

OEA/Ser.L/V/II.153
Doc. 19
7 November 2014
Original: Spanish

REPORT No. 103/14
CASE 12.350
REPORT ON FRIENDLY SETTLEMENT

M.Z.
BOLIVIA

Approved by the Commission at its session No. 2016 held on November 7, 2014
153 Regular Period of Sessions

Cite as: IACHR, Report No. 103/14 Case 12.350.Friendly Settlement. M.Z. Bolivia. November 7,
2014.

REPORT No. 103/14
CASE 12.350
FRIENDLY SETTLEMENT
MZ
BOLIVIA
NOVEMBER 7, 2014

I. SUMMARY

1. On November 22, 2000, the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission” or “the IACHR”) received a complaint submitted by the *Oficina Jurídica para la Mujer*, the Latin American and Caribbean Committee for the Defense of Women’s Rights (CLADEM), and the Center for Justice and International Law (CEJIL) (“the petitioners”) against the Bolivian State (“the State”), alleging international responsibility on the part of the Bolivian State for violation of the rights established in Article 5 (right to humane treatment); Article 8 (right to a fair trial); Article 11 (right to privacy); Article 24 (right to equal protection); Article 25 (right to judicial protection) of the American Convention on Human Rights (hereinafter the “American Convention”) as well as Articles 3, 4, 6, and 7 of the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (hereinafter the “Convention of Belem do Pará”), to the detriment of MZ (the “victim”).

2. According to the facts alleged in the petition, on October 2, 1994, MZ was the victim of rape at her residence in the city of Cochabamba committed by her landlord’s son. The crime was reported to Bolivian criminal justice so that it would be investigated and the person responsible would be properly punished, but as of the date this petition was submitted to the IACHR this had not occurred. In this regard, the petitioners indicated that on November 19, 1996, a first instance decision handed down by the Third Criminal Court (Juzgado 3º de Partido en lo Penal) declared the attacker responsible for the crime of rape and sentenced him to serve a prison term of five years. Contesting the punishment imposed on her attacker, which she considered not in proportion to the harm caused, MZ and her representatives appealed that decision. On October 13, 1997, the Second Criminal Chamber of the Superior Court of the Cochabamba District (Sala Penal Segunda de la Corte Superior de Distrito de Cochabamba), issued a second instance decision acquitting the alleged perpetrator and leaving unpunished the rape of which MZ had been the victim. On April 25, 2000, the Supreme Court of the Nation (Corte Suprema de Justicia de la Nación) declared the cassation appeal filed by MZ and her representatives to be unfounded.

3. The petitioners assert that the victim’s position as a women meant that her basic rights were violated, as she was subjected to a discriminatory judicial process based on prejudicial stereotypes that failed to take into account respect for due process and judicial protection.

4. For its part, the State alleged that the complaint would be inadmissible in that it had been filed outside the period of six months established in Article 38 of the Commission’s Rules of Procedure in effect at the time the complaint was filed, and Article 46 of the American Convention; that the judges exercised their jurisdiction in assessing the evidence during the course of the entire domestic proceeding in Bolivia, in accordance with Bolivian law and jurisprudence, and with respect for the criteria of discretion and reasoned judgment; and that MZ had access to all the remedies established under Bolivian law.

5. On October 10, 2001, the IACHR adopted Admissibility Report No. 73/01, declaring the instant case admissible with respect to alleged violations of the rights protected in Articles 1, 5, 8, 11, 24, and 25 of the American Convention, as well as under the terms of the Convention of Belém do Pará.

6. In 2004 the parties began a process to negotiate a friendly settlement. On March 11, 2008, a friendly settlement agreement was signed during the 131st regular session of the IACHR, whereby the State agreed to implement reparation measures in favor of MZ for the damages done to her person.

7. This friendly settlement report, as established in Article 49 of the Convention and in Article 40.5 of the Commission's Rules of Procedure, summarizes the facts alleged by the petitioners and transcribes the "Friendly Settlement Agreement" signed on March 11, 2008 by the petitioners and representatives of the Bolivian State. In addition, the agreement signed between the parties is approved and it is agreed that this report will be published in the Annual Report to the General Assembly of the Organization of American States.

II. PROCESSING BY THE IACHR

8. The petition was received on November 22, 2000 and forwarded to the Bolivian State on December 14, 2000. The State presented its observations on March 16, 2001 and the petitioners submitted their observations on July 19, 2001. On October 10, 2001, the IACHR adopted Admissibility Report No. 73/01.

9. On June 26, 2002, the IACHR received an amicus curiae brief from the Equality Now organization in support of the petitioners.

10. The State submitted its observations on October 19 and 25, 2001; December 11, 2003; August 31, 2006; and April 9 and June 12, 2007.

11. For their part, the petitioners submitted their observations on November 19 and December 5, 2001; August 4, 2003; September 2 and October 22, 2004; January 28, 2005 (in which they submitted a proposed friendly settlement agreement); and February 20 and 28, 2007.

12. The friendly settlement agreement was signed on March 11, 2008 during the 131st regular session of the IACHR.

13. The State submitted information on the status of compliance with the friendly settlement agreement on September 25, 2008; March 25, June 11, November 16, and December 23, 2009; February 23, March 8, April 20, September 1 and 30, 2010; January 25 and September 20, 2012; January 4, March 1 and 19, September 13 and 25, 2013 and February 25 and March 17, 2014.

