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Unintended Consequences of United States' Foreign Drug Policy in Bolivia

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COMMENT

UNINTENDED CONSEQUENCES OF UNITED STATES' FOREIGN DRUG POLICY IN BOLIVIA

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I. INTRODUCTION

"When, in the year 2099, historians will reflect on drugs policy in the 20th century, they will describe it as an example of human stupidity."¹

For over two decades the United States has been waging its war on drugs in Bolivia and other South American countries in an unsuccessful attempt to reduce drug use within its own borders. U.S. assistance for police and military drug enforcement efforts in Bolivia has indeed advanced the eradication of tens of thousands of hectares of coca leaf plantations. At first glance, it might seem like the war on drugs in Bolivia is close to an end. Upon closer examination, however, it is clearly evident that the laws imposed by the war on drugs and as a result of the war have left Bolivia, the poorest country in South America, in the grips of economic devastation and in the wake of social upheaval.

The unintended ramifications of United States-sponsored anti-narcotics laws in Bolivia are manifold. The impact of these laws and enforcement mechanisms has been particularly devastating for women and children, who are not the highest-ranking concern of bureaucrats and politicians and are particularly disregarded by the country supplying the resources and strategy for the war. In addition to economic deprivation, women suffer aggression from troops who control the population through beating, raping, and abusing them. Such atrocities are excused by the troops' duty to enforce Bolivia's harsh anti-narcotics laws. Hundreds of innocent children also suffer the consequences of the war on drugs, spending months and years of their precious childhood in prison along with their mothers and fathers, victims themselves of unconstitutional, mandatory sentencing provisions of the anti-narcotics law.

This article explores in greater depth the inadvertent effects of anti-narcotics laws in Bolivia. It will first briefly discuss Bolivia's economy and culture in an effort to explain how and why

1. *Drugs and Development* #19, THE MONTHLY NEWSLETTER OF ENCOD (European NGO Council on Drugs and Dev., Borgerhout, Belg.), Dec. 1999, available at <http://www.tni.org/drugs/encod/dyd19.htm> (last visited Sept. 24, 2001).

it became a target in the international war on drugs led by the United States. The article will then describe the main anti-narcotics regulations and policy in Bolivia as a backdrop to the discussion of the unintended consequences of crop eradication measures on women, children, and overall society as exemplified in demonstrations and protests led by affected Bolivians. Finally, it will present some recommendations as to how to ameliorate the grave consequences that the Bolivian anti-narcotics policy has on the country's most vulnerable and affected citizens.

II. UNITED STATES' WAR ON DRUGS: BOLIVIA AS ONE OF ITS MAIN TARGETS

The "War on Drugs" in the United States began in approximately 1972, when President Nixon declared drugs "public enemy number one."² The war escalated when President Reagan and former President Bush took it to its international dimensions, implementing a supply-side strategy of suppression of drugs through crop eradication and the disruption of trafficking channels. The focus of this strategy was and continues to be the Andean nations of Bolivia, Peru, and Colombia.³ In 1986, drug trafficking was labeled a threat to U.S. national security, thereby justifying the United States' financing of counter-narcotics efforts.⁴ Bolivia's status as one of the world's three leading producers of the coca plant makes it a major "enemy" of the American war.⁵ Since for-

2. See Maia Szalavitz, *War on Drugs, War on Women*, reprinted in The Lindesmith - DRUG POLICY FOUNDATION ONLINE LIBRARY (1999), at <http://www.lindesmith.org/library/szalavitz2.html> (last visited Sept. 24, 2001).

3. See Melanie R. Halloms, Note, *Bolivia and Coca: Law, Policy, and Drug Control*, 30 VAND. J. TRANSNAT'L L. 817, 819 (1997). Supply suppression strategies for drug control have garnished support in most parts of the world. Illicit drug control problems in high demand countries are not likely to be solved through the continuation of such strategies: "[d]espite the expenditure of billions of dollars on controlling supplies, the successful capture of major traffickers and dismantling of their drug empires . . . the global supply and consumption of drugs has continued to grow." *Policy Options: What Is To Be Done?*, ILLICIT DRUGS: SOCIAL IMPACTS AND POLICY RESPONSES (United Nations Research Inst. for Soc. Dev., Geneva, Switzerland), at <http://www.unrisd.org/engindex/publ/list/bp/bp2/bp02-04.htm> (last visited Sept. 7, 2001).

4. *Human Rights and the War on Drugs*, Andean Information Network, at <http://www.scbbs-bo.com/ain/ain/details/ddrugs.htm> (last visited Oct. 10, 2001).

5. During 2000, Bolivia's production of the coca leaf and cocaine consistently fell behind that of Colombia and Peru. See generally 2000 Country Reports, U.S. Dept. of State, available at <http://www.state.gov/g/inl/rls/nrcrpt/2000/index.cfm?docid=883> (last visited Sept. 24, 2001). Colombia is "the world leader in the production of cocaine entering the U.S. . . ." During 2000 and 2001, the Clinton administration gave \$1.2 billion in counter narcotics funds to Colombia, approximately eighty percent of

mer President Bush launched the Andean Initiative in 1989, Bolivia has received more than \$800 million in antinarcotics support.⁶

A. A Closer Look at Bolivia

A brief look at Bolivia's geography, economy, and society is necessary at this point in order to understand the consequences of drug control policy and enforcement on its society.

1. Bolivia, a Snapshot

Bolivia, a landlocked nation, is one of the least-developed countries in South America.⁷ About two-thirds of the population lives in poverty, many of its members being subsistence farmers.⁸ Agriculture accounts for roughly fifteen percent of Bolivia's gross national product ("GDP").⁹ The extraction of minerals and hydrocarbons accounts for another ten percent of the GDP, while manufacturing represents less than seventeen percent of the GDP.¹⁰ To finance development projects, Bolivia is heavily dependent on foreign assistance.¹¹ At the end of 1998, the government owed \$4.3 billion to its foreign creditors, most of the balance owed to multilateral development banks and \$1.6 billion owed to other governments.¹² The United States is Bolivia's largest trading partner.¹³

2. Bolivia's Culture and Coca's Role in Bolivia's Heritage

Bolivia's particularly distinct culture is characterized by the highest indigenous population in the Americas, with fifty-six to seventy percent indigenous people (primarily Quechua and Aymara).¹⁴ Only sixty to seventy percent of the population speaks

which was for military equipment and training. See Andrew Miller, *Colombia in Crisis*, FOREIGN POLICY IN FOCUS (May 2001), at http://www.fpif.org/briefs/vol6/v6n20colombia_body.html (last visited Sept. 15, 2001).

6. Jacqueline Williams, *Waging the War on Drugs in Bolivia*, TNI "DRUGS & DEMOCRACY": RELATED LINKS AND DOCUMENTATION, at <http://www.tni.org/drugs/links/boldrg.htm> (last visited Sept. 7, 2001).

7. 2000 *Country Reports*, *supra* note 6. "Not only is it [Bolivia] landlocked, it's one of the most roadless countries in the Americas." *Destinations, Basic Bolivia. What's Bolivia about?*, GREAT OUTDOOR RECREATION PAGES, at http://www.gorp.com/gorp/location/latamer/bolivia/basic_b.htm (last visited Sept. 15, 2001).

