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REPORT No. 270/23
CASE 11.426
REPORT ON FRIENDLY SETTLEMENT

MARCELA ALEJANDRA PORCO
BOLIVIA

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FRIENDLY SETTLEMENT
MARCELA ALEJANDRA PORCO
BOLIVIA
NOVEMBER 30, 2023

I. SUMMARY AND RELEVANT PROCEEDINGS OF THE FRIENDLY SETTLEMENT PROCESS

1. On December 30, 1994, the Inter-American Commission on Human Rights (hereinafter "the Commission" or "IACHR") received a petition presented by the organization Servicio Paz y Justicia (SERPA), the Center for Justice and International Law (CEJIL), the Asociación Justicialista de Abogados, Fernando Rizzi and Gaspar Porco¹ (hereinafter "the petitioners" or "the petitioning party"), alleging the international responsibility of the Plurinational State of Bolivia (hereinafter "State" or "Bolivian State" or "Bolivia") for the alleged violation of the human rights enshrined in Articles 5 (right to humane treatment), 7 (right to personal liberty), 8 (right to a fair trial), 11 (right to privacy), and 25 (right to judicial protection), in connection with the general obligations set forth in Articles 1. 1 and 2 of the American Convention on Human Rights (hereinafter "the American Convention" or "the Convention"), to the detriment of Marcela Alejandra Porco (hereinafter "alleged victim"), an Argentine citizen, 25 years of age at the time, who was allegedly held in a women's prison despite suffering from a mental illness; during her imprisonment she was allegedly the victim of torture, inhuman and degrading treatment, and sexual violence. The petitioner also denounced alleged irregularities in the criminal proceedings against Marcela Alejandra Porco.

2. On March 4, 2008, during the 131st Regular Period of Sessions, the IACHR adopted Admissibility Report No. 8/08 and declared the petition admissible with respect to the alleged violation of the rights enshrined in Articles 5(1) (right to humane treatment), 7 (right to personal liberty), 8(1) (right to a fair trial), 11(1) (right to privacy) and 25 (right to judicial protection) of the American Convention in relation to Articles 1(1) and 2 of said instrument.

3. On May 1, 2009, the parties initiated the friendly settlement process, which materialized with the signing of a Friendly Settlement Agreement (hereinafter FSA) on May 30, 2022. Subsequently, on July 11, 2023, the parties submitted a joint report on the progress made in the implementation of the FSA and requested the IACHR to homologate it.

4. In this friendly settlement report, in accordance with the provisions of Article 49 of the Convention and Article 40(5) of the Rules of Procedure of the Commission, a summary of the facts alleged by the petitioning party is provided and the friendly settlement agreement signed by the petitioning party and the representatives of the Bolivian State on May 30, 2022 is transcribed. It also approves the agreement signed between the parties and the publication of this document in the Annual Report to the General Assembly of the Organization of American States.

II. THE FACTS ALLEGED

5. The petitioners argued that Marcela Alejandra Porco, an Argentine citizen, would have been detained on June 2, 1994, pursuant to the Law on the Regime for Coca and Controlled Substances (hereinafter "Law 1008"), and released on June 7, 1995; remained deprived of her liberty for approximately one year and subjected to a special proceeding regulated by Law 1008. The petitioners argued that Marcela Alejandra Porco had a history of acute and chronic schizophrenic psychosis and, due to the conditions of her detention, she would have suffered a serious deterioration in her health.

¹ In August 2011, the petitioner informed that the alleged victim had passed away due to health problems. In this regard, the petitioner indicated that Antonella Grissi, daughter of Marcela Alejandra Porco, would continue with the negotiation process and would be the beneficiary of the individual measures established in favor of her deceased mother.

6. The petitioners argued that several irregularities would have been committed by the Bolivian Stated against Marcela Alejandra Porco, that would include: (1) failure to provide timely medical treatment to Marcela Porco while she was detained, which would have accentuated her physical and mental deterioration; (2) lack of guarantees for her security, since, they argued, she would have been a victim of sexual violence while in the custody of the Stated; and (3) being subjected to a judicial proceeding under Law 1008, a law that they considered that had several provisions that violate human rights.

7. The petitioners alleged that Marcela Porco would have been detained on June 2, 1994, by the Bolivian authorities (*Fuerza especial para la lucha contra el narcotráfico, hereinafter "FELCN"*), at the Viru Viru airport of Santa Cruz, Bolivia, on charges of transporting cocaine, set forth in Article 55 of Law 1008. They argued that Marcela Porco would have made a statement for the first time to the police authorities on June 7, 1994, and in that statement, she would have said that she suffered from a serious mental illness and that she needed to be supplied with her medications.

8. The petitioners stated that after her detention she would have been transferred to the Women's Prison, Palmasola, Santa Cruz, also known as the "hell of Palmasola," without access to the medical treatment she would have needed because of her illness. They alleged that the name "hell" is not capricious, and that the case of Marcela Porco would be one example of it. They argued that the female sector of the Palmasola prison would have housed both convicts and defendants, in violation of the American Convention and the Standard Minimum Rules for the Treatment of Prisoners of the United Nations. They argued that Marcela Porco would have been locked in a dark cell, in solitary confinement, merely because of her mental illness, and without the proper safeguards. They argued that her place of confinement would have been a small space delimited by a pair of curtains, through which water ran, which is the reason why she would have been given a bed frame to keep the water from wetting the mattress on which she slept. They alleged that it would have happened after a strike by her fellow female prisoners motivated by the wretched conditions in which Marcela Porco would have been held.

