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Venezuela: Institutions, Indecision and Referendum Turmoil

Judy Meltzer

In spite of an ongoing jurisdictional battle over a series of rulings regarding the revocatory referendum process, Venezuela's National Electoral Council (CNE) has set a tentative date— 8 August 2004, for a referendum, pending verification of sufficient signatures. It has also designated four days at the end of May (27-30, 2004) for confirmation of the signatures that are in question. Of the over 3 million signatures that were submitted by the opposition, only 1.9 million were accepted—half a million short of the 2.4 million required to force a revocatory referendum on President Hugo Chávez's mandate.

Unresolved Institutional Disputes

The verification of unconfirmed signatures, which was supposed to have been completed in February, has been delayed by court appeals and disagreement over institutional jurisdiction. In March, the CNE announced that it intended to publish the list of individuals whose signatures were in doubt and allow these individuals to "ratify" their signature at public polling stations. The opposition coalition that submitted the original signatures (lead by umbrella organization—the *Coordinadora Democrática*), appealed this authentication process to the Electoral Panel of the Venezuelan Supreme Court, which ruled against the CNE's decision. Subsequently, the Constitutional Panel of the Supreme Court attempted to thwart the Electoral Panel ruling, claiming that the latter panel did not hold the authority to rule on CNE affairs. This disagreement between Supreme Court panels is still awaiting settlement in a plenary session of the full (20-person) court, which is predicted to rule in favour of the CNE (LA Weekly Report, 06/04/04).

Indecision Among the Opposition

The Supreme Court decision may be moot, however, as the *Coordinadora Democrática* agreed to follow the new guidelines for verification set by the CNE last week. The new rules include four days for verification in May, the announcement of outcome of the verification process on June 4, and a tentative referendum date set for August 8, pending the results of the verification process. The CNE ruling also included the acceptance of approximately 100,000 previously disqualified signatures. International observers including The Carter Center and the OAS have stated their support and willingness to monitor the verification process, (despite concerns over delays in the process and earlier suggestions that using a smaller but statistically meaningful sample to validate signatures would be logistically more feasible).

On the one hand the CNE's new rules address some of the opposition requests and concerns, including the admittance of more signatures and the possibility of holding a referendum prior to August 19—after which date a vote against Chávez would

automatically result in Vice-President Rangel completing the term—something the opposition would like to prevent. On the other, the opposition will likely find that these new rules present a similar logistical challenge in terms of having to individually verify hundreds of thousands of signatures. Although they have accepted that CNE guidelines, there is likely lingering

concern that a failure to validate signatures or the discovery of high rates of falsification will undermine their overall political capital.

Ecuador

Ecuador's President Lucio Gutiérrez continues to lose his last vestiges of support, as new allegations of illegal campaign fundraising threaten to undermine the recent backing from conservative parties in Congress. In a recent poll on Presidential popularity carried out by Mexico's *Consulta Mitofsky International* in March, President Gutiérrez was the third least popular president in the region, with only 20 percent of public support, slightly more than Panama's President Moscoso and Peru's President Toledo (LA Weekly Report, 06/04/04).

President Gutiérrez has also further alienated public sector workers and former coalition members, CONAIE—the largest national indigenous organization: The former for failing to meet promises of pay increases for healthcare, prison and municipal workers as well as teachers, and the latter after Wilma Salgado, the head of the Deposit Guarantee Agency (AGD) who is known for her intolerance toward corruption, was fired earlier this month after she spoke out about misused funds. This alienation of former coalition members and the failure to fulfill campaign promises has in turn fueled the ongoing standoff between Gutiérrez and his Vice President, Alfredo Palacio. Even the support of the military, which Gutiérrez, as a former military Colonel, has counted on, has been shaken this month with rumours that some members were conspiring to oust him.

Recently, the President's only support has come from an unlikely source—the conservative opposition parties, notably the Social Christian Party (PSC). This support is politically significant, as the PSC holds the greatest number of seats in Congress, with twenty-five sitting *diputados*. This support is based on a specific bundle of reforms that are rumoured to be pending, which would pave the way for a redistribution of social spending, energy sector investment and lower interest rates (El Comercio, 28/04/04). However according to PSC leader, former President Febres Cordero, support for these reforms will not be maintained if Gutiérrez is found guilty of receiving illegal campaign funds. Earlier this month, Ecuador's Electoral Court initiated an investigation into allegations that Mexico's *Partido del Trabajo* (PT) had given an estimated US\$500,000 to Gutiérrez's campaign in 2002 (Reuters, 07/04/04). Ecuador's campaign finance rules prohibit foreign contributions. This is the second investigation into illegal campaign funds that Gutiérrez is facing, with an earlier claim related to drug money contributions still ongoing. In light of his dwindling support and pending investigations, the threat of impeachment still looms.

Even though it appears that the verification process will proceed, in order for the opposition to realize their goal of ousting Chávez they need to garner more votes in the referendum than those with which Chávez was initially elected, i.e. over 60%. A recent poll by pro-opposition media *Globovisión* indicated that, if held now, the number of votes in a recall referendum would not be sufficient to remove Chávez from office (LA Weekly Report, 20/04/04). A second poll by Alfredo Keller & Associates, released on Friday April 23, suggested a similar outcome. Of those polled, 35% supported Chávez, while 31% would vote against him in a referendum. Although most of the remaining 34% did not support Chávez, the poll indicated that they would abstain from voting due to a split in support for the opposition (Reuters, 26/04/04).

