



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



**ORGANIZACIÓN DE LOS ESTADOS AMERICANOS**  
WASHINGTON, D.C. 2 0 0 0 6 EEUU

November 30, 2010

**Ref.: Case No. 12.649**  
**Río Negro Massacre**  
**Guatemala**

Mr. Secretary:

I am pleased to address you on behalf of the Inter-American Commission on Human Rights in order to file Case No. 12.649, *Río Negro Massacre v. the Republic of Guatemala* (hereinafter "the State", "the Guatemalan State" or "Guatemala") before the jurisdiction of the Honorable Inter-American Court of Human Rights. The State ratified the American Convention on Human Rights on May 25<sup>th</sup>, 1978, and accepted the contentious jurisdiction of the Court on March 9, 1987. Due to the ratification of the American Convention by the State and in accordance with the Tribunal's jurisprudence<sup>1</sup>, this submission refers to continuing behavior that persists after March 9, 1987 and actions that constitute independent facts and which amount to specific and autonomous violations occurring after the recognition of the jurisdiction of the Tribunal.

The Commission has designated Commissioner Dinah Shelton, and Executive Secretary Santiago A. Canton, as its delegates. Likewise, Elizabeth Abi-Mershed, Deputy Executive Secretary; Karla I. Quintana Osuna and Isabel Madariaga Cuneo, attorneys of the Executive Secretariat of the IACHR, have been designated to serve as legal advisors.

In accordance with Article 35 of the Rules of Procedure of the Inter-American Court, the Commission encloses a copy of report 87/10 prepared in compliance with Article 50 of the American Convention, as well as a copy of the entire file before the Inter-American Commission (Appendix 1.)

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

Enclosures

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<sup>1</sup> See, *inter alia*, judgments in the cases of Plan de Sanchez Massacre (2004), Dos Erres Massacre (2009), María Tiu Tojín *et. al.* (2009), Florencio Chitay Nech *et. al.* (2010), all of them against the State of Guatemala.

In said report, the Inter-American Commission concluded that the massacres against the Río Negro community were planned by Guatemalan State agents with the objective of exterminating the Community and constituted genocide. The massacres were executed within scorched-earth (*tierra arrasada*) policy directed by the Guatemalan State against the Mayan people, who were referred as the “enemy within,” in a context of discrimination and racism. These acts implied a violation of the fundamental human rights of individuals, indigenous peoples and the values shared by the Inter-American community.

Likewise, it concluded that the Guatemalan State has not conducted an effective investigation of the massacres perpetrated against the Community of Río Negro, nor has it examined the multiple violations that occurred during the course of those massacres. In the same vein, the Commission finds that the Guatemalan courts have not acted with the necessary diligence to move forward the criminal case to solve all the facts of the massacres and punish all responsible intellectual and material authors.

Furthermore, the Commission concluded that the State has failed to take the measures necessary to fully identify the remains of the executed persons, or to establish the whereabouts of the disappeared.

Consequently, the Guatemalan State is responsible for the violation of the following articles:

- (a) Articles 4, 5 and 7 of the American Convention, in relation to Article 1(1) thereof, to the detriment of the members of the community of Río Negro who were extrajudicially executed;
- (b) Article 19 of the American Convention, in relation to Article 1(1) thereof, to the detriment of the children of the community of Río Negro who were extrajudicially executed;
- (c) Articles 3, 4, 5 and 7 of the American Convention, in relation to Article 1(1) thereof and Article I of the Inter-American Convention on Forced Disappearance of Persons, to the detriment of Ramona Lajuj and Manuel Chen Sánchez, and in relation to Article 19 of the Convention, to the detriment of Manuel Chen Sánchez;
- (d) Articles 5 and 11 of the American Convention, in relation to Article 1(1) thereof, to the detriment of J.O.S., V.C., M.T., and María Eustaquia Uscap Ivoy, and in relation to Article 19 of the Convention in the case of J.O.S., and María Eustaquia Uscap Ivoy;
- (e) Article 5 of the American Convention, in relation to Article 1(1) thereof, to the detriment of the members of the community of Río Negro who survived the massacres, and to the detriment of the next of kin of the members of the community of Río Negro;
- (f) Articles 6, 17 and 19 of the American Convention, in relation to Article 1(1) thereof, to the detriment of Agustín Chen Osorio, Celestina Uscap Ivoy, Cruz Pérez

Osorio, Froilan Uscap Ivoy, Jesús Tecú Osorio, José Osorio Osorio, Juan Chen Chen, Juan Chen Osorio, Juan Pérez Osorio, Juan Uscap Ivoy, Juana Chen Osorio, María Eustaquia Uscap Ivoy, Pedro Sic Sánchez, Silveria Lajuj Tum, Tomasa Osorio Chen, Florinda Uscap Ivoy, and Juan Burrero;

(g) Articles 11(1), 12, 16, 21 and 24 of the American Convention, in relation to Article 1(1) thereof, to the detriment of the members of the community of Río Negro;

(h) Article 22 of the American Convention, in relation to Article 1(1) thereof, to the detriment of the survivors of the community of Río Negro;

(i) Articles 8 and 25 of the American Convention, in relation to Article 1(1) thereof, Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture, and Articles 7(b) of the Convention of Belém do Pará to the detriment of the survivors and the next of kin of the persons tortured and extrajudicially executed in the different massacres;

(j) Articles 8 and 25 of the American Convention, in relation to Article 1(1) thereof, and Article I of the Inter-American Convention on Forced Disappearance of Persons, to the detriment of the disappeared and their next of kin; and

(k) Articles 8(1) and 25 of the American Convention, in relation to Articles 1(1) and 2 thereof.

The merits report of July 14, 2010 was notified to the State of Guatemala by means of communication of July 30, 2010, granting it a period of two months to inform about compliance with the recommendations. On October 4, 2010, Guatemala requested a one month extension to submit information about the compliance with the recommendations, and on October 25, 2010 it expressly renounced to submit preliminary objections regarding the compliance with Article 51(1) of the American Convention, in accordance with Article 46 of the Commission's Rules of Procedure. On October 30, 2010, the IACHR granted the requested extension and requested the State to submit its report on November 20, 2010. The State did not submit said report.

The Commission submits the instant case to the jurisdiction of the Inter-American Court for failure of the State to carry out the recommendations and the consequent need to obtain justice in the case. As shown throughout the report on the merits, the instant case involves the destruction of the Mayan Community of Río Negro by means of a series of massacres carried out by the State of Guatemala and members of the Civil Self-Defense Patrols in 1980 and 1982, and the persecution and elimination of their members and the subsequent violations directed against the survivors, including the failure to investigate the referenced facts. In particular, the Commission submits this case due to the denial of justice ever since the facts were perpetrated and the consequent impunity, which persists to this day.

The Court has jurisdiction to hear the instant case. Its referral is based on the facts that occurred as of the acceptance by the State of the contentious jurisdiction of the Inter-

American Court, to wit, March 9, 1987. Therefore, the referral to the Court makes reference to the continuing conduct that persists subsequent to that date, and the actions that constitute independent acts and that constitute specific and autonomous violations that occurred after recognition of the Court's jurisdiction.

In that regard, the IACHR observes that the facts made known to the Court include, among others, those relating to the forced disappearances, forced displacement, violations of the personal integrity of the next-of-kin and survivors, the destruction of the community's social fabric, the failure to identify the persons executed and disappeared (whose names appear in the report), the consequent failure to bury them in keeping with Mayan traditions, the impossibility of the survivors returning to their lands, the lack of protection for children, accusations of being "guerrillas, the social base of the guerrillas, internal enemies and subversives," discrimination, as well as the failure of an impartial and effective investigation into the multiple violations that occurred during and after the massacres.

Moreover, the IACHR considers that the Court has jurisdiction to analyze the facts that refer to the denial of justice in light of the procedural obligation arising from the duty to guarantee, since those violations are within the Court's temporal jurisdiction. In that regard, the IACHR recalls that as expressed in the report on the merits, the facts that are the subject matter of this case have to do with a sequence of serious crimes against human rights, which include arbitrary detention, torture, rape, and extrajudicial execution with extreme cruelty all directed against the members of the Community of Río Negro, the subsequent hiding of the corpses, enslavement of some of the child survivors, all as part of a policy designed by those who held power aimed at destroying entire communities, thus it is argued that there was a genocide in Guatemala. The human rights violations committed against the members of the community of Río Negro remain in impunity.

Finally, the Commission notes that the facts of the instant case fit within a more general context of massacres in Guatemala that were planned by State agents as part of a "scorched earth" policy aimed by the Guatemalan State against the Maya people, who were characterized as the "internal enemy" in a context of discrimination and racism, in violation of fundamental human rights. The Commission has closely monitored the situation through different mechanisms. In particular, the Commission has referred to this issue in its second, third, fourth, and fifth Reports on the Situation of Human Rights in Guatemala (1983, 1985, 1993, and 2001). The Commission considers it necessary for the Inter-American Court to give special consideration to the characteristics of this grave context in Guatemala in the terms described in the report on the merits.

Due to the aforementioned, the Commission requests the Inter-American Court that it concludes and declares the international responsibility of the State of Guatemala, determining the questions of fact and corresponding rights.

Consequently, the Commission requests the Court that it orders the following reparatory measures:

1. Make adequate reparations for the human rights violations proven in the [merits] report, both in the form of material and moral damages, including just

compensation, establishment and publication of the historical truth of the events, rehabilitation of the memory of the victims who were killed or were disappeared, implementation of a proper psychosocial treatment program for survivors and the next of kin of the victims who were killed and disappeared, and communal reparations determined by agreement with the survivors of the Río Negro community.

2. Establish a mechanism to identify as many of the executed victims of the Río Negro massacres as possible and provide whatever is needed to continue the identification process and return the victims' mortal remains.

3. Establish a mechanism to determine who the disappeared persons in the massacres were and the survivors.

4. Locate the disappeared victims' mortal remains and return them to their next of kin.

5. Establish a mechanism to facilitate full identification of the next of kin of the victims who were executed and disappeared, so that they may claim the reparations they are due.

6. Conduct, conclude and re-open, as the case may be, the domestic proceedings into the human rights violations declared in the present report and conduct an impartial and effective investigation, within a reasonable time, to clarify all the facts, identify the intellectual and material authors and impose the penalties prescribed by law. Specifically, the State must complete the internal proceedings into the Río Negro massacres, reopening it so that it delivers justice for all victims of the massacres. Furthermore, the State must conduct investigations into the events that occurred in the chapel of Río Negro and at Los Encuentros.

7. Strengthen the capacity of the judicial branch to investigate the facts and punish those responsible, including the materials and techniques needed to ensure that the proceedings unfold properly.

8. Order the appropriate administrative, disciplinary or criminal measures for the actions or omissions committed by State officials that have been instrumental in denying justice and enabling those responsible for the events of the case to go unpunished, or who intervened in measures to obstruct the proceedings being conducted to identify and punish the responsible parties.

9. Adopt the measures necessary to avoid a recurrence of similar events, in furtherance of the obligation to prevent and guarantee the human rights recognized in the American Convention. In particular, implement permanent programs in human rights and international humanitarian law in the armed forces' training schools.

On the other hand, regarding identification of the next of kin who should be considered victims in the instant case, the Commission informs the Inter-American Court that, at the time of adopting Report 87/10, it enclosed the respective list. After the approval of the merits report, the petitioners submitted to the Commission a list of persons

who they considered as part of the survivors and at the same time next of kin of the executed and disappeared victims. Said list is enclosed to the petitioners' communication of August 30, 2010.

Additionally, the Commission offers expert statements on inter-American public interest issues related to the present case:

- a) Juan Méndez, attorney, who will refer to the issue of genocide from the perspective of international law in relation to the present case, as well as to the absence of efficient response by the Guatemalan Judicial Power in relation to this issue.
- b) Expert to be defined, who will refer to the effects on the Indigenous Maya people (especially in the area of Rabinal) within the context of the internal armed Guatemalan conflict including massacres, rape, forced labor and forced disappearances.
- c) Expert to be defined, who will refer to the international standards in relation to the methods of exhuming clandestine graves. Likewise, he/she will refer specifically to the case of Guatemala, to the obstacles to conduct the exhumations in said country and the measures that should be adopted to clarify the facts.

The *curricula vitae* of the experts proposed by the Inter-American Commission are attached.

Finally, the petitioners expressed the interest of the victims in the submission of the present case to the Inter-American Court and informed that the representatives of the victims are the *Asociación para el Desarrollo Integral de las Víctimas de la Violencia en las Verapaces* (ADIVIMA), represented by Edgar Fernando Pérez Archila and Carlos Chen Osorio. They may be contacted at the following address, phone number and email:

ADIVIMA



Guatemala



With renewed assurances of my attentive consideration.

Elizabeth Abi-Mershed  
Deputy Executive Secretary

**REPORT No. 86/10**  
CASE 12.649  
MERITS  
COMMUNITY OF RÍO NEGRO OF THE MAYA ACHI INDIGENOUS PEOPLE AND ITS MEMBERS  
(RIO NEGRO MASSACRES)  
GUATEMALA  
July 14, 2010

**I. SUMMARY**

1. On July 19, 2005, the Inter-American Commission on Human Rights (hereinafter the "Inter-American Commission," the "Commission" or "the IACHR") received a complaint that the *Asociación para el Desarrollo Integral de las Víctimas de la Violencia en las Verapaces, Maya Achí* (hereinafter "ADIVIMA" or "the petitioners") filed in which it alleges that the Republic of Guatemala (hereinafter "the State" or "the Guatemalan State") is responsible for violations committed against the indigenous community of Río Negro and its members, all of whom are members of the Maya Achí indigenous people (hereinafter the "Community of Río Negro" or the "alleged victims"). The petition alleged that the community was destroyed and the alleged victims persecuted and killed in a series of massacres committed by the Guatemalan Army and members of the Civilian Self-Defense Patrols (hereinafter the "PAC") in 1980 and 1982. The petition identifies by name more than 500 persons killed; 17 children enslaved by members of the PAC, as well as some survivors.

2. The Commission approved admissibility report No. 13/08<sup>2</sup> on March 5, 2008. There it concluded that it was competent to take up the complaint that the petitioners filed and decided, based on the arguments of fact and of law and without prejudging the merits of the question, to declare the petition admissible with respect to the alleged violations of articles 3, 4, 5, 6, 8, 11(1), 12, 17, 18, 19, 24 and 25 of the American Convention on Human Rights (hereinafter "the American Convention" or "the Convention"), in relation to Article 1(1) thereof, to the detriment of the indigenous community of Río Negro of the Maya Achí indigenous people and its members. Furthermore, in application of the principle of *jura novit curia*, the Commission concluded that the petition was also admissible with respect to the possible violation of articles 2, 16, 21, and 22 of the Convention and the possible violation of Article I of the Inter-American Convention on Forced Disappearance of Persons, all in relation to Article 1(1) of the American Convention and to the detriment of the members of the community of Río Negro. Finally, the Commission declared the petition inadmissible with respect to the alleged violations of articles 20 and 27 of the American Convention.

3. The petitioners alleged that the State is responsible for violation of articles 3, 4, 5, 6, 8, 11(1), 12, 16, 17, 18, 19, 21, 22, 24 and 25 of the American Convention, in relation to articles 1(1) and 2 thereof, to the detriment of the community of Río Negro by virtue of a series of massacres, forced disappearances and other violations committed against the community in 1980 and 1982. They also alleged that the State violated Article I of the Inter-American Convention on Forced Disappearance of Persons. According to the petitioners, those violations are a consequence of the actions taken by state officials or of the State's failure to comply with its duty to ensure the rights of all persons subject to its jurisdiction by its failure to prevent or, if necessary, to investigate, prosecute and punish those responsible.

4. For its part, the State's contention was that "the massacres [...] occurred in the communities of Los Encuentros and Agua Fría [and that the] other massacres should be presented through

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<sup>2</sup> IACHR, Admissibility Report No. 13/08, March 5, 2008, Petition 844-2005, Community of Río Negro of the Maya Indigenous People and Its Members.

separate and individual petitions, and not as an amendment to the initial petition.” It stated, therefore, that it would only address the March 13, 1982 massacre and the events related thereto, which were already the subject of a criminal proceeding. It also alleged that “the proceedings in the judicial system have produced positive results in the effort to administer justice.” However, it added that “it appears from the information provided by the Constitutional Court and by the petitioners that in fact the criminal proceedings initiated by the petitioners have not moved as expeditiously as they ideally should.”

5. Based on the considerations of fact and of law contained in the present report, the Commission concludes the following:

6. The massacres against the Río Negro community were planned by Guatemalan State agents with the objective of exterminating the Community. Such massacres constituted genocide. The massacres were executed within scorched-earth (*tierra arrasada*) policy directed by the Guatemalan State against the Mayan people, who were referred as the “enemy within,” in a context of discrimination and racism. These acts implied a violation of the fundamental human rights of individuals, and of indigenous peoples, as well as a violation of the values shared by the Inter-American community.

7. The Guatemalan State has not conducted an effective investigation of the massacres perpetrated against the Community of Río Negro, nor has it examined the multiple violations that occurred during the course of those massacres. The Commission finds that the Guatemalan courts have not acted with the necessary diligence to move forward the criminal case to solve all the facts of the massacres and punish all those intellectual and material authors responsible.

8. Furthermore, the Commission concludes that the State has failed to take the measures necessary to fully identify the remains of the executed persons, or to establish the whereabouts of the disappeared.

9. Accordingly, the Commission concludes that the massacres against the Río Negro community and their consequences remain in impunity.

10. Consequently, the Commission considers that the Guatemalan State is responsible for violation of the following articles: a) Articles 4, 5 and 7 of the American Convention, in relation to Article 1(1) thereof, to the detriment of the members of the community of Río Negro who were extrajudicially executed; b) Article 19 of the American Convention, in relation to Article 1(1) thereof, to the detriment of the children of the community of Río Negro who were extrajudicially executed; c) Articles 3, 4, 5 and 7 of the American Convention, in relation to Article 1(1) thereof and Article I of the Inter-American Convention on Forced Disappearance of Persons, to the detriment of Ramona Lajuj and Manuel Chen Sánchez, and in relation to Article 19 of the Convention, to the detriment of Manuel Chen Sánchez; d) Articles 5 and 11 of the American Convention, in relation to Article 1(1) thereof, to the detriment of J.O.S., V.C., M.T. and María Eustaquia Uscap Ivoy, and in relation to Article 19 of the Convention to the detriment of J.O.S. and María Eustaquia Uscap Ivoy; e) Article 5 of the American Convention, in relation to Article 1(1) thereof, to the detriment of the members of the community of Río Negro who survived the massacres, and to the detriment of the next of kin of the members of the community of Río Negro; f) Articles 6, 17 and 19 of the American Convention, in relation to Article 1(1) thereof, to the detriment of Agustín Chen Osorio; Celestina Uscap Ivoy; Cruz Pérez Osorio; Froilan Uscap Ivoy; Jesús Tecú Osorio; José Osorio Osorio; Juan Chen Chen; Juan Chen Osorio; Juan Pérez Osorio; Juan Uscap Ivoy; Juana Chen Osorio; María Eustaquia Uscap Ivoy; Pedro Sic Sánchez; Silveria Lajuj Tum; Tomasa Osorio Chen; Florinda Uscap Ivoy; and Juan Burrero. g) articles 11(1), 12, 16, 21 and 24 of the American Convention, in relation to Article 1(1) thereof, to the detriment of the members of the community of Río Negro; h) Article 22 of the American Convention, in relation to Article 1(1) thereof, to the detriment of the survivors of the community of Río Negro; i) Articles 8 and 25 of the American Convention, in relation to Article 1(1)

thereof, and with articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture and article 7.b of the Belém do Pará Convention, to the detriment of the survivors and the next of kin of the persons who were tortured and extrajudicially executed in the various massacres; j) Articles 8 and 25 of the American Convention, in relation to Article 1(1) thereof, and with article 1 of the Inter-American Convention of Forced Disappearance of Persons, to the detriment of the victims who disappeared and their next of kin; k) Articles 8 and 25 of the American Convention, in relation to Articles 1(1) and 2 thereof.

## II. PROCESSING WITH THE COMMISSION SUBSEQUENT TO THE APPROVAL OF ADMISSIBILITY REPORT No. 13/08

11. On March 5, 2008, during its 131st regular session, the IACHR approved the admissibility report. In that report it concluded that the case was admissible with respect to the alleged violation of articles 3, 4, 5, 6, 8, 11.1, 12, 17, 18, 19, 24 and 25 of the American Convention, in relation to Article 1(1) thereof, to the detriment of the indigenous community of Río Negro of the Maya People and its members. Also, by application of the principle of *jura novit curia*, the Commission concluded that the petition was admissible for the possible violation of articles 2, 16, 21 and 22 of the American Convention, all in relation to Article 1(1) thereof, and for the possible violation of Article I of the Inter-American Convention on Forced Disappearance of Persons.

12. Pursuant to Article 37(2) of its Rules of Procedure, on March 24, 2008 the IACHR notified the parties of the approval of the admissibility report and of the case number (12,649). It gave the petitioners two months in which to submit additional observations on the merits. That same day, the Commission placed itself at the disposal of the parties with a view to reaching a friendly settlement. On May 12, 2008, the State indicated its willingness to arrive at a friendly settlement with the petitioners. On May 27, 2008, the Commission acknowledged receipt of the note and forwarded it to the petitioners that same day, requesting that they submit the corresponding observations within one month.

13. On May 22, 2008, the petitioners requested an extension to submit their observations on the merits of the case. On May 30, 2008, the Commission granted the petitioners a one-month extension. On June 3, 2008, the petitioners submitted their observations on the merits, confirmed the amplification of the facts sent in May of 2007 and submitted a list of victims of the massacres and survivors, a copy of the case files of the investigations and of the criminal proceedings conducted into the events, and the birth and death certificates of the victims.

14. On June 23, 2008, the petitioners answered the note of May 27, 2008, and said that "they are unable to bring themselves to negotiate the violation of life, the persecution, the disrespect for the dignity of the victims and of the survivors of the community of Río Negro [...] "However, [...] we are interested in knowing what it is that the Guatemalan State is proposing." On July 2, 2008, the IACHR forwarded that note to the State and requested that it present whatever observations it deemed pertinent within one month. It also asked it to send a copy of Judgment 28-2003 of May 28, 2008.

15. On July 29, 2008, the State again expressed its readiness to arrive at a friendly settlement and sent a copy of the requested judgment. On August 7, 2008, the Commission asked the petitioners to present, within one month's time, their observations on the State's report of July 29, 2008.

16. On August 19, 2008, the State submitted its response to the petitioners' observations on the merits, stating that "although it is the victims' right to demand justice for the human rights violations committed, the State believes that each and every one of the amplifications has to be regarded as separate and individual petitions and that the State will only address the

events of March 13, 1982 and the amplification and correction done thereon by the petitioners." It also asked the Commission to consider the progress that the Guatemalan system of justice had made in the form of the investigation and conviction of 5 persons as the authors of the massacre that occurred in Rio Negro on March 13, 1983. Finally, the State again expressed its willingness to arrive at a friendly settlement with the petitioners. On September 16, 2008, the Commission asked the petitioners to submit relevant observations on the State's August 19, 2008 brief.

17. On September 11, 2009, the petitioners again made plain that they had no intention of entering into negotiations with the State. On October 9, 2008, the petitioners reiterated that they had no intention of reaching a negotiated settlement with the State, that the judicial inquiries into the massacres, the identification of the victims, and the conviction of those responsible were not meaningful developments. They therefore asked the Commission to take the case to the Inter-American Court of Human Rights. On October 10, 2008, the Commission sent the petitioners' observations to the State and requested that it make whatever observations it deemed pertinent.

18. On November 3, 2008, the State submitted its response to the petitioners' observations on the merits, reiterated its intention to reach a friendly settlement and said that "with the progress made in the criminal case and the investigations that the Public Prosecutor's Office and the Ministry of the Interior have conducted into this case, the Guatemalan State seeks to demonstrate its determination to comply with the provisions of the American Convention." On November 11, 2008, the IACHR forwarded the State's note to the petitioners and asked that they submit such observations as they deemed pertinent.

19. On January 14, 2009, the legal representative of ADIVIMA reported that Jesús Tecú Osorio would no longer be serving as a representative in the case. The legal representative reported that Edgar Pérez and Carlos Chen Osorio would be the new representatives in the case. On March 2, 2009, the State recognized the new representatives in the case. At the petitioners' request a working meeting was held at the Commission on March 21, 2009, with the State and the petitioners in attendance. The purpose of the meeting was to "present information on the obstacles that the victims and their representatives had encountered in getting justice in the present case." On June 11, 2009, Commissioner Víctor Abramovich<sup>3</sup>, then the IACHR Rapporteur on the Rights of Indigenous Peoples, traveled to Río Negro, specifically to Pacoxom, during his visit to the country. On that occasion, the Rapporteur spoke with surviving members of the community. The Commissioner also visited Pacux, the resettlement village where most of the survivors now live. There he took additional testimony. On August 17, 2009, the representatives sent the "statements of survivors who have not given official statements to the Guatemalan investigation and justice system." The petitioners said that the testimony in question had not been heard at the domestic level because there are no judicial proceedings into the massacres. On September 21, 2009, the petitioners sent a "screened" list of the persons killed in the various massacres and the list of survivors. On December 16, 2009, the Commission requested additional information from the petitioners and the documentation of the victims and survivors of the massacres. On that same date, the Commission asked the State to send copies of the "Victory '82 Campaign Plan, the "Tenacity '83 Campaign Plan" and the "Counterinsurgency War Manual."

20. On January 15, 2010, the State reported on the process of "dialogue and negotiation with the representatives of the Office of the Coordinator of the Communities Affected by the Chixoy Hydroelectric Project (COCAHICH) to identify, confirm and make full reparations for the damages and injuries caused to those communities by the construction of the Chixoy River Reservoir and Dam." It also presented a copy of the "Victory '82 Campaign Plan" and the "Tenacity

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<sup>3</sup> IACHR, Press Release 37/09, "IACHR visits Guatemala", June 12, 2009. See also IACHR, Annual Report 2009, Judicial bases and activities 2009, C. Visits. OES/Ser.LV/II. December 30, 2009, available at <http://www.cidh.oas.org/annualrep/2009sp/indice2009.htm>. See also photographic file of the visit.

'83 Campaign Plan." On January 20, 2010, the petitioners supplied additional information requested by the Commission and documentation on the victims. On February 2, 2010, the Commission forwarded that information to the respective parties and requested their observations within one month's time. On March 1, 2010, the petitioners presented their observations on the State's brief. On April 13, 2010, the Commission forwarded the petitioners' brief of observations to the State and requested that it submit observations within one month. On February 2 and March 10, 2010, the State submitted two briefs and asked that the petitioners provide the "identification numbers and a photocopy of the identification document, cover to cover, in order to create a database that would enable it to identify with certainty who the beneficiaries are when the time comes to make reparations for the human rights violations committed in 1982 and 1983." On May 18, 2010, the petitioners presented observations on the State's brief. On June 9, 2010, the Commission forwarded the petitioners' brief to the State and on June 16, 2010 the Commission asked the State for additional information.

### **III. THE PARTIES' POSITIONS**

#### **A. The petitioners**

21. The petitioners allege that the State is responsible for violation of articles 3, 4, 5, 6, 8, 11(1), 12, 16, 17, 18, 19, 21, 22, 24 and 25 of the American Convention, in relation to articles 1(1) and 2 thereof, to the detriment of the indigenous community of Río Negro of the Maya People and its members. They also assert that the State had violated Article I of the Inter-American Convention on Forced Disappearance of Persons.

22. They allege that the massacres were committed on March 4, 1980 (in the chapel of the village of Río Negro), on February 13, 1982 (in the village of Xococ), on March 13, 1982 (in the village of Río Negro, on the mountaintop known as Pacoxom), on May 14, 1982 (in the village of Los Encuentros), and on September 14, 1982 (in the hamlet of Agua Fría). They also report that bodies had been exhumed from the massacres committed in Xococ, on Pacoxom Mountain, and in Agua Fría.

23. The petitioners allege that the State "systematically" violated the right to life of the members of the community of Río Negro, "against the backdrop of the internal armed conflict [...], committing acts of such enormity that they can be classified as genocidal acts committed against a non-combatant civilian population, as the intention was to wipe out the population and community of Río Negro. One massacre was not sufficient; it took five massacres and the persecution and repression of the survivors." The petitioners contend that the purpose of the extrajudicial executions targeted at the community was to exterminate it. They claimed that individual extrajudicial executions were systematically carried out against members of the community of Río Negro.

24. The petitioners allege that Article 3 was violated by the forced disappearance of seven leaders of the community of Río Negro in early 1980. These leaders had participated in the negotiations with the National Electrification Institute (hereinafter "INDE"). The petitioners further allege the forced disappearance of 40 people who had sought safe haven in Los Encuentros and whom the Military Forces took away aboard helicopters on May 14, 1982. The fate of those 40 people is still unknown. Given their forced disappearance, these individuals are unable to exercise the rights they have by virtue of their recognition as persons before the law. The petitioners also allege that with these forced disappearances, the State also violated Article I of the Inter-American Convention on Forced Disappearance of Persons.

25. The petitioners contend that the State had violated Article 5 of the American Convention, to the detriment of the members of the community of Río Negro, by allowing it to be subjected to the cruel, inhuman and degrading treatment that preceded the massacres. Specifically,

the victims were beaten with rifle butts, the children were flung against trees and rocks; victims were hit with machetes and other bladed instruments and burned; the perpetrators cut off the victims' ears and then forced them to eat them, the women were raped and beaten. They also assert that the State is responsible for violation of the right to humane treatment, to the detriment of the survivors of the massacres, who were persecuted and forced to go into hiding in the mountains, where they lived for years in subhuman conditions.

26. They also point out that since early 1980, the community of Río Negro endured psychological harassment, systematic persecution, and had been branded in the sense that they were "the social base of the insurgency" because of the opposition to construction of the Chixoy Hydroelectric Dam. According to the petitioners, the members of the community of Río Negro continue to be tortured to this day because the victims and their next of kin are being denied justice.

27. With regard to Article 6, the petitioners state that after witnessing the March 13, 1982 massacre, 18 children from the community of Río Negro were enslaved by the PAC, put into forced labor, subjected to inhuman and degrading treatment that resulted in the death of two of the children.

28. With regard to articles 8 and 25, the petitioners allege that they have encountered obstacles in their attempts to get access to Guatemala's judicial bodies and that, because of the internal conflict and the persecution to which victims were subject until just before 1993, it was not until 1993 that some next of kin of the victims were able to file complaints with the jurisdictional bodies.

29. The petitioners also allege that the obstacles have been compounded by unwarranted delays. Since 1993, the date on which the complaint was filed with the court, the judicial system has still not investigated all the facts, identified and named all the victims, or punished all the material and intellectual authors of these events. Specifically, since the complaints were filed, the State has convicted only some of those responsible and identified only some of the victims. According to the petitioners, the State has refrained from pressing the inquiries and proceedings forward as its own legal duty, even though it was formally appraised of the facts back in 1993.

30. They argue that the Guatemalan system of justice has been ineffective because, although it knows who the material authors of the massacres are, it has failed to deliver justice. The justice system has been incompetent and ineffective in the face of public and proven facts, which creates a double victimization. Specifically, in the criminal case instituted in connection with the massacre of September 14, 1982, the perpetrators were released because the victims had not been identified by name. Compounding this is the fact that the State has been unable to apprehend former Army Colonel José Antonio Solares González, all of which, the petitioners contend, creates a lack of legal certainty. The petitioners observed that case No. 28-2003 concerning the March 13, 1982 massacre was irregular, because it prosecuted the killing of 26 of the 143 victims. They add that the process has been slow and intentionally drawn out by the defense; the judicial system has been complicit by delaying its decision on the appeals filed.

31. In connection with the Xococ massacre of February 13, 1982, the petitioners allege that in the wake of the exhumation proceedings conducted in that village, "no investigative measures were taken to identify the material and intellectual authors."

32. Summarizing, the petitioners assert that the alleged victims have been denied justice for the 30 years that have passed since the events occurred; judicial proceedings are pending into the massacres of March 1980, February 13, May 14 and September 14, 1982. The petitioners'

contention was that the executive branch lacks the political resolve to apprehend former Colonel Solares González, an intellectual author of the massacres, for whom an arrest warrant was issued in 2003 and who still collects a pension from the State.

33. The petitioners allege that the State is responsible for violation of Article 11(1) inasmuch as it regarded the people of Río Negro as the “social base of the insurgency” and declared its members to be “enemies within” and “second-class indigenous citizens” because they were members of the Maya Achí people. According to the petitioners, the situation materialized in a number of events, specifically: the massacres, the denial of justice, the unequal treatment in the judicial proceedings, the unwillingness to protect the victims and their next of kin, who are the chief witnesses in the judicial proceedings, the refusal to “pay fair compensation for the displacement and to recognize that in fact, the State has shown no mercy for the Community of Río Negro”.

34. The petitioners argue that the State violated Article 12, to the detriment of the Maya Achí community of Río Negro, by refusing to allow the survivors of the massacres to bury their next of kin according to their rites and customs. The petitioners contend that this situation will persist until such time as they are able to locate and recover the victims’ remains. The petitioners also blame the State for the “loss of their sacred sites, a place where they profess their beliefs and perform their sacred rituals”, which was caused when their lands were flooded and the inhabitants forcibly displaced.

35. The petitioners allege as for Article 16, that the persecution, stigmatization, massacres and displacements forced the indigenous people of Río Negro to spend years in hiding in the mountains, thereby preventing them from organizing according to their own community structures and from preserving their social, economic, political and cultural structures within their ancestral territories.

36. They also assert that the State is responsible for violation of Article 17, by its failure to protect the family as the natural and fundamental unit of society and by having allowed the Armed Forces to commit acts of persecution, repression and massacres. In so doing, the “State broke up the families in the community of Río Negro, as there are survivors who were left alone, with no father, no mother, no siblings or uncles because [...] there were either executed or forcibly disappeared;” in some cases, entire families were massacred.

37. The petitioners allege that the State was responsible for violation of Article 18 by virtue of the fact that after witnessing the March 13, 1982 massacre, a number of children were taken as slaves or servants to members of the Xococ PAC “with the authorization and acquiescence of the Guatemalan Army [and ...] forced to perform adult farm labor; they suffered mistreatment, were malnourished and were unschooled for a period of some two years.” The petitioners also assert that these children were separated from their surviving family members and from the community “until they were rescued by [their] next of kin in 1983 and 1984.”

38. The petitioners argue that the State violated Article 19 by virtue of the fact that it did not adopt the children of the community of Río Negro or respect their rights; the persecution and repression of that community did not discriminate for age. Thus, the children became victims of torture, massacre, slavery, and forced displacement; some were forced to live in hiding in the mountains, enduring subhuman conditions.

39. The petitioners allege that the State violated Article 21 of the American Convention by allowing the displacement of the community of Río Negro to make way for construction of the Chixoy hydroelectric dam. The petitioners assert that the community’s displacement was part of the State’s counterinsurgency strategy: “during the years of military repression, the community of Río Negro was persecuted and destroyed, as it was the Guatemalan State’s deliberate intention to

wipe out the community and its inhabitants.” They point out that before and after the massacres, the property of the inhabitants was destroyed.

40. As for Article 22, the persecution and stigmatization of the community by the PAC and the Army prevented community members’ freedom of movement, which meant that they had to seek refuge in the mountains for years and return to their place of origin secretly. The massacres made it virtually impossible for survivors to reclaim their native territory and forced them to live in the settlement of Pacux.

41. The petitioners also claim that the State violated Article 24 by having accused the indigenous community of being subversives and the social base of the insurgency, based on the fact that they were part of the Maya Achí people. This was allegedly invoked to justify their extermination. The petitioners also contend that it has been years since “the vast majority of atrocious events occurred [...] yet the discrimination against the survivors of the community of Río Negro persists to this day, as they do not have the same access to the justice system that the perpetrators have.” The petitioners add that “the State has used its own structure to protect former Colonel Solares González, and [...] to ensure that the perpetrators go unpunished, who have thus far not had to stand trial.”

42. The petitioners also assert that the State violated the obligations it undertook in articles 1(1) and 2 of the American Convention by having allowed the extermination of the majority of the members of the Maya Achí people of Río Negro. They also contend that the State’s international responsibility was engaged by the direct actions of its agents and by its failure to take effective judicial, legislative and executive measures to ensure the free and full exercise of human rights. Specifically, they allege that “the intention on the part of the State security apparatuses at that time -which acted on orders and as part of an obvious chain of military command- was to eliminate and destroy the population and community of Río Negro”.

43. The petitioners allege that the State perpetuated the impunity. Under Guatemalan criminal law, the identity of a murder victim need not be established for a criminal act to qualify as murder. In the case prosecuted in connection with the massacre of September 14, 1982, the defendants were acquitted on the grounds that the identity of the victims had not been established and that the requirements to convict were not present. Here, the petitioners allege that the absence of evidence was due to the State’s own inactivity; they assert that the justice system has to change its standards and take into account factors such as the context and the motive for the events.

## **B. The State**

44. In addressing the criminal case prosecuted with respect to the March 13, 1982 massacre, the State argues that the “petitioners have to await the outcome of the criminal case,” and that while “there are still certain factors obstructing fulfillment of the decision [...] that ordered the arrest of Colonel José Antonio Solares”, the domestic system of justice had observed the principle of due process and the guarantees that the law requires.

45. Before issuance of the admissibility report, the State asserted that the only additional submissions by the petitioners of which it considered itself informed were those connected to the events that transpired in the massacre of March 13, 1982, namely, *inter alia*, the manner in which the victims were executed, the sacking of the village, the rape of the women, the mistreatment that preceded the extrajudicial executions, the enslavement of 18 children, and the results of the exhumations of bodies. It stated the following in this connection:

[As to what] was done to the leaders of the community of Río Negro in 1978, what happened in the chapel of Río Negro on March 4, 1980, in the community of Los Encuentros on May 14

[1982], in the village of Xococ on February 13, 1982, in the village of Agua Fría on September 14, 1982, and in the village of Río Negro on March 13, 1982 [...], each one of those events [...] has to be considered as a separate and individual petition [...] and not as an amplification of the original petition in the case.

[Therefore,] the State address[ed] only the events of March 13, 1982, and the amplification and correction made by the petitioners.<sup>4</sup>

46. As for the alleged violations of judicial guarantees, the right to judicial protection and equality before the law, in relation to Article 1(1) of the Convention, the State alleges that “the proceedings in the judicial system have yielded positive results in the effort to administer justice.”

47. As for the guarantee of access to justice, the State alleges that in 1993, a judicial inquiry was instituted into the March 13, 1982 massacre; as part of that inquiry, three members of the PAC were detained in 1994, cadavers were exhumed in October 1994, and in 1996 a continuance was ordered in a hearing because the defense requested enforcement of Amnesty Decree 32/88. The inquiry resumed in late 1998 and on November 30, 1998, the lower court convicted four material authors. The higher court overturned the lower court’s conviction, but in 2000 the lower court’s ruling was upheld and became final; the defendants were convicted and sentenced to 50 years in prison for the murder of two persons whose remains were identified in the clandestine grave in Pacoxom. The State adds that criminal proceedings were instituted against other former civil patrollers and against former Colonel Solares, for whom an arrest warrant was issued in April 2003.

48. It also alleges that “it appears from the information provided by the Constitutional Court and by the petitioners that in fact the criminal proceedings initiated by the petitioners have not moved as expeditiously as they ideally should.” Nevertheless, it “apprised [the IACHR] of the results of the efforts made to administer justice for the human rights violations that occurred on March 13, 1982.” Specifically, it made allusion to the May 28, 2008 conviction in connection with the Xococ massacre on March 13, 1982, a decision that the convicted persons appealed; their appeal is still pending. It also reported that in order to expedite the judicial proceedings, the Río Negro case had been submitted to the Guatemalan State’s Committee to Expedite Judicial Proceedings [Comité de Impulso].<sup>5</sup>

49. As to the violation of articles 8 and 25 of the Convention, the State observes that although it has put out its maximum effort and diligence, thus far it has not succeeded in arresting Mr. Solares. It reports that requests were sent to the Traffic Department, the National Immigration Office, the Registry of Motor Vehicles, the Ministry of National Defense, the Military Social Security Institute, the Office of Vital Statistics of Casillas, the Department of Santa Rosa, the Citizen Registry of the Supreme Electoral Tribunal, the director of the Bureau of Criminal Investigations of the Public Prosecutor’s Office and the banks. It also reports that 3 searches were conducted in December 2005.

50. As for the alleged aiding and abetting and cover-up of former Colonel Solares González to prevent him from being taken into custody, the State contends that the legislative, executive and juridical branches exercise their functions independently of each other and that

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<sup>4</sup> Document in the record of the case with the IACHR, Folder 4, observation presented by the State, dated August 19 and entered into the record on August 20, 2008, pages one and 2.

<sup>5</sup> According to information supplied by the State, the *Comité de Impulso* is charged with expediting cases that the Commission has before it, so as to strengthen and help expedite the investigation and clarification of the facts. It is composed of representatives from the Judicial System, the Office of the Attorney General, the Public Prosecutor’s Office, the Ministry of the Interior and various state institutions.

subordination of any branch to another is strictly prohibited under the Constitution. It contends, therefore, that it is impossible to tamper with the judicial branch or to protect Mr. Solares to prevent his arrest.

51. It also states that it filed a “red notice application<sup>6</sup> with INTERPOL for Victor González López, Miguel Alvarado Sic and Serapio Lajuj Cuxum.” It states that “various steps are being taken to identify Ambrosio Pérez Lajuj and Domingo Chen, whom the May 28 [2008] judgment had ordered be investigated; Mr. Ambrosio Pérez Lajuj was the only one found to have a certification of identification entry.”

52. It also makes reference to the construction of the Chixoy Hydroelectric Dam. It states that the dam’s construction “affected the community of Río Negro and other communities; hence on September 18, 2006, the Government of Guatemala and the office of the Coordinator of Communities Affected by Construction of the Chixoy Hydroelectric Dam (COCAHICH) signed the Political Agreement containing the Terms of the Negotiation to Identify, Confirm and Redress the Damages and Injuries Caused to the Communities by the Construction of the Chixoy River Dam and Reservoir.” That agreement was renewed in 2007, 2008, and 2009, and was said to have been renewed in January 2010.

53. Finally, the State asserts that in response to the Inter-American Commission’s offer of its good offices to enable the parties to reach a friendly settlement, on four different occasions the Guatemalan State placed itself at the petitioners’ disposal with a view to promoting a rapprochement that would be the basis for setting up negotiations to arrive at a friendly settlement.” That friendly settlement would include “the obligation to investigate, [prosecute and punish] those responsible for the violations and the measures of reparations for the victims [and] “other forms of reparations to be arranged with the petitioners.”

#### **IV. ANALYSIS OF THE MERITS**

##### **A. Examination of the evidence**

54. In application of Article 43(1) of the Rules of Procedure of the Inter-American Commission on Human Rights (hereinafter the “Rules of Procedure of the Commission”), the Commission will examine the arguments, the evidence presented by the parties, and the information obtained during the working meeting held at the 134<sup>th</sup> regular session of the Commission. It will also take into account information that is public knowledge.<sup>7</sup>

##### **B. The facts**

###### **1. Background and context**

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<sup>6</sup> The international red notices are one of the principal means INTERPOL has available to inform its member countries that a judicial authority has issued an arrest warrant for a given person. The red notices are not international arrest warrants, but many member countries of INTERPOL interpret them as a request for preventive detention. See in: <http://www.interpol.int/Public/News/2006/ICRedNotices20060601ES.asp>

<sup>7</sup> Article 43(1) of the Commission’s Rules of Procedure: “The Commission shall deliberate on the merits of the case, to which end it shall prepare a report in which it will examine the arguments, the evidence presented by the parties, and the information obtained during hearings and on-site observations. In addition, the Commission may take into account other information that is a matter of public knowledge.” In this specific case, the Commission will consider, as it has in previous reports, the report of the Commission for Historical Clarification, which was established on June 23, 1994, under the Oslo Accord, in order to clarify the human rights violations associated with the armed conflict in Guatemala. See Report of the CEH at: <http://shr.aas.org/guatemala/ceh/mds/spanish/>

**a. Armed conflict in Guatemala**

55. An armed conflict raged in Guatemala from 1962 to 1996, and took a terrible toll in human lives and material, institutional and moral costs. During this period, an estimated two hundred thousand persons became the victims of arbitrary executions and forced disappearance.<sup>8</sup> In ethnic terms, the members of the Maya indigenous people accounted for 83% of the victims.<sup>9</sup>

56. Among the causes of the armed conflict identified by the Commission of Historical Clarification (hereinafter "CEH") in its report *Guatemala: Memory of Silence* (hereinafter "CEH Report" or "Memory of Silence"), is a pervasive structural injustice, racism and an institutionalized exclusion of broad sectors of society.<sup>10</sup>

57. During the internal armed conflict, the so-called national security doctrine was applied,<sup>11</sup> which governments and armed forces of various countries of the Americas adopted in response to the action and message of insurgent movements. During the period of armed conflict in Guatemala, the notion of an "enemy within", a central premise of that doctrine, was expanded. In its investigation, the CEH concluded that in application of the national security doctrine, the State forces and related paramilitary groups were responsible for 93% of the violations documented by the CEH, including 92% of the arbitrary executions and 91% of the forced disappearances. The CEH attributed 3% of the violations to the insurgent armed groups;<sup>12</sup> in the remaining 4% of cases, it was unable to compile information attributing blame to any one actor.

58. Of the violations recorded by the CEH, 91% occurred from 1978 to 1983, under the dictatorships of General Romeo Lucas Garcia (1978-1982) and General Efraín Ríos Montt (1982-1983), making it the most violent period of the armed conflict in Guatemala. It was in this context that the massacre in the community of Río Negro took place.<sup>13</sup>

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<sup>8</sup> En its documentation work, the CEH registered 42,275 victims of arbitrary executions and forced disappearances: 23,671 were the victims of arbitrary executions and 6,150 were victims of forced disappearance. CEH, *Memory of Silence*, Volume V, Conclusions and Recommendations, p. 21.

<sup>9</sup> CEH, *Memory of Silence*, Volume II, Human Rights Violations, pp. 321 and 322. CEH, *Memory of Silence*, Volume V, Conclusions and Recommendations, p. 21. See also, I/A Court H.R., *Case of Tiu Tojín v. Guatemala. Merits, Reparations and Costs*. Judgment of November 26, 2008. Series C No. 190, para.48.

<sup>10</sup> CEH, *Memory of Silence*, Volume V, Conclusions and Recommendations, p. 24.

