

# **BOLIVIA**

## **Human Rights Violations and the War on Drugs**

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*This is the first report by a Human Rights Watch special project to examine the impact on human rights of counternarcotics policies and programs. We take no position on the merits of counternarcotics objectives. But those objectives—like all national and international goals—must be pursued within the framework of internationally recognized human rights.*

## I. Introduction and Summary

President Clinton, like his Republican predecessors, has made the Andean countries of Bolivia, Colombia and Peru a focus of his international counternarcotics strategy. Within this trio, Bolivia—second to Peru as a producer of coca leaf and to Colombia as a producer of refined cocaine—has been the largest recipient of U.S. counternarcotics aid. The impact of U.S. counternarcotics pressure on Bolivia cannot be overstated: Bolivia has passed laws, created institutions and adopted antinarcotics strategies shaped by U.S. concerns and dependent on U.S. funding. The United States funds and equips Bolivia's special antinarcotics police, and has stationed a large contingent of Drug Enforcement Administration (DEA) personnel within Bolivia to train and guide them. The United States also funds and provides technical assistance to all other Bolivian agencies involved in counternarcotics activities.

Assistant Secretary of State for the Bureau for International Narcotics and Law Enforcement Affairs, Robert Gelbard insists that U.S. "counternarcotics assistance can be a powerful force in advancing, rather than retarding, human rights objectives in the hemisphere..."<sup>1</sup> In Bolivia, however, U.S. counternarcotics assistance has supported programs and policies deeply flawed by human rights abuses:

- Under the country's anti-drug law, Law 1008, Bolivians charged with drug offenses—no matter how minor—are imprisoned without the possibility of pre-trial release and must, if acquitted, remain in prison until the trial court's decision is reviewed by the Supreme Court, a process that takes years. During that time, prisoners are held in appallingly overcrowded and miserable prisons.
- In the Chapare, the rural area in which most of Bolivia's coca is grown and cocaine base produced, the antinarcotics police run roughshod over the population, barging into homes in the middle of the night, searching people and possessions at will, manhandling and even beating residents, stealing their goods and money. Arbitrary arrests and detentions are routine.
- A number of Bolivians detained on drug trafficking charges allege torture by Bolivian law enforcement personnel. They also allege DEA complicity with abusive interrogations. DEA personnel acknowledge that they do not intervene to stop abuse.
- Impunity for abuses by the antinarcotics police is the norm. Even complaints of serious human rights violations, including torture, are rarely investigated. Charges of human rights abuse by DEA agents are left unanswered. A mantle of diplomatic immunity and agency secrecy impedes public investigation and accountability.

Bolivian and U.S. public officials make excuses for or attempt to justify human rights violations in the context of the drug war. Senior Bolivian officials concede that there are profound problems with Law 1008, but insist that the United States, which had encouraged the enactment of the law, would oppose reform. U.S. officials acknowledge that aspects of Law 1008 are inconsistent with principles of liberty and due process, but are concerned that any legislative reform of the offending legal provisions would be accompanied by efforts to weaken the law's substantive framework, which undergirds Bolivia's entire antinarcotics effort.

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<sup>1</sup> Statement of Robert Gelbard, Assistant Secretary of State for International Narcotics and Law Enforcement Affairs, before the House Foreign Affairs Committee, June 22, 1994.

U.S. officials dismiss or downplay abuses by the U.S.-supported Bolivian counternarcotics forces. To some extent, this reflects a complacency rooted in a comparison of Bolivia's recent human rights record with that of neighboring Andean countries. Bolivia has, since the demise of military rule in 1982, been largely free of serious political violence and human rights abuses;<sup>2</sup> certainly it has been spared the widespread brutality (e.g., mass killings, disappearances) that has plagued Colombia and Peru.<sup>3</sup> But the U.S. attitude also appears to reflect a determination not to be distracted from the principal goal of combatting drug trafficking, and a willingness to overlook human rights violations that arise in pursuit of that goal. When questioned by Human Rights Watch about abusive interrogations by the Bolivian police, a senior DEA official in Bolivia acknowledged the problem but said simply that "the Bolivians have their own way of doing business" and that it is "not our job to interfere." U.S. officials are well aware of the reputation of the rural antinarcotics police, the UMOPAR, as "thieves and thugs," but have failed to use U.S. leverage to press for adequate reform. U.S. efforts to improve the UMOPAR's human rights record have consisted primarily of including a human rights component in the UMOPAR's basic training; trying to ensure that "good men" are placed in senior positions; and engaging in *ad hoc* monitoring, necessarily limited to the more egregious cases.

Human Rights Watch believes the United States should pay more attention to the problem of abusive conduct by the antinarcotics police. We do not, however, discount the importance of U.S. efforts in other areas that bear on human rights. U.S. funding and technical assistance currently contribute to the strengthening of institutions that can buttress Bolivia's adherence to the rule of law. The United States has provided technical assistance and funding to modernize and improve the efficiency and effectiveness of Bolivian courts, which currently labor under anachronistic case management systems and antiquated legal procedures; to professionalize the investigative and intelligence-gathering capacities of the police; and to train prosecutors how to develop sound legal cases backed by solid evidence. In addition, the United States is providing technical assistance to help develop Bolivia's newly created system of public defenders.

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After more than a century of political instability, including twenty years of military rule ending in 1982, Bolivia has recently begun the difficult task of consolidating democratic rule. Promoting that effort is one of the principal U.S. foreign policy objectives for the country, one which, in the view of U.S. officials, is complemented by the goal of combatting drug trafficking. Indeed, in justifying to Congress its most recent International Narcotics and Law Enforcement Affairs budget request for Bolivia, the State Department insisted that "neither a stronger democracy nor a stable growing economy is possible under the pervasive threats of drug related crime and violence, corruption, domestic drug abuse and environmental damage caused by illegal narcotics production and trafficking."<sup>4</sup>

There is no question that drug trafficking jeopardizes democracy and the rule of law in Bolivia, as elsewhere in Latin America. It subverts and corrupts the government, legislature, judiciary, police, military and other public

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<sup>2</sup> As a consequence, there has been relatively little attention to Bolivia by international human rights organizations. Human Rights Watch has previously published two short reports on Bolivia, both covering the trial of former dictator Gen. Luis García Meza. See Americas Watch, *Bolivia: The Trial of Responsibilities; The García Meza Tejada Trial* (New York: Human Rights Watch, 1993); Americas Watch, *Bolivia: Almost Nine Years and Still No Verdict in the "Trial of Responsibilities"* (New York: Human Rights Watch, 1992).

<sup>3</sup> Human Rights Watch/Americas has covered human rights violations in Peru and Colombia extensively, particularly those arising in the context of government and paramilitary "dirty wars" against guerrilla forces. See for example, Americas Watch, *State of War: Political Violence & Counterinsurgency in Colombia* (New York: Human Rights Watch, 1993); Americas Watch, *Political Murder & Reform in Colombia: The Violence Continues* (New York: Human Rights Watch, 1992); Americas Watch, *The "Drug War" in Colombia: The Neglected Tragedy of Political Violence* (New York: Human Rights Watch, 1990); Americas Watch, *Peru: Anatomy of a Cover-up: The Disappearances at La Cantuta* (New York: Human Rights Watch, 1993); Americas Watch, *Human Rights in Peru: One Year after Fujimori's Coup* (New York: Human Rights Watch, 1993).

<sup>4</sup> Bureau for International Narcotics and Law Enforcement Affairs, *Congressional Presentation for Fiscal Year 1996* (Washington: U.S. Dept. of State, 1995), p. 1.

institutions. But it is also true, as some U.S. and Bolivian officials recognize, that counternarcotics efforts that do not respect human rights can themselves subvert the broader objective of promoting democratic values.

Recent events in Bolivia underscore the dangers posed to democracy and respect for human rights by counternarcotics efforts—and the unfortunate role of the United States in exacerbating those dangers. On March 2, the United States informed Bolivia that it would cut off aid and oppose multilateral bank loans to Bolivia if the government did not immediately undertake certain counternarcotics efforts, including the eradication of 1,750 hectares of coca by June 30. This ultimatum, which prompted political furor in Bolivia, came at a time when the Bolivian government was already being sorely tested by other domestic political battles. On April 18, in the midst of escalating political tensions, the government declared a state of siege, suspended certain constitutional rights, and began to round up labor leaders who were prominent in the public opposition to government initiatives. Precise figures are not available, but estimates are that approximately 400 individuals were arrested; most were administratively detained and banished—without charges or access to judicial review—to public facilities including military barracks in remote areas of the country.

The government ostensibly imposed the state of siege to end increasingly violent demonstrations by teachers' unions. But the government also used the suspension of constitutional rights to suppress opposition to its plans to carry out the anti-drug actions demanded by the United States. Among those arrested were leaders of the coca growers who have fought government eradication efforts. The clear intent of the government was to use their detention to exert pressure on the coca growers and their political allies in the context of the debate over how the government would respond to the U.S. ultimatum.

The state of siege illustrates, we believe, a broader pattern in Bolivia by which U.S. pressure to yield results in the war on drugs can subvert the rule of law. Pressed by the U.S.—under penalty of forfeiting crucial economic support—to combat coca cultivation, but lacking a strong domestic constituency in favor of such action, the Bolivian government has reacted by skirting its international obligation to protect the human rights of its people.

As of this writing, all of those detained under the state of siege have been released. The formal abrogation of liberties under the state of siege is due to end by mid-July, when the ninety-day period for emergency powers permitted by the Bolivian constitution expires.

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In this report, Human Rights Watch evaluates the impact that counternarcotics policies have on human rights in Bolivia. We focus primarily on the effects of Law 1008 and on respect for human rights in the Chapare, the region that produces most of the Bolivian coca that is processed into cocaine.

The Bolivian government has, of course, primary responsibility for ensuring that its agents and laws comply with international human rights standards. But the U.S. government also has a responsibility to ensure that it does not facilitate or underwrite human rights violations. There are many reforms that would improve respect for human rights during Bolivian counternarcotics operations. Human Rights Watch believes the following are indispensable—and feasible—first steps:

- *Reform of Law 1008, in its terms and application.* Law 1008 should be amended to: 1) permit pre-trial liberty for persons charged with violations of antinarcotics laws, subject as necessary to guarantees to assure appearance for trial; and 2) in particular, require the release of acquitted defendants during the period that their acquittals are being mandatorily appealed by the prosecution.
- *Guidelines for searches.* Clear guidelines for determining the circumstances in which arrests and searches of persons and property are reasonable should be developed for counternarcotics personnel and strictly enforced.
- *Identification of law enforcement agents.* Antinarcotics law enforcement personnel should be required to wear name tags so that citizens can identify them.

- *Review and reform of complaint and disciplinary procedures.* A commission of civilians (including community leaders, human rights activists and defense lawyers), law enforcement officials and representatives of the Ministry of Justice and the Office of the Attorney General, among others, should be created to investigate the efficacy of existing internal procedures for deterring human rights violations in antinarcotics operations and disciplining abusive antinarcotics agents. This panel should make public recommendations for reform. Among such reforms, we urge: 1) the establishment of adequate, accessible and widely publicized complaint procedures by which the government of Bolivia can receive complaints of abuses by antinarcotics law enforcement officials; 2) the allocation of sufficient numbers of trained personnel to investigate such complaints; and 3) the public disclosure of the findings and results of administrative investigations. We also recommend the development of a mechanism for citizen participation in the complaints review process.
- *Monitoring of disciplinary procedures.* The Ministry of Justice or the Defensor del Pueblo (if created as authorized by the constitution)<sup>5</sup> should be given ongoing oversight responsibility to ensure that the internal disciplinary mechanisms of counternarcotics personnel function properly.
- *Reporting on human rights cases.* Periodic reports should be prepared on the status of cases of alleged abuse against civilians by antinarcotics law enforcement agents that are being handled by internal disciplinary procedures or that have been turned over to the courts. These reports should be made public and shared with the U.S. Embassy.

Human Rights Watch calls on the Bolivian government to adhere to international human rights standards as it pursues its national drug policies, and we urge the U.S. government to use its influence to strengthen the Bolivian government's willingness and ability to do so. At the very least, the United States should insist that mechanisms be instituted to ensure the adequate investigation and prosecution of cases of abuse by the antinarcotics forces that it funds. It should also act vigorously—both in public and private—to seek the elimination of laws and procedures that trample fundamental rights, whatever their contribution to counternarcotics objectives.

## II. Background

In 1982, Bolivia ended twenty years of rule by a succession of right-wing military figures and began an uninterrupted period of constitutional democratic rule, with elected civilian governments peacefully alternating in power.<sup>6</sup> Since then, lacking any real insurgent movement, Bolivia has been spared political violence and bloodshed, as well as such egregious human rights abuses as extrajudicial executions and disappearances.

Although blessed with relative peace, the country nevertheless faces the formidable challenges of consolidating democracy, strengthening the rule of law, developing effective, accountable and accessible public institutions, and restructuring a crisis-prone economy. These challenges are made more difficult by the country's fractious party politics, extreme dependency on foreign financing, vulnerability to international influence, profound regional, ethnic and political cleavages, massive poverty and entrenched drug-related corruption.

Trafficking in cocaine and drug-related corruption took hold in Bolivia during the rule of Gen. Hugo Banzer (1971-78) and intensified during the brutal "narco-dictatorship" of Gen. Luis García Meza (1980-81). Although the Bolivian government and military are no longer as massively, directly and overtly involved in the cocaine trade as during the García Meza regime, by all accounts the level of corruption in Bolivia remains extraordinary. Cocaine traffickers reputedly have widespread influence in the executive branch, Congress, the judiciary, the military, the police, political parties and other public institutions.

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<sup>5</sup> Under the Bolivian Constitution, the Defensor del Pueblo would have express responsibility to monitor and promote respect for human rights by public officials. See Constitución Política del Estado, Arts. 127-131.

<sup>6</sup> The period is unique in Bolivian history; since becoming a sovereign nation in 1824, Bolivia has had more changes in government than years of independence.

Drug trafficking and corruption hamper Bolivia's ability to develop public institutions wedded to the rule of law. Unlike Colombia, however, drug trafficking in Bolivia has not taken a heavy toll in lives. Bolivian traffickers have been relatively nonviolent; they have largely eschewed, or not felt the need to use, murder and terror in maintaining their business. The cocaine trade has, nonetheless, had human rights consequences. As detailed below, the effort to combat drug trafficking has been accompanied by laws and practices that violate international human rights standards. Before examining those violations, this report looks first at the social, political and institutional context in which they arise.

### **Coca Cultivation**

Bolivia is the world's second largest producer of coca leaf. Coca has been an integral part of Andean life for centuries and is used for a variety of medicinal, social, ritual and religious purposes. Millions of Bolivians even today consume coca leaves, mainly in tea or through chewing them. Coca leaves are also the raw material from which cocaine is produced.

The explosion in coca production in Bolivia over the last two decades reflects the growth in demand for cocaine in the United States. Between 1963 and 1987, the number of hectares in Bolivia cultivated with coca grew twenty-fold. Bolivian coca cultivation is primarily concentrated in two geographic regions: the Yungas region of western Bolivia and the eastern subtropical region of the Chapare. Most of the growth in coca cultivation has occurred in the two million hectares area of the Chapare, where some 40,000 peasant families grow coca, in most cases along with other crops, in small plots of less than two hectares. Coca produced in the Chapare is almost wholly directed towards satisfying the demand of the illegal narcotics market.

The production of coca in Bolivia is intimately linked to the larger issue of rural poverty. Bolivia is the second poorest nation in the hemisphere; and the poorest of its poor are small farmers and miners. Economic policies adopted by the Bolivian government to combat the economic crisis of the early 1980s have only aggravated rural poverty; massive layoffs from the tin mines and declining terms of trade for highland agriculture, coupled with land degradation and drought, have encouraged thousands of highland mining and farm families to migrate. They have moved either to marginal urban neighborhoods or to lowland areas in which they can grow tropical or subtropical crops. The easiest crop to grow, transport and market—and the one that consistently sells for a comparatively higher price than others—is coca.<sup>7</sup>

The productivity and profitability of coca make the substitution of alternative crops extremely difficult. Considerable investment by the United States and other donors to develop and promote alternative crops has had only limited success. Many reasons are offered for the scant impact of alternative development efforts: most of the funding has been for pilot projects, and resources have not been available to replicate or expand their impact; some of the more attractive alternative crops take a long time to reach maturity, discouraging farmers with immediate income needs; adequate transportation and refrigeration facilities are not available and many of the alternative crops perish; the internal market in foodstuffs is small and cannot support added production, while external markets take time to develop; resources have been squandered in excessive overhead and bureaucratic mismanagement. Most important, however, is the simple fact that even when coca leaf prices are low, the profit generated from the leaf is higher than that from any other crop. Farmers growing coca in the Chapare have an annual income ten times the average income of non-coca-growing farmers in Bolivia. Although there has been an increase in the cultivation of other cash crops in the Chapare, those crops are, for the most part, grown along with coca. Few farmers have abandoned coca altogether, as it provides a critical and relatively secure source of dollars, buoying small family incomes.

### **From Coca to Cocaine**

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<sup>7</sup> See Flavio Machicao, "Coca Production in Bolivia," in Peter H. Smith, ed., *Drug Policy in the Americas* (Boulder: Westview Press, 1992), pp. 88-98; *El Libro Verde: Coca - Cocaína Erradicación Desarrollo Alternativo* (hereinafter "*El Libro Verde*"). *El Libro Verde* is a bound compilation of documents covering different coca-cocaine issues in Bolivia that was prepared by the U.S. Embassy in La Paz. Its pages are not numbered.

Coca growers in the Chapare produce nearly 76,000 metric tons of coca leaf annually. Although some of this coca will be sold legally, most will be diverted into cocaine production. The first phase of the process is the production of coca base. This phase takes place in a widespread cottage industry of approximately 5,000-9,000 small primitive facilities owned either by peasants or local commercial entrepreneurs. The facilities, rather grandly called "laboratories" by some U.S. and Bolivian law enforcement officials, generally consist of one or two maceration pits in which coca leaves are stomped and mixed with chemicals to extract the base.

Increasing numbers of peasants have been willing to take on the production of base—the technology is simple and cheap—to make up for the income lost as coca leaf prices fell in the latter half of the eighties. With this shift, large numbers of peasant coca growers who were previously of no concern to the police became law-breakers directly involved in illicit cocaine trafficking.

An army of small transporters—drawn again from the world of unemployed and underemployed youth and young adults—carries small amounts of base on buses, trucks and by foot out of the Chapare. (In the same way, the chemical precursors used to make the base are brought illegally into the Chapare.) The carriers turn the base over to the approximately thirty to forty Bolivian drug trafficking organizations based in the Santa Cruz and Beni departments. Although some cocaine is refined into cocaine hydrochloride in Bolivia itself (indeed, the country now is the world's second largest producer of refined cocaine), most of the base is ultimately refined in Colombia. Colombians also purchase much of Bolivia's cocaine production, which they then distribute through their channels to world markets, primarily the United States and Europe.

Since the late 1970s, the illegal production, transport and sale of cocaine have become a major component of the Bolivian economy. The overall role of drug trafficking has diminished in recent years, with the general strengthening of the licit economy, but cocaine remains a significant source of income, foreign exchange and employment.<sup>8</sup> Bolivian public policy is caught therefore between, on the one hand, the very real contributions of cocaine to an economy which has limited options for growth and, on the other, strong U.S. and international pressure to curtail drug trafficking.

## **Legal Regime Governing Coca Cultivation**

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<sup>8</sup> Cocaine statistics are, at best, approximations that vary greatly; the variance reflects both the inherent methodological difficulties in measuring an illegal economic activity and the political interests influencing the interpretation of the data. Nevertheless, over 200,000 people are estimated to be directly involved in the different phases of cocaine production. Cocaine accounts for somewhere between 2 and 7 percent of the gross national product; cocaine exports account for some 24 percent of legal exports; and from sales worth well over U.S. \$300 million, at least U.S. \$120 million of cocaine earnings are retained in the country. See generally Roberto Laserna, *Cultivo de Coca, Tráfico de Drogas y Desarrollo Regional en Cochabamba, Bolivia* (Doctoral Dissertation: Univ. of California, Berkeley, 1995); *El Libro Verde*

On July 19, 1988, Congress enacted the Coca and Controlled Substance Law (*Ley del Régimen de la Coca y Sustancias Controladas*), better known as Law 1008. Passed under strong U.S. pressure, Law 1008 establishes the overall legal regime governing coca production and drug trafficking, delineates the responsibilities of the agencies that will be responsible for enforcing counternarcotics law and mandates harsh penalties and procedures for drug offenses (see discussion below). The most fiercely contested aspect of Law 1008 was its regulation of coca. Coca growers unions, in particular, objected to the notion that a single law could be enacted to control both coca cultivation—with its weighty historical and cultural significance—and drug trafficking.<sup>9</sup>

Law 1008 criminalizes, for the first time in Bolivian history, coca cultivation except in certain expressly permitted circumstances. In the Yungas, where the coca crop is used primarily for traditional and licit purposes, up to 12,000 hectares of coca may continue to be cultivated legally. For the Chapare, in contrast, the law establishes a framework by which existing coca cultivation would gradually be eradicated. Targets are set for the eradication of existing coca fields and farmers are compensated for "voluntarily" eradicating their coca plants and taking up alternate crops. Planting new coca plants or expanding the area under coca cultivation is prohibited. Coca cultivation outside the Yungas and the Chapare is illegal.

After six years, Bolivia has made little progress in meeting Law 1008's eradication timetable. Although between 1987 and 1993 some 26,140 hectares of coca were in fact voluntarily eradicated in the Chapare, a greater number were newly planted or were replanted. By the end of 1993, some 33,240 hectares remained under coca cultivation. In the past two years, eradication came to a virtual standstill. In 1994, the government eradicated 1,000 hectares—and an equal number were newly planted.

U.S. officials characterize the failure to eradicate as a failure of will.<sup>10</sup> The lack of will, however, reflects Bolivian political realities. Whether voluntary and compensated or forced, the physical destruction of coca crops pits the state directly against the 30,000-60,000 coca farming families and their political allies who view coca in terms of livelihood and national tradition and who reject antinarcotic policies that threaten either.

### **Political Forces Opposing Coca Eradication**

The Chapare's peasants seek to protect their ability to grow coca—and hence to protect their livelihood—through a network of grassroots unions (*sindicatos*), organized into some thirty sub-federations (*centrales*), which in turn are organized into five regional federations that work together through a regional confederation.<sup>11</sup> Two of the federations account for 85 percent of the growers in the Chapare. The *sindicatos* were originally created to enable new settlers who migrated to the Chapare to establish their claims to land and to address a wide range of community development needs. Indeed, in many ways the *sindicatos* function as a form of de facto local government: they establish land boundaries, influence transport fares, raise money and undertake small-scale public works programs.<sup>12</sup>

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<sup>9</sup> Although the coca growers unions were unable to secure a separate law regulating coca cultivation, their influence may be detected in the fact that Law 1008 clearly differentiates between "coca and controlled substances." Article 3 of the law, more particularly, draws an "essential distinction" between coca in its natural state, and coca that is chemically processed to obtain the cocaine alkaloid. Further evidence of the conceptual distinction can be found in Chapter One of the law, which refers to the pre-Colombian history of coca and the long tradition of its lawful consumption in Bolivia.

<sup>10</sup> The 1995 report of the Bureau for International Narcotics and Law Enforcement Affairs complains, for example: "As in previous years, the main impediments to eradication were political. We hope that the Bolivian government will overcome its political trepidation and meet its target in 1995." Bureau for International Narcotics and Law Enforcement Affairs, *International Narcotics Control Strategy Report March 1995* (Washington, U.S. Department of State, 1995), p.9 (hereinafter "INCSR").

<sup>11</sup> Bolivian peasants may be the most organized in Latin America. First created in 1953 as part of the national agrarian reform movement, peasant *sindicatos* now organize and represent peasants throughout the Bolivian countryside. See José Guillermo Justiniano, "The Power of Coca Producers," in Peter H. Smith, ed., *Drug Policy in the Americas* (Boulder: Westview Press, 1992), pp. 99-104.

<sup>12</sup> Our discussion of the role of the *sindicato* draws heavily on Kevin Healy, "Political Ascent of Bolivia's Peasant Coca Leaf Producers," *Journal of Interamerican Studies and World Affairs* Vol. 33:1 Spring 1991



The coca farmer sindicatos have become highly militant political action groups that have consistently sought to block attempts of the Bolivian government to control and reduce coca production. The political agenda of the sindicatos responds to the farmers' desire to defend their ability to grow and sell their most lucrative cash crop. To support what are essentially concerns of economic self-interest they draw on nationalist and populist themes—depicting the coca debate as a struggle between a poor but sovereign nation with a tradition of the "sacred leaf," and an imperialist, repressive United States, which, unable to control its domestic drug consumption, tries to impose its dictates abroad. The coca growers do not see themselves as criminals or societal delinquents for growing coca; on the contrary, they insist on the distinction between coca and cocaine and reject what they perceive as government efforts to stigmatize coca as being equivalent to cocaine. They declare themselves opposed to drug trafficking, but when pressed to acknowledge that their coca is used for cocaine and not for traditional uses, they insist that the burden should be on the United States to curtail consumption, not on them to curtail production. They do not publicly acknowledge that a considerable number of farmers have taken up cocaine-base production.

The coca sindicatos have employed a range of tactics to press their cause, galvanizing thousands of peasants to construct roadblocks and to engage in hunger strikes, public protests, rallies and marches. Most recently and most notably, several thousand peasants marched from the Chapare to La Paz last September to protest a major antinarcotics initiative in the Chapare labeled *Operación Nuevo Amanecer* (Operation New Dawn).

The coca growers have become a powerful sector within the national peasant confederation, the Confederación Sindical Única de Trabajadores Campesinos de Bolivia (CSUTCB), and have convinced CSUTCB members from non-coca-growing regions to oppose foreign-backed efforts to eradicate coca, using the argument that protecting coca protects Bolivian culture. The coca farmers have also increased their power in and the acceptance of their perspective by the Central Obrero Boliviano (COB), Bolivia's powerful, militant and anti-imperialist national confederation of trade unions.<sup>13</sup> Their effort to defend coca has also led the coca growers into the wider national political arena, where they have succeeded in establishing ties with national opposition political parties, some of which now articulate the coca growers' interests within the halls of Congress.<sup>14</sup>

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<sup>13</sup> As Kevin Healy points out, there is a natural affinity between the anti-U.S. discourse of the coca leaf growers and that of the COB. "Throughout its history, COB leaders have allied themselves with that part of Latin America's political culture of the Left which criticizes U.S. 'intervention' and U.S. support of economic and military elites at the expense of the needs of the poor majority. Consequently, it is easy for the coca-leaf growers to borrow from the 'anti-imperialist' rhetoric and slogans of the COB, and for the two groups mutually to reinforce on another's political biases." *Ibid.*, p.101.

<sup>14</sup> For a discussion of the "coca lobby," see Rensselaer W. Lee III, *The White Labyrinth: Cocaine and Political Power* (New Brunswick: Transaction Publishers, 1989), pp. 55-90.

Their direct-action tactics, their demonstrated capability to mobilize their membership, and their position within the national political arena have given the coca sindicatos considerable influence on national politics and policies.<sup>15</sup> In particular, they have been able to alter, restrain and retard policies and programs to reduce coca production, either by negotiating formal agreements with the government or by blocking the government from implementing particular aspects of Law 1008. It is a testimony to the power of the coca growers that the government has never mounted a vigorous eradication effort backed by measures to eliminate new plantings.<sup>16</sup>

### III. U.S. Counternarcotics Strategies and Bolivian Institutions

#### U.S. Policy Goals

United States policymakers identify three goals for Bolivia: fighting the war on drugs; strengthening democracy; and encouraging sustained economic growth and stability. But counternarcotics concerns have dominated U.S. actions in Bolivia. As the State Department explained to the U.S. Congress, "[N]either a stronger democracy nor a stable, growing economy is possible under the pervasive threats of drug-related crime and violence, corruption, domestic drug abuse and environment damage caused by illegal narcotics production and economic environment."<sup>17</sup> U.S. efforts to strengthen democratic institutions emphasize those institutions capable of stopping narcotics production and trafficking (e.g. the justice system of prosecutors, courts and police); and efforts to strengthen the economy emphasize efforts to create alternatives to the coca economy.

Current U.S. drug policy towards Bolivia has its roots primarily in a 1989 Bush administration initiative called the Andean Strategy, a \$2.2 billion five-year multifaceted program to combat drug production and trafficking in Bolivia, Colombia and Peru, the source countries for the cocaine entering the U.S.<sup>18</sup> The cocaine control strategy adopted by the Clinton administration also focuses on these source countries, reflecting its belief that from a tactical standpoint, anti-drug efforts in the source countries should provide the United States with the best opportunities to eradicate production, to arrest drug "kingpins" and destroy their organizations, and to interdict drug flow."<sup>19</sup>

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<sup>15</sup> Frustrated by the persistent power of the coca growers and their ability to thwart eradication goals, the United States has sought to discredit the sindicato leadership. One of the allegations U.S. officials have made is that the more militant coca growers, organizations and their leadership are directly supported by drug trafficking. For example, the United States has stated that "peasant pro-coca groups are extremely active in the selling of [coca] base, and some of them finance their political activities with resources stemming from the selling of base." *El Libro Verde*. To our knowledge, no proof has been publicly offered to support such allegations.

<sup>16</sup> The coca growers have also pressed the government to promote the commercialization of alternative licit uses for coca, arguing that coca possesses nutritional and medicinal properties that could be converted into new products for international markets. A few, essentially symbolic steps in that direction were taken by the administration of President Jaime Paz Zamora, which briefly adopted a posture of "coca diplomacy" and tried to promote coca internationally. President Sánchez de Lozada last fall also signed an agreement with the coca growers that included a commitment to press for commercialization of new licit uses for coca. But international realities, principally the steadfast opposition of the United States, have prevented the Bolivian government from making any real movement in this direction.

<sup>17</sup> Bureau for International Narcotics and Law Enforcement Affairs, *Congressional Presentation for Fiscal Year 1995* (Washington: U.S. Department of State, 1994).

<sup>18</sup> The strategy had four goals: to strengthen the political will and institutional capability of the governments of Bolivia, Colombia and Peru to attack the cocaine trade; to improve the intelligence gathering capability of Andean law enforcement and military institutions; to strengthen ties between police and military units to target the leaders of the major cocaine trafficking organizations, impede the transfer of drug-generated funds and seize their assets within the United States; and to expand economic assistance. See generally Bruce M. Bagley and William O. Walker III, eds., *Drug Trafficking in the Americas* (Miami: University of Miami, 1994).

<sup>19</sup> The White House, *National Drug Control Strategy Executive Summary* (Washington: The White House, April 1994),



In Bolivia, the U.S. counternarcotics goal "is to eliminate the cultivation of illegal coca and the production of cocaine and to assist the [government of Bolivia] to develop the capability to combat narcotrafficking on its own."<sup>20</sup> Specifically, counternarcotics strategy in Bolivia has long emphasized three interrelated objectives: interdiction and law enforcement, alternative development and eradication. Interdiction disrupts the production and transport of cocaine, uncovers and dismantles drug trafficking networks. Alternative development programs promote the economic viability of cash crops to replace coca. The heart of the strategy, however, has been and remains eradication. U.S. officials believe it is easier to destroy crops in the field than to locate and destroy laboratories, to dismantle drug trafficking organizations, or to keep processed cocaine from being carried across U.S. borders and sold on American city streets.

### **U.S. Funding**

In the six years since the Bush administration initiated the Andean Strategy, Bolivia has received more than three-quarters of a billion dollars in assistance from the United States.<sup>21</sup> Within the Andean Region, Bolivia receives the largest amount of U.S. counternarcotics financial assistance of any of the three coca-producing countries. For fiscal years 1994 and 1995, the international narcotics budget for Bolivia, including economic and military counternarcotics programs, was \$69.8 million, compared to \$58.4 million for Colombia and \$33.8 million for Peru. For fiscal year 1996, the U.S. Department of State has requested a counternarcotics budget of \$60 million for Bolivia.<sup>22</sup> This level of funding represents an enormously significant economic contribution to the resources available to Bolivian law enforcement organizations.

### **U.S. Counternarcotics Personnel in Bolivia**

The U.S. does more, however, than just provide financial assistance. The U.S. has created an extensive operation in Bolivia both to oversee the spending of U.S. funds and to provide a wide variety of direct support services to Bolivian government counternarcotics operations.

The war against drugs is the dominant concern of U.S. Embassy personnel in Bolivia; all agencies have some involvement with it, but two units dominate the U.S. anti-drug activities: the Narcotics Affairs Section in the Embassy and the Drug Enforcement Administration, both of whom report to the ambassador.

The Narcotics Affairs Section (NAS) provides the overall supervision and coordination of U.S. counternarcotics initiatives in Bolivia. As the in-country operating arm of the State Department's Bureau of International Narcotics and Law Enforcement Affairs (INL)<sup>23</sup>, NAS works closely with the DEA, U.S. Agency for International Development, and the U.S. military in administering INL programs in Bolivia. NAS plans and coordinates the provision of logistical, material, training, advisory and financial support to Bolivian government counternarcotics agencies and maintains extremely close relations with them. NAS personnel do not themselves directly engage in law enforcement operations.

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<sup>20</sup> INL, *INCSR March 1995*, p. 71.

<sup>21</sup> For a listing of all U.S. financial assistance to Bolivia from 1989 through Fiscal Year 1995, prepared by the U.S. and in Spanish), see Appendix 1.

<sup>22</sup> For recent budget figures prepared by U.S. State Department Bureau for International Narcotics and Law Enforcement Affairs, see Appendix 2.

<sup>23</sup> The Bureau of International Narcotics and Law Enforcement Affairs, formerly the Bureau of International Narcotics Matters, develops, implements and monitors U.S. international counternarcotics strategies and programs

The DEA is the U.S. government's lead agency in the war on drug trafficking in Bolivia. There are currently approximately eighty-four full-time DEA employees in Bolivia, twenty-seven of whom are law enforcement agents, stationed in La Paz, Cochabamba, the Chapare, Santa Cruz and Trinidad.<sup>24</sup> Both the U.S. and Bolivian governments have preferred publicly to emphasize the DEA's role of providing advice and training to Bolivians. In private, they acknowledge the DEA's role has been far broader. According to the internal State Department documents, the DEA has had "the dominant role in directing and planning all counter-drug enforcement and intelligence collection operations throughout Bolivia."<sup>25</sup> DEA agents have functioned as de facto senior law enforcement officials within Bolivia.

The DEA's work has ranged from directing traditional criminal investigations with the Bolivian narcotics police to planning, supporting, and/or participating in jungle operations with the Police Rural Mobile Patrol Units (UMOPAR). The DEA helps develop the intelligence necessary to plan raids against major criminal organizations operating cocaine base and hydrochloride laboratories in remote areas of Bolivia and to disrupt and dismantle trafficking organizations. The DEA also helps gather information in Bolivia that will support the prosecution of federal drug conspiracy cases in the United States and helps with the extradition of major traffickers who operate internationally. DEA agents may carry weapons, but are permitted to use them only for self-defense. They do not have authority to arrest or interrogate Bolivians, but they assist and participate in both.

A major focus for the DEA since 1988 has been providing the in-country command and control for Operation Snowcap. The operation has consisted of an ongoing series of operations using temporary rotating teams from the United States, which in cooperation with the Bolivian police, conduct interdiction and search-and-destroy missions against major cocaine processing plants. The Snowcap teams (consisting of personnel from different U.S. agencies, including the DEA, the Coast Guard and the Border Patrol) are trained, deployed and ultimately controlled by the Snowcap Operations Center in Washington D.C. According to Embassy and DEA officials, Operation Snowcap was phased out as of April 1, 1995. The DEA team in Bolivia will for budgetary and tactical reasons, remain deeply involved in intelligence gathering and analysis, however, and will continue to review and guide counternarcotics operations by Bolivian law enforcement personnel.

### **U.S. Support of Bolivian Counternarcotics Institutions**

With the exception of Bolivia's special drug courts (see discussion below), all of the many organizations within the Bolivian government that carry out the country's counternarcotics efforts receive U.S. funding and technical assistance and work closely with U.S. personnel. Indeed, although the United States is trying to "expand [the Bolivian government's] responsibility for directing and financing counternarcotics efforts,"<sup>26</sup> it continues to underwrite and remain enmeshed in the routine operation of Bolivia's counternarcotics law enforcement institutions.

The Special Force for the Fight Against Narcotics Trafficking (FELCN) is the principal Bolivian counternarcotics law enforcement entity. It exercises operational control over the UMOPAR, national police assigned to counternarcotics duties in the cities, and the Bolivian Air Force, Army and Navy counternarcotics task forces.<sup>27</sup> The commander of the FELCN, currently the former commander of the army, Gen. Simon Sejas, reports to the subsecretary of social defense within the Ministry of Government. U.S. support for the FELCN includes contract personnel support, salary supplements, office equipment, vehicles, training, travel and administrative support.

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<sup>24</sup> Between 1989 and 1995, the U.S. has spent \$41 million dollars to support DEA activities in Bolivia. See Appendix I.

<sup>25</sup> This quote is taken from an internal State Department briefing memorandum, dated August 9, 1994, prepared for Ambassador Kamman, on file at Human Rights Watch.

<sup>26</sup> INL, *Congressional Presentation 1996*.

<sup>27</sup> The FELCN also includes a financial investigations unit and a drug detection canine program.

Within the FELCN, the most extensive counternarcotics enforcement activities are carried out by the UMOPAR. The United States encouraged the creation of the 600-person UMOPAR as an "elite" counternarcotics law enforcement force chosen from among the most able police officers. Under the supervision of U.S. Special Forces, UMOPAR members receive special training in jungle survival, military operations and small unit tactics at the U.S.-funded Chimoré Police International Training Center "Garras del Valor."<sup>28</sup> Commonly known as the "*leopardos*," the UMOPAR are a paramilitary force wearing army fatigues, carrying automatic weapons and organized in military fashion, with enforcement missions carried out by patrols of ten to twelve people. More than 85 percent of the UMOPAR (about 500) are stationed in the Chapare, with the battalion command at Chimoré. Separate companies are also stationed in the Beni and La Paz departments. UMOPAR operations in the Chapare consist primarily of locating and dismantling maceration pits, intercepting and arresting people involved in transporting precursor chemicals and cocaine base, seizing small planes, operating check points and roadblocks, and mounting extended jungle operations that last several days.

According to U.S. and Bolivian officials, the United States funds approximately 90 percent of UMOPAR's non-salary operating expenses, and provides two-thirds of the UMOPAR salaries.<sup>29</sup> The UMOPAR's fatigues (still stamped with the oversized letters "U.S."), equipment, arms and even dehydrated meals all come from the United States. As of March 1, 1995, U.S. funding for the UMOPAR obligated for fiscal year 1994 amounted to \$3,349,000.<sup>30</sup>

In addition to funding FELCN and the UMOPAR, the U.S. is directly involved in their day-to-day operations. U.S. personnel provide direct supervision, operational planning and guidance. For example, according to the State Department, although the commander of FELCN "reports administratively through the Secretary for Social Defense . . . [i]n practice, direction of counternarcotics operations is planned and coordinated through direct liaison between Bolivian enforcement units and DEA."<sup>31</sup> Since the UMOPAR's creation, DEA agents have provided advice, training and operational oversight to UMOPAR forces in the field, accompanying them on field patrols and operations. In addition, "NAS field personnel provide comprehensive logistic support to UMOPAR field units in the Chapare and Beni."<sup>32</sup> U.S. officials acknowledged to Human Rights Watch that career advancement in the UMOPAR and FELCN depends on U.S. approval.

According to U.S. officials, the United States is trying to move Bolivian counternarcotics agencies towards greater self-sufficiency. Indeed, the fact that the United States is now officially trying to "bolivianize" Bolivian counternarcotics operations is eloquent testimony to the importance of the U.S. role during the past decade and up to the present. A 1994 State Department report noted with satisfaction that the "UMOPAR increasingly assumed responsibility for planning and conducting operations. In 1993, approximately 55 percent of UMOPAR's operations were conducted independently."<sup>33</sup>

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<sup>28</sup> The course was originally taught by U.S. Special Forces, but UMOPAR officers have gradually replaced U.S. instructors.

<sup>29</sup> UMOPAR agents receive a monthly salary of 200 bolivianos (approximately \$40) from the Bolivian government which is then "supplemented" by a monthly payment of 450 bolivars from the United States.

<sup>30</sup> Figure taken from a summary of financial management activities by the U.S. Embassy, La Paz. Document on file at Human Rights Watch.

<sup>31</sup> The quote is taken from an internal State Department briefing memorandum, dated August 9, 1994, prepared for Ambassador Kamman, on file at Human Rights Watch.

<sup>32</sup> Ibid.

<sup>33</sup> U.S. Embassy in Bolivia, *Post Operation Plan Fiscal Year 1994, December 1993*, on file at Human Rights Watch.  
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The Bolivian military plays a limited but key role in Bolivian counternarcotics operations.<sup>34</sup> The Air Force provides three air units to support counternarcotics operations; the Navy helps the UMOPAR monitor rivers for trafficking in drugs and chemicals; and one supply and transportation battalion of the Army provides ground mobility support for counternarcotics operations. The U.S. supports all three with funding, training, program guidance and technical support.<sup>35</sup>

In an effort to ensure the vigorous prosecution of drug trafficking cases, Law 1008 authorized the creation of special prosecutors. Appointed by the Attorney General, the Controlled Substances Prosecutors are responsible for directing criminal investigations by the FELCN (including UMOPAR and urban narcotics police), accompanying the FELCN units on their operations, and prosecuting drug cases in the Controlled Substances Courts.<sup>36</sup> There are currently twenty-eight special prosecutors, in addition to nine attorneys operating a special "case tracking system." In addition to providing technical assistance and training, the U.S. provides the funding for their entire budget, including salaries and operating costs—about \$850,000 annually.

### **Progress in Counternarcotics Efforts and U.S. Demands**

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<sup>34</sup> In the early 1990s, after persistent pressure by the U.S., Bolivia undertook a brief but aborted effort to expand the role of the Bolivian army in counternarcotics activities. In May 1990, Bolivia and the United States supplemented previous bilateral antinarcotics agreements with Annex III, under the terms of which the Bolivian government agreed to order Bolivian armed forces into counternarcotics missions if police forces were overrun by drug traffickers. In exchange, the United States promised \$33.2 million in military aid. Once the agreement was signed, then President Paz Zamora expanded participation of the Bolivian navy and air force in antinarcotics activities, but responded to Bolivian opposition to the "militarization" of counternarcotics efforts by continuing to resist U.S. pressure to involve the Bolivian army directly. Nonetheless, in October 1991, two U.S.-trained army battalions initiated an operation to locate traffickers and destroy laboratories in a remote border area of the Santa Cruz department. The political costs of involving the army were so high—and its accomplishments so scant—that both the U.S. and Bolivian governments backed off from the effort to draw the Bolivian army into the drug war. In 1992, the Bolivian and U.S. governments signed bilateral agreements in which the Bolivian army would receive training and equipment for a transport battalion and that providing such transportation would be the extent of the army's involvement with the war on drugs. For discussion of efforts to militarize Bolivia's war on drugs, see Washington Office on Latin America (WOLA), *Clear and Present Dangers: The U.S. Military and the War on Drugs in the Andes* (Washington: WOLA, 1991); Coletta Youngers, "A Fundamentally Flawed Strategy: The U.S. 'War on Drugs' in Bolivia," *WOLA Briefing Series: Issues in International Drug Policy*, Issue Brief #4 (Washington: WOLA, 1991); and Eduardo A. Gamarra, *Entre la Droga y la Democracia* (La Paz: ILDIS, 1994).

<sup>35</sup> The United States has invested mainly in Bolivian Air Force counternarcotics support: in FY 1995, the State Department budget for Bolivian counternarcotics air operations support was \$5.35 million; the budget request for FY 1996 is \$8 million. The U.S. Coast Guard and Navy provide program management, training and advice for Bolivian Navy law enforcement operations on Bolivian rivers. In addition, the United States funds all travel, per diem, logistical support and operating costs. For FY 1995, \$1 million was budgeted for riverine operations support; \$2.5 million are sought for FY 1996. The Bolivian Army's counternarcotics transportation battalion, the Green Devils, is also supported by the U.S., which provides, *inter alia*, training, equipment, and construction of new facilities.

<sup>36</sup> Law 1008, Arts. 91 and 92; see also Ley de Ministerio Público, Arts. 79-80, enacted Feb. 19, 1993.

The massive investment of funds and personnel by the United States in Bolivia has generated significant annual statistics of arrests, drugs seized and drug production installations destroyed.<sup>37</sup> But counternarcotics efforts in Bolivia have not secured an absolute reduction in the amount of coca leaf produced or in the amount of Bolivian cocaine shipped to the United States. Although the United States has been generally satisfied with Bolivia's law enforcement efforts, it has grown increasingly frustrated by the Bolivian government's unwillingness to mount a forceful coca reduction effort.

Some coca was voluntarily eradicated in 1993 and 1994, but more was planted; the net result was an increase in the total land cultivated with coca in the Chapare: from 31,600 hectares in 1992 to 33,900 hectares in 1994.<sup>38</sup> In February 1994, the government of President Sánchez de Lozada undertook a brief campaign of forced eradication of coca plants growing next to cocaine base laboratories. When resistance by the coca growers began to grow violent, however, the government ended the effort. In mid-1994, the Bolivian government launched Operation New Dawn, an aggressive, multifaceted counternarcotics campaign in the Chapare targeting maceration pits and attempting to block the entry of buyers into the region and the shipment of drugs, but the campaign did not include eradication. The massive sweeps, arrests and high levels of abuse that characterized Operation New Dawn provoked such outrage among the coca growers that they staged a remarkable several-day march of thousands from the Chapare to La Paz. The upshot of subsequent negotiations between the growers and the government was, in essence, a stalemate, as the Sánchez de Lozada administration unsuccessfully sought to develop a politically acceptable strategy to deal with the coca problem. Eradication efforts were, in the meantime, dropped.

United States frustration with Bolivian antinarcotics efforts has been exacerbated by the lack of a workable extradition mechanism. The existing extradition treaty between the U.S. and Bolivia dates from 1900, and does not include drug-related crimes among the extraditable offenses enumerated. Nonetheless, relying upon the 1988 United Nations Convention against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances,<sup>39</sup> to which Bolivia is a state party, the Bolivian Supreme Court has in the past few years ratified the extradition to the United States of a few accused narcotraffickers. These cases have, however, been relatively infrequent as well as enormously controversial. The United State authorities currently have a large backlog of extradition requests pending before the Bolivian courts.

The U.S. is impatient to smooth the extradition process and render such drug-related extraditions more routine. In 1990, the United States and Bolivia negotiated a new extradition treaty that includes drug crimes. The treaty was never signed by President Jaime Paz Zamora, however, and thus did not enter into force. At present, the two governments are proceeding with renewed extradition treaty negotiations. One sticking point has been U.S. resistance to a treaty provision proposed by Bolivia that bars either country from taking custody of a person in violation of the other country's sovereignty.<sup>40</sup>

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<sup>37</sup> For example, last year law enforcement efforts led to the destruction of more than 1,900 maceration pits and the seizure of 202 metric tons of illegally grown coca leaf, 6.4 metric tons of cocaine base and 1.02 metric tons of cocaine HCL. Thirty-two cocaine hydrochloride laboratories were also destroyed. See Bureau for International and Narcotics Law Enforcement Affairs, *International Narcotics Control Strategy Report*, March 1995, p. 72.

<sup>38</sup> *El Libro Verde*.

<sup>39</sup> U.N. Doc. E/CONF. 82/15 (1988).

<sup>40</sup> This provision was apparently formulated in reaction to the United States Supreme Court's controversial ruling in *United States v. Alvarez-Machain*, 112 S. Ct. 2188 (1992). In that case, the Court held that, in the absence of an explicit provision to the contrary, the abduction of a criminal suspect by paid agents of the United States from another country's territory does not violate the extradition treaty with that country. Human Rights Watch/Americas filed a brief *amicus curiae* in that case urging the Supreme Court to uphold the lower court's decision to repatriate the abducted defendant. In our view, such state-sponsored kidnapping violates a defendant's right to due process.



Under a provision in the Foreign Assistance Act, the president of the United States must certify whether major drug-producing or transit countries have taken sufficient steps to combat trafficking. The United States cannot provide aid to countries that are not so certified; it must also vote against loans to them by multilateral banks. U.S. foreign aid to Bolivia is not inconsiderable for a small, poor country. But the major leverage the United States has comes from its ability effectively to block the multilateral loans that are Bolivia's economic life blood.

Although the U.S. certified Bolivia in 1994 and 1995, it relied on the act's national interest waiver, under which the President has the authority to determine that it is in the "vital national interests of the United States" to certify a country, even though that country has not cooperated fully with the United States or taken adequate steps on its own to combat drug trafficking.<sup>41</sup> In announcing his 1995 decision to certify Bolivia, President Clinton explained:

[D]enial of certification would likely terminate much of Bolivia's multilateral development bank assistance, which would have an extremely harmful effect on the Bolivian economy. It would reduce significantly the resources available to the [government of Bolivia] to combat narcotics trafficking and would foster conditions in which more Bolivians would be driven to engage in illicit coca cultivation and trafficking. . . Economic instability could lead to a loss of confidence throughout the country and thereby serve to undermine Bolivia's still-fledgling democratic institutions.

The 1995 certification was, however, immediately followed by an ultimatum. In early March, the U.S. government sent a letter to the Bolivian government in which it insisted that the Bolivians take three steps by June 30, 1995, or the United States would treat Bolivia as if it had been denied certification. Bolivia was told it had to:

- initial a mutually agreeable extradition treaty with the United States;
- develop a comprehensive and mutually acceptable plan to eradicate illicit coca cultivation, covering short, medium and long-term goals; and
- eradicate 1,750 hectares of coca in the Chapare.<sup>42</sup>

The ultimatum set off a political firestorm in Bolivia. It came at a particularly difficult moment for the government, which was already battling a labor movement determined to block plans for educational reform that would, among other things, weaken the power of the teachers' unions. The coca growers and the political opposition railed against U.S. disregard for Bolivian sovereignty, protested what they saw as U.S. efforts to blame Bolivia for the U.S. drug problem and, at least initially, suggested that no eradication would be undertaken without guarantees of alternative development. One high-ranking Bolivian official acknowledged to Human Rights Watch that the ultimatum placed Bolivia "between a sword and a wall." If the country did not meet U.S. demands, it would lose multilateral funding and risk becoming a "pariah" in the international community. On the other hand, to submit to these demands would bring down on the government the political wrath of formidable domestic opponents.

Unwilling to commit economic suicide, the government of Bolivia announced that it would embark on an ambitious eradication campaign that would yield a reduction of 1,750 hectares by June 30 and 5,400 hectares by the end of the year. A few weeks later, on April 18, the government declared a state of siege, ostensibly in response to the increasingly frequent and increasingly violent public demonstrations by the teachers' unions.<sup>43</sup> The government

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<sup>41</sup> Foreign Assistance Act of 1961, sect. 490(b)(1)(B), as amended.

<sup>42</sup> Text of communication on file at Human Rights Watch.

<sup>43</sup> In Supreme decree no. 23.993 issued on April 18, 1995, President Gonzalo Sánchez de Lozada declared that strikes, marches, street blockades and other protest activities had provoked a state of "commotion and instability" that justified the declaration of a state of siege.

established a curfew, banned public meetings and arrested labor leaders. But the government also took advantage of the state of siege to arrest coca leaders and to begin to undertake a survey of coca cultivations in the Chapare.<sup>44</sup>

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<sup>44</sup> Hours before decreeing the state of siege, in an egregious abuse of power, the Bolivian government broke up a meeting of the Andean Council of Coca Growers being held in Copacabana. The participants in the peaceful and lawful meeting included key leaders of the Bolivian coca growers as well as Colombian and Peruvian coca growers and advisors who were meeting to discuss issues of shared concern, including how to promote licit uses of the coca leaf. The non-Bolivians at the meeting, including a representative from the Andean Commission of Jurists, were forced to leave Bolivia; the Bolivians were arrested.

In the first week of the state of siege, approximately 400 labor leaders, coca grower representatives, students and journalists were arrested. Most were detained incommunicado in facilities (primarily military barracks) in remote areas of the country, without charges and without access to lawyers of their choice or to judicial protection through habeas corpus. These measures abrogated the rights to personal liberty, due process and a fair trial guaranteed by the American Convention on Human Rights, to which Bolivia is a party.<sup>45</sup> The convention does permit the suspension of certain rights and liberties, but only "in time of war, public danger or other emergency that threatens the independence or security of a State Party [and only] to the extent and for the period of time strictly required by the exigencies of the situation."<sup>46</sup> Habeas corpus may never be suspended.<sup>47</sup> The threats to public peace cited by the government to justify the state of siege clearly did not jeopardize the country's independence or security. Moreover, the number of arrests and conditions of detention far exceeded those "strictly necessary." On May 1, 1995, Human Rights Watch/Americas, the Center for Justice and International Law and the International Confederation of Free Labor Unions petitioned the Inter-American Human Rights Commission to protect the rights of the detainees. On May 3, the commission asked the Bolivian government to adopt measures to protect the life and physical integrity of those detained under the state of siege.

By early May, the government had released all those detained under the state of siege, including the coca growers' leaders (although they were among the last to be released). During the first few days after the state of siege was declared, there were incidents of violence, primarily between coca growers and the UMOPAR, and there were reports of abuse connected with the arrests of some coca grower representatives.<sup>48</sup> Most observers, however, were surprised—and relieved—that the situation remained as calm as it did. Important coca grower representatives, including Evo Morales (who had been among those arrested), urged coca growers to recognize Bolivia's predicament vis-à-vis the United States and to agree to eradicate voluntarily the hectares necessary to satisfy the ultimatum. By mid-June, the government declared that a sufficient number of hectares had been eradicated to avoid U.S. sanctions.

#### IV. Criminal Prosecutions Under Law 1008

Though they may be arrested on mere suspicion, people prosecuted on drug charges in Bolivia are incarcerated without possibility of bail and held for years even after being acquitted at trial. Law 1008, the country's harsh drug law, provides the legal basis for these human rights abuses; its battered justice system, the context. Reform is needed, both in the terms of the law and in its application

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<sup>45</sup> Art. 7 and Art. 8.

<sup>46</sup> Art. 27 (1).

<sup>47</sup> Inter-American Court of Human Rights, Habeas Corpus in Emergency Situations, Advisory Opinion OC-8/87, Series A, No.8, January 30, 1987.

<sup>48</sup> For a report of abuses associated with the state of siege, see Comisión de Derechos Humanos Cámara de Diputados, *Vigencia y Respeto de los Derechos Humanos durante "el estado de sitio."* (La Paz, June 1995).

By all reports, the Bolivian justice system is highly politicized, plagued by corruption, understaffed and slow.<sup>49</sup> Although the judiciary is constitutionally an independent branch of government, it is vulnerable to pressure from the other branches, in particular the Executive, as well as a variety of external influences.

Critics of the Bolivian justice system point out that a person's treatment is largely determined by his financial status.<sup>50</sup> Most notoriously, those with sufficient resources can often buy their freedom at some stage of the prosecution, whether from the police, the prosecutor or the judge. Poor people, in contrast, often cannot even make bail. Even in the absence of outright corruption, cases may drag on interminably unless attended by a persistent lawyer. Because of these problems, the majority of people in prison have not yet been sentenced.<sup>51</sup> Indeed, it is not uncommon for prisoners to spend more time incarcerated awaiting trial than they would under the maximum sentence for their crime. In other egregious examples, case files have been archived while the defendant remains in prison.

The chronic deficiencies of the Bolivian justice system have not escaped notice. Recently, certain institutional reforms were instituted to improve the administration of justice. In 1993, the Public Ministry, which is charged with the prosecution of crimes and the promotion of justice, was reformed. Headed by the attorney general (fiscal general de la república), who is appointed to a ten-year term, the Public Ministry was granted greater independence from political control than under the previous system, in which the prosecutorial function was almost entirely subject to the will of the Executive.<sup>52</sup> In 1993, the first-ever Justice Ministry was established and charged with public defense, prison reform, and the protection of human rights. Another important reform, given the large percentage of poor defendants in Bolivia, was the creation of a public defenders' office providing free legal services to indigents. Having begun operations in 1992, it was placed under the auspices of the Justice Ministry the following year. It presently consists of regional offices in six cities, with two additional offices planned.

Finally, a Constitutional Tribunal was established in 1994 to review the constitutionality of laws, decrees and other resolutions; in the absence of implementing legislation it is not yet functioning. Currently, rulings on questions of law by the Bolivian courts—including the Supreme Court—are applicable only to the individual case; they have no binding precedential value for future cases (although lower courts may choose to follow them so as to reduce the likelihood of reversal). In contrast, rulings by the Constitutional Tribunal will constitute binding precedent for future cases. The tribunal will be able to invalidate and render inapplicable legislative provisions that violate Bolivia's constitution.<sup>53</sup>

Although these and other reforms constitute significant improvements, the Bolivian justice system remains seriously flawed. These flaws persist and, in some respects, are exacerbated in prosecutions under Law 1008.

## Law 1008

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<sup>49</sup> See for example, Eduardo A. Gamarra, *The System of Justice in Bolivia: An Institutional Analysis* (San José, Costa Rica: Centro para la Administración de Justicia, 1991); Instituto de Investigaciones Jurídicas y Criminológicas de la Universidad Católica Boliviana, *Estudio del Funcionamiento del Sistema Penal en Bolivia* (La Paz: Producciones Gráficas "El Progreso," 1994); Comisión Andina de Juristas, *Bolivia: Administración de Justicia y Derechos Humanos* (Lima: Comisión Andina de Juristas, 1993) (hereinafter "CAJ Report").

<sup>50</sup> See for example, CAJ Report, pp. 69-73.

<sup>51</sup> *Ibid.*, p. 95; Department of State, *Country Reports on Human Rights Practices for 1994* (Washington, D.C.: U.S. Government Printing Office, 1995), p. 329 (hereinafter "State Department, *Country Report*").

<sup>52</sup> See Williams Herrera Anez, *Apuntes de Derecho Procesal Penal* (La Paz: Sirena, 1993), pp. 151-173 (stating that the reformed Public Ministry has finally broken "the umbilical cord with the Executive Power") (hereinafter "*Apuntes*").

<sup>53</sup> Constitución Política del Estado, Art. 121(II).

Characterizing narcotrafficking as a "crime against humanity,"<sup>54</sup> Law 1008 criminalizes a broad array of drug-related activities, including manufacturing, distribution and sale.<sup>55</sup> Although the law was fiercely debated prior to its passage, the debate centered on the regulation of coca rather than the law's provisions covering controlled substance offenses. Most of the latter provisions were, in fact, carried over from past drug laws.<sup>56</sup>

Curiously, there was also relatively little public debate about the special procedures and institutions created by Law 1008 for the prosecution of drug cases. Law 1008, in effect, creates a special sub-system within the administration of justice. The rules of this system are harsh by design and affects thousands of people. Currently over one-third of the Bolivian prison population—at least 1,700 inmates—is incarcerated on drug-related charges.<sup>57</sup>

The special institutions created for drug prosecutions include drug courts (Juzgados de Partido de Sustancias Controladas), drug prosecutors (Fiscales de Sustancias Controladas), and the special antinarcotics force (Fuerza Especial de Lucha Contra el Narcotráfico (FELCN). (These are discussed below.)

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<sup>54</sup> While cognizant of the international scope and impact of illegal drug trafficking, Human Rights Watch nonetheless objects to its characterization as a crime against humanity. This term was traditionally reserved for the most serious violations of international human rights, those that violate "elementary dictates of humanity." *Final Report of the Commission of Experts Established Pursuant to Security Council Resolution 780* (1992), U.N. Doc. S/1994/674, paragraph 73; see also Control Council Law No. 10 (Punishment of Persons Guilty of War Crimes, Crimes Against Peace and Against Humanity), Dec. 20, 1945. But see *Eighth Report on the Draft Code of Crimes Against the Peace and Security of Mankind* (1990), U.N. Doc. A/CN.4/430 (describing the illicit traffic in narcotic drugs as a crime against peace and a crime against humanity); *Report of the International Law Commission on the work of its forty-second session*, U.N. Doc. A/45/10 (1990) (suggesting that proposed article covering drug trafficking be included within chapter on crimes against humanity in draft international criminal code). Given the importance of guarding the conceptual integrity of the category of crimes against humanity, Human Rights Watch believes that it should not be stretched to cover crimes not involving fundamental human rights. Illegal narcotrafficking is an international crime of a different type. See for example, M. Cherif Bassiouni, "Enforcing Human Rights through International Criminal Law and through an International Criminal Tribunal," in Henkin & Hargrove, *Human Rights: An Agenda for the Next Century* (1994), p. 353 (classifying drug crimes as violating "social interests," but crimes against humanity as violating "fundamental human rights").

<sup>55</sup> Among its many provisions, Law 1008 includes a prohibition on the "apology" of drug crimes that clearly violates the right to freedom of expression. This provision prohibits anyone from using the public media to defend, "in a tendentious, false or sensationalistic manner," a crime or a person convicted of or even prosecuted for narcotrafficking. In other words, the provision does not simply criminalize defending or justifying the acts of convicted narcotraffickers, it also bars the public defense of persons who are not found guilty of, and are in fact presumed innocent of, the offenses charged. Granted, it only prohibits expression done in a specified manner, but its manner limitation is so inherently vague and subjective as to be virtually worthless, failing to provide sufficient notice as to what types of speech are proscribed. We have not, however, received any reports of prosecutions under this provision. Debate on drug issues in Bolivia is, from what we have observed, vigorous and unfettered.

<sup>56</sup> Law 1008's historical antecedents date back to Decree Law 4291 of 1956, which deemed the manufacture, supply, trafficking and illegal possession of drugs to be "crimes against the public health." This law was superseded by a more detailed and comprehensive drug law in 1962. Further drug laws were passed in 1973, 1976 and 1979, twice in 1981 (first during the García Meza "narco-dictatorship," and then in its wake), and in 1985. See SEAMOS, *Problemas Jurídico-Legales Asociados a la Aplicación de la Ley 1008; Procesos, Encausamiento y Penalidades al Narcotráfico* (1991) (hereinafter "SEAMOS report"), pp. 18-21.

<sup>57</sup> Although there are no precise figures available regarding the number of prisoners held under Law 1008, most sources estimate that such prisoners constitute between one-third and one-half of the entire prison population, with large variations from prison to prison. See for example, "Habrà guerra entre presos si los desalojan para ubicar a menores," *La Razón*, April 5, 1995, p.8-9 (stating that in the District Prison of Santo Domingo, for example, only 9 percent of the prisoners are held for drug offenses, whereas 80 percent of the prisoners in Chonchocoro Prison are); "Según estadísticas del gobierno, treinta-cuatro de cada cien reos están presos por narcos," *La Razón*, April 5, 1995, p.7. The Attorney General's Office has begun to track Law 1008 cases via computer, but the statistics compiled to date, which include 1,581 people currently completing sentences under the law as of February 1995, are concededly incomplete. *Datos Relacionadas a Procesos de Narcotráfico a Nivel Nacional* (document on file with Human Rights Watch/Americas).

The special drug courts have certain unique attributes. First, unlike other Bolivian trial courts, they consist of three judges who act by majority vote. This innovation was designed to curb corruption, as three judges are harder to bribe than one. Second, in anticipation of the prosecution of nation-wide drug rings, they were accorded national jurisdiction. This increases the burden on defendants, who can be tried far from the scene of the relevant events. A defendant arrested for a crime allegedly committed in Santa Cruz, for example, can be held and tried in La Paz. Third, as will be discussed below, the drug courts' powers to act in favor of the defendant have been somewhat restricted. Fourth and perhaps most importantly, these courts are under tremendous political pressure to produce results in the fight against drug trafficking. Judicial conduct is scrutinized for indicia of corruption; acquittals are particularly suspect.

#### *Mandatory Pre-Trial and Post-Acquittal Detention*

Innocent or guilty, a person charged with drug trafficking offenses faces years of imprisonment. This widely condemned feature of Bolivian drug prosecutions arises from the conjunction of two Law 1008 provisions: one that bars provisional liberty and one that requires the prosecutor to appeal every acquittal all the way up to the Supreme Court.<sup>58</sup> Under these provisions, a person is mandatorily detained while awaiting trial and then, if acquitted, remains incarcerated as the prosecutor appeals the case through two more levels of the judicial system. Although the law anticipates an approximately three-month timetable for trials and appeals, the deadlines it establishes are not observed in practice.<sup>59</sup> Instead, trials last a year; and the appeals process lasts two to four more years.<sup>60</sup>

Law 1008 permits no exceptions to these provisions. A defendant must be incarcerated from the moment of being charged through the Supreme Court's ruling regardless of the gravity of the specific offenses he or she is charged with, the nature of his or her role in the alleged crime, the strength of the evidence, or even the availability of guarantees to assure the defendant's presence at trial. Similarly, Law 1008 contains no exceptions to its astonishing requirement that detention continue even following acquittal by the trial court. No precise statistics were available as to the number of acquitted people currently detained awaiting a decision from the Supreme Court, but defense lawyers and others familiar with the problem estimate there are several dozen. Innocent persons can remain imprisoned for years. In the Cochabamba prisons, for example, the person who has been detained longest is Jesús Guajare, who has been detained for approximately four years. He was found not guilty in both the trial court and on appeal, and his case has been pending before the Supreme Court since July 4, 1992.

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<sup>58</sup> Art. 121 of Law 1008 states that "the prosecutor must appeal . . . whenever a sentence or decision acquits or declares the defendant innocent or imposes a lighter sentence than that requested." Art. 109 states that "in controlled substance cases, the benefit of provisional liberty does not apply"; it has been interpreted to require the continued detention of the defendant during the appeals process.

<sup>59</sup> The law also establishes penalties for exceeding its timetables, but these are reportedly not applied.

<sup>60</sup> Although the time taken up by the various stages of the process varies, it is generally acknowledged that the time required for the trial stage and first appeal is less, often much less, than that required for the Supreme Court's review. The Supreme Court's extreme slowness is partially explained by the fact that, since 1993, there has been only one magistrate assigned to its Sala Penal, the chamber which hears all Law 1008 appeals. This magistrate, Dr. Hugo César Cadima, is almost ninety years old and has an enormous backlog of cases. Aided on an ad hoc basis by two magistrates from the Sala Civil, he is currently reviewing cases that have been pending in the Supreme Court for approximately two years. Although the Sala Penal is supposed to consist of three magistrates, it remains understaffed because of a highly politicized selection process. Basically, no single political party has been able to obtain the super-majority necessary to name its preferred candidates to the positions

Both in its blanket denial of pre-trial release and, particularly, in its denial of post-acquittal release, Law 1008 infringes on international protections for the right to personal liberty. By requiring that every defendant be detained pending trial,<sup>61</sup> the law contravenes Article 9(3) of the International Covenant on Civil and Political Rights (ICCPR), which states in relevant part: "It shall not be the general rule that persons awaiting trial shall be detained in custody."<sup>62</sup> Even more egregious, is the requirement of continued *post-acquittal* detention. By acquitting the defendant the court has authoritatively determined that the criminal charges against him or her are unfounded. In the absence of a superseding conviction or other valid reason, therefore, the continued detention of the defendant is arbitrary.

Neither the ICCPR nor the American Convention on Human Rights specifically addresses post-acquittal detention (underscoring the novelty of the practice). They omit this category from their discussions of imprisoned persons, which simply distinguish the categories of "accused" (or "unconvicted") persons and "convicted persons."<sup>63</sup> They both explicitly declare, however, that anyone who is detained is entitled to trial within a reasonable time or release.<sup>64</sup> Since acquitted persons have already been tried, their release is required.

The Bolivian government cannot argue that "trial within a reasonable time" subsumes the full appeals process, such that people detained pending the prosecution's appeal of their acquittal would simply be deemed unconvicted persons awaiting the results of their trial. Under both the ICCPR and the American Convention, persons convicted of crimes have the right to appeal their conviction to a higher court.<sup>65</sup> It would violate these provisions to deem the judgment of the Supreme Court the trial judgment, as no appeal of a conviction would be possible. In recognizing that persons may be "finally convicted" or "finally . . . acquitted,"<sup>66</sup> moreover, the ICCPR implicitly recognizes the preceding stages of the process: that people are convicted or acquitted pending appeal, not that they are still awaiting the results of their trial.

Finally, because the process of trial and appeals generally takes several years—long beyond the deadlines established under Law 1008—even if the Supreme Court's judgment were deemed the end of the trial, the long period of detention pending this judgment would violate the requirement of trial within a reasonable time.

#### *The Balance of Power in Prosecutions under Law 1008*

Law 1008 has been criticized by defense lawyers for transferring enormous power to the antinarcotics forces and special prosecutors while limiting the power of the judge and the defendant. This criticism has merit. Law 1008 eliminates certain aspects of the inquisitorial legal system, traditional in Bolivia, in favor of a more party-centered accusatory model of criminal procedure. In doing so, however, it expands the power of the prosecution without similarly expanding the powers of the defense.

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<sup>61</sup> Law 1008, Art. 109. In general, under the Bolivian penal code, defendants may obtain provisional liberty if the maximum sentence for their crimes is not more than four years; if they have already been detained for at least half of the sentence of the crime of which they are accused; and if they are older than sixty, are women, are minors, or are higher-level members of religious orders, unless their release would constitute a danger to the society. See Arts. 194-196, Código de Procedimiento Penal.

<sup>62</sup> ICCPR, Art. 9(3), 999 U.N.T.S. 171 (1967), Dec. 16, 1966 (ratified by Bolivia in 1982); see also General Comment No. 8 of the Human Rights Committee on the International Covenant on Civil and Political Rights, Art. 9 (Sixth Sess. 1982), Report of the Human Rights Committee, adopted Apr. 12, 1984 by the Human Rights Committee, 40 U.N. GAOR Supp. (No. 40) U.N. Doc. A/40/40 (stating "[p]re-trial detention should be an exception and as short as possible").

<sup>63</sup> ICCPR, Art. 10(2)(a); American Convention (ratified by Bolivia in 1979), Art. 5(4); see also Standard Minimum Rules for the Treatment of Prisoners, Art. 8(b), which distinguishes between "untried prisoners" and "convicted prisoners."

<sup>64</sup> ICCPR, Art. 9(3); American Convention, Art. 7(5); see also Art. 14(3)(c) (protecting right "[t]o be tried without undue delay").

<sup>65</sup> ICCPR, Art. 14(5); American Convention, Art. 8(2)(h).

<sup>66</sup> ICCPR, Art. 14(7); see also ICCPR, Art. 14(6).

Normally, crimes in Bolivia are investigated under the supervision of an investigating judge during the pre-trial stage known as the *sumario*,<sup>67</sup> based on that investigation, the judge determines whether a full trial should be instituted. Under Law 1008, the pre-trial role of the judge via the *sumario* has been eliminated. Instead, the decision to proceed to trial is entirely in the hands of the prosecution. Based on police reports prepared by the antinarcotics forces, the prosecutor decides whether to bring charges; then, regardless of its own assessment of the evidence, the controlled substance court must open trial proceedings. The court can neither dismiss nor reduce the charges brought by the prosecutor; the only change the court can make is to increase them.<sup>68</sup> The law also bars defendants from making preliminary objections to the proceedings, with two narrow exceptions for the death of the defendant and for previously adjudicated cases.<sup>69</sup>

The police reports that provide the basis for trial are widely characterized as shoddy: careless, incomplete, and reflecting little or no investigation. They often consist of little more than the defendant's confession,<sup>70</sup> which, at least in the past, was often made under duress.<sup>71</sup> Under Law 1008, these reports have the status of "preconstituted proof," which means that they are automatically admissible at trial and the officials who prepared them do not need to be present to ratify the statements made in them.<sup>72</sup> It is not uncommon for these reports to be the only trial evidence submitted by the prosecutor.

#### *Rights of Poor Defendants Under Law 1008*

The number of major players in the drug trade charged with violating Law 1008 is relatively small. Instead, the vast majority of defendants under Law 1008 are poor and unsophisticated, typically charged with involvement in the manufacture or transport of small amounts of drugs. These "*pisacocas*" (coca stompers), "*mulas*" (mules), and "*hormigas*" (ants) subsist at the lowest level of the drug trade. Lacking the resources to buy their way out of prosecution, they endure the full weight of the "excesses" associated with Law 1008.

Before the establishment of the public defenders' offices, indigents were normally represented by court-appointed lawyers with little time for or interest in defending them. Often the defense provided was negligible. Even now, the heavy caseloads of public defenders—those in La Paz, for example, handle over ninety cases each—sharply restrict their ability to defend each client.

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<sup>67</sup> The *sumario* stage, which tends to be long, was eliminated from Law 1008 to speed up the proceedings. It is worth noting, however, that the only other crimes under Bolivian law that lack a *sumario* are a small category of crimes such as defamation, deemed "private," and those punishable by not more than two years' imprisonment. See *Apuntes*, p. 281.

<sup>68</sup> Law 1008, Art. 101. After the case is opened by the trial court, the case file is reviewed by the Superior Court. There is some debate over whether the Superior Court may, at this time, dismiss the charges. Lawyers and a Cochabamba Superior Court judge that we spoke to said that the Court may, although they emphasized that the practice is uncommon. The leading Bolivian treatise on Law 1008, relying on Bolivian jurisprudence, states that the Court may not. See José María Rivera Ibañez, *Ley del Regimen de la Coca y Sustancias Controladas* (La Paz: Zegada, 1993), pp. 242-243 (explaining that the Superior Court lacks authority to dismiss the charges).

<sup>69</sup> See Law 1008, Art. 108. Defense attorneys admitted, however, that the bar on preliminary objections does not have a significant impact in practice, since the kind of objections that might otherwise be made are rarely central to the case.

<sup>70</sup> As a legal term of art in Bolivia, the term confession (*confesión*) refers specifically to the defendant's in-court declaration. We use the term in its more colloquial sense, simply to refer a statement by the defendant admitting guilt.

<sup>71</sup> Fortunately, an important reform was recently made with the 1993 Law of Public Administration that seems to have remedied, to a great extent, the problem of forced declarations. Under Article 23 of the law, a defendant has the right to have his lawyer present when making a declaration (the prosecutor must be there as well). Although there have been some complaints that abuses occur even in the presence of defense lawyers, it is clear that the situation has greatly improved. See discussion on p. 31.

<sup>72</sup> A defendant may, however, file a motion requesting that the officials come to trial to testify



At sentencing, the rights of poorer defendants may be further prejudiced by the use of "*días multa*": fines that are converted into days in jail if the defendant cannot pay. While defense lawyers told us that large fines are only very rarely assessed, and that those of less than 5,000 bolivianos have been pardoned under a recent presidential decree,<sup>73</sup> the possibility of disparate jail sentences for poor defendants is disturbing. The crime of drug trafficking, for example, is punishable by up to twenty-five years of imprisonment and up to 20,000 *días multa*. Were a defendant to be sentenced to the maximum fine and lack the resources to pay it, he might spend nearly fifty-eight additional years in prison: over twice as long as the original maximum term of incarceration. Even if infrequent,<sup>74</sup> the practice of subjecting defendants to longer prison terms solely on the basis of financial status offends equal protection principles.

### *Two Illustrative Cases*

The cases of two women held under Law 1008 at San Sebastián Women's Prison in Cochabamba highlight some of the law's problems<sup>75</sup>:

Luisa Logres Nicolás of Potosí, who is forty-five years old and has seven children, worked as a cook in Cochabamba for eight years before her arrest. She does not know how to read or write, and speaks primarily Quechua. She rented one room of her four-room home in Cochabamba to a tenant who had some empty containers that the narcotics police believed were for the chemical precursors for cocaine. She was arrested in early 1994 and found not guilty (she is not sure what the exact charges were) in August; now she is waiting for the prosecutor's appeal to be decided.

Miriam Roja rented a room in a house in Chimoré in which eight other people lived. She does not know how to read or write. At 4:00 A.M. one morning, in approximately December 1992, the antinarcotics forces searched the house (according to Roja, they did not have a search warrant), and found drugs in the hallway. She was charged with transporting drugs but found not guilty, whereas another man who lived in the house was found guilty. She believes her case is now on appeal at the Supreme Court, but is not sure; she says that her court-appointed lawyer "abandoned" her after trial since she had no money to give him. She now lives in prison along with three of her five children, one of whom is two months old.

### *Reform of Law 1008*

There is strong and widespread sentiment in Bolivia that Law 1008 should be reformed. Of the people Human Rights Watch spoke to—including narcotics agents, prosecutors and judges whose job it is to implement the law—no one defended all of its provisions. Its requirement of post-acquittal detention, in particular, is viewed as an unjustifiable excess.

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<sup>73</sup> See Supreme Decree No. 23692 of December 23, 1993, which pardons fines of up to 5,000 bolivianos and reduces higher fines by the sum of 5,000 bolivianos.

<sup>74</sup> In some cases, high *días multa* are apparently assessed. The 1993 report of the Andean Information Network describes the case of Aldo Choque Alcons, who was sentenced to twenty-five years plus *días multa* for trafficking in chemical precursors for cocaine production, amounting to eighty-three years in prison. Andean Information Network, *Human Rights Violations Stemming from the "War on Drugs" in Bolivia* (Cochabamba: AIN, 1993), p. 12. The AIN is a volunteer group composed primarily of foreigners living in Bolivia who are concerned about the effects of U.S. policies. Their report is, to date, the only published effort to examine human rights in Bolivia in the context of drug policies.

<sup>75</sup> Human Rights Watch interview, San Sebastián Women's Prison, Cochabamba, April 7, 1995.

Even at the time of the law's passage, it was recognized as harsh and potentially violative of human rights. Its severity was intended to demonstrate the Bolivian government's resolve to combat narcotrafficking at a time when the problem appeared to demand urgent action and the country was facing strong international pressure, primarily from the United States. Juan Carlos Durán, who was minister of the interior at that time, has stated that the law's drafters feared the "Colombianization" of the country. With this in mind, they "put human rights on a balance and asked if narcotraffickers, narcotics, and the crime of narcotrafficking would cause more harm to the country and its citizens than [straying from] orthodox or traditional legal procedures."<sup>76</sup>

Opposition to Law 1008 is quite often couched in nationalist terms.<sup>77</sup> Law 1008's detractors criticize it as a foreign imposition, inconsistent with Bolivian indigenous traditions and constitutional norms. In fact, foreign legal advisors, including from the United States, aided in the law's drafting.<sup>78</sup> Not surprisingly, in light of the law's history, the U.S. Embassy is widely regarded as the chief obstacle to its reform. U.S. officials acknowledged to us that procedural aspects of the law raise human rights issues.<sup>79</sup> Indeed, the American ambassador to Bolivia, Curtis Kamman, told Human Rights Watch that the "application [of Law 1008] has defeated justice in many cases."<sup>80</sup> U.S. officials also believe, however, that by reducing the authority of the courts the law has—as intended—reduced the incidence of judicial bribery, at least at the trial court level.

Over the past couple of years, there has been increased attention to the injustices spawned by Law 1008 and the need for reform. At present, however, the movement to amend the law in Congress appears to have stalled. Bolivian officials told Human Rights Watch that, given overall U.S. impatience regarding Bolivia's counternarcotics efforts, this was not the moment to push for reform of Law 1008. At the same time, U.S. officials admitted to Human Rights Watch their fear that any reform of the law would not be limited to remedying its procedural defects, but would extend to the substantive provisions that supply the legal structure for Bolivian counternarcotics efforts. Yet Robert Gelbard, assistant secretary of state for international narcotics and law enforcement affairs, told Human Rights Watch that he agreed that at least Law 1008's requirement of mandatory appeals should be abolished.<sup>81</sup>

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<sup>76</sup> SEAMOS report, pp. 60-61 (quoting Juan Carlos Durán).

<sup>77</sup> Typical of this perspective is an editorial written in the wake of Law 1008's passage that excoriates the Lower Chamber of Congress for voting in favor of the law, accusing its members of following the orders of the United States and forgetting any sense of patriotism. "Hecha la Ley . . .," *Los Tiempos*, July 8, 1988, p. 7.

<sup>78</sup> SEAMOS report, p. 60 (quoting Juan Carlos Durán). Critics of the law are much more direct, as in the following editorial: "Law 1008 was originally drafted by a foreign diplomatic official who didn't take the time to study the text of the [Bolivian] Constitution." *Los Tiempos*, April 12, 1994.

<sup>79</sup> In fact, the State Department's country report criticizes the long detentions that are common under Law 1008. State Department, *Country Report*, p. 329.

<sup>80</sup> Human Rights Watch interview, U.S. Embassy, La Paz, March 30, 1995.

<sup>81</sup> Human Rights Watch interview, U.S. State Department, May 11, 1995. Gelbard was U.S. ambassador to Bolivia when Law 1008 was enacted and strongly supported the legislation.

Many critics of Law 1008 have now pinned their hopes for reform on litigation in two fora: the projected but still-unborn Constitutional Tribunal and the quasi-judicial human rights mechanism of the Organization of American States (OAS). Challenges to Law 1008 are anticipated when the Constitutional Tribunal begins to function.<sup>82</sup> Challenges to Law 1008 before the Inter-American Commission on Human Rights, the OAS human rights body charged with applying the American Convention on Human Rights, are also being planned.<sup>83</sup>

Unless and until these challenges succeed, Bolivia is violating its international obligations under the ICCPR and the American Convention. Although the government believes political pressures currently constrain its ability to enact the necessary changes in Law 1008, such pressures do not excuse it from respecting the fundamental human rights of liberty and due process.

### **Prison Conditions**

The capacity of the prison system has not expanded to keep pace with the influx of persons detained under Law 1008. Bolivia's prisons are severely overcrowded and plagued with a host of related problems.

Some prisons, such as Cochabamba's San Sebastián prison for men and La Paz's San Pedro prison, are filled to several times their capacity. San Sebastián, in which over 50 percent of the prisoners are held under Law 1008, was designed to hold sixty people; it now holds over 500. The overcrowding is so severe there that the inmates riot and block the entrances if guards attempt to let new prisoners inside. The shortage of space also means that many prisoners lack cells and are forced to sleep in passageways. (Yet life in prison is, as many prisoners emphasized to us, a microcosm of Bolivian society: prisoners who have financial resources can buy a cell and other amenities.<sup>84</sup>)

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<sup>82</sup> Critics point out many inconsistencies between Law 1008 and the Bolivian Constitution. One of the most widely cited criticisms is that the law violates the presumption of innocence enshrined in Article 16(I) of the constitution. In the strict legal sense of the presumption of innocence—referring to the prosecution's burden at trial—this criticism is invalid. It is true, however, that the law's denial of provisional liberty and the requirement of mandatory appeals create a situation of multi-year imprisonment in which the accused suffers the same as if he or she had been found guilty—in effect, a de facto presumption of guilt.

<sup>83</sup> One case has already been filed before the Inter-American Commission that may, in fact, serve as a vehicle for a broad challenge to several aspects of Law 1008. A request for provisional measures (like a preliminary injunction), was filed by the Center for Justice and International Law (CEJIL), the leading NGO regularly litigating within the inter-American system, and Servicio, Paz y Justicia (SERPAJ), a Latin American NGO, on behalf of Marcela Alejandra Porco. *Marcela Alejandra Porco v. Bolivia*, No. 11.426. Ms. Porco is an Argentine woman with severe psychiatric problems who was prosecuted under Law 1008 as a drug courier in June 1994. Besides being denied provisional liberty by the Bolivian authorities, Porco was denied critical medical treatment, as Article 74 of the law bars detainees from receiving medical attention outside of prison. In addition, she alleges that her psychiatric condition worsened and that she was the victim of sexual abuse during her imprisonment.

Although after the case was brought Porco was transferred to a mental institution and subsequently repatriated to Argentina, she plans to continue her suit in order to demand compensation for the human rights violations she suffered during the prosecution, including the denial of provisional liberty.

<sup>84</sup> At least in San Pedro and San Sebastián, two of the prisons we visited, the prison authorities guard the gates of the prisons but otherwise the prisoners rule themselves. Thus, prisoners buy their cells from other prisoners (a reasonably sized cell costs the equivalent of U.S. \$1,500 - \$2,000, a small one about U.S. \$800); they do their own cooking; they run shops and cafés in the prison; and they do carpentry and other jobs.

Other problems in the prisons include the insufficient provision of food; lack of medical services and resulting health problems; lack of toilet and bathing facilities; mixing of pre-trial detainees with convicted criminals;<sup>85</sup> mixing of adults with youthful offenders;<sup>86</sup> and drug, alcohol and spousal abuse.<sup>87</sup> Although the overcrowding and miserable conditions of Bolivian prisons are not a necessary or intended result of drug prosecutions under Law 1008, without attention and funding they are an inevitable and foreseeable consequence.

## V. The UMOPAR and Human Rights in the Chapare

In recent years few large narcotraffickers are based in or even need to enter the Chapare directly. As a consequence, UMOPAR efforts to interdict, seize and prevent the transport of drugs, precursor chemicals and illegal coca leaf in the Chapare fall on the coca farmers and the region's labor force, i.e. on the poor.<sup>88</sup> Police work aimed at disrupting activities that provide a living for many necessarily engenders bitterness and distrust, particularly in a community in which nobody feels they benefit from law enforcement.<sup>89</sup> In the Chapare, that bitterness is heightened because the coca farmers consider the antinarcotics law unfair and illegitimate. It is also heightened by the abusive nature of the UMOPAR's interaction with Chapare residents.

UMOPAR has acquired a widespread reputation in the Chapare as thugs and thieves. During two weeks of research in Bolivia in April this year, Human Rights Watch representatives spoke with almost a hundred Bolivians—young and old, men and women, some speaking only Quechua, all poor—who told simple short stories of UMOPAR abuse: of homes invaded in the middle of the night; of food, personal possessions and money stolen; of extortion, threats and arbitrary arrests; of manhandling, kicks, blows and even torture. Similar stories arise from the pages of court documents in which defendants describe the circumstances of their arrest and their treatment during interrogation,<sup>90</sup> complaints filed with local human rights groups, and press reports. Many of the Bolivian and U.S. officials interviewed by Human Rights Watch confirmed that there is rampant UMOPAR abuse.

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<sup>85</sup> See ICCPR, Art. 5(5), (Right to Humane Treatment), stating that "accused persons shall, save in exceptional circumstances, be segregated from convicted persons."

<sup>86</sup> See Edwin Herrera Salinas, "Habr  guerra entre presos si los desalojan para ubicar a menores," *La Raz n*, April 5, 1995 (stating that the 328 minors held together with adults in Bolivian prisons have complained of a series of abuses to the Congressional Human Rights Commission and the penal authorities). Under Article 5(5) of the ICCPR (Right to Humane Treatment), minors subject to criminal proceedings must be kept separate from adults.

<sup>87</sup> In San Sebasti n men's prison, the wives of many inmates live in prison with their husbands and children. Prisoners assured us that because of the resulting family atmosphere, the prison was a peaceful place with little violence—except against the wives. Spousal violence was described as a common occurrence by inmates, who hear everything through the thin cell dividers, though they did not recognize the practice as a problem.

<sup>88</sup> We heard many complaints that Bolivian law enforcement efforts ignore the "big fish"—the traffickers who live in Santa Cruz and the Beni. There is no question that Bolivia's prisons are filled with people of humble origins, most of whom who have been accused or convicted of transporting small amounts of base or chemical precursors. According to a special prosecutor stationed in the Chapare, for example, 80 percent of the people arrested there in the first four months of 1995 were accused of transporting drugs. Bolivian officials we spoke with insist, however, that they have not stunted in their efforts to identify, arrest and prosecute traffickers. For example, two individuals accused of being important traffickers with ties to the Medell n cartel have been arrested. One of the two, Jos  Faustino Rico Toro, was recently extradited to the United States for trial on drug charges.

<sup>89</sup> The UMOPAR have no police responsibilities other than narcotics law enforcement, and narcotics consumption in the Chapare is negligible. We are told, therefore, that no one in the Chapare has reason to view the UMOPAR as protecting them or advancing their interests.

<sup>90</sup> Human Rights Watch has reviewed—and has on file—court documents from a sample of nineteen individuals prosecuted between 1989 and 1994 under Law 1008 in the special drug court in Cochabamba, which usually handles cases from the Chapare.

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In each case, the statements by the accused include descriptions of police abuses. The documents were gathered by the Consultorio Jurídico Popular, a law school legal clinic of the Universidad Mayor de San Simón in Cochabamba, as part of a project on human rights and Law 1008.

The efforts of UMOPAR to uncover crimes and to arrest suspects are supposed to be under the direction and control of the special drug prosecutors.<sup>91</sup> Law 1008 gives UMOPAR authority to enter private property when its agents have knowledge of the preparation or commission of a crime in that place.<sup>92</sup> At the scene of the crime, they may proceed to arrest and render incommunicado any criminal suspects, to interrogate witnesses, and to seize evidence. Judicial warrants are required to search premises which are not considered the scene of the crime.<sup>93</sup> These police activities are to be conducted in the presence of special prosecutors except in cases of *delito flagrante* (i.e., when the police arrive during the commission of the crime).<sup>94</sup> The special prosecutors also have the authority to order arrests.<sup>95</sup> Again, except in the case of *delito flagrante*, the detention of suspects can only legally be undertaken in the presence of the special drug prosecutors.<sup>96</sup>

These laws offer scant protection for the rights of the Chapare's residents under the Bolivian constitution and international human rights law to be free from arbitrary searches and arrests.<sup>97</sup> In practice, the prosecutors do not direct and control UMOPAR criminal investigations. UMOPAR generally establishes and executes its own operational plans and objectives without review by the prosecutors, and the prosecutors do not accompany UMOPAR agents on all their activities. The two prosecutors stationed in the Chapare obviously cannot participate in the twelve to fifteen daily UMOPAR patrols occurring simultaneously in different parts of the region. Instead, the prosecutors simply give the police blanket authorization to enter any dwellings or places they choose within a wide geographic swath in which there may be criminal activities, e.g. maceration pits. In some cases, the authorization is provided after the fact. The prosecutors and the UMOPAR also utilize expansive and distorted interpretations of "*delito flagrante*."

One special prosecutor told Human Rights Watch representatives that carrying drugs on a bicycle or bus, i.e. in public, was *ipso facto* sufficiently flagrant to justify the search that uncovered them even if the drugs were not in plain view. The commander of the UMOPAR base at Chimoré, Lt. Col. Luis Caballero, told us that if UMOPAR agents locate a maceration pit, then the concept of *delito flagrante* enables them to conduct a search in a wide area around it, entering any dwelling they encounter.

From interviews with UMOPAR officials, special prosecutors and defense lawyers, and U.S. officials, Human Rights Watch has concluded that neither UMOPAR nor the special prosecutors feel the need to establish whether there is a reasonable basis or probable cause for a given search or arrest. Counternarcotics law enforcement in the Chapare is predicated on the assumption that the majority of the population is engaged in some form or another of criminal conduct and that compliance with legal formalities is at best unnecessary, at worst counterproductive. The prosecutors do not try to ensure that UMOPAR personnel have the requisite knowledge of illegal activity before entering individual homes, searching a person or making an arrest. Indeed, even if the prosecutors did, in fact, accompany all UMOPAR operations as the law requires them to do, their presence would not guarantee respect for the right to be protected from abusive and arbitrary searches. The principal objective of the prosecutors, like the police, is to stop criminal activities and bring criminals to justice. Most modern legal systems require the intervention of judges to authorize searches as well as detentions (except in cases of *delito flagrante*) precisely because the police and the prosecutors who are their

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<sup>91</sup> See Law 1008, Arts. 92, 93.

<sup>92</sup> See Law 1008, Art. 95.

<sup>93</sup> See Ley del Ministerio Público, Art. 80(c), Código de Procedimiento Penal, Art. 91(9).

<sup>94</sup> See Law 1008, Art. 96.

<sup>95</sup> See Ley del Ministerio Público, Art.80(d).

<sup>96</sup> See Law 1008, Art. 96.

<sup>97</sup> Constitución Política del Estado, Arts. 9, 21; American Convention on Human Rights, Arts. 7, 11.

law enforcement allies cannot reasonably be expected to weigh sufficiently the privacy and liberty interests of individuals suspected as criminals. Under Law 1008, however, the special courts in Bolivia do not have that function. Moreover, it is our understanding that in practice the special courts also do not undertake to review the circumstances of a search that uncovered evidence or of an arrest to ascertain whether a reasonable basis existed at the time and whether they were lawful.

Not surprisingly, given the imperatives of law enforcement in the Chapare and the lack of meaningful controls over police conduct, residents complain of constant arbitrary searches and arrests.

### **Search and Seizure**

Facing the daunting task of enforcing antinarcotics laws in the vast Chapare, UMOPAR relies heavily on daily patrols and special operations that continually take its personnel onto private property and into private homes, primarily land and homes belonging to coca farmers. UMOPAR agents enter individual homes or conduct sweeps of entire geographic sectors, going house by house. Residents of the Chapare who spoke to Human Rights Watch described a consistent pattern of police bursting into their homes day and night, yelling, knocking possessions about, intimidating and terrifying the inhabitants. No permission to enter is requested;<sup>98</sup> no search warrants are shown; no explanations are given. Special prosecutors are not present. At checkpoints permanently stationed on roads in and out of the Chapare and in certain zones within it, UMOPAR agents routinely stop and search private vehicles and private belongings. The U.S. State Department, in its human rights country report for 1994, cautiously notes, "[T]here were credible allegations of UMOPAR . . . illegal searches."<sup>99</sup>

### **Arbitrary Arrests**

As the Andean Information Network pointed out in its 1993 report: "Arresting large numbers of people, innocent or guilty, is in the interests of the narcotics forces. . . There is strong international pressure on Bolivia to show concrete results in the 'war on drugs,' pressure which is passed down to the field operating units of UMOPAR, whose performance is measured quantitatively, i.e., number of arrests, number of [maceration pits] destroyed."<sup>100</sup>

Most people arrested in the Chapare today are arrested for illegally transporting drugs or precursor chemicals, and most of these arrests are made after an illegal substance has been found. Frequently the drugs are found on a bus or truck carrying many passengers, and UMOPAR must determine who owned the bundle in which the drugs were hidden.<sup>101</sup> Sometimes an individual confesses. But often UMOPAR simply arrests whichever passenger or passengers they choose, sometimes whoever was sitting closest to the drugs, sometimes someone who the admitted owner of the drugs claims is a total stranger, sometimes the bus or truck driver.

The case of Salustiano Vallejos is illustrative: On February 3, 1992, Vallejos, a van driver, gave a ride to a stranger carrying a bundle who had flagged him down on the road. UMOPAR officers subsequently forced Vallejos to pull over and searched his van. The passenger fled and succeeded in escaping UMOPAR officers, leaving behind his bundle in the van. The bundle contained drugs. Vallejos claims that UMOPAR officers interrogated him, severely beat him and forced him at gunpoint to sign a statement that he could not read, as he is illiterate. (Vallejos claimed a

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<sup>98</sup> Under the Bolivian Constitution, permission must be obtained from the residents for nighttime searches of a house. Constitución Política del Estado, Art. 21.

<sup>99</sup> State Department, *Country Report*, p.330.

<sup>100</sup> Andean Information Network, *Human Rights Violations Stemming from the "War on Drugs" in Bolivia*, p. 4 (hereinafter "AIN report").

<sup>101</sup> A common means of transportation in the Chapare, as throughout rural Bolivia, is to get a ride on the back of a truck. Operating as de facto buses, trucks passing along the main roads stop and pick up passengers until they are crammed with people.

prosecutor witnessed this.) Vallejos was tried on drug trafficking charges. Although Vallejos was ultimately acquitted of any crime, he had to spend over two years in jail.<sup>102</sup>

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<sup>102</sup> The case of Salustiano Vallejos is taken from the AIN report, p. 15.



The case of Celilo Paza is similar. According to Paza, a twenty-three-year-old farmer, he was riding in a bus from Cochabamba to Santa Cruz on June 29, 1993. Half-way to Santa Cruz, two women got on the bus, and Paza helped them put their bananas on the luggage rack. At a checkpoint, UMOPAR agents found coca paste in the bananas. The women denied the bananas belonged to them and were let go. Paza, who had been identified by other passengers as having helped the women, was arrested and charged with transporting drugs. The trial court acquitted him, but was reversed on appeal.<sup>103</sup>

UMOPAR also periodically engages in sweeps, rounding up dozens and even hundreds of people in a single raid in situations in which there is no pretense of probable cause for the detention of any given individual. Residents of the Chapare describe what are best seen as practices consistent with the role of the military in enemy territory, rather than the role of police subject to strictures to protect the civil liberties of citizens.

Last year, for example, as part of Operation New Dawn, UMOPAR made a concerted effort to restrain the flow into the Chapare of people who are associated with drug trafficking, including the "floating" population of unemployed people who drift into the region seeking temporary work and from whom are recruited the army of "ants" who transport coca base and precursor chemicals. During a nine-month period, UMOPAR arrested 1,478 people. Of those, 732 were detained simply because they were not carrying identification documents at the time of arrest—even though the failure to carry I.D. is not a crime (and most peasants do not possess it). Five hundred of those without I.D. were lawful residents of the Chapare. Some of those arrested were held for days before being released. Of the people arrested for lacking I.D., 180 were deemed to be part of the "floating" population with no fixed residence or employment in the Chapare. After being held at the UMOPAR base in Chimoré, they were taken to Cochabamba and released. When Human Rights Watch questioned the commander of UMOPAR at Chimoré about the right to move freely in Bolivian territory, which is guaranteed by the Bolivian Constitution<sup>104</sup> and international human rights laws,<sup>105</sup> he simply insisted that these people "had bad backgrounds" and "had no good reason" to be there.<sup>106</sup>

According to Lt. Col. Luis Caballero, UMOPAR must bring arrested person before a judge and charge them within forty-eight hours.<sup>107</sup> In practice, however, as he acknowledged, the forty-eight-hour period frequently stretches into weeks and months. Last year, for example, a group of seventeen people among those arrested for not carrying identification languished in the cells of the UMOPAR base in Chimoré for twenty-three days until freed when their lawyers filed a writ of habeas corpus. The reasons for the delays are straightforward: there are often too many detainees at a time to investigate and too few agents to do it. In addition, there are inevitable difficulties scheduling the presence of police, prosecutors and defense lawyers for the detainees' official declarations. But if the delays are understandable, they are nonetheless unlawful. Individuals are entitled to their liberty if the police lack sufficient grounds to have them charged for a crime within the time set by the law.<sup>108</sup>

## Unlawful Violence

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<sup>103</sup> Human Rights Watch interview with Celilo Paza, San Sebastián Men's Prison, April 7, 1995.

<sup>104</sup> Constitución Política del Estado, Art. 7(g).

<sup>105</sup> American Convention of Human Rights, Art. 22.

<sup>106</sup> Human Rights Watch interview with Lt. Col. Luis Caballero, Chimoré base, April 9, 1995.

<sup>107</sup> Código de Procedimiento Penal, Art. 118. In cases of delito flagrante in which there is no arrest warrant, the detainees must be brought before a court within twenty-four hours. Constitución Política del Estado, Art. 10.

<sup>108</sup> Delays of more than a few days in being brought before a judge are widely considered violative of the right to liberty. See American Convention on Human Rights, Art. 7, Right to Personal Liberty, and International Covenant on Civil and Political Rights, Art. 9.

Compared to neighboring Colombia and Peru, Bolivia has low levels of lethal violence. The nation's homicide rate is low, and there are few reported cases of the use of deadly force by the police. Nevertheless, unlawful physical violence of varying degrees of severity appears to be common during counternarcotics operations.

*The Flores and Pérez Cases*

We are aware of only two confirmed killings by the UMOPAR in the course of anti-narcotics operations in the Chapare in the last several years. These two cases do not indicate a systematic pattern or practice of the unlawful use of deadly force. Nevertheless, we include them here because of their notoriety in Bolivia and because they reveal the difficulties of tracing responsibility when excessive violence is used in the war on drugs.

The first case is that of Emilio Flores Corpos. It is well established that Flores was killed by the UMOPAR on May 13, 1992 and that no one has been disciplined or tried for his death. There is considerable disagreement, however, over the circumstances of his death. According to the results of the investigation conducted by the Andean Information Network, Flores and his sister were walking on the road in San Pedro when an UMOPAR vehicle passed them, came to a stop and reversed toward them. Flores began to run into the woods, was ordered to halt by an UMOPAR officer, started to turn around and was shot three times. A DEA officer was riding with the patrol vehicle and allegedly reprimanded the officer who shot Flores. The UMOPAR agents then put his body in their vehicle and drove off. The next day Flores's remains were found in a body bag on the road close to where he had been shot. A medical report indicated that Flores had been shot in the foot, knee and upper arm. According to AIN, no one has yet been formally accused or disciplined for Flores's death, and no investigation appears to be underway.<sup>109</sup>

The U.S. Embassy's investigation yields a quite different story: During an UMOPAR sweep of an area searching for maceration pits, a patrol consisting of three UMOPAR members and a DEA adviser went to an area where they believed they would find a mobile walkie-talkie transmitter used by the pit operators. The DEA adviser remained in the vehicle while the UMOPAR followed three persons who entered an isolated building. Two of these persons fled from the rear of the building, and one of them fired with a handgun at the UMOPAR agent who was chasing them. He returned fire with his rifle. The DEA adviser claims he heard both handgun shots and shots from an M-16 rifle. He went to the scene and found the UMOPAR police with the wounded Flores. He then went and got medical personnel; by the time they arrived, Flores was dead. The body was taken to the Chimoré base camp and claimed, in a body bag, by his family. The Bolivian authorities considered the shooting to be justifiable.<sup>110</sup>

The second killing is that of Felipe Pérez Ortiz, a twenty-nine-year-old from Alto San Pablo who was killed on August 18, 1994, by a bullet fired from an M-16 that entered the roof of his mouth. The original report put out by UMOPAR was that a patrol discovered Pérez's corpse at the conclusion of an armed confrontation near a maceration pit; he had presumably been killed during the exchange of gunfire. This version, based on the initial testimony of the UMOPAR patrol members, unravelled following an investigation by an inter-institutional commission led by the president of the Congressional Human Rights Commission and the subsecretary for human rights of the Ministry of Justice and a simultaneous investigation by the FELCN headquarters staff. Both sets of investigations established that there had been no armed confrontation between the patrol and narcotraffickers, as the patrol members initially claimed, and that patrol member Jorge Mamani Callizaga fired the fatal shot at very close range. During the investigations, Mamani revised his original story and claimed that Pérez had jumped him while he was searching the area near the maceration pit and that his gun had gone off while they were wrestling and Pérez had his mouth open. The inter-institutional commission pointed out, however, that Pérez's face lacked the external bullet and smoke marks consistent with a close range firing. They concluded the physical evidence suggested that the gun barrel was placed inside Pérez's mouth when it was fired. Mamani and the other patrol members were arrested and turned over to the courts. Mamani "escaped" on September 3, 1994, however, and has not been found. The guards on duty at the time of the escape have been arrested. The trial of the other patrol members is continuing.

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<sup>109</sup> AIN report, pp. 14-15.

<sup>110</sup> This version of Flores' death is contained in letter from Ken Keller, U.S. Embassy, La Paz, to Human Rights Watch, May 16, 1995.

### *Excessive Physical Force*

U.S. and Bolivian officials tend to be complacent about human rights abuses in Bolivia because lethal violence is rarely used. But excessive physical violence, albeit not deadly, is routine. Residents and long-time observers of the Chapare interviewed by Human Rights Watch describe a pattern of excessive and unnecessary violence and intimidation by the UMOPAR. Persons detained or searched by the UMOPAR are routinely the object of threats, spontaneous blows and kicks. Some endure more serious abuse. One peasant told us of having his foot smashed with a rifle butt; another told of having his hands tied behind his back and being hit.

Prolonged, serious beatings also occur. For example, on July 28, 1994, during Operation New Dawn, Sandalio Verdúñez, age twenty-four, was walking with his brother-in-law towards the town of Central 4 de Abril to join friends preparing for a party. They were stopped by an UMOPAR patrol in two trucks; the brother-in-law was taken away in one truck, Verdúñez in the other. The agents who detained Verdúñez stole his money (about U.S. \$450 bolivianos from a recent sale of coca) as well as the pot and food that he had been carrying for the party. According to the report made by a member of the Andean Information Network who interviewed Verdúñez:

They brought him up the hill in the other vehicle. There, in an empty house, held by three soldiers, they took turns beating him, and hitting him hard in the back and the buttocks with sticks . . . they beat him with the palms of their hands on his face and his ears, and soldiers stomped on his body. Later they repeatedly beat him in the chest. The whole time they yelled at him, "Where is your maceration pit?"

The torture lasted for two or three hours. The UMOPAR agents threatened that they would throw him in jail if he ever talked about what had happened. Human Rights Watch has a copy of photographs of the badly bruised buttocks of Verdúñez.<sup>111</sup>

In another case from the summer of 1994, the height of Operation New Dawn, Juan Cruz<sup>112</sup> was caught by the UMOPAR as he tried to escape from a maceration pit. Cruz was allegedly pinned by one agent and bit his hand, prompting an attack by two other agents. Then according to Cruz, the three UMOPAR agents began to hit, punch, kick and beat him with a stick while insisting he identify the owner of the pit. At one point they tied him to a tree and threatened to shoot him. They then made him carry a machete between his teeth while crawling on all fours like a dog and kicking him when he dropped it. At one point the agents hit downward on the handle of the machete so that it knocked out two teeth. The UMOPAR also cut marks into his hands, feet and back; people who saw him claim he has visible scars. Cruz and his family have not gone public with the story for fear of retaliation.

Beatings have also been customary during interrogations at UMOPAR stations, used to secure the confessions which in many cases constitute the only evidence the police present to the court. A case illustrative of many is that of Julián Flores, a twenty-six-year-old farmer in the Chapare who was convicted in 1993 under Law 1008, and who is serving his sentence in the San Sebastián men's prison, where we interviewed him. According to Flores, he was detained at an UMOPAR checkpoint in the Chapare in October 1992, taken to a little house in Goru Goru and beaten. He was then brought to the UMOPAR base in Chimoré and beaten again while he was interrogated and then forced to sign a declaration. To his knowledge, there were no prosecutors or lawyers present during his interrogation.

### *Recent Decline in Physical Abuse*

Most of the incidents of serious abuse accompanying arrest that Human Rights Watch learned about during our research in Bolivia took place before the end of Operation New Dawn and the cocaleros' march to La Paz in September 1994. Even the coca federation leaders acknowledged that the level of severe physical abuse had declined considerably since then. We were unable to ascertain whether the level of overall activity by the UMOPAR has declined, or whether

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<sup>111</sup> The photos were provided to us by members of AIN. They were also published in the press.

<sup>112</sup> This is not his real name. Our recounting of the story is based on the description Cruz gave to human rights activists, whom he asked not to reveal his name.

they are conducting the same level of operations in a more careful and lawful manner. Informed Bolivians believe that the government may have felt the situation in the Chapare got out of hand with Operation New Dawn and insisted the UMOPAR "back off."

Similarly, the testimony Human Rights Watch received of beatings during interrogations at UMOPAR facilities in the Chapare described abuses that took place more than a year ago. The improved nature of the interrogations appears to be the result of changes in the law governing the admissibility of declarations and the creation of a system of public defenders. The Law of the Public Ministry, enacted in 1993, protects the right of detainees to be represented by counsel when making declarations to the police by rendering such declarations inadmissible if counsel is not present.<sup>113</sup> Moreover, a public defender's office opened in Chimoré in October 1994, with two public defenders and a legal assistant; their ready access to detainees held at the UMOPAR base at Chimoré and their presence during interrogations on the base have diminished the incidence of abuse. None of the detainees held at Chimoré during our visit to the base claimed that they had been mistreated there, although one claimed to have been beaten during his arrest.

### **Theft and Extortion**

There is widespread agreement—even among people who usually do not agree, such as coca farmers, senior Bolivian and U.S. officials, law enforcement agents and human rights activists—that petty theft and extortion by the UMOPAR are rampant. As Maj. Juan Melean Arias, the second highest ranking officer at the UMOPAR base, acknowledged to Human Rights Watch representatives, robbery by UMOPAR agents "is a serious problem, but we think we're putting the brakes on it bit by bit."<sup>114</sup> UMOPAR agents steal food, money, whatever items of value they find in impoverished households. During meetings with residents of the Chapare, Human Rights Watch was told of the thefts of a small guitar, a radio, a rooster, bicycles, a machete, a tape recorder, a bracelet, earrings, an old rifle, a shaving mirror, lanterns, etc. The sums of money stolen can be considerable—often hundreds of dollars, representing a good portion of the victim's annual income, as coca farmers do not have bank accounts but keep their earnings with them or in their houses. The UMOPAR are also notorious for extortion, offering not to detain a person or to release a detained person if he or she pays a sum of money. For example, Ofronio Quisverría, who lives in Isinuita in the Chapare, told Human Rights Watch that in May last year an UMOPAR patrol arrested him and took him to an UMOPAR post; the commander wanted to know why he had plastic containers and said he shouldn't have them.<sup>115</sup> When Quisverria paid UMOPAR one hundred bolivianos, they let him go. Residents of the Chapare described negotiations with the UMOPAR in which the price for their release was progressively reduced until the victim was willing and able to pay. For example, Vidal Rojas, an old woman who lives in Villa 14 de Septiembre, told Human Rights Watch representatives that on a Sunday in February (she was unsure of the date), the police stopped her on the street and asked her for identification and wanted her to pay them fifty bolivianos. When she said that she did not have that much, the agents tried to take her bicycle, then they asked for ten bolivianos. She finally paid them five bolivianos, and they left her.

## **VI. Abuse Outside the Chapare**

Although our research focused on abuses in the Chapare, we also learned of charges of serious torture, some of which are backed by medical documents, made by persons detained elsewhere, primarily in the Santa Cruz area, and who are accused of being members of drug trafficking organizations. They allege interrogations under torture by the FELCN in "safe houses," i.e., in places which are not official public detention facilities. Some of the complaints allege the presence of special prosecutors and/or the participation of DEA agents during the abusive interrogations. U.S. officials acknowledged to us that they provide funding for unmarked facilities used by the FELCN for meetings with

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<sup>113</sup> See Ley del Ministerio Público, Arts. 23-24.

<sup>114</sup> Human Rights Watch interview, UMOPAR base, Chimoré, April 12, 1995.

<sup>115</sup> Plastic containers are often used to store chemicals used in manufacturing coca base.

informants; we received conflicting information as to whether such facilities were also used for holding and interrogating criminal suspects.

We were able to interview several men accused of drug trafficking who are being held in San Sebastián prison in Cochabamba and who allege torture. Two cases by way of illustration:

Máximo Perera Martínez, a forty-year-old taxi driver from Santa Cruz, was arrested in his home on September 7, 1994, by Bolivians dressed as civilians who said they worked for the DEA. Perera claims that they took him to a house where they kept him with three other people, including a Brazilian. According to Perera, he was tortured every day with beatings, electric shocks, and near-suffocation with plastic bags over his head. A foreigner with an American accent<sup>116</sup> came every day and asked him questions. He was then taken to the FELCN office in Santa Cruz to make a declaration. Although Perera claims he told the special drug prosecutor about the torture, the prosecutor did not include this information in the declaration that he drafted for Perera to sign.

On the evening of September 7, 1994, Juan Luis Muñoz Campos, a thirty-eight-year-old unemployed waiter from the Santa Cruz area, was heading for the town of Ramón on the back of a truck along with six other people when the truck was made to pull over and stop by the FELCN. He was handcuffed, and his shirt was pulled over his head while the agents asked, "Where are the drugs, where is the money?" He heard a foreigner's voice saying, "This one knows something," and he was hit with sticks. Muñoz claims he was then placed in one of the FELCN cars and beaten until he fainted. After driving for about an hour and a half, the car arrived at a house where he was held blindfolded and incommunicado for twenty days. According to Muñoz, during the first week, he was beaten and tortured, his hands and feet tied to a pole that was spun around. Loud music was played while he was interrogated. A "gringo" with a strong accent was present during the interrogations. Muñoz began vomiting blood and lost a tooth during the torture; his calves and arms were cut. After five days, the agents gave him medicine and treatments, and after fifteen more days he was taken to the FELCN detention facilities in Santa Cruz. Two weeks after he arrived there, he was examined by a doctor. When he made his declaration, he told the special drug prosecutor about the torture. The prosecutor dismissed his experience, saying, "That's part of the process."

Several complaints of torture have been made by people accused of being major drug traffickers, who are currently detained in the maximum security prison of Chonchocoro in La Paz. Although we have reviewed some of the documentation on these claims, we have not taken other steps to assess their veracity. However, the Human Rights Commission of the House of Deputies of the Bolivian Congress is investigating these allegations of torture and is expected to issue a report shortly. We hope the report will determine whether there is sufficient basis for opening disciplinary or criminal investigations against agents who may have participated in or condoned the alleged abuse.

## VII. Impunity

A government's commitment to human rights is not measured solely by the number and kind of abuses committed. It is also measured by the determination and vigor with which such crimes are prosecuted and by the seriousness and steadfastness of a government's efforts to hold its agents accountable. By this standard, Bolivia comes up short. The perception is widespread in Bolivia that most human rights violations by the anti-narcotics forces are committed with legal impunity. Neither administrative nor judicial mechanisms ensure accountability for such abuses, nor is there redress for victims.

### General Factors Contributing to Impunity

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<sup>116</sup> Perera actually characterized the accent as being "like yours," referring to the Human Rights Watch representative who was interviewing him.

The lack of accountability for abuses has many causes, including many not limited to the counternarcotics policy. More systematic factors include, for example, the longstanding pattern of abusive conduct by Bolivia's police against members of the lower classes; and the relative paucity of efforts—by either the government or private groups—to educate citizens about their rights and to assist them in the defense of those rights. Another difficulty, common with perhaps all law enforcement agencies, is that of obtaining information and cooperation from agents who tend to protect each other, as occurred in the Pérez shooting case described above.

Furthermore, there is no public official entity<sup>117</sup> in Bolivia with the resources, mandate and will to investigate cases of abuse by counternarcotics law enforcement personnel and ensure that perpetrators are brought to justice. The Public Ministry, under the direction of the attorney general, is authorized to prosecute cases of abuse by officials against civilians. Bolivian lawyers and judges told Human Rights Watch, however, that such prosecutions are rare. The Bolivian constitution authorizes the creation of an ombudsman or "defensor del pueblo", who would have express responsibility to monitor and promote respect for human rights by public officials.<sup>118</sup> The Bolivian Congress has failed to enact implementing legislation, however.

The Human Rights Commission of the Chamber of Deputies is the public entity that has been most effective and diligent in responding to complaints of abuse by public officials, including abuse by the UMOPAR. Composed of members of Congress, and assisted by only one part-time professional staff person, the commission lacks the resources to respond adequately to all complaints of abuse. Nonetheless, its work has been notable.<sup>119</sup> Simply by asking public officials to explain themselves, it has often succeeded in securing relief for victims of abuse. Even if it possessed greater resources, however, a congressional body cannot be expected to exercise the investigatory and prosecutorial functions that properly belong with entities charged with the administration of justice. Nor can it substitute for decisive action by law enforcement officers insisting on adherence to human rights norms, or for effective internal disciplinary mechanisms within the law enforcement agencies.

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<sup>117</sup> There are also no private organizations in Bolivia which systematically monitor and gather information on cases of abuse.

<sup>118</sup> Constitución Política del Estado, Arts. 127-131.

<sup>119</sup> See Comisión de Derechos Humanos, *Informe de Actividades* (La Paz, 1994).

Unfortunately, Human Rights Watch did not discern a firm commitment to upholding human rights standards among most of the Bolivian government officials with whom we met. To the contrary, we were struck by the prevailing attitude of indifference towards abuses by the UMOPAR and the willingness to dismiss reports of human rights violations as exaggerated and politically motivated. The commander of the FELCN, Gen. Simon Sejas, told Human Rights Watch that there are only "isolated instances of abuse that occur from excessive zeal in fulfilling professional duties."<sup>120</sup> In his view, complaints of abusive conduct were made by "biased people who use the press to throw around accusations." UMOPAR commanders in the Chapare also expressed to Human Rights Watch their suspicions regarding the credibility of complaints of abuse—they considered most to be fabrications or exaggerations made by coca farmers and their union leaders to discredit a force they feel is their enemy.

### **Impunity for Abuses by Counternarcotics Police**

It appears that in unusually serious and public cases of abuse, such as the killing of Felipe Pérez Ortiz, credible investigations are undertaken. As discussed above, the FELCN's investigation of that case, along with the investigation of the congressional Human Rights Commission, succeeded in dismantling the initial UMOPAR cover-up and securing the subsequent arrest of the UMOPAR agent who fired the lethal bullet. (On the other hand, it is disheartening that the alleged perpetrator has not been found since he escaped from jail, and that to date trial is still pending for other patrol members who at the very least participated in the cover-up.) The real challenge in holding government agents accountable, however, lies in controlling abuses that do not become *causes célèbres*.

Although General Sejas was eager to discredit claims of widespread abuse, he nonetheless insisted to Human Rights Watch that the FELCN had effective internal disciplinary mechanisms. He claimed that all cases of alleged or possible wrongdoing by FELCN members—whether of corruption, abuse against civilians, or breaches of internal disciplinary rules—are brought to his attention and that he, unilaterally, decides whether or not they warrant investigation by the FELCN's office of internal affairs. During the interview, General Sejas showed Human Rights Watch a chart summarizing the FELCN's internal affairs investigations for 1994: the total was less than three dozen, and only a handful involved abuses against civilians.<sup>121</sup> On their face, these figures indicate the limited extent of internal investigation by the FELCN. The results of the investigations are not routinely made public.

The commanders of the UMOPAR in the Chapare also acknowledged to Human Rights Watch the existence of some abuse, particularly theft and extortion, and insisted that they were trying to bring their troops under greater control and to institute a more effective system of internal discipline.<sup>122</sup> They identified two major problems impeding their ability to investigate and sanction abuses. The first is a lack of personnel and resources. They claim that there are only four agents available for investigations—including corruption investigations—and that these agents also have operational responsibilities. They would welcome the ability to add staff for internal investigations, but suggested that the decision lay in the hands of others, including the United States.

The second impediment is the unwillingness and inability of victims of abuse to come forward with detailed complaints. Most victims do not file formal complaints; generally the UMOPAR commanders learn of allegations of abuse from the press—which has received denunciations from the coca unions—or from informants. Few residents of the Chapare are willing to come to Chimoré base to make complaints. The base is an armed compound which understandably intimidates Chapare residents; there are no offices established for receiving complaints, no regular procedures for handling people who wish to make them. As coca growers and their families explained to Human

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<sup>120</sup> Human Rights Watch interview, La Paz, April 3, 1995.

<sup>121</sup> Although General Sejas assured us that he would send information on all pending investigations into cases of alleged abuse by UMOPAR agents against civilians, we have not received that information as of this writing.

<sup>122</sup> Major Juan Melean told Human Rights Watch that when he arrived at Chimoré last year, there was no system of internal discipline. Human Rights Watch interview, Chimoré, April 12, 1995.

Rights Watch, they view going to the base to make a complaint about the UMOPAR at best as time-consuming and futile, at worst as exposing them to retaliation.

The residents' fear and distrust of the UMOPAR also impedes the few investigations that are launched. In the case of Sandalio Verdúñez, for example, the UMOPAR commanders told Human Rights Watch that they were trying to investigate the case—which they had learned of from press reports—but had been unable to locate the victim to interview him. Coca union leaders told Human Rights Watch that Verdúñez was hiding from the UMOPAR who had "come looking for him"—from their perspective in an effort to threaten or punish him.

Obviously a vicious cycle is at work. Historically, neither the FELCN or UMOPAR have had effective procedures to investigate and prosecute abuses. As a result, the rural population sees no reason to cooperate and fears retaliation. The result is almost total impunity for human rights abuses except in extreme cases.

Chapare residents might be more likely to make complaints, and UMOPAR personnel might therefore be deterred from engaging in abuse, if the agents could be readily identified by name. UMOPAR agents currently do not wear name tags; during some operations their faces are obscured with paint; and their vehicles are not marked with identifying numbers or signs. Lieutenant Colonel Caballero agreed with Human Rights Watch that wearing identification was important. He insisted that he was trying to get name tags for his troops and that their arrival had been delayed simply by bureaucratic hurdles, including slowness on the part of the U.S. officials who authorize UMOPAR expenditures.

But even assuming victims are willing and able to come forward with details concerning abuses they endure, they confront the absence of a complaint and review procedure designed to assure them of justice. The simple fact is that neither the Bolivian authorities nor the U.S. has focused on the need to establish such a procedure. Human Rights Watch believes that abuses would decline—and false complaints would decline—if an effective, transparent system for reviewing allegations of misconduct against civilians was established, followed by criminal prosecutions or administrative sanctions as appropriate.

Human Rights Watch believes an off-base office should be created to receive complaints about UMOPAR abuses. Information on how to file complaints should be provided to victims and witnesses and widely publicized. Complainants should be informed about the status of internal investigations. The UMOPAR should, for example, publish periodic reports on administrative sanctions imposed for misconduct, thereby assuring the public that disciplinary procedures are functioning. Human Rights Watch also believes the complaint review and disciplinary procedure must be overseen by government officials who are not part of the law enforcement chain of command. A mechanism for citizen participation in the oversight and review process should also be established. Such representation is indispensable if the public is to be assured that investigations are conducted in good faith, with independence and impartiality, and if the deep distrust that permeates the relationship between the UMOPAR and the Chapare residents is to be removed.

## VIII. The Role of the United States

### The DEA and Human Rights

The DEA's reputation in Bolivia is highly controversial. Allegations of abuse, including torture, by the DEA have surfaced in Bolivia over the years. Because DEA agents have diplomatic immunity and have operated under a mantle of secrecy, there has been no public investigation, in either Bolivia or the U.S., into the nature and extent of any such abuses.

Residents of the Chapare have accused the DEA of active and passive complicity with UMOPAR abuses.<sup>123</sup> They have accused DEA agents of standing by during incidents of beatings and pillage by the UMOPAR. They have

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<sup>123</sup> Jaime Malamud-Goti, *Smoke and Mirrors: The Paradox of the Drug Wars* (Boulder: Westview Press, 1992), pp. 35-37.



also accused DEA agents of participating in interrogations conducted with the use of torture. These complaints have persisted since at least the 1980s, voiced by human rights activists, church leaders, and congressmen, as well as by individuals claiming to be victims.<sup>124</sup>

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<sup>124</sup> The Bolivian military has also accused the DEA of abuses. During a joint DEA/UMOPAR raid in 1991 on the town of Santa Ana de Yásuma, the commander of the naval garrison in Santa Ana, Lt. Carlos Revollo was arrested. Revollo, whom U.S. officials accused of involvement in drug trafficking, claims he was struck by members of the DEA. The commander of the Bolivian navy subsequently publicly accused the DEA of mistreating the official. At the time, U.S. officials denied Revollo's claims, altogether. Assistant Secretary of State Robert Gelbard told Human Rights Watch in May 1995, however, that the DEA agent did in fact strike Revollo. The Santa Ana incident is discussed in Washington Office on Latin America, "A Fundamentally Flawed Strategy: the U.S. 'War on Drugs' in Bolivia," pp. 16-17. See also, Malamud-Goti, *Smoke and Mirrors*, pp. 41-43.

In late 1993, detained drug trafficking suspects publicly accused the DEA of maintaining "safe houses" in which they had been interrogated under torture. The accusations were widely carried by the press, including photographs of a house in Santa Cruz supposedly rented by the DEA and outfitted with elaborate communications equipment which, according to a congressional representative who saw it, allegedly had "blood stains" on its floor.<sup>125</sup> The minister of government announced that the charges would be investigated; if any such investigation was made, its results have not been released.

U.S. officials deny that DEA agents have abused Bolivians. They attack the credibility of drug traffickers and coca growers. They also, rather disingenuously, place the burden on the victim to come forward with sufficient information to identify the individual agent who supposedly participated in an abusive interrogation. In most cases the victims can only indicate that "a gringo" was present, or "someone who spoke Spanish with an accent." Human Rights Watch interviewed several prisoners who said they believed that DEA agents had been present during interrogations that included torture. For example, Julián Flores, a twenty-six-year-old farmer from the Chapare with a five-year sentence, told us that he had been detained by the UMOPAR on October 12, 1992, and brought to the base at Chimoré, where he was beaten. According to Flores, two white people with light hair were present during his interrogation. He assumes that they were DEA. They did not beat him, but one asked questions and translated for the other, who took notes.

A senior DEA official with years of experience in the country also suggested a pattern of tacit DEA acquiescence in human rights abuses by Bolivian law enforcement agents. In an interview with Human Rights Watch, the official readily admitted that in order to avoid direct knowledge of abuses the DEA "wears blinders" when conducting joint operations with the UMOPAR. He described, for example, how DEA agents would wait outside a place in which the UMOPAR was conducting interrogations, knowing full well that the interrogations included unlawful physical violence. When pressed, the agent justified this refusal to act to protect Bolivians from abuse or to instruct Bolivian agents in the law. "[We] are guests in their country. It's not for us to criticize . . . We fuel the truck and say 'go get them.' If people come back arrested with bruises on their face, it's not my responsibility."<sup>126</sup> In certain situations, this reluctance to interfere with UMOPAR human rights abuses could make the DEA party to the crime. It contrasts with the DEA's mission of advising and training the UMOPAR on law enforcement practices—and directly contradicts State Department claims that U.S. agents working with Bolivian law enforcement personnel provide guidance and training in techniques to protect the human rights of detainees.

In theory, allegations of wrongdoing by DEA agents are investigated by the DEA's Office of Professional Responsibility. As of this writing, the DEA has not responded to Human Rights Watch's request for information on how many such investigations have been undertaken with regard to agents in Bolivia. Without such information, it is not possible to determine how vigorously the DEA enforces its own rules. There are at least anecdotal indications, however, that the DEA's internal procedures may not be sufficiently strict: for example, a senior DEA agent in Bolivia told Human Rights Watch that many complaints had been made about an agent in Santa Cruz. The official told us, however, that he had simply talked to the agent in question, who denied any wrongdoing. The investigation ended there.

Human Rights Watch is concerned by the lack of any transparent system for investigating DEA agents in Bolivia and for holding them accountable for any abuses they may commit. Because of diplomatic immunity the Bolivian government has no authority to investigate complaints against the DEA or to hold agents accountable. Bolivians who believe themselves aggrieved by DEA agents cannot assure themselves of the adequate investigation of complaints and the application of appropriate sanctions. The results of internal DEA investigations are not routinely disclosed to the public.

## **U.S. Efforts to Promote Human Rights**

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<sup>125</sup> We asked the congressman, Jerjes Justiano, whether the stains had been tested to determine whether they in fact were from human blood. He was unaware of any such tests.

<sup>126</sup> Human Rights Watch interview, Bolivia, April 7, 1995.

As part of its commitment to strengthening democracy in Bolivia, the United States has provided crucial support for Bolivian programs designed to strengthen the institutions protecting the rule of law. It has, however, failed to appreciate the significance of the human rights violations that are woven into the very fabric of Bolivian counternarcotics law enforcement operations. Within the range of the U.S. efforts to promote human rights in Bolivia, few target counternarcotics personnel. And although the U.S. underwrites Bolivian counternarcotics efforts, it has not insisted that the agencies it funds develop procedures that will better protect human rights in the course of drug law enforcement.

#### *Improving the Administration of Justice*

For State Department officials, the principal human rights concerns in Bolivia involve the institutional weakness in the administration of justice.<sup>127</sup> In keeping with its objective of strengthening democracy in Bolivia, the United States has provided important encouragement, technical assistance and financial support to efforts to enhance the effectiveness, efficiency and accessibility of Bolivian law enforcement and the administration of justice. It has funded programs, for example, to modernize the judicial and administrative infrastructure, to institute more efficient case processing and case management systems, and to train police and prosecutors in order to improve the investigation, preparation and presentation of criminal cases. It has provided assistance to the Ministry of Justice to strengthen its institutional capabilities to promote judicial and legal reforms and to develop an effective public defender program.

The United States has also supported activities that will encourage the regular police to observe human rights. For example, it has supported the creation of a new branch of police detectives (the *Policía Técnica Judicial*), which includes an office to investigate abuses against civilians as well as police corruption. In addition, the U.S. is helping to develop the investigative skills of the police, which should decrease police reliance on coerced confessions. The United States is also helping to create an Institute of Legal Medicine under the Ministry of Justice, a forensic agency independent of the police that can establish evidence of physical abuse. Finally, the United States has also funded human rights seminars attended by police, members of the military, prosecutors, judges and public defenders.

#### *Programs Aimed at Counternarcotics Forces*

U.S. officials downplay the problem of human rights abuses by Bolivian counternarcotics forces, and the United States directs few initiatives or activities toward improving their record. To some extent, the lack of U.S. concern reflects a comparison with the human rights problems in Colombia and Peru. We believe it also reflects the fact that the U.S. officials responsible for implementing U.S. international drug policies do not necessarily see human rights as an integral part of their work.

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<sup>127</sup> This view is reflected in the State Department's country report on Bolivia, which states: "Denial of justice through prolonged detention remains the most pervasive human rights problem." State Department, *Country Report*, pp. 327-332. Human Rights Watch/Americas

The United States has insisted that human rights be included in the U.S.-funded basic training that all UMOPAR agents receive. The United States also sponsored a human rights seminar in 1994 which senior UMOPAR officials attended along with other law enforcement personnel. In theory, the United States also provides "on-the-job" human rights training to Bolivian law enforcement personnel, including the UMOPAR. According to the U.S. Embassy's most recent outline of planned activities to promote democracy and human rights in Bolivia, "personnel of all U.S. agencies interfacing with Bolivian law enforcement agencies will continue to provide guidance and training as appropriate on proper arrest, interrogation, and detention techniques and norms to protect the human rights of detainees, prisoners, and the public."<sup>128</sup> Such guidance appears in practice to be limited. Human Rights Watch interviews with officials of the DEA—the agency that "interfaces" most continually with Bolivian counternarcotics law enforcement agencies—have led us to conclude the DEA does not realize that providing human rights guidance to Bolivians is part of its job.

Even the best human rights training is, of course, ineffective in the absence of appropriate mechanisms for ensuring adherence to human rights norms. Unfortunately, the United States has not sought to use the leverage of its funding and close working relations with Bolivian counternarcotics agencies to help strengthen their systems of internal discipline. Indeed, to our knowledge there has never been a review of those systems, nor any determination by the United States or Bolivia as to what steps are necessary to make them function effectively.

#### *Human Rights Oversight by the United States*

Robert Gelbard, assistant secretary of state for international narcotics and law enforcement affairs, has asserted in referring to the role of counternarcotics assistance in promoting human rights that U.S., "training and oversight help instill respect for human rights and professionalism among police and military commanders in the host countries."<sup>129</sup> In Bolivia, at least, that oversight is extremely limited. The State Department has not developed a system commensurate with the extent of U.S. funding to monitor the human rights performance of Bolivian counternarcotics personnel. Human Rights Watch was surprised to learn, for example, that Bolivian officials do not regularly inform the United States about complaints received of abuses against civilians or on the status or results of internal investigations. In contrast, the United States communicates regularly with Bolivian officials about counternarcotics activities and about violations of internal discipline by counternarcotics agents that involve corruption.

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<sup>128</sup> U.S. Embassy, "Democracy and Human Rights Workplan," undated document on file at Human Rights Watch.

<sup>129</sup> Statement of Assistant Secretary of State for International Narcotics Matters Robert Gelbard, before the House Foreign Affairs Committee, June 22, 1994.

There is a single political officer at the U.S. Embassy who, in addition to his other responsibilities, officially monitors human rights. The U.S. Embassy's human rights working group, composed of representatives from different embassy offices, meets every couple of months and monitors ad hoc complaints of specific human rights abuses, pressing the Bolivian authorities for responsive action. This monitoring has limited effectiveness for several reasons. First, allegations of abuse reach the embassy on an ad hoc basis—through stories in the press, through the occasional communication directly to the embassy from victims or their representatives, from internal intelligence sources, etc. As noted above, Bolivian officials do not provide any periodic reporting to the U.S. regarding complaints of human rights abuse (whether by counternarcotics or other state agents). Second, embassy personnel bring such a degree of skepticism to complaints of abuse that emerge from coca farmers or people otherwise alleged to be connected with drug trafficking that it appears most of these complaints receive scant attention; certainly few receive an energetic or sustained response. For example, one embassy official told Human Rights Watch that most complaints are part of the coca farmers' "public relations campaign."<sup>130</sup> We understand why U.S. officials might have doubts about some complaints arising in the context of counternarcotics efforts. But we are troubled by the evident bias with which many are viewed. Third, in those cases in which the embassy feels some sort of action on its part is warranted, it may make inquiries to ascertain what happened. But those inquiries generally are made only to Bolivian and other U.S. officials and this cannot be expected to yield an impartial or balanced version of the events.<sup>131</sup>

There nonetheless have been certain human rights cases in which the embassy has had a major impact. In the case of Felipe Pérez, confronted with a homicide that was widely denounced in the press, the embassy pressed the Bolivian authorities to ensure an investigation that would clarify the circumstances of his death. That the guilty parties were identified and arrested—despite an initial cover-up—is in no small part due to the embassy's interest in the case. Similarly, in the case of Marcela Porco, the embassy worked hard to address the many abuses presented. But few cases can receive this kind of embassy attention.

## IX. Conclusion

There are Bolivian and U.S. analysts who believe that by its very nature, the war on drugs threatens human rights. The resources possessed by Bolivian antinarcotics forces are too few: too few men too poorly equipped are being asked, on the one hand, to battle well-entrenched drug traffickers funded by immense profits. On the other hand, they are being asked to control the thousands of poor people who labor at the lowest end of the drug production pyramid producing small amounts of base and transporting base and precursor chemicals. This law enforcement effort, moreover, is conducted in the absence of institutions and traditions that hold public agents accountable for their own adherence to laws protecting civilians from abuse.

The Bolivian government is making steps, supported by the United States, to improve the administration of justice and strengthen the rule of law. Some of the reforms underway—improved case management systems, strengthened prosecutorial direction—may improve Bolivia's ability successfully to prosecute and lock away drug traffickers and to diminish corruption. Others, such as the institution of the system of public defenders, will provide important protections for the rights of defendants, including those charged with drug trafficking offenses. Unfortunately, such reforms do not directly address the problems of abuse, impunity and unjust prolonged imprisonment that currently characterize the antinarcotics effort in Bolivia.

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<sup>130</sup> Human Rights Watch interview with Ken Keller, U.S. Embassy, La Paz, March 30, 1995.

<sup>131</sup> For example, Human Rights Watch was informed by a Bolivian nongovernmental organization in April that during the state of siege, Bolivian law enforcement agents had forced their way into its offices and searched its files. We alerted the U.S. Embassy, which then apparently contacted Bolivian officials for their version of the facts, which differed in significant ways from the report of the organization. The embassy did not, however, contact the organization directly

## APPENDIX 1

### PROGRAMA DE COOPERACION DE LOS ESTADOS UNIDOS A BOLIVIA

(En millones de dólares)

	<u>FY89</u>	<u>FY90</u>	<u>FY91</u>	<u>FY92</u>	<u>FY93</u>	<u>FY94</u>	<u>FY95est</u>
<u>ASISTENCIA ECONOMICA</u>							
Programa de Recuperación Económica, incluyendo Apoyo a la Balanza de Pagos	12.0	33.0	76.0	99.0	59.0	32.0	13.0
<u>ASISTENCIA PARA EL DESARROLLO</u>							
Programa de Asistencia Regular para el Desarrollo económico y social	25.0	25.0	24.0	28.0	27.0	20.0	24.0
<u>ASISTENCIA ALIMENTARIA</u>							
Programas PL-480 Título II (donación de Alimentos empleados en el Programa Alimentos por Trabajo y Título III (donación de trigo para ser monetizado)	33.0	34.0	37.0	38.0	47.0	37.0	18.0
<b>SUBTOTAL</b>	<b>70.0</b>	<b>92.0</b>	<b>137.0</b>	<b>165.0</b>	<b>133.0</b>	<b>89.0</b>	<b>55.0</b>
<u>ASISTENCIA MILITAR</u>							
FMF Fondo Militar para el Extranjero (materiales y servicios para la lucha antidroga)	5.0	38.2	35.0	25.0	18.0	4.721	6.865
IMET Educación y Entrenamiento Internacional Militar 506A (2)	0.4	0.5	0.9	0.9	1.1	0.4	0.5
Provisiones y equipamiento para emergencias	0	7.8	0	0	0	0	0
Soporte para actividades del cumplimiento de la Ley						4.818	0
<b>SUBTOTAL</b>	<b>5.4</b>	<b>46.5</b>	<b>35.9</b>	<b>25.9</b>	<b>19.1</b>	<b>9.939</b>	<b>7.365</b>
<u>PROGRAMA PARA CUMPLIMIENTO DE LA LEY</u>							
Asistencia para programas contra las drogas mediante la oficina de NAS	10.0	16.7	17.9	15.7	17.0	17.0	16.5
Apoyo para la DEA	0	6.6	6.6	7.0	7.0	7.0	6.8
<b>SUBTOTAL</b>	<b>10.0</b>	<b>23.3</b>	<b>24.5</b>	<b>22.7</b>	<b>24.0</b>	<b>24.0</b>	<b>23.3</b>
<u>OTROS</u>							
CUERPO DE PAZ	0	0.8	1.2	1.3	1.6	1.7	1.8
TDA Agencia para el Comercio y Desarrollo	3.4	0	0	0	0	1.0	0
<b>SUBTOTAL</b>	<b>3.4</b>	<b>0.8</b>	<b>1.2</b>	<b>1.3</b>	<b>1.6</b>	<b>2.7</b>	<b>1.8</b>
<b><u>TOTAL GENERAL</u></b>	<b>88.8</b>	<b>162.6</b>	<b>198.6</b>	<b>214.9</b>	<b>177.7</b>	<b>125.639</b>	<b>87.465</b>

Source: U.S. Embassy, La Paz, *El Libro Verde*. Figures dated February 22, 1995. Reproduced in the original spanish.

**APPENDIX 2**

**INL Budget for Bolivia**

(In millions of dollars)

	1/	<u>FY 1994</u>	<u>FY 1995</u>	<u>FY 1996</u>
<b>Narcotics Law Enforcement</b>				
Ground Operations Support (FELCN, UMOPAR, Urban Narc Police, DIRECO and DINACO)		7,506	6,279	12,000
Air Operations Support (Red Devils Task Force and Other Police Air Support Units)		6,011	5,350	8,000
Riverine Operations Support (Red Devils Task Force)		1,800	1,000	2,500
Field Support (Commodities, training, vehicle support facility field project offices and support staff)		1,800	1,000	1,800
		-----	-----	-----
Subtotal		17,117	13,629	24,300
 <b>Sustainable Development</b>				
Alternative Development		25,000	5,000	15,000
Macroeconomic Initiatives		0	5,000	15,000
		-----	-----	-----
Subtotal		25,000	10,000	30,000
 <b>Drug Awareness and Demand Reduction</b>		300	500	0
Training, surveys, commodities, workshops				
<b>Judicial Reform</b>		0	0	4,000
<b>Program Development and Support</b>				
U.S. Personnel:				
Direct Hire (4)		575	600	600
Contract/Pit (4)		90	90	90
Non-U.S. Personnel:				
Direct Hire (3)		260	225	225
Contract (8)		125	135	135
Other Costs:				
Foreign Affairs Administrative Support		225	250	250
Program Support		375	400	400
		-----	-----	-----
Subtotal		1,650	1,700	1,700
 <b>TOTAL</b>	1/	<b>44,067</b>	<b>25,829</b>	<b>60,000</b>

Totals include INL, Military and Economic counternarcotics funding.

Source: Bureau for International Narcotics and Law Enforcement Affairs, *Congressional Presentation Fiscal Year 1996 Budget*

This report was written by Jamie Fellner, associate counsel of Human Rights Watch, and Joanne Mariner, Orville Schell Fellow at Human Rights Watch. Research for this report included interviews in Bolivia from March 30 through April 13, 1995 with Bolivian and U.S. government representatives, members of congress, lawyers, judges, coca growers and their union leaders, prisoners, human rights activists and others.

*Bolivia: Human Rights Violations and the War on Drugs* is the first report undertaken by Human Rights Watch as part of a new special project to examine the impact on human rights of counternarcotic policies and programs. The project is directed by Jamie Fellner. We are grateful to the Open Society Institute for its support of the project.

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*Human Rights Watch/Americas*

Human Rights Watch is a nongovernmental organization established in 1978 to monitor and promote the observance of internationally recognized human rights in Africa, the Americas, Asia, the Middle East and among the signatories of the Helsinki accords. It is supported by contributions from private individuals and foundations worldwide. It accepts no government funds, directly or indirectly. Kenneth Roth is the executive director; Cynthia Brown is the program director; Holly J. Burkhalter is the advocacy director; Ann S. Johnson is the development director; Gara LaMarche is the associate director; Juan E. Méndez is general counsel; Susan Osnos is the communications director; and Derrick Wong is the finance and administration director. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair. Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. José Miguel Vivanco is executive director; Anne Manual is deputy director; Allyson Collins is advocacy director; James Cavallaro is the Brazil director; Sebastian Brett, Sarah DeCosse, Robin Kirk, and Gretta Tovar Siebentritt are research associates; Joanne Mariner is the Orville Schell Fellow; Steve Hernandez and Paul Paz y Miño are associates. Peter D. Bell is the chair of the advisory committee and Stephen L. Kass and Marina Pinto Kaufman are vice chairs.