14. For their part, the petitioners submitted observations regarding those communications on August 29 and November 13, 2008; May 15 and September 29, 2009; June 4, 2010; September 5, 2011; August 28 and December 21, 2012; and August 12 and November 26, 2013.

15. Since processing of the petition began, the IACHR has facilitated four working meetings held between the parties. The first occurred on March 6, 2002 during the 114th regular session of the IACHR. The second was held on July 19, 2007 in the context of the 128th regular session of the IACHR, for the purpose of advancing the friendly settlement process. The third meeting was held on November 3, 2012, in the context of the 146th regular session of the IACHR, to monitor the points yet to be satisfied in the agreement. The fourth meeting was held on March 26, 2014 in the context of the 150th regular session, during which the parties signed a memorandum of understanding, for the purpose of indicating the two commitments pending for full compliance with the friendly settlement agreement. On September 17, 2014, the State provided information regarding those two points.

III. THE ALLEGED FACTS

16. The petitioners alleged that in the early morning of October 12, 1994, MZ, a Dutch national who was 30 years old at the time, single, an agronomist and anthropologist, was sleeping in her bedroom located at No. 215 José Pol Terrazas Street in the city of Cochabamba, when she was awakened by noises coming from the roof and saw that someone was backing into her room through the window.

17. The petitioners reported that in response to the unexpected invasion, MZ shouted "what's happening" and asked the individual to identify himself. When she realized the stranger's intentions, the victim shouted for help several times but was not heard by the other tenants in the building. The petitioners indicated that MZ tried to resist the assault by hitting her attacker with a heavy object above the eyebrows.

However, given the attacker's physical strength and the death threats he made against MZ (gesturing as if to take a firearm from a pocket in the back of his pants), the attacker was able to subdue her.

18. The petitioners asserted that the attacker violently removed MZ's pajamas and underwear and proceeded to rape her. They maintained that due to the victim's distress and the terror caused by the attacker who remained in her room for four hours, she was unable to shout for help again. It was only when the light of dawn entered the room that MZ was able to see that her attacker was Mr. Jorge Carlos Aguilar Orellana, son of the owner of the house where she was residing as a tenant, with whom she dealt exclusively on a business basis, as he would come to her office to collect the rent.

19. Just after 6:00 a.m., taking advantage of the inattention of her attacker, who was beginning to fall asleep, she managed to escape from her residence and take refuge with neighbors who lived in the front of the building, gave her a robe to cover herself, and allowed her to use the telephone to call for help, at which time she called two friends to accompany her to report the incident and seek medical care.

20. On that same day, October 2, 1994 at 7:00 a.m., MZ went to the Judicial Technical Police in the company of a friend to report the incident and then to the Bolivian-Belgian Surgical Medical Center for the appropriate forensic examination. Personnel specialized in criminalistics went to the scene of the crime that afternoon to gather evidence for laboratory processing and to take photographs there. On October 5, 1994, MZ filed a complaint with the Fifth Examining Magistrate of Cochabamba.

21. The petitioners indicated that an investigation was initiated and concluded by summoning the accused to appear because there was evidence indicating he was responsible for the crime of rape as defined in Article 308 of the Penal Code in effect at that time.

22. On November 19, 1996, given the evidence gathered in the investigative phase and presented during the corresponding oral trial, a first instance decision handed down by the Third Criminal Court of Cochabamba declared Jorge Carlos Aguilar Orellana guilty of the crime of rape and unlawful entry, sentencing him to five years in prison.

23. That decision was appealed by the victim and her representatives who stated that during the appeal stage (and later when challenging the higher court decision in a cassation appeal), the Bolivian authorities conducted a biased analysis of the facts, assigning responsibility for the attack to the victim herself instead of the accused, invoking for the purpose a series of metajudicial criteria including: the size and physical strength of the victim and her potential ability to resist the attack; the alleged prior emotional relationship between the victim and her attacker, and the resulting presumption of consent to engage in sexual relations; MZ's return to her native country and appointment of an attorney in the case as indications of disinterest; the fact that the victim was not a virgin; and that the neighbors at the front of the building did not hear noise or screams.

24. As a result of the foregoing, on October 13, 1997, the Second Criminal Chamber of the Superior Court of the District of Cochabamba issued a second instance decision acquitting the alleged perpetrator and leaving unpunished the rape of which MZ was a victim. On April 25, 2000, the Supreme Court of Justice declared the cassation appeal filed by MZ and her representatives to be unfounded.

25. In this regard, the petitioners alleged that the State incurred international responsibility due to the actions of its judicial bodies, since the decisions handed down by the Superior Court of the District of Cochabamba and Bolivia's Supreme Court of Justice fell outside due process and entail the violation of various rights enshrined in the American Convention and the Convention of Belem do Para. Specifically, they state that the Bolivian State failed to recognize the right to an impartial tribunal in determining the rights of MZ and the right to obtain a well-founded decision, based on the evidence appearing in the process, in response to the allegations of the parties. In addition, they asserted that remedies filed within the domestic jurisdiction proved to be ineffective for protecting MZ against the violations to which she had been subject; also failing to recognize her rights to a life free of violence, to physical, mental, and moral integrity, and the protection of honor and dignity.

