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Human Rights Committee

Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 3211/2018*, **, ***

Communication submitted by:	Madeleine Alicia Rodríguez (represented by counsel, Marius O. Dietrichson)
Alleged victim:	The author
State party:	Plurinational State of Bolivia
Date of communication:	8 February 2018 (initial submission)
Document references:	Decision taken pursuant to rule 92 of the Committee's rules of procedure, transmitted to the State party on 23 July 2018 (not issued in document form)
Date of adoption of Views:	15 March 2023
Subject matter:	Undue delay of final judgment in criminal proceedings
Substantive issue:	Undue delay
Procedural issues:	Exhaustion of local remedies; effective remedies; lack of substantiation of claims
Article of the Covenant:	14 (3) (c)
Articles of the Optional Protocol:	2 and 5

1. The author of the communication is Madeleine Alicia Rodríguez, a national of Norway[1] born on 19 July 1986. She claims that the State party has violated her rights under article 14 (3) (c) of the Covenant. The Optional Protocol entered into force for the State party on 12 November 1982. The author is represented by counsel.

* Adopted by the Committee at its 137th session (27 February–24 March 2023).

** The following members of the Committee participated in the examination of the communication: Tania María Abdo Rocholl, Farid Ahmadov, Wafaa Ashraf Moharram Bassim, Rodrigo A. Carazo, Yvonne Donders, Mahjoub El Haiba, Carlos Gómez Martínez, Laurence R. Helfer, Marcia V.J. Kran, Bacre Waly Ndiaye, Hernán Quezada Cabrera, José Manuel Santos Pais, Soh Changrok, Tijana Šurlan, Kobauyah Tchamdja Kpatcha, Teraya Koji, Hélène Tigroudja and Imeru Tamerat Yigezu.

*** An individual opinion by Committee member Carlos Gómez Martínez (dissenting) is annexed to the present Views.

[1] The court rulings submitted by the parties indicate that the author is also a national of Uruguay.

Factual background

2.1 On 19 May 2008, the author was arrested at the airport of Cochabamba, Plurinational State of Bolivia, together with her 2-year-old daughter and two other persons, S.T.B. and C.O., for alleged drug trafficking. The arrest took place after airport dogs detected cocaine hydrochloride in the suitcases of the author and her two companions. The suitcases were identified and searched, and 22,429 grams of cocaine hydrochloride were found.[2] On 3 April 2009, the author was charged with the offence of trafficking and criminal association and conspiracy under articles 48[3] and 53[4] of the Coca and Controlled Substances Act (No. 1008). The oral proceedings took place from 7 to 24 April 2010.

2.2 On 24 April 2010, Sentencing Court No. 1 of the Judicial District of Cochabamba handed down a decision at first instance, sentencing the author to a term of imprisonment of 13 years and 4 months. In the same decision, the Court convicted three additional persons for the same acts. The other convicted persons are C.A.T.B., sentenced to 20 years' imprisonment, A.R.P.B., sentenced to 20 years' imprisonment, and S.T.B., one of the author's companions, sentenced to 13 years and 4 months of imprisonment.[5] The court acquitted P.A.O.V., J.Y.C.J., A.V.P.F. and F.F.V. It identified Ms. Rodríguez as the perpetrator[6] of the "offences of criminal possession, transportation, delivery, removal from the country, transactions in any capacity and criminal association and conspiracy" for the purpose of trafficking cocaine hydrochloride from the Plurinational State of Bolivia to Norway.

2.3 On 13 May 2010, the author filed an appeal against the decision of Sentencing Court No. 1 of the Judicial District of Cochabamba.[7] The author argued that she could not be charged with the crimes of "transportation" or "removal from the country", since she had not transported any illegal substance, given that she had not even been allowed to board the plane. She believed that her acts should have fallen under the criminal offence of attempted transportation of a controlled substance, the penalty for which is 5 years and 5 months. Finally, the author claimed that the Court had not referred to any evidence that would substantiate her participation in an alleged criminal association or conspiracy; she also claimed that the Court had simply described the facts without establishing a link between them or proving that she had committed such a crime.

2.4 On 3 November 2010, the Supreme Court of Cochabamba (First Criminal Chamber) handed down its final verdict in respect of the author and the other persons convicted on the basis of the same facts. The Court considered that the judge of the lower court had committed an error of law in characterizing the punishable act as trafficking of controlled substances (Act No. 1008, art. 48) and that the punishable conduct of the four convicted persons matched the description of the criminal offence set out in article 55 of the same Act, which refers only

[2] According to the ruling of the court of first instance, 6,115 grams were found in the author's suitcase, 8,190 grams in C.O.'s suitcase and 8,124 grams in S.T.B.'s suitcase.

[3] Article 48 states: "Trafficking: Whoever traffics in controlled substances shall be liable to 10 to 25 years' imprisonment and a fine of 10,000 to 20,000 day-fine units. The trafficking of controlled substances in large volumes constitutes an aggravating circumstance. This article covers any conduct referred to in the definition of trafficking set out in article 33 (m) of this Act." Article 33 (m) reads: "Possession: the illicit possession of controlled substances, raw materials or seeds of plants from which controlled substances can be extracted."

[4] Article 53 reads: "Criminal association and conspiracy: persons who form a group of two or more persons for the purpose of committing a criminal offence established in the present Act shall be sentenced to one third more of the principal penalty."

[5] The decision indicates that both the author and S.T.B. were given a "minimal" sentence, because they were young and because one had a 2-year-old daughter and the other was pregnant, circumstances that would facilitate their social reintegration.

