



INTER - AMERICAN COMMISSION ON HUMAN RIGHTS
COMISION INTERAMERICANA DE DERECHOS HUMANOS
COMISSÃO INTERAMERICANA DE DIREITOS HUMANOS
COMMISSION INTERAMÉRICAINÉ DES DROITS DE L'HOMME



ORGANIZACIÓN DE LOS ESTADOS AMERICANOS
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August 7, 2011

Ref.: Case No. 12,576

Segundo Aniceto Norín Catrimán, Juan Patricio Marileo Saravia, Víctor Ancalaf Llaupe, et al (Lonkos, leaders and activists of the Mapuche indigenous community)
Chile

Mr. Secretary:

I have the pleasure of addressing you on behalf of the Inter-American Commission on Human Rights and submits to the jurisdiction of the Inter-American Court of Human Rights Case No. No. 12,576, *Segundo Aniceto Norín Catrimán, Juan Patricio Marileo Saravia, Víctor Ancalaf Llaupe, et al (Lonkos, leaders, and activists of the Mapuche indigenous community) v. the Republic of Chile* (hereinafter “the State,” “the Chilean State,” or “Chile”). This case involves violations of the rights enshrined in Articles 8.1, 8.2, 8.2.(f), 8.2.(h), 9, 13, 23, and 24 of the American Convention on Human Rights, with regard to the obligations established in Articles 1.1 and 2 of said instrument, against Segundo Aniceto Norín Catrimán, Pascual Huentequero Pichún Paillalao, Florencio Jaime Marileo Saravia, José Huenchunao Mariñán, Juan Patricio Marileo Saravia, Juan Ciriaco Millacheo Lican, Patricia Roxana Troncoso Robles, and Víctor Manuel Ancalaf Llaupe, who were tried and convicted for alleged acts of terrorism in proceedings which employed rules of criminal procedure that are inconsistent with the principle of legality, and also involved a series of irregularities that impacted due process, including unjust consideration of and discrimination against the defendants’ ethnic origin. All of this took place against a well-known backdrop of selective implementation of anti-terrorist legislation to the detriment of members of the Mapuche indigenous community in Chile.

Mr. Pablo Saavedra Alessandri
Secretary, Inter-American Court of Human Rights
Apartado 6906-1000
San José, Costa Rica

Appendices

Specifically, the victims were tried and convicted based on a legislation which has a number of ambiguities that allowed the characterization of the behavior alleged as terrorist offenses. This was made taking into account the ethnicity of the victims and their position of Lonkos, leaders or activists between the indigenous Mapuche people. The Chilean judicial authorities which convicted the victims for terrorist crimes based their sentence on a context referred to as the "Mapuche conflict" without making distinctions between the more general context of legitimate claims of indigenous people characterized by various forms of social protest, and acts of violence that have been filed by certain minority groups in this context in particular. Thus, the invocation of the victims' membership of and / or the connection with the indigenous Mapuche was an act of discrimination that aimed to criminalize, at least in part, the social protest of members of the indigenous Mapuche people. These events affected the social structure and cultural integrity of the people as a whole.

The Chilean State ratified the American Convention on Human Rights and accepted the contentious jurisdiction of the Inter-American Court on August 21, 1980.

The Inter-American Commission appointed Commissioner Dinah Shelton and IACHR Executive Secretary Santiago A. Canton as its delegates. Moreover, Elizabeth Abi-Mershed, Assistant Executive Secretary; Silvia Serrano Guzmán; María Claudia Pulido; and Federico Guzmán Duque acted as legal advisers.

