for the Andean Free Trade Agreement, the Bush Administration later declined to do so, citing political instability and uncertainty over the treatment of investments under the 2005 Hydrocarbons Law. Now, however, the table has

been turned. On March 15, President Morales announced that his government would “never” negotiate a free trade agreement with the U.S., arguing that such an agreement would negatively impact small, medium and large Bolivian producers. In its place, the government has proposed the *Tratado de Comercio entre los Pueblos (TCP)*, People’s Trade Agreement. The objectives of the TCP include “promoting a model of trade integration between people that limits and regulates the rights of foreign investors and multinationals so that they serve the purpose of national productive development.” Ideally, such an agreement would allow signatory governments to retain critical policy space to promote domestic industries and agriculture and to retain public ownership of basic services. Bolivia signed just such a trade agreement with Venezuela and Cuba on April 29, which sets forth a broad range of commercial and non-commercial commitments such as literacy and healthcare programs between the three nations.

Additionally, Bolivia is pressing for an extension of existing trade preferences under the Andean Trade Promotion and Drug Eradication Act (ATPDEA). These preferences, which expire on December 31, 2006, provide duty free access to the U.S. market for a limited number and quantity of Bolivian exports, namely textiles, jewelry, tin, leather goods, and furniture. While Bolivia may continue to export some of these and other products duty free under other trade regimes, the textile industry, which is highly concentrated, will likely suffer without an extension or the identification of markets elsewhere. Bolivia may have a brief reprieve if the U.S. Congress approves a bill introduced on March 30 to extend preferences to all Andean countries for one year. That move was meant to be a stop-gap for countries like Colombia, which have negotiated a free trade agreement but will not likely have it ratified before the expiration of the preferences.

Ecuador—¿Quizás?

Ecuador may be the last of three Andean nations to conclude a free trade agreement with the U.S., although that is looking less likely. The latest negotiating round, which commenced on March 23 in Washington D.C., was expected by some to be the last. However, the negotiators found themselves with much ground to cover on a number of highly sensitive issues, such as agriculture, intellectual property and rules of origin (regulations on the

Trade

continued from the previous page

export of important exports such as tuna). Following nearly two weeks of talks, it became clear to the Ecuadorian team that they would be unable to reach an agreement that differs substantially from the agreements struck with Colombia and Peru. Following the March round, Ecuador proposed additional negotiations but the USTR did not take them up on the offer. One reason offered was the mid-April passage of a new hydrocarbons law that would impose a 50% tax on windfall profits.

Prior to the hydrocarbons reform, Ecuador received roughly 20% under the terms of contracts negotiated when oil was trading at less than \$20 a barrel. For example, Ecuador received \$2.50 for each barrel of crude oil sold, while operators received \$12.50 under the typical contract, which set the price of oil at \$15. When the price of oil exceeded the \$15 a barrel rate, the operator reaped the excess. The new law would give the state a 50% share for oil sold above the contract price. It is expected that the move would generate an additional \$250 million this year alone.

Trade negotiations with Ecuador were put into a “deep freeze”, however, when the government cancelled a lucrative oil contract with U.S.-based Occidental Petroleum. Ecuador claims that Occidental had breached its contract, justifying the measures taken. Occidental replied by filing a claim against Ecuador in the International Center for Settlement of Investment Disputes (ICSID), demanding \$1 billion dollars, under the terms of a bilateral investment treaty. Secretary General of the Organization of American States (OAS), José Miguel Insulza, sharply criticized the U.S. for so quickly condemning Ecuador over the recent dispute with Occidental Petroleum. “I don’t think more than a few hours passed between the Ecuadorian announcement and the U.S. response,” said Mr Insulza. He added, “These kind of things cause resentment ... and that is not good for the hemisphere.”

Ecuador also faces significant pressures at home. Protests organized principally by the Confederation of Indigenous Peoples of Ecuador (CONAIE) erupted throughout the country on March 13. Protestors opposed the planned FTA with the U.S., fearful of the agreement’s impact on rural Ecuador. Thousands blockaded roads and burned tires in hopes of blocking commerce and bringing the government to the table.

However, the government refused to be swayed by the protests. Instead, it declared a state of emergency in four departments, giving the police and military the authority to impose curfews and make arrests. On the streets of Quito, police fired tear gas at students and indigenous activists that were marching on the government palace. After 11 days, CONAIE called off the protests, but warned that the cessation was temporary and that the movement would “define new actions ... with much greater radicalism.”