<sup>11</sup> The CEH noted that the national security doctrine was a practical way of confronting, internally or externally, the possible or real communist threat in the context of the Cold War and of the new relations between the United States and Latin America. This doctrine helped unify the ideological profile of the Latin American armies, bringing them into line with clearly anticommunist concepts. The national security doctrine considered that national power was made up of four elements, economic, social, political, and military power, which required a particular strategy for its implementation, and for it to become, subsequently, a national strategy. Considering these four components of national power, and in keeping with strategic planning, the governments increased the intervention of the military power so as to confront and eliminate the subversive forces, a concept that included any person or organization that represented any form of opposition to the government in place or to the State; that notion came to be the equivalent of that of "enemy within." This concept meant in Guatemala that all the structures of the State and all the resources of power should be placed at the disposal of the Army to fight and defeat the guerrillas, in keeping with the broad conception of an enemy within. CEH, Volume I, Causes and origins of the internal armed confrontation, p. 117. .

<sup>12</sup> In the case of the acts of violence committed by the guerrilla movement, the CEH applied principles common to the International Law of Human Rights and to International Humanitarian Law, in order to give the parties equal treatment. CEH, *Memory of Silence*, Volume I, p. 47.

<sup>13</sup> I/A Court H.R., *Case of the Las Dos Erres Massacre v. Guatemala. Preliminary Objection, Merits, Reparations and Costs*. Judgment of November 24, 2009. Series C No. 211, para. 71; IACHR, *Annual Report 1983-1984*, Chapter IV (OEA/Ser.L/V/II.63).

59. On March 23, 1982, as a result of a coup d'état, a military governing junta was installed presided by José Efraín Ríos Montt, and also composed of Horacio Egberto Maldonado Schaad and Francisco Luís Gordillo Martínez. That military junta constituted the highest authority of the Republic of Guatemala up until June 8, 1982, the date on which Ríos Montt<sup>14</sup> assumed the positions of President of the Republic and Minister of National Defense. Ríos Montt remained in power as the *de facto* president until August 31, 1983.<sup>15</sup>

60. The Military Junta and High Command devised and ordered implementation of a military campaign plan called "Victory 82" using new strategic definitions for the counterinsurgency and the objectives of the National Plan for Security and Development.

61. The National Plan for Security and Development<sup>16</sup> and the Victory 82 Campaign Plan were implemented by the Army in 1982 and directed especially against the guerrilla fronts in northwestern and northern Guatemala. Appendix H of the aforementioned National Security Plan states that subversives must be cut off from the population that constitutes its social and political base. The following are mentioned among the tactics to be used against the guerrilla force: deceive them, find them, attack them, and annihilate them. "The mission is to annihilate the guerrilla force and parallel organizations."<sup>17</sup> Thus, the National Security Plan ordered annihilation of those considered to be "subversives" or "enemies within".<sup>18</sup>

62. The counterinsurgency policy<sup>19</sup> in Guatemala was characterized, especially during the most violent period of the conflict,<sup>20</sup> by military actions aimed at destroying groups and communities, as such, as well as forcibly displacing them when they were considered possible guerrilla auxiliaries. These military actions, carried out with the knowledge of or on orders from the highest-level authorities of the State, mainly entailed killings of a defenseless population, known as

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<sup>14</sup> José Efraín Ríos Montt assumed the executive and legislative functions of the State, as President of the Republic and General Commander of the Army, with the authorities, powers, and prerogatives that Decree Law 24-82 conferred on the government Military Junta, pursuant to Decree Law 36-82.

<sup>15</sup> See, *inter alia*, IACHR, Report on the situation of human rights in Guatemala, October 3, 1983. "The Coup d'état of March 23, 1982" (OEA/Ser.L/V/II.61).

<sup>16</sup> The document "Plan Nacional de Seguridad y Desarrollo" is dated April 10, 1982, and signed on behalf of the governing Military Junta by José Efraín Ríos Montt as President, Horacio Maldonado, and Luis Gordillo Martínez.

<sup>17</sup> Plan de Campaña Victoria 82, case file with the IACHR, folder 6, supplied by the State as a document attached to the communication of January 15, 2010.

<sup>18</sup> See document "State Violence in Guatemala, 1960-1996: A Quantitative Reflection," Chapter 14 "The Victims," Patrick Ball, Paul Kobrak, and Herbert F. Spierer. Available at: <http://shr.aaas.org/guatemala>.

<sup>19</sup> The counterinsurgency policy from 1978 to 1983 can be divided into three phases. (a) Selective phase (1978-1981), in which the main targets of military operations were certain individuals; (b) collective and massive phase in 1981 and 1982, the period during which the largest number of massacres took place; and (c) the phase of development and stability, in 1983. The displaced population was relocated in model towns and development poles supervised by the Army. In complaint brief filed by the victims' representatives.

<sup>20</sup> On July 1, 1982, a state of siege law was declared that prohibited all political activity and by which "official control of the media was ensured, on declaring it a crime to public any information about guerrilla activity...." (Amnesty International, "Guatemala: *The Human Rights Record*"). That provision also prohibited the airing of opinions on the country's political situation. In addition, during the years of the armed conflict that saw the most violence, the Army designed a tactic aimed at disinformation for the purpose of distorting public opinion and legitimating the action of the State as a valid measure for the military struggle against the guerrillas. (Document "Plan de Acción Anti-subversivo de la Armada," which is in the record). That Plan *Victoria 82* provided for the "censorship or suspension of civilian broadcasts and the monitoring and control of vulnerable aspects of the region [including] the system of radio stations, antennas, and repeaters [... and the] prevention of civilian interference in military operations ... control free access to the sources of information." Report of the CEH, Guatemala: *Memory of Silence*, Chapter II, Volume 3, paras. 480 and 481. See also, Victory '82 Campaign Plan, document in the record of the case with the IACHR, folder 6, supplied by the State as an annex to the communication of January 15, 2010.

massacres<sup>21</sup> and scorched-earth operations.<sup>22</sup> The CEH recorded 626 massacres committed by the State forces during the armed conflict, mainly the Army, supported by paramilitary structures such as the Civilian Self-Defense Patrols (PAC: *Patrullas de Autodefensa Civil*),<sup>23</sup> the Military Commissioners<sup>24</sup> and the Judicial Commissioners.<sup>25</sup>

63. In the early 1980s, the Army devised a counterinsurgency strategy to actively engage the civilian population –especially the Maya communities. This was how the Civilian Self-Defense Patrols or *Patrullas de Autodefensa Civil* (PAC) developed as groups of civilian men that the Army organized by means of coercion into a supplementary paramilitary force, for the purpose of “isolating the guerrilla movement and policing its communities.”<sup>26</sup> In its 1985 Special Report on the Situation of Human Rights in Guatemala, the IACHR wrote the following:

[...] Civilian Self-Defense Patrols are the military organization created by the Guatemalan Army to establish and operate, within the *campesino* and indigenous civilian population, small groups organized along military lines who mainly perform patrol-, defense- and control-related functions within their villages [...] They are most prominent in the so-called conflict areas, in the municipalities, small villages and development poles.

[...] The PACs were created under the regime of General Romeo Lucas García in 1981, and later set in motion under the military regimes of General Efraín Ríos Montt and General Oscar Humberto Mejía Víctores. They are governed by a number of legal provisions, regulations and military higher orders. [...]

#### **b. The Maya indigenous people regarded as an “enemy within”**

64. The reason why the majority of the victims of the massacres were members of the Maya indigenous people and why the massacres were committed within their territory is because

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<sup>21</sup> The CEH defined massacres as arbitrary executions of more than five persons, conducted in the same place and as part of the same operation, with the victims in an absolutely or relatively defenseless position. CEH, *Memory of Silence*. Volume III, p. 251.

<sup>22</sup> The so-called scorched-earth operations meant the forced displacement of the civilian population as a result of the repression brought to bear against them in the form of murders and the systematic destruction of harvests and properties. The CEH estimated that between 500 thousand and one and a half million Guatemalans, especially in the early 1980s, were forced to flee as a direct consequence of the repression. The massive displacement in the early 1980s was a direct consequence of the campaign plans and military operations that the Army developed to take back control of the civilian population in the conflict areas. CEH, *Memory of Silence*. Volume III, p. 211.

<sup>23</sup> The PACs were created in late 1981 by the *de facto* military regime of General Ríos Montt, as part of the policy of exterminating the guerrilla movement by relocating the indigenous population, and wiping out “any community or killing any person that his government was suspicious of, using methods that violated human rights.” The PACs were begun in the department of El Quiché, and expanded to other departments. IACHR, Fourth Report on the Situation of Human Rights in Guatemala, 1993.

<sup>24</sup> From the outset of the armed confrontation the military commissioners were the representatives of the Army in each community. The post was created in 1938 by executive order and they were “vested with the character of agents of the military authority, who were to carry out their mission within the villages, hamlets, and population centers whose importance required this measure in view of the organization of the militias...” In 1973 an executive order was issued to the effect that only the military authority had command over the military commissioners and their aides. In a document that is in the record, and in CEH, *Memory of Silence*, Volume II, pp. 158-160 .

<sup>25</sup> The judicial commissioners were an investigative corps of the National Police which, during the armed conflict, especially in the years of greatest violence, were taken over and controlled by the Army.

<sup>26</sup> CEH, *Memory of Silence*, Chapter II, Volume I, The Civilian Self-Defense Patrols. See also, I/A Court H.R. *Case of the Plan de Sánchez Massacre v. Guatemala*. Merits. Judgment of April 29, 2004, Series C No. 105.

the Army, based on the national security doctrine, identified the Maya as an enemy within, because of a belief that they were or could be the basis of support for the guerrilla movement.<sup>27</sup>

In the most violent years of the conflict (1978-1983), as the support base and sphere of influence of the guerrilla movement expanded, in various regions of the country the Army singled out the Maya as a group with ties to the guerrilla movement. In some instances, they were so identified because they were actually supporting insurgent groups; pre-insurreccional conditions were present in certain small areas of the country's interior. However, the CEH has established that in the majority of cases, the State deliberately exaggerated the connection between the Maya communities and the insurgency. The government exploited long-standing racial prejudices to make that connection, as a pretext for eliminating any present and future possibilities that the Maya population might provide aid or join any insurgency project.<sup>28</sup>

65. Specifically, the Victory 82 Campaign Plan read, in part, as follows:

[...] The vast indigenous masses of the Guatemalan highland identify with the message of subversion as their causes are the scarcity of land and the immense poverty; because of the many years of indoctrination they have received, they view the Army as an invading enemy (only some areas that are under control); compounding this are a considerable number of mistakes made by the troops, such as vandalism, rapes, robberies and destruction of harvests, which the national and international subversive movement has exploited to good effect.<sup>29</sup>

**c. Strategies against the indigenous Mayan people: Massacres and scorched-earth (tierra arrasada) operations**

66. The massacres and scorched-earth operations were intended to exterminate the Maya communities completely, and to destroy their houses, livestock, harvests and other means of survival, thereby violating the right to life, the Maya people's right to ethnic or cultural identity and the right to express and disseminate culture, among others.

67. As a consequence of the State's policy:

[As] their populations were indiscriminately massacred, the villages were razed. [...] [I]n northern Huehuetenango, Rabinal and Zacualpa, entire villages were burned, belongings were destroyed and the collective sowing and planting was burned, leaving the people without food.<sup>30</sup>

68. In that regard, one Maya Achí woman from Río Negro said that when she was fleeing from the Los Encuentros massacre with her daughter in her arms, in order to survive she had to rid herself of her cultural attire and anything else that might identify her as an indigenous woman.<sup>31</sup> Here, the CEH documented the following:

The Army destroyed ceremonial centers, sacred places and cultural symbols. The language and dress, and other elements that were part of the indigenous peoples' identity, were

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<sup>27</sup> CEH, *Memory of Silence*, Volume V, Conclusions and Recommendations, p. 49.

<sup>28</sup> CEH, *Memory of Silence*, Volume V, Conclusions and Recommendations, p. 29.

<sup>29</sup> Victory '82 Campaign Plan. Annex F. (*Plan de Opsic*).

<sup>30</sup> CEH, *Memory of Silence*, Volume V, p. 50.

<sup>31</sup> Testimony given by Antonia Osorio Chen on June 24, 2009, in the presence of Notary Edgar Fernando Pérez Archila. Document in the record of the case with the IACHR folder 5, supplied by the petitioners on August 17, 2009 and entered into the record at the IACHR on September 9, 2009.

repressed. With the militarization of the communities and the introduction of the PACs and the military commissioners, the communities' legitimate authority system was dismantled, they were prevented from using their own standards and procedures to regulate social life and settle conflicts; the practice of the Maya spirituality and of the Catholic religion was made difficult, obstructed or repressed. This interfered with the preservation and development of the indigenous peoples' way of life and social organization. Displacement and the need to go into hiding only exacerbated the difficulties obstructing the practice of their own culture.<sup>32</sup>

69. This was the scenario in which the massacres and the persecution of the indigenous community of Río Negro occurred. Racism, which materialized in the form of a doctrine of superiority and manifested itself in the Guatemalan State's conduct, was one of the causes of the armed conflict. It was also

[...] a fundamental factor in explaining the particular brand of brutality and indiscrimination with which the military operations were carried out against hundreds of Maya communities in the western and northwestern sectors of the country, especially between 1981 and 1983, when over half the massacres and scorched-earth operations were perpetrated against them.<sup>33</sup>

70. The response to the guerrilla movement was so disproportionate because the counterinsurgency policy sought not only to destroy the social bases of the guerrilla movement, but also to destroy the cultural values that gave the indigenous communities their sense of cohesion and collective endeavor.

## 5. The Massacres

71. One of the distinctive features of the massacres committed during the armed conflict were the acts of excessive cruelty intended to eliminate the persons or group of persons identified in advance as the target of the military operations.<sup>34</sup> Specifically, the massacres were used against the Maya people for the simple fact that they were Maya.<sup>35</sup> The massacres were intended to eliminate enemies, which meant all members of the group whenever possible.<sup>36</sup> In its second special report on Guatemala, published in 1983 and titled "The Situation of Human Rights in Guatemala," the Commission made reference to the indiscriminate attacks upon the rural population, in which no distinction was drawn between civilians and insurgents or between adults and children: everyone was under attack.<sup>37</sup>

72. As for the strategies employed by the Army when carrying out the massacres, the CEH wrote the following:

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<sup>32</sup> CEH, *Memory of Silence*, Volume III, p. 195.

<sup>33</sup> CEH, *Memory of Silence*. Volume V, Conclusions and Recommendations, p. 29.

<sup>34</sup> 95% of the massacres were committed between 1978 and 1984 and 90% of those committed during that period were in areas populated mainly by the Maya people, such as the departments of El Quiché, Huehuetenango, Chimaltenango, Alta and Baja Verapaz. *Memory of Silence*, Chapter III, paragraphs 443, 460. Chapter II, para.42.

<sup>35</sup> As the CEH wrote: "Racism, whether conscious or unconscious, is a very important factor in explaining many of the disproportionate acts of violence committed throughout Guatemala's history and during the armed conflict. In the racist mentality, any indigenous mobilization brings to mind the recurring image of the uprising. Racism may have been a factor in some of the bloodiest episodes of the armed conflict, when the indigenous population was punished as if it was an enemy to be conquered." CEH, *Memory of Silence*, Chapter I, Causes and origins of the armed conflict, para. 35.

<sup>36</sup> CEH, *Memory of Silence*, Human Rights Violations and Acts of Violence. Volume 3. Human rights violations, para. 1033.

<sup>37</sup> OEA/Ser.L/V/II.66, doc.47, October 5, 1983, Original: Spanish.

The CEH has noted particularly harsh cruelty in many acts committed by agents of the State, especially members of the Army in their operations against Maya communities. The counterinsurgency strategy not only led to violations of basic human rights, but also to the fact that these crimes were committed with particular cruelty, with massacres representing their archetypal form. In the majority of massacres there is evidence of multiple acts of savagery, which preceded, accompanied or occurred after the deaths of the victims. Acts such as the killing of defenceless children, often by beating them against walls or throwing them alive into pits where the corpses of adults were later thrown; the amputation of limbs; the impaling of victims; the killing of persons by covering them in petrol and burning them alive; the extraction, in the presence of others, of the viscera of victims who were still alive; the confinement of people who had been mortally tortured, in agony for days; the opening of the wombs of pregnant women, and other similarly atrocious acts, were not only actions of extreme cruelty against the victims, but also morally degraded the perpetrators and those who inspired, ordered or tolerated these actions.<sup>38</sup>

73. For its part, the Recovery of the Historical Memory Inter-Diocesan Project (henceforth "REMHI") wrote the following:

Although these massacres will never be fully explained [...], the Army offensive, the progression of massacres, and their internal structure obeyed a certain logic [...] They were not merely a spontaneous reaction by soldiers or officers. In order to isolate the guerrillas, the Army launched a series of large-scale, indiscriminate massacres against their civilian support base. The Army routed the civilians out of their hiding places in the hills and forests; and terrorized them; it laid siege to them to starve them out after having burned their homes and stored crops, destroyed their household utensils, and stolen their belongings. In this way, people were forced to surrender and subsequently clustered into "special camps". This practice of massacres, pursuit, burning, and siege is known as the scorched-earth policy.<sup>39</sup>

74. And so, in 1982, the pattern shifted from one of selective repression to indiscriminate repression.<sup>40</sup> As the CEH documented in its report, the perpetrators carried out wholesale slaughters, targeting everyone in a community without distinction.<sup>41</sup> In these cases, they deliberately employed "methods that would increase the number of victims by taking advantage of market day or by encircling the community. The pattern of the massacres was to dehumanize and demonize the victims."<sup>42</sup>

75. On a number of occasions the Army used the PACs as a weapon to carry out the massacres. According to information compiled by the CEH –and in some cases corroborated in court proceedings– the cruelty of the PACs was even worse in the massacres, namely: Plan de Sánchez, Río Negro, Xococ, Los Encuentros and Agua Fría.<sup>43</sup> The last four are the massacres under examination in this report.

76. Based on the anthropological reports, it has been established that the victims of the massacres were a civilian population and that "there was not one case in which the massacres

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<sup>38</sup> CEH, *Memory of Silence*, Volume V, Conclusions and Recommendations, p. 43.

<sup>39</sup> Project headed up by the Human Rights Office of the Archdiocese of Guatemala –ODHAG-. The REMHI Project report was published in 1998 under the title *Guatemala: Never Again*, p. 133 of English translation done by Thomas Quigley.

<sup>40</sup> Chapter II: Volume 3. GENOCIDE, para. 1029.

<sup>41</sup> CEH, *Memory of Silence*, Human Rights Violations and Acts of Violence. Volume 3. Human rights violations, para. 1030.

<sup>42</sup> CEH, *Memory of Silence*, Human Rights Violations and Acts of Violence. Volume 3. Human rights violations, para. 1031.

<sup>43</sup> CEH, *Memory of Silence*, Human Rights Violations and Acts of Violence. Volume 3. Human rights violations, para. 1062.

occurred on the occasion of or as a consequence of clashes between the Army and the guerrilla movement." Thus, for example:

One can say without fear of equivocation that the persons murdered in the massacres carried out on January 8, 1982 in the community of Chichupac, on March 13 in the community of Río Negro, and on June 18 in Plan de Sánchez, did not die in combat; the forensic evidence shows that they were brutally murdered and had no means to defend themselves.<sup>44</sup>

77. As the CEH has documented:

The sequence, repetition and massive scale of the brutal acts to which members of the Maya people were collectively subjected demonstrate an absolute intention to destroy that people, either in whole or in part, as happened with the systematic persecution against certain communities, like Río Negro and the persecution suffered by the displaced population, by those who remained in their communities, and even those who turned themselves in to the Army. In the municipality of Rabinal, these acts took a heavier toll on the Maya Achí group, which is another factor indicative of the genocidal nature of these acts... hence, they constitute discriminatory acts.<sup>45</sup>

78. The massacres were combined with the destruction and burning of property and belongings. One example is that in the northern portion of Rabinal, the area near the Chixoy reservoir was "completely scorched." Ten communities were destroyed, namely: Río Negro, Los Encuentros, Agua Fría, La Laguna, Comalmapa, Jocotales, Chitucán, Pacaal, Los Mangales, and the Chitucán Hacienda,<sup>46</sup> the first three of which are being examined in this report.

79. The survivors of the massacres were treated harshly in the displacement, including persecution by the perpetrators.<sup>47</sup> In its second special report on Guatemala, published in 1983 and titled "The Situation of Human Rights in Guatemala" the Commission documented the massive displacement that happened in Guatemala as a result of the widespread repression in 1981 and 1982.<sup>48</sup>

#### **E. The forced disappearance of persons**

80. Amid the indiscriminate violence pervasive in Guatemala, the forced disappearance of persons was one of the major calamities that the victims of the conflict endured. Like the other manifestations of the terror that reigned in those years, forced disappearances were also the result of operations and actions conducted by groups acting with the State's tolerance and acquiescence.

81. The phenomenon of the "disappeared" was basically a result of the fact that the system of abducting and eliminating persons on a massive scale, without leaving a trace of their whereabouts, became part of the counterinsurgency strategy. In effect, because of the failure to investigate and punish the authors of these acts and the obvious support they were receiving to

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<sup>44</sup> CEH, *Memory of Silence*, Human Rights Violations and Acts of Violence. Volume 3. Human rights violations, para. 1032.

<sup>45</sup> CEH, *Memory of Silence*, Human Rights Violations and Acts of Violence. Volume 3. Human rights violations, para. 1081. The emphasis has been added by the IACHR.

<sup>46</sup> CEH, *Memory of Silence*, Human Rights Violations and Acts of Violence. Volume 3. Human rights violations, para. 1041.

<sup>47</sup> CEH, *Memory of Silence*, Human Rights Violations and Acts of Violence. Volume 3. Human rights violations, para. 1047.

<sup>48</sup> OEA/Ser.L/V/II.66, doc.47, October 5, 1983. Original: Spanish.

enable them to carry out their operations, it became increasingly apparent that these patrol groups had ties to the Guatemalan government's security forces.<sup>49</sup>

82. The situation prevailing in Guatemala at that time was a source of great concern to the IACHR.<sup>50</sup> The victims of these operations were literally disappeared without a trace, making it virtually impossible to get any news of their whereabouts, despite the relentless searches undertaken by family and friends, who scoured morgues, hospitals, military bases and police stations.

83. Forced disappearance was a Guatemalan State practice carried out mainly by agents with the State security forces, specifically the Army, the civilian self-defense patrols "the PACs", the military commissioners, the Treasury Guard, the Mobile Military Police, the national police, the judicial police and the "death squads."<sup>51</sup>

**f. Violence against children**

84. With respect to children as victims of the armed conflict in Guatemala, the CEH wrote that

[...] it is particularly troubling that so many children were among the direct victims of arbitrary executions, forced disappearances, torture and rape, among other violations of their most basic rights. The armed conflict orphaned many children, leaving them defenseless. This was especially true of the Maya population, whose families were torn apart. The chances of these children living a normal childhood within the parameters of their culture were lost.<sup>52</sup>

85. Furthermore, the Recovery of Historical Memory Inter-Diocesan Project (hereinafter "REMHI")<sup>53</sup> compiled compelling testimony documenting the way in which the children were victimized by the conflict and lived the conflict through their firsthand experiences as victims and witnesses and as indirect victims of violations committed against their parents and other members of their families. The children were more vulnerable to violations because they were unable to

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<sup>49</sup> IACHR, *Third Report on the Situation of Human Rights in the Republic of Guatemala*, approved October 3, 1985, chapter II, para.3 [available only in Spanish].

<sup>50</sup> On the occasion of the *in loco* visit conducted in May 1985, the Commission wrote the following:

[...] Prior to the *in loco* visit to Guatemala in May 1985, the Commission received many new complaints indicating that the problem of forced disappearance had gotten worse; all those complaints were processed according to the regulations governing the individual case system [...]. During the *in loco* visit, the IACHR's special commission received direct testimony from the next of kin of hundreds of disappeared persons; it heard from eye witnesses to some of the kidnappings and captures; it met with members of the Mutual Support Group [Grupo de Apoyo Mutuo (GAM)], received other new complaints, learned of kidnappings and disappearances that happened precisely during the Commission's presence in Guatemala; it directly investigated the organizations accused of having a hand in these deeds; as said before, it spoke with authorities of all stripes and with public and private persons who were able to give it valuable information about this problem. It made personal overtures of all kinds in an effort to establish the whereabouts of those who might still be alive, to put a stop to this reprehensible practice, to investigate the perpetrators and to get the country's highest ranking public authorities to look at the very serious situation of the disappeared and deal with it. [...]

See: IACHR, *Third Report on the Situation of Human Rights in the Republic of Guatemala*, approved October 3, 1985, chapter II, para.7 [available only in Spanish].

<sup>51</sup> I/A Court H.R., *Case of Molina Theissen*. Judgment of May 4, 2004. Series C No. 106, para. 40. See also I/A Court H.R.; *Case of Tiu Tojin, Merits, Reparations and Costs*, Judgment of November 26, 2008. Series C No. 190, para. 49. I/A Court H.R., *Case of the Plan de Sanchez Massacre. Merits*. Judgment of April 29, 2004. Series C No. 105, and I/A Court H.R., *Case of the Plan de Sánchez Massacre. Reparations and Costs*. Judgment of November 19, 2004. Series C No. 116.

<sup>52</sup> CEH, *Memory of Silence*, Volume V, Conclusions and Recommendations, para. 28.

<sup>53</sup> Project headed by the Human Rights Office of the Archdiocese of Guatemala –ODHAG-. The REMHI Project report was published in 1998 under the title *Guatemala: Never Again!*

understand danger and the mechanics of violence. They were and still are deeply affected by the loss of security, trust and the care they need for normal growth and development.<sup>54</sup>

86. For its part, the Human Rights Office of the Archdiocese of Guatemala –ODHAG– published a study in 2000 about the children who disappeared during the internal armed conflict. It estimates that over 400 children disappeared.<sup>55</sup>

87. On the other hand, some children survived the massacres because the civil patrollers, military and military commissioners decided to take them home. As the CEH documented:

[...] after the massacres or scorched-earth operations, many children who could have fended for themselves were taken by military, military commissioners or civil patrollers to be subjected to servitude in their homes or in the homes of other families. Some of these children were subjected to exploitation and systematic abuse; others were received in homes where they were raised. Others still don't know that they are not the children of the family with whom they live or lived.<sup>56</sup>

#### **G. Violence against women**

88. The CEH concluded that the women accounted for about one fourth of the direct victims of the human rights violations committed under the conflict.<sup>57</sup> The reports prepared by the Recovery of the Historical Memory Inter-Diocesan Project and of the Commission for Historical Clarification documented how women were insulted and dehumanized, terrorized and tortured, raped, disappeared and massacred by agents of the State, almost always soldiers and civilian patrollers.<sup>58</sup> Sexual violence against women was a widespread and systematic practice in the Army's counterinsurgency strategy<sup>59</sup> and one of the most specific manifestations of gender violence in Guatemala's internal armed conflict.<sup>60</sup>

89. In 99% of the rape cases documented by the CEH, the victim was a woman.<sup>61</sup> A total of 1465 rapes<sup>62</sup> were documented; of these, one third involved girls.<sup>63</sup> The women who survived were left to cope with the physical and psychological consequences, including the stigma attached to rape.<sup>64</sup>

90. On this subject, the CEH found that:

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<sup>54</sup> IACHR, *Fifth Report on the Situation of Human Rights in Guatemala*, approved on April 6, 2001, para. 27.

<sup>55</sup> ODHAG, *Hasta Encontrarte: Niñez Desaparecida por el Conflicto Armado Interno en Guatemala* (2000), p. 35.

<sup>56</sup> CEH, *Memory of Silence*, XXX, para. 170.

<sup>57</sup> CEH, *Memory of Silence*, Volume V, Conclusions and Recommendations, para. 29.

<sup>58</sup> IACHR, *Fifth Report on the Situation of Human Rights in Guatemala*, approved April 6, 2001, para. 42.

<sup>59</sup> CEH, *Memory of Silence*, Volume III, *Human rights violations and acts of violence*, para. 2351.

<sup>60</sup> CEH, *Memory of Silence*, Volume III, *Human rights violations and acts of violence*, para. 2350.

<sup>61</sup> CEH, *Memory of Silence*, Volume III, *Human rights violations and acts of violence*, para. 2376.

<sup>62</sup> CEH, *Memory of Silence*, Volume III, *Human rights violations and acts of violence*, para. 2388.

<sup>63</sup> CEH, *Memory of Silence*, Volume III, *Human rights violations and acts of violence*, para. 2391.

<sup>64</sup> REMHI, *Guatemala: Never Again* (1998), Part I, "The impact of the violence", section six, "From violence to the affirmation of women." Translation by Thomas Quigley.

The rape act itself was attended by violations of many other rights. As a rule, the rapes – whether individual or selective- occurred in the context of the victims’ detention; what followed was often the victims’ death or disappearance. The cases of rapes on a mass scale or indiscriminate and public rapes occurred in areas with large indigenous populations; rapes became common practice when an outpost of military troops or PAC was installed; they also routinely preceded massacres or were part of scorched-earth operations. Pregnant women were raped, killed and their fetuses destroyed.<sup>65</sup>

91. Thus, the collective and public raping of women was part of a pattern of behavior in the massacres, where the perpetrators raped their victims and then killed them.<sup>66</sup>

## **h. Genocide**

92. In this context, the CEH concluded that agents of the Guatemalan State, in the framework of the counterinsurgency campaign waged from 1981 to 1983, carried out acts of genocide against groups of the Maya people who resided in the four regions analyzed (including the Maya-Achí of Rabinal). This conclusion was based on the evidence that in light of Article II of the Convention on the Prevention and Punishment of the Crime of Genocide, there were killings of the Maya groups (Article II(a)), grievous injuries to their physical or mental integrity (Article II(b)), and acts of intentionally subjecting the groups affected to conditions of existence that entailed or could have entailed their total or partial physical destruction (Article II(c)). It was also based on the evidence that that all those acts were perpetrated "with intent to destroy, in whole or in part," groups defined by their common ethnic identity, as such, independent of the cause, motive, or ultimate objective of those acts (Article II, first paragraph).<sup>67</sup>

"In 1981 and 1982 it was heard from Army specialists from Sacapulas and other municipalities of Quiché that they had access to the command of military base number 20 of Santa Cruz del Quiché (6<sup>th</sup> Military Zone "Mariscal Gregorio Solares") regarding the order they had given to the first and second commander to kill all the Indians. Some pilots and persons in charge of the security of the commanders took their family members out of Quiché to safeguard them, given that the order was real."<sup>68</sup>

## **2. The Maya Achí indigenous community of Río Negro**

### **2.1. Background**

93. The Maya Achí community of Río Negro, on the banks of the Chixoy River in the municipality of Rabinal, department of Baja Verapaz, lived by farming, fishing and exchanging products with the neighboring community of Xococ.<sup>69</sup> The Maya have lived in that region since 330 B.C. and there were a number of ceremonial centers.<sup>70</sup>

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<sup>65</sup> CEH, *Memory of Silence*, Chapter II, Human Rights Violations and Acts of Violence, Volume III, Sexual violence against women, para. 3.

<sup>66</sup> CEH, *Memory of Silence*, Human Rights Violations and Acts of Violence. Volume 3. Human rights violations, para. 1066.

<sup>67</sup> CEH, *Memory of Silence*, Conclusions and Recommendations, Volume V, page 51.

<sup>68</sup> CEH, *Memory of Silence*, Chapter II, *Human rights violations and acts of violence*, Volume III, Sexual violence against women, para. 3.

<sup>69</sup> CEH, *Memory of Silence*, Illustrative Case No. 10. MASSACRE AND ELIMINATION OF THE COMMUNITY OF RIO NEGRO.

<sup>70</sup> CEH, *Memory of Silence*, Illustrative Case No. 10. MASSACRE AND ELIMINATION OF THE COMMUNITY OF RIO NEGRO.

94. In 1975, the INDE submitted a project for construction of a hydroelectric plant in the Chixoy River basin. The project would affect the communities located on the banks of the river, because the government would have to relocate them.<sup>71</sup> The community of Río Negro did not agree to the State's proposals, which had offered to settle them in Pacux. A member of the community of Río Negro said the following:

All the adults, the men and women who lived in the village, couldn't believe what the government people came to say, which was that the river was going to be blocked up. The elders always said that the place where the wall was going to be built was sacred ground [...] <sup>72</sup>

95. In 1978, many people from the community of Río Negro moved their homes to situate them on higher ground, high enough where the dam waters wouldn't cover them.<sup>73</sup> In the dam's construction, the sacred sites were looted and then flooded:

[...] There were many sacred sites; a considerable number of archeological sites [...] That was where our grandfathers, our forefathers and the elders performed sacred ceremonies. They were all destroyed, looted in 1978, before being flooded by the waters. The despoilers, the looters were government agents [...] <sup>74</sup>

96. The life of inhabitants of Río Negro and of those peoples who lived along the banks of the Chixoy River changed when the hydroelectric dam was built. In 1980, the hydroelectric project was still on and the inhabitants of Río Negro continued to refuse to give up their lands.<sup>75</sup>

97. During the armed conflict, the Army believed that the community was under the influence of the guerrilla movement<sup>76</sup> and that influence was why the inhabitants refused to leave their lands.

## **2.2 THE MASSACRES AND PERSECUTION AGAINST THE COMMUNITY OF RÍO NEGRO**

98. The community of Río Negro was the victim of systematic persecution aimed at annihilating it.<sup>77</sup> Its members were the victims of five massacres involving, *inter alia*, extrajudicial executions, forced disappearances and torture.

### *Massacre in the chapel of the village of Río Negro*

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<sup>71</sup> CEH, *Memory of Silence*, Illustrative Case No. 10. MASSACRE AND ELIMINATION OF THE COMMUNITY OF RIO NEGRO.

<sup>72</sup> Testimony given by Jerónimo Osorio Chen on July 6, 2009, in the presence of Notary Edgar Fernando Pérez Archila, Document in the record of the case with the IACHR, folder 5, supplied by the petitioners on August 17, 2009, and entered into the record at the IACHR on September 9, 2009.

<sup>73</sup> CEH, *Memory of Silence*, Illustrative Case No. 10. MASSACRE AND ELIMINATION OF THE COMMUNITY OF RIO NEGRO.

<sup>74</sup> Testimony given by Jerónimo Osorio Chen on July 6, 2009, in the presence of Notary Edgar Fernando Pérez Archila, Document in the record of the case with the IACHR, folder 5, supplied by the petitioners on August 17, 2009, and entered into the record at the IACHR on September 9, 2009.

<sup>75</sup> CEH, *Memory of Silence*, Illustrative Case No. 10. MASSACRE AND ELIMINATION OF THE COMMUNITY OF RIO NEGRO.

<sup>76</sup> CEH, *Memory of Silence*, Illustrative Case No. 10. MASSACRE AND ELIMINATION OF THE COMMUNITY OF RIO NEGRO.

<sup>77</sup> CEH, *Memory of Silence*, Chapter II: Volume 3. GENOCIDE, para. 1034.

99. On March 4, 1980, Army personnel arrived in the village of Río Negro accusing a number of the community's members of stealing food from the INDE workers. The military assembled the community in the village chapel and, after some discussion, the military fired on the people, killing seven. The seven were the community's representatives or catechists, namely: Calixto Chen, Francisco Tum Uscap, Máxima Chen, Santos Oswaldo López Ixpatá, Jesús Alvarado Ixpatá, Mateo Ixpatá Alvarado and Mateo Uscap Chen.<sup>78</sup>

*Execution of Evaristo Osorio Sánchez and Valeriano Osorio Chen*

100. On July 8, 1980, Evaristo Osorio Sánchez and Valeriano Osorio Chen, representatives of Río Negro and members of the committee for reparation of the damages caused by the Chixoy dam construction, were summoned to a meeting with INDE personnel. They were never seen alive again. According to the testimony in the case record, their bodies turned up several days later, with their hands and feet tied with rope; they appeared to have been tortured and had sustained gunshot wounds.<sup>79</sup> As a result of those events "the books containing INDE commitments" to the community disappeared.<sup>80</sup> According to the testimony of Valeriano Osorio Chen's brother, who experienced the persecution firsthand: "The soldiers from the outpost, the mobile military police, the commander and head of the army at the Cobán military base at that time, and [INDE] personal are those most responsible for this crime."<sup>81</sup>

*Massacre in the village of Xococ*

101. In February 1982, alleged guerrillas burned down the market in the village of Xococ and killed five persons. Because the Army said that the episode was the work of guerrillas and individuals from the indigenous community of Río Negro, the villagers of Xococ broke off their trade

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<sup>78</sup> Testimony given by Antonia Osorio Chen on June 24, 2009, in the presence of Notary Edgar Fernando Pérez Archila, Document in the record of the case with the IACHR, folder 5, supplied by the petitioners on August 17, 2009 and entered into the record at the IACHR on September 9, 2009. Testimony given by Jerónimo Osorio Chen on July 6, 2009 in the presence of Notary Edgar Fernando Pérez Archila, Document in the record of the case with the IACHR, folder 5, supplied by the petitioners on August 17, 2009, and entered into the record at the IACHR on September 9, 2009. Testimony given by Cornelio Osorio on July 3, 2009, in the presence of Notary Edgar Fernando Pérez Archila, Document in the record of the case with the IACHR, folder 5, supplied by the petitioners on August 17, 2009 and entered into the record at the IACHR on September 9, 2009.

<sup>79</sup> Testimony given by Antonia Osorio Chen on June 24, 2009, in the presence of Notary Edgar Fernando Pérez Archila, Document in the record of the case with the IACHR, folder 5, supplied by the petitioners on August 17, 2009 and entered into the record at the IACHR on September 9, 2009. Testimony given by Jerónimo Osorio Chen on July 6, 2009 in the presence of Notary Edgar Fernando Pérez Archila, Document in the record of the case with the IACHR, folder 5, supplied by the petitioners on August 17, 2009, and entered into the record at the IACHR on September 9, 2009. Testimony given by Cornelio Osorio on July 3, 2009, in the presence of Notary Edgar Fernando Pérez Archila, Document in the record of the case with the IACHR, folder 5, supplied by the petitioners on August 17, 2009 and entered into the record at the IACHR on September 9, 2009.

<sup>80</sup> Testimony given by Antonia Osorio Chen on June 24, 2009, in the presence of Notary Edgar Fernando Pérez Archila, Document in the record of the case with the IACHR, folder 5, supplied by the petitioners on August 17, 2009 and entered into the record at the IACHR on September 9, 2009. Testimony given by Jerónimo Osorio Chen on July 6, 2009 in the presence of Notary Edgar Fernando Pérez Archila, Document in the record of the case with the IACHR, folder 5, supplied by the petitioners on August 17, 2009, and entered into the record at the IACHR on September 9, 2009. Testimony given by Cornelio Osorio on July 3, 2009, in the presence of Notary Edgar Fernando Pérez Archila, Document in the record of the case with the IACHR, folder 5, supplied by the petitioners on August 17, 2009 and entered into the record at the IACHR on September 9, 2009.

<sup>81</sup> Testimony given by Jerónimo Osorio Chen on July 6, 2009 in the presence of Notary Edgar Fernando Pérez Archila, Document in the record of the case with the IACHR, folder 5, supplied by the petitioners on August 17, 2009, and entered into the record at the IACHR on September 9, 2009.

relations with members of the village of Río Negro, declared them enemies and became armed civil patrollers under the guidance of the Army.<sup>82</sup>

102. On February 7, 1982, the Xococ civilian self-defense patrollers summoned 150 persons from the community of Río Negro, and did so in the name of the Rabinal military outpost. The civil patrollers blamed the members of the Río Negro community for the burning of the market. The Río Negro villagers denied the charges. Finally, the Xococ civil patrollers retained the identification documents of the accused members of the Río Negro community and ordered them to return to Xococ the following week to retrieve them.<sup>83</sup>

103. On February 13, 1982, 89 individuals<sup>84</sup> from Río Negro set out for Xococ in response to the orders that they come to retrieve their documents. When they reached Xococ, "judicial commissioners, civil patrollers and military,"<sup>85</sup> were waiting for them armed with sticks, machetes and clubs. They assembled the members of the community of Río Negro and then separated the men from the women and children. They then beat the men, dragging them on their knees to the fig tree, where they executed and buried them. They kept the women enclosed without food or water. They then raped them and executed them, most by cutting their throats.<sup>86</sup>

104. Teodora Chen was the lone survivor of the massacre. She managed to escape her captors and walked all night back to the village of Río Negro to alert the villagers about what had happened and to warn them that the civil patrollers were on their way to the village.<sup>87</sup> Teodora said that the civil patrollers "from Xococ did what they wanted without ever considering that we are all human beings."<sup>88</sup>

105. The following 91 members of the indigenous community of Río Negro were extrajudicially executed in that massacre: 1) Antonia Ismalej Cuxum; 2) Camila Chen Chen; 3) Candelaria Mendoza; 4) Jesusa (Jesús) Ivoy Sánchez; 5) Dominga Ivoy Chen; 6) Felisa Osorio Chen; 7) Justa Osorio Sic; 8) Luciana Ivoy Osorio; 9) Magdalena Osorio Sánchez; 10) Marcela Chen; 11) Martina Osorio Chen; 12) Patricia Chen Chen; 13) Agustín Osorio Chen; 14) Agustín Osorio; 15) Agustín Osorio Sánchez; 16) Alberto Lajuj Tum; 17) Andrés Chen Osorio; 18) Andrés Tun Sánchez; 19) Alejandro Sánchez Chen; 20) Andrés Sánchez Ixpatá; 21) Antonio Chen; 22) Bernardino Uscap Chen; 23) Cayetano Osorio Chen; 24) Ciriaca Chen Chen; 25) Ciriaco López Chen; 26) Ciriaco Sánchez Osorio; 27) Clemente Sánchez Osorio; 28) Crispín Tun Ivoy; 29) Damacio

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<sup>82</sup> CEH, *Memory of Silence*, Illustrative Case No. 10. MASSACRE AND ELIMINATION OF THE COMMUNITY OF RIO NEGRO.

<sup>83</sup> CEH, *Memory of Silence*, Illustrative Case No. 10. MASSACRE AND ELIMINATION OF THE COMMUNITY OF RIO NEGRO.

<sup>84</sup> While the CEH documented the death of 74 persons, the allegation in the proceeding before the IACHR is that the deaths of 88 persons have been documented.

<sup>85</sup> Testimony given by Teodora Chen on June 22, 2009 in the presence of Notary Edgar Fernando Pérez Archila, Document in the record of the case with the IACHR, folder 5, supplied by the petitioners on August 17, 2009, and entered into the record at the IACHR on September 9, 2009.

<sup>86</sup> CEH, *Memory of Silence*, Illustrative Case No. 10. MASSACRE AND ELIMINATION OF THE COMMUNITY OF RIO NEGRO. Testimony given by Teodora Chen on June 22, 2009 in the presence of Notary Edgar Fernando Pérez Archila, Document in the record of the case with the IACHR, folder 5, supplied by the petitioners on August 17, 2009, and entered into the record at the IACHR on September 9, 2009. Testimony given by Jesús Tecu Osorio, February 1995. Criminal Proceeding 001-98-1, Folder 2, at 287 to 294.

<sup>87</sup> Testimony given by Teodora Chen to the delegation from the Inter-American Commission on Human Rights on July XXX, 2009. Testimony of Jesús Tecu Osorio, February 1995. Criminal Proceeding 001-98-1, Folder 2, at 287 to 294.

<sup>88</sup> Testimony given by Teodora Chen on June 22, 2009 in the presence of Notary Edgar Fernando Pérez Archila, Document in the record of the case with the IACHR, folder 5, supplied by the petitioners on August 17, 2009, and entered into the record at the IACHR on September 9, 2009.

Osorio Ixpatá; 30) Doroteo Osorio; 31) Domingo Osorio Sic; 32) Esteban Chen Tecú; 33) Esteban Osorio Burrero; 34) Evaristo Alvarado; 35) Evaristo López Ixpatá; 36) Feliciano Chen Osorio; 37) Feliciano Chen; 38) Felipe Sánchez Osorio; 39) Félix Chen; 40) Félix Osorio; 41) Fernando Lajuj Toj; 42) Gregorio Osorio; 43) Guillermo Osorio Lajuj; 44) Guillermo Sánchez; 45) Gustavo Osorio Sic; 46) Ignacio Chen Osorio; 47) Jesús Osorio; 48) José Chen Uscap; 49) José Ivoy Osorio; 50) Juan Cuxum Sic; 51) Juan Pablo Osorio; 52) Laureano Tecú; 53) Lorenzo Osorio; 54) Lorenzo Osorio Chen; 55) Lorenzo Osorio Sic; 56) Luis Iboy Sánchez; 57) Luis Osorio Chen; 58) Martín López Osorio; 59) Mateo Osorio; 60) Matías Tecú Chen; 61) Nicolás Chen; 62) Pablo Chen; 63) Pablo Osorio Chen; 64) Pablo Tun Chen; 65) Pascual Sánchez Osorio; 66) Pedro Ivoy Chen; 67) Pedro Ivoy Osorio; 68) Raymundo Osorio Ixpatá; 69) Rosendo Sic; 70) Ruperto Ivoy Chen; 71) Santiago Lajuj Jerónimo; 72) Santiago Sánchez Chen; 73) Secundino Uscap Chen; 74) Soterio Sánchez Chen; 75) Tereso Osorio Chen; 76) Timoteo Chen Sánchez; 77) Tomas Lajuj Chen; 78) Toribio Lajuj Chen; 79) Valentín Pérez González; 80) Venancio Sánchez; 81) Vicente Chen Tecú; 82) Víctor Lajuj Chen; 83) Victoriano Cahuec López; 84) Virgilio Sucup Sucup; 85) Avelino Sánchez Chen. The following persons were children: 86) Hilaria Sici Sic (age 4); 87) Rufino Chen Chen (age 9); 88) Abelino Sánchez Chen (age 16); 89) Balvino Uscap Ivoy (age 12); 90) Juana Cuxum Ismalej (age 11) and 91) Lucas Osorio Chen (age 11).

106. Jesús Tecu Osorio, who was 10 years old when his parents were killed in the Xococ massacre, testified as follows:

When we learned that they had killed our parents, we did nothing. What could we do [...] go to the police? Go to the military commissioners? Go to the Army? [...] These are the very people who killed our parents. They would kill us too if we complained. [...] <sup>89</sup>

107. In the weeks following the massacre in the village of Xococ, the civil patrollers and the soldiers were constantly going to the community of Río Negro looking for guerrillas and weapons and were abusive to the members of the community. <sup>90</sup>

[...] As for our relatives, whom they killed in Xococ, they told us “they didn’t die. They went with the guerrillas” or “they went to live in the (United) States.” Of course, they never found any weapons in our homes, because we weren’t with the guerrilla movement. <sup>91</sup> [...]

