I. SUMMARY

1. On August 4, 1998, the Aboriginal Communities Association Lhaka Honhat (hereafter "the petitioners" or the “Lhaka Honhat Association"), with the support of the Center for Legal and Social Studies (Centro de Estudios Legales y Sociales, CELS)[FN1] and the Center for Justice and International Law (Centro por la Justicia y el Derecho Internacional, CEJIL), presented a petition before the Inter-American Commission on Human Rights (hereafter "the Commission", "the Inter-American Commission", or "the IACHR") for violation of the rights to life (Article 4), the right to humane treatment (Article 5), the right to privacy (Article 11.2), the right to information (Article 13), the right to freedom of association (Article 16), the right to freedom of movement and residence (Article 22), the right to judicial protection (Article 25), in concordance with the general obligation to respect human rights, recognized in Article 1.1 of the American Convention on Human Rights (hereafter “the Convention” or “the American Convention”) and in Articles XI, XII, XIII and XXII of the American Declaration on the Rights and Duties of Man (hereafter the Declaration), against the Argentine Republic (hereafter “the State”, the “Argentine State”, or “Argentina”), to the prejudice of the indigenous communities that make up the Lhaka Honhat Association, and that live in State-owned or “fiscal” lots (lotes fiscales) 14 and 55 of the Municipality of Santa Victoria, Department of Rivadavia, Province of Salta, for failing to consult them on various public works projects in the context of the integration plan for MERCOSUR (the Common Market consisting of Argentina, Paraguay, Brazil and Uruguay, with participation of Chile), since 1995. The Lhaka Honhat Association consists of 35 indigenous communities of the Mataco (Wichi), Chorote (Iyjwaja), Toba (Quom), Chulupí (Nivacklé), and Tapiete (Tapy´y) ethnic groups. In the Chaco-Salteño Region, fiscal lots 14 and 15, there are approximately 45 indigenous communities (numbering between 6000 and

7000 people), who belong to nine indigenous villages, and are living together with 2600 criollos (persons of non-aboriginal origin).

[FN1] Commissioner Victor Abramovich formally resigned as legal counsel and representative of CELS in this case, by a letter sent to the Commission on July 7, 2005, after he was elected a member of the Commission on June 7, 2005 during the General Assembly of the Organization of American States. The Commission acknowledged receipt of this letter on November 14, 2005. Commissioner Abramovich did not participate in discussion and voting for approval of this report, by virtue of Article 17 of the IACHR Rules of Procedure.

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2. The petitioners maintain that, although the national Constitution[FN2] and the Constitution of the Province of Salta[FN3] recognize indigenous peoples' communal possession and ownership of the lands they have traditionally occupied, and guarantee their participation in the management of their natural resources and other interests affecting them, to date those rights have received no legal recognition.

[FN2] Article 75 (17) of the National Constitution of Argentina.
[FN3] Article 15 of the Constitution of the Province of Salta.

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3. As of its first response, the State offered to make itself available to begin a friendly settlement procedure with the petitioners, through the National Institute of Indigenous Affairs (INAI), for the purpose of recognizing community possession and ownership of the lands on which these communities were living, pursuant to Article 75 (17) of the national Constitution. The petitioners agreed to initiate a friendly settlement procedure at the end of 2000, on condition that the State first stop the construction works that gave rise to this complaint, and that it undertake no new surveys and subdivisions, until an agreement could be reached on how the lands in fiscal lots 14 and 55 should be distributed.

4. In July 2005 the Province of Salta called a referendum, to be held in October 2005, whereby residents of the Department of Rivadavia were to indicate whether they were in agreement that the lands corresponding to fiscal lots 14 and 55 should be turned over to their current occupants. That move, together with the lack of consensus on the manner in which the land should be turned over to the indigenous communities, led the petitioners to break off the friendly settlement procedure that had been underway for five years.

5. With respect to admissibility, the petitioners argue that their petition is admissible because domestic remedies have been exhausted: they cite the lack of consultation with the communities, and invoke the exception of Article 46.2 of the Convention to the requirement of exhaustion of domestic remedies, on the grounds that Argentine law offers no effective procedure to delimit, demarcate and grant ownership of indigenous lands under "single title" (título único). The State maintains that domestic remedies have not been exhausted.

6. Without prejudging the merits of the case, the IACHR concludes in this report that the case is admissible, for it meets the requirements of Article 46 of the American Convention. The Commission consequently has decided to notify this decision to the parties and to continue its analysis of the merits of the case relating to the alleged violation of the right to due process (Article 8), the right to freedom of thought and expression (Article 13) in connection with political rights (Article 23), the right to private property (Article 21) and the right to judicial protection (Article 25), recognized in the American Convention, in relation with the general obligations enshrined in Articles 1 and 2 of that instrument. The Commission has also decided to publish this decision and to include it in its annual report to the OAS General assembly.

II. PROCEEDINGS BEFORE THE COMMISSION

7. The complaint was submitted by the petitioners to the Executive Secretariat of the Commission on August 4, 1998. The IACHR received additional information on December 29, 1998, and transmitted the petition and the additional information to the State on January 26, 1999, requesting that it report to the Commission within 90 days. On May 7, 1999 the State requested an extension for presenting its response, and the Commission granted this extension on May 10 for a period of 30 days. On June 7, 1999, the State requested a further extension, which the Commission granted on June date for a period of 30 days. Finally, the State responded to the IACHR on July 7, 1999. On July 29, 1999 the IACHR transmitted that response to the petitioners, giving them 20 days to present their observations.

8. The petitioners presented their observations on August 18, 1999, indicating among other things that they were willing to initiate the INAI mediation process offered by the State in its communication of July 7, 1999, on the condition that the government undertake in advance to stop the works that gave rise to this petition, and to abstain from any further acts in the territory, and particular the delivery of dwellings to the members of the community individually. The petitioners also asked the Commission to grant precautionary measures. Those observations were transmitted to the State on August 24, 1999.

9. The Commission received a request from the petitioners on August 20, 1999 to hold a hearing during its 104th session. That hearing was held on October 1, 1999.

10. On October 18, 1999, the State requested an extension for submitting its response, and on November 9, 1999 the Commission granted this extension for 15 days. On November 24, 1999 the Commission received the observations requested from the government. Those observations were transmitted to the petitioners on December 9, 1999, giving them 30 days to submit their response, together with any new or supplementary information. The petitioners responded on January 10, 2000, repeating their request of August 18, 1999 for precautionary measures.

11. On February 18, 2000, before rendering its decision on the appropriateness of precautionary measures, the IACHR asked the State to report within 15 days on the impact that the planned civil works would have on the territory occupied by these communities.

12. On June 7, 2000, the petitioners wrote to the IACHR with updated information on the situation that gave rise to the petition, and requested the IACHR to make the necessary

arrangements for beginning the friendly settlement procedure proposed by the State in its communication of July 7, 1999.

13. On September 25, 2000, the petitioners again requested the Commission to adopt precautionary measures. On September 25 the IACHR transmitted this request to the State, giving it 16 days to respond. On October 12, 2000 a hearing was held during the 108th regular session of the IACHR.