Chávez's popularity is seen to be slowly increasing, in part due higher oil prices resulting from OPEC's cut to oil production in early April, which provided Chávez with more capital to implement the social programs promised (LA Andean Report, 06/04/04). Predictions of economic stabilization and growth for 2004 due to the recovery of the oil industry have also helped buoy Chávez's popularity, despite the fact that these economic gains follow a 9% contraction in the Venezuelan economy in 2003, continued levels of high under- and unemployment, and the economy's persistent vulnerability to economic shocks.

Whether the verification process is successful or whether a referendum is held, Chávez is likely to see out the end of his term. The alternate institutional process through which the opposition can make gains is in municipal and state elections, originally scheduled for August 1, 2004. However, a singular focus on the referendum at the expense of election campaigns makes it increasingly unlikely that these elections will bring about the change desired by the opposition. ■

Judy Meltzer is a FOCAL Senior Analyst

Waiting for Justice: Beyond Nicaragua's Alemán Case

Claudia Paguaga

Justice is the foundation upon which a stable democracy should be built. In most societies, the application of justice is safeguarded by an impartial, independent judicial system, the functions of which are based on the rule of law, the separation of powers and the respect of the fundamental rights and freedoms of all citizens. When the judicial system is neither impartial nor independent, democracy is weakened. In Latin America, particularly in the case of Nicaragua, the lack of independence of the judicial system continues to constitute one of the greatest threats to emergent democracies.

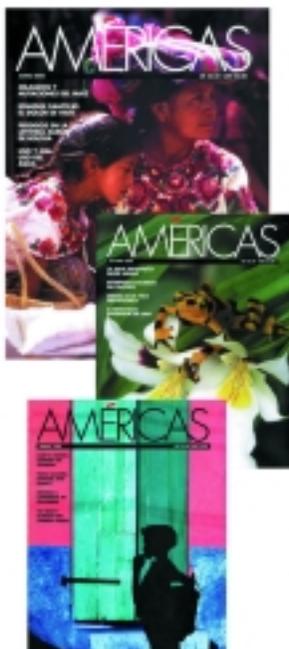
The Case of Nicaragua

The Nicaraguan judicial system is for the most part perceived as lacking independence and impartiality. It has become evident that the decisions made by judges and magistrates in the Supreme Court are to some extent influenced by the interests of the political parties to which they belong. The latest ruling in the case of former-president Arnoldo Alemán, who was sentenced to 20 years in prison in December 2003 for embezzlement and corruption during his administration (1997-2002), is just such an example of how the judicial system in Nicaragua has been politicized following the 1999 *Sandinista-Liberal Pact*.

Starting in 1999, President Alemán's governing style was becoming more personalistic. He attempted to concentrate power in his own hands and appointed his own supporters within the bureaucracy in order to increase his

odds for re-election in 2006. However, he could not consolidate his power without constitutional reforms, which required the support of Daniel Ortega and his opposition party, the *Frente Sandinista de Liberación Nacional* (FSLN). Guaranteeing important positions of power for both the *Liberal Party* (PLC) and the FSLN, Ortega and Alemán signed what became known as "*el pacto*", which became law in January 2000. For the FSLN, this political agreement brought with it power-sharing in key institutions, such as the Supreme Court, the Office of the Comptroller General and the Supreme Electoral Council. In essence, the pact created a two-party system, in which Liberals and Sandinistas alternate control of key institutions—the members of which are appointed by party affiliation (www.focal.ca/images/pdf/nicaragua.pdf).

The result appears to have drawn the Supreme Court, in theory an independent body, into the political arena. Since the Legislative Assembly voted in favour of lifting former-president Alemán's immunity from prosecution in December 2002, the Alemán case has dominated the legislative agenda and has become a way for the opposition to obstruct the government's plans (FOCALPOINT, Nov-Dec 2003).



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For example, in early April 2004, judge Juana Méndez—the same judge that dictated the December 2003 sentence in the Alemán case and whose political affiliations lie with the Sandinistas—ordered Alemán to be transferred to prison from his residential estate, where he had been serving his sentence due to medical reasons. In an apparent counter-move, deputies affiliated with the faction of the PLC that still supports Alemán within the Legislative Assembly threatened to boycott the approval of the judicial career law (*ley de carrera judicial*)—an initiative that President Bolaños (of the *Azul y Blanco* faction of the PLC and who served as vice-president under Alemán) is promoting to address political *favouritism* in the judiciary.

The Awaited Reforms

The judicial system is the backbone of a society and is one of the *risk factors* that foreign investors and foreign donors examine when assessing a country. A modern, fully independent, efficient, transparent judicial system is therefore the key to a prosperous democratic society. In Nicaragua judicial reform must be a priority. Nevertheless, Nicaragua and other Latin American countries in search of reforming their judiciaries need the assistance of the international community and international organizations with experience in the field to implement these much needed, but challenging reforms.

In the October 2002 Issue No. 1 of the Summit of the Americas Follow-Up Series, FOCAL suggests that justice reform must include, among other things: the modernization of its courts, the identification of measures that strengthen its independence, transparent judicial selection, secure tenures for judges and magistrates, appropriate standards of conduct, such as a code of ethics, and systems of accountability. It is important and necessary that the appointment or selection of judges be transparent and unbiased. It is also of extreme importance that civil society and other sectors of society be involved in the process of selecting judges to not only guarantee the transparency and impartiality of the process, but also to promote cohesion and harmony in society as a whole (http://www.focal.ca/images/pdf/summit_justice.pdf).