[...] We no longer enjoyed life or calm. The judicial commissioners were coming here constantly to see [...] to mistreat, to beat us [...] <sup>92</sup>

108. The few men from the community of Río Negro who had not attended the meeting in Xococ left their homes and families and went into hiding in the mountains. <sup>93</sup>

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<sup>89</sup> Testimony given by Jesús Tecu Osorio, February 1995. Criminal Proceeding 001-98-1, Folder 2, at 287 to 294.

<sup>90</sup> Testimony given by Jesús Tecu Osorio, February 1995. Criminal Proceeding 001-98-1, Folder 2, at 287 to 294. Testimony given by Carmen Sánchez Chen on July 2, 2009, in the presence of Notary Edgar Fernando Pérez Archila, Document in the record of the case with the IACHR, Folder 5, supplied by the petitioners on August 17, 2009, and entered into the record at the IACHR on September 9, 2009.

<sup>91</sup> Testimony given by Jesús Tecu Osorio, February 1995. Criminal Proceeding 001-98-1, Folder 2, at 287 to 294.

<sup>92</sup> Testimony given by Carmen Sánchez Chen on July 2, 2009, in the presence of Notary Edgar Fernando Pérez Archila, Document in the record of the case with the IACHR, Folder 5, supplied by the petitioners on August 17, 2009, and entered into the record at the IACHR on September 9, 2009.

<sup>93</sup> CEH, *Memory of Silence*, Human Rights Violations and Acts of Violence. Volume 3. Human rights violations, para. 1070 and testimony given by Jesús Tecu Osorio, February 1995. Criminal Proceeding 001-98-1, Folder 2. Judgment of November 30, 1998. Criminal Proceeding 001-98-1, Folder 5, at 1048. Document in the record of the case with the IACHR, supplied by the petitioners on April 16, 2007, and entered into the record at the IACHR on May 7, 2007. Folder 5. Testimony given by Carmen Sánchez Chen on July 2, 2009, in the presence of Notary Edgar Fernando Pérez Archila,

*Massacre in the village of Río Negro (Pacoxom Mountain)*

109. One month later, at six on the morning of March 13, 1982, 12 Army troops and 15 Xococ civil patrollers entered the community of Río Negro.<sup>94</sup> "The women were already up and almost all the children were still asleep."<sup>95</sup> They went from house to house, asking for the men. The men, however, were not at home because they had spent the night on the mountain for safety reasons. The soldiers said they were sure the men were with the guerilla movement.<sup>96</sup>

110. They then ordered everyone out of their homes to participate in a meeting<sup>97</sup> and proceeded to sack the village.<sup>98</sup> The soldiers and the civil patrollers assembled the women and played marimba music, and forced the women to dance, as the soldiers said, the way they danced with the guerrillas. Several young women and girls were taken aside and raped.<sup>99</sup> One survivor of the massacre said the following:

They forced us to walk in the direction of a placed called "Palo Conacasto", a tree known well to the community [...] When we got there, the civil patrollers put on the music and forced the women to dance right there. I was sitting there, with the other children in the middle of everything [...] A Xococ civil patroller [...] grabbed a girl of 14 whose name was [J.O.S.] He took her to the mountain and raped her. They returned shortly thereafter; she was crying, and was dirty and beaten up.<sup>100</sup>

111. Antonia Osorio Sánchez, a member of the community, said the following:

[...] my sister-in-law [V.C.] was six months pregnant. They took her away on foot [...] then the judicial commissioners, the Xococ civil patrollers and the soldiers gang-raped [her] [...]<sup>101</sup>

112. In court proceedings, it was also established that:

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Document in the record of the case with the IACHR, Folder 5, supplied by the petitioners on August 17, 2009, and entered into the record at the IACHR on September 9, 2009.

<sup>94</sup> CEH, *Memory of Silence*, Human Rights Violations and Acts of Violence. Volume 3. Human rights violations, para.1070 and testimony of Jesús Tecu Osorio, February 1995. Criminal Proceeding 001-98-1, Folder 2.

<sup>95</sup> Testimony given by Jesús Tecu Osorio, February 1995. Criminal Proceeding 001-98-1, Folder 2.

<sup>96</sup> CEH, *Memory of Silence*, Human Rights Violations and Acts of Violence. Volume 3. Human rights violations, para. 1070 and testimony given by Jesús Tecu Osorio, February 1995. Criminal Proceeding 001-98-1, Folder 2. Judgment of November 30, 1998. Criminal Proceeding 001-98-1, Folder 5, at 1048. Document in the record of the case with the IACHR, supplied by the petitioners on April 16, 2007, and entered into the record on May 7, 2007. Folder 5. Testimony given by Carmen Sánchez Chen on July 2, 2009, in the presence of Notary Edgar Fernando Pérez Archila, Document in the record of the case with the IACHR, Folder 5, supplied by the petitioners on August 17, 2009, and entered into the record at the IACHR on September 9, 2009.

<sup>97</sup> CEH, *Memory of Silence*, Illustrative Case No. 10. MASSACRE AND ELIMINATION OF THE COMMUNITY OF RIO NEGRO and testimony of Jesús Tecu Osorio, February 1995. Criminal Proceeding 001-98-1, Folder 2.

<sup>98</sup> CEH, *Memory of Silence*, Illustrative Case No. 10. MASSACRE AND ELIMINATION OF THE COMMUNITY OF RIO NEGRO.

<sup>99</sup> CEH, *Memory of Silence*, Illustrative Case No. 10. MASSACRE AND ELIMINATION OF THE COMMUNITY OF RIO NEGRO.

<sup>100</sup> Testimony given by Jesús Tecu Osorio, February 1995. Criminal Proceeding 001-98-1, Folder 2.

<sup>101</sup> Testimony given by Antonia Osorio Chen on June 24, 2009 in the presence of Notary Edgar Fernando Pérez Archila, Document in the record of the case with the IACHR, Folder 5, supplied by the petitioners on August 17, 2009 and entered into the record at the IACHR on September 9, 2009.

The younger and prettier women (even girls and young teens) were selected to be brutally gang-raped. Apart from the physical harm done, as the Report of the Commission for Historical Clarification states, this had a symbolic effect since Maya women are responsible for the group's social reproduction. "Women personify the values that must be reproduced and passed on within the community and these women and the values they personified had been sullied."<sup>102</sup>

113. They then ordered the women, the children and the elderly to march up the mountain for a distance of two or three kilometers, to a place known as Pacoxom. On the way, they were treated like animals<sup>103</sup> and given nothing to eat or drink. They were "physically and emotionally abused, even hit with machetes; some women were tied up; everyone was treated like animals [.]"<sup>104</sup>

During the entire march [...] they hit the women a lot, and called them cows; they treated them as if they were cows [...]. They beat the children hard, saying they were sons of guerrillas.<sup>105</sup> [...] By then most of the women were nude and had been raped. Some women were within days of giving birth, but their babies came right there from the effect of the beatings and blows.<sup>106</sup>

114. According to the Report of the Commission for Historical Clarification, the purpose of this treatment was to dehumanize the victims, so that their brutal repression would come more easily.

115. Along the way, the children and the elderly begged for water because it was very hot that day. On the trail leading up the mountain, the civil patrollers "threw an elderly man into a ravine, and then threw stones at him and buried him that way."<sup>107</sup> "There was an elderly woman who was unable to walk any further, and so they killed her."<sup>108</sup>

116. Once they arrived at their destination, the soldiers and the civil patrollers took the young women and little girls into the bushes where they raped them. Some managed to run away

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<sup>102</sup> Copy of the ruling issued by the Trial Court for Criminal, Drug-Trafficking and Environmental Offenses of Salamá, Baja Verapaz, case number 28-2003-OF of May 28, 2008, supplied by the petitioners in their note of July 1, 2008, pp. 335 and 336.

<sup>103</sup> CEH, *Memory of Silence*, Chapter II: Volume 3. GENOCIDE, para. 1031. November 30, 1998 ruling in Criminal Proceeding 001-98-1, Folder 5, at 1048. Document in the record of the case with the IACHR, supplied by the petitioners on April 16, 2007 and entered into the record at the Commission on May 7, 2007, at 1048. Testimony given by Juana Chen Osorio on June 24, 2009 in the presence of Notary Edgar Fernando Pérez Archila, Document in the record of the case with the IACHR, Folder 5, supplied by the petitioners on August 17, 2009 and entered into the record at the IACHR on September 9, 2009.

<sup>104</sup> Copy of the ruling issued by the Court for Criminal, Drug-Trafficking and Environmental Offenses of Salamá, Baja Verapaz, case number 28-2003-OF of May 28, 2008, supplied by the petitioners in their note of July 1, 2008, and by the State as an attachment to its note of July 22, 2008, pp. 335 and 336. Testimony given by Jesús Tecu Osorio, February 1995. Criminal Proceeding 001-98-1, Folder 2.

<sup>105</sup> CEH, *Memory of Silence*, Human Rights Violations and Acts of Violence. Volume 3. Human rights violations, para. 1070.

<sup>106</sup> Chapter II: Volume 3. SEXUAL VIOLENCE AGAINST WOMEN. Annex 1: Volume 1. ILLUSTRATIVE CASE No. 10.

<sup>107</sup> November 30, 1998 ruling in Criminal Proceeding 001-98-1, Folder 5, at 1048. Document in the record of the case with the IACHR, supplied by the petitioners on April 16, 2007 and entered into the record at the Commission on May 7, 2007, at 1048.

<sup>108</sup> Testimony given by Juana Chen Osorio on June 24, 2009 in the presence of Notary Edgar Fernando Pérez Archila, Document in the record of the case with the IACHR, Folder 5, supplied by the petitioners on August 17, 2009 and entered into the record at the IACHR on September 9, 2009.

and were able to save their own lives.<sup>109</sup> Then, the civil patrollers began killing the women, using neck tourniquets to hang them or strangle them, machetes to slash them to death, or both. One child who survived said the following: “The civil patrollers killed one woman, a midwife in the community by the name of Petronila Chen; they killed her one meter from where we were standing. I remember that she couldn’t speak because they were strangling her with a stick and a rope [...]”.<sup>110</sup>

117. Another survivor of the massacre said the following:

[...] they took my mother last; she had my little brother on her back [...] my mother was the last one they took [...] they caught them and shot them, with my little brother on her back. That was how they killed them. Then they threw them with the others [...]<sup>111</sup>

118. María Eustaquia Uscap Ivoy, who was a child at the time of the events, recalled the following:

When we sat down, the soldiers grabbed my little brother from my back; after that my little brothers sat down with my grandmother and [...] God, where are they taking my granddaughter ... they took me away and when I came back my grandmother was no longer there [...] we were on the verge of being killed [...] and although [...] she resisted, three soldiers and one patrolmen raped her.<sup>112</sup>

119. They took the little children by the feet and smashed them against the rocks or the trees until they were dead. “Another way [of killing them] was to pile 4 or 5 children atop one another and then shoot them from above [...]”<sup>113</sup> Other children were slashed to death with machetes.<sup>114</sup>

120. The civil patrollers threw the bodies of the women and children into a shallow gully through which a small stream flowed.<sup>115</sup> “When they had finished everything, they threw in stones to cover the bodies and then cut down a pine tree atop the site.”<sup>116</sup>

121. According to one survivor, it was the civil patrollers who carried out the massacre, with the soldiers urging them on.<sup>117</sup> As he said, the soldiers “were there for the civil patrollers’ protection [...]”<sup>118</sup>

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<sup>109</sup> Testimony given by Jesús Tecu Osorio, February 1995. Criminal Proceeding 001-98-1, Folder 2.

<sup>110</sup> Testimony given by Jesús Tecu Osorio, February 1995. Criminal Proceeding 001-98-1, Folder 2.

<sup>111</sup> Testimony given by Juana Chen Osorio on June 24, 2009 in the presence of Notary Edgar Fernando Pérez Archila, Document in the record of the case with the IACHR, Folder 5, supplied by the petitioners on August 17, 2009 and entered into the record at the IACHR on September 9, 2009.

<sup>112</sup> Testimony given by María Eustaquia Uscap Ivoy, cited in the May 28, 2008 ruling in Criminal Proceeding 001-98-1.

<sup>113</sup> Testimony given by Jesús Tecu Osorio, February 1995. Criminal Proceeding 001-98-1, Folder 2.

<sup>114</sup> November 30, 1998 ruling in Criminal Proceeding 001-98-1, Folder 5, at 1048. Document in the record of the case with the IACHR, supplied by the petitioners on April 16, 2007 and entered into the record at the Commission on May 7, 2007, at 1048.

<sup>115</sup> Testimony given before the delegation from the Inter-American Commission on Human Rights. November 30, 1998 ruling in Criminal Proceeding 001-98-1, Folder 5, at 1048. Document in the record of the case with the IACHR, supplied by the petitioners on April 16, 2007 and entered into the record at the Commission on May 7, 2007, at 1048.

<sup>116</sup> Testimony given by Jesús Tecu Osorio, February 1995. Criminal Proceeding 001-98-1, Folder 2. See also, CEH, *Memory of Silence*, Illustrative Case No. 10. MASSACRE AND ELIMINATION OF THE COMMUNITY OF RIO NEGRO.

<sup>117</sup> Testimony given by Jesús Tecu Osorio, February 1995. Criminal Proceeding 001-98-1, Folder 2. Testimony given by Juana Chen Osorio on June 24, 2009 in the presence of Notary Edgar Fernando Pérez Archila, Document in the

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122. The persons of the Río Negro community who were executed on March 13, 1982, most of whom were children and women, were as follows: A) Children: 1) Adela Lajuj Osorio (age 2); 2) Adelia Osorio Ivoy (age 2); 3) Ana María Chen Osorio (age 2); 4) Anastacio Tecú Osorio (age 4); 5) Antonio Chen Ivoy (age 4); 6) Arcadio Sánchez González (age 5); 7) Arcadio Chen Osorio (age 1); 8) Arnulfo Osorio Chen (age 5); 9) Basilio Osorio Sánchez (age 1); 10) Bonifacio López Osorio (age 3); 11) Carmelina Cuxum Lajuj (age 1); 12) Cesario Osorio Ivoy (age 7); 13) Ciriaca Chen Chen (age 5); 14) Cristina Tecú Sánchez (age 5); 15) Cristina Sánchez González (age 9); 16) Demetrio Osorio Chen (age 13); 17) Dominga Tecú Osorio (age 1); 18) Elena Osorio Chen (age 6); 19) Emiliano Pérez Osorio (age 5); 20) Enriqueta Chen Ivoy (age 6); 21) Estéfana Tecú León (age 4); 22) Eugenia Osorio Chen (age 1); 23) Felisa Tum Osorio (age 1); 24) Florinda Sánchez Chen (age 1); 25) Floridalma Elvira Sánchez Chen (age 1); 26) Francisco Sánchez López (age 1); 27) Francisco Sic Chen (age 7); 28) Gabriel Tum Osorio (age 2); 29) Gregorio Osorio Lajuj (age 1); 30) Hortensia Uscap Teletor (age 1); 31) Israel Ivoy Sánchez (4 months old); 32) Jaime Tecú Osorio (age 3); 33) Javier Chen Chen (3 months old); 34) Jesús Tecú León (age 1); 35) José Chen Uscap (age 4); 36) Juan Chen Tecu (age 3); 37) Juan Ivoy Sánchez (age 6); 38) Juana Ivoy Sánchez (age 1); 39) Juliana Uscap Chen (11 months old); 40) Luis Osorio Chen (age 4); 41) Marcela Osorio Chen (age 3); 42) Marcelo Tecú Osorio (age 8); 43) Micaela Osorio Osorio (7 months old); 44) Miguel Ángel Pérez Osorio (age 1); 45) Miguel Osorio Chen (age 1); 46) Narcisa Chen Osorio (age 9); 47) Nicolás Osorio Sánchez (age 1); 48) Pablo Osorio Sánchez (age 2); 49) Pablo Sánchez (age 3); 50) Reginaldo Sánchez González (age 2); 51) Santos Joaquina Osorio Mendoza (age 2); 52) Santos Sánchez López (age 2); 53) Silveria Osorio Chen (age 5); 54) Silveria Osorio Ivoy (age 5); 55) Silveria Sic Sánchez (age 1); 56) Tomasa Osorio Chen (age 1); 57) Ubaldo Ivoy Sánchez (age 2); 58) Víctor Osorio Chen (age 2); 59) Alberta Ivoy Sánchez (age 11); 60) Catarina Ivoy Sánchez (age 13); 61) Cleotilde Osorio Chen (age 10); 62) Esperanza Ivoy (age 12); 63) Eusebio Chen López (age 14); 64) Gregorio Chen Chen (age 13); 65) Hilaria Chen Chen (age 11); 66) Isabel Osorio Chen (age 13); 67) Juana Osorio Chén (age 13); 68) Juana Osorio Sánchez (age 15); 69) Juana Chen Osorio (age 12); 70) Juliana Ivoy Sánchez (age 15); 71) Magdalena Osorio Chen (age 14); 72) Margarita Chen Chen (age 14); 73) Margarita Sánchez Chen (age 14); 74) Matilde Osorio Chen (age 15); 75) Patrocinio Tecu León (age 11); 76) Santa Eduarda Chen Chen (age 10); and 77) Santiago Chen Osorio (age 10). B) Adults: 78) Alejandra Osorio Chen; 79) Anastacia Chen Sánchez; 80) Angela Sánchez Chen; 81) Bernarda Chen Osorio; 82) Carmela Osorio Chen; 83) Ciriaca Osorio Osorio; 84) Clementina Osorio; 85) Dominga Chen; 86) Dominga Ivoy Chen; 87) Dominga Sánchez Chen; 88) Eligia Chen Osorio; 89) Eugenia Teletor Pérez; 90) Eulalia Chen Osorio; 91) Felipa Osorio Chen; 92) Félix Osorio; 93) Guillerma Osorio Chen; 94) Herlinda Lajuj Ivoy; 95) Higinia Chen Ixpata; 96) Isabel Osorio; 97) Isabel Sánchez Chen; 98) Jesusa Sánchez Pérez; 99) Juana Tecú Osorio; 100) Julia Osorio; 101) Julia Sánchez Chen; 102) Lucía Sánchez; 103) Manuel Osorio; 104) Marcela Ivoy Osorio; 105) Margarita Chen Uscap; 106) María del Rosario Osorio Chen; 107) María Dolores Chen Osorio; 108) María Luisa Osorio Sánchez; 109) María Pedrina González Tecú; 110) Martha Julia Chen Osorio; 111) Narcisa Chen; 112) Narcisa Osorio López; 113) Nazaria Sánchez; 114) Paulina Ivoy Osorio; 115) Rosa Sánchez Osorio; 116) Santa Inés Sánchez Pérez; 117) Silveria Alvarado; 118) Timotea Osorio Chen; 119) Tomasa López Ixpatá; 120) Toribia Cuxum Osorio; 121) Tranquilina Osorio Chen; 122) Valeria Sic Pérez; 123) Vicenta Chen Osorio; 124) Vicenta Ivoy Chen; 125) Vicenta Lajuj Chen; 126) Felipe Iboy Chen; 127) Jesús Iboy Sánchez. C) No data on age: 128) Anastacia Osorio Ivoy; 129) Anastacia Tecú Sánchez; 130) Andrés Ivoy; 131) Aníbal Tum Osorio; 132) Benedicto Osorio Chen; 133) Candelaria Pérez Osorio; 134) Catarino Chen Tecú; 135) Celestina Sánchez González; 136) Ciriaca Chen Tecú; 137) Cristina Tecu Sanchez; 138)

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record of the case with the IACHR, Folder 5, supplied by the petitioners on August 17, 2009 and entered into the record at the IACHR on September 9, 2009.

<sup>118</sup> Testimony given by Jesús Tecu Osorio, February 1995. Criminal Proceeding 001-98-1, Folder 2.

Delfina Chen Osorio; 139) Demetrio Osorio Ivoy; 140) Demétria Osorio Lajuj; 141) Dorotea Chen Osorio; 142) Dorotea Sánchez Osorio; 143) Eligia Osorio; 144) Emiliana Osorio Alvarado; 145) Emilio Sic Chen; 146) Eugenia Ivoy Osorio; 147) Eusebia Osorio; 148) Francisca Sánchez Chen; 149) Francisco Ivoy Sic; 150) Gabina Chen Osorio; 151) Gabina Sic Siana; 152) Gilberto Osorio Chen; 153) Gregoria Alvarado González; 154) Héctor López Osorio; 155) Irma Cahuec Osorio; 156) Irma Osorio Ivoy; 157) Javier Chen Uscap; 158) José Iboy Sánchez; 159) Juan Osorio Alvarado; 160) Juana Nicha Sánchez Pérez; 161) Juana Pérez Hernández; 162) Juana Pérez; 163) Juana Tum Sánchez; 164) Justa Osorio Sic; 165) Leocadio Tum Sánchez; 166) Lorenzo Osorio Chen ; 167) Lucía Osorio Mendoza; 168) Magdalena Lajuj Ruiz; 169) Magdalena Osorio Sánchez; 170) Manuel Osorio Chen; 171) Manuela Chen Osorio; 172) Margarita Chen Osorio; 173) María Chen Sánchez; 174) María Juliana Chen; 175) María Tum Osorio; 176) Mario Sánchez Sic; 177) Marta Elvira Sánchez Osorio; 178) Martín Lajuj Sánchez; 179) Natividad Ixpatá Alvarado; 180) Pablo Chen Ismalej; 181) Pablo Tun Chen; 182) Paula Chen; 183) Paula Pérez; 184) Pedrina Osorio Pérez; 185) Petronila Cahuec Osorio; 186) Petronila Chen; 187) Petronila Osorio Ivoy; 188) Raymunda Sánchez Sánchez; 189) Ricardo Chen Osorio; 190) Sabina Tecú Osorio; 191) Silveria Ivoy Sic; 192) Silveria Ivoy Sic; 193) Tomasa Tecú Osorio; 194) Venancia Alvarado Ivoy; 195) Ventura Pérez Alvarado; 196) Vicenta Tecú Sánchez; 197) Victoriana Osorio Sic; 198) Eulalia Chen Sánchez, 199) Agustín Chen Osorio, 200) Magdalena Osorio Chen, 201) Lucía Osorio Sic, 202) Lorenzo Osorio Sic, and 203) Víctor Osorio Chen.

123. There were few survivors of the massacre of March 13, 1982. Seventeen children, all from the community of Río Negro and witnesses to the executions of their mothers, grandmothers, grandfathers, aunts, sisters and brothers, were separated from the group until the massacre was over.<sup>119</sup> The names of these 17, who were children at the time, are as follows: 1) Agustín Chen Osorio; 2) Celestina Uscap Ivoy; 3) Cruz Pérez Osorio; 4) Froilan Uscap Ivoy; 5) Jesús Tecú Osorio; 6) José Osorio Osorio; 7) Juan Chen Chen; 8) Juan Chen Osorio; 9) Juan Pérez Osorio; 10) Juan Uscap Ivoy; 11) Juana Chen Osorio; 12) Maria Eustaquia Uscap Ivoy; 13) Pedro Sic Sánchez; 14) Silveria Lajuj Tum; 15) Tomasa Osorio Chen; 16) Florinda Uscap Ivoy; 17) Juan Burrero.

124. The civil patrollers, soldiers and surviving children left the site and headed for Xococ late that afternoon.<sup>120</sup> A former patrol member told the CEH the following:

After the massacre, we headed out at around five in the afternoon. Along the way, they were talking among themselves about how many they had killed that day. The one who killed the most was the most 'macho'; they made fun of the one who had killed the fewest. We arrived in Xococ at around one in the morning. I was in Xococ and saw the civil patrollers head out for the Agua Fría massacre, and then again for the Los Encuentros massacre.<sup>121</sup>

125. The civil patrollers took seventeen children who survived the Río Negro massacre to their homes in Xococ, where they were forced them to work for several years. They were also given a new identity.<sup>122</sup>

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<sup>119</sup> CEH, *Memory of Silence*, Human Rights Violations and Acts of Violence. Volume 3. Human rights violations, para. 1070. Testimony given by Juana Chen Osorio on June 24, 2009, in the presence of Notary Edgar Fernando Pérez Archila, Document in the record of the case with the IACHR, folder 5, supplied by the petitioners on August 17, 2009 and entered into the record at the IACHR on September 9, 2009.

<sup>120</sup> CEH, *Memory of Silence*, Illustrative Case No. 10. MASSACRE AND ELIMINATION OF THE COMMUNITY OF RIO NEGRO.

<sup>121</sup> CEH, *Memory of Silence*, Chapter II: Human Rights Violations and Acts of Violence. Volume 3. Human rights violations, para. 746.

<sup>122</sup> CEH, *Memory of Silence*, Human Rights Violations and Acts of Violence. Volume 3. Human rights violations, para. 1070. Testimony given by Juana Chen Osorio on June 24, 2009, in the presence of Notary Edgar Fernando Pérez

126. One of those children, Jesús Tecu Osorio, who was ten years old at the time, said the following:

[...] patrol member Pedro González Gómez told me I was going to live with him. I was fine with that, thinking that my life would be spared that way. I went along to wait for him, with my little brother Jaime [who was two years old]. [...] Pedro told me that we had a long way to walk that night [...] and that I wasn't going to be able to carry Jaime. I said that yes, I could do it, but then the patrol member said that if I refused, he'd kill me, too. He grabbed Jaime from my arms; I was crying to see my little brother and I wanted to do something to save Jaime's life. [...] The patrol member put a rope around Jaime's neck and set off walking with my brother hanging by that rope [...] When he saw some rocks, the patrol member grabbed him by the feet and smashed him against the rocks [...]<sup>123</sup>

127. So the children were forced to live with their assailants; "they were used as servants in the house, badly mistreated, beaten and forced to work too hard."<sup>124</sup> The following was said in this regard:

[...] as a result of the events [...] the children were forcibly moved [...] to the community of Xococ, where they were forced to live with some of their own assailants [...] they were living in servitude, subjected to degrading treatment, particularly as they were children. They were completely severed from their families, most of whom had been killed, and from their surviving kin, their social milieu, and from the ethical and moral values of their community, which had an incalculable psychosocial effect on them.<sup>125</sup>

128. Juana Chen Osorio, who was one of the children who survived the massacre, said the following:

[When we reached Xococ, a woman took my brother Juan and me and] she told me 'Look, I'm your mother and he's your father. You have to take care of your brother [...] When she sent me to work, I always thought about my mother and father and I would cry in hiding. They gave us a new name; I don't recall what it was [...]

[T]he man scolded us often [...] and hit us [...] because we were unable to work [in the field]. [One day my brother said.] 'I'm desperate,' Juan said, 'I'm leaving and I'm going to kill myself [...] The women heard what he'd said [...] and she burned Juan's feet [...]<sup>126</sup>

129. The children were even forced to deny their kin, in some cases under the threat of death,<sup>127</sup> as illustrated by the testimony given by one of the girls who survived:

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Archila, Document in the record of the case with the IACHR, folder 5, supplied by the petitioners on August 17, 2009 and entered into the record at the IACHR on September 9, 2009.

<sup>123</sup> Testimony given by Jesús Tecu Osorio, February 1995. Criminal Proceeding 001-98-1, Folder 2.

<sup>124</sup> Judgment of November 30, 1998. Criminal Proceeding 001-98-1, Folder 5, at 1048. Document in the record of the case with the IACHR, supplied by the petitioners on April 16, 2007, and entered into the record on May 7, 2008, at 1048.

<sup>125</sup> Copy of the ruling issued by the Trial Court for Criminal, Drug-Trafficking and Environmental Offenses of Salamá, Baja Verapaz, case number 28-2003-OF of May 28, 2008, supplied by the petitioners in their note of July 1, 2008, and by the State as an attachment to its note of July 22, 2008, p. 354.

<sup>126</sup> Testimony given by Juana Chen Osorio on June 24, 2009 in the presence of Notary Edgar Fernando Pérez Archila, Document in the record of the case with the IACHR, Folder 5, supplied by the petitioners on August 17, 2009 and entered into the record at the IACHR on September 9, 2009.

[T]hen he said, “We’re going to Rabinal and if you see any relatives [...] you say ‘we don’t know you.’ But we didn’t know whether any relative was still alive [...] When I saw my father standing on a corner [...] and he called out to me, I pretended I didn’t know him, because that’s what the woman told us to do. When we returned to Xococ, she told us “One day you’re going to leave [...] then they took us away and I saw my father and embraced him and he embraced me.”<sup>128</sup>

### *The Los Encuentros Massacre*

130. One group of survivors from the Río Negro massacre sought safe haven in the community of Los Encuentros, located near the village of Río Negro, at the confluence of the Salamá and Chixoy rivers.<sup>129</sup> As it happened,

[...] those who had survived the massacre of the village of Río Negro went down to the community of Los Encuentros, since Río Negro had been abandoned, left in silence. Almost all our parents had died. The civil patrollers hunted us down, because they came to the community of Los Encuentros to kill us.<sup>130</sup>

131. On May 14, 1982, civil patrollers and soldiers attacked the community with grenades. They raped a number of women and tortured some of the men and boys.<sup>131</sup> Then several helicopters took approximately 15 people away; most were women and children. They were never heard from again.<sup>132</sup> Some of the villagers managed to escape to the mountain, where they had to manage to survive for a long time.<sup>133</sup>

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<sup>127</sup> Testimony given by José Osorio Sic on June 26, 2009 in the presence of Notary Edgar Fernando Pérez Archila, Document in the record of the case with the IACHR, Folder 5, and supplied by the petitioners on August 17, 2009, and entered into the record at the IACHR on September 9, 2009.

<sup>128</sup> Testimony given by Juana Chen Osorio on June 24, 2009 in the presence of Notary Edgar Fernando Pérez Archila, Document in the record of the case with the IACHR, Folder 5, supplied by the petitioners on August 17, 2009 and entered into the record at the IACHR on September 9, 2009.

<sup>129</sup> CEH, *Memory of Silence*, Chapter II: Human Rights Violations and Acts of Violence. Volume 3. Human rights violations, para. 1034. CEH, *Memory of Silence*, Illustrative Case No. 10. MASSACRE AND ELIMINATION OF THE COMMUNITY OF RIO NEGRO. Testimony given by Antonia Osorio Chen on June 24, 2009 in the presence of Notary Edgar Fernando Pérez Archila, Document in the record of the case with the IACHR, Folder 5, supplied by the petitioners on August 17, 2009 and entered into the record at the IACHR on September 9, 2009. Copy of the ruling issued by the Trial Court for Criminal, Drug-Trafficking and Environmental Offenses of Salamá, Baja Verapaz, May 28, 2008, case number 28-2003-OF 1, attachment to the petitioners’ note of July 1, 2008, 66, 269, 270. Statement of Carlos Chen Osorio. Testimony given by Carmen Sánchez Chen on July 2, 2009, in the presence of Notary Edgar Fernando Pérez Archila, Document in the record of the case with the IACHR, supplied by the petitioners on August 17, 2009, and entered into the record at the IACHR on September 9, 2009.

<sup>130</sup> Testimony given by Antonia Osorio Chen on June 24, 2009 in the presence of Notary Edgar Fernando Pérez Archila, Document in the record of the case with the IACHR, Folder 5, supplied by the petitioners on August 17, 2009 and entered into the record at the IACHR on September 9, 2009.

<sup>131</sup> CEH, *Memory of Silence*, Chapter II: Human Rights Violations and Acts of Violence. Volume 3. Human rights violations, para. 1034. CEH, *Memory of Silence*, Illustrative Case No. 10. MASSACRE AND ELIMINATION OF THE COMMUNITY OF RIO NEGRO. Testimony given by Antonia Osorio Chen on June 24, 2009 in the presence of Notary Edgar Fernando Pérez Archila, Document in the record of the case with the IACHR, Folder 5, supplied by the petitioners on August 17, 2009 and entered into the record at the IACHR on September 9, 2009. Copy of the ruling issued by the Trial Court for Criminal, Drug-Trafficking and Environmental Offenses of Salamá, Baja Verapaz, May 28, 2008, case number 28-2003-OF 1, attachment to the petitioners’ note of July 1, 2008, 66, 269, 270. Statement of Carlos Chen Osorio. Testimony given by Carmen Sánchez Chen on July 2, 2009, in the presence of Notary Edgar Fernando Pérez Archila, Document in the record of the case with the IACHR, supplied by the petitioners on August 17, 2009, and entered into the record at the IACHR on September 9, 2009.

<sup>132</sup> Testimony of survivors, as told to the delegation from the Inter-American Commission on Human Rights. Testimony given by Antonia Osorio Chen on June 24, 2009 in the presence of Notary Edgar Fernando Pérez Archila,

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132. Antonia Osorio Sánchez, a survivor of the massacre, said the following:

We spotted the patrollers at around one in the afternoon. They entered the community and began to throw bombs on the bank of a ravine. We heard it [...]

[...] Our friends started running along the river bank [...] but the patrollers threw bombs at them and went in pursuit. They surrounded Los Encuentros. They we heard screams, cries because they were killing our poor friends [...] They shot to death my cousins, who were children at the time.<sup>134</sup>.

133. Carmen Sánchez Chen, another survivor, gave the following testimony:

[T]hat day, the Civil Defense Patrollers and the soldiers came by surprise [...] I took off running, without my clothes, because I was bathing at the time. I hid myself [...]

The judicial commissioners raped Mrs. [M.T.] and other women who were captured [...] The patrollers and soldiers spent the night under the mango trees; the men they had captured were tied to the trees. They built a fire beneath their feet and put a griddle on the fire [...] until they died there.

The children cried at night, knowing what would happen to them; in the morning [...] the women they captured were put aboard helicopters. It was done in three trips. They took away my mother-in-law and my son [...] <sup>135</sup>

134. For his part, José Osorio Sic, who was outside the village of Los Encuentros at the time these events occurred, testified as follows:

[...] the patrollers [...] came to kill the people in the community of Los Encuentros, we watched it happened [...] At around one in the afternoon, an Army helicopter arrived; it landed twice, and we watched as they boarded the men and women into the helicopter [...]

The following day, we went back to the community of Los Encuentros to see what the place looked like after the suffering we had witnessed. We went to get the bodies of the dead [...] and looked for the place where they had built a fire; there was a grill on top. The socks of those who were tortured at the spot were there [...] there were more bodies, but they were half buried. We couldn't recognize them anymore and we didn't remove them because we were afraid, since the soldiers and patrollers were hunting for us.<sup>136</sup>

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document in the record of the case with the IACHR, Folder 5, supplied by the petitioners on August 17, 2009 and entered into the record at the IACHR on September 9, 2009. Testimony given by Jerónimo Osorio Chen on July 6, 2009, in the presence of Notary Edgar Fernando Pérez Archila, document in the record of the case with the IACHR, Folder 5, supplied by the petitioners on August 17, 2009, and entered into the record at the IACHR on September 9, 2009.

<sup>133</sup> Testimony given by Carmen Sánchez Chen on July 2, 2009, in the presence of Notary Edgar Fernando Pérez Archila, document in the record of the case with the IACHR, supplied by the petitioners on August 17, 2009, and entered into the record at the IACHR on September 9, 2009.

<sup>134</sup> Testimony given by Antonia Osorio Chen on June 24, 2009 in the presence of Notary Edgar Fernando Pérez Archila, document in the record of the case with the IACHR, Folder 5, supplied by the petitioners on August 17, 2009 and entered into the record at the IACHR on September 9, 2009.

<sup>135</sup> Testimony given by Carmen Sánchez Chen on July 2, 2009 in the presence of Notary Edgar Fernando Pérez Archila, document in the record of the case with the IACHR, Folder 5, supplied by the petitioners on August 17, 2009 and entered into the record at the IACHR on September 9, 2009.

<sup>136</sup> Testimony given by José Osorio Sic on June 26, 2009, in the presence of Notary Edgar Fernando Pérez Archila, document in the record of the case with the IACHR, Folder 5, supplied by the petitioners on August 17, 2009 and entered into the record at the IACHR on September 9, 2009.

135. The following persons were executed in that massacre: A) Children: 1) Andrea Sánchez Sic (age 6); 2) Angela Sánchez Sic (age 1); 3) Cristina Lajuj Osorio (age 1); 4) Hilaria Chen Ivoy (age 4); 5) Héctor López Osorio (age 1); 6) Jerónimo Osorio Iboy [Chen] (age 3); 7) Joaquin Chen Ivoy (age 1); 8) Juan Osorio Chen (age 2); 9) Juana Chen Osorio (age 6); 10) Mariano Alvarado Ivoy (age 5); 11) Marta Elena Chen Ivoy (age 2); 12) Pilar Chen Ivoy (age 9); 13) Roberto López Chen (age 4); 14) Rosa Alvarado Ivoy (age 2); 15) Vilama López Chen (age 2); 16) Daniel Chen Osorio (age 16); 17) Pedrina Lajuj Iboy (age 11); 18) Pretonilo Osorio Tahuico (age 13); 19) Román Osorio Chen (age 10); 20) Tomas Osorio Tahuico (age 14); 21) Carlos Chen Osorio (age 9), 22) Demetria Osorio Tahuico (age 3), 23) Francisco Chen Osorio (age 6), 24) Juan Osorio Lajuj (age 5), 25) Luciano Osorio Chen (age 5), 26) Marina Chen Lajuj (age 1), 27) Pablo Osorio Tahuico (age 6), 28) Sebastiana Osorio Tahuico (age 10). B) Adults: 29) María Rafaela Tahuico Morales; 30) Martina Rojas; 31) Paulina Chen Osorio; 32) Victoriana Ivoy Osorio; 33) Sebastiana Iboy Sic; 34) Cornelio Osorio Lajuj; 35) Julio Chen Ivoy; 36) Benita Osorio Osorio, 37) Martina Chen Chen, 38) Pedro Chen Rojas; 39) Pedro Osorio Chen; 40) Vacilio Lajuj Sánchez. C) No data on age: 41) Tomás Lajuj Chen; 42) Alberto Lajuj Tum; 43) Alberto L.; 44) Andrés Sánchez Sic; 45) Antonio Morales Lajuj; 46) Basilio Lajuj Sánchez; 47) Berta Gregoria Lajuj Toj; 48) Emilio Osorio Tahuico; 49) Esteban Morales Lajuj; 50) Eulalia Pérez Tum; 51) Francisco Sánchez Sic; 52) Gregoria Chen Osorio; 53) Gregoria Lajuj Toj; 54) José Osorio Valey; 55) Juan Osorio Iboy; 56) Juliana Lajuj Tum; 57) Magdalena Chen; 58) María Margarita Tum Iboy; 59) Maria Dolores Sic Siana; 60) Maria Isabel López; 61) María Isabel López; 62) María Morales Tahuico; 63) Martina Chen Osorio; 64) Narcisa Chen Osorio; 65) Paula Osorio Chen; 66) Paulina Iboy Osorio; 67) Pedro Chen; 68) Pedro López Osorio; 69) Pedro Román; 70) Petrona Chen; 71) Roberto Osorio Chen; 72) Sandra Sánchez Osorio; 73) Santo Timoteo Lajuj Tum; 74) Silverio Alvarado Ivoy; 75) Serapia Rafael Lajuj; 76) Soterio Pérez Tum; 77) Cristina Lajuj Osorio; 78) Vilma Osorio Chen; 79) Fermín Tum Chen; 80) Aurelia Alvarado Ivoy, and 81) Héctor López Osorio.

136. Some 15 people were disappeared, and are presumably among those named on the preceding list. However, only Ramona Lajuj and Manuel Chen Sánchez (age 2) have been identified.

#### *Massacre of Agua Fría*

137. Some survivors of the Rio Negro and Los Encuentros massacres fled to the village of Agua Fría, a hamlet of some sixteen dwellings and a school, located on the other side of the Chixoy River in the department of El Quiché<sup>137</sup>.

138. On September 14, 1982, soldiers and members of the Xococ Civilian Defense Patrol arrived in Agua Fría and assembled everyone in one of the dwellings. After accusing them of supplying food to the guerrillas, they fired into the house from outside and then set it on fire. This action resulted in the death of several individuals, including elderly, children and women. They then proceeded to steal the livestock.<sup>138</sup> Few people survived that massacre: Timotea Lajuj and her son.

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<sup>137</sup> CEH, *Memory of Silence*, Chapter II: Human Rights Violations and Acts of Violence. Volume 3. Human rights violations, paragraphs 1034 and 1055. Court record, at 472. Testimony given by Carmen Sánchez Chen on July 2, 2009 in the presence of Notary Edgar Fernando Pérez Archila, Document in the record of the case with the IACHR, Folder 5, supplied by the petitioners on August 17, 2009 and entered into the record at the IACHR on September 9, 2009. Testimony given by Antonia Osorio Chen on June 24, 2009 in the presence of Notary Edgar Fernando Pérez Archila, Document in the record of the case with the IACHR, Folder 5, supplied by the petitioners on August 17, 2009 and entered into the record at the IACHR on September 9, 2009.

<sup>138</sup> CEH, *Memory of Silence*, Chapter II: Human Rights Violations and Acts of Violence. Volume 3. Human rights violations, paragraphs 1034 and 1055. CEH, *Memory of Silence*, Illustrative Case No. 10. MASSACRE AND ELIMINATION OF THE COMMUNITY OF RIO NEGRO. The names of the persons executed appear in Annex XX of this report. Judgment of November 30, 1998. Criminal Proceeding 001-98-1, Folder 5, at 1048. Document in the record of the case with the IACHR, supplied by the petitioners on April 16, 2007, and entered into the record on May 7, 2007. Folder 5, at 1048. Document

Because her brother was in the military service, she pleaded for their lives to his superior. Eusebio Sic and “Don Julián” also survived, because they were not in the village that day.<sup>139</sup>

139. The persons who were executed and incinerated in the massacre were as follows: A) Children: 1) Ana Sánchez Sic (age 9); 2) Anastacia Cuxum Lajuj (age 4); 3) Cruz Sic Lajuj (age 9); 4) Cruz Sic Sic (age 5); 5) Eduardo Cuxum Sánchez (age 7); 6) Eusebio Sic Lajuj (age 6); 7) Eusebio de Jesús Cuxum Sánchez (age 5); 8) Francisca Cuxum Sánchez (age 9); 9) Inocente Sánchez Sic (age 6); 10) Isabela Sic Sic (age 3); 11) Juan Osorio Chen (age 3); 12) Leonarda Sic López (age 7); 13) Leonardo Sic Sic (age 9); 14) Luisa Sánchez Chen (age 10); 15) María Felipa Sic Sic (age 7); 16) María Leonarda Sic Sic (age 7); 17) María Mercedes Cuxum Sánchez (age 3); 18) María Celestina Six Lajuj (age 3); 19) Matilde Sic Lajuj (age 6); 20) Pascual Sic Lajuj (age 3); 21) Serapia Sic Sic (age 5); 22) Tomás Cuxum Lajuj (age 4); 23) Jorge Sic Hernández (age 13); 24) Juana Cuxum Lajuj (age 10); 25) Lucía Sic Sic (age 10); 26) María Ramona Sic (age 16); 27) Nolberto Sánchez Iboy (age 10); 28) Pablo Sic Sic (age 13); 29) Santos Elena Sic Lajuj (age 16); 30) Santos Iberta Cuxum Sánchez (age 11); 31) Zenón Sic Hernández (age 10); 32) Alejandro Sic Lajuj (age 12); 33) Cruz Sánchez Chen (age 14). B) Adults: 34) Higinia Sic Sis; 35) Juliana Chen Alvarado; 36) María Sic Cahuec; 37) Nemecia Hernández López; 38) Rafaela Ivoy Uscap; 39) Catalina Rafael López; 40) Cruz Alvarado Sic; 41) Francisca López; 42) Antonio Sic Sis; 43) Fermín Sic Sis; 44) Francisco Rafael Cuxum; 45) José Sic; 46) Juan Sic Sic; 47) Julio Enríquez López; 48) Santiago Sánchez; 49) Santiago Sic Rafael; 50) Saturnino Sic Sic; 51) Tereso Sic López; 52) Valeriano Sic Isquien; 53) Víctor Sic Sic. C) No specifics on age: 54) Alberta Cuxum Sánchez; 55) Angela Enríquez Mendoza; 56) Carmelina Cuxum Lajuj; 57) Calixtro Sic Sic; 58) Celestina Sic Lajuj; 59) Ciriaca Pérez Osorio; 60) Cristina Sic Alvarado; 61) Delfina Rafael Cuxum; 62) Demecia Hernández; 63) Demetrio Sic Alvarado; 64) Santos Elena Sic Lajuj; 65) Emiliana Sic Cuxum; 66) María Herlinda Sic Enríquez; 67) Eusebia Sic; 68) Eusebia Sic Ismalej; 69) Feliza Alvarado; 70) Fermina Alvarado González; 71) Francisca Enríquez; 72) Francisca Sic Osorio; 73) Francisca Sánchez Iboy; 74) Francisca Sic; 75) Francisca Sic Alvarado; 76) Francisco Sic Ismalej; 77) Francisco Sic Osorio; 78) Gregoria Sic Alvarado; 79) Ismael Sic Cuxum; 80) Josefa Enríquez López; 81) Jesús Sic Osorio; 82) Jesusa Sic Sic; 83) José Sic López; 84) Juan Sic Sic; 85) Juana Mendoza Sic; 86) Juana Sánchez Osorio; 87) Juana Sic Enríquez; 88) Juana Sis Sic; 89) Juana Tum Sánchez; 90) Juliana Osorio Chen; 91) Juliana Sánchez Chen; 92) Leonarda Sic Hernández; 93) Leona Sic Sic; 94) Lucas Rafael; 95) Lucía Sánchez; 96) Lucía Sic Sánchez; 97) Marcelo Isquien; 98) María Cuxun Sánchez; 99) María Cruz Lujuj Alvarado; 100) María Salomé Cuxum Sánchez; 101) Margarita Sánchez Iboy; 102) Notuer Rafael Ivoy; 103) Pedro Sic Sánchez; 104) Petronila Sánchez Osorio; 105) Rosa Cuxum Alvarado; 106) Regina Sic Sic; 107) Rosa Rafael; 108) Román Sic Alvarado; 109) Santiago Sánchez Tum; 110) Santos Rafael; 111) Sebastián Sic Alvarado; 112) Serapia Rafael Lajuj; 113) Simeón Sic Alvarado; 114) Simeón Sic López; 115) Simona Sic Sic; 116) Tereso Sic Cuxum; 117) Tereso Sic Alvarado; 118) Tereso Sic Enríquez; 119) Timotea Lajuj López; 120) Tomasa Rafael Lajuj; 121) Valeriano Sic Isquien; 122) Vicenta Sánchez Ivoy; 123) Calixto Sic Sic; 124) Hilaria Perez Tum y 125) Fulgencia Sic Sic; 126) Antonia Sic Alvarado; 127) Benito Sic Alvarado; 128) Bruna Sic Sánchez.

### 3. Life in the mountains and the resettlement

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in the record of the case with the IACHR, supplied by the petitioners on April 16, 2007 and entered into the record at the Commission on May 7, 2007, at 1049.