14. On October 19, 2000, the Commission transmitted to the petitioners information sent by the State on October 16. On November 3, 2000 the State sent information which was transmitted to the petitioners on November 10, 2000, giving them 15 days to submit any observations. On November 30, 2000, the petitioners reported to the Commission on the first meeting held under the friendly settlement procedure with representatives of the State on November 1, at which the IACHR Rapporteur for Argentina was present.

15. The friendly settlement procedure between the petitioners and the State continued from November 1, 2000 until July 20, 2005, when the petitioners advised the Commission of their decision to terminate that procedure. During that period of nearly five years, numerous hearings and working meetings were held between the parties, both in the Province of Salta and in the city of Buenos Aires. As well, a number of working meetings and hearings were held during the ordinary sessions of the Commission.[FN4]

[FN4] Meeting held March 1, 2001, during the 110th regular session of the IACHR; working meeting held on November 15, 2001, during the 113th regular session of the IACHR; meeting held in the Province of Salta on August 5, 2002, during the IACHR visit to Argentina; working meeting held on October 18, 2002, during the 116th regular session of the IACHR; working lunch on February 23, 2003 during the 117th regular session of the IACHR; working meeting held during the 118th regular session of the IACHR; working meeting held on March 5, 2004 during the 119th regular session; working meeting held October 26, 2004 during the 121st regular session of the IACHR; working meeting held March 2, 2005 during the 122nd regular session of the IACHR; working meeting in Buenos Aires in September 2005, in the presence of the IACHR Rapporteur for Argentina; hearing held October 17, 2005 during the 123rd regular session of the IACHR.

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16. During the working meeting held at IACHR headquarters on March 2, 2005, still within the context of the friendly settlement procedure, the representative of the Province of Salta delivered to the national government, to the petitioners and to the IACHR a copy of the land delivery proposal prepared by the Province of Salta. The national government and the petitioners undertook to present their observations within 30 days.

17. On March 16, 2005 the petitioners requested an extension of 30 days to present their observations. The IACHR granted this extension on March 22, and it also gave the government an extension of 30 days to the original time limit for presenting its observations.

18. On April 11, 2005 the petitioners, before submitting their position with respect to the proposal for distribution of lands, requested the IACHR to seek other information from the State. That information was transmitted to the State by the Commission on April 28, 2005. On April 20, 2005 the Commission received a communication from the State, requesting a further extension of 10 days to present its observations. On April 22 the Commission notified the parties that it had granted that extension.

19. On May 10 and 19, 2005, the Commission received further communications from the petitioners. Upon learning that the draft law authorizing the referendum on fiscal lots 55 and 14 had been formally submitted on June 6 to the provincial Chamber of Deputies, signed by the Governor, the petitioners submitted a request on July 13, 2005 for precautionary measures, to which the IACHR assigned the number MC-150/05. On July 29, 2005 the IACHR requested the State to provide information on that point.

20. The petitioners advised the Commission on July 20, 2005 that the Senate and the Chamber of Deputies of the Province of Salta had approved a draft law to hold a referendum in the Department of Rivadavia, and they submitted a copy of the letter addressed on that date to the Special Representative for Human Rights, Ministry of Foreign Relations, International Trade and Worship, in which they reported their decision to terminate the friendly settlement procedure on the basis of that referendum call.

21. On August 15, 2005 the Commission received a note from the State requesting a seven-day extension in addition to the original time granted. On August 17 and 19, 2005, the Provincial Attorney of Salta responded with respect to the requested precautionary measures. In a note of August 19, 2005, the State also responded to the request for information.

22. On September 6, 2005, the Provincial Attorney of Salta sent another letter to the Commission. On September 9, 2005 the IACHR received a copy of the letter sent by the Lhaka Honhat Association to the Special Representative for Human Rights, Ministry of Foreign Relations, International Trade and Worship, providing a series of observations to the proposed distribution of lands by the government of the Province of Salta. On September 12, 2005, the IACHR transmitted to the petitioners the communications sent by the State on August 15 and 19, and by the Provincial Attorney of Salta on August 17 and 19, 2005, giving them 15 days to submit observations.

23. On October 3, 2005, the petitioners reiterated to the Commission their July 12 request for precautionary measures, in particular suspension of the referendum called by the government of Salta, to be held on October 23, 2005. In that letter the petitioners also submitted the observations requested by the IACHR on September 12. On October 4, 2005, the petitioners sent the Commission further information, which was transmitted to the State on October 7, and its annexes on October 18. As well, the Commission requested the State to report during or before the hearing on various aspects relating to the pending referendum and its implications.

24. The Provincial Attorney of Salta informed the Commission on October 11 of the proposal to expand, amend and improve the proposed award of lands. On October 12, 2005, the IACHR received a copy of the letter sent by the Secretary General of Governance of Salta to the Special

Representative for Human Rights, Ministry of Foreign Relations, International Trade and Worship, with respect to the request for information made by the IACHR on October 7. The Commission transmitted this letter to the petitioners for their information on October 13.

25. On November 10, 2005 the Commission received a letter from the petitioners indicating that the referendum had been held on October 23, and reiterating the request to the Commission to adopt urgent measures. The Commission transmitted this letter to the Argentine State on January 31, 2006, giving it three months to present observations.

26. The Commission transmitted to the petitioners on February 21, 2005 the pertinent portions of the additional information supplied by the State of Argentina in the course of the working meeting held during the 123rd regular session of the IACHR.

27. On June 1, 2006, the petitioners sent the IACHR a letter signed by the caciques (chiefs or leaders) of the communities that make up the Lhaka Honhat Association. The Provincial Attorney of Salta sent to the Commission on June 9, 2006 a copy of the minutes of the meeting of March 14, 2006 between the Secretary General of Governance of the Province of Salta and Mr. Francisco José Perez, Coordinator of the Lhaka Honhat Association. On July 18, 2006 the Commission received a letter from the Lhaka Honhat Association reporting on recent events in the zone.

28. On August 16, 2006, the Commission requested the petitioners and the State to submit updated information within one month on the subject matter of the petition, and it transmitted the letters of June 1 and July 18, 2006 from the petitioners. The State and the petitioners sent information to the Commission on September 7 and 15, 2006, respectively.

II. POSITION OF THE PARTIES

A. The petitioners

29. The Lhaka Honhat Association of Aboriginal Communities (the petitioners) is a nonprofit association, as stated in Ministerial Resolution 449 of December 9, 1992 which approved its corporate charter and granted it legal personality. The Lhaka Honhat Association consists of 35 indigenous communities of the Mataco (Wichi), Chorote (Iyjwaja), Toba (Quom), Chulupí (Nivacklé) and Tapiete (Tapy´y) ethnic groups, who have been living in the area of Pilcomayo River (fiscal lots 14 and 55) since time immemorial. Specifically, fiscal lots 14 and 55 in the Chaco-Salteño region, Department of Rivadavia, Municipality of Santa Victoria Este, Province of Salta, are home to some 45 indigenous communities (with between 6000 and 7000 people), belonging to nine indigenous groups, and coexisting with about 2600 criollos. This is a sparsely populated zone, with few signs of urbanization, covering about 600,000 hectares.