Nicaragua needs the support of the international community, multilateral organizations and intra-governmental organizations, such as the *Centro de Estudios de Justicia de las Américas* (CEJA), with expertise in areas of judicial reform. It must not be forgotten, however, that judicial and institutional reforms are essentially political and cultural in nature, not just technical and based on the availability of knowledge or resources. Thus, international assistance programs must not only provide infrastructure and equipment, but also include training for judges as well as awareness-raising programs for citizens. Judicial reform must be custom-made to fit the unique conditions of each country and must include input from all sectors of society in order to ensure their durability. ■

Claudia Paguaga is FOCAL's Central American Analyst.



The Vote on Cuba and its Discontents

Juan Antonio Blanco

On 15 April 2004, a vote was taken in the United Nations Human Rights Commission—as has happened annually for the last several years - on the situation of human rights in Cuba. The draft resolution finally adopted (22 in favor, 21 against and 10 abstentions) provoked the traditional polarization of Commission members. For some long weeks diplomats at Geneva, and their governments in their respective capitals, had been submitted once again to severe "political harassment" by both Cuban and US authorities pressing ("courting" is not the word here) for their vote.

Is this exhausting yearly exercise really worth it? Does it mean anything in practical terms for the advancement of human rights in Cuba? The tentative answer is "yes it does", although other avenues could and should be explored to strengthen the hand of the Commission in general, and other *additional* avenues could also be found to deal with the issue of human rights in Cuba in particular. But let's examine a few facts first.

The votes (see box) in direct support of the Cuban Government—i.e., against the draft resolution—represent a list of countries that, with the notable exception of India, no one except themselves would dare to qualify as anything but non-democratic (think of China, Sudan, Zimbabwe or Qatar) or formally democratic but still with strongly authoritarian strains (as Russia or Ukraine). Some of them are closely allied with the USA (as Saudi Arabia, Pakistan and Indonesia), others are opposed to the US (like Cuba).

The Cuban authorities—after an intensive campaign of lobbying and spending on "gaining friends and influencing people" in Latin America—were not able to convince one hemispheric government, not even friendly Argentina or Brazil—to vote against the resolution presented by Honduras. Latin Americans in the Commission split into two groups, either supporting (Chile, Costa Rica, Guatemala, Honduras, Mexico and

Cuba

UNHRC Resolution 2004/11. Situation of human rights in Cuba

E/CN.4/2004/L.11/Add.2

The Commission on Human Rights,

Taking into account its resolution 2003/13 of 17 April 2003,

Considering that, in the above-mentioned resolution, the Commission urged the Government of Cuba to receive the Personal Representative of the United Nations High Commissioner for Human Rights and to provide all the facilities necessary for her to be able to fulfil the mandate contained in resolution 2002/18 of 19 April 2002,

Aware that respect for human rights and fundamental freedoms is an obligation attaching to all States in the framework of the purposes and principles of the Charter of the United Nations,

1. *Considers that the Government of Cuba, like those of all other sovereign States, irrespective of the current exceptional international circumstances which have obliged many States to step up security measures, should refrain from adopting measures which could jeopardize the fundamental rights, the freedom of expression and the right to due process of its citizens, and, in that regard, deplors the events which occurred last year in Cuba involving verdicts against certain political dissidents and journalists, as reported internationally;*

2. *Expresses the hope that the Government of Cuba will continue its efforts to boost religious freedom and will initiate measures designed to facilitate the transition towards the establishment of a fruitful dialogue with all schools of thought and organized political groups in Cuban society, notwithstanding the delicate international environment, with the aim of fostering the all-round development of democratic institutions and civil liberties;*

3. *Urges the Government of Cuba, within the context of the full exercise of its sovereignty, to cooperate with the Personal Representative of the United Nations High Commissioner for Human Rights by facilitating the discharge of her mandate, as other sovereign States must do in keeping with the purposes and principles set out in the Charter of the United Nations;*

4. *Decides to consider this matter further at its sixty-first session, under the same agenda item.*

50th meeting

15 April 2004

[Adopted by a recorded vote of 22 votes to 21, with 10 abstentions.

See chap. IX.]

Source: UN Human Rights Commission, www.unhcr.ch/, 15/04/04.

Peru) or abstaining (Argentina, Brazil and Paraguay) on the resolution. It was known that Brazil sent a special high-level envoy to Chile to persuade President Lagos to abstain like the other MERCOSUR countries in the Commission (Argentina, Brazil and Paraguay) but failed in that mission. In the end it was a group of Caribbean Basin countries (Mexico, Guatemala, El Salvador, Nicaragua and the Dominican Republic) which decisively supported the Honduran resolution.

Those who voted against mostly used the same argument to explain their vote: the resolution represented an intrusion in the sovereignty of the Cuban state. It did not matter if they were close allies of and overly dependent on the US or not. That was not the dividing line between them and those who supported the resolution. Their real common denominator is that almost all of them are human rights violators and need to stick together in the Commission to collectively defend the "sovereignty" of their governments to do as they please with their respective populations.

For a long period Cuba worked patiently and quietly to encourage like-minded authoritarian governments to join the Commission and build a wall of impunity for themselves. In the seventies, the Cuban government designed a strategy of cutting "gentlemen's agreements" with several dictatorships—such as the Argentinean Military Junta—to protect each other within the Commission. They pioneered the way for other "like-minded" regimes. That strategy has been paying off reasonably well and that is the explanation behind the tight vote every year. Today they constitute *almost* the majority of the member countries of the Commission.