U.S. Pressures Central Americans to Extract Concessions Beyond DR-CAFTA

With the exception of Costa Rica, all countries party to DR-CAFTA ratified the accord in 2005. However, ratification of the agreement was only the first step. Legislatures have had the difficult task of passing legislation to make national law conform to the agreement. This task is all the more difficult now that the U.S. is demanding more from the Central American governments than what was agreed to at the negotiating table. Enrique Lacs, Vice Minister of Foreign Trade for Guatemala explained to the New York Times that, “[i]n some areas, CAFTA is not precise” and that the U.S. is demanding “precision based on its criteria.” Such changes include strengthening laws on intellectual property rights, a measure strongly opposed by public health advocates for its potential to impact access to affordable medicines. These concerns were also reflected in an April 7 letter from nine members of the U.S. Congress, urging USTR not to press Guatemala for legal or regulatory changes that go beyond the scope of the trade agreement. With regard to agriculture, the USTR has demanded that the Central American governments enact new regulations on food safety and inspection which would require them to accept U.S. meat inspection as equivalent to their own – thus prohibiting them from conducting their own health inspections.

The USTR has also demanded the renegotiation of CAFTA rules governing textiles and apparel, a move meant to fulfill a promise to U.S. Congress members from textile producing states who otherwise would have opposed the agreement. At issue was a demand to renegotiate the rules of origin on the production of pockets and linings so as to require more U.S. inputs. Nicaragua and Honduras recently negotiated textile compensation in exchange for accepting the change. Despite

fast track rules, which prohibit members from amending trade agreements, this change is a clear indication that it is possible when the political will to do so exists.

The first to ratify CAFTA, El Salvador was also the first to pass the legislation necessary to bring its domestic laws in line with the agreement. The USTR thus recommended that the agreement with El Salvador enter into effect on March 1, 2006. On March 15, Honduras passed implementing legislation and, with Nicaragua, joined El Salvador as CAFTA compliant on April 1. In Guatemala implementing legislation formulated along the lines demanded by the U.S was passed in mid-May. However, USTR continues to make further demands of Guatemala primarily in the area of



President Hugo Chávez addresses crowd at the People's Summit as then-presidential hopeful Evo Morales looks on.

intellectual property In Costa Rica, the agreement has yet to be debated in its legislature. Incoming president Óscar Arias has promised that it will be among the first things he does.

Endnotes

- 1 The FTAA ran aground following the collapse of the WTO Round in Cancún, Mexico in 2003, due in large part to the failure of the member states to make progress on the reduction of agriculture subsidies in the developed nations. The FTAA Ministerial in Miami, which took place only weeks after the Cancún fiasco, was doomed to failure from the start.
- 2 Swann, Christopher and Edward Alden, *Focus on bilateral trade deals*, Bush is urged, *Financial Times*, Apr. 3, 2006.
- 3 The official theme for the Fourth Summit was "Creating Jobs to Fight Poverty and Strengthen Democratic Governance."
- 4 Para Secretario General De La OEA, El ALCA Nunca Debio Haber Sido Introducido En La Cumbre, *La Clarín*, Nov. 4., 2005.
- 5 Bush Faces Tough Time In South America, *Financial Times*, Nov. 2, 2005.
- 6 See, Bumiller, Elisabeth, *Far Away from Home, No Rest for a Weary President*, *LA Times*, Nov. 7, 2005
- 7 A recent analysis of the Doha Development Round, undertaken by the Carnegie Endowment for International Peace finds that the net gain from trade liberalization along the Doha Framework would be a mere 0.2% increase in GDP. Many of the least developed countries, most of them in Africa, would actually suffer important economic setbacks from the so called "development round." See, Polaski, Sandra, *Winners and Losers: Impact of the Doha Round on Developing Countries*, Carnegie Endowment for International Peace, 2006.
- 8 For more information on the ALBA, see <http://www.alternativa-bolivariana.org>.
- 9 Reuters, *Peru leftist candidates aim to scrap US trade deal*, Mar. 31, 2006.
- 10 In Ecuador, a March 2006 survey conducted by Cedatos-Gallup found that 50% opposed the agreement and 35% supported the agreement. In Colombia, a 2006 Gallup poll showed support for the agreement had plummeted from 70% to 37%, while opposition increased from 15% to 49% See, Carlos Alberto Hernández, *Mitad de Colombianos Rechaza Firma del TLC*, *La República*, Feb. 3, 2006.
- 11 Haskel, David, *New Chilean Leader to Push Conclusion Of Free Trade Area of the Americas Pact*, *BNA*, Mar. 29, 2006, p. A-33.
- 12 The U.S. and Peru formally signed the agreement on April 12, 2006. As of this writing, the U.S. and Colombia had yet to ink the deal. See, Gedda, George, *US, Peru Sign Free Trade Agreement*, *Washington Post*, Apr. 12, 2006.
- 13 Schor, Elana, *Peru, Colombia Spark Free-Trade-Pact Déjà Vu*, *The Hill*, Mar. 15, 2005.
- 14 See, *Evo Morales Descarta TLC con Estados Unidos*, *La Prensa*, Mar. 15, 2006. President Morales explained, "We are never going to negotiate the free trade agreement. I want the Bolivian people and the people of Latin America to know that."
- 15 The text of the agreement is available at <http://quest.quixote.org/andean/bolivia/pta>.
- 16 See, *BBC, Leftist trio seals Americas pact*, posted April 29, 2006 at <http://news.bbc.co.uk/2/hi/americas/4959008.stm>. See also, *Bolivia, Venezuela y Cuba firmarán el TCP el día 29*, *La Prensa*, Apr. 26, 2006 and *TCP no define qué productos venderá a Venezuela y Cuba*, *La Prensa*, Apr. 27, 2006.
- 17 *Cuatro petroleras quieren renegociar sus contratos*, *El Comercio*, April 26, 2006
- 18 *U.S. Freezes Ecuador FTA After Government Cancels Occidental Contract*, *Inside U.S. Trade* May 19, 2006.
- 19 Lapper, Richard, *US 'too hasty' in move to condemn Ecuador*, *Financial Times*, May 22 2006
- 20 Malkin, Elisabeth, *Central American Trade Deal Is Being Delayed by Partners*, *New York Times*, Mar. 2, 2006.
- 21 *Honduran reforms pave way for CAFTA*, *Houston Chronicle*, Mar. 16, 2006.
- 22 *USTR Calls for Further Steps After Guatemala Approves CAFTA Bill*, *Inside U.S. Trade*, May 26, 2006.