Background

30. The petitioners maintain that, although they are the legitimate owners of the lands on which they live, as recognized by the national Constitution, and have taken various steps since Argentina returned to democracy in 1983 in order to win legal recognition of community

ownership of these lands, to date they have received nothing but promises. As background, the petitioners note that in 1991 a memorandum of understanding was signed between the indigenous communities, which the petitioners represent, and the Director General of State Land Acquisitions of the Province of Salta, setting of the conditions for the award of the territories in which the indigenous people were living. Subsequently, the Governor of Salta issued a Decree ratifying all the points recognized in that MOU. With the change of government, that Decree was ratified for a second time on November 6, 1992 by the new Governor of Salta, who declared his willingness to award the lands as had been agreed. Consequently, the Governor of Salta issued Decree 18/93 on January 13, 1993, creating the Honorary Advisory Commission to examine the situation and make recommendations on the methodology to be used to finalize the delivery of the lands. That Commission presented its conclusions in April 1995, recommending that the indigenous people be given title to the land in the "areas de recorrido" (i.e. the lands customarily frequented) of the communities with settlements on both lots, in the form of community ownership, with no subdivisions, and a single title.

31. The petitioners maintain that, despite the technical studies that have been approved, the legal basis that has been demonstrated, the expressed intention of the political authorities to give effect to the delivery of the land, and the indigenous consensus, at the time the petition was presented the lands had not been delivered.

32. The petitioners argue that, for the indigenous communities, the importance of the land lies in the fact that it is an essential feature of their identity, as well as being an indispensable resource for their communities. According to the petitioners, since the distant past the lands covered by fiscal lots 14 and 55 have been used as hunting and gathering grounds by these people, and they are vital to their survival, for it is in these traditionally demarcated hunting lands that they find the animals and fruits on which they depend for food. The petitioners point out that their territory no longer has the wealth of soil and the abundance of natural resources that it once had. The reason for this, they claim, is the intrusion of nonindigenous people (criollos), who have engaged primarily in cattle ranching since 1902. The problem lies in the fact that the economic activities of the two groups -- indigenous people and criollos -- are incompatible. The petitioners allege that the government of Salta is responsible for the conflict because it has not taken the necessary steps to demarcate the territories of each group.

Events giving rise to the present petition

33. The petitioners indicate that since 1995 the Province of Salta, with the backing of the national government, has undertaken a series of public works as part of the project for integrating Argentina into MERCOSUR (the common market formed by Argentina, Paraguay, Brazil and Uruguay, with the participation of Chile), and that an international bridge has already been built. Moreover, plans have been laid to build roads to complete the Atlantic-Pacific corridor, and a vast urbanization plan has been adopted for the region, including a border control center, police (gendarmerie) barracks, housing for police officers and staff, a customs and immigration post, a health center, a school, housing, businesses, a service station, restaurants, and exchange bureaus.

34. The petitioners maintain that they are not opposed to the planned works, provided those works do not affect their legitimate rights to the territory, and their right to their culture. Yet they

insist that the works and construction be undertaken only after an analysis of the social and environmental impact that those works would have on their communities, and that the views and interests of the people who have historically occupied these lands must be taken into account. Moreover, the petitioners indicate that, if all the planned projects were to be completed, the indigenous people who live in the region would see themselves displaced from their lands, and the very basis of their subsistence would be threatened, because their hunting and gathering territory, which runs from the Pilcomayo River to the hills, will have been cut off.

35. For this reason, the petitioners claim, on September 11, 1995 they presented an appeal against the Province of Salta before the Court of Justice of the Province, asking the court to order suspension of the construction works on the bridge from Mision La Paz to Pozo Hondo in Paraguay, as well as any other construction or urbanization work or any activity that would alter the Mision La Paz reserve or fiscal lots 55 and 14. In that appeal, the petitioners requested, as a precautionary measure, the granting of a "no innovations" (no inovar) injunction with respect to construction of the international bridge and other works that were underway in the zone, in order to prevent greater environmental damage. However, the Court of Justice of Salta ruled against such an injunction on November 8, 1995, and on April 29, 1996 it rejected the appeal, declaring: "because the analysis is limited to examining the actions of the Province of Salta, which apparently related to the execution of national decisions not questioned in this appeal, and which are intended to integrate such communities into the national life, there being social and economic interests at stake that were the determining factors behind such works, there would seem to be no illegality or arbitrariness involved, which in itself prevents the processing of the request, since the clarification of this issue requires greater debate and further proof that go beyond the expeditious and rapid judgment that concerns us here".

36. On May 14, 1996, the legal representatives of the Association filed an extraordinary federal appeal, which was also rejected. On February 27, 1997, the petitioners filed a complaint for denial of the extraordinary appeal before the federal Supreme Court, which rejected that motion on February 5, 1998.

37. Because the State, in its reply of July 7, 1999, offered to have the National Institute of Indigenous Affairs (an agency that reports to the Secretariat for Social Development in the Office of the President of the Nation) "coordinate all available mechanisms to comply with the constitutional imperative of recognizing community possession and ownership of the lands occupied by indigenous people (Article 75 (17) of the national Constitution)", the petitioners agreed to begin mediation proceedings on August 18, 1999, provided the State gave a prior commitment to stop the works that gave rise to this petition. In addition, the petitioners asked the State to abstain from any other action in their territory, and in particular the delivery of dwellings individually to members of the community. To guarantee these prior conditions, the petitioners asked the Commission to grant precautionary measures.

38. The petitioners reiterated their request for precautionary measures to the IACHR on January 10, 2000. Those measures would have required the provincial government: 1) to interrupt the work begun and block the forestry operations under way; 2) to abstain from undertaking any further works in the lands covered by the complaint; 3) not to deliver dwellings in individual ownership to members of the communities represented by the Association; and 4)

to abstain from delivering title to the lands in question, either individually to indigenous people, or to criollos.

39. On September 25, 2000, the petitioners again asked the Commission to adopt precautionary measures in light of the events cited in previous requests, and new events. They claimed that the works were continuing and moreover, in the last three months, trees were being felled in the region, despite the express prohibition contained in Decree 2609 issued by the Provincial Executive. The petitioners asked for orders: 1) to interrupt the work begun and to block the forestry operations under way; 2) to abstain from undertaking any further works in the lands covered by the complaint; 3) not to deliver dwellings in individual ownership to members of the communities represented by the Association; and 4) to abstain from delivering title to the lands in question, either individually to indigenous people, or to criollos.

40. The petitioners and the State initiated the friendly settlement procedure on November 1, 2000 in Buenos Aires in the presence of the IACHR Rapporteur for Argentina. During that meeting, the petitioners declared it their aim to have a single title of community ownership issued for the lands on which they were dwelling, and to have a social and environmental impact report prepared, as well as the corresponding consultation with the communities on the road works that had been launched on indigenous territory. This procedure was pursued until July 2005, when the petitioners advised the Commission of their intention to terminate it.

41. Throughout the friendly settlement procedure before the IACHR, the petitioners repeatedly insisted that the granting of title to the lands in fiscal lots 14 and 55 in the name of the indigenous communities must respect the following principles:

1. The principle of a territory under a single title, based on the agreement entered into by the indigenous communities and successive governments of Salta between 1991 and 1996,[FN5] recognizing that unity of the lands is the only manner to enforce respect for "procedures established by the peoples concerned for the transmission of land rights among members of these peoples", consistent with Article 17 of ILO Convention 169 and Article 75 (17) of the national Constitution. The petitioners argue that the national Constitution's recognition of the right to "community ownership of land" necessarily implies that the interpretation of the term "community" must be in accordance with the cultural framework of the indigenous peoples, for if the State aggregates to itself a power of giving content to community ownership, that rule loses its meaning.
2. The principle that the criollo inhabitants who are engaged in cattle ranching should be relocated to nonindigenous areas, while recognizing all the improvements they have made to their facilities.
3. The principle that the indigenous communities may not be relocated.
4. The principle of compensation for the economic costs of criollo inhabitants who, by virtue of the dialogue with the indigenous communities, decide to relocate.
5. The principle of free and informed consultation with the indigenous communities with respect to future areas of urbanization and the routing of roads and highways, before they are planned and executed.
6. The principle that any changes necessary to territorial reorganization must provide sufficient incentives.

[FN5] Decree 2609/91, ratifying the memorandum of understanding signed in San Luis; Decree 1397 of 1995 approving the work of the Honorary Advisory Commission; Memorandum of Understanding on the bridge on September 16, 1996.

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42. As well, during the friendly settlement procedure, the petitioners complained on various occasions that the Province of Salta had failed to respect some of its commitments given during the procedure. The petitioners advised the Commission that, although the national government had undertaken from the outset of the friendly settlement procedure not to initiate new works in the territory covered by the claim (except those planned for the police, and the multiple use hall), and not to continue with the individual delivery of land, it had authorized a series of works in preparation for the exploration and exploitation of hydrocarbons, it had issued the necessary legislative measures to begin construction of the National Highway 86; and it had begun paving a road in the territory covered by the claim. The petitioners also indicated that the government of the Province had engaged in individual conversations with certain caciques of the communities that make up the Lhaka Honhat Association, urging them to sign memorandums of understanding for the delivery of individual properties.

43. The petitioners again informed the IACHR of the events that were undermining the understanding between the parties in the friendly settlement procedure, and that implied in their view a breach of the commitments made during the negotiations. Among those events, the petitioners indicated that the caciques of each community had received a note from the representative of the Provincial Institute of Indigenous Affairs of Salta urging the communities to obtain legal status from the Province of Salta as a prerequisite for electing representatives to that Institute, and to do so by a deadline later in the same month of June. According to the petitioners, this approach was intended to break up the Lhaka Honhat Association into various legally recognized organizations. The petitioners argue that the government of Salta had been systematically engaging in maneuvers to deny the legitimacy of the Association as representative of its member communities, as had been repeatedly demonstrated and confirmed by each of the community caciques. Moreover, the petitioners claim that provincial government engineers were continuing to take measurements for the delivery of properties, and had in fact prepared a concrete proposal to deliver 15,000 properties to the La Puntana community.

44. On July 13, 2005, the petitioners submitted a request for precautionary measures to the IACHR upon learning, via a newspaper report in the daily El Tribuno of June 13, 2005, that the draft law on the referendum on fiscal lots 55 and 14 had been submitted on June 6 to the provincial Chamber of Deputies, signed by the Governor. The petitioners maintain that the provincial legislature's approval of a referendum on the delivery "of the lands corresponding to fiscal lots 55 and 14 to their current occupants, both aboriginals and criollos, executing the necessary infrastructure works", constitutes a breakdown of the friendly settlement process. The petitioners also claim that the situation at that time revealed "serious intrusions in the zone: offers of applications for land, the marking off and measuring of lots, illegal wood cutting and construction of infrastructure works, on one hand, as well as actions that were dividing the

communities", in breach of "commitments assumed by the State" in the friendly settlement procedure.

45. Finally, on July 20, 2005, following approval by the provincial Senate and Chamber of Deputies of the draft law calling voters of the Department of Rivadavia to a referendum, the petitioners sent the Commission a copy of the letter they had addressed on that date to the Special Representative for Human Rights, Industry of Foreign Relations, International Trade and Worship, advising her of their decision to terminate the friendly settlement procedure, based on the calling of that referendum.

46. The petitioners submitted a series of observations on the proposal of the Governor of the Province of Salta to distribute lands, indicating that, despite the various letters that they had sent to the national government, there was still no word on its position with respect to the funding needed to finalize distribution of the lands, a factor that in their judgment was essential for any future settlement of the conflict.

47. On October 3, 2005, the petitioners again requested the Commission to adopt the precautionary measures requested on July 12. In particular, they asked for suspension of the referendum declared unilaterally by the government of Salta for October 23 of that year, which they maintain interrupted the friendly settlement procedure that had been underway for more than five years. In turn, they asked the Commission to order the Argentine State to take measures to avoid constant intrusions into their territory, and to cease efforts to divide the indigenous organization and its communities and to ignore the legitimately elected authorities.

48. The petitioners also noted that the provincial government had begun an aggressive campaign to smear and destabilize Lhaka Honhat, and to promote the referendum. The petitioners indicate that the provincial government had urged a cacique of a community not involved in the conflict over lots 55 and 14 to file a complaint before the provincial courts, which was favorably received, ordering Lhaka Honhat to "abstain from any acts that would in any manner obstruct the right to vote in the referendum convened for October 23, 2005". The petitioners also indicate that the motion to declare certainty that they had filed against the provincial and national governments before the federal Supreme Court, to declare unconstitutional provincial law 7352 calling the referendum, had been rejected on September 27. They add that another appeal presented by a group of individuals to the provincial courts was not dealt with, successive magistrates having declared themselves incompetent to hear it, and that this showed that the remedies filed with the courts of Salta with respect to indigenous lands could not be considered as " effective remedies" in the terms of the jurisprudence established by bodies of the inter-American system.

49. On November 10, 2005, the petitioners reported to the Commission on the official results of the referendum held on October 23, 2005 in the Department of Rivadavia, Province of Salta, in which the “yes” side won.

50. With respect to the lands distribution policy being implemented by the Province of Salta since the referendum, the petitioners maintain that the provincial government began, in early 2005, to issue the necessary rules to begin the process of delivering lands at its discretion. With

respect to the national government, the petitioners indicate that, although it had prepared an alternative proposal for land distribution, which was to a large extent consistent with international standards regarding indigenous territorial rights, there were no signs that it was taking any effective steps to block the Province's action. The petitioners argue that in this context, the continuing felling of trees and lumber, the construction of dwellings, the delivery of individual properties in an arbitrary and uninformed manner, the indifference of the provincial government to the national proposal, among other aspects, are subjecting the community to a situation of insecurity and uncertainty that prevents it from defending and protecting its rights.

B. The State

51. With respect to the exhaustion of domestic remedies, the State, in its initial response of July 7, 1999, declared that, although the petitioners had launched and exhausted all domestic remedies with respect to amparo (constitutional protection) they had not met the requirements of Article 46.1 of the American Convention. The State maintains that there is another appropriate route for resolving such a complex dispute, and that the petitioners should have attempted a procedure that would have addressed the substance of the issue.

52. Notwithstanding the foregoing, the State indicates that, while in no way recognizing or admitting any illegal act on its part, the National Institute of Indigenous Affairs (INAI) considers that construction of the international bridge over the Pilcomayo River between Misión La Paz in Argentina and Pozo Hondo in Paraguay, as well as other roads and various buildings, is appreciably changing the way of life of the indigenous communities, for which reason it would have been advisable to hold consultations and to produce an environmental impact study of those projects. For this reason, the INAI had offered its good offices to coordinate all the mechanisms available for fulfilling the constitutional imperative of recognizing indigenous community possession and ownership of the lands occupied by indigenous peoples (Article 75 (17) of the national Constitution), and to pursue mediation efforts among the parties. The State also declared that, without prejudice to the foregoing, it reserved the right to intervene in-depth in the handling of the questions of admissibility and of law posed in this petition.

53. During the hearing held in Washington DC at the 104th regular session of the IACHR, on October 1, 1999, the INAI representative indicated that in the present petition the State had indeed failed to consult the indigenous communities. For this reason, the State considered it essential to begin a friendly settlement procedure immediately. Nevertheless, and because the Supreme Court had decided that the question giving rise to the petition was not a federal latter but one for the Province of Salta, the INAI trusted that the government of Salta could be persuaded, through the friendly settlement procedure, of the need to back down and to stop construction while the procedure unfolded.

54. In light of the meeting held on November 1, 2000 with the petitioners, in the presence of the IACHR Rapporteur for Argentina, the government of the Province of Salta undertook, as part of the friendly settlement procedure, not to begin new works in the disputed area, except those planned for the police and the multiple use hall, and not to continue for the time being with the delivery of lands, until a broader framework for the distribution process could be agreed. Furthermore, with a view to the meeting held with the petitioners on December 4, 2000, the

provincial government undertook to submit a proposal in writing to the petitioners to give effect to the right of the indigenous communities within the Lhaka Honhat Association to ownership of the lands they occupy, and this was submitted on December 5, 2000.

55. During the friendly settlement procedure, the State reported on a series of measures that it had taken, in consultation with the petitioners, to organize a Technical Group (the purpose of which would be to prepare a proposal for delivery of lands that would serve as a basis for dialogue with the indigenous communities and with the criollo families who had historically lived on fiscal lots 14 and 55), and an Expanded Negotiating Roundtable (consisting of national and provincial government bodies, the petitioners, and representatives of the criollo families with their respective advisors), and it reported on a number of studies conducted by the technical group, and the dialogue in the expanded roundtable, among members of the Lhaka Honhat Association and the criollo population, dealing with the situation in the zone.

56. At the hearing held at Commission headquarters on March 2, 2005, the Provincial Attorney of Salta maintained that the human reality in the zone referred to by the petitioners has a history dating back over more than 100 years of peaceful coexistence between the aboriginal inhabitants and the criollo groups known as "chaqueños", and that the resulting mixture of bloods rendered obsolete the old criteria of ethnic purity and the possibility of discriminating in any aspect. As well, he argued that the delay in the present case implied a high human cost, because it was limiting and postponing indispensable public works that were essential to prevent a worsening of poverty in the region. For these reasons, the government of Salta had prepared a friendly settlement proposal, and intended to submit it for consideration by residents of the zone, via the referendum mechanism, since seeking the opinion of the people was in his view an essential feature of a democratic system. This land distribution proposal was delivered to the national government, to the petitioners and to the IACHR during the hearing. Subsequently, both the national government and the petitioners undertook to advise the government of the Province of Salta within 30 days of their position on that proposal.

57. On April 12, 2005, the Provincial Attorney of Salta informed the national government that, because it had received no response to his land distribution proposal, the provincial executive had decided at that date to hold a "popular consultation" with respect to the measures that should be taken in the zone covered by the Lhaka Honhat claims, and for this reason a draft referendum bill had been submitted to the Legislature. According to the Province, any new dialogue could only take place after the referendum.

58. Finally, on July 11, 2005, the Argentine State indicated that, because the petitioners had not submitted specific observations on the proposal made by the Province, it had no objection to seeing the Province's proposal aired internationally, without prejudice to the details and specifications that might be discussed within the project executing unit in the future in order to guarantee the project's compatibility with the required standards. Moreover, the national State asked the petitioners to transmit their position on the land distribution proposal by July 30, and it also asked them to be available to participate in a further working meeting in the city of Salta.

59. In response to a request for information from the IACHR to the Argentine State, dated July 29, 2005, the Provincial Attorney of Salta sent different information to the Commission on

August 17 and 19, 2005. In this response, the Provincial Attorney indicated that Francisco Perez, the representative of Lhaka Honhat who had signed the request for precautionary measures, had “lost his powers of representation", because on August 12, 2005 the INAI had convened a meeting to appoint representatives of the various indigenous ethnic groups and, as representative of the “wichis”, Indalecio Palermo had been elected by a wide majority as "General Coordinator of Caciques". With respect to the invasions and clandestine extraction of lumber cited in the petitioners’ complaint, the provincial government indicated that such events occur because the vastness of the territory in question (650,000 hectares) made it difficult to supervise the area, which in any case belonged to the provincial government.

60. The Provincial Attorney of Salta argues that the petition submitted to the IACHR is inadmissible because, according to Article 46 of the Convention, in order for a petition to be admitted, the remedies under domestic law must have been pursued and exhausted before the courts. In this respect, the Provincial Attorney indicates that the issue relating to the award of lands belonging to lots 55 and 14 is currently under discussion in the judicial case referred to as "Lhaka Honhat Association of Aboriginal Communities vs Provincial Executive Branch", case 21.648/00, before the Court of Justice of Salta, and that consequently the petitioners have not exhausted domestic remedies. The Province indicates that Lhaka Honhat brought a motion for amparo (constitutional protection) against Decree 461/99 of the Province of Salta and against resolution 423/99 of the General Secretariat of Governance of the Province of Salta, which ordered preparatory measures for the award of State lands. Because the provincial Court of Justice rejected the amparo motion by a judgment of March 14, 2001, the petitioners brought an extraordinary federal appeal which was decided by the Supreme Court of Justice of Argentina on June 15, 2004. The federal Supreme Court overturned the ruling of the court of Salta, on the grounds that that ruling was unfounded because, among other things, the occupants convened had not been duly notified and because the issuing of summonses by edicts did not meet legal requirements. For these reasons, the Supreme Court of Justice of the Nation ordered the Court of Justice of Salta to issue a new ruling, which it has not yet done.

61. With respect to the alleged failure of the Province of Salta to keep its commitments given during the friendly settlement procedure, as alleged by the petitioners, the Provincial Attorney notes that: 1) the provincial government made an offer on March 2, 2005, but this was not accepted by the petitioners within the 30 days offered by the Province; 2) the Province of Salta is not a party to the petition before the Commission; 3) the petitioners' allegations do not indicate any concrete or plausible violation of the rights of indigenous peoples enshrined in Article 75.17 of the national Constitution and in the Convention, but show instead that the provincial government is taking the necessary steps to comply, in accordance with the procedure stipulated in Article 15.11 of the provincial Constitution, which requires that solutions involving State lands must be agreed with indigenous and nonindigenous inhabitants. For the Province, the referendum constitutes the mechanism to ensure effective participation of all inhabitants, and moreover it is provided for in Article 6 of ILO Convention 169, which requires governments to "consult the peoples concerned, through appropriate procedures".

62. The national government, in a note dated August 19, 2005, responded to the IACHR's request for information of July 29, 2005 in the context of the precautionary measures requested by the petitioners. In its response, the national State indicates that "without prejudice to the

objections that the request for precautionary measures raises from a legal viewpoint, the State understands that the situation in the zone cannot be resolved through compulsion of any kind", since the scenario is so complex that, in the absence of dialogue and consensus among all interested parties, it is impossible to see how a measure such as that requested by the petitioners could produce a solution that would respect the rights of the inhabitants of fiscal lots 55 and 14 in accordance with international standards. With respect to the petitioners' "grievances" over the referendum approved by the provincial legislature, which they call "illegal" and "contrary to international commitments assumed by the federal and provincial State", the national State indicates that both the national Constitution and the Constitution of the Province of Salta recognize motions for amparo as the best remedy for dealing with acts or omissions of the public authorities that affect or threaten, in a clearly arbitrary manner, rights recognized in the Constitution, the laws, and international treaties.

63. With respect to the alleged "passivity" of the national State over the referendum, the State argues that when it was notified of the Province's decision, the Foreign Office declared its profound concern to the local government, "stressing the effects that such a decision could have on the friendly settlement process". Moreover, the national agencies participating in the Expanded Roundtable issued a "Joint Declaration" in which they expressed “their profound concern over the approval of the referendum relating to State lands of lots 55 and 14”, and request the Governor of the Province, “in order to facilitate a global and definitive solution of the conflict, to take the steps necessary to suspend that initiative".

64. The Provincial Attorney of Salta sent the Commission on October 11, 2005, following a meeting with the petitioners on that same day, an expanded and improved proposal for awarding lands that was presented by the Province on March 2, 2005, and which supposedly included the petitioners' observations from September 8, 2005.

65. On September 7, 2006, the national State sent the IACHR a draft of an alternative proposal to the provincial proposal for distribution of lands in fiscal lots 55 and 14. The proposal calls for delivery of ownership over the land to the indigenous communities under a single title, free of livestock and fencing, and to the criollo population, recognizing their 20-year possession right, and compensation for losses from relocation. As to the financing required for implementing this proposal, the State indicates that financing "must be mixed: National State and Provincial State". While the national government is responsible for the funds for infrastructure works, and other funds for the social consensus effort, it is up to the provincial government to finance the work of delimiting public services (schools, health centers, urban amenities).

66. Subsequently, the IACHR received information from the State as to how the latest proposal submitted by the Province of Salta for land distribution was to be implemented. The State sent a copy of the Decree of the General Secretariat of Governance 936/05 (of May 10, 2005), creating the Provincial Executing Unit for Lots 55 and 14, which is the "enforcement authority" responsible for executing the proposal, reporting to the Minister of Production and Employment. As well, by Governance Decree 2407 of December 2, 2005, various procedures were established for transferring ownership title: community title (for the indigenous communities) specifying that two or more communities could opt for a joint title; and individual title or "condominium under civil law" for nonindigenous occupants with the right to title. On

April 19, 2006, the Minister of Production and Employment issued resolution 65, appointing the members of this unit, assigning its specific functions, and establishing the requirements that criollo and indigenous communities alike must meet to benefit from this land distribution proposal.

III. ANALYSIS OF ADMISSIBILITY

A. Competence of the Commission Ratione Personae, Ratione Loci, Ratione Temporis, and Ratione Materiae.

67. The petitioners are entitled by Article 44 of the American Convention to present complaints before the Commission. The petition names as the alleged victims the members of the indigenous communities belonging to the Wichi (Mataco), Iyojwaja (Chorote), Nivacklé (Chulupí), Quom (Toba) and Tapy´y (Tapiete) indigenous peoples who make up the Lhaka Honhat Association and who live on fiscal lots 14 and 55, with respect to whom the State of Argentina is committed to respect and guarantee the rights enshrined in the American Convention. The Commission notes that Argentina is a State Party to the American Convention, having ratified it on September 5, 1984. In terms of passive jurisdiction ratione personae, the IACHR also notes that it is a general principle of international law that the State is responsible for the acts of all its organs, including those of the judiciary. It is responsible as well for the acts of the provinces that make up the federal State, by virtue of universally recognized general principles of international law and Articles 1, 2 and 28 of the American Convention. The Commission therefore has jurisdiction to examine the petition.

68. The Commission has jurisdiction ratione loci to hear this petition inasmuch as it alleges violations of rights protected in the American Convention that took place within the territory of a State party to that treaty.

69. The Commission has jurisdiction ratione temporis because the events alleged in the petition took place when the obligation to respect and guarantee the rights established in the Convention was already in force for the State.

70. Finally, the Commission has jurisdiction ratione materiae because the petition complains of possible violations of human rights protected under the American Convention.

71. With respect to the allegations of violations of the American declaration, in light of Articles 23 and 49 of its Rules of Procedure, the Commission in principle has jurisdiction ratione materiae to examine violations of the rights enshrined in that declaration.[FN6] Nevertheless, the IACHR has previously established[FN7] that, once the American Convention comes into force with respect to any State, it is that instrument, and not the declaration, that becomes the specific source of law which the Commission must apply, provided that the petition alleges violations of substantially identical rights protected by both instruments,[FN8] and a continuing situation is not involved.[FN9]

[FN6] See also I/A Court H.R., Interpretation of the American Declaration of the Rights and Duties of Man within the Framework of Article 64 of the American Convention on Human Rights. Advisory Opinion OC-10/89 of July 14, 1989. Series A No. 10, para. 41.
[FN7] See IACHR, Amílcar Menéndez et al., Report Nº 03/01 of January 19, 2001, Case 11.670 (Argentina),
para. 41.
[FN8] I/A Court H.R., Interpretation of the American Declaration of the Rights and Duties of Man within the Framework of Article 64 of the American Convention on Human Rights. Advisory Opinion OC-10/89 of July 14, 1989. Series A No. 10, para. 46.
[FN9] The IACHR has held that it has jurisdiction to examine violations of the declaration and of the Convention, where there is a demonstrated continuity in the violation of rights protected by both instruments. See for example IACHR Annual Report 1980 7-88, Resolution 26/88, Case 10,190 Argentina; and IACHR Annual Report 1998, Report 38/99, Argentina, para 13.

B. Other requirements of admissibility

1. Exhaustion of domestic remedies

72. As a requirement for admissibility, Article 46.1 of the American Convention requires “that the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law".[FN10] Both the Inter-American Court of Human Rights (hereafter "the Court" or "the Inter-American Court") and the IACHR have ruled repeatedly that, according to the generally recognized principles of international law and international practice, the rule that requires prior exhaustion of domestic remedies was conceived "in the interest of the State", as it seeks to dispense the State from having to respond to an international body for actions imputed to it before having had the opportunity to remedy them by its own means.[FN11] Nevertheless, the Convention also stipulates that this provision does not apply when such domestic remedies are not available, de facto or de iure. More specifically, Article 46.2 establishes exceptions to the general principle of exhaustion of domestic remedies: (a) when the domestic legislation of the State concerned does not afford due process of law for the protection of the right or rights that have allegedly been violated; (b) when the party alleging violation of his rights has been denied access to the remedies under domestic law or has been prevented from exhausting them; or (c) when there has been unwarranted delay in rendering a final judgment under the aforementioned remedies. For those remedies to be adequate implies that they be:

[FN10] See I/A Court H.R., Exceptions to the Exhaustion of Domestic Remedies (Arts. 46(1), 46(2)(a) and 46(2)(b), American Convention on Human Rights). Advisory Opinion OC-11/90 of August 10, 1990. Series A No. 11, para. 17.
[FN11] See I/A Court H.R., In the Matter of Viviana Gallardo et al. Series A No. G 101/81, para. 28.
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suitable to address an infringement of a legal right. A number of remedies exist in the legal system of every country, but not all are applicable in every circumstance. If a remedy is not adequate in a specific case, it obviously need not be exhausted. A norm is meant to have an effect and should not be interpreted in such a way as to negate its effect or lead to a result that is manifestly absurd or unreasonable.[FN12]

[FN12] I/A Court H.R., Velásquez Rodríguez Case. Judgment of July 29, 1988. Series C No. 4, para. 64.

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73. Before presenting this petition, the Lhaka Honhat Association filed an appeal for constitutional protection (amparo) with the Supreme Court of the Province of Salta, against that Province, asking the court to order immediate suspension of construction works on the Mision La Paz-Pozo Hondo bridge, and all other works (urban development, road construction) or changes to the Mision La Paz reserve or to fiscal lots 14 and 55. The provincial court rejected the application for "no innovation" on November 8, 1995, and on April 29, 1996 it rejected the motion for amparo. In its ruling, the Supreme Court of Salta held that, from an analysis of the presentation given and the elements supplied, it could not conclude that the Province's conduct had been manifestly illegal or arbitrary, given that the actions challenged consisted in the Province's carrying out decisions of the federal government which were not challenged by the petitioners. This pointed to the need to pursue ordinary channels that would allow greater possibility for debate and evidence. With respect to the injury that execution of those works might imply, and the disastrous environmental impact that they would have on the aboriginal communities, the Supreme Court of Salta held that, although those works and acts might affect the petitioners, there was no evidence that they went beyond what was reasonable. Subsequently, on May 14, 1996, the legal representatives of the Lhaka Honhat Association filed an extraordinary federal appeal against that ruling, which was also rejected. Finally, on February 27, 1997 the petitioners filed a complaint for denial of the previous appeal before the federal Supreme Court, which rejected that complaint on February 5, 1998.

74. Once the petition was laid before the IACHR, and following publication of Decree 461/99 of December 24, 1999[FN13] (whereby the Governor of the Province awarded portions of fiscal lots 55 in community ownership to members of various indigenous communities and to certain criollos), the petitioners filed a motion for constitutional protection before the Supreme Court of the Province of Salta against the executive of that Province, on March 8, 2000. The petitioners argue that the General Secretariat of Governance of Salta, prior to approval of Decree 461, had issued resolution 423/99 ordering the publication of edicts for 15 days in the Official Gazette and the newspaper El Tribuno citing the unnamed occupants and all those who claimed rights over the lands of fiscal lots 55 to be awarded and calling upon them to enforce their rights according to law, something that would expressly violate the recognized rights of ownership, equality and due process and, especially, those recognized for the indigenous communities both in the national Constitution and in the Constitution of the Province of Salta. The petitioners also indicate that the individualized properties that were to be awarded by means of Decree 461/99 were part of the original claim filed in 1991, and Decree 3097/95 (which approved the actions of the Honorary Advisory Commission) expressly established that the land to be delivered "is held

under single title without internal divisions". For these reasons, the petitioners demanded that the effects be suspended and that resolution 423/99 of the General Secretariat of Governance of the Province and Decree 461/99 of the provincial executive be declared unconstitutional because they violate Articles 14, 17, 18 and 75 (17) of the national Constitution, and Article 15 of the provincial Constitution.

[FN13] Boletín Oficial de la Provincia de Salta of January 14, 2000, Decreto Nº 461 of the Secretaría General de la Gobernación, p. 223.

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75. The petitioners hold that, prior to submission of the present appeal for amparo, they had filed an administrative motion for revocation against resolution 423/99 and had demanded suspension of the act, for grave shortcomings that disqualified it as an administrative act. When that motion was rejected on December 20, 1999,[FN14] the petitioners filed an appeal on December 30, 1999, repeating the demand to suspend the act, and that appeal had not been decided at the date the motion for amparo was filed. For these reasons, the petitioners maintained that it was because of the lack of any other suitable channel for defending their rights that they had filed the motion for amparo.

[FN14] Resolución Nº 500/99 of the Secretaría General de la Gobernación, notified December 27, 1999.

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76. Following publication in the newspaper El Tribuno of the news that the provincial executive had, on April 4, 2000, delivered ownership papers for portions of fiscal lots 55 covered by Decree 461, which the petitioners had challenged, they requested, in their motion for amparo, that "prior to the final decision, the executive branch be ordered to suspend all acts and effects that flow from the challenged Decrees." This request for "no innovation" was rejected by the Supreme Court of Salta on June 8, 2000. On November 15, 2000 the Court of Justice of Salta rejected the motion for constitutional protection brought by the petitioners, finding that there was no specific breach of the rights invoked, nor any manifest illegality in the handling of the claim. The petitioners brought an extraordinary federal appeal against that ruling, which was rejected by the Court of Salta on March 14, 2001, whereupon the petitioners filed a complaint before the federal Supreme Court of Justice.

77. In its ruling of June 15, 2004, the federal Supreme Court accepted the extraordinary appeal and quashed the challenged decision, ordering the case returned to the original tribunal to issue a ruling consistent with that judgment. The federal Supreme Court, in its judgment, accepted the reasoning and the conclusions set forth by the Prosecutor General, to which the reader is referred for the sake of brevity. Among his conclusions, the Prosecutor General noted that:

the challenged ruling "has extinguished the action filed without sufficient legal and factual grounds…. Especially, when there is no apparent usefulness in pursuing another process with

more debate and evidence, since it is not necessary to produce more data to resolve the present case." The Prosecutor General also ordered that the judgment must be quashed on the basis of the doctrine of arbitrariness, since the Supreme Court of Salta had ignored the provisions of local public law invoked by the petitioners, thereby affecting rights covered by constitutional protection.[FN15] To date, the Supreme Court of Salta has not issued a new decision.

[FN15] Attorney General (Procurador General de la Nación), Nicolás Eduardo Becerra, Buenos Aires, November 26, 2003.

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78. The petitioners argue that they have exhausted all available legal remedies within the domestic jurisdiction of the Argentine State in their quest to achieve recognition of the right to community property, under a legal form that would allow them to continue their socioeconomic pattern of subsistence and their special way of life, and in order as well to demand that the necessary social and environmental impact studies be performed for the design and execution of various public works projects that would affect their way of life, and that the exception of Article 46.2 of the Convention is therefore applicable because Argentine law does not provide any effective procedure for delimiting, demarcating and granting single title over indigenous lands.

79. In its initial response of July 7, 1999, the State argued that while the petitioners had pursued and exhausted all domestic remedies with respect to constitutional protection, they had not fulfilled the requirements of Article 46.1 of the American Convention. On this point, the State noted that there is another adequate channel for resolving such a complex situation, and that the petitioners should have attempted a procedure that would have addressed the substance of the issue. Subsequently, after the breakdown of the friendly settlement procedure in 2005, the National State argued that while this petition arose as a result of works related to the international bridge between Misión La Paz and Pozo Hondo, from the outset the dialogue had been dominated by the question of the distribution of State lands from lots 55 and 14 as the central issue on the indigenous side, yet on this point there had been no exhaustion of local jurisdiction.

80. On the other hand, the Province of Salta sent to the Commission a letter indicating that the petitioners had not exhausted all domestic remedies, for which reason the petition should be declared inadmissible. The Province argued that the federal Supreme Court, in its judgment of June 15, 2004, had quashed the ruling of the provincial Supreme Court and had ordered the Court of Salta to issue a new judgment taking into account the foregoing points, which to date had not been issued.

81. The Commission notes that the State has had many opportunities to resolve the substance of the matter, i.e. effective enforcement of the property rights of members of the Lhaka Honhat Association. The petitioners have filed several motions since 1999 to ensure that fiscal lots 14 and 55 be demarcated and awarded to the community, taking into account its way of life, but to date that right has not been recognized. To date, the judgment of the federal Supreme Court of June 15, 2004 has not been implemented by the Supreme Court of Justice of the Province of Salta. The Commission has no set rules over what constitutes "unwarranted delay", but rather

evaluates the circumstances of each case to determine whether there has been unwarranted delay.[FN16] In the present case, bearing in mind that the petitioners filed a motion for constitutional protection in 2000 that is still pending, and given the circumstances set forth above, the Commission concludes that, without prejudging its future determination on the merits of the case, there has been an unwarranted delay in issuing a final judgment, within the meaning of Article 46.2 (c). As to the question of prejudgment, it is important to recall that:

the invocation of exceptions to the requirements of Article 46 is closely linked to the examination of the substance of possible violations of rights enshrined therein, particularly the guarantees relative to access to justice. Nonetheless, given its nature and purpose, the review under Article 46.2 is autonomous vis-à-vis the substantive norms of the Convention. The determination as to whether the exceptions to the requirement of exhaustion of domestic remedies apply in a given case requires an analysis of the claims raised in advance of and apart from the determination of the merits of the case, and according to a standard distinct from the one used to determine whether the State bears responsibility for the violation of the rights to judicial protection or guarantees set forth in the Convention. The causes that have impeded the exhaustion of domestic remedies, and the consequences thereof, shall be analyzed to the extent appropriate when the Commission examines the merits of this case.[FN17]

[FN16] IACHR, Report Nº 16/02, Marco Antonio Servellón García et al. (Honduras), Petition 12.331, Admissibility, para. 31, February 27, 2002.
[FN17] IACHR, Report Nº 03/03, Carlos Saúl Menem (Son), Argentina, Petition 12.257, Admissibility, para. 36, February 20, 2003.

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82. Because the events of this case are covered by the rule of "unwarranted delay" of Article 46.2.c, the petitioners are excused from fulfilling the requirement of Article 46.1.a on the exhaustion of domestic remedies. The Commission sees no reason to consider the other remedies invoked by the State, because it has determined that there was unwarranted delay in issuing a final judgment with respect to a suitable remedy for protecting the rights under examination in this petition.

2. Timeliness of the petition

83. Article 46.1.b of the Convention provides that, to be admissible, a petition must be lodged within a period of six months from the date on which the petitioners are notified of the final judgment exhausting domestic remedies. That six-month rule guarantees legal certainty and stability once a decision has been taken. In the absence of a final decision, Article 32.2 of the Commission's Rules of Procedure requires that the petition be presented within a reasonable time.

84. The Commission notes that the last definitive decision at the federal level with respect to the motion for constitutional protection was issued on February 5, 1998 by the federal Supreme Court, and the petition was submitted to the IACHR on August 4, 1998. As noted in the previous

section, there is another appeal pending at the date of this report. Therefore, the Commission concludes that this requirement of the Convention has been met.

3. Duplication of proceedings and res judicata

85. Article 46.1.b establishes as a condition for a petition to be admissible that "the subject of the petition or communication is not pending in another international proceeding for settlement", and Article 47 of the Convention stipulates that the Commission shall consider inadmissible any petition that "is substantially the same as one previously studied by the Commission or by another international organization". In the present case, the parties have not indicated that either of these circumstances applies, nor can they be deduced from the file.

4. Characterization of the facts alleged

86. The State has requested the Commission to declare the petition inadmissible. The Commission considers that it is not appropriate at this stage of the proceedings to establish whether or not there has been a violation of the American Convention. For purposes of admissibility, the IACHR must determine whether the petition describes facts that could characterize a violation, as stipulated in Article 47.b, and whether the petition is "manifestly groundless or obviously out of order", according to subparagraph (c) of that Article.

87. The standard for appreciating these limits is different from that required for deciding on the merits of a complaint. The Commission must make a prima facie evaluation to examine whether the complaint establishes an apparent or potential violation of a right guaranteed in the Convention, and not to establish whether there was such a violation. This examination is a summary analysis that implies no prejudgment or advanced opinion on the substance of the matter. The Commission's Rules of Procedure, in establishing two clear stages of admissibility and merits, reflects this distinction between the evaluation that the Commission must reform in order to declare a petition admissible and that required to establish a violation of human rights.

88. In the present case, pursuant to Article 47.b of the American Convention, the Commission considers that the arguments of the petitioners are well founded and pertinent for determining, in an examination of the merits, whether the facts constitute violations of the American Convention.

89. The Commission considers that petitioners' complaints about the failure of the Province of Salta to implement a policy to demarcate and award title to lands in a legal form that respects the communities' way of life could, if proven, characterize violations of the rights guaranteed in Article 8 (due process), 13 (freedom of thought and expression) in connection with Article 23 (political rights), Article 21 (right to private property), and Article 25 (judicial protection), of the American Convention, in relation with the general obligations enshrined in Articles 1 and 2 of that treaty.

90. Consequently, the IACHR does not find the petition to be "manifestly groundless" or untimely. On the basis of the foregoing, the Commission considers that the admissibility requirements of Article 47.b and c of the American Convention are satisfied.

V. CONCLUSION

91. The Commission concludes that it is competent to examine the claim submitted by the petitioners, pursuant to Articles 46 and 27 of the Convention

92. By virtue of the arguments of fact and of law set forth above, and without prejudging the merits of the case,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To declare the petition admissible as it relates to alleged violations of the rights protected in Articles 8, 13 in connection with 23, 21 and 25 of the American Convention, in relation with the obligations of Articles 1 and 2 of that instrument.
2. To notify this to the parties.
3. To continue its examination of the merits of the case, and
4. To publish this decision and to include it in its Annual Report to the OAS General Assembly.

Done and signed in the city of Washington, D.C., on the 21st day of the month of October, 2006. (Signed): Evelio Fernández Arévalos, President; Paulo Sérgio Pinheiro, First Vice-President; Florentín Meléndez, Second Vice-President; Freddy Gutiérrez, and Paolo G. Carozza, Commissioners.