Those that abstained from the vote justified their position with two basic arguments: the issue is too controversial and politicizes and polarizes the work of the Commission; and there are other more important issues to which that the Commission should pay attention.

Behind these two formal arguments there is a logic based on another hidden premise: the issue of the situation of human rights in Cuba is promoted by US diplomacy and we should oppose it because there is a strong anti-American

UNHRC Vote on Cuba

UN Commission on Human Rights: Resolution 2004/11 - Situation of human rights in Cuba		
In Favour	Against	Abstention
22	21	10
Germany	Bahrain	Argentina
Armenia	Burkina Faso	Bhutan
Australia	China	Brazil
Austria	Congo	Eritrea
Chile	Cuba	Gabon
Costa Rica	Egypt	Mauritania
Croatia	Ethiopia	Nepal
Dominican Republic	India	Paraguay
France	Indonesia	Sri Lanka
Guatemala	Nigeria	Uganda
Honduras	Pakistan	
Hungary	Qatar	
Ireland	Russian Federation	
Italy	Saudi Arabia	
Japan	Sierra Leone	
Mexico	South Africa	
Holland	Sudan	
Peru	Swaziland	
South Korea	Togo	
Sweden	Ukraine	
United Kingdom	Zimbabwe	
United States		

Source: Cuban Ministry of Foreign Affairs,
<http://www.cubaminrex.cu/CDH/60cdh/Votacion.htm>

feeling at home; thus, backing the resolution will make us internally vulnerable to the attacks of the domestic political opposition. Those governments which make this assumption may or may not fully or partially share those anti-American feelings. They may believe that the situation of human rights in Cuba is problematic, but consider their vote mostly in terms of their domestic agenda, not as a foreign policy decision. Aware of this, the very Cuban Government that explodes in anger when any foreign embassy in Havana invites a political dissident to a reception, carries out an official systematic campaign—with particular emphasis in Latin America—encouraging friendly opposition parties and social groups to use any official criticisms on the situation in Cuba as evidence of their government's "sell out to the Americans." Sometimes they go too far. Two years ago, Uruguay broke diplomatic relations with Cuba following tensions that had originated in such circumstances (BBC News, 23/4/02).

It should be noted however, that the governments that abstained—particularly those from Latin America—are in a certain way acknowledging that *there is some kind of problem* with the situation of human rights in Cuba although *for other considerations* they prefer not to discuss or take any position on this matter.

One of those considerations is that in their countries there is a strong sentiment against the US (not merely against this particular Administration or some ongoing US policies). This sentiment is sometimes more or less discreetly shared by some politicians in decision-making positions. They are basically guided by the maxim that "the enemy of my enemy is my friend". It seems sometimes that for a significant segment of the left, the USA is still the force that to a great extent, gives them *meaning*.

Opposing any idea originating or has the approval and support of Washington, is their initial rallying point to take a position on any subject. That approach has historically placed them under the spot in a number of past occasions. The "imperialist's lies" about the Soviet Union turned out to be true despite whatever crimes were also committed by those on the other side of the Cold War barricades. For many years, what the Soviet Union said on the lack of political and civil rights

in the Southern States of the US was true, as the existence of Stalin's Gulag, denounced by several US governments, was also true. A human rights defender should know that his/her commitment is the protection of the victims (whatever their ideology might be) from the perpetrators (whatever ideology they may profess). A government that is truly and fully committed to the cause of human rights should follow suit.

The Commission is still, despite any deficit in its functioning, an important piece in the system of the UN mechanisms for the universal protection of human rights. Any discussion regarding its reform should aim at strengthening its capacity to perform the mission with which it has been entrusted instead of an excuse to move away from its responsibilities and obligations.

The importance that any bureaucracy attaches to a particular subject is not determined by rhetoric, but by the resources and time that it assigns to deal with it. Despite passionate statements to the contrary, the Cuban Government assigns extraordinary resources and time to avoid being singled out by the Human Rights Commission in Geneva. The fact that it does care very much about what happens in Geneva strengthens the notion that their behavior would be even worse if they could get rid of that permanent monitoring. There are examples of this opportunistic behavior in the recent past. In 1998, after the visit of the Pope and other dignitaries to Cuba, an international perception grew that the country was ready to become more flexible in the area of human rights leading to the withdrawal of the Special Rapporteur of the Human Rights Commission to Cuba. But only a few months after the session in Geneva took place, the Cuban Government tried behind closed doors and then sent to jail the so-called "Group of Four" prominent dissidents for expressing their views in an open letter to the Communist Party.

Monitoring the situation in the hope of containing further deterioration is certainly not enough. Some other avenues to engage the Cuban Government in a more promising direction could be explored. A group of Latin American countries which may not be completely satisfied with the vote on Cuba in Geneva, or which are not totally at ease with discussing the issue of the situation of human rights in Cuba in that forum, could entertain the idea of organizing a "working group" or "task force" to follow-up this problem outside of the UN system. There are regional precedents for this kind of approach during the war in Central America when a group of countries put in motion the processes—outside of the OAS—of Contadora and Esquipulas to de-Americanize the issue and to find a regional peaceful solution to that conflict.

Merely complaining about the insufficiencies and limitations of the Commission in Geneva and/or the active role of the USA on this issue as a justification to turn a blind eye to human rights abuses in Cuba, would not be honorable or acceptable. There is an unavoidable ethic and legal responsibility—under international law and universally accepted human rights standards—towards the victims that cannot be ignored. ■

Juan Antonio Blanco (PhD) is Director of International Cooperation, Human Rights Internet, Canada.