9. The petitioners adduced that there were several irregular practices in the prison that would have affected all the prisoners. They alleged, for example, that those who entered the prison would have been forced to pay rent or build themselves a cell after paying US\$ 300. They argued that food would have been brought by relatives or the inmates had to pay for it. They adduced that according to the testimony of visitors "the internal security of the prison would have been run by inmates called kingpins." They argued that these subhuman conditions would have accelerated the deterioration in Marcela Porto's mental health, which would have reached such an advanced stated that her father found her on July 15, 1994 lying naked in a section called "the boat" (*"el bote"*) in wastewater, with worms on her feet and in her vagina; completely lost and delirious, suffering serious malnutrition; her father would have to spoon-feed her.

10. The petitioners also argued that the guarantees established at Articles 8 and 25 of the American Convention would have not been respected. They alleged that Law 1008 contained several violations, which would render the rights and freedoms set forth in the American Convention ineffective. Among the violations alleged they adduced that there would have been a grave disparity between the legal term of three months established in Law 1008 for processing the matter and the time of approximately one year that the victim was detained. In addition, they argued that Article 121 of Law 1008 presumed that persons accused are guilty, since that article required that the prosecutor appealed acquittals so that such cases could go a second judicial instance. Meanwhile, a detainee who is acquitted must have remained in prison, because the law did not allow his or her provisional release. They argued that such indefinite prolongation would have resulted in damages to the mental and physical health of Marcela Porco.

11. The petitioners argued that Law 1008 has not offered adequate time or means for the preparation of her defense, and that Marcela Porco would not have access to a suitable remedy to protect her rights. They adduced that the defendants had three days to present their defense, the term could not be extended, and the order initiating the trial (*auto de apertura del proceso*) did not allow for any appeal, among others. In addition, they argued that under Law 1008 the investigation would have been conducted by non-judicial officers of the Special Force to Fight Drug Trafficking (*Fuerza Especial de Lucha contra el Narcotráfico*),

who would not meet the requirements of independence and impartiality demanded of judges or courts under international standards.

12. The petitioners alleged that Marcela Porco would have been barred from being granted parole for the purpose of undergoing medical treatment. The petitioners argued that Marcela Porco's medical diagnosis, according to a report issued by the authorities of the hospital Clínica San Agustín S.R.L. in Argentina, where she received psychiatric treatment, would have showed that Marcela Porco would suffered an "acute psychosis with characteristics of exotoxicity, schizophrenic psychosis, chronic delirious psychosis." They adduced that even though the authorities would have known this information, and there were warnings made by other specialists, she would have not been offered appropriate treatment for her condition. The petitioners mentioned one psychological report in the record that would state that "her psychopathological picture worsened considerably after being confined in these two places" (referring to the Conchocorito prison and the prison known as the "boat").

13. The petitioners stated that Marcela Porco's father believed she may have been sexually abused by guards while detained, based on comments that he would have received from other female prisoners. They also argued that the State itself would have recognized that Marcela Porco had sexual relations with another in-patient at a mental health center. They alleged that such recognition would show the State's tolerance for and failure to prevent such acts. They also adduced that such an act would constitute sexual violence due to the mental illness that Marcela Porco was suffering.

14. They argued that the judges of the First Court of Controlled Substances who conducted the trial of Marcela Porco would allow her to receive psychiatric treatment in prison but would not allow her transfer to an adequate place for her treatment. This was pursuant to Article 74 of Law 1008, which prohibited medical admissions outside of prisons for defendants in pre-trial detention. They also stated that since the prison would lack a medical service, Marcela Porco would not receive treatment. They argued that Amnesty International would have visited Marcela Porco in the prison and would have confirmed that she was in "deplorable" health conditions, and that she would die soon if she didn't receive attention. The petitioners alleged that the lack of security guarantees would have allowed for the violation of Marcela Porco's right to physical and mental integrity, and to the recognition of her dignity.

15. The petitioners argued that on January 14, 1995, the Bolivian court would have ordered Marcela Porco to be committed to the Mental Health Center of Santa Cruz [*Centro de Salud Mental de Santa Cruz in Spanish*] for a period of seven days to perform the necessary medical exams to establish her mental condition. They argued that the court would have demanded two civilian escorts and would have ruled that the costs for her stay at the health center would be charged to the victim's family. They also alleged that on January 14, 1995, the director of the psychiatric institution would have refused to receive Marcela Porco, alleging that he could not guarantee her committal due to the lack of adequate infrastructure. Nonetheless, they adduced that the court would have demanded that she was admitted at that health care facility even though it was not a suitable for receiving the treatment required.

16. The petitioners argued that on January 23, 1995, the medical expert in the case would have determined that the victim was mentally alienated and would have ordered that she undergo prolonged treatment with commission of no less than 60 days. The petitioners alleged that on January 23 the court would have ruled that Marcela Porco should continue to be committed, under surveillance, and would have ordered the expert to report weekly on her progress.

