

BOLIVIA

SUBMISSION TO THE UNITED NATIONS HUMAN RIGHTS COMMITTEE

**109TH SESSION OF THE HUMAN RIGHTS
COMMITTEE (14 OCTOBER – 1
NOVEMBER 2013)**

**AMNESTY
INTERNATIONAL**



Amnesty International Publications

First published in 2013 by
Amnesty International Publications
International Secretariat
Peter Benenson House
1 Easton Street
London WC1X 0DW
United Kingdom
www.amnesty.org

© Amnesty International Publications 2013

Index: AMR 18/005/2013
Original Language: English
Printed by Amnesty International, International Secretariat, United Kingdom

All rights reserved. This publication is copyright, but may be reproduced by any method without fee for advocacy, campaigning and teaching purposes, but not for resale. The copyright holders request that all such use be registered with them for impact assessment purposes. For copying in any other circumstances, or for reuse in other publications, or for translation or adaptation, prior written permission must be obtained from the publishers, and a fee may be payable. To request permission, or for any other inquiries, please contact copyright@amnesty.org

Amnesty International is a global movement of more than 3 million supporters, members and activists in more than 150 countries and territories who campaign to end grave abuses of human rights.

Our vision is for every person to enjoy all the rights enshrined in the Universal Declaration of Human Rights and other international human rights standards.

We are independent of any government, political ideology, economic interest or religion and are funded mainly by our membership and public donations.

**AMNESTY
INTERNATIONAL**



CONTENTS

INTRODUCTION	5
I. NON-DISCRIMINATION AND VIOLENCE AGAINST WOMEN AND RIGHT TO LIFE; EQUAL RIGHTS OF MEN AND WOMEN (ARTICLES 2, 6, 7 AND 26 ICCPR)	6
a. Criminalization of abortion (Question 5 in the List of Issues)	6
b. Amnesty International recommendations to the Bolivian State	11
II. RIGHT TO LIFE, PROHIBITION OF TORTURE AND OTHER ILL-TREATMENT, AND FIGHT AGAINST IMPUNITY (Articles 2, 6 and 7 ICCPR)	11
a. Impunity and reparation for human rights violations (Question 8 in the List of Issues)	11
b. Fight against impunity and prompt investigations (Question 9 in the List of Issues)	16
c. Torture, inhuman and degrading treatment, and excessive use of force by the police (Questions 9 and 10 in the List of Issues)	17
d. Amnesty International recommendations to the Bolivian State	20
III. RIGHT OF PERSONS DEPRIVED OF THEIR LIBERTY (Articles 9 AND 10 ICCPR)	21
a. Prison conditions (Questions 14 and 15 in the List of Issues)	21
b. Amnesty International recommendations to the Bolivian State	24
IV. INDEPENDENCE OF THE JUDICARY AND DUE PROCESS (ARTICLE 14 ICCPR)	24
a. Independence of justice system and the right to defence (Question 17 in the List of Issues)	24
b. Amnesty International recommendations to the Bolivian State	24
V. RIGHTS OF MINORITIES (ARTICLE 27 ICCPR)	25
a. The right to consultation and free, prior and informed consent (Question 24 in the List of Issues)	25
b. Amnesty International recommendations to the Bolivian State	30
LIST OF AMNESTY INTERNATIONAL DOCUMENTS	31

INTRODUCTION

Amnesty International submits this briefing to the United Nations (UN) Human Rights Committee (the Human Rights Committee or the Committee) ahead of its examination in October 2013 of Bolivia's third periodic report on the implementation of the International Covenant on Civil and Political Rights (the Covenant or ICCPR).

Amnesty International recognises that significant changes and reforms have been taking place in Bolivia since it was last reviewed by the Human Rights Committee in 1997. As part of an ambitious change process motivated by the principles of equality and social justice, a new Political Constitution was approved in January 2009 by referendum. The new Constitution established specific rights to overcome discrimination and reverse a history based on social exclusion and cultural domination. While Amnesty International acknowledges that the extent of the reforms and actions needed to respond to a system that permitted widespread injustices in the past takes time, the organisation has called on the authorities of the Plurinational State of Bolivia to ensure that such a change process adheres strictly and leads to greater respect for existing international human rights norms.

In this regard, the organization would like to highlight a number of human rights concerns in Bolivia in relation to several questions on the Committee's list of issues from March 2013.¹ Most of this submission is based on information gathered during visits to Bolivia in March and June 2012 and more recently in May 2013. In particular:

- Amnesty International remains concerned about the lack of comprehensive legislation on sexual and reproductive rights, the criminalization of abortion, the limitations that are in place to access legal and safe abortion and the lack of mechanisms to provide appropriate information to women and girls on methods of contraception and on ways to avoid unwanted pregnancies (Question 5 in the list of issues).
- Truth, justice and reparation to victims of human rights violations committed during the military and authoritarian regimes between 1964 and 1982 are still pending. Lack of full access to military archives which are believed to contain crucial information about the fate and whereabouts of victims of enforced disappearances is contributing to impunity for past human rights violations. In 2004 legislation was passed to provide reparation –including monetary compensation– to victims and their families; however, the requirements and procedures put in place to assess applications have been widely criticized by victims' organizations for lacking transparency and being unfair (Question 8).
- Legislation to ensure that the definition of torture in national law is in conformity with the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the UN Convention against Torture) and to create a national mechanism for the prevention of torture has not been passed yet, as well as specific procedures to receive

¹ See List of issues in relation to the third periodic report of the Plurinational State of Bolivia (CCPR/C/BOL/3), adopted by the Committee at its 107th session (11–28 March 2013). Bolivia's state report to the Human Rights Committee is available at: http://www2.ohchr.org/english/bodies/hrc/docs/AdvanceVersions/CCPR_C_BOL_3_sp.pdf

complaints of torture and ill-treatment. Moreover, the organization is concerned about reports of the excessive use of force and ill-treatment by the police in the context of demonstrations and social unrest and the lack of prompt and independent investigations to ensure that all those suspected of criminal responsibility are brought to justice and victims of police violence have access to fair reparation (Questions 9 and 10).

- Allegations of inadequate prison conditions contrary to international standards to protect the rights of prisoners remain present (Questions 14 and 15).

- With regard to administration of justice and the judiciary, Amnesty International is aware of the universal election mechanism for members of the highest courts that has been established. The organization is concerned at the potential impact on the right to defence that this system could produce as it excludes from being a candidate those lawyers who have defended people convicted of certain crimes. Delays in the administration of justice in key cases including the 13 killings in Pando in 2008, the acts of violence in Sucre in 2008 and the Santa Cruz killings in 2009 are also a concern (in part related to Questions 9 and 17).

- Amnesty International recognizes the significant guarantees for the respect of Indigenous peoples' rights in Bolivia's new Constitution and in some specific laws recently approved. However, the state needs to take clear steps to ensure meaningful consultations -including specific legislation on consultation- to ensure free, prior and informed consent of Indigenous peoples on projects that may affect them, in line with ILO Convention 169, to which Bolivia is a party, and the UN Declaration on the Rights of Indigenous peoples (Question 24).

I. NON-DISCRIMINATION AND VIOLENCE AGAINST WOMEN AND RIGHT TO LIFE; EQUAL RIGHTS OF MEN AND WOMEN (ARTICLES 2, 6, 7 AND 26 ICCPR)

a. Criminalization of abortion (Question 5 in the List of Issues)

According to article 66 of the Constitution, sexual and reproductive rights are guaranteed for men and women. Nevertheless, this provision has not yet fully translated into the enjoyment of these rights by all.

Of particular concern is the regulation of abortion and the request for judicial authorization. Bolivia's penal code criminalizes abortion in articles 263 to 269, imposing different sanctions depending on context, actor and motivations. The law has exceptions to the ban on abortion when the life or health of women is at risk and when pregnancy is a result of rape or incest. However, under Bolivian law, judicial authorization is required in those cases, to avoid criminal proceedings. In addition, women who become pregnant as a result of rape must also begin criminal proceedings against the rapist before requesting judicial authorization for an abortion.

According to criminal law experts in Bolivia, judges rarely allow termination of pregnancy, usually citing conscientious objection for religious and moral reasons. Thus, in practice, judicial authorization appears to represent an obstacle to access abortion even in the cases in which it is not penalized.

At present there is a case questioning the constitutionality of the articles that criminalize

abortion and other provisions of the Penal Code under review by the Plurinational Constitutional Court (*Tribunal Constitucional Plurinacional*).² When discussions about this case exploded in the media in July 2013, public statements of some authorities were contradictory and sometimes ill-informed regarding the legal regulation of abortion in the country.³

Criminalization of abortion has ruinous effects on the right to life of women and girls. Available information indicates that the criminalization of abortion not only compels women to undergo illegal abortions, but that many die as a result of such interventions. At the regional level (Latin America and the Caribbean), unsafe abortions (often illegal and clandestine) are responsible for about 12 percent of maternal deaths and globally cause about 50,000 deaths per annum that are largely preventable.⁴ Both the Human Rights Committee and the UN Committee on the Elimination of Discrimination against Women have repeatedly said that there is a link between laws that criminalize abortion and risks to the lives of pregnant women and girls.⁵

Governments of the region, including Bolivia, have recently stated that they are “concerned at the high rates of maternal mortality, due largely to difficulties in obtaining access to proper sexual health and reproductive health services or to unsafe abortions, and aware that some experiences in the region have demonstrated that the criminalization of abortion leads to higher rates of maternal mortality and morbidity and does not reduce the number of abortions, and that this holds the region back in its efforts to fulfil the Millennium Development Goals.”⁶

Bolivia has the second highest maternal mortality ratios in the Americas.⁷ According to

² Abstract constitutional claim [*Demanda abstracta de inconstitucionalidad*] submitted by Patricia Mancilla Martínez, parliamentarian, case No. 00320-2012-01—AIA. Amnesty International has filed an Amicus brief in this case, recommending that the criminalization of abortion be declared unconstitutional. The ruling in the case has repeatedly been delayed. After the media started discussing the case in July 2013 and there were several public demonstrations, the Constitutional Court deferred its ruling indefinitely.

³ See http://www.la-razon.com/sociedad/Presidente-Evo-Morales-aborto-delito_0_1872412810.html ; http://www.la-razon.com/sociedad/Garcia-dice-aborto-penalizado-excepciones_0_1875412456.html

⁴ World Health Organization and Guttmacher Institute, “Facts on Induced Abortion Worldwide, In Brief”. Geneva/Washington DC, 2012.

⁵ See, Human Rights Committee, “Concluding Observations of the Human Rights Committee: Bolivia” CCPR/C/79/Add. 74, 5 May 1997, para. 22; and Committee on the Elimination of Discrimination against Women (CEDAW) “Concluding comments of the Committee on the Elimination of Discrimination against Women: Nicaragua” UN Doc. CEDAW/C/NIC/CO/6, 2 February 2007, paras. 17-18.

⁶ Montevideo Consensus On Population and Development, *Full integration of population dynamics into rights-based sustainable development with equality: key to the Cairo Programme of Action beyond 2014*, adopted at the First session of the Regional Conference on Population and Development in Latin America and the Caribbean; Montevideo, 12-15 August 2013, page 11.

⁷ The highest in the Americas is Haiti. Maternal Mortality Ratio is the “Number of maternal deaths during a given time period per 100,000 live births during the same time period”, WHO, UNICEF, UNFPA and The World Bank, Trends in Maternal Mortality: 1990 to 2008. World Health Organization, 2010.

official data from 2008 the ratio was 230 per 100,000 live births in that year.⁸ According to latest international data (2010) by the Economic Commission for Latin America and the Caribbean (ECLAC), the average for Latin America and the Caribbean for 2010 is 81.⁹ Furthermore, according to national data, abortion is the third most common cause for maternal mortality.¹⁰

In its General Recommendation 24, the UN Committee on the Elimination of Discrimination against Women called on states to “refrain from obstructing action taken by women in pursuit of their health goals”.¹¹ The Committee explains that barriers for women to access appropriate health care “include laws that criminalize medical procedures only needed by women and that punish women who undergo those procedures”.¹² Abortion is a procedure only required by women. The Committee recommends that “when possible, legislation criminalizing abortion should be amended, in order to withdraw punitive measures imposed on women who undergo abortion”.¹³

The Human Rights Committee as well as other UN treaty bodies have consistently argued that access to legal and safe abortion can save lives and, therefore, governments have the obligation to ensure all women and girls have access to safe and legal abortion at least in cases of rape or incest or when the health or life of the pregnant woman or girl is at risk.¹⁴ Furthermore, with respect to barriers to sexual and reproductive services, the UN Committee on Economic, Social and Cultural Rights stated that to eliminate discrimination against women, their right to health should be promoted and that “the realization of women’s right to health requires the removal of all barriers interfering with access to health services,

⁸ Post National Survey on Maternal Mortality, quoted at *Plan Estratégico Nacional para Mejorar la salud Materna Perinatal y Neonatal en Bolivia 2009- 2015*, page 15. available at http://www.mariestopes.org.bo/webassets/documentos/plan_salud_materna.pdf

⁹ According to latest international data (2010) by the Economic Commission for Latin America and the Caribbean (ECLAC), the maternal mortality ratio in Bolivia is 190. ECLAC, Statistics Division, Millennium Development Goals: Country Profiles – Bolivia. Available at <http://interwp.cepal.org/perfil_ODM/perfil_pais.asp?pais=BOL&id_idioma=2> Maternal Mortality Ratio is the “Number of maternal deaths during a given time period per 100 000 live births during the same time-period”, WHO, UNICEF, UNFPA and The World Bank, Trends in Maternal Mortality:1990 to 2008.

¹⁰ According to a survey done after the 2000 census about maternal health, quoted in IPAS Bolivia, *Las cifras hablan*, page 5. Available at <<http://www.despenalizacion.org.ar/pdf/publicaciones/Lascifrashablan.pdf>>

¹¹ CEDAW, General Recommendation No. 24 (20th session, 1999) (article 12: Women and health)”, contained in document A/54/38/Rev.1, chapter I.1999, para. 14.

¹² *Ibid.*, para. 14.

¹³ *Ibid.*, para. 31(c).

¹⁴ See for example, Human Rights Committee, “Concluding observations of the Human Rights Committee: Guatemala” CCPR/CO/72/GTM, 27 August 2001, para. 19; “Concluding observations of the Human Rights Committee: Sri Lanka” CCPR/CO/79/LKA, 1 December 2003, para. 12 (“The State party should ensure that women are not compelled to continue with pregnancies, where this would be incompatible with obligations arising under the Covenant (art. 7 and General Comment 28), and repeal the provisions criminalizing abortion”).

education and information, including in the area of sexual and reproductive health.”¹⁵

Governments of the region have recently agreed, inter alia, to “ensure, in those cases where abortion is legal or decriminalized under the relevant national legislation, the availability of safe, good-quality abortion services for women with unwanted and unaccepted pregnancies, and urge States to consider amending their laws, regulations, strategies and public policies relating to the voluntary termination of pregnancy in order to protect the lives and health of women and adolescent girls, to improve their quality of life and to reduce the number of abortions;” as well as to “eliminate preventable cases of maternal morbidity and mortality, including (...) measures for preventing and avoiding unsafe abortion (...)”.¹⁶

Amnesty International recognizes the efforts made by the state to recognize women’s rights. One example is the approval of Law 348 to guarantee women’s right to a life free of violence.¹⁷ In relation to sexual and reproductive rights these efforts have translated in the Strategic National Plan on Sexual and Reproductive Health 2009-2015 (*Plan Estratégico Nacional de Salud Sexual y Reproductiva 2009-2015*).¹⁸ This plan contains strong wording and recognition of sexual and reproductive rights as human rights, and aims at tackling inefficiencies in the provision of health care and other services at the national and local level. Similarly, the National Plan for Adolescents’ Integral Health (2009-2013) (*Plan Nacional para la Salud Integral de las y los Adolescentes 2009-2013*), contains specific interventions to prevent teen pregnancy and activities to promote sexual and reproductive health care and the Youth Law (*Ley de la Juventud*), recognises sexual and reproductive rights of adolescents and young people, including sex education and differentiated sexual and reproductive health care services.¹⁹

However, according to information received, implementation of these policies is still a challenge. Interviewees from women rights organizations, social movements, service providers and intergovernmental organizations mentioned weak institutions, insufficient funding, lack of training and confusion about budget holders and responsibilities for implementing these

¹⁵ Committee on Economic, Social and Cultural Rights “The right to the highest attainable standard of health (article 12 of the International Covenant on Economic, Social and Cultural Rights)”, General Comment 14, 11 August 2000, UN Doc E/C.12/2000/4, para. 21.

¹⁶ Montevideo Consensus on Population and Development, *Full integration of population dynamics into rights-based sustainable development with equality: key to the Cairo Programme of Action beyond 2014*; adopted at the First session of the Regional Conference on Population and Development in Latin America and the Caribbean; Montevideo, 12-15 August 2013; paras. 40-42.

¹⁷ Law 348, 20 June 2013, *Ley integral para garantizar a las mujeres una vida libre de violencia*.

¹⁸ See Estado Plurinacional de Bolivia, Ministry of Health and Sports, Publication No. 140, 2010, <http://www.sns.gob.bo/institucional/redes%20y%20calidad/PLAN%20ESTRATEGICO%20NACIONAL%20DE%20SALUD%20SEXUAL%20Y%20REPRODUCTIVA.pdf>

¹⁹ Another interesting initiatives are the Universal Maternal and Child Insurance (*Seguro Universal Materno Infantil – SUMI*) created by Law 2426 in 2002, which establishes a free and integral insurance for health services for pregnant women –from the beginning of their pregnancies until six months after the delivery– and for children up to 5 years. The services and beneficiaries of SUMI were increased in 2007 by Law 3250. In 2009 the government also introduced the “*Bono Juana Azurduy*”, which also has as an objective the reduction of maternal and child mortality and malnutrition.

laws and policies.²⁰ Absence of culturally adequate information for women and girls, in every language spoken, was also a concern.

Although these efforts in legislation and policies are encouraging, much more needs to be done. Bolivia still shows very worrying indicators. According to UNPFA, while the average adolescent fertility in Latin America and the Caribbean is 70 births per thousand women aged between 15 and 19 years, the second highest in the world after Sub-Saharan Africa, in Bolivia that rate is 88.²¹ Furthermore, in Bolivia three in ten teenagers in the poorest group is a mother or pregnant, compared with one ten in the richest sector.²² While in 2003, 16 percent of the total number of adolescents aged 15 to 19 were mothers or were pregnant, in 2008 this figure increased to 18 percent. Also, 74 percent of teenage pregnancies were unplanned.²³

Amnesty International would also like to highlight efforts carried out by social movements and local non-governmental organizations to draft a law on sexual and reproductive rights which has strong consensus among Indigenous women. In December 2012, the draft bill was presented to the head of each chamber of the Plurinational Legislative Assembly (*Asamblea Legislativa Plurinacional*) and many other legislators, followed by a debate about the need for such legislation. Even the government's National Plan on Sexual and Reproductive Health recognizes the importance of such a law.²⁴ However, the draft bill was not officially tabled before the Assembly and its discussion is not yet in the legislative agenda. Amnesty International is concerned that delays in tabling this draft bill are putting at risk its approval and implementation and may be a signal of lack of political will.

The bottom-up developed draft Law on Sexual and Reproductive Rights is needed to regulate the recognition of such rights under article 66 of the Constitution, unpacking the meaning of those rights. Among other things, this law would guarantee the right to receive information, orientation and sexual and reproductive health services to prevent unplanned or unwanted pregnancies; would guarantee sexual education in schools, the right to freely choose

²⁰ For example although international cooperation has increased its efforts to guarantee the provision of contraceptives, according to information received by Amnesty International, in 2013 many were not distributed in due time because of administrative lack of coordination, see <http://www.lapatriciaenlinea.com/?nota=133292>

²¹ See http://www.la-razon.com/sociedad/ONU-Bolivia-mayores-embarazo-adolescente_0_1867613294.html

²² *Idem*.

²³ UNPFA Bolivia, *Boletín Informativo Agosto 2013*, available at <http://bolivia.unfpa.org/content/bolet%C3%ADn-informativo-agosto-2013-unfpa-bolivia-embarazo-adolescente>

²⁴ In its first line of action the National Plan proposes activities to secure the "formulation and implementation of strategies for appropriate legislation of article 66 of the new Political Constitution of the State." Even though Bolivia has a National Plan on Sexual and Reproductive Health, a Law is needed. Firstly, such plan is limited in time (lasts until 2015). Secondly, while the Plan is a good first effort to improve sexual and reproductive health, rights are not guaranteed by it. According to the introduction, the National Plan is "an indicative operational tool (...) expressing political orientations". The Law on Sexual and Reproductive Rights, on the other hand, could consolidate the attainments of the National Plan without an expiration date, and give proper protection to sexual and reproductive rights.

traditional medicine and explicit recognition of sexual rights as separate from reproduction.

b. Amnesty International recommendations to the Bolivian State

- Reform the Criminal Code to ensure that abortion is decriminalized in all circumstances, and that women and girls seeking or obtaining an abortion are not subjected to criminal sanctions.
- Ensure medical practitioners are not subjected to criminal sanctions solely for providing safe abortions services.
- Eliminate all practical barriers to access safe and legal abortion and ensure that safe and legal abortion services are available to all girls and women.
- Provide adequate resources to ensure the implementation of the national strategy on sexual and reproductive rights, in particular, to ensure access to adequate information to women regarding contraception.
- Promptly adopt legislation on sexual and reproductive rights, in line with Bolivia's international obligations.
- Strengthen efforts, through education and other measures, to reinforce gender equality and combat discriminatory gender stereotypes.

II. RIGHT TO LIFE, PROHIBITION OF TORTURE AND OTHER ILL-TREATMENT, AND FIGHT AGAINST IMPUNITY (ARTICLES 2, 6 AND 7 ICCPR)

a. Impunity and reparation for human rights violations (Question 8 in the List of Issues)

The right of many victims of human rights violations committed during the military and authoritarian regimes in Bolivia (1964-1982)²⁵ to an effective remedy, including truth justice and reparation have not yet been fulfilled.

Absence of investigations and persistent delays in bringing to justice all those suspected of criminal responsibility for human rights violations under the military and authoritarian regimes, remain a concern.²⁶ In particular, attempts to investigate cases of enforced

²⁵ According to the reports by the association of relatives of enforced disappeared victims in Bolivia, ASOFAMD, during the regime of Hugo Banzer (1971-1978) at least 68 persons were forcibly disappeared, 35 of these under the "Operation Condor", and 78 persons suffered extrajudicial executions. The same organization has reported more than 80 cases of enforced disappearances during the other past military regimes. Illegal detentions and torture were widespread during all years of the military and authoritarian regimes in Bolivia. See http://www.lostiempos.com/diario/actualidad/nacional/20070716/familiares-de-desaparecidos-todavia-albergan_16004_18690.html

²⁶ Bolivia has three sentences by the Inter American Court of Human Rights for human rights violations committed during the military regimes. Case *Ibsen Cardenas and Ibsen Peña vs Bolivia* (judgment September 2010); case *Ticona Estrada and others vs Bolivia* (judgment November 2008); case *Trujillo Oroza vs Bolivia* (judgment January 2000).

disappearance have encountered serious obstacles, including lack of full access to military files that could shed light on the whereabouts of those who were forcibly disappeared. Despite the existence of several court orders and a resolution passed by the Ministry of Defence, military files have still not been fully opened.²⁷

Further, mechanisms to establish the whereabouts and to investigate cases of enforced disappearances have been under-resourced and have not proved very effective. In October 1982, the National Commission of Investigation of Enforced Disappearances (*Comisión Nacional de Investigación de Desaparecidos Forzados*) was created.²⁸ The objective of the commission was to locate the remains of victims of enforced disappearances between 1964-1982 and push for investigations. However, the Commission did not publish a final report because it was disestablished in 1984 before it finished its work.

In 2003 the Inter-institutional Council for the Clarification of Enforced Disappearances (*Consejo Interinstitucional para el Esclarecimiento de Desapariciones Forzadas*) was set up. The council included representatives of relatives of victims of enforced disappearances. According to information provided by the authorities, the council is undertaking further work to identify the remains of victims of enforced disappearances as well as criminal investigations to identify the perpetrators of the human rights violations committed between 1964 and 1982. While Amnesty International welcomes recent efforts to carry out the exhumation of victims of enforced disappearances, progress in locating and identifying bodies remains slow and impunity for such abuses remains.²⁹ To establish the whereabouts and the fate of the disappeared victims constitutes a measure of reparation that needs to be attended by the State.³⁰

Absence of investigations and persistent delays in bringing to justice all those suspected of criminal responsibility for human rights violations between 1964 and 1982 goes along with lack of effective measures to ensure full reparation to victims and relatives of the victims in line with international standards.³¹ In March 2004, Law 2640 on “Exceptional

²⁷ Resolution No. 0316/2009 by the Ministry of Defence, 19 May 2009. Supreme Court Order No. 125, April 2010. Also, the Judicial Resolution No 384/2009, 16 September 2009 ordering access to classified documents by the Military from July and August 1980 with the aim to investigate the whereabouts of Renato Ticona Estrada, Marcelo Quiroga Santa Cruz and Juan Carlos Flores Bedregal; Judicial Resolutions No 59/2010 and 101/2010 which extend the order to classified documents from 1980.

²⁸ See Supreme Decree 241, de 1982.

²⁹ In 2010 and 2013 the Inter American Court of Human Rights ordered the State to implement, within a reasonable term and with the corresponding budgetary resources, a training program on due investigation and prosecution of facts which constitute forced disappearance of persons, addressed to Public Prosecutors’ Office agents, judges of the Judiciary Power of Bolivia (see case *Ibsen Cárdenas and Ibsen Peña vs Bolivia*, Judgment 1 September 2010 and supervision of the judgment, 14 May 2013).

³⁰ Inter American Court of Human Rights, Case *Ibsen Cárdenas and Ibsen Peña vs Bolivia*, Judgment 1 September 2010, para. 214.

³¹ . See Office of the High Commissioner, 2012 Bolivia annual report, February 2013, A/HRC/22/17/Add.2. For international standards on the right to remedy and reparation see the UN General Assembly Resolution 60/147, March 2006-Basic Principles and Guidelines on the right to a remedy and reparation for victims of gross violations of International Human Rights Law and serious violations of International Humanitarian Law establishes the rights of the victims to equal and effective access to justice, reparation for the harm suffered and access to relevant

compensation to victims of political violence during periods of unconstitutional governments" (*Ley 2640 de Resarcimiento excepcional a víctimas de la violencia política en períodos de gobiernos inconstitucionales*) was passed.³² The norm was welcomed by the victims and organizations as it was the first attempt to address their right to reparation. The norm established a set of measures of reparation such as free medical assistance, psychological rehabilitation, the obligation of the state to honor the victims and monetary compensation to victims and relatives of those who suffered from enforced disappearances, torture, killings or were persecuted and detained or forced to go into exile for political reasons between 1964 and 1982.

Law 2640 created the National Commission for Redress of the Victims of Political Violence (*Comision Nacional para el Resarcimiento a Víctimas de Violencia Política, CONREVIP*),³³ to assess the applications. In 2009 the *CONREVIP* was replaced by a new commission, the Technical Qualification Commission (*Comisión Técnica de Calificación, COMTECA*),³⁴ under the authority of the Ministry of Justice.

After eight years, in May 2012, the official list of beneficiaries according to Law 2640 was released.³⁵ Of the around 6,200 applications received, 1,714 people were qualified as beneficiaries.

National and international institutions have expressed concerns about the lack of transparency and the unfairness of the qualification process, which ended with around 70 percent of the applications rejected. Some institutions have called on the authorities to ensure the right to effective reparation and redress for victims.³⁶

In May 2013, survivors of grave human rights abuses and their relatives explained to Amnesty International that conditions imposed by the *CONREVIP* and the *COMTECA* have been extremely restrictive.³⁷ For example, in the case of torture or enforced disappearances,

information concerning violations and reparation mechanisms. Effective reparation includes the restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition, paras. 15-20.

³² Law 2640, 11 March 2004. See also Supreme Decree 28015, 22 February 2005

³³ According to article 12 of Law 2640 this was an inter-institutional commission formed by one representative from the Ministry of Presidency –who acted as the president of the Commission – and one representative each from the Ministry of Finance, the Human Rights Commission of the Deputy Chamber, the Episcopal Conference of Bolivia and the Workers Union (*Central Obrera Boliviana*).

³⁴ Law 4069, 27 July 2009 and Ministerial Resolution No. 122/09, 19 August 2009.

³⁵ Supreme Decree No 1211, 1 May 2012.

³⁶ UN Office of the High Commissioner for Human Rights, Annual Report Bolivia A/HRC/22/17/Add.2, 8 February 2013, paras. 62 and 63; Committee against Torture, Concluding Observations, Second report of the Plurinational State of Bolivia adopted during the 50th period of sessions (6 to 31 May 2013), para. 14; Permanent Assembly for Human Rights of Bolivia, *Asamblea Permanente de Derechos Humanos de Bolivia (APDH)*, http://www.radioiyambae.com/sitio/index.php?option=com_content&view=article&id=1780%3Ael-gobierno-indemnizara-a-1600-victimas-de-la-violencia-politica&Itemid=9

³⁷ In May 2013 Amnesty International interviewed members of several organisations and victims of the military and authoritarian

testimonies to certify the violations were requested. Applicants were also asked for testimonies to give evidence of exact dates of the abuses which would be difficult or impossible to obtain to qualify as a victim of an illegal detention or persecution for political reasons.³⁸ In practice, missing one of the requirements resulted in failing to qualify as a beneficiary.

