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London, 24 October 2003

**OPEN LETTER TO THE PRESIDENT OF THE REPUBLIC OF BOLIVIA
SR. CARLOS MESA GISBERT**

Mr. President,

On the occasion of your inauguration as Constitutional President of the Republic of Bolivia, Amnesty International would like to address this letter to you and the members of your government with the aim of initiating a dialogue and presenting our concerns regarding the country's human rights situation. Our organization would also like to take this opportunity to urge the members of your new administration to consider effective measures for the promotion and protection of human rights.

Amnesty International is a global organization striving to ensure that all the rights enshrined in the Universal Declaration of Human Rights are observed and respected. Amnesty International thus acts on the most serious violations of people's fundamental rights committed by governments. Of these, the organization works primarily to secure the freedom of all prisoners of conscience; to ensure that all political prisoners have access to prompt and impartial trials; to achieve the abolition of the death penalty; to eradicate torture and other cruel treatment of prisoners and to bring to an end extrajudicial executions and "disappearances". Amnesty International opposes abuses committed by armed political groups such as the imprisonment of prisoners of conscience, hostage taking, torture and unlawful killings. Recognising the indivisibility of human rights, Amnesty International also works to protect and promote the rights enshrined in the *International Covenant on Economic, Social and Cultural Rights*.

Amnesty International's work is based on the international human rights standards proclaimed by the international community through the United Nations and other intergovernmental bodies, standards that States undertake to respect. We address governments because of the specific obligation they have undertaken to ensure that State officials act within the context of the law and respect for fundamental human rights.

Amnesty International welcomes the statement made in your inaugural speech to the National Congress on 17 October, declaring respect for human rights and respect for life to be "the most precious asset and gift of any citizen". Bearing in mind the tragic events of recent weeks, which have

resulted in the loss of an as yet unconfirmed number of lives, but which, according to our information, could be more than 80, during demonstrations in a number of the country's towns, particularly Sorata, Warisata and various districts of El Alto and La Paz, Amnesty International appreciates the importance of your declaration that independent investigations into these events will be carried out through the ordinary courts. We trust that these investigations will be carried out in accordance with the relevant international standards, including the *United Nations Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions*. We also urge you to ensure that the process for resolving the current crisis is guided by the principle of the integrality of human rights, that is, recognising that the roots of the crisis lie in the violations of the economic, social and cultural rights of the country's marginalized sectors.

Amnesty International has repeatedly made its concerns regarding the country's human rights situation known to successive Bolivian governments and has called for the promotion and protection of these rights. Despite the fact that the Bolivian State has been a party to important international treaties for more than 30 years, Amnesty International has noted with concern the failure of successive governments to follow through the will expressed when signing and ratifying those treaties with effective action at national level to promote human rights protection and make it a reality. Since the return to civilian government in 1982, the organization has repeatedly urged successive governments to comply with their national and international commitments to defend fundamental human rights and to implement measures to ensure the protection of those rights.

Amnesty International has duly noted your statements regarding the need for new policies to enable inclusion of the legitimate demand of those who have been excluded from the protection that a democratic process should offer, promoting the contribution of all sectors of society in order to ensure the universality and protection of all rights and to ensure that those rights are maintained with equality of access and protection under the law. Amnesty International echoes these declarations, reiterating that a large number of measures need to be taken if human rights protection and promotion is to be effectively extended throughout the country. Some of these measures will require administrative directives, others the introduction of new legislation, many simply the implementation of that which is already enshrined in Bolivian legislation. All, however, will require political will at all levels.

It is in this context that Amnesty International would like to express its main concerns to you, including reports of deaths which, given their nature, would seem to have been caused by an excessive use of force on the part of law enforcement officers, particularly in the context of coca crop eradication in the El Chapare area, and in the context of public demonstrations; torture and mistreatment of detainees at the hands of members of the security forces; the practice of disciplinary measures that constitute torture and inhuman or degrading treatment of conscripts fulfilling their compulsory military service; and with regard to the prison conditions, which constitute cruel, inhuman and degrading treatment.

Amnesty International wishes to stress its concern to the authorities at the failure to exhaustively, independently and conclusively investigate such complaints, along with the use of military courts to deal with cases of members of the armed forces accused of human rights violations. In addition, the threats and attacks taking place against human rights defenders are a cause for growing concern.

Deaths through excessive use of force

The organization is concerned at continuing complaints of an apparent use of excessive force on the part of members of the army and police force, which has led to civilian deaths and an innumerable number of people injured during the joint forces' operations within the El Chapare coca crop

eradication programmes that have been agreed between the United States and Bolivia, as well as in the context of public demonstrations.

Amnesty International considers it to be of vital importance that actions of the security forces are carried out in line with the provisions of the *Code of Conduct for Law Enforcement Officials* and the *United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*. These international standards set strict limits on the use of force by law enforcement officials and establish that force may only be used when strictly necessary and in proportion to the aim or threat in question, and that lethal force must only be used when essential to protect lives.

Amnesty International urges the new administration to take the necessary measures to provide all members of the security forces with appropriate training in national and international human rights legislation and the means for its protection, including the previously mentioned Codes and Principles.

Amnesty International also trusts the new administration will ensure that impartial and independent bodies immediately and rigorously investigate the complaints of apparent use of excessive force on the part of members of the security forces, and that the results are made public. This investigation must establish whether the security forces used excessive and disproportionate force during the operation and whether their action was in line with the provisions of the above mentioned United Nations Codes of Conduct and Basic Principles.

Mistreatment and torture

Article 12 of the Political Constitution of the State prohibits “any kind of torture, coercion, exaction or any form of physical or moral violence”, thus guaranteeing all people the right to life and physical and psychological integrity. However, complaints of torture and mistreatment of detainees continue. Amnesty International believes that vigorous and decisive action is required on the part of the national and departmental authorities and the judiciary if torture and mistreatment are to be eradicated. The authorities’ apparent lack of action in such situations gives the negative impression that such actions are tolerated, thus making it easier for these acts to be repeated. Amnesty International considers it of vital importance to carry out exhaustive and impartial investigations into such complaints, making the investigation methods and conclusions public and bringing those responsible to justice through the civil courts.

Amnesty International urges the new administration to fully implement the May 2001 observations and recommendations adopted by the UN Committee against Torture following its examination of Bolivia’s initial report regarding implementation of the provisions of the *Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment*¹. Amnesty International wishes to stress its concern with regard to detention conditions in prisons and remand centres, which constitute cruel, inhuman or degrading treatment, as indicated by the Committee in its Observations and Recommendations.

Amnesty International would like to emphasise the importance of the international instruments protecting the safety and physical integrity of all of Bolivia’s inhabitants. In this context, the organization wishes to stress the importance of taking the necessary measures to ensure that Bolivia

¹Conclusions and recommendations of the Committee against Torture: Bolivia 10/05/2001, CAT/C/XXVI/Concl.3/Rev.1.

fulfils Article 22 of the Constitution, which recognises the competence of the Committee to receive and examine communications sent by people within its jurisdiction or on their behalf claiming that a State Party has violated one or more of the Convention's provisions in their regard. The organization also trusts that ratification of the Organization of American States' *Inter-American Convention to Prevent and Punish Torture* will be promoted.

Military jurisdiction

Amnesty International notes with growing concern the widening of the military jurisdiction to bring cases of human rights violations on the part of members of the armed forces to justice. The Human Rights Committee and the Inter-American Commission on Human Rights have, on numerous occasions, stated that trying members of the armed forces accused of human rights violations through the military courts is incompatible with a State's obligations under international law.

Amnesty International considers that both the legal code and the legal process must be in line with the standards adopted by the international community to protect human rights, such as the *International Covenant on Civil and Political Rights*. This Covenant is one of the instruments establishing the fundamental precepts on which the laws and legal proceedings of all countries must be based. In this respect, military courts must be special courts, whose role is to maintain discipline within the armed forces and which must, consequently, be limited to strictly military offences.

Human rights defenders

Amnesty International notes with extreme concern the repeated threats to which human rights defenders are being subjected. The organization urgently appeals to you to take the necessary measures to ensure that your government publicly supports the work and actions of human rights defenders, rejecting intimidation and ensuring that all those who defend human rights receive full protection with which to continue their work.

In this regard, the recommendations of the *Vienna Declaration and Programme of Action* should be recalled, adopted by the World Conference on Human Rights in June 1993, regarding the importance of creating a National Action Plan to identify the steps by which a State can improve its human rights promotion and protection. Amnesty International calls for this National Action Plan to be produced during the current presidential term, including within it the protection of lawyers, witnesses, victims and their families in cases related to human rights violations. Amnesty International consequently urges the authorities to state their public support for the United Nations Declaration on the rights and duties of individuals, groups and institutions in promoting and protecting universally recognised human rights and fundamental freedoms, known as the *Declaration on Human Rights Defenders*, adopted on 9 December 1998. Amnesty International also urges the authorities to declare their support for the resolution on *Human Rights Defenders in the Americas*, adopted in June 1999 by the General Assembly of the Organization of American States, along with its commitment to "promote and protect the fundamental rights of Human Rights Defenders".

Death penalty

Amnesty International is unreservedly opposed to the death penalty, considering it the most exceptional form of cruel, inhuman and degrading punishment and that it constitutes a violation of the right to life. It is a punishment that has proven ineffective in resolving problems of a social nature and one that can lead to the execution of innocent people.

Amnesty International notes with satisfaction the Republic of Bolivia's position of having de facto abolished the death penalty for common crimes, along with the reforms to the Criminal Code and Criminal Procedure Code adopted by the Bolivian Congress in 1997, which substituted capital punishment with a thirty-year prison sentence. With this measure, criminal legislation was brought into line with the Political Constitution of the State, in which the death penalty is not stipulated. However, Amnesty International calls for the necessary measures to be adopted to consolidate the abolition of this punishment, with ratification during the forthcoming parliamentary session of the *Second Optional Protocol to the International Covenant on Civil and Political Rights* aimed at abolishing the death penalty.

International Standards

Amnesty International particularly welcomed Bolivia's ratification of the *Rome Statute of the International Criminal Court* on 27 June 2002, demonstrating the Bolivian authorities' willingness to collaborate with the international human rights protection system. The whole legal system established in the Treaty of Rome is based on the principle of complementarity enshrined within it. This means that should one of the crimes under international law listed in the Statute (genocide, crimes against humanity and war crimes) take place, it is the duty of a State Party to exercise its own national jurisdiction and only when a State is unable adequately, or is not willing, to exercise that authority can the Criminal Court substitute it in that regard.

It emerges from this that national jurisdictions must have the regulatory elements enabling them to fulfil this duty. Amnesty International notes with concern that Bolivian legislation suffers from serious gaps that would prevent the judicial authorities from adequately exercising their jurisdiction with regard to such crimes. For example, the several dozen war crimes listed in article 8 of the Rome Statute do not appear to have any equivalent in Bolivian legislation, either ordinary or military, thus preventing the prosecution of a trial with regard to such acts.

Mr. President, our organization notes with concern that Bolivia is one of the very few countries that have ratified the Treaty but not yet initiated a process for its domestic implementation. Other countries in the region that ratified the Treaty of Rome after Bolivia have made more rapid progress on the ground, forming implementation committees with civil society participation that have a mandate to produce one or more draft bills in order to comply with the previously noted duty.

Amnesty International recognises and reiterates the value of Bolivia's ratification of the Treaty of Rome. We believe that rapid implementation of its provisions within the country's internal legislation is now essential. We therefore urge you, as President of the Republic, to promote the process of domestic implementation of the Rome Statute with the greatest of haste. Amnesty International has serious concerns regarding the bilateral agreement signed between Bolivia and the United States of America giving impunity to US nationals accused by that Court of genocide, crimes against humanity and war crimes. Amnesty International urges the new administration to refuse to sign this agreement, which is in violation of Bolivia's obligations contracted under international law, including its obligations as a State party to the Rome Statute. Your government will thus contribute decisively to respect for the integrity of the Treaty and international law, which must take precedence among sovereign nations.

The organisation hopes that the current presidential programme will concretely and unreservedly reflect the commitments assumed by Bolivia in relation to the *UN Convention on the Elimination of All Forms of Discrimination against Women*, the *Convention on the Rights of the Child* and the International Labour Organization's *Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries*, which protects the right of indigenous peoples. Fulfilment of these agreements will be another sign of the government's firm commitment to respecting the human rights of all, including indigenous groups, peasant farmers, women and other sectors of the population who

have been considerably marginalized from the country's political and economic life and who are legitimately demanding their participation.

Given that the Republic of Bolivia is a State Party to the *International Covenant on Economic, Social and Cultural Rights*, Amnesty International would like to stress the importance of this international commitment in the policies you will be considering during your term in office. Article 2(1) of this Covenant establishes that each State Party undertakes to take steps "individually and through international assistance and cooperation, especially economic and technical" to achieve, by all appropriate means, "including particularly the adoption of legislative measures", the full realization of the rights recognised by the Covenant. These rights include, among others, the right to work, to an adequate standard of living, to health and to education.

It is in this context that Amnesty International calls upon you to ensure that, during your presidential term in office and in the formulation of future economic policies, these rights are taken into account and the necessary measures taken to recognise these rights, as established in the *International Covenant on Economic, Social and Cultural Rights*, thus recognising the indivisibility of human rights.

Amnesty International welcomes your declarations with regard to respect for human rights and hopes that, during your administration, you will open the door wide to a future of complete respect for human rights in Bolivia and that, in the country's current serious situation, the promotion political as well as social and economic measures will protect the defence of human rights and respect for the rule of law.

Yours sincerely,

For: Irene Khan
Secretary General