Haiti: Une passé qui ne passe pas

Carlo Dade

In the weeks following the controversial departure of President Aristide, Haiti continues to teeter on the edge. Even though the International Community has moved forward on some important issues little work has been done on the ground in Haiti. If a larger crisis is to be averted much work must be done in improving security, humanitarian assistance and convincing the Haitian populace that there is reason for hope.

On the positive side of the ledger, the UN Secretary General has released his report on Haiti. This lays out the framework for extending the UN mandate in Haiti and identifies priority areas for State building. The Secretary General has called for a structure similar to previous UN mandates with civilian, humanitarian and development pillars in addition to a peacekeeping/police component under the command of Brazil, which has agreed to provide over 1,500 troops and take the leadership role in peacekeeping. Canada has announced that it will keep its 500 troops in Haiti and may provide RCMP officers at a later date. A Special Representative to run the other components has not been named. Though the Secretary General earlier had called for 10-year mandate in the report he has settled for one that would run for 24 months with the possibility of unlimited 12-month extensions based on periodic reviews. With the structure of the mandate now in place, the rebuilding process may proceed on other fronts.

On 22 April, a donors' meeting held in Port au Prince that included the World Bank, the Inter-American Development Bank, UNDP, CARICOM, the OAS, WHO, and La Francophonie, as well as donors, including Canada, the European Commission, France and the USA, reported on initial assessments of the development situation in Haiti and took some preliminary decisions regarding the sectors in which each donor will offer cooperation. An upcoming Interim Cooperation Framework mission, led by the government of Haiti and supported by donors and agencies will take place later this summer.

Response to a flash appeal for emergency funds for Haiti made by the UN has so far received only \$7 million of the \$35 million needed to meet basic humanitarian needs. Canada pledged \$5 million to the fund. The World Food

Programme, which was to receive the bulk of funds (\$11.2 million) for emergency food relief donations but has so far received only \$1.5 million (France), \$356,000 (Italy), \$458,000 (Japan), \$912,000 (Norway) and \$373,000 (Spain).

UNDP

New UNDP report highlights Latin Americans' disenchantment with democracy

As part of its Project on Democratic Development in Latin America, the United Nations Development Programme (UNDP) recently released a report on *Democracy in Latin America: Towards a Citizens' Democracy*. The report presents the findings of research undertaken by an independent team of Latin American researchers in cooperation with regional institutions including *Latinobarómetro*, in eighteen countries. The report is structured around three broad questions: the current state of democracy; current perceptions of, and support for democracy; principal issues in deepening a "citizens democracy."

The report highlights the disjuncture that exists between political democracy and the high levels of inequality and poverty that persist in these countries; emphasizing the urgent need to deepen democracy to meaningfully incorporate citizens. It addresses the gains made and challenges that remain to be fulfilled in the political, civic, social dimensions of citizenship.

Significantly, the failure to address "social citizenship" is identified as the most serious challenge to Latin American democracies. Inequality, poverty and unemployment are highlighted as some of the foremost obstacles in this regard. With regard to political citizenship, well-known challenges including ineffective representation, distrust of political parties, low voter turnout, weak institutions, and lack of resources for oversight bodies are highlighted. The report also points to the failure to translate new legislation into improvements in civil rights of citizens in the region, evidenced by weak state capacity to administer justice and persistent human rights abuses, among other problems.

Underscored is the significant decline in overall support for democracy in Latin America, as a result of unfulfilled political, civic and social citizenship. This decline in support was found to be more pronounced in countries with greater inequality. Ultimately the report calls for a "citizen-centered state" in which citizens are empowered to participate, politics is reinvigorated and state legitimacy is restored.

The report is comprehensive, thoroughly researched, and provides concrete data highlighting the pressing need for action in dealing with the current challenges facing democracy in Latin America. Information on the report can be found at: <http://democracia.undp.org>

There is equally troubling news from the peace and security front, where despite the presence of over 3,000 peacekeepers little has been done to improve security. The Haitian National Front rebel army, augmented by over 3,000 prisoners that they released, still occupies police stations and intersections. The Haitian National Police has carried out some patrols with UN Peacekeepers but it has dwindled to fewer than 1,500 men and more troubling, when the police academy opened in mid April, an applicant was trampled to death and two dozen injured while journalists reported that those who paid bribes were given preferential access.

Most disturbing is the fact that almost no progress has been made on disarmament and as of mid April, journalists and observers had reported that only about 150 weapons had been collected. There appears to be no serious disarmament programme underway or contemplated. This will be extremely problematic as the new Brazilian forces entering the country have neither the experience with disarmament nor, it appears the desire to have this dangerous, hostility engendering responsibility dumped on them. Making the issue more difficult for the Brazilians will be that the interim government has not yet established control over most of the country beyond Port au Prince, Cap Haitian Gonaives and Fort Liberté. Rebel groups and local armed gangs control many villages. The voluntary surrender of rebel leader Louis Chamblain, months after he re-entered the country and almost a decade after his in-absentia conviction in connection with the massacre of Raboteau has brought to "one" the grand total of those arrested for past human rights violations. Guy Phillipe, another rebel leader who has been implicated in the attacks on the Haitian Police Academy and the National Palace in July and December 2001 as well as being accused of being a former Duvalier death squad leader by Human Rights Watch accompanied Chamblain to jail but declined to turn himself in.

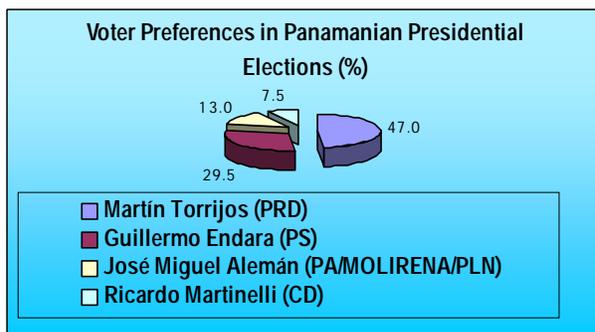
The interim treatment of Chamblain and Phillipe by the interim government contrasts sharply with the arrests of former Lavalas officials and lends credence to charges that the government is targeting Lavalas officials. In

Panama

On May 2, 2004, Panama will be holding general elections for the first time as a fully sovereign and independent country—after having received full control of the Panama Canal from the United States in December 1999. During these elections, Panamanians will be electing a new president and vice-president, 75 deputies, 66 mayors and 616 town councils.

Leading the polls with 47 percent is Martín Torrijos of the *Partido Revolucionario Democrático* (PRD — social-democrat). Torrijos is the son of former dictator General Omar Torrijos, who governed Panama from 1968 until his death in 1981 after having ousted Arnulfo Arias—the husband of current President Mireya Moscoso. Torrijos' candidacy has the support of the *Partido Popular* (former *Democracia Cristiana* and an old political adversary of his father) and his platform includes job creation, fighting corruption and improving human security. He was previously vice-minister of Governance and Justice between 1994 and 1999 and lost the presidential elections against President Moscoso in 1999.

Lower in the polls is Guillermo Endara of the *Partido Solidaridad* (PS — right wing) with 29.5 percent. Endara was president of Panama from 1990 to 1994 and was expelled from the ruling Partido Arnulfista in 2003 for criticizing the government. His electoral promise is to prosecute corrupt officials. Third in the polls with 13 percent is José Miguel Alemán who is running under the alliance of the *Partido Arnulfista* (PA — right wing), the *Movimiento Liberal Republicano Nacionalista* (MOLIRENA) and the *Partido Liberal Nacional* (PLN). José Miguel Alemán was Minister of Foreign Affairs between 1999 and 2003 and promises to continue President Moscoso's social agenda, particularly in rural areas, and to fight corruption. Ricardo Martinelli of the *Partido Cambio Democrático* (CD) is another candidate with aspirations to occupy the Presidential Palace, however he is trailing other candidates with only 7.5 percent of public support (LatiNetwork Dichter and Neira, Univisión, 02/04/04).



Source: LatiNetwork Dichter and Neira, Univisión, 02/04/04.

addition, to making eventual national reconciliation more difficult, the imbalance of these actions has further angered CARICOM members, who have so far refused to recognize the interim government.

Despite the lack of progress on security and governance, the interim government has set elections for November 2005. This would be an ambitious timetable under normal circumstances and almost impossible under the current situation. The international community is already overburdened in meeting emergency commitments and it is unlikely in the extreme that Haitian institutions could be reconstituted in time to meet this deadline. It is also unclear from where the close to US\$20 million to finance new elections would come.

Even though the Secretary General's report on Haiti is a positive development, as with so many other events in Haiti it has been endangered by bad news in other sectors. Lack of any visible progress on disarmament in Haiti is of greatest concern and must be rectified if stability and rebuilding are to be attempted. Those nations that have promised troops for the new UN mandate would do well to pressure the US, which currently has the largest contingent in Haiti to move on this front. French and Canadian forces also will have to increase their disarmament efforts. A unified, comprehensive disarmament programme, founded on lessons of the last occupation is desperately needed. Delays in disarming the rebels and armed gangs will only exacerbate instability and harm future State building and reconstruction efforts. On the justice front, the international community needs to pressure the interim government to act equitably and evenhandedly in dealing with human rights violations. The current bias for prosecuting Lavalas officials is understandable given that their violations occurred more recently. However, this imbalance is shortsighted and threatens longer-term stability. Canada lost an invaluable chance to make this point, and improve relations with CARICOM, when it extradited Jean Oriol to the U.S. on drug trafficking charges, essentially the same charges that, according to observers, should be brought against Guy Phillippe. ■

Carlo Dade is FOCAL Senior Advisor.

Editorial

Believing if Not Seeing the FTAA

Donald R. Mackay

It is a sad time for those of us who believe that the negotiation of a Free Trade Area of the Americas (FTAA) represents good public policy for the 34 countries whose democratically elected governments are the main participants and whose people would be, on the whole, the main beneficiaries.

We who believe in the FTAA do so because the mountain of evidence accumulated since the end of the Second World War shows that the liberalization of foreign trade regimes and regulations is invariably one of the many factors supporting higher rates of economic growth. Higher economic growth can eventually lead to higher real incomes for all, including for the least well-off segments of society. But this process is certainly not without its attendant dislocations, and policies to mitigate such problems for the particularly vulnerable have their place.

The preparatory phase of the FTAA negotiations began shortly after the Miami Summit in December of 1994. The formal negotiation phase was launched after the Santiago Summit in 1998 after the broad shape and texture of an agreement was discussed and debated. Settling on the scope of the agreement required extensive concessions on sensitive issues. Such balancing was, critical as it enabled governments to put before their citizens an outcome that contained sufficient benefits and sacrifices for an agreement to be within reach. That agreement was broken by the two principal protagonists of the FTAA: the United States and Brazil. For its part, the United States had agreed that agriculture, including the critical subsidies issue and the so-called unfair trade laws, would be on the agenda. In exchange, Brazil agreed to include issues such as government procurement, intellectual property, services and investment as part of the scope of the eventual agreement.

The United States never really had any intention of negotiating away its agricultural subsidies or its trade laws in a regional forum. It agreed to include these items in the agenda based on the existence of complementary timetables for the Doha Round of WTO negotiations and those of the FTAA. Agriculture, the US maintained, was a global problem and any possible solutions could only be reached at the global level. Whether the US was prepared to seriously negotiate agricultural subsidies at the global level is itself highly questionable, but the pertinent point is that US strategy was predicated on the ability to include any outcome reached at the global level into the regional agreement. The same held true for anti-dumping and countervailing duty laws and regulations; although on these issues the US was even less inclined to change even a comma of its regime. Brazil and everybody else knew this.

Brazil, for its part, has been the least enthusiastic participant in what is now a decade-long FTAA process. Over the years it skillfully played a delaying game even though its tactics at times seemed to endanger the solidarity of its own regional grouping Mercosur—which it dominates. Brazil remembers that its views on issues like intellectual property were steamrolled during the Uruguay Round of the GATT negotiations and that the vaunted Uruguay Round agreement on agriculture was skillfully designed by the US and the Europeans to ensure that no actual reform of subsidy practices by the developed countries, including Canada, would be required. Brazil has shifted its tactics, and its energy and resources, to attacking in bite-sized pieces those programs and sectors of most interest to and of greatest political value to the United States. It has used the WTO's dispute settlement regime—itsself largely a product of US frustrations with the unenforceability of the previous GATT regime—to nibble away at special interest provisions in the US foreign trade regime. A partial list of such attacks includes: reformulated gasoline, steel and most recently cotton.

No matter. The question that arises is as follows: if the FTAA represents the foundation on which the Summit of the Americas process rests and if the Summit process represents the driving force of continued democratic development in the Americas (itself not without its own difficulties) can we collectively allow the ultimate choice to be one of special economic interests versus continued democratic development?

While beginning this piece with the notion that trade liberalization leads to economic growth and thus increased welfare for the citizenry at large, it is also—in our view—inescapable that, in the modern world, trade liberalization can also be a supporting pillar of democratic development. That is to say, in the Americas, 34 governments have consciously designed a regional architecture based on the Summit process in which collective action is not only made possible but is required on a wide range of issues including democracy and trade liberalization. Simply put, it didn't have to be done this way, but since it has been, what next?

Effectively, there have been no FTAA negotiations since the Miami FTAA Ministerial meeting of November 2003. The five months that have elapsed have seen the Trade Negotiations Committee (TNC) deadlocked and incapable of reaching agreement on how to proceed following the “FTAA-Lite” architecture agreed upon in Miami. That agreement stipulated that the market access negotiations be completed by September (five months from now) and that the entire agreement be completed by the original deadline of January 2005, some nine months away. The third draft of the agreement was released to the public in Miami and even a cursory examination of the contents of its 24 chapters shows how far from agreement the countries are. Even provisions drawn word for word from the WTO—to which all countries, other than the Bahamas, have already agreed—remain “square bracketed” or tentative in the FTAA.

Brazil

When João Pedro Stédile, spokesperson for the Landless Movement (MST), warned President Luiz Inacio “Lula” da Silva that he would experience hell in April, he was right. Much of it was indeed the doing of the MST, which embarked on an unprecedented escalation of land seizures. Invasions rose in the states of São Paulo and Santa Catarina, and doubled in Lula’s home state of Pernambuco. Land invasions since the beginning of the year have already exceeded 278, more than twice the number for all of 2003. What is largely triggering the boom is the fact that President da Silva’s tightened budget of US\$480m is short of what is needed to meet the official target of settling 115,000 families in 2004 (LA Weekly Report, 20/04/04).

But President Lula’s own Workers’ Party (PT) and some of his former union colleagues also contributed their share to making April a difficult month. The radical wing of the PT issued a letter on Easter weekend *“Before it’s too late: Change now,”* demanding a change in economic policy to one which is more in line with traditional PT social precepts. A week later, the National Coordinator of Federal Public Employees announced they would go on strike for an indefinite period of time starting May 10. The unions are asking for a 50% raise in salaries. President da Silva, a former union leader himself, responded by saying “Nobody in the history of Brazil has treated public employees better than I do. They have to understand that I see them as my children. I don’t give my children everything they want, I only give them what I am able to. And I don’t go into debt to give my children a gift that I can afford.” To balance his paternalistic metaphor he also retorted “a union leader must know that it is pointless to make absurd demands” (*La Nación*, 20/04/04). In light of the upcoming October municipal elections, how President da Silva manages increasing social discontent, will have important political ramifications.

But Canada too, is paralyzed in the FTAA, paralyzed in the Doha Round, and paralyzed in the relatively modest negotiations with the 4 other Central American countries (not counting Panama). Chile has its agreements with Mercosur and with the United States, and is now even negotiating with China. Mexico has a plethora of agreements including with the European Union. Outside of NAFTA – the importance of which can never be understated – Canada has agreements with Chile and Costa Rica. While other countries are “picking off” economic powerhouses such as the European Union, China and even Mercosur, Canada is languishing on the sidelines unable to conclude an agreement with relatively small countries.

No government has yet declared the obvious. The timetable of the FTAA is pure fiction and governments appear incompetent or ignorant the longer that they refuse to officially acknowledge that simple fact. As a first step, at least one government needs to break rank and state the obvious. Canada should take the lead and set out a new timetable as a unilateral initiative. That new timetable should largely, but not exclusively, be based on the timelines set in the Trade Promotion Authority legislation that governs US participation in the process. Such a position would reflect reality.

There is a critical need to completely rethink the fundamental architecture of the FTAA. The participation of all 34 countries in an FTAA should remain the goal but should not be an absolute requirement. Accepting this principle would open the possibility that the non-Mercosur, non-US participants could and should craft a framework agreement to which others could eventually “dock.” Canada, Mexico, Costa Rica, Chile and others (counted at various times as the group of 14) have found themselves marginalized by the US-Brazilian deadlock. The 14 could and should put forward an agreement less ambitious than the originally “comprehensive” FTAA vision but certainly one with more weight than the cumbersome FTAA-Lite conceived by the ill-fated union of US and Brazil interests. Those countries willing to “dock” could, and the others would arrive at the party when they are ready. This would be an *FTAA-Medium*.■

Abstracts

The New Latin American Debt Crisis and Its Implications for Managing Financial and Social Risk

By Susanne Soederberg and Marcus Taylor

The potential for sovereign default in Latin America has become a very real possibility. This was driven home by Argentina's recent sovereign debt crisis, which represented the largest default in history. The Argentine case suggests that the current market-based approach of sovereign debt management is not conducive to dealing effectively with the social risks associated with financial crisis. The existing informal and *ad hoc* international architecture of sovereign

debt management serves to place the interests of transnational financial actors over those who must face the brunt of the crisis—which includes the poor who now account for over 50 percent of the Argentine population. It also acts to restrict policy formulation in such a manner as to create a legitimacy deficit for crisis-hit governments, which, in turn, could have destabilizing effects, such as a further deterioration of a country's creditworthiness due to political unrest.

A formalised structure of governance mechanisms to manage sovereign bankruptcy offers three potential benefits. Firstly, the potential for governments to petition preemptively for a hold on debt repayments could prevent a crisis situation from escalating, therein avoiding financial meltdown situations and the inherent social dislocation involved. Secondly, a formalised system of adjudication could avoid deadlocked negotiations between sovereign and creditors, as is currently occurring in the Argentinean debacle. Thirdly, a process that recognises the social rights of the debtor-country population—and that gives civil society groups a voice in the proceedings—would enable a repayment schedule to be constructed that does not sacrifice public expenditures for social protection on the altar of creditor repayment. This paper reviews three sovereign debt governance mechanisms put forward in the wake of the Argentine crisis, although it cautions that a preferable solution must involve examining the root causes of sovereign default in the current era.

Available online at:

http://www.focal.ca/images/pdf/debt_crisis.pdf

Mexico

After more than a month, the corruption and mismanagement of funds scandals that touched top officials from the Mexico City government, continue to occupy the main headlines in the Mexican media. The cases are currently being investigated by the Attorney General's Office (Procuraduría General de la República) but have also increased the level of confrontation between political actors, including President Vicente Fox (*Partido Acción Nacional—PAN*), the Minister of Interior Santiago Creel and the Governor of Mexico City, Andrés Manuel López Obrador (*Partido de la Revolución Democrática—PRD*) (See FOCAL POINT, March 2004)

On April 15, López Obrador, responded to allegations of corruption in the municipal government by accusing the federal government of trying to damage his image in what he has called a conspiracy. He demanded a meeting with the President in order to reveal the evidence against him. The following day, President Fox refused to receive López Obrador and encouraged him to appeal to the appropriate institution, which is the Attorney General's Office (Reforma, 16/04/04). As a reaction to the scandals, the National Executive Committee of the PRD, the third most important party in Mexico, announced that it would break relations with the Executive particularly with the Ministry of Interior in a protest of what they consider to be a dirty campaign to discredit López Obrador (Reforma, 18/04/04) and the PRD in anticipation of the 2006 presidential election (Imagen, 20/04/04).

With the damage that the scandals have caused to the PRD, which is the only national party from the left, some political analysts are warning about the emergence of a bipolar party system where the population is left with only two options: a return to the past with the PRI, or the PAN. Another effect of the scandal is that essential reforms in the energy, fiscal and labour sectors continue to be stalled in Congress.



The Corporate Social Responsibility System in Latin America and the Caribbean

By Paul Haslam

This paper advances our understanding of the existing system of corporate social responsibility (CSR) promotion and advocacy in Latin America and the Caribbean. It begins by contextualizing the relative importance of, and commitment to, corporate social responsibility in the Americas through a cross-national comparison of levels of CSR activity. The paper then elaborates a model, "The CSR System" which theorizes the key relationships and influences on the development of the CSR culture in the region. It defines the major actors working to promote CSR in the hemisphere as multilateral organizations, governments, private firms, private foreign foundations, educational institutions and civil society organizations. The CSR System model shows that considerable impetus behind the promotion of CSR in the region comes from outside Latin America. By understanding how the system of CSR promotion and advocacy works, it is possible to identify the pressure points where the CSR agenda can be best moved forward. The paper advocates strengthening the watchdog capacity of independent non-governmental organizations (NGOs), in order to work towards a CSR system that not only promotes corporate social responsibility, but also engenders business compliance with its CSR obligations.

Available online at: http://www.focal.ca/images/pdf/csr_04.pdf

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