<sup>139</sup> Testimony given by Antonia Osorio Chen on June 24, 2009 in the presence of Notary Edgar Fernando Pérez Archila, Document in the record of the case with the IACHR, Folder 5, supplied by the petitioners on August 17, 2009 and entered into the record at the IACHR on September 9, 2009.

140. The survivors of the various massacres against the community of Río Negro went into hiding in the mountains, where they remained for months, some even for years. They suffered hunger, sickness, cold and even death. Some women gave birth in the mountains and were unable to register the children until much later.<sup>140</sup> The testimony of some survivors follows:

As survivors of the massacres [...] we sought refuge on different mountains [...] [...] hiding in different groups [...] We walked by different routes; we spent about six months at each place, so that the soldiers wouldn't find us. We could only build fires at night, because the smoke was visible by day. We endured hunger and thirst. All we had to keep us alive was palm cabbage [...] we ate jocote roots [...] At the outset we had ground corn mixed with sugar, which we gave to our children. As adults we went without, because it was more important for the children to eat [...] we were never able to sleep in peace [...]<sup>141</sup>

During that period, life no longer made sense, because we had to stay in hiding so that they wouldn't kill us [...] The army used small aircraft to search for us, and began firing and bombing from the air [...]<sup>142</sup>

Some children died there in the mountains [...] while others [...] were born there. [...] We were unable to register them with the municipality of Rabinal because it was too dangerous. Some of those children were not registered until 2003 or 2004. We gave different dates of birth because had we given the real date, we would have been fined; other children were registered in other municipalities. In the end, each did things differently [...] False dates and places of birth were always used.<sup>143</sup>

141. The survivors of the various massacres for whom the IACHR has information are as follows:

- The massacre at Xococ: Teodora Chen Tecú.
- The Río Negro massacre (Pacoxom): The following children: Agustín Chen Osorio; Celestina Uscap Ivoy; Cruz Pérez Osorio; Froilan Uscap Ivoy; Jesús Tecú Osorio; José Osorio Osorio; Juan Chen Chen; Juan Chen Osorio; Juan Pérez Osorio; Juan Uscap Ivoy; Juana Chen Osorio; María Eustaquia Uscap Ivoy; Pedro Sic Sánchez; Silveria Lajuj Tum; Tomasa Osorio Chen; Florinda Uscap Ivoy; Juan Burrero. The following women: Laura Tecú Osorio, Felisa Coloch Gonzáles, Bruna Pérez Osorio and Dominga Sic Ruiz.
- The Los Encuentros Massacre: Bernarda Lajuj Osorio, Carmen Sánchez Chen, Osorio Sánchez; Osorio Lajuj; Antonia Osorio Lajuj; Paulina Chen Osorio; Felipa Osorio Tahuico.
- The Agua Fria massacre: Timotea Lajuj López and her son.

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<sup>140</sup> Testimony given by Carmen Sánchez Chen on July 2, 2009 in the presence of Notary Edgar Fernando Pérez Archila, Document in the record of the case with the IACHR, Folder 5, supplied by the petitioners on August 17, 2009 and entered into the record at the IACHR on September 9, 2009. Testimony given by Antonia Osorio Chen on June 24, 2009 in the presence of Notary Edgar Fernando Pérez Archila, Document in the record of the case with the IACHR, Folder 5, supplied by the petitioners on August 17, 2009 and entered into the record at the IACHR on September 9, 2009.

<sup>141</sup> Testimony given by Antonia Osorio Chen on June 24, 2009 in the presence of Notary Edgar Fernando Pérez Archila, Document in the record of the case with the IACHR, Folder 5, supplied by the petitioners on August 17, 2009 and entered into the record at the IACHR on September 9, 2009.

<sup>142</sup> Testimony given by José Osorio Sic on June 26, 2009, in the presence of Notary Edgar Fernando Pérez Archila, Document in the record of the case with the IACHR, Folder 5 and supplied by the petitioners on August 17, 2009, and entered into the record at the IACHR on September 9, 2009.

<sup>143</sup> Testimony given by Carmen Sánchez Chen on July 2, 2009 in the presence of Notary Edgar Fernando Pérez Archila, Document in the record of the case with the IACHR, Folder 5, supplied by the petitioners on August 17, 2009 and entered into the record at the IACHR on September 9, 2009.

- The massacre that the following individuals survived is unknown: Juan Tum Sánchez; Santiago Lajuj Jerónimo (possibly the son of Timotea Lajuj López and a survivor of the Agua Fría massacre); Antonia Osorio Chen; Eusebio Sic, Dorotea Lajuj López and Julián Sic López.

142. In 1983 the survivors of the various massacres came out of hiding in the mountains. Some went to Escuintla, to Retalhuleu and to other parts of Guatemala, while the rest returned to Rabinal.<sup>144</sup>

143. There were two resettlement villages in Rabinal: San Pablo and Pacux. The surviving members of the community of Río Negro were moved to Pacux,<sup>145</sup> which is located behind the military outpost in Rabinal.<sup>146</sup> Living conditions there are very difficult and the land is not suitable for even subsistence farming.<sup>147</sup> One survivor of the Río Negro community said the following:

[...] they said that there was to be an “Amnesty” [...] Then we came to Pacux [...] We were brought there by the military [...] In Pacux, the soldiers came and raped the women and when we went to market, we had to go in groups of women; we were guarded by groups of soldiers. It was very hard, because we had no way of knowing whether we would survive; they could have killed us at any time [...].<sup>148</sup>

144. Some months after the March 13, 1982 massacre, INDE started to fill the Chixoy reservoir. One individual who made a statement to the CEH said the following: “After the massacre, the people left and [...] they began to fill [the reservoir]. It was that simple.”<sup>149</sup>

145. From 1980 to 1985, the members of the community of Río Negro were victims of persecution. Most of them were either killed or forcibly disappeared in the massacres described above. However, at least another 63 people died in other circumstances related to the persecution to which they were subjected. The respective list was made available to the State, and was neither rejected nor contested by the State. The persons named on the list are: 1) Alejandro Sánchez Chen, 2) Andrés Tum Sánchez, 3) Antonio Sánchez Tum, 4) Antonio Tum Sánchez, 5) Baleriano Osorio Chen, 6) Bernardino Uscap Chen, 7) Calixto Chen Sánchez, 8) Carlos Alvarado Ivoy, 9) Damacia Chen Sánchez, 10) Dominga Sánchez, 11) Esperanza Pérez Tum, 12) Evaristo Chen Lajuj, 13) Evaristo Osorio, 14) Evaristo Osorio Sánchez, 15) Felipe Iboy Chen, 16) Félix Sic Alvarado, 17) Fermín Tum, 18) Francisco Cuxum Chen, 19) Fernando Chen, 20) Fernando Tecú Chen, 21) Francisco Sánchez Chen, 22) Francisca Sánchez Chen, 23) Francisco Sánchez Osorio, 24) Francisco Tum Uscap, 25) Fabián Osorio Osorio, 26) Fulgencia Chen Tolon, 27) José Iboy Osorio, 28) Juan Chen Tum, 29) Julio Chen Iboy, 30) Julio Sánchez Chen, 31) Justo Chen, 32) Justo Chen Tecú, 33)

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<sup>144</sup> CEH, *Memory of Silence*, Illustrative Case No. 10. MASSACRE AND ELIMINATION OF THE COMMUNITY OF RIO NEGRO.

<sup>145</sup> CEH, *Memory of Silence*, Human Rights Violations and Acts of Violence. Volume 3. Human rights violations, para. 1051.

<sup>146</sup> CEH, *Memory of Silence*, Illustrative Case No. 10. MASSACRE AND ELIMINATION OF THE COMMUNITY OF RIO NEGRO.

<sup>147</sup> CEH, *Memory of Silence*, Illustrative Case No. 10. MASSACRE AND ELIMINATION OF THE COMMUNITY OF RIO NEGRO.

<sup>148</sup> Testimony given by Antonia Osorio Chen on June 24, 2009 in the presence of Notary Edgar Fernando Pérez Archila, document in the record of the case with the IACHR, Folder 5, supplied by the petitioners on August 17, 2009 and entered into the record at the IACHR on September 9, 2009.

<sup>149</sup> CEH, *Memory of Silence*, Illustrative Case No. 10. MASSACRE AND ELIMINATION OF THE COMMUNITY OF RIO NEGRO.

Mateo Uscap Chen, 34) María Sic Ismalej, 35) Mateo Sánchez Chen, 36) Martín Lajuj Sánchez, 37) Miguel Ángel Pérez Osorio, 38) Pablo Cahuec Chen, 39) Pablo Osorio Chen, 40) Pablo Osorio Lopez, 41) Pablo Osorio Sánchez, 42) Pablo Uscap Tecú, 43) Pablo Uscap Tum, 44) Patrocinio Chen Sánchez, 45) Patrocinio Sánchez Chen, 46) Pedrina Osorio Pérez, 47) Pedro Chen López, 48) Pedro Chen Rojas, 49) Raimunda Sánchez Sánchez, 50) Raymunda Sánchez Sánchez, 51) Refugio Sic Siana, 52) Simeón Chen López, 53) Santos Oswaldo López Ixpata, 54) Siriaco Sánchez Osorio, 55) Sabina Sic Siana, 56) Secundino Pérez Alvarado, 57) Toribio Lajuj Chen, 58) Tránsito Chen Chen, 59) Tránsito Chen Sánchez, 60) Valeriano Osorio Chen, 61) Venacio Sánchez, 62) Irma Cahuec Osorio y 63) Héctor López Osorio.

146. On the other hand, the next of kin of the members of the Río Negro communities who were victims of the Facuss described in paragraphs 93 to 140, have suffered by such facts and for the impunity in which they remain<sup>150</sup>.

#### **4. Concerning the investigation of the facts and the exhumations**

##### *The Río Negro and Agua Fría massacres*

147. On August 10, 1993, Jesús Tecú Osorio and Francisco Chen Osorio filed a complaint with the Court of First Instance of Salamá, Baja Verapaz, requesting exhumation of the bodies that had been “unlawfully buried in the village of Río Negro, municipality of Rabinal in the department of Baja Verapaz,” in a clandestine cemetery.<sup>151</sup>

148. On August 13, 1993, the Court of First Instance of Baja Verapaz opened the public proceedings, ordered the inquiry, recognized the Public Prosecutor’s Office, and requested information on four accused former patrol members.<sup>152</sup> The court also ordered exhumation of the bodies, for which purpose it commissioned the Justice of the Peace of the Municipality of Rabinal.<sup>153</sup> The exhumation proceeding began on October 7, 1993.<sup>154</sup>

149. On October 26, 1993, José María López Osorio and Pedrina Vargas Ixpata went to the Office of the Human Rights Ombudsman to make a statement to the effect that the mother of the former, Juana Osorio, and the husband of the latter, Mateo Pérez Siana, and her two daughters, Estefanía and Gregoria Pérez Vargas, ages 5 and 3, respectively, were also killed during the Río Negro massacre. According to their statements, the murders occurred at a distance of one and a half kilometers from the site where the Río Negro exhumation was underway. The Human Rights Ombudsman filed a request with the Judge of First Instance asking that the complaint be entered

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<sup>150</sup> See list of next of kin. Annex to this report. See also Chapter related to Determination of victims..

<sup>151</sup> Brief of August 10, 1993, Criminal Proceeding 001-98-1, Folder 1, at 1 to 3.

<sup>152</sup> Carlos Chen, Pedro González, Tomás Gómez González and Pedro González Gómez. Criminal Proceeding 001-98-1, Folder 1, at 8. The complaint, the confirmation of the complaint, and the inquiry make reference to the first three individuals named here. Later, in Criminal Proceeding 001-98-1, Folder 1, at 53, the departmental lower court judge requested information from the commander of Military Zone No. 4. In addition to the first three persons named, the request also mentions Fermín Lajuj Xitumul. Document in the record of the case with the IACHR, supplied by the petitioners on April 16, 2007 and entered into the record at the IACHR on May 7, 2007.

<sup>153</sup> Court order of August 13, 1993. Criminal Proceeding 001-98-1, Document in the record of the case with the IACHR, supplied by the petitioners on April 16, 2007 and entered into the record at the IACHR on May 7, 2007, at 8.

<sup>154</sup> Note from the Police Chief to the Judge of First Instance, dated October 30, 1993. Justice of the Peace. Exhumation proceedings October 7, 9, 11, 13, 15, 21, 23, 25, 27, 29, 31, and November 2, 4, 5, 7, 9, 1993, Criminal Proceeding 001-98-1, Document in the record of the case with the IACHR, supplied by the petitioners on April 16, 2007 and entered into the record at the IACHR on May 7, 2007.

into the case file for the exhumation proceedings underway in the village of Río Negro.<sup>155</sup> On February 18, 1994, Pedrina Vargas and José María López amplified and ratified the complaints filed in October 1993.<sup>156</sup>

150. On November 4, 1993, the Judge of First Instance of the Department of Baja Verapaz ordered the Justice of the Peace of the municipality of Rabinal to exhume the bodies of Juana Osorio, Mateo Pérez Siana, Estefanía and Gregoria Pérez Vargas.<sup>157</sup>

151. On November 8, 1993, the Judge asked the Commander of the Departmental Military Reserves for information about Carlos Chen Gomez, Tomás Gómez González and Pedro González Gómez, to determine whether they had been members of the PAC on March 13, 1982.<sup>158</sup>

152. On December 8, 1993, the Rabinal District Justice of the Peace who had been assigned the exhumation, delivered to the Court of First Instance of Baja Verapaz the report on the exhumation conducted between October 7, 1993 and November 9, 1993, in Río Negro, at the site called "El Portezuelo" or Pacoxom.<sup>159</sup>

153. On February 6, 1994, the Commander of the Departmental Military Reserves informed the court that he did not have the information requested on November 8, 1993, and said that the request should be addressed to the Commander of Military Zone No. 4.<sup>160</sup>

154. On February 10, 1994, Jesús Tecú Osorio filed a formal complaint against Fermín Lajuj for the events of March 13, 1982, and stated that he lived with patrol member Pedro González Gómez, who "saved his life only in order to put him to work in his own home," and "after killing his three-year-old brother."<sup>161</sup>

155. On February 14, 1994, the court requested information from the Commander of Military Zone No. 4, in order to determine whether Carlos Chen Gómez, Tomás Gómez González, Pedro González Gómez and Fermín Lajuj were members of the PAC on March 13, 1982.<sup>162</sup>

156. On March 9, 1994, the court received a reply from the Commander of Military Zone No. 4 in which he informed the court that the military zone in question was created on May 23, 1983, so that there were no records or files on members of the PAC prior to that date.<sup>163</sup>

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<sup>155</sup> Letter from the Office of the Human Rights Ombudsman of Salamá, Baja Verapaz, addressed to the Judge of First Instance, dated October 26, 1993. Criminal Proceeding 001-98-1, Document in the record of the case with the IACHR, supplied by the petitioners on April 16, 2007 and entered into the record at the IACHR on May 7, 2007, at 9.

<sup>156</sup> Criminal Proceeding 001-98-1, Document in the record of the case with the IACHR, supplied by the petitioners on April 16, 2007 and entered into the record at the IACHR on May 7, 2007, at 54 and 55

<sup>157</sup> Letter from the Office of the Human Rights Ombudsman of Salamá, Baja Verapaz, addressed to the Judge of First Instance, dated October 26, 1993. Criminal Proceeding 001-98-1, Document in the record of the case with the IACHR, supplied by the petitioners on April 16, 2007 and entered into the record at the IACHR on May 7, 2007, at 16.

<sup>158</sup> Criminal Proceeding 001-98-1, Document in the record of the case with the IACHR, supplied by the petitioners on April 16, 2007 and entered into the record at the IACHR on May 7, 2007, at 17

<sup>159</sup> Criminal Proceeding 001-98-1, Document in the record of the case with the IACHR, supplied by the petitioners on April 16, 2007 and entered into the record at the IACHR on May 7, 2007, at 31 to 38

<sup>160</sup> Criminal Proceeding 001-98-1, Document in the record of the case with the IACHR, supplied by the petitioners on April 16, 2007 and entered into the record at the IACHR on May 7, 2007, at 49

<sup>161</sup> Criminal Proceeding 001-98-1, Document in the record of the case with the IACHR, supplied by the petitioners on April 16, 2007 and entered into the record at the IACHR on May 7, 2007, at 81.

<sup>162</sup> Criminal Proceeding 001-98-1, Document in the record of the case with the IACHR, supplied by the petitioners on April 16, 2007 and entered into the record at the IACHR on May 7, 2007, at 53.

157. On May 3, 1994, the Departmental Forensic Physician presented a “report to the Judge of First Instance of the Department of Baja Verapaz concerning the exhumation proceedings conducted in Río Negro, as ordered by the court on September 17, 1993. He reported that his finding was that the victims “were buried in an incident involving violence.”<sup>164</sup> According to the report, the clandestine cemetery consisted of three graves in which 143 persons were buried; 85 of these were children, and the rest were women. He managed to establish the identity of three of the remains, namely: Marta Julia Chen Osorio, Demetrio Osorio Lajuj and Margarita Chen Uscap.<sup>165</sup>

158. On May 6, 1994, the Deputy Departmental Human Rights Ombudsman submitted to the Departmental Judge of First Instance a complaint brought by Víctor Mendoza concerning the existence of a clandestine cemetery in Agua Fría. In his complaint, Mr. Mendoza named Victoriano Lajuj Cuxum, Military Commission, Carlos Chen Gómez, Francisco Alvarado, Victoriano Lacusum Lajuj, Gabriel Cuxum Lajuj, Damian Alvarado, Pedro Cusum Alvarado, Pedro González, Pedro Ismalej, Abelino Alvarado Cuxum, Felipe Eríquez Mendoza and Arturo Ruiz, as some of the patrol members who committed the September 14, 1982 massacre in Agua Fría.<sup>166</sup> According to Mr. Mendoza, the cemetery in question was being destroyed to eliminate the evidence, a fact that the anthropologists in charge of the exhumation subsequently corroborated.<sup>167</sup>

159. At the request of the Public Prosecutor’s Office, on June 14, 1994 the Court of First Instance of Baja Verapaz ordered the arrest of Carlos Chen Gómez, Pedro González Gómez and Fermín Lajuj Xitumul for the crime of murder.<sup>168</sup> On July 25, 1994, Carlos Chen, Pedro González Gómez and Fermín Lajuj Xitumul were arrested and formally indicted for the crime of murder.<sup>169</sup>

160. On October 19, 1994, during the course of the criminal proceedings into the massacre at Agua Fría, the Departmental Deputy Human Rights Ombudsman asked the Special Prosecutor from the Public Prosecutor’s Office of the Department of Baja Verapaz to interrogate former patrol members Pedro González Gómez, Carlos Chen and Fermín Lajuj, the defendants in the case involving the Río Negro massacre, as they had been implicated as suspects in both massacres.<sup>170</sup>

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...continuation

<sup>163</sup> Criminal Proceeding 001-98-1, Document in the record of the case with the IACHR, supplied by the petitioners on April 16, 2007 and entered into the record at the IACHR on May 7, 2007, at 69

<sup>164</sup> Criminal Proceeding 001-98-1, Document in the record of the case with the IACHR, supplied by the petitioners on April 16, 2007 and entered into the record at the IACHR on May 7, 2007, at 77.

<sup>165</sup> Note of May 3, 1994. Criminal Proceeding 001-98-1, Document in the record of the case with the IACHR, supplied by the petitioners on April 16, 2007 and entered into the record at the IACHR on May 7, 2007. CEH, *Memory of Silence*, Illustrative Case No. 10. MASSACRE AND ELIMINATION OF THE COMMUNITY OF RIO NEGRO.

<sup>166</sup> Complaint filed on May 25, 1994. Criminal Proceeding 001-98-1, Document in the record of the case with the IACHR, supplied by the petitioners on April 16, 2007 and entered into the record at the IACHR on May 7, 2007.

<sup>167</sup> July 15, 1995 statement of Víctor Mendoza to the effect that “the self-defense patrollers were taking the bones to the clandestine cemeteries and removing any trace of evidence so that when the investigative commission arrived, it would find no evidence that any massacre had taken place at all.” Criminal Case 001-98-1, Folder 2. Exhumation report, February 19, 1996. “The archeologist José Fernando Moscoso Moller states that because of the compaction of the soil, he assumes that the grave had been disturbed.” Criminal Proceeding 001-98-1, Document in the record of the case with the IACHR, supplied by the petitioners on April 16, 2007 and entered into the record at the IACHR on May 7, 2007, Folder 2.

<sup>168</sup> Criminal Case 001-98-1, Folder 1, at 82.

<sup>169</sup> Note of July 25, 1995, from the Baja Verapaz Criminal Judge of First Instance. Note of that same day from the Judge to the Head of Public Prisons. Note of October 10, 1994, to the Municipal Mayor of Rabinal, to the Departmental Deputy Human Rights Ombudsman. Criminal Case 001-98-1, Folder 1 at 87, 90 to 101, and 106 to 109.

<sup>170</sup> October 19, 1994 brief. Criminal Case 001-98-1, Document in the record of the case with the IACHR, supplied by the petitioners on April 16, 2007 and entered into the record at the IACHR on May 7, 2007, at 251.

161. On November 3, 1994, oral proceedings were held to review the arrest and detention of the defendants. There, the judge denied the request for release given the seriousness of the crime with which they were accused and the flight risk. The defendants appealed the decision.<sup>171</sup> On November 22, 1994, the Tenth Chamber of the Appellate Court for Criminal, Drug-Trafficking and Environmental Offenses upheld the lower court's decision.<sup>172</sup>

162. On January 26, 1995, the judge asked the Public Prosecutor's Office to wrap up the investigation and provide any missing documents that it deemed appropriate.<sup>173</sup>

163. On February 16, 1995, the Public Prosecutor's Office requested, *inter alia*, that the Río Negro massacre case and the Agua Fría massacre case be joined.<sup>174</sup> On February 20, 1995, the Criminal Court of First Instance ordered that the two cases be joined.<sup>175</sup>

164. The Agua Fría exhumations began on February 19, 1996.<sup>176</sup> On March 18, 1996, the Guatemalan Forensic Anthropology Team issued its anthropological report in which it concluded, *inter alia*, that the remains could not be identified "due to the degree of incineration and fragmentation." It added that "despite the condition of the skeletal remains [...], it is apparent that the victims died a violent death." According to the forensic anthropology report, the remains of at least fourteen persons were found.<sup>177</sup>

165. On March 7, 1995, Carlos Chen Gómez, Pedro González Gómez and Fermín Lajuj Xitumul were ordered to stand trial for the crimes of murder, aggravated theft, and illegal possession of firearms.<sup>178</sup>

166. At the request of the Public Prosecutor's Office, the order to commence proceedings was issued on May 9, 1996.<sup>179</sup>

167. On May 27, 1996, the defense counsel representing Fermín Lajuj Xitumul, Carlos Chen and Pedro González Gómez requested application of amnesty decree 32/88.<sup>180</sup> On June 7,

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<sup>171</sup> Criminal Proceeding 001-98-1, Document in the record of the case with the IACHR, supplied by the petitioners on April 16, 2007 and entered into the record at the IACHR on May 7, 2007, Folder 1, at 212.

<sup>172</sup> Criminal Proceeding 001-98-1, Document in the record of the case with the IACHR, supplied by the petitioners on April 16, 2007 and entered into the record at the IACHR on May 7, 2007, Folder 1, at 215.

<sup>173</sup> Criminal Proceeding 001-98-1, Document in the record of the case with the IACHR, supplied by the petitioners on April 16, 2007 and entered into the record at the IACHR on May 7, 2007, Folder 1, at 223.

<sup>174</sup> Criminal Proceeding 001-98-1, Document in the record of the case with the IACHR, supplied by the petitioners on April 16, 2007 and entered into the record at the IACHR on May 7, 2007, Folder 2, at 261 to 263.

<sup>175</sup> Criminal Proceeding 001-98-1, Document in the record of the case with the IACHR, supplied by the petitioners on April 16, 2007 and entered into the record at the IACHR on May 7, 2007, Folder 2, at 264 to 265.

<sup>176</sup> Criminal Proceeding 001-98-1, Document in the record of the case with the IACHR, supplied by the petitioners on April 16, 2007 and entered into the record at the IACHR on May 7, 2007, Folder 2, at 466.

<sup>177</sup> Criminal Proceeding 001-98-1, Document in the record of the case with the IACHR, supplied by the petitioners on April 16, 2007 and entered into the record at the IACHR on May 7, 2007, Folder 2, at 464 to 483.

<sup>178</sup> Criminal Proceeding 001-98-1, Document in the record of the case with the IACHR, supplied by the petitioners on April 16, 2007 and entered into the record at the IACHR on May 7, 2007, Folder 2, at 278 to 279.

<sup>179</sup> Criminal Proceeding 001-98-1, Document in the record of the case with the IACHR, supplied by the petitioners on April 16, 2007 and entered into the record at the IACHR on May 7, 2007, Folder 2, at 484 to 488. Criminal Proceeding 001-98-1, Document in the record of the case with the IACHR, supplied by the petitioners on April 16, 2007 and entered into the record at the IACHR on May 7, 2007 Folder 2, at 510 to 508.

1996, the Trial Court dismissed the request on the grounds that “the crimes with which the defendants are charged [...] are not among those provided for in the aforementioned decree.”<sup>181</sup>

168. On July 23, 1996, the defendants once again asked the Court for Criminal, Drug-Trafficking and Environmental Offenses to declare them eligible for the amnesty, to order their release and dismiss the case.<sup>182</sup> On July 30, 1996, that court confirmed the June 7, 1996 ruling, in which the court had declared that the defendants were not eligible for the benefits of the amnesty decree.<sup>183</sup>

169. On August 5, 1996, the defense counsel for Pedro González Gómez appeared before the Court for Criminal, Drug-Trafficking and Environmental Offenses and filed an appeal to challenge the decision of July 30, 1996. The following day, the Court agreed to hear the appeal.

170. The public hearing for oral arguments in the case was scheduled for August 6, 1996. However, it was suspended when the defense counsel for Pedro González Gómez excused himself claiming health problems<sup>184</sup> and when counsel for defendants Carlos Chen and Fermín Lujuj Xitumul did not make an appearance.<sup>185</sup>

171. On August 12, 1996, the Twelfth Chamber of the Cobán Appellate Court upheld the July 30, 1996 ruling on appeal.<sup>186</sup>

172. On August 16, 1996, defense counsel for Pedro González Gómez filed a petition with the Supreme Court seeking *amparo* relief against the August 12, 1996 ruling of the Twelfth Chamber of the Cobán Appellate Court on the grounds that “the accused has been denied the right to amnesty and [because no] other ordinary remedy was available.”<sup>187</sup>

173. On August 31, 1996, the Supreme Court issued the writ of provisional *amparo* relief requested and temporarily suspended the August 12, 1996 ruling because the authority being challenged had failed to provide the Supreme Court, within 48 hours, the background information in the case or the report detailing the circumstances.<sup>188</sup>

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...continuation

<sup>180</sup> Criminal Proceeding 001-98-1, Document in the record of the case with the IACHR, supplied by the petitioners on April 16, 2007 and entered into the record at the IACHR on May 7, 2007, Folder 3, at 318 to 519.

<sup>181</sup> Criminal Proceeding 001-98-1, Document in the record of the case with the IACHR, supplied by the petitioners on April 16, 2007 and entered into the record at the IACHR on May 7, 2007, Folder 3, at 524.

<sup>182</sup> Criminal Case 13-96 with the Trial Court for Criminal, Drug-Trafficking and Environmental Offenses at Cobán, Alta Verapaz, at 566 Río Negro and Agua Fría massacres. Annexes to the petitioners’ note of May 7, 2007.

<sup>183</sup> Criminal Case 13-96 at 569. Annexes to the petitioners’ note of May 7, 2007.

<sup>184</sup> Criminal Proceeding 001-98-1, Document in the record of the case with the IACHR supplied by the petitioners on April 16, 2007 and entered into the record at the IACHR on May 7, 2007, Folder 3, at 586

<sup>185</sup> Criminal Case 13-96 at 569. Annexes to the petitioners’ note of May 7, 2007.

<sup>186</sup> Brief submitting Amparo petition No. 266-96, filed with the Supreme Court of Justice on August 16, 1996 by the defense attorney representing Pedro González Gómez, in criminal proceeding No 13-96. Attachments to the petitioners’ note of May 7, 2007.

<sup>187</sup> Amparo petition No. 266-96, filed with the Supreme Court of Justice on August 16, 1996 by the defense attorney representing Pedro González Gómez, in criminal proceeding No 13-96. Attachments to the petitioners’ note of May 7, 2007.

<sup>188</sup> Amparo petition No. 266-96 filed with the Supreme Court of Justice on August 16, 1996, at 11, in criminal proceeding No 13-96. Attachments to the petitioners’ note of May 7, 2007.

174. On September 12, 1996, the Supreme Court revoked the writ of provisional *amparo* relief “since the circumstances are such that it would be inadvisable to keep that measure in place.”<sup>189</sup>

175. On October 1, 1996, defense counsel for Pedro González Gómez appealed the September 12, 1996 ruling, arguing that “the writ of provisional *amparo* relief was indeed advisable inasmuch as the freedom of [his] defendant hinged upon it.”<sup>190</sup>

176. At the request of Carlos Chen Osorio, Coordinator of Maya Achí Widows, Widowers, Orphans and Displaced Persons of Baja Verapaz, on October 25, 1996 the Chief Judge of the Trial Court for Criminal, Drug-Trafficking and Environmental Offenses of Cobán, Alta Verapaz, ordered the District Attorney of the Public Prosecutor’s Office to hand over to Mr. Chen Osorio, the 23 paper bags “containing the ashes and skeletal remains discovered in the exhumation conducted in the hamlet of Agua Fría.”<sup>191</sup>

177. On November 22, 1996, the Supreme Court issued its ruling in which it denied the August 16, 1996 petition seeking *amparo* relief on the grounds that it was “obviously unfounded;” it ordered payment of costs and fined Pedro González Gómez’ defense counsel.<sup>192</sup>

178. On January 10, 1997, defense counsel for Pedro González Gómez appealed the ruling of November 22, 1996, and requested that the matter be referred to the Constitutional Court.<sup>193</sup>

179. On February 13, 1997, the Constitutional Court set a hearing for February 15, 1997.<sup>194</sup> On October 21, 1997, the Constitutional Court confirmed the November 22, 1996 ruling.<sup>195</sup>

180. On March 25, 1997, the Justice of the Peace of Rabinal, Baja Verapaz, set April 8, 1997 for the exhumation of the bodies of Juan Cano, Mateo Pérez Siana and Estafanía and Pedrina Vargas Ixpatá.<sup>196</sup>

181. On April 24, 1997, the Justice of the Peace of Rabinal presented to the Baja Verapaz Trial Court for Criminal, Drug-Trafficking and Environmental Offenses, the report on the exhumation of the bodies of “Juana Osorio, Mateo Pérez Siana, Estefanía and Gregoria, surnames

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<sup>189</sup> Amparo petition No. 266-96 filed with the Supreme Court of Justice on August 16, 1996, at 12, in criminal proceeding No 13-96. Attachments to the petitioners’ note of May 7, 2007.

<sup>190</sup> Amparo petition No. 266-96 filed with the Supreme Court of Justice on August 16, 1996, at 14, in criminal proceeding No 13-96. Attachments to the petitioners’ note of May 7, 2007.

<sup>191</sup> Criminal Proceeding 001-98-1, Document in the record of the case with the IACHR, supplied by the petitioners on April 16, 2007 and entered into the record at the IACHR on May 7, 2007, Folder 3. at 615 and 617.

<sup>192</sup> Amparo petition No. 266-96 filed with the Supreme Court of Justice on August 16, 1996, at 34 and 38, in criminal proceeding No 13-96. Attachments to the petitioners’ note of May 7, 2007.

<sup>193</sup> Amparo petition No. 266-96 filed with the Supreme Court of Justice on August 16, 1996, at 39, in criminal proceeding No 13-96. Attachments to the petitioners’ note of May 7, 2007.

<sup>194</sup> The appeal filed with the Constitutional Court was logged as No.130-97 in criminal case No.13-96. Attachments to the petitioners’ note of May 7, 2007.

<sup>195</sup> Constitutional Court, Case No 130-97. Part of criminal case No 13-96. Attachments to the petitioners’ note of May 7, 2007

<sup>196</sup> Criminal Proceeding 001-98-1, Document in the record of the case with the IACHR, supplied by the petitioners on April 16, 2007 and entered into the record at the IACHR on May 7, 2007, Folder 3, at 628

Pérez Vargas,” conducted at the site called MONTE REDONDO, village of Chitucán, Municipality of Rabinal, department of Baja Verapaz. The report states that the skeletal remains were identified by family members José María López Osorio and Pedrina Vargas Ixpata.

182. Because the April 8, 1997 exhumation was conducted as part of the joined cases and referred to the Trial Court of First Instance of the Department of Alta Verapaz, on April 25, 1997 the Baja Verapaz Trial Court of First Instance for Criminal, Drug-Trafficking and Environmental Offenses sent the report back to the Trial Court of First Instance of the Department of Alta Verapaz to be added to the respective case file.<sup>197</sup>

183. In an August 28, 1997 communication that the Baja Verapaz District Attorney sent to the Judge of the Court of First Instance for Criminal, Drug-Trafficking and Environmental Offenses, the District Attorney stated that the exhumation conducted on April 8, 1997 had been requested by the Court of First Instance as “evidence in advance of trial,” and that in conducting the exhumation it was “determined that the exhumation is not final and could be done again in the course of the proceedings, since the means used to conduct the exhumation and the nature of exhumation itself make that possible. The view was that [...] the exhumation as a means and object of investigation can be done again in the oral proceedings [...] They also expressed the view that the Public Prosecutor’s Office can conduct these procedures as a simple investigative measure [...] Because of the logistical and procedural difficulty that this type of procedure represents, from what the analysis suggests, the means of investigation should be CORRECTED.” The District Attorney requested that the exhumation “be classified as a simple investigative procedure and not as evidence in advance of trial, thereby rectifying the mistake and correcting the flawed procedural activity.”<sup>198</sup>

184. On June 19, 1998, the Trial Court for Criminal, Drug-Trafficking and Environmental Offenses of Alta Verapaz, Cobán, ordered that the criminal proceedings were being referred to the Baja Verapaz Trial Court for Criminal, Drug-Trafficking and Environmental Offenses, whose seat was in Salamá; it was a matter of territorial jurisdiction, since the facts in the case occurred within the jurisdiction of the latter court.<sup>199</sup>

185. At the request of the Trial Court for Criminal, Drug-Trafficking and Environmental Offenses of Baja Verapaz, on July 3, 1997, June 3 and October 9, 1998 the Supreme Court agreed to extend the pre-sentencing confinement of the defendants.<sup>200</sup>

186. Oral arguments began on November 9, 1998, and ended on November 30 of that year, when the Trial Court for Criminal, Drug-Trafficking and Environmental Offenses convicted the defendants.<sup>201</sup> In its ruling the court stated, *inter alia*, the following:

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<sup>197</sup> Criminal Proceeding 001-98-1, Document in the record of the case with the IACHR, supplied by the petitioners on April 16, 2007 and entered into the record at the IACHR on May 7, 2007, Folder 3, at 634.

<sup>198</sup> Criminal Proceeding 001-98-1, Document in the record of the case with the IACHR, supplied by the petitioners on April 16, 2007 and entered into the record at the IACHR on May 7, 2007, Folder 3, at 642.

<sup>199</sup> Criminal Proceeding 001-98-1, Document in the record of the case with the IACHR, supplied by the petitioners on April 16, 2007 and entered into the record at the IACHR on May 7, 2007, Folder 3, at 657.

<sup>200</sup> Criminal Proceeding 001-98-1, Document in the record of the case with the IACHR, supplied by the petitioners on April 16, 2007 and entered into the record at the IACHR on May 7, 2007, Folder 3, at 621, 653 and 692.

<sup>201</sup> Judgment of November 30, 1998. Criminal Proceeding 001-98-1, Folder 5, at 1048. Document in the record of the case with the IACHR, supplied by the petitioners on April 16, 2007 and entered into the record at the IACHR on May 7, 2007, at 1044 to 1062.

[In the Río Negro massacre] the defendants never took account of the age of the children, the fact that some women were pregnant, or that others were elderly [...] <sup>202</sup>.

[However, in the Río Negro exhumation] only three persons were identified [...] MARIA JULIA CHEN OSORIO, DEMETRIA LAJUU OSORIO and MARGARITA CHEN USCAP who died from *circum mortem* traumas: the first of the three had sustained multiple fractures and had been hung, she was also seven-and-a-half months pregnant, suggesting also that this person was identified because she had certain dental features that distinguished her from the other victims and that at the time of the laboratory analysis fit the description; the second identified victim died of blunt-instrument blows to the right cranial area. In both cases, death was violent. The third identified victim died from multiple fractures and blows with a blunt instrument. All these causes were documented in the reports prepared by the anthropologists. <sup>203</sup>

[...] Since none of those exhumed [at Agua Fría] could be identified, there is no way to prove a person's existence and, by extension, the guilt of those on trial for [that] massacre [...] <sup>204</sup>  
[...] Therefore, lacking any incriminating evidence against them, the defendants cannot be held responsible. <sup>205</sup>

187. The Court ruled as follows:

I. TO ACQUIT defendants Carlos Chen single surname, PEDRO GONZÁLEZ GÓMEZ and FERMIÍN LAJUU XITUMUL of the crimes of AGGRAVATED THEFT and ILLEGAL POSSESSION OF FIREARMS, committed against the property of the inhabitants of the village of Río Negro in the Municipality of Rabinal, department of Baja Verapaz [...] II. That CARLOS CHEN single surname, PEDRO GONZÁLEZ GÓMEZ and FERMIÍN LAJUU XITUMUL are guilty of three murders committed against the physical persons of MARTHA JULIA CHEN OSORIO, MARGARITA CHEN USCAP and DEMETRIA OSORIO LAJUU [killed in the Río Negro massacre]. III) For that crime, they are hereby sentenced to the DEATH PENALTY .... VII) The Public Prosecutor's Office is ordered to begin the investigation into the THREE MURDERS [...] where the suspects are Tomás Alvarado Toj, Ambrosio Pérez Lajuj, Simeón Enríquez Alvarado, Macario Alvarado Toj, Pablo Ruiz Alvarado, Francisco Cuxun Alvarado, Gabriel Cuxun Alvarado, Lucas Lajuj Alvarado and Marcelo Lajuj. <sup>206</sup>

188. On an unspecified date –sometime between December 1998 and January 1999- the defense filed a special appeal and requested that the November 30, 1998 conviction be nullified. It did so on the procedural grounds that the experts failed to establish their credentials in the case proceedings; as for substantive grounds, the defense argued that “during the oral proceedings IT WAS NEVER PROVEN THAT [Carlos Chen, Pedro González Gómez and Fermín Lajuj Xitumul were responsible for the murder of Marta Julia Chen Osorio, Margarita Chen Uscap and Demetria Osorio

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<sup>202</sup> Judgment of November 30, 1998. Criminal Proceeding 001-98-1, Folder 5, at 1048. Document in the record of the case with the IACHR, supplied by the petitioners on April 16, 2007 and entered into the record at the IACHR on May 7, 2007, at 1060.

<sup>203</sup> Judgment of November 30, 1998. Criminal Proceeding 001-98-1, Folder 5, at 1048. Document in the record of the case with the IACHR, supplied by the petitioners on April 16, 2007 and entered into the record at the IACHR on May 7, 2007, at 1052.

<sup>204</sup> Judgment of November 30, 1998. Criminal Proceeding 001-98-1, Folder 5, at 1048. Document in the record of the case with the IACHR, supplied by the petitioners on April 16, 2007 and entered into the record at the IACHR on May 7, 2007, at 1053.

<sup>205</sup> Judgment of November 30, 1998. Criminal Proceeding 001-98-1, Folder 5, at 1048. Document in the record of the case with the IACHR, supplied by the petitioners on April 16, 2007 and entered into the record at the IACHR on May 7, 2007, at 1053 bis.

<sup>206</sup> Judgment of November 30, 1998. Criminal Proceeding 001-98-1, Folder 5, at 1048. Document in the record of the case with the IACHR, supplied by the petitioners on April 16, 2007 and entered into the record at the IACHR on May 7, 2007, at 1061 to 1062.

Lajuj]. HAD THAT BEEN THE CASE [,] THEY WOULD HAVE BEEN CONVICTED OF OTHER DEATHS.”<sup>207</sup>

189. On February 25, 1999, the Fourteenth Chamber of the Alta Verapaz Appellate Court for Criminal, Drug-Trafficking and Environmental Offenses granted the appeal on the procedural grounds and therefore ordered that a new tribunal, composed of different judges, should preside over a new oral trial.<sup>208</sup>

190. The Public Prosecutor’s Office filed a remedy of cassation against the February 25, 1999 ruling, which the Criminal Chamber of the Supreme Court dismissed outright on April 13, 1999.<sup>209</sup>

191. On October 7, 1999, the Baja Verapaz Trial Court for Criminal, Drug-Trafficking and Environmental Offenses, with different judges presiding, issued a ruling in which it found that the three defendants were responsible for the murders of Marta Julia Chen Osorio and Demetria Osorio Lajuj “as it has been established that they died violent deaths.” The Court imposed the death penalty. It also ordered that proceedings be continued in the case against ten former PAC patrol members<sup>210</sup> and against Guatemalan Army officer Antonio González Solares and other members of the Army who were implicated in the two murders. The Court held that “they colluded with the accused and were present at the scene when Marta Julia Chen Osorio and Demetria Osorio Lajuj were killed.”<sup>211</sup>

192. On October 27, 1999, both the Public Prosecutor’s Office and the defense counsel for the accused appealed the October 7, 1999 ruling. The defense counsel for the three former patrol members argued that “their participation in the events with which they are accused has not been proved, especially inasmuch as the proceedings against other persons are still ongoing, which shows that the Tribunal did not have the certainty necessary to convict.”<sup>212</sup>

193. In October 1999, a request was filed to have the three men convicted by the Baja Verapaz Trial Court transferred to the El Progreso Penitentiary, since the facility in which they were being held “does not meet the necessary security requirements.”<sup>213</sup>

194. On February 1, 2000, the Fourteenth Chamber of the Appellate Court of Cobán, Alta Verapaz, issued its decision on the appeals filed by the Public Prosecutor’s Office and by the defense counsel. Its ruling was that the defendants were the authors of the murders of Marta Julia

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<sup>207</sup> Criminal Proceeding 001-98-1, Document in the record of the case with the IACHR, supplied by the petitioners on April 16, 2007 and entered into the record at the IACHR on May 7, 2007, Folder 5, at 1143 and 1144

<sup>208</sup> Criminal Proceeding 001-98-1, Document in the record of the case with the IACHR, supplied by the petitioners on April 16, 2007 and entered into the record at the IACHR on May 7, 2007, Folder 5, at 1154 to 1161.

<sup>209</sup> Criminal Proceeding 001-98-1, Document in the record of the case with the IACHR, supplied by the petitioners on April 16, 2007 and entered into the record at the IACHR on May 7, 2007, Folder 6, at 1198.

<sup>210</sup> Pablo Ruiz Alvarado, Macario Alvarado Toj, Simeón Enríquez Gómez, Ambrosio Pérez Lajuj, Cristóbal Mendoza, Pablo Jesús Alvarado, Gabriel Cuxun Alvarado, Francisco Cuxun Alvarado, Marcelo Lajuj Osorio, Tomás Alvarado Toj, Lucas Lajuj Alvarado, Francisco Alvarado Lajuj, Victoriano Lajuj, Tomás Vino Alvarado, Víctor González López, Miguel Alvarado Sic, Serapio Jajuj Cuxun and Bonifacio Cuxun López.

<sup>211</sup> Criminal Proceeding 001-98-1, Document in the record of the case with the IACHR, supplied by the petitioners on April 16, 2007 and entered into the record at the IACHR on May 7, 2007, Folder 7, at 1571.

<sup>212</sup> Criminal Proceeding 001-98-1, Document in the record of the case with the IACHR, supplied by the petitioners on April 16, 2007 and entered into the record at the IACHR on May 7, 2007, Folder 7, at 1699 to 1727, 1724.

<sup>213</sup> Criminal Proceeding 001-98-1, Document in the record of the case with the IACHR, supplied by the petitioners on April 16, 2007 and entered into the record at the IACHR on May 7, 2007, Folder 6, at 1521.

Chen Osorio and Demetria Osorio Lajuj, in concurrent criminal offenses. The Chamber imposed a sentence of 30 years in prison not subject to commutation.<sup>214</sup>

195. On an unspecified date –sometime between February 1 and 22, 2000- Carlos Chen’s defense counsel filed a petition of cassation to challenge the February 1, 2000 ruling. On March 15, 2000, the Criminal Chamber of the Supreme Court dismissed the appeal as inadmissible.<sup>215</sup>

196. Carlos Chen’s defense counsel then filed an appeal for reconsideration of the cassation appeal. On April 25, 2000, the Criminal Chamber of the Supreme Court declared the appeal inadmissible.<sup>216</sup>

197. On May 12, 2000, the Secretary of the Supreme Court of Justice remanded to the Salamá Criminal Trial Court the proceedings in the cassation appeal filed by Carlos Chen’s defense counsel challenging the ruling delivered by the Fourteenth Chamber of the Appellate Court.<sup>217</sup>

198. Because the February 1, 2000 ruling had become final, on May 16, 2000 the Supreme Court remanded the criminal case to Guatemala City’s First Court for Enforcement of Judgment.<sup>218</sup> On May 30, 2000, the Chief Judge of the Salamá Trial Court referred the criminal case to Guatemala City’s First Court for Enforcement of Judgment.<sup>219</sup>

199. On October 28, 2002, the Deputy Prosecutor from the Public Prosecutor’s Office filed a request with the Judge of the Court of First Instance for Criminal, Drug Trafficking and Environmental Offenses, Department of Baja Verapaz, asking that the court issue a warrant for the arrest of Miguel Alvarado Sic, Tomas Vino Alvarado, Francisco Alvarado Lajuj, Serapio Lajuj Cuxúm, Maracaibo Alvarado Toj, Lucas Lajuj Alvarado and Víctor González López. On January 9, 2003, the Public Prosecutor’s Office of the Department of Baja Verapaz repeated the request seeking issuance of an arrest warrant. On that same day, the Public Prosecutor’s Office requested that the criminal prosecution of the suspects in the crime of murder be considered underway and that the judge preside over the investigation.<sup>220</sup>

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<sup>214</sup> Criminal Proceeding 001-98-1, Document in the record of the case with the IACHR, supplied by the petitioners on April 16, 2007 and entered into the record at the IACHR on May 7, 2007, Folder 7, at 1736 to 1742. That decision was based on Article 43.2 of the Penal Code, which provides that the death penalty cannot be imposed on the basis of presumptive evidence.