IV. FRIENDLY SETTLEMENT

26. On March 11, 2008, during the 131st regular session of the IACHR, the parties signed the following Friendly Settlement Agreement:

FRIENDLY SETTLEMENT AGREEMENT

This document represents a friendly settlement agreement signed by the petitioner and the Bolivian State within the framework of the provisions of Article 41.1 of the Rules of Procedure of the Inter-American Commission.

This document is signed pursuant to the following clauses:

ONE.- THE PARTIES

The parties to this agreement are:

1. On the one hand, the BOLIVIAN STATE, represented by the Minister of Foreign Affairs, Ambassador David Choquehuanca Céspedes, whose powers, in accordance with Law 1444, the Foreign Service Law of Bolivia, include the legal representation of the State, which shall hereinafter be called "THE STATE."
2. On the other, the *Oficina Jurídica para la Mujer* of Cochabamba – represented by Julieta Montaña-, the Latin American and Caribbean Committee for the Defense of Women's Rights (CLADEM) – represented by Norma Henríquez-, and the Center for Justice and International Law (CEJIL) - represented by Viviana Krsticevic and Liliana Tojo, all in their capacity as petitioners in the case and representatives of Mrs. MZ, a Dutch national, who hereinafter shall be called "THE PETITIONERS."

TWO.- PUBLIC ACKNOWLEDGEMENT OF RESPONSIBILITY

The BOLIVIAN STATE recognizes its international responsibility with respect to the MZ Case No. 12.350, noting that the referenced case illustrates the situation faced by many women victims of sexual violence who have been discriminated against by the justice system in violation of the rights protected by the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women – the Convention of Belém do Pará- and the American Convention on Human Rights, the "Pact of San José, Costa Rica," particularly with respect to the right of all women to a life free of violence and the State's obligation to act with due diligence to prevent, investigate, and punish violence against women.

This recognition of international responsibility shall be made known through a public ceremony to be held within 120 days following the signing of the agreement, to be conducted by the Minister of Foreign Relations and attended by the Minister of Justice, Vice Minister of Justice and Human Rights, the Vice Minister on Gender, judicial authorities, and national authorities, as well as relatives of the victim, the petitioners in the case, and others.

To disseminate this friendly settlement agreement, the State agrees to:

- Publish once in the Bolivian Information Agency (or some other equivalent official outlet) the full text of the Friendly Settlement Agreement approved by the Inter-American Commission on Human Rights.
- Publish this Agreement once in two press outlets with national circulation (*Los Tiempos* and *La Razón*).

- Submit the Friendly Settlement Agreement to the Judicial Branch and the General Prosecutor's Office of Bolivia, reminding judges and prosecutors of the commitments assumed by the Republic of Bolivia for protecting and respecting human rights, particularly those derived from the Convention of Belém do Pará.
- Publish the full text of the Friendly Settlement Agreement approved by the Inter-American Commission on Human Rights on the websites of the Ministry of Foreign Relations and the Judiciary Institute of Bolivia, making it visible on the sites' home page and leaving it there for a period of six months.

THREE.- RENUNCIATION OF RESTITUTION AND COMPENSATORY INDEMNITY MEASURES.

It is clearly established that in order to make it easier to reach a friendly settlement in this case and to contribute – thereby – to overcoming discriminatory practices against women in the administration of justice in cases of sexual violence, Mrs. MZ indicates her renunciation of her right to monetary compensation.

In the same spirit, the petitioner organizations renounce their right to claim reimbursement from the State of their costs and expenses.

In addition, Mrs. MZ and the co-petitioners renounce any other action (administrative, judicial, or international) to which they might have a right with respect to the facts that led to this case.

FOUR.- THE COMMITMENTS MADE BY THE PARTIES.

With the parties to this agreement indicating that there is no defect in the consent, agreement is reached on the following obligations:

COMMITMENTS MADE BY THE STATE.

1. THE STATE agrees to implement within a period of one year through the Judiciary Institute of Bolivia a positive action to ensure that at least 15% of the total amount of time in its educational programs is dedicated to activities focusing on the promotion and protection of human rights with a gender approach, for which purpose it must ensure the participation of personnel who specialize in this subject.
2. Explicitly include within a period of six months in the regulations governing the procedures for evaluating sitting judges the variable "*degree of knowledge of human rights, particularly issues associated with gender discrimination.*"
3. Within no more than two years, through an administrative act, implement dissemination on the official website of the Judiciary and the Office of the Attorney General the resumes of candidates selected to occupy vacancies, in order to ensure maximum publicity. That publication must remain for a reasonable amount of time so as to allow individuals, professional colleagues, and associations involved in sectors linked to the work of the judiciary, human rights, and other similar organizations to submit in writing and on a well-founded and documented basis to the authorized administrative authorities of the Judiciary and the Office of the Attorney General, any observations, objections, views and other circumstances they deem relevant with respect to the candidates selected.
4. The Ministry of Foreign Relations will organize a conference during 2008 on the rights of women and the Convention of Belém Do Para for judicial officials of the Supreme Court and District Superior Courts, the General Prosecutor's Office, District Prosecutors' Offices, the National Police, as well as lawyers in private practice and public defenders, ensuring the participation of the organizations acting as petitioners in the case and the Ministry of Justice and the Vice Ministry on Gender.