Labor Update

Human Rights of Colombian Trade Unionists Continue to be Violated, according to ILO and Colombian NGOs.

The Escuela Nacional Sindical (ENS), the Medellín-based labor rights organization, recently issued its report on human rights violations committed against trade unionists in 2005. Fortunately, the report reflects a slight decline in the number of trade unionists assassinated last year, down to 70 from 94 the year before. Other human rights violations, such as death threats and arbitrary detentions, occurred with alarming frequency, at 260 and 56 cases respectively.¹ In those where the perpetrators were identified and recorded, paramilitary organizations and the state were deemed responsible for the majority of

Colombia. In the two years that the two nations negotiated the agreement, approximately 150 union members and leaders were murdered. These murders, in addition to the numerous obstacles to exercising the rights of freedom of association, organizing and collectively bargaining, amply demonstrate that the Colombian state does not adequately respect fundamental labor rights.⁵

In Colombia, most crimes against trade unionists are not investigated or prosecuted, allowing a state of impunity to continue. In response to a May 2004 request for information by ENS about the state of investigations into

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— ILO Committee on Freedom of Association

these violations.² Although overall human rights violations were down from the previous year, ENS found that the decline reflects foremost a change in tactics by the paramilitaries. In order to give the appearance of adhering to the demobilization process, paramilitaries have opted to threaten trade unionists and their families rather than to kill them—an act which chills union activity but generates less alarm from the international community.³ Thus, regardless of whether the grisly year-end number is up or down, the fact that trade unionists in Colombia are unable to exercise their basic labor rights remains unchanged.⁴

Apart from the violations of national and international law that these cases represent, and the failure of the state to adequately enforce the law (or refrain from violating it), they should also be viewed in the context of the recently concluded free trade agreement between the United States and

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 of them. The Human Rights Observatory of the Office of the Vice President noted that for the 1,981 assassinations of trade unionists confirmed by the government since 1992, only 31 persons, linked to 19 cases, were jailed for their crimes. The CUT, Colombia’s largest union confederation, estimates the level of impunity at 99.44%

The International Labor Organization (ILO) has also condemned the alarming level of impunity in Colombia. In 2005, the ILO Committee on Freedom of Association stated that:

“...the lack of investigations in some cases, the limited progress in the investigations already begun in other cases and the total lack of convictions



Labor rally in Plaza Bolívar, Bogotá, Colombia

underscore the prevailing state of impunity, which inevitably contributes to the climate of violence affecting all sectors of society and the destruction of the trade union movement. The Committee once again urges the Government, in the strongest terms, to take the necessary measures to carry on with the investigations which have begun to put an end to the intolerable situation of impunity so as to punish effectively all those responsible.”⁶

Due to the excessive violence and the other numerous violations of ILO Convention 87, which relates to the right to freedom of association, the ILO sent a high level mission to Colombia in October 2005. The purpose of the mission was to visit with workers, employers and the government to better understand the complex dynamics that foster impunity for labor violations. At the conclusion of the mission, the ILO again confirmed that impunity

continued to be a serious problem, stating,

“As for the question of impunity with regard to the significant violence and threats suffered by trade union leaders and members, the members must observe that, notwithstanding the recognition by the Government of the importance of the problem and the many efforts to address this problem, as well as the undeniably greater security within the country for all citizens of Colombia, the reality is that impunity still prevails.”⁷

This finding undoubtedly led the Governing Body of the ILO, on March 31, 2006, to consider a proposal to establish an office in Colombia to facilitate communication between the Colombian government and the ILO Committee on Freedom of Association to combat impunity and to promote freedom of association.

Endnotes

- 1 *Informe sobre la violación a los derechos humanos de los y las sindicalistas colombianos en el año 2005*, Escuela Nacional Sindical (2006), p. 5.
- 2 According to ENS, the state was responsible for 18 percent of the violations, paramilitaries 20.5 percent, and the guerrilla .9 percent. In 58.49 percent of the cases, the perpetrators were not identified or no data was available. See, *id.* at p. 11.
- 3 *Informe*, *supra* at n.1, p. 19-20.
- 4 The International Centre for Trade Union Rights, in London, has also posted reports of murders and death threats for the first 3 months of 2006. They include: the murder of Carlos Arciniegas Niño, of the agricultural workers' union SINTRAINAGRO on January 2; the murder of Zemana Bermeo, of the Cauca teachers' union on February 14; the murder of Héctor Díaz Serrano, member of the oil workers' union USO on March 2; the disappearance of Jaime Enrique Gómez Velásquez, former President of the telephone workers' union, on March 21; the death threat upon Plutarco Vargas Roldán, member of the food workers' union SINALTRAINAL and his family.
- 5 A fact sheet outlining the major shortcomings in the Colombian labor code is available at www.wola.org.
- 6 ILO Committee on Freedom of Association, Case No. 1787, Report No. 337 (June 2005), para. 492(e), available at <http://www.ilo.org/public/english/standards/relm/gb/docs/gb293/pdf/gb-7.pdf>.
- 7 ILO Committee of Experts on the Application of Conventions and Recommendations, Observation on the Freedom of Association and Protection of the Right to Organize Convention (No. 87), (October 2005).

Oil and Human Rights in the Ecuadorian Amazon

The Sarayaku Case before the Inter-American Commission on Human Rights

BY MARIO MELO, CDES, AND JEFFREY VOGT, WOLA

Violent conflicts over oil exploration and exploitation, and the redistribution of Ecuador's oil wealth, roughly 25 percent of the country's GDP, have become almost routine. In March 2006, for example, workers at Petroecuador went on strike to demand overdue wages and direct hire by the company rather than through subcontractors, a method of employment meant to minimize workers' labor rights. Two days later, the government declared a state of emergency in three eastern provinces and placed them under military control. Subsequently, troops used tear gas against the strikers in an attempt to force them from the oilfields and arrested one of their leaders. This followed unrest in February 2006, when protestors in the Napo province occupied a pumping station in Sardinas to demand more of the country's oil wealth to be spent on infrastructure and job creation. Troops reportedly injured three protestors when

indigenous people have a right to prior consultation, and in many cases free prior informed consent, by the state before natural resources may be exploited and that, if exploited, fair compensation for use of their land and resources.¹ Those rights are rarely respected in practice. In Ecuador's case, irresponsible oil exploration, with little oversight or controls, has had a major impact on the rights of indigenous and other communities to occupy, control, and use their lands.

One of the best-known cases in Ecuador is that of Texaco. For almost 30 years, Texaco (now Chevron) explored for and extracted oil in the Ecuadorian Amazon, the *Oriente*, much of which belongs to indigenous communities. When Texaco pulled out in 1992, the multinational left behind an environmental disaster, with entire communities displaced and suffering illnesses, including cancer, from the leakage of hundreds of open toxic waste pits. To date, these pits continue to leak into the

"Fueling much of the conflict in Ecuador, and throughout Latin America, is the violation of indigenous peoples' collective rights to lands and natural resources by the state and/or by national and multinational corporations that exploit natural resources there."

they opened fire. By the week's end, the government agreed to negotiate the protestors' demands.

Fueling much of the conflict in Ecuador, and throughout Latin America, is the violation of indigenous peoples' collective rights to lands and natural resources by the state and/or by national and multinational corporations that exploit natural resources there. Mining, drilling, dam building and logging have all impacted indigenous land. National and international law generally provides that

water table, polluting rivers and streams used by tens of thousands of people for their basic needs. A federal lawsuit against Texaco was originally filed in New York in 1993, *Aguinda v. Texaco*. The litigation was provisionally transferred to a court in Ecuador in 2003, where it continues to date.²

The Sarayaku Case

The case of Sarayaku, currently pending before the Inter-American Commission on Human Rights (IA-CHR), is among the latest to assert the rights of indigenous people to their land and natural resources against an extractive industry. The Kichwa commu-

Dr. Mario Melo is the principal author of this article. Jeff Vogt contributed to the text, translated it and edited it for form and content. Special thanks to Esperanza Lujan of the Indian Law Resource Center for numerous useful comments and insights.

nity of Sarayaku is made up of six communities and approximately one thousand inhabitants. Sarayaku's ancestral territory is located in the center of Ecuador's Amazon region and consists of nearly 135,000 hectares that were legally titled to the community in 1992. On July 26, 1996, the Ecuadorian government granted the Argentine oil company Compañía General de Combustibles (CGC) a concession to oil Block 23, a block of about 200,000 hectares, 65 percent of which lie in Sarayaku's territory. The U.S. oil company Conoco-Phillips purchased Burlington Resources in March 2006, which owned a 50 percent interest of the rights to Block 23.