<sup>215</sup> Criminal Proceeding 001-98-1, Document in the record of the case with the IACHR, supplied by the petitioners on April 16, 2007 and entered into the record at the IACHR on May 7, 2007, Folder 7, at 1752 and 1753.

<sup>216</sup> Criminal Proceeding 001-98-1, Document in the record of the case with the IACHR, supplied by the petitioners on April 16, 2007 and entered into the record at the IACHR on May 7, 2007, Folder 7, at 1754.

<sup>217</sup> Criminal Proceeding 001-98-1, Document in the record of the case with the IACHR, supplied by the petitioners on April 16, 2007 and entered into the record at the IACHR on May 7, 2007, Folder 7, at 1750.

<sup>218</sup> Criminal Proceeding 001-98-1, Document in the record of the case with the IACHR, supplied by the petitioners on April 16, 2007 and entered into the record at the IACHR on May 7, 2007, Folder 7, at 1763.

<sup>219</sup> Criminal Proceeding 001-98-1, Document in the record of the case with the IACHR, supplied by the petitioners on April 16, 2007 and entered into the record at the IACHR on May 7, 2007, Folder 7, at 1763, 1770 to 1771.

<sup>220</sup> Criminal Proceeding 001-98-1, Document in the record of the case with the IACHR, supplied by the petitioners on April 16, 2007 and entered into the record at the IACHR on May 7, 2007, Folder 8.

200. On December 20, 2002, the Baja Verapaz Court of First Instance for Criminal, Drug-Trafficking and Environmental Offenses ordered the Public Prosecutor's Office to conduct the necessary investigations, take statements and give the suspects a hearing.<sup>221</sup>

201. On January 28, 2003, Jesús Tecú Osorio, as legal representative of ADIVIMA, became a co-complainant in the case.<sup>222</sup>

202. On April 15, 2003, a warrant was issued for the arrest of Army officer José Antonio Solares González for the crime of murder.<sup>223</sup> Furthermore, three searches were conducted<sup>224</sup> and search requests were sent to, *inter alia*, the Traffic Department of the Civilian National Police,<sup>225</sup> the National Immigration Bureau,<sup>226</sup> the Registry of Motor Vehicles under the Ministry of Finance, the Ministry of National Defense, the Military Social Security Institute,<sup>227</sup> the Office of Vital Statistics of the Municipality of Casillas in the department of Santa Rosa,<sup>228</sup> and the banking institutions in the financial system.<sup>229</sup>

203. To date, retired military officer José Antonio Solares González has not been arrested, even though he is receiving a pension from the Ministry of Defense.<sup>230</sup>

204. On May 14, 2003, the Public Prosecutor's Office requested the assistance of the Attorney General of the Republic to complete the investigation of the case. It asked to be informed as to whether "the investigation has succeeded in identifying then First Captain José Antonio Solares González, [now] retired Colonel and General Staff College graduate." The Public Prosecutor's Office also said that "the arrest warrant ha[d] to be carried out so that the intellectual author can be brought to trial alongside the material authors of the crime." Finally, the Public Prosecutor's Office reported that José Antonio Solares González had purportedly filed a "petition of *habeas corpus* with the Fourth Appellate Chamber, the outcome of which is still not known."<sup>231</sup>

205. On June 11, 2003, the Attorney with the Public Prosecutor's Office requested that trial proceedings get underway and that Macario Alvarado Toj, Francisco Alvarado Lajuj, Tomas

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<sup>221</sup> Criminal Proceeding 001-98-1, Document in the record of the case with the IACHR, supplied by the petitioners on April 16, 2007 and entered into the record at the IACHR on May 7, 2007, Folder 8.

<sup>222</sup> "Case No. 722-93 -39, Accused Francisco Alvarado *et al.*" The reference is to case 28-2003, being investigated by the Public Prosecutor's Office.

<sup>223</sup> Criminal Proceeding 001-98-1, Document in the record of the case with the IACHR, supplied by the petitioners on April 16, 2007 and entered into the record at the IACHR on May 7, 2007, Folder 8, at 252.

<sup>224</sup> Memorandum No. 1096-2005 ref – GWORD – Botzoc, dated December 29, 2005, from the Criminal Investigation Service, Court Assistance Section, Civilian National Police.

<sup>225</sup> Memorandum from the Agent Prosecutor in charge of the Unit for Special Cases and Human Rights Violations, addressed to the Chief of the Arrests Section of the Criminal Investigation Service, Civilian National Police, dated January 5, 2006.

<sup>226</sup> Memorandum dated April 11, 2006, 821.

<sup>227</sup> Memorandum No. Pm 001030 – 2005, dated December 30, 2005, Military Social Security Institute.

<sup>228</sup> Memorandum No. MP 001/2005/95839, of October 4, 2006, from the Office of the Prosecutor, Human Rights Section. AGE4 Special Cases Unit.

<sup>229</sup> Memorandum No SICOMP 001-2005-95839, of January 25, 2007, from the Office of the Prosecutor, Human Rights Section.

<sup>230</sup> Notarized document dated December 15, 2004.

<sup>231</sup> Memorandum sent by the District Attorney to the Attorney General of the Republic in Case No. 722-93, Suspect Francisco Alvarado *et al.*, Folder 8, at 252

Vino Alvarado, Pablo Ruiz Alvarado, Bonifacio Cuxum López and Lucas Lajuj Alvarado be formally indicted.<sup>232</sup>

206. On October 27 and 30, 2003, the Trial Court for Criminal, Drug-Trafficking and Environmental Offenses of the department of Baja Verapaz, Salamá, declared that the evidence from the Public Prosecutor's Office and co-complainant ADIVIMA was deemed offered and individually identified.<sup>233</sup>

207. On July 14, 2004, the Trial Court admitted the evidence identified and requested by the parties and set the date for public, oral arguments at October 5, 2004.<sup>234</sup> ADIVIMA and counsel for the defense filed separate motions asking that the order be revisited and requested that testimony that had been ruled out be admitted into evidence. Both motions were in part upheld.<sup>235</sup>

208. On October 27, 2004, the Baja Verapaz Trial Court for Criminal, Drug-Trafficking and Environmental Offenses commenced oral arguments and proceeded to get them underway. The oral proceedings were suspended when several motions were filed.

209. Specifically, on October 28, 2004, the public, oral proceedings were suspended when the public defender representing Maracaibo Alvarado Toj, Francisco Alvarado Lajuj, Tomas Vino Alvarado, Pablo Ruiz Alvarado, Bonifacio Cuxum López and Lucas Lajuj Alvarado filed a petition seeking *amparo* relief, alleging a violation of due process. That petition was dismissed, and the decision to dismiss was later upheld on appeal.<sup>236</sup>

210. On November 19, 2004, the defense filed a petition seeking *amparo* relief in connection with the admission of the expert evidence.<sup>237</sup> On November 22, 2004 the Regional Mixed Chamber of the Cobán Appellate Court denied the petition seeking provisional *amparo* relief.<sup>238</sup> On January 18, 2005, the Constitutional Court confirmed the appellate court's decision to deny provisional *amparo* relief.<sup>239</sup>

211. On May 9, 2005, the Regional Mixed Chamber of the Cobán Appellate Court ruled that the petition seeking *amparo* relief, filed on October 28, 2004, was unfounded.<sup>240</sup> On May 16, 2005, the defense filed an appeal challenging the May 9 ruling.<sup>241</sup>

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<sup>232</sup> Memorandum that the District Attorney sent to the Judge of First Instance for Criminal, Drug-Trafficking and Environmental Offices, Department of Baja Verapaz, in Case No. 722-93, Suspect Francisco Alvarado *et al.*, Folder 8, at 258 to 260.

<sup>233</sup> Folders 8 and 9, Case No. 28-2003, no page, before the Trial Court for Criminal, Drug-Trafficking and Environmental Offenses, Department of Baja Verapaz, Salamá.

<sup>234</sup> Exhibit 9 Case No. 28-2003, no page, before the Trial Court for Criminal, Drug-Trafficking and Environmental Offenses, Department of Baja Verapaz.

<sup>235</sup> Folder 9 Case No. 28-2003, no page, before the Trial Court for Criminal, Drug-Trafficking and Environmental Offenses, Department of Baja Verapaz.

<sup>236</sup> Folder 9 Case No. 28-2003, *Amparo* petition 154-2004, Regional Mixed Chamber of the Cobán Appellate Court, acting as Constitutional Court of *amparo*, May 9, 2005.

<sup>237</sup> Exhibit 9 Amparo No. 154-2004, before the Regional Mixed Chamber of the Appellate Court with its seat in Cobán, Alta Verapaz. Acting as Special Court of *Amparo*.

<sup>238</sup> Exhibit 9 Amparo No. 154-2004, before the Regional Mixed Chamber of the Appellate Court with its seat in Cobán, Alta Verapaz. Acting as Special Court of *Amparo*.

<sup>239</sup> Exhibit 9 Case File 25-2005, Constitutional Court of Guatemala, no page.

<sup>240</sup> Exhibit 9 Amparo No. 154-2004, Regional Mixed Chamber of the Cobán Appellate Court, acting as Constitutional Court of *amparo*, no page.

212. On September 7, 2005, the Criminal Trial Court ordered a continuance in the proceedings when the defense entered an interlocutory constitutional motion challenging the validity of the report on which the expert witness was to testify.<sup>242</sup> On September 19, 2005, the Criminal Trial Court ruled that the constitutional motion was unfounded.<sup>243</sup> On September 22, 2005, the defense filed an appeal challenging that ruling.<sup>244</sup>

213. In mid October 2005, ADIVIMA filed a brief with the Guatemalan Constitutional Court in which it expressed its dissatisfaction over the fact that the appeal on the constitutionality ruling had not been decided.<sup>245</sup>

214. On October 6, 2005, the Public Prosecutor's Office filed a request with the Ministry of National Defense asking for the names of the Army officers who held the posts of Minister, Deputy Minister, Commanders, Deputy Commanders, sub commanders and middle-level officers in Guatemala's Defense Ministry in the period from January 1, 1981 to August 17, 1987.<sup>246</sup>

215. On October 5, 2005, the Prosecutor in charge of the Special Cases Unit requested the "Guatemalan Army's general orders for the various officers who held high-ranking and middle-level positions throughout the national territory between 1981 and 1983." On November 16, 2005, the Ministry of Defense reported that owing to the number of orders and officers, the request would have to identify the officer or officers whose general orders were being requested; otherwise, the Prosecutor's Office would have to defray the cost of copying the requested orders.<sup>247</sup>

216. On October 11, 2005, the General Bureau of Immigration reported on José Antonio Solares González' immigration activity.<sup>248</sup>

217. On October 24, 2005, the Public Prosecutor's Office asked the Chief of the Arrests Section of the Criminal Investigation Service of the Civil National Police to investigate the whereabouts of José Antonio Solares and to carry out the standing arrest warrant against him.<sup>249</sup> On December 29, 2005, the Criminal Investigation Service informed the Public Prosecutor's Office of the measures taken in connection with two searches conducted to find José Antonio Solares.<sup>250</sup>

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...continuation

<sup>241</sup> Exhibit 9 Amparo No. 154-2004, Regional Mixed Chamber of the Cobán Appellate Court, acting as Constitutional Court of *amparo* no page.

<sup>242</sup> Exhibit 9 Case No. 28-2003, no page, Trial Court for Criminal, Drug-Trafficking and Environmental Offenses , Department of Baja Verapaz

<sup>243</sup> Exhibit 9 Case No. 28-2003, no page, before the Trial Court for Criminal, Drug-Trafficking and Environmental Offenses , Department of Baja Verapaz

<sup>244</sup> Exhibit 9 Case No. 28-2003, no page, Trial Court for Criminal, Drug-Trafficking and Environmental Offenses , Department of Baja Verapaz

<sup>245</sup> Exhibit 9 Case No. 2319-2005, no page, before the Constitutional Court. Incomplete document.

<sup>246</sup> The State's report of February 22, 2007, measures taken to capture retired Army Colonel José Antonio Solares González, no page, document in the record of the case with the IACHR, Folder 1.

<sup>247</sup> The State's report of February 22, 2007, measures taken to capture retired Army Colonel José Antonio Solares González, no page, document in the record of the case with the IACHR, Folder 1.

<sup>248</sup> The State's report of February 22, 2007, measures taken to capture retired Army Colonel José Antonio Solares González, no page, document in the record of the case with the IACHR, Folder 1.

<sup>249</sup> The State's report of February 22, 2007, measures taken to capture retired Army Colonel José Antonio Solares González, no page, document in the record of the case with the IACHR, Folder 1.

<sup>250</sup> The State's report of February 22, 2007, measures taken to capture retired Army Colonel José Antonio Solares González, no page, document in the record of the case with the IACHR, Folder 1.

218. On December 14, 2005, the Public Prosecutor's Office asked the Ministry of Defense to report the names of those persons acting as commandants of the Military Brigade Guard of Honor between 1980 and 1984. On March 8, 2006, the Ministry of Defense replied that it was reviewing the Guatemalan Army files to determine whether any such record existed.<sup>251</sup>

219. On February 2, 2006, the Prosecutor in the case asked the Director of the Department of Criminal Investigations in the Public Prosecutor's Office to appoint an investor to locate and supply information leading to the arrest of José Antonio Solares.<sup>252</sup>

220. On February 14, 2006, the Office of the Director of Property Survey, IUSI [single property tax] division, informed the Special Agent in charge that no real estate was registered in the name of José Antonio Solares.<sup>253</sup> On February 7, 2006, the Supreme Electoral Tribunal reported that the master file of citizens registered to vote included the name of José Antonio Solares González.<sup>254</sup>

221. On February 14, 2006, the Director of the General Archive of Prescribed Protocols was asked to send a copy of the special commission given to José Antonio Solares González. The copy was sent on February 20, 2006.<sup>255</sup>

222. On May 28, 2008, the Baja Verapaz Trial Court for Criminal, Drug-Trafficking and Environmental Offenses received various pieces of testimony from survivors. Having examined the testimony given by María Eustaquia Uscap Ivoy concerning her rape, the Court held that:

In order to establish the circumstances of the charge, one has to consider that this witness gave an account of the violent manner in which they were led to the place known as Pakoxom and how the soldiers took 'patojas' aside, referring to girls or young women." Even more compelling was the witness' specific identification of defendant Fabio Ruiz Alvarado when she stated ... this man raped me there in the market..., which unequivocally proves the guilt of that defendant in the events on trial, although she suffered the same outrage at the hands of three more soldiers."<sup>256</sup>

223. In that ruling, the Court held that "the acts committed [in the Río Negro massacre] had the effect of completely annihilating the community."<sup>257</sup> As a result, five former patrol members<sup>258</sup> were convicted and sentenced to thirty years in prison for the crime of murder. In this

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<sup>251</sup> The State's report of February 22, 2007, measures taken to capture retired Army Colonel José Antonio Solares González, no page, document in the record of the case with the IACHR, Folder 1.

<sup>252</sup> The State's report of February 22, 2007, measures taken to capture retired Army Colonel José Antonio Solares González, no page, document in the record of the case with the IACHR, Folder 1.

<sup>253</sup> The State's report of February 22, 2007, measures taken to capture retired Army Colonel José Antonio Solares González, no page, document in the record of the case with the IACHR, Folder 1.

<sup>254</sup> The State's report of February 22, 2007, measures taken to capture retired Army Colonel José Antonio Solares González, no page, document in the record of the case with the IACHR, Folder 1.

<sup>255</sup> The State's report of February 22, 2007, measures taken to capture retired Army Colonel José Antonio Solares González, no page, document in the record of the case with the IACHR, Folder 1.

<sup>256</sup> Testimony given by María Eustaquia Uscap Ivoy, cited in the ruling of May 28, 2008, Criminal Proceeding 001-98-1.

<sup>257</sup> Copy of the ruling delivered by the Trial Court for Criminal, Drug-Trafficking and Environmental Offenses of the Department of Baja Verapaz, Salamá, on May 28, 2008, case number 28-2003-OF 1°, attachment to the petitioners' note of July 1, 2008, at 353.

<sup>258</sup> Macario Alvarado Toj, Francisco Alvarado Lajuj, Tomás Vino Alvarado, Pablo Ruiz Alvarado and Lucas Lajuj Alvarado.

ruling the court held that the statements of the witnesses constituted proof of the death of 26 of the 177 persons.<sup>259</sup> It also ruled that:

The relevant facts have to be certified so that the Public Prosecutor's Office can carry forward the investigation and, ultimately, the corresponding criminal prosecution of José Antonio Solares González, as the party responsible for having organized the patrol that was composed of civilians and soldiers and that went to the village of Río Negro, in Rabinal, [...] to carry out the deeds that are now on trial.<sup>260</sup>

224. According to the information supplied by the State, the defendants challenged the court ruling and the decision on the challenge is still pending.

*Concerning the Xococ massacre*

225. On March 19, 2001, Denese Joy Burck (whose Guatemalan name is Dominga Sic Ruiz), gave a deposition to the Office of the Special Prosecutor in the Public Prosecutor's Office in Guatemala City, concerning the events that occurred in the community of Xococ on February 13, 1982, in which they killed several members of the community, including her father; she also testified about the March 13, 1982 events in the community of Río Negro [Pacoxom mountain], of which she is a survivor. She testified that one week prior to the events of February 13, 1982, the people of Xococ "retained her father's identification papers and told him that he would have to return one week later to reclaim them."

226. On August 31, 2001, the Baja Verapaz Departmental Judge of First Instance ordered that members of the Guatemalan Forensic Anthropology Foundation were to conduct the exhumation of the remains in the village of Xococ. The exhumation was conducted from September 4 through 17, 2001; the processing and analysis phase was in March 2002.<sup>261</sup>

227. On March 11, 2002, the Guatemalan Forensic Anthropology Foundation completed the forensic-anthropology report in which it stated that 44 skeletal remains were recovered; however, it did not discount the "likelihood that the number of individuals originally buried was higher than the number of those recovered." It also reported that some skeletal remains showed evidence of violence, traumas, and that the deceased must have been immobilized and/or defenseless prior to their death. The Guatemalan Forensic Anthropology Foundation was also able to identify the victims Tereso Osorio Chen and Crispín Tum Iboy. Finally, the report recommended that bone samples and blood samples be sent to a laboratory for DNA analysis and that the rope be exhibited in order to improve the chances of identifying the other victims.<sup>262</sup> That expert report was sent to the Public Prosecutor's Office, to the Baja Verapaz Justice of the Peace, and to the Court of First Instance for Criminal, Drug-Trafficking and Environmental Offenses of Rabinal, Baja Verapaz.<sup>263</sup>

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<sup>259</sup> Copy of the ruling delivered by the Trial Court for Criminal, Drug-Trafficking and Environmental Offenses of the Department of Baja Verapaz, Salamá, on May 28, 2008, case number 28-2003-OF 1º, attachment to the petitioners' note of July 1, 2008.

<sup>260</sup> Copy of the ruling delivered by the Trial Court for Criminal, Drug-Trafficking and Environmental Offenses of the Department of Baja Verapaz, Salamá, on May 28, 2008, case number 28-2003-OF 1º, attachment to the petitioners' note of July 1, 2008, at 358 to 359.

<sup>261</sup> Forensic anthropological report on the exhumation conducted in the village of Xococ, presented by the petitioners in their note of February 18, 2010, received at the IACHR on March 1, 2010.

<sup>262</sup> Forensic anthropological report on the exhumation conducted in the village of Xococ, presented by the petitioners in their note of February 18, 2010, received at the IACHR on March 1, 2010.

<sup>263</sup> Notes dated March 11, 2002, with which the Guatemalan Forensic Anthropology Foundation sent those authorities the forensic anthropology report on the exhumation done in the village of Xococ, presented by the petitioners in their note of February 18, 2010, received at the IACHR on March 1, 2010.

228. On March 26, 2003, Carlos Chen Osorio appeared at the Baja Verapaz District Attorney's Office in Salamá and gave a statement on the events that occurred in the community of Xococ. He stated that various members of the community of Río Negro had gone to the Cobán Military Zone to speak with the Colonel about their harassment by Army soldiers and members of the Xococ PAC. According to the complaint, on their return from that meeting, the members of the community were detained and ordered to come back on Saturday, to feed the soldiers. Carlos Chen Osorio added that "all the men who went to Xococ died."<sup>264</sup>

### C. The law

#### Preliminary observations

229. Although each of the rights deemed to have been violated will be analyzed separately, given the magnitude of the events and the multiple massacres that the Guatemalan State has perpetrated against a defenseless civilian population, especially the indigenous Maya people –which includes the members of the Río Negro community who are the subject of the present report–, the Commission believes that an extensive interpretation of the rights recognized in the American Convention is in order, based on other international instruments relevant to the case and pursuant to the clause contained in Article 29(b). Interpretation of those other international instruments will allow for a more comprehensive characterization of the facts.<sup>265</sup>

230. Both the Inter-American Court and the European Court of Human Rights have emphasized that international human rights treaties are living instruments and that their interpretation "must evolve over time in view of existing circumstances."<sup>266</sup> Similarly the Inter-American Court has concluded that certain acts or omissions that violate human rights protected under treaties that it is competent to apply, also violate other international instruments for the protection of the individual.<sup>267</sup> Therefore, given the nature of the facts denounced and the socio-political milieu in which they occurred, the Commission believes that other international instruments of humanitarian law<sup>268</sup> that the Guatemalan State has ratified<sup>269</sup> should be kept in mind as they will enable the Commission to interpret the full content and scope of the rights protected under the American Convention<sup>270</sup>.

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<sup>264</sup> Statement made by Mr. Carlos Chen Osorio on March 26, 2003, at the Office of the District Attorney of Salamá, Baja Verapaz. Criminal Case 28-2003, Document in the record of the case with the IACHR, supplied by the petitioners on April 16, 2007 and entered into the record on May 7, 2007.

<sup>265</sup> Article 29(b) provides that no provision of the Convention shall be interpreted as "restricting the enjoyment or exercise of any right or freedom recognized by virtue of the laws of any State Party or by virtue of another convention to which one of the said states is a party."

<sup>266</sup> I/A Court H.R., *Case of the "Street Children" (Villagrán Morales et al.)*. Judgment of November 19, 1999. Series C No. 63, paras.192-193.

<sup>267</sup> I/A Court H.R., *Case of Bámaca Velásquez*. Judgment of November 25, 2000. Series C No. 70, para.208.

<sup>268</sup> Accordingly, the Inter-American Court has referred to the international humanitarian law and its interpretative character to the analysis of cases. See, inter alia, I/A Court H.R., *Case of the Serrano Cruz Sisters v. El Salvador*. Merits, Reparations and Costs. Judgment of March 1, 2005. Series C No. 120, paragraphs 145 and 148. I/A Court H.R., *Case of Las Palmeras v. Colombia*. Preliminary Objections. Judgment of February 4, 2000. Series C No. 67, para.32. *Case of Bámaca Velásquez*, Judgment of November 25, 2000, para. 208.

<sup>269</sup> Guatemala ratified the Convention on the Prevention and Punishment of the Crime of Genocide on November 30, 2010. It ratified the Geneva Conventions of August 12, 1949 on May 14, 1952. See [http://www.icr.org/web/spa/sitespa0.nsf/html/party\\_main\\_treaties](http://www.icr.org/web/spa/sitespa0.nsf/html/party_main_treaties).

<sup>270</sup> See, inter alia, IACHR, Report 57/97, Case 11.137 of November 18, 1997, para. 167.

231. What Guatemala experienced between 1962 and 1996 was not an international armed conflict, whose levels of violence made it characterize as an internal armed conflict.<sup>271</sup> The Commission considers that the nature of the acts committed against the members of the community of Río Negro, the more than 600 massacres committed against members of the Maya people during the most violent period of the armed conflict and the evidence offered by the parties prove that the various massacres committed against the community of Río Negro were part of a State strategy calculated to wipe out an ethnic group by means of military operations; the result was that thousands of members of the Maya indigenous people were massacred, the survivors fled, their subsistence economies were destroyed and, finally, thousands of indigenous Maya were deliberately forced into subordination to the military structure.

232. According to the Convention on the Prevention and Punishment of the Crime of Genocide, two elements must be present for the acts in question to qualify as genocide: any of the acts listed under Article II of that instrument<sup>272</sup> and the intent to destroy the group. Concerning the first element, the Commission deems that in the present case systematic massacres were perpetrated against members of the Maya people; serious bodily or mental harm was inflicted upon them; and the Maya people were deliberately subjected to subhuman living conditions when survivors were forced to seek safe haven in the mountains for years. As for the second element, it is clear that the factor that all the victims had in common –including children, women, elder, men and leaders- was that they were members of the same ethnic group (the Río Negro community) and demonstrate that the actions were perpetrated with the “intent to destroy, in whole or in part,” that group.

233. As for Article 3 of the Geneva Conventions<sup>273</sup>, the Commission observes that, the facts of this case occurred amid an internal armed conflict, which in no way exempts the State from

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<sup>271</sup> Recognized by the United Nations Subcommission for the Prevention of Discrimination and Protection of Minorities in resolution 1984-23.

<sup>272</sup> Article II of the Convention on the Prevention and Punishment of the Crime of Genocide, establishes that “[...] genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) Imposing measures intended to prevent births within the group;
- (e) Forcibly transferring children of the group to another group.

<sup>273</sup> Art. 3. In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:

- (1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.

To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:

- (a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
- (b) taking of hostages; (c) outrages upon personal dignity, in particular humiliating and degrading treatment;
- (d) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.

- (2) The wounded and sick shall be collected and cared for.

Continue...

its obligation to respect and ensure the basic human rights of those persons not directly involved. On the contrary, the State has general and specific obligations to protect its civilian population, which follow from international humanitarian law.

234. In summary, the Commission deems that the evidence is sufficient to prove that the State planned a strategy to eliminate at least a part of the Maya people through systematic massacres and other military operations, salient among which were the scorched-earth operations. Based on the criteria established in international law, the Commission concludes that the massacres committed against the community of Río Negro are acts of genocide committed against the Maya people.

235. This having been said, the Commission will now do a specific legal analysis of the facts of this case. As will be evident from the facts, the case involves multiple incidents that occurred over a period of several years. Given the complexity of the case, the Commission will do a legal analysis of the facts in the following order: a) the massacres and related facts, and b) the consequences of the massacres.

**a) Concerning the massacres and the related facts**

236. The facts in this case are part of a pattern of persecution against the civilian population, which in this case was the Maya Community of Río Negro. As the facts in this case will show, that persecution had multiple causes and consequences that materialized in a series of heinous and brutal human rights violations.

237. In this chapter, the Commission will address the following: 1) torture and executions; 2) children victims of violence; 3) forced disappearance, and 4). rape.

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...continuation

An impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict

The Parties to the conflict should further endeavour to bring into force, by means of special agreements, all or part of the other provisions of the present Convention.

The application of the preceding provisions shall not affect the legal status of the Parties to the conflict

**1. Regarding the torture and executions: the right to life (Article 4),<sup>274</sup> the right to humane treatment (Article 5)<sup>275</sup> and the right to personal liberty (Article 7)<sup>276</sup>**

238. The right to life is the prerequisite for the exercise and enjoyment of all other human rights. If the right to life is not respected, then all other rights have no meaning.<sup>277</sup> The Court has held that:

As the Human Rights Committee created by the United Nations International Covenant on Civil and Political Rights has stated, the protection against arbitrary deprivation of life, which is explicitly required by the third paragraph of Article 6.1 [of the International Covenant on Civil and Political Rights] is of paramount importance. The Committee considers that States parties should take measures not only to prevent and punish deprivation of life by criminal acts, but also to prevent arbitrary killing by their own security forces. The deprivation of life by the authorities of the State is a matter of utmost gravity. Therefore, [the State] must strictly control and limit the circumstances in which [a person] may be deprived of his life by such authorities.<sup>278</sup>

239. In previous cases the Commission has written that:

[...] extrajudicial or summary executions are deliberate, unlawful deprivations of freedom by agents of the state, acting on orders or with at least the consent and acquiescence of the authorities. Hence, extrajudicial executions are unlawful acts committed precisely by those

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<sup>274</sup> Article 4(1) of the American Convention provides that: "Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life."

<sup>275</sup> Article 5 of the American Convention reads as follows: (1) Every person has the right to have his physical, mental, and moral integrity respected. (2) No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person.

<sup>276</sup> Article 7 of the American Convention on Human Rights recognizes the right to personal liberty and provides that:

1. Every person has the right to personal liberty and security.
2. No one shall be deprived of his physical liberty except for the reasons and under the conditions established beforehand by the constitution of the State Party concerned or by a law established pursuant thereto.
3. No one shall be subject to arbitrary arrest or imprisonment.
4. Anyone who is detained shall be informed of the reasons for his detention and shall be promptly notified of the charge or charges against him.
5. Any person detained shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to be released without prejudice to the continuation of the proceedings. His release may be subject to guarantees to assure his appearance for trial.
6. Anyone who is deprived of his liberty shall be entitled to recourse to a competent court, in order that the court may decide without delay on the lawfulness of his arrest or detention and order his release if the arrest or detention is unlawful. In States Parties whose laws provide that anyone who believes himself to be threatened with deprivation of his liberty is entitled to recourse to a competent court in order that it may decide on the lawfulness of such threat, this remedy may not be restricted or abolished. The interested party or another person in his behalf is entitled to seek these remedies.
7. No one shall be detained for debt. This principle shall not limit the orders of a competent judicial authority issued for nonfulfillment of duties of support.

<sup>277</sup> I/A Court H.R., *Case of the "Street Children" (Villagrán Morales et al.)*. Judgment of November 19, 1999. Series C No. 63, para. 144.

<sup>278</sup> I/A Court H.R., *Case of the "Street Children" (Villagrán Morales et al.)*. Judgment of November 19, 1999. Series C No. 63, para. 145.

vested with the power originally intended to protect and guarantee the safety and life of individuals.<sup>279</sup>

240. The Commission recalls that the prohibition of torture is absolute and non-derogable, even in the most difficult circumstances, such as war, the threat of war, the fight against terrorism, and any other crime, martial law or state of emergency, civil war or commotion, suspension of constitutional guarantees, internal political instability, or any other public disaster or emergency.<sup>280</sup> An international juridical regime of absolute prohibition of all forms of torture, both physical and psychological, has been developed that is now part of the international *jus cogens*.<sup>281</sup>

241. Based on the facts proven, a total of 510 defenseless civilians were extrajudicially executed in the massacres<sup>282</sup> on March 4, 1980, and February 13, March 13, May 14 and September 14, 1982. Among them were women, men, the elderly, and children, all members of the Maya indigenous community of Río Negro. It has also been shown that between 1980 and 1985, at least 63 who had escaped those massacres were hunted down and extrajudicially executed. It has also been shown that before extrajudicially executing the victims, patrol members and soldiers subjected them to physical and mental mistreatment and abuse, and even torture.

242. The IACHR takes as proven that on March 4, 1980, Army personnel entered the village of Río Negro, assembled the community in the chapel and then executed seven leaders.

243. The IACHR also takes as proven that on February 13, 1982, 93 members of the Río Negro community, most of them men, went to the village of Xococ, having been summoned there to retrieve their identification papers. Once there, they were executed by members of the Civilian Defense Patrol. One month later, early on the morning of March 13, 1982, 12 Army soldiers and 15 patrol members entered the community of Río Negro, populated at the time mainly by women, children and elderly persons. They assembled the population and set them on a forced march to a place known as Pacoxom. There they proceeded to kill 203 persons.

244. One group of survivors from the Pacoxom massacre sought safety in the community of Los Encuentros, which patrol members and Army personnel attacked on May 14, 1982, killing 81 persons and forcibly disappearing at least two more. Some who had survived the Río Negro and Los Encuentros massacres fled to the village of Agua Fría, which soldiers and patrol members attacked on September 14, 1982. There they assembled the entire population of 128 persons in a single dwelling, fired their weapons into the dwelling and then set it on fire.

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<sup>279</sup> IACHR, Report No. 25/02, *Plan de Sánchez Massacre*, Case 11,763, February 28, 2002, para. 114. I/A Court H.R., *Case of the Dos Erres Massacre*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 24, 2009. Series C No. 211.

<sup>280</sup> I/A Court H.R., *Case of Maritza Urrutia*. Judgment of November 27, 2003. Series C No. 103, para.89; and I/A Court H.R., *Case of Cantoral Benavides. Reparations* (Art. 63(1) American Convention on Human Rights). Judgment of December 3, 2001, Series C No. 88, par. 95.

<sup>281</sup> I/A Court H.R., *Case of Maritza Urrutia*. Judgment of November 27, 2003. Series C No. 103, para. 92; and I/A Court H.R., *Case of Cantoral Benavides. Reparations* (Art. 63(1) American Convention on Human Rights). Judgment of December 3, 2001, Series C No. 88, paragraphs 102 and 103.

<sup>282</sup> "As it is done, the crux of a massacre is the concurrence of multiple arbitrary executions. If these don't happen, then it's not a massacre. Nevertheless, apart from the executions, the majority of massacres also involve multiple and varied human rights violations such as torture, cruel treatment, forced disappearances and rapes, as well as aberrant acts such as mutilation of corpses and destruction of the personal belongings, community property and farming implements. It is this set of circumstances that preceded, accompanied or followed the massacres that makes them historically significant as a phenomenon that explains what happened in Guatemala." CEH, *Memory of Silence*, Volume III, *Human rights violations and acts of violence*, para. 3057.

245. Various statements in the court record and in the record of the case with the IACHR describe the brutality with which the people of the indigenous community of Río Negro were treated before being extrajudicially executed in a series of massacres. The acts which they were submitted to involve being forcibly enclosed in a house, being beaten and threatened, being treated “like animals”, being strangled with a neck tourniquet or slashed to death with machetes, and women and girls being sexually abused and raped. Particularly striking was the brutality and fury with which the children were killed, and whose specific case will be discussed in a separate chapter. According to the testimony, the children were killed in front of their mothers and grandmothers, who would then be executed after. The facts established show that the killers inflicted various forms of torture on their victims.

246. The Commission observes that its case is an especially egregious one because the victims were completely defenseless women, children and men who were extrajudicially executed by members of the PAC and the Guatemalan army in barbaric acts. The Commission considers that the Guatemalan State bears aggravated responsibility for the massacres committed against the community of Río Negro.

247. Moreover, the massacres against the Río Negro community were not isolated during the internal armed conflict, but were framed in the so-called national security doctrine and within the notion of an “enemy within”, adopted in response to eliminate the alleged social base of insurgent groups<sup>283</sup>. The massacres perpetrated against the community of Río Negro were special military operations, planned and carried out by agents of the Guatemalan State. Moreover, the community was the victim of systematic persecution whose goal was to wipe it out. The manner and timing of the massacres demonstrate that these were planned operations and that State agents hunted down members of the community.

248. The Commission therefore considers that the Guatemalan State violated articles 4(1), 5(1), and 5(2) of the American Convention, in relation to Article 1(1) thereof, to the detriment of the 510 members of the community of Río Negro who were extrajudicially executed on March 4, 1980, and February 13, March 13, July 14 and September 14, 1982, and with regards to the, at least, 63 who were extrajudicially executed between 1980 and 1985.

249. Finally, it has been established that in the massacres perpetrated on March 4, 1980 and February 13, March 13, and September 14, 1982, the patrol members and the military had the victim members of the community in their custody before executing them. In the March 4, 1980 massacre, they had locked the members of the community in their church and then executed seven community leaders; in the Xococ massacre on February 13, 1982, the patrol members had assembled members of the Río Negro community, separated the men from the women and children, then took the men away and executed them. The women were kept enclosed, without food or water, then raped and finally executed. In the March 13, 1982 massacre in the community of Río Negro, the women, the elderly and the children were assembled; the women were ordered to dance,

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<sup>283</sup> CEH, *Memory of Silence*, Volume III, *Human rights violations and acts of violence*, paragraphs 3083 and 3084.

The figures [626 massacres] reveal the magnitude of the massacre phenomenon in the Army’s military operations to annihilate the enemy within. In applying the counterinsurgency strategy, hundreds of communities in different parts of Guatemala became the victims of the scorched-earth policy during the armed conflict. The methods used during these collective executions demonstrate the degree of cruelty unleashed upon the victims, all of whom were defenseless and unarmed.

And yet, the impact of the massacres cannot be grasped by just looking at the figures; instead, a qualitative analysis of this merciless violence is needed in order to discover the underlying logic of the military’s strategies and tactics and the horror that they meant for the victim populations [...]

after which everyone was forced to walk for hours to a place known as Pacoxom, where they were subsequently killed. Finally, in the Agua Fria massacre of September 14, they ordered the members of the community to assemble in one dwelling, fired on them from the outside and then set fire to the dwelling.

250. The facts established in the preceding paragraph are violations of Article 7 of the American Convention. In its admissibility report, the Commission did not address the violation of this Article. However, given the information and documents supplied by the parties during the merits phase of this case, and by application of the principle of *jura novit curia*, and inasmuch as the State has had an opportunity to defend itself and present its allegations in this regard, the Commission will analyze some considerations.

251. The Court has held with regards to personal liberty that:

while the State has the right and the obligation to guarantee its security and to maintain public order, its power is not unlimited, as it has the duty, at all times, of applying procedures that are in accordance with the Law and that respect the fundamental rights of all individuals under its jurisdiction and, in this regard, it must conduct its actions "within limits and according to procedures that preserve both public safety and the fundamental rights of the human person".<sup>284</sup>

252. Specifically, paragraphs 2 and 3 of Article 7 recognize the right of all persons to protection against unlawful and arbitrary detention, respectively. The Court has written that:

[a]ccording to the first of these regulatory provisions, no one shall be deprived of his personal liberty except for reasons, cases or circumstances specifically established by law (material aspect) but, also, under strict conditions established beforehand by law (formal aspect). In the second provision, we have a condition according to which no one shall be subject to arrest or imprisonment for causes or methods that – although qualified as legal – may be considered incompatible regarding the fundamental rights of the individual, because they are, among other matters, unreasonable, unforeseeable or out of proportions.<sup>285</sup>

253. The Commission, too, has observed that detention for reasons or by methods not prescribed by law is in itself a form of punishment without trial or extralegal punishment that violates the guarantee of the right to trial. As the Inter-American Court has held, "[t]he kidnapping of a person is an arbitrary deprivation of liberty, an infringement of a detainee's right to be taken without delay before a judge and to invoke the appropriate procedures to review the legality of the arrest, all in violation of Article 7 of the Convention."<sup>286</sup> This need to protect the individual against transgressions is precisely why the Article analyzed establishes "positive obligations that impose specific or special requirements both on the agents of the State and on third parties acting with their tolerance or consent."<sup>287</sup>

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<sup>284</sup> I/A Court H.R., *Case of Juan Humberto Sánchez*. Judgment of June 7, 2003, Series C, No. 99, para.86. See also *Case of Hilaire, Constantine and Benjamin et al.* Judgment of June 21, 2002. Series C No. 94, para.101; *Case of Bámaca Velásquez*, Judgment of November 25, 2000. Series C No. 70, para.174; *Case of Durand and Ugarte*, Judgment of August 16, 2000. Series C No. 68, para. 69; and *Case of Castillo Petruzzi et al.*, Judgment of May 30, 1999. Series C No. 52, paragraphs 89 and 204.

<sup>285</sup> I/A Court H.R., *Case of the Gómez Paquiyauri Brothers*. Judgment of July 8, 2004. Series C No. 110, para. 83; I/A Court H.R., *Case of Juan Humberto Sánchez*. Judgment of June 7, 2003. Series C No. 99, para.78.

<sup>286</sup> I/A Court H.R., *Case of Velásquez Rodríguez*, para.155.

<sup>287</sup> I/A Court H.R., *Case of Juan Humberto Sánchez*. Judgment of June 7, 2003. Series C No. 99, para. 81 (4) and 281 (6).

254. In the instant case, it has been proven that patrol members and soldiers unlawfully detained members of the community of Río Negro, without a court order and without bringing them before a competent judge. The Commission therefore considers that the State violated Article 7 of the American Convention, in relation to Article 1(1) thereof, to the detriment of the members of the community of Río Negro who were extrajudicially executed on March 4, 1980, and February 13, March 13 and September 14, 1982.

## 2. Children victims of violence. Rights of the child (Article 19)

255. As the Commission has observed, the present case is particularly egregious because of the brutality with which the defenseless children were extrajudicially executed by patrol members and Guatemalan army personnel in barbaric acts. As was established in the section on proven facts, at least 144 children –most of who were under the age of 10- perished in the various massacres perpetrated against the community of Río Negro. It has been established that during the Río Negro massacre (Pacoxom Mountain), the patrol members grabbed children by the feet and smashed them against rocks or trees until they were dead. They also piled children atop one another and fired down on them; others were killed with machetes. It has also been proven that children were executed in the massacres at Xococ, Los Encuentros and Agua Fría.

256. According to the case law of the Inter-American Court, Article 19 of the American Convention should be understood as an additional and complementary right that the Convention establishes for individuals who need special measures of protection, owing to their stage of physical and emotional development.<sup>288</sup> Children are thus the holders of the same rights that all persons enjoy; but they are also the holders of those special rights to which their condition as children entitles them, which carry specific obligations for the family, society and the state. In other words, children are entitled to and must receive special measures of protection.<sup>289</sup>

257. The IACHR recalls that where children are concerned, the principle of the best interest of the child rules, and this is based on the dignity of the individual, on the special characteristics of children, and on the need to allow them to develop their full potential.<sup>290</sup> Ultimately, the rights of children must be protected both because they are human beings and because of their condition as children, which requires that special measures of protection be taken. This added obligation of protection<sup>291</sup> and these special duties are to be determined according to the particular needs of the child as a legal person.<sup>292</sup>

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<sup>288</sup> I/A Court H.R., *Case of the Ituango Massacres*. Judgment of July 1, 2006. Series C No. 148, par. 106; *Case of Baldeón García*, Judgment of April 6, 2005. Series C No. 147, para.244; *Case of the Mapiripán Massacre*, Judgment of September 15, 2005. Series C No. 134, par.152; and especially: the *Case of the Juvenile Reeducation Institute*, Judgment of September 2, 2004. Series C No. 112, para. 147, and *Case of Servellón García et al.* Judgment of September 21, 2006, para.113.

<sup>289</sup> Advisory Opinion OC-17/2002, para. 62: Adoption of special measures to protect children is a responsibility both of the State and of the family, community, and society to which they belong.

<sup>290</sup> I/A Court H.R., *Case of the Ituango Massacres*. Judgment of July 1, 2006. Series C No. 148, para. 244. See also I/A Court H.R., *Case of the "Mapiripán Massacre"*. Judgment of September 15, 2005. Series C No. 134, para. 134; I/A Court H.R., *Case of the Girls Yean and Bosico*. Judgment of September 8, 2005. Series C No. 130, para.134; and I/A Court H.R., *Case of the Yakye Axa Indigenous Community*. Judgment of June 17, 2005. Series C No. 125, para.172.

<sup>291</sup> I/A Court H.R., *Case of the "Juvenile Reeducation Institute"*, paragraph 160; *Case of the Gómez Paquiyauri Brothers*, paragraphs 124, 163-164, and 171; *Case of Bulacio*, paragraphs 126 and 134; and *Case of the "Street Children" (Villagrán Morales et al.)*, paragraphs 146 and 191; and *Case of the Yakye Axa Indigenous Community*. Judgment of June 17, 2005, paragraph 172. See also, Advisory Opinion OC-17/02, paragraphs 56 and 60.

<sup>292</sup> I/A Court H.R., *Case of the Sawhoyamaya Indigenous Community*. Judgment of March 29, 2006, paragraph 154.

258. The Inter-American Court has also held that:

The special vulnerability of boys and girls due to their condition as such becomes even more evident in a situation of domestic armed conflict, as in the instant case, since they are least prepared to adapt or respond to said situation and, sadly, it is they who suffer its abuse in a disproportionate manner.<sup>293</sup>

259. In earlier cases, the Inter-American Court has made reference to the *corpus juris* on the human rights of children.<sup>294</sup> The Commission has also addressed the matter of the human rights of children under international law in the following terms:

For an interpretation of a State's obligations vis-à-vis minors, in addition to the provision of the American Convention, the Commission considers it important to refer to other international instruments that contain even more specific rules regarding the protection of children. Those instruments include the Convention on the Rights of the Child and the various United Nations declarations on the subject. This combination of the regional and universal human rights systems for purposes of interpreting the Convention is based on Article 29 of the American Convention and on the consistent practice of the Court and of the Commission in this sphere.<sup>295</sup>

260. Specifically, the Court has written that both the American Convention and the Convention on the Rights of the Child form part of a very comprehensive international *corpus juris* for the protection of minors under the age 18. That *corpus juris* helps the Court establish the content and scope of the general provision established in Article 19 of the American Convention. In fact, in various cases involving children, the Court has used specific provisions of the Convention on the Rights of the Child to interpret Article 19 of the American Convention.<sup>296</sup>

261. The Commission will highlight Articles 6 and 38 of the Convention on the Rights of the Child that apply to the present case.<sup>297</sup>

262. The testimony in the case record describing the manner in which the children were physically and mentally tortured and then extrajudicially executed paints a chilling picture of the State's direct violation of the principle of the best interest of the child.

263. The commission emphasizes that the State not only failed to provide the children of the community of Río Negro with the necessary guarantees and protection that their special condition of vulnerability required, but also, by the actions of its agents, became the active cause of the violation of their rights. It has been shown that the massacres against the community of Río

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<sup>293</sup> I/A Court H.R., Case of the "Mapiripán Massacre" v. Colombia. Merits, Reparations and Costs. Judgment of September 15, 2005. Series C No. 134, para.156.

<sup>294</sup> I/A Court H.R., Case of the "Street Children" (Villagrán Morales et al.). Judgment of November 19, 1999. Series C No. 63.

<sup>295</sup> IACHR, Report No. 41/99, Case 11,491, Minors in Detention v. Honduras, March 10, 1999, par. 72.

<sup>296</sup> I/A Court H.R., Case of the "Street Children" (Villagrán Morales et al.). Judgment of November 19, 1999. Series C No. 63, paragraph 194; see, also, Case of the Juvenile Reeducation Institute, Judgment of September 2, 2004. Series C No. 112, paragraph 148; and Case of the Gómez Paquiyauri Brothers. Judgment of July 8, 2004, para.166.

<sup>297</sup> Article 6 (1). States Parties recognize that every child has the inherent right to life.

Article 38 (1): States Parties undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child. [...]-

Negro were special operations, planned and carried out by agents of the Guatemalan State for the purpose of exterminating the population.