8. 2000 *Country Reports*, *supra* note 6.

9. *Id.*

10. *Id.*

11. *Id.*

12. *Id.*

13. 2000 *Country Reports*, *supra* note 6.

14. *Id.*

Spanish, the country's official language, and frequently as a second language. Indigenous groups in Bolivia have traditionally used the coca leaf since pre-colonial times for a variety of purposes, including religious and cultural rituals, chewing it after meals as a social event, and using it for tea ("mate de coca") and for medicinal purposes.¹⁵ The coca leaf is considered a gift from the Sun god to the Andean indigenous people.¹⁶ "Coca is a sacred symbol of the mother earth."¹⁷

The cultivation of coca for illicit drug production "was not a spontaneous change in agricultural practices on the part of Bolivian coca farmers (cocaleros); rather, it resulted from a combination of political, economic, and social factors."¹⁸ Out of economic necessity, many unemployed workers moved to the rural areas to avail themselves of the jobs and profits offered by illegal coca cultivation.¹⁹ "During the 1980s, the illegal coca economy surpassed the traditional legal coca market," bringing Bolivia to the forefront of U.S. targets in its escalating war on drugs.²⁰

B. United States' War on Drugs at the International Level

The international scope of the U.S. war on cocaine was heightened under the Reagan Administration. International drug control programs targeting the source of production with an emphasis on the eradication of coca fields and interdiction were implemented and enforced through the Foreign Assistance Act, amended in 1986 to allow it to suspend economic aid to countries uncooperative in the U.S. drug effort.²¹

15. Hallums, *supra* note 3, at 823. "Coca . . . is the sacred leaf of the Andean people. Cocaine . . . is a harmful drug that causes serious problems throughout the world." *Coca is not Cocaine*, Andean Information Network, at <http://www.scbb-sbo.com/ain/ain/details/dcocaine.htm> (last visited Feb. 1, 2002).

16. *Coca is not Cocaine*, *supra* note 15. "Coca is indeed a godsend among the harsh and high environments of the Andes as it relieves altitude sickness and gives a sense of increased energy and strength." *Id.*

17. Lesley Mackay, *Bolivia's Women Farmers Refuse to Pay the Price for U.S. Drug Policies*, MS MAGAZINE (online through the Media Awareness Project, Porterville, CA), Aug. 1, 2001, available at <http://www.mapinc.org/drugnews/v01/n1432/a01.html?397> (last visited Feb. 1, 2002) (quoting Leonilda Zurita, leader of the women farmers' unions in the region of Cochabamba).

18. Hallums, *supra* note 3, at 824. Hallums describes how each of these factors contributed to the rise in export-oriented coca production in Bolivia. *Id.*

19. *Id.* at 826. The three areas that yield most of Bolivia's coca are the Yungas in La Paz, the Chapare in Cochabamba, and the Yacacani in Santa Cruz. *Id.*

20. *Id.*

21. See *Prohibitions on Security Assistance: Prohibitions on assistance in the FAA*

1. Certification Process

Every year by the 1st of March, the President of the United States is required to certify whether major drug producing or trafficking countries are fully cooperating with U.S. anti-narcotic policy. Cooperation is demonstrated by evidence of commitment and success in fighting the war on drugs through crop eradication and drug control policy implementation and enforcement.²² A country that is not certified is subject to various sanctions, including "withdrawal of U.S. aid not directly related to anti-narcotics programs, U.S. oppositions to loans from the multilateral development banks like the World Bank, and possible trade sanctions."²³ Drug certification policy is resented in Latin America as arbitrary and in violation of countries' national sovereignty.²⁴

The certification process "translates into extreme pressure to produce numbers demonstrating success in the drug war."²⁵ Dependent on foreign aid for the implementation of structural adjustment programs and other economic revitalization programs, countries must pass anti-drug laws if they want to be eligible to receive such aid. In Bolivia, the process of certification judges the country in part by the amount of crops that are eradicated and by the number of arrests made as proof of enforcement of anti-narcotics laws.²⁶ Under pressure to maintain certification, President Hugo Banzer Suarez militarized the Chapare coca-growing region in order to meet the aggressive eradication goal of eliminating all illicit coca from Bolivia by 2002.²⁷ Human rights and the due pro-

and AECA, THE CENTER FOR INTERNATIONAL POLICY, available at <http://www.ciponline.org/facts/eligib.htm> (last visited Sept. 15, 2001).

22. See *id.* (explaining how the law defines cooperation with U.S. counternarcotics efforts).

23. *Annual Drug Certification Process – Time for a Change*, WASHINGTON OFFICE ON LATIN AMERICA (on file with author), available at <http://www.wola.org> (last visited Sept. 24, 2001).

24. See *Failing to make the grade, The Case Against U.S. Drug Certification Policy*, WASHINGTON OFFICE ON LATIN AMERICA, available at <http://www.wola.org/drugpolfailing.html> (February 1999) (last visited Oct. 1, 2001). The author argues that the certification policy has been ineffective for drug control and should be ended by Congress. See *id.* Certification is perceived as a hypocritical judgment by the world's largest consumer of illegal drugs. *Id.* Moreover, "... the certification process erodes the very sense of common purpose and partnership that must be the foundation of international cooperation on any issue." *Id.*

25. *Certification*, ANDEAN INFORMATION NETWORK, at <http://www.scbbs-bo.com/ain/ain/details/dcercertification.htm> (last visited Oct. 1, 2001).

26. See generally *Annual Drug Certification Process – Time for a Change*, *supra* note 23.

27. See *id.*

cess of law have been undermined by the focus on the amount of arrests made to meet quotas, with United States-sponsored security forces abusing and torturing peasants during eradication efforts.²⁸ "[T]he tremendous U.S. political pressure on the Bolivian government to meet the yearly coca eradication deadlines pushes human rights concerns to the bottom of the list of priorities for Bolivian anti-narcotics forces."²⁹

U.S. policy-makers share criticisms of certification provisions. In 1997, the Senate nearly approved suspension of certification for two years, with top Clinton administration officials opposing the process.³⁰ On January 30, 2001, a bill was introduced in the Senate "[t]o suspend for two years the certification procedures . . . in order to foster greater multilateral cooperation in international counter narcotics programs"³¹ The bill states that the annual certification process is not currently effective because its provisions are inconsistently applied and because it "alienates the very allies whose cooperation we [the U.S.] seek."³² It further proposes a multilateral strategy to replace the unilateral policy of review.³³ Repealing the certification process would give countries under its review greater confidence and trust in U.S. efforts, setting a path for mutual cooperation rather than imposition of demands in exchange for much needed monetary aid. More importantly, "it would allow us to turn attention to the domestic roots of our drug problem – to preventing and treating drug abuse and addiction in our own backyards."³⁴

2. Monetary Assistance to Certified Countries

Upon certification, countries eligible for U.S. security assistance programs receive funding from both the Department of Defense and the Department of State through authority granted by the Defense Appropriations Act and the Foreign Operations Appropriations Act. U.S. security assistance to the Andean Region reached its highest peak in 2000 and 2001 with an aid package of

28. *Id.*; see generally George Ann Potter & Linda Farthing, *Bolivia: Eradication and Backlash*, Policy Brief (Foreign Policy in Focus), at http://www.foreignpolicyinfocus.org/briefs/vol5/v5n38bolivia_body.html (last visited Sept. 7, 2001). The zero coca option in the Chapare has resulted in more than 100 civilians killed or wounded in recent clashes with the police and the military. *Id.*

29. *Human Rights and the War on Drugs*, *supra* note 4.

30. See *Annual Drug Certification Process – Time for a Change*, *supra* note 23.

31. S. Res. 219, 107th Cong. (2001) (enacted).

32. *Id.* § 1(a)(7).

33. See *id.* § 1(b)(2).

34. *Failing to Make the Grade, The Case Against U.S. Drug Certification Policy*, *supra* note 24.

\$1.3 billion, ninety percent of which is allocated to Colombia, Ecuador, Peru and Bolivia.³⁵ Assistance comes in various forms, generally categorized as military/police assistance and economic/social assistance. Funded activities under the first category include International Military Education and Training, Foreign Military Financing, International Narcotics and Law Enforcement, and International Peacekeeping Capabilities.³⁶ Under the second category, in addition to economic aid grants under the Economic Support Fund, aid is given to fund Drug Interdiction and Counter-Drug Activities among other things.³⁷ Bolivia received \$110 million in assistance in 2000, \$25 million for the police and/or military, and \$85 million for alternative development.³⁸ Assistance grants are being used for the enforcement of measures for the continuing goal of eradication of coca by 2002.³⁹

III. LAW 1008

The paramount anti-narcotics law in Bolivia is Law 1008, implemented on July 19, 1988, under pressure from the U.S. government.⁴⁰ The law has been harshly and rightly criticized by human rights groups, political activists, and Bolivian cocaleros, "with the most frequent adjective to describe the law being *draconian*."⁴¹ Law 1008 is criticized on three fronts: that it is unconsti-

35. See *Colombia - Overview: U.S. Security Assistance to the Andean Region, 2000-2001*, THE CENTER FOR INTERNATIONAL POLICY, available at <http://www.ciponline.org/facts/co.htm> (last visited Sept. 15, 2001). The package was passed as an "emergency supplemental appropriation" - a measure that permits the administration to spend money exceeding that which was initially budgeted. *Id.*

36. See *Foreign Military Training*, ARMS TRADE OVERSIGHT PROJECT (Council for a Livable World, Washington, DC) at <http://www.clw.org/atop/training.html> (last visited Sept. 15, 2001).

37. See *id.*

38. See *U.S. Support for Plan Colombia*, THE CENTER FOR INTERNATIONAL POLICY, available at <http://www.ciponline.org/facts/coaid.htm> (last visited Feb. 1, 2002).

39. See *infra* p. 13 and note 69.

40. See *Law 1008*, ANDEAN INFORMATION NETWORK, at <http://www.scbbbs-bo.com/ain/ain/details/dlaw1008.htm> (last visited Sept. 24, 2001). "The law defines the legal status of coca cultivation and its relationship with the illegal drug cocaine." *Id.* Critics argue that the Coca and Controlled Substances Law, Law 1008, was written with the assistance of the U.S. Agency for International Development to ensure that narcotrafficking would be defined a crime and that illegal coca cultivation would be eradicated. See David E. Dubberly, *Commentary on the Ley del Regimen de la Coca y Sustancias Controladas*, 6 AMERICAN BAR ASSOCIATION: INTER-AMERICAN LEGAL MATERIALS 278 (1995), available at <http://www.natlaw.com/pubs/spbocs1.htm> (last visited Sept. 24, 2001). "In 1988 the Reagan administration froze fifty percent of U.S. aid until the Bolivian Congress approved the law." *Law 1008*, *supra* note 40.

41. Dubberly, *supra* note 40 (emphasis added). See also Jim Shultz, *War On Drugs Becomes War on Poor*, SACRAMENTO BEE (online through the Media Awareness

tutional and in violation of international law; that it is discriminatory against poor, mostly rural peasants; and that it is threatening to national sovereignty and to cultural traditions associated with the coca leaf.

A. *Procedural Characteristics of Law 1008*

Law 1008 creates a separate justice system, made up of the Controlled Substance Courts (Juzgados de Sustancias Controladas), Controlled Substance Judges (Jueces de Sustancias Controladas), and Controlled Substance Prosecutors (Fiscales de Sustancias Controladas) assigned only to narcotics offenses.⁴² The sentencing provisions are mandatory – the prosecutor may not request and the judge may not impose a sentence outside what is proscribed by law.⁴³ Often, the only evidence submitted at trial against the accused are the reports by anti-narcotic police, taken as proof automatically admissible at trial, effectively allowing anti-narcotic police to carry out what should be judicial determinations.⁴⁴ Most importantly, Law 1008 prohibits provisional release, “mandating incarceration of prisoners (including those *acquitted* by a lower court) until the Supreme Court has made a ruling.”⁴⁵

A common narcotics prosecution proceeds as follows: first, the “operativo” or arrest stage, when the Special Counter Narcotics Force (Fuerza Especial de Lucha Contra el Narcotráfico) arrests the suspect and seizes assets.⁴⁶ Suspects may be held for a maxi-

Project, Porterville, CA), available at <http://www.mapinc.org/drugnews/v99.n795.a03.html> (last visited Sept. 7, 2001) (“Bolivia’s notorious Law 1008, a Draconian statute . . .”; Mackay, *supra* note 17 (“[D]rug wars have . . . subjected coca farmers to draconian anti-drug laws.”); Potter & Farthing, *supra* note 28 (“[T]he U.S. promoted the passage of the draconian Bolivian Law 1008 . . .”)

42. See Dubberly, *supra* note 40.

43. *Id.*

44. See Theo Roncken, *Bolivia: Impunity and the Control of Corruption in the Fight Against Drugs*, DEMOCRACY, HUMAN RIGHTS, AND MILITARISM IN THE WAR ON DRUGS IN LATIN AMERICA (1997), at <http://www.tni.org/drugs/folder1/roncken.htm> (last visited Sept. 24, 2001).

