11-1-2013

Paraguay’s Congress Clears Controversial "Privatization" Law

Andrés Gaudán

Follow this and additional works at: https://digitalrepository.unm.edu/notisur

Recommended Citation

This Article is brought to you for free and open access by the Latin America Digital Beat (LADB) at UNM Digital Repository. It has been accepted for inclusion in NotiSur by an authorized administrator of UNM Digital Repository. For more information, please contact amywinter@unm.edu.
Paraguay’s Congress Clears Controversial "Privatization" Law

by Andrés Gaudín
Category/Department: Paraguay
Published: 2013-11-01

Two months after assuming the Paraguayan presidency, businessman Horacio Cartes has convinced Congress to approve a law giving the government authority to rent out—for a period of up to 40 years and without legislative or judicial oversight—a vast array of state assets and services.

Officially named the Ley de Promoción de la Inversión en Infraestructura, the norm is more commonly referred to as the Ley de Participación Pública–Privada, or PPP. Among other things, it allows the executive to offer leases on Paraguay’s two massive binational hydroelectric plants: Itaipú, which it shares with Brazil, and Yacyretá, which it shares with Argentina.

President Cartes and the governing Asociación Nacional Republicana (ANR), better known as the Partido Colorado (PC), say the PPP will jumpstart the economy, generate jobs, and allow the country to end its chronic budget-deficit problems. The opposition Frente Guasú (FG), a coalition of political parties and social movements led by ex–President Fernando Lugo (2008-2012), dismisses the law as unconstitutional and calls it "a covert effort to privatize all the state’s assets," and said it amounts to "the surrender of national sovereignty during the next four decades."

The bill, which received final congressional approval on Oct. 28, is the second in a pair of provisions that Cartes, almost immediately upon taking office, cited as keys for "putting the country in order and creating a good government." Congress satisfied the first of the president’s goals on Aug. 22 when it passed a bill giving the armed forces extraordinary powers to intervene in domestic affairs (NotiSur, Sept. 6, 2013). "Militarization and privatization go hand in hand in the businessman-president’s strategy," Sen. Esperanza Martínez (FG) told Radio Cardinal.

Cartes and his PC backers did not include the PPP in the platform they presented to the Paraguayan people in the lead-up to last April’s elections. Nor was the law publicly debated. Only one special committee made up of PC leaders was allowed to preview the text, which was drafted by a group of presidential advisors and then fast-tracked through the legislature.

The Cámara de Diputados approved the bill in late August, just two weeks after the new government was sworn in. A month later, on Sept. 27, the PPP went to a vote in the Senate. At the president’s behest, the Senate added a number of modifications, sending the text back to the lower house, where the PC—which enjoys a comfortable majority—approved the controversial law without a debate.

Vague language

The law is unprecedented among the South American countries that, starting in the 1990s, developed neoliberal policies introducing the privatization of public facilities and services. The PPP gives the Paraguayan president unrestricted power to offer leases on "basically everything," according to the FG. As a general rule, private-public partnerships are to last for 30 years. But
the executive can extend the leases by an additional 10 years in cases where the private investor "proves" that its operation has not been completely profitable.

The "almost everything" mentioned by the FG includes public electricity generators and transport facilities; land, rail, river, and air transport; the state’s water purification and distribution network, as well as its sewage system; roads, canals, airports, hospitals, health centers, schools, universities, prisons, telephone and telecommunications services, social and urban infrastructure; and, among other things, the production and sale of cement and hydrocarbons.

Careful to avoid the term "privatization," legislators spoke instead about "concessions." The law, however, makes no mention of concessions. Critics say the omission was intentional: concessions—as spelled out in Article 202 of the Constitution—must be regulated by Congress. Another curious aspect of the PPP is the absence of any mention of the judiciary. Conflicts that might arise between the state and private sector are to be resolved via "tribunals," the new law stipulates. In drafting the law, the Cartes administration made sure no other branch of government could intervene in its decisions.

**Risky business**

Opponents say the law’s vague language ultimately puts the country at risk: by using the generic term "tribunal," without specifying which, there is a good chance PPP-related conflicts "will be resolved abroad, more specifically by the World Bank’s International Centre for Settlement of Investment Disputes (ICSID), which, as a general rule, settles in favor of private companies and against the state," the FG’s legislative bloc warned.

"This is immeasurably serious, because it unmarks the president’s authoritarian streak and because the state’s entire apparatus is left at the mercy of private greed," the FG added. "The worst part is that it involves all goods and services and, once the public-private contracts are in place, whatever debt a company accrues can end up being transformed into public debt."

As Argentina did during its privatization wave in the 1990s, Paraguay—through the PPP—will offer private investors minimum-profit guarantees. In doing so, explained Sen. Martínez, the state assumes all the risk since it will be forced to create a collateral fund, made up of public money, to be used as compensation in cases where private companies fail to meet their guaranteed-profit expectations. To create the necessary collateral fund, the state will have to draw on its various entities; commit both current and future revenue from taxes, tolls, tariffs, credits, bonds, and royalties; and divert money earned from Brazil and Argentina for their respective partnerships in Paraguay’s binational hydroelectric plants. a

"We’re handing everything over to companies which, at the end of the day, we won’t be able to control. Never in history, since its independence from Spain, has the country taken such a huge risk," said Sen. Luis Alberto Wagner, one of the few legislators from the Partido Liberal Radical Auténtico (PLRA) to oppose the law.

**Getting ready for "takeoff"**

President Cartes and his allies are celebrating the PPP’s passage through Congress. "Calm was restored, and the sun came out for Paraguay," Sen. Luis Alberto Castiglioni (PC) said following the recent Senate vote. "For that I thank my colleagues for their lofty spirit of patriotism. The approved
law is going to help consolidate national development once and for all. We’ve given the president a formidable tool."

In a statement published on the Web site of the Presidencia de la República, Cartes, whose term will expire 2017, congratulated the Senate for taking a "crucial step" that favors the county’s "final takeoff."

Even before the PPP cleared Congress, Cartes and his ministers had already begun using international forums to sell companies on the idea of leasing Paraguay’s public entities and services. During the recent XXIII Cumbre Iberoamericana, held Oct. 18-19 in Panama, the president spoke with would-be investors about the Acuífero Guaraní, a massive freshwater aquifer that also reaches into Brazil, Argentina, and Uruguay. As an incentive, Cartes extolled the many virtues of the PPP, even though it had yet to be approved. Later that same week, during an international water technology conference in Israel, Industry and Commerce Minister Gustavo Leite invited participants "to travel to Paraguay to learn about great opportunities in the water business."

Two days after that—and just four days before the Cámara de Diputados gave the PPP its final stamp of approval—French Ambassador to Paraguay Olivier Pupard visited Itaipú "together with a business delegation to learn about opportunities that Paraguay offers," according to the hydroelectric plant’s Web page. One company represented in the delegation was Lyonnaise des Eaux, a multinational with extensive investments in Central America. Lyonnaise des Eaux also had a presence in Argentina, until 2006, when then President Néstor Kirchner (2003-2007) sent the company packing after deciding to re-exert state control over the country’s essential water services, which were plagued by problems (NotiSur, April 7, 2006).

-- End --