



Open letter to the new Plurinational Legislative Assembly of Bolivia

Amnesty International would like to address this open letter to legislators in the newly-elected Plurinational Legislative Assembly of Bolivia, in order to present comments relevant to the debate of key legislative reforms that will give effect to provisions of the 2009 Constitution.

Amnesty International is a worldwide organization working for the observance and respect of all the rights enshrined in the Universal Declaration of Human Rights. It is therefore dedicated to preventing serious abuses of the rights to physical and mental integrity and freedom of conscience and expression as well as discrimination. Amnesty International recognizes the indivisibility of all human rights and works to protect and promote civil, political, economic, social and cultural rights.

The organisation understands that legislative proposals for certain key laws relating to the justice system are being discussed in the Plurinational Legislative Assembly which, under the 2009 Constitution, has been given 180 days to approve such reforms. Amnesty International understands that legislative proposals have been prepared by the Ministry of Justice for the following laws: the Law of Judicial Organ [Ley del Organismo Judicial]; the Law of the Plurinational Constitutional Tribunal [Ley de Tribunal Constitucional]; the Law of the Public Ministry [Ley Organica del Ministerio Publico]; the Law of the Magistrates' Council [Ley del Consejo de la Magistratura]; and the Law of Jurisdictional Delimitation [Ley de Deslinde Jurisdiccional] and that these texts will form the starting point for discussions. Structural reforms to be introduced, in line with the 2009 Constitution, include the recognition and implementation of two parallel jurisdictions of equal hierarchy in the country's legal order – the “ordinary” jurisdiction and the “indigenous, aboriginal and campesino” [indigena originaria campesina] jurisdiction (hereafter “indigenous jurisdiction”) – as well as a system of popular election of judges after a pre-selection of candidates by the Legislative.

Based on its understanding of the possible content of some of the proposals to be discussed in the Plurinational Legislative Assembly, Amnesty International sets out a series of key themes it believes to be central to the success of the reform process and its adherence to human rights principles and legal standards.

- i) The relevance of human rights principles to Bolivia and its process of change
- ii) Independence of the judiciary
- iii) Due process of law as a guarantee of the right of access to justice
- iv) Non-discrimination and equality before the law
- v) Criteria for selecting and electing law officers and judges

Bolivia has been a party to many international human rights treaties for many years. It is vital that the work undertaken by the new Plurinational Legislative Assembly of Bolivia reflects the State's obligation to guarantee the effective implementation of these treaties, in order to safeguard the universality and protection of all rights and ensure that equal access to and protection of such rights is provided in law. Amnesty International presents its comments as a way of contributing to the debate underway in Bolivia.

For many years, Amnesty International has been calling for measures to be taken to strengthen the rule of law and independence of the jurisdictional bodies in Bolivia. It has also called for measures to overcome discrimination and promote the economic, social and cultural rights of the most marginalized peoples in Bolivia as in other countries, and welcomes the efforts the Bolivian Government has made in this respect.¹ The organisation recognises that the legislative reforms being debated are part of a significant change process Bolivia is undergoing, motivated by principles of social justice and respect for the human rights of all people within the country's plural heritage and enshrined in a new Constitution that sets out to reverse a history based on racial discrimination and cultural domination. Amnesty International is aware that such a process requires profound reforms to domestic institutions and legislation, and it believes that where unique institutions are created and tailored to the needs of Bolivian society, this should be seen as a chance to reinforce the country's commitment to international human rights law and principles.

Amnesty International has raised concerns regarding a number of serious human rights challenges in Bolivia that must be effectively addressed to ensure concrete improvements to the situation of human rights at the national and local levels, most recently in its report to the Universal Periodic Review of Bolivia at the UN Human Rights Council.² The organization believes that addressing the deep-rooted problems arising from past impunity for violations of economic, social, cultural, civil and political rights and its lasting effects can only be achieved by incorporating strong human rights safeguards in reformed institutions and legislation, in particular in those of specific relevance to the justice system. The role of the Legislative Assembly to ensure that concrete steps are taken in this regard is essential to ensuring that promised improvements in human rights are put into practice and do not remain merely in rhetoric.

¹For example in an open letter in 2005 Amnesty International stated that "the roots of the crisis Bolivia is experiencing lie in violations of the economic, social and cultural rights of the historically most marginalised sectors of society (...), and in the discrimination these groups suffer. Any measures the new government may decide to take will only have a real impact if they take the needs of these groups into consideration." in Bolivia: An action plan, essential for the future of Bolivia: Open letter to the presidential candidates <http://www.amnesty.org/en/library/asset/AMR18/005/2005/en/5c1db3fa-d477-11dd-8743-d305bea2b2c7/amr180052005en.pdf>

² Bolivia: Submission to the UN Universal Periodic Review: Seventh session of the UPR Working Group of the Human Rights Council, February 2010, <http://www.amnesty.org/en/library/info/AMR18/002/2009/en>.

As the issues at stake are so crucial, Amnesty International believes that the importance of allocating sufficient time for open discussion and debate around the scope and content of concrete proposals for reform at all levels of Bolivian society and in international forums cannot be underestimated. This opportunity to make concrete improvements and introduce essential safeguards for the protection of human rights of all Bolivians must not be squandered.

The ambitious nature of the reforms that Bolivia is implementing, in particular the recognition of its plurinational justice system, presents some challenges that must be responded to with care. The unprecedented scale of these changes places particular responsibilities on legislators to ensure that the reforms respect both collective and indigenous rights without compromising Bolivia's international legal obligation to protect individuals' human rights and those of different communities and groups co-existing within Bolivian society. Amnesty International believes that achieving such a harmonization of values is possible if careful consideration is given to questions of equality in the protection and enjoyment of the human rights of individuals and communities. In so doing, the Bolivian system would constitute a convincing framework with which to combat the discrimination of Indigenous Peoples and campesinos, as well as discrimination on other grounds including sex and gender, thus setting an important example for other countries struggling with the same issues.

As a way of contributing to the debate in Bolivia, Amnesty International would like to draw attention to some specific human rights principles that are of importance to current debates in the Legislative Assembly around proposed reforms to Bolivia's justice system. It seeks to urge those involved in current debates to acknowledge and uphold the human rights standards to which Bolivia has already ascribed through ratification of international treaties, as well as other general principles of international law.

i) The relevance of human rights principles to Bolivia and its process of change

Amnesty International would like to take this opportunity to underscore the essential relevance of human rights to Bolivia's change process. The very development of human rights has its roots in the struggle for freedom and equality everywhere in the world, a struggle that Bolivia fought in the past and continues to fight to overcome centuries of discrimination and injustice. Human rights belong to people simply because they are human: they are inherent to each individual. Core rights, including due process and fair trial rights, are universal for all people regardless of race, sex, religion, ethnicity, political or other opinion, national or social origin, or other status. As the Universal Declaration of Human Rights states, all humans are born free and equal in dignity and rights: human rights are universal.

In Bolivia, as in many countries, human rights have played a crucial role in protecting individuals from excesses of power and in permitting them to challenge and seek redress for abuse of power. Abuses of human rights can arise from different actors, so may stem from military regimes or security forces that use brutal tactics to suppress opposition voices; they may also arise from the actions of multinational companies

operating in a country that provides insufficient protection for those who may be affected by their actions. It is for this reason that the principles underpinning human rights require that the law be applied and interpreted in a way that best protects the rights of human beings.

As authoritative documents such as the United Nations Declaration on the Rights of Indigenous Peoples underscore, human rights have both individual and collective implications. This Declaration seeks to promote the rights of Indigenous peoples and individual indigenous men, women, and children. Amnesty International acknowledges the lead role played by Bolivia in the drafting of the Declaration and securing its acceptance at the UN General Assembly. Striking a careful balance between the rights of communities and individuals will be central to ensuring positive outcomes from the process underway in Bolivia, which seeks to vindicate the importance of its indigenous heritage. Concepts of rights are also developing to embrace the relationship between humans and their natural environment, and Amnesty International is listening with great interest to the debates being taken forward in Bolivia to this respect.

ii) Independence of the judiciary

Everyone facing a criminal trial or a law suit of any nature has the right to a fair trial by a competent, independent and impartial tribunal established by law.³ The primary institutional guarantee of a fair trial is that decisions will be made by competent, independent and impartial tribunals established by law, free from political influence. In seeking to address long-standing systemic problems that have hindered justice and allowed impunity in the past, Bolivia must take concrete measures to strengthen the institutional framework that supports the ability of the judiciary to act independently, paying full respect to the principle of separation of powers. This independence must be enshrined in law, and safeguarded from any interference in the administration of justice, be it from the state or private individuals.

Amnesty International understands that the proposals being discussed incorporate some principles and mechanisms for “social control” to be conducted by civil society, including grassroots organisations and trades unions as well as indigenous communities, and that these are put forward as a means of ensuring the accountability of the judiciary. The organisation urges that such a principle be envisaged in a manner that supports the structural and functional independence of the judiciary, rather than one that attempts to directly influence its working. In this respect, the Inter-American Democratic Charter of the Organization of American States underscores that while the systems of representative democracy enshrined in the constitutional regimes of its member states is strengthened by the “permanent, ethical, and responsible participation of the citizenry”, among the essential elements of such a representative democracy are the “respect for human rights and fundamental freedoms, access to and

³ International Covenant on Civil and Political Rights (ICCPR), Art.14(1); Universal Declaration of Human Rights, Article10; American Convention on Human Rights (ACHR), Arts.8(1) and 27(2); American Declaration of the Rights and Duties of Man, Article XXVI.

the exercise of power in accordance with the rule of law... and the separation of powers and independence of the branches of government.”⁴

iii) Due process of law as a guarantee of the right of access to justice

By effectively integrating due process standards into reforms, the Bolivian State will be able to ensure the exercise of human rights. Due process is a concept that serves to guarantee individual and social interests and rights within the supreme interest of justice. It is therefore a guiding principle for the proper resolution of legal actions and a fundamental right of all persons and must be applied to all areas of legal action.

The right to trial by an independent and impartial tribunal is an absolute right that may suffer no exception. Amnesty International considers it essential that these values – independence, impartiality – are enshrined in both the ordinary and indigenous jurisdictions in Bolivia both in theory and in practice. Furthermore, for due process to be guaranteed, tribunals must be established by law;⁵ therefore Bolivia must provide a clear framework for how the jurisdictional functions of indigenous and non-indigenous authorities and incorporation of their existing practices into a coherent system will be achieved.

One of the greatest challenges to ensure due process is upheld in the proposed system will be in relation to questions of competence. The operation of two parallel systems must be mutually-reinforcing in order that they both contribute to an overall justice system in Bolivia that respects the rights of all those before it. A reliable, efficient and workable procedure for resolving disputes over jurisdiction and competency of each system must be set out clearly.

iv) Non-discrimination and equality before the law

Positive action, which includes a range of legislative, administrative and policy measures to overcome past disadvantage and to accelerate progress towards equality of particular groups, is a necessary element to achieving the right to equality. Notwithstanding, Amnesty International urges Bolivia to make sure that while vindicating the rights of all in its plurinational context, all individuals remain equal before the law and are entitled without discrimination to equal protection of the law, one of the most fundamental tenets of human rights enshrined in the Universal Declaration on Human Rights.⁶

In recognising and implementing two parallel jurisdictions, the ordinary and indigenous jurisdictions, Bolivia must make sure that despite their different procedures, fundamental guarantees and values such as due process and transparency are applicable to both. Any existence of differing standards would jeopardise the right to equal protection before the law, and it must be remembered that to ensure the full

⁴ Inter-American Democratic Charter, Arts.2 and 3.

⁵ ICCPR, Art.14(1); ACHR, Art.8(1).

⁶ Universal Declaration on Human Rights, Article 7; ICCPR, Articles 2(1) and 26.

protection of human rights, the laws that provide best protection to an individual in a case must be applied [pro homine principle]. Efforts to redress some forms of discrimination should not result in other forms of discrimination (on the grounds of gender, sex, age, among others) being reinforced or created.

Similarly, punishments applied must be proportionate to the gravity of the crime and the circumstances of the offender. Neither the punishment nor the manner in which it is imposed may violate international law or standards.

Finally, the right to appeal the conviction of a criminal offence in a higher tribunal is a fundamental principle that must be respected by both the ordinary and indigenous jurisdictions. The State must also provide effective recourse and ensure that competent authorities are able to enforce remedies granted.⁷

v) Criteria for selecting and electing law officers and judges

Amnesty International recognises that the proposals under discussion defer the final election of Constitutional Court and Supreme Court judges, as well as members of the Magistrates' Council, to popular vote, and that this is proposed as a guarantee of their upholding essential standards. The organisation would like to reiterate the need for objective factors, in particular those of "integrity and ability with appropriate training or qualifications in law"⁸ to be brought in at every stage of the pre-selection and election process. Although the exact requirements needed for law officers and judges in the parallel systems may be different, Amnesty International believes that the values of integrity, ability and experience must be applied in an equivalent manner to both. Judges should be selected on the basis of their training and experience, with due respect paid to their experience of existing ordinary and indigenous jurisdictions where relevant. While Indigenous peoples do have the right to "promote, develop and maintain their institutional structures and their distinctive [...] juridical systems", these must exist "in accordance with international human rights standards".⁹ There must be no discrimination on the grounds of race, colour, sex, religion, political or other opinion, national or social origin, property, birth or status, in the selection of judges.¹⁰

Whether appointed or elected, judges should enjoy security of tenure to insulate them from concern that their post will be affected by political reaction to their decisions. Whether appointed or elected, judges should have guaranteed tenure until they reach the age of mandatory retirement or if they have a term of office, it must be of reasonable length and secured by law until its expiry. They may only be suspended or removed from office if they are incapable of carrying out their duties, or for conduct incompatible with their office.

⁷ International Covenant on Civil and Political Rights, Article 14(5); American Convention on Human Rights, Articles 8(2)(h) and 25.

⁸ United Nations Basic Principles on the Independence of the Judiciary, Principle 10.

⁹ United Nations Declaration on the Rights of Indigenous Peoples, Article 34.

¹⁰ United Nations Basic Principles on the Independence of the Judiciary, Principle 10.

In conclusion, Amnesty International would like to reiterate respectfully its insistence that open debate around the legislative proposals before the Assembly is crucial to the current process. It believes that an ambitious social change process, such as the one Bolivia is undergoing, needs to set a pace that responds to both the clamour for overhauling a system that permitted widespread injustices in the past, and the necessary safeguards to ensure that reform does not create new problems for the future. A long term vision that ensures a clean break can be made from the discrimination of the past by instilling a new culture of justice based on the country's diverse heritage is essential: such a process must also take into careful consideration the resources and time that will be needed to implement the new system practically.

The changes underway in Bolivia are being watched not only by its own citizens, but by the international community, who genuinely hope to see evidence of concrete steps being taken towards improving Bolivia's record on justice. The ambitious nature of the reforms means that much is at stake and for this reason it is of shared concern to those inside and outside Bolivia that the legislation implementing the change process reflects shared human rights law and standards. Amnesty International believes that in this way, Bolivia will demonstrate its commitment to improving the human rights situation of its people, and ensure that unacceptable violations committed in the country's past are never repeated.

The Plurinational Legislative Assembly must at all times ensure that legislative developments are in line with standards of international law to which the country's Constitution requires it to adhere. These include requirements that Indigenous peoples are able to enjoy the full measure of human rights and fundamental freedoms, and that in exercising their right to retain their own customs and institutions, these should not be incompatible with internationally recognised human rights.¹¹

Amnesty International would like to present the following recommendations to members of the Legislative Assembly currently discussing the proposals:

- Ensure that all legislation relating to the justice system and parallel jurisdictions adheres strictly to existing international human rights standards, such as the UN Declaration on the Rights of Indigenous Peoples, and the UN Basic Principles on the Independence of the Judiciary, among others;
- Pay special attention to principles of due process, equality before the law; independence of the judiciary and the criteria for selecting judges when discussing legislative proposals;
- Promote transparency and open debate around the proposals so as to ensure that the legislation is strengthened and accepted by different constituents;

¹¹ International Labour Organization, Convention 169, Articles 3, 8, 9.

- Seek the advice of experts such as the UN Special Rapporteur on Indigenous Peoples, the Inter-American Commission of Human Rights and the Office of the High Commissioner for Human Rights, as have other countries in the region, on implementing the new constitution into national law.

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