

Institution:	Inter-American Commission on Human Rights
File Number(s):	Report No. 93/09; Petition 337-07
Session:	Hundred Thirty-Fifth Regular Session (3 – 8 August 2009)
Title/Style of Cause:	Samanta Nunes da Silva v. Brazil The Commission is using the complete name of the alleged victim at the express request of the petitioner, according to the letter received on October 16, 2009 that shows the authorization of the alleged victim regarding the issue.
Doc. Type:	Decision
Decided by:	President: Luz Patricia Mejia Guerrero; First Vice President: Victor Abramovich; Second Vice President: Felipe Gonzalez; Commissioners: Sir Clare K. Roberts, Florentin Melendez, Paolo Carozza. As provided in Article 17.2.a of the Rules of Procedure of the IACHR, Commission member Paulo Sergio Pinheiro, a Brazilian national, did not participate in discussions on this petition.
Dated:	7 August 2009
Citation:	Nunes da Silva v. Brazil, Petition 337-07, Inter-Am. C.H.R., Report No. 93/09, OEA/Ser.L/V/II., doc. 51, corr. 1 (2009)
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## I. SUMMARY

1. On April 25, 2003, the Inter-American Commission on Human Rights (“the Inter-American Commission” or “the IACHR”) received a complaint by regular mail claiming the international responsibility of the State of Brazil for irregularities and violations of due process allegedly committed in the context of the criminal investigation of sexual aggression denounced by Samanta Nunes da Silva, a 16-year-old girl. The petition was presented by the organization Themis (hereinafter “the petitioner”).

2. The petitioner argues that the events constitute violations, in detriment of Samanta Nunes da Silva, of the following rights guaranteed by the American Convention on Human Rights (“the American Convention”): the right to personal integrity (Article 5.1); the right to personal liberty (Article 7); the protection of the honor and dignity (Article 11.1); the rights of the child (Article 19); the equal protection of the law (Article 24); and the right to judicial protection (Article 25); and constitute violations of the obligations to respect the rights and adopt the measures enshrined in Article 1(1) of the American Convention. The petitioner also claims violations of Articles 1, 2, 3, 4, and 7 of the Inter-American Convention to Prevent, Punish, and Eradicate Violence against Women (“the Convention of Belém do Pará”).

3. The State, for its part, requests that the petition be declared inadmissible because it does not meet the minimum admissibility requirements set forth in the American Convention. Specifically, the State considers that admitting this petition would oblige the IACHR to act as a court of “fourth instance” to reexamine the body of evidence from the internal judicial proceedings in connection with the facts of this case.

4. Without prejudging the merits, the IACHR concludes in this report that the petition is admissible, in light of Articles 46 and 47 of the American Convention. Therefore, the Inter-American Commission has decided to notify the parties of this decision and to continue its examination of the merits regarding the alleged violations, in respect of Samanta Nunes da Silva, of Articles 8(1), 19, 24, and 25 of the American Convention, all of these in connection with the general obligation to respect and guarantee rights, as set forth in Article 1(1) of the American Convention and Article 7 of the Convention of Belém do Pará. As for the alleged violations of Articles 5(1), 7, and 11(1) of the American Convention, the Commission finds the petition inadmissible. As for Articles 1, 2, 3, and 4 of the Convention of Belém do Pará, the Commission shall take them into account, insofar as they are relevant, in its interpretation of Article 7 of that Convention during the merits phase. In addition, it has decided to notify the parties and to order the publication of its decision in its Annual Report.

## II. PROCESSING BY THE COMMISSION

5. The petition was received by the IACHR by regular mail on April 25, 2003, and registered under number P 337-03. On March 22, 2005, the IACHR transmitted a copy of the pertinent sections of the petition to the State, granting it a period of two months to submit information in accordance with Article 30 (sections 2 and 3) of its Rules of Procedure. On July 12, 2005, the State requested an extension, to August 1, 2005, of the deadline for presenting its observations. The IACHR notified the State on August 4, 2005, that the extension could not be granted, citing Article 30 (section 3) of the Rules of Procedure. The State’s observations were presented on January 18, 2006, and were duly transmitted to the petitioner on February 1, 2006.

6. On March 16, 2006, the IACHR received additional observations from the petitioner, and these were transmitted to the State on April 19, 2006. The IACHR received additional observations from the State on July 7, 2006; these were transmitted to the petitioner on July 26, 2006.

7. On August 15, 2008, the Commission requested that the State present, within one month, a copy of the criminal case file related to the facts of this case. On September 16, 2008, the State requested from the IACHR a one-month extension of the deadline to present a full copy of the criminal case file, which was granted by the IACHR on September 22, 2008. On September 26, 2008, the State presented to the IACHR copies of the criminal trial, the appeal, and the extraordinary appeal concerning this petition; this information was transmitted on October 7, 2008, to the petitioner, which was given a deadline of one month to present its observations. On November 7, 2008, the State presented to the IACHR a copy of the *agravo de instrumento* concerning the petition; this was transmitted to the petitioner on November 17, 2008. The petitioner presented its observations on December 3, 2008, and these were transmitted to the

State on December 9, 2008. The State presented additional observations to the IACHR on December 24, 2008; these were transmitted to the petitioners on January 13, 2009.

### III. POSITIONS OF THE PARTIES

#### A. Background

8. In this matter the parties disagree as to whether irregularities occurred and due process was violated in the context of the criminal investigation of sexual aggression denounced by Samanta Nunes da Silva, a 16-year-old girl. Considering that the parties do not disagree regarding the aspects related to the stages in the internal criminal process conducted by the Office of the Attorney General against the physician, the Commission shall summarize that proceeding before turning to the positions of the parties.

9. The petitioner reported the alleged acts of sexual assault on the same day on which they allegedly occurred, October 15, 1997. The Office of the Attorney General, on December 16, 1997, presented a complaint against the physician for indecent assault by dishonest means, on the basis of a lascivious act other than carnal knowledge, an offense punishable under Article 216 of the Brazilian Penal Code in effect at the time. During the first-instance proceedings, the interests of Samanta Nunes da Silva were represented by the Office of the Attorney General and its assistant prosecutor. The court of first instance initially condemned the physician to two years and six months in prison. This sentence then was changed to a fine and community service. The defendant appealed this decision on January 19, 2001.

10. At the second instance level, the Seventh Chamber of the Court of Justice of the State de Rio Grande do Sul requested the views of the defendant and of the Office of the Attorney General. At a sitting held on September 24, 2001, the judges comprising the Seventh Chamber of the Court of Justice of the State de Rio Grande do Sul unanimously acquitted the defendant.

11. Samanta Nunes da Silva presented two appeals in domestic courts in which she reported violations of constitutional guarantees that took place during the criminal trial. The victim first presented an extraordinary appeal to the Court of Justice of Rio Grande do Sul on November 5, 2001; this was ruled inadmissible by that Court on April 17, 2002. Later, the victim filed an agravo de instrumento with the Federal Supreme Court; this was ruled inadmissible on October 3, 2002.

#### B. Position of the petitioner

12. The petitioner states that Samanta Nunes da Silva set a medical appointment with a private orthopedic physician for October 15, 1997, because she suffered back pain. It states that during the appointment the doctor sexually abused Samanta by way of “fraud and threats.”[FN2] The petitioner denies that the doctor ordered Samanta to undress and fondled her breasts and her private areas – including her anus and vagina – complimenting her and asking her silly questions.

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[FN2] Original petition, dated April 25, 2003.

13. The focus of the petitioner's arguments before the IACHR is the lack of adequate access to justice and an unequal protection of the law because of her gender, race, age and economic situation. In this context, the petitioner states that during the criminal trial of the orthopedic physician the minimum standards of due process were not observed and that she was discriminated. These defects were especially serious in view of the gender, race, minor age and economic situation of Samanta Nunes da Silva, which obliged the State to provide special protection and heightened the State's duty to act with the necessary due diligence to prosecute and punish the actions involved. According to the petitioner, several defects in the trial resulted in the acquittal of the physician by way of a groundless decision, biased toward the alleged assailant, by the Seventh Chamber of the Court of Justice of the State de Rio Grande do Sul. The petitioner cited among the defects in the trial: that Samanta Nunes da Silva was not duly heard as the victim; that the justice operators in the second instance – including the Office of the Attorney General and the judges – were not impartial, but were influenced by discriminatory prejudices against women victims of sexual assault; that the Brazilian judicial system is not properly prepared to gather the necessary evidence in cases of sexual assault, and this impaired the gathering of the necessary evidence in this case; and that these defects are elements in a pattern of discrimination in the investigation and prosecution of sexual crimes.

14. The petitioner states that it does not seek to have the IACHR reexamine the evidence considered in the criminal trial as a court of fourth instance, as suggested by the Brazilian State. On the contrary, the petitioner seeks recognition that the Brazilian State, through its public agents, the Office of the Attorney General and the Federal Supreme Court, violated the principles of the American Convention on Human Rights, the Convention of Belém do Pará, and the Convention on the Elimination of All Forms of Discrimination against Women (hereinafter "CEDAW"). The petitioner argues that the autonomy of judicial decisions must not be confused with total freedom to condone discriminatory treatment that violates women's human rights on the basis of their social roles and their moral and sexual behavior.

15. The petitioner argues that several sociocultural patterns that discriminate against women victims of sexual assault negatively influenced judicial actions in the criminal trial of the physician. The petitioner considers this case paradigmatic of the differential treatment by judicial officials in Brazil of cases involving women victims of sexual assault, as compared to other offenses, resulting from traditional discrimination against women and the idea that these crimes are private matters[FN3]. The petitioner also points to a number of factors that placed Samanta Nunes da Silva at greater risk of having her rights violated, which were not considered by the officials during the trial. Samanta was a female of minor age, afro-descendent, and of scant economic means; the assailant was a man, white, and of considerable economic means; this placed them on unequal footing with the authorities, and therefore called for special protection for Samanta Nunes da Silva during the criminal trial.

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[FN3] As part of its complaint, the petitioner presents the findings of research on the prosecution of sexual assault cases in Brazil; and alleges that these illustrate how a large majority of assailants hold positions of authority over their victims and demonstrate the scant credence given

to the word of the victim in courts of second instance, as compared to those of first instance. The petitioner presents the findings of research undertaken by a program of the Carlos Chagas Foundation – Gender, Reproduction, Action, and Leadership – for the 2001-2002 period, concerning criminal trials regarding the sexual assault of girls and adolescents in Brazil. In that research, 10 sexual assault cases were examined; only one resulted in a conviction in the second instance and the victim was male (the only boy included in the study). In seven trials, the assailants were acquitted; the victims were girls between the ages of 11 and 14. The petitioner presents a second study, concerning 24 criminal sexual assault trials and the relationship between expert testimony, convictions, and acquittals; in 58% of the trials, the defendant knew the victim; in 42.9%, the victims were girls; in 60%, the assailants held positions of authority over their victims and/or the offense had taken place in a public setting.

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16. As for concrete examples, the petitioner argues that, as often occurs in criminal trials regarding sex offenses against women, the word of Samanta Nunes da Silva was discredited during the criminal trial and her credibility was evaluated on the basis of her sexual behavior. As part of its petition, the petitioner presents the complaint filed by the Office of the Attorney General, which, in order to establish the existence of an offense, specifies that the victim was a virgin, had no boyfriend, and was an honest young woman[FN4]. During the questioning of Samanta Nunes da Silva by the court of first instance, she was asked a number of questions which included whether she had sexual experience, whether she had a boyfriend, and whether she remembered how she was dressed during the medical appointment[FN5].

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[FN4] The petitioner presents with its original petition a copy of the complaint filed by the Office of the Attorney General on December 16, 1997.

[FN5] Transcript of the questioning of Samanta Nunes da Silva by the judge in the Seventh Criminal Chamber of the Judiciary, State of Rio Grande do Sul, April 29, 1999.

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17. The petitioner also argues that the Brazilian State is not properly prepared to gather the necessary evidence in cases of sexual assault, especially in cases such as this, where there is no evidence of physical resistance, and that this hinders the proper punishment of victimizers and encourages society to tolerate such acts. The petitioner maintains that in the first instance this was illustrated by the lack of a psychiatric examination focusing on the repercussions of sexual assault. Therefore, it alleges, Samanta Nunes da Silva was given an examination that showed only that she did not suffer from mental problems.

18. In the context of the second-instance criminal trial, the petitioner also refers to the opinion of the Office of the Attorney General[FN6], presented by her as well as by the State, which concludes that the victim “shows signs of a developing histrionic personality disorder. This is precisely the pathology most associated with false accusations of sexual abuse”[FN7]. According to the petitioner, in contrast to its position in the first-instance proceedings, the Office of the Attorney General even questioned, in its opinion, why a girl would report sexual assault: “Why would a girl so traumatized by what had happened want to go through a trial in which she

would have to relive those events? Could she have a subconscious desire for the turmoil of the trial?”[FN8].

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[FN6] Opinion of the Office of the Attorney General, Court of Justice, Special Criminal Chamber, Appeal of Offense N° 70-002-059-764, Porto Alegre, March 23, 2001.

[FN7] Opinion of the Office of the Attorney General, Court of Justice, Special Criminal Chamber, Appeal of Offense N° 70-002-059-764, Porto Alegre, March 23, 2001, para. 5.1.

[FN8] Opinion of the Office of the Attorney General, Court of Justice, Special Criminal Chamber, Appeal of Offense N° 70-002-059-764, Porto Alegre, March 23, 2001, para. 9.

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19. The petitioner states that the Office of the Attorney General finally concludes that, although the assailant committed a number of errors in the medical appointment with Samanta Nunes da Silva, this did not mean he should be punished criminally:

Clearly the doctor made some mistakes. He agreed to work at a clinic without nurses, gowns, or screens to protect patient privacy. He was overly trusting in seeing an adolescent girl unaccompanied by her parents and in conducting an invasive exam without regard for the girl’s privacy. Even more so when he saw she was nervous and tried to proceed, or to calm her down with remarks about his professionalism, perhaps caressing her. He was perhaps careless in praising her beauty before she disrobed for the exam. And it is not entirely unlikely that he would have been aroused by seeing a girl in her prime. It is quite a leap from that point to say that he satisfied himself through trickery and the means alleged. If he committed all or just some of these errors, he has already paid by being tried and convicted and will continue to pay for a long time, because with these offenses, whether the result is acquittal or conviction, the suspicion, looks, and gossip always persist. He who tends to believe in the absurdity of sexual conduct is exactly the one capable of such practices; he who most loudly condemns them is trying to close the seven gates of the giants who torment his own soul. One should be careful, then, not to judge others, either morally or juridically”[FN9].

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[FN9] Opinion of the Office of the Attorney General, Court of Justice, Special Criminal Section, Appeal of Offense N° 70-002-059-764, Porto Alegre, March 23, 2001, para. 12.

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20. The petitioner indicates that the Office of the Attorney General did not evaluate the defendant’s testimony according to the same criteria applied to that of the victim. For example, the capacity of the assailant to invent things and/or to contradict himself was not evaluated, but that of the victim was. The petitioner believes that the criteria used by the Office of the Attorney General in assessing the evidence were different for Samanta Nunes da Silva and for the doctor because she was a female victim of sexual assault and also a child, afro-descendent, and of low economic means, while the assailant was a man, white, and wealthy:

On the one hand, this testimony, and on the other, the denial of the defendant. Why would the defendant, a relatively young, very successful, married physician, need to satisfy his lust in such

an incongruous way? He had never been involved in any complaint of abuse. Would he risk his name and his respectability to “rub his mustache” on the back of an adolescent girl? We do not see how the incriminating evidence could have been convincing [FN10].

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[FN10] Opinion of the Office of the Attorney General, Court of Justice, Special Criminal Section, Appeal of Offense N° 70-002-059-764, Porto Alegre, March 23, 2001, para. 11.

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21. Referring to the opinion of the Office of the Attorney General, the judges comprising the Seventh Chamber of the Court of Justice of the State de Rio Grande do Sul, in issuing the acquittal, considered the fact that the victim had seen fictitious news reports of similar events; considered the absence of witnesses; and considered that the victim’s statement to the police had been less detailed than her statement during the trial.

22. According to the petition, Samanta Nunes da Silva presented two appeals to the domestic courts to report acts of discrimination, the lack of special protective measures, and defects of due process during the criminal trial of the orthopedic physician. First, she presented an extraordinary appeal[FN11] on November 5, 2001; this was ruled inadmissible by the Court of Justice of Rio Grande do Sul on April 17, 2002. The petitioner states that Samanta based her appeal on Articles 1 (III and IV)[FN12] and 5 (I, X, XLI, paragraphs 1 and 2)[FN13] of the Federal Constitution of Brazil, Articles 2, 3, and 5 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), and Articles 1, 2, 3, 4, and 6 of the Convention of Belém do Pará.

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[FN11] According to Law 8.038 of May 28, 1990, Article 26, “a special or extraordinary appeal, in the cases for which the Federal Constitution provides, shall be presented within 15 days, to the president of the court of appeals, and shall contain: I – arguments of fact and of law; II – an explanation of the pertinence of the appeal; III – the reasons for which a change in the decision is requested.” Under Article 27.1, the Tribunal shall decide whether or not the appeal shall be admitted.

[FN12] The special appeal presented by Samanta Nunes da Silva cites section III of Article 1 of the Federal Constitution of Brazil, which protects personal dignity and section IV of the same article which promotes the well-being of all “without prejudice as to origin, race, gender, color, or age, or any other form of discrimination.” (Translation of the Portuguese by the Secretariat)

[FN13] The special appeal presented by Samanta Nunes da Silva cites Article 5 of the Federal Constitution and the aforementioned subparagraphs, which protect equality before the law, personal privacy and prohibit discrimination against any person.

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23. The petition indicates that Samanta Nunes da Silva alleged in the extraordinary appeal that discriminatory prejudice against victims of sexual assault affected judicial actions during the trial, including the lack of a psychiatric exam showing the psychological repercussions of sexual offenses. She indicated more specifically in the text of the appeal that the court of second instance, in its decision, only considered the opinions of the alleged assailant and of the Office of

the Attorney General, not that of its assistant prosecutor, who was not invited to present her counter-arguments. On the opinion of the Office of the Attorney General, Samanta noted:

... the divergence of views within the Office of the Attorney General itself between the first and second instances; in the first, the opinion was in favor of conviction; in the second, it favored acquittal. Was this judgment based on law or on ideology? It is quite impressive to see how a judicial decision can develop according to the perceptions and ideologies of justice operators, especially in the case of sexual crimes. When a woman does not invite assault by dressing suggestively, behaving seductively, or not being an honest woman, she makes things up or gets confused by something she saw that wasn't real[FN14].

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[FN14] Special appeal filed by Samanta Nunes da Silva with the Court of Justice of Rio Grande do Sul on November 5, 2001.

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24. The Court of Justice of the State of Rio Grande do Sul ruled that the appeal filed by Samanta Nunes da Silva was inadmissible, alleging that it did not indicate "precisely and objectively"[FN15] which constitutional provisions had been violated during the criminal trial and did not cite sufficient grounds. In addition, the Court found that the allegations focused merely on a re-examination of evidence, for which the extraordinary appeal was not adequate. Therefore, the Court decided that the appeal did not meet the minimum admissibility requirements.

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[FN15] The petitioner presents, with its original petition, the ruling by the Court of Justice of Rio Grande do Sul rejecting the extraordinary appeal filed by Samanta Nunes da Silvia, April 17, 2002.

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25. In response to this decision, the victim filed an agravo de instrumento[FN16] with the Federal Supreme Court; which was found inadmissible on October 3, 2002. In the agravo de instrumento, Samanta reiterated the arguments given as grounds for the extraordinary appeal and clarified that her purpose in filing it was not to request a review of the evidence or to obtain a third-instance decision. The Federal Supreme Court agreed with the Court of the State of Rio Grande do Sul and found the agravo de instrumento inadmissible.

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[FN16] Under Act 8.038 of May 28, 1990, Article 28, "if the extraordinary or special appeal is denied, an agravo de instrumento may be filed, within five days, with the Federal Supreme Court or with the Superior Court of Justice, as applicable".

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26. As for the admissibility requirements, the petitioner argues that it submitted the petition within a reasonable period of time, in accordance with Article 46.1.b of the American Convention on Human Rights and Article 32.1 of the Rules of Procedure of the IACHR. The



petitioner alleges that it submitted the complaint by mail, precisely at the end of the six-month period, i.e., April 18, 2003, which is verified by the postmark. Its understanding is that the deadline was April 18, 2003, because the agravo de instrumento was ruled inadmissible by the Federal Supreme Court in a decision published on October 18, 2002. The petition was sent by postal mail, according to the procedure established by the Executive Secretariat, the result being that the petition was registered on April 25, 2003. The petitioner argues that the deadlines should always be interpreted in the manner most conducive to the effective exercise of human rights, i.e., that the record of receipt does not necessarily mean the date on which the deadline expired, because various problems can occur with international correspondence. As for the exhaustion of domestic remedies, the petitioner argues that, with the filing of the extraordinary appeal and of the agravo de instrumento, and their denial, the victim exhausted all avenues available under the Brazilian judicial system to secure a judicial remedy under these circumstances.

### C. Position of the State

27. The State requests that the petition be declared inadmissible in that it does not meet the minimum admissibility requirements set forth in the American Convention on Human Rights. It also reasons that admitting this petition would oblige the IACHR to act as a court of “fourth instance” to reexamine the body of evidence from the internal judicial proceedings related to this case. The State argues that, given the subsidiary nature of the bodies of the inter-American system, both the Court and the Commission have adopted jurisprudence in which they indicate that these bodies can review internal judicial decisions only when the petition pertains to a judgment rendered outside the bounds of due process, or when it appears to violate any other right guaranteed in the Convention, which has not occurred in this case.

28. The State argues specifically that the petition was presented outside the statutory timeframe and therefore should be found inadmissible. It indicates that the complaint was presented on April 25, 2003, at 2:40 p.m., according to IACHR records, one week after the deadline. The State maintains that the date of publication of the final decision declaring the agravo de instrumento inadmissible was October 18, 2002, and that therefore the deadline for presentation of the petition to the IACHR was April 18, 2003, under Article 46(1)(b) of the American Convention on Human Rights and Article 32(1) of the Rules of Procedure of the Commission.

29. The State argues that the Rules of Procedure of the IACHR, in Article 29(1)(a), provide that the date for determining the deadline as regards Article 46(1)(b) of the American Convention is the date on which the petition was presented to the IACHR, which date is confirmed by the date stamp at the point of receipt. The State also lacks access to the postmark that would prove that the complaint was dispatched on April 18, 2003, as the petitioners claim. The requirement set forth in Article 29(1)(a) of the Rules of Procedure of the Commission exists precisely to provide States with legal certainty as to compliance or noncompliance with the deadline established by the American Convention[FN17].

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[FN17] The State cites a number of cases declared inadmissible by the Commission because they were not presented within a reasonable period of time, including, IACHR, Report 32/98, Case

11.507, Anselmo Ríos Aguilar (Mexico), May 5, 1998; IACHR, Report 70/00, Case 11.707, Gladis Cardozo Andrade (Venezuela), October 30, 2000; IACHR, Report 95/01, Case 12.203, Liliana Zambrano Pacheco, (Peru), October 10, 2001, among others.

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30. As for the exhaustion of domestic remedies, the understanding of the State is that the victim is in part responsible for the decision of the Federal Supreme Court on the agravo de instrumento that exhausted domestic remedies, because she did not provide sufficient grounds for her request and based it merely on a request for review of evidence. On the agravo de instrumento, the Federal Supreme Court decided that the victim had not indicated which constitutional provisions she believed to have been violated or which treaty or federal law had been declared unconstitutional by the decision contested. The insufficient grounds presented by the victim in her extraordinary appeal and her presentation of the petition to the IACHR outside the statutory timeframe should lead “this Commission to clearly show that the high aims of the inter-American human rights system have no bearing on that old saying, a corollary to legal certainty, that the law does not protect those who sleep!”[FN18]

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[FN18] Observations of the State, January 18, 2006.

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31. The State also argues that the petitioner requests the Commission to place a higher evidentiary value on certain pieces of evidence, those which benefit the alleged victim, as opposed to the reading of the competent domestic jurisdictional bodies in examining the entire body of evidence in the second instance. The State also argues that the Commission should not function as a court of appeals to examine errors of law or of fact that may have been committed by national courts within the bounds of their competence. Unfavorable but duly justified decisions must not be considered violations of human rights.

32. The State argues that the autonomy of judicial bodies in properly assessing evidence is a general principle of law in all the American States, and also is expressly recognized by the Inter-American Court of Human Rights in the exercise of its own contentious function[FN19]. The State argues that the unanimous decision of the Seventh Criminal Chamber of the Court of Justice of Rio Grande do Sul constituted solely an exercise of the autonomy of jurisdictional bodies in assessing the evidence, based on the review of the body of evidence according to applicable law, in keeping with the principles of legal due process and the presumption of innocence.

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[FN19] The State argues that “this autonomy is an inseparable guarantee of the independence of jurisdictional bodies, whose jurisdictional competence, in a world of evidence pre-evaluated and separated from the evidentiary whole, would be reduced to a mere mathematical exercise unlikely to bring about true justice.” Observations of the State, January 18, 2006.

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#### IV. ANALYSIS OF ADMISSIBILITY

A. Competence of the Commission *ratione personae*, *ratione loci*, *ratione temporis*, and *ratione materiae*

33. The petitioner is empowered by Article 44 of the American Convention to submit complaints to the Commission. The petition identifies the alleged victim as Samanta Nunes da Silva, in respect to whom Brazil undertook to respect and guarantee the rights enshrined in the American Convention. As for the State, the Commission indicates that Brazil has been a State party to the American Convention since September 25, 1992, on which date it deposited its instrument of ratification, and has also been party to the Convention of Belém do Pará since November 27, 1995. Therefore, the Commission is competent *ratione personae* to hear the petition.

34. The Commission is competent *ratione loci* to hear the petition because it pertains to alleged violations of rights protected by the American Convention and the Convention of Belém do Pará which allegedly took place within the territory of Brazil, a State party to that treaty.

35. The Commission is competent *ratione temporis* because the obligation to respect and guarantee the rights protected by the American Convention and the Convention of Belém do Pará was already in effect for the State on the date on which the events described in the petition are alleged to have taken place. The Commission is competent *ratione materiae* because the petition reports violations of human rights protected by the American Convention and the Convention of Belém do Pará. The Commission is not competent *ratione materiae* to examine the violations to the articles of the Convention on the Elimination on all Forms of Discrimination against Women (CEDAW). Nevertheless, according to article 29 of the American Convention, as well as Vienna Convention on the Law of Treaties[FN20], in certain circumstances, the Commission must refer to the obligations under international law to interpret and apply the treaties of the Inter-American human rights system.

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[FN20] Vienna Convention on the Law of Treaties, U.N. Doc A/CONF.39/27 (1969), 1155 U.N.T.S. 331, entered into force, January 27, 1980, article 31.

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B. Other admissibility requirements for the petition

1. Exhaustion of domestic remedies

36. Article 46(1)(a) of the American Convention provides that, in order for the petition to be admitted, the remedies under domestic law must “have been pursued and exhausted in accordance with generally recognized principles of international law.” This requirement was established to guarantee the State an opportunity to resolve disputes within its own legal framework.

37. The parties disagree on whether domestic remedies were duly exhausted. The petitioner argues that, in response to the acquittal rendered in the second instance, Samanta Nunes da Silva

filed with the Court of Justice of Rio Grande do Sul on November 5, 2001, a special appeal, providing sufficient grounds, citing violations of several constitutional guarantees in the form of discriminatory acts, the absence of special protective measures, and procedural defects during the criminal trial resulting in the acquittal of the assailant by that same court. That appeal, however, was declared inadmissible by the Court of Justice of Rio Grande do Sul on April 17, 2002. In response, Samanta presented an agravo de instrumento to the Federal Supreme Court reiterating her arguments and it was declared inadmissible by that court on October 3, 2002.

38. The State, for its part, maintains that the victim is in part responsible for the decision of the Federal Supreme Court to reject the agravo de instrumento, which exhausted domestic remedies, because Samanta Nunes da Silva did not provide sufficient grounds for her request and based it solely on a request for review of the evidence. The State also argues that in both the special appeal and the agravo de instrumento the courts found that the victim had not indicated which constitutional provisions had been violated or which treaty or federal law had been declared unconstitutional by the decision in question.

39. The parties agree that the alleged victim pursued the remedies available at the domestic level, and that these remedies were appropriate to her allegations and the judicial proceeding in question. The State does not claim that Samanta Nunes da Silva pursued inappropriate remedies, but rather that she filed the available appeals without providing sufficient grounds. In this procedural phase, the Commission must determine whether the victim pursued sufficient and appropriate remedies, and whether the State was duly notified of the complaints so as to have the opportunity to resolve them, as appropriate, at the domestic level.

40. The Federal Supreme Court found, in its analysis of the extraordinary appeal and of the agravo de instrumento, that Samanta Nunes da Silva was merely requesting a review of the evidence. The presentations of the parties show that Samanta Nunes da Silva, in the text of her appeals, cited the constitutional provisions she considered to have been violated, describing, with detailed grounds, the acts of discrimination, absence of special protective measures, and defects of due process that allegedly occurred during the criminal trial. Therefore, the Commission finds that the alleged victim pursued the available remedies and that the State was notified of the substance of her allegations.

41. On the basis of the foregoing considerations, the Commission concludes that the remedies applicable to the petitioner's complaints have been duly exhausted, in keeping with Article 46(1)(a) of the American Convention.

2. Deadline for presentation of the petition

42. Article 46(1)(b) of the American Convention provides that the petition must be lodged within a period of six months from the date on which the party alleging violation of his rights was notified of the final judgment that exhausts domestic remedies.

43. The parties disagree as to whether this requirement was met. The petitioner argues that the petition was submitted by regular mail, as required, within six months, and a statement to that effect appears in the case file. It indicates that the victim learned of the decision of the Federal

Supreme Court on the agravo de instrumento on October 18, 2002, by way of the publication of that decision, and consequently sent the petition by postal mail to the Commission on April 18, 2003. The State, on the other hand, argues that the petition was received after the deadline, since the IACHR registered its receipt on April 25, 2003, one week after the deadline, and that the case file does not include any statement that it was dispatched by the petitioner on April 18, 2003.

44. In this case, the petition is dated April 18, 2003, and its receipt by regular mail was registered by the Commission on April 25, 2003. According to the practice of the IACHR in these matters[FN21], presuming the number of days the petition was en route by mail, the Commission finds that the petition was submitted in a timely fashion.

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[FN21] See IACHR, Report on Admissibility N° 69/08, Petition 681-00, Guillermo Patricio Lynn, Argentina, October 16, 2008, paras. 44-46 (In this case, the petition was dated December 12, 2000, was sent by postal mail, and was received by the Commission on December 29, 2000. The Commission, presuming the number of days the petition was en route by mail, finds that the petition was submitted in a timely fashion).  
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3. Duplication of international procedures and res judicata

45. It cannot be inferred from the content of the case file that the subject of the petition is pending consideration under any other international proceeding for settlement, nor that it duplicates a petition already examined by this or any other international body. Therefore, the requirements set forth in Article 46(1)(c) of the American Convention should be considered to have been met.

4. Characterization of the alleged facts

46. The petitioner alleges that several of the rights of Samanta Nunes da Silva were violated during the criminal trial of an orthopedic physician who allegedly abused her sexually during a medical appointment. The petitioner argues specifically that the rights of Samanta Nunes da Silva were violated with respect to personal integrity, personal liberty, protection of her honor and dignity, equality before the law, the rights of the child, judicial protection, and the right to live free of violence. The State, for its part, argues that the petition does not meet the minimum admissibility requirements.

47. The State, more specifically, considers the petition inadmissible in that the petitioner requests the Commission to act as a court of “fourth instance,” for which it is not competent, since the petitioner seeks to have the IACHR review the body of evidence contained in the domestic judicial proceedings that resulted in the acquittal of the alleged assailant. With respect to this argument, the Commission reiterates, as it has established in its jurisprudence that it is not competent to review rulings issued by domestic courts that act within the bounds of their competence and observe due process and judicial guarantees[FN22]. The Commission cannot act as a court of appeals to examine alleged errors of law or of fact that may have been committed by domestic courts. However, within the context of its mandate to ensure the observance of the

rights enshrined in the American Convention and other inter-American human rights instruments, the Commission is competent to find a petition admissible and to rule on the merits when the petition pertains to domestic proceedings that might violate rights guaranteed by the American Convention and the Convention of Belém do Pará[FN23].

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[FN22] See IACHR, Report No. 52/02, Case 11.753, Merits, Ramón Martínez Villareal, United States, October 10, 2002, para. 53; IACHR, Report No. 39/96, Santiago Marzioni v. Argentina, Annual Report of the IACHR, 1996, paras. 48 – 51.

[FN23] See IACHR, Report N° 42/08, Petition 1271-04, Karen Atala and Daughters v. Chile, July 23, 2008, para. 59; IACHR, Report No. 52/02, Case 11.753, Merits, Ramón Martínez Villareal, United States, October 10, 2002, para. 53; IACHR, Report No. 39/96, Case 11.673, Santiago Marzioni v. Argentina, Annual Report of the IACHR, 1996, paras. 48 – 51; IACHR, Report N° 54/01, Case 12.051, Maria da Penha Maia Fernandes v. Brazil, April 16, 2001, para. 28.

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48. According to this doctrine, the Commission notes that in admitting this petition it does not intend to supplant the competence of domestic judicial authorities to assess the evidence in cases of sexual violence, and to examine errors of assessment that might have been committed by domestic courts, which matters fall, in principle, to domestic courts. The Commission, in the merits phase, shall determine whether the domestic judicial proceeding[FN24] was consistent with the guarantees of due process and the right of women to live free of discrimination and violence in keeping with the rights protected by the American Convention and the Convention of Belém do Pará.

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[FN24] The Inter-American Court has established that the “clarification as to whether the State has violated its international obligations through the actions of its judicial bodies could mean that the Court must undertake an examination of the respective internal proceedings to assess their compatibility with the American Convention ... In that light, the domestic proceedings should be considered as a whole. The function of the Court is to determine whether the proceeding, as a whole, was consistent with the Convention.” Inter-American Court of Human Rights, Case of Escher et al., Preliminary Exceptions, Merits, Reparations, and Costs. Judgment of July 6, 2009. Series C No. 199, para. 44; Case of the “Street Children” (Villagrán Morales et al.) Merits. Judgment of November 19, 1999. Series C No. 63, para. 222.

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49. The Commission considers it inappropriate in this admissibility phase to decide whether the alleged violations did or did not occur. For purposes of admissibility, the IACHR must decide whether the events described would constitute potential violations of the American Convention, as stipulated in Article 47(b) of the American Convention. The assessment criteria applicable to these points are different from those that apply to a decision on the merits of a complaint. The Inter-American Commission must make a prima facie assessment to determine whether the complaint provides grounds to indicate apparent or potential violations of a right guaranteed in the American Convention[FN25]. This analysis is of a summary nature and does

not imply a prior judgment or opinion on the merits of the dispute. The distinction between the study involved in the admissibility ruling and the study required for determining whether a violation took place is reflected in the Rules of Procedure of the IACHR, which establish clearly distinct phases for admissibility and merits[FN26].

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[FN25] See IACHR, Report No. 128/01, Case 12.367, Herrera and Vargas (“La Nación”), Costa Rica, December 3, 2001. para. 50.

[FN26] See IACHR, Report No. 31/03, Case 12.195, Mario Alberto Jara Oñate et al., Chile, March 7, 2003.

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50. The petitioner’s allegations refer to events that, if proven, could constitute violations of a number of rights protected by the American Convention, in Articles 19, 24, and 25, in connection with Article 1(1) of that instrument, in respect of Samanta Nunes da Silva, and by Article 7 of the Convention of Belém do Pará.

51. The petitioner’s allegations refer to the lack of judicial protection and acts of discrimination that Samanta Nunes da Silva allegedly suffered during the criminal trial, for reasons of her gender, race, and social class, that if proven, these could constitute violations of Articles 24 and 25 of the American Convention. Moreover, the petitioner argues the lack of impartiality in the judicial authorities and a lack of access to justice in equal conditions, which can characterize human rights violations. The petitioner also argues that Samanta Nunes da Silva was not given special protection as a minor child during the criminal trial, which could constitute a violation of Article 19 of the American Convention.

52. The Commission finds as well that these facts could constitute a violation of Article 7 of the Convention of Belém do Pará, given the petitioner’s argument that the Brazilian judicial system committed irregularities and defects of due process in a sexual violence case--allegations thus connected with the duty of the State to act with the necessary due diligence to duly prosecute and punish acts of violence against women. With respect to Articles 1, 2, 3, and 4 of the Convention of Belém do Pará, these do not constitute a legal basis to admit the petition, but the Commission will take them into account, insofar as they are relevant, in its interpretation of Article 7 of the Convention of Belém do Pará in the merits phase. The Commission clarifies that the analysis of the merits of the case does not have the objective of reviewing issues of interpretation or application of the law within the State, but analyzing if Samanta Nunes da Silva had an adequate access to justice on equal conditions and free from any form of discrimination.

53. Moreover, although the petitioner has not cited Article 8(1) of the American Convention, by virtue of the principle *iure novit curia* the Commission will study arguments concerning alleged violations of that article.

54. In the opinion of the Commission, the petitioner’s arguments do not provide sufficient grounds to demonstrate violations of the rights protected by Article 5(1), on personal integrity, Article 11(1), the protection of the honor and the dignity, and Article 7, on personal liberty.

## V. CONCLUSIONS

55. The Inter-American Commission concludes that it is competent to examine the merits of this case and that the petition is admissible according to Articles 46 and 47 of the American Convention. On the basis of the arguments of fact and of law set forth in this report, and without prejudging the merits of the matter,

### THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

#### HAS DECIDED:

1. To declare this petition admissible as regards alleged violations of the rights recognized by Articles 8(1), 19, 24, and 25 of the American Convention, in connection with Article 1(1) of that instrument, and by Article 7 of the Convention of Belém do Pará, interpreted in light of articles 1, 2, 3 and 4 of this Convention, in respect of Samanta Nunes da Silva.
2. To declare this petition inadmissible as regards the alleged violation of Articles 5(1), 7, and 11(1) of the American Convention.
3. To notify the parties of this decision.
4. To continue to examine the merits of this matter; and
5. To publish this decision and include it in the Annual Report it will submit to the OAS General Assembly.

Done and signed in the city of Buenos Aires, Argentina on September 7, 2009. (Signed): Luz Patricia Mejía Guerrero, President; Victor E. Abramovich, First Vice-President, Felipe González, Second Vice-President; Sir Clare K. Roberts, Florentín Meléndez, and Paolo Carozza, members of the Commission.