45. Dubberly, *supra* note 40. “As the unconvicted (or worse EXONERATED by a lower court) prisoner waits through the years of process, without the possibility of bail, in an unsanitary, overcrowded jail, it appears that their fundamental rights were forgotten.” *Id.*

46. See *id.* The Special Counternarcotics Force (“FELCN”) was created in July 1987 by presidential decree, supported in the rural areas by the Mobile Rural Patrol Unit (Unidad Movil de Patrullaje Rural) (“UMOPAR”) and by some units of the Armed Forces. FELCN and UMOPAR, the lead forces in the war against coca and cocaine, are trained and directed by the U.S. Drug Enforcement Agency and are

mum of forty-eight hours without being charged.⁴⁷ The decision to go to trial is then entirely in the hands of the prosecutor, not the judge.⁴⁸ The prosecutor prepares a request for indictment to be submitted to the Controlled Substances Trial Court, having no discretion to request a sentence outside that set out by law.⁴⁹ The indictment is then sent to the penal chamber of the Appellate Court for review, approval, or rejection, and passed back to the Controlled Substance Trial Court.⁵⁰ The sentence is passed to the Appellate Court for review – with permissible appeals limited to those set out by the law (questions of prejudice, for example, are impermissible).⁵¹ In the event that there is an acquittal, the prosecutor has the *obligation* to file an appeal to the Supreme Court.⁵² Ironically, this process was designed to speed up the prosecution of narcotics offenses. “Strictly following the procedures as codified, a case from arrest to the time of sentencing by the Supreme Court should last 111 days”⁵³ In truth, “. . . a typical case usually lasts an average of three to four years before there is a final sentence.”⁵⁴

B. *Criticisms of Law 1008*

1. Law 1008 is unconstitutional and violates international law

Critics argue that by prohibiting provisional liberty, Law 1008 effectively creates a system whereby the accused is presumed guilty until proven innocent, in total contravention of the presumption of innocence guaranteed by the Bolivian Constitution and international human rights law.⁵⁵ The law thus raises questions both of constitutionality and of consistency with international law.

The requirement that all accused remain incarcerated throughout the entire judicial process contravenes the International Covenant on Civil and Political Rights which declares, in

completely dependent on U.S. embassy officials for intelligence and planning. See Roncken, *supra* note 44.

47. See Dubberly, *supra* note 40.

48. See generally *id.*

49. *Id.*

50. *Id.*

51. *Id.*

52. See Dubberly, *supra* note 40.

53. *Id.*

54. *Id.*

55. See *id.*; see also Law 1008, *supra* note 40; Hallums, *supra* note 3, at 833 n.87

part, “[i]t shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgment.”⁵⁶ More notorious is the requirement of incarceration after acquittal. “In the absence of a supplementary accusation or another valid reason, the continued detention of the accused is arbitrary.”⁵⁷ The Law, in its application, might also be in violation of the ICCPR requirement of a trial within a reasonable time because of the lengthy time period between trials and appeals.⁵⁸

2. Law 1008 Discriminates Against the Poor

Law 1008 is also flawed by its discriminatory effect against the poor. “Although the intent of the law was to provide a mechanism to punish narcotraffickers who exploit the poor and bring violence and crime to Bolivia, in reality it is the poor who feel the brunt of the law.”⁵⁹ Prominent cocaine producers and traffickers, if caught, are wealthy enough to buy their freedom. The penalties of the law are felt most harshly by the underclass that produces or transports small quantities of cocaine, people who live off the lowest end of drug trafficking. Having no means to pay their way out of a corrupt system, they “carry all the weight of the ‘excesses’ associated with Law 1008.”⁶⁰ In a constant need to demonstrate high arrest statistics for certification purposes, special drug police forces make arrests by the numbers.⁶¹ Surprisingly, there is no correlation between a higher number of arrests and drug seizures.⁶² The people being arrested, the “transport mules” and poor farmers who cultivate coca, are sadly “readily replaceable commodities subject to manipulation by the real narcos,” and are

56. International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI), U.N. GAOR, Supp. No. 16, at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, *entered into force* Mar. 23, 1976., art. 9 § 3 [hereinafter ICCPR].

57. *Encausamiento Penal Segun la Ley 1008*, VIOLACIONES A LOS DERECHOS HUMANOS Y LA GUERRA ANTI-DROGAS (Human Rights Watch, New York, NY), available at <http://www.hrw.org/spanish/informes/1995/bolivia3.html> (last visited Sept. 24, 2001).

58. See ICCPR, *supra* note 56.

59. Dubberly, *supra* note 40. The Andean Information Network labels this problem as “the greatest tragedy of Law 1008 and the ‘War on Drugs’ in Bolivia; the coca growers and other poor citizens of Bolivia are the ones who suffer. They lose years of their lives in prison to meet U.S. expectations of incarceration rates and to construct the appearance of a war that s being won.” *Law 1008*, *supra*, note 40.

60. See generally *Encausamiento Penal Segun la Ley 1008*, *supra* note 57.

61. See *id.*

62. See *id.*

indeed easily replaced by more victims of poverty.⁶³

3. Law 1008 is a Threat to Bolivia's National Sovereignty

Many Bolivians view Law 1008 as a threat to national sovereignty.⁶⁴ Bolivians take pride in their traditions, including the widespread use of coca for religious and social purposes. Although the law takes into account the cultural use of coca, eradication goals are perceived as a threat to cultural practices like chewing of the coca leaf or its use for tea.⁶⁵ Moreover, the United States' instrumental role in the drafting and enforcement of the law is viewed as a foreign imposition – hence its common referral as the "Law of Foreigners."⁶⁶ The law is criticized as "inconsistent with Indian traditions and Bolivian constitutional norms."⁶⁷ The U.S. embassy and U.S. financial support are the main obstacles to the Law's amendment, further reason for criticism of the war on drugs as a threat to the nation's sovereignty. The sentiment of Evo Morales, head of the cocaleros union, is thus shared by many: "[t]he fight against drug trafficking is a pretext for the U.S. to dominate . . . our people – to violate our sovereignty."⁶⁸

IV. PLAN DIGNIDAD

A new campaign for the complete eradication of all illegal coca began in 1997. "Plan Dignidad" (Dignity Plan) is a five-year plan introduced by then President Hugo Banzer Suarez to eradicate the cultivation of all illegal coca by 2002.⁶⁹ The Plan receives U.S. financial, intelligence, and military support. The campaign's effects have been felt the most in the Chapare region, an area that provided much of the world's cocaine supply until the introduction

63. Dubberly, *supra* note 40.

64. Hallums, *supra* note 3, at 834.

65. *See id.*

66. *Id.* at 835.

67. *See id.*; *see also* *Encausamiento Penal Segun la Ley 1008*, *supra* note 57.

68. James Reynolds, *Bolivia Wages the War on the Coca Leaf*, BBC NEWS (June 9, 2000) at http://news.bbc.co.uk/1/hi/english/world/americas/newsid_778000/778100.stm (last visited Sept. 7, 2001).

69. *See Human Rights and the War on Drugs*, *supra* note 4; *see also* Representative Benjamin Gilman, Remarks at the opening of the Fourth Transatlantic Inter-Parliamentarian Conference of Drug Control, Santa Cruz, Bolivia, (Feb. 21, 2001), available at <http://usinfo.state.gov/topical/global/drugs/01022103.htm> (last visited Sept. 7, 2001) (stating "President Banzer and Vice President Quiroga . . . underscored that by the year 2002 there will be no more cocaine coming out of Bolivia.").

of the Plan.⁷⁰ Under Law 1008 the eradication of coca was to be accomplished gradually through voluntary eradication in exchange for compensation and crop substitution.⁷¹ Under the Plan, however, the goal is to move from individual to community compensation, with the complete elimination of compensation within five years.⁷² The Plan also calls for relocation of 5000 families.⁷³ Most debated, however, is the prevalent use of violence as a means of meeting the zero coca goal.

The campaign has indeed proved successful in eradicating coca from the Chapare region. Anti-narcotics forces have succeeded in eradicating tens of thousands of hectares of coca-leaf plantations in the Chapare.⁷⁴ By the end of 2000, all commercially significant coca fields were eliminated from the Chapare. In 2000, Plan Dignidad "reduced coca cultivation by thirty-three percent nationwide— and by over ninety percent in the Chapare" region.⁷⁵ Based on the apparent success of the eradication program, the U.S. Department of State affirms, "Bolivia continues to be the model for the region in coca eradication."⁷⁶

How did such success come about? Unfortunately, the success in eradication has come about at the expense of militarization of the region and numerous instances of armed conflict and human rights abuses. Law 1008 was more strictly enforced after 1997, causing an increase in the inmate population by the hundreds.⁷⁷ Military forces and UMOPAR have been forcibly eradicating coca in the Chapare.⁷⁸ They conduct special operatives, continually trespassing into private property, particularly the land of the cocaleros, going house by house day and night, "screaming, throwing our belongings, intimidating and terrorizing the citizens."⁷⁹ Coca is not the only thing that has been eradicated in the advent of Plan Dignidad; human rights and the citizens' trust in the government and the police have also been destroyed in the interim.

70. See generally 2000 Country Reports, *supra* note 5.

71. Human Rights and the War on Drugs, *supra* note 4.

72. *Id.*

73. *Id.*

74. See generally *id.* In 2000, 7,500 hectares of Chapare coca were eradicated, leaving less than 600 hectares by the end of the year. *Id.*

75. See *id.*

76. *Id.*

77. See Mackay, *supra* note 17.

78. See Reynolds, *supra* note 68.

79. Encausamiento Penal Segun la Ley 1008, *supra* note 57.

V. UNINTENDED CONSEQUENCES OF ANTI-NARCOTICS POLICY IN BOLIVIA

Anti-narcotics policies in Latin America have given rise to a myriad of human rights violations. Pressure on foreign governments by the United States and the international community to eradicate illegal drug production and trafficking through the enforcement of extremely harsh laws has failed to create a net for social problems arising out of such enforcement. In drafting Law 1008 and executing Plan Dignidad, systemic corruption of Bolivia's judicial system and Bolivia's characteristic classicist society was not considered in how the law might affect different segments of Bolivian population. As discussed above, Law 1008 is disproportionably enforced against the poor. The increased military presence in the Chapare region has led to abuse, harassment, torture, and even instances of murder by anti-narcotics forces.⁸⁰ Notably, the injustices resulting from the war on drugs in Bolivia are most apparent in its effect on the female population.

A. *Inadvertent Consequences of Anti-narcotics Measures on Women and Children*

In discussing the consequences of the war on drugs on women in the United States, one commentator points out how "[i]n the drug war, women's concerns have historically been ignored, dismissed, or exploited."⁸¹ This notion is even more applicable to the war on drugs at the international level. Women's concerns in countries outside the United States are particularly underscored because it is a foreign country's nationals who are affected by how the war is fought on foreign land while the United States imposes the adoption of laws abroad with no regard for cultural and social differences that might impact how the laws are actually enforced in a society with particular gender norms and beliefs. In the case of Bolivia, women (particularly poor women of indigenous descent) as well as children, suffer grave effects of the war on drugs due to their respective social and economic positions.

80. See Potter & Farthing, *supra* note 28. The Amnesty International 2001 report on Bolivia states that "human rights violations . . . in el Chapare increased . . . security forces reportedly us[ing] excessive and arbitrary force against groups of demonstrators . . . in protest at government policies. Ten people died and more than 100 were injured." *Bolivia*, Amnesty Int'l Report 2001, available at <http://www.amnesty.org>. (last visited Oct. 1, 2001).

81. Szalavitz, *supra* note 2.

1. Overwhelming Exposure to Military Oppression and Abuse

In terms of military abuse, women are the most affected. One woman's account exemplifies one of the consequences of the 7000 troops in the Chapare region undertaking Plan Dignidad: "[t]he men, our husbands, flee to the mountains for fear of arrest; and we stay with our children and suffer the abuse."⁸² Instances of abuse and torture by the FELCN and UMOPAR are routine. In the Chapare, UMOPAR abuses the population, raiding their homes in the middle of the night, searching them against their will, mistreating and sometimes injuring them while stealing their property.⁸³

Aggression from troops is mostly suffered by women, not only because they cannot flee like their husbands since they have to attend to their children, but also because of the sociological role of women in Bolivia and the relation of power resulting from their interaction with anti-narcotics forces. In the Chapare, "[t]he armed forces feel the need to control the population through women After all, the women are a real political force."⁸⁴ Thus, troops have been accused of everything from beating women to raping them to detaining them arbitrarily.⁸⁵ The FELCN and UMOPAR commit these violations with virtual impunity, as there is no administrative or judicial mechanism to investigate, prevent, or punish the occurrences of such abuses. In addition, systematic practices and other factors lead to an unregulated anti-narcotics force, financed by the United States, practically immune from punishment or control.⁸⁶

82. Leonilda Vargas, WOMEN'S INTERNATIONAL LEAGUE FOR PEACE AND FREEDOM SPEAKING TOUR 1999 (Women's International League for Peace and Freedom, Philadelphia, PA) at <http://www.igc.org/colhrnet/newsletter/y1999/winter99art/wilpf.htm> (last visited Sept. 24, 2001).

83. See *Resumen y Recomendaciones, VIOLACIONES A LOS DERECHOS HUMANOS Y LA GUERRA ANTI-DROGAS* (Human Rights Watch, New York, NY), available at <http://www.hrw.org/spanish/informes/1995/bolivia.html> (last visited Sept. 24, 2001).

84. Mackay, *supra* note 17.

85. See *id.*

86. See *Abusos Fuera del Chapare, VIOLACIONES A LOS DERECHOS HUMANOS Y LA GUERRA ANTI-DROGAS* (Human Rights Watch, New York, NY), available at <http://www.hrw.org/spanish/informes/1995/bolivia4.html> (last visited Sept. 24, 2001).