The Ecuadorian government allegedly granted this concession without previously consulting or informing the people of Sarayaku, or any other indigenous peoples in the affected area. Indeed, the government has yet to conduct any sort of judicial process of notification, consultation or consent with the Sarayaku regarding petroleum exploitation activities in their territory, despite the fact that national legislation as well as international human rights law requires it to do so. For decades, the Kichwa people of Sarayaku have opposed oil operations on their ancestral lands and territories, based on the potential negative impacts that such

activities might have on their sacred land, cultural integrity, and their quality and way of life.

Nevertheless, CGC resorted to entering Sarayaku's territory, without consent, to conduct seismic exploration. In an effort to stop CGC's activities, in late 2002 and early 2003, the Sarayaku declared a state of emergency, mobilized its population and organized self-denominated "Campos de Paz y Vida" or "Camps for Peace and Life" to restrict any further incursions by CGC and the military. On January 25, 2003, four young members of the community were kidnapped from the Tiutihualli camp by members of the armed forces and CGC workers. According to testimony before the IACHR on October 21, 2005, Fabián Grefa recounted how he was kidnapped and brought to the CGC headquarters in Chontoa, where he was beaten by CGC workers before finally being bound and thrown onto a giant anthill. Many hours later, the soldiers and police employed by the oil company finally took Grefa to a police station in Puyo. Since late 2002, the community of Sarayaku and its leaders have experienced intrusions, harassment, and threats by members of the armed forces and CGC personnel.

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The Sarayaku have been cut off from the Bobonaza River, the lifeblood of their community.

Sarayaku

continued from the previous page

The Sarayaku Case in the Inter-American System of Human Rights

In early 2003, leaders from Sarayaku appeared before the IACHR to ask the Commission to intervene to protect the rights of the community that were being violated by CGC's exploration activities. In May 2003, the IACHR issued precautionary measures to protect the life and integrity of the community, as well as the community's special relationship to its land. The government failed to comply with

the measures, causing the IACHR to turn to the Inter-American Court for provisional measures. In July 2004, provisional measures were authorized by the Court, urging the government to protect the rights and integrity of the leaders and members of Sarayaku and to investigate the violent acts committed against the people. Importantly, the Court also ordered the government to

guarantee the right to access the Rio Bobonaza river. The river, which has been blocked by allies of CGC in order to force the Sarayaku to negotiate with the company, is the only way to access the community other than by small aircraft. The government again failed to comply with the measures and, in June 2005, the Inter-American Court renewed the

provisional measures and expanded them to include an order for the immediate removal of all explosives used by CGC for exploration in Sarayaku's territory.

According to official information submitted to the Subsecretary of Environmental Protection, there are 476 perforations in Sarayaku's territory where CGC placed individual loads of 3 to 5 kilograms of highly explosive material. In total there are 1,433 kilograms (nearly a ton and a half) buried 12 meters deep in the earth and an unknown quantity abandoned on the surface of Sarayaku's land. The Ministry of Energy has acknowledged that this particular type of explosive is very dangerous because it can easily detonate inadvertently.

The Most Recent Hearing

The case before the IACHR is ongoing, with the latest round of testimony taken in March 2006. There, the government presented several of its own witnesses to recount various key events in this conflict. However, one "witness" alleged that he could provide testimony regarding the events that occurred near Sarayaku, even though he had been studying miles away in Quito at the time of the events. Another government witness provided testimony even though he had not been officially included on the witness list prior to the hearing. At the end of the hearing, the government proposed a friendly settlement, which the community agreed to review, but with great skepticism. The people of Sarayaku have since decided not to accept the government's proposed friendly settlement and have requested that the Commission continue to finalize its review of the case.

PHOTO FROM AMAZON WATCH



Endnotes

1 See, e.g., International Labor Organization (ILO) Convention 169, the Draft United Nations Declaration on the Rights of Indigenous People, and the Draft American Declaration on the Rights of Indigenous Peoples.

2 For more information on the history and current status of this case, see Amazon Watch at www.amazonwatch.org. See also the Texaco campaign website - www.chevrontoxico.com.