Pursuant to Article 35 of the Rules of Procedure of the Inter-American Court, the Commission attaches a copy of merits report 176/10, prepared in accordance with Article 50 of the Convention, as well as a copy of the entire case file before the IACHR (Appendix I), and the annexes used to prepare report 176/10 (Annexes). This merits report was furnished to the Chilean State in a communication dated December 7, 2010, granting it a period of two months to report on its compliance with the recommendations. In view of the State's request for an extension in order to furnish this information, the IACHR granted a one-month extension, through April 1, 2011, on which date the State submitted a report in which it presented information on some of the recommendations and challenged specific conclusions of report 176/10. On April 7, 2011, the IACHR received a new request for extension from the State, which was granted for a period of four months. In the IACHR's letter granting the extension, the Chilean State was asked to present a new report on compliance with the recommendations by July 7, 2011. Said report was received on the requested date. On August 5, 2011, the State submitted a new report, in which it essentially reiterated the position set forth in its report of July 7, 2011.

The Commission hereby submits the present case to the jurisdiction of the Inter-American Court based on the need to obtain justice for the victims owing to noncompliance with the recommendations on the part of the Chilean State.

With respect to the recommendation "***to vacate the terrorism-related sentences imposed on the victims,***" the State noted that most of the victims were not incarcerated "thus vacating the effects of the sentences imposed." Furthermore, the State made reference to a series of benefits that resulted from these sentences, in view of the reforms introduced to Law No. 18,314. In that regard, the Commission considers that it is the

responsibility of the State to provide *sua sponte* the necessary measures to vacate the effects of the sentences imposed in violation of the principles of legality, nondiscrimination, and due process guarantees. The State referred only to Article 18 of Law No. 20,467, offering neither an explanation as to how this rule applied to the facts in this case nor the measures it was to adopt in this regard to vacate the effects of the sentences. Moreover, the Commission considers that enforcement of the sentences, the reduction thereof, or the implementation of penitentiary benefits [*beneficios penitenciarios*], do not address the purpose of this reparative remedy, the stated objective of which is to vacate all effects of the sentences handed down in violation of different extremes of the American Convention.

On the recommendation to ***"if the victims choose so, they must have the possibility that his sentence be revised through a process that is carried out in accordance with the principle of legality, the prohibition discrimination and guarantees of due process"*** the state broadly stated that the Constitution establishes the principles and guarantees and that the Chilean criminal procedure regulates the applications for annulment, appeal and even review of final judgments. Regarding the motion to vacate, the State noted that were brought by the victims and rejected by courts. With regard to the judicial review, the State declared the legal basis of it and its grounds. The Commission notes that the information provided by the State on this point cannot assess the specific mechanism that would allow victims to have a review on recommended terms, particularly given that the causal origin of judicial review is not possible identify any cases in which this case is subsumed.

Regarding the recommendation to "compensate the victims both materially and morally for the violations committed" the state described a "general negotiation process intended to provide a solution to the situations that generated the issues considered in this case" and indicated that this process should cover the repairs recommended by the Commission. The State indicated that would give special attention "to the specific case" and provided general information on the process called "Mesa de Diálogo para un Reencuentro Histórico" focused on various needs of indigenous peoples in Chile. Moreover, the State indicated that there are constitutional and legal mechanisms through which victims of this case may require reparation. The Commission notes that the information provided by the State is general and it is unclear how the roundtable is an appropriate mechanism to provide redress for violations in the case. On the contrary, the available information indicates that, to date, the Chilean government has not provided any measure of reparation for victims of the case.

On the recommendation to ***"adjust terrorism legislation -Law 18,314-, so that it is compatible with the principle of legality regulated in Article 9 of the American Convention"***, the State indicated that "the Antiterrorism Law was significantly amended under Law 20.467 promulgated on 5 October 2010 and published on 8 October of the same year." The State disagreed with the observations made by the Commission in its report on merits in that the law does not remedy the problems identified. The Committee recalls that in its background report it noted the amendments introduced by Law 20,467 and offered some thoughts about them. In short, the Commission noted that the new legislation continues to be vague and broad which generated the violations in this case.