The Ministry of Justice has informed Amnesty International of its decision not to review any application and that the process of qualification is now finished. The Ministry argues that the state has fully complied with the law and insists that those who were not included in the list of beneficiaries did not provide sufficient proof as established by the law.

The different commissions, and in particular the COMTECA, did not take into account other sources of information besides the documents that victims or relatives could provide. According to some of the files reviewed by Amnesty International as well as testimonies gathered by the organization, no comprehensive explanation has been given to victims regarding the reasons for rejecting their applications besides a standard notification which in many cases only states that the request has not been successful due to lack of sufficient evidence.³⁹

Reparation must be adequate, effective and comprehensive. With respect to psychological rehabilitation, Amnesty International is not aware of any specific programme. As recently stated by the Committee against Torture, rehabilitation “seeks to enable the maximum possible self-sufficiency and function for the individual concerned, and may involve adjustments to the person’s physical and social environment. Rehabilitation for victims should aim to restore, as far as possible, their independence, physical, mental, social and vocational ability; and full inclusion and participation in society”.⁴⁰ The same Committee states that legislation should be put in place with concrete programmes for providing rehabilitation to victims of torture or ill-treatment. According to the information received by Amnesty International, there is no specific health and psychological support for victims but only that which anyone can access via the general health service and the Elderly Social Insurance (*Seguro Social para el adulto Mayor*).⁴¹

Full reparation also encompasses satisfaction, which amongst others includes “public apologies, (...) acknowledgement of the facts and acceptance of responsibility;

regimes, including the Platform for social activists against impunity, for justice and historical memory of the Bolivian people (*Plataforma de luchadores sociales contra la impunidad, por la justicia y la memoria histórica del pueblo Boliviano*), Association of Families of Disappeared (*ASOFAM*), ex prisoners of detention camps in Madidi and Coati and Women Freedom (*Mujeres Libertad*).

³⁸ Supreme Decree No 29214, 2 August 2007 about the Minimum Requirements to Qualify for Compensation (*Requisitos Mínimos de Calificación de Hechos Resarcibles*).

³⁹ Seventy percent of the applications were rejected on the grounds of lack of evidence (*insuficiencia probatoria*). Letter by the Ministry of Justice sent to Amnesty International, 26 July 2013 (MJ-DESP-No.0920/2013).

⁴⁰ UN Committee against Torture, General comment No. 3 (2012), CAT/C/GC/3, December 2012, para. 11.

⁴¹ Letter sent by the Ministry of Justice to Amnesty International, 26 July 2013.

commemorations and tributes to the victims”.⁴² In October 2012, the Ministry of Justice informed Amnesty International⁴³ that tributes to victims –as requested by article 5 of Law 2640- were still pending.

On 30 April 2012, a new law⁴⁴ was passed by the Plurinational Legislative Assembly to establish a one-off and definite payment of 20 percent of what could have been the total compensation as stated by Law 2640.

According to the Ministry of Justice the majority of the 1,714 beneficiaries –as determined in May 2012- have received the payment.⁴⁵ The Ministry also informed Amnesty International that in March 2012 a request to obtain external funds to cover the other 80 percent of the total payment had been sent to the Ministry of Planning Development (*Ministerio de Planificación del Desarrollo*) – in charge of requesting funds from external sources, but no positive response was received. Amnesty International is not aware of any further steps taken by the authorities to secure the remaining 80 percent of the funds to cover the total cost of the compensations as established in the 2004 law. In this regards, in its latest report on Bolivia, the Inter-American Commission of Human Rights has stated that “if overtures to obtain external funding are not successful, the State will take the necessary budgeting steps to give continuity to the above-mentioned programs for identification of remains and for reparations.”⁴⁶

In March 2012 several survivors of human rights violations and their relatives, members of the Platform of social activists against impunity, for justice and historical memory of the Bolivian people (*Plataforma de luchadores sociales contra la impunidad, por la justicia y la memoria histórica del pueblo Boliviano*), set up a protest campsite in front of the Ministry of Justice in La Paz. At the time of writing the protest continued. They are demanding a review of the applications process and full payment as established by the 2004 law and full reparation to be provided to the victims for the abuses they or their loved ones suffered in the past.

Amnesty International received information that on 8 February 2013 Victoria López, one of the members of the association currently protesting in front of the Ministry, was attacked and injured. On February López told Amnesty International she was inside one of the tents, when three men, who appeared to be drunk, approached and started to destroy the tent and placards outside it. When Victoria López tried to stop them, one of the men started to beat her with a stick. He also smashed a computer and other possessions in the tent. According to

⁴² UN Committee against Torture, *supra* note 40, para. 16.

⁴³ Letter from Ministry of Justice, MJ-DESP-No. 1143/2012

⁴⁴ Law 238, 30 April 2012.

⁴⁵ According to official information provided to Amnesty International 1,438 persons had been granted with economic compensation as for 14 February 2013; 312 persons received the maximum compensation allowed (7,080 \$US). Letter by the Ministry of Justice sent to Amnesty International, 26 July 2013 (MJ-DESP-No.0920/2013).

⁴⁶ Inter-American Commission of Human Rights, *Access to justice and social inclusion: The road towards strengthening democracy in Bolivia*. Follow up report 2009, para. 93.

Victoria López, the man said, “Why are you (all) still here; until when?” (*Por qué siguen acá; hasta cuándo?*) She was left with a broken arm and a cut on her head which required 13 stitches. Other protesters caught the main attacker at the campsite, and handed him over to a nearby police officer. As far as Amnesty International has been able to ascertain, the officer let him go without questioning him. The association of victims believes that Victoria López was attacked by an official from the Ministry of Justice and filed a criminal complaint with the public prosecutor on 14 February. The Minister of Justice issued a statement the next day saying that it did not send anybody to attack the protesters.⁴⁷ The attack against Victoria López remains unpunished.

Victims and relatives of victims have been calling for the creation of a truth commission that could bring to light the crimes committed between 1964 and 1982. Amnesty International received information that a draft bill is currently under discussion between the Ministry of Justice and some victims’ organizations.⁴⁸ Amnesty International welcomes the efforts to create such a body, or any other mechanism that would enhance the search for truth and justice, and calls on the authorities to ensure that the draft bill is adequately consulted with all the organizations that represent victims and their families of past human rights violations.⁴⁹

The authorities should ensure that the truth commission upholds the right of victims of past human rights violations to obtain truth, justice and reparation. To this end, Amnesty International considers that any truth commission- which must not replace criminal investigations- should: clarify as far as possible the facts about past human rights violations; feed the evidence they gather into continuing and new investigations and criminal judicial proceedings; and formulate effective recommendations for providing full reparation to all the victims and their relatives.⁵⁰ Members of a truth commission should be selected on the basis of their competence in human rights, proven independence and recognized impartiality. They should have demonstrated experience and qualification in the field of, as well as proven commitment to uphold, human rights.⁵¹

b. Fight against impunity and prompt investigations (Question 9 in the List of Issues)

Concerns remain about the delays in the administration of justice, which has been highlighted by the Committee and UN Office of the High Commissioner for Human Rights for

⁴⁷ See <http://www.iusticia.gob.bo/index.php/noticias/notas-de-prensa/940-ministra-de-justicia-niega-enfaticamente-la-agresion-a-la-sra-victoria-lopez>

⁴⁸ Meetings with victims; OHCHR 2012 report, recommendation I)

⁴⁹ For example, members of the *Plataforma de luchadores sociales*, as well as APDH, has informed Amnesty International that they have not taken part of the discussions; whilst other organizations, such as Asofamd, informed that they were actively involved in the draft. See http://www.la-razon.com/nacional/seguridad_nacional/Victimas-dictaduras-comision-verdad-Bolivia_0_1854414622.html

⁵⁰ See Amnesty International, *Truth, justice and reparation: establishing and effective truth commission*, AI Index: POL 30/009/2007.

⁵¹ UN Set of principles for the protection and promotion of human rights through action to combat impunity, E/CN.4/2005/102/Add.1 Updated, Principle 7.

many years.⁵²

Trial proceedings connected to the September 2008 Pando massacre (also known as the Porvenir Massacre) in which 13 people, mostly peasant farmers, were killed and approximately 50 others injured, started in June 2010 and are still ongoing. According to the prosecutor's formal indictment, 27 people have been charged for crimes including terrorism, murder, and serious injuries. After almost five years since the event, concerns remain about the slow progress of the hearings and bringing justice and reparation to the victims and their families.⁵³

Similarly, justice is still pending in the so-called 24 May case. In May 2008 Indigenous and *campesino* (peasant farmers) supporters of President Morales were corralled by a group of opposition activists in the city of Sucre's main square where they were beaten, their shirts were stripped off and they were forced to burn their traditional clothing and flags and to chanted slogans critical of the President. In 2011 the oral hearing in this process started but has been subjected to a number of suspensions. No one has yet been tried and convicted.

Hearings in the case of 39 people accused of involvement in an alleged plot in 2009 to kill President Evo Morales began in October 2012. However, at the time of writing this submission, there had been no investigations into the actions of security forces, including the eventual excessive use of force that resulted in the killings of three men who were allegedly involved in the plot, and the allegations of arbitrary detention. The UN Working Group on Arbitrary Detention determined in 2011 that one of the accused in the process - Elöd Tóásó - was a victim of arbitrary detention.⁵⁴

c. Torture, inhuman and degrading treatment, and excessive use of force by the police (Questions 9 and 10 in the List of Issues)

(i) Lack of adequate definition and independent mechanism to investigate torture

Bolivia ratified the UN Convention against Torture in April 1999. Further, in 2006 it ratified the Optional Protocol to the Convention, which establishes the obligation to create a national preventive mechanism. Amnesty International welcomes these ratifications, as well as the acceptance by Bolivia, under the Universal Periodic Review, of the recommendation "[t]o amend domestic legislation, in keeping with its international commitments, to include the

⁵² Human Rights Committee, Concluding Observations Bolivia, during its 1562 and 1563 sessions, CCPR/C/79/Add.74, May 1997; Office of the High Commissioner in Bolivia, 2012 Country report, A/HRC/22/17/Add.2, para. 46-48, also 2011 Country report, A/HRC/19/21/Add.2, para. 52.

⁵³ According to Supreme Decree No. 29,719, 24 September 2008, an exceptional payment of Bs50,000 for relatives of those killed in the massacre was established.

⁵⁴ UN Working Group on Arbitrary Detention, 2011 report to the Human Rights Council, A/HRC/19/57, 26 December 2011.

concept of torture”.⁵⁵

The current definition of torture, under article 295 of the Criminal Code, does not fully conform to the requirements under international law. In May 2013, in its Concluding Observations, the UN Committee against Torture recommended that the state “should incorporate a definition of torture into its body of criminal law that includes all the elements set forth in article 1 of the Convention. These elements include a clear definition of intent, of aggravating circumstances, of attempted torture, of acts of torture committed to intimidate or coerce a person or a third person and of acts of torture committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity” and reiterated its call to incorporate appropriate penalties that take into account the grave nature of the crime.⁵⁶

According to Bolivia’s third periodic report to the Human Rights Committee – submitted in August 2011 – and the state’s second periodic report to the Committee against Torture submitted in October 2011, a process to reform the criminal code that is currently underway would include changes in the definition of torture. The UN Committee against Torture has highlighted its concern about the flaws of this draft bill as it “does not cover acts of torture carried out in order to intimidate or coerce a third person or acts committed by a person other than a public official who is acting in an official capacity”.⁵⁷ At the time of writing this report, no legislation has been passed.

Moreover, according to the third transitory article of Law 025 on the Judicial Body of June 2009, a transitional period of a maximum of two years was established to modify codes that regulate the administration of justice, with the Criminal Code being a priority.⁵⁸ That deadline has passed by several years.

At the time of writing this report, the national law has not yet been reformed to create a national preventive mechanism, as required by the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. According to information received, although a draft law to create and implement the national mechanism is currently with the Ministry of Justice, and has been consulted with different groups, no advances have been made to ensure its prompt consideration in the Plurinational Legislative Assembly.

Bolivia does not have an independent mechanism to take up and investigate allegations of torture and other ill-treatment, resulting in impunity for such acts. According to reports received by Amnesty International, the lack of such a mechanism deters people from lodging

⁵⁵ Human Rights Council, Report of the Working Group on the Universal Periodic Review, 14th period of sessions, A/HRC/14/7, 15 March 2010, recommendation 27.

⁵⁶ Committee against Torture, Concluding Observations on the second periodic report of the Plurinational State of Bolivia as approved by the Committee at its fiftieth session (6–31 May 2013), CAT/C/BOL/CO/2, June 2013, para. 8.

⁵⁷ *Ibid.* para. 8

⁵⁸ See the second state report to the Committee against Torture (CAT/C/BOL/2, March 2012), para. 15.

complaints of torture and other ill-treatment, particularly in cases relating to drug trafficking. The UN Committee against Torture has stressed the need to ensure such a mechanism, when it requested that the state “establish a special independent complaints mechanism for receiving reports of torture and ill-treatment so that such reports can be dealt with swiftly and impartially (...)”, and reiterated the need to create a centralized register system with information on investigations and criminal and disciplinary penalties imposed.⁵⁹

(ii) Excessive use of force by the police in Chaparina

In August 2011, more than 1,000 Indigenous people and activists marched peacefully from the town of Trinidad, Beni Department, towards La Paz to protest against the planned construction of a road between Cochabamba and Trinidad which would cross the Isiboro-Sécure Indigenous Territory and National Park (*Territorio Indígena y Parque Nacional Isiboro Securo*, TIPNIS).

On 25 September 2011, the march was obstructed in Yucumo, Beni Department, where supporters of the road blocked their path. According to the authorities, hundreds of police officers were deployed to the area (around a place called Chaparina) to prevent any clashes. While trying to stop the march, the police responded with excessive use of force against indigenous protesters. The police used excessive and indiscriminate tear gas and truncheons during a raid on the makeshift camp where the protesters were based. This event happened a day after some protesters had apparently forced the Foreign Minister to briefly march with them.

According to testimonies gathered by the organization, when the police arrived at the camp, many of the protesters fled, and in the confusion some parents were separated from their children. Approximately 70 people were injured and the police detained between 200 and 300 of people. In some cases they placed tape over the mouths of the people arrested. Further, according to reports, a doctor who had joined the march to provide assistance during the road protests was beaten while being detained.⁶⁰

While Amnesty International acknowledges the public order difficulties that may arise in the context of demonstrations, the police should only use force where strictly necessary and even then only to the minimum possible amount required by the circumstances, so that the risk of inflicting harm and injuries is reduced to a minimum. Amnesty International believes that the protesters were posing no threat to the security forces. This calls into serious question the proportionality and necessity of the measures taken by the police and therefore Bolivia’s compliance with state obligations to respect the rights enshrined in the Covenant (including under articles 6 and 7) and other human rights standards on the use of force.⁶¹

⁵⁹ *Supra nota 56*, para. 10.

⁶⁰ Ombudsman report, November 2011.

⁶¹ Article 3 of the UN Code of Conduct for Law Enforcement Officials states that they “may use force only when strictly necessary and to the extent required for the performance of their duty.” According to Principle 4 of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, they “shall, as far as possible, apply non-violent means before resorting to the use of

No comprehensive and effective investigation into the allegations of ill-treatment against Indigenous people and other supporters during the march appear to have been carried out to date. According to article 134 of the Criminal Procedural Code, the preparatory phase (*etapa preparatoria*) of a criminal procedure should take no longer than six months, with the possibility to extend this period to up to 18 months based on the complexity of the case. Further, according to article 133 of the same code, the maximum duration of a process is three years counted from the first procedural act. In this case, is in the preparatory phase and two people have been indicted. In its most recent visit to the country in May 2013, Amnesty International requested a meeting with the prosecutor in charge of the investigation; no response was received.

The slow progress of the investigations in this case raises concerns about the willingness of the authorities to effectively investigate the complaints of excessive use of force during the police operation in September 2011, and to bring all those suspected of criminal responsibility for the abuses to justice.⁶²

d. Amnesty International recommendations to the Bolivian State

- Strengthen mechanisms to bring truth and justice to victims of human rights violations committed between 1964 and 1982. This includes, among others, steps to ensure prompt, independent and impartial investigations to bring those responsible to justice.
 - Guarantee that the proposed truth commission satisfies the requirements of independence and autonomy, as required by international standards. A Truth commission should not replace judicial proceedings.
 - Ensure full and effective reparation for victims of human rights violations committed in the past, including the setting up of a fair and transparent mechanism to review applications submitted under Law 2640.
 - Guarantee access to classified military files that could provide relevant information for the clarification of cases of enforced disappearances, killings and other human rights violations committed between 1964 and 1982.
 - Carry out an independent and exhaustive investigation into the attack against Victoria Lopez, a member of the Platform for Social Activists Against Impunity, for Justice and Historical Memory of the Bolivian People..
 - Ensure full compliance with the three Inter American Court judgements of 2000, 2008
-

force and firearms. They may use force and firearms only if other means remain ineffective or without any promise of achieving the intended result." Principle 5 states that "whenever the lawful use of force and firearms is unavoidable, law enforcement officials shall: ... [e]xercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate objective to be achieved". Principle 9 states that "intentional lethal use of firearms" should only be used "when strictly unavoidable in order to protect life".

⁶² Similar concerns have been raised by local organizations, such as *Asamblea Permanente de Derechos Humanos*, and the National Ombudsman, see *Defensoría del Pueblo, 2012 report*, December 2012, p. 50.

and 2010 in relation to cases of human rights violations committed during the military and authoritarian regimes in Bolivia from 1964 to 1982.

- Guarantee truth, justice and reparations to victims and their relatives in the Porvenir Massacre in the context of a prompt, independent and impartial trial.
- Conduct independent and impartial investigations into allegations of arbitrary detention, excessive use of force and extrajudicial killing during the police intervention in the 2009 in Santa Cruz in the context of an alleged terrorism plot.
- Ensure that the definition and sanction of torture in the Criminal Code is consistent with the UN Convention against Torture.
- Create and implement a national preventive mechanism in line with the Optional Protocol to the UN Convention against Torture.
- Ensure that all cases of human rights violations, including torture and other ill-treatment, are investigated in ordinary courts.
- Ensure that allegations of excessive use of force by the police are promptly and independently investigated and those suspected of criminal responsibility are brought to justice, and that there is no impunity for the police misconduct in the Indigenous march in September 2011.
- Strengthen programmes of awareness and education of human rights among the police and security forces to ensure that while performing their duties, they comply with international norms and standards on the use of force.

III. RIGHT OF PERSONS DEPRIVED OF THEIR LIBERTY (ARTICLES 9 AND 10 ICCPR)

a. Prison conditions (Questions 14 and 15 in the List of Issues)

Poor prison conditions in Bolivia is one of the most dramatic human rights concerns in the country and has been denounced by national and international organisations for years. In its third periodic report to the Committee the state recognized that overcrowding is critical,⁶³ explaining the number of measures it is taking to tackle it. International comparisons show that, based on the latest data provided by the Organisation of American States (OAS), in 2010 the prison occupancy rate in Bolivia was 233 percent, which is the second highest in the Americas after El Salvador.⁶⁴

⁶³ Bolivian third report to the Human Rights Committee, CCPR/C/BOL/3, 25 August 2011, para. 104.

⁶⁴ Organization of American States, *Report on Citizen Security in the Americas 2012: Official Statistical Information on Citizen Security provided by the OAS Member States*, July 2012, page 122, <http://www.oas.org/dsp/alertamerica/Report/Alertamerica2012.pdf> Official capacity of prisons means the intended number of places available at adult prisons, penal institutions or correctional facilities as at December 31 of any given year. Excludes

According to information provided by the General Directorate of Penitentiary Regime (*Dirección General de Régimen Penitenciario*) between 2003 and 2013 there was a 137 percent increase in the prisons population in the country. The latest data from May 2013 indicates that the total population in prisons in the country – distributed in the 55 detention centres – was at 14,441 inmates, from which 12,749 were men and 1,692 were women.

According to reports, delays in the administration of justice to conclude trials as well as the excessive use of pre-trial detention and the limited use of alternatives to pre-trial detention, contribute to prisons overcrowding. Reports indicate that approximately 80 percent of all detainees were in pre-trial detention by 2012.⁶⁵ Further, official data indicates that some people spend even longer in prison than the maximum term they can legally receive; for example, in San Pedro prison approximately 30 people may be in this situation.⁶⁶

In December 2012, Presidential Decree (*Decreto Presidencial*) 1445⁶⁷ established a presidential pardon (*indulto*) as a way to deal with the overpopulation in prisons. The pardon was to be given to those with unappealable sentences under certain conditions⁶⁸, or those who had been in pre-trial detention if they were sentenced in an abbreviated procedure within 120 days of the decree entering into force. The expectation was that this measure would benefit approximately 2,000 detainees. Although some people have benefited, the measure has not had the expected results. By March 2013 the measure had benefited around 200 people.⁶⁹

The conditions of detention centres -including adequate separation of inmates in pre-trial detention from those who have been sentenced, as well as the need to improve prison services such as health and food provision- have also been highlighted as concerns in Bolivia.⁷⁰ Although national law (Law 2298, December 2001)⁷¹ includes the obligation by

places/capacity used for detention of persons on the basis of immigration status.

⁶⁵ See 2012 Report from the Bolivia Ombudsman, page 48, http://www.defensoria.gob.bo/defensor/userfiles/file/INFORME_DDHH_2012_FINAL.pdf ; see also UN Office of the High Commissioner in Bolivia, 2013 Report on Bolivia, A/HRC/22/17/Add.2, para. 71. <http://bolivia.ohchr.org/docs/Informe%20Anual%202012.pdf>

⁶⁶ Information provided to Amnesty International during a meeting with the Director of the General Directorate of the Penitentiary Regime, May 2013.

⁶⁷ Presidential Decree 1445, 19 December 2012, published in Official Gazette (*Gaceta Oficial del Estado Plurinacional de Bolivia*), edition 466NEC, 31 December 2012. On 11 September 2013, another presidential pardon decree was passed.

⁶⁸ According to article 3 of Decree 1445, it has to be individual serving a first crime conviction under some of the following conditions: men over 58 and women over 55 who have served 1/3 of the conviction, young people up to 25 year old who have served 1/3 of the conviction, people with terminal illness, among others.

⁶⁹ Information provided to Amnesty International during a meeting with the Director of the General Directorate of the Penitentiary Regime, May 2013. See also, http://www.lostiempos.com/diario/actualidad/nacional/20130304/indulto-no-llega-ni-al-50-de-reos-elegibles_204337_437139.html

⁷⁰ UN Office of the High Commissioner in Bolivia, 2012 Report on Bolivia, A/HRC/22/17/Add.2, para. 72, <http://bolivia.ohchr.org/docs/Informe%20Anual%202012.pdf>; Bolivian state report to the Human Rights Committee, CCPR/C/BOL/3, para. 104; UN Human Rights Committee, Concluding Observations, CCPR/C/79/Add.74, May 1997, para. 30; 2012

the state to ensure adequate prisons facilities and separation of detainees, this regulation does not apply in practice.

Amnesty International is concerned at allegations of lack of control that the authorities have over detention centres, which has been recognized by President Evo Morales.⁷² This may facilitate the presence of weapons and firearms among prisoners. Law 2298, articles 67 and 71, indicates that external security of prisons is the responsibility of the National Police, while internal security should be carried out by specialized personnel of the National Police. Amnesty International received information that, in practice, due to lack of human resources, the police has capacity to be mainly responsible for external (perimeter) security control.

In August 2013, a major fire allegedly started as a consequence of a fight between detainees in Palmasola prison (Santa Cruz) that ended with the death of more than 30 interns and dozens injured.⁷³ The incident reflects the weak control over the prison that the authorities have. It further exposed the poor conditions of the detention centre and the level of overcrowding.

The presence of children living with their parents in the prisons raises concerns amongst local organizations about the safety of these children and the impact this may have on their lives, personal security and their education.⁷⁴ According to article 26 of Law 2298, children under six years old can live in prison with their parents. According to reports, nevertheless, more than half of the children who live in prisons exceed that age.⁷⁵ In its latest review of Bolivia, UN Committee on the Rights of the Child recommended the state “to develop and implement clear guidelines on the placement of children with their parent in prison [...] and ensure safety and living conditions, including health care, adequate for the child's development as required by article 27 of the Convention”.⁷⁶

Bolivia Ombudsman report, page 48. Also in September 2012 a general regulation for the penitentiaries (*Reglamento General de Centros Penitenciarios, Res. Ministerial 190/2012*), this is the first attempt to regulate the rights and duties of the persons deprived of liberty and personnel working in the prisons to ensure the safety in the prisons.

⁷¹ Ley 2298 de Ejecución Penal y Supervisión, December 2001.

⁷² See http://www.la-razon.com/nacional/seguridad_nacional/Proponen-indulto-amnistia-crisis-carceles_0_1900010020.html; and <http://www.eldeber.com.bo/evo-ve-debil-aplicacion-de-la-justicia-y-un-sistema-penitenciario-en-crisis/130902130138>

⁷³ See Amnesty International public statement, *Bolivia: Las autoridades bolivianas deben investigar completamente la tragedia en la cárcel de Palmasola*, AMR 18/004/2013, 23 August 2013.

⁷⁴ Meetings with Bolivia Catholic Prison (*Pastoral Penitenciaria Católica de Bolivia*) during Amnesty International visit to La Paz in May 2013. See also Pastoral Penitenciaria Católica de Bolivia “*Voces en Libertad. Niños y cárceles. Conozca la historia que se queda tras las rejas*”, April 2013.

⁷⁵ See <http://www.lanacion.com.py/articulo/130819-bolivia-carcel-donde-fue-violada-nina-sera-cerrada-a-nuevos-presos-en-julio.html>

⁷⁶ UN Committee on the Rights of the Child, Concluding Observations: The Plurinational State of Bolivia, Fifty-second session, CRC/C/BOL/CO/4, 16 October 2009, paras. 65-66.

b. Amnesty International recommendations to the Bolivian State

- Adopt all necessary steps to improve prison conditions, including tackling overcrowding, in accordance with international law and standards including the UN Standard Minimum Rules for the Treatment of Prisoners. Guarantee that gender perspective is considered in any measure undertaken.
- Take appropriate steps to ensure the specific needs of children with their parents in prison, including measures to ensure their safety and living conditions for the child's development as required by international law.

IV. INDEPENDENCE OF THE JUDICIARY AND DUE PROCESS (ARTICLE 14 ICCPR)

a. Independence of justice system and the right to defence (Question 17 in the List of Issues)

Amnesty International is aware of the steps taken by Bolivia to strengthen the capacity of the judiciary, including its independence and impartiality, which has been a longstanding concern.⁷⁷ Nevertheless, further steps are still needed to ensure timely delivery of justice. As part of the measures taken to transform the judiciary into a more inclusive and responsive body, the 2009 Constitution established that the members of the Bolivian high courts – the Supreme Court of Justice (*Tribunal Supremo de Justicia*), the Bolivian Agricultural Court (*Tribunal Agroambiental*), the Plurinational Constitutional Court (*Tribunal Constitucional Plurinacional*), and the Bolivian Judicial Council (*Consejo de la Magistratura*) – would be elected by universal suffrage.⁷⁸ The election took place in October 2011 –with approximately 60 percent blank and invalid ballots.⁷⁹ The 56 elected magistrates took office in February 2012.

With regard to the selection process Amnesty International is concerned about the criteria for prohibition and ineligibility for judicial functions. Article 19 of the Law 025 “Law of the Judiciary Body” (*Ley del Órgano Judicial*), of June 2010, excludes those lawyers who have represented people who have been sentenced for crimes against national unity from the possibility of being elected for the highest courts. Such a provision not only affects the particular individual lawyer, but by effectively discouraging lawyers from defending persons accused of such offences it will further adversely affect the right of such accused persons to be defended by a lawyer of their choice and highlights the need for a reform in the legislation.

b. Amnesty International recommendations to the Bolivian State

- Create and implement mechanisms for the judiciary to address its backlog, including providing resources and capacity to end delays in the administration of justice.

⁷⁷ In its previous review of Bolivia, the Committee stressed the need for the government to ensure independence of the judiciary, and that the selection of judges was based on their skills and not on their political affiliation. HRC, CCPR/C/79/Add.74, May 1997, para. 34.

⁷⁸ See Bolivia Constitution, articles 182, 188, 194 and 198.

⁷⁹ See <http://www.cambio.bo/noticia.php?fecha=2011-11-11&idn=58221>

- Review Law 025 to ensure that none of its provisions conflict with the right to defence.

V. RIGHTS OF MINORITIES (ARTICLE 27 ICCPR)

a. The right to consultation and free, prior and informed consent (Question 24 in the List of Issues)

Bolivia ratified ILO Convention 169 on Indigenous and Tribal Peoples⁸⁰ and endorsed the UN Declaration on the Rights of Indigenous peoples giving it constitutional rank by Law 3760 in 2007, which requires recognition of Indigenous peoples' rights to consultation and free, prior and informed consent. In addition, the 2009 Constitution establishes Indigenous peoples' right to be consulted, requiring it to be compulsory, prior, informed, free and in good faith.⁸¹

In 2010, Bolivia supported a number of recommendations under the Universal Periodic Review (UPR) mechanism for combating discrimination against Indigenous peoples. Moreover, it accepted a recommendation which called for concrete measures to guarantee participation and consultation with Indigenous peoples,⁸² who form the majority population in the country (over 60 percent according to the 2001 census data).⁸³

Despite very inclusive national constitutional provisions in place and the commitments made by Bolivia internationally, Amnesty International believes that the right to consultation in order to seek an agreement or to obtain Indigenous peoples' free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect Indigenous peoples is yet to be fully respected in Bolivia. In its recent review of Bolivia, the UN Committee on the Elimination of Racial Discrimination also recommended the state to establish practical mechanisms for implementing the right to consultation ensuring that they are carried out systematically and in good faith, among others.⁸⁴

To carry out a consultation to obtain free, prior and informed consent with Indigenous peoples is an obligation under international law. In recent years, the controversy around a governmental project to build a road across the Isiboro-Sécure Indigenous Territory and National Park (*Territorio Indígena y Parque Nacional Isiboro-Sécure*, TIPNIS⁸⁵) exposed the

⁸⁰ The ILO convention was ratified in 1991 (Law 1257).

⁸¹ See Constitution, articles 30.II.15, 403.1 and articles 352 and 353 that refer to consultation with the affected population in case of natural resources.

⁸² See Report of the Working Group on the Universal Periodic Review – Bolivia, UN Doc. A/HRC/14/7, 15 March 2010, recommendations 98.21, 98.22, 98.23 and 98.76.

⁸³ According to the latest census from 2012, which is under review, the total population in Bolivia would be just over 10 million people, of which around 40 percent would be indigenous.

⁸⁴ UN Committee on the Elimination of Racial Discrimination, Concluding observations of the Committee on the Elimination of Racial Discrimination Plurinational State of Bolivia, CERD/C/BOL/CO/17-20, Seventy-eighth session, 8 April 2011, para. 20.

⁸⁵ Isiboro-Sécure Indigenous Territory and National Park (*Territorio Indígena y Parque Nacional Isiboro-Sécure*, TIPNIS) has an extension of approximately 1,200,000ha. It is situated between the north of the Cochabamba Department and the south of the Beni Department. The Indigenous territory TIPNIS (*Tierra Comunitaria de Origen – TCO TIPNIS*) is about 1,000,000ha of the park and the

obstacles some Indigenous peoples in Bolivia face in the enjoyment of their right to consultation and free, prior and informed consent.

Contextual information on the TIPNIS case

Since 2003 the authorities have taken key decisions on the construction of the road across the TIPNIS. These include an agreement on external funding, a call for tender and the allocation of the project to a company, which are currently suspended. In August 2011, representatives of Indigenous communities and Indigenous supporters marched from Trinidad, Beni Department, to La Paz to protest against the road (VIII Indigenous March). The protesters argued that the government plans were in breach of constitutional guarantees on prior consultation with Indigenous peoples, and of environmental preservation laws.⁸⁶ The communities opposing the project⁸⁷ were concerned that the road across the park would open up the area to extractive industries and encourage deforestation and coca production putting in danger their traditional livelihood.

Several attempts by some parliamentarians and governmental officials to secure a negotiated solution with the indigenous leaders during the march failed and in the end, as a result of the protest, Law 180 that cancelled the construction of the road and declared the territory as “untouchable” (*intangible*) was passed.⁸⁸ In January 2012 some other communities in favour of the road⁸⁹ marched also to La Paz against the Law 180 and in February 2012, another law (Law 222) calling for a consultation with Indigenous peoples in the TIPNIS over government plans was passed.⁹⁰ This new law did not revoke Law 180. Also, in February 2012, Supreme Decree 1146⁹¹ regulated the commercial use of the TIPNIS territory in application of Law 180 and defined “untouchable”. At the same time the government cancelled the contract for the construction of the road.

In April 2012, Indigenous communities opposing the road marched again to La Paz arguing

ownership title dates from 2009 (TCO – NAL 000229). Between 60 and 70 communities of indigenous people who belong to the Tsimané, Yuracaré, and Mojeño-Trinitario peoples have been living in park for many years. Communities are affiliated to one of the three “*subcentrales*”: Subcentral TIPNIS, Subcentral Sécure and Consejo Indígena del Sur – CONISUR.

⁸⁶ Law 1333 on Environment, and its regulations on environmental licenses.

⁸⁷ Mainly communities part of either the Subcentral TIPNIS or Subcentral Sécure.

⁸⁸ Law 180, published on Official Gazette (*Gaceta Oficial*), edition 308NEC, 25 October 2011, see articles 1.III and 3 of Law 180, <http://www.gacetaoficialdebolivia.gob.bo/normas/buscar/180>

⁸⁹ Mainly communities part of CONISUR.

⁹⁰ Law 222, published on Official Gazette (*Gaceta Oficial*), edition 341NEC, 10 February 2012, <http://www.gacetaoficialdebolivia.gob.bo/normas/buscar/222>

⁹¹ Supreme Decree 1146, published on Official Gazette (*Gaceta Oficial*), edition 344NEC, 24 February 2012. <http://www.gacetaoficialdebolivia.gob.bo/normas/listadonor/11/page:10> According to article 3 of Supreme Decree 1146, traditional non commercial use is allow under the concept of intangible of Law 180, and it prohibits illegal occupation of the territory, the commercial use of the forest and any megaproject that could provoke environmental, socioeconomic or cultural impact in the TIPNIS.

that the consultation established by Law 222 was contrary to previous legislation (Law 180) to protect the TIPNIS, and to international standards and the Constitution. They stated that it was not a prior consultation as the decision about building the road had been made since at least 2006.

In June 2012, as a result of a case before the Plurinational Constitutional Court to review the constitutionality of Law 222, the Court ruled that the consultation as stated by Law 222 was constitutional, but that its parameters had first to be agreed with the affected Indigenous communities (decision no.300).

The consultation process

In July 2012, the consultation started after the authorities reached agreements as requested by the Constitutional Court – but not with all communities in the TIPNIS. The consultation lasted until December 2012 within a permanent climate of division and confrontation between and within certain indigenous communities with respect to whether or not to participate in the consultation and what to say about the road.

The official reports published after the consultation⁹² indicate that the majority of the communities (55) were positive about the construction of the road, three were against the road and 11 did not participate in the process. The construction has nevertheless been delayed by the government as it has decided to concentrate on eliminating extreme poverty in the park as a first step.⁹³

Amnesty International's analysis of the results shows that at least 22 communities that agreed with the construction, mentioned conditions for the road to be built. For Amnesty International some of those conditions - such as the road not passing through the middle of the TIPNIS, or to review the environmental impact assessment, or to seek a joint agreement with representatives of all communities before any work starts- are major ones and the Bolivian state should address them before going ahead with the construction of the road.

Amnesty International recognises the work of some of the officials involved in the process to ensure the participation of the communities as well as efforts to make the results of the consultation public. Nevertheless, the organization is concerned about the way the consultation was undertaken in the TIPNIS. Particularly: about the information that was shared with some of the communities in order for them to make informed decisions as

⁹² See Supreme Electoral Court (Tribunal Supremo Electoral) "*Informe de observación y acompañamiento de la Consulta previa, libre e informada a los Pueblos Indígenas del TIPNIS*", published in January 2013; and Ministry of Environment and Ministry of Public Works (Ministerio de Obras Públicas, Servicios y Vivienda – Ministerio de Medio Ambiente y Agua), government final report on the consultation process in the TIPNIS "*Informe Final del proceso de consulta previa, libre e informada a los pueblos Moxeños-Trinitario, Yuracaré y Chimane del Territorio Indígena y Parque Nacional Isiboro Séure (TIPNIS)*", April 2013.

⁹³ Information provided during a meeting with representative of the Ministry of Presidency, May 2013; see also http://www.cambio.bo/pol%EF%BF%BDtica/06042013/gobierno_apunta_al_desarrollo_en_el_tipnis_para_erradicar_la_pobreza_90585.htm ; http://www.la-razon.com/nacional/Primero-eliminar-carretera-Vladimir-Sanchez_0_1808219206.html

required by international standards;⁹⁴ and the lack of an adequate climate for consultation.

According to Law 222 and its regulation⁹⁵ the matters to be under consultation were (i) determine whether or not the TIPNIS was to be “untouchable” -which in practice means to decide whether or not to revoke Law 180- and therefore allow both the activities of the Mojeño-Trinitario, Chimane and Yuracaré people as well as the construction of the road Villa Tunari - San Ignacio de Moxos; and (ii) define measures to protect the TIPNIS, as well as mechanisms to prohibit and expel illegal settlements in the TIPNIS.

According to international standards communities must be provided with full and objective information in a clear manner that is disclosed in a culturally appropriate way. With respect to the concept of “untouchable” Article 3 of Supreme Decree 1146 states that the word untouchable in Law 180 allows for the non commercial traditional use of the renewable natural resources, within the frame of the Protected Area Management Plan (*Plan de Manejo de Area Protegida*) and the Constitution.⁹⁶ The Management Plan allows communities to use natural resources and also allows controlled trade of lizard skin, cocoa and timber. However, some representatives from communities that participated in the process, stated that they were told “untouchable” meant that they were not going to be able to use their land/or touch it. As one of the interviewees mentioned to Amnesty International, “*with Law 180 we have no right to even take a leaf from the territory*”. Amnesty International is concerned that the way the word “untouchable” was explained to some communities –that is, not allowing any trade - might have influenced their response to the question of whether or not to revoke Law 180.

It is also of concern to Amnesty International that not all information was adequately provided to the communities concerning the different aspects of the project, including information on possible alternative routes and the potential adverse impact of the road.⁹⁷ According to the Protocol for the Consultation,⁹⁸ one of the documents to be shared with the communities during the consultation was the Strategic Environmental Evaluation in TIPNIS (*Evaluación Ambiental Estratégica del TIPNIS*, EAE), conducted by the National Service of Protected Areas (*Servicio Nacional de Áreas Protegidas*, SERNAP) in 2011. The report analyzes the potential impact for the Indigenous communities as well as the territory of

⁹⁴ Report of the Special Rapporteur on Indigenous peoples on the situation of the rights of the indigenous people of Guatemala, 2011, A/HRC/18/35/Add.3, Appendix, para. 71. See also Inter-American Commission on Human Rights, Report 40/04, Merits, Case 12,053, Maya indigenous communities of the Toledo district, Belize, para. 142.

⁹⁵ Article 4 Law 222 and article 3 of Supreme Decree 1146.

⁹⁶ Article 3 of Supreme Decree 1146, in Spanish, indicates: “*ARTÍCULO 3.- (APLICACIÓN). I. En el marco de la declaración de intangibilidad de la Ley N° 180, se garantiza el uso tradicional no comercial de los recursos naturales renovables por parte de los pueblos indígenas Yuracaré, Tsimane y Mojeño-Trinitario que lo habitan, de acuerdo con su cultura y concepción propia de desarrollo, en el marco del Plan de Manejo del Área Protegida y la Constitución Política del Estado.*”

⁹⁷ In May 2013 Amnesty International interviewed members of several communities that participated in the consultation. That included communities against and in favour of the road. The organization also interviewed *Asamblea Permanente de Derechos Humanos* and *Iglesia Católica* that in jointly conducted a visit to some communities in the TIPNIS in January 2013, to assess how the consultation process was conducted.

⁹⁸ See Protocolo Consulta en el TIPNIS, 29 June 2012, <http://www.slideshare.net/weberbol/protocolo-consulta-tipnis-modificado>

different sorts of interventions in it.⁹⁹

However, government reports published after the consultation do not have any reference to how this document was explained to the communities.¹⁰⁰ According to interviews held by Amnesty International with representatives of indigenous communities (including those that participated in the process and accepted the road, and also those that did not accept the road) comprehensive information on the EAE was not shared during the consultation.

Further, from the interviews conducted by Amnesty International,¹⁰¹ representatives of communities explained that the main focus of the consultation was about the needs of the communities and that, when discussing about the road, the focus was given to discuss measures to protect the TIPNIS from the expansion of coca leaf production in the south of the park and also from the construction of the road, but not about the potential environmental and cultural negative impact of the road or possible alternatives to the road. In meetings with representatives of the authorities that took part on the consultation, Amnesty International was told that no environmental impact assessment of the road was shared with the communities, no alternative design of the road was suggested and that the main focus was to identify measures with them to avoid the potential destruction of the park as a consequence of the road.

The consultation in the TIPNIS took place in a climate of mistrust. 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.¹⁰² 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.

Further, before and during the beginning of the consultation the authorities delivered goods to the members of various communities. While Amnesty International recognizes that this may contribute towards the development of the Indigenous peoples in the TIPNIS and it is a duty from the state to attend people's needs, these actions raised doubts about the freedom in which the communities participated in the process.

Conflicts as well as divisions within Indigenous organizations in the TIPNIS and even within some of the communities increased after the consultation in 2012 and during 2013. Amnesty International is concerned that the authorities may also be contributing to this

⁹⁹ SERNAP Executive Summary of the report, July 2011, page 5, <http://www.scribd.com/doc/67440767/Evaluacion-Ambiental-Estrategica-Tipnis-Sernap>

¹⁰⁰ Both, the Supreme Electoral Court and the government final report (supra footnote 92) explain the process, such as who attended, time, date, etc, but they do not consistently explain the content of the dialogue with communities.

¹⁰¹ In May 2013 Amnesty International met indigenous leaders and community members from Subcentral TIPNIS, Subcentral Secure and CONISUR in Trinidad and Cochabamba

¹⁰² The authorities also reported incidents of violence against officials in charged of the consultation in communities that rejected the process

atmosphere of division by recognising only those organisations and individuals in the TIPNIS who are more in favour of the authorities' positions.¹⁰³ This may undermine the establishment of a climate of confidence in which a proper dialogue and a genuine consensus is possible.

According to international standards, consultation should be understood as a process of substantial dialogue between Indigenous peoples and the government, to be carried out in good faith and taking whatever time may be necessary to reach an agreement with the communities affected. Although the construction of the road is currently on hold as the authorities have decided to focus first on tackling poverty in the TIPNIS, Amnesty International reiterates its call on the Bolivian authorities to ensure that any decision to go ahead with this project should be previously agreed with the affected communities. Any measure that could lead to a significant impact upon Indigenous peoples in the TIPNIS should not move forward without their free, prior and informed consent.

The consultation in the TIPNIS has both highlighted and triggered the need to discuss and develop a national framework to ensure meaningful consultation with Indigenous peoples and to obtain their free, prior and informed consent regarding administrative legislative measures that could affect them. This is of most urgency in a country such as Bolivia, where the combination of a high percentage of Indigenous people among the population with the enormous amount of natural resources in their lands, exposes the challenges between the need to extract that wealth with the need to ensure and protect the rights of those who own the land. This has been also a concern of national and international bodies.¹⁰⁴

Amnesty International is aware of the current process to agree a draft bill on consultation drafted by the Government among several organisations in the country. The latest text to which Amnesty International had access –discussed in Cochabamba in August 2013- raises concerns at the definition of the right to consent, particularly when referring to extractive projects the draft bill only recognizes the right to free, prior and informed consultation but not to consent, as requested by international standards and recently recommended by the Special Rapporteur on the Rights of Indigenous peoples.¹⁰⁵

b. Amnesty International recommendations to the Bolivian State

- Ensure that legislation on the right of Indigenous peoples to consultation currently under

¹⁰³ See coverage of confrontations on <http://www.eldeber.com.bo/pelea-campal-entre-indigenas-aviva-la-tension-en-el-tipnis/130621235523>. Also, during the hearing before the Interamerican Commission on Human Rights on the TIPNIS case, the government delegation was formed also by indigenous authorities that were challenged as representatives by some representatives of communities of the TIPNIS See http://www.youtube.com/watch?v=mapm_YD3RRc

¹⁰⁴ UN Committee on the Elimination of Racial Discrimination, Concluding Observations on Bolivia, March 2011, CERD/C/BOL/CO/17-20 para. 20; Report of the Ombudsman in Bolivia 2012, *El ejercicio de los derechos humanos en la construcción del Estado Plurinacional*, page 58.

¹⁰⁵ According to the last report of the Special Rapporteur on Right of Indigenous peoples consent is required for extractive projects with Indigenous peoples as a general rule. A/HRC/24/41 Extractive Industries and Indigenous peoples, 1 July 2013, paras. 27-29

discussion is in line with international human rights obligations on the right to consultation and free, prior and informed consent. To ensure a robust consultation over the draft bill with all representative Indigenous organisations in Bolivia to guarantee that any legislation is adopted with the consent of those affected by it.

- Guarantee that any decision around the road in the TIPNIS will not go ahead unless the concerns and conditions highlighted by the communities during the consultation process of 2012 are fully addressed.
- Ensure all representative institutions of the communities in the TIPNIS are included in any process of negotiation or dialogue that is started in the future in search of a solution to the TIPNIS dispute, as well as for deciding the implementation of plans to combat poverty.
- Continue with its efforts to tackle poverty in the TIPNIS as well as ensuring that any measures taken in this respect are in line with the culture and traditions of those benefiting from them, regardless of whether or not the road is built.

LIST OF AMNESTY INTERNATIONAL DOCUMENTS

Indigenous peoples' rights and the right to consultation

- Press release, *Bolivia: Use of excessive force must be investigated*, AMR 18/002/2011, 27 September 2011, <http://www.amnesty.org/en/library/asset/AMR18/002/2011/en/a5ab2c42-3961-4b9a-9ad5-99c3c02aa0e8/amr180022011en.html>
- *Open letter to the authorities of the Plurinational State of Bolivia in the context of the dispute concerning the Isiboro Sécuré Indigenous Territory and National Park (TIPNIS)*, AMR 18/002/2012, May 2012, <http://www.amnesty.org/en/library/info/AMR18/002/2012>
- Press release, *Bolivia: A un año de los abusos policiales contra indígenas los responsables siguen sin comparecer ante la justicia*, PRE01/453/2012, 24 September, 2012.
- Public statement, *Bolivia: Amnistía Internacional observa con preocupación la realización del actual proceso de consulta a los pueblos indígenas en el TIPNIS y el potencial conflicto que esto pueda producir*, AMR 18/003/2012, 2 August 2012, <http://www.amnesty.org/es/library/info/AMR18/003/2012/es>

Justice and reparation for past human rights violations

- - Press release, *Bolivia: authorities must grant full reparation to victims of human rights violations occurred during military and authoritarian regimes, 21 August 2012*, <http://www.amnesty.org/en/for-media/press-releases/bolivia-authorities-must-grant-full-reparation-victims-human-rights-violati>
- Press release, *Bolivia: The 30th anniversary of the military coup: what remains to be done to secure truth and justice*, AMR 18/009/2010, 16 July 2010, <http://www.amnesty.org/en/library/info/AMR18/009/2010/en>
- Press release, *Bolivia: Military documents must be handed over if justice for past*

disappearance cases is to be achieved, AMR 18/003/2010, 23 February 2010,
<http://www.amnesty.org/es/library/info/AMR18/003/2010/en>

- Urgent Action. *Protestor attacked, police take no notice: Victoria Lopez*, AMR 18/001/2013, 18 February 2013, <http://amnesty.org/en/library/info/AMR18/001/2013/en>

Other

- Public statement, *Bolivia: Las autoridades bolivianas deben investigar completamente la tragedia en la cárcel de Palmasola*, AMR 18/004/2013, 23 August 2013,
<http://amnesty.org/es/library/info/AMR18/004/2013/es>

- Press release, *Acción de Inconstitucionalidad: Una oportunidad histórica para compatibilizar la legislación Boliviana con las obligaciones internacionales de derechos humanos del Estado Boliviano*, AMR 18/002/2013, 20 June 2013.

- *Submission to the UN Universal Periodic Review: Seventh session of the UPR Working Group of the Human Rights Council*, February 2010, AMR 18/002/2009, 8 September 2009, <http://www.amnesty.org/en/library/info/AMR18/002/2009/en>

- *Bolivia: Open letter to the new Plurinational Legislative Assembly of Bolivia*, AMR 18/002/2010, 24 February 2010,
<http://www.amnesty.org/en/library/info/AMR18/002/2010/en>

- Press release, *Bolivia: Amnesty International calls for reform of the justice system and transparency of past human rights abuses*, AMR 18/007/2010, 9 June 2010
<http://www.amnesty.org/en/library/info/AMR18/007/2010/en>

AMNESTY
INTERNATIONAL



www.amnesty.org