3 For more information, see www.sarayaku.com.

Foreign Aid Update

Development Aid Declines Again

The Bush Administration has once again slashed economic development assistance to Latin America. Indeed, this is the third consecutive year in which funding has declined, with one notable exception: a request of \$30 million in new funding for the Office of Transition Initiatives.¹ In the FY07 budget, Development Assistance fell 28 percent, from \$254.4 million in FY06 to \$181.8 million in FY07. Similarly, Child Survival and Health programs declined 9 percent over the same period, down from \$140.9 million to \$128 million. Economic Support Funds (ESF) is the sole program to experience an increase, from \$120.7 million to \$152 million. However, twelve countries in Latin America are ineligible for ESF funds because they have refused to sign controversial “Article 98” agreements with the United States (see below). Further, much of the new ESF funds are directed to the implementation of the Dominican Republic – Central America Free Trade Agreement (DR-CAFTA). Even with the increase in ESF funding, overall economic assistance levels to Latin America will have fallen 17 percent from FY05 to FY07.

Additionally, Honduras and Nicaragua, which signed compacts with the Millennium Challenge Corporation (MCC) in 2005, have yet to receive promised development funds. As holders of a MCC compact, they have been excluded from receiving additional rural development funds that were promised in a deal brokered by U.S. Trade Representative Robert Portman and Senator Jeff Bingaman (D-NM). In an effort to secure backing for CAFTA, Mr. Portman agreed to support additional spending for rural development assistance of \$10 million per year per country, for up to five years, or until such time as a country may sign a MCC compact.

Administration Admits Misstep on Article 98

In 2002, Congress passed the American Service-Member Protection Act (ASPA), cutting off military aid to countries that approved the establishment of the International Criminal Court, while failing to give exemptions from prosecution

to U.S. service-members. Two years later, Congress voted to cut off ESF funds through an amendment to the Foreign Operations, Export Financing, and Related Programs Appropriations Act. Rather than sign the Article 98 Agreements, however, 12 Latin American countries have instead decided to forgo the military and economic aid.²

The ASPA has recently drawn fire from Congress and the Administration, which are now rethinking the wisdom of cutting military and economic aid to Latin American nations where the U.S. is losing influence. The agreement has also led many in Latin America to further question the U.S.’s commitment to human rights, since the sole purpose of an Article 98 agreement is to exempt U.S. citizens who may be accused of committing gross human rights violations from the international court’s jurisdiction.³ Even Secretary of State Condoleezza Rice has characterized the policy as “sort of the same as shooting ourselves in the foot.”⁴

Sadly, the legality of the prosecution exemption, —questionable at best—has become a backburner issue, while the debate has focused on the potential loss of U.S. military influence in the region and the threat of China filling that vacuum. For example, General Bantz Craddock, the head of the U.S. Southern Command, told the Senate Armed Services Committee in March, “If we are not there, if we can’t provide the opportunity, someone else will. We see more and more military commanders and officers going to China for education and training. We see more and more Chinese non-lethal equipment showing up in the region.”⁵ Senators Inhofe and Clinton echoed his remarks and urged a reconsideration of current policy. “Every day we don’t, more and more people take off for wherever the Chinese facilities and training are to develop those relationships,” said Clinton. Others have also sounded the alarm; during a similar hearing, Rep. Dan Burton said that he is worried about “the leftist countries that are dealing with China.” He continued that, “It’s extremely important that we don’t let a potential enemy of the U.S. become a dominant force in this part of the world.”⁶ Thomas Shannon, Assistant Secretary of State, Bureau of Western Hemisphere Affairs, recently visited Beijing to assess China’s interests in Latin America.

Rice Announces “Transformational Diplomacy”

Early this year, Secretary of State Rice revealed a controversial new initiative—Transformational Diplomacy—which calls for, among other things, the consolidation of USAID and State Department foreign aid. The announcement met with skepticism and concern from all sides. Under this plan, a new Director of Foreign Assistance would take charge of all aid distribution, reporting directly to Secretary Rice. Perhaps most controversial was the election of Randall Tobias as the Director. Mr. Tobias was the CEO of pharmaceutical giant Eli Lilly & Co., which

ing the transmission of AIDS, drawing criticism from the human rights community.

Furthermore, many fear that the foreign aid currently administered by USAID, a formally independent agency, will become more politicized and simply channeled to those initiatives that most promote the Bush Administration’s political agenda. Inter-Action, the largest coalition of U.S. aid NGOs, criticized the proposal, expressing “concern that the same priority won’t be given to long term development as resources are siphoned to support shorter-term diplomatic or military objectives.”⁷ The Center for Global Development echoed these concerns, and pointed out that Secretary Rice did not specifically mention poverty reduction as a goal of the new, transformational approach to aid delivery.⁸ Indeed, she explained that foreign aid must

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has worked to strengthen intellectual property rights, a move expected to limit access to affordable, generic medicines in the developing world. Later, as the director of the Office of Global AIDS, he pushed ideological, abstinence-based programs and questioned the effectiveness of condoms in prevent-

be directed to “strengthen security, to consolidate democracy, to increase trade and investment and to improve the lives of their people.”⁹ So formulated, it is not difficult to imagine that foreign aid programs will be perceived in Latin America as largely political or self-interested meddling.