With respect to the recommendation to “***to adapt its domestic criminal procedure legislation so as to make it compatible with the rights enshrined in Articles 8.2(f) and 8.2(h) of the American Convention,***” the State indicated that its Anti-terrorism Law had been amended to achieve a “reasonable balance between the right to cross-examine witnesses offering testimony in a trial, and the need (...) to protect the life and physical integrity of witnesses, their family members, and third parties.” With respect to Article 8.2(h) of the Convention, the State referred to the nature of the appeal to vacate [*recurso de nulidad*] in Chile’s criminal procedure system and challenged the IACHR’s conclusions in the sense that said appeal does not meet the guarantee set forth under Article 8.2(h) of the American Convention. In brief, the State mentioned that “a review of the facts in second instance implies the qualification of proof before a different court; one that comes to hear the matter in a remote and half-obscured context as opposed to the court in which that proof was originally substantiated.”

With respect to modifications regarding the use of unidentified witnesses, the Commission considers that the information furnished by the State is minimal and therefore does not allow for an in-depth evaluation of the impact such modifications may have in the search for an adequate balance between the rights of those on trial and the security of witnesses. In particular, it is not clear whether the use of such witnesses is exceptional or whether judicial authorities should make some individual determination regarding the need to resort to this mechanism as a last alternative and having the necessary reparative measures so as to not disproportionately affect the right to defense. With respect to Article 8.2(h) of the Convention, the IACHR observes that the State only questioned the report on the merits and did not furnish information regarding its compliance with the aforementioned recommendation aimed at adapting its legislation.

Regarding the recommendation to “***take measures of non-repetition, to eradicate the use of discriminatory prejudices based on ethnicity, on the exercise of public authority and, in particular, on the administration of justice,***” even though the State referred to some general measures, again questioned the findings of the background of the Commission, indicating that the Chilean authorities do not have discriminatory prejudices, because the Constitution prohibits it. The State indicated that the belonging of the victims “to the Mapuche ethnic group is not, in any respect, a circumstance to be considered from the criminal point of view.” In this sense, the State stated that “criminal prosecution on these people, and some other members from the Mapuche people, is not based, in any case, animosity, on discrimination or racial prejudices present in the authorities, but in the fact that these people have committed acts which are in the nature criminal offenses and should be criminalizing as terrorists.” Thus, the State did not provide accurate and sufficient information on the adoption of non-repetition measures recommended by the Commission.

The Inter-American Commission submits all the facts and violations of human rights described in merits report 176/10 to the jurisdiction of the Court and requests that the Court conclude and declare that:

1. The State of Chile violated the principle of legality, recognized in Article 9 of the American Convention, in relation to the obligations set forth in articles 1(1) and 2 thereof and to the detriment of Segundo Aniceto Norín Catrimán, Pascual Huentequero Pichún Paillalao, Florencio Jaime Marileo Saravia, José Huenchunao Mariñán, Juan Patricio Marileo Saravia, Juan Ciriaco Millacheo Lican, Patricia Roxana Troncoso Robles and Víctor Manuel Ancalaf Llaupe.

2. The State of Chile violated the right to equal protection of the law and non-discrimination, recognized in Article 24 of the American Convention, in relation to the obligations set forth in articles 1(1) and 2 thereof to the detriment of Segundo Aniceto Norín Catrimán, Pascual Huentequero Pichún Paillalao, Florencio Jaime Marileo Saravia, José Huenchunao Mariñán, Juan Patricio Marileo Saravia, Juan Ciriaco Millacheo Lican, Patricia Roxana Troncoso Robles and Víctor Manuel Ancalaf Llaupe.

3. The State of Chile violated the right to freedom of expression and the political rights, established in Articles 13 and 23 of the American Convention, in relation to the obligations set forth in article 1(1) of the American Convention to the detriment of Segundo Aniceto Norín Catrimán, Pascual Huentequero Pichún Paillalao, Florencio Jaime Marileo Saravia, José Huenchunao Mariñán, Juan Patricio Marileo Saravia, Juan Ciriaco Millacheo Lican, Patricia Roxana Troncoso Robles and Víctor Manuel Ancalaf Llaupe.

4. The State of Chile violated the principle of individual criminal responsibility and the presumption of innocence, recognized in Articles 8(1), 8(2) and 9 of the American Convention, in relation to Article 1(1) thereof and to the detriment of Segundo Aniceto Norín Catrimán, Pascual Huentequero Pichún Paillalao, Florencio Jaime Marileo Saravia, José Huenchunao Mariñán, Juan Patricio Marileo Saravia, Juan Ciriaco Millacheo Lican, Patricia Roxana Troncoso Robles and Víctor Manuel Ancalaf Llaupe.

5. The State of Chile violated the right of defense of *Lonkos* Aniceto Norín and Pascual Pichún, and of *Werken* Víctor Ancalaf, specifically their right to question the witnesses in the court, in keeping with Article 8(2)(f) of the American Convention, in relation to the obligations set forth in articles 1(1) and 2 thereof.

6. The Chilean State violated the right to appeal a judgment, recognized in Article 8(2)(h) of the American Convention, in relation to the obligations set forth in articles 1(1) and 2 thereof, to the detriment of Segundo Aniceto Norín Catrimán, Pascual Huentequero Pichún Paillalao, Florencio Jaime Marileo Saravia, José Huenchunao Mariñán, Juan Patricio Marileo Saravia, Juan Ciriaco Millacheo Lican, Patricia Roxana Troncoso Robles and Víctor Manuel Ancalaf Llaupe.

7. The Chilean State violated the right to an impartial judge, recognized in Article 8(1) of the Convention, in relation to Article 1(1) thereof, to the detriment of Segundo Aniceto Norín Catrimán, Pascual Huentequero Pichún Paillalao, Florencio Jaime Marileo Saravia, José Huenchunao Mariñán, Juan Patricio Marileo Saravia, Juan Ciriaco Millacheo Lican, Patricia Roxana Troncoso Robles and Víctor Manuel Ancalaf Llaupe.

8. The violations of the human rights recognized in articles 8, 9, 24, 13 and 23, described above, had a resulting impact on the socio cultural integrity of the Mapuche people as a whole.

9. The Chilean State did not violate the rights to a competent and independent judge or the principle of *non bis in idem*, recognized in articles 8(1) and 8(4), respectively.

Consequently, the Commission requests the Inter-American Court to award the following reparative measures:

1. Eliminate the effects of the terrorism convictions imposed on Segundo Aniceto Norín Catrimán, Pascual Huentequero Pichún Paillalao, Florencio Jaime Marileo Saravia, José Huenchunao Mariñán, Juan Patricio Marileo Saravia, Juan Ciriaco Millacheo Lican, Patricia Roxana Troncoso Robles and Víctor Manuel Ancalaf Llaupe.

2. If the victims so choose, they shall have the opportunity to have their convictions reviewed in a proceeding conducted in accordance with the principle of legality, the prohibition of discrimination and the guarantees of due process, in the terms described in this report.

3. Make adequate reparations to the victims for the pecuniary and non-pecuniary damages caused by the violations declared in the present report.

4. Adapt the Anti-Terrorism Act embodied in Law 18,314, so that it is compatible with the principle of legality recognized in Article 9 of the American Convention.

5. Adapt the domestic laws governing criminal procedure so that they are compatible with the rights recognized in articles 8(2)(f) and 8(2)(h) of the American Convention.

6. Adopt measures of non-repetition to eradicate the discriminatory prejudices based on ethnic origin in the exercise of public power and, most especially, in the administration of justice.

In addition to the need to obtain justice for the victims, the IACHR notes that the present case involves matters of inter-American public order.

The Commission specially notes that this case will allow the Court to define standards on equality and non-discrimination, a new course in the jurisprudence of the Inter-American system, i.e. the selective application of a legal framework to a group included in the non-discrimination clause contained in Article 1.1 of the American Convention. In addition, the Court may examine under the rights to equality and non-discrimination, the different manifestations of the selective application and the polluter effect it can have, in the light of such rights, consideration of ethnicity of a person in a decision court, especially when it comes to the exercise of punitive power of the State.

Moreover, the Court may develop its jurisprudence on reparations, in particular on measures of non-repetition that transcend the victims in a particular case and that are necessary to address the use of prejudices and stereotypes in contexts of discriminatory application of a legal framework detriment of a group clearly identified.

In addition, this case requires an analysis of the legislation from the perspective of the principle of legality and certain guarantees of due process, with an impact on the definition of standards on this subject. As for the guarantees of due process, the Commission considers that this case represents an opportunity for the Court to define its applicable to the use of witnesses whose identity was not revealed by the court in light of the American Convention identity standards. Moreover, the case will allow the Court to set parameters on the apparent tension between the scope of the right to appeal the judgment and the principles underpinning the adversarial criminal procedure systems.

Bearing in mind that these matters have a relevant impact on inter-American public order, with respect to Article 35.1(f) of the Rules of Procedure of the Court, the Commission del Reglamento de la Corte, the Commission should like to offer the following expert opinions:

1. Martin Scheinin will testify on the relevant international standards for the analysis of the compatibility of counter-terrorism legislation with the principle of legality and the guarantees of due process. The expert will also discuss anti-terrorism legislation applied to the victims in the light of these standards and make the necessary considerations about the compatibility of the legislation with the American Convention modifications.
2. Rodolfo Stavenhagen will testify on international standards on non-discrimination, particularly the application of these standards to a situation of selective application of the rule to the detriment of a group comprised within the provisions of non-discrimination in international law human rights. Additionally, the expert will analyze the context of selective anti-terrorism legislation in Chile about members of the indigenous Mapuche people and their different manifestations and effects, in light of these standards.
3. An expert whose name shall be informed promptly will testify on the figure of the witness identity booked under criminal proceedings, from the perspective of international law of human rights. The expert will analyze the treatment this subject has received in other systems of human rights protection.

Finally, according to the information available to the IACHR, the legal representatives of the the victims in this case are:

Jaime Madariaga de la Barra and Ylenia Hartog, representing Segundo Aniceto Norín
Catrimán and Pascual Huentequero Pichún Paillalao

[REDACTED]
[REDACTED]
[REDACTED]
Temuco-Chile.

José Aylwin Oyarzún, Sergio Fuenzalida and the Center for Justice and International Law
(CEJIL), representing Víctor Manuel Ancalaf Llaue

[REDACTED]
[REDACTED]
José Aylwin Oyarzún and Sergio Fuenzalida:

CEJIL [REDACTED]

José Aylwin Oyarzún and Sergio Fuenzalida:

[REDACTED]
[REDACTED]
CEJIL [REDACTED]

Ciudad de Buenos Aires.

International Federation for Human Rights and Alberto Espinoza Pino, representing
Florencio Jaime Marileo Saravia, José Huenchunao Mariñán, Juan Patricio Marileo Saravia,
Juan Ciriaco Millacheo Lican, and Patricia Roxana Troncoso Robles

[REDACTED] and [REDACTED]

FIDH: [REDACTED]

Alberto Espinoza Pino: [REDACTED]

FIDH: [REDACTED]

Alberto Espinoza Pino: [REDACTED]

Santiago, Chile

Despite this information, the Commission notes that the last communication issued by the petitioners, on July 28, 2011 (See Appendix 1. IACHR case file), was issued jointly by the Center for Justice and International Law (CEJIL), the International Federation for Human Rights (FIDH), Jaime Madariaga de la Barra, and Alberto Espinoza, indicating that they represent the victims in the case, and do not distinguish among the persons each represents.

Very truly yours,

Signed in the original

Santiago A. Canton
Executive Secretary