



global witness



São Paulo – La Paz – London, [...] October 2015.

À
Sra. Maria Carolina Capistrano
Ouvidora
Gabinete da Presidência
Banco Nacional de Desenvolvimento Econômico e Social – BNDES

CIVIL SOCIETY COMPLAINT TO THE BNDES ON ITS INVOLVEMENT IN THE TIPNIS HIGHWAY PROJECT

1. Summary

This complaint, submitted by Conectas Direitos Humanos (Brazil), Centro de Estudios para el Desarrollo Laboral y Agrario – CEDLA (Bolivia) and Global Witness (international) to the Ombudsman office of the Brazilian Development Bank (BNDES), addresses the failures in the Bank’s social, environmental and human rights due diligence process related to the “Villa Tunari-San Ignacio de Moxos” highway project in Bolivia. In this complaint, the organizations present evidence that the BNDES’ mechanisms for the assessment, mitigation and remediation of adverse impacts on the fundamental rights of individuals and vulnerable populations, especially indigenous peoples, are insufficient to cover potential harms and fall short of incorporating the minimum requirements the Bank should observe according to Bolivian domestic law, Brazilian legislation, international human rights law and the Bank’s own policies and standards. The case of the Bolivian highway project addressed in this complaint also illustrates the urgent need of reforms in the BNDES’ approach to social, environmental and human rights impact management when promoting the export of engineering services of Brazilian companies.

Among other measures, the BNDES should: (i) ascertain the legality and socio-environmental compliance of projects financed abroad by ensuring that full respect to human rights and environmental laws exists in practice, and not only in formal declarations and contractual documents; (ii) engage directly with communities and all interested stakeholders in all phases of the project cycle, and not rely solely on third-parties’ opinions and judgments about the scale



global witness



of potentially adverse impacts; (iii) promote accountability and, when damages actually materialize, provide remedies for the affected parties. In order to assist the BNDES in achieving these objectives, this document sets forth concrete recommendations designed to be implemented under the auspices of a process based on dialogue, good faith and commitment to concrete changes.

2. Context

On 22 August 2009 Bolivian President Evo Morales and then President of Brazil, Lula da Silva, signed a US\$332 million Financing Protocol to build the Villa-Tunari–San Ignacio de Moxos Highway in Bolivia.ⁱ The loan was to come from the Brazilian National Bank for Economic and Social Development (BNDES), through its Exim Program, and be used for the construction of a 273km Highway through the Isiboro Sécore National Park and Indigenous Territory (TIPNIS), a protected area in the Bolivian Amazon.ⁱⁱ The TIPNIS is also home to 12,388 indigenous inhabitants, living in 64 communities.ⁱⁱⁱ In April 2010 the Financing Protocol was approved by law,^{iv} and in February 2011 the contract between Bolivia and the BNDES to finance the road was approved.^v

In March 2008, a bidding process initiated by the Bolivian Highways Administration led to the Brazilian company OAS being awarded the contract to build the road in August.^{vi} Three days after the contract allocation, the TIPNIS Subcentral, the representative body for the park's indigenous communities, sent a public letter to President Morales, claiming that they were never consulted, as was their right by law, about the construction of the road or about the bidding process, despite repeated letters to the authorities requesting information.^{vii} They opposed the road's construction because of its potential social and environmental impacts. One study, for example, predicted that 65% of the TIPNIS forests would be deforested over an 18 year period were the road to be built, principally due to the expansion of the coca frontier and illegal logging.^{viii}

The TIPNIS area is an Indigenous Territory^{ix} as well as a National Park^x and has been in the process of making official its land title since 25 April 1997.^{xi} This process, led by the Institute for Agrarian Reform, concluded on 13 February 2009, before the signing of the financing contract to build the road, when the Government of Evo Morales handed over the collective land title^{xii} to the indigenous administration of the Subcentral TIPNIS. Part of the TIPNIS park, classified as "Polygon 7", is still pending certification of its juridical status due to the area being taken over by coca-planting non-indigenous peoples.^{xiii}

Plans for the TIPNIS road began in April 2003 when the Government of Gonzalo Sánchez de Lozada included the potential highway route in its National Road Network (*Red Fundamental de Carreteras*).^{xiv} Later that year, Law 2530^{xv} authorized the search for financing for the construction of the road. From this time, the TIPNIS indigenous communities consistently made the government aware of their outright rejection of the plans for the road.^{xvi} In September



global witness



2006 President Evo Morales declared “of national importance” the elaboration of the design and construction of the TIPNIS highway and tasked the Prefectures of Beni and Cochabamba provinces with searching for the necessary economic resources.

Despite the opposition of the TIPNIS Subcentral, the contract of financial collaboration between BNDES and the Bolivian Government to construct the road was approved in May 2011^{xvii} and road building began the next month. Soon after this, on 15 August, the indigenous communities of TIPNIS, supported by other civil society organisations, began a month-long protest march from TIPNIS to the Bolivian capital La Paz, against what they saw as a project imposed on their territory without their consent and which would have devastating environmental impacts. In September a violent police crackdown on the march left 74 people injured^{xviii} and many indigenous leaders detained, including the President of the TIPNIS Subcentral.^{xix} In a response to these protests, the Government of Bolivia passed Law 180 designating the TIPNIS protected area as ‘intangible’ (untouchable). The law explicitly states, in article 3, that the construction of a road through the National Park is not permitted –though with an additional punitive element that restricted the subsistence practices of the TIPNIS communities, arguing that these would affect the park’s ‘intangibility’.^{xx} In June 2012 the BNDES announced the cancellation of the contract with the Bolivian government to build the highway.^{xxi}

3. The complaint

In the interests of “ensuring dialogue and accounting for its decisions and efforts”,^{xxii} as stated by the Bank in its Social and Environmental Responsibility principles, the civil society organizations Conectas Derechos Humanos, CEDLA and Global Witness, present this complaint requesting a formal, detailed response from the Bank for each of the allegations made in the table below (in the penultimate section of this complaint) and request the creation of a transparent, participatory and dialogue-based process for the incorporation of the recommendations set forth at the end of this document.

This complaint has two main objectives. The first is to ensure the Bank recognizes the social, environmental and human rights due diligence failures related to this project and improve its procedures in all investments made outside Brazil, especially in relation to the export of goods and services used in infrastructure projects. The second objective of this complaint is to set in motion, and in concrete terms, the recommendations offered for the reform of the Ombudsman in the context of the ongoing dialogue between the BNDES and civil society organizations.

This complaint argues that the contract between the Bolivian government and the Bank breached Bolivian law as well as the Bank’s own environmental and social safeguards. The Bank has repeatedly failed to acknowledge these breaches. For instance, responding to an article in Valor Econômico criticising the BNDES’ involvement in the project,^{xxiii} the Bank stated that it had “determined that all of the environmental requirements were met that would permit the



global witness



signing of the contract for the export of goods and services used for the road.”^{xxiv} The BNDES has also responded to further criticism by a Latin American civil society coalition, the Regional Coalition for Transparency and Participation, stating: “The BNDES’ involvement in the highway project Vila Tunari-San Ignacio de Moxos has always sought to abide by legal and official requirements established by the Bolivian authorities.”^{xxv}

In June 2015, subsequent to a freedom of information request by the Brazilian NGO Conectas (one of the authors of this complaint), the Bank, in an unprecedented move, released a variety of documents from 2010 that set out some of its due diligence procedures used to justify its financing of the project. The documents make clear the rights of the TIPNIS communities to be consulted when “implementing legislative or administrative measures that may affect them”.^{xxvi} As such, the BNDES officially recognized in the course of the project due diligence that the communities living in the area that would be crossed by the road were entitled to the right to consultation. The due diligence failed, however, to include any assessment of whether the TIPNIS communities *were actually consulted prior* to the tendering out of the construction of the highway, as was their right. The Bank therefore agreed to finance the project even though they did not know whether such a consultation took place and despite a public outcry by the communities concerned that they had not been consulted.

Global Witness, CEDLA and Conectas contend that the BNDES, on signing a contract to loan US\$332 million to the Bolivian Government for the construction of the TIPNIS Highway and on continuing plans to finance the project until August 2012:

- a. breached its own safeguards and policies, including the BNDES’:
 - I. Mission, Vision and Value statement;
 - II. Social and Environmental Responsibility;
 - III. Socio-environmental Policy;
 - IV. Responsibilities to apply its Socio-environmental instruments.

- b. failed in its due diligence in relation to abiding by the national laws of Bolivia; failing to take into account numerous illegalities and human rights violations related to the road project, including:
 - I. Lack of consultation of the TIPNIS indigenous communities, who publicly opposed the road project;
 - II. The failure of the Bolivian Highways Administration to count on an Environmental Impact Assessment prior to tendering out the construction of the road;



global witness



- III. Poor quality Environmental Impact Assessments of branches 1 and 3 of the road, which did not sufficiently set out the potential future negative impacts of the highway construction and which failed to implement a valid consultation process with local communities, and which had been widely criticised by the Environmental Authority in charge at the time;
- IV. Wide-scale illegalities in the tender process as detailed in an official investigation by the Bolivian Comptroller General's office, published in June 2010;^{xxvii}
- V. Credible evidence of human rights violations related to the August 2011 protest march against the highway.^{xxviii}

BNDES claims that all of the social and environmental requirements were met “that would permit the signing of the contract”^{xxix} and that the Bank abided “by legal and official requirements established by the Bolivian authorities”.^{xxx} BNDES never disbursed any funds but only cancelled the contract when, in the Bank's own words, “Bolivian legislation itself made it unfeasible to carry out the undertaking”,^{xxxi} after the passage of Law 180 designating the TIPNIS protected area as “intangible” in October 2011.^{xxxii}

Information on all of the breaches mentioned above, barring the human rights violations committed by the Bolivian state in August 2011, were available well before the BNDES signed the contract with Bolivia in February 2011. By the Bank's own policies and by the national laws of Bolivia the contract should never have been signed.

Given that the BNDES still defends its participation in this project, it is important to ensure that it acknowledges the violations of its own policies and of Bolivian national laws in agreeing to finance the TIPNIS highway. It would mark an important precedent in the Bank's steps to improve how it conducts due diligence both within Brazil and abroad.

The importance of a thorough revision of the BNDES' procedures for the assessment, measurement, mitigation and remediation of social and environmental harms and human rights abuses in the context of projects financed abroad can be evidenced by the substantial volume of funds allocated to this type of lending instrument. As disclosed by BNDES in June 2015, the operations of export of engineering services of Brazilian companies to other countries between 2002 and 2015 exceed the amount of 12 billion reais (around US\$3 billion), distributed among approximately 570 projects. A heightened allocation of BNDES' resources to this type of loan has not been accompanied by a more robust system of policies and procedures to mitigate environmental and social harm.



global witness



Our substantiated allegations against the Bank related to the TIPNIS highway project are set out in detail below in table format, after we outline the expectations we have of the role of the Ombudsman and highlight excerpts of the Bank’s own standards and policies that relate to the breaches outlined in the complaint

4. The role of the Ombudsman

In the second meeting of the BNDES – Civil Society Dialogue Forum, on 15th September 2014, civil society recommended that the BNDES either reform its current Ombudsman or, alternatively, create a new governance structure to ensure that affected communities have direct access to the highest levels of the Bank whenever projects have the potential to, or are already violating, their fundamental rights. In the third meeting of the Dialogue Forum, Mrs. Maria Carolina Capistrano, BNDES’ Ombudswoman, highlighted that the Ombudsman’s office would undergo a process of reform and invited a smaller group of civil society organizations to present their views on how this might take place. On 10 November 2014, these civil society organizations met with the Ombudswoman and other BNDES staff and reiterated the proposals submitted in prior meetings, emphasizing that the BNDES should ensure the Ombudsman office works with proper transparency, accountability, predictability and accessibility for affected communities. The organizations also recommended that the Ombudsman office adopt a more proactive attitude towards social, environmental and human rights risk management by requiring to be consulted, from other departments within the Bank, in all phases of the project cycle.

By submitting this complaint to the BNDES Ombudsman office we expect this body to steer a process of critical re-evaluation of current internal practices to avoid repeating the same types of failures in the due diligence process related to the Villa Tunari-San Ignacio de Moxos highway. The civil society proposal reflects the understanding that the Ombudsman is well-positioned to undertake the task of enhancing the performance of the operational and strategic departments of the Bank through the identification of gaps and shortcomings in the institutions’ internal procedures. Through the accumulation of evidence-based knowledge and lessons learned from past experiences, the Ombudsman can foster a culture of risk prevention instead of remediation. Nonetheless, the Ombudsman itself must review its methods for receiving and handling complaints coming from civil society and the affected communities when these address social, environmental and human rights conflicts and negative impacts. In this sense, the last section of this complaint contains recommendations for the improvement of the Ombudsman’s own methods of work in order to improve its efficacy, transparency, impartiality, accessibility and accountability.

5. Relevant BNDES standards and policies

On the **BNDES Mission Vision and Values** page of the BNDES website it states that “our main principle is that development is only possible when accompanied by ethics” and that the Bank has “a vital commitment to the human rights of all participants in our relations.”^{xxxiii}



The **BNDES Social and Environmental Responsibility Policy** sets out principles that guide the Bank’s operations, amongst which are “respect for human rights as well as combating and opposing all practices that involve any kind of discrimination or violation of rights” and “ethics and transparency as the pillars of relations with all stakeholders, ensuring dialogue and accounting for its decisions and efforts”, as well as “proactive operations aligned with Brazilian standards and public policies, while respecting international norms of behaviour.”^{xxxiv}

The BNDES also has a **Socio-environmental Policy** which “respects social and environmental principles when granting credit.”^{xxxv} The following guidelines,^{xxxvi} which guide the work of the Bank within the scope of this policy, are the most relevant to highlighting our concerns:

- To act in accordance with current public policies and legislations;
- To consider the policies of the BNDES system related to human rights;
- To foster and guide the adoption of efforts to prevent and mitigate social impact and unsuitable environments.

Furthermore, the BNDES has created **Socio-environmental Instruments**, which provide the “tools to implement and pursue the goals of its Socio-environmental Policy.”^{xxxvii} One of these instruments states that “to grant financial assistance”, the following are respected:

- applicable legislation;
- the beneficiary’s policy of social and environmental responsibility;
- environmental compliance;
- environmental risk of the undertaking.

The Bank then states that it “may, for example, recommend the project be revised; offer resources to strengthen mitigation measures to stimulate the achievement of social and environmental investments by the beneficiaries; and even refuse financial support due to non-compliance or social and environmental risks”^{xxxviii}, which in the case of the TIPNIS highway the BNDES did not do, instead signing a contract to finance a project that was illegal.

The table below sets out how this project violated Bolivian law and how, in contractually agreeing to financially support the TIPNIS road, the BNDES breached its Mission Vision and Values, its Social and Environmental Responsibility Policy, as well as its Socio-environmental Policy Guidelines, in addition to failing to properly apply its Socio-environmental instruments. The evidence in the table contradicts the Bank’s claim, related to the project, that “all of the environmental requirements were met that would permit the signing of the contract for the export of goods and services used for the road”^{xxxix} and that its “involvement in the highway project Villa Tunari-San Ignacio de Moxos has always sought to abide by legal and official requirements established by the



Bolivian authorities.”^{xi} The table also sets out the gaps and deficiencies in the documents that the Bank used in their due diligence before approving the project.

6. The Breaches

TABLE OF BREACHES		
AREA OF CONCERN	BOLIVIAN LAWS BROKEN	BREACHES OF BNDES STANDARDS AND POLICIES
HUMAN RIGHTS AND SOCIAL CONCERNS	<p>Failure to consult indigenous communities</p> <ul style="list-style-type: none"> The International Labour Organisation’s (ILO) Convention 169 was ratified by the Bolivian government in July 1991 under Law 1257,^{xii} and obliges the State, in article 6, to regularly consult indigenous peoples “whenever consideration is being given to legislative or administrative measures which may affect them directly.”^{xiii} Since plans commenced for the highway in 2003, the Bolivian government has consistently failed to respect the Convention and consult the TIPNIS communities. In 2007 Bolivia’s Law 3760 elevated the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) to binding national law.^{xiiii} Article 19 of UNDRIP requires consulting any affected indigenous peoples, “in order to obtain their free, <i>prior</i> and informed consent <i>before</i> adopting and implementing legislative or administrative measures that may affect them”.^{xlv} The Bolivian Highways Administration put out to tender the TIPNIS highway project on 5 March 2008^{xlv}, which was an administrative measure that would affect the indigenous communities residing in TIPNIS, without having consulted them, as 	<ul style="list-style-type: none"> As the BNDES agreed to finance the project despite the lack of consultation of the TIPNIS indigenous communities - which violated ILO Convention 169, Bolivian Law 1257, UNDRIP and Bolivian Law 3760 - the Bank failed to adhere to its: <ul style="list-style-type: none"> Mission, Vision and Value statement of committing to “the human rights of all participants in our relations”^{lviii} Social and Environmental Responsibility Policy principles of “combating and opposing all practices that involve any kind of discrimination or violation of rights”^{lix} as well as “respecting international norms of behaviour”^{lix} Socio-environmental Policy Guidelines, that require the Bank to act “in accordance with the current public policies and legislations” of Bolivia, as well as failing to adopt “efforts to prevent and mitigate social impact and unsuitable environments”^{lxi} as required by its Socio-environmental Policy Guidelines Socio-environmental Instruments that respect the “applicable legislation” of Bolivia and the



	<p>required by Law No 3670. The putting out to tender and all subsequent measures related to the highway project were therefore illegal.</p> <ul style="list-style-type: none"> • Proof of the lack of free prior and informed consent can be shown by a variety of public declarations^{xlvi} by the indigenous communities living inside the Isiboro Sécure National Park and Indigenous Territory (TIPNIS) stating how they were not consulted prior to the tendering process.^{xlvii} <p style="text-align: center;">Human rights abuses</p> <ul style="list-style-type: none"> • On 15 August 2011, the indigenous communities of TIPNIS, supported by other civil society organisations, began a month-long protest march from TIPNIS to the Bolivian capital La Paz. In September 2011 a violent police crackdown of the march, known as the Chaparina massacre, occurred, leaving 74 people injured^{xlviii} and many indigenous leaders detained, including the President of the TIPNIS Subcentral.^{xlix} The Human Rights Ombudsman’s Office of Bolivia claimed that the order to crack down on the marchers was illegal, and named the Government Minister Sacha Llorenti as responsible for carrying out the order.^{li} <p style="text-align: center;">Land invasions</p> <ul style="list-style-type: none"> • Article 5 of Supreme Directive 22610, passed in 1990,^{lii} under Bolivian law, requires the need to “determine a red line that avoids new land invasions from colonisers in National Parks, and in particular in the TIPNIS park”. In October 1996 Law 175 (Law INRA)^{liii} was passed, which 	<p>“beneficiary’s policy of social and environmental responsibility.”^{lxii}</p> <ul style="list-style-type: none"> • The BNDES knew of the TIPNIS communities’ right to prior consultation. The Bank’s 2010 socio-environmental risk analysis of the project,^{lxiii} which it used to determine whether all legal requirements were met, states that the indigenous communities in TIPNIS had the right to be consulted prior to any administrative or legislative measure which may affect them. The analysis failed to include any assessment of whether the TIPNIS communities were actually consulted prior to the tendering process for the road, which was an administrative measure, and which therefore broke the law. • Additionally, after the human rights abuses perpetrated against the TIPNIS community members during the protest march in September, the BNDES did not publicly announce it would no longer finance the project, breaching its Mission, Vision and Value statement of committing to “the human rights of all participants in our relations”^{lxiv}. • In its internal analysis report, the Bank recognised the “socio-environmental sensitiveness” of the project and that the TIPNIS park is subject to pressure from “colonisers” (especially coca producers)^{lxv}.
--	---	---



	<p>stated that land occupations which happen on State land - like the National Park area of TIPNIS - subsequent to the passage of the law were illegal and would be the subject of eviction. The area named “Polygon 7” in the TIPNIS park corresponds to the “red line” demarcating the colonized land, which has been the object of consistent modification between 1999 and 2009^{lv}. In 2007 this area reached 101,000 hectares, inhabited by 14 indigenous communities and 67 Coca Unions.^{lv} There are ongoing conflicts^{lvi} between indigenous communities and coca producers who continue to invade indigenous territory.^{lvii}</p>	
<p>ENVIRONMENTAL CONCERNS</p>	<p>Failure to conduct an EIA prior to the tendering process</p> <ul style="list-style-type: none"> No Environmental Impact Assessment (EIA) was conducted prior to the tendering process for the road as required by the Basic Norms of the Public Investment System (SNIP)^{lxvi} for the completion of public investment projects for all state entities. This norm defines that the process that must cover all projects requires a pre-investment phase, an investment phase and an operational phase. The pre-investment phase was regulated by the Ministerial Resolution No 29, which requires the production of an ‘Integral Technical, Economic, Social and Environmental Study (TESA).’^{lxvii} The TESA study requires the production of ‘the Environmental Impact Assessment Evaluation Study (EEIA)’^{lxviii} the reach of which is defined in Bolivian Law 1333.^{lix} Further legislation, passed in June 2007, establishes the obligation to comply with the SNIP norms in the case of turnkey contracts^{lxx}. The turnkey contract with the construction 	<ul style="list-style-type: none"> In a formal letter published on its website, the BNDES stated that “the Bank determined that all of the environmental requirements were met that would permit the signing of the contract.”^{lxxxiii} As proved by our analysis opposite, this was not the case. Among the standards and policies that the Bank failed to adhere to: <ul style="list-style-type: none"> Socio-environmental Instruments of respecting Bolivia’s “applicable legislation” and “environmental compliance.”^{lxxxiv} The Bank’s 2010 socio-environmental risk analysis of the project^{lxxxv} was clearly deficient, as it made no mention of the requirement for an EIA prior to the tendering process, or of the many deficiencies of the EIAs that were eventually produced. Furthermore, the Bank accepted separate EIAs for the three branches of the road, rather than demanding the aggregate impacts of the whole road



	<p>company OAS to build the highway was signed in 2008 without any EIA studies.^{lxxi}</p> <ul style="list-style-type: none"> • The documents released by the Bolivian Highways Administration on 5 March 2008, as part of the competitive tendering process, related only to the “categorisation of the Environmental Impact Assessment Study”,^{lxxii} a process which, as per Article 25 of the 1992 Environment Law,^{lxxiii} precedes the production of the actual EIA. The Bolivian Highways Administration did not count on an EIA and therefore acted illegally when it put the project out to competitive tender. • Since there was no EIA prior to awarding the road-building contract and since there was no consultation of the TIPNIS communities, there was no way the affected communities could be informed of the potential environmental impacts of the road through their territory. The failure to count on an EIA prior to the tendering process therefore also violated their right to informed consent. • An analyst working for the Bolivian Vice-Ministry of Public Investment and Foreign Financing (VIPFE), when reviewing the road-building contract in September 2008, concluded that the criteria of any future EIA had not been properly determined and that the potential effects on the environment had not been properly considered.^{lxxiv} <p style="text-align: center;">Deficiencies of EIAs</p> <ul style="list-style-type: none"> • The National Environmental Authority, a Bolivian state body, reported that environmental impact evaluation assessments for the TIPNIS highway were incomplete and 	<p>be taken into account in one “integral” EIA.</p> <ul style="list-style-type: none"> • The socio-environmental risk analysis also failed to mention the 143 observations to the EIAs established by Bolivia’s National Environmental Authority on 24 May 2010. It also failed to recognize the impossibility of resolving these deficiencies in the EIAs in only two months - the period in which the Environmental Licences were granted. The analysis fails to contemplate the risk associated with the project given the resignation of both the Vice Minister and Director of Environment, who, according to the press, resigned after refusing to issue the Environmental Licenses for routes 1 and 3.^{lxxxvi} The Environmental Licenses were approved only days after the new Vice Minister of the Environment was appointed^{lxxxvii}. • The BNDES had almost three years between the time of the tendering process for the road construction and the signing of the contract to finance the project. But the Bank still did not apply its Socio-environmental Instruments - to implement due diligence and ensure compliance with its relevant environmental standards and policies.
--	--	--



deficient.^{lxxv} The May 2010 report, directed to the President of the Bolivian Highways Administration (ABC), made 143 observations on the EIAs.^{lxxvi} It also emphasised the failure to consider the statement by TIPNIS communities that demonstrated deficiencies in the process.^{lxxvii} Two months after the report was published, the head of the National Environmental Authority was replaced and Environmental Licences were approved for branches 1 and 3 of the highway, despite the objections of the former head.^{lxxviii}

- Article 7, para b of the Bolivian Regulation for Prevention and Environmental Control^{lxxix} states that an EIA must contain a section detailing the possible positive and negative ‘future effects’ on the environment by a given project. In this section of the EIA for branch 1 of the road (south of the TIPNIS park from Villa Tunari to Isinuta), there is a description of the illegal and unplanned coca plantations in the park, along with a quantification of the illegal timber that has historically been extracted from the area. But the EIA fails to estimate possible rates of future deforestation from subsequent expansion of the coca and illegal logging frontier, looking instead at past environmental effects of these sectors on the TIPNIS park. As such, the EIA has not abided by the Bolivian Regulation for Prevention and Environmental Control because it did not adequately consider the “future effects” of the construction of the road on the area.^{lxxx}
- In the consultation section of the EIA for branch 3 of the road (North of the TIPNIS park - Monte Grande del Apere to San Ignacio de Moxos) it describes the methodology for



	<p>the consultation and the results the consultation process is hoping to achieve, amongst which is included: “That the population of the affected area of the project agree to the construction of the road.”^{lxxxix} The Regulation for Prevention and Environmental Control, in its article 160, however, clearly stipulates that the participation of the public in the process of producing the EIA will be subject to the Law on Public Participation, article 7 point C of which states that communities have the right, through participation, to “obtain modification of any works which are contrary to their interests.”^{lxxxii} Clearly the methodology of the EIA left no room for such a modification, seeking only that communities agree to the construction of the road, thereby breaching the rights of the community to modify the route of the road should they have come out against it.</p>	
<p>OTHER ILLEGALITIES</p>	<p style="text-align: center;">Comptroller General’s report</p> <ul style="list-style-type: none"> • On 3 March 2009 the Bolivian Senate requested the Comptroller General’s office to evaluate the tendering process for the TIPNIS highway construction. In June 2010 the Comptroller General of the Nation presented the report to the President of the ABC, detailing numerous illegalities.^{lxxxviii} As a result, the Comptroller General concluded that administrative measures be taken against the public servants of the Bolivian Highways Administration that were involved in the illegal contracting process. Some of the illegalities included: <ul style="list-style-type: none"> ○ In a report produced by the Bolivian Administration 	<ul style="list-style-type: none"> • The BNDES’ socio-environmental risk analysis of the project,^{xcii} submitted to the Bank’s Executive Director in December 2010, was clearly deficient as it made no mention of the Comptroller General’s report, despite the fact that the Bolivian Senate had requested the report in March 2009^{xciii} and it was completed in June 2010. This provided more than enough time for the Bank’s internal analysis to have included this in their assessment of the conformity of the project with national law and with the BNDES’ own standards and policies.



	<p>of Highways (ABC), to estimate the cost of constructing the road, the section dealing with the costs for drains and structures exceeded the price of the reference road Riberalta – Guayaramerin (used in the report as a price comparison) by US\$1 million</p> <ul style="list-style-type: none"> ○ The estimation of the costs of the risks associated with the construction of the road were estimated at 40% of total cost, which was not based on reliable information ○ The report produced by the Consultant to estimate the cost of constructing the road for the contracted company (OAS) was over-estimated by US\$165,497 per km, because he failed to exclude the price needed to pay for the asphalt, which was to be paid for by the Bolivian Government, and therefore should not have been contemplated in the cost of constructing the road for the contracted party (OAS) ○ There were differences between the Contract signed by OAS, and the contract finally approved after the tender process between OAS and ABC.^{lxxxix} <p>Failure to count on financing for the project</p> <ul style="list-style-type: none"> • The Bolivian Supreme Directive 29190 of Basic Norms for Goods and Services, article 20 point f, states that “public servants are prohibited from realising the following acts: [...] initiate a process of contracting out works that will last longer than one year, without counting on full financing for the totality of the project”^{xc}. The Bolivian Highways Administration put out to tender the TIPNIS project on 5 March 2008^{xcii} thereby 	
--	---	--



	<p>“initiating a process of contracting out works”, while the financing of the road was only secured on 15 February 2011 when the Contract of Financial Collaboration was signed between the BNDES and the Bolivian Government. The Bolivian Highways Administration therefore acted illegally when it put the construction of the road out to tender.</p>	
--	--	--

7. Conclusion and Recommendations

The TIPNIS highway case addressed in this complaint demonstrates that BNDES’ current due diligence procedures for the financing of infrastructure projects outside Brazil must undergo a thorough process of review to take into account the potential adverse consequences of such projects on the fundamental rights of local communities and the environment.

The case shows that the BNDES’ current social and environmental due diligence for infrastructure projects abroad suffers from:

- I. An attitude of deference to local administrative agencies’ decisions and acts (even when blatantly illegal or harmful to communities);
- II. A reliance on opinions by third-party independent auditors on the legality and socio-environmental compliance of the project ;
- III. Insufficient due diligence procedures that count only on an internal socio-environmental analysis coupled with the setting of contractual clauses and covenants to ensure compliance by the loan beneficiary.

This is an insufficient, even reckless, approach to social and environmental risk management that can no longer be sustained by one of the most significant development banks in the world. It is incompatible with the Bank’s proclaimed mission and core values, with its own policies and procedures and, in the face of current Brazilian Central Bank’s regulation, with Brazilian financial legislation.^{xciv} It keeps the BNDES from assuming its own obligation to implement a more robust set of tools and methodologies for the assessment of the social, environmental and human rights risks associated with infrastructure projects benefited by Brazilian companies’ engineering services.

The main problems that the BNDES should address are:

- I. The inefficiencies of its socio-environmental risk assessment;



global witness



- II. The absence of structured processes designed to ensure meaningful participation and consultation with stakeholders, especially the rights-holders, in all phases of the project cycle;
- III. The lack of transparency in its dealings.

Furthermore, it's highly concerning that the BNDES did not question the Bolivian government's decision to split the road's EIA into three branches and entered into a financial collaboration agreement without the EIA for the branch that carried the highest social and environmental risks. If this branch was approved it would invalidate the entire project. The decision of the BNDES to proceed with the contractual arrangements to finance the highway despite strong opposition from the local indigenous peoples living in the TIPNIS Park about how their right to consultation had been breached also provides evidence of the Bank's deficiencies. Finally, despite the positive step taken by the Bank to grant access to some documents relating to the project, the disclosure of the Bank's environmental and social assessments should be part of a policy of active transparency as part of a broader mission of enhancing its legitimacy and public accountability.

Based on the facts and allegations exposed above and considering that BNDES, in its Socioenvironmental Policy Guidelines, vows to "continuously develop and improve methodologies and analytical, monitoring and assessment tools, incorporating social and environmental criteria", and further taking into account BNDES' responsibilities toward the protection of human rights as a Brazilian federal public enterprise, a country whose foreign policy is guided by the "prevalence of human rights", according to Article 4, II of its Constitution, Conectas, CEDLA and Global Witness request and recommend the following:

With respect to the case of the Villa Tunari-San Ignacio de Moxos highway project:

1. Acknowledge formal receipt of this complaint;
2. Recognize the failures in the Bank's due diligence process in the project of the Villa Tunari-San Ignacio de Moxos highway project, which ignored, among other illegalities and human rights violations, the right of the indigenous peoples of the TIPNIS park to "free, prior and informed consent" prior to the adoption of administrative and legislative measures that may affect them, pursuant to Convention 169 of the ILO and UNDRIP, signed and ratified by both the Brazilian and the Bolivian states;
3. Provide a detailed response for each of the allegations made in the Table of Breaches, in Section 6, above;



global witness



For all other infrastructure projects benefiting from BNDES' export of goods and services of Brazilian companies:

4. Institute a transparent and dialogue-based institutional process for the incorporation of the recommendations set forth in this complaint onto the entire portfolio of infrastructure projects in countries other than Brazil;
5. Implement a Human Rights Due Diligence (HRDD) framework, including a Human Rights Impact Assessment (HRIA), in order to identify, prevent, mitigate and account for “adverse human rights impacts”^{xcv} of the financed projects. The results of the HRIA should be integrated across relevant internal functions and processes, and appropriate actions should be taken.^{xcvi} The HRDD should be based on and aimed at realizing the fundamental principles of human rights, such as participation, non-discrimination, accountability, transparency and remediation. If potential impacts are identified, or if actual violations occur, mitigation and compensatory measures should be designed after meaningful consultation and in close collaboration with the affected communities and populations, and in case that other stakeholders (such as local governmental agencies and project proponents) are assigned this responsibility, the BNDES should ensure that they meet communities’ expectations and that the means of remediation and accountability are in accordance with the highest human rights standards;
6. Ensure that local communities, including indigenous and traditional peoples, as well as other interested stakeholders, are consulted prior to the elaboration of the terms of reference containing the scope of the work of the independent auditors/consultants engaged by the Bank or any other contractual party to ascertain the legality of licenses and authorizations and the socio-environmental compliance of the project to the applicable laws and standards;
7. Disclose, as part of an active transparency policy, all the relevant documents containing risk analyses and socio-environmental impact assessments related to the projects financed outside Brazil, especially those of infrastructure, including the evaluations of independent consultants, in a time, language and format adjusted to the local communities cultural particularities, so that they can present their concerns to the Bank well before the signing of the loan agreement;
8. Ensure that the views of local communities are duly taken into account in the Bank’s decision-making process, with the possibility that the negotiations are suspended or even terminated if local governments or the private enterprises refuse to abide by the Bank’s Socio-environmental



policies and procedures and internationally recognized human rights standards, especially the rights of indigenous and traditional peoples to be offer their free, prior and informed consent to development projects that can significantly impact on their lives and territory;

9. Involve the Ombudsman in the beginning of the project cycle and in all its subsequent stages and raise awareness among local communities to the existence of the mechanism to ensure that their grievances are channeled to the appropriate internal departments in a timely and orderly fashion. The Ombudsman’s functioning should be guided by the principles of transparency, impartiality, accessibility, predictability, equality, rights-compatibility and participation.^{xcvii}

The organizations hereby request an in-person meeting with BNDES Ombudswoman and other Bank representatives in a time and format that is convenient to the institution.

The organizations reiterate their commitment to work with the BNDES to ensure that the Bank’s support to the export of Brazilian goods and services, especially engineering services, contributes to a truly sustainable development, one that, instead of deepening situations of vulnerability and injustice, respects and promotes fundamental human rights and long-lasting, positive changes to communities and society as a whole.

ⁱFederal Government of Brazil and the Government of the Plurinational State of Bolivia (22 August 2009), Protocol Between the Plurinational Sate of Bolivia and the Federal Republic of Brazil about the Financing of the Highway Project “Villa Tunari – San Ignacio de Moxos”

ⁱⁱBolivian Highway Administration (22 August 2009), Following the Paths of Development, We construct Integration Highways to promote the progress of Beni. Available from: https://web.archive.org/web/20121021060159/http://www.abc.gob.bo/IMG/pdf/DIPTICO_BENI.pdf

ⁱⁱⁱEarth Foundation (2010), Case study N° 2: TIPNIS, coca and a road beset the Holy Hill: Indigenous Territory of Cochabamba and Beni, Report of Indigenous Territories of the Holy Hill and Pachamama, p 269. Available from: <http://ftierra.org/index.php/publicacion/libro/2-informe-2010-territorios-indigena-originario-campesinos>

^{iv}Law for the Approval of the Protocol between the Plurinational State of Bolivia and the Federal Republic of Brazil About the Financing of the Road “Villa Tunari-San Ignacio de Moxos” (7 April 2010). Available from: <http://www.lexivox.org/norms/BO-L-N5.xhtml>

^vLaw N° 112 (7 May 2011). Available from: <http://www.lexivox.org/norms/BO-L-112.pdf>

^{vi}Contract ABC No. 218/08 GCT-OBR-BNDES (1 August 2008).

^{vii}Open Letter from the Subcentral TIPNIS (4 August 2008), Don’t Turn your back on us brother Evo, p 11. Available from: http://www.iwgia.org/images/stories/sections-esp/tablero-de-anuncios/docs/boletin_ceadl_tipnis.pdf.pdf

^{viii}PIEB Bolivia (25 June 2012), Compensation for environmental services related to carbon, An Alternative to reduce deforestation in TIPNIS, p 1. Available From: http://www.cambioclimatico-bolivia.org/pdf/cc-20120625-El_TIPNIS.pdf

^{ix}Supreme Directive No 22610 (1990). Available from: <http://www.cedib.org/bp/2011/09/DS22610.PDF>



- ^xLaw No. 07401 (22 November 1965), TIPNIS is constituted as a protected area, categorised as a National Park as per Law No.1333, declared as under protection of the State to preserve the natural and cultural patrimony of the State. Available from: <http://bolivia.infoleyes.com/shownorm.php?id=3210>
- ^{xi}Executive Title for Native Communal Lands (*Título Ejecutorial de Tierras Comunitarias de Origen*) TCO-NAL-000002 (25 April 1997). Available from: https://spdb.ohchr.org/hrdb/19th/Bolivia_27.10.11_%283.2011%29.pdf
- ^{xii}Native Communal Lands (*Tierras Comunitarias de Origen*) TCO-NAL-0803002 (13 February 2009). Available at: https://spdb.ohchr.org/hrdb/19th/Bolivia_27.10.11_%283.2011%29.pdf
- ^{xiii}United Nations Office of Drugs and Crime (August 2015), Monitoring Coca Cultivations 2014, Available from: https://www.unodc.org/documents/bolivia/Informe_Monitoreo_Coca_2014/Bolivia_Informe_Monitoreo_Coca_2014.pdf
- ^{xiv}Supreme Directive N° 26996 (17 April 2003). Available from: <http://www.lexivox.org/norms/BO-DS-26996.xhtml>
- ^{xv}Law N° 2530 (24 October 2003). Available from: <http://www.lexivox.org/norms/BO-L-2530.xhtml>
- ^{xvi}CIDOB, Compiled documentation from the TIPNIS Subcentral, CPEMB, y CIDOB (June 2010), Surrounding the Highway Villa Tunari – San Ignacio De Moxos, Resolution 003/2004 of the TIPNIS Subcentral; Vote Resolution No. 001/2007 of 14 September of 2007; Vote Resolution No. 04/2008 of 7 September 2008, Resolution No. 0014/2009 26 August 2009; Resolution No. 001/2010 18 May 2010
- ^{xvii}Law N° 112 (7 May 2011). Available from: <http://www.lexivox.org/norms/BO-L-112.pdf>
- ^{xviii}Human Rights Ombudsman’s Office, Ombudsman’s Report (November 2011), In Relation to the Violation of Human Rights in the Indigenous March. Available from: http://www.defensoria.gob.bo/archivos/Informe_Defensorial_Intervencion_Marcha_Indigena_DP.pdf
- ^{xix}Digital (15 August 2014), Chaparina Massacre, José Luis Saavedra. Available from: http://www.erbol.com.bo/opinion/awqa_runa/masacre_de_chaparina
- ^{xx}Law for the Protection of the Indigenous Territory and National Park Isiboro Sécura – Tipnis, Law No 180 (24 October 2011). Available from: <http://bolivia.infoleyes.com/shownorm.php?id=3335>
- ^{xxi}Opinion.com.bo (15 June 2012), Highway that crosses TIPNIS does not count on financing. Available from: <http://www.opinion.com.bo/opinion/articulos/2012/0615/noticias.php?id=60112>
- ^{xxii}Brazilian National Bank for Economic and Social Development (BNDES), Social and Environmental Responsibility. Available from: http://www.bndes.gov.br/SiteBNDES/bndes/bndes_en/Institucional/Social_and_Environmental_Responsibility/
- ^{xxiii}Valor Econômico (29 September 2011), BNDES signed contract for project in Bolivia without environmental study. Available from: <http://www.valor.com.br/internacional/1025712/bndes-assinou-contrato-para-obra-na-bolivia-sem-estudo-ambiental>
- ^{xxiv}Brazilian National Bank for Economic and Social Development (BNDES) (30 September 2011), Letter from BNDES to the Newspaper Valor Econômico. Available from: http://www.bndes.gov.br/SiteBNDES/bndes/bndes_pt/Institucional/Sala_de_Imprensa/Notas/2011/Institucional/20110930_carta_valor.html
- ^{xxv}Brazilian National Bank for Social and Economic Development (BNDES) (9 September 2014), BNDES Position provided by the BNDES Press Office relative to the report “Paradigmatic Cases of Investments by the Brazilian National Bank for Economic and Social Development (BNDES) in South America. The need and opportunity to improve its internal policies.” Available from: <http://business-humanrights.org/pt/brasil-relat%C3%B3rios-de-ongs-questionam-modo-de-financiamento-do-bndes-a-empresas-com-rela%C3%A7%C3%A3o-a-direitos-humanos#c105525>
- ^{xxvi}Extract from analysis report AEX/DECEX2 n° 2010/0074 (8 December 2010), Page 4, Para 2. Document provided by BNDES after a freedom of information request by the Brazilian NGO Conectas.
- ^{xxvii}Lic Javier Vega Viza, Principal Manager of External Auditing (14 June 2010), Comptroller General’s Office, Letter to Dr Luis Sanchez Gomez Cuquerella, Executive President of the Bolivian Administration of Highways (ABC)
- ^{xxviii}Human Rights Council (16 March 2015), Twenty-eighth session, Agenda item 2, Report of the United Nations High Commissioner for Human Rights on the activities of his office in the Plurinational State of Bolivia. Available from: <http://www.refworld.org/pdfid/5519477e4.pdf>. And: Human Rights Ombudsman’s Office, Ombudsman’s Report (November 2011), Regarding the Violation of the Human Rights of the Indigenous March. Available from:



http://www.defensoria.gob.bo/archivos/Informe_Defensorial_Intervencion_Marcha_Indigena_DP.pdf

^{xxxix} Brazilian National Bank for Economic and Social Development (BNDES) (30 September 2011), Letter from the BNDES to the Newspaper Valor Econômico. Available from:

http://www.bndes.gov.br/SiteBNDES/bndes/bndes_pt/Institucional/Sala_de_Imprensa/Notas/2011/Institucional/20110930_carta_valor.html

^{xxx} Business and Human Rights Resource Centre (9 September 2014), BNDES response to NGOs report. Available from:

<http://business-humanrights.org/en/bndes-response-to-ngos-report>

^{xxx} Business and Human Rights Resource Centre (9 September 2014), BNDES response to NGOs report. Available from:

<http://business-humanrights.org/en/bndes-response-to-ngos-report>

^{xxxii} Law for the Protection of the Indigenous Territory and National Park Isiboro Sécuré – Tipnis, Law No 180 (24 October 2011). Available from:

<http://bolivia.infoleyes.com/shownorm.php?id=3335>

^{xxxiii} Brazilian National Bank for Economic and Social Development (BNDES), Mission, Vision and Values. Available from:

http://www.bndes.gov.br/SiteBNDES/bndes/bndes_en/Institucional/The_BNDES/mission.html

^{xxxiv} Brazilian National Bank for Economic and Social Development (BNDES), Social and Environmental Responsibility. Available from:

http://www.bndes.gov.br/SiteBNDES/bndes/bndes_en/Institucional/Social_and_Environmental_Responsibility/

^{xxxv} Brazilian National Bank for Economic and Social Development (BNDES), Socio-environmental Policy. Available from:

http://www.bndes.gov.br/SiteBNDES/bndes/bndes_en/Institucional/Social_and_Environmental_Responsibility/environmental_policy.html

^{xxxvi} Brazilian National Bank for Economic and Social Development (BNDES), Socio-environmental Policy. Available from:

http://www.bndes.gov.br/SiteBNDES/bndes/bndes_en/Institucional/Social_and_Environmental_Responsibility/environmental_policy.html

^{xxxvii} Brazilian National Bank for Economic and Social Development (BNDES), Socio-environmental Policy. Available from:

http://www.bndes.gov.br/SiteBNDES/bndes/bndes_en/Institucional/Social_and_Environmental_Responsibility/environmental_policy.html

^{xxxviii} Brazilian National Bank for Economic and Social Development (BNDES), Socio-environmental Policy. Available from:

http://www.bndes.gov.br/SiteBNDES/bndes/bndes_en/Institucional/Social_and_Environmental_Responsibility/environmental_policy.html

^{xxxix} Brazilian National Bank for Economic and Social Development (BNDES), Socio-environmental Policy (BNDES) (30 September 2011), Letter from the BNDES to the Newspaper Valor Econômico. Available from:

http://www.bndes.gov.br/SiteBNDES/bndes/bndes_pt/Institucional/Sala_de_Imprensa/Notas/2011/Institucional/20110930_carta_valor.html

^{xl} Business and Human Rights Resource Centre (9 September 2014), BNDES response to NGOs report. Available from: <http://business-humanrights.org/en/bndes-response-to-ngos-report>

^{xli} Law N° 1257 (11 June 1991). Available from: <http://www.lexivox.org/norms/BO-L-1257.html>

^{xlii} International Labour Organisation, C169 Indigenous and Tribal Peoples Convention (1989). Available from: http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/publication/wcms_100897.pdf

^{xliii} Law N° 3760 (7 November 2007). Available from: <http://www.lexivox.org/norms/BO-L-3760.xhtml>

^{xliv} Resolution adopted by the UN General Assembly (2007), United Nations Declaration on the Rights of Indigenous Peoples. Available from:

http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf

^{xlv} Bolivian Highways Administration (March 2008), Base Document for Contracts for the Contracting of Works with Finance Managed by the Proponent under the Turnkey Contract Modality – Construction of the Villa Tunari – San Ignacio de Moxos Highway of the Route F-24.

^{xlvi} Open Letter by the TIPNIS Subcentral (4 August 2008), Don't give us the shoulder brother Evo. Available from: <http://www.scribd.com/doc/106459777/Tipnis#scribd>



^{xlvii}TIPNIS Subcentral (18 May 2010), Resolution No 0001/2010 of the XXIX Extraordinary Meeting of Councillors of the Isiboro Sécore National Park and Indigenous Territory of the Moxeno, Yuracare and Chimán. On 18 May 2010, one year before BNDES signed the contract of financial collaboration, the organised communities of TIPNIS held a meeting of their leaders and issued a declaration rejecting the construction of the highway. This Resolution ratifies the resolutions of the years 2004, 2007, 2008 and 2009.

^{xlviii}Human Rights Ombudsman’s Office (11 November 2011), Ombudsman’s Report, Regarding the Violation of the Human Rights of the Indigenous March. Available from: http://www.defensoria.gob.bo/archivos/Informe_Defensorial_Intervencion_Marcha_Indigena_DP.pdf

^{xlix}Digital (15 August 2014), Chaparina Massacre, José Luis Saavedra. Available from: http://www.erbol.com.bo/opinion/awqa_runa/masacre_de_chaparina

^lHuman Rights Council (8 February 2013), Report of the United Nations High Commissioner for Human Rights on the activities of her office in the Plurinational State of Bolivia, Twenty second session, Agenda item 2. Available from: http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A-HRC-22-17-Add-2_en.pdf

^{li}Human Rights Ombudsman’s Office (11 November 2011), Ombudsman’s Report, Regarding the Violation of the Human Rights of the Indigenous March, p 104. Available from: http://www.defensoria.gob.bo/archivos/Informe_Defensorial_Intervencion_Marcha_Indigena_DP.pdf

^{lii}Supreme Directive Nº 22610 (24 September 1990). Available from: <http://www.lexivox.org/norms/BO-DS-22610.xhtml>

^{liii}Law No 1715 (October 1996), Law of the National Service for Agrarian Reform. Available from:

http://www.redesma.org/docs_portal/leyes/ley_inra.pdf

^{liv}Centre for the Study and Support of Local Development (2011), Bulletin No 7, Isiboro Sécore National Park and Indigenous Territory (TIPNIS); Subcentral of the Isiboro Sécore National Park and Indigenous Territory (2011), Complaint about riding roughshod over our human and territorial rights

^{lv}Centre for the Study and Support of Local Development (2011), Bulletin No 7, Isiboro Sécore National Park and Indigenous Territory (TIPNIS); Subcentral of the Isiboro Sécore National Park and Indigenous Territory (2011), Complaint about riding roughshod over our human and territorial rights

^{lvi}Somos Sur, The coca expansion in TIPNIS during Evo Morales Government. Available from: <http://somosur.net/index.php/bolivia/economia/no-a-la-carretera-por-el-tipnis/447-la-expansion-cocalera-en-el-tipnis-en-el-gobierno-de-evo-morales>

^{lvii}National Service for Protected Areas (SERNAP) (July 2011), TIPNIS Strategic Environmental Evaluation, P 140

^{lviii}Brazilian National Bank for Economic and Social Development, Mission (BNDES), Vision and Values. Available from:

http://www.bndes.gov.br/SiteBNDES/bndes/bndes_en/Institucional/The_BNDES/mission.html

^{lix}Brazilian National Bank for Economic and Social Development (BNDES), Social and Environmental Responsibility. Available from:

http://www.bndes.gov.br/SiteBNDES/bndes/bndes_en/Institucional/Social_and_Environmental_Responsibility/

^{lx}Brazilian National Bank for Economic and Social Development (BNDES), Social and Environmental Responsibility. Available from:

http://www.bndes.gov.br/SiteBNDES/bndes/bndes_en/Institucional/Social_and_Environmental_Responsibility/

^{lxi}Brazilian National Bank for Economic and Social Development (BNDES), Socio-environmental Policy. Available from:

http://www.bndes.gov.br/SiteBNDES/bndes/bndes_en/Institucional/Social_and_Environmental_Responsibility/environmental_policy.html

^{lxii}Brazilian National Bank for Economic and Social Development (BNDES), Socioenvironmental Policy. Available from:

http://www.bndes.gov.br/SiteBNDES/bndes/bndes_en/Institucional/Social_and_Environmental_Responsibility/environmental_policy.html

^{lxiii}Extract From Analysis Report AEX/DECEX2 nº 2010/0074 (8 December 2010), Page 4, Para 2. Document provided by BNDES after a freedom of information request by the Brazilian NGO Conectas: “The communities situated within the forested areas are the titleholders for the management and use of these areas, and they are guaranteed the right to be consulted whenever consideration is being given to legislative or administrative measures which may affect them.”

^{lxiv}Brazilian National Bank for Economic and Social Development (BNDES), Mission, Vision and Values. Available from:

http://www.bndes.gov.br/SiteBNDES/bndes/bndes_en/Institucional/The_BNDES/mission.html



^{lxv} Extract From Analysis Report AEX/DECEX2 nº 2010/0074, (8 December 2010), p 1: “What is of particular note is the socio environmental sensitivity of the project, given the passage of the highway through forested regions known Isiboro Sécore National Park and Indigenous Territory (TIPNIS), subject to pressure from colonisers of the region (especially coca producers)”.

^{lxvi} Supreme Resolution N° 216768 National System of Public Investment (18 June 1996). Available from:

http://www.vipfe.gob.bo/index.php?opcion=com_contenido&ver=categoria_vista&id=572&id_item=729

^{lxvii} Basic Regulation of Pre-Investment, Ministerial Resolution No.29 of the Planning Ministry (May 2007), Article 14. Available from:

<http://www.ops.org.bo/textocompleto/bvsp/boxp68/reglamento-preinversion.PDF>

^{lxviii} Basic Regulation of Pre-Investment, Ministerial Resolution No.29 of the Planning Ministry (May 2007), Article 14, point 3. Available from:

<http://www.ops.org.bo/textocompleto/bvsp/boxp68/reglamento-preinversion.PDF>

^{lxix} Environment Law No 1333 (27 March 1992), Chapter 3 Article 12, point d. Available from: <http://www.lexivox.org/norms/BO-L-1333.xhtml>

^{lxx} Basic Norms of the Administration System of Goods and Services (NB-SABS) approved by Supreme Directive No. 29190 and its regulation (11 June 2007). Available from:

http://www.oas.org/iuridico/PDFs/mesicic4_blv_dec29190.pdf (See Articles 58 and 59)

^{lxxi} Contract ABC No. 218/08 GCT-OBR-BNDES (1 August 2008).

^{lxxii} Bolivian Highways Administration (March 2008), Base Document for Contracts for the Contracting of Works with Finance Managed by the Proponent under the Turnkey Contract Modality – Construction of the Villa Tunari – San Ignacio de Moxos Highway of the Route F-24, p 28

^{lxxiii} Environment Law No 1333 (27 March 1992). Available from: <http://www.lexivox.org/norms/BO-L-1333.xhtml>

^{lxxiv} Plurinational State of Bolivia, Ministry of Public Works, Services and Housing (2009), Technical Report, MOPSV/VMT/DGTTFL/CBP No 0173/2009

^{lxxv} Ministry of Environment and Water (Vice-Minister of MAyA) in note MMAyA-VMA No. 881/10 (24 May 2010). The first revision of the Analytical and Integral Environmental Impact Evaluation Assessment of the Project “Highway Villa Tunari San Ignacio de Moxos”, Route “Monte Grande del Apere – San Ignacio de Moxos.

^{lxxvi} Ministry of Environment and Water (Vice-Minister of MAyA) in note MMAyA-VMA No. 881/10 (24 May 2010)

^{lxxvii} CIDOB, Compiled documentation from the TIPNIS Subcentral, CPMB, and CIDOB (June 2010), Regarding the Issue of the Villa Tunari – San Ignacio De Moxos Highway; TIPNIS Subcentral, Resolución 0004/2010 (29 April 2010)

^{lxxviii} Bolpress (26 July 2010), The Vice Minister and the Director of Environment renounce their positions. Available from: <http://www.bolpress.com/art.php?Cod=2010072601>

^{lxxix} Regulation of Environment Law N° 1333, Regulation for Environmental Prevention and Control (8 December 1995). Available from:

http://biblioteca.unmsm.edu.pe/redlieds/Recursos/archivos/Legislacion/Bolivia/reglamento_prevenicion.pdf

^{lxxx} OAS and Bolivian Highways Administration (June 2010), Analytical and Integral Study of the Environmental Impact Assessment Route 1: Villa Tunari–Isinuta, 8.5.3.2 Induced Future and Risks, 8-17

^{lxxxi} OAS and Bolivian Highways Administration (November 2009), Analytical and Integral Study of the Environmental Impact Assessment Route 3: Monte Grande del Apere–San Ignacio de Mojos, 10.5 Methodology of the Public Consultation

^{lxxxii} Law of Popular Participation 1551 (20 April 1994), Article 7 para c (Abrogated by Law 031 in 2010). Available from <http://bolivia.infoleyes.com/shownorm.php?id=639>

^{lxxxiii} Brazilian National Bank for Economic and Social Development (BNDES) (30 September 2011), Letter from the BNDES to the Newspaper Valor Econômico. Available from:

http://www.bndes.gov.br/SiteBNDES/bndes/bndes_pt/Institucional/Sala_de_Imprensa/Notas/2011/Institucional/20110930_carta_valor.html

^{lxxxiv} Brazilian National Bank for Economic and Social Development (BNDES), Socioenvironmental Policy. Available from:

http://www.bndes.gov.br/SiteBNDES/bndes/bndes_en/Institucional/Social_and_Environmental_Responsibility/environmental_policy.html

^{lxxxv} Extract From Analysis Report AEX/DECEX2 nº 2010/0074 (8 December 2010), Page 4, Para 2. Document provided by BNDES after a freedom of information request by the Brazilian NGO Conectas: “The communities situated within the forested areas are the titleholders for the management and use of these areas, and they are guaranteed the right to be consulted whenever consideration is being given to legislative or administrative measures which may affect them.”



^{lxxxvi} Bolpress (26 July 2010), The Vice Minister and the Director of Environment renounce their positions. Available from: <http://www.bolpress.com/art.php?Cod=2010072601>

^{lxxxvii} Ministry of Environment and Water, Note No MMAyA/VMA 1513/10 (5 August 2010); Bolpress (4 August 2010), Cynthia Silva Maturana assumes the role of Vice Minister of Environmenta. Available from: <http://www.bolpress.com/art.php?Cod=2010080401>

^{lxxxviii} Lic Javier Vega Viza Principal External Auditor Manager (14 June 2010), State Comptroller General, Letter directed to Dr Luis Sanchez Gomez Cuquerella, Executive President of the Bolivian Highways Administration (ABC)

^{lxxxix} Lic Javier Vega Viza Principal External Auditor Manager (14 June 2010), State Comptroller General, Letter directed to Dr Luis Sanchez Gomez Cuquerella, Executive President of the Bolivian Highways Administration (ABC)

^{xc} Basic Norms for the Administration of Goods and Services (NB- SABS), Supreme Directive No. 29190 (11 July 2007). Available from: http://www.oas.org/juridico/PDFs/mesicic4_blv_dec29190.pdf (In force at the time but revoked by a later law in 2009)

^{xc1} Bolivian Highways Administration (March 2008), Base Document for Contracts for the Contracting of Works with Finance Managed by the Proponent under the Turnkey Contract Modality – Construction of the Villa Tunari – San Ignacio de Moxos Highway of the Route F-24

^{xcii} Extract From Analysis Report AEX/DECEX2 n° 2010/0074 (8 December 2010), Page 4, Para 2. Document provided by BNDES after a freedom of information request by the Brazilian NGO Conectas: “The communities situated within the forested areas are the titleholders for the management and use of these areas, and they are guaranteed the right to be consulted whenever consideration is being given to legislative or administrative measures which may affect them.”

^{xciii} Lic Javier Vega Viza Principal External Auditor Manager (14 June 2010), State Comptroller General, Letter directed to Dr Luis Sanchez Gomez Cuquerella, Executive President of the Bolivian Highways Administration (ABC)

^{xciv} In April 2014 the Brazilian Monetary Council approved and the Brazilian Central Bank issued Resolution N. 4.327, which requires that all Brazilian financial institutions create (or update) an Environmental and Social Policy and to institute appropriate internal controls, mechanisms and governance structures to assess, measure and mitigate social and environmental risks.

^{xcv} United Nations Guiding Principles on Business and Human Rights, Principle 17. Available from:

http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf

^{xcvi} UN Guiding Principles on Business and Human Rights, Principle 19. Available from:

http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf

^{xcvii} UN Guiding Principles on Business and Human Rights, Principle 31. Available from:

http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf