I. SUMMARY

1. On August 15, 2003 the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission" or "the IACHR") received a complaint submitted by Aniceto Norín Catrimán and another complaint submitted by Pascual Huentequeo Pichún Paillalao (hereinafter "the alleged victims") against the State of Chile (hereinafter "the State," "Chile," or "the Chilean State"), which alleged violation of Articles 8.1, 8.2 and 8.4 and Article 9 of the American Convention on Human Rights (hereinafter "the American Convention") during their criminal trial which resulted in the conviction of both men for the crime of making terrorist threats.

2. Aniceto Norín Catrimán was represented in the complaint by attorneys Rodrigo Lillo Vera and Jaime Madariaga De la Barra (hereinafter "the petitioners").[FN1] Regarding admissibility, the petitioners argue that the requirement to exhaust domestic remedies was fulfilled with the issuance of the final unappealable judgment in the trial.

[FN1] In later submissions Rodrigo Lillo Vera, Jaime Madariaga De la Barra and Luis Rodríguez-Piñero assumed the representation of Aniceto Norín Catrimán and Pascual Huentequeo Pichún Paillalao.

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3. The State disputed admissibility as it considers that, pursuant to Article 47.b and c of the American Convention, the complaint is unfounded in that it contains no facts that constitute a violation of the rights guaranteed in the American Convention. Therefore, the State asks the Commission to declare the complaint inadmissible.

4. Upon examining the petition in light of Articles 46 and 47 of the American Convention, as well as Articles 30 and 37 and its own Rules of Procedure, the Commission declares the petition admissible with regard to the alleged violations of Article 8 and 9, and in regard to the general obligations established in Articles 1.1 and 2 of the American Convention. The Commission has likewise decided to notify the parties and publish this decision and include it in its Annual Report to the General Assembly of the Organization of American States.

II. PROCESSING BY THE COMMISSION

5. Two petitions were submitted on August 15, 2003. The first was filed by Aniceto Norín Catrimán, represented by attorneys Jaime Madariaga De la Barra and Rodrigo Lillo Vera; the second by Pascual Huentequeo Pichún Paillalao, who in the submission indicated that he would name a representative before the IACHR at a later date. The petitions were registered at the Inter-American Commission and joined under number 619/03. The petitioners submitted additional information October 30 and December 22, 2003. Processing of the petition began on July 16, 2004 with the transmittal of the petition to the State, along with a request for observations within two months.

6. Pascual Pichún Paillalao and Segundo Aniceto Norín Catrimán requested precautionary measures from the IACHR on June 21, 2004 and July 12, 2004, respectively. After analyzing the requirements of Article 25 of its Rules of Procedures, the Inter-American Commission decided to deny both requests.

7. The State of Chile submitted its reply to the petition on November 29, 2004, which was transmitted to the petitioners on December 9, 2004 so that they could make observations within one month. On September 7, 2005 the petitioners submitted their observations, and on September 14, 2005 these observations were forwarded to the State.

III. POSITIONS OF THE PARTIES A. Background

8. At issue in this case is the criminal trial of Aniceto Norín Catrimán and Pascual Huentequeo Pichún Paillalao. Before presenting the positions of the parties, the Inter-American Commission will give a brief summary of the trial, whose proceedings began with an investigation conducted by the Public Ministry, and concluded in the conviction of Mr. Norín and Mr. Pichún for the crime of making terrorist threats.[FN2] They are both currently serving their sentences and incarcerated.

[FN2] Article 7 of Law 18,314 on acts of terrorism:
An attempt to commit an act of terrorism described in this law shall be punished with the minimum sentence established by law for the consummated crime. If there is only one degree of punishment, the provisions of Article 67 of the Criminal Code shall be applied and the minimum shall be tentatively imposed.
A serious or credible threat to commit any of the aforementioned crimes shall be punished as an attempt of same.

Conspiracy with regard to the same crimes shall be punished with a sentence corresponding to the consummated crime, reduced by one or two degrees.
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9. With regard to the trial, the background information provided by the parties shows that the Prosecutor's office of the Public Ministry began an investigation in December of 2002 of fires that had occurred in some living quarters and a tree farm, both in the municipality of Traiguén, and ordered that Mr. Norín and Mr. Pichún be placed in preventive detention. In September of 2002, the prosecutor's office brought charges against Mr. Norín and Mr. Pichún and Ms. Patricia Roxana Troncoso Robles. They were accused of the following crimes: terrorist arson of a residential house on December 12, 2001 in the Nancahue tree farm in Traiguén municipality; terrorist arson of 80 hectares of celebrated pine forest in the San Gregorio tree farm.[FN3]

[FN3] The Regional Government for the Ninth Region and the Office of the Provincial Governor of Malleco intervened as complainants in the trial, Juan Ignacio Figueroa Elqueta intervened as a private accuser.
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10. On March 31 and April 2 and 9, 2003, the oral trial was held in the Angol Criminal Trial Courthouse. On April 14, 2003 the Court acquitted the three defendants and ordered the Public Ministry and the private accusers to pay court costs and the defendants' attorney's fees. It also denied the civil suit filed by one of the private accusers, ordering the latter to pay court costs.

11. On April 24, 2003 the Public Ministry and the private accusers filed an appeal with the Supreme Court based on procedural violations in the lower court trial. On July 2, 2003 the Supreme Court vacated[FN4] the judgment of acquittal and ordered the Retrial Court to proceed to a new trial.

[FN4] Justice Juica voted against the Supreme Court decision as he was inclined to deny the appeal.
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12. The second trial was held on September 9, 13, 15 and 22, 2003, with a decision issued on September 27 of that year. In the Second trial Ms. Troncoso was acquitted. Mr. Pichún was acquitted of the charge of arson to the living quarters in the Nancahue tree farm, while Mr. Norín was acquitted of the charge of arson to the San Gregorio tree farm, as well as the threats to harm the owners and administrator of the Nancahue tree farm. In the same judgment Mr. Pichún was convicted of making terrorist threats against the administrator and owners of Nancahue tree farm as set forth in Article 7 of Law 18,314. Mr. Norín was convicted of making terrorist threats against the owners of the San Gregorio tree farm.

13. The two alleged victims were sentenced to five years and one day of imprisonment, minimum degree of punishment; complete and permanent disqualification from holding public

office or exercising their political rights; and complete disqualification from exercising titled professions until the sentence has been served and the court costs have been paid. Furthermore, the convicted parties were disqualified from holding public office, elected or not; from being the principal or superior of an educational establishment or from serving as teachers; from running a media outlet or serving as director or administrator of same, or from performing functions related to issuing or disseminating opinions or information; and from being leaders of political organizations or community, professional, business, trade union, student or labor organizations in general. None of the alternative forms of serving the sentence provided for in law 18,216[FN5] were afforded to the defendants; it was expressly ordered that the sentence be served through incarceration.

[FN5] Law 18,216 of 1983 establishes alternative forms of punishment other than deprivation of liberty. These alternative forms of punishment are: a) conditional suspension of sentence; b) nighttime detention; and c) probation or supervised release.

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14. In early October 2003 the defense team of Mr. Norín and Mr. Pichún filed an appeal of the verdict before the Supreme Court based on procedural violations. On December 15, 2003 the Supreme Court denied the appeal.

B. The Petitioners

15. The petitioners stated that Mr. Norín and Mr. Pichún are members of the Mapuche people and are Lonkos[FN6] in the communities of Lorenzo Norín and Antonio Ñirripil, respectively. They added that the arrest, trial and conviction of their clients are part of what in Chile has come to be called the "Mapuche conflict." According to the petitioners, this has been described in the media as "tensions caused by indigenous people who oppose the economic development of the country and subvert law and order and public safety."[FN7] They indicated that the conflict pits "the indigenous people against the large forestry companies, large landholders and the State. The latter has reacted judicially by extending the debate to the courts, which means that the indigenous people have been put on trial for various crimes, making use of legislation extensively applied by the military regime to repress the opposition, practices that were harshly criticized during the military dictatorship by those who now hold power (the State Security Law and the Anti-terrorism Law)."[FN8]

[FN6] Traditional authority of the Mapuche people.
[FN7] Petitioners brief of August 15, 2003, p. 2.
[FN8] Petitioners' brief of August 15, 2003, p. 4

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16. The petitioners stated that the prosecution of Mr. Norín and Mr. Pichún is not an isolated incident, as the Chilean State has been judicially repressing the Mapuche because of their demands that their land be recognized or reinstated. The State has been applying special legislation enacted during the military dictatorship, which has led to the incarceration of a large

number of Mapuche, accused of what the State calls crimes of terrorism such as arson, land takeovers, and damages.

17. With regard to the criminal trial against Mr. Norín and Mr. Pichún, the petitioners stated that the Public Ministry and the private accusers requested the application of Law 18,314 on terrorist conduct enacted in 1984. It establishes longer sentences than those of common crimes, carries a series of restrictions on political rights and personal liberty, allows for longer periods of detention, allows the government to conduct its investigation in secret for up to six months, and permits wiretapping and other restrictions. They allege that in the case of Mr. Norín and Mr. Pichún the request to apply the anti-terrorism law was made because the private accuser is a former Minister of State and current member of the Constitutional Court.

18. The petitioners stated that during the trial the investigation had been conducted in secret for six months, which is only allowed by law for alleged terrorist conduct.[FN9] For common crimes the time limit on secret investigation is 60 days. In the first trial, the Public Ministry and the private accusers offered to produce evidence to substantiate the charges in the form of 67 witnesses, 13 experts, and documentary evidence. During the oral proceedings, two witnesses offered by the prosecutor and the accusers gave testimony while hidden behind a screen. The defense was unable to know the identity of the witnesses, which they feel constitutes a violation of the right to due process.

[FN9] Article 21 of Law 18,314 on acts of terrorism:
If, during the investigation of the crimes set forth in this law the Public Ministry deems that there is a risk to the safety of the witnesses or experts, it may order that certain acts, records or documents remain secret regarding one or more of the parties, according to the provisions of Article 182 of the Criminal Procedure Code. The time limit established in clause three of this provision may be extended for a total of up to six months.
Anyone who reveals the acts, records, or documents ordered to remain secret shall be punished with medium- to maximum-degree short-term imprisonment.

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19. Despite the objections of the defense, the court accepted this testimony. The defense, in turn, decided to present no evidence in light of the presumption of innocence, as the evidence presented at trial did not come close to overcoming that presumption. The court issued its decision acquitting the defendants on April 14, 2003. Paragraph 10 of the preamble explaining the legal reasoning states:

Considering the evidence presented by the Public Ministry and the private accuser, which was extensively debated and disputed during the hearing, it must be concluded that it does not meet the necessary standards of proof in terms of quality, certainty, or sufficiency to overcome the Constitutional presumption of innocence which protects the defendants. This allows these judges to peremptorily conclude that the material participation of PICHUN, TRONCOSO and NORIN in the crimes of which they have been accused has not been proven, according to the literal meaning of the charges lodged against them.[FN10]

[FN10] Judgment of acquittal issued by the judge of the Angol Criminal Trial Court dated April 14, 2003.

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20. Upon hearing the appeal based on procedural violations[FN11] the Supreme Court ruled on July 2, 2003 to vacate the verdict and ordered a new trial. According to the petitioners, the Supreme Court's decision was issued in violation of the presumption of innocence, because it states the following:

Regarding the possible involvement of the defendants, it is clear and apparent that both the Public Ministry and the private accusers gave evidence during the oral proceedings, as was expressly mentioned in the decision. However, the only explanation of this evidence was completely ignored. The judgment does not cover it and does not give reasons for its possible exclusion or acceptance. It does not weigh the evidence as required by law, such that the facts the judges take to be shown do not really contradict the principles of logic, the maxims experience, or scientifically supported knowledge, which is the only way to prevent any odd idea of arbitrariness by the judge issuing the decision.[FN12]

[FN11] An appeal based on procedural violations is that which is granted to nullify the trial and final judgment, or only the latter, for the reasons expressly indicated in the law. Article 372, Criminal Procedure Code, Law 19,696 of 2000.
[FN12] Supreme Court Ruling Rol Nº 1743-03, dated July 2, 2003.

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21. According to the petitioners, verdicts can be vacated and trials declared null and void in the following cases: when the conduct of the trial or issuance of a decision infringes substantially on the rights or guarantees protected by the Constitution or international treaties ratified by Chile that are in force; or when a decision is issued on the basis of an erroneous application of law that would have had a substantial influence on the verdict.[FN13] An appeal is also in order when one of the grounds set forth in Article 374 of the Criminal Procedure Code is present.

[FN13] Article 373, Criminal Procedure Code, Law 19,696 of 2000.

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22. The petitioners stated that the Supreme Court did not speak to the grounds set forth in Article 373(a) of the Criminal Procedure Code, which is precisely what gives it jurisdiction, and that the Supreme Court's decision violates the principle of presumed innocence, because it demands that the lower court give detailed reasons as to why the defendants were acquitted. Likewise, the petitioners alleged that there was a violation of the ne bis in idem principle with the ordering of a new trial for people who had already been acquitted. They acknowledged that the latter aspect is debatable, as it is necessary to determine whether the verdict of acquittal being appealed was a final, unappealable decision, and they state that the decision cannot be given to interpretation by the national courts.

23. The petitioners stated that with the second trial and conviction, their fear of having an unfair trial was realized because the judges were predisposed to convict, in violation of Article 8.1 and 8.2 of the American Convention. The petitioners asserted that: a) the judge must approach the case without prejudice and must not assume that the defendant is guilty. However, in clause 15 of its legal reasoning in the conviction, the court indicated:

Regarding the involvement of both defendants, it is imperative to consider the following: 1. As general background, and according to the evidence provided during the trial by the Public Ministry and the private accusers, it is a public and notorious fact that for some time in that area organizations have been active that use violence or incite violence as justification for land claims. Among the methods they employ are various acts of force against forestry companies and small and medium-sized farmers, all of whom are owners of land adjacent to or near indigenous communities that assert historic rights to the land. These actions are aimed at reclaiming land they deem to be ancestral, with illegal occupation being one means to attain the most ambitious ends. In this way they will recover part of their ancestral territory and strengthen the territorial identity of the Mapuche People.[FN14]

[FN14] Judgment of conviction issued by the judges of the Retrial Court of the Angol Criminal Trial Courthouse dated September 27, 2003. Whereas clause 15 (1).

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24. The petitioners added that in criminal law the burden of proof regarding guilt or innocence does not lie with the defendant. However, in paragraph 2 of whereas clause 15 of the decision this burden is reversed when the Court said:

It is not sufficiently proven that these acts were caused by persons outside the Mapuche communities, since they correspond to the clear intent to create a climate of total hostility towards the property owners in the sector, in order to instill fear and get them to accede to their demands. This responds to the logic of the so-called “Mapuche Problem” because the perpetrators knew the claimed territory and because no Mapuche community or property had been damaged.[FN15]

[FN15] Judgment issued by the judges of the Retrial Court of the Angol Criminal Trial Courthouse dated September 27, 2003. Whereas clause 15 (2).

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25. Likewise, they stated that the judgment accepts as fact things that the court itself had discussed as allegations, for example:

According to the testimony of Osvaldo Carvajal, both defendants are purported to belong to the Arauco Malleco C.A.M. Coordinator group, an organization which in fact, as was reiterated, is of a violent nature.[FN16]

[FN16] Judgment issued by the judges of the Retrial Court of the Angol Criminal Trial Courthouse dated September 27, 2003. Whereas clause (6).

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26. They added that in the judgment the Court convicted them for collective and not individual responsibility:

Regarding the involvement of both defendants it is imperative to consider the following: 3. It was proven that defendant Pascual Pichún is the Lonko of the Antonio Nirripil Community, and the second defendant, Norín is the Lonko of the Lorenzo Norín Community, which gives them rank and certain leadership capacity over those communities. 4. Likewise, it is imperative to stress that defendants Pichún and Norín have been convicted of other crimes related to occupying land on tree farms in places neighboring their respective communities, as is seen in case Rol No. 22,530 et al., for which Pascual Pichún was convicted and sentenced to 4 years of maximum-degree short-term imprisonment, and Norín to 800 days medium-degree short-term imprisonment, while both were sentenced to pay secondary claims and court costs for the crime. Furthermore, Pichún Paillalao was sentenced to 41 days in maximum degree prison and to pay a fine of 10 monthly tax units for committing the crime of driving while intoxicated. This is verified in the summary and background information and copies of the duly certified and filed final decisions. 5. The Mapuche communities of Didaico and Temulemu are adjacent to the Nancahue tree farm…[FN17]

[FN17] Judgment issued by the judges of the Retrial Court of the Angol Criminal Trial Courthouse dated September 27, 2003. Whereas clause 15 (3), (4) y (5).

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27. Furthermore, they indicated that the court violated the principle of presumed innocence in other paragraphs of the judgment, such as whereas clause 13. The court also did not reveal the identity of the witnesses to Mr. Norín or Mr. Pichún. In a segment pointed out by the petitioners, whereas clause 13 reads as follows:

The illicit acts mentioned are part of a process of recovering land for the Mapuche people, which has been carried out through de facto means, without adhering to the legal institutions in force. They have resorted to acts of force which are previously planned, coordinated, and prepared by aggravated groups that seek to create a climate of insecurity, instability, and fear among various sectors in regions eight and nine. These actions can be summarized as making disproportionate demands and the exertion of pressure by groups belligerent to the business owners and property owners. The latter are warned that they will suffer all kinds of attacks if they do not meet the demands. Many of these threats have materialized in physical attacks, robberies, thefts, arson, damages to property and land takeovers against individuals and the property of various people involved in agriculture and forestry in this part of the country.[FN18]

[FN18] Judgment issued by the judges of the Retrial Court of the Angol Criminal Trial Courthouse dated September 27, 2003. Whereas clause 13 (5).

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28. The petitioners added that the conviction was issued by a court that lacked competence because when the crimes occurred, procedural reform was in effect in the judicial district where the trial took place. However, since the special law giving the court such powers was not in effect yet, that court did not have jurisdiction. That law was enacted in 2002, whereas the events occurred in 2001. Therefore there was a violation of the right to freedom from ex post facto laws embodied in Article 9 of the Convention. That is, Mr. Norín and Mr. Pichún were convicted of a crime that did not then exist in Chilean legislation, that of making terrorist threats.

29. Regarding the requirements for admissibility of the petition under the Convention, the petitioners stated that domestic remedies have been exhausted.

C. The State

30. In its reply of November 29, 2004, the State made the general observation that in its view, the petition applies a mistaken and confusing method of analysis, reaching conclusions based on intentional suppression of the context in which courts conduct their reasoning. The State added that the petitioners forget that internal procedural rules demand that all judicial decisions contain a clear, logical, and complete explanation of the facts, circumstances, and evidence that are considered by the court during the trial. The State added that, consequently, a serious legal analysis must necessarily be done regarding the decision as a whole, and not regarding phrases or partialities, which is the only way to know or reveal the judicial truth established therein.[FN19] For this reason, the State analyzed of the various infractions alleged, presented a corollary on the criminal procedure reform process, and presented its specific requests.

[FN19] State's brief of August 15, 2003, p. 2.

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31. Regarding the transgression over the presumption of innocence, the State recalled that this principle is recognized in the national Constitution, in the Criminal Procedure Code, and in the text of several pieces of domestic legislation. As to the petitioners' questioning of the Supreme Court's July 2, 2003 decision to grant the appeal based on procedural violations filed by the Public Ministry and the private accusers, the State referred to the grounds and effects of a procedural appeal as set forth in the Criminal Procedure Code. In this vein, it stated that an isolated interpretation of Article 297,[FN20] which is the basis for the petitioners' reasoning, necessarily leads to mistaken conclusions because that rule must be viewed in conjunction with other precepts to which it is closely linked. Article 342 of the Criminal Procedure Code indicates what a judicial decision must always contain, be it an acquittal or a conviction. This includes a clear, logical, and complete explanation of each of the acts and circumstances that were proven, be they favorable or unfavorable to the accused, as well as an assessment of the evidence on which said conclusions were based according to Article 297.[FN21]

[FN20] Article 297 of the Criminal Procedure Code, Assessment of the evidence. The courts shall assess the evidence freely, but shall not contradict the principles of logic, maxims of experience, or scientifically supported knowledge.
In its legal reasoning, the court must address all of the evidence produced, even that which it may have dismissed, indicating in such cases the reasons for doing so.
The assessment of the evidence in the judgment shall require an indication of the mean or means of evidence whereby each of the facts or circumstances were proven. This legal explanation must allow one to reproduce the reasoning used to reach the conclusions drawn in the judgment.
[FN21] Article 342(c) Criminal Procedure Code.
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32. The State asserted that in granting the procedural appeal, the Supreme Court was ensuring that judicial decisions are issued with strict adherence to the procedural precepts that govern the reasoning given for verdicts. If the procedural appeal was granted, argued the State, it was not because it was deemed that the acquittal must lay out in detail the reasons why the defendant is innocent; rather, it is because a requirement demanded by the procedural law for judgments was missing. The State continued that this cannot be interpreted to mean that the Supreme Court presumed criminal liability of the petitioners for the events investigated.

33. With regard to its alleged violation of the principle of ne bis in idem, the State asserted that this did not occur in the present case, because the ban on double prosecution refers to a final judgment not subject to appeal. According to domestic legislation, a decision is considered final or res judicata once the parties are notified of it and there is no appeal against it.[FN22] In this case, the verdict of acquittal issued by the Trial Court of Angol was susceptible to appeal on procedural grounds, and therefore there was no violation of the aforementioned principle.

[FN22] Article 174, Civil Procedure Code.
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34. It bears mention, according to the State, that in this case the Public Ministry investigated and filed charges according to the standards of law 18,314 which criminalizes and punishes terrorist conduct. In the opinion of the State this was because the facts that gave rise to the investigation and subsequent prosecution fall within a framework of criminal activity taking place in Region Nine, perpetrated by a group of people who use ideological discourse based on claims to ancestral rights to come together to plan, organize, and carry out crimes. The purpose of these criminal acts is to instill fear among the population, or part of it, that one will fall victim to these kinds of crimes, by the means employed. There is evidence that it is all part of a premeditated plan to attack a certain category or group of people, particularly owners of agricultural estates and tree farms in the areas that the perpetrators have declared to be in conflict. The purpose is to pressure them to abandon their estates, and at the same time pressure the authorities to turn the land over to these groups. The State asserted that such a hypothesis is covered by law 18,314.

35. The State added that in order to give context to the events, it should be noted that since December 16, 2000, the Public Ministry has had to investigate numerous cases of serious crimes that have occurred in different areas of Region Nine, such as fires set to forests, planted fields, and farmhouses, as occurred in the case which led to the petition. There have also been burnings of agricultural and forestry machinery, attempted homicides, and serious harm to owners of agricultural estates, lumber company workers, attacks on privately owned vehicles, acts of aggravated damages, and other crimes. Thus far more than one hundred such complaints have been received and the victims are demanding justice. From the investigations conducted by the Public Ministry it is known that these acts are carefully planned and are executed in a similar way, and that the same people are repeatedly involved in these episodes of violence. They usually wear hoods and operate in groups, spreading fear among the population, particularly the rural population of small farmers and owners of agricultural properties, as well as the forestry companies. All of these actions have the population living in fear, including the indigenous communities that do not subscribe to these violent methods for demanding their rights. In Region Nine there are more than 3,500 Mapuche communities, encompassing 203,950 people. Thus, the less than 60 people involved in this criminal activity, many of them non-Mapuche, are a relatively small percentage of the Mapuche population.

36. The State added that while law 18,314 was enacted in 1984, most of its rules have been modified through various legal texts since 1990, in order to bring it in line with Constitutional and legal standards currently in force.

37. The State also addressed the arguments brought forth by the petitioners regarding the September 27, 2003 decision issued by the Angol Criminal Trial Court, which acquits on some charges and convicts on others. The petitioners had alleged that the court violated due process and approached the case with prejudice by making an assumption of guilt regarding the defendants, as is evidenced in whereas clause 15 of the decision. In response, the State asserted that it is necessary to point out that the paragraph of the decision transcribed in the petition does nothing more than relate the facts that were established during the trial based on the evidence rendered, which was assessed by the judges directly and assessed according to logic and the maxims of experience. The State added that the evidence presented at the trial was given with due guarantees of immediacy, publicity, and cross examination, with all the rights that the system offers to defendants. The defense was safeguarded and led by six attorneys, four of whom are part of the Criminal Public Defender's Service and paid by the Chilean government.

38. As to the petitioners' argument that whereas clause 15 of the judgment in question changed the burden of proof, the State asserted that the petition is once again mistaken when it takes the acts described therein to be attributed directly to the defendants. Those facts, taken by the court as proven, were included as part of the unquestionable context in which the events took place which led to the charges and ultimate convictions of Mr. Norín and Mr. Pichún, once their involvement was proven beyond all reasonable doubt.

39. Furthermore, the state rejected the petitioners' accusation that the judgment infringed on the presumption of innocence because the defendants were charged with criminal involvement on the basis of facts that were not convincingly established. The petitioners' assertion is based on the use of the Spanish conditional tense in whereas clause 15(6): "according to the testimony of

Osvaldo Carvajal, both defendants are purported to belong to the Arauco malleco C.A.M. Coordination group, an organization which in fact, as was reiterated, is violent in nature."[FN23] The State asserted that Mr. Norín and Mr. Pichún were not judged on whether or not they belonged to a certain group, but rather whether they had carried out certain acts; to wit: making terrorist threats. After examining all of the evidence, the court became convinced that the defendants had perpetrated these crimes. According to the State, this was apparent from the petitioner's own submission because nowhere did it indicate that the violation of this fundamental right took place with regard to these acts, the threats. The petitioner merely alleged infringement on the presumption of innocence with regard to secondary matters which were mentioned by the judge drafting the decision in order to give context to the specific charges.

[FN23] Judgment issued by the judges of the Retrial Court of the Angol Criminal Trial Courthouse of September 27, 2003. Whereas clause 15 (6).

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40. The State also addressed the charge by the petitioners that paragraphs 3, 4, and 5 of whereas clause 15 infringed on the principle of personal criminal liability, whereby liability cannot be extended to another person or persons who were not involved in the commission of the crime. The State alleged that showing that the defendants were lonkos in their respective communities is simply another fact that is certainly relevant, given the way and context in which the threats occurred. However, asserted the State, their guilt was not determined by being lonkos, but rather by the direct and indirect evidence indicating that they had made the threats.

41. The State asserted that the petitioners were also mistaken when they argued that mention of the defendants' prior convictions was considered to establish their involvement in the crime under investigation. This was merely an undisputed fact that may be relevant for determining the sentence according to the rules of Chilean criminal law.

42. The State said that the petitioners were also mistaken when they questioned the verdict for indicating that the Mapuche communities of Diádico and Temulemu are adjacent to the Nancahue tree farm. This is a real, factual circumstance that was legally established.

43. The State added that the petitioners asserted that the verdict infringed upon the presumption of innocence, and to uphold that assertion they singled out certain expressions in the judgment and quoted them out of context, such as "the Mapuche people," "aggravated groups," and belligerent groups." However, the State countered that the paragraphs quoted by the petitioners serve to provide context to the events surrounding the crime with which they were charged, and cannot be interpreted in isolation.

44. In Summary, the state argued that all of the petitioners' arguments seek to challenge a single whereas clause in the judgment, the one which gives context to the events investigated. However, they said nothing about the rest of the whereas clauses in which the judges addressed each and every piece of evidence presented against the defendants at trial, as well as the evidence presented by the defense, the assessment of which convinced the judges that the defendants were involved in the crimes, such that they were therefore ultimately convicted.

45. The State then addressed the alleged violation of due process rights based on the court not allowing the identity of the protected witnesses to be revealed. Witness protection rules are established in the criminal procedure code, in the aforementioned law 18,314, and in law 19,366 on drug trafficking. The legal grounds for protecting certain witnesses are none other than a risk to one's life or physical integrity, which is what was considered when these measures were requested by the Public Ministry. The State recalled that the Convention guarantees the defense's right to examine witnesses present in the court, a right which the defense fully exercised.

46. The State asserted that the protected witnesses did not give testimony with their faces covered—the pejoratively named "faceless witnesses"—but that they were behind a screen facing the courtroom. Furthermore, the identity of the protected witnesses had been previously corroborated and reported to the defense attorneys before they gave testimony. The testimony had also been turned over to the defense attorneys in advance so that they could study it before the trial and be prepared to cross-examine the witnesses. The State added that the petitioners' allegation that the substantial evidence in the trial consisted of the testimony of two "faceless witnesses," does not reflect the truth. A mere reading of the judgment shows that the court heard, received, and assessed the testimony of more then thirty witnesses and experts. Furthermore, the testimony of those witnesses did not make it possible to verify the facts for which they were testifying, that is, involvement of the defendants in the Nancahue tree farm fire, as was indicated in whereas clause 14 of the judgment.

47. Regarding the allegation that the court lacked jurisdiction, the State asserts that this analysis does not stand because it is based on an erroneous interpretation of the rules.

48. Regarding the alleged violation of Article 9 of the Convention, freedom from ex-post facto laws, the State asserted that the acts which the defendants were accused of committing were established as crimes in Chilean criminal legislation, specifically Article 7 of law 18,314.[FN24]

[FN24] Article 7 of Law 18,314 establishes:
An attempt to commit a terrorist act covered by this law shall be punished with the minimum sentence indicated by law for the consummated crime. If this only consists of one degree, the provisions of Article 67 of the Criminal Code shall be applied, and the attempted crime will receive the minimum sentence.
A serious and credible threat to commit any of the aforementioned crimes shall be punished as an attempt at same.
Conspiracy to commit these crimes shall be punished the sentence corresponding to the consummated crime, reduced by one or two degrees.

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49. Finally, and after referring to the criminal procedure reforms in Chile, the State requested that pursuant to Article 47.b and c the petition be declared inadmissible because it is manifestly unfounded, as the facts of the case do not depict acts that constitute a violation of the rights guaranteed by the American Convention.

IV. ADMISSIBILITY

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

50. Under Article 44 of the American Convention and Article 23 of the Rules of Procedure of the IACHR, the petitioners do have standing to lodge complaints with the Commission regarding alleged violations of the rights established in the American Convention. As for the State, Chile is a party to the Convention and must therefore respond in the international arena to violations of that instrument. The alleged victims are natural persons whose State has undertaken to guarantee the rights established in the Convention. Based on all of the foregoing, the Inter-American Commission is competent ratione personae to examine petition.

51. The IACHR is competent ratione materiae since the petition alleges violations of the human rights protected by the American Convention. Likewise, it is competent ratione temporis as the obligation to respect and guarantee the rights protected in the American Convention was in force for the State on the date when the acts mentioned in the petition are alleged to have occurred, since Chile ratified the American Convention on August 21, 1990. Finally, the Inter-American Commission is competent ratione loci to examine the petition because it alleges violations of rights protected in the American Convention having occurred within the territory of a State Party to said instrument.

B. Admissibility Requirements

1. Exhaustion of domestic remedies

52. Article 46.1.a of the Convention establishes that one of the requirements for admission of a petition is "that the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law."

53. From the information submitted by the parties, the Commission observes that in the present petition all domestic remedies have been exhausted. Indeed, on December 15, 2003 the Supreme Court denied the appeal filed by Mr. Norín and Mr. Pichún's defense team, which was based on procedural violations in the judgment of conviction that was issued from their second trial on September 27, 2003.

54. Under Article 387 of the Criminal Procedure Code, the decision ruling on a procedural appeal is not subject to any further remedy, without prejudice to review of the final judgment of conviction. Nor is any further remedy possible for a judgment issued in a new trial that is held as the result of the granting of an appeal based on procedural violations. However, the rule adds that if the judgment is one of conviction while the vacated judgment had been one of acquittal, a procedural appeal on behalf of the defendant is in order.

55. The Commission verifies that the remedies provided for in Chilean legislation for such cases have been exhausted, and that therefore the petition examined meets the requirement established in Article 46.1.a of the Convention.

2. Time period for lodging a petition

56. Article 46.1.b of the American Convention establishes that one of the requirements for admission of a petition is that it be "lodged within a period of six months from the date on which the party alleging violation of his rights was notified of the final judgment."

57. However, the Convention's requirements for exhaustion of domestic remedies and for lodging the petition within six months of notification of the final judgment are independent. Therefore, The Inter-American Commission must determine if the petition being examined was lodged within a reasonable time frame. The first communication from the petitioners which served as the basis to begin processing in the Commission was received on August 15, 2003, before final exhaustion of domestic remedies. On December 15, 2003 the Supreme Court issued its decision on the last appeal filed during the proceedings against Mr. Norín and Mr. Pichún. Therefore, the IACHR considers the petition to have been lodged within a reasonable time period, thus fulfilling the requirement of Article 46.1.b of the American Convention.

3. Duplication of proceedings and res judicata

58. The petition file contains no information whatsoever that might lead one to believe that this matter is pending resolution in another international forum. Nor is it believed that this petition or communication is substantially the same as one previously studied by the IACHR. Therefore, the Commission concludes that the requirements of 46.1.c and 47.d of the American Convention have been met.

4. Characteristics of the alleged facts

59. In the present case, the State alleged that the petition is inadmissible because the facts described therein do not tend to establish a violation of the rights guaranteed by the Convention. Thus the State asked the IACHR to dismiss the case pursuant to Article 47.b and c of the American Convention.

60. The Commission does not consider it appropriate at this stage of the proceedings to establish whether violations of the alleged victims' rights to a fair trial and freedom from ex-post facto laws in fact occurred. For the purposes of admissibility, the IACHR must only determine whether facts were presented that if proven would constitute a violation of the American Convention, as stipulated in Article 47.b of same, or whether the petition is "manifestly groundless" or "obviously out of order," according to subparagraph (c) of that Article.

61. The criteria for assessing these extremes are different from the requirements for ruling on the merits of a petition. The IACHR must conduct a prima facie evaluation to determine whether the petition provides grounds for the apparent or potential violation of a right guaranteed by the Convention, but not establish the existence of such a violation.[FN25] This is a summary

analysis, which does not imply prejudice or advance an opinion on the merits of the case. The distinction between the review to determine admissibility and the review required to determine a violation is reflected in the Rules of Procedure of the Inter-American Commission, which establish different stages for admissibility and merits.[FN26]

[FN25] See IACHR, Report No. 128/01, Case 12,367, Herrera y Vargas ("La Nación"), Costa Rica, December 3, 2001, para. 50. See IACHR Report No. 4/04, Petition 12,324, Rubén Luís Godoy, Argentina, February 24, 2004, para. 43.
[FN26] See IACHR, Report No. 31/03, Case 12,195, Mario Alberto Jara Oñate et al., Chile, March 7, 2003, para. 41. See IACHR Report N° 4/04, Petition 12,324, Rubén Luis Godoy, Argentina, February 24, 2004, para. 43.

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62. The jurisprudence of this body clearly establishes that it is not competent to review decisions issued by national courts acting within their jurisdiction and respecting the right to a fair trial. The IACHR cannot become a forum to review alleged errors of fact or law committed by national courts acting within the limits of their competence. However, within the limits of its mandate to protect the rights embodied in the Convention, the Inter-American Commission is competent to declare a petition admissible and to rule on its grounds when it refers to a national judicial decision that was issued in a departure from due process, or if it describes a violation of any other right protected by the Convention.[FN27]

[FN27] See IACHR Report Nº 1/03, Case 12,221, Jorge Omar Gutiérrez, Argentina, February 20, 2003, para. 46, citing Report Nº 39/96, Case Nº 11,673, Marzioni, Argentina, October 15, 1996, paras. 50-51. See, IACHR, Report Nº 4/04, Petition 12,324, Rubén Luis Godoy, Argentina, February 24, 2004, para. 44.

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63. The State argued that the complaint is manifestly groundless because it does not state facts that tend to establish a violation of the rights guaranteed by the American Convention.

64. However, the petitioners stated that in the trial of Mr. Norín and Mr. Pichún there was a failure to provide freedom from ex post facto laws, which "presumes a clear definition of the criminalized conduct, … establishes its elements, and allows it to be distinguished from behaviors that are either not punishable or punishable but not with imprisonment."[FN28] This applies because the law on terrorist conduct, under which they were prosecuted, has vague definitions of penal categories, establishes greater sentences than those of common crimes, carries a series of restrictions on political rights and personal liberty, allows for longer periods of detention, allows investigations to be conducted in secret for up to six months, and allows wiretapping and other restrictions. The petitioners specifically argued that the alleged victims were sentenced to incarceration for the crime of "making terrorist threats," a penal category that is not established in the law on terrorist conduct. They also asserted in the petition that the criminal trial did not respect the principle of freedom from ex post facto laws,[FN29] the requirement to have a tribunal that was previously established by law, nor the precautions

required by a democratic system to ensure that criminal sanctions are adopted with utmost respect for the basic rights of individuals after a careful examination to determine whether illicit behavior occurred.[FN30] The petitioners further argued that the State violated the alleged victims' fundamental rights to judicial guarantees, such as the right of the defense to properly examine witnesses.

[FN28] See, e.g. the analysis conducted by the Inter-American Court of Human Rights in the Ricardo Canese Case, Judgment of August 31, 2004. Series C No. 111, para. 174; Cantoral Benavides Case, Judgment of August 18, 2000. Series C No. 69, para 157; the Castillo Petruzzi et al. Case, Judgment of May 30, 1999. Series C No. 52, para. 121; and the De la Cruz Flores Case. Judgment of November 18, 2004. Series C No. 115, Title VII.

[FN29] See, e.g. the analysis conducted by the Inter-American Court of Human Rights in the Ricardo Canese Case, August 31, 2004. Series C No. 111, para. 177; and Baena Baena Ricardo et al. Case, Judgment of February 2, 2001. Series C No. 72, para 107; and De la Cruz Flores Case. Judgment of November 18, 2004. Series C No. 115, Title VII.

[FN30] See, e.g., the analysis conducted by the Inter-American Court of Human Rights in the Baena Ricardo et al. Case. Judgment of February 2, 2001. Series C No. 72, para. 106; and I/A Court H. R., Case of De la Cruz Flores. Judgment of November 18, 2004. Series C No. 115, Title VII; and, inter alia, Eur. Court H.R. Ezelin judgment of 26 April 1991, Series A no. 202, para. 45; and Eur. Court H.R. Müller and Others judgment of 24 May 1988, Series A no. 133, para. 29.

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65. Based on the arguments and documentation provided by the parties, as well as Inter-American jurisprudence, the Commission does not find the petition to be manifestly groundless or out of order. It finds, prima facie, that the petitioners' allegations regarding the special penal regime applied to the alleged victims, the definition of illicit behavior or the penal category utilized, the determination of the competent judge, and the right to one's defense may all constitute violations of the rights guaranteed by Articles 8 and 9 of the Convention, and Article 1.1 of the same instrument, to the detriment of Aniceto Norín Cartimán and Pascual Huentequeo Pichún Paillalao. The petitioners alleged that a special penal regime more severe than that for ordinary crimes was used against the victims because of their ethnic origin. The Commission considers that these reported acts may constitute a violation of Article 24 of the American Convention, and also Article 1.1 of that instrument.

66. The Inter-American Commission therefore considers that the petition satisfies the requirements established by Article 47.b and c of the American Convention.

V. CONCLUSIONS

67. The IACHR concludes that it is competent to hear the merits of this case and that the petition is admissible under Article 46 and 47 of the American Convention and Articles 30 and 37 of its Rules of Procedure.

THE INTER-AMERICAN COMMISSION OF HUMAN RIGHTS,

DECIDES:

1. To declare this case admissible with respect to the alleged violations of Articles 8, 9, and 24 and regarding Articles 1.1 and 2 of the American Convention on Human Rights.
2. To notify the State and the petitioners of this decision.
3. To publish this decision and include it in its Annual Report to the General Assembly of the Organization of American States.

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, Paolo G. Carozza and Víctor Abramovich, Commissioners.