264. The fact that so many children were victims demonstrates once again that in a situation of armed conflict, the particular vulnerability of children becomes all the more apparent "because children are less prepared to adapt or respond to this type of situation and suffer its excesses disproportionately."<sup>298</sup> In the instant case, it is obvious that the children of the community of Río Negro who were executed did not receive the special measures of protection that their heightened vulnerability as children required.<sup>299</sup>

265. The Commission therefore considers that the Guatemalan State violated Article 19 of the American Convention, to the detriment of the children who were extrajudicially executed on February 13, March 13, July 14 and September 14, 1982.

### 3. Concerning the forced disappearances

266. The *jurisprudence constante* of the Inter-American Court holds that forced disappearance constitutes an illegal act that gives rise to a multiple and continuing violation of a number of Convention-protected rights and renders the victim completely defenseless, giving rise to other related crimes. Forced disappearance also means that the obligation to organize the apparatus of the State in such a manner as to guarantee the rights recognized in the Convention has been disregarded.<sup>300</sup> By directly implementing or tolerating actions aimed at carrying out forced or involuntary disappearances of persons, failing to investigate them properly and, if appropriate, punishing those responsible effectively, the State violates its obligation to respect and ensure the rights established in the American Convention and to ensure their free and full exercise.<sup>301</sup>

267. The phenomenon of forced disappearance is a complex form of human rights violation that must be understood and confronted in an integral fashion.<sup>302</sup> The Court has held that:

[f]orced or involuntary disappearance is one of the most serious and cruel human rights violations, in that it not only produces arbitrary deprivation of freedom but places the physical integrity, security and the very life of the detainee in danger. It also leaves the detainee utterly defenseless, bringing related crimes in its wake. Hence, it is important for the State to take all measures as may be necessary to avoid such acts, to investigate them and to sanction those responsible, as well as to inform the next of kin of the disappeared person's whereabouts and to make reparations where appropriate.<sup>303</sup>

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<sup>298</sup> I/A Court H.R., *Case of the Ituango Massacres*. Judgment of July 1, 2006. Series C No. 148, para.246. See, also, I/A Court H.R., *Case of the "Mapiripán Massacre"*. Judgment of September 15, 2005. Series C No. 134, para.156.

<sup>299</sup> I/A Court H.R., *Case of the "Street Children" (Villagrán Morales et al.)*. Judgment of November 19, 1999. Series C No. 63, para.191.

<sup>300</sup> I/A Court H.R., *Case of Goiburú et al.* Judgment of September 22, 2006. Series C No. 153, para.82; I/A Court H.R., *Case of Gómez Palomino*. Judgment of November 22, 2005. Series C No. 136, para.92; I/A Court H.R., *Case of the 19 Tradesmen*. Judgment of July 5, 2004. Series C No. 109, para.142.

<sup>301</sup> I/A Court H.R., *Case of Paniagua Morales et al.* Judgment of March 8, 1998, Series C No. 37, para.90; I/A Court H.R., *Case of Fairén Garbí and Solís Corrales*. Judgment of March 15, 1989. Series C No. 6, para.152; I/A Court H.R., *Case of Godínez Cruz*. Judgment of January 20, 1989. Series C No. 5, paras. 168-191; and I/A Court H.R., *Case of Velásquez Rodríguez*, Judgment of July 29, 1988, Series C No. 4, paras. 159-181. See also, I/A Court H.R., *Case of the Pueblo Bello Massacre*. Judgment of January 31, 2006. Series C No. 140.

<sup>302</sup> I/A Court H.R., *Case of Velásquez Rodríguez*, Judgment of July 29, 1988. Series C No. 4, paragraphs 149-152. I/A Court H.R., *Case of Godínez Cruz*, Judgment of January 20, 1989, Series C No 5, paragraphs 157-160.

<sup>303</sup> I/A Court H.R., *Case of Blake*. Judgment of January 24, 1998. Series C No. 36, para. 66.

268. The Court has also recognized that forced disappearance is a crime against humanity.<sup>304</sup> The Inter-American Convention on Forced Disappearance of Persons, adopted on June 9, 1994, states that the systematic practice of forced disappearance constitutes a crime against humanity.<sup>305</sup> For its part, Guatemalan law has adopted these principles; which when practiced systematically, classifies forced disappearance as a crime.<sup>306</sup>

269. The *jurisprudence constante* of the Inter-American Court has been that due to the nature of the phenomenon and the difficulty proving it, in order for a forced disappearance to be considered proved, one need only show the existence of a practice of forced disappearance that is promoted or tolerated by the State, that the victim's disappearance can be attributed to that practice, either by circumstantial or indirect evidence or both, or by pertinent logical inference.<sup>307</sup> Based on the facts that the Commission deems proven in the instant case, it will proceed to determine the violations of the Convention that, in the case *sub examine*, engage the international responsibility of the Guatemalan State.

**3(1) Right to personal liberty (Article 7), the right to humane treatment (Article 5) and the right to life (Article 4).**

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<sup>304</sup> I/A Court H.R., *Case of Goiburú et al.* Judgment of September 22, 2006. Series C No. 153, para.82; I/A Court H.R., *Case of the "19 Tradersmen"*. Judgment of July 5, 2004. Series C No. 109, para.142. Resolution AG/RES. 742 (XIV-O/84), adopted by the General Assembly of the Organization of American States. The gravity of this crime against humanity, which has so often left its ugly mark on the history of our hemisphere, was singled out by the OAS General Assembly in its resolutions AG/RES.666 (XIII-O/83) and AG/RES.742 (XIV-O/84), which held that "the practice of the forced disappearance of persons in the Americas is an affront to the conscience of the hemisphere and constitutes a crime against humanity," and that "the forced disappearance of persons without trial is a cruel and inhuman practice that undermines the rule of law, which weakens those norms that guarantee protection against arbitrary detention and the right to personal safety and security."

<sup>305</sup> Under Article I of the Inter-American Convention on Forced Disappearance of Persons, States Parties undertake:

b. To punish within their jurisdictions, those persons who commit or attempt to commit the crime of forced disappearance of persons and their accomplices and accessories; [...]

d. To take legislative, administrative, judicial, and any other measures necessary to comply with the commitments undertaken in this Convention.

<sup>306</sup> Sg. Amendment of Decree No. 33-96 approved by the Congress of the Republic on May 22, 1996. Article 201 TER, added to the Penal Code in 1996,

Anyone who, by order, with the authorization or with the support of the authorities of the State, in any way deprives one or more persons of liberty for political reasons, concealing their whereabouts, refusing to tell where they were taken or to acknowledge their detention, commits the crime of forced disappearances, as does the public official or employee who orders, authorizes, supports or gives his or her acquiescence for such actions –regardless of whether he or she is a member of the State security or law enforcement bodies.

Even when no political motive is present, the act of depriving one or more persons of their freedom shall constitute the crime of forced disappearance when carried out by elements of State security forces that, in the exercise of their functions, act arbitrarily and make abusive or excessive use of force. Members or elements of groups or bands organized for terrorist, insurgent, subversive purposes or for any other criminal intent, commit the crime of forced disappearance when they engage in unlawful deprivation of freedom or abduction, whether they are participating as members of or collaborators with those groups or bands.

The crime is deemed to be continuous so long as the victim is not released.

Anyone convicted of forced disappearance shall face imprisonment for twenty-five to forty years. The death penalty shall be imposed rather than life imprisonment when because of or in the act of the forced disappearance, the victim suffers grave or very grave injury, permanent psychiatric or psychological trauma, or dies.

<sup>307</sup> I/A Court H.R., *Case of Bámaca Velázquez*, Merits. Judgment of November 25, 2000, para.130.

270. Article 7 of the American Convention is a fundamental guarantee against unlawful detention.<sup>308</sup> In the particular case of forced disappearance, the Inter-American Court has consistently held that this practice represents a phenomenon of “arbitrary deprivation of liberty,” in violation of said Article of the Convention.<sup>309</sup>

271. From its earliest case law<sup>310</sup> to its most recent,<sup>311</sup> the Inter-American Court has held that the forced disappearance of human beings is a multiple and continuous violation of many rights under the Convention that the States Parties are obligated to respect and guarantee. The Court has also written that the continuing and multiple-offense quality of forced disappearance is reflected in articles II and III of the Inter-American Convention on Forced Disappearance of Persons, in its *travaux préparatoires*,<sup>312</sup> in its preamble<sup>313</sup> and in Article 1(2) of the 1992 United Nations Declaration on the Protection of All Persons against Forced Disappearance.

272. Article I of the Inter-American Convention on Force Disappearance of Persons provides that:

The States Parties to this Convention undertake:

- a. Not to practice, permit, or tolerate the forced disappearance of persons, even in states of emergency or suspension of individual guarantees;
- b. To punish within their jurisdictions, those persons who commit or attempt to commit the crime of forced disappearance of persons and their accomplices and accessories;
- c. To cooperate with one another in helping to prevent, punish and eliminate the forced disappearance of persons;
- d. To take legislative, administrative, judicial and any other measures necessary to comply with the commitments undertaken in this Convention.

273. As has been proved, the members of the community of Río Negro were the victims of systematic persecution. In February and March 1982, the community was the target of two massacres, whose survivors sought refuge in the community of Los Encuentros, place where patrol members and Army troops conducted another massacre, in which around 15 people disappeared. Of these, the IACHR has been able to establish the identity of at least Ramona Lajuj and Manuel

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<sup>308</sup> Eur. Court HR, *Kurt v. Turkey* judgment of 25 May 1998, Reports of Judgments and Decisions 1998 III, para. 124, in I/A Court H.R., *Case of Bámaca Velásquez*, para.140; *Case of Villagrán Morales et al.*, para.135; and *Juan Humberto Sánchez Case*, para.84.

<sup>309</sup> I/A Court H.R., *Case of Bámaca Velásquez*. Judgment of November 25, 2000. Series C No. 70, para.142; I/A Court H.R., *Case of Godínez Cruz*. Judgment of January 20, 1989. Series C No. 5, paragraphs 163 and 193; I/A Court H.R., *Case of Fairén Garbi and Solís Corrales*. Judgment of March 15, 1989. Series C No. 6, paragraphs 155 and 186.

<sup>310</sup> I/A Court H.R., *Case of Velásquez Rodríguez*. Judgment of July 29, 1988. Series C No. 4, para.155; I/A Court H.R., *Case of Goiburú et al.* Judgment of September 22, 2006. Series C No. 153, paragraphs 81 to 85, and I/A Court H.R., *Case of Gómez Palomino*. Judgment of November 22, 2005. Series C No. 136, para.92.

<sup>311</sup> I/A Court H.R. *Case of Tiu Tojin, Merits, Reparations and Costs*, Judgment of November 26, 2008. Series C No. 190; I/A Court H.R., *Case of Heliodoro Portugal*. Judgment of August 12, 2008. Series C No. 186, para.106.

<sup>312</sup> IACHR, Annual Report 1987-1988, Chapter V.II. This crime “is permanent since it is not committed instantly but in a permanent and prolonged manner during the totality of the period during which the person remains disappeared.” (OEA/CP-CAJP, Report of the President of the Workgroup In Charge of Analyzing the Project of the Inter-American Convention on the Forced Disappearances of Persons, doc. OEA/Ser.G/CP/CAJP-925/93 rev.1, de 25.01.1994, p. 10).

<sup>313</sup> Preamble to the Inter-American Convention on Forced Disappearance of Persons, which states that “the forced disappearance of persons of persons violates numerous non-derogable and essential human rights enshrined in the American Convention on Human Rights, in the American Declaration of the Rights and Duties of Man, and in the Universal Declaration of Human Rights.”

Chen Sánchez (see, chapter on Identification of Victims). The testimonies in the Commission's record of this case all agree that the disappeared persons were forced into helicopters, even though none of the circumstances that, under Guatemalan law, would have allowed such a measure was present and the legal requirements to make such action lawful were not satisfied. The whereabouts of these disappeared persons is still unknown.

274. The absence of this set of minimum legal protections is consistent with a pattern of violations of this type that existed at the time the events occurred. Indeed, as mentioned earlier, the dimensions and characteristics of this systematic practice in Guatemala have been confirmed by the CEH,<sup>314</sup> by the Inter-American Commission in processing various cases, and by the information gathered on the occasion of its *in loco* visits and the general reports on the situation of human rights in Guatemala which the Commission prepared in furtherance of its mandate.

275. A person who is unlawfully or arbitrarily detained is in an exacerbated situation of vulnerability creating a real risk that his or her other rights, such as the right to humane treatment (Article 5) and to be treated with dignity, will be violated.<sup>315</sup>

276. Given the context of rampant violence and persecution in Guatemala, upon seeing these people being attacked by patrol members and soldiers the natural reaction would be one of great fear and panic. The IACHR's special report on Guatemala in 1981 vividly depicts the brutality to which people like Ramona Lajuj and Manuel Chen Sánchez were subjected when detained:

[...]The clear purpose is to create panic and intimidation among the other persons present and it is systematically attempted to avoid identification of the bodies whenever they are found [...].In some instances they are taken, as an exception and for very short periods, to military barracks or police stations for questioning. Later they almost always appear mutilated and with signs of having suffered brutal torture, floating in the rivers, inside plastic bags, thrown on the streets, in highway ditches or in gorges.

As a rule, when the bodies are discovered, they appear brutally disfigured, nude and without documents or signs of identification. In many instances they have been burned, thrown into the ocean or into the mouths or craters of volcanoes. Also, as it has been possible to ascertain in a large number of cases, especially when dealing with members of Indian or rural communities, whose populations have been decimated quite frequently, their bodies have been found already decomposed and rotting, buried together in large common graves. [...]<sup>316</sup>.

277. As for the length of time that the victims were unlawfully detained, there is not enough evidence in the case record to prove precisely how long they were held before being forcibly disappeared. Nevertheless, the Court<sup>317</sup> has held that even a brief period of detention is enough for it to constitute an infringement of one's mental and moral integrity.

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<sup>314</sup> For more on this point, see *Memory of Silence*, published in 1999; and Report on the Recovery of the Historical Memory Inter-Diocesan Project of the Human Rights Office of the Archdiocese of Guatemala: *Guatemala, Never Again!*.

<sup>315</sup> I/A Court H.R., *Case of Baldeón García*. Judgment of April 6, 2006. Series C No. 147, para.119; I/A Court H.R., *Case of López Álvarez*. Judgment of February 1, 2006. Series C No. 141, para.104; I/A Court H.R., *Case of Juan Humberto Sánchez*. Judgment of June 7, 2003. Series C No. 99, para.96. See also, ECHR, *Case of Ireland v. the United Kingdom*, Judgment of 18 January 1978, Series A No. 25. para. 167.

<sup>316</sup> IACHR, *Report on the Situation of Human Rights in Guatemala*, approved on October 13, 1981, Chapter II E, paragraphs 4 and 5.

<sup>317</sup> I/A Court H.R., *Case of the Gómez Paquiyauri Brothers*. Judgment of July 8, 2004. Series C No. 110, para.108; and I/A Court H.R., *Case of Juan Humberto Sánchez*. Judgment of June 7, 2003. Series C No. 99, para.98; I/A Court H.R., *Case of Cantoral Benavides*. Judgment of August 18, 2000, paragraphs 83, 84 and 89.

278. At the time of the events in this case, it was systematic, standard practice to hold the detainees absolutely incommunicado for the clear purpose of erasing any trace of the extrajudicial execution to which they frequently fell victim. Here the Court has held that “prolonged isolation and deprivation of communication are in themselves cruel and inhuman treatment, harmful to the psychological and moral integrity of the person and a violation of the right of any detainee to respect for his inherent dignity as a human being.”<sup>318</sup> “Isolation from the outside world produces moral and psychological suffering in any person, places him in a particularly vulnerable position, and increases the risk of aggression and arbitrary acts.”<sup>319</sup>

279. As the Court has held, compliance with the obligations imposed by Article 4 of the American Convention, in relation to Article 1(1) thereof, presumes not only that no one shall be deprived of their life arbitrarily (negative obligation), but also, in light of their obligation to ensure the full and free exercise of all human rights, that States adopt all appropriate measures to protect and preserve the right to life (positive obligation) of those subject to their jurisdiction.<sup>320</sup> It wrote the following in this regard:

[...] This active protection of the right to life by the State involves not only its legislators, but all State institutions, and those persons who should protect its safety, whether they are members of its Police Forces or its Armed Forces. In view of the foregoing, States must take all necessary steps, not only to prevent, prosecute and punish the deprivation of life as a result of criminal acts in general, but also to prevent arbitrary executions by its own security agents [...]<sup>321</sup>.

280. Specifically with reference to violation of the right to life in the framework of the forced disappearance of persons, the Court has found that one of the multiple violations of the Convention that forced disappearance entails is the following:

[...] secret execution without trial, followed by concealment of the body to eliminate any material evidence of the crime and to ensure the impunity of those responsible. This is a flagrant violation of the right to life, recognized in Article 4 of the Convention [...]<sup>322</sup>.

281. Based on the facts proven in the instant case, the forced disappearance of Ramona Lajuj and Manuel Chen Sánchez occurred amid the violence and persecution being waged against the Maya people or against anyone suspected of having ties with the subversive movement or of having ideological differences<sup>323</sup> and they were executed by State agents. It is obvious that the pattern of forced disappearances and extermination tolerated and fostered by the Guatemalan State during the armed conflict created a climate incompatible with effective protection of the right to life. If one also considers that, as the Court has determined, when a person has disappeared amid violent circumstances and remains disappeared for several years it is reasonable to conclude that he or she

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<sup>318</sup> I/A Court H.R., *Case of Fairén Garbi and Solís Corrales*, par. 149; I/A Court H.R., *Case of Godínez Cruz*, Judgment, paragraphs 164 and 197, and I/A Court H.R., *Case of Velásquez Rodríguez*, paragraphs 156 and 187.

<sup>319</sup> I/A Court H.R., *Case of Castillo Petruzzi et al.*, para.195; and I/A Court H.R., *Case of Suárez Rosero*, para.90.

<sup>320</sup> I/A Court H.R., *Case of Vargas Areco*. Judgment of September 26, 2006. Series C No. 155, para.75; I/A Court H.R., *Case of the Ituango Massacres*. Judgment of July 1, 2006. Series C No. 148, para.130; I/A Court H.R., *Case of the Sawhoyamaya Indigenous Community*. Judgment of March 29, 2006. Series C No. 146, para.152.

<sup>321</sup> I/A Court H.R., *Case of the Miguel Castro Castro Prison*. Judgment of November 25, 2006. Series C No. 160, para.237; I/A Court H.R., *Case of the “Mapiripán Massacre”*. Judgment of September 15, 2005. Series C No. 134, para.231; I/A Court H.R., *Case of Huilca Tecse*. Judgment of March 3, 2005. Series C No. 121, para.66.

<sup>322</sup> I/A Court H.R., *Case of El Caracazo*, para. 50(a); *Case of Velásquez Rodríguez*, Judgment of July 29, 1988, para.157.

<sup>323</sup> See chapter on “Facts Proven”.

has been killed,<sup>324</sup> then the evidence is sufficient to conclude that the State violated the right to life of Ramona Lajuj and Manuel Chen Sánchez. Indeed the evidence mentioned thus far is sufficiently compelling to reasonably conclude that they are dead and that the State is responsible.

282. Finally, the State is also responsible for failing to investigate, at all, the forced disappearance of Ramona Lajuj and Manuel Chen Sánchez, despite having had information concerning the disappearances during the domestic criminal proceedings. Here, the Court has held that the State must adopt “the necessary measures, not only at the legislative, administrative and judicial level, by issuing penal norms and establishing a system of justice to prevent, eliminate and punish the deprivation of life as a result of criminal acts, but also to prevent and protect individuals from the criminal acts of other individuals and to investigate these situations effectively.”<sup>325</sup>

283. Summarizing, the forced disappearance of Ramona Lajuj and Manuel Chen Sánchez, perpetrated by military personnel and patrol members amid the persecution of the community of Río Negro, the brutality of this practice, the failure of the courts to take any action, and a context of egregious human rights violations are sufficient to enable one to conclude, based on the rules of sound judgment and taking all the facts of the case together, there were violations of articles 7, 5 and 4 of the American Convention, in relation to Article 1(1) thereof, and Article I of the Inter-American Convention on Forced Disappearance of Persons. The Commission also concludes that the State violated Article 19 of the American Convention, to the detriment of the child Manuel Chen Sánchez.

### **3(2) Right to juridical personality (Article 3<sup>326</sup>)**

284. Recognition as a person before the law is essential in order to be the *titulaire* of all human rights and to exercise them. Without recognition as a person before the law, the individual does not enjoy the protection and guarantees that the law affords, for the simple reason that said person is invisible in the eyes of the law.

285. The Commission considers that the connection between forced disappearance and violation of the right to juridical personality lies in the fact that the precise objective of forced disappearance is to remove the individual from the protection of the law that is his due; the objective of those who commit forced disappearance is to operate beyond the realm and reach of the law, concealing any evidence of a crime and endeavoring to escape punishment; it is also their clear and deliberate intention to eliminate any possibility that the person might bring a legal action to demand his rights. The objective is to separate the disappeared person from the real world and the world of laws, to conceal his whereabouts and to prevent him –so long as he is alive- from ever turning to the courts for protection or from exercising any other right.

286. Recently the Inter-American Court has recognized that inasmuch as forced disappearance is a complex violation involving multiple offenses it may also entail a specific violation of the right to juridical personality: apart from the fact that the disappeared person can no longer exercise and enjoy other rights, and eventually all the rights to which he or she is entitled, his

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<sup>324</sup> I/A Court H.R., Case of El Caracazo, para.50(a); I/A Court H.R., *Case of Bámaca Velásquez*. Judgment of November 25, 2000. Series C No. 70, para.173 citing I/A Court H.R., *Case of Castillo Páez*, Judgment of November 3, 1997. Series C No. 34, paras. 71-72; I/A Court H.R., *Case of Neira Alegría et al.*, Judgment of January 19, 1995. Series C No. 20, para. 76; I/A Court H.R., *Case of Godínez Cruz*, Judgment of January 20, 1989. Series C No. 5; para.198; and I/A Court H.R., *Case of Velásquez Rodríguez*, Judgment on the Merits, July 29, 1988. Series C No. 4, paras.157 and 188.

<sup>325</sup> I/A Court H.R., *Case of the Pueblo Bello Massacre*. Judgment of January 31, 2006. Series C No. 140, par. 120.

<sup>326</sup> Article 3. Every person has the right to recognition as a person before the law.

or her disappearance is one of the most serious ways of removing the person from the protection of the law and seeks to deny that person's existence and to place him or her in a kind of limbo or uncertain legal situation vis-à-vis society, the State and even the international community.<sup>327</sup>

287. The forced disappearance of Ramona Lajuj and Manuel Chen Sánchez and extreme vulnerability in which they found themselves, meant that they were excluded from the Guatemalan State's legal system and institutional order. The objective of those who perpetrated the forced disappearance was to operate outside the law, to instill fear and hide the evidence of their crimes. The Commission understands that through the victims' disappearance the perpetrators sought to create a legal vacuum, and in so doing deliberately made it impossible for the victims to exercise their rights; they also sought to keep their next of kin completely in the dark as to their whereabouts, situation or condition.

288. Based on the foregoing arguments of fact and of law, the Commission concludes that the Guatemalan State violated the right to juridical personality, recognized in Article 3 of the American Convention, in relation to Article 1(1) thereof, to the detriment of Ramona Lajuj and Manuel Chen Sánchez.

#### **4. Concerning the women and children victims of sexual violence**

##### **4(1) Right to humane treatment and the right to privacy (articles 5 and 11<sup>328</sup>)**

289. In the instant case, it has been established that during the course of the massacres perpetrated against the community of Río Negro, the women were constantly raped and then executed. Numerous pieces of testimony and the domestic court itself confirm this.

290. As was established in the chapter on Identification of victims, the Committee notes that some of the testimony includes the initials of several of the many women who were raped before being extrajudicially executed during the course of the various massacres perpetrated against the community of Río Negro –namely J.O.S., V.C., and M.T. One of the survivors, María Eustaquia Uscap Ivoy, testified before the domestic court about the massacre on February 13, 1982, in which she was raped by patrol members and soldiers. However, there is no way of determining precisely how many women were raped.

291. The IACHR observes that sexual violence committed by members of the security forces of a State against the civilian population constitutes, in any situation, a serious violation of the human rights protected under Articles 5 and 11 of the American Convention.<sup>329</sup> Those articles of the American Convention are mutually reinforcing in cases of rape. A rape is not only physically, mentally and emotionally devastating for its victims, but also violates her sense of dignity, invades one of the most intimate spheres of her life –her physical and sexual space- and undermines her ability to make independent decisions about her body.

292. The Inter-American Court has held that sexual violence against women has devastating physical, emotional, and psychological consequences for them.<sup>330</sup> The Court also

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<sup>327</sup> I/A Court H.R., *Case of Kenneth Ney Anzualdo*, Judgment of September 22, 2009, para. 90.

<sup>328</sup> Article 11(2): No one may be the object of arbitrary or abusive interference with his private life, his family, his home, or his correspondence, or of unlawful attacks on his honor or reputation.

<sup>329</sup> IACHR, Report No.53/01 (Merits), Case 11,565, *Ana, Beatriz y Celia González Pérez*, Mexico, April 4, 2001, para. 45. At: <http://www.cidh.oas.org/annualrep/2000eng/ChapterIII/Merits/Mexico11.565a.htm>

<sup>330</sup> I/A Court H.R., *Case of the Miguel Castro Castro Prison*. Merits, Reparations and Costs. Judgment of November 25, 2006. Series C No. 160, para. 313, U.N., Human Rights Commission, 54<sup>th</sup> session. *Report presented by Mrs. Radhika* Continue...

acknowledged that the sexual rape of a detainee by a State agent is an especially gross and reprehensible act, taking into account the victim's vulnerability and the abuse of power displayed by the agent.<sup>331</sup> It has also held that sexual rape is an extremely traumatic experience that may have serious consequences<sup>332</sup> and it causes great physical and psychological damage that leaves the victim "physically and emotionally humiliated", a situation difficult to overcome with time, contrary to what happens with other traumatic experiences.<sup>333</sup>

293. The sexual rape of the women of the community of Río Negro was yet another element calculated to destroy and annihilate the Maya people. The CEH documented the following with regard to the sexual violence perpetrated against indigenous women:

[...] For the Maya women, the armed violence was compounded by gender violence and ethnic discrimination. [...]

[...] Sexual rape was a widespread and systematic practice by State agents in the framework of the counterinsurgency strategy. Rape became a real *weapon of terror*, a gross violation of human rights and international humanitarian law. The immediate victims were mainly women and children, although men and boys were not spared. The rapes caused suffering and had profound aftereffects on both the immediate victims and their families, spouses and the entire community. It also had serious collective effects on the victims' ethnic group.

[...]The rape act itself was attended by violations of many other rights. As a rule, the rapes – whether individual or selective- occurred in the context of the victims' detention; what followed was often the victims' death or disappearance. The cases of rapes on a mass scale or indiscriminate and public rapes occurred in areas with large indigenous populations; rapes became common practice when an outpost of military troops or PAC was installed; they also routinely preceded massacres or were part of scorched-earth operations. Pregnant women were raped, killed and their fetuses destroyed.

[...] Because of the *modus operandi*, rapes led to an exodus of women and scattered entire communities, breaking up marital and social relationships, and thus led to a sense of social isolation and community shame. It also drove women to abortion and infanticide, were an impediment to marriages and births within the group, which hastened the destruction of the indigenous groups.<sup>334</sup>

294. Torture and other cruel, inhuman or degrading treatment or punishment is strictly prohibited under international human rights law.<sup>335</sup> At both the global and regional levels, it has been established that once a rape perpetrated by state agents, both within and beyond the walls of

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*Coomaraswamy, Special Rapporteur on violence against women, with the inclusion of its causes and consequence, pursuant to resolution 1997/44 of the Commission.* Doc. E/CN.4/1998/54 of January 26, 1998, para. 14.

<sup>331</sup> I/A Court H.R., *Case of the Miguel Castro Castro Prison*. Merits, Reparations and Costs. Judgment of November 25, 2006. Series C No. 160, para. 311.

<sup>332</sup> Cf. U.N., Human Rights Commission. 50<sup>th</sup> session. Matter of the human rights of all persons submitted to any form of detention or imprisonment, and especially torture and other cruel, inhuman, or degrading treatments or punishments. Report of the Special Rapporteur, Mr. Nigel S. Rodley, presented in accordance to resolution 1992/32 of the Human Rights Commission. Doc. E/CN.4/1995/34 of January 12, 1995, para. 19.

<sup>333</sup> I/A Court H.R., *Case of the Miguel Castro Castro Prison*. Merits, Reparations and Costs. Judgment of November 25, 2006, Series C No. 160, para.311, citing Eur.C.H.R., *Case of Aydin v. Turkey* (GC), Judgment of 25 September 1997, App. No. 57/1996/676/866, para. 83.

<sup>334</sup> CEH, Chapter II: Volume 3 SEXUAL VIOLENCE AGAINST WOMEN, paras. 1 to 4.

<sup>335</sup> I/A Court H.R., *Case of the Miguel Castro Castro Prison*. Merits, Reparations and Costs. Judgment of November 25, 2006, Series C No. 160, para. 271.

detention facilities, has been proved, that rape constitutes torture based on the presence of two factors: the nature of the perpetrator and the purpose of the act.

295. In fact, the International Criminal Tribunal for the former Yugoslavia expressly stated that "there can be no doubt that rape and other forms of sexual assault are expressly prohibited under international humanitarian law."<sup>336</sup> Years later that tribunal's Appeals Chamber held that in a case of rape, in order to determine whether there is an intent to commit torture, it is important to establish whether a perpetrator intended to act in a way which would cause severe pain or suffering, whether physical or mental, to his victim, even if the perpetrator's intent is "entirely sexual".<sup>337</sup>

296. Within the inter-American system, the Commission has determined that three elements must be present in order for rape to classify as torture: (i) it must be an intentional act through which physical and mental pain and suffering is inflicted on a person; (ii) it must be committed with a purpose, and (iii) it must be committed by a public official or by a private person acting at the instigation of the former.<sup>338</sup> The Commission has also emphasized the physical and mental suffering inherent in rape, and how it can be used as a method of psychological torture because its objective in many cases is to humiliate not just the victim, but the victim's family or community as well.<sup>339</sup> The Commission has held that:

Rape causes physical and mental suffering in the victim. [...] The fact of being made the subject of abuse of this nature also causes a psychological trauma that results, on the one hand, from having been humiliated and victimized, and on the other, from suffering the condemnation of the members of their community if they report what has been done to them.<sup>340</sup>

297. The Inter-American Court, for its part, held that the acts of sexual violence to which detained women were subjected constituted torture.<sup>341</sup> In its analysis, the Inter-American Court explicitly considered that "the women who suffered there were subject to the complete control and power of State agents, absolutely defenseless [...]."<sup>342</sup>

298. Based on the development of international and regional standards, the Commission considers, as it has in other cases,<sup>343</sup> that a rape perpetrated by a state agent will always result in intimidation, humiliation and/or coercion of the victim, among other prohibited aims and purposes by

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<sup>336</sup> *Celebici* Case No. IT-96-21-T, Judgment, para.476, November 16, 1998.

<sup>337</sup> ICTY Appeals Chamber, *Prosecutor v. Kunarac, Kovak and Vukovic*, Judgment of June 12, 2002, para. 153.

<sup>338</sup> IACHR, Raquel Martín Mejía, Report No. 5/96, Case 10,970, March 1, 1996. At: <http://www.cidh.oas.org/annualrep/95eng/Peru10970.htm>.

<sup>339</sup> IACHR, Raquel Martín Mejía, Report No. 5/96, Case 10,970, March 1, 1996. At: <http://www.cidh.oas.org/annualrep/95eng/Peru10970.htm>. IACHR, Report on the Merits, No. 53/01, Ana, Beatriz and Cecilia González Pérez (Mexico). At: <http://www.cidh.oas.org/annualrep/2000eng/ChapterIII/Merits/Mexico11.565a.htm>.

<sup>340</sup> IACHR, Raquel Martín Mejía, Report No. 5/96, Case 10,970, March 1, 1996. At: <http://www.cidh.oas.org/annualrep/95eng/Peru10970.htm>

<sup>341</sup> I/A Court H.R., *Case of the Miguel Castro Castro Prison*. Merits, Reparations and Costs. Judgment of November 25, 2006, Series C No. 160, para. .312.

<sup>342</sup> *Idem*, para. 307.

<sup>343</sup> IACHR, Application in Case 12,579 Valentina Rosendo Cantú v. Mexico, available at: <http://www.cidh.oas.org/demandas/12.579%20Valentina%20Rosendo%20Cantu%20Mexico%20ago09%20ENGLISH.pdf> and IACHR, application in Case 12,580 Inés Fernández Ortega v. Mexico, available at : <http://www.cidh.oas.org/demandas/12.580%20Ines%20Fernandez%20Ortega%20Mexico%207mayo09%20ENGLISH.pdf>

today's international legal standards pertaining to torture.<sup>344</sup> This is due to the severe and long-lasting physical and mental suffering inherent in all acts of rape, due to its non-consensual and invasive nature, affecting the victim, her family and the community. This is aggravated when the perpetrator is a state agent, because of the physical and psychological power the aggressor can abusively exercise over the victim due to his position of authority.

299. According to the international standards on this subject and the Commission's own jurisprudence, the Commission considers that the facts of the present case involve the crime of torture.<sup>345</sup> The Commission therefore considers that the abuses that the soldiers and patrol members committed against the physical, mental and moral integrity of the women of Río Negro, constitute torture.

300. Finally, the Commission observes that despite the fact that various testimonies given in the course of the investigation of the Río Negro and Agua Fría massacres made reference to the rapes –a fact documented by the CEH– the domestic court did not conduct any investigation to establish who the perpetrators of these violations were. (Infra)

301. Given these considerations, the Commission concludes that the Guatemalan State is responsible for violation of articles 5(1) and 11 of the American Convention on Human Rights, in relation to Article 1(1) thereof, to the detriment of J.O.S., V.C., M.T. and María Eustaquia Uscap Ivoy. The Commission further considers that the State also violated Article 19 of the Convention, to the detriment of J.O.S. and María Eustaquia Uscap Ivoy, who were children then.

## **B. Concerning the events that occurred subsequent to the massacres**

302. As was established, the massacres of the Community of Río Negro were planned and carried out by the State of Guatemala through the Army and its civilian collaborators for the purpose of exterminating the members of the Community. Nonetheless, the persons who were able to survive, mostly children, suffered a series of consequences that had a detrimental impact on them for many years. Next is an analysis of the rights of the American Convention that were violated to the detriment of the survivors of the massacres.

### **1. Right to humane treatment (Article 5) of the survivors and the victim's next-of-kin**

303. According to the facts proven in this report, approximately 33 persons survived the massacres of the members of the community of Río Negro. In that regard, the Commission has considered it proved that several members of the community of Río Negro not only witnessed the way in which their family members were tortured and extrajudicially executed, which itself constitutes cruel, inhuman, and degrading treatment, but that they themselves were victims of violations of their right to humane treatment. Several of the survivors were children at the time of the facts. In this respect, the age of those survivors is such that the impact of those experiences is that much greater. That experience is a source of anguish and suffering of particular intensity.

304. In addition, while most of the women raped were executed in the massacres, some testimony given to Commissioner Abramovich in his visit to Río Negro, at the working meeting held at the IACHR with the presence of the State, revealed that some of the female survivors had also been raped, but that they were able to escape from their victimizers. The oral and private

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<sup>344</sup> IACHR, Application in Case 12,579 Valentina Rosendo Cantú v. Mexico, available at: <http://www.cidh.oas.org/demandas/12.579%20Valentina%20Rosendo%20Cantu%20Mexico%20ago09%20ENGLISH.pdf>.

<sup>345</sup> IACHR, Report on the Merits, No. 53/01, Ana, Beatriz and Celia González Pérez (Mexico). At: <http://www.cidh.oas.org/annualrep/2000eng/ChapterIII/Merits/Mexico11.565a.htm..>

information of one of those women is that she had never told anyone in her community what happened for fear of being rejected; and she was all the more reluctant to report them for fear of reprisals. Nonetheless, it appears in the record that María Eustaquia Uscap Ivoy gave testimony before the lower court regarding the February 13, 1982, massacre of Pacoxom in which she was raped by members of the patrols and by members of the military.

305. It has also been proven that many of the survivors of Río Negro hid for years in the mountains, fleeing the systematic persecution of which they were victims and living in subhuman conditions.

306. In view of the foregoing, the Commission considers that the State of Guatemala is responsible for violating Article 5 of the American Convention in relation to its Article 1(1), to the detriment of the survivors of the community of Río Negro.

307. The Commission also recalls that the Inter-American Court has stated repeatedly that "the next of kin of the victims of human rights violations may also be victims."<sup>346</sup> In cases related to massacres, the Court has considered that "no evidence is needed to prove the severe effects on the mental integrity of the next of kin of victims who have been executed."<sup>347</sup> As regards forced disappearances specifically, the Court has established that:

... the violation of those relatives' mental and moral integrity is a direct consequence of [the] forced disappearance. The circumstances of such disappearances generate suffering and anguish, in addition to a sense of insecurity, frustration and impotence in the face of the public authorities' failure to investigate.<sup>348</sup>

308. Accordingly, as regards the pain and anguish suffered by the next-of-kin of the massacre victims, and of the disappeared, the Commission, consistent with the case-law of the inter-American human rights system on this point, considers that they were, at the same time, victims of a violation of their right to humane treatment.

309. In addition, the Commission recalls that the Court has established that the lack of effective remedies is a source of additional suffering and anguish for the victims' next-of-kin.<sup>349</sup> In this case, there has not been a complete investigation into the facts, or an effective judicial proceeding that makes it possible to identify and punish all those responsible for the massacres, or the disappearances, or the violations related to those acts, as will be observed in the analysis of the violation of Articles 8 and 25 of the American Convention.

310. The Commission concludes that by means of the pain and anguish caused by the State to the next-of-kin of the victims of the massacres and disappearances carried out against the

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<sup>346</sup> I/A Court H.R., *Case of Castillo Páez v. Peru. Reparations* (Article 63(1) American Convention on Human Rights). Judgment of November 27, 1998. Series C No. 43, para. 88. See also I/A Court H.R., *Case of the Pueblo Bello Massacre v. Colombia*. Merits, Reparations and Costs. Judgment of January 31, 2006. Series C No. 140, para. 154.

<sup>347</sup> I/A Court H.R., *Case of the Ituango Massacres v. Colombia*. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 1, 2006. Series C No. 148, para. 262. See also I/A Court H.R., *Case of the Mapiripán Massacre v. Colombia*. Merits, Reparations and Costs. Judgment of September 15, 2005. Series C No. 134, para. 146.

<sup>348</sup> I/A Court H.R., *Case of Blake v. Guatemala*. Merits. Judgment of January 24, 1998, para. 114.

<sup>349</sup> I/A Court H.R., *Case of the Ituango Massacres v. Colombia*. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 1, 2006. Series C No. 148, para. 261. See also I/A Court H.R., *Case of the Mapiripán Massacre v. Colombia*. Reparations and Costs. Judgment of September 15, 2005. Series C No. 134, para. 145; *Case of the Pueblo Bello Massacre v. Colombia*. Merits, Reparations and Costs. Judgment of January 31, 2006. Series C No. 140, para. 145; and *Case of the Moiwana Community v. Suriname*. Preliminary Objections, Merits, Reparations and Costs. Judgment of June 15, 2005. Series C No. 124, para. 94.

members of the community of Río Negro, Guatemala violated Article 5 of the American Convention, in relation to Article 1(1) thereof, to their detriment.

**2. The right not to be subjected to forced labor (Article 6), the rights of the child (Article 19) and the rights of the family (Article 17)**

311. The Commission has taken as proven fact that after witnessing their mothers and sisters being raped and their family members being extrajudicially executed –even small children– seventeen children were taken to the village of Xococ where they were put into forced labor in the homes of the patrol members.

312. The domestic court wrote as follows:

[...] as a result of the events [...] the children were forcibly moved [...] to the community of Xococ, where they were forced to live with some of their own assailants [...] they were living in servitude, subjected to degrading treatment, particularly as they were children. They were completely severed from their families, most of who had been killed, and from their surviving kin, their social milieu, and from the ethical and moral values of their community, which had an incalculable psychosocial effect on them.<sup>350</sup>

313. The scars left on the physical and mental integrity of the children who survived the massacre will be difficult to heal. The State bears aggravated responsibility for the violation of these survivors' rights, first by failing in its special duty of protection, as these were children and as such persons in a state of extreme vulnerability;<sup>351</sup> and second, by having actively participated, through its agents, in the harm done to the child survivors' physical and mental integrity and the extrajudicial execution of the next of kin.

314. The Court has been emphatic about the child's right to live with his or her family, which is directly related to the right to receive protection against arbitrary or illegal interference in the family, which in turn is an integral part of the right of the child and of the family to protection.<sup>352</sup> Furthermore, the Court held that the State has an obligation to foster the development and strength of the nuclear family and that under certain conditions, separating a child from his or her family is a violation of the rights of the family.<sup>353</sup> The Court has held that:

[...] The violence of the armed conflict had a terrible impact on Maya indigenous families, not only because of a parent's disappearance and/or the separation of the children, but also because it meant that they had to abandon their communities and their traditions.<sup>354</sup>

[...] bearing in mind that a child's development is a holistic concept encompassing his or her physical, mental, spiritual, moral, psychological and social development,<sup>355</sup> the Court deems

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<sup>350</sup> Copy of the ruling issued by the Trial Court for Criminal, Drug-Trafficking and Environmental Offenses of Salamá, Baja Verapaz, case number 28-2003-OF of May 28, 2008, supplied by the petitioners in their note of July 1, 2008.

<sup>351</sup> I/A Court H.R., *Case of the "Street Children" (Villagrán Morales et al.)*. Judgment of November 19, 1999. Series C No. 63, para. 191.

<sup>352</sup> I/A Court H.R., *Juridical Condition and Human Rights of the Child*, Advisory Opinion OC-17/02 of August 28, 2002. Series A No. 17, para. 71.

<sup>353</sup> I/A Court H.R., *Case of Chitay Nech et al.* Judgment of May 25, 2010, para.157. See also, *Juridical Condition and Human Rights of the Child*. Advisory Opinion OC-17/02, *supra* note 108, paras. 71 and 72, and *Case of the Dos Erres Massacre v. Guatemala*, *supra* note 12, para. 188.

<sup>354</sup> I/A Court H.R., *Case of Chitay Nech et al.* Judgment of May 25, 2010, para. 125. See also the Expert Opinion of Rosalina Tuyuc given during the public hearing that the Court held in that case on February 2, 2010.

that for indigenous children's personality to develop fully and in balance with their vision of the cosmos, they need to grow and develop within their natural and cultural environment, as they have a distinctive identity that anchors them to their land, their culture, their religion and their language.<sup>356</sup>

315. On the subject of forced labor, the Court has written that:

[...] according to the ILO Convention [No. 29] the definition of forced or compulsory labour consists of two basic elements. First, the work or service is exacted "under the menace of a penalty." Second, it is performed involuntarily. Furthermore, the Court finds that, to constitute a violation of Article 6(2) of the American Convention, it is necessary that the alleged violation can be attributed to State agents, either due to their direct participation or to their acquiescence to the facts. [...].<sup>357</sup>

316. In the present case, the Commission deems that the threat of punishment was obvious as the children lived under an ever-present, implied threat of violence or death against themselves or, in some cases, against their surviving family members. One cannot forget that these children had witnessed the brutal deaths of most of their family. Second, these children clearly had no choice about the work they were required to perform, which was not only age-inappropriate but also compulsory and done under threat. Finally, it has been proven that the children were subjected to forced labor by the patrollers, with the acquiescence of Army personnel.

317. The testimonies regarding the situation of the seventeen children who were taken by force to Xococ by the patrollers who participated in the massacre in which most of the children's family members were killed are unequivocal in stating that the assailants not only enslaved the children, but also prohibited them, under threat of death, from speaking with family members that might still be alive, should they pass them on the street.

318. The Commission therefore deems that the Guatemalan State is responsible for violation of articles 6(2), 19 and 17 of the American Convention, in relation to Article 1(1) thereof, to the detriment of Agustín Chen Osorio, Celestina Uscap Ivoy, Cruz Pérez Osorio, Froilan Uscap Ivoy, Jesús Tecú Osorio, José Osorio Osorio, Juan Chen Chen, Juan Chen Osorio, Juan Pérez Osorio, Juan Uscap Ivoy, Juana Chen Osorio, María Eustaquia Uscap Ivoy, Pedro Sic Sánchez, Silveria Lajuj Tum, Tomasa Osorio Chen, Florinda Uscap Ivoy and Juan Burrero.

#### **Freedom of movement and residence (Article 22)<sup>358</sup>**

319. The Commission has written that for an ethnic group to be able to preserve its cultural values, it is essential that its members be allowed to enjoy all of the rights set forth by the American Convention on Human Rights, since this guarantees their effective functioning as a group, which includes preservation of their own cultural identity. Particularly relevant are the right to

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<sup>355</sup> Cf. UN. Committee on the Rights of the Child. *General Observation No. 5* of November 27, 2003, para.12. This concept of holistic development appeared in the Court's earlier case law. Cf. *Case of the "Juvenile Reeducation Institute" v. Paraguay, supra*, note 179, para. 161.

<sup>356</sup> I/A Court H.R., *Case of Chitay Nech et al.* Judgment of May 25, 2010, para.169.

<sup>357</sup> I/A Court H.R., *Case of the Ituango Massacres*, para.160.

<sup>358</sup> Article 22 of the American Convention provides that:

1. Every person lawfully in the territory of a State Party has the right to move about in it, and to reside in it subject to the provisions of the law. [...]

[...] 4. The exercise of the rights recognized in paragraph 1 may also be restricted by law in designated zones for reasons of public interest. [...]

protection of freedom of movement and residence, the right of assembly and freedom of association, freedom of conscience and religion, and the right to have one's honor respected and dignity recognized.<sup>359</sup> These rights will be discussed below.

320. In the case of Guatemala, the Commission has stated that:

The Commission, for its part, has given close attention to the plight of the population uprooted by the conflict since the early 1980's. It was at that time that the "scorched earth" strategy of massacres and the eradication of whole villages implemented by the Lucas García regime and continued by the Efraín Ríos Montt regime led to massive flows of displaced persons. The separation of families, communities and cultural groups tore the social fabric of the country.<sup>360</sup>

321. The Inter-American Court has held that Article 22(1) of the Convention "protects the right to not be forcefully displaced within a State Party to the Convention."<sup>361</sup> It has also established that it has written that "freedom of movement is an indispensable condition for free development of each person".<sup>362</sup> Furthermore, the Court has recognized that:

[...] Because of the complexity of the phenomenon of internal displacement and the wide range of human rights that it affects and threatens, and taking into account the circumstances of special vulnerability and defenselessness in which the displaced usually find themselves, their situation can be understood as a *de facto* situation of lack of protection. [...] Under the American Convention, this situation obliges States to grant the displaced preferential treatment and to adopt positive measures to reverse the effects of this situation of vulnerability and defenselessness, including *vis-à-vis* acts and practices of individual third parties.<sup>363</sup>

322. The CEH has written that:

The displacement of the civilian population in Guatemala stands out [...] because it was done on such a massive scale and was so destructive [...]. [...] Families and entire communities were torn apart and the cultural ties that bound them together were severed. The unprecedented terror [...] unleashed a massive exodus of various peoples, most of whom were from Maya communities [...]. For some families, the displacement was a matter of weeks; for others, however, the displacement went on for years. [...].<sup>364</sup>

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<sup>359</sup> IACHR, Report on the Situation of Human Rights of a Segment of the Nicaraguan Population of Miskito Origin., Part Two, B, para. 14..