[6] Article 20 of the State party's Criminal Code states that perpetrators are persons who "commit an act alone, jointly, or through another person, or who wilfully provide such cooperation without which an intentional unlawful act could not have been committed".

[7] The other three convicted persons and the Public Prosecution Service also appealed against the judgment of the lower court.

to the transportation of such substances.[8] Consequently, the Supreme Court of Cochabamba decided to partially accept the arguments of the author (and other convicted persons on this point) and handed down a new judgment. The Court clarified that, since the case involved an error in the legal characterization of the acts in question, it was not appropriate to overturn the decision of the court of first instance; it further clarified that the new decision could not have a bearing on the assignment of criminal liability to the accused and convicted persons. As for the author's claim that she should instead be charged with the criminal offence of attempted transportation, the penalty for which is lower than that imposed, the Court indicated that, since the crime of transportation is a crime of conduct rather than of result, it is consummated simply through the act of transporting a controlled substance. It therefore rejected the author's claim in this regard. Regarding the author's claim that the judge of the lower court had not substantiated the author's involvement in a criminal association or conspiracy, the appeals judge indicated that the author had merely stated that the lower court had failed to prove her involvement in such a crime, but had failed to present any evidence herself that she had not been involved. Therefore, this claim was also rejected. Finally, the Court applied article 397 of the Code of Criminal Procedure, according to which "where there are co-defendants in a case, an appeal filed by one of them will also apply to the others, unless the grounds on which it is based are exclusively personal" and imposed the following penalties: the author was sentenced to a term of imprisonment of 10 years and 8 months; S.T.B. was given the same term of imprisonment as the author; and C.A.T.B. and A.R.P.B. were sentenced to a term of imprisonment of 13 years and 9 months. The Court also confirmed the acquittal of the other four defendants.

2.5 On 29 November 2010, the author filed an appeal in cassation against the decision of 3 November 2010. The author claimed violations of due process, especially with regard to the lack of substantiation of the appealed judgment, and she referred to the reliance of the appeals judge on the supposed evidence of her participation in the crime of criminal association or conspiracy, using the same arguments on this point as those previously described. The author also questioned the degree to which she was considered to have participated in the offences of which she was accused, claimed that certain mitigating circumstances had not been applied to her situation and submitted that she had been given a very harsh sentence.

2.6 On an unspecified date in 2012, the author filed a motion claiming that the maximum duration of the proceedings had been exceeded. On 17 September 2012, Sentencing Court No. 1 rejected the author's motion, arguing that the "expert judges" of that court lacked the jurisdiction to deal with motions that were submitted while preparations for the proceedings were under way and that the motion would be addressed during the oral proceedings. In April 2014, the Public Prosecution Service filed a request for the case to be made a priority and for a decision to be handed down. The Public Prosecution Service submitted that the case was socially significant, given that it had revealed the existence of a Bolivian-Norwegian organization that trafficked controlled substances. In February 2015, the Public Prosecution Service, using arguments similar to those it had used previously, again requested that the case be made a priority and that a decision be handed down.

2.7 On 9 March 2015, the Criminal Chamber of the Supreme Court ruled on the cassation appeals filed by the author and the other convicted persons.[9] The Supreme Court decided to confirm the first instance sentence for all the convicted persons, considering that the Supreme Court of Cochabamba (second instance) had committed an error in characterizing the conduct of the accused as crimes corresponding to those established under article 55 of Act No. 1008 (transportation of controlled substances), instead of article 48 of the same Act (trafficking of controlled substances). The Supreme Court indicated that, according to its case law, acts whereby controlled substances were brought into or taken out of the country could not be classified as transportation, but must be characterized as trafficking of controlled substances, regardless of whether or not the end result was that such substances were brought into or

[8] Article 55 states: "Transportation: Whoever unlawfully and knowingly transfers or transports any controlled substance shall be liable to a term of imprisonment of 8 to 12 years and a fine of 1,000 to 1,500 day-fine units, as well as the definitive seizure of the motor vehicle or means of transportation."

[9] The Supreme Court, sitting in plenary, carried out an early drawing of lots for the case, based on the prioritization request submitted by the Public Prosecution Service in February 2015.

taken out of the country. The Supreme Court decided that the Supreme Court of Justice of Cochabamba (second instance) should issue a new judgment, taking into account the arguments presented in the present Views, and ordered that said Court issue a new judgment without waiting for a turn or drawing of lots.

2.8 On 23 July 2015, the Supreme Court of Cochabamba issued a new judgment confirming the decision of 24 April 2010 of Sentencing Court No. 1 of the Judicial District of Cochabamba, including the sentences for each of the convicted persons. The author's sentence to a term of imprisonment of 13 years and 4 months was therefore reinstated. The author waived her right to file an appeal in cassation against this judgment.[10]

2.9 On 27 October 2015, at the author's request, a hearing was held before Sentencing Court No. 1, at which her request for a change to the amount of her bail (400,000 bolivianos) was examined. The author claimed that it was impossible for her to post bail of such an amount, providing as evidence the fact that, at the time of the hearing, she had already been detained for 7 years, 4 months and 23 days and had not been able to post the bail until then. The author also claimed that certain benefits under domestic law should apply to her, particularly in view of the fact that she was responsible for two minors. The author further claimed as a violation of her rights her inability to benefit from alternatives to detention, as the sentence she was given was not enforceable owing to the actions of the other convicted persons during the proceedings. The author referred to the delays caused by the impossibility of notifying the convicted persons who had absconded,[11] as well as the cassation appeal against the judgment of 23 July 2015, filed by A.C.T.B. Sentencing Court No. 1 decided to change the amount of bail set for the author's release to 100,000 bolivianos.

2.10 On 15 June 2018, the author filed a motion for the termination of the criminal proceedings against her, owing to the duration of the proceedings before Sentencing Court No. 1, which had reached the legal maximum. This plea was rejected because the case was before the Supreme Court of Cochabamba at the time. The author then filed the same motion with the Supreme Court of Cochabamba on 28 July 2018. The Supreme Court of Cochabamba responded, indicating that the author's case file had been forwarded to the Supreme Court. The author then filed the motion before the Supreme Court on 31 July 2018. The Supreme Court responded on 3 August 2018, stating that it had "ordered the file to be returned to the court of origin".

2.11 The author was released on 28 June 2016.

Proceedings involving the other convicted parties

2.12 On 6 May 2009, three of the defendants in the case filed a motion of unconstitutionality against article 48 (2) of Act No. 1008.[12] On 18 August 2014, the Criminal Chamber for Cases Pending before the Supreme Court suspended the deadline for ruling on the cassation appeals filed by the persons involved in the same case as the author. The Constitutional Court rejected the motion of unconstitutionality on 12 September 2014.

2.13 The convicted person A.C.T.B. filed a series of motions in relation to the proceedings, which in turn had an impact on the proceedings: (a) on 18 August 2015, he filed an appeal in cassation before the Supreme Court of Cochabamba against its decision of 23 July 2015; (b) on 12 February 2016, he filed a motion for the termination of the criminal proceedings before Sentencing Court No. 1, a motion that was rejected on 10 March 2016; (c) on 25 May 2016, he filed an appeal against the decision of 10 March 2016; and (d) on 18 August 2017, he filed a motion for the termination of the criminal proceedings in virtue of the expiry of the statute of limitations before the Criminal Chamber of the Court of Justice of Cochabamba, an application that was declared well founded on an unspecified date.

[10] The State party has provided a copy of the author's pleading in this regard, dated 1 February 2016, in which the author claims her right to obtain justice without delay.

[11] S.T.B. and A.R.P.B.

[12] The author was not a party to this motion.

2.14 On 26 June 2018, the Criminal Chamber of the Court of Justice of Cochabamba ruled on the appeal in cassation filed by A.C.T.B. and returned the file to Sentencing Court No. 1. On 4 September 2018, Sentencing Court No. 1 ruled that the judgment was enforceable.

Complaint

3.1 The author claims that her rights under article 14 (3) (c) of the Covenant have been violated owing to the unreasonable delay in the criminal proceedings against her, which began in May 2008 when she was arrested and were still ongoing at the time of submission of the communication, in February 2018 – almost ten years later.

3.2 The author states that the right to be tried within a reasonable time, provided for by article 14 (3) (c) of the Covenant, is designed not only to avoid keeping persons who undergo lengthy proceedings in a state of uncertainty about their fate but also to serve the interests of justice.[13] The author adds that a reasonable amount of time has to be assessed taking into account the complexity of the case, the conduct of the accused, and the manner in which the matter was dealt with by the administrative and judicial authorities.[14]

3.3 The author adds that this guarantee applies not only to the period between arrest, indictment and the beginning of the trial but also to the period between the trial and the handing down of the final verdict once any appeals have been dealt with. In this regard, the author refers to decisions of the Committee in which it has indicated that judges are bound to comply with the reasonable time limit at all stages of the proceedings, including in first instance and on appeal.[15] The author states that this obligation is even more evident in view of the Committee's jurisprudence, according to which paragraphs (3) (c) and (5) of article 14 of the Covenant are to be read together, so that the review of a conviction or sentence must be completed within a reasonable time.[16]

3.4 The author submits that the period to be taken into account in analysing whether or not the length of time of the proceedings is reasonable starts from the arrest and indictment and finishes on the day on which the criminal proceedings come to an end; in her case, the proceedings had not yet ended at the time of submission of the communication, as the decision on the cassation appeal filed by A.C.T.B. was still pending.

3.5 The author submits that the requirement of a reasonable period of time has not been met in her case, since she was arrested in 2008 and a final verdict had yet to be handed down in 2018.[17] The author claims that this delay cannot be attributed to any action on her part, but is in fact attributable to the State party, which has failed to provide the necessary resources to the judiciary to take decisions in the criminal proceedings against her within a reasonable time. The author adds that the delays are also attributable to the other accused persons in the criminal proceedings in question.

3.6 The author also notes that it took five years for the Criminal Chamber of the Supreme Court to rule on the cassation appeal that she and the other accused persons had filed. The author states that the same could occur with the cassation appeal filed by A.C.T.B., since despite its having been submitted in August 2015, at the time of submission of the communication – February 2018 – it was still pending.

3.7 The author claims that the unreasonable delay in obtaining a final verdict in the criminal proceedings against her has serious consequences for her personal situation. The author explains that, in the State party, a judgment is not enforceable until a decision has been handed down in respect of all the accused and that, since the cassation appeal filed by

[13] Human Rights Committee, general comment No. 32 (2007), para. 35.

[14] Ibid.

[15] The author refers to *Rouse v. Philippines* (CCPR/C/84/D/1089/2002) and *Tarighat et al. v. Algeria* (CCPR/C/86/D/1085/2002).

[16] The author refers to the Human Rights Committee, *Pratt and Morgan v. Jamaica*, communications No. 210/1986 and No. 225/1987.

[17] The author refers to several Committee decisions related to articles 9 (3) and 14 (3) (c), including *Siewpersaud et al. v. Trinidad and Tobago* (CCPR/C/81/D/938/2000), paras. 6.1 and 6.2, *Ruiz Agudo v. Spain* (CCPR/C/76/D/864/1999), para. 9.2, and *Yasseen and Thomas v. Guyana* (CCPR/C/62/D/676/1996), para. 7.11.

A.C.T.B. is pending, the judgment against her is not considered final, and she is thus barred from leaving the country. She also indicates that she has two minor daughters, one of whom is in Norway and whom she has not been able to see for years owing to the delays in the resolution of her case. Finally, the author submits that she is in a very difficult and vulnerable situation in the Plurinational State of Bolivia, as she does not have a residence or work permit, which prevents her from being self-sufficient and adequately caring for her minor daughter. She therefore stresses the need for her situation to be resolved as quickly as possible, so that she can return to Norway and take care of her daughters.

State party's observations on admissibility

4.1 In its observations dated 24 October 2018, the State party submits that the communication is inadmissible for lack of substantiation and failure to exhaust domestic remedies.

4.2 With regard to the first argument, the State party submits that the author did not provide evidence that the duration of the proceedings against her was unreasonable; she merely made her claim, citing the Committee's jurisprudence, without explaining how such jurisprudence should be applied to her particular case. The State party adds that, at the time of submission of the communication, the criminal proceedings were awaiting a ruling by the Supreme Court on the appeal in cassation filed by A.C.T.B., and it argues that it was not possible to hinder the exercise of constitutional rights, including the right of defence being exercised by A.C.T.B. The authorities had no choice but to consider the aforementioned appeal. The State party also states that, at the time of submission of its observations, a final judgment had been handed down and the author's judicial situation was therefore resolved. Indeed, on 4 September 2018, Sentencing Court No. 1 declared the judgment enforceable.

4.3 The State party presents a detailed description of the events that occurred during the proceedings, particularly during the first appeals stage, which began with the issuance of the judgment of Sentencing Court No. 1 of the Judicial District of Cochabamba on 24 April 2010 and ended with the judgment of the Court of Justice of Cochabamba on 23 July 2015 – the date on which it upheld the decision of 24 April 2010. The State party argues that this five-year period was reasonable, taking into account several factors: the author's actions, the actions of the other defendants, the complexity of the case, the actions of the judicial authorities, the lack of impact of the length of the proceedings on the author's situation[18] and the reform process undergone by the judiciary during this period.

4.4 With regard to the author's actions, the State party states that, during the first appeals stage of the proceedings, the author, together with the other defendants, caused the hearing, the purpose of which was to consider the evidence presented in the appeal of the first instance decision, to be suspended four times. It also states that, despite the fact that the appeals decision favoured the author, since it reduced her sentence, she filed an appeal in cassation against the decision, as did the other defendants. The State party further indicates that the author did not participate in the second appeals stage,[19] showing a lack of interest in the case. The State party refers to the case law of the Inter-American Court of Human Rights, according to which undue delay of proceedings cannot be attributed to the State if the interested party has hindered or actively participated in the case, or if the party in question showed a lack of interest.[20]

4.5 With regard to the actions of the other defendants, the State party reiterates that the author, together with the other defendants, was responsible for the fact that the hearing held

[18] On this point, the State party refers to the case law of the Inter-American Court of Human Rights, according to which four elements must be considered in order to determine whether the duration of the proceedings is reasonable: the complexity of the matter, the procedural activity of the interested party, the conduct of the judicial authorities and the adverse effect on the judicial situation of the person involved in the proceedings. The State party cites the Inter-American Court of Human Rights, *Rodríguez Vera et al. v. Colombia*, judgment of 14 November 2014, among others.

[19] In reference to the appeal in cassation filed against the 23 July 2015 decision of the Supreme Court of Cochabamba.

[20] Inter-American Court of Human Rights, *Uzcátegui et al. v. Venezuela*, judgment of 3 September 2012, para. 226.

with a view to considering the evidence presented in the appeal of the first instance decision was suspended four times. In addition, the State party refers to the motion of unconstitutionality filed by the other three convicted persons against article 48 of Act No. 1008, which resulted in the suspension of the deadline for ruling on the cassation appeals of the first appeals stage until 12 September 2014, when the Constitutional Court rejected the motion. The State party also refers to the actions of the other defendants in its arguments regarding the complexity of the case.

4.6 With regard to the complexity of the case, the State party submits that the case became complex during the first appeals stage, owing to the number of parties involved in the proceedings. Indeed, there were eight defendants in the case, and they used various legal mechanisms to exercise their right of defence. The State party refers to the following actions: (a) six defendants made "explanation, supplementation and amendment" requests under article 125 of the Code of Criminal Procedure,[21] requests that were again made in respect of the decision of 3 November 2010;[22] (b) on several occasions, notifications had to be made by means of a court dispatch and/or edict owing to the defendants' place of residence; for example, the first instance judgment of 24 April 2010 had to be notified by court dispatch to six defendants on 3 May 2010; and the second instance judgment – dated 3 November 2020 – had to be notified by edict to five defendants on 30 November 2010; (c) all the defendants, including the author, appealed the first instance judgment. These appeals had to be notified to all the parties before a date was set for the evidentiary hearing;[23] (d) the Public Prosecution Service had to respond to each of the appeals filed against the first instance decision, and did so progressively: the appeal filed by the author was answered on 28 May 2010; that of S.T.B. on 11 June 2010, that of A.C.T.B. on 14 June 2010 and that of A.R.P.B. on 16 June 2010; (e) all the convicted persons filed an appeal in cassation against the judgment of 3 November 2010, which necessitated notifying all the defendants, as was done by 20 January 2011; and (f) the Supreme Court had to rule on all the appeals, which it did on 9 March 2015.

4.7 Regarding the second appeals stage, the State party refers to the fact that, on 18 August 2015, A.C.T.B. filed an appeal in cassation against the 23 July 2015 decision of the Supreme Court of Cochabamba, adding to the proceedings' complexity. The State party also refers to a series of procedural measures initiated by A.C.T.B. (see para. 2.13), which had a considerable impact on the duration of the proceedings, given that they had to be notified to all the defendants in different parts of the Plurinational State of Bolivia.

4.8 With regard to the actions of the judicial authorities, the State party argues that the existence of a large number of defendants, who filed various types of motion provided for in the domestic legal system, resulted in the need for more time than is normally required in this type of criminal proceeding. The State party therefore considers that this delay is not attributable to the State party's authorities. Likewise, the State party indicates that the Public Prosecution Service twice requested an early drawing of lots in the proceedings (see para. 2.6) and that, as a result of one of those requests, lots were finally drawn on 12 August 2014, paving the way for the decision on the cassation appeals of 9 March 2015.

4.9 The State party submits that the author has not demonstrated that her legal situation has been affected by the length of the proceedings. The State party states that, by deciding not to file an appeal in cassation against the judgment of 23 July 2015, she tacitly accepted the sentence. Consequently, the author's situation has not been affected by the time that passed between that judgment and the final resolution of the case. In addition, the State party notes that the time she spent in pretrial detention counted towards the completion of her

[21] Article 125 establishes that the judge or court may, on its own motion, "clarify vague statements, fill any gaps or correct any material or factual error contained in its proceedings and decisions, provided that this does not entail an essential modification of the same". The State party does not indicate in respect of which decision the defendants filed these requests; it indicates only that they were filed by the Public Prosecution Service, A.R.P.B. and four other individuals whose names do not match those of the defendants in the author's case.

[22] A.C.T.B. filed the request on 24 November 2010, and an answer was given on 29 November 2010.

[23] In accordance with article 412 of the Code of Criminal Procedure, which provides that "whoever has offered evidence shall present it at the hearing and the court shall rule only on the basis of that which has been presented and the witnesses who are present".

sentence. The State party adds that the author was free at the time of submission of the communication, as she was released on 28 June 2016.

4.10 The State party also refers to the process of legislative reform that its legal system underwent during the period in which the criminal proceedings against the author took place. The State party explains that, in February 2009, a transition began from the old system of judicial organization to the new system, which instituted, among other things, a judicial body in charge of administering the ordinary courts, the agroenvironmental courts and the specialized courts. The State party had to adopt several laws to comply with its duty of care regarding access to the administration of justice and to be able to implement the new system, while guaranteeing the continuity of judicial functions. Among these laws were Act No. 3 of 13 February 2010 on the need to undertake a transition to the new entities of the judiciary and the Public Prosecution Service, Act No. 40 of 1 September 2010 on the deadlines for electing judges to the new judicial body and the Constitutional Court and Act No. 212 of 23 December 2011 on the transition process for the Supreme Court. Based on this regulatory framework, on 31 December 2011, the former Supreme Court ceased its functions, and the new judicial authorities took up their roles on 3 January 2012. In addition, chambers for cases pending before the Supreme Court were created as part of the newly established Supreme Court to resolve the backlog of cases, including the author's case.[24] The Act established a period of 36 months, renewable for up to 12 months, to clear the backlog. On 15 December 2014, the Criminal Chamber for Cases Pending before the Supreme Court declared that the cassation appeals filed by the author and other defendants against the second instance judgment were admissible. On 9 March 2015, the newly created Supreme Court ruled on said appeals, ordering the Court of Justice of Cochabamba to issue a new decision, which it did on 23 July 2015. Therefore, the State party submits that, although the reforms were implemented over the same period as the author's trial, the trial's duration was within the time limit established by national law (48 months from the establishment of the new judicial bodies). The State party also refers to Act No. 586 of 30 October 2014 on streamlining the judicial system, which provided for the establishment of procedures to expedite the processing of criminal cases.

4.11 The State party also submits that the author failed to exhaust domestic remedies, since she did not file a motion for the termination of criminal proceedings, as established in articles 27 and 308 of the Code of Criminal Procedure.[25] It states that this remedy was effective and adequate, as evidenced by the fact that A.C.T.B. obtained a favourable decision upon filing the motion. The State party adds that, although the author filed a motion alleging that the maximum duration of the proceedings had been exceeded on 21 May 2012, she did not comply with the requirements established by law,[26] and so the motion was rejected on 17 September 2012. Therefore, this remedy was available to the author, but she did not make good use of it. The State party also submits that, even though the author filed the motion in question three more times – on 15 June and 18 and 31 July 2018 – she did so before the wrong courts and so they were not competent to deal with it (para. 2.10).

State party's observations on the merits

5.1 In its submission of 21 May 2019, the State party submitted its observations on the merits, reiterating that the communication was inadmissible for lack of substantiation of claims and failure to exhaust domestic remedies. The State party once again stated that the author had not demonstrated that the guarantee of a reasonable time had been violated and that the authorities had simply applied the laws in force, which require that the right of

[24] The State party states that, since the author's appeal in cassation was filed with the former Supreme Court, once the chambers for cases pending before that Court were created, the case had to await a new drawing of lots, since the drawings made in respect of the former Supreme Court were cancelled owing to the transfer of judges to other bodies.

[25] According to these articles, criminal proceedings are discontinued upon the expiration of the maximum length of the proceedings (art. 27 (10)).

[26] The State party has provided a copy of the decision indicating that the request was untimely and outside the current jurisprudential framework.

defence be upheld.[27] It also reiterated its arguments about what must be taken into account when considering whether a time period is reasonable, including the author's actions, the actions of the other defendants, the complexity of the case, the actions of the judicial authorities, the lack of impact of the length of the proceedings on the author's situation and the reform process undergone by the judiciary during this period. The State party reiterates that the analysis of these elements does not allow it to conclude that the author's right to be tried within a reasonable time was violated.

5.2 The State party adds, in connection with the exhaustion of domestic remedies, that the author did not apply for constitutional amparo, an option that became available to her, in accordance with article 128 of the Constitution,[28] once the decision of 4 September 2018, which declared the judgment enforceable, was handed down. The State party maintains that the Inter-American Commission on Human Rights has described this remedy as adequate and effective to protect the rights of victims of human rights violations.[29] The State party also states that the author did not lodge an appeal for an extraordinary review of the final judgment, as provided for in article 421 of the Code of Criminal Procedure, which establishes the possibility of reviewing an executory judgment, provided that certain requirements are met.[30]

5.3 On the merits, the State party submits that approximately two years elapsed between the beginning of the proceedings and the date on which the first instance judgment was handed down – less than the three years required under national law.[31] In addition, with regard to the second appeals period, the State party states that the fact that the author did not file an appeal in cassation against the second instance judgment did not exempt the courts from ruling on the appeals filed by the other defendants.

5.4 The State party also states that the author exercised her right of defence without any restriction. In this regard, it explains that the author was represented by a private attorney until 2016, when she requested, and was subsequently assigned to, a public defender. However, the author reneged on this arrangement when she filed a brief signed by a private attorney in July of the same year. The author again requested the services of a public defender in May 2018; she was subsequently assigned to a public defender, whose services she retained until July 2018, when she was again represented by private counsel.

5.5 The State party also explains that the author was able to benefit from alternatives to deprivation of liberty as of December 2009, when bail was set for her release. However, the author did not post the bail, and so was kept in detention. The State party maintains that the author did not provide evidence of her alleged situation of vulnerability or her inability to cover the amount of the bail, which is why her requests to reduce the bail were rejected.[32]

[27] The State party refers to the relevant articles of the Constitution (9 and 115), as well as to the case law of the Constitutional Court in this regard.

[28] "The remedy of constitutional *amparo* may be applied for in respect of illegal or improper acts or omissions on the part of public servants or of natural or legal persons which restrict or suppress or threaten to restrict or suppress the rights enshrined in the Constitution and the law" (art. 128).

[29] It refers to the Inter-American Commission on Human Rights, *Lucio Orlando Ortuño Rivas v. Bolivia*, report No. 43/07, petition 362-03 (Admissibility).

[30] An appeal for review of convictions handed down as executory judgments will be available in the following cases: 1. When the facts serving as the basis for the judgment are incompatible with those established by another executory judgment in a criminal case; 2. When the conviction that is being challenged is based on evidence found to be false in a subsequent executory judgment; 3. When the conviction was issued as a consequence of offences committed by the judiciary whose commission has been substantiated by a subsequent executory judgment; 4. When, after the judgment has been issued, new facts, pre-existing facts or evidence come to light that demonstrate: (a) that the offence was not committed; (b) that the convicted person did not commit or participate in the commission of the offence; or (c) that the acts in question are not punishable; 5. When a more lenient provision of criminal law should be applied retroactively; 6. When a judgment of the Constitutional Court has the effect of nullifying the provision of criminal law on which the conviction was based.

[31] Code of Criminal Procedure, art. 133.

[32] It refers to several requests by the author in this regard, one in December 2009 (rejected), another in February 2011 (rejected) and yet another in October 2015, when her request was finally granted (see para. 2.9). The State party states that the applications were rejected because the author submitted documents issued in Norway without a stamp from the competent authority, which were considered invalid by the State party's authorities.

The State party adds that the fact that the author is a fugitive from justice is evidence of her bad faith in requesting a reduced bail amount, as she was hoping to get out of prison only to avoid serving her sentence. The State party states that the author failed to comply with her obligation to report to the Court's registry on 12 September 2018[33] and that her whereabouts have been unknown since then.

Author's comments on the State party's observations on admissibility and the merits

6. On 21 November 2019, the author submitted her comments on the State party's observations. The author stated that she had nothing to add and referred to the initial communication, in which she claimed a violation of her rights under article 14 (3) (c) of the Covenant.

Issues and proceedings before the Committee

Consideration of admissibility

7.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with rule 97 of its rules of procedure, whether the communication is admissible under the Optional Protocol to the Covenant.

7.2 The Committee takes note of the State party's submission that the author did not exhaust domestic remedies, as she did not properly file a motion for the termination of criminal proceedings. The Committee notes that the author filed such a motion on 21 May 2012, 15 June, and 18 and 31 July 2018 (see para. 2.10). Furthermore, the Committee notes that, when the author filed the motion in question in July 2018, she was informed by the judicial authorities that the proceedings had been referred to another judicial authority and that it was before that authority that she should file the motion, which the author promptly did. Indeed, when the author was informed on 28 July 2018 that the file had been referred to the Supreme Court, she filed the motion with that court on 31 July, just two days later. However, on 3 August – three days later – she was told that the proceedings were already before another court. The Committee also notes that the State party did not explain why the remedy in question would have been effective in the author's specific case, but rather merely stated that it had been effective for another defendant (A.C.T.B.) (see para. 4.11). The Committee is therefore of the view that the argument the State party makes on this point is not a reason to find the communication inadmissible.

7.3 The Committee also notes the State party's submission that the author did not apply for constitutional *amparo*, an option that had become available to her once the decision of 4 September 2018, in which the judgment was declared enforceable, was handed down. The Committee notes that approximately ten years had elapsed between May 2008, when the proceedings against the complainant were initiated (see para. 2.1), and September 2018, when the remedy became available to her (see para. 2.14). The Committee is of the view that the remedy in question was not effective in the present case, considering the excessive period of time that had elapsed before it became available.[34] The Committee also takes note of the State party's submission that the author did not lodge an appeal for an extraordinary review of the judgment, as provided for in article 421 of the Code of Criminal Procedure, which establishes the possibility of reviewing an executory judgment. The Committee notes that the reasoning set out previously also applies to this remedy, as it also became available to the author only once the judgment became enforceable, in September 2018. In addition, the Committee notes that article 421 of the Code of Criminal Procedure was not applicable to the author's situation, since she did not meet the requirements set out in the article. The Committee is therefore of the view that there are no obstacles to the admissibility of the communication under article 5 (2) (b) of the Optional Protocol.

7.4 The Committee considers that the author has sufficiently substantiated her claims under article 14 (3) (c) of the Covenant for the purposes of admissibility. Given that there are

[33] It has provided a copy of a report from Sentencing Court No.1 dated 11 December 2018, which confirms that the author ceased to report to the Court on the aforementioned date.

[34] See, for example, *Fei v. Colombia* (CCPR/C/53/D/514/1992), para. 5.1, and *Bautista de Arellana v. Colombia* (CCPR/C/55/D/563/1993), para. 5.1.

no other obstacles to admissibility, the Committee declares the communication admissible and proceeds to its consideration of the merits.

Consideration of the merits

8.1 The Committee has considered the present communication in the light of all the information made available to it by the parties, in accordance with article 5 (1) of the Optional Protocol.

8.2 The Committee notes the author's claim that her rights under article 14 (3) (c) of the Covenant have been violated owing to the unreasonable delay in the criminal proceedings against her. The Committee also notes the State party's argument that the author simply made the claim that the duration of her trial was unreasonable, but did not provide any evidence thereof. The Committee also notes the State party's submission that the fact that the criminal proceedings took longer than is normally required for this type of proceeding was due to several factors, including the author's actions, the complexity of the case, the actions of the other defendants and the reform of the judiciary, which was carried out over the same period (see para. 4.3).

8.3 The Committee recalls its jurisprudence, according to which the reasonableness of the length of proceedings has to be assessed in the circumstances of each case, taking into account mainly the complexity of the case, the conduct of the accused and the manner in which the matter was dealt with by the administrative and judicial authorities.[35]

8.4 In this regard, the Committee takes note of the State party's statements in relation to the author's actions, including in relation to: (a) the responsibility of the author, together with the other defendants, for the four postponements of the hearing held with a view to considering the evidence presented in the appeal of the first instance decision; (b) her appeal of that decision; and (c) her lack of interest in the second appeals stage of the proceedings. The Committee notes that the State party does not provide details as to why the author was allegedly responsible for the postponement of the evidentiary hearing. The Committee also notes that the author's appeal in cassation against the first instance decision constituted a guarantee of her right of defence. With regard to the author's "lack of interest" in the second stage of the proceedings, the Committee notes that she waived her right to appeal the second instance judgment on the grounds of her right to obtain justice without delay (see para. 2.8). As to the actions of the other defendants, the Committee notes the State party's reference to the four postponements of the evidentiary hearing, as well as its submission that the motion of unconstitutionality filed by the other three convicted persons resulted in the suspension of the deadline for ruling on the first cassation appeals. Regarding the postponement of the evidentiary hearing, the State party did not explain in what way the other defendants were responsible for the postponement. With regard to the motion of unconstitutionality, the Committee notes that, despite the fact that the motion was filed on 6 May 2009, the Criminal Chamber for Cases Pending before the Supreme Court suspended the deadline for ruling on the cassation appeals on 18 August 2014 – some five years after the motion was filed – and handed down a decision on the motion on 12 September 2014. The Committee notes that the deadline for ruling on the appeals was suspended for one month. Consequently, none of the State party's arguments justify an undue delay in the proceedings against the author.

8.5 The Committee also takes note of the State party's statement on the complexity of the case given the large number of defendants and the various appeals they filed, as well as the difficulties involved in notifying the defendants of developments in the case. The Committee further notes the State party's submission that the authorities worked expediently, including the Public Prosecution Service, which made requests for an early drawing of lots for the case. In addition, the Committee takes note of the State party's arguments related to the reform of

[35] General comment No. 32 (2007), para. 35. See also Inter-American Court of Human Rights, *Valle Jaramillo et al. v. Colombia*, judgment of 27 November 2008, in which the Court (para. 155) added a fourth element to be taken into account to determine whether the time is reasonable: "[In the] analysis of reasonableness, the adverse effect of the duration of the proceedings on the judicial situation of the person involved in it must be taken into account; bearing in mind, among other elements, the matter in dispute. If the passage of time has a relevant impact on the judicial situation of the individual, the proceedings should be carried out more promptly so that the case is decided as soon as possible."

the judicial system that was carried out during the same period as the trial but that was nevertheless supposed to ensure the continued administration of justice. The Committee further notes the State party's submission that the author's legal situation was not affected by the length of the proceedings and that the authorities diligently fulfilled their duty to respect the right of defence of all defendants, which is why they had to rule on each of the appeals filed, including the cassation appeal filed by A.C.T.B. against the decision of 23 July 2015 of the Supreme Court of Justice of Cochabamba, resulting in an even more complex case.

8.6 In addition, the Committee takes note of the author's claims that the criminal proceedings against her were unreasonably lengthy, given that some ten years elapsed between her arrest and indictment and the time at which she submitted the communication, without her situation having been resolved. The Committee also notes the author's claim that the delay in ruling on the case cannot be attributed to any action on her part, but to the State party, which failed to provide the necessary resources to the judiciary to resolve her situation within a reasonable time. The Committee further notes the author's submission that the delay should also be attributed to the other defendants (see para. 3.5). In addition, the Committee takes note of the author's claim that she was adversely affected by the length of the criminal proceedings against her, in particular as she was prohibited from leaving the country until the sentence was final, thereby preventing her from seeing one of her daughters, who was in Norway, and that, as she did not have a work permit, she was unable to provide for herself, making it impossible to care adequately for her other minor daughter.

8.7 The Committee notes that the author was arrested on 19 May 2008 at Cochabamba airport, that she was charged in April 2009, that a judgment at first instance was handed down on 24 April 2010, that a judgment at second instance was handed down on 3 November 2010, that the Supreme Court ruled on the cassation appeals lodged by the author and other convicted persons on 9 March 2015 and that on 23 July 2015 the Supreme Court of Cochabamba issued a new judgment in their respect. The Committee nevertheless also notes that, at the time of submission of the communication, in February 2018, the judgment against the author was not final, owing to the fact that the appeal in cassation filed by one of the other defendants, A.C.T.B., against the decision of 23 July 2015 was still pending. The Committee further notes that, on 26 June 2018, the Court of Justice of Cochabamba ruled on the appeal in cassation filed by A.C.T.B. and that, on 4 September 2018, Sentencing Court No. 1 finally issued an executory judgment. The Committee notes that 10 years and four months elapsed between the author's arrest and the final judgment. The Committee also notes that the author was detained for approximately eight years.

8.8 The Committee recalls its jurisprudence, according to which the guarantee of being tried within a reasonable time refers not only to the time interval between the formal accusation and the moment when the trial begins but also to the time that transpires until the final judgment on appeal, and that all phases of the trial must be held "without undue delay", both in the first instance and on appeal.[36] In the circumstances of this case, the Committee is of the view that the State party's observations do not adequately explain how the delays in the proceedings can be attributed to the actions of the author or the complexity of the case.[37] The Committee notes that, on 29 November 2010, the author filed an appeal in cassation against the decision of 3 November 2010 of the Supreme Court of Cochabamba. However, the Committee also notes that the Supreme Court ruled on that appeal only on 9 March 2015. The Committee further notes that the State party's argument relating to the reform of its judicial system does not relieve it of its obligation to ensure that persons under its jurisdiction are tried within a reasonable time. Consequently, the Committee considers that the proceedings against the author suffered from delays that are contrary to the provisions of article 14 (3) (c) of the Covenant.

[36] Ibid., *Rouse v. Philippines* (CCPR/C/84/D/1089/2002), para. 7.4, *Arredondo v. Peru* (CCPR/C/69/D/688/1996), para. 10.6, and *Shalto v. Trinidad and Tobago* (CCPR/C/53/D/447/1991), para. 7.2.

[37] *Cedeño v. Bolivarian Republic of Venezuela* (CCPR/C/106/D/1940/2010), para. 7.7, and *Tarighet al. v. Algeria* (CCPR/C/86/D/1085/2002), para. 8.5.

9. The Committee, acting under article 5 (4) of the Optional Protocol, finds that the facts of which it has been apprised constitute a violation by the State party of article 14 (3) (c) of the Covenant.

10. Pursuant to article 2 (3) (a) of the Covenant, the State party is under an obligation to provide the author with an effective remedy. This requires it to make full reparation to individuals whose Covenant rights have been violated. Accordingly, the State party is obligated, inter alia, to take the necessary steps to provide compensation to the author in respect of the damage caused by the unwarranted delay in the resolution of the judicial proceedings against her. The State party is also under an obligation to take steps to prevent similar violations from occurring in the future.

11. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory or subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy when a violation has been established, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the Committee's Views. The State party is also requested to publish the present Views and to have them widely disseminated in the State party.

Annex

Individual opinion of Committee member Carlos Gómez Martínez (dissenting)

1. I disagree with the finding of a violation of article 14 (3) (c) of the Covenant, as I am of the view that there is no reason to conclude that there were undue delays in the criminal proceedings to which the author was a party.

2. The precise timeline of the case is laid out in paragraph 8.7: the author was arrested on 19 May 2008; on 24 April 2010, a judgment against the author and three other persons was handed down at first instance; a judgment at second instance was handed down on 3 November 2010; on 9 March 2015, the State party's Supreme Court of Justice ruled on the cassation appeals filed by the author and other convicted persons, requiring the Supreme Court of Cochabamba (second instance) to hand down a new judgment; the new judgment, in which the sentence of 13 years and 4 months imposed on the author was confirmed, was handed down on 23 July 2015. From that moment on, the case concerning the author had concluded as far as she was concerned; the definition of her situation was pending only the outcome of another appeal in cassation filed by one of the defendants that could have benefited her only if the appeal had succeeded. It did not succeed, however, and the Supreme Court's judgment became final on 4 September 2018.

3. Consequently, I do not share the Committee's conclusion that the trial lasted more than ten years (see para. 8.8), since for the author it was shorter, and there is no evidence to suggest that, in the period between her arrest and conviction (seven years and two months), there were any instances of the "undue delay" referred to in article 14 (3) (c) of the Covenant as a violation of the right to a fair trial.