Open letter to the authorities of the Plurinational State of Bolivia in the context of the dispute concerning the Isiboro Sécure Indigenous Territory and National Park (Territorio Indígena y Parque Nacional Isiboro Sécure - TIPNIS)

Amnesty International has been following the development of human rights in Bolivia closely for many years. In a visit to the country last March, it addressed human rights issues, and in particular the situation of Indigenous Peoples, with the authorities, civil society organizations and representatives of the Indigenous movement.

In the context of the dispute that has arisen because of plans to build a road across the Isiboro Sécure Indigenous Territory and National Park (Territorio Indígena y Parque Nacional Isiboro Sécure - TIPNIS), Amnesty International is writing to the authorities of the Plurinational State of Bolivia to raise a series of concerns regarding violations of the right to free, prior and informed consultation.

Amnesty International recognizes the efforts made by the Plurinational State of Bolivia to advance the principles of equality and justice enshrined in the 2009 Political Constitution of the State that are seeking to make radical changes to the present reality which is founded on a history of racial discrimination, social exclusion and cultural domination that continues to affect the Indigenous Peoples of Bolivia substantially. The organization has also welcomed Bolivia's strong support for ILO Convention 169 and the United Nations Declaration on the Rights of Indigenous Peoples. These commitments were reiterated by the authorities during the first Universal Periodic Review of Bolivia, in which the State agreed to, amongst other things, the recommendation to consolidate the rights of Indigenous Peoples by guaranteeing their participation and consultation. These have unquestionably been important steps for guaranteeing the human rights of Indigenous Peoples, who form the majority population in the country.

Bolivia is in an excellent position to become a point of reference for the protection of the rights of Indigenous Peoples, given its support for existing standards and the reforms that it has driven forward in recent years. However, the current dispute concerning the road project in the TIPNIS has created uncertainty and doubt, not only within Bolivian society but also in the international community, over the State's commitment to the rights of Indigenous Peoples. Amnesty International hopes that the authorities will take note of the urgent need to take specific action to demonstrate its willingness to settle the dispute by strictly complying with national and international standards on human rights and the rights of Indigenous Peoples.

2 Ratified in 1991 by means of Law No. 1257.
3 The 46 articles of this Declaration were raised to the status of national law through Law No. 3760 of 2007. See in particular articles 18, 19, 28, 30 and 32.2 of the Declaration.
The duty to carry out prior consultation

Amnesty International believes that the current dispute largely stems from the fact that the Bolivian authorities failed to carry out free, prior and informed consultation on the TIPNIS road project when they should have done, as stipulated by international standards and in treaties to which Bolivia is a party, as well as in its domestic legislation. However, a consultation process in accordance with the provisions of Law 222 of February 2012 is currently under way.5

Amnesty International’s does not consider prior consultation to have occurred in this case, as a series of legal and administrative provisions authorizing the road to go ahead were approved over the past few years, without even informing the people affected. These include: the Supreme Decree No. 26996 of 17 April 2003, which includes the section of road between Villa Tunari and San Ignacio de Moxos as part of the country’s main network; Law 3477 of September 2006 which declares the drawing up of a study for the final design and construction of the Villa Tunari - San Ignacio de Moxos road to be a priority for the nation and the department; the opening of international competitive bidding for the work (No. 001/2008) in March 2008; the contract agreed with Brazilian construction company OAS in August 2008;6 Law No. 005 of April 2010 approving the protocol for financing delivery of the road; and Law No. 112 approving the establishment of a loan agreement with the Brazilian Development Bank (BNDES).

The Bolivian authorities insist that this consultation is prior in nature since it planned to consult about the middle section of the road that passes through the park and where work has not yet begun. However, plans for the work had already been approved as far back as 2008 at least. What is more, the consultation currently being proposed does not appear to ask about whether or not the road should be built, but only asks about “establishing the best conditions possible for the construction of the first ecological road in Bolivia that includes the design, use and application of innovative technologies (...)”7, a question which detracts from the value of the process because it implies that a prior decision on the road project has already been made. Furthermore, recent statements by the authorities8 give the impression that there is a clear determination to go ahead with the second section of the road as currently proposed, namely, through the middle of the park.

Amnesty International is concerned that there is no genuine willingness to consult with the communities that are potentially affected by this project and questions whether this is really a case of prior consultation. As indicated by several international bodies and the jurisprudence on this matter, any project or legislative initiative that affects Indigenous Peoples must have the effective participation of the Indigenous Peoples concerned and the consultations must be carried out as early as possible9, in the first stages of the plan and not only when it becomes necessary to obtain the community’s approval.10 Thus, meetings between parties following the adoption of legislative measures would not comply with the requirements of Convention 169.11

5 On 24 October 2011, following the 8th Indigenous March earlier that month, Law 180 on the Protection of the TIPNIS was passed. That law determined that the park was protected and that the road would not cross it. Subsequently, in January 2012, following another march led by supporters of the road who included communities from the TIPNIS, Law 222 on consultation in the TIPNIS was promulgated.
6 Contract ABC No 218/08 GCT-OBR-BNDES.
7 Draft Protocol for Participatory Consultation with the peoples of the Isiboro Sécure Indigenous Territory and National Park (TIPNIS), letter C under Aims of the Consultation.
8 See http://www.ia-raazon.com/nacional/Morales-reitera-posible-centro-TIPNIS_0_1599440100.html.
9 Report by the Committee established to examine the claim alleging Colombia’s failure to comply with the Convention on Indigenous and Tribal Peoples, 1989 (núm. 169), submitted under article 24 of the ILO Constitution by the Central Unitaria de Trabajadores (CUT), GB.276/17/1; GB.282/14/3 (1999), para. 90.
10 According to article 19 of the Declaration on Indigenous Peoples, the consultation should be carried out in good faith in order to obtain free, prior and informed consent (emphasis added). Inter-American Commission on Human Rights, Case of the Saramaka People v. Suriname, Judgment of 28 November 2007 (Preliminary Objections, Merits, Reparations and Costs), Series C. No 172, para. 133.
This lack of prior consultation does not mean that a dialogue or other form of consultation with communities could not be started in the future, but for that to happen, trust would need to be established by means of a process that is transparent, including the provision of full and objective information, carried out in good faith, carried out in accordance with the customs and traditions of the Indigenous Peoples affected, and respectful of the representative institutions of the Indigenous Peoples so that their participation is ensured in accordance with the requirements of international standards.

The consultation process must be transparent, provide full objective information to the communities and be culturally appropriate

Despite the government’s recent announcement that the contract with the construction company had been rescinded, the future of the contract is still in doubt. The construction company has denied that it failed to carry out the work on time, as the State argues, and so does not accept that the government has sufficient grounds for terminating the contract. Furthermore, the legislative measures for carrying out the work remain in place. Amnesty International is concerned about what information can be shared with the communities when, in practice, there is no clarity about the current state of the agreements on building the road.

The organization wishes to remind the authorities that in order for the consultation to meet international standards, full, objective and accurate information must be delivered to all members of the communities concerning the different aspects of the project, including information on possible alternative routes and the potential adverse effects of the project. This is particularly important given the possible risks that a project of this size might pose to the survival of the communities living within the original community territory (Territorio Comunitario de Origen - TCO). According to the 2011 report prepared by the National Protected Areas Service (Servicio Nacional de Areas Protegidas - SERNAP), there is a close relationship between the park and the way of life of the communities that could be seriously affected if the road were built. During its visit to Bolivia, Amnesty International was able to confirm the existence of this fear of the threat to their way of life among several members of communities living in the TIPNIS.

International standards clearly state that the consultation must be carried out using procedures that are culturally appropriate and which are in line with the traditions and customs of the communities themselves. This means, among other things, that the information must be accessible to the communities, including being available in the language of the communities affected and presented in an understandable way, devoid of any unnecessary technical language. It should also be recognized that there may be varying degrees of literacy among members of the community so that different ways of disseminating the information should be considered, for example, via local radio stations and using visual presentations of the basic ideas about which they are being consulted.

Amnesty International takes no position for or against the building of the road inside the TIPNIS. However, it reminds the State that it has a duty to provide comprehensive information.

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15 The Evaluación Ambiental Estratégica (EAE), strategic environmental assessment, of TIPNIS carried out by the Servicio Nacional de Áreas Protegidas (SERNAP), National Protected Areas Service, in 2011, which points out some of the possible negative effects of building the road, is not included among the documents to be shared that are listed in the consultation protocol.
17 Inter-American Court of Human Rights, Case of the Saramaka people v. Suriname, Judgment of 28 November 2007 (Preliminary Objections, Merits, Reparations and Costs), Series C. No. 172, paras. 133 and 134.
to the communities in a transparent, accessible and culturally appropriate way so that they can take a position on it in full knowledge of the facts.

The consultation must be carried out in good faith, taking whatever time may be necessary to reach an agreement with the communities affected or obtain their consent

The organization is concerned that the consultation process pursuant to Law 222 is not being carried out according to the minimum conditions required to meet its main objective, namely to reach an agreement with the Indigenous Peoples affected or to obtain their consent. The fact that several communities opposed to the road have announced that they will not participate in the consultation under Law 222 jeopardizes the achievement of this aim as well as the legitimacy of the process because the results will only represent the wishes of some of those affected.

The consultation cannot be understood as being simply a process for getting the communities to say yes or no.\(^{18}\) It is a more complex negotiation that seeks to reach an agreement with the communities affected.\(^ {19}\) In any case, it is clear from international law that if the project is likely to have a significant impact on the Indigenous Peoples and their territory and resources, the State must obtain their free, prior and informed consent, according to their customs and traditions.\(^ {20}\) Moreover, the question of “significant impact” should be considered from the perspective of the peoples affected and should take into account their current situation.\(^ {21}\)

The process of dialogue in which the consultation takes place must be based on principles of confidence and mutual respect between the parties.\(^ {22}\) The existence of a climate of confidence is particularly important in relation to Indigenous Peoples because the distrust they have felt towards State institutions and their feeling of marginalization cannot yet be assumed to have been overcome.\(^ {23}\)

Amnesty International recognizes that all the actors involved should help to create the most favourable conditions so that consultation or negotiation can take place on an equal footing. However, a large part of the current dispute in the TIPNIS could stem from government actions that have generated distrust in several communities and which raise concerns about the good faith in which the authorities have approached the consultation process.

According to information obtained by Amnesty International, the communities opposed to the road\(^ {24}\) had informed the authorities back in 2006 that they intended to be involved in the planning process for building the road\(^ {25}\) and in 2008, after trying to communicate with the government on several occasions, they publicly stated their opposition to its construction.\(^ {26}\)

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\(^{18}\) Special Rapporteur, report A/HRC/15/37/Add.8, 2010, para. 15.

\(^{19}\) “The somewhat different language of the [United Nations] Declaration [on the Rights of Indigenous Peoples] suggests a heightened emphasis on the need for consultations that are in the nature of negotiations towards mutually acceptable arrangements, prior to the decisions on proposed measures, rather than consultations that are more in the nature of mechanisms for providing indigenous peoples with information about decisions already made or in the making, without allowing them genuinely to influence the decision-making process.” - United Nations Human Rights Council, Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, James Anaya, UN doc. A/HRC/12/34, 15 July 2009, para. 46.

\(^{20}\) Inter-American Court of Human Rights, Case of the Saramaka people v. Suriname, Judgment of 28 November 2007 (Preliminary Objections, Merits, Reparations and Costs), Series C. No. 172, paras. 133-137.

\(^{21}\) Amnesty International, Amicus Curiae, Case of the Kichwa People of Sarayaku vs. Ecuador, presented before the Inter-American Court of Human Rights, 2011, AMR 28/001/2011.


\(^{24}\) Most of the communities that oppose the road crossing the park live inside the TCO and are affiliated to the TIPNIS Sub-Central. Other communities that are against the project belong to the Securé Sub-Central, which is also inside the TCO.


\(^{26}\) See ballot resolution, Subcentral de Pueblos Indígenas: Mojeños a –Yuracaré – Chimane del TIPNIS, No. 04/2008
Even so, the authorities never instigated a consultation on the second section of the road, and on 3 June 2011, work on construction of the road between Villa Tunari and San Ignacio de Moxos was launched by President Evo Morales, thus reducing the likelihood of dialogue.

Amnesty International has been paying close attention to recent actions by the government authorities which, while they may contribute towards the development of the Indigenous Peoples in the TIPNIS, may also call into question the purpose of the consultation process the government wants to carry out. At the same time as preparing the protocols and design for the consultation pursuant to Law 222, the government has been providing the communities from the TIPNIS who are to be consulted with goods such as motors for boats and satellite dishes. It also signed agreements on the improvement of living conditions with 11 of the 13 organizations that make up the Confederación de Pueblos Indígenas de Bolivia, Confederation of Indigenous Peoples of Bolivia, to which the institution that brings together most of the communities in the TIPNIS belongs and whose leaders are opposed to the road being built.

Amnesty International urges the government to carry on with these initiatives whether or not the road is built. The State has an obligation to protect and promote all rights, including the economic, social and cultural rights of all the communities living in the TIPNIS regardless of their views about the road. However, the fact that these types of initiatives – which are both necessary and obligatory – are being taken shortly before the consultation takes place, raises doubts about the freedom with which the communities will be participating in that process, causing greater distrust of the consultation among those currently opposed to the building of the road.

Amnesty International notes that an amendment to Law 222 was recently approved by the Plurinational Legislative Assembly in order to make the timetable for the consultation more flexible. Though the organization sees this as a positive step, it is concerned that strict deadlines are still being imposed in order to secure a result. According to international standards, the consultation must be carried out by means of appropriate procedures that are consistent with the traditions of the Indigenous Peoples affected, such as the building of consensus within the communities. To this end, the organization calls on the authorities to review this amendment and bring it into line with international standards by allowing the necessary time to reach an agreement with the communities or obtain their consent. Also it is critical to ensure that the scheduling of meetings allows all members of the communities to participate, especially women, whose involvement is often limited by domestic responsibilities. The organization believes that negotiations should not be bound by deadlines that restrict constructive dialogue.

Bearing in mind the above, the organization encourages the authorities to work towards building a climate of confidence which at the moment is absent. Only when the parties trust each other will it be possible to carry out a consultation process that fosters a productive dialogue so that an agreement can be reached or the free and informed consent of the communities obtained.

*The consultation process must respect representative institutions*

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27 See [http://www.cambio.bo/ultimas/20120412/evo_llega_a_gundonovia_con_apoyo_68675.htm](http://www.cambio.bo/ultimas/20120412/evo_llega_a_gundonovia_con_apoyo_68675.htm);
[http://www.cambio.bo/regiones/20120412/presidente_lleva_a_empresas_del_estado_y_ayuda_al_tipnis_68640.htm](http://www.cambio.bo/regiones/20120412/presidente_lleva_a_empresas_del_estado_y_ayuda_al_tipnis_68640.htm);

28 Statements by the Minister of the Presidency Juan Ramón Quintana, [http://www.la-razon.com/nacional/San-Ignacio-Moxos-concentra-Gobierno_0_1601239906.html](http://www.la-razon.com/nacional/San-Ignacio-Moxos-concentra-Gobierno_0_1601239906.html).

29 See article 6 of Convention 169 and Inter-American Court of Human Rights, *Saramaka* case, para. 134.

International standards also require the State to conduct the consultation through the representative institutions of Indigenous Peoples. Amnesty International is concerned that the preparation of the consultation process, such as the discussion of the protocol, lacks the effective participation of all the communities affected. According to the information available to the organization, the protocol has been designed and drawn up unilaterally by the authorities and later shared with some of the communities. The organization is also concerned about reports that the government authorities are disregarding leaders and representative institutions and trying to replace the dialogue that they should be having with them in favour of a direct dialogue with other members of the communities. Amnesty International has been told that this would cause divisions within the communities.

Bolivia has made a commitment to consult the Indigenous Peoples, which includes their leaders and representatives. As pointed out by the United Nations Special Rapporteur on Indigenous Peoples, “[t]he building of confidence and the possibility of genuine consensus also depends on a consultation procedure in which Indigenous Peoples’ own institutions of representation and decision-making are fully respected”. The government would also be validating the process through recently-established Indigenous organizations whose representativity is unclear. The Inter-American Commission on Human Rights has clearly established that “[g]ood faith is also incompatible with practices such as attempts to disintegrate the social cohesion of the affected communities, whether it is through the corruption of communal leaders or the establishment of parallel leaderships, or through negotiations with individual members of the community that are contrary to international standards”.

The duty to ensure the right to peaceful assembly and to investigate human rights violations

The authorities have a duty to ensure that the right to peaceful assembly and freedom of expression are respected in the context of the IX Indigenous March currently being planned. Amnesty International has already expressed its concerns in the context of the road blockade in San Ignacio de Moxos organized by supporters of the building of the road and hopes that the authorities will take appropriate steps to ensure that the march can go ahead. In addition, journalists from a community radio station in San Ignacio de Moxos, Arrairu Sache, were reportedly attacked during the blockade for reporting on the IX Indigenous March. According to reports, some 40 people burst into the radio station and beat its director who refused to stop reporting on the Indigenous march. Another broadcaster was also forced to leave the studio. Amnesty International calls on the authorities to ensure the right to freedom of expression and to carry out a thorough, prompt and impartial investigation into what happened in order to ensure that those responsible are brought to justice and to prevent a potential escalation of unrest in the area.

Amnesty International is also calling on the authorities to continue the investigations initiated last year as a result of the police operation during the VIII Indigenous March held on 25 September 2011. The organization is concerned at the apparent slowness of these investigations and urges the competent authorities to speed up the legal proceedings, ensuring that due process is observed and that they are free from any kind of political interference, so that those responsible for instigating and actually perpetrating human rights violations are brought to justice. Amnesty International is also concerned at the slow progress being made in

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34 See http://www.amnesty.org/es/library/asset/AMR18/001/2012/es/f84f2598-b9fe-4c7a-b249-d5e3f671ca/amar180012012en.pdf
the investigation of the supposed kidnapping and attempted murder of Chancellor David Choquehuanca on 24 September in the context of the VIII march. Although there are plans to summon some witnesses, many of them Indigenous leaders, it is not clear what other progress has been made in the investigation or what elements are necessary to assert that the offences of kidnapping or attempted murder have taken place, especially since the Chancellor himself did not talk about kidnapping but said that several women had surrounded him and forced him to join the march.\footnote{24 September 2011, \url{http://www.emol.com/noticias/internacional/2011/09/24/504905/choquehuanca-marcha.html} [last consulted on 30 April 2012].}

Amnesty International believes that making progress in these cases by conducting proceedings that comply with the law and are endowed with all the necessary guarantees of independence and impartiality could help to rebuild the climate of confidence between the communities and the authorities that is required for any kind of consultation process to go ahead.

Recommendations:

- The authorities must find a solution to the TIPNIS dispute in which assurances are given that, prior to any future dialogue with the Indigenous Peoples affected, international obligations with regard to the rights of Indigenous Peoples will be respected, especially those described above in relation to the right to consultation in good faith and with transparent negotiations;
- Take specific steps to restore the communities’ confidence, including the possibility of rescinding legislative and administrative measures related to the building of the road;
- Ensure that the negotiating process is culturally acceptable and that full and objective information is provided to the communities, including alternative options for the route and information on the possible negative and positive effects of the project;
- Make sure that the timetable for conducting dialogue and negotiations in any consultation process are not subject to fixed deadlines that prevent an agreement from being reached or the free, prior and informed consent of the communities from being obtained;
- Make sure the representative institutions of the communities are included in any process of negotiation or dialogue that is started in the future in search of a solution to the TIPNIS dispute;
- Promote and protect the human rights of the communities living in the TIPNIS, including their economic, social and cultural rights, by undertaking sustainable actions and programmes that respect their ways of life, regardless of whether or not the road is built;
- Ensure that the rights to peaceful assembly and freedom of expression are respected in the context of the IX Indigenous march;
- Carry out a thorough, impartial and independent investigation into complaints that journalists from the community radio station \textit{Arrairu Sache} were attacked for reporting on the organization of the IX Indigenous march and ensure that those responsible are brought to justice;
- Make sure that both the investigations initiated as a result of the police violence in the context of the VIII Indigenous march and those related to the supposed kidnapping and attempted murder of Chancellor David Choquehuanca are conducted impartially and in accordance with the law;
- Ensure the implementation of the recommendations accepted by Bolivia in the 2010 Universal Periodic Review in relation to Indigenous Peoples. Amnesty International encourages the authorities to report to the Human Rights Council on the progress made and challenges faced in implementing these recommendations.

\footnote{The organization wrote to the Attorney-General’s Office, the relevant prosecutors and other appropriate authorities to express concern about the slow progress of these investigations and asking for further information.}
\footnote{Principle 2 of the Basic Principles on the Independence of the Judiciary.}
Given the social discontent provoked by the TIPNIS dispute, the authorities of the Plurinational State of Bolivia have an opportunity to reverse this situation by complying with the obligations and principles established in international law and domestic legislation with regard to the right to free, prior and informed consultation. Only by doing so will it become a point of reference for how this right should be put into practice. This would also help to create a more favourable environment in which to carry forward discussion of the draft Framework Law on Consultation that is being debated in the Plurinational Legislative Assembly. Amnesty International hopes that the Plurinational State of Bolivia will take note of the concerns and recommendations outlined above and bring its actions into line with human rights standards, especially those related to the rights of Indigenous Peoples.

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