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Labor Unions Join Forces To Oppose Paraguay’s Controversial ‘Privatization’ Law

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Twenty years after a general strike against then President Juan Carlos Wasmosy (1993-1998) provoked a backlash of state repression that decimated the country’s labor movement, Paraguayan workers are once again making their presence felt.

On March 26, the country’s various union organizations put aside their differences to carry out a massive work stoppage that paralyzed the country and served as a wake-up call for the government of President Horacio Cartes. Demanding salary hikes and other economic and labor improvements, participants also took aim at the recently approved public-private association law (ley de asociación público-privada, APP), a controversial measure allowing the executive branch to privatize a vast array of state assets and services for a period of up to 40 years (NotiSur, Nov. 1, 2013). Union members want the APP repealed.

In the weeks leading up to the strike, President Cartes gave the labor movement an unintentional boost by likening Paraguay to "a beautiful and easy girl." Cartes made his comments during a Feb. 18 meeting with potential Brazilian investors. "Use and abuse her. Make yourselves at home," he said. "This land is for you. This country is for you. I invite you, with all my heart, to work toward building a single country."

The president’s objectionable "invitation" seemed to confirm exactly what labor leaders had been warning for months: that the APP constitutes a grave threat to national sovereignty. The comments all but guaranteed, furthermore, that the upcoming strike would be a success, according to former interior minister Carlos Filizzola. Many observers now view March 26 as a real turning point for the country, especially since it forced Cartes (via Vice President Juan Afara) to enter into negotiations with the workers.

"Looting and abuse"

Of all the pressing demands put forth during the strike, union leaders made it clear that their primary goal at this point is to do away with the APP. The country’s labor groups, which have only recently begun to reorganize and make their demands heard, consider the law to be politically and philosophically unacceptable.

The issue, in fact, cuts across Paraguayan society as a whole, as evidenced by the widespread circulation of the book Saqueo y abuso: la ley de APP de Cartes (Looting and Abuse: Cartes’ APP Law), written by engineers Ricardo and Mercedes Canese (a father and daughter), who held positions in the democratic government of President Fernando Lugo (2008-2012). President Lugo was ousted in a parliamentary coup in June 2012 (NotiSur, July 13, 2012).

Officially named the Ley de Promoción de la Inversión en Infraestructura Pública, the APP is billed as a solution to the country’s structural problems. Ricardo and Mercedes Canese insist otherwise. "In reality, it is the most complete privatization project imposed in South America since neoliberal
economic ideas first started gaining ascendance, in the final decade of the last century," they explain.

The contentious law, approved last November by lawmakers from the governing Partido Colorado (PC), gives the executive unrestricted power to offer leases on (privatize) all the state’s assets, services, and public resources—without congressional oversight and without interference from local courts, which have no jurisdiction regarding conflicts the contracts might provoke.

In drafting the APP, the Cartes administration was careful to avoid the word "concession," since concessions, as dictated by the Constitution, must be regulated by Congress. But it was also careful to list, in detail, all the many state assets and functions the law encompasses: "infrastructure projects and management of services, including road projects, railways, ports, airports, waterways, dredging and maintenance of navigable rivers; social and electric infrastructure; projects related to improvement, equipment and urban development, among others." The text also mentions "projects that include the production of goods and provision of services that are themselves the subject of agencies, organizations, companies, and companies in which the state is part."

Article 34 of the law stipulates that contracts in all these areas are to last 30 years. Private companies can extend the contracts for an additional 10 years by declaring, once the original 30-year period has expired, that they have yet to obtain their anticipated rate of return.

Predicting problems
In their book, Ricardo and Mercedes Canese criticize the APP for allowing the executive, i.e. President Cartes, to "handover, privatize" all assets and services currently in the public domain. Not only are many aspects of the law unconstitutional and a threat to national sovereignty, but the model it proposes has already proven to be disastrous, the book argues. As an example, the authors point to the country’s public-transportation system, which has long operated under a public-private scheme. Despite enjoying tax breaks, subsidies, and other publicly provided perks, Paraguay’s transportation operators provide poor service, they explain. Vehicles are old, poorly maintained, and thus unsafe. And coverage is limited: the transportation network does not reach those sectors of society that most need it.

Saqueo y abuso also argues that Paraguay, by passing the APP, has jeopardized its judicial sovereignty. Conflicts that might arise between the state and private sector are to be settled by "arbitration" rather than by local courts, according to the law’s vaguely worded Article 41. Ricardo and Mercedes Canese claim that the "arbiter" is such cases will be none other that the International Centre for Settlement of Investment Disputes (ICSID), a legal branch of the World Bank that, since its establishment, has generally ruled in favor of multinationals and against national governments.

"The handing over of judicial sovereignty is such that even national laws are trumped by the contracts," the book explains. "That’s because [the APP] establishes that local courts are not to handle cases regarding public-private contracts." The authors go on to say that in other parts of the world "the application of this model has led to capital flight, services that become more precarious, and greater inequalities."

The state, furthermore, assumes all the risk in this scenario since it will be obliged, in cases where companies either suffer losses or take legal action, to provide compensation, the book explains. The APP stipulates that the money to pay for such eventualities be collected in a collateral fund.
The principal contributor to that fund is the state, which must make annual payments using public money drawn from the national budget. The law states clearly that the state must act as a trustee, meaning it must manage a fund with public money to pay companies that demand reparations or to cover legal expenses should it be subject to lawsuits. Private companies are also obliged to contribute to the collateral fund, though on a much smaller scale, to cover the costs of fines they may incur for providing poor services.

**Dirty dealings**

The unions involved in the March 26 strike are particularly concerned about how the APP will affect water services. Article 52 of the law, as Saqueo y abuso points out, lists "drinking water provision" and "sanitation and wastewater treatment" among the many services that can now be turned over to private operators.

Other things open for privatization include "the generation, transmission, distribution, and sale of electricity; hospitals, health centers, and education centers of all levels; aqueducts, pipelines, oil lines, gas lines, and penitentiaries." With respect to the last item on the list, Ricardo and Mercedes Canese acknowledge that there are serious problems with how the state currently manages Paraguay’s prisons. Experience has shown, however, that privatizing jails tends to create another problem, namely a marked increase in prison populations, they argue.

"The law is simply not negotiable. We’ll only sit down and talk with the government if it annuls [the APP] first," the Federación Nacional Campesina (FNC), which represents various campesino organizations, responded after being informed by Vice President Afara that Cartes was willing to negotiate. Of all the labor groups involved in last month’s strike, the FNC has been the most outspoken in its criticisms of President Cartes and the APP. "No one can forget that the only person really in charge of implementing [the law] is Cartes, a criminal," it added in a press release.

Information pertaining to those investigations appeared in US diplomatic cables made public in 2011 by the organization WikiLeaks (NotiSur, May 10, 2013). The documents revealed that the US Justice Department’s Drug Enforcement Agency (DEA) investigated Banco Amambay as part of an operation called Heart of Stone, which targeted organizations providing narcotics to the US consumer market. The operation also focused on illicit tobacco sales from Paraguay to Brazil and the US. Heart of Stone looked to "break up Cartes’ drug trafficking organizations" in the Triple Frontier, a tri-border region near the cities of Foz do Iguaçu (Brazil), Ciudad del Este (Paraguay), and Puerto Iguazú (Argentina).