Endnotes

- 1 For prior years, see USAID, Budget, Latin America and the Caribbean, available at <http://www.usaid.gov/policy/budget/cbj2006/lac/>. Information for FY07 is available at <http://www.state.gov/s/d/rm/rls/iab/2007/html/60203.htm>.
- 2 To evade the ASPA restrictions, the Administration has since rerouted many of the ESF funds to local NGOs.
- 3 See Haugaard, Lisa, *Tainted Image: Latin America Perceives the United States*, LAWG (Mar. 2006), available at <http://www.lawg.org/docs/tarnishedimage.pdf>.
- 4 Trip Briefing, Secretary Condoleezza Rice, Mar. 10, 2006, available at <http://www.state.gov/secretary/rm/2006/63001.htm>.
- 5 Senate Armed Services Committee, Hearing on FY2007 Budget: Military Strategy and Operational Requirements, Mar. 14, 2006.
- 6 Hawksley, Humphrey, *Chinese influence in Brazil worries US*, BBC Online, Apr. 3, 2006, available at <http://news.bbc.co.uk/2/hi/americas/4872522.stm>.
- 7 Kessler, Glenn & Bradley Graham, *Diplomats Will be Shifted to Hot Spots*, *The Washington Post*, Jan. 19, 2006, p. A1.
- 8 Steve Radelet, *Sec. Rice’s Aid Reform Plan Falls Short*, Center for Global Development, Jan. 19, 2006, available at http://blogs.cgdev.org/globaldevelopment/2006/01/sec_rices_aid_reform_plan_fall.php.
- 9 See Secretary Condoleezza Rice, Remarks on Foreign Assistance, January 19, 2006, available at <http://www.state.gov/secretary/rm/2006/59408.htm>.

Gunmen in Sister Dorothy Stang Murder Tried and Sentenced *The Crime's Masterminds Go Unpunished for Now*

As reported in the last issue of Rights and Development, Sister Dorothy Stang, an Ohio-born nun with the Sisters of Notre Dame de Namur, was brutally murdered in the Brazilian Amazon on February 12, 2005. She had spent almost 40 years of her life supporting the struggle of landless workers to obtain land through agrarian reform and to promote sustainable farming and environmental protection. Her efforts earned her the enmity of loggers and ranchers in the area who saw her as a threat to their economic interests.¹ It is widely believed that her murder was planned and funded by a large consortium involving influential landowners in the area. An April 2005 report issued by a Brazilian Senate commission charged to investigate her murder came to the same conclusion. Two gunmen, Rayfran das Neves Sales and Clodoaldo Carlos Batista, were arrested shortly after the murder. Two local landowners, Vitalmiro Bastos Moura and Regivaldo Pereira Galvão, and their middleman, Amair Feijoli da Cunha, were also arrested later for their role in the crime.

The gunmen were found guilty on December 10, 2005, following a short trial. As the evidence was presented, it was discovered that Sales and Batista were each offered R\$50,000 (approximately US\$22,000) by ranchers to kill Sister Dorothy.² The trial and conviction of the murderers was widely seen as a test of the country's commitment to justice in land-related killings, an area in which impunity is the norm. The Pastoral Land Commission (CPT) – the social justice arm of the Catholic Church with which Sister Dorothy worked – reports that 1,385 rural workers, trade unionists, lawyers, and religious workers aligned with the struggle for a rights-based land reform were assassinated between 1985 and

2004. Only 77 of those cases went to trial, resulting in the conviction of only 15 intellectual authors and 65 gunmen. In just the state of Pará, where Sister Dorothy lived and died, the CPT recorded the assassination of 772 rural workers in the context of land conflicts between 1971 and 2004.³ According to Amnesty International, “The violence has been sustained by a painfully slow and generally ineffective judicial system that perpetuates a state of impunity.”⁴

The judge sentenced Sales, who shot Sister Dorothy six times with a .38-caliber revolver, to 27 years in prison and Batista, charged as an accomplice, to 17 years.⁵ The speed with which the gunmen were tried and sentenced and the severity of their sentences were historic. However, as Sales is a first-time offender sentenced to more than 25 years, he is automatically eligible for a new trial. Sadly, the government decided to try the gunmen separately from the landowners and their middleman. A separate trial was later set for the middleman, Mr. da Cunha, for April 26-27 in Belém do Pará, resulting in a sentence of 18 years for his participation in the murder.⁶ However, no trial has been set for the intellectual authors of the crime, Moura and Galvão. Until they are all brought to trial, the murder case will remain unresolved.⁷

Supporters of the landless movement fear that domestic and international pressure will diminish following the successful prosecution of the gunmen. Further, the landless are concerned that little will be done to investigate the involvement of the consortium of loggers and ranchers in Pará into this and other crimes. Until other serious investigations are conducted and arrests are made, there is no question that many more landless workers will die in Brazil, and that the perpetrators will go unpunished.

Endnotes

- 1 See, WOLA, *The Struggle for Land in Brazil*, Rights and Development Monitor, August 2005, p.2.
- 2 BBC News, *Amazon Nun's Killers are Jailed*, Dec 11, 2005, available online at <http://news.bbc.co.uk/2/hi/americas/4517868.stm>.
- 3 Data obtained from the Pastoral Land Commission, Brazil.
- 4 Amnesty International, Brazil: *Amnesty International calls for*

an end to the bloodshed after activist's murder, AI Index: AMR 19/003/2005, February 14, 2005.

- 5 See *Amazon Nun's Killers*, supra, n. 2.
- 6 Astor, Michael, *Brazilian Farmer Sentenced to 18 Years*, Washington Post, April 26, 2006.
- 7 *Id.*

USTR Obstacle to Progress on Labor Rights in Andean Region

The United States recently concluded negotiations for two new trade agreements in Latin America, the first with Peru on December 7, 2005, and subsequently with Colombia on February 27. Negotiations with Ecuador have been suspended after two years of negotiation, due in part to the passage of a hydrocarbons law that would increase taxes on oil companies operating in Ecuador. The U.S.-Peru and U.S.-Colombia FTAs follow on the heels of the Dominican Republic-Central America Free Trade Agreement (DR-CAFTA), which narrowly passed in the summer of 2005, over strong objections in Congress on labor rights, among others.

Following CAFTA’s passage, the US Trade Representative (USTR) promised to consult with Congress and to take into account its concerns in future trade deals. However, a review of the Labor Chapter (Chapter 17) of the Peru and Colombia FTAs demonstrates that any such promises were all but empty.

Like DR-CAFTA, the Peru and Colombia FTAs:

- ▶ Do not require that domestic labor laws comply with the international standards established by the International Labor Organization (ILO). Instead, Peru and Colombia have committed only to “strive to ensure” compliance with the ILO core labor standards. This commitment is *not* subject to the enforcement mechanisms of the agreement. President Alejandro Toledo of Peru made public statements last year *in support* of a trade agreement that would include an enforceable commitment to comply with ILO core labor standards. The absence of such a commitment in the final agreement is attributable entirely to the USTR.
- ▶ Do not prevent Peru and Colombia from “weakening or reducing the protections afforded in domestic labor laws” to “encourage

trade or investment.” Under the agreement, Peru and Colombia could roll back their labor laws without threat of sanction. This is not an academic point. In 2005, Mexico drafted legislation to substantially weaken its labor code, despite an “enforceable” commitment not to do so in the labor side agreement to NAFTA.

- ▶ Only require that Peru and Colombia effectively enforce their own laws as to the right of association; the right to organize and bargain collectively; the prohibition on the use of any form of forced or compulsory labor; labor protections for children and minors; and acceptable conditions of work with respect to minimum wages, hours of work and occupation safety and health. Once again, the agreement excludes non-discrimination, a core labor right, from the list, *despite a request by the Andean nations to include it.*
- ▶ Excuse non-compliance with the labor chapter’s obligations if it is deemed “a reasonable exercise of discretion” or a “bona fide decision regarding the allocation of resources.” Thus, the “failure to enforce” standard may be denied any force of law if a member state can satisfy the ambiguous test of “reasonableness” or show that their under-funded Ministries of Labor allocated resources toward some other objective.
- ▶ Contain mechanisms for addressing violations that are wholly inadequate. Once again, a labor dispute is subject to a more onerous dispute resolution procedure than commercial disputes arising under the agreement. The labor enforcement procedures also cap the maximum amount of fines at \$15 million and allow Peru and Colombia to pay those fines to itself with little oversight.

WOLA and the Rights and Development Program

WOLA's *Rights and Development* program seeks to place human rights at the center of development policy debates by analyzing the impact of U.S. and multilateral policies on the protection and fulfillment of the full range of human rights in Latin America. From a rights-based perspective, WOLA promotes policies that ensure the enjoyment of economic and social rights, including the right to an adequate standard of living, and the right of all people to participate in the political and policy decisions that shape their lives. Currently, the *Rights and Development* program monitors the following issues: the impact of trade liberalization on human rights, including labor rights and the right to food; Latin America's rural crisis and alternative models for rural development; innovations in economic and social policy in Brazil; and the role of international financial institutions in setting the development agenda, including issues of accountability and civil society participation.

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