<sup>360</sup> IACHR, *Fifth Report on the Situation of Human Rights in Guatemala* (2001), Chapter XIV, para. 2.

<sup>361</sup> Cf. I/A Court H.R., *Case of the "Mapiripán Massacre" v. Colombia*. Merits, Reparations and Costs. Judgment of September 15, 2005. Series C No. 134, para. 188.

The Court has concurred with the conclusion of the United Nations Human Rights Committee, in its General Comment No. 27, where it establishes that freedom of movement and of residence consist, *inter alia*, of the following: a) the right of those lawfully in the territory of a State to move about freely in that State and to choose their place of residence; and b) the right of each person to enter their country and remain in it. Enjoyment of this right does not depend on any specific objective or motive of the person who wishes to move about or to remain in a certain place.

<sup>362</sup> Cf. I/A Court H.R., *Case of the "Mapiripán Massacre" v. Colombia*. Merits, Reparations and Costs. Judgment of September 15, 2005. Series C No. 134, para.168; *Case of the Moiwana Community*, *supra* note 4, para.110, and *Case of Ricardo Canese*, *supra* note 185, para.115. United Nations Human Rights Committee, General Comment No. 27, November 2, 1999, paragraphs 1, 4, 5 and 19.

<sup>363</sup> I/A Court H.R., *Case of Chitay Nech et al.* Judgment of May 25, 2010, para.141.

<sup>364</sup> CEH, *Guatemala: Memory of Silence*, *supra* nota 35, Volume IV, Chapter III, pp. 119 and 120, para. 4193.

323. In the present case, the Commission has taken as proven fact that the members of the indigenous community of Río Negro were forced to abandon their village, leaving their belongings, their homes and their lands destroyed and abandoned; at the outset, they moved to neighboring communities or went into the mountains. Women, men and children lived there for months and even years, struggling to survive the threats and persecution, the hunger, and the lack of access to health and education services.

324. It has also been taken as proven fact that as of 1983, the survivors of the community of Río Negro were resettled in the community of Pacux, near the city of Rabinal. There, the living conditions are difficult and the lands are ill-suited to subsistence farming. As a result, the survivors have been unable to regain the sense of dignity and security they enjoyed prior to the massacres and the displacement. The CEH observed the following in this regard:

From 1983 onwards, the Army's strategy for the displaced population was designed more to regain control of the displaced population, urging it to return to places under its control: amnesties were offered and those who accepted were resettled in highly militarized communities with a view to long-term pacification of the conflict areas. [...] To gain control over the population in the conflict areas, particularly the displaced who had returned, the Army used different methods, such as forced resettlement in places where it could easily control the population, places like the model villages or the larger villages and hamlets.<sup>365</sup>

The Army [...] ordered people who were going to be resettled in these places to build their own houses [...]thereby trying to undermine] the traditional settlement master plans of the *campesino* indigenous population [...]<sup>366</sup>.

325. The Commission observes that the facts of the present case occurred within a generalized context of internal forced displacement in Guatemala, particularly of the indigenous population, and was caused by the internal armed conflict and the terror to which the indigenous population was subjected. The CEH wrote the following:

The magnitude of the institutionalized violence to which Guatemala's civilian population was subjected during the armed conflict is painfully apparent in the phenomenon of forced displacement. Estimates are that between 500 thousand and one and a half million Guatemalans, especially in the early 1980s, were forced to flee as a direct consequence of the repression.<sup>367</sup>

326. The Commission considers that the phenomenon of forced displacement cannot be separated from other violations given its complexity and "the broad range of human rights affected or endangered by it, and bearing in mind the special weakness, vulnerability, and defenselessness in which the displaced population generally finds itself, as subjects of human rights."<sup>368</sup> The Inter-American Court has held the following in this regard:

[...] The circumstances of the instant case and the special and complex situation of vulnerability that affects said persons include but also transcend the content of the protection that the States must provide in the framework of Article 22 of the Convention. Displacement

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<sup>365</sup> CEH, *Memory of Silence*, Chapter II Human Rights Violations and Acts of Violence, Volume 3, Forced Displacement, para. 634.

<sup>366</sup> CEH, *Memory of Silence*, Chapter II Human Rights Violations and Acts of Violence, Volume 3, Forced Displacement, para.677.

<sup>367</sup> CEH, *Memory of Silence*, Chapter II Human Rights Violations and Acts of Violence, Volume 3, Forced Displacement, para.602.

<sup>368</sup> Cf. I/A Court H.R., *Case of the Mapiripán Massacre v. Colombia*. Merits, Reparations and Costs. Judgment of September 15, 2005. Series C No. 134, para.177.

[...] in fact originates in the lack of protection during the massacre and reveals its effects in the violations of their right to humane treatment [...] and in the consequences of non-fulfillment of the duty to investigate the facts, which have led to [...] impunity [...]. This set of components leads the Court to find that, beyond the provisions of Article 22 of the Convention, the situation of displacement addressed here has also affected the right of [...] the victims to a decent life, in connection with non-fulfillment of the obligations to respect and to guarantee the rights embodied in those provisions.<sup>369</sup>

327. In the specific case of the indigenous peoples forcibly displaced from their community, the Court has held that:

Forced displacement] can leave them in a highly vulnerable situation [...] its after effects are destructive to the ethnic and cultural fabric [...]; [forced displacement] creates the very real risk that the indigenous people will become culturally or physically extinct [...]. Hence, it is imperative that States adopt specific measures of protection [...] that take into account the indigenous peoples' distinctive characteristics and their customary law, values, uses and customs [...] in order to prevent and reverse the effects of [forced displacement].<sup>370</sup>

328. The IACHR observes that the vast majority of those who survived the massacre in the community of Río Negro have not returned to their village, not just because of the threats and the persecution to which they were subjected and the failure to investigate the facts, but also because the dam flooded most of their land. In this regard, in the *Case of the Moiwana Community v. Suriname*, the Court held that the displaced survivors feared for their safety if they returned and it was that fear and the failure to conduct a criminal investigation of the facts that denied them their rights to freedom of movement and residence.<sup>371</sup>

329. Further, the Commission observes that the survivors of the Community of Río Negro were not just forcibly displaced; many were ultimately forced to live in a resettlement community where they were policed and where living conditions were far from what they had been prior to displacement.

330. For the foregoing reasons, the Guatemalan State is responsible for violation of Article 22(1) of the American Convention, in relation to Article 1(1) thereof and to the detriment of the survivors of the community of Río Negro.

**Rights to honor and dignity (Article 11)<sup>372</sup>, the freedom of association (Article 16)<sup>373</sup>, and the freedom of conscience and religion (Article 12)<sup>374</sup>**

<sup>369</sup> Cf. I/A Court H.R., *Case of the Mapiripán Massacre v. Colombia*. Merits, Reparations and Costs. Judgment of September 15, 2005. Series C No. 134, para.186; *Case of the Yakye Axa Indigenous Community*, *supra* note 12, paras. 162 and 163; *Case of the "Juvenile Reeducation Institute"*, para.164, and *Case of the "Street Children" (Villagrán Morales et al.)*, para.191.

<sup>370</sup> I/A Court H.R., *Case of Chitay Nech et al.* Judgment of May 25, 2010, para. 141.

<sup>371</sup> Cf. *Case of the Moiwana Community*, paras. 107 to 121; See also *Case of Ricardo Canese*, paras. 113 to 120.

<sup>372</sup> Article 11 of the American Convention establishes that:

1. Everyone has the right to have his honor respected and his dignity recognized.

2. No one may be the object of arbitrary or abusive interference with his private life, his family, his home, or his correspondence, or of unlawful attacks on his honor or reputation.

3. Everyone has the right to the protection of the law against such interference or attacks.

<sup>373</sup> Article 16(1) of the American Convention establishes: "Everyone has the right to associate freely for ideological, religious, political, economic, labor, social, cultural, sports, or other purposes."

<sup>374</sup> Article 12 of the American Convention establishes:

331. In the instant case, the Commission has considered it proven that the Maya people were considered by the Guatemalan State to be the internal enemy by the Guatemalan State, the social base of the guerrilla forces, and even part of the guerrilla forces. Numerous witness statements in the record before the Commission reveal that the persecution and annihilation of the community of Río Negro happened because the patrol members and the members of the military considered them guerrillas. In that regard, the CEH has established that:

... in most cases, the identification between the Maya communities and the insurgency was intentionally exaggerated by the State which, drawing on traditional racist stereotypes, used this form of identification to eliminate present and future possibilities of the population providing assistance to or joining any insurgent project.<sup>375</sup>

332. In the instant case, the Commission considers that the Guatemalan State not only did not respect the honor and reputation of the members of the Maya Achi community of Río Negro, but that it considered expressly and without any foundation that the members of the Maya people were guerrillas, the social base of the guerrilla forces, internal enemies and subversives, in keeping with the doctrine of National Security and Plan Victoria 82, thereby violating their reputation and honor, which was one of the main bases for the atrocious persecution and annihilation of which they were victims.

333. Based on the foregoing, the Commission considers that the Guatemalan State is responsible for the violation of Article 11 of the American Convention, in relation to Article 1(1) of the Convention, to the detriment of the members of the indigenous community of Río Negro.

334. As regards Article 16 of the Convention, as was established by the Inter-American Court, the right to freedom of association refers to "the right to join with others in lawful common pursuits, without pressure or interference that may alter or impair the nature of such purpose."<sup>376</sup> In the instant case, the analysis should take stock of the role the exercise of that right plays in the community life of indigenous peoples.

335. The CEH has established the following with regard to the indigenous peoples' community life, their authorities, and the effect of leaving these communities without leaders:

[...] The concept of authority in Maya communities has to do with service, wisdom and counsel. The authority figures are persons with experience in serving the community. They are the ones who can build consensus, provide advice and guidance, find arrangements

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...continuation

1. Everyone has the right to freedom of conscience and of religion. This right includes freedom to maintain or to change one's religion or beliefs, and freedom to profess or disseminate one's religion or beliefs, either individually or together with others, in public or in private.

2. No one shall be subject to restrictions that might impair his freedom to maintain or to change his religion or beliefs.

3. Freedom to manifest one's religion and beliefs may be subject only to the limitations prescribed by law that are necessary to protect public safety, order, health, or morals, or the rights or freedoms of others.

<sup>375</sup> CEH, *Memory of Silence*, Volume V, Conclusions and Recommendations, p. 29.

<sup>376</sup> I/A Court H.R., *Case of Kawas Fernández v. Honduras*. Merits, Reparations and Costs. Judgment of April 3, 2009 Series C No. 196, para. 143; *Case of Baena Ricardo et al.* Merits, Reparations and Costs, Judgment of February 2, 2001. Series C No. 72, para. 156. See also *Case of Huilca Tecse v. Peru*. Merits, Reparations and Costs. Judgment of March 3, 2005. Series C No. 121, para. 69, and *Case of Cantoral Huamaní and García Santa Cruz v. Peru*. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 10, 2007. Series C No. 167, para. 144.

satisfactory to the parties, rehabilitate those who violate community norms and restore harmony to the community [...]

[...] During the years of the armed conflict, a number of developments occurred that disrupted the structures of indigenous authority and leadership. Indigenous authorities were killed, persecuted or replaced, and the dismantling of community organizations weakened the community as a whole, both as a group and as a people.

[...] Between 1980 and 1983, the military strategy was intended to destroy the structure of the Maya communities as social groups. It focused on destroying the authority-based order and organization and symbols of cultural identity. At its most extreme, the Army conducted operations to totally annihilate communities, and scorched-earth operations, massacres, executions, torture, and rapes on a massive scale.<sup>377</sup>

336. In the present case, it has been established that on March 4, 1980, Army personnel came to the village of Río Negro, rounded up its members and herded them into the chapel, and then extrajudicially executed Calixto Chen, Francisco Tum Uscap, Máxima Chen, Santos Oswaldo López Ixpatá, Jesús Alvarado Ixpatá, Mateo Ixpatá Alvarado and Mateo Uscap Chen, who were the community's representatives, its elders or catechists. It has also been proved that four months later, Evaristo Osorio Sánchez and Valeriano Osorio Chen, representatives of Río Negro and members of the committee for seeking reparations for the damages caused by the Chixoy dam, were tortured and then executed by state agents.

337. As a consequence of these atrocities, the collective life of the community was torn asunder, to the point that it was left with no authority figure, had been broken apart and practically annihilated. The survivors sought refuge in the mountains, as they could no longer live as community. The testimony in the record of the case reveals the terror that the survivors experienced; the community way of life had been altered, leaving the survivors with a sense of isolation. That persecution served to undo the social fabric of the community, which was woven together through the intense interaction among its members. The climate of terror did not stop with the massacres, since for years thereafter the area was militarized and the survivors were afraid to mend the social fabric.

338. The Commission therefore deems that the Guatemalan State is responsible for violation of Article 16 of the Convention, in relation to Article 1(1) thereof, to the detriment of the members of the community of Río Negro.

339. In regard with the right to freedom of conscience and religion, the Commission takes as proven fact that the victims in the present case are indigenous Maya belonging to the Achí linguistic group. The Commission considers that for indigenous peoples, the right to culture and ethnic identity means, *inter alia*, the expression and preservation of their beliefs, their language, customs, dress, way of life, sacred places and social organization. The CEH has written that the preservation of indigenous identity and culture meant ensuring the cultivation of the characteristics that distinguish an indigenous people, such as their language, religion, way of life and symbols.<sup>378</sup>

340. From the facts established in this case, the victims who were extrajudicially executed in the massacres at Xococ, Río Negro, Los Encuentros and Agua Fría were not buried according to the traditions of the community. It has been proven that in Río Negro, the victims were thrown into a pit and covered with rocks and branches. The Xococ victims were buried in secret graves. Some of the victims of the Los Encuentros massacre were only partially buried,

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<sup>377</sup> CEH, Chapter III, Effects and consequences of the armed conflict, paragraphs 441, 443 and 459.

<sup>378</sup> CEH, *Memory of Silence*, Volume III, p. 177.

while others were left exposed to the elements. Finally, the Agua Fría victims were burned to death.

341. The CEH concluded that during the armed conflict,

[...] thousands of Guatemalans were unable to observe the rites that normally accompany a person's death and burial, causing a profound pain that persists to this day among the sectors of the population so affected. The climate of fear, the military presence and other circumstances that surrounded the massacres, the flight, and the persecution in the mountains often made burial of the dead impossible. For all the cultures and religions present in Guatemala, it is virtually unthinkable that the dead should not be given a decent burial. It is contrary to everyone's values and dignity. For the Maya, the rituals of death and burial are important because of the active relationship that unites the living and the dead. The lack of a sacred place where this relationship could be nurtured constitutes a profound concern that emerges from the testimonies of many Maya communities.<sup>379</sup>

342. For its part, the REMHI wrote that:

In addition to its capacity for devastation, destruction by fire is highly symbolic for the indigenous population. The burning of everyday objects linked to human life also destroys their *mwel* or *dioxil*, the principle underlying the continuity of life, among other things. This is true of corn and grinding stones, and the human body or any of its parts, such as hair.<sup>380</sup>

343. In its judgment in the *Bámaca Velásquez* case, the Court considered the right that the next of kin of a victim of forced displacement have to bury his or her remains and its importance in the Maya culture.<sup>381</sup> In its judgment on reparations, the Court wrote that caring for the mortal remains of a deceased person is a way of observing the right to human dignity. It stated that:

[...] the mortal remains of a person deserve respectful treatment before that person's next of kin, due to the significance they have for them. Respect for those remains, observed in all cultures, acquires a very special significance in the Mayan culture [...] For the Mayan culture [...] funeral ceremonies ensure the possibility of the generations of the living, the deceased person, and the deceased ancestors meeting anew. Thus, the cycle between life and death closes with these funeral ceremonies, allowing them to "express their respect for [the victim], have him near and return him or take him to live with the ancestors", as well as for the new generations to share and learn about his life, something that is traditional in his indigenous culture<sup>382</sup>.

344. In the Case of the Moiwana Community, the Court held that :

[...] one of the greatest sources of suffering for the [...] community members is that they do not know what has happened to the remains of their loved ones, and, as a result, they cannot honor and bury them in accordance with fundamental norms of [their] culture. The Court notes that it is understandable, then, that community members have been distressed by reports indicating that some of the corpses were burned [...]<sup>383</sup>.

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<sup>379</sup> CEH, *Memory of Silence*, Volume V, p. 34.

<sup>380</sup> REMHI, *Guatemala Never Again* (1998).

<sup>381</sup> I/A Court H.R., *Case of Bámaca Velásquez*, Judgment of November 25, 2000, para. 230.

<sup>382</sup> I/A Court H.R., *Case of Bámaca Velásquez*, Judgment on Reparations, February 22, 2002, para.81.

<sup>383</sup> I/A Court H.R. *Case of the Moiwana Community*. Preliminary Objections, Merits, Reparations and Costs. Judgment of June 15, 2005. Series C No. 124, para.100.

345. The Commission considers that the way in which the cadavers were destroyed and the way in which the mortal remains of the victims of the community of Río Negro were buried, without respecting the survivors' cultural, spiritual and religious beliefs, is a violation of Article 12 of the Convention, in relation to Article 1(1) thereof, to the detriment of the members of the community of Río Negro.

**Right to property (Article 21)<sup>384</sup>**

346. The Court has defined the property that is to be protected by the right to property as those material objects that may be appropriated, and also any right that may form part of a person's patrimony; this concept includes all movable and immovable property, corporal and incorporeal elements, and any other intangible object of any value."<sup>385</sup>

347. The CEH was able to establish that in most cases, "the massacres involved pillaging of the victims' possessions and the destruction of their homes, crops, animals, cooking utensils, grinding stones, clothing, and anything they had for their material survival, all part of the so-called scorched-earth operations."<sup>386</sup>

Irrespective of the actions, a considerable percentage of massacres recorded by the CEH had other features suggesting that the purpose was to eliminate the communities' basic means of subsistence, cause the communities to break up or destroy them altogether, and to dismantle their organizations and other mechanisms of collective endeavor. The most important elements in this respect were: the physical destruction of the communities, the homes, crops and animals, places of prayer, schools, communal meeting rooms, and other community buildings; the desecration of the churches by using them as places for torture and execution; destruction of material elements like corn and grinding stones, which carry strong symbolism for the culture [.]<sup>387</sup>

348. An important factor to consider in this case is that the members of the Maya Achí community of Río Negro lived by agriculture, fishing, and trading products. The land they occupied had been the homeland to Maya since 330 B.C.<sup>388</sup>

349. In the present case it has been proved that after perpetrating the massacres, the patrollers and members of the Guatemalan Army not only stole the personal effects, food, domestic animals of the villagers, but also destroyed the property, sometimes entire villages, by burning them to the ground. The destruction of the property of the members of the community of Río Negro, including the burning of their homes, was part of a strategy designed by the State to eliminate the communities accused of collaborating with the guerrilla movement. It was a strategy of total annihilation: people, property and the community as such.

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<sup>384</sup> Article 21 of the American Convention, which is on the right to property, reads as follows:

1. Everyone has the right to the use and enjoyment of his property. The law may subordinate such use and enjoyment to the interest of society.
2. No one shall be deprived of his property except upon payment of just compensation, for reasons of public utility or social interest, and in the cases and according to the forms established by law.
3. Usury and any other form of exploitation of man by man shall be prohibited by law.

<sup>385</sup> I/A Court H.R., *Case of Ivcher Bronstein*. Judgment of February 6, 2001. Series C No. 74, para.122, *Case of the Ituango Massacres*. Judgment of July 1, 2006. Series C No. 148, para.174.

<sup>386</sup> CEH, *Memory of Silence*, Volume III, *Human rights violations and acts of violence*, para. 3054.

<sup>387</sup> CEH, *Memory of Silence*, Volume III, *Human rights violations and acts of violence*, para. 3076.

<sup>388</sup> CEH, *Memory of Silence*, Illustrative Case No. 10. MASSACRE AND ELIMINATION OF THE COMMUNITY OF RIO NEGRO.

350. It has also been established that because of the dam, most of the survivors were unable to return to their lands, even after the amnesty. Therefore, they had to live in Pacux, a community for the displaced, where they were given less land to farm and of poorer quality.

351. The Commission observes that a reparations project has been underway since 2005, to redress the damages sustained by the various communities affected, which includes Río Negro. However, based on the documents supplied, the Commission finds that thus far the negotiations do not appear to have made much progress.

352. The Commission therefore concludes that sufficient elements are present to find that the Guatemalan State violated articles 21(1) and 21(2) of the Convention, to the detriment of the members of the community of Río Negro.

### **Right to equality before the law and to non-discrimination (articles 24<sup>389</sup> and 1(1))**

353. In the present case, the Commission has established that as a result of the prevailing racism and institutionalized exclusion<sup>390</sup> the Maya people were the sector of the Guatemalan population that bore the brunt of the internal armed conflict: 83% of the victims of forced disappearance and extrajudicial execution during this period were members of the Maya people. The CEH concluded that the Maya people was collectively targeted as being the “social base” of the insurgency and collectively were branded as being the “enemy within”, all as a function of the national security doctrine; in the opinion of the CEH, they were labeled as such because of racial prejudices that served to identify Maya communities collectively and as a whole with the insurgency, thus paving the way for their systematic persecution and extermination. As has been demonstrated in the present report, the Guatemalan armed conflict led to multiple, egregious violations of the cultural integrity of the Maya people, and systematic, brutal attacks on Maya individuals, families and communities, for the mere fact that they were Maya, all part of a state policy of racism and genocide<sup>391</sup> – all of which set the stage for the massacres and persecution perpetrated against the indigenous community of Río Negro. The prevailing racial discrimination thus provided the trigger for state agents to commit genocidal acts.

354. The American Convention on Human Rights prohibits discrimination of any kind, which includes unwarranted distinctions based on race, color, national or social origin, economic standing, birth or any other social condition. The principle of equality and non-discrimination is a

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<sup>389</sup> Article 24. All persons are equal before the law. Consequently, they are entitled, without discrimination, to equal protection of the law.

<sup>390</sup> The IACHR has previously observed that “the indigenous peoples of Guatemala have historically been the targets of ethically-driven discrimination.” IACHR, Justice and Social Inclusion – the challenges of democracy in Guatemala, OEA/Ser.L/V/II.118, Doc. 5 rev. 2, December 29, 2003 (only in Spanish). See also: IACHR, Fifth Report on the Situation of Human Rights in Guatemala, OEA/Ser.L/V/II.111, Doc. 21 rev., April 6, 2001.

<sup>391</sup> The IACHR already wrote the following about this situation: “During the armed conflict, the exclusion and discrimination to which the indigenous peoples in Guatemala were subjected was shockingly apparent; indeed, 83% of the victims were members of the Maya people who had been the victims of genocidal acts.” In its report, the Commission for Historical Clarification (CEH) found that racism as a doctrine of superiority, as manifested in the conduct of the Guatemalan State, was one of the causes of the armed conflict and “is a fundamental factor in explaining the particular brand of brutality and indiscriminate with which military operations were carried out against hundreds of Maya communities in the western and northwestern sectors of the country, especially between 1981 and 1983, when over half the massacres and scorched-earth operations were perpetrated against them. According to the CEH, the response to the guerrilla movement was so disproportionate because the counterinsurgency policy sought not only to destroy the social bases of the guerrilla movement, but also to destroy the cultural values that gave the indigenous communities their sense of cohesion and collective endeavor.” IACHR, Justice and Social Inclusion – the challenges of democracy in Guatemala; OEA/Ser.L/V/II.118, Doc. 5 rev. 2, December 29, 2003, paragraphs 216-217 (only in Spanish).

protection that underpins the guarantee of other rights and freedoms since, under Article 1(1) of the American Convention, all persons are *titulaires* of the human rights recognized in that instrument and are entitled to have the State respect and ensure their free and full exercise of those rights, without any form of discrimination. The Inter-American Court has held that “[n]on-discrimination, together with equality before the law and equal protection of the law, are elements of a general basic principle related to the protection of human rights.”<sup>392</sup>

355. The Inter-American Court has interpreted the scope of Article 24 of the Convention, which recognizes the right to equality before the law and to equal protection of the law without discrimination, as follows:

Although Articles 24 and 1(1) are conceptually not identical [...] Article 24 restates to a certain degree the principle established in Article 1(1). In recognizing equality before the law, it prohibits all discriminatory treatment originating in a legal prescription. The prohibition against discrimination so broadly proclaimed in Article 1(1) with regard to the rights and guarantees enumerated in the Convention thus extends to the domestic law of the States Parties, permitting the conclusion that in these provisions the States Parties, by acceding to the Convention, have undertaken to maintain their laws free of discriminatory regulations.<sup>393</sup>

356. The Inter-American Court has also clarified the obligations that the principle of equality and non-discrimination requires of the States:

States have the obligation to combat discriminatory practices and not to introduce discriminatory regulations into their laws.<sup>394</sup> In compliance with this obligation, States must abstain from carrying out any action that, in any way, directly or indirectly, is aimed at creating situations of *de jure* or *de facto* discrimination. This translates, for example, into the prohibition to enact laws, in the broadest sense, formulate civil, administrative or any other measures, or encourage acts or practices of their officials, in implementation or interpretation of the law that discriminate against a specific group of persons because of their race, gender, color or other reasons.<sup>395</sup>

357. One specific manifestation of the right to equality is the right of all persons not to be the victims of racial discrimination. This form of discrimination infringes the equality and dignity inherent in all human beings, and has been unanimously condemned by the international community<sup>396</sup> and is expressly prohibited under Article 1(1) of the American Convention.

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<sup>392</sup> I/A Court H.R., *Juridical Condition and Rights of the Undocumented Migrants*. Advisory Opinion OC-18/03 of September 17, 2003, Series A. No. 18, para. 83. The Human Rights Committee has also stated that “*Non-discrimination, together with equality before the law and equal protection of the law without any discrimination, constitute a basic and general principle relating to the protection of human rights.*” Human Rights Committee, General Comment No. 18, Non-discrimination, November 11, 1989, para.1.

<sup>393</sup> I/A Court H.R., *Proposed amendments to the Naturalization Provision of the Constitution of Costa Rica*. Advisory opinion OC-4/84 of January 19, 1984. Series A No. 4, para. 54. See also, IACHR, Report No. 40/04, Case 12,053, *Maya Indigenous Communities of Toledo District v. Belize*, October 12, 2004, paragraphs 162 et seq.

<sup>394</sup> I/A Court H.R., *Juridical Condition and Rights of the Undocumented Migrants*. Advisory Opinion OC-18/03 of September 17, 2003, Series A. No. 18, para. 88

<sup>395</sup> I/A Court H.R., *Juridical Condition and Rights of the Undocumented Migrants*. Advisory Opinion OC-18/03 of September 17, 2003, Series A. No. 18, para.103.

<sup>396</sup> See, *inter alia*, the United Nations Declaration on the Elimination of All Forms of Racial Discrimination, November 20, 1963 [General Assembly resolution 1904 (XVIII)], which solemnly affirms the necessity of speedily eliminating racial discrimination throughout the world, in all its forms and manifestations, and of security understanding of and respect for the dignity of the human person.

358. For its part, the International Convention on the Elimination of All Forms of Racial Discrimination –to which the Guatemalan State is party<sup>397</sup>- defines this form of discrimination as follows:

any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life [Article 1... and requires States Parties, *inter alia*, to] engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to ensure that all public authorities and public institutions, national and local, [...] act in conformity with this obligation [Article 2.1(a) and] not to sponsor, defend or support racial discrimination by any persons or organizations. [Article 2.1(b).]

[In Article 5, this Convention requires the States Parties to] prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights: (a) The right to equal treatment before the tribunals and all other organs administering justice; (b) The right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by an individual group or institution [...]

359. Thus, under the applicable international law, persons have a fundamental right not to be victims of discrimination based on their ethnic or racial origin, and States are internationally obligated to refrain from committing any acts of racial discrimination and to prohibit the commission of discriminatory acts. Furthermore, as a manifestation of the international obligation incumbent upon States to investigate acts that violate human rights and then to punish those responsible,<sup>398</sup> States have an international duty to provide persons with effective judicial remedies that protect them from discriminatory acts and to provide just compensation when such acts have been consummated.<sup>399</sup>

360. Indigenous persons and peoples are also the *titulaires* of the fundamental rights to equality and to live free of all forms of discrimination –especially any form of racial discrimination based on their ethnic origin-. These rights take on an added and specific meaning in the case of indigenous peoples. The United Nations Declaration on the Rights of Indigenous Peoples provides that:

**Article 2.** Indigenous peoples and individuals are free and equal to all other peoples and individuals and have the right to be free from any kind of discrimination, in the exercise of their rights, in particular that based on their indigenous origin or identity.

**Article 9.** Indigenous peoples and individuals have the right to belong to an indigenous community or nation, in accordance with the traditions and customs of the community or nation concerned. No discrimination of any kind may arise from the exercise of such a right.

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<sup>397</sup> Guatemala signed it in September 1967 and ratified it in January 1983.

<sup>398</sup> I/A Court H.R., Case of El Amparo, Reparations (Article 63(1) American Convention on Human Rights), Judgment of September 14, 1996, Series C No. 28, paragraphs 53-55 and 61. IACHR, Report on Terrorism and Human Rights, OEA/SER.L/V/II.116, Doc. 5 rev. 1, corr., October 22, 2002, para.33.

<sup>399</sup> Article 6 of the International Convention on the Elimination of All Forms of Racial Discrimination requires that States parties assure to everyone within their jurisdiction effective protection and remedies, through the competent national tribunals and other State institutions, against any acts of racial discrimination which violate his human rights and fundamental freedoms contrary to this Convention, as well as the right to seek from such tribunals just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination.”

361. Article 3(1) of ILO Convention No. 169 on Indigenous and Tribal Peoples in Independent Countries, which Guatemala ratified in 1996, provides that “[i]ndigenous and tribal peoples shall enjoy the full measure of human rights and fundamental freedoms without hindrance or discrimination.” The Committee on the Elimination of Racial Discrimination “has consistently affirmed that discrimination against indigenous peoples falls under the scope of the [International] Convention [on the Elimination of All Forms of Racial Discrimination] and that all appropriate means must be taken to combat and eliminate such discrimination”<sup>400</sup>, which is why it has called upon the States to “[e]nsure that members of indigenous peoples are free and equal in dignity and rights and free from any discrimination, in particular that based on indigenous origin or identity.”<sup>401</sup> Thus, all indigenous persons have an internationally recognized and protected basic right to effectively enjoy, as equals, the same rights that every human being has, and not to be victims of discrimination in the exercise of those rights by reason of their ethnic origin.

362. The persecution and genocidal extermination of the community of Río Negro was the ultimate display of racial discrimination practiced against the Maya people during the armed conflict in Guatemala. That racial discrimination was implicit when the Maya people were collectively labeled as the “social base” or “collaborator” of the insurgency, and in the attacks against individuals, families and entire communities that resulted when the Maya people were so stigmatized. This collective stigmatization became part of a racist State policy; the actions taken when implementing that policy were discriminatory in nature. It is the Commission’s view that racial discrimination was the basis both of the State policy of stigmatizing and then exterminating the Maya people, and of the “demonization” of the Maya people in order to de-sensitize the aggressors. It also explains the brutality with which the massacres and persecution were conducted, the enslavement of some surviving children and the authorities’ subsequent failure to react to these events. This racial discrimination and the genocidal messages that fed it, took a particularly harsh and heavy toll on the women and children of the community of Río Negro.

363. The Commission therefore considers that the massacres, persecution and extermination of the community of Río Negro, planned and orchestrated by the State, were in themselves violations of Articles 24 and 1(1) of the American Convention because they were predicated on discrimination.

364. The state authorities charged with investigating and prosecuting the crimes committed in this case failed to respond swiftly and effectively to the events. In the Commission’s view, this, too, constitutes a violation of Articles 24 and 1(1) of the American Convention. Under the applicable international law, both the occurrence of acts constituting genocide and confirmation of a pattern of racial discrimination by stigmatizing and persecuting members of the Maya people as sympathizers of the insurgency, demand special diligence of Guatemala in its investigation and prosecution of the perpetrators. The Commission observes that this degree of special diligence was glaringly absent in the Guatemalan courts’ response –as will be explained in detail in the following section.

365. The Commission has said the following in this regard:

In Guatemala, the impunity that has attended the egregious human rights violations committed during the internal armed conflict against the Maya people and its members is on such a scale that the only possible conclusion is that the remnants of a racist and

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<sup>400</sup> Committee on the Elimination of Racial Discrimination – General Recommendation No. 23, Indigenous Peoples, August 18, 1997, para.1.

<sup>401</sup> Committee on the Elimination of Racial Discrimination – General Recommendation No. 23, Indigenous Peoples, August 18, 1997, para. 1.

discriminatory culture continue to permeate broad sectors and spheres of Guatemalan society, and are especially in evidence in the system for the administration of justice<sup>402</sup> (and that) the impunity of those responsible for the human rights violations committed against the Maya people during the armed conflict (...), and the failure to investigate acts of discrimination committed against members of the Guatemalan indigenous peoples, is inimical not just to the rule of law but to the dignity of the peoples as well.<sup>403</sup>

366. The Inter-American Court has held that:

[...] pursuant with the principle of non-discrimination enshrined in Article 1(1) of the American Convention, in order to guarantee the members of indigenous communities access to justice, "it is necessary that the States grant an effective protection taking into account their specific features, economic and social characteristics, as well as their special situation of vulnerability, their common law, values, uses and customs." [...]<sup>404</sup>

[...] access to justice and the special protection that must be granted to indigenous communities is regulated in the Constitution of the State of Guatemala. However, this Tribunal has established that "the legislation itself is not enough to guarantee full effectiveness of the rights protected by the American Convention; instead it entails the need of a governmental behavior that ensures the existence, in reality, of an effective guarantee of the free and full exercise of human rights."<sup>405</sup>

367. The failure to fulfill this heightened obligation to investigate and prosecute acts of genocide and racism perpetrated against the community of Río Negro perpetuates the effects of the racial discrimination to which the members of the Maya Achí people were subjected. The only way to put an end to the racial discrimination and its effects is diligent investigation and prosecution, with a view to compensating the surviving victims for their violated rights.

368. The treatment that the courts dispense to persons is a means of enforcing the law, since the courts and judges are the ultimate administrators of justice in any domestic system. Consequently, equal treatment by the courts and prohibition of discrimination by the courts are guarantees inherent in the right to equality before the law, protected under Article 24 of the American Convention. For the Commission, the prohibition of racial discrimination is also violated when the courts perpetuate the effects of cases of racial discrimination as serious as the one that resulted in the persecution and extermination of the community of Río Negro.

369. Therefore, by failing to diligently investigate and prosecute the serious crimes and racism of which the members of the community were victims and thereby perpetuating the cycle of racial discrimination that resulted in the crimes committed in the present case, the Guatemalan courts have violated Article 24 of the Convention, in relation to Article 1(1) thereof.

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<sup>402</sup> IACHR, Justice and Social Inclusion – the challenges of democracy in Guatemala, OEA/Ser.L/V/II.118, Doc. 5 rev. 2, December 29, 2003, para. 241. (in Spanish only)

<sup>403</sup> IACHR, Justice and Social Inclusion – the challenges of democracy in Guatemala; OEA/Ser.L/V/II.118, Doc. 5 rev. 2, December 29, 2003, para. 247. (in Spanish only)

<sup>404</sup> I/A Court H.R., *Case of Tiu Tojin v. Guatemala*. Merits, Reparations and Costs. Judgment of November 26, 2008. Series C No. 190, para.96.

<sup>405</sup> I/A Court H.R., *Case of Tiu Tojin v. Guatemala*. Merits, Reparations and Costs. Judgment of November 26, 2008. Series C No. 190, para. 99.

### Rights to a fair trial and to judicial protection (articles 8<sup>406</sup> and 25<sup>407</sup>)

370. The Inter-American Court has established the right of every person whose human rights have been violated to obtain from the competent State authorities a clarification of the events in which his or her rights were violated and the identification of those responsible through an investigation of the facts and prosecution of those responsible, in accordance with articles 8 and 25 of the American Convention.<sup>408</sup> These obligations of the State are part of a general obligation contained in Article 1(1) of the Convention,<sup>409</sup> which is to respect and ensure the rights recognized therein to all persons subject to its jurisdiction.

371. In order to establish a violation of Article 8, it is necessary to establish whether the accusing party's procedural rights were respected in the trial.<sup>410</sup> For its part, Article 25(1) of the American Convention incorporates the principle of the effectiveness of the procedural instruments or means designed to guarantee such rights.<sup>411</sup>

372. The Court has repeatedly pointed to the close interrelationship between articles 1, 8 and 25 of the American Convention. In effect, Article 25 in relation to Article 1(1) of the American Convention obliges the State to guarantee to every individual access to the administration of justice and, in particular, to a simple and prompt recourse so that, *inter alia*, those responsible for human rights violations may be prosecuted and reparations obtained for the damages suffered. Article 25 is one of the fundamental pillars not only of the American Convention but of the very rule of law in a democratic society in the terms of the Convention, all of which is directly connected to Article 8(1), which protects the right of everyone to a hearing with due guarantees, for a determination of one's rights, whatever their nature.<sup>412</sup>

373. Similarly, the Court has held that:

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<sup>406</sup> Article 8(1) of the American Convention provides that "[e]very person has the right to a hearing, with due guarantees and with a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature."

<sup>407</sup> Article 25 of that instrument provides that:

1. Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.
2. The States Parties undertake:
  - a. to ensure that any person claiming such remedy shall have his rights determined by the competent authority provided for by the legal system of the state;
  - b. to develop the possibilities of judicial remedy; and
  - c. to ensure that the competent authorities shall enforce such remedies when granted.

<sup>408</sup> I/A Court H.R., *Case of Barrios Altos*. Judgment of March 14, 2001. Series C No. 75, para.48.

<sup>409</sup> Article 1(1) provides that: "The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition."

<sup>410</sup> I/A Court H.R., *Case of Genie Lacayo*. Judgment of January 29, 1997. Series C No. 30, para.74.

<sup>411</sup> I/A Court H.R., "*Judicial Guarantees in States of Emergency* (Arts. 27(2), 25 and 8 American Convention on Human Rights). Advisory Opinion OC-9/87 of October 6, 1987. Series A No. 9, para.24.

<sup>412</sup> I/A Court H.R., *Case of Loayza Tamayo. Reparations* (Art. 63(1) American Convention on Human Rights). Judgment of November 27, 1998. Series C No. 42, para.169.

[...] under the American Convention, the States Parties are obliged to provide effective judicial remedies to the victims of human rights violations (Article 25), remedies that must be implemented according to the rules of due process of law (Article 8(1)), all within the general obligation of States to ensure to all persons subject to their jurisdiction free and full exercise of the rights established in the Convention (Article 1(1)).<sup>413</sup>

374. Thus, based on these provisions of the Convention, States have a duty to conduct serious investigations of human rights violations, identifying those responsible, compensating the victims and taking all possible measures to avoid impunity, which the Court has defined as “the total lack of investigation, prosecution, capture, trial and conviction of those responsible for violations of the rights protected by the American Convention.”<sup>414</sup> It has written the following in this regard:

the American Convention guarantees everyone access to justice to enforce their rights, and the States Parties have the obligation to prevent, investigate, identify and punish the masterminds and accessories of human rights violations.<sup>415</sup>

375. The Commission recalls that in the Peace Accords the State signed, it stated that:

The Guatemalan people are entitled to know the full truth about the human rights violations and acts of violence that occurred in the context of the internal armed conflict. Shedding light objectively and impartially on what happened will contribute to the process of national reconciliation and democratization in the country.<sup>416</sup>

376. In following the human rights situation after the Peace Accords were signed the IACHR documented the following:

A key aspect of the accords, identified as a critical failure of the past and a priority challenge for the present and the future, is the requirement that justice be done and be seen to be done. The State acknowledges that the systems for public security and the administration of justice are gravely deficient. Among the problems identified by the State itself are abusive and arbitrary action by the police forces; the lack of institutional capacity to investigate and prosecute crime, especially when committed by State agents; and serious deficiencies in due process and the administration of justice<sup>417</sup>.

377. The magnitude of the impunity in Guatemala is itself acknowledged to be one of the most serious human rights violations ongoing in that country<sup>418</sup> and has been one of the main reasons why human rights violations and criminal and social violence have continued.<sup>419</sup> The facts

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<sup>413</sup> I/A Court H.R., *Case of the Ituango Massacres*. Judgment of July 1, 2006. Series C No. 148, para. 287.

<sup>414</sup> See in this regard, I/A Court H.R., *Case of the Gómez Paquiyauri Brothers*. Judgment of July 8, 2004. Series C No. 110, para. 148; I/A Court H.R., *Case of the “19 Tradersmen”*. Judgment of July 5, 2004. Series C No. 109, para. 175; I/A Court H.R., *Case of Bámaca Velásquez. Reparations* (Art. 63(1) American Convention on Human Rights), Judgment of February 22, 2002. Series C No. 91, para.64.

<sup>415</sup> I/A Court H.R., *Case of the Constitutional Court*. Judgment of September 29, 1999. Series C No. 71, para. 123. See also, I/A Court H.R., *Case of Myrna Mack Chang*. Judgment of November 25, 2003. Series C No. 101, para. 275; *Case of Juan Humberto Sánchez*. Judgment of June 7, 2003, Series C No. 99, para. 186; *Case of Blake*, *Reparations. Judgment of January 22, 1999*, Series C No. 48, para. 65.

<sup>416</sup> Agreement on a firm and lasting peace, Guatemala City, December 29, 1996, point 4.

<sup>417</sup> IACHR, *Fifth Report on the Situation of Human Rights in Guatemala*, approved April 6, 2001, Chapter 1, para. 3.

<sup>418</sup> IACHR, *Fifth Report on the Situation of Human Rights in Guatemala* (2001), Chapter IV, para. 55.

<sup>419</sup> IACHR, *Fifth Report on the Situation of Human Rights in Guatemala* (2001), Chapter IV, para .57. In this report, the “Commission exhorts the State to devote priority attention and political will to overcoming the situation of impunity that  
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of this case occurred against a backdrop of extreme violence and persecution, in which impunity was one of the main cogs in a system that was the driving force behind the most unspeakable atrocities. The obligation incumbent upon the State to combat impunity is premised on the fact that impunity “fosters chronic recidivism of human rights violations and total defenselessness of victims and their relatives.”<sup>420</sup>

378. In the present case, 28 years have passed since the massacres and forced disappearances, 16 years since the judicial proceedings began on two of the massacres (Río Negro and Agua Fría) and another 8 years since the proceedings began on still a third massacre (Xococ). Even now, only some of the material authors have been brought to trial. The case of the Río Negro and Agua Fría massacres has dragged on for more than 16 years, and only some of the material authors of one of the massacres have been brought to trial and are now serving sentences; the intellectual author of the massacres, on the other hand, continues to collect his pension as a retired military officer despite the fact that a warrant has been issued for his arrest. Although proceedings have been conducted in connection with the Agua Fría massacre, no one was convicted because none of the remains were identified; as a result, no one has been made to answer for the crimes committed in that massacre. Finally, based on the information in the Commission’s record of the case, the State has never investigated the massacres in the Río Negro chapel or at Los Encuentros.

379. Before embarking upon the specific analysis, the Commission should note that in order to establish what the obligation of criminal investigation entails, one has to establish what the facts are. In the present case it has been established that regular Army personnel committed barbaric acts in which they extrajudicially executed 500 totally defenseless men, women and children. It has also been established that the massacres were planned and carried out by State agents and members of the PAC, and that they were not an isolated incident within Guatemala’s internal armed conflict, but rather part of a State policy designed by and under the military dictatorship and premised on the doctrine of national security and the concept of an enemy within, and all calculated to eliminate the social base of the insurgent groups at that time.

380. The facts under examination in this case do not involve a multiple murder, but rather a sequence of gross violations of human rights, which included arbitrary detention, torture, rape and the extrajudicial execution of hundreds of inhabitants of the community of Río Negro, perpetrated with horrific cruelty, the subsequent concealment of the bodies and the enslavement of the children who survived, all as part of a policy designed by the people in power, whose purpose was to destroy entire communities. Hence, the Commission maintains that what happened in Guatemala was genocide. In fact the Trial Court for Criminal, Drug-Trafficking and Environmental Offenses held that “the deeds perpetrated [...] completely wiped out the community [of Río Negro].”<sup>421</sup>

381. According to the *corpus juris* of international law, a crime against humanity is by definition a gross violation of human rights that affects all humanity. In the *Case of Almonacid Arellano et al. v. Chile*, the Court recognized that crimes against humanity include the commission

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...continuation

persist, and reiterates that the State will face responsibility for all violations of human rights that occur until such time as it takes the necessary measures to ensure that justice is administered fairly and effectively.”

<sup>420</sup> I/A Court H.R., *Case of Loayza Tamayo*, Judgment on Reparations. November 27, 1998, Series C, No. 42, paras. 169 and 170.

<sup>421</sup> Copy of the ruling delivered by the Trial Court for Criminal, Drug-Trafficking and Environmental Offenses of the Department of Baja Verapaz, Salamá, case number 28-2003-OF 1° of May 28, 2008, supplied by the petitioners by note of July 1, 2008, p. 353.

of inhumane acts like murder, committed within a context of a generalized or systematic attack against the civil population.<sup>422</sup>

382. The facts in the present case constitute violations of non-derogable norms of international law, which requires that all means, instruments and mechanisms be set in motion for effective prosecution of the crimes and the punishment of the authors, all in order to prevent crime and to ensure that the perpetrators are punished. The domestic courts confirmed this when they held that the facts described constituted crimes against humanity.<sup>423</sup>

383. The Commission wishes to note that in the analysis set forth in this chapter, one must take into account the particular gravity of the events in which the members of the community of Río Negro were extrajudicially executed or disappeared. To that end the Commission, by application of the principle of *iura novit curia*, will offer considerations in relation to the Inter-American Convention to Prevent and Punish Torture<sup>424</sup>, by which the State is under a duty to prevent and punish torture<sup>425</sup> and to take “effective measures to prevent and punish torture within their jurisdiction.”<sup>426</sup> Furthermore, during the massacres, the women and girls of the village of Río Negro were those most deeply and severely affected by the violence perpetrated against their physical integrity and sexual freedom. Therefore, the Commission will take into account the provisions of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, “Convention of Belém do Pará”,<sup>427</sup> which makes it incumbent upon the States parties to act with all due diligence when investigating and punishing acts of violence against women.<sup>428</sup> The Court has held that “these provisions [...] specify and complement the State’s obligations regarding compliance with the rights enshrined in the American Convention,” as well as the “international *corpus juris* on the matter of protection of personal integrity (humane treatment)”.<sup>429</sup>

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<sup>422</sup> I/A Court H.R., *Case of Almonacid Arellano et al.* Judgment of September 26, 2006. Series C No. 154, para.96.

