

National Lawyers Guild

Report of Delegation to Bolivia

January 1 – 10, 2007

Report edited by:

Leonard Cavise, Chicago, IL
Denise Oliveira, New York, NY

Written by:

Beth Baltimore, Brooklyn, NY
Antoine J. Bastien van der Meer, Lane, OK
Melissa Brennan, New York, NY
Mark Burton, Boulder, CO
Mercedes Castillo, CA
Leonard Cavise, Chicago, IL
Angela Davis, Lane, OK
Jean Friedman-Rudovsky, La Paz, Bolivia (In-country Coordinator)
Angie Mendoza, San Rafael, CA
Denise Oliveira, New York, NY
Judy Somberg, Cambridge, MA
Vanessa Spinazola, New Orleans, LA
Kerrin Staskawicz, Berkeley, CA
Lawrence Mark Stern, New York, NY
Lee Tockman, Chicago, IL

Report published July, 2007

CONTENTS

Executive Summary	
I. Introduction	3
II. Impressions	4
III. History	5
IV. Social Movements	7
V. Legal System: Community vs. “Ordinary” Justice	9
VI. Constituent Assembly	13
VII. Former President Gonzalo Sánchez de Lozada	16
VIII. The United States and Bolivia	17
IX. The Cocaleros	20
X. Land Reform	21
XI. Foreign Patents on Local Crops	22
XII. San Pedro Prison	23

EXECUTIVE SUMMARY

Bolivia is a country on the brink of an historic transformation. Colonized over and over by foreign capital, for many centuries the South American nation has been a playing field for wealthy elites. Bolivia now has the opportunity to emerge from the economic domination of the World Bank, the International Monetary Fund and American transnationals and to take control of its own resources and its own destiny. The catalyst for this rapidly changing scenario was the election in December, 2005 of Evo Morales, an indigenous Bolivian and former *cocalero* union organizer, who quickly took his place with Chávez of Venezuela, Lula of Brazil and the leaders of several other South American countries who are forming a wall of resistance to American and international pressure to allow “free market” looting of the continent’s plentiful natural resources.

Bolivia is the poorest and most indigenous country in South America. The history of the 500 years since Spanish conquest is one of repeated interventions from abroad, a series of brutal dictatorships, continual exploitation of the country’s tin, silver and other minerals, along with constant repression of the indigenous majority by the handful of families that traditionally controlled both the economic and political life of the country.

The election of Morales has given new life not only to the aspirations of the indigenous but also to the social movements that both support and monitor his government. These are the social movements that have resisted the United States for decades, including major victories in the Water War of 2000 and the two Gas Wars in 2003 and 2005. The social movements also sent the last dictator into exile in the U.S. Not to be lost in this scenario is *cocalero* politics. Morales, already anathema to Washington because of his leftist politics and his alignment with Chávez, has made it clear that coca cultivation in Bolivia will not be eradicated. Coca has a centuries-long traditional usage in the Andean countries, both in various food products and to cut hunger. The *cocaleros* have organized into one of the strongest of the national social movements. Ever since Morales held up a coca leaf at the United Nations, the world has come to see that coca is not a drug and that the cocaine problem is not a Bolivian issue. Washington has traditionally used its “war on drugs” to condition foreign aid to Bolivia. The U.S. government is now watching warily.

The National Lawyers Guild sent a group of lawyers, law students and one scientist to Bolivia in January, 2007 to observe what a society in the midst of progressive transformation looks like. The group had the singular advantage of having a Bolivian-based American guide, Jean Friedman-Rudovsky, who is not only up to date on the political issues of the moment but also sufficiently well connected to secure interviews for the group with very highly-ranked government officials: two cabinet ministers, the counsel to the President, two justices of the Supreme Court and members of the Constituent Assembly, as well as leaders of some of the most prominent social organizations. The group also had access to several indigenous communities where we observed the labors of one community to bring water to its residents, the agony of a community that saw many of its members murdered in the Gas Wars of 2003, the joy of an indigenous group of students who had just completed a long struggle to establish a law school “for the people.” We also met with the leader of “The Democracy Center” (a U.S. citizen), who briefed us on some of the political intricacies of the Bolivian situation, as well as with a representative of the principal opposition party.

The primary issues of inquiry: land reform, the role of the indigenous in the new government, the nationalization of gas and oil, the reform of the Constitution, the U.S. war on coca, the prison system, U.S. patents of seed and plant material, the reaction of the Morales government to the criticisms of Washington and, of course, reform of the legal system. Key to that reform appears to be the notion of “community justice”, which recognizes the traditional consensus politics of the indigenous and the obvious dysfunction of the regular justice system. On that point, our meeting with the then-Minister of Justice, herself an indigenous non-lawyer, was dramatically more useful than our meeting with two holdover members of the Supreme Court.

Another important issue for both Bolivians and North Americans is the attempt by Bolivia to extradite its recent former president, Gonzalo Sánchez de Lozada, or “Goni,” for the murder of peaceful demonstrators and bystanders. To this point, not surprisingly, Goni (as he is always known) has been given safe haven in the United States, where he enjoys the legal representation and the powerful influence of several Clinton Democrats. His extradition is an issue that has had a unifying effect in a country that, on most other issues, is largely polarized.

Our backdrop was the Bolivian countryside and the breathtaking Andes mountain range. Our three chosen cities, Cochabamba, La Paz and Sucre, were selected for their political and social importance. Sucre is the center of the Constituent Assembly where the mechanics of constitutional reform and the demand of several non-indigenous regions for complete autonomy have become lightning-rod issues throughout the country. La Paz is the third-world metropolis: located at 12,000 feet, even though it sits in a “bowl” in the Andes, with skyscrapers downtown and abject poverty all around. Cochabamba, to our eyes during our visit, is a small, sleepy city where major demonstrations and violence broke out, resulting in the death of three people, on the day we left the country. Volatility is a constant in Bolivia.

I. INTRODUCTION

On January 10, the day that we left Bolivia – and nearly a year after the inauguration of indigenous leader Evo Morales as president – the people of the city of Cochabamba erupted. The indigenous people of that town massed in the central plaza, threatening to take the town, trying to force out the governor of the department, who had allied himself with the right-wing factions opposing Morales. Like their counterparts across Bolivia over the past decade, the people of Cochabamba were struggling against the vestiges of the colonial power structure.

Only a few days earlier, that same central square of Cochabamba had appeared to strolling members of our Lawyers Guild delegation to be a peaceful, sleepy place, with lunch-time eaters, a trio of kid musicians and dancers, shoe shine boys trying not to take no for an answer, and old Aymara women begging with the same intensity. Indeed, intensity was the only somewhat unsettling feeling in the plaza that afternoon, as some of the people in a small crowd listening to a political speech turned to stare at us hard. The intensity quickly broke, however, when one of us cheered them on, and laughter and expressions of goodwill flowed to us from the Bolivian people, whom we would come to know as generally warm, open, respectful, and, ironically, light hearted.

The delegation, composed of legal workers, lawyers, law students, and a scientist, had come to Bolivia to learn about the extraordinary success of Bolivia's indigenous peoples, who have elected an indigenous president and majority in the legislature for the first time since the Spanish conquest. We were in Cochabamba on our first day in the country, where we met the local founders and leaders of a private water cooperative. In the absence of government-supplied water, they had dug a well and are now using a Nissan car engine to pump water to hundreds of families in the poor areas of the city. We also met Oscar Olivera, the leader of the Water War in 2000 that resulted in the expulsion of the foreign corporation with which the government had contracted to supply water at rates the poor could not afford.

These visits and a meeting with Jim Shultz of the Democracy Center, a careful observer of US policy in Bolivia, made absolutely vivid the familiar role of the United States as protector of its corporate interests and compliant governments in foreign countries, at the expense of the development of those countries.

During the next seven days, we managed to go to three other cities. In La Paz, we met with coca farmers who explained with pride that the coca plant has contributed to the health and stamina of the people of Bolivia; now, without apologies, Bolivians will seek to export coca leaves, as they also interdict its diversion into cocaine. Labor lawyers explained the complexities of adapting and changing old colonially imposed systems into a new social welfare order.

We met with judges of the Supreme Court, government ministers, and advisors to the president. In some cases forthrightly, and in other cases with old-fashioned political side-stepping, they revealed to us the angry and seemingly unbridgeable divisions between the few powerful rich and the masses of the poor, and between various factions and interest groups within the indigenous peoples themselves. One of the leaders of PODEMOS, a political party of the wealthy elite who have run the country for the last 500 years, cast his constituents as the victims of a new dictatorship. We then heard from some of the family members of the 67 people shot and killed during a mass demonstration against the former right-wing government. The families and their lawyers described the Morales government's efforts to extradite the former president – now living in Maryland – for trial in Bolivia, and the resistance of the US State Department to those efforts so far.

Perhaps the most endearing and inspiring person we met was the Minister of Justice, Casimira Rodriguez, a Quechua woman who had been enslaved as a child. She explained her goal of extending the system of justice into the barrios closest to the people, to enable their immediate and ready access to a government that would hear and adjudicate complaints of injustice as they arise at the source. Her evident humility and sincere concern to make a socialist-humanist government work at the lowest levels close to the people moved us all. When we learned only weeks after our meeting that the new president had fired her, once again the lessons of history – about reality versus idealism in revolutionary movements – intruded on the hopes with which she had confidently left us. But it remained clear from our meeting with the law students who founded and now manage and protect the public university in El Alto (the sprawling indigenous city above La Paz) from political forces who would close it, that the people of Bolivia are now empowered by their experiences of mass organization and will not be contained.

II. IMPRESSIONS

The primary objective of this report is to impart what we learned about the politics, economy and social situation in Bolivia. The report would be incomplete, however, without at least some discussion of a more subjective, anecdotal nature, intended to convey what it *felt* like to be in Bolivia, to partake in the culture, to interact with high government officials and common citizens, to experience the local cuisine and catch a glimpse of the coca culture.

Some of us felt the impact of the high altitude as soon as we landed in La Paz. All of us quickly learned how to chew on the coca leaf to help us acclimatize. However, even with the coca leaf and generous doses of *mate de coca* throughout the day, many in the group still felt the effects of the altitude throughout the trip, resulting in headaches, upset stomachs and sleepless nights. Despite all of that, we maintained our calm, our energy and our desire to be fully immersed in Bolivian culture during our short stay in the country.

The Bolivians have a strikingly broad and deep understanding of their history and the social movements that affect their lives. They speak with pride, conviction and power, but also with utmost humility and grace. All of the social activists with whom we met were eager to share their stories with us, grateful to have an audience, willing to be honest about their situation and to ask for our help. Each of these meetings was for us yet another cultural awakening, an opportunity to learn, but also to partake in a form of gathering and storytelling that to many of us was truly foreign.

We kidded within the delegation that every presentation we attended opened with the refrain, “500 years ago when the Europeans arrived...” Our hosts were eager to help us understand the context of their struggles, their oppression, their fears. The impressively detailed accounts of Bolivia’s history made for several extremely lengthy meetings that took some of us out of our comfort zones but nonetheless opened our eyes to a different way of being together, of being in community to learn about each other’s struggles. Nowhere was this more evident than in our meeting with students from the public university in El Alto, a teeming, largely low-income community about 40 minutes away from the La Paz city center. We gathered on the third-floor of a community organization in El Alto, sitting on wooden benches in a room that was cold and where we could feel the effects of being almost five hundred meters higher than in La Paz. We had asked a handful of law students to tell us about their struggles to establish a university (which included a major in law) in El Alto (the Universidad Pública y Autónoma de El Alto). We

had expected that they would speak for about an hour and then we would talk, as they had requested, about the legal system in the United States.

Four hours into the meeting, which had started at 6 pm, the El Alto students were still speaking. They talked about Bolivia's history, about the current legal and executive branches, about the philosophy of legal education and certainly about their experiences as they fought for the opening of their law school. The discomfort some of us felt was largely obliterated by the sense of awe, admiration, humility and gratitude we felt towards these students. For some of them, this may have been their first opportunity to prepare a lecture and talk to an audience that wanted to learn about them. As we continuously passed around the bags of coca leaves the students brought to share with us, we were struck by the dangers they confronted in their struggle, the commitment and passion they maintained for years as they faced rejection after rejection, the pains they went through to obtain something – a legal education – that many of us took for granted in our own country. We left the meeting feeling physically exhausted and emotionally drained, slightly sore and starving. The feast we shared with the students afterwards – endless portions of meat and the local brew at a nearby restaurant – served well to cure all of our ailments.

The pages that follow highlight the people and issues we encountered during our trip. As we prepare this report we reflect on what we learned and also hold on to memories of a country with beautiful landscapes (our drive to Lake Titicaca for a Sunday of relaxation was breathtaking), delicious food (many of us were introduced to *quinoa*, a grain grown in the Andes, for the first time) and admirable human beings. For many of us, the most powerful image we brought home was of a little boy wiping tears off his mother's face as she told us about having lost her husband during the gas war. That image remains with us as we report on the political, economic and social developments in Bolivia.

III. HISTORY

The Spanish conquistadors arrived in Latin America, previously ruled for hundreds of years by the Incas, in 1532. Bolivian silver mines accounted for much of the Spanish empire's wealth, as the Spanish benefited from the near-enslavement of indigenous people to mine silver and tin. While independence was proclaimed in 1809, the republic of Bolivia was not formed until 1825 after the War of Independence, when Simón Bolívar became the first President. Since independence, Bolivia has lost over half of its territory to neighboring countries as a result of multiple wars. Bolivia lost its coastline during the War of the Pacific (1879–83), its region of rubber production, Acre, when Brazil persuaded the state of Acre to secede from Bolivia in 1903, and the Chaco region to Paraguay in 1935. A succession of governments controlled by the economic and social elite followed laissez-faire capitalist policies through the first thirty years of the twentieth century. Bolivia's tumultuous history includes 188 coups and numerous constitutions. A Constituent Assembly held in 1938 resulted in alterations to the constitutional relationship between the state and society. Particularly important was the Assembly's declaration that human rights outweighed property rights and that the national interest in national resources was paramount to individual interests.

The Movimiento Nacionalista Revolucionario (MNR) emerged after the Chaco War as a political coalition having strong support among a variety of social classes. The support did not last, as the party's leader was accused of fascism and lynched by mobs of students, teachers and workers in 1946. The period following the assassination of MNR's leader brought economic decline, military demoralization and extreme social unrest, but MNR still led the successful 1952

Revolution. Immediately following the Revolution, Bolivia commenced nationalization of a number of resources, beginning with the country's mines. Universal suffrage was established, the armed forces were reduced, the three largest tin companies were nationalized and the Corporación Minera de Bolivia (CoMiBol) was created to manage the state-owned mines. In 1953, the new government passed the Agrarian Reform Law, which abolished forced labor and initiated land transfer from traditional landowners to indigenous peasants.

The MNR, however, soon lost momentum when it split between radical leftists and a more moderate majority. Party leaders turned to a strict International Monetary Fund stabilization program that froze wages and required large U.S. loans, which alienated the far left. In 1964, a military junta reinstated military rule and reversed almost every policy pursued by the MNR. The military was turned against the workers, CoMiBol was placed under military control, the miners' militias were disarmed and union leaders were exiled. A military takeover ousted the MNR in 1964, bringing to an end the National Revolution. The event marked the beginning of nearly 20 years of military rule during which successive regimes mismanaged the government, leading to severe hyperinflation. Civilians eventually regained control of the government in 1982. By 1985, Bolivia's hyperinflation had left the country unable to make loan payments to international financial institutions.

At the urging of the World Bank and the International Monetary Fund, President Victor Paz Estenssoro introduced his New Economic Policy, marking the beginning of neoliberalism in Bolivia. Proponents of neoliberal policies promised that privatization and foreign investment would jumpstart the Bolivian economy. In reality, such neoliberal policies ultimately took a toll on Bolivia. The privatization of state industries, including the state mining corporation, oil and gas company and the national airline, led to massive layoffs and increased utility fees. The benefits that economists had promised failed to materialize, and the privatization of natural resources only aggravated many Bolivians. Specifically, in 1993, the administration of President Gonzalo Sánchez de Lozada, in close cooperation with the World Bank and the IMF, began the process of handing over Bolivia's state-owned industries, including oil and gas to foreign corporations. The plan introduced the concept of "capitalization." The government's "capitalization" of state-owned Yacimientos Petrolíferos Fiscales Bolivianos (YPFB) placed majority control in the hands of foreign corporations, handing over billions of dollars of public assets to private foreign corporations. Bolivia's shares in the capitalized companies were placed under management of private pension fund administrators instead of being held by individual Bolivians as originally promised. The Bolivian government was forced to sell shares and take on millions of dollars in loans in order to meet pension payments not covered by weak dividends from the capitalized companies.

In April of 2000 widespread discontent with the neoliberal agenda came to a head. Popular demonstrations erupted in the streets of Cochabamba in response to rate hikes implemented by the privatized water company, Aguas del Tunari, a subsidiary of U.S. based Bechtel. The revolt, known as "The Water War," succeeded in driving the company out of the country. Another similar protest took place in 2003 in El Alto, a poverty-stricken city outside of La Paz, against the efforts of multi-national corporations working to privatize Bolivia's oil resources. After the issuance of a supreme decree that ordered martial law to suppress the opposition, the demonstration essentially resulted in the murder of nearly 70 civilians and the fleeing of the corrupt president, Gonzalo Sánchez de Lozada.