5. The STATE, through the Ministry of Foreign Relations, and the Ministry of Justice – Vice Ministry on Gender and Generational Affairs, agrees to make financial provision for editing manuals and other publications on the treatment of the victims of sexual violence, which will be given to the Judicial Branch, the General Prosecutor’s Office, the National Police, and other institutions, as a campaign to raise awareness regarding the rights of women and the effect of international treaties.
6. The STATE, through the Office of the Attorney General, in accordance with Art. 26 of Law 2033 on protecting victims of crimes against sexual freedom, will create within a period of two years a Specialized Unit to support the victims of sexual violence as well as to conduct investigations and take public criminal action with respect to these crimes.
7. The STATE, through the Office of the Attorney General – Forensic Investigations Institute – will create within a period of two years a Special Unit to develop the scientific-technical studies needed for the investigation of crimes against sexual freedom.
8. The STATE, through the Office of the Attorney General – Forensic Investigations Institute – agrees to make the necessary adjustments within no more than two years to ensure that the physical locations where victims of sexual violence submit their statements provide the necessary infrastructure conditions to guarantee their privacy.

FIVE – COMMITMENTS MADE BY THE PETITIONER.

The petitioner undertakes the following commitments:

1. Once this friendly settlement agreement is signed, to communicate to the IACHR the agreement that has been reached in accordance with the friendly settlement procedure governed by Art. 41 of the IACHR Rules of Procedure.
2. Once both parties have fully complied with the commitments, to ask the IACHR to issue in accordance with Art. 49 of the American Convention on Human Rights a Friendly Settlement Report to conclude the processing of Petition No. 12.350.

SIX.- FAILURE TO COMPLY WITH THE AGREED COMMITMENTS.

The points agreed to in this friendly settlement agreement must be effectively satisfied within the periods established for each of them. Failure to satisfy one or more points will lead to termination of the friendly settlement process before the Inter-American Commission on Human Rights and both the STATE and the PETITIONER will immediately proceed to inform the Inter-American Commission on Human Right that they renounce the friendly settlement, which will authorize the IACHR to proceed with the processing of the case in accordance with procedure.

However, depending on the circumstances, the petitioners may favorably consider any request for extension for purposes of compliance.

SEVEN.- FOLLOW-UP MECHANISM.

The STATE, within the framework of the powers established by its regulations, establishes that the Ministry of Foreign Relations will be responsible for following up compliance with the measures agreed to, should coordinate actions with the entities sponsoring the Petitioner, and inform the Inter-American Commission on Human Rights quarterly regarding the agreements implemented.

EIGHT.- INTERPRETATION.

The parties agree that the meaning and scope of this Agreement are interpreted in accordance with Articles 29 and 30 of the American Convention on Human Rights, as relevant and based on the principle of good faith. In the event of doubt or dispute between the parties regarding the content of this Agreement, the Inter-American Commission on Human Rights shall decide on its interpretation. It is also responsible for verifying compliance therewith.

Signed in four copies in Washington D.C., Tuesday, March 11, 2008.

27. On March 26, 2014, in the context of the 150th regular session, after the parties had interpreted the level of compliance with the agreement in a working meeting, the parties signed a memorandum of understanding to make total compliance with the Friendly Settlement Agreement contingent on the following two commitments as indicated below:

1. With regard to the package of commitments related to the appointment, promotion, and training of judges and prosecutors who are members of the judiciary, the parties agreed they would consider it to have been satisfied upon approval of the draft regulations for the judicial career, regarding which the petitioners made observations during the meeting held by the parties on February 20, 2014, in the city of La Paz. The State will inform the petitioners regarding the results of its efforts to incorporate those observations.
2. With regard to the commitment on the creation of a Specialized Unit, the parties agreed that it would be considered satisfied upon the State's delivery to the petitioners of the list of personnel in the Victims Support Unit of Cochabamba, indicating the functions they perform. For their part, the petitioners offered to conduct training on gender issues for said personnel.

V. DETERMINATION OF COMPATIBILITY AND COMPLIANCE

28. The IACHR reiterates that according to Articles 48.1.f and 49 of the Convention, the purpose of this procedure is to reach "a friendly settlement of the matter on the basis of respect for the human rights recognized in the Convention". The agreement to go forward with this process expresses the good faith of the State to comply with the purposes and objectives of the Convention in conformity with the principle of *pacta sunt servanda*, according to which States must fulfill obligations assumed under treaties in good faith. It further recalls that the friendly settlement procedure contemplated in the Convention allows individual cases to be terminated in a non-contentious manner and, in cases involving various countries, has proven to be an important settlement vehicle that can be used by both parties.

29. The IACHR describes below the compliance level of this agreement of understanding, according to the specific clauses:

A. Public Acknowledgement of Responsibility

30. The Bolivian State recognized its international responsibility with respect to the instant case on March 11, 2008 in the friendly settlement agreement itself, in which it indicated as follows: "The Bolivian STATE recognizes its international responsibility in relation to the MZ Case No. 12.350, noting that the referenced case illustrates the situation faced by many women victims of sexual violence who have been discriminated against by the justice system in violation of the rights protected by the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women – the Convention of Belém do Pará- and the American Convention on Human Rights, the "Pact of San José, Costa Rica," particularly with respect to the right of all women to a life free of violence and the State's obligation to act with due diligence to prevent, investigate, and punish violence against women."

