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**REPORT No. 37/19**  
**PETITION 354-10**  
REPORT ON ADMISSIBILITY

ELISABETH SEMANN  
BRAZIL

Approved Electronically by the Commission on April 12, 2019.

**Cite as:** IACHR, Report No. 37/19. Petition 354-10. Admissibility. Elisabeth Semann. Brazil.  
April 12, 2019.



**I. INFORMATION ABOUT THE PETITION**

<b>Petitioning Party:</b>	Elisabeth Semann and person with reserved identity <sup>1</sup>
<b>Alleged victims:</b>	Elisabeth Semann
<b>State denounced:</b>	Brazil <sup>2</sup>
<b>Rights invoked:</b>	American Convention on Human Rights <sup>3</sup> ; Convention on the Elimination of all Forms of Discrimination Against Women; and Articles 3, 4, and 7 of the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women <sup>4 5</sup>

**II. PROCEDURE BEFORE THE IACHR <sup>6</sup>**

<b>Filing of the petition:</b>	March 11, 2010
<b>Notification of the petition to the State:</b>	April 20, 2015
<b>State's first response</b>	September 1, 2015
<b>Additional observations from the State:</b>	April 24, 2015; June 22, 2017

**III. COMPETENCE**

<b>Competence <i>Ratione personae</i>:</b>	Yes
<b>Competence <i>Ratione loci</i>:</b>	Yes
<b>Competence <i>Ratione temporis</i>:</b>	Yes
<b>Competence <i>Ratione materiae</i>:</b>	Yes, under the terms of Section VII <sup>7</sup>

**IV. DUPLICATION OF PROCEDURES AND INTERNATIONAL *RES JUDICATA*, COLORABLE CLAIM, EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION**

<b>Duplication of procedures and International <i>res judicata</i>:</b>	No
<b>Rights declared admissible:</b>	Articles 5 (Humane Treatment), 8 (Fair Trial), 17 (Family), 22 (Freedom of Movement and Residence), 24 (Equal Protection), and 25 (Judicial Protection), all of which are related to Articles 1.1 (Obligation to Respect Rights) and 2 (Domestic Legal Effects) of the American Convention; and Article 7 of the Convention of Belém do Pará
<b>Exhaustion of domestic remedies or applicability of an exception to the rule:</b>	Yes, under the terms of Section VI
<b>Timeliness of the petition:</b>	Yes, under the terms of Section VI

<sup>1</sup> By the petitioner's request, the Commission reserves their identity based on article 28.2 of its Rules of Procedure.

<sup>2</sup> As provided in Article 17.2.a of the Regulations of the Commission, Commission Member Flávia Piovesa, a Brazilian national, did not participate in the debate or in the decision on this matter.

<sup>3</sup> Hereinafter, "American Convention"

<sup>4</sup> Hereinafter, "Convention of Belém do Pará"

<sup>5</sup> The petitioner does not claim violations of articles of the American Convention and of the Convention on the Elimination of all Forms of Discrimination Against Women.

<sup>6</sup> Each party's observations were appropriately delivered to the opposing party.

<sup>7</sup> American Convention (adopted on September 25, 1992); Convention of Belém do Pará (instrument deposited on November 27, 1995).

## V. ALLEGED FACTS

1. The petitioner claims that Elisabeth Semann (hereinafter, “Mrs. Semann”, or “alleged victim”) was the victim of domestic violence by her ex-partner, Semar de Souza, with whom she has three children. In 2009, she reported the constant threats and violence she had suffered to the local police, which led to the immediate arrest of her aggressor. The court sustained the arrest on December 9, 2009, at which time a date was set for a preliminary hearing, pursuant to Law 11.340/06 (Maria da Penha Law). The petitioner claims that in the ruling that sustained the arrest it was determined that the alleged victim’s absence from the preliminary hearing meant no criminal action would be taken against the defendant. Threatened by Semar de Souza and his family, Mrs. Semann states that despite having received notice to appear, she had not appeared at the hearing because of fear and a lack of protection by police authorities. Consequently, the case was closed and the offender was freed on December 17, 2009, with no notice given to the alleged victim.

2. As a result of new threats and acts of violence, Mrs. Semann moved to different cities, leaving her children in the care of relatives. She filed two new complaints, on January 20 and February 18, 2010. The petitioner claims, however, that the State did not take any protective measures. Ultimately, on March 3, 2010, the alleged victim was beaten and deeply stabbed three times in her abdomen and three times between her shoulder and arm, by her ex-partner at her workplace, for which a new report was filed with the police, though without causing the State to take any action whatsoever. Mrs. Semann was hospitalized and underwent surgical procedures because of the serious wounds she suffered. The petitioner states that despite having requested [protection], the authorities did not provide her with protection while she was hospitalized, despite the threats. Furthermore, the petitioner states that Semar went to the home of the alleged victim’s mother to threaten to kill them.

3. On December 7, 2011, the alleged victim filed a lawsuit seeking indemnification from the State of Santa Catarina because of the authorities’ omission to take measures to guarantee her safety. The petitioner states, however, that the lawsuit was decided prematurely with no production of evidence, sustaining the State’s argument that because of her moves to different cities the police were unable to locate her. The petitioner counters this argument, saying that Mrs. Semann always went to the police stations to check on the status of her complaints. The trial court denied her lawsuit on September 18, 2012, as did the lower appellate court, on September 22, 2013, arguing that guilt was exclusively the offender’s, it being impossible to hold the State liable for not meeting the demand that authorities be omnipresent.

4. The State, for its part, claims that the petition does not contain specific requests, as provided by the Regulations of the Commission, thus hindering its right to a comprehensive defense. It claims that domestic remedies have not been exhausted, given that the appeals filed by the alleged victim in the indemnification suit are still awaiting court rulings. Furthermore, the State avers that the international legal system was activated prior to the alleged victim having filed her indemnification suit domestically, thereby keeping the State from learning about the petition. In summary, the State holds that the alleged victim has turned to the Inter-American system with the intention of revising domestic court rulings.

5. The State also clarifies that a criminal case for attempted aggravated murder was filed against the alleged victim’s ex-partner, in 2010. Semar de Souza was preventively arrested on March 24, 2010, and convicted and sentenced on March 30, 2012, to 10 years and 27 days of incarceration for attempted homicide. The final ruling on the case came on July 18, 2012, after an appeal that challenged the length of the sentence was denied, upholding the [original] sentence.

## VI. EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

6. The petitioner files the petition owing to the State’s omission to protect the physical integrity of the alleged victim, in spite of the various complaints filed with the police authorities. The State, for its part, reports that it took the necessary measures to establish the liability of the defendant, resulting in an effectual sentence by the courts. Furthermore, the State asserts that domestic legal remedies were not

exhausted in the lawsuit for indemnification, and that this petition was filed with the Commission prior to the alleged victim having engaged the domestic civil legal system.

7. According to the information available in the case file, as regards the criminal system, the Commission verifies that on various occasions the alleged victim sought out the police authorities to obtain protection from the threats and violent attacks by her ex-partner. In spite of this, the State did not provide the necessary protection, culminating in the attempted homicide against Mrs. Semann, on March 3, 2010. However, although Semar de Souza was found liable of attempted homicide, the police authorities did not investigate the threats and other violent acts against the alleged victim. Consequently, the Commission decides to apply the exception to exhaustion of domestic remedies provided in Article 46.2.c of the Convention.

8. Further, the Commission reaffirms that in cases such as this one it is not necessary to exhaust a civil action prior to engaging the Inter-American system, as that remedy would not respond to the petition's principal complaint, to wit, the State's omission to protect the life and physical integrity of Mrs. Semann, a victim of gender violence. In this context, the Commission observes that the petition was received on March 11, 2010, shortly after the complaints filed by the alleged victim in the three previous months. In light of the fact that it is not necessary to exhaust civil legal remedies, the [petitioner's] attempts to secure protection of her life and physical integrity can be considered legitimate and adequate recourse in cases like this one. Thus, the Commission considers that the petition was filed in a timely manner, under the terms of Article 32.2 of its Regulations and in compliance with Article 46.1.b of the American Convention.

## **VII. ANALYSIS OF COLORABLE CLAIM**

9. In light of the elements of fact and law put expounded by the parties, and the nature of the matter submitted, the Commission considers that, if proven, the facts as narrated could characterize possible violations of Articles 5 (Humane Treatment), 8 (Fair Trial), 17 (Family), 22 (Freedom of Movement and Residence), 24 (Equal Protection), and 25 (Judicial Protection), all of which are related to Articles 1.1 (Obligation to Respect Rights) and 2 (Domestic Legal Effects) of the American Convention; and Article 7 of the Convention of Belém do Pará.

10. Regarding the alleged violation of the United Nations Convention on the Elimination of all Forms of Discrimination Against Women, the Commission considers that the facts expounded could characterize violations of Article 7 of the Convention of Belém do Pará. As for the alleged violations of Articles 3 and 4 of that document, the Commission underscores that the competence provided in its Article 12, to make a pronouncement about an individual case, is limited to Article 7. Regarding the other articles, pursuant to Article 29 of the American Convention, the Commission may bear them in mind to interpret and enforce the American Convention and other instruments under its competence.

## **VIII. DECISION**

1. To declare this petition admissible as it relates to Articles 5, 8, 17, 22, 24, and 25, all of which are related to Articles 1.1 and 2 of the American Convention; and Article 7 of the Convention of Belém do Pará;

2. To declare this petition inadmissible as it relates to the Convention on the Elimination of all Forms of Discrimination Against Women, and Articles 3 and 4 of the Convention of Belém do Pará.

3. To notify the parties about this decision; proceed with the analysis of merits of the matter; and to publish this decision and include it in the Annual Report to the General Assembly of the Organization of American States.

Approved by the Inter-American Commission on Human Rights on the 12th day of the month of April, 2019. (Signed): Esmeralda E. Arosemena Bernal de Troitiño, President; Joel Hernández García, First Vice

President; Antonia Urrejola, Second Vice President; Margarette May Macaulay, Francisco José Eguiguren Praeli and Luis Ernesto Vargas Silva, Commissioners.