As the poorest country today in South America, Bolivia's economic challenges are reflected in its political and social conflicts. The central concerns of Bolivia's contemporary struggles include access to the country's natural resources, agrarian reform, the rewriting of the Republic's

constitution, regional autonomy, coca production, indigenous rights and efforts to extradite ex-president Sánchez de Lozada. After years of exploitation by foreign firms and corruption by local officials, Bolivia is now beginning to emerge as a self-determined entity in search of more autonomy and control of its own riches. Bolivia's first indigenous leader, Evo Morales, was democratically elected on December 18, 2005. With the support of his party, Movimiento al Socialismo (MAS), the former coca grower claimed victory just as the United States was aggressively implementing its coca eradication program in Bolivia. Morales' ascension to the head of state is a profound political symbol. As an Aymaran Indian, Morales has gained international attention and admiration with his anti-imperialist and anti-capitalist rhetoric, especially with his high-profile political and economic ties to Hugo Chávez and Fidel Castro.

One of Morales' major undertakings has been his effort to nationalize the natural resources of Bolivia. On May 1, 2006, President Evo Morales issued a supreme decree that nationalized the country's production of oil and transferred power to state-owned YPFB. YPFB will theoretically be able to define prices, volumes and conditions for commercialization of Bolivia's reserves. However the nationalization will not be legally binding until the contracts are edited and finalized. Prior to the supreme decree, Bolivia received \$250 million USD in taxes and royalties from oil production. Now, Bolivia will receive \$1.3 billion USD each year. This sense of sovereignty and control of the nation's own riches provides hope and optimism for a more just and principled society.

IV. SOCIAL MOVEMENTS

If there was one aspect of Bolivia's current social and political situation on which every one of our speakers agreed, it was the pivotal role played by the Bolivian social movements in the country's recent history. It was the social movements that:

- sustained a decades-long resistance to the U.S.-enforced drug war requiring coca eradication and which gave rise to current-President Evo Morales' national prominence as a union leader;
- won the Water War in 2000—the now infamous battle in which ordinary citizens ousted Bechtel Corporation, an event that triggered a wave of social rebellion against neo-liberal policies that had been imposed on Bolivia during the 1980's and 90's;
- fought the two Gas Wars, in 2003 and 2005, demanding that the benefits of Bolivia's vast natural resource go to Bolivians themselves and not into the transnational executives pockets, tossing out two Presidents along the way and paving the road for hydrocarbon nationalization in May 2006;
- created a public and autonomous university through street protest in the high-altitude, low-income city of El Alto and who now defend that institution with a humbling passion and commitment;
- voted en masse for Bolivia's first indigenous President on December 18, 2005—an Aymara who grew up steeped in *Altiplano* (highland) poverty, herding llamas and eating the food people tossed out of passing buses' windows; a man who promises to turn around 500 years of colonial and imperialist exploitation of his people and country.

As we listened to these stories and more during our short visit, it became clear that understanding the Bolivian social movements was key in understanding Bolivia today.

The majority of the people with whom we shared conversation and meals spoke with ownership and pride about the social movements and their accomplishments. Among the countless tales of

street mobilization, strategic community organization and political advancement, it became evident that the social movements are driven by the people themselves. Here, there are no organizers, no professional activists whose only goal is to foment political activity. Quite to the contrary, the everyday people themselves—those who sell candy and soda on the street, those who work in the mines and factories, those who harvest the potato or the coca crops—are the social movements and are the ones who make social change happen. There seems to be no divide between the people we passed on the street and those who impelled Bolivia's radical protest in the last 10 years.

Specifically, the term "social movements" refers to the organizations and associations on the left side of the Bolivian political spectrum—those who reject the country's centuries-long white elite economic and political hegemony and who battle for economic and social justice (often in the streets). They are unions, neighborhood associations, community indigenous councils, student collectives, farmers organizations, women's groups, and water cooperatives, to name a few. Though speakers often specified which sector they belonged to, often they self-identified as part of this larger whole.

There were, however, contradictions when it came to analysis of the social movements—specifically concerning where they fall on the now blurry line between civil society and government.

Legal advisor to President Morales, Fernando Pizarro, told us that MAS is not a normal political party but in fact a grouping of social movements. He explained that this new government is made up of, represents, and works expressly in the interests of the Bolivian poor and indigenous majority and the social movements formed by these masses. He stressed that the MAS is not a "traditional" political party and that the social movements have now become the government.

This stood in stark contrast to the vision Water War leader Oscar Olivera shared with us earlier in the trip. When asked why he had adamantly and repeatedly rejected Morales' offers to join his Presidential cabinet (as either Minister of Work or of Water), Olivera explained that he preferred to remain with the social movements than become part of the government. Reflecting on this divide, Oscar commented:

Evo Morales is part of a process that we've been pushing forward since the year 2000. The enemies of this process are the people who have governed for thousands of years. They include the big land owners, the very rich, the right wing parties and the U.S. Embassy which has coordinated, in part, the robbing of what our country has to offer. Our goals were always to modify the political model, the end of totalitarianism and to create a constitutional assembly in which the people—not the political parties—could decide how this country ought to be...The only way to change lives for the people of Bolivia is to struggle for social change. The real power and the real capacity still remains among the people, among the social movements. And if the power is among the people, then I want to be with the people.

The certainty with which Oscar stressed the existence and firmness of the line between government and people's movements and the idea that change can—and should—be created independent of state power supported our earlier visit to AAPAS (the Association for Water and Sanitation Production and Administration). In the low-income areas of Bolivia's third largest city, community water cooperatives have constructed their own unique and effective alternatives to privatized water systems (including using an old Nissan car engine to pump water to hundreds of residents). Part of a larger network of water cooperatives named ASICA-SUR

(Southern Association of Communal Water Systems), AAPAS supplies water to 605 families and maintains extremely low user rates (an average of about \$3 US dollars per month) so that even the most impoverished families have water. They have accomplished all this without relying on politicians or state power for answers.

In the eyes of the opposition, it barely matters whether the social movements are independent or not, because they see Morales as inextricably tied to this loose leftist base regardless. Opposition party leader Rafael Loayza believes that the social movements comprise the country's new hegemony because Morales responds only to their needs. He criticized Morales as stubborn and close-minded and accused him of refusing to dialogue with opposing political parties or sectors (a claim which Presidential advisor Pizarro rejects).

The social movement's role in the country's future will continue to be significant, though how this will unfold is questionable.

Though the constitutional assembly delegates do not come directly from the social movements—but instead from political parties—there are over 100 proposals sitting in Sucre which were elaborated based on conversations and consultations with social movements nationwide. The extent to which these views and recommendations are taken into account in the country's new magna-carta will undoubtedly have repercussions on the country and its socio-economic make-up.

Similarly, the social movements will continue to have an impact on legislation and government. Viewing the political relationships through Pizarro's eyes, the social movements are now defining and will continue to control the country's future because they hold the reigns of state power in their very hands—via the MAS party.

From Olivera's perspective, the social movements hold power through their ability to maintain autonomy, create alternatives, and pressure the government from an independent standpoint. The MAS's ability to respond to their constituency's demands and actions, whether this translates into real and tangible change in the lives of the Bolivian majority, and whether the social movements are completely satisfied will all be determining factors that shape this country's future.

V. LEGAL SYSTEM: COMMUNITY VS. “ORDINARY” JUSTICE

The rise of Aymaran President Evo Morales has served to validate indigenous communal beliefs, previously denied official state approval throughout 500 years of oppressive colonial rule and *la justicia ordinaria*. Bolivia's majority indigenous population – the largest in South America – is visible on every street corner, as Aymara and Quechua women proudly display their distinctive traditional clothing. Less visible, but equally as distinctive, is the manner in which these 36 different indigenous groups facilitate their communities.

“Community justice,” while varying slightly in its application among Bolivia's distinct groups, has as its central tenet the maintenance of a moral and social order to effectively regulate the norms of peaceful co-existence. Transmitted orally through generations dating back to the Incas, adherents to community justice seek equilibrium with their environment by curing social ills through a consensus decision-making process. Full participation of each indigenous community member is expected, and is guaranteed through rotating leadership positions. Leadership responsibilities vary among the different groups, but typically include service on a type of

community court that hears family, criminal, and civil/tort-like disputes, meting out appropriate justice. Sanctions by definition include public humiliation, and can include fines and other restitution, community work, expulsion from the community, and corporal punishment. For example, community justice occurs in the Yungas coca-growing region, where coccaleros who are found to be trafficking cocaine are publicly denounced in front of a municipal assembly and expelled from the community.

While a western legal mind might pigeonhole the notion of community justice under the rubric of a legal system, the Bolivians we met viewed its much wider application. Oscar Olivera, a leader of social movements concerning water rights, framed his community's struggle for justice as toward the greater common good, re-defining humanity in a capitalist era. The Bolivian state is willing to recognize this struggle and permit community justice punishment within those communities – with limitations. Article 171 of the Bolivian Constitution permits the use of community justice within indigenous communities unless conflict results with other constitutional provisions. Community justice practices prohibited through Article 28 of the Code of Criminal Procedure include life sentences, the death penalty, civil death, and corporal punishment. Therefore, there is conflict between the practice of community justice and its full legal recognition. Presently, several proposals for better integration of community justice into the “ordinary” system are on the Constituent Assembly agenda.

The national prominence to which indigenous beliefs have risen was apparent upon meeting with David Choquehuanca, Foreign Affairs Minister, who immediately and primarily engaged us in a discussion of traditional cosmology, including the necessity for equilibrium between man and nature and the difference between living “well” and living “better,” the latter being a disdainful western life of waste. Minister Choquehuanca emphasized the primacy of consensus-based decision-making and the limitation of democracy in its requirement of submission to majority will, instead of permitting a process involving all community members. Similarly critiquing international development programs, Minister Choquehuanca cited “anti-development” programs for causing disharmony between people and nature. Ultimately, he felt that man-made law (colonial rule) does not account for natural law (indigenous conceptions of the cosmos) and this is why our planet is in “a state of death.”

Equally passionate about community justice but focusing on its broader application throughout the country's infrastructure was Justice Minister Casimira Rodríguez, a thoughtful, well-organized Quechua woman who at the age of 14 was taken from her rural village and brought to the city of Cochabamba, with the promise that in exchange for her labor, she would be provided with schooling and care. Instead, she was held in servitude and forced to work for long hours with no pay and regularly abused by her "employers" until she was rescued two years later. Rodríguez later started and led a domestic workers' union. Under her purview were four vice-ministries: community justice, justice and human rights, transparency and anti-corruption, and gender. The Justice Ministry operates essentially as a mediation center, with branches in many local neighborhoods, where everyday Bolivians may bring, and hopefully resolve, disputes. This system works to the benefit of poorer Bolivians who cannot afford court fees or the wait-time for legal resolution, and is more reflective of their own ideas about how justice works. Minister Rodríguez described the “abyss” between community justice and “official” justice, where money, a lawyer, the need for literacy skills and extensive education, and inefficiency prevail. While official justice punishes with prison time, community justice offers restitution to those wronged through a decision in which the entire community participates. Minister Rodríguez criticized the Bolivian Supreme Court, stating that the Court functions as if it were an island, ignoring (and fearing) notions of community justice, permitting only those with wealth to make decisions,

merely replicating the past. Sadly, President Morales replaced Minister Rodríguez for “lack of progress” several weeks after our departure from Bolivia.

Our much-anticipated meeting with Fernando Pizarro, a member of President Morales’ legal advising team, was less than satisfying in the Mr. Pizarro chose not to answer questions directly and provided little new information about the Bolivian legal system. While the opportunity to visit the presidential palace was welcome and the unexpected contrast of a cabinet-level advisor in jeans chewing coca was refreshing, the meeting ran like a recitation of Evo’s campaign promises and did not include any mention of community justice. Of note is the fact that while Mr. Pizarro is a non-indigenous lawyer, Ministers Rodríguez and Choquehuanca are both indigenous non-lawyers.

At the height of ordinary justice lies the Bolivian Supreme Court. Until 1994, the Court was obligated to hear all cases rising on appeal, but now is broken into several specializations, including a constitutional tribunal, a general council of administrative and disciplinary issues, and an agrarian branch. In our brief meeting with Justices Dr. Emilse Ardaya Gutiérrez and Dr. Julio Ortiz Linares, the discussion centered around increased academic training of lawyers and judges. A question as to President Morales’ recess appointment of four Justices was brushed aside, and no mention of community justice was made.

A further example of the divide between the community justice of Bolivia’s indigenous populations and ordinary justice of the minority Creole descendants is the stratification of employment and its consequent legal ramifications. As was evident throughout our travel, a majority of the population works in the informal economy, selling wares in the streets or markets or running one of the thousands of minivan-busses (“micros”). While Bolivia maintains social security, only 20% of the formal working population pays into, and thus ultimately benefits from, the system. Furthermore, smaller employers are able to contract outside of the Civil Code and avoid the employment protections provided by law. Due to the high demand for work, many Bolivians are willing to enter into unfair informal contracts that the court system is slow to remedy. When a worker in the informal sector is able to afford the associated time and expense, a losing defendant-employer in breach of contract and unpaid wage claims may have all litigation costs taxed against them, their assets attached, and potentially serve jail time.

Not only do the employment laws rarely benefit indigenous workers in the informal employment sector, but also these laws may work against them. Entire families work in the informal economy, particularly the micros, where children as young as 6 years old precariously hang out the side of the bus, attempting to out-scream dozens of other micros headed to various destinations, while their fathers maneuver the crowded streets. The involvement of all family members is absolutely necessary for survival; however, in Bolivia all child labor is outlawed.

Judge Ivan Campero and Esteban Rios, President of the Bolivia Association of Labor and Social Rights (ALAL), an academic institution engaged primarily in research and recommendations to government organizations, expressed approval of President Morales’ plans to triple the social security funds through taxes levied through the nationalization of natural resources. ALAL clarified that the executive branch creates law through Supreme Decrees, which are essentially executive orders, but are limited to implementing existing law. For example, Supreme Decree 28699, promulgated by President Morales on May 1, 2006, refers to law concerning termination of employees, but adds the requirement that employers must have just cause before firing an employee. ALAL expressed that this Decree does not create any additional stability in the law, because President Morales did not define “just cause.”

As in the United States, a problem that begins with inequities in primary education is exacerbated by discrimination at the secondary school level. Bolivian secondary education is offered to students at essentially no charge, but with fees that to the poor can be substantial. In Bolivia, law school is considered as one of several possible tracts, similar to an undergraduate major, available in immediate secondary education. Once an individual completes five years of legal education, they are prepared to work as a lawyer; no bar exam necessary. While this might initially seem somewhat equitable, we learned that not all tracts are offered at each university location.

In the City of El Alto, less than 20 miles away and 1,000 feet up from La Paz, the poorer, majority indigenous population was offered only manual labor tracts upon the opening of the university. As we learned from our meeting with the incredible people who tirelessly fought to open – and keep open – that university, even getting those lower-paying technical tracts was literally a battle. In our meeting with Dr. Javier Guachalla, President of Bolivian bar association currently seated in La Paz, we were unable to get a straight answer as to how many – if any – indigenous people are members of the bar, and how many are admitted to law school tracts in the universities. In addition to the cost and lack of access, one must also take into account the ability of a family member to be spared for five years, not working and instead pursuing education, which Dr. Guachalla did admit disproportionately excludes poor families from educational opportunities.

The exclusion of community justice and indigenous ways of life from ordinary justice has essentially bifurcated Bolivian justice into two systems for 500 years, to the extreme detriment of indigenous peoples. Meanwhile, minority white governments have also used the state-sanctioned legal system to create false divides between people and create unnecessary dissent. For example, hype about the warring factions of Bolivia's two centuries-old coca-growing regions, the Yungas and the Chapare, was quickly dismissed by cocalero leaders as a division imposed by outsiders. Upon enactment, Law 1008, enacted by President Carlos Mesa, decreed the Yungas to be a "traditional," legal growing region and Chapare an "excess," illegal region, immediately criminalizing a way of life for hundreds of indigenous peoples. President Morales, a former cocalero leader from the Chapare himself, issued a Supreme Decree in reference to Law 1008. This Decree has not yet passed by parliament but if it is, it will increase the limit for legal coca cultivation.

The use of the law by the minority, Creole-descended white class to oppress and divide Bolivia's majority indigenous population has in some cases created an aversion by social movements to utilize the legal system as a means of achieving social progress. For example, community organizer Oscar Olivera recognizes that Supreme Decrees are not the answer to curing social ills, focusing most efforts on organizing indigenous peoples, while maintaining an attorney on the Coordinadora team. Other movements have chosen to work within the legal system. The students of El Alto, whether by choice or necessity, used the law to their advantage by organizing around their community's mandate for a university. Through incredible fearlessness and ferocity, these students successfully fought for Laws 2115 and 2556, establishing and maintaining the university of El Alto. Similarly, the lawyers of the Comité Impulsor seek to extradite ex-President Gonzales Sánchez de Lozada through a myriad of legal strategies. At the same time, the families of victims of the 2003 Gas War went to the extent of exhuming the victims' bodies – in opposition to their indigenous beliefs – when legal channels of action appeared closed. Regardless of whether Bolivian activists are working within or outside of the system of ordinary justice, it is clear that they are guided by their sincere beliefs in community justice and continue to fight until they believe the battle is won.

VI. CONSTITUENT ASSEMBLY

In an act representative of much of Bolivia's history, the 1825 founding constitution authored by a constituent assembly was quickly replaced by a paternalistic 1826 version written by "the liberator," Simón Bolívar. While Bolívar was guided in theory by egalitarian notions in the philosophy of Jean Jacques Rousseau and Bartolomé de las Casas, his wars of independence were intended to free Creoles from Spanish rule, and never to permit – at least not initially – native peoples participation in this newfound freedom. As evidence of this, the 1826 constitution imposed requirements that all voters be landowners literate in Spanish, effectively excluding women and indigenous peoples, or 80% of the population. The indigenous may have been averse to learning the Spanish language because of the Spanish colonial practice of removing the eyes of any indigenous person who learned how to read.

Bolivia however, a country for whom Bolívar was named, has a tumultuous history that includes 18 constitutional reformations. Unsurprisingly then, Bolívar's constitution was replaced in 1831 by the first of a series of military dictators who increasingly empowered the executive branch. This trend continued until the 1880 constituent assembly and constitution following the War of the Pacific, wherein a bicameral legislature was adopted. Unfortunately, the 1880 constitution intentionally continued to impose Spanish literacy requirements, thus continuing to exclude the majority indigenous population. The 1952 Revolution, fought on the frontlines by the indigenous people of Bolivia, finally led to the 1961 constituent assembly's constitutional adoption of universal suffrage.

Thus, social protest and the use of a constituent assembly as a source for re-ordering Bolivian society is not a novel concept. While Rafael Loayza, a representative of current opposition party PODEMOS, remarked that the constitution is simply a document which does nothing to change relationships between people or solve problems, history has proven to the contrary. The 1938 constituent assembly, for example, constitutionalized worker organizing and collective bargaining, which in turn helped establish the miner's and peasants' unions central to the success of the 1952 revolution. Actors in the social movements culminating in the both the Gas War and Black October of 2003 demanded a constituent assembly to further transform the country to be more representative of the majority indigenous population. The inability of Carlos Mesa, President at that time, to successfully convene a constituent assembly may have compelled his resignation. What is clear from history and conversations with the Bolivians we encountered is that the people's demand for a constituent assembly pre-dated President Morales; some stated that he might not have won the election without the convocation of a constituent assembly as central to his platform.

Evo Morales, the Movement Toward Socialism (*Movimiento A Socialismo*, "MAS") candidate, prevailed over the 2006 presidential elections with an unprecedented 54% of the popular vote. President Morales did emphasize the convocation of a constituent assembly, with the stated purpose of revisiting the constitution to, "transform [indigenous] inheritance of colonialism and neoliberalism into a homeland for all." To that end, Law 3364, convoking the assembly, was passed within three months of the start of President Morales' term. The Law baldly strips away elitist barriers; for example, there is no educational requirement to serve as a delegate. As a result, the minority white population has fought to maintain control by constructing a series of political procedural hurdles. Initial congressional conflict over how many delegates should represent the nine "departments" (regions) of Bolivia took several months to resolve, such that the 2006 Constituent Assembly did not begin until seven months into Morales' presidency, in July 2006. Ultimately, delegates were elected through two distinct processes, both a set

territorial number per each department (“conscription”) and a population-based method. Delegates ran as members of political parties, as well as representatives of social movements or indigenous groups. Majority party MAS won 54% of the seats, while opposition party PODEMOS garnered 24%.

Because of the resulting diversity of delegates, never before seen in a Bolivian constituent assembly, deep infrastructure shifts in the law and society are likely. The conservative congressional element erected another roadblock by calling into question the legal basis of the assembly to rewrite, as opposed to simply amend, the constitution. Ignacio Mendoza Pizarro, Assembly delegate and First Secretary of the Constituent Assembly Executive Committee, framed this as the power of the Assembly as “originario.” While the Supreme Court had issued a pre-Assembly advisory opinion that the delegates must work with the present (1967) constitution, Mr. Pizarro – himself a lawyer – informed the delegation that setting aside that opinion was one of the Assembly’s first actions. He assured us that the Assembly is legally permitted a complete rewriting of the constitution and that none of three branches of government may interfere with this process. Mr. Mendoza attributed the Court’s opinion to fear and an attempt to weaken rapid change by adhering to the old structure.

As the new political minority, Bolivians from low-lying, resource rich areas like Santa Cruz stood to lose national power through both the election of President Morales and a more diverse constituent assembly. Possibly recognizing this political fear, President Morales offered the election of constitutional delegates alongside a simple yes-or-no referendum on departmental autonomy, Law 3365. Wealthy departments with natural resources desire departmental autonomy because it will effectively keep income generated from these resources within their department borders. Four of the nine departments voted for departmental autonomy; the five departments with a strong political preference for nationalization of resources and higher indigenous populations are still the majority. The mandate to work out the details for this decentralization is left to the Constituent Assembly.

During the delegation’s time in Bolivia, procedural debate in the Assembly continued to take precedence over discussions of substantive change. For nearly five months, the Assembly has stalled over the interpretation of Article 25 of Law 3091, convoking the Assembly: “the Constituent Assembly must approve the text of the new Constitution with two thirds of the votes of members present at the Assembly.” MAS’ position, advocating for a simple majority for all votes except the final text, probably stems from its over-half-but-not-quite-two-thirds-majority in the assembly: 142 representatives out of the 255 delegates. As the main opposition party, PODEMOS reads the text as requiring two-thirds majority vote required to pass *any* resolution or article revision, not just the final text. The problem was somewhat exacerbated by the President of the Supreme Court issuing an unsolicited October 4th advisory opinion, wherein he declared that the Constituent Assembly is required to adhere to constitutional procedure for other elected bodies, where two-thirds is required for each and every resolution or article revision.

President Morales was not pleased with this opinion, perhaps inspiring his replacement of four of the Justices on the first day of our arrival in Bolivia. (One of his legal advisors explained that these were temporary recess appointments that would eventually be ratified by the Congress.) By the time our delegation ended, the assembly still had not decided on this procedural issue and thus we were unable to witness the discussion of substantive issues on the Assembly floor during our time in Sucre, Bolivia’s constitutional capitol.

The delegation was fortunate to have met with Gisela López, the national representative of REPAC, the staunchly independent organization that collected, reviewed, and repackaged the 100+ proposals submitted by political parties for discussion during the Assembly. Ms. López was of the opinion that there is more commonality than difference among Bolivians, for she found these platforms to have much consensus. While the Assembly has spent several months mired down in procedural debate, Ms. López believes that substantive progress can be made because of REPAC's work in narrowing the issues. Ms. López cited departmental autonomy as the most contentious issue for the Assembly, and indicated that land reform and nationalization of natural resources, particularly hydrocarbons, followed closely behind. Departmental autonomy stands apart, however; because it was voted on in a popular referendum, the Assembly *must* deal with this issue and constitutionally provide for the fact that four out of nine departments prefer regional over national control. After the Assembly, REPAC was designated to work for about a year "socializing" the constitution, ensuring that both everyday Bolivians and foreign investors alike were familiar with the country's new governing structure. Unfortunately, REPAC was dissolved soon after our delegation returned to the States; President Morales has since created an organization with similar duties that, at this point in time, consists solely of MAS allies.

In one of the most memorable comments of the delegation, Ms. López, upon being asked about female representation in the Assembly, admitted that the equality Bolivians had hoped for had not been achieved, for "only" 85 of the 255 delegates were women. Four national networks, each consisting of dozens of private organizations and non-profit entities, came together to form the organization "Mujeres en la Asamblea Constituyente," which effectively gathers historical materials, puts forth proposals to the Assembly to the benefit of women, and maintains a presence in Sucre, Bolivia's constitutional capitol. Silvia Lazarte Flores, an indigenous MAS representative from Cochabamba, serves as President(a!) of the Assembly.

In our meeting with Executive Committee members Mendoza and Weimar Becerra Ferreira, Sixth Secretary and an indigenous delegate representing the Amazon region, the diversity of the Assembly was palpable. While the refined lawyer Mendoza discussed the dry procedural problems, the Amazonian lowlander expounded upon environmental issues with an intense passion. Even more, as with any population, particularly one as large as indigenous Bolivians, distinct beliefs among the many groups cannot be whitewashed into one single monolith. For example, current debates regarding agrarian land reform have split some portions of Bolivia's indigenous populations. While eastern groups, benefiting from international environmental interest in preserving the Amazon rainforest, seek to maintain private ownership of land which encourages eco-tourism and benefits their local businesses, more radical indigenous political groups encroach on these lands daily, utilizing slash and burn agriculture, in their belief that the land is rightfully theirs. Despite the Assembly's lack of progress beyond procedural debate and lack of convergence on all issues, both delegates did express optimism about the Assembly's future.

While it would appear that the wealthy, white, neoliberal minority political group PODEMOS worked diligently to raise procedural blocks to Assembly progress at every turn, representative Rafael Loayza assured the delegation that his party has an interest in the Assembly as a place where people are seen together as Bolivians, and not as white versus indigenous. PODEMOS believes that President Morales is encouraging ethnic division by calling unwarranted attention to the historic oppression of indigenous peoples in Bolivia by the wealthy, colonial-descended upper class. Mr. Loayza believes that it is possible to speak of both maintenance of Bolivia's status quo and greater Bolivian unity in the same breath.

Shortly after the conclusion of the delegation, MAS compromised with PODEMOS over the most recent procedural debate, agreeing to a complicated formula for votes wherein two-thirds approval is required for everything of major importance until July 2, 2007 (and minor issues are voted on in committees) and beginning July 3, 2007, all votes will require majority approval unless the minority demands that a “conflicted issue” has arisen, requiring two-thirds approval. Thereafter, a “conflicted issue” not resolved by two-thirds vote will go to a nationwide referendum. Because of this structure, the major issues – departmental autonomy and land reform, for example – will most likely require nationwide approval. The importance of this compromise cannot be understated, for during our delegation meeting with Mr. Loayza in early January, the chasm between the two main parties seemed so great that he did not believe that consensus was a political possibility. This agreement, however, is not seen so much as a consensus, but rather a loss for MAS.

Under the convocatory law, the Assembly’s term runs for only one year; thus, less than 6 months remain for this incredibly diverse body to resolve a myriad of substantive problems. However, as in the United States, most debate occurs in committee; in fact, Assembly delegate Mendoza shared that some delegates are complaining that they are constrained to raising their hands on the floor, and nothing else. This system is most likely to move the process along, especially in light of the near-domination of MAS in the Assembly, which could potentially lead to extended floor debate and filibusters on any issue not within their agenda. Furthermore, the general sentiment in Sucre is that the Assembly’s term will be extended for another year in order to accomplish this enormous task. After the document is ultimately drafted, it passes in its entirety within 180 days to the Bolivian people for a simple yes-or-no referendum. The delegation looks forward to the Assembly’s progress and the production of this document in June 2007 or 2008.

VII. FORMER PRESIDENT GONZALO SÁNCHEZ DE LOZADA

The NLG delegation met with the Comité Impulsor, a group of lawyers and activists working for the extradition of ex-president, Gonzalo Sánchez de Lozada (Goni). Rogelio Mayta, the lead attorney, explained the historical background of the case for extradition.

In 2003, Goni announced a massive sell-off of Bolivia’s natural gas reserves to United States interests which sparked protests and road blockades in various parts of the country. Goni sent the army in to clear the blockades in a military operation that ended with the massacre of eight persons in the Altiplano town of Serata.

Rather than quiet the protest, the government’s action’s provoked more strikes, blockades, protests, and hunger strikes. These actions effectively blocked gas supplies from reaching the capital. By decree, Goni ordered his military to carry out actions against the Bolivian people, ostensibly to bring gas to the capital. This decree unleashed a wave of military attacks against Bolivia’s indigenous community in September and October of 2003, and, by the end of the military repression, 67 people had been killed. The uprising continued with more intensity however, and Goni was forced to flee the country. It is alleged that on his way to the United States, Goni took \$1.5 million from the Bolivian Treasury.

Attorney Mayta highlighted the vast amount of work that has gone into the extradition proceedings, that included reviewing hundreds of documents, orders and decrees signed by Goni, and unclassified military documents. Over 100 witnesses have testified in court proceedings. As required under Bolivian law, two-thirds of the congress approved the indictment of Goni for genocide (as considered by Bolivian law) and homicide, among other

charges, showing the widespread support in Bolivia for his extradition. Since our visit, Bolivia has formally requested extradition. In addition to Goni, the *Comité* also seeks the prosecution of the former heads of the armed forces and members of his cabinet.

Mayta also described the possible defense that Goni will ultimately use if faced with extradition. He now claims that the effort to extradite him is a personal vendetta of President Evo Morales and not a legitimate judicial issue thereby invoking the political offense exception as a defense to any extradition request. This exception holds that one should not be extradited for crimes committed in a political struggle as opposed to ordinary crimes. There is some doubt, however, whether the massacre of a civilian population would fit under this exception.

Since our delegation's visit, the Bolivian Supreme Court has declared Goni in contempt of court ("*en rebeldía*") and issued a warrant for him and two of his ex-ministers, Carlos Sánchez Berzain and Jorge Berindogue, for the crimes of homicide, genocide, assault with serious bodily injury, and others.

Our delegation also had an emotional meeting with members of an association of Bolivians whose family members were killed during the gas wars. One person described how her husband was shot while asleep in his house. The members of the association showed us the gravesites of their victimized family members and personally pointed out areas of their city where Bolivian troops massed against the local population.

Juan Patricio Quispe Mamani, who spoke on behalf of the committee, asked the delegation to take their stories back to the United States to help the campaign to extradite Goni. He emphasized that no amount of restitution will bring their loved ones back and that they want Goni to answer for his crimes in Bolivia.

The Bush administration has refused to serve notice of the extradition proceedings on Goni, and many Bolivians believe that only solidarity from people within the U.S. will force the Bush administration to comply with their extradition demand. Mayta, of *Comité Impulsor*, explained that powerful interests in the United States protect Goni as he has a close business and personal relationship with the Rockefeller family. Also, Bill Clinton's campaign manager, James Carville, worked on Goni's election campaign and Goni currently receives legal counsel from Greg Craig, who defended Clinton during the Monica Lewinsky scandal.

Bolivians also believe that there are political reasons for U.S. opposition to the extradition of Goni. The Morales government has ensured that a great majority of the oil and gas revenue stays in the country for public benefit. These revenues now fund public schools and healthcare for children, instead of profits for the transnational corporations. The government also has recently passed a land reform bill and there are plans to carry out some form of nationalization in the mining sector. Bolivians believe that the United States opposes these new developments and may try to stymie the extradition process to politically weaken the Morales government.

The Bolivian people are determined that Sánchez de Lozada, unlike the Chilean dictator Augusto Pinochet, will not escape facing his people.

VIII. THE UNITED STATES AND BOLIVIA

In 1823, two years prior to the establishment of the Republic of Bolivia, United States President James Monroe proclaimed what became known as the Monroe Doctrine in his State of the

Union address: that European powers should no longer colonize or interfere with the affairs of the nations of the Americas and, in essence, that henceforth Latin America would be solely within the U.S. sphere of influence. To date, almost 200 years later, the United States has not wavered in its efforts to ensure its continuing dominance in Latin America.

As its preferred method of maintaining control for much of the 20th century, Washington sponsored and promoted favored governments, including military dictatorships and authoritarian regimes. The United States intervened militarily at least 80 times in Latin America since the proclamation of the Monroe Doctrine. In Bolivia, it sent Green Berets and CIA operatives to find and destroy Che Guevara and the nascent revolutionary movement in the 1960s.

Much of the United States control in Bolivia throughout the past century has been exercised through the use of foreign aid. U.S. foreign aid to Bolivia started in the 1940s. With most of the foreign aid to Bolivia in the form of loans instead of grants, Bolivia quickly joined the group of most heavily indebted nations. Indebtedness, in turn, led to dependence on and acquiescence to foreign lenders.

In the 1980s Bolivia's largest source of foreign income was tin; in 1985 the world tin market collapsed, Bolivia printed money to pay its expenses, and hyperinflation resulted. Bolivia, ever indebted to its foreign creditors, then became the testing ground for World Bank and IMF neoliberal austerity policies. Numerous public sector enterprises were privatized and legislated structural reforms locked in place market-oriented policies that encouraged private investment; foreign ownership of companies was virtually unrestricted. Despite these measures, foreign direct investment inflows dwindled and there was no economic growth to speak of. According to Mark Weisbrot of the Center for Economic and Policy Research, by 2005 per person income was lower than it had been in 1978, "a relatively rare outcome in the history of modern societies." During this same time, GDP per capita (measured at purchasing power parity) for developing countries as a whole had almost doubled.

Although Bolivia had been deemed a model country in carrying out the highly touted structural reforms of multi-lateral lending institutions, the IMF acknowledged the total failure of this program in its April 2005 country report on Bolivia. There the authors addressed the Bolivian "puzzle": "that a country perceived as having one of the best structural reform records in Latin America" had actually "experienced sluggish per capita growth, and made virtually no progress in reducing income-based poverty measures."

U.S. intervention in Bolivia was also manifested in its conditioning of aid to Bolivia on the eradication of coca. For centuries, the Bolivian coca leaf had been used in traditional rituals and to cut hunger, but, in the 1970s and 1980s, the emergence of world demand for cocaine -- especially in the United States -- and the lack of other markets for Bolivian farmers led to an expansion of coca cultivation that went to cocaine supply.

After years of supporting one oligarchic government after another in Bolivia, including a succession of corrupt military governments, Washington, in the mid-1980s, switched tracks and began to fund "democracy promotion" programs in Bolivia as well as throughout the region. William I. Robinson, professor of sociology at the University of California, Santa Barbara, argues that this promotion of democracy is really the promotion of polyarchy. This is a system "in which a small group actually rules, and mass participation in decision-making is confined to choosing leaders in elections that are carefully managed by competing elites." Popular mass democratic movements that seek real political, social, and economic change aren't able to get a

foot in the door of the government. This system permits these "democratically elected" leaders to then carry out a social and economic program that makes the region available and safe for global capitalism and the unfettered operation of "free markets".

If there were any question as to the role that the United States and its policies play in Bolivia, one would only need to look at the 2002 presidential election. In that election, former president Gonzalo Sánchez de Lozada (Goni), architect of the "shock therapy" used by Bolivia in 1985 when he was planning minister in the government of Victor Paz Estenssoro and credited with having engineered the neoliberal restructuring of the Bolivian state, ran against Evo Morales, of the MAS party, and Manfred Reyes Villa, governor of Cochabamba (then and currently), and leader of the NFR party. Goni had been president from 1993 to 1997, when he privatized the majority of state-owned businesses. Raised and educated in the United States, Goni brought in Clinton buddy James Carville's consultant firm, Greenberg, Carville, Shrum, to turn the election around for him by using constant polling to guide their choice of time-worn U.S.-style negative campaign tactics. Goni won that election by a hair. The United States didn't have to fund that election; Goni, a successful businessman and already in the U.S. camp, could pay his own way.

However, to the surprise of most, Goni didn't last long in office. Just months later, hundreds of thousands participated in massive nationwide marches and blockades in response to Goni's plans to export Bolivian natural gas to the United States via Chile at bargain prices. After Goni called out the military and an estimated 67 people were killed and 400 wounded, a national uproar resulted and Goni fled the country.

Robinson writes, "From that point on, millions of dollars poured in to fund and organize discredited traditional political parties, support compliant ("moderate") indigenous leaders that could counter more radical ones, and to develop civic organizations under elite control to compete with militant social movements." Money was funneled through the quasi-governmental US National Endowment for Democracy (NED), which funds the US National Democratic Institute for International Affairs (NDI) as well as the US International Republican Institute (IRI), both of which fund programs attempting to strengthen "civil society." Reed Lindsey, writing for the North American Committee on Latin America, says this money is used "to rebuild discredited political parties, to undercut independent grassroots movements, to bolster malleable indigenous leaders with little popular support and to dissuade Bolivians from talking about whether they should have greater ownership rights over their natural resources". According to Robinson, USAID spent no less than \$11.8 million in Bolivia for these purposes during 2004 and 2005. In spite of all the money spent supporting more US-compliant parties, coca union leader Evo Morales was elected President in December 2005 by an unprecedented popular majority vote.

In his one year in office Morales has shown a willingness to seek some independence from the United States and the IMF. In March 2006, the Bolivian government allowed its IMF agreement to expire and promptly used its new freedom to renegotiate its gas contracts to its benefit. In December 2006 Bolivia hosted the Summit of Heads of State for South America in Cochabamba. Seeking to promote regional integration as well as participation in the region-wide social movements, it formally supported the "Social Summit for a People's Integration" (involving 5000 grassroots representatives from the region), which was taking place at the same time.

David Choquehuanca, Minister of Foreign Relations, told our delegation, "We're deepening democracy. We're democratizing democracy. And we want the USA to support us in these changes." Others, such as Cochabamba Water War leader Oscar Olivera, who has refused an

invitation to participate in the Morales government and who recognizes the limits of what the new government can do, told us, "The only way to change lives for the people of Bolivia is to struggle for social change. The real power and the real capacity still remains among the people." Whether Bolivia is able to gain any real independence from the United States remains to be seen.

IX. THE COCALEROS

Last September, during his address to the United Nations, Evo Morales held up a small leaf. "Here is a coca leaf," he told the General Assembly. "It is green. It is not white like cocaine."

To Nelson Carvajal, whom we met with during our visit, this little, pale green leaf is a source of spiritual inspiration, and physical strength. It also symbolizes Bolivia's future. Nelson works with *cocaleros* (coca farmers) to advance their rights. Reynaldo Calcina, who we also met with, is the mayor of Asunta, a small town in the La Paz high plains. He represents eight Yungas *cocalero* municipalities.

Nelson and Reynaldo didn't mention this, but it appears as though Yungas *cocaleros* receive preferential treatment under Bolivia's Ley 1008, a draconian drug-control statute enacted under pressure from the Reagan Administration. The law permits legal coca cultivation for traditional, domestic use on 12,000 hectares (30,000 acres), primarily in the Yungas. Most of what is left is in the Chapare, Bolivia's other main coca-growing region. Under Ley 1008, other coca crops are "in transition" which, according to common interpretation, means that they are set for eradication. Individuals who grow illegal coca are subject to prison sentences that can exceed Bolivia's constitutionally-mandated 30-year limit. We were under the impression that Yungas and Chapare *cocaleros* are at odds over this law. Not so, according to Nelson and Reynaldo, because a policy adopted in 2004 by Bolivia's Carlos Mesa government, gave Chapare *cocaleros* the right to legally farm one *cato* (1,600 square meters) of coca.

A soft-spoken Bolivian Aymara, Reynaldo focused on coca's history. The Aymara and Quechuas have grown it for thousands of years making it a part of their culture, and their spiritual lives. This changed with the arrival of the Spaniards.

"The Spanish," Reynaldo told us, "enslaved us for work in mines and plantations, and saw us as *animales* that worked all day long on a diet of leaves."

Since then, coca has been viewed through Western eyes as nothing more than a drug, and a noxious one at that. Nelson and Reynaldo want this to change. They are involved with the Campaña Coca y Soberanía, a campaign that seeks to re-establish coca's central role in Bolivian life; with plans to eventually introduce healthy, organic, coca-based products to the world. To achieve this, *cocaleros* must focus on integrated crop systems, that is, grow other crops alongside their coca bushes. Integrated farming is a tradition that promotes a healthy ecosystem. Production limits would ensure quality by preventing large-scale, environmentally-damaging agricultural practices. All is not well with coca farming, however. It's a crop which is subject to increasing environmental and pest problems. But other aspects make it worthwhile – traditions, such as the community harvest celebrations, coca's profitability, and its potential export value.

In addition to promoting sound cultivation practices, and preserving *cocalero* traditions, Nelson would like to see the coca leaf de-criminalized. A huge obstacle, however, stands in the way: the

1961 United Nations Single Convention on Narcotic Drugs which placed the coca leaf in the same class as morphine, and subjects it, along with heroin, to strict control. Signatories to the 1961 Convention (including most of UN members) have an obligation, under international law, to criminalize the cultivation, and non-scientific or medical use of coca leaves. As an example of how draconian these UN-imposed restrictions are, customs agents in Ecuador confiscated innocuous coca-based products (tea, flour, pasta) that Bolivian *cocaleros* had sent to a National Geographic reporter who wanted to photograph them for an article.

Nelson is looking forward to the U.N. Economic and Social Council's 2008 meeting in Vienna, when member nations will re-visit the 1961 Convention. He, his fellow *cocaleros*, and *cocaleras*, government agencies in coca growing countries, the European Union, activists and NGOs, have made some headway towards the eventual removal of the coca leaf from the 1961 Convention's schedule I of dangerous drugs.

The Bolivian government has asked the World Health Organization to conduct a study on the nutritional and medicinal value of the coca leaf (a 1975 study at Harvard concluded that the nutritional content of 100 grams of coca leaf exceeded the U.S. recommended daily requirements for calcium, iron, phosphorous, vitamin A, and riboflavin). Coca is making its way into pasta, flour, toothpaste, and cosmetics. China wants to import coca tea. The European Union's Parliament contributed 420,000 Euros towards a study to determine coca's commercial potential.

Yet, in spite of overwhelming evidence of the coca leaf's benefits, and worldwide support for it, the United States remains adamant in its opposition, and could very well use its influence to keep coca on the 1961 Convention's Schedule I. Nevertheless, borrowing a phrase from Brazil, coca leaf's supporters might be able to *dar um jeito* (find a way) around U.S. opposition, and sidestep the 1961 Convention in regards to consumer coca-based products.

X. LAND REFORM

Ownership of natural resources is a theme that the NLG delegation encountered throughout the visit. Many Bolivians who spoke with the delegation made reference to issues concerning access to water, the nationalization of oil and gas, and land reform.

Gisela López of REPAC, a non-partisan independent commission charged with facilitating the work of the Constituent Assembly, explained to the delegation that one of the primary points of contention between the government and the opposition is the issue of land reform. López told the delegation that the best productive land in the country was in the hands of a very few large landowners, while many poor and indigenous Bolivians are landless.

To redress this inequity the government of Evo Morales passed an agrarian reform law in November of 2006. The law, "*Ley de Reconducción Comunitaria de la Reforma Agraria*", expanded and empowered a previously created national institution, *Institución Nacional de Reforma Agraria* (INRA), to oversee the nationalization of lands that come under the auspices of this new law.

Article 28 of this new land reform law allows for nationalization without compensation for land whose use is harmful to the national collective interest. Article 33 however, calls for market level compensation for most land that is nationalized. The new law primarily aims to redistribute land that is unproductive or to which title was gained illegally. Many tracts of

previously government–owned land had fallen into private hands over the years by corrupt practices. Additionally much land has been taken from indigenous people by fraud and deception. In the Eastern part of the country there are large landowners with large estates (“*latifundios*”) that contain large areas of fallow land. The new law aims to redistribute fallow and illegally obtained land to the indigenous and small farmers of Bolivia.

The new land reform law, along with the Oil and Gas Nationalization, has created tremendous hostility among opposition parties, such as PODEMOS, whose social base is in the wealthy landholding classes from the East of Bolivia. Rafael Loayza of PODEMOS spoke to the delegation about the stark divide between the landowning classes in the East, centered in the city of Santa Cruz, and the government over issues such as land reform. Loayza described how the mainly white business owners in the city of Santa Cruz were interested in preserving their wealth in the face of the government’s attempts to redistribute the resources of the country in a more equitable manner. He described how the movement to preserve the wealth of the elites has resulted in attempts to prevent indigenous people from moving to Santa Cruz, and in a movement for autonomy in the Eastern provinces of the country. The autonomy movement is generally regarded as an attempt to stymie land reform and other redistributive programs of the government.

The Morales government appears determined to carry out land reform, however. When this new land reform law passed last November President Evo Morales declared: “The era of the large estate is now over. We now have the tools to end large [private] landholdings in Bolivia.” Land reform, along with other wealth redistribution programs, is at the heart of the Morales government’s agenda and it appears that the government, encouraged by the social movements, will continue to promulgate more egalitarian access to the land for all Bolivians.

XI. FOREIGN PATENTS ON LOCAL CROPS

Quinoa is a highly nutritious grain that is a staple in the Andean diet. Because most of the quinoa germplasm is found in the Andean region, developing varieties and selling seed around the world serves as an important source of revenue for Andean farmers.

Almost 10 years ago, La Asociación Nacional de Productores de Quinoa and Dr. Alejandro Bonifacio led a campaign to stop Colorado State University (CSU) scientists from patenting a process that would allow them to produce commercial quinoa hybrids originally obtained from Bolivia. With the help of Andean farms and government authorities, agricultural missions of the United States, Canadian Lutheran World Relief, IBIS (a Danish civil society organization), and the Rural Advancement Foundation, the campaign was a major success.

In face of the social backlash, CSU allowed the patent application to lapse. Dr. Bonifacio said, “If the patent had been enforced, Andean exports to the growing quinoa markets in North America and Europe would have been threatened. Even local production might have been affected.” CSU’s dropping of the patent effort was a victory for the people of Bolivia, but there are still thousands of other intellectual property claims on medicinal plant and crop germplasm around the world.

One member of our delegation, a scientist, met with Dr. Bonifacio in Bolivia. Dr. Bonifacio is proposing a national registry for all plant germplasm. This would encourage the free distribution of germplasm among countries while still maintaining some legal rights for Bolivians over the germplasm. This distribution of seed and plant material is important for

conservation efforts, for storage of genetic resources in multiple locations, and for assurance of the continued survival and diversity of many plant species.

XII. SAN PEDRO PRISON

Near Plaza San Francisco in downtown La Paz is San Pedro prison. Three members of the delegation had the opportunity to visit the prison. It's a building a block square across from a park. It has one guard tower. The prison houses approximately 1,400 prisoners, all male, some of whom are pretrial detainees who frequently have no information as to how long they will be confined. Although under Bolivian law a prisoner must be released if he has been detained but not tried within two years, this law is often disregarded and many prisoners remain incarcerated beyond two years without a trial. Those who have been tried and found guilty typically do not know how long their sentence will be. Most prisoners at San Pedro are there for drug offenses. Some are there for political crimes, others for ordinary criminal offenses. The new government of Evo Morales has not instituted changes or improvements to this system as of yet, nor has the government altered the previously existing prison conditions.

San Pedro has rules and characteristics all its own, atypical in prisons in many other parts of the world. The first visual impression is startling to anyone accustomed to prisons in the United States. There are no bars, no galleries, no guards, no guns. The prisoners have complete freedom of movement within the prison. The visitor enters into a scene of relative chaos, at least on visiting day, as the entrance opens into a large Spanish-style courtyard. Inmates are hanging out everywhere, waiting for visitors. There are children running around and spouses either in the inmate's cell or watching the children. There are strolling vendors and even an Evangelical "street preacher." Walking the corridors is like walking through a neighborhood. There are restaurants and kiosks, a shoe repair store, a seamstress, a grocery, and any number of other shopkeepers—all owned and operated by inmates. Many of the spouses, children and girlfriends live with their incarcerated husbands or fathers at the prison --- for a price. Family members who don't live at the prison can visit. The prison allows visits on Thursdays and Sundays and lines form before 9:00 a.m. The prison was originally built as a convent and stable. Inmates sometimes cut holes in the roof to dry their clothes. There are nooks and crannies everywhere.

It is striking that there are no guards inside the prison at all. Prisoners do not wear prison garb of any kind. The prison, which is essentially self-governed, is divided up into seven sections plus a segregation unit. Each section has the feel of a neighborhood or even a small village with its own courtyard plaza and shops. The committee in charge of each section manages the section, repairing the sidewalks or painting the walls. Each "directiva" sets an assessment charge for prisoners in the section and each committee is responsible for its own budget. Inmates pay for all services, including a tiny monthly fee for showers.

A prisoner is not assigned to a section by the prison administration. Rather, where a prisoner lives is determined by arms length transactions among prisoners, who are buyers and sellers of living units. The more funds a prisoner has, the better the cell he can afford to buy or rent and the better the section where he can choose to live. The cell may cost as little as \$100 USD or as much as \$1,200 (for the length of the prisoner's stay). The cell is actually sold by deed from an outgoing to an incoming inmate. Some cells are not sold at all and are rented to prisoners. The cheaper the unit, the more modest it will be. Likewise, a unit costing as much as \$1,200 may have more than one room, private bath and other accommodations. When the prisoner is nearing his release date, he typically places his unit for sale (complete with "for sale" signs.).

The living units are unlike cells in that there are no bars. If there are locks on the doors, the keys are kept by the prisoner who can lock his unit at any time. There is free passage between the seven sections within San Pedro until 9:00p.m., at which time doors between sections are locked---presumably to maintain the integrity of the section itself. In this way, only the residents of the section (which includes prisoners and their family members who might live there) are kept in the section overnight. A few prisoners, those who have no money to purchase or rent cells are actually “homeless” and sleep under stairways and alleyways throughout the prison.

The restaurants and stores typically are owned by prisoners who may employ other prisoners to work there. Prisoners without a skill or money have to create other ways to make money within the walls to be able to afford to buy what they need. For example, an enterprising prisoner can work as a “taxi:” he positions himself by the front gate and, when a visitor arrives he goes to find the prisoner and tell him that his visitor is there. In that way, prisoners do not have to stand around the front gate and wait (sometimes for hours) for visitors to arrive. For that service, the taxi gets one Boliviano—about 12 cents.

Food in the prison is problematic. Although the prison provides a gruel-like soup and bread twice a day (and meat twice a week), prisoners report that it tastes bad and causes ulcers and hepatitis. Therefore all those who can afford it purchase or cook their own food. The kitchen itself was filthy, and the prisoners working in the kitchen were there as a three month form of unpaid punishment, so they had no incentive to do their job well.

Because the sections have electricity, some prisoners own televisions, stoves or refrigerators. The internet is not permitted for security reasons. The sections have their own play areas and sponsor intersectional soccer tournaments, among other activities. In at least one section, there was a combination pool hall/game room. There is a child care center within the prison for the children who live within the prison.

The prison administration provides no rehabilitation services, no schools, and minimal health care. The prisoners have organized their own educational programs in conjunction with the local university. This has resulted in some prisoners completing high school or even college while behind the wall. Several have become lawyers, having finished law school after they were released from San Pedro. Two or three returned after they were released to provide service to prisoners.

According to the prisoners who served as our guides, there is no gang activity at San Pedro nor are there sexual predators who prey on more defenseless prisoners. Nonetheless, one prisoner shared that certain prisoners do sell themselves sexually as a way of making money. We were also informed that it was possible to purchase the services of prostitutes who come into the prison on particular days, with the full knowledge of the prison administration. The prison guards who staff the entry are also said to be the primary sources of drugs within the prison.

Because of the lack of prison uniforms, lack of guards, the self administration of the prisoners, the presence of children, spouses, and girlfriends and the “neighborhood” concept, the prison had a humane feel to it that we, as attorneys in North America, had never imagined possible in a prison. Make no mistake, however, the prison was as poor as most of the rest of Bolivia. With the lack of medical care and adequate nutrition (unless a prisoner had the means to purchase it), the absence of meaningful education or occupational programs and the anxiety from not knowing how long a prisoner might be confined, the punishment of the deprivation of liberty in Bolivia is still very severe. However, because family ties can be maintained and because the

prisoner can actually earn money inside to help support himself with even a little for the family outside, prison life just seemed much more approximated to life on the outside, leaving the impression that, after incarceration, there is a reasonable chance for the prisoner to readjust to society.