17. Finally, the petitioners alleged that even though Marcela Porco would have been released and repatriated to the Argentine Republic, the Bolivian State would not have made reparations to the victim for the violations of her rights and the lack of guarantees during the proceeding, nor would it have followed through on the duty to investigate, sanction, and make reparation in keeping with the provisions of the American Convention. The petitioners adduced that the failure to provide timely treatment and the abuses suffered in prison would have produced permanent damage to the health of Marcela Porco.

III. FRIENDLY SETTLEMENT

18. On May 30, 2022, the Attorney General of the State, on behalf of the State of Bolivia, the Executive Director of the Center for Justice and International Law and Antonela Grisi, signed a friendly settlement agreement. Likewise, the parties agreed that, for purposes of compliance with the commitments established in the FSA, this would be computable from June 30, 2022, due to the time required to exhaust the signing process.² The friendly settlement agreement establishes the following:

FRIENDLY SETTLEMENT AGREEMENT CASE 11.246 MARCELA ALEJANDRA PORCO

On May 30, 2022, in the city of La Paz, the Office of the Attorney General of the State ("AGS"), represented by Attorney General Wilfredo Franz David Chávez Serrano, Attorney General of the State, acting on behalf and in legal representation of the Bolivian State, by virtue of Presidential Decree No. 4390 of November 12, 2020, and Articles 229 and 231.I of the Political Constitution of the State, and Article 11.I of Law 064, as well as Article 15.IV. b of the Regulations of the State Council for Friendly Solutions in Human Rights Matters, approved by Supreme Decree No. 3458, being authorized to sign this Friendly Settlement Agreement and hereinafter referred to as the "State", and on the other hand, Antonela Grisi, with identity card No. [...], as victim, legally represented by Dr. Viviana Krsticevic, Executive Director of the Center for Justice and International Law ("CEJIL"), hereinafter referred to as "the Petitioners", sign this Friendly Settlement Agreement ("FSA") in Case 11.426 "Marcela Alejandra Porco", processed before the Inter-American Commission on Human Rights.

I. BACKGROUND OF THE FRIENDLY SETTLEMENT AGREEMENT

Marcela Alejandra Porco ("Mrs. Porco"), an Argentinean citizen, was arrested on June 2, 1994 by the Bolivian authorities at the airport of Santa Cruz - Bolivia, on the charge of transporting cocaine under article 55 of the Coca and Controlled Substances Regime Law ("Law 1008"). Subsequently, Ms. Porco was transferred to the Women Rehabilitation Center of Santa Cruz "Palmasola", located in the department of Santa Cruz and was placed in an isolation cell, where due to the time she remained in said prison, the inadequate conditions of her detention, and especially the lack of provision of adequate medical treatment to meet her mental health needs, which, due to provisions of Article 74 of Law 1008, made medical internment outside the prisons impossible for those accused of the crimes defined in the law in question; deteriorated her health. In addition, Mrs. Porco denounced having been a victim of rape while in the custody of the State.

On December 30, 1994, Mrs. Porco's relatives and representatives requested the Inter-American Commission on Human Rights ("IACHR") to adopt precautionary measures in her favor, and after they were granted, on January 6, 1995, Mrs. Porco was admitted to the "Benito Menni" Mental Health Center for treatment of her illness. Subsequently, the Bolivian State declared her unimputable by means of a judgment dated February 22, 1995, and shortly thereafter, she was repatriated to the Republic of Argentina in June 1995.

Subsequently, on May 14, 1999, Mrs. Porco's family and her representatives filed a petition before the IACHR, arguing the violation of the rights protected in Articles 5, 7, 8, 11 and 25, in connection with the general obligations established in Articles 1. 1 and 2 of the American Convention on Human Rights ("ACHR"); on the understanding that, despite having knowledge of Ms. Porco's illness, the State did not provide her with the health care that her physical and psychological condition required; and she was a victim of torture, inhuman and degrading treatment, and sexual violence while in the custody of the State.

² The FSA had to be sent in physical form to Washington DC, Argentina and Bolivia for signature.

On March 4, 2008, in Report No. 8/08, the IACHR declared the petition admissible in relation to the alleged violations of the rights set forth in Articles 1(1), 2, 5(1), 7, 8(1), 11(1) and 25 of the ACHR.

II. FRIENDLY SETTLEMENT PROCEEDING

Following the interest expressed by the State, and recognition of the violations committed in the present case, together with the interest expressed by the petitioners, on March 1, 2009, the IACHR opened a process of dialogue aimed at exploring the possibility of a friendly settlement of the case in process.

In the course of this dialogue, the parties identified, in a constructive dialogue, the issues that require special attention for an effective reparation of the human rights whose violation was denounced in the present case.

In this regard, the petitioners appreciate the State's efforts which, through the SAG, in coordination with the Office of the United Nations High Commissioner for Human Rights in Bolivia, held training workshops for judges, prosecutors, public defenders and police officers on human rights and gender, with emphasis on the situation of women deprived of their liberty, thereby seeking to avoid the repetition of violations of rights such as those at issue here.

Likewise, as a result of the framework of this friendly process, on May 3, 2019, through the Sixth Clause of the Abrogating and Repealing Provisions of Law No. 1173, the Plurinational State of Bolivia has expressly repealed the last part of Article 74 of Law No. 1008 that established the prohibition of medical internment outside the prisons of those prosecuted for the crimes typified in this law, a point that was included as reparation in the negotiations of this agreement.

Notwithstanding these advances, the reported violations have not yet been fully redressed, nor have sufficient measures been adopted to contribute to guaranteeing the non-repetition of the facts. It should be noted that Mrs. Porco died on August 13, 2011, in Argentina, without having obtained due justice and reparation for the violations of the rights she suffered. In this regard, her daughter, Antonela Grisi, and her maternal grandparents have promoted the friendly settlement process and have expressed their claims for reparation, which have been communicated to the State and are identified below.

In view of the foregoing, the State undertakes to implement the following measures of integral reparation:

III. ACKNOWLEDGMENT OF RESPONSIBILITY AS A SATISFACTION MEASURE

The Bolivian State recognizes its international responsibility for the violation of Marcela Alejandra Porco's rights to humane treatment, personal liberty, fair trial, privacy and judicial protection, recognized in articles 5.1, 7, 8.1, 11.1 and 25 of the ACHR, all in accordance with the general obligations to respect and guarantee the rights set forth in articles 1.1 and 2 of said international instrument.

The recognition of the State's responsibility for the violation of the aforementioned human rights will be embodied in a formal missive addressed to Antonela Grisi and Gaspar Porco, signed by the State Attorney General, in his capacity as legal representative of the State, which will include an apology for the rights violations configured in the Admissibility Report No. 8/08 of March 4, 2008. Said letter shall be submitted in the framework of this international proceeding within a period of three (3) months computable as of the signature of this FSA.

IV. NON-REPETITION MEASURES

1. Legislative reform

In 2019, in the framework of the negotiations of this FSA, previously agreed with the petitioner, a Bill was presented to the Chamber of Deputies to amend Article 295 of the Criminal Code, in accordance with the Inter-American Convention to Prevent and Punish Torture, the recommendations of the Concluding Observations on the Second Report of the Plurinational State of Bolivia, adopted by the Committee against Torture at its 50th Session (A/56/44) and other international instruments related to the prevention of torture, which was subsequently returned with observations to the drafting institutions.

On August 16, 2021, the Service for the Prevention of Torture ("SEPRET") sent to the Ministry of Justice and Institutional Transparency, two proposed amendments to Article 295 of the Criminal Code, to be analyzed and once the final version of the Bill is drafted, the State undertakes to share it with the petitioning party to receive its final comments and to submit it to the Plurinational Legislative Assembly for approval.

Said presentation shall be made within a period of four (4) months as of the signature of this FSA; and the necessary efforts shall be made so that the Draft Law is approved within a reasonable period of time.

2. Right to truth, justice and guarantees of non-repetition

The Plurinational State of Bolivia recognizes the right to truth and justice of all victims of serious human rights violations. Accordingly, the State explored the feasibility of filing a criminal complaint, but taking into account the passage of time and the death of the victim, this proved to be unfeasible.

Therefore, in order to contribute to the non-repetition of the facts related to this case, the State undertakes to issue, through the Ministry of Government, an internal instruction of national scope, addressed to the General Directorate of the Penitentiary Regime and the General Command of the Bolivian Police, reminding them that the State is in a special position of guarantor with respect to persons deprived of liberty, and that as such, it assumes specific duties to respect and guarantee the fundamental rights of these persons; In particular, the rights to life and personal integrity, the realization of which is an indispensable condition for the achievement of the essential purposes of the sentence of deprivation of liberty: the reform and social readaptation of convicted persons. It will also recall the obligation to comply with the Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas, as well as the United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules), mainly in relation to medical care and humane treatment, according to which all persons deprived of liberty will be treated humanely, with unrestricted respect for their inherent dignity, their fundamental rights and guarantees, and in strict compliance with international human rights instruments and the responsibilities derived from their non-compliance. Likewise, the instruction shall make specific reference to the facts of this case, its content and wording shall be previously agreed upon with the victim and his representatives.

V. COMPENSATION

The State undertakes to compensate Antonela Grisi, daughter of Marcela Alejandra Porco, for the violations of rights indicated in the Admissibility Report No. 8/08 of March 4, 2008, with a one-time payment of US\$ 12,000 (TWELVE THOUSAND 00/100 AMERICAN DOLLARS), which will be materialized through a Decree and must be made within one (1) year, as of the

signature of this FSA. Considering that Antonela Grisi resides in Argentina, the payment will be made through an international bank transfer.

However, the State will only be responsible for the payment of compensation to Antonela Grisi and will not be responsible for any other payment related to the facts referred to in this case.

Furthermore, Antonela Grisi, Gaspar Porco and CEJIL definitively and irrevocably waive the right to initiate any other claim of any nature with the Bolivian State in relation to the facts that gave rise to this case.

VI. NOTIFICATION TO THE IACHR

Once the recognition of international responsibility and the payment of the corresponding compensation is effective, within a period of one (1) month, the parties shall request the IACHR Commission to adopt the report provided for in Article 49 of the ACHR, agreeing to its dissemination through the website of the SAG, of the Ministry of Foreign Affairs, as well as its publication in the Official Gazette of the Plurinational State of Bolivia.

In the event of non-compliance with the measures set forth in the preceding paragraph concerning the recognition of the responsibility of the State and the payment of reparations, the petitioning party may request the IACHR to continue processing the case.

VII. CONFORMITY

Having read and ratified the clauses of this FSA, the State and the Petitioner, sign at the bottom of this document, as a sign of conformity in four (4) copies of the same tenor, on May 30, 2022.

IV. DETERMINATION OF COMPATIBILITY AND COMPLIANCE

19. The IACHR reiterates that in accordance with Articles 48(1)(f) and 49 of the American Convention, the purpose of this procedure is to “reach a friendly settlement of the matter based on respect for the human rights recognized in the Convention.” The acceptance to pursue this process expresses the good faith of the State to comply with the purposes and objectives of the Convention pursuant to the principle of *pacta sunt servanda*, by which States must comply with the obligations assumed in the treaties in good faith.³ It also wishes to reiterate that the friendly settlement procedure set forth in the Convention allows for conclusion of individual cases in a non-contentious manner, and has proven, in cases involving a variety of countries, to provide an important vehicle for resolution that can be used by both parties.

20. The Inter-American Commission has closely followed the development of the friendly settlement reached in this case and appreciates the efforts made by both parties during the negotiation of the agreement to reach this friendly settlement, which is compatible with the object and purpose of the Convention.

21. In accordance with the provisions of the sixth clause of the friendly settlement agreement, the parties agreed that, once the acknowledgment of international responsibility and the payment of compensation by the State had been made, the parties would request the Commission to issue the homologation report contemplated in Article 49 of the American Convention. In this regard, and taking into consideration the parties' request of July 11, 2023 to move forward in this way, it is appropriate at this time to assess compliance with the commitments established in the friendly settlement agreement.

22. The Inter-American Commission considers that the first (Background of the Friendly Settlement Agreement), second (Friendly Settlement Proceeding), sixth (Notification to the IACHR), and

³ Vienna Convention on the Law of Treaties, U.N. Doc A/CONF.39/27 (1969), Article 26: “**Pacta sunt servanda**” *Every treaty in force is binding upon the parties to it and must be performed by them in good faith.*

seventh (Conformity) clauses of the agreement are of a declaratory nature, and therefore it is not appropriate to supervise their compliance.

23. In relation to the third clause (Acknowledgment of international responsibility as a satisfaction measure), as jointly reported by the parties, after approval of the letter by the petitioner, on September 19, 2022, a symbolic act was carried out in virtual format of delivery and a reading of the aforementioned letter, of which the State sent a copy to the file on September 29, 2022. Likewise, the parties reported the existence of a permanent and fluid communication between the State and the petitioners, with whom they agreed on each of the details for the fulfillment of the measure, such as the date, time, agenda and logistics required for the development of the symbolic act of delivery of the missive. In this regard, the parties provided a simple copy of the circulated invitations, photographs of the event, and graphic pieces of the dissemination of the event on the social networks of the State Attorney General's Office and of the petitioner organization. They also provided links to the live transmission of the act of acknowledgment of responsibility on the Facebook Live portal of the Attorney General's Office⁴ and confirmed the participation of the victim's family and their representatives, as well as that of the State Attorney General's Office.

24. In addition, the parties reported on the contents of the agenda agreed upon for the event, which included an opening, the national anthem of the Plurinational State of Bolivia, words by Antonela Grissi, daughter of Marcela Alejandra Porco; by the representative of CEJIL, Mariángeles Misuraca, the petitioner organization in this case; by the Deputy Attorney General for Defense and Legal Representation of the State, and by the State Attorney General, who offered apologies to the victim and her next of kin and acknowledged the responsibility of the State in the terms established in the friendly settlement agreement signed between the parties, stating the following:

[...]

The Plurinational State of Bolivia is aware that the recognition of responsibility for the violation of the human rights of Marcela Alejandra Porco (†), while she was detained in a Bolivian prison, is fundamental for the restoration of the victim's dignity, as well as that of her family.

In merit of this, [the State] recognizes that while Mrs. Marcela Porco was detained under the custody of the Bolivian State at the Santa Cruz "Palmasola"-Women Rehabilitation Center, located in the department of Santa Cruz she was kept in an isolation cell, where due to the time she remained in said prison, the inadequate conditions of her detention, and especially the lack of provision of adequate medical treatment to meet her mental health needs, which, due to provisions of Article 74 of Law 1008, made medical internment outside the prisons impossible for those accused of the crimes defined in the law in question; deteriorated her health. Also, Mrs. Porco denounced having been a victim of rape during that period.

Consequently, in compliance with the friendly settlement agreement, the Plurinational State of Bolivia, represented by the State Attorney General's Office, acknowledges its responsibility for the violation of Marcela Alejandra Porco's rights to humane treatment, personal freedom, fair trial, privacy, and judicial protection, as recognized in Articles 5.1, 7, 8.1, 11.1 and 25 of the American Convention on Human Rights, in accordance with the general obligations to respect and guarantee the rights set forth in Articles 1.1 and 2 of said international instrument, established in Admissibility Report No. 8/08 of March 4, 2008.

On behalf of the Bolivian State, I extend my apologies for the harm caused to Marcela Alejandra Porco and her family, requesting that they be granted the restorative power that will help to reestablish trust in the State and its institutions, and constitute the cornerstone

⁴ See the Facebook page of the State Attorney General's Office. Available at: <https://www.facebook.com/procuraduriabolivia>; y, <https://www.facebook.com/photo/?fbid=457781849709604&set=a.218728016948323>

of the true process of reconciliation. Likewise, by this means, the State commits itself to avoid the repetition of this type of events in the future.

In this way, the Bolivian State honors its international commitments and enhances the memory of Marcela Alejandra Porco.

[...]

25. Finally, the closing remarks were made by Commissioner Joel Hernández, Rapporteur for Bolivia, who acknowledged the efforts made by the parties to reach a friendly settlement agreement and reiterated the Commission's commitment to follow up on the matter until it is fully complied with. In this regard, he said:

[...]

Twenty-eight years after the events in which Marcela Alejandra Porco was allegedly the victim of torture, inhuman and degrading treatment and sexual violence while in the custody of the Bolivian State, this recognition of international responsibility by the State is in itself a significant measure of reparation framed in the commitment to seek satisfaction for the victims, which, in turn, constitutes a step forward towards the dignification of the memory of Marcela Alejandra Porco and her relatives, for the suffering and violations they have endured.

[...]

The Commission appreciates the acknowledgment of international responsibility made by the Bolivian State for the violation of the rights to humane treatment, personal liberty, a fair trial, privacy, and judicial protection recognized in the American Convention on Human Rights, violations committed to the detriment of Marcela Alejandra Porco and her next of kin. The Commission hopes that this recognition will be accepted by the Porco family and that it will result in reparation, since it is a key component in the integral reparation of the damages caused and also constitutes an important step towards the non-repetition of these serious violations in Bolivia.

The Commission recognizes and celebrates the Bolivian State's willingness to move forward with compliance with the measures agreed by the parties, and hopes that this public acknowledgement of responsibility will continue to contribute to building a relationship of trust, which can in turn be strengthened with full compliance with the other obligations assumed by the State in the framework of this agreement.

I would also like to take this opportunity to recognize the tireless struggle undertaken by the Porco family, who with courage and fortitude have walked a long and rocky road in their search for justice, the result of which may also have a structural impact on the Bolivian criminal and penitentiary system by recognizing torture as a criminal offense in accordance with international standards on the matter.

[...]

26. The act of acknowledgment was recorded on the YouTube web page of the the State Attorney General's Office.⁵ Subsequently, the parties informed that, by means of official letter PGE-DESP No. 1896/2022 of September 27, 2002, the State Attorney General's Office sent a copy of the letter of acknowledgment of international responsibility and apology, signed by the State Attorney General, which was sent through the Bolivian Embassy in Buenos Aires to Antonela Grisi. Therefore, taking the information provided jointly by the

⁵ See, Office of the State Attorney General's Office, YouTube, Act of Recognition of International Responsibility Case 11.426, Marcela Alejandra Porco. Available at: <https://www.youtube.com/watch?v=ZPusOqnOWeE>

parties, the Commission considers that the third clause (*letter of acknowledgment of international responsibility as a satisfaction measure*) of the friendly settlement agreement has been fully complied with and so declares.

27. In relation to paragraph (1) Legislative reform of clause four (non-repetition measures) of the friendly settlement agreement, the parties stated that there was a disagreement in the interpretation of the level of compliance with this clause of the FSA and requested the Commission to determine its level of compliance.

28. In this sense, from the informal exchanges it is clear that the petitioners considered that there was a common understanding that the commitment assumed by the State to *make the necessary efforts for the bill to be approved within a reasonable period of time* would imply the deployment of additional actions on its part for this purpose.⁶ The State, for its part, in its communication of October 27, 2022, considered that this item of the agreement was fully complied with, having presented, within the agreed-upon period, the Bill for the modification of Article 295 to the Plurinational Legislative Assembly on October 21, 2022, and the incorporation of Articles 295bis and 295ter to the Penal Code, approved by Law No. 1768 of March 10, 1997. Additionally, they have taken further actions.

29. In this regard, the Commission notes that, in numeral (1) Legislative reform of the fourth clause (measures of non-repetition), the commitment is established in the following terms:

"In the 2019 administration, in the framework of the negotiations of this FSA, previously agreed with the petitioning party, a Bill was submitted to the Chamber of Deputies, to amend Article 295 of the Criminal Code, in accordance with the Inter-American Convention to Prevent and Punish Torture, the recommendations of the Concluding Observations on the Second Report of the Plurinational State of Bolivia, adopted by the Committee against Torture at its 50th Session (A/56/44) and other international instruments related to the prevention of torture, which was subsequently returned with observations to the drafting institutions.

On August 16, 2021, the Service for the Prevention of Torture ("SEPRET") sent to the Ministry of Justice and Institutional Transparency, two proposed amendments to Article 295 of the Criminal Code, to be analyzed and once the final version of the Bill is drafted, **the State undertakes to share it with the petitioning party to receive its final observations and to submit it to the Plurinational Legislative Assembly for approval.**

Said presentation shall be made within a term of four (4) months to be computed from the subscription of this FSA; and the necessary efforts shall be made in order for the Draft Law to be approved within a reasonable term. (Bold and underlined outside the text)."

30. In addition to the foregoing, from the information provided by the parties during the exchanges in the negotiation process in their documents dated June 28, 2012,⁷ September 13, 2013,⁸ August

⁶ Counterproposal of the petitioner. Draft joint report June 8, 2023 version.

⁷ Communication from CEJIL: "...we request that the IACHR require the State to present the **Preliminary Draft** referred to in order to be able to know and present observations if appropriate, as well as the timetable of the process that the State is following in the **preparation of the Legal Project for its presentation to Congress**". (*bold emphasis added*).

⁸ Communication from the State: "... the conclusion of the preliminary draft of the Criminal Code, which is finalized in the General Part and with an important progress in the Special Part, **the preliminary draft will be adjusted and agreed in relation to international standards and the recommendations that the different Committees of International Conventions and Treaties have issued on different matters of human rights and the fight against crime.**

16. **The document will be presented to the Plurinational Legislative Assembly in December of this year**, and its approval is a priority for the State. ..." (*bold emphasis added*).

22, 2014,⁹ December 6, 2017,¹⁰ and July 29, 2022,¹¹ which are on file in this case, it can be inferred that the scope of the clause agreed to by the parties and the commitment assumed by the State, refer to the preparation of a draft bill, with the participation of the petitioner, so that it would be adjusted to the standards on the matter and to "make the necessary efforts" for its approval, which required an articulation on the part of the SAG for the effective presentation of the draft law to the competent body for its evaluation. In this regard, neither in the final text of the friendly settlement agreement, nor in its preparatory work, is there any obligation in terms of ensuring the outcome of the legislative debate in the sense of approval of the regulation.

31. Now, regarding the execution of the measure, the parties informed that the content of the proposal to amend Article 295 (Extortion and Torture) of the Criminal Code, which included the contributions of the petitioner, was approved by the Ministry of Justice and Institutional Transparency, which subsequently allowed, on October 21, 2022, to forward to the President of the Legislative Assembly the draft amendment to Article 295 (Extortion and Torture) of the Criminal Code, which included the contributions of the petitioner, to submit to the President of the Plurinational Legislative Assembly the Technical Legal Report, Statement of Motives and Bill for the amendment of Article 295 and the incorporation of Articles 295 bis and 295 ter to the Criminal Code approved by Law 1768 of March 10, 1997, within the term established in the FSA for full compliance with this end of the agreement. According to the exchange between the parties, the petitioning party had the opportunity to present its observations, which were incorporated into the draft presented.

32. The State also reported on the presentation of the draft to the Plurinational Legislative Assembly, informing the legislative body that it is related to the friendly settlement agreement and the case pending before the Inter-American Commission on Human Rights, the need to adapt the current regulations, and making an express recommendation to the legislature for the approval of the regulations, highlighting the need for legislative treatment within a reasonable period of time, and informing the Legislative Assembly that all of the above is part of the commitments assumed in the FSA.

33. In addition, the parties informed that, as a result of the recommendations and judgments of the Inter-American Human Rights System and the Universal Human Rights System, Bolivia had pending the work of adapting some sections of its domestic legislation to international standards, so that during the month of March 2023, the Ministry of Justice and Institutional Transparency submitted to the Chamber of Deputies the Bill called "Law on Compliance with International Human Rights Commitments", which incorporated the Technical Legal Report, Statement of Motives and Bill for the amendment of Article 295 and the incorporation of Articles 295 bis and 295 ter to the Criminal Code approved by Law 1768 of March 10, 1997, as it was one of the required regulatory adaptations.

34. Based on the foregoing, it is noted that the parties confirmed that the participation of the petitioner in the preparation of the draft legislation was ensured, that its observations and comments were incorporated into the draft legislation, and that the draft legislation has already been submitted to the competent legislative body. In addition, the State took steps to encourage the legislative body to take cognizance of the obligations assumed by the State under the terms agreed upon and to recommend approval of the legislation. In addition, the State incorporated this same opinion in the bill related to compliance with international commitments, making it known that this is also linked to compliance with this friendly settlement agreement and giving relevance to the need to move forward with the legislative debate. Therefore, the

⁹ CEJIL Communication: "... b) **the State undertakes that during the course of 2015 it will submit to the Legislative Assembly the draft law to reform the Criminal Code to include the criminal offense of torture** in the terms established by the Inter-American Convention to Prevent and Punish Torture, ratified by Bolivia by Law No. 3454 of July 27, 2006 and in accordance with the recommendations of the Concluding Observations on the Second Report of the Plurinational State of Bolivia, adopted by the Committee against Torture at its 50th Session" (A/56/44) in May 2013. ..." (*bold emphasis added*).

¹⁰ Communication from the State: "... In this sense, within the framework of the principle of good faith, the progress and all the legislative proposals have been transmitted to the representatives of the Petitioner, as a sign of the State's commitment to have all the legal tools available for the signing of friendly settlements, in light of the international commitment with the Inter-American Human Rights System. However, in this international proceeding, **it must be understood that the legislative process related to the above-mentioned issues is an exclusive prerogative of the State.** ..." (*bold and underlined emphasis added*).

¹¹ CEJIL Communication: "...In conclusion, we submit our observations for consideration in the drafting of Article 295 of the Criminal Code. **We hope that they can be incorporated,** in order to take advantage of the opportunity and achieve the wording that best complies with International Human Rights Law. **We also consider it important that the process be carried out expeditiously, in order to promote the reform as soon as possible.** ..." (*bold and underlined emphasis added*).

Commission considers that the State has complied with numeral 1 of the fourth clause, in the agreed terms, and so declares. Notwithstanding the foregoing, the Commission urges the State to inform the Commission of the outcome of the legislative debate underway.

35. In relation to paragraph (2) Right to truth, justice and guarantees of non-repetition of the fourth clause (measures of non-repetition) of the friendly settlement agreement, the parties informed that, as established in the FSA, on February 15, 2023, the petitioning party approved the proposal for instructions prepared by the Bolivian Police, which included the observations previously made by the petitioners. In this regard, on February 27, 2023, the Ministry of Government issued Instruction MIN.GOB-INS.DESP No. 012/2023, addressed to public servants of the Bolivian Police, as well as to the General Directorate of the Penitentiary Regime, with the objective that said public servants who have persons deprived of their liberty in their custody, apply the established procedures, framing their actions within the framework of the Political Constitution of the State, international norms and treaties in the framework of human rights, the Organic Law of the National Police, the Manual of Basic Techniques of Police Intervention in the context of human rights, and current legal norms. In view of the foregoing, and taking into consideration the joint request of the parties to consider this aspect of the FSA as fulfilled, the Commission considers that paragraph (2) Right to truth, justice and guarantees of non-repetition of the fourth clause (measures of non-repetition) of the friendly settlement agreement has been fully complied with and so declares it.

36. In relation to the fifth clause (Compensation) of the friendly settlement agreement, the parties reported that on February 22, 2023, Supreme Decree No. 4880 was approved with the objective of giving effect to the commitment assumed by the State to compensate Antonela Grisi, daughter of Marcela Alejandra Porco, for the violations of rights recognized in the friendly settlement agreement. Subsequently, on May 30, 2023, the parties stated that the totality of the compensation in favor of Antonela Grisi was cancelled. This information was corroborated by the exchanges of communication between the parties that allowed the initiation of the administrative procedures and the coordination with the victim's representation, which concluded with a single payment in favor of Antonela Grisi in the amount of US\$12,000 (twelve thousand 00/100 US dollars) by means of a direct bank transfer.

37. In view of the foregoing, and taking into consideration the joint request of the parties to consider this aspect of the FSA as fulfilled, the Commission considers that the fifth clause, Compensation, of the friendly settlement agreement, has been fully complied with and so declares it.

38. By virtue of the considerations described above, the Commission concludes that the third clause (recognition of international responsibility as a satisfaction measure), paragraphs (1) Legislative reform and (2) Right to truth, justice and guarantees of non-repetition of the fourth clause (measures of non-repetition), and the fifth clause (Compensation), have been fully complied with and so declares it. Therefore, the Commission concludes that the friendly settlement agreement has a level of full compliance and so declares it. Finally, the Commission considers that the rest of the content of the agreement is of a declarative nature and therefore does not correspond to its supervision. Consequently, the Commission decides to cease monitoring and close this matter.

V. CONCLUSIONS

1. Based on the foregoing and in keeping with the procedure provided for in Articles 48(1)(f) and 49 of the American Convention, the Commission would like to reiterate its profound appreciation of the efforts made by the parties and its satisfaction that a friendly settlement has been arrived at in the present case on the basis of respect for human rights and consistent with the object and purpose of the American Convention.

2. Based on the considerations and conclusions contained in this report,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To approve the terms of the agreement signed by the parties on May 30, 2022.
2. To declare full compliance with the third clause (recognition of international responsibility as a satisfaction measure), paragraphs (1) Legislative reform and (2) Right to truth, justice and guarantees of non-repetition of the fourth clause (measures of non-repetition) and the fifth clause (Compensation) of the friendly settlement agreement, according to the analysis contained in this report.
3. To declare full compliance with the friendly settlement agreement, according to the analysis contained in this report.
4. To order the cessation of the follow-up and closure of the matter.
5. To make this report public and include it in its Annual Report to the OAS General Assembly.

Approved by the Inter-American Commission on Human Rights on the 30th day of the month of November, 2023. (Signed:) Margarete May Macaulay, President; Esmeralda Arosemena de Troitiño, Vice President; Roberta Clarke, Second Vice President; Julissa Mantilla Falcón, Stuardo Ralón Orellana, Carlos Bernal Pulido and José Luis Caballero Ochoa, Commissioners.