31. In addition to the above, the agreement recorded the State's commitment to make this recognition known "through a public ceremony to be held within 120 days following the signing of the agreement, to be conducted by the Minister of Foreign Relations and attended by the Minister of Justice, Vice Minister of Justice and Human Rights, the Vice Minister of Gender, judicial authorities, and national authorities, as well as relatives of the victim, the petitioners in the case, and others."

32. Following up this commitment, on July 21, 2008 the Bolivian State held the public ceremony, which was conducted in accordance with the terms agreed to by the parties in this friendly settlement agreement. In this sense, the ceremony was attended by the Minister who indicated "the firm commitment of the State to eradicate sexual violence against women and discrimination in the administration of justice."¹ The petitioners and representatives attended that ceremony, had the opportunity to participate, and urged the Bolivian authorities in attendance to work to completely eradicate sexual violence against women and gender-based discrimination in the judicial system. Participants at the event also included the Vice Minister of Justice and Human Rights, the Vice Minister on Gender and Generational Affairs, and relatives of the victim.

33. In addition to the public ceremony recognizing responsibility, the State agreed in the Friendly Settlement Agreement to:

- i. *Publish once in the Bolivian Information Agency (or some other equivalent official outlet) the full text of the Friendly Settlement Agreement approved by the Inter-American Commission on Human Rights.*
- ii. *Publish this Agreement once in two press outlets with national circulation (Los Tiempos and La Razón).*
- iii. *Submit the Friendly Settlement Agreement to the Judicial Branch and the General Prosecutor's Office, reminding judges and prosecutors of the commitments assumed by the Republic of Bolivia for protecting and respecting human rights, particularly those derived from the Convention of Belém do Pará.*
- iv. *Publish the full text of the Friendly Settlement Agreement approved by the Inter-American Commission on Human Rights on the websites of the Ministry of Foreign Relations and the Judiciary Institute of Bolivia, making it visible on the sites' home page and leaving it there for a period of six months.*

34. With respect to the commitments assumed to disseminate the Friendly Settlement Agreement, the parties agreed that points i. and iv. described above will be satisfied once the IACHR issues the approval report provided in Article 49 of the Convention.²

35. In compliance with the other two clauses, the friendly settlement agreement was published in the newspapers "La Razón" and "Los Tiempos" on August 3, 2008.³ With respect to point iii., the State reported in a communication of September 5, 2012 that the Friendly Settlement Agreement had been submitted to the Judicial Branch and the Office of the Attorney General. That information was verified and the point was deemed to have been satisfied by the petitioners in observations received on June 19, 2013.⁴

36. The Commission is very appreciative of the efforts made by the State to disseminate the Acknowledgement of Responsibility relating to the facts of this report and deems these points of the agreement to have been satisfied.

¹ Communication from CEJIL, August 29, 2008.

² Petitioners' observations to the State's brief on compliance with the Friendly Settlement Agreement, June 19, 2013.

³ Petitioners' observations to the State's brief on compliance with the Friendly Settlement Agreement, June 19, 2013.

⁴ Petitioners' observations to the State's brief on compliance with the Friendly Settlement Agreement, June 19, 2013.

B. Other commitments made by the State

Point 1: *The STATE agrees to implement within a period of one year through the Judiciary Institute of Bolivia a positive action to ensure that at least 15% of the total amount of time in its educational programs is dedicated to activities focusing on the promotion and protection of human rights with a gender approach, for which purpose it must ensure the participation of personnel who specialize in this subject.*

37. The State provided information on this point in its report received on March 1, 2013 on the implementation of programs to promote and protect human rights with a gender approach. In this regard it indicated that “the State, through the School for Judges, complies by developing the design of the curriculum for the Course on Human Rights in the administration of justice, both for ongoing training and updating and the process for training judges, and specifically with regard to the MZ case it incorporates the gender approach in the instruction and training course of the School for State Judges.” On that occasion, the State added to the referenced report the programmatic content of the Human Rights Course, in which a section on gender equity is noted.

38. In addition, in a communication received by the IACHR on September 16, 2013, the State listed another series of training courses with gender content that had been conducted, in which the following are pointed out: “Orientation Cycle for Recently Appointed Court Officials” in which a course had been taught on Human Rights with a gender approach for 47 male and female judges; a course organized by the School for State Judges in coordination with the Spanish Agency for International Development Cooperation (AECID) and the Office of the United Nations High Commissioner for Human Rights (OHCHR) on “International Standards on the Rights of Women – Comprehensive Law to Guarantee Women a Life Free of Violence and a Gender Approach in the Administration of Justice;” course-workshop “Specialization on issues of gender, human rights, and violence, Law 348,” which has been conducted since June 2013 in various departments of the country by the School for State Judges in coordination with the OHCHR, which has the national objective of training approximately 600 male and female judges and 100 prosecutors. Provision was made for dissemination of the MZ case and its Friendly Settlement Agreement within the context of the course-workshop described.

39. For their part, the petitioners⁵ recognized progress and achievements made by the State in the area of training. However, it was not clear to them whether those programs were ongoing and mandatory in all study plans offered by the School for State Judges, including the initial training course and the orientation cycle. In addition, they noted that the report also omitted reference to the number of hours in the course, a point found in the clause included in the Agreement.

40. In the working meeting held in the context of the 150th regular session on March 26, 2014, the parties agreed that the commitment on training for judge and prosecutor members of the judiciary would be considered satisfied with approval of the draft regulations for the judicial career, with information from the State regarding the inclusion of observations made by the petitioners regarding that draft.

41. In a communication dated September 17, 2014, the State informed the IACHR regarding approval of the Regulations for the Judicial Career through Agreement No. 079/2014 issued by the Council of the Judiciary on April 8, 2014, copy of which was attached. It also attached the letters sent to the petitioners whereby the State had sent them the Regulations for the Judicial Career and had informed them regarding approval thereof, particularly compliance with this point through Articles 17⁶ and 100⁷ of the Regulations.

⁵ Petitioners’ observations to the State’s brief on compliance with the Friendly Settlement Agreement, June 19, 2013.

⁶ Regulations for the Judicial Career in Bolivia, Agreement No. 079/2014, Article 17 (Training and judicial specialization judicial): *The School for State Judges is the institution responsible for regulating and executing the process of training, judicial specialization, and technical training for male and female candidates for judgeships in the regular and agro-environmental jurisdiction. The process of training, judicial specialization, and technical training will also consider the Political Constitution of the State, international agreements and treaties ratified by the Bolivian State in the area of human and gender rights, the Judicial Body Law, laws and codes in effect according to the subject involved and constitutional and ordinary jurisprudence.*

42. In that same communication, the State made reference to a new cycle of workshops called “Obligations and International Responsibility of the State in the Area of Human Rights” that are being conducted by the General Procurator’s Office and the OHCHR and be directed to police officers, male and female judges, prosecutors, and public defenders. The workshops conducted in the city of Cochabamba on August 21-22, 2014 included the participation of Julieta Montaña, director of the *Oficina Jurídica de la Mujer* and petitioner in this case, who gave a presentation on the difficulties of implementing Law No. 348, the “Comprehensive Law to Guarantee Women a Life Free of Violence.”

43. In a communication dated September 17, 2014, the State also made reference to the “Third National Seminar on the IACHR Friendly Settlement Mechanism” that was conducted on September 3 and September 4 in the cities of Santa Cruz and La Paz, respectively. At that seminar, the State gave a presentation on the case and gave the participants the CD titled “Friendly Settlement Agreement in the MZ Case – Compilation of Materials on Gender-Based Violence and Sexual Violence.” The State also reported that at the seminar conducted in the city of La Paz Mrs. Julieta Montaña gave a presentation on the Friendly Settlement Agreement in the MZ case. On that occasion, Mrs. Montaña referred to progress made and challenges met in implementing the agreement, emphasizing as a great challenge the time it took for full compliance.

44. Based on the above, the Commission recognizes and appreciates that various training cycles have been developed for government officials, particularly in the judiciary. It also notes that Article 100 of the Regulations for the Judicial Career ensures that the country’s male and female judges will continue to have ongoing training in human rights and gender. The IACHR also appreciates the proactive and committed attitude of the petitioners and their willingness to participate as presenters in those training cycles. Thus, this point of the agreement is considered satisfied.

Point 2: *I Explicitly include within a period of six months in the regulations governing the procedures for evaluating sitting judges the variable “degree of knowledge of human rights, particularly issues associated with gender discrimination.”*

45. On various occasions the State issued statements regarding the development of the Regulations on Access to the Judicial Career,” which was being prepared by the Judiciary Council to adapt the regulations for the evaluation of male and female judges. With this objective, that body was developing national events to gather information for drafting the regulations.⁸

46. The petitioners, for their part, reported that in the working meetings held on February 20, 2014 in the city of La Paz and on March 26, 2014 in the city of Washington D.C. they had the opportunity to make observations regarding the Draft Regulations for the Judicial Career. For that reason, the parties agreed that they would consider this clause to be satisfied with approval of the draft Regulations for the Judicial Career with the relevant information provided by the State regarding the result of its efforts to incorporate the observations made by the petitioners.

47. On September 17, 2014, the State informed the IACHR of the approval of those regulations, attaching copy thereof. Through this communication, it attached the letters sent to the petitioners in which the State had sent them the Regulations for the Judicial Career and informed them regarding their approval, particularly compliance with this point under Article 43⁹ of the Regulations.

[... continuation]

⁷ Regulations for the Judicial Career, Agreement No. 079/2014, Article 100 (Content): *Training, update, supplemental, and ongoing specialization programs for male and female judges in the regular and agro-environmental jurisdiction shall be carried out in a minimum of: ... 2. International agreements and treaties ratified by the Bolivian State in the area of human and gender rights.*

⁸ Report on State compliance, September 12, 2013; Report on State compliance, February 28, 2013.

⁹ Regulations for the Judicial Career in Bolivia, Agreement No. 079/2014, Article 43 (Main themes): *The main themes for testing knowledge will have a particular effect on the subjects and specialties related to the position sought by candidates, which shall include at a minimum: ... 2. International agreements and treaties ratified by the Bolivian State in the area of human and gender rights.*

48. The Commission understands that under Article 100 of those Regulations knowledge regarding international agreements and regulations ratified by the Bolivian State in the area of human and gender rights will become part of the main themes for testing the knowledge of male and female candidates for judgeships. Based on the preceding, the Commission recognizes the efforts made by the State and deems this point of the agreement to have been satisfied.

Point 3: *Within no more than two years, through an administrative act, implement dissemination on the official website of the Judiciary and the Office of the Attorney General the resumes of candidates selected to occupy vacancies in order to ensure maximum publicity. That publication must remain for a reasonable amount of time so as to allow individuals, professional colleagues, and associations involved in sectors linked to the work of the judiciary, human rights, and other similar organizations to submit in writing and on a well-founded and documented basis to the authorized administrative authorities of the Judiciary and the Office of the Attorney General, any observations, objections, views and other circumstances they deem relevant with respect to the candidates selected.*

49. The State, through reports dated September 5, 2012, February 28, 2013, and September 12, 2013, announced that the Regulations for the Judicial Career would include dissemination of the CVs of candidates for the Judicial Branch. More specifically, through a compliance report dated September 5, 2012, the State reported that it would be adapting the institutional web page in order to incorporate the resumes of public servants.

50. The petitioners asserted that the mechanisms that would be used to allow civil society to submit their observations and objections regarding the candidates selected had not been made clear. Accordingly, they would consider this point in the agreement satisfied once the Regulations for the Judicial Career were approved with the relevant information provided by the State regarding the results of its efforts to incorporate the observations made by the petitioners at the meeting held on February 20, 2014 in the city of La Paz.

51. The Commission notes that the Regulations for the Judicial Career were approved by Agreement No. 079/2014 issued by the Council of the Judiciary on April 8, 2014. On this basis and taking into account the provisions established by the parties in the Memorandum of Understanding of March 26, 2014, the IACHR considers this point in the agreement to have been satisfied.

Point 4: *The Ministry of Foreign Relations will organize a conference during 2008 for judicial officials of the Supreme Court and District Superior Courts, the General Prosecutor's Office, District Prosecutors' Offices, the National Police, as well as lawyers in private practice and public defenders regarding the rights of women and the Convention of Belém Do Para, ensuring the participation of the petitioners in the case and the Ministry of Justice and the Vice Ministry on Gender.*

52. The parties considered this point to have been satisfied with the International Public Conference on "Access to Justice for Women in Domestic and International Jurisdictions" held on June 26, 2009 with the participation of 275 people. That conference was organized and conducted jointly by the Ministry of Foreign Relations, the Ministry of Justice, the Supreme Court of Justice, and the Judiciary Institute of Bolivia. The Rapporteur on Women's Rights at the time participated in the conference intended to train male and female officials at all levels of the Judicial Branch regarding matters related to violence and discrimination against women, in order to collaborate in carrying out the friendly settlement of this case.

Point 5: *The STATE, through the Ministry of Foreign Relations, and the Ministry of Justice – Vice Ministry on Gender and Generational Affairs, agrees to make financial provision for editing manuals and other publications on the treatment of the victims of sexual violence, which will be given to the Judicial Branch, the General Prosecutor's Office, the National Police, and other institutions, as a campaign to raise awareness regarding the rights of women and the effect of international treaties.*

53. The State asserted that it had complied with the production and publication of materials related to the rights of victims and witnesses in cases of psychological, physical, and sexual violence, through the publication of the following documents by the Office of the Attorney General in November 2012: 1. National Diagnosis of the Victims and Witnesses Support Unit; 2. Protocol for Gesell Chamber Interviews and Methodology for Taking Testimony from Children, Adolescents, Victims, and Witnesses; 3. Guide on Use of the Gesell Chamber; 4. Single National Critical Path for Supporting the Victims of Crimes against Sexual Freedom and Gender Violence.¹⁰

54. The State also reported that Law No. 348, the “Comprehensive Law to Guarantee Women a Life Free of Violence,” was enacted on March 9, 2013. The purpose of the law is to establish mechanisms, measures, and comprehensive policies on prevention, care, protection, and support for women who have been the victims of violence. The law also provided for the prosecution and punishment of assailants and would be disseminated to male and female officials in the Judicial Branch and the Office of the Attorney General. The State also indicated that this law and its respective protocols have been disseminated on the website of the Office of the Attorney General and in news reports dated June 8 and August 22, 2013.¹¹

55. The IACHR has the file with the materials indicated and appreciates the work done by the State in issuing these documents in accordance with international standards in this area. Thus, it considers this point of the agreement to have been satisfied.

Points 6 and 8: *The STATE, through the Office of the Attorney General, in accordance with Art. 26 of Law 2033 on protecting victims of crimes against sexual freedom, will create within a period of two years a Specialized Unit to support the victims of sexual violence as well as to conduct investigations and take public criminal action with respect to these crimes (6).*

The STATE, through the Office of the Attorney General – Forensic Investigations Institute – agrees to make the necessary adjustments within no more than two years to ensure that the physical locations where victims of sexual violence submit their statements provide the necessary infrastructure conditions to guarantee their privacy (8).

56. With regard to the creation of a specialized unit to support the victims of sexual violence, the State reported that a National Coordinating Office on Sexual Crimes, Human Smuggling and Trafficking, and Support for Victims and Witnesses was created. Units to Support Victims and Witnesses and Specialized Units for the Prosecution of Human Smuggling and Trafficking, Sexual Crimes, and Gender-Based Violence have also been created.¹²

57. With respect to the point on physical locations for taking statements, the State indicated that Gesell Chambers¹³ have been implemented in seven of the country’s nine departments.

58. At a meeting held at the headquarters of the IACHR Secretariat on March 26, 2014 in the context of the 150th regular session, the petitioners agreed with the State that these points would be considered satisfied “upon delivery to the petitioners by the State of the list of personnel in the Victims Support Unit of Cochabamba, indicating the functions they perform. For their part, the petitioners offered to conduct training on gender issues for said personnel.”

¹⁰ Report on State compliance, February 28, 2013. The file includes a hard copy of each of the documents described.

¹¹ Report on State compliance, September 12, 2013

¹² Report on State compliance, February 28, 2013.

¹³ *Guide on use of the Gesell Chamber*, Directorate for Protection of Victims, Witnesses, and Members of the Attorney General’s Office, General Prosecutor’s Office, Bolivia, 2012, p.31: “For forensic work, currently the Gesell Chamber is a specially conditioned environment that allows interviews to be conducted with victims and witnesses. It consists of one-way glass that divides the area into two rooms, which are called the observation room and the interview room. The observation room has audiovisual equipment for recording interviews, an intercom, and furniture for those who will observe the procedure that will take place. The interview room has an imperceptible microphone, a film camera, and furniture suitable for the victims or witnesses who will participate in the proceeding that will take place.”

59. The State, through a communication sent to the IACHR on September 17, 2014, attached a “Record of Delivery” of the list of personnel in the Victims Support Unit of Cochabamba, signed by Mrs. Julieta Montaña, director of the *Oficina Jurídica para la Mujer*, and Mr. Miguel Angel Estrada, General Director of Human Rights and Environmental Processes of the Procurator General’s Office, on May 9, 2014, which is transcribed below:

In compliance with point 2 of the Memorandum of Understanding in Case 12.350 MZ BOLIVIA, dated March 26, 2014, signed in the city of Washington, in the context of the working meeting held during the 150th Regular Session, which states as follows: With regard to the commitment on the creation of a Specialized Unit, the parties agreed that it would be considered satisfied upon delivery to the petitioners by the State of the list of personnel in the Victims Support Unit of Cochabamba, indicating the functions they perform. For their part, the petitioners offered to conduct training on gender issues for said personnel, delivery is made to Dr. Julieta Montaña- Director of the *Oficina Jurídica para la Mujer* as petitioners in case 12.350 MZ- of the payroll for personnel participating directly or indirectly in attending to and processing cases related to gender-based violence, sent by the Autonomous Municipal Government of Cochabamba, Departmental Prosecutor’s Office of Cochabamba, and the Special “Genoveva Ríos” Force to Combat Violence of Cochabamba, at folio 16.

60. The IACHR greatly appreciates the State’s creation of the units mentioned above (para. 56) as well as the great effort deployed to adapt physical locations for taking statements, implementing Gesell Chambers. It also trusts that those units will provide effective service according to the needs of the victims and will be given the proper materials. Accordingly, the Commission considers this point of the agreement to have been satisfied.

Point 7: *The STATE, through the Office of the Attorney General – Forensic Investigations Institute – will create within a period of two years a Special Unit to develop the scientific-technical studies needed for the investigation of crimes against sexual freedom.*

61. This point was considered satisfied by the parties with the creation in 1999 of the Forensic Investigations Institute, which has its principal headquarters in the city of La Paz, as well as the implementation of regional laboratories throughout the country.

VI. CONCLUSIONS

62. Based on the preceding considerations and pursuant to the procedure provided in Articles 48.1.f and 49 of the American Convention, the Commission wishes to reiterate its profound appreciation for the efforts made by the parties and its satisfaction at their having reached a friendly settlement in this case, based on respect for human rights and consistent with the aim and purpose of the American Convention.

63. The Commission also wants to emphasize that this Friendly Settlement Agreement is part of efforts to combat violence against women and discrimination on the part of justice operators. Its signing, and the firm commitment of the petitioners, Mrs. MZ, and the Bolivian State made it possible, through the establishment of this agreement’s clauses, most of them focused on guarantees preventing a recurrence, to achieve progress on the national level in the area of public policies, human rights and gender, training cycles for justice operators, amendment of the Regulations for the Judicial Career, issuance of laws, and the creation of Specialized Support Units with premises suitable for carrying out their activities.

64. At the same time, the IACHR wishes to emphasize how important it is to comply with friendly settlement agreements in accordance with the time periods established by the parties, or if not, as quickly as possible, in order to guarantee the criterion of timeliness.

65. Based on the considerations and conclusions presented in this report,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To approve the terms of the agreement signed by the parties on March 11, 2008.
2. To consider the clauses in this agreement to have been satisfied.
3. To make this report public and include it in its Annual Report to the General Assembly of the OAS.

Done and signed in the city of Washington, D.C., on the 7th day of the month of November, 2014.
(Signed): Tracy Robinson, President; Rose-Marie Belle Antoine, First Vice President; Felipe González, Second Vice President; Rosa María Ortiz, Paulo Vannuchi and James L. Cavallaro, Commissioners.