Systemic factors conducive to virtual impunity of the forces include an established pattern of abusive conduct by the police against the poorer sectors of society, stalled attempts by the government and private organizations to inform the public about their rights, inability of victims of abuse to make detailed complaints, fear of retaliation, and lack of a public entity with sufficient resources to investigate reports of abuse and to bring abusers to justice. *Id.*

2. Overcrowding of Prisons and Inhumane Living Conditions for Women and Children

The impact of Law 1008 in the prisons of Bolivia has been acute, particularly after the introduction of Plan Dignidad. The prison system was not expanded to keep up with the number of detainees brought in under Law 1008. Incarceration during the entire trial and appellate process of a drug charge has caused the prisons to be filled beyond capacity,⁸⁷ under conditions "... well below the international minimum standards" amounting to "cruel, degrading, or inhuman treatment."⁸⁸ The prison of San Sebastián, where half the inmates have sentences related to Law 1008, was designed to hold sixty people, yet holds over five hundred now.⁸⁹ Lack of space translates into inmates sleeping on the floor and hallways, inadequate food supply, and lack of medical services.⁹⁰ As Human Rights Watch observes: "[e]ven though the miserable conditions of Bolivian prisons are not a necessary or planned consequence of the incarceration for trafficking under Law 1008, the lack of necessary attention and financing constitute an inevitable and expected consequence."⁹¹

Prison overcrowding is due to more than just an increased number of arrests made under Law 1008. The women's jail in San Sebastián (where most arrestees from the Chapare region end up) is especially overcrowded partly because of the arbitrary police and military sweeps characteristic of Plan Dignidad eradication.⁹² The remainder of the jail's inhabitants are incarcerated as an indirect consequence of Law 1008; in addition to 320 prisoners, the jailhouses 250 children who only have their incarcerated mothers to care for them.⁹³ They too have to pay the price of the

87. According to Bolivian human rights groups, more than 1,000 of the nearly 1,400 prisoners jailed in Cochabamba have never been sentenced. *A Bolivian Baby Turns One in Jail - C/O The U.S. War On Drugs*, THE DEMOCRACY CENTER ON-LINE (The Democracy Center, San Francisco, CA), at http://www.democracyctr.org/online/news/Vol_28.html (Aug. 2, 1999) (last visited Sept. 24, 2001).

88. *Bolivia*, *supra* note 80.

89. *See Encausamiento Penal Segun la Ley 1008*, *supra* note 57.

90. Prisons are a microcosm of Bolivian society, where money can buy inmates royalty treatment. In the Cochabamba jails, for example, "cash will buy you a private cell with carpeting, cable television, a cell phone and police willing -for a price- to bring everything from alcohol to women. The poor sleep on cold patios, unless they can come up with \$300 (a half year's salary here) to buy a bed-sized cell." *A Bolivian Baby Turns One in Jail - C/O The U.S. On Drugs* *supra*, note 81.

91. *Encausamiento Penal Segun la Ley 1008*, *supra* note 57.

92. *See* Mackay, *supra* note 17.

93. *Id.*

“draconian” law:

The Cocachamba woman’s prison, like many in Bolivia, is filled with the prisoners’ youngest children. Mothers and children live often seven or eight in a small cell meant for one or two. Since the prison is overcrowded –built to hold 128 people, it now has nearly 600 crammed into it – cells are a rare and expensive commodity. A woman who has a cell but can no longer afford it may sell it to someone else and sleep in the courtyard, where those with little or no money live.⁹⁴

The challenges women in prison face for mere survival are inhumane, particularly when notice is taken that a great number of them have not even had the opportunity of being heard at trial. Women in jail must earn money for food and bed. To earn it they cook meals, make clothing to sell to people outside the prison, sell necessities to other inmates, or wash the clothing of people outside the prison. Inmates with less seniority who need to wash clothes for a living in the prison must do the washing during the night, still taking turns with others in the same precarious condition.⁹⁵

The thought that prisons in Bolivia are filled not only with lawbreakers but also, in many cases, with their complete immediate family is almost surreal.⁹⁶ “Law 1008 never considered children, much less families.”⁹⁷ When either the father or the mother or both are imprisoned they are taken to the city, their property left behind and abandoned, and the only method of caring for the children becomes keeping the family together inside the prison. As a consequence, at the beginning of 1998 approximately 2200 children lived in Bolivia’s seventeen prisons.⁹⁸ The Bolivian gov-

94. *Id.*

95. *See id.* One woman who ran out of money to feed her children was forced to sell her bed, wake up at 2:00a.m. to wash clothes, sell rolls, sew, and again wash some more. Another female prisoner sleeps in the corner of a stairwell with her two daughters, one who suffers from anemia. The reason why she was incarcerated – carrying powdered lime (which can be used to make cocaine and is thus punishable under Law 1008) for the purpose of making paint. *See id.*

96. *See* Elizabeth Schwimmer, *Los Niños de la Ley 1008*, REBELION - DERECHOS HUMANOS (Red Andina de Informacion, Cocachamba, Bolivia), at <http://www.rebelion.org/ddhh/ninos220401.htm> (April 22, 2001), (last visited Sept. 24, 2001).

97. *Id.*

98. Mike Ceaser, *In Bolivia, Children Often Live With Their Fathers in Prison*, THE MIAMI HERALD, Dec. 17, 1998, available at www.rose-hulman.edu/~delacova/bolivia/prison.htm (last visited Sept. 24, 2001). Children like Delsy, who “goes to school each morning, studies six hours and then goes home to play with her friends – in prison, where she lives among murderers, rapists, drug dealers and thieves.” *Id.*

ernment implemented a program called "Prisons without Childhood" to relocate children and their families outside of prisons that effectively reduced the number of children sharing prison cells.⁹⁹ Yet, by the end of 2000 there were still about 350 children in jail.¹⁰⁰ The lack of government-sponsored children services programs and an established foster care system makes parents fearful that their children will turn into "street kids," preferring instead to keep the family together inside the prisons.

3. Economic Consequences of Eradication Measures on Women

Women farmers have suffered the worst blow from the economic consequences of the war on drugs as it is fought in Bolivia. Women in rural areas like the Chapare have no other comparable economic opportunities to make a living that is not related to coca production. The leader of the Women Farmer's Union in the region expresses:

[C]oca is our economy. The leaf knows our hunger, our thirst, our lack of clothing, and our need for education. If I sell coca, I can go to the hospital. If I sell coca, I can buy school supplies for my children. If I sell coca, I can buy food.¹⁰¹

The political tool adopted by the government to manage this situation is alternative development – a plan that in words seems like a viable solution, but in practice remains to be effective.

a. Alternative Development Programs – Reality or Illusion?

Alternative development takes its form in crop substitution and socio-economic development.¹⁰² Although the Bolivian government, the United States, and the United Nations have supported the policy of rural development, there is not much to show for it for various reasons. First, coca is more economically attractive than any other crop, producing four crops a year at lucrative prices. Second, coca is appropriate to the socio-economic conditions in Bolivia, requiring little technology and much manual labor. Although the government has attempted to persuade farm-

99. *See id.*

100. Schwimmer, *supra* note 96.

101. Mackay, *supra* note 17.

102. *See Policy Options: What Is To Be Done?*, *supra* note 3.

ers to switch to alternative crops like bananas or pineapples, many have chosen not to switch,¹⁰³ partly because coca keeps much longer than other crops and thus its sale is not hindered by the country's poor infrastructure. Third, the market potential for alternative crops and the viability of other alternative development programs have not been adequately researched, resulting in ill-conceived programs lacking support and adoption from the local coca grower representatives.¹⁰⁴ Fourth, many of the funds allocated for structural adjustment programs are being spent for balance-of-payment support (resulting from structural adjustment programs) and rural electrification, both of little benefit to poor coca growers.¹⁰⁵ Hence, the lack of viable solutions limits the creation of economic opportunities for coca growers. Now that there are no more coca fields in the Chapare, the same can be said regarding employment opportunities for approximately 60,000 farmers living in the Chapare: "the great question mark is what the former coca producers will live from."¹⁰⁶

B. Social Unrest and Civilian Protests

United States-imposed anti-drug policies and the consequences of human rights violations, overcrowded jails, and lack of opportunities for earned income has led Bolivia to its worst political and social crisis since the advent of a democratic government in 1983. Law 1008 and Plan Dignidad have caused civil uproar ranging from nationwide protests to road blockades, hunger strikes, and multiple instances of violence. In September 2000, farmers unions blocked one of Bolivia's major highways for twenty-seven days, demanding a halt to the zero coca goal.¹⁰⁷ Two months later women farmers formed unions resembling the men's, holding demonstrations and blockades to protest government repression and the obliteration of their crops.¹⁰⁸ To protest condi-

103. See James Reynolds, *Bolivia Wages War on the Coca Leaf*, BBC NEWS ONLINE, at http://news.bbc.co.uk/1/hi/english/world/americas/newsid_778000/778100.stm (June 9, 2000) (last visited Sept. 7, 2001).

104. See Potter & Farthing, *supra* note 28.

105. See *id.* In 2001, the \$85 million allocated by the United States for alternative development programs was mostly spent on these expenses. *Id.*

106. *Drugs and Development* #19, *supra* note 1. The author relates the story of MILKA, a milk factory established in the Chapare with funds from the Swedish government and initially managed by the United Nations as an example of the failure of alternative development programs. *Id.*

107. See Mackay, *supra* note 17.

108. *Id.* Hundreds of poor traveled to the city of Cochabamba to protest the arrest of women leaders who were also coca farmers; the protest lasted seventeen days. *Id.*

tions in women's prisons, the women have organized horrific demonstrations, one of which involved ten women who tied their hands and feet to iron bars on a balcony and crucified themselves for up to nine days without food while the rest of the inmate population supported them with a hunger strike.¹⁰⁹

Weeks of civil violence and road blockades in the end of 2000 caused Bolivia's economic activity to decline by nearly half.¹¹⁰ Massive protests were successful in getting at least one demand granted by the government – abandonment of the plan to build three Bolivian Army brigade headquarters in the Chapare (at a cost of \$6.4 million, care of the U.S. counter-drug budget under §1004 of the National Defense Authorization Act) to maintain military presence after the eradication campaign.¹¹¹ Civil protests continued into 2001 seeking the enforcement of other agreements made by the government after the uprisings of 2000. Protests are being led by coalitions of coca growers, trade unionists, water protestors, teachers, and peasants.

VI. CONCLUSIONS AND RECOMMENDATIONS

The goal of eradicating coca in Bolivia, at least in the Chapare region, has proved to be an attainable goal. Coca has been successfully eradicated, but at a high price. The economic and social costs resulting from Law 1008 and Plan Dignidad are too high a price to pay for an overall unsuccessful war on drugs. Continuous civil protests for years should give signal to systemic problems in anti-drug policies. The United States must take different steps in the creation of a new foreign policy, taking heed of societal concerns that have been brushed off for far too long.¹¹²

It is unrealistic to expect that the United States will cease its war on drugs. The United States is obstinately committed to the policy, even though many have criticized how it is fought both domestically and abroad.¹¹³ Since the United States will likely

109. See *id.* Four women "sewed their lips shut, refusing to eat or drink." *Id.*

110. See 2000 Country Reports, *supra* note 5.

111. Colombia – Overview: U.S. Security Assistance to the Andean Region, 2000-2001, *supra* note 35.

112. The United States cannot continue to ignore the social unrest its policies are causing and the increased perception of the United States by Bolivians as invading their sovereignty. Ignoring the protests "risks fomenting what it has always sought to repress: a leftist, anti-American revolutionary movement like the one that Che Guevara attempted to create in Bolivia three decades ago." Potter & Farthing, *supra* note 28.

113. See generally Arthur L. Berney, *Cocaine Prohibition: Drug-Induced Madness in the Western Hemisphere*, 15 B.C. THIRD WORLD L.J. 19 (1995). Berney discusses

maintain its focus on the supply side of the drug problem, recommendations are limited to the acceptance of the United States' imposition of demands upon the Bolivian government.

A. Aim at a New Target: Poverty

The United States' policies in Bolivia should target the real root of the problem of illicit drug crops and trafficking: poverty. Alternative development programs must cease to be figures of politician's imaginations. In an initial step towards improving the dire economic conditions of Bolivia, the United States and other industrialized nations discounted Bolivia's debt servicing by twenty-seven percent in 2000, easing the burden of foreign debt on the country.¹¹⁴ But this is not enough. The United States needs to invest in the education and economic development of the nation if it wishes to prevent the balloon effect of drug crops and the ineffectiveness of foreign anti-narcotics policy.¹¹⁵

In designing alternative development programs and other viable solutions to the extreme poverty in Bolivia, it is necessary to empower the population and allow its members to be involved in the political process, rather than merely existing at the receiving end of foreign policy. The Andean Council of Coca Leaf Growers calls for support of proposals, maintaining that "to achieve these proposals a serious commitment of governments and international cooperation agencies is necessary, but the resources destined for this must be channeled directly to the campesino producers organized in union, federations, associations, boards and fronts."¹¹⁶ Providing economic assistance to existing organizations of local people and working with them in drafting and implementing a solution will not only work best for Bolivian peasants but also for the United States. The United States would benefit from such a collaborative effort by diminishing, if not eliminating, Bolivians' perceptions of the United States as an imposing govern-

various reasons why the U.S. government is unlikely to change its prohibition policy anytime in the near future.

114. See Potter & Farthing, *supra* note 28.

115. See *Policy Options: What is to be done?*, *supra* note 3. The balloon effect - "what is punched down in one place. . . springs up in another" - refers to the phenomenon that one region's success in curtailing production of illicit drugs will only become another region's problem as dealers and intermediaries move to places of decreased resistance and increased opportunity. *Id.*

116. Statement of the Andean Coca Producers at the U.N. Special Session on Drugs, NY, (June 1998) available at <http://www.tni.org/drugs/ungass/coca1.htm> (last visited Sept. 24, 2001).

ment, possibly preventing a future massive civil outcry of worse magnitude than the protests that have already taken place.

*B. Support the Amendment of Law 1008 and
Eliminate Certification*

The Bolivian government is prevented from modifying Law 1008 because of the United States' pressure to follow its anti-drug policies, as illustrated by the certification process. The United States has the responsibility of withdrawing its support of a law that is plainly unconstitutional and in violation of international law, instead allowing and promoting the law's amendment. Law 1008 needs to be amended so that it permits bail, allows for the freedom of those detained and declared innocent during the appeal process, takes power away from anti-narcotics forces and mandates their display of identification cards, establishes clear circumstances under which searches and seizures are allowed, and establishes a set of procedures to manage reports of abuses.

Amendment of the law should take into consideration its discriminatory effects against the poor and against women. If the United States wishes to continue its support of strict sentencing guidelines for coca growers and traffickers, foreign assistance should be conditional on Bolivia's assurance that the prison system is modified to manage overcrowding. Moreover, the United States must ensure that the country establishes government-funded orphanages and other children's services departments in order to prevent the unintended incarceration of children and to appease the parents' fears that their children will grow up fending for themselves on the streets.

In addition to supporting the amendment of Law 1008, the United States must domestically reform, if not repeal, the annual drug certification process. Certification is not conducive to cooperation between governments and community groups, but is rather an imposition that forces countries to meet certain requirements in order to get much needed funding. Where the U.S. gives no other option but to meet the requirements and cooperate with U.S. drug policy, a militarized drug control strategy arises that, without any preventive measures or safety nets to undermine abuse and violence, results in the U.S. requirements being met at the expense of human rights.

C. Stop the Promotion of Militarization

United States foreign assistance to Bolivia should not pro-

mote the increased militarization of regions in which eradication of coca is the goal. Militarization funded by U.S. economic assistance increases the weariness and distrust of the United States and of the Bolivian government. Additionally, it creates room for further abuse of human rights and violence and for the continued targeting of the poor peasants rather than the drug lords. The United States should shift its funding, thereby increasing social and economic aid while decreasing aid to military and police. Surprisingly, the opposite is taking place, with an estimated military and police aid increase of twenty percent and a four percent decrease in social and economic aid in 2002 from 2001 levels.¹¹⁷ Social and economic aid in the form of alternative development programs (formulated by or with feedback from local peasants), assistance to displaced persons, and support for judicial reform, administration of justice, and human rights must be increased if the United States hopes to eradicate drug production on a long-term basis without eternal sustenance by military barracks in every corner.

D. Enforce the Leahy Law

In giving security assistance to Bolivia in the form of police and military aid, the United States must enforce the Leahy Law to ensure that American dollars are not financing abusive anti-narcotics forces. The Leahy Law first appeared as part of the 1997 Foreign Operations Appropriations Act, and was originally applicable only to the State Department's International Narcotics Control (INC) program.¹¹⁸ Since then, it has been broadened to encompass "all security assistance programs funded through the Foreign Operations Act" and "training programs authorized under the Defense Department Appropriations Bill."¹¹⁹ The provision has become the "most important legal tool used to promote respect for human rights through U.S. security assistance programs."¹²⁰

117. *U.S. Military and Police Aid: The 2002 Aid Request*, Colombia Project (The Center For International Policy), at <http://www.ciponline.org/colombia/aid02.htm> (last updated May 17, 2001). Estimates made as of May 13, 2001 by the Center for International Policy.

118. See *Prohibitions on Security Assistance: Limitations on Assistance to Security Forces (The "Leahy Law")*, *supra* note 21. Interestingly, "the Leahy Law originated in 1996 from efforts to control U.S. military aid to Colombia." *Defend The Leahy Law*, AMNESTY INTERNATIONAL USA (Issue Brief on the Leahy Law), available at <http://www.amnesty-usa.org/stoparms/issuebrief.html> (last visited Sept. 15, 2001).

119. *Prohibitions on Security Assistance: Prohibitions on assistance in the FAA and AECA*, *supra* note 21.

120. *Id.* The Leahy Law is an important human rights tools because "(1) [i]t

The Leahy Law prohibits the allocation of most types of U.S. foreign aid and Defense Department training programs to foreign security military and police units where there is credible evidence that a unit carried out human rights violations. The law has thus far been enforced against units in Turkey and Colombia.¹²¹ "To implement the Leahy Law, each U.S. embassy has established a 'vetting procedure' to review the backgrounds of military units for which assistance has been proposed."¹²² Where credible evidence of abuse exists, funds to that particular unit are denied until the Secretary of State or the Defense Department determines that effective measures are being taken to bring security forces to justice.¹²³

The problem with the law is that it does not provide who exactly is responsible for collecting the information necessary to make a decision.¹²⁴ It is also unclear whether every individual in a unit needs to be screened or whether a collective screening of a unit is required and how far embassies must screen for human rights abuses. In Bolivia, there have been some accusations of DEA cognizance of wrongdoing and abuse by the UMOPAR and FELCN, raising doubts as to the likelihood that the U.S. embassy in Bolivia will bring any evidence of human rights violations to light.

The Leahy Law can nevertheless be enforced in Bolivia in light of reports of police brutality and abuse by non-governmental organizations ("NGOs") such as Amnesty International. Once human rights groups gather credible evidence that a unit has committed violations and bring it to the embassy's attention, it is

actually keeps weapons out of the hands of human rights abusers; (2) [i]t requires U.S. missions abroad to increase their monitoring of human rights issues; and (3) [i]t is a law, not a policy guideline." *Defend the Leahy Law*, *supra* note 118.

121. *Defend the Leahy Law*, *supra* note 118.

122. See *Prohibitions on Security Assistance: Prohibitions on assistance in the FAA and AECA*, *supra* note 21. The law, however, is not specific as to who is charged with collecting the information required to make a decision. See, e.g., Dana Priest, *Pentagon Slow to Cooperate With Information Requests*, WASH. POST, Dec. 31, 1998, at A34. Neither an embassy's military group, with direct contact with potentially violent military units, nor the CIA station chief are specifically required to disclose relevant information nor participate fully in the vetting process. *Id.*

123. Much debate arises when funds are prohibited under the Leahy Law, as was the case in 1998 when the State Department rejected request from a defense manufacturer in the United States for U.S. financing to help Turkey purchase armored vehicles. See Dana Priest, *New Human Rights Law Triggers Policy Debate*, WASH. POST, Dec. 31, 1998, at A34 [hereinafter *New Human Rights Law Triggers Policy Debate*].

124. See Priest, *supra* note 122, at A34.

the United States' obligation to follow the Leahy Law and withhold the financing of military training programs and weapons for the unit involved.

The United States, however, should not make the enforcement of the Leahy Law contingent upon NGO's reports and findings of abuse by military units. The government must rather implement and enforce information-gathering procedures and make sure that human rights violations do not go undetected.¹²⁵ The United States should not finance anti-narcotics units that violate human rights. In Bolivia, it is necessary and essential that violations of human rights do not go unnoticed, particularly in light of forced crop eradication and the likelihood that abuse has occurred and will continue to occur with continued militarization of the region.

The United States perceives Bolivia as a success story, bragging about the effectiveness of coca crop eradication policy in eliminating the production of cocaine. Nevertheless, in the process of eliminating the supply of coca from Bolivia by all means, at the very least the United States must ensure that practices that would not be tolerated in its own soil do not take place abroad as a result of U.S. foreign drug policy. Stripped of one of its most profitable crops, Bolivia should not and cannot be left in shambles by the United States behind a façade of a victory. Such victory is not much with so many losers left in the sidelines.

SOLIMAR SANTOS*

125. The State Department set up an interagency task group to discuss how to implement the Leahy Law, but changes have yet to be made. See *New Human Rights Law Triggers Policy Debate*, *supra* note 123.

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