<sup>423</sup> Copy of the ruling issued by the Trial Court for Criminal, Drug-Trafficking and Environmental Offenses of Salamá, Baja Verapaz, case number 28-2003-OF of May 28, 2008, supplied by the petitioners in their note of July 1, 2008, p. 353.

<sup>424</sup> Guatemala deposited its signature of the Inter-American Convention to Prevent and Punish Torture on January 29, 1987.

<sup>425</sup> Inter-American Convention to Prevent and Punish Torture, Article 1.

<sup>426</sup> Inter-American Convention to Prevent and Punish Torture, Article 6. In addition, one should highlight the following articles:

Article 6 ... The States Parties shall ensure that all acts of torture and attempts to commit torture are offenses under their criminal law and shall make such acts punishable by severe penalties that take into account their serious nature. The States Parties likewise shall take effective measures to prevent and punish other cruel, inhuman, or degrading treatment or punishment within their jurisdiction.

Article 8. The States Parties shall guarantee that any person making an accusation of having been subjected to torture within their jurisdiction shall have the right to an impartial examination of his case. Likewise, if there is an accusation or well-grounded reason to believe that an act of torture has been committed within their jurisdiction, the States Parties shall guarantee that their respective authorities will proceed properly and immediately to conduct an investigation into the case and to initiate, whenever appropriate, the corresponding criminal process. After all the domestic legal procedures of the respective State and the corresponding appeals have been exhausted, the case may be submitted to the international fora whose competence has been recognized by that State.

<sup>427</sup> Guatemala ratified the Convention of Belém do Pará on April 4, 1995.

<sup>428</sup> Convention of Belém do Pará, Article 7.b: The States Parties condemn all forms of violence against women and agree to pursue, by all appropriate means and without delay, policies to prevent, punish and eradicate such violence and undertake to: [...] apply due diligence to prevent, investigate and impose penalties for violence against women.

<sup>429</sup> Cf. I/A Court H.R., *Case of the Dos Erres Massacre v. Guatemala. Preliminary Objection, Merits, Reparations and Costs.* Judgment of November 24, 2009. Series C No. 211, para.137 and *Case of the Miguel Castro Castro Prison v. Peru*, *supra* note 27, paras. 276, 377 and 379.

384. Finally, in its analysis the Commission will also consider the Inter-American Convention on Forced Disappearance of Persons, Article I of which provides that the States undertake “[t]o punish [...] those persons who commit or attempt to commit the crime of forced disappearance of persons and their accomplices and accessories; [...] [and to] take legislative, administrative, judicial, and any other measures necessary to comply with the commitments undertaken in th[e] Convention.”

385. The Commission will now explain the various situations in which justice and judicial guarantees have been denied to the surviving victims of the massacres perpetrated against the community of Río Negro, the next of kin of the victims of the massacre, and the disappeared persons.

*Failure to investigate the events in the Río Negro chapel and at Los Encuentros.*

386. In the proceedings instituted into the Río Negro and Agua Fría massacres, the domestic courts have been apprised of the massacres committed in the chapel at Río Negro and at Los Encuentros. The testimony has been very clear in asserting that at least 86 people were tortured and executed in those massacres, most of them women and children and in which a number of persons were forcibly disappeared, two of whom the Commission has been able to identify. In *Memory of Silence*, the CEH made reference to those massacres in its analysis of the Río Negro Case. Even so, the State has never instituted an inquiry into these facts.

387. As the Court and the Commission have said time and time again, when the allegation is of a crime that can be prosecuted *ex officio*, the State must undertake the necessary investigations and pursue the criminal case to the end.<sup>430</sup> In such cases, this is the proper avenue for clarifying the facts, prosecuting those responsible and setting the penalties prescribed by law, as well as making other forms of reparation possible. Thus, where crimes involved can be prosecuted *ex officio*, as in the present case, the State must undertake the respective investigations on its own initiative, but did not.

388. Within the domestic proceedings, constant reference is made to the fact that various persons disappeared at Los Encuentros. These comments did not escape the Commission’s notice. Under the laws in force in Guatemala at the time of the events, kidnapping was a crime prosecuted by the State, and “criminal prosecution of such cases [came] under the jurisdiction of the Public Prosecutor’s Office.”<sup>431</sup> The law also provided that “the judges and the authorities that the law prescribes shall act *ex officio* upon learning, through whatever means, that a crime has been committed. [...]”<sup>432</sup> It is evident that in the present case, neither the Public Prosecutor’s Office nor the judges instituted any investigation.

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<sup>430</sup> I/A Court H.R., *Case of Baldeón García*. Judgment of April 6, 2006. Series C No. 147; I/A Court H.R., *Case of the Pueblo Bello Massacre*. Judgment of January 31, 2006. Series C No. 140; See also Report No. 52/97, Case 11,218, *Arges Sequeira Mangas*, Annual Report of the IACHR 1997.

<sup>431</sup> Article 68, paragraph two, Code of Criminal Procedure in force in Guatemala in 1981. Article 77 provided that:

Any victim of a criminal offense shall, within the period that this Code prescribes, file a complaint so that criminal, civil or other action may be brought. Failure to file a formal complaint shall not imply waiver of civil action.

Nevertheless, if the aggrieved parties fail to bring a complaint or if they are unable to be a party to the case, the Public Prosecutor’s Office shall bring the two actions on their behalf; they shall retain the right to be informed by the Public Prosecutor’s Office and to cooperate with it, taking the measures that they deem necessary for the best outcome of their case.

<sup>432</sup> Article 68, paragraph three, Code of Criminal Procedure in force in Guatemala in 1981

389. Moreover, and regardless of its obligations under domestic law, in the *Case of Rosendo Radilla*, the Court held that:

[...] an investigation is to be launched whenever there is reasonable cause to suspect that a person has been subjected to forced disappearance.<sup>433</sup> This obligation exists whether or not a complaint is filed, since in cases of forced disappearance, international law and the general obligation to ensure require that a serious, impartial and effective investigation of the case be undertaken *ex officio* and without delay. This is a fundamental element that will determine whether or not certain rights violated by forced disappearances, such as the right to personal liberty, the right to humane treatment and the right to life will be protected.<sup>434</sup> Having said this, no matter what the case, any state authority, public official or private individual who has information about measures intended to bring about the forced disappearance of persons shall report them immediately.<sup>435</sup> [...]

390. Under the American Convention, it was incumbent upon Guatemala to investigate, with all due diligence, the facts that occurred in the chapel at Río Negro and at Los Encuentros. Guatemala recommitted itself to that obligation when it ratified the Inter-American Convention to Prevent and Punish Torture, the Convention of Belém do Pará and the Inter-American Convention on Forced Disappearance of Persons. Whereas the State should have been vigilant to ensure that the obligation was respected, it did nothing to investigate the events to prevent them from going unpunished.

*Concerning the case into the massacre at Xococ*

391. The Commission observes that the evidence in the Commission's record on this case proves that an exhumation was conducted in the village of Xococ in September 2001 by order of the Departmental Judge of First Instance of Baja Verapaz. The report prepared by the Guatemalan Forensic Anthropology Foundation states that while it recovered 44 skeletal remains, it was able to identify two victims. Nevertheless, it stated that it did not discount the "likelihood that the number of individuals originally buried was higher than the number of those recovered." In its report, the Guatemalan Forensic Anthropology Foundation recommended DNA analysis to identify more victims.

392. The Commission does not have the court record of the proceedings conducted into the Xococ massacre, despite having requested them from the State. Therefore, the IACHR does not have information on how the inquiry is proceeding. The petitioners, for their part, have said that they, too, have no information of any progress in that investigation.

*Concerning the case into the Río Negro (Pacoxom) and Agua Fría massacres*

a) Failure to investigate acts of torture

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<sup>433</sup> Cf. Article 12.2 of the International Convention for the Protection of All Persons from Enforced Disappearance and Article 13 of the Declaration on the Protection of All Persons from Enforced Disappearance. Also, the Declaration and Programme of Action of Vienna approved by the World Conference on Human Rights on June 25, 1993, reaffirms that: "it is the duty of all States, under any circumstances, to make investigations whenever there is reason to believe that an enforced disappearance has taken place on a territory under their jurisdiction and, if allegations are confirmed, to prosecute its perpetrators." (para. 62).

<sup>434</sup> Cf. *Case of the Pueblo Bello Massacre v. Colombia. Merits, Reparations and Costs*. Judgment of January 31, 2006. Series C No. 140, para.145, and *Case of Anzualdo Castro v. Peru*, para.65.

<sup>435</sup> Cf. *Case of Rosendo Radilla*, par. 114; and *Case of Anzualdo Castro v. Peru*, para.65.

393. From the testimony given in the criminal case and the CEH report, the State had official knowledge of the acts of torture committed against the population of the community of Río Negro and of other forms of sexual violence involving women and children. Even so, the State failed to launch any investigation to clarify what happened and prosecute those responsible.<sup>436</sup> The Inter-American Court has written the following on this subject:

[...]the failure to investigate serious violations of the right to humane treatment, such as torture and sexual violence in armed conflicts and/or as part of systematic patterns,<sup>437</sup> constitutes a breach of the State's obligations in relation to grave human rights violations, which infringe non-derogable norms<sup>438</sup> (*ius cogens*) and generate obligations for the States<sup>439</sup> such as investigating and punishing those practices, in conformity with the American Convention and in this case in light of the ICPPT and the Convention of Belém do Pará.<sup>440</sup>

394. The State's obligation to investigate and punish human rights violations must be undertaken in a serious manner. The Court has held that:

In certain circumstances, it may be difficult to investigate acts that violate an individual's rights. The duty to investigate, like the duty to prevent, is not breached merely because the investigation does not produce a satisfactory result. Nevertheless, it must be undertaken in a serious manner and not as a mere formality preordained to be ineffective. An investigation must have an objective and be assumed by the State as its own legal duty, not as a step taken by private interests that depends upon the initiative of the victim or his family or upon their offer of proof, without an effective search for the truth by the government. This is true regardless of what agent is eventually found responsible for the violation. Where the acts of private parties that violate the Convention are not seriously investigated, those parties are aided in a sense by the government, thereby making the State responsible on the international plane.<sup>441</sup>

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<sup>436</sup> Under articles 27 and 69 of the 1973 Guatemalan Criminal Code, in force at the time of the events in this case, the State had the authority to investigate and individualize the various crimes committed and any aggravating circumstances.

<sup>437</sup> Various international courts have spoken to this point. Thus, the International Criminal Tribunal for the Former Yugoslavia has described sexual violence as comparable to torture and other cruel, inhuman and degrading treatment, when it is committed as systematic practice against a civil population and for the purpose of obtaining information, or for punishment, intimidation, humiliation or discrimination against the victim or a third party. Cf. *ICTY, Trial Ch II. Prosecutor v. Anto Furundzija*. Judgment, Dec. 10, 1998. paras. 267. and 295; *ICTY, Trial Ch II. Prosecutor v. Delalic et al (Celebici case)*. Judgment, Nov. 16, 1998. paras. 941; *ICTY, Appeals Ch. Prosecutor v. Delalic et al (Celebici case)*. Judgment, Feb. 20, 2001. paras. 488, 501; and *ICTY, Trial Ch II. Prosecutor v. Kunarac et al*. Judgment, Feb. 22, 2001. paras. 656, 670, 816. The International Criminal Court for Rwanda has also compared rape to torture and wrote that rape can constitute torture if committed by or with the acquiescence, consent or at the instigation of a public official. Cf. *ICTR, Trial Ch I. Prosecutor v. Akayesu, Jean-Paul*. Judgment, Sept. 2, 1998, paras. 687, 688. For its part, the European Court of Human Rights that rape can constitute torture if committed by state agents against persons within their custody. Cf. *ECHR. Case of Aydin v. Turkey*. Judgment, Sep. 25, 1997. Paras. 86, 87, y *Case of Maslova and Nalbandov v. Russia*. Judgment. Jul. 7, 2008. Para. 108.

<sup>438</sup> Cf. *Case of Goiburú et al. v. Paraguay*, par. 128; *Case of the Rochela Massacre v. Colombia*, par. 132, and *Case of Anzualdo Castro v. Peru*, para.59.

<sup>439</sup> Cf. *Case of Goiburú et al. v. Paraguay*, para.131.

<sup>440</sup> Cf. I/A Court H.R., *Case of the Dos Erres Massacre*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 24, 2009. Series C No. 211, para.140.

<sup>441</sup> I/A Court H.R., *Case of Velásquez Rodríguez*. Judgment of July 29, 1988. Series C No. 4, para.177. For its part, the Constitutional Court of Colombia has written that: "International law has said that for the effective protection of human rights, it is insufficient for the victims and injured parties to be solely given indemnification for the damages suffered; this is because truth and justice are necessary if a society is to avoid repeating those situations that lead to grave human rights violations, and in addition, because recognizing the inherent dignity and equal and inalienable rights of all human beings requires that the judicial remedies designed by states be geared toward comprehensive redress for victims and injured parties, including economic indemnification and access to justice to establish the truth about what happened and to seek, through institutional channels, the just punishment of the guilty." Judgment C-228/02 of April 3, 2002.

395. Furthermore, the Commission recalls that the ICTY has held that “[t]he condemnation and punishment of rape becomes all the more urgent when it is committed by, or at the instigation of, a public official, or with the consent or acquiescence of such official [...]”<sup>442</sup>

396. The Commission observes that the investigation in the domestic jurisdiction has been neither thorough nor exhaustive, as only the violations of the right to life are mentioned, and not the attendant acts of torture committed against members of the community of Río Negro and the other acts of violence committed against women and children.

397. Based on its obligations as set forth in articles 8(1) and 25(1) of the Convention, articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture, and Article 7(b) of the Convention of Belém do Pará, the State should have undertaken, *ex officio* and without delay, a serious, impartial and effective investigation of the violations of the right to life and the right to humane treatment committed in connection with the massacres. However, as is evident from the record of the proceedings in the case in the domestic courts, it failed to do so.

**b) Failure to prosecute those responsible for the massacres at Río Negro and Agua Fría and the failure to identify remains**

398. It has been established that seven former patrol members were convicted in the death of 26 of the 148 persons whose remains were exhumed at Río Negro (and which, according to the testimony, could be as high as 199). Guilt was established based on the identification of 3 of those remains and the testimony of survivors who named another 24 persons who died in the massacre. On the other hand, it has been proven that no one has been prosecuted for the arbitrary executions of 128 individuals exhumed –at least 14 according to the forensic anthropology report– in Agua Fría on the grounds that none of the victims could be identified because the bodies were burned beyond recognition.

399. First, although a handful of individuals are serving sentences for a few of the extrajudicial executions committed at Río Negro, no one has been made to answer for the murders of the other persons killed in that massacre on the grounds that the victims have not been identified; other persons who have been convicted have not yet been taken into custody. The effect of the decision of the domestic courts not to prosecute the events in Agua Fría because the victims were burned beyond recognition is that no one is being made to answer for that massacre.

400. The Commission observes that despite the witness statements and allegations making reference to a larger number of deaths, the State did not continue to carry out the work of searching for and locating the other persons. In addition, the Commission observes that more than 16 years after the exhumation of the remains from the Massacre of Río Negro (Pacoxom) and 14 years after the exhumation of the remains from the village of Agua Fría, Guatemala has only fully identified the remains of three persons, given their physical features, and has not taken the measures necessary, such as DNA tests, to identify all the other remains, which has led to impunity in those cases.

401. The Commission also observes that numerous pieces of testimony make reference to disappearances, specifically during the Los Encuentros massacre. The State has not undertaken any investigations in this regard, thereby violating the disappeared’ rights to judicial guarantees and to judicial protection.

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<sup>442</sup> *Celebici Case* No. IT-96-21-T, Judgment, para. 495, November 16, 1998.

402. Finally, the Commission recalls that the next of kin of victims of gross human rights violations are entitled to a clarification of the facts. The Court has held that:

[...] every person, including the next of kin of victims of grave human rights violations, has the right to know the truth. Consequently, the next of kin of the victims and society as a whole must be informed of everything that happened concerning such violations.<sup>443</sup> The right to the truth is subsumed in the right of the victim or his next of kin to obtain clarification of the facts relating to the violations and the corresponding responsibilities from the competent State organs, through the investigation and prosecution established in Articles 8, 25, and 1.1 of the Convention.<sup>444</sup>

403. As the Court has held, “within the duty to investigate exists the right of the victim’s next of kin to know what happened to them, and, when applicable, to know where their remains lie. It is the State’s responsibility to satisfy these fair expectations using the means at its disposal.”<sup>445</sup>

404. As the record of the case in the domestic courts reveals, the State has not done a thorough identification of the exhumed remains, or taken other measures aimed at identifying the remains of the other persons executed in the massacres at Río Negro and Agua Fría. Consequently, the State has violated the right of the next of kin to know the whereabouts of the victims who were killed and/or forcibly disappeared in those events.

**c) Reasonable time**

405. As the Court has written, “the right to access to justice implies that the controversy be solved within a reasonable time”<sup>446</sup> since “an extended delay may constitute, in itself, a violation of the judicial guarantees.”<sup>447</sup> With specific reference to Guatemala, the Court has written that:

[...] the Court has proven the undue delay in the Guatemalan judicial system,<sup>448</sup> as well as the violations of the rights to due process.<sup>449</sup> In this sense, the Court indicated that the Judgments on the cases of Myrna Mack Chang, Maritza Urrutia, Plan de Sanchez Massacre, Molina Theissen and Tiu Tojin, all on human rights violations during the armed conflict in Guatemala, [which occurred] 13, 11, 22, 22 and 17 years after the events, respectively, the

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<sup>443</sup> I/A Court H.R., *Case of Carpio Nicolle et al.* Judgment of November 22, 2004. Series C No. 117, para.128; I/A Court H.R., *Case of the Plan de Sánchez Massacre.* Judgment of November 19, 2004. Series C No. 116, para.97; I/A Court H.R., *Case of Tibi.* Judgment of September 7, 2004. Series C No. 114, para.257.

<sup>444</sup> I/A Court H.R., *Case of Bámaca Velásquez.* Judgment of November 25, 2000. Series C No. 70, para.201.

<sup>445</sup> I/A Court H.R. *Case of the Dos Erres Massacre.* Preliminary Objection, Merits, Reparations and Costs. Judgment of November 24, 2009. Series C No. 211, para.147.

<sup>446</sup> Cf. *Case of Suárez Rosero v. Ecuador. Merits, supra* note 137, paragraphs. 71 to 73; *Case of Ticona Estrada et al. v. Bolivia, supra* note 135, para.79, and *Case of Valle Jaramillo et al. v. Colombia, supra* note 21, para.154.

<sup>447</sup> Cf. *Case of Hilaire, Constantine and Benjamin et al. v. Trinidad and Tobago.* Merits, Reparations and Costs. Judgment of June 21, 2002. Series C No. 94, para.145; *Case of Valle Jaramillo et al. v. Colombia, supra* note 21, para.154, and *Case of Anzualdo Castro v. Peru, supra* note 28, para.124.

<sup>448</sup> “The Guatemalan system for justice administration was inefficient in guaranteeing compliance with the law and the protection of the rights of the victims and their next of kin in almost all of the human rights violations committed at that time.” *Case of Tiu Tojin v. Guatemala, supra* note 17, para.51.

<sup>449</sup> “[U]ntil today, the courts of justice of Guatemala have proven incapable of effectively investigating, processing, prosecuting, and punishing those responsible for the human rights violations” and that “[i]n numerous occasions the courts of justice have acted subordinated to the Executive Power or military influence, ‘applying rules or legal provisions contrary to due process or omitting applying the corresponding ones’”. *Case of Bámaca Velásquez.* Monitoring Compliance with Judgment. Order of the Court of January 27, 2009, para.22. Cf. *Case of Myrna Mack Chang v. Guatemala, supra* note 18, para.134(1)3).

State's obligations of investigating and ending the impunity remained unfulfilled,<sup>450</sup> which evidences a pattern of judicial delay in Guatemala in investigations of grave human rights violations.<sup>451</sup>

406. In the *cas d'espèce*, it has been proven that the unwarranted delay in the criminal proceedings, which amounts to more than 16 years, is attributable not just to the abusive and indiscriminate use of appeals and motions on the part of the defendants, but also to a lack of interest and willingness on the part of the State's judicial authorities who have presided over those proceedings. This has caused a delay in the criminal proceedings that the State itself acknowledges where it states that "it appears from the information provided by the Constitutional Court and by the petitioners that in fact the criminal proceedings initiated by the petitioners have not moved as expeditiously as they ideally should."

407. In the present case, 16 years after the complaint was filed, the case into the massacres at Río Negro and Agua Fría is still open with respect to a number of material and intellectual authors. Furthermore, almost 30 years have passed since the massacres in the Río Negro chapel and at Los Encuentros, yet these two episodes have not been investigated at all. All this constitutes an excessive delay in the administration of justice.

**d) Indiscriminate recourse to appeals and motions, and the authorities' failure to cooperate**

408. As described in the section of this report that dealt with the facts of the case, since the start of the criminal proceedings instituted for the massacres at Río Negro and Agua Fría, counsel for the defendants have filed or entered at least 9 appeals, 3 petitions seeking *amparo* relief, 2 cassation appeals, one appeal for reversal, and one constitutionality challenge.

409. Most of these appeals were declared unfounded or out of order by the courts that heard them, both in first and second instance. This demonstrates the defense's obvious strategy of delay, which the intervening courts accommodated - in the words of the Inter-American Court - "forgetting that their function is not exhausted by enabling due process that guarantees defense at a trial, but that they must also ensure, within a reasonable time, the right of the victim or his or her next of kin to learn the truth about what happened and for those responsible to be punished."<sup>452</sup>

410. The Court has also written that "[t]he right to effective judicial protection therefore requires that the judges direct the process in such a way that undue delays and hindrances do not lead to impunity, thus frustrating adequate and due protection of human rights."<sup>453</sup>

411. In the judicial case prosecuted into the events of the Río Negro and Agua Fría massacres, the courts tolerated the abusive use of remedies as delaying tactics; the lack of due diligence was exacerbated by the fact that some courts were slow in issuing their decisions on the

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<sup>450</sup> Cf. *Case of Myrna Mack Chang v. Guatemala*, *supra* note 18, para.272; *Case of Maritza Urrutia v. Guatemala*. Merits, Reparations and Costs. Judgment of November 27, 2003. Series C No. 103, para.176; *Case of the Plan de Sánchez Massacre v. Guatemala*. Reparations and Costs. Judgment of November 19, 2003. Series C No. 116, par. 95; *Case of Molina Theissen v. Guatemala*. Reparations and Costs. Judgment July 3, 2004. Series C No. 108, para.79, and *Case of Tiu Tojin v. Guatemala*, *supra* note 17, para.72. Cited in the *Case of Bámaca Velásquez v. Guatemala*. Monitoring compliance with Judgment, *supra* note 142, para.23.

<sup>451</sup> I/A Court H.R., *Case of the Dos Erres Massacre*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 24, 2009. Series C No. 211, para.134.

<sup>452</sup> I/A Court H.R., *Case of Bulacio*. Judgment of September 18, 2003. Series C No. 100, para.114.

<sup>453</sup> I/A Court H.R., *Case of Bulacio*. Judgment of September 18, 2003. Series C No. 100, para.115.

appeals. The Commission should note that it has no information as to when or if the constitutionality challenge filed by the defense in 2005 was decided (*supra*).

412. The permissiveness and tolerance shown by the court authorities for the defense's delaying tactics in this case has meant that not all the parties responsible for the massacres have been convicted and constitute a violation of the State's international obligation to prevent and protect human rights, and a violation of the right of the victims and their next of kin to know the truth and have those responsible identified and punished.

413. With specific reference to petitions seeking *amparo* relief, which were used a number of times and to no effect, the Commission observes that the provisions governing the *amparo* process are such that they invite the abuse of this practice for delaying purposes, in violation of Article 2 of the American Convention. The Court wrote the following in this regard:

[...]the Court believes that the appeal for legal protection is an adequate remedy to protect individuals' human rights, since it is suitable to protect the juridical situation infringed, as it is applicable to acts of authority that imply a threat, restriction or violation of the protected rights. However, in the instant case the current structure of the appeal for legal protection in Guatemala and its inadequate use have impeded its true efficiency, as it is not capable of producing the result for which it was conceived.

[...] the general duty of the State to adapt its internal law to the provisions of the American Convention so as to guarantee the rights embodied therein, as established in Article 2, implies the adoption of measures in two regards. On one hand, this includes the suppression of laws and practices of any nature that imply a violation to the guarantees set forth in the Convention. On the other hand, it implies the promulgation of laws and the development of practices that are conducive to an efficient observance of these guarantees,<sup>454</sup> which has not been materialized in the case of the appeal for legal protection. ...<sup>455</sup>

[...] within the framework of the current Guatemalan legislation, in the instant case the appeal for legal protection has been transformed into a means to delay and hinder the judicial process, and into a factor for impunity. [...]

414. The Commission therefore considers that the *amparo* petition was used in this case as a delaying tactic that aided and abetted impunity, in violation of articles 8(1) and 25 of the Convention and constitute a failure to fulfill the obligations undertaken in articles 1(1) and 2 thereof.

415. Particular mention should be made of the lack of cooperation on the part of military authorities. In the investigations, the attorney from the Public Prosecutor's Office requested information from military personnel as to the names of the persons who were members of the Xococ PAC. The response received was that there was no military outpost in that area, that it did not have information on the matter and instead referred the attorney to another outpost, all of which served to delay the process. Furthermore, the military authority did not disclose the name of the officer in charge of the Army outpost in the village of Xococ and how much information the Army high command had about these events. This lack of cooperation is also in evidence in the lack of information about the Guatemalan Army platoons based in the area, despite the fact that all the testimonies point out that, in addition to patrollers, soldiers had also had a hand in the events denounced.

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<sup>454</sup> Cf. *Case of Castillo Petruzzi et al. v. Peru*. Merits, Reparations and Costs. Judgment of May 30, 1999. Series C No. 52, para. 207; *Case of Heliodoro Portugal v. Panama*, *supra* note 23, par. 180, and *Case of Reverón Trujillo v. Venezuela*, *supra* note 29, para. 60.

<sup>455</sup> I/A Court H.R., *Case of the Dos Erres Massacre*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 24, 2009. Series C No. 211, paragraphs 121 and 122.

416. The lack of cooperation on the part of the authorities is also obvious by the fact that the Police have done nothing to carry out the arrest warrants issued for some of those accused, namely, Víctor González López, Miguel Alvarado Sic, Serapio Lajuj Cuxum and Antonio González Solares. While the Commission is not unmindful of the efforts reported by the State regarding the measures taken to establish the whereabouts of the intellectual author of these events, retired colonel Antonio González Solares, the fact that he has not been apprehended is conspicuous especially since a warrant for his arrest was issued back in 2003, and he has still not been taken into custody, even though he collects a monthly pension from the Ministry of Defense.

417. Here the Commission discovered a disturbing pattern of collaboration between certain State bodies and the judicial system, especially the Ministry of Defense which has refused to provide the documentation requested through judicial channels in the investigations underway.<sup>456</sup> At times it has claimed that certain documents are classified for reasons of national security; at other times it has simply said that the requested evidence was incinerated or that it never existed; at other times it has claimed bureaucratic workloads. This posture constitutes obstruction of justice.

418. Summarizing, the Commission finds that the State has not conducted a prompt and effective investigation of the massacres perpetrated against the community of Río Negro, nor has it examined the multiple violations that occurred during the course of those massacres. Furthermore, the State has failed to take the measures necessary to fully identify the remains of the executed persons, or to establish the whereabouts of the disappeared. The Commission finds that the Guatemalan courts have not acted with the necessary diligence and determination to move forward the criminal case to solve all the facts of the massacres and punish all those responsible,<sup>457</sup> thereby obstructing progress in the case.<sup>458</sup>

419. Based on the analysis done in this chapter, the Commission concludes that the Guatemalan State is responsible for violation of articles 8 and 25 of the American Convention, in relation to Article 1(1) thereof, articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture, and Article 7(b) of the Convention of Belém do Pará, to the detriment of the survivors and next of kin of the persons tortured and extrajudicially executed in the various massacres.

420. The Commission further considers that the Guatemalan State is responsible for violation of articles 8 and 25 of the American Convention, in relation to Article 1(1) thereof, Article I of the Inter-American Convention on Forced Disappearance of Persons, and Article 7(b) of the Convention of Belém do Pará, to the detriment of the disappeared persons and their next of kin.

421. Finally, the Commission considers that the Guatemalan State violated articles 8(1) and 25 of the American Convention and failed to honor the obligations it undertook in Articles 1(1) and 2 thereof.

## **7. Right to a name (Article 18)**

422. The petitioners alleged that the State violated the right to a name with respect to the children of Río Negro taken by the Xococ patrollers and forced to live with their assailants. The

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<sup>456</sup> IACHR, *Fifth Report on the Situation of Human Rights in Guatemala* (2001), Chapter IV, para. 34.

<sup>457</sup> I/A Court H.R., *Case of Myrna Mack Chang*. Judgment of November 25, 2003. Series C No. 101, para.203.

<sup>458</sup> I/A Court H.R., *Case of Myrna Mack Chang*. Judgment of November 25, 2003. Series C No. 101, para.208.

Commission observes that while many other articles of the Convention were violated in the events of this case, it does not have sufficient evidence to prove that the children's right to a name was violated as well.

#### **D. IDENTIFICATION OF VICTIMS**

423. In the admissibility report on this case, the Commission determined that, based on the information supplied as of then, the number of victims was as follows: 89 massacred in the village of Xococ; 190 massacred in the village of Río Negro; 57 massacred and forcibly disappeared in the village of Los Encuentros; 116 massacred in the hamlet of Agua Fría, 51 massacred at different times between 1980 and 1985 as a result of systematic persecution, and 17 children enslaved.

424. In the admissibility report the Commission stated that given the complexity of the case, the list of persons identified could be expanded to include other alleged victims of the events described in the petition. Hence, the Commission would, during the merits phase, take up the analysis of the additional names of alleged victims.<sup>459</sup> In the admissibility report's characterization of the facts, the Commission included, in addition to the four 1982 massacres, the facts related to the alleged forced disappearance of 7 representatives of the Río Negro community, which happened in early 1980, and the execution of 7 members of the community on March 4, 1980.<sup>460</sup>

425. Since the merits report, the representatives of the victims have presented new lists in which the victim count is even higher: 91 extrajudicially executed in the village of Xococ, 203 extrajudicially executed in the village of Río Negro, 81 extrajudicially executed and forcibly disappeared in the village of Los Encuentros, 128 extrajudicially executed in the hamlet of Agua Fría, 62 extrajudicially executed at various times between 1982 and 1985 as a result of systematic persecution, and 376 next of kin of the victims. They also confirm the information regarding the 17 children enslaved.

426. Furthermore, in its report titled "Memory of Silence," the Commission for Historical Clarification confirmed the following facts based on the testimony received: 74 extrajudicially executed in the village of Xococ, 177 extrajudicially executed in the village of Río Negro, 79 extrajudicially executed and 15 forcibly disappeared in the village of Los Encuentros, and 92 extrajudicially executed in the hamlet of Agua Fría.<sup>461</sup>

##### **1. Concerning the victims extrajudicially executed**

427. The Commission observes that, as the facts proven (*infra*) show, the present case has unique complexities given the internal armed conflict that was the context in which the events occurred and the consequences of the conflict. This explains the discrepancy in the number of victims reported on the lists presented by the petitioners, reported in the report on *Memory of Silence*, those given in the anthropological reports, and the number of death certificates that the petitioners provided.

428. Furthermore, the Commission notes that the forensic anthropological reports prepared on the exhumations conducted at Xococ, Río Negro and Agua Fría, set the minimum

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<sup>459</sup> IACHR, Admissibility Report No. 62/04 of March 5, 2008, Petition 844-2005, Community of Río Negro of the Indigenous Maya People and its members, para. 60.

<sup>460</sup> IACHR, Admissibility Report No. 62/04 of March 5, 2008, Petition 844-2005, Community of Río Negro of the Indigenous Maya People and its members, para. 92 a) and b).

<sup>461</sup> Report of the Commission for Historical Clarification, Volume VI, Illustrative Cases Annex I, pp. 47 to 51.

number of victims based on the remains discovered. Given the amount of time that has passed since the events occurred and the *modus operandi* used in the massacres, there is no way of knowing just what the total number of victims was. It is worth recalling that in all three cases, the reports conclude that the victims died violent deaths; in the specific case of Agua Fría, the victims were burned to death. In the case of Río Negro, only three victims could be identified; only two in Xococ, and none in Agua Fría.

429. The IACHR observes, on the other hand, that the petitioners have presented birth and/or death certificates for some of those whose names appear on the lists of victims of the various massacres. It also notes that some of the death certificates include the "cause of death," where the entries are such causes as the following: "by violence," "unknown", "firearm", "torture" or "presumed dead". While the Commission is grateful that these certificates were presented, it notes that the determination as to who the victims were cannot be made on the basis of these death certificates alone, especially considering the context in which the events occurred, the difficult that next of kin and survivors –if there were any- would have in applying for death certificates, and the lack of progress made in the investigation and identification of the remains from all the massacres.

430. Finally, the Commission observes that the State has known of the various lists of victims sent by the petitioners. It has thus had an opportunity to object to their contents but has not. The State has confined itself to arguing that it would only address matters related to the events of March 13, 1982, and not the other massacres (*supra*), an argument that the Commission rejected in the Admissibility Report.

431. The Commission will therefore consider the following persons as victims of extrajudicial execution: (i) the seven persons extrajudicially executed in the Río Negro chapel in 1980 (paragraph 94); (ii) the 91 extrajudicially executed in the village of Xococ (paragraph 100); (iii) 203 extrajudicially executed in the village of Río Negro (paragraph 117); (iv) 81 extrajudicially executed in the village of Los Encuentros (paragraph 130); (v) 128 extrajudicially executed in the hamlet of Agua Fría (paragraph 134), and (vi) 63 extrajudicially executed at various times between 1980 and 1985 (paragraph 140).

## **2. Concerning the victims of forced disappearance**

432. In its admissibility report, the IACHR deemed that the facts alleged by the petitioners in connection with the seven persons alleged to have been forcibly disappeared in 1980 and the 57 persons alleged as disappeared in Los Encuentros, could characterize forced disappearances.

433. The IACHR recalls that the petitioners have presented birth and/or death certificates for some of the persons named on the lists of victims. It notes that some of the death certificates list a "cause of death" and the entries here include: "by violence", "unknown", "firearm", "torture", and "presumed dead". These death certificates were issued between 2005 and 2007, which was more than twenty years after the fact. Furthermore, concerning the "presumed dead" entry, the Commission notes that according to the petitioners, the entries were done under the 1997 Temporary Law on Personal Identification, which allowed any relative, within the degrees that the law prescribed, to register a death, declaring persons who "had disappeared or were disappeared" to be "presumed dead".<sup>462</sup>

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<sup>462</sup> Article 24 of that law reads as follows: PRESUMED DEATH. At the request of any relative within the legally prescribed degree of kinship, a death may be recorded as a presumed death, in the following cases: 1. If the person has or was disappeared by the following definition: any person who has supposedly been arrested, detained or moved against his or her will or otherwise deprived of his or her freedom, thereby moving said person outside the reach of the law's protection. 2. Continue...

434. The Commission notes that the petitioners have supplied 16 certificates of persons “presumed dead,” including 13 connected to the Los Encuentros massacre and 3 for persons alleged to have disappeared amid the systematic persecution. The Commission observes that the death certificates that list “presumed dead” as the cause of death cannot, by themselves, constitute evidence of a person’s disappearance. Moreover, limiting the proof of a forced disappearance to a document recording a presumed death would be arbitrary. In the instant case, the Commission notes that there are many records that list the cause of death as “unknown”; in many more cases there is no death certificate at all.

435. In the report titled *Memory of Silence*, it was established that during the Los Encuentros massacre, approximately 15 persons, most of them women and children, were put aboard helicopters and were never heard from again. The petitioners alleged that during that massacre, between 15 and 57 people were forcibly disappeared: 15 were boarded onto helicopters, while the others’ bodies were left exposed to the elements in the wake of the massacre. The State did not present any observations in this regard.

436. While the precise number of persons who disappeared in the Los Encuentros massacre has not been determined, a number of clues suggest that at least 15 people were boarded onto helicopters. The IACHR observes that the petitioners have presented a list with the names of the persons executed/disappeared in the Los Encuentros massacre, but have not identified who the disappeared persons are.

437. Nevertheless, based on the evidence in the case file, the IACHR has been able to identify Manuel Chen Sánchez, age two, and Ramona Lajuj, both of whom are mentioned in the testimony of Mrs. Carmen Sánchez Chen,<sup>463</sup> mother and daughter-in-law, respectively, of the two persons. She saw them being boarded on a helicopter on the date of the events. The IACHR also has their respective birth certificates and certificates of presumed death, which enabled the Commission to corroborate the victims’ identity and family kinship.

438. With regard to the other victims whom the petitioners list as disappeared and whose bodies were left exposed to the elements in the wake of the massacre, the Commission considers that, based on the evidence in the case file, one can infer that these people were executed on the day of the events. The Commission therefore has considered these to be executed victims (*supra*).

439. Consequently the Commission concludes that while it is true that at least 15 people were forcibly disappeared in the Los Encuentros massacre after being boarded onto helicopters, the IACHR has only been able to identify Manuel Chen Sánchez and Ramona Lajuj, which is why they will be the only persons regarded as victims of forced disappearance. The other persons listed as victims of the Los Encuentros massacre will be regarded as extrajudicially executed victims, as the Commission has no further evidence in the matter, independently of what the Commission will decide in the chapter on recommendations (*infra*).

440. Finally, in the admissibility report the characterization of the facts included those related to the alleged forced disappearance of seven representatives of the community of Río Negro

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...continuation

If the person disappeared during an armed confrontation in which he or she took part, or is in the zone of operations or in an area of widespread violence, after more than five years have passed. [...]

<sup>463</sup> Testimony given by Carmen Sánchez Chen on July 2, 2009, in the presence of Notary Edgar Fernando Pérez Archila, Document in the record of the case with the IACHR, Folder 5, and supplied by the petitioners on August 17, 2009, and entered into the record at the IACHR on September 9, 2009.

in early 1980. In the merits phase of the proceedings, the petitioners alleged that these leaders were participating in the negotiations with the National Electrification Institute (INDE). Here, the Commission finds that it was not supplied with sufficient evidence to determine under what circumstances these seven individuals allegedly disappeared or even their identity.

### 3. Concerning the rape victims

441. Various pieces of evidence in the case file reveal that the women, many of whom were young and even girls, were raped before being extrajudicially executed in the Xococ, Río Negro and Los Encuentros massacres. This *modus operandi* of raping indigenous women has been documented in the CEH's *Memory of Silence*<sup>464</sup> and the REMHI Project's *Guatemala: Never Again!*.<sup>465</sup> The domestic courts have also taken as proven fact that the women of Río Negro were raped.<sup>466</sup>

442. In this connection, the Commission observes that there are few survivors of these massacres, which limits the Commission's ability to identify each and every one of the women who were raped and then executed. Nevertheless, some of the testimony<sup>467</sup> did identify, by name, three of the women who were raped before being executed in the various massacres committed against the community of Río Negro. In referencing them, the Commission will only use their initials, even though the women in question are named in the testimony in question. The initials are J.O.S., V.C., and M.T.

443. It is worth noting that the women who survived the massacres have for many years chosen not to reveal the fact that they were rape victims. In cases where indigenous women are raped, the Commission has emphasized that the pain and humiliation they endure is compounded by the fact that they are indigenous women.<sup>468</sup> They face "the condemnation of the members of their community if they report what has been done to them."<sup>469</sup> In the specific case of indigenous women in Guatemala, the CEH has written that:

Documenting the sexual violence that women experience poses problems of various kinds, since some of these women have internalized the impact that this type of aggression had on them, on their families and on their communities. Similarly, in order to understand this particular type of violence amid the internal armed conflict in Guatemala, one has to bear

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<sup>464</sup> CEH, *Memory of Silence*, Chapter II, Human Rights Violations and Act of Violence, Volume III, Sexual violence against women.

<sup>465</sup> REMHI, *Guatemala Never Again* (1998), Part I, "The impact of the violence", section six, "From violence to the affirmation of women." Translation by Thomas Quigley.

<sup>466</sup> Copy of the ruling issued by the Trial Court for Criminal, Drug-trafficking and Environmental Offenses of Salamá, Baja Verapaz, case number 28-2003-OF of May 28, 2008, supplied by the petitioners in their note of July 1, 2008, pp. 335 and 336.

<sup>467</sup> Testimony of Jesús Tecu Osorio, February 1995. Criminal Case 001-98-1, Folder 2. Testimony given by Antonia Osorio Chen on June 24, 2009, in the presence of Notary Edgar Fernando Pérez Archila, Document in the record of the case with the IACHR, folder 5, supplied by the petitioners on August 17, 2009, and entered into the record at the IACHR on September 9, 2009. Testimony given by Carmen Sánchez Chen, July 2, 2009, in the presence of Notary Edgar Fernando Pérez Archila, Document in the record of the case with the IACHR, folder 5, supplied by the petitioners on August 17, 2009, and entered into the record at the IACHR on September 9, 2009.

<sup>468</sup> IACHR, Merits Report No. 53/01, Ana, Beatriz and Cecilia González Pérez (Mexico), April 4, 2001. At: <http://www.cidh.oas.org/annualrep/2000eng/ChapterIII/Merits/Mexico11.565.htm>

<sup>469</sup> IACHR, Raquel Martín Mejía, Report No. 5/96, Case 10,970, March 1, 1996. At: <http://www.cidh.oas.org/annualrep/95eng/Peru10970.htm>.

ethnic affiliation in mind, since many of the women who endured this violence were Maya women.<sup>470</sup>

444. Based on the foregoing, and given the context of extermination in which the events of this case occurred –as will be discussed in the chapter on proven facts- the survivors of the various massacres have found it difficult to obtain justice in the present case. Those difficulties are compounded many times over in the case of women who have been victims of sexual violence.

445. Having said this, one survivor, María Eustaquia Uscap Ivoy, testified in the domestic court about the Pacoxom massacre on February 13, 1982, in which she was raped by civil patrollers and military personnel. She confirmed that information during the working meeting on this case held at Commission headquarters, where representatives of the State and of the victims were present.

446. During Commissioner Abramovich's visit to Río Negro and Pacux, at least two women who survived the massacres told him in confidence that they had been raped before they managed to escape. Because that testimony was given confidentially and the State has no knowledge of it, the Commission is unable to include these women as rape victims.

447. Therefore, the IACHR will regard the four fully identified women as rape victims, namely: J.O.S., V.C., M.T. and María Eustaquia Uscap Ivoy, without prejudice to what the Commission will determine in the chapter on recommendations as regards the State's obligation to investigate and clarify the facts (*infra*).

#### **Concerning the victims of forced labor**

448. While the petitioners initially alleged that 18 children were taken by civil patrollers to their own homes and enslaved subsequent to the massacre at Río Negro, they later make reference to and name only 17 of them. For that reason, the IACHR will consider those 17 children as alleged victims of forced labor (paragraph 118).

#### **5. Concerning the survivors and the victims' next of kin**

449. The Commission notes that the petitioners presented a list of survivors-next of kin totaling 354 persons. Nevertheless, the representatives have not indicated which are survivors and next of kin of victims; or which of them are simply the next of kin of the Río Negro victims. Then, at the Commission's request, the petitioners presented some names of persons whom they classified as survivors of the massacres, because they had been present at the scene of the events and had escaped by one means or another and so testified, and the "rest of the population who, [not having been at the scene of the events for one reason or another<sup>471</sup>] were thus spared from becoming the victims of that genocidal campaign, are those whose names appear on the list and are those who are demanding the justice that the State has denied them."

450. For the IACHR, the survivors are those persons who, having been at the scenes of the various massacres, managed to escape. Thus, based on the evidence in the case file, the

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<sup>470</sup> CEH, *Memory of Silence*, Chapter II, Human Rights Violations and Acts of Violence, Volume III, Sexual violence against women, paragraph 30.

<sup>471</sup> "...some people had already gone off to work in the community, some to collect firewood and others to cut pine needle. When the assailants entered homes they took away only those people inside." Case file with the IACHR, folder 6, observation presented by the petitioners, dated January 14, 2010.

following will be considered to be survivors: the 17 children subjected to forced labor, and the persons who have given their testimony in this case and who have said that they were present at the scene (paragraph 136). This, notwithstanding what the Commission will decide in the chapter on recommendations (infra). All the other persons included on the list submitted by the petitioners, including the identified survivors, have been considered as next-of-kin of the victims, who number 416 to 418 persons (paragraph 141).

## VI. CONCLUSIONS

451. Based on the considerations of fact and of law contained in the present report, the Commission concludes the following:

1. The massacres against the Río Negro community were planned by Guatemalan State agents with the objective of exterminating the Community. Such massacres constituted genocide. The massacres were executed within scorched-earth (*tierra arrasada*) policy directed by the Guatemalan State against the Mayan people, who were referred as the “enemy within,” in a context of discrimination and racism. These acts implied a violation of the fundamental human rights of individuals, and of indigenous peoples, as well as a violation of the values shared by the Inter-American community.

2. The Guatemalan State has not conducted an effective investigation of the massacres perpetrated against the Community of Río Negro, nor has it examined the multiple violations that occurred during the course of those massacres. The Commission finds that the Guatemalan courts have not acted with the necessary diligence to move forward the criminal case to solve all the facts of the massacres and punish all those intellectual and material authors responsible.

3. Furthermore, the Commission concludes that the State has failed to take the measures necessary to fully identify the remains of the executed persons, or to establish the whereabouts of the disappeared.

4. Accordingly, the Commission concludes that the massacres against the Río Negro community and their consequences remain in impunity.

5. Consequently, the Commission considers that the Guatemalan State is responsible for violation of the following articles:

a) Articles 4, 5 and 7 of the American Convention, in relation to Article 1(1) thereof, to the detