

WorldCourts™

Institution: Inter-American Commission on Human Rights
File Number(s): Report No. 33/07; Petition 581-05
Title/Style of Cause: Victor Manuel Ancalaf Llaupe v. Chile
Doc. Type: Decision
Decided by: President: Florentin Melendez;
First Vice-President: Paolo Carozza;
Second Vice-President: Victor Abramovich;
Commissioners: Sir Clare K. Roberts, Evelio Fernandez Arevalos, Freddy Gutierrez Trejo.
Dated: 23 April 2007
Citation: Ancalaf Llaupe v. Chile, Petition 581-05, Inter-Am. C.H.R., Report No. 33/07, OEA/Ser.L/V/II.130, doc. 22 rev. 1 (2007)
Represented by: APPLICANTS: Ariel Leon Bacian, Sergio Fuenzalida Bascunan and Jose Alywin Oyarzun
Terms of Use: Your use of this document constitutes your consent to the Terms and Conditions found at www.worldcourts.com/index/eng/terms.htm

I. SUMMARY

1. On May 20, 2005 the Inter-American Commission on Human Rights (hereinafter the “Inter-American Commission,” or “the IACHR”) received a complaint filed by 69 Mapuche indigenous community leaders[FN1] and the attorneys Ariel León Bacian, an Aymara; Sergio Fuenzalida Bascuñán, of the Center for Social Legal Studies and Indigenous Documentation; and José Alywin Oyarzún, Director of the Observatory of Indigenous Peoples’ Rights, (“the petitioners”), all of whom are representing Mr. Víctor Manuel Ancalaf Llaupe (“the alleged victim”). The complaint was filed against the State of Chile (“the State” or “the Chilean State”), alleging violation of Articles 8, 9, 24, and 1(1) of the American Convention on Human Rights (“the American Convention” or “the Convention”) in the criminal trial of the alleged victim, wherein he was convicted as the perpetrator of a terrorist offense as provided under Law N° 18.314, which defines terrorist behaviors and establishes related penalties.

[FN1] The leaders’ names are in the IACHR case file.

2. As regards admissibility, the petitioners argue that domestic remedies were exhausted with the complaint appeal (recurso de queja) filed with the Supreme Court of Justice and decided on November 22, 2004.

3. For its part, the State disputes admissibility, arguing that the complaint was not filed in a timely manner in accordance with Article 46(b) of the American Convention. It also asserts that

no specific facts were alleged with respect to the 69 Mapuche who signed the petition, in accordance with Article 47(b) of the American Convention.

4. After analyzing the petition and in accordance with the provisions of Articles 46 and 47 of the American Convention, as well as Articles 30, 37 and related articles of its Rules of Procedure, the IACHR declares that the petition is admissible with respect to the alleged violations of Articles 8, 9, and 24, as they relate to the general obligations established in Articles 1(1) and 2 of the American Convention. The Inter-American Commission also determines to notify the parties, 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. The Inter-American Commission received the petition on May 20, 2005 and assigned it the number 581-05. The information was sent to the State on August 12, 2005, allowing it a period of two months to submit its response.

6. On October 12, 2005, the State of Chile requested an extension for submission of its response to the complaint. On October 17, 2005, the IACHR granted the State an extension until November 12, 2005 to submit its observations.

7. The State of Chile submitted its response on November 22, 2005, which was transmitted to the petitioners on December 1, 2005, requesting its observations within a period of one month. On December 30, 2005, the petitioners submitted their observations, which were transmitted to the State on March 16, 2006, with a request that it submit its observations within a period of one month. As of the date this report was published, the State had not submitted its observations.

III. POSITION OF THE PARTIES

A. Petitioners

8. In their initial petition, the complainants indicated that Mr. Víctor Manuel Ancalaf Llaupe is an indigenous Mapuche and has the title of Werken, i.e., a community messenger, or Lof,[FN2] who was convicted as the alleged perpetrator of the alleged offense of terrorism. The petitioners indicate that on March 19, 2002, the then Governor the province of Bío-Bío, in the country's Region IX, a confidential employee of the President of the Republic, a government official, and state administration official, filed a petition with the Appeals Court in Concepción, based on Article 10 of Law 18.314, which defines terrorist behaviors and establishes the related penalties, in order to initiate the judicial process to investigate and punish those responsible for actions characterized in that submission as terrorist acts.

[FN2] In the Mapuche sociopolitical organization, the role of the Werken is that of a messenger or spokesperson vis-à-vis other Mapuche communities as well as non-Mapuche society. Together with the Lonko, or chief of the community, they are the leaders at the head of the organization. The existence of these traditional Mapuche roles has been recorded by ethnographers and experts

in anthropology, and has been recognized by the Chilean courts. Petitioner's brief of May 20, 2005.

9. According to the petitioners, the Governor of the province of Bío-Bío related the following events in the submission:

1. On Sunday, March 17, 2002, at approximately 10:00 p.m., in the Guayalí public road sector, a group of five hooded man, one of whom carried a firearm (shotgun), intercepted a truck belonging to the BROTEC company, an ENDESA contractor, and fired into the air to force the driver to get out. They immediately threw a lighted candle inside the vehicle, burning it completely.

2. On September 29, 2001, as established in the proceeding, at approximately 3:20 a.m., two more trucks carrying materials to the Ralco Dam projects were intercepted by a group of six individuals who forced the drivers to get out and then set the vehicles on fire with the help of the fuel they carried. On the same date, these individuals proceeded to throw gasoline at a backhoe that was alongside an area belonging to ENDESA, burning it completely.

3. On March 3, 2002, a truck traveling on the Guayalí road was intercepted by a van. Two hooded men got out of the van, one of whom carried a shotgun and proceeded to shoot into the air in order to frighten the driver and force him to get out of the vehicle and move away. The attackers then sprayed the truck with gasoline and set it on fire, burning it completely.[FN3]

[FN3] Petition dated March 19, 2002 filed by the Governor of the province of Bío-Bío before the Appeals Court in Concepción. Cited by the petitioners in their brief dated May 20, 2005

10. The petitioners indicate that the preliminary stage of the judicial proceeding ended on April 17, 2003, and an indictment was issued on May 23 of the same year, accusing Víctor Manuel Ancalaf of having committed alleged terrorist offenses, offenses defined, according to the petitioners, in Article 2.4 of Law 18.314, as it relates to Article 1 of the same law, with respect to the three events indicated above. The government of Bío-Bío joined the indictment on June 3, 2003 and the defense responded to the indictment on July 7, 2003.

11. The petitioners indicate that the lower court decision was issued on November 30, 2003, and sentenced Víctor Ancalaf to ten years and one day of long-term mid-level imprisonment, as the perpetrator of the terrorist offenses established in Article 2.4 of Law 18.314,[FN4] as it relates to Article 1 of the same law, committed on September 29, 2001, and March 3 and 17, 2002, in the Upper Bío-Bío sector of the Eighth Region. Mr. Ancalaf was also sentenced to the additional penalties of perpetual and absolute disqualification for public duties and offices and political rights and absolute disqualification for degreed professions for the term of the sentence, and to pay the costs of the case. According to the petitioners, pursuant to Article 9 of the Political Constitution of Chile,[FN5] Mr. Ancalaf Llaupe was disqualified for a period of 15 years from carrying out teaching duties; from operating a social communications medium or being the director or administrator thereof; or from performing therein functions related to the airing or dissemination of opinions or information; or from acting as the leader of political organizations

or those related to education or neighborhood, professional, corporate, union, student, or association related matters in general. According to the petitioners, the above sentence was appealed on January 3, 2004.

[FN4] Law 18.314, Article 1: The offenses listed in Article 2 constitute terrorist offenses when any of the following circumstances apply:

1a The offense is committed with the intention of producing in the population or in a portion thereof a well-founded fear of becoming victim to similar crimes, either due to the nature and effect of the methods used or evidence that it responds to a premeditated plan to attack a specific category or group of people.

The goal of producing fear among the general population shall be presumed, unless there is indication to the contrary, based on the fact that the offense was committed through the use of explosive or incendiary devices, weapons with great destructive power, toxic, corrosive or infectious agents, or other agents that could cause great havoc, or by mailing letters, packages or the like with explosive or toxic effects.

2a The offense is committed to wrest decisions from authority or to impose demands.

Article 2: The following shall constitute terrorist offenses when they satisfy any of the characteristics indicated in the previous article:

No. 4: Placing, tossing, or shooting bombs or explosive or incendiary devices of any type that affect or could affect personal safety or cause harm.

[FN5] Political Constitution of Chile states at Article 9:

Terrorism, in any of its forms, is essentially contrary to human rights.

A qualified quorum law shall define terrorist acts and the punishment for them. Those responsible for these offenses shall be disqualified for a period of fifteen years from holding public office or positions, whether popularly elected or not, or the position of rector or director of an educational facility, or carrying out teaching functions therein; from operating a social communications medium or being the director or administrator thereof, or from serving functions therein that are related to education or neighborhood, professional, corporate, union, student, or association related matters, during that period. The preceding is understood to be without prejudice to other disqualifications or longer disqualification periods established by law.

The offenses referred to in the previous paragraph shall be considered ordinary and not political for all legal purposes and individual pardons shall not be admissible with respect to them, except to commute the death penalty to life in prison.

12. On June 4, 2004, a higher court ruling was issued. The petitioners state that the sentence modified the lower court ruling in the sense that Mr. Ancalaf's participation in the events of September 29, 2001 and March 3, 2002 were not held to have been proven, sentencing Mr. Ancalaf to five years and one day and additional penalties, as the perpetrator of a terrorist offense based on the events of March 17, 2002.

13. The petitioners state that Mr. Ancalaf Llaube's defense later filed an appeal seeking a reversal of the conviction in the lower court [recurso de casación], based on errors of law, and at the same time they submitted a complaint appeal seeking invalidation of the conviction due to error or serious abuse in the decision handing down the conviction. According to the petitioners,

the appeal for reversal was declared inadmissible on August 2, 2004 and the complaint appeal was handled and rejected on November 22, 2004 because in the view of the Court there was no error or serious abuse on the part of the sentencing judges.

14. The petitioners argue that there was in this case a violation of the principle of proportionality and harmlessness that should underlie a democratic criminal system, amounting to a violation of the right or principle of equality and non-discrimination enshrined in Articles 1 and 24 of the Convention. They argue that the law punishing terrorist offenses in Chile, Law 18.314 of May 17, 1984, includes among the types of conduct classified as terrorist acts “placing, throwing, or igniting bombs or explosive or incendiary devices of any kind that affect or could affect personal safety or cause harm.”[FN6] According to the petitioners, this typical description, relating to mere effects on property, completely exceeds the proper proportionality that should exist between the seriousness of the act, the definition of the offense, and the punishment given to the crime.

[FN6] Petitioners’ brief dated May 20, 2005

15. They also state that the principle of proportionality and consequently the right to equality and non-discrimination enshrined in Articles 1 and 24 of the American Convention was violated, because the courts handed down a conviction for the alleged terrorism offense without proper appreciation and discernment regarding the legal nature and actual seriousness of the alleged act, by indiscriminately applying antiterrorist legislation.

16. The petitioners also affirm that there has been a violation of the right to a fair trial and the presumption of innocence as enshrined in Articles 8 and 9 of the Convention, in that the conviction was handed down on the basis of insufficient evidence and the evidentiary methods used in the criminal proceeding against Mr. Víctor Ancalaf. They argue that according to the system for evaluating reasonable judgment, the law applicable to the case required assessing the evidence according to the stricter system of legal evidence.

17. The petitioners state that the actions of which Mr. Víctor Ancalaf Llaupé is accused cannot be understood without reference to the construction of the Ralco Hydroelectric Plant, which led to the complaint submitted to the Inter-American Commission,[FN7] in which a friendly settlement was reached that, according to the petitioners, has not yet been implemented by the State of Chile.

[FN7] IACHR, Report N° 30/04. Petition 4617/02. Friendly Settlement, Mercedes Julia Heunteao Beroiza et al., Chile.

18. Further, the petitioners state that the actions attributed to Mr. Ancalaf Llaupé occurred during the construction of the Ralco Hydroelectric Plant, in Mapuche-Pehuenche territory, and

that his relationship to the Ralco Hydroelectric Plant was expressly indicated in Friendly Settlement Report N° 30/04 of the Inter-American Commission.[FN8]

[FN8] In that report the IACHR expresses the following:

The State of Chile shall seek to ensure strict observance with the rules of due process guaranteed in Article 8 (rights to a fair trial) of the American Convention on Human Rights, and underscores that it has a duty to ensure that the accused enjoys all of his rights under the Constitution and the law. (2) Once final judgments have been delivered in the lawsuits in which Mr. Víctor Ancalaf Llaupe is currently under prosecution or has been sentenced, in the event those judgments entail prison terms, the Government of Chile undertakes to study the application of all the instruments that the law provides to invoke the benefits guaranteed to all persons deprived of liberty by decision of the courts, and furthermore, to examine the adoption of the appropriate measures applicable to his case. (3) At the request of the petitioning Mapuche Pehuenche families, the Government of Chile expresses its disposition to seek, via the appropriate legal and administrative procedures, to procure humanitarian assistance on behalf of the family of Mr. Ancalaf Llaupe.”

IACHR, Report N° 30/04. Petition 4617/02. Friendly Settlement, Mercedes Julia Heunteao Beroiza et al., Chile.

19. With respect to the State’s argument that the complaint was not filed in a timely manner, the petitioners[FN9] stipulate that the deadline for submitting the complaint to the Commission was May 22, 2005, and the complaint was submitted on May 20, 2005.

[FN9] On December 30, 2005, the petitioners submitted their observations regarding the State’s brief.

20. In its observations brief dated December 30, 2005, the petitioners clarify the point that the victim of the human rights violations being claimed is Víctor Manuel Ancalaf Llaupe, and that the attorneys as well as the 69 Mapuche who sign the complaint do so as petitioners.[FN10]

[FN10] “The petitioners in the complaint, who include 69 Mapuche leaders, non-indigenous attorneys and a member of the Aymara people is one thing, and the victim of the human rights violation, Víctor Ancalaf, is something quite different. The observation that 69 Mapuche leaders who signed the petition are in a position of being threatened given the repeated application of antiterrorist legislation against the members of this people is information that we want the Commission to take into account.” Petitioners’ brief dated December 30, 2005.

B. The State

21. The State argues in its observations that the petition is inadmissible because it was not submitted within the required time period and because it does not relate events that constitute a violation of the American Convention, in that it refers to the indictment, prosecution and conviction of Mr. Víctor Manuel Ancalaf Llaue for a terrorist offense.

22. According to the State, the indictment of Víctor Ancalaf was dated March 19, 2002 and its purpose, within the framework of current legal and constitutional standards, was to initiate a court proceeding intended to investigate serious actions constituting crimes that occurred on September 29, 2001 and March 3 and 17, 2002.

23. The State asserts that the petitioners' brief indicates that the lower court decision was issued on November 30, 2003. This decision was appealed and the higher court decision modified the earlier decision in the sense that it reduced the sentence to five years and one day. Subsequently, the defense filed an appeal for reversal with the Supreme Court that was ruled inadmissible on August 2, 2004. The complainants filed a complaint appeal on November 22, 2004, which was rejected and with which the domestic remedies were exhausted.[FN11]

[FN11] State's brief dated November 2, 2005.

24. The State stipulates that these same petitioners recognize that the domestic remedies were exhausted with the appeal dated November 22, 2004, and the decision became final in accordance with Article 46 of the American Convention. According to the State, this deadline ran out on May 22, 2005, and the petition is thus inadmissible because, according to the State, the Executive Secretariat of the Inter-American Commission informed it of the petition on August 12, 2005, that is, beyond the deadline established in Articles 46.1.b and 47.a of the Convention and Article 32.1 of the Rules of Procedure of the Commission.

25. In its response to the communication sent by the Commission, the State makes reference to the 69 Mapuche who signed the complaint. In this regard, the State of Chile stipulates that the series of facts reported and that allegedly constituted violations of the American Convention refer solely to the indictment, prosecution and conviction of Mr. Víctor Ancalaf Llaue for the offense of terrorism. The State argues that the complaint does not detail specific facts regarding the 69 Mapuche leaders that constitute violations of the Convention attributable to the State.

26. According to the State, the complaint submitted indicates that the 69 Mapuche leaders who signed the complaint do so "due to the repeated application of antiterrorist legislation against Mapuches, which constitutes a situation of threat affecting all of them." [FN12] In this respect, the State indicates that it is not sufficient for purposes of the Inter-American Commission's jurisdiction in a complaint or claim that there be a fear of possible or probable threats due to a specific situation. As a result, the complaint with respect to the 69 Mapuche leaders, separate from Víctor Manuel Ancalaf Llaue, is inadmissible and without foundation, in view of the provisions of Article 47.b of the Convention and Article 32 of the Commission's Rules of Procedure.

[FN12] Petitioners' brief dated May 20, 2005, cited in the State's brief dated November 22, 2005.

27. The State reiterates that any communication must always have a victim, in that the Commission cannot rule in the abstract on a law or administrative situation in a State Party to the American Convention. In the current petition, according to the State, the only alleged victim individually identified is Mr. Víctor Manuel Ancalaf Llaupe.[FN13]

[FN13] "Any communication must always have a victim, because the Commission cannot use this procedure to rule in the abstract regarding a law or administrative practice." Medina Quiroga Cecilia et al. *Manual de Derecho Internacional de los Derechos Humanos, para Defensores Penales Públicos*. Part I. Chile, 2003, page 56. Cited by the State in its brief dated November 22, 2005.

28. In addition, the State asserts that Court precedents in this regard have stated that in order to initiate the "procedures set forth in Articles 48 and 50 of the American Convention...it is essential that the Commission receive a communication or petition alleging a concrete violation of the human rights of a specific individual." [FN14]

[FN14] I/A Court H.R., Advisory Opinion OC-14-94. Cited in the State's brief dated November 22, 2005

29. The State requests that the Inter-American Commission declare the complaint inadmissible by virtue of the allegations made and in accordance with the provisions of both the American Convention and the Commission's Rules of Procedure.

IV. ANALYSIS OF ADMISSIBILITY

A. Competence *ratione personae*, *ratione materiae*, *ratione temporis*, and *ratione loci*

30. In accordance with Article 44 of the American Convention and Article 23 of the Rules of Procedure of the IACHR, the petitioners have standing to submit petitions to the Commission regarding alleged violations of the rights established in that treaty. As regards the State, Chile is a party to the American Convention and thus answerable in the international arena for violations of that instrument.

31. In this regard, the State argues that the complaint with respect to the 69 Mapuche leaders who signed the petition was inadmissible and groundless. For their part, the petitioners clarified in their brief dated December 30, 2005 that the victim of the human rights violations they report

is Víctor Manuel Ancalaf Llaupe and that the attorneys as well as the 69 Mapuche who signed the petition did so as petitioners.

32. Thus, the petition indicates as the alleged victim an individual with respect to whom the Chilean State agreed to honor and guarantee rights enshrined in the American Convention. Based on all the foregoing, the Inter-American Commission is competent *ratione personae* to examine the complaint.

33. The IACHR is competent *ratione materiae* because the petition refers to complaints of violations of human rights protected by the American Convention. In addition, it enjoys competence *ratione temporis* in that the obligation to respect and guarantee the rights protected in that treaty was already in effect for the State on the date on which the event alleged in the petition would have taken place, given that Chile ratified the American Convention on August 21, 1990. Finally, the Inter-American Commission is competent *ratione loci* to hear the petition, in that it alleges violations of rights protected under the American Convention that would have occurred within the territory of a State Party to that instrument.

B. Requirements for admissibility of the petition

1. Exhaustion of domestic remedies

34. Article 46(1)(a) of the American Convention establishes as one of the requirements for admission of a petition “that the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law.”

35. Based on the information provided by the parties, the Commission notes that domestic remedies have been exhausted with respect to the facts denounced in this petition. In effect, on November 22, 2004, the Supreme Court rejected the complaint appeal the defense filed on behalf of Mr. Víctor Manuel Ancalaf Llaupe, which sought the invalidation of the conviction due to serious error or abuse in the decision.

36. In accordance with Article 97 of the Organic Code of Courts, decisions issued by the Supreme Court in appeals on substantive grounds, on procedural grounds, for complaint, for protection, for constitutional protection, and for review are not subject to appeal whatsoever, other than for clarification, correction or amendment as established in Article 182 of the Code of Civil Procedure. Any resubmission or reconsideration of the rulings referred to in this article is inadmissible and shall be rejected in full by the President of the Court.

37. The Inter-American Commission confirms that the remedies provided by Chilean law for these cases have been exhausted and consequently determines that the petition under review meets the requirement established in Article 46(1)(a) of the American Convention.

2. Deadline for submission of the petition

38. Article 46(1)(b) of the American Convention establishes as one of the requirements for admission of a petition 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."

39. In this regard, the State argues that the petition is inadmissible because the Executive Secretariat of the IACHR informed the State of the petition on August 12, 2005, i.e., beyond the deadline established in Articles 46(1)(b) and 47(a) of the Convention and Article 32(1) of the Rules of Procedure of the Commission.

40. It is a fact undisputed by the parties that on November 22, 2004 the Supreme Court of Chile ruled on the final appeal filed during the case against Mr. Víctor Manuel Ancalaf Llaupe. According to the provisions of Article 46(1)(b) of the Convention, the deadline for submitting a complaint to the IACHR was May 22, 2005. In the instant case, the petition or communication from the petitioners was received by the IACHR on May 20, 2005.

41. Based on the above, the IACHR rejects the argument made by the State of Chile that the petition is inadmissible because it was not submitted on a timely basis. This is because the six month period established under Article 46(1)(b) of the Convention runs from the date on which the party alleging violation of his rights was notified of the final decision until the petition is submitted to the IACHR, not until the petition is transmitted to the respective State.

42. Based on the foregoing, the IACHR concludes that the petition satisfies the requirement established in Article 46(1)(b) of the American Convention.

3. Duplication of proceedings and res judicata

43. The petition file contains no information that could lead to a determination that the complaint submitted is pending in any other international proceeding. Neither are there any indications that this petition reproduces a petition previously reviewed by the IACHR. Thus, this body concludes that the requirements under Articles 46(1)(c) and 47(d) of the American Convention have been satisfied.

4. Characterization of the facts

44. In this matter, the State alleges that the petition is inadmissible because the facts related therein do not constitute violations of rights protected by the Convention, on which basis it asked the IACHR to throw out the complaint pursuant to Article 47(b) and c of the American Convention.

45. In this regard, the Commission considers that it is not appropriate at this stage of the proceedings to decide whether there were violations of the alleged victim's right to a fair trial or the principle of freedom from ex post facto laws. For purposes of admissibility, the IACHR must at this point only resolve whether facts are presented that, should they be proven, would characterize violations of the American Convention, as stipulated in Article 47(b) thereof, and whether the petition is "manifestly groundless" or "obviously out of order," as per subparagraph "c" of that same article.

46. The criterion for evaluating these points is different from that needed to rule on the merits of a complaint. The IACHR must perform a *prima facie* evaluation and determine whether the complaint supports the apparent or potential violation of a right guaranteed by the American Convention, but must not at this point establish the existence of that violation.[FN15] At this stage it is appropriate to perform a summary analysis that does not involve prejudgment or a preliminary opinion as to the merits. The Rules of Procedure of the Inter-American Commission, by establishing an admissibility phase and a merits phase, reflects this distinction between the evaluation that the Inter-American Commission must perform for purposes of declaring a petition admissible and that needed to establish whether a violation attributable to the State has been committed.[FN16]

[FN15] See IACHR, Report N° 128/01, Case No. 12.367, Herrera and Vargas (La Nación), Costa Rica, December 3, 2001, para. 50. See IACHR, Report N° 4/04, Petition 12.324, Rubén Luis Godoy, Argentina, February 24, 2004, para. 43.

[FN16] See IACHR, Report N° 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.

47. The precedents of the Inter-American Commission clearly establish that it is not competent to review rulings issued by national courts acting within their jurisdiction and applying due judicial guarantees. The IACHR may not act as an appeals court to review alleged errors of law or fact that national courts acting within the limits of their jurisdiction may have made. Nonetheless, within the limits of its mandate to guarantee observance of the rights enshrined in the Convention, the Inter-American Commission is in fact competent to declare a petition admissible and rule on its merits when it relates to a national court decision issued outside the bounds of due process, or if it describes a violation of any other right guaranteed by the American Convention.[FN17]

[FN17] See IACHR, Report N° 1/03, Case 12.221, Jorge Omar Gutiérrez, Argentina, February 20, 2003, para. 46, citing Report N° 39/96, Case 11.673, Marzioni, Argentina, October 15, 1996, paras. 50-51. See, IACHR, Report N° 4/04, Petition 12.324, Rubén Luis Godoy, Argentina, February 24, 2004, para. 44.

48. The State argues that the petition is inadmissible because it does not contain facts that might represent a violation of rights guaranteed in the American Convention.

49. Specifically with respect to the prosecution of Mr. Víctor Manuel Ancalaf Llaupe, the petitioners allege that the principle of proportionality and thus the right to equality and non-discrimination enshrined in the American Convention in Articles 1 and 24 were violated because the courts handed down a conviction for the alleged terrorism offense without an adequate assessment and discernment regarding the legal nature and actual seriousness of the alleged

action, by indiscriminately applying antiterrorist legislation. In the petition it is also alleged that the state is responsible for the violation of the right to freedom from ex post facto laws and of the presumption of innocence enshrined in Articles 8 and 9 of the Convention.

50. Based on the arguments and the documentation provided by the parties, as well as Inter-American jurisprudence, the Commission feels that a lack of grounds or inadmissibility of the complaint submitted is not in evidence. In addition, the IACHR deems that the allegations of the petitioners concerning the special criminal system applied to the alleged victim and the definition of illegal conduct or criminal definition used rise to a prima facie characterization of a violation of the rights guaranteed in Articles 8 and 9 of the American Convention, as they relate to Article 1(1) of the same instrument, to the detriment of Víctor Ancalaf Llaupe. In addition, based on the allegations of the petitioners regarding the application to the alleged victim of a more rigorous special criminal system than the ordinary criminal system, based on his ethnic origin, the IACHR feels that the actions denounced could represent a violation of Article 24 of the American Convention, consistent also with Article 1(1) of the same instrument.[FN18]

[FN18] IACHR, Report N° 89/06, Petition 619-03, Admissibility, Aniceto Norin Catriman and Pascual Pichún Paillalao, Chile, October 21, 2006, para. 65.

51. Consequently, the Inter-American Commission deems that the requirements established by Article 47(b) and (c) of the American Convention have been satisfied.

V. CONCLUSION

52. The IACHR concludes that it is competent to hear this petition and that the petition satisfies the admissibility requirements in accordance with Articles 46 and 47 of the American Convention and Articles 30, 37 and related articles of the Rules of Procedure.

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To declare this case admissible with respect to the alleged violations of Articles 8, 9 and 24, as they relate to Articles 1(1) and 2 of the American Convention.
2. To send this report to the State and to the petitioners.
3. Publish this decision and include it in its Annual Report to the General Assembly of the Organization of American States.

Done on the 23rd day of the month of April, 2007. (Signed): Florentín Meléndez, President; Paolo Carozza, First Vice-President; Víctor Abramovich, Second Vice-President; Sir Clare K. Roberts, Evelio Fernández Arévalos, and Freddy Gutiérrez Trejo, Commissioners.