REPORT No. 37/13
PETITION 1279-04
M.V.M. and P.S.R.
ADMISSIBILITY
BRAZIL
July 11, 2013

I. SUMMARY

1. On November 30, 2004 the Inter-American Commission on Human Rights (hereinafter "the IACHR" or "the Inter-American Commission") received a petition against the Federative Republic of Brazil ("the State" or "Brazil"), lodged by THEMIS – *Assesoria Jurídica e Estudos de Gênero*, *Católicas pelo Direito de Decidir*, *Comitê Latino Americano de Defesa dos Direitos da Mulher* – CLADEM/SP and *Justiça Global*/RJ ("the petitioners"). The petition alleges that the State is responsible for violations of Articles 1.1, 5, 7, 11, 24 and 25 of the American Convention on Human Rights ("the American Convention"), as well as violations of Articles 1, 2, 3, 4 and 7 of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women ("the Convention of Belém do Pará"). According to the petitioners, the aforementioned violations stem from the failure of the Brazilian judicial branch to act with due diligence to sanction the repeated acts of rape perpetrated by a Catholic priest in 1996 and 1997, in Porto Alegre, Rio Grande do Sul state, against M.V.M. and 16-year-old P.S.R. ("the alleged victims").[1]

2. The State maintains that the petition is inadmissible because it does not state facts that tend to establish a violation of the rights guaranteed by the American Convention and by the Convention of Belém do Pará. In this regard, the State argues that the fact that a judicial decision did not conform to the aspirations of the complainants does not entail any violations of the right to judicial protection. Consequently, the State asserts that the petitioners are merely trying to use the IACHR as a fourth instance tribunal in order to obtain a further review of the domestic judgment. In addition to that, Brazil alleges that domestic remedies were not previously exhausted, since the alleged victims did not denounce the facts before the National Council of Justice (*Conselho Nacional de Justiça* – "CNJ") or the Ombudsman of the Special Secretariat on Policies for Women (*Ouvidoria da Secretaria Especial de Políticas para as Mulheres*). In view of the foregoing, the State considers that the petition is inadmissible, in conformity with Articles 47.b and 46.1.a of the American Convention.

3. Without prejudging the merits of the complaint, and after examining the positions of the parties and in compliance with the requirements set out in Articles 46 and 47 of the American Convention, the Inter-American Commission decides to declare the case admissible for the purpose of examining the alleged violation of the rights enshrined in Articles 5, 8.1, 11, 19, 24 and 25 of the American Convention (hereinafter, "American Convention" or "Convention), in accordance with Article 1(1) of that treaty, and in Article 7 of the Convention of Belém do Pará. As regards the alleged violation of Article 7 of the American Convention, the Inter-American Commission finds the petition inadmissible. Additionally, with regard to Articles 1, 2, 3 and 4 of the Convention of Belém do Pará, the IACHR shall take them into account, insofar as they are relevant, in its interpretation of Article 7 of that treaty during

[1] The IACHR withholds the identities of the alleged victims by virtue of an express request from the petitioners in the first case, and because P.S.R. was a minor at the time that the rapes allegedly took place.

the merits stage. The IACHR further decides to notify the parties of this decision, publish it, and include it in its Annual Report to the General Assembly of the OAS.

II. PROCEEDINGS BEFORE THE IACHR

4. The petition was received by the IACHR by regular mail on November 30, 2004. On January 8, 2010, the IACHR transmitted a copy of the pertinent portions of the petition to Brazil. The State presented its response on March 12, 2010, and the IACHR duly remitted this communication to the petitioners for their comments. The petitioners presented additional information on the following dates: April 27, 2010; July 22, 2010; and February 21, 2011. These communications were duly transmitted to the State. For its part, the State presented additional information on the following dates: June 8, 2010 and October 16, 2010. These communications were duly transmitted to the petitioners.

III. POSITION OF THE PARTIES

A. Position of the petitioners

5. With regard to the first alleged victim – M.V.M. – the petitioners assert that, from July 1996 until December 1997, she worked at the rectory as a cleaning lady for a Catholic priest in the city of Porto Alegre, Rio Grande do Sul state. According to the petitioners, in 1997 that priest began raping 24-year-old M.V.M.[2] The petitioners allege that the Catholic priest used his position of authority as M.V.M.'s employer, including threatening to refuse to pay her salary, in order to force her to maintain sexual relations with him. The petitioners add that the priest also blackmailed her with the information that she shared during a confession about having previously worked as a prostitute in order to subjugate her to his will. They indicate that the first rape took place one night in 1997, when the priest grabbed her by the hair, repeatedly slapped her in the face, kicked her, and raped her without using a condom. The petitioners allege that he also threatened her saying that if she reported the rapes, no one would believe her, since he was a priest, while she was a cleaning lady and a former prostitute. According to the petition, the last incident of rape happened in December 1997, when M.V.M. left her job and went to live with an aunt.

6. As regards the second alleged victim – P.S.R. – who was 16 years old at the time of the events denounced,[3] the petitioners assert that she volunteered as a catechist at the Parish because she wanted to become a nun. The petitioners allege that P.S.R. was raped twice by the same Catholic priest who allegedly raped M.V.M. In June 1996, according to the petitioners, she was raped for the first time. The petitioners assert that P.S.R. decided to spend the night at the rectory because she had no means to go back home after a social function at church. In the middle of the night, according to the petitioners, P.S.R. woke up and found the Catholic priest in her bed touching her. The petitioners indicate that P.S.R. told him to leave, but the Catholic priest told her to shut up and proceeded to cover her mouth with his hand so she could not scream. According to the petitioners, the Catholic priest then violently removed her blouse, told her he would like having sex with him, and after removing his own clothes raped her. Afterwards, the petitioners observe that the Catholic priest told her to forget about what had happened. In March 1997, the petitioners allege that P.S.R. was raped by the Catholic priest again, after leaving school. The petitioners argue that the Catholic priest forced her to enter his car, and then took her to a

[2] The petition indicates that M.V.M. was born on April 2, 1973.

[3] The petition indicates that P.S.R. was born on April 14, 1980.

motel. There, according to the petitioners, he dragged her up some stairs to a bedroom while she cried, slapped her in the face repeatedly, and raped her again. They argue that P.S.R. did not react because she was paralyzed with fear. Since these incidents, according to the petitioners, P.S.R. has given up becoming a nun and has presented emotional problems.

7. The petitioners indicate that on March 10, 1998, the alleged victims denounced the rapes that they suffered before the Police District specializing in Violence against Women, in the city of Porto Alegre, Rio Grande do Sul state. The petitioners observe that, since the rapes allegedly took place in 1996 and 1997, the physical evidence collected was very limited, and the State failed to pursue alternative means to collect evidence, such as conducting psychological examinations of the alleged victims, particularly for post-traumatic stress disorder. Indeed, the petitioners stress that no psychological evaluation was ever performed by State authorities once the rapes were denounced. That is to say, the petitioners denounce the State for the failure of its authorities to act with due diligence with a view to punishing crimes of rape committed by a private actor, i.e. the Catholic priest in question. Notwithstanding the foregoing, on May 27, 1998, the Office of the Public Prosecutor presented an indictment against the Catholic priest for three counts of rape -- one against M.V.M. in December 1997 and two against P.S.R. in June 1996 and April 1997 -- and the judicial authority formally accepted the indictment on May 29, 1998.

8. According to the petitioners, on July 24, 2001, the first instance judge convicted the Catholic priest to 24 years in prison for three counts of rape; 8 years for each crime. The petitioners observe that the first instance judgment indicated that, despite the fact that the physical evidence was inconclusive, the statements of the alleged victims had been consistent and transparent since the initial investigation until the trial. Indeed, the petitioners state that the judgment was based on the fact that, "with both victims, the defendant abused his powers as a priest, his position and hierarchical superiority to terrorize and physically subjugate the victims to maintain sexual relations with him, by violent means."[4]

9. Moreover, the petitioners add that the statements of other female witnesses who allegedly also suffered sexual violence and harassment at the hands of the Catholic priest were fundamental for this first instance conviction. In this regard, the petitioners refer to the statement of Ana Regina Pinto Fontoura, who was also a domestic worker at the rectory, and was allegedly also raped repeatedly between July and November 1996. According to the petitioners, Ms. Fontoura was forced to maintain sexual relations with the Catholic priest every day during that period of time. The petitioners maintain that Ms. Fontoura cried every time she was raped, to which the Catholic priest responded saying that she looked pretty when crying, and slapped her in the face. Whenever she refused to maintain sexual relations with the Catholic priest, according to the petitioners, he would grab her by the hair and throw her against the furniture, while also cursing and verbally humiliating her. The petitioners clarify that this information is presented as context, and that this person is not presented as an alleged victim in their petition.

10. The petitioners indicate that defense counsel appealed the judgment alleging that there was a conspiracy against the Catholic priest due to a power dispute within the Parish, and that the

[4] Translation of the Portuguese original: *Com ambas as vítimas, abusou o acusado de sua função de padre da paróquia, de sua posição e ascendência para atemorizar e obrigar fisicamente, mediante violência, as vítimas a com ele manter relação sexual* (Attachmnent 6 of the petition – 1st instance judgment, pg. 6).

nongovernmental organization THEMIS (one of the petitioners) was "contrary to the Catholic Church" by virtue of its feminist nature. On October 10, 2002, the 7th Chamber of the Tribunal of Justice of Rio Grande do Sul ("TJRS") acquitted the defendant of all charges. The petitioners allege that the decision of the TJRS was discriminatory and gender-biased insofar as it clearly gave more weight to the word of the defendant, a Catholic priest, than that of the female victims, one of whom was discredited for having worked as a prostitute. The petitioners add that the second instance tribunal did not take into account the social vulnerability of the victims, their gender and age, and that its considerations of the statements of the alleged victims were completely contrary to that of the first instance judge due to discrimination and gender-bias. For instance, with regard to M.V.M., the petitioners observe that the judgment of the TJRS established that, "even though someone's past is not decisive, there is no way around looking at the person and the surrounding circumstances. And the plaintiff, as she recognizes, was a prostitute, "an escort girl."[5] With regard to P.S.R., on the other hand, the petitioners stress that the judgment of the TJRS dismissed the word of the victim without proper consideration of her age, among other factors, stating that, "this case refers to a rape perpetrated by means of physical violence, which consisted merely of slapping her in the face and, according to the plaintiff, covering her mouth." The petitioners add that the TJRS considered that, "there is no proof even of the use of violence, except for the word of the plaintiff, and much less a minimum attempt of reaction by the girl, who neither screamed nor seriously resisted the defendant. Even a 16-year-old girl […] could hardly be raped, in an inhabited house, if she reacted, even if she did not scream. It is inexplicable that a man could rape a 16-year-old woman [sic], simultaneously keeping her mouth covered, if she seriously and actively resisted."[6]

11. The petitioners presented additional appeals regarding the second instance decision, on the basis of international instruments dealing with women's rights and violence against women – namely, a recourse for clarification (*Embargos de Declaração*), an extraordinary appeal (*Recurso Extraordinário*) and an interlocutory appeal (*Agravo de Instrumento*) – but they were all rejected by the respective courts. The last recourse attempted – the *Agravo de Instrumento* – was rejected by the Supreme Federal Tribunal ("STF"), by means of a decision issued on May 13, 2004. According to the petitioners, this decision exhausted all available domestic remedies and it was notified by means of its publication on May 21, 2004. The petitioners allege that the time period of eight years between the rapes (1996) and the final judgment (2004) violated the alleged victims' right to a simple and prompt recourse and their right to a hearing within a reasonable time. The petitioners conclude that, as a result of discrimination and gender-bias by the Brazilian courts, the sexual violence perpetrated against the alleged victims by a Catholic priest remains unpunished to this date, in violation of rights protected in the American Convention, in the Convention of Belém do Pará, and in the Convention on the Elimination of All Forms of Discrimination against Women ("CEDAW").

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[5] Translation of the Portuguese original: *[E]mbora o passado das pessoas não seja decisivo, não há como se desvincular o homem de suas circunstâncias. E a ofendida, como por ela é reconhecido, era prostituta, "garota de programa."* (Attachment 7 of the petition – 2nd instance judgment, pg. 15).

[6] Translation of the Portuguese original: *[D]eparamo-nos com estupro cometido mediante violência física, que consistiu em um simples tapa no rosto e, segundo disse a vítima, em ser-lhe tapada a boca* (Attachment 7 of the petition – 2nd instance judgment, pg. 17). *[N]ão há, igualmente aqui, comprovação quer do emprego de violência, isolada a referência na palavra da ofendida, e muito menos o mínimo esboço de reação da jovem, que não gritou nem opôs resistência séria ao acusado. Mesmo uma menina de dezesseis anos […] dificilmente seria estuprada, em casa habitada, se reagisse, ainda que não gritasse. Inexplicável que um homem, diante de uma mulher [sic] de dezesseis anos, conseguisse praticar o coito, mantendo, ao mesmo tempo, a boca da vítima tapada, se houvesse oposição séria e efetiva daquela* (Attachment 7 of the petition – 2nd instance judgment, pgs. 17 and 18).

12. The petitioners clarify that they are not seeking to have the IACHR reexamine the evidence considered in the criminal trial as a court of fourth instance, as suggested by the State. In this regard, the petitioners emphasize that the violations denounced before the IACHR are the lack of due diligence in investigating the crimes denounced by the alleged victims, as well as the lack of adequate access to justice and equal protection of the law because of the victims' gender, age (in the case of P.S.R.) and economic situation. The petitioners indicate that the TJRS did not evaluate the defendant's testimony according to the same criteria applied to that of the victims, because they were female victims of sexual assault, one was a former prostitute while the other was a minor, both of limited economic means, whereas the defendant was a man, and a Catholic priest. Moreover, the petitioners argue that the State did not exercise due diligence to gather the necessary evidence in these cases of sexual assault, where there was no physical evidence, and that this hindered the proper punishment of the victimizer. The petitioners stress that the foregoing can be illustrated by the failure to conduct a psychological examination of the alleged victims, which is a standard regarding due diligence in collecting evidence that has been recognized by the IACHR itself in its Report on Access to Justice from Women Victims of Violence in the Americas.[7]

13. In conclusion, the petitioners assert that the treatment received by the alleged victims by the Brazilian judicial system was discriminatory and gender-biased. The petitioners also refer to recurring cases of so-called "clerical violence" perpetrated against women, which remain in impunity due to an institutional protection that shields Catholic priests from judicial oversight regarding alleged sexual violence. As a consequence, the petitioners maintain that Brazil violated Articles 1.1, 5, 7, 11, 24 and 25 of the American Convention, as well as violations of Articles 1, 2, 3, 4 and 7 of the Convention of Belém do Pará.

B. Position of the State

14. The State maintains that the petition is inadmissible because it does not state facts that tend to establish a violation of the rights guaranteed by the American Convention and by the Convention of Belém do Pará. Moreover, Brazil alleges that domestic remedies were not previously exhausted, since the alleged victims did not denounce the facts before the National Council of Justice (*Conselho Nacional de Justiça* – "CNJ") or the Ombudsman of the Special Secretariat on Policies for Women (*Ouvidoria da Secretaria Especial de Políticas para as Mulheres*). In view of the foregoing, the State concludes that the petition is inadmissible, in conformity with Articles 47.b and 46.1.a of the American Convention.

15. With regard to its contention that the petition does not state facts that tend to establish a violation of the rights guaranteed by the American Convention, the State stresses that the mere fact that a judicial decision is unfavorable to the interests of the plaintiffs does not entail a violation of the right to judicial protection, as long as the judgment is duly reasoned and justified, in keeping with the principles of legal due process and the presumption of innocence. In this regard, the State emphasizes that, in conformity with the principle of *in dubio pro reo*, the Catholic priest who was the defendant was acquitted because the body of evidence was not sufficient to convict him of the rape, and the alleged victims – as plaintiffs – did not manage to fulfill their burden of proof with regard to the rape charges.

[7] The petitioners specifically refer to paragraph 55 of the IACHR's Report on Access to Justice for Women Victims of Violence in the Americas.

16. In addition to that, the State observes that if the IACHR were to admit this petition, it would have to act as a court of "fourth instance" in order 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 Inter-American Commission, it can review internal judicial decisions only when the petition pertains to a judgment rendered without regard for due process guarantees, or when it appears to violate any other right guaranteed in the American Convention, which has not occurred in this case. In this regard, the State further contends that the petitioners merely allege that the judicial decision was incorrect and unfair, which would require the IACHR to act as an additional instance to reexamine what has already been analyzed by a domestic court in a reasoned and extensively motivated judgment.

17. In order to further support its allegations of impartiality of the domestic court in question, in deciding cases of sexual violence against women, the State presents excerpts of various judgments issued by the TJRS in which: (i) appropriate weight is allegedly given to the word of the victim, due to an explicit recognition that sexual crimes are commonly perpetrated without the presence of witnesses and without visible physical evidence, so that the word of the victim outweighs that of the alleged perpetrator, as long as it cannot be discredited by the rest of the body of evidence; and (ii) the fact that a victim might have previously worked as a prostitute is deemed irrelevant by itself to discredit that person's testimony regarding a sexual assault. The foregoing, according to the State, strongly indicates that the TJRS' decision regarding the alleged victims in this petition cannot be considered discriminatory or gender-biased, but rather was duly reasoned and based on its assessment of the entire body of evidence. If the IACHR were to admit this petition, the State reiterates, it would be merely second-guessing the decision that a domestic court adopted in accordance with its assessment of the case, which the State alleges was done in conformity with all due process guarantees for the alleged victims.

18. The State also contends that the petition fails to state facts that tend to establish violations of the Convention of Belém do Pará, since Brazil has been adopting measures to achieve the goals of that instrument, including the creation of a Special Secretariat on Policies for Women with a ministerial status and the promulgation of the national law on violence against women ("Law Maria da Penha"), among others. Finally on this point, the State alleges that there was no undue delay in the administration of justice, since the alleged victims denounced the facts before the authorities in March 1998, the first instance judgment was issued in 2001, and the second instance judgment became *res judicata* in 2004.

19. Additionally, the State maintains that this petition is also inadmissible because domestic remedies have not been exhausted, as required by Article 46.1.a of the American Convention. In this regard, Brazil firstly indicates that on December 31, 2004, the CNJ was created with a view to reforming the Brazilian Judiciary and providing a more prompt and effective administration of justice. The State argues that the facts denounced in this petition could have been denounced before the CNJ, but the petitioners failed to do so. Secondly, the State adds that the petitioners also failed to denounce the facts before the Ombudsman of the Special Secretariat on Policies for Women, which was created by Decree No. 4.625 of 2003. According to the State, this Ombudsman Office can receive complaints about the occurrence of crimes, forward them to the pertinent organs and follow up on the situation. The petitioners' failure to exhaust these two domestic remedies, according to the State, demonstrates that they did not pursue and exhaust the remedies under domestic law, in accordance with generally recognized principles of international law.

20. In conclusion, the State argues that this petition is inadmissible because, on one hand, it does not state facts that tend to establish a violation of the rights guaranteed by the American Convention and the Convention of Belém do Pará, in accordance with Article 47.b of the American Convention; and on the other hand, for the reason that the petitioners failed to previously exhaust the two aforementioned remedies, as required by Article 46.1.a of the American Convention.

IV. ANALYSIS ON COMPETENCE AND ADMISSIBILITY

A. Competence

21. The petitioners have standing to file petitions with the Inter-American Commission pursuant to Article 44 of the American Convention. The alleged victims are two individuals regarding whom the Brazilian State agreed to respect and ensure the rights enshrined in the American Convention. Therefore, the IACHR has competence *ratione personae* as regards the allegations related to them.

22. Brazil ratified the American Convention on September 25, 1992 and the Convention of Belém do Pará on November 27, 1995; that is to say, both treaties were already in force for the State when the violations described in this petition allegedly took place under the jurisdiction of Brazil. Therefore, with regard to both the American Convention and the Convention of Belém do Pará, the Inter-American Commission has competence *ratione materiae*, *ratione temporis* and *ratione loci*.

B. Exhaustion of domestic remedies

23. Under Article 46.1(a) of the American Convention, for a petition to be admitted by the IACHR, the remedies offered by the domestic jurisdiction must have been exhausted in accordance with generally recognized principles of international law. For purposes of admissibility, the first relevant step in this regard is to clarify which domestic remedies must be exhausted. The Inter-American Court of Human Rights has indicated that only remedies suitable for addressing the violations allegedly committed need be exhausted.[8]

24. The petitioners allege that the violations of rights of the alleged victims stem from the failure of the Brazilian judicial branch to punish repeated acts of rape perpetrated by a Catholic priest in the context of a criminal action based on a criminal complaint presented by the alleged victims. They further allege the lack of due diligence of the authorities and a discriminatory and gender-biased evaluation of the case. With regard to this criminal action, both the petitioners and the State have observed that it resulted in a final judgment that was published and became *res judicata* on May 21, 2004 (*supra* paras. 11 and 18).[9] In other words, as regards this domestic remedy, the State has not contested that it was duly exhausted.

25. Taking into consideration that the main allegations of the petitioners focus on the failure of the Brazilian Judiciary to punish the crimes of sexual violence perpetrated against the alleged victims due to lack of due diligence, discrimination and gender-bias, and the resulting impunity, the

[8] I/A Court H.R., *Case of Velásquez Rodríguez v. Honduras.* Merits. Judgment of July 29, 1988, Series C, No. 4, para. 63.

[9] *See* Attachment 13 to the petition – "Decision of the Supreme Federal Tribunal – AI," which corroborates that the final judgment of the STF was published on May 21, 2004. *See also*, State's communications of March 12, 2010 (para. 13) and June 8, 2010 (para. 13).

Inter-American Commission concludes that the suitable and effective remedy in this case is the criminal investigation and trial that was pursued and exhausted before the ordinary judicial system. Therefore, the IACHR decides that the remedies under domestic law have been duly exhausted, in conformity the admissibility requirement contained in Article 46.1.a of the American Convention. Notwithstanding the aforementioned conclusion about the exhaustion of the appropriate domestic remedies, the IACHR wishes to make the following considerations regarding the remedies before the CNJ and the Ombudsman of the Special Secretariat on Policies for Women, which according to the State were not duly exhausted.

26. Firstly, with respect to the disciplinary procedure before the CNJ, the Inter-American Commission observes that the CNJ was created on December 31, 2004 by means of Constitutional Amendment No. 45,[10] and was established on June 14, 2005.[11] One of its attributions, according to the aforementioned Constitutional Amendment, is "to receive and examine complaints against member or organs of the Judiciary […], and determine their removal, availability or retirement […], as well as establish other administrative sanctions."[12] That is to say, the CNJ – created after the appropriated domestic remedies were exhausted with regard to the crimes allegedly perpetrated against the alleged victims – could at most result in disciplinary sanctions against members of the Judiciary. In other words, this disciplinary procedure is neither suitable nor effective to resolve the main violations denounced herein, i.e. the alleged failure of the Brazilian Judiciary to punish the crimes supposedly perpetrated against the alleged victims and the resulting impunity of the perpetrator.[13] Consequently, the IACHR decides that this remedy need not have been exhausted.

27. Secondly, as regards a complaint before the Ombudsman of the Special Secretariat on Policies for Women, which was created by Decree no. 4.625 of March 21, 2003, the IACHR also decides that this "remedy" is neither suitable nor effective to resolve the violations denounced herein, since the laws regulating it and the State's assertion itself indicate that such a complaint could at most result in the Ombudsman's Office submitting the complaint to the appropriate authorities.[14] The IACHR notes that, in this case, the appropriate authorities were the Police, the Office of the Public Prosecutor and the Judiciary, all of which had already been contacted by means of a complaint directly presented to them

[10] *See* Article 103-B of Constitutional Amendment No. 45, available at http://www.planalto.gov.br/ccivil_03/constituicao/Emendas/Emc/emc45.htm.

[11] *See* Rules of Procedure of the CNJ, available at http://www.cnj.jus.br/regimento-interno-e-regulamentos.

[12] *See* Article 103-B, §4º, III of Constitutional Amendment No. 45, available at http://www.planalto.gov.br/ccivil_03/constituicao/Emendas/Emc/emc45.htm (Free translation of the Portuguese original: *Compete ao Conselho […] receber e conhecer das reclamações contra membros ou órgãos do Poder Judiciário […] e determinar a remoção, a disponibilidade ou a aposentadoria […] e aplicar outras sanções administrativas…*). *See also* http://www.cnj.jus.br/sobre-o-cnj.

[13] The petitioners stressed that the CNJ is not competent to review or overturn judgments issued by the courts, and that the CNJ itself has repeatedly stated that it is not a court of appeals, but rather a monitoring body of the Judiciary (*See* Petitioners' communication of July 22, 2010, Pg. 2). The IACHR notes that the State did not contradict these assertions.

[14] *See* Decree No. 4.625, available at http://www.planalto.gov.br/ccivil_03/decreto/2003/D4625.htm. This decree was revoked and substituted by Decree No. 7.043 of December 22, 2009 (*See* http://www.planalto.gov.br/ccivil_03/_Ato2007-2010/2009/Decreto/D7043.htm#art6). This decree, in turn, was revoked and substituted by Decree No. 7.765 of June 25, 2012. *See* http://www.planalto.gov.br/ccivil_03/_Ato2011-2014/2012/Decreto/D7765.htm#art8, specifically its Article 3º, VIII which refers to an Ombudsman Office to "receive and forward complaints of discrimination against women" (Free translation of the Portuguese original: *ouvidoria específica para atender e dar encaminhamento a denúncias relativas à discriminação da mulher*).

by the alleged victims (*supra* paras. 7 and 18).[15] Consequently, the IACHR decides that this remedy did not need to be exhausted either.

C. Timeliness of the petition

28. Article 46.1.b of the American Convention requires that petitions be lodged within a period of six months following notification of the final judgment. The State has made no reference to this admissibility requirement. Having ruled above that the relevant domestic remedies were exhausted by means of a decision that was notified to the petitioners on May 21, 2004, the IACHR observes that the petition was submitted by postal mail on November 19, 2004, and it was received on November 30, 2004. According to the practice of the IACHR in this type of situation,[16] presuming the number of days the petition was en route by mail, the Inter-American Commission decides that the petition complies with the requirement enshrined in Article 46.1.b of the American Convention.

D. Duplication and international *res judicata*

29. Nothing in the present file indicates that the subject of this petition is pending in any other international proceeding for settlement, or that it is substantially the same as another petition previously studied by the Inter-American Commission or by any other international organization. Hence, the requirements set forth in Articles 46.1.c and 47.d of the American Convention have been met.

E. Colorable claim

30. For purposes of admissibility, the Inter-American Commission must determine whether the facts denounced in the petition tend to establish a violation of the rights guaranteed by the American Convention, as required by Article 47.b thereof, or whether the petition should be rejected as "manifestly groundless" or "obviously out of order." At this stage in the proceedings it falls to the IACHR to carry out a *prima facie* evaluation, not to establish alleged violations of the American Convention or other applicable treaties, but to examine whether the petition describes facts that could tend to establish violations of rights protected by the inter-American instruments. This examination in no way constitutes a prejudgment or preliminary opinion on the merits of the case.

31. Neither the American Convention nor the IACHR's Rules of Procedure require a petitioner to identify the specific rights allegedly violated by the State in the matter brought before the Inter-American Commission, although petitioners may do so. It is for the Inter-American Commission, based on the system's jurisprudence, to determine in its admissibility report which provisions of the relevant Inter-American instruments are applicable and could be found to have been violated if the alleged facts are proven by sufficient elements.

32. In the present case, the IACHR must reiterate that:

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[15] *See* Attachment 1 to the petition – "Police Investigation," which corroborates that the alleged victims denounced the rapes on March 10, 1998 (Pgs. 7-10).

[16] See IACHR, Report No. 93/09, Admissibility, Petition 337-03, *Samanta Nunes da Silva* (Brazil), September 7, 2009, para. 44; citing Report No. 69/08, Admissibility, 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).

> it 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 [Inter-American] 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.[17]

33. That is to say, upon admitting this petition the Inter-American Commission does not intend to replace the competence of domestic judicial authorities in the assessment of the evidence in cases of sexual violence. In the merits phase, the IACHR shall examine whether the domestic judicial proceeding was consistent with the guarantees of due process, judicial protection and the right of women and girls to live free from discrimination and violence, in keeping with the rights protected by the American Convention and the Convention of Belém do Pará.[18]

34. Specifically with regard to the violations alleged by the petitioners, the IACHR takes note that the rapes of the alleged victims were supposedly perpetrated by a private actor, in this case a Catholic priest. Consequently, the Inter-American Commission holds that the petitioners' arguments do not provide sufficient grounds to demonstrate State responsibility for violations of the right protected by Article 7 of the American Convention. Therefore, these allegations are deemed inadmissible in conformity with Article 47.b of the American Convention.

35. On the other hand, the IACHR considers that, if proven true, the arguments of the petitioners regarding the failure of the Brazilian Judiciary to punish the crimes supposedly perpetrated against the alleged victims due to lack of due diligence, in contravention of its obligation to act with due diligence to investigate and sanction acts of violence against women and girls, as well as the discrimination and gender-bias which allegedly affected the processing by the Judiciary of these cases, resulting in their impunity, could characterize violations of Articles 5, 8.1, 11, 19, 24 and 25 of the American Convention, in connection with Article 1.1 of that instrument, as well as a violation of Article 7 of the Convention of Belém do Pará.[19] Similarly, regarding P.S.R, the Commission will examine the alleged facts in light of Article 19 of the American Convention, specifically with regard to the special duty to protect that the States have in accordance with the principle of the best interests of the child and the *corpus juris* on the subject of children and adolescents. With respect to Articles 1, 2, 3, and 4 of the Convention of Belém do Pará, the IACHR observes that these do not constitute a basis to admit

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[17] IACHR, Report No. 93/09, Admissibility, Petition 337-03, *Samanta Nunes da Silva* (Brazil), September 7, 2009, para. 47. *See also* IACHR, Report No. 42/08, Admissibility, Petition 1271-04, *Karen Atala and Daughters* (Chile), July 23, 2008, para. 59; and Report No. 54/01, Admissibility and Merits, Case 12.051, *Maria da Penha Maia Fernandes* (Brazil), April 16, 2001, para. 28.

[18] *See* IACHR, Report No. 93/09, Admissibility, Petition 337-03, *Samanta Nunes da Silva* (Brazil), September 7, 2009, para. 48. In this regard, 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." *See* I/A Court H.R., *Case of Escher et al. v. Brazil*, Preliminary Exceptions, Merits, Reparations, and Costs. Judgment of July 6, 2009. Series C No. 199, para. 44; and *Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala*, Merits. Judgment of November 19, 1999. Series C No. 63, para. 222.

[19] *See*, *mutatis mutandi*, IACHR, Report No. 93/09, Admissibility, Petition 337-03, *Samanta Nunes da Silva* (Brazil), September 7, 2009, paras 50-53.

complaints, according to Article 12 of the same treaty, but they may be taken into account to the extent relevant, in the interpretation of Article 7 of the Convention of Belém do Pará in the merits phase.

V. CONCLUSIONS

36. The Inter-American Commission concludes that it is competent to examine the merits of this case, and decides that the petition is partially admissible under Articles 46 and 47 of the American Convention. Based on the foregoing considerations of fact and law, and without prejudging the merits of the case,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare this petition admissible with respect to Articles 5, 8.1, 11, 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 same instrument, and Article 7 of the Convention of Belém do Pará;

2. To declare this petition inadmissible as regards the alleged violation of Article 7 of the American Convention;

3. To inform the parties of this decision;

4. To continue with analysis of the merits of the case; and

5. To publish this decision and include it in its Annual Report to the General Assembly of the OAS.

Done and signed in the city of Washington, D.C., on the 11th day of July 2013. (Signed): José de Jesús Orozco Henríquez, President; Tracy Robinson, First Vice-President; Rosa María Ortiz, Second Vice-President; Felipe González, Rodrigo Escobar Gil and Rose-Marie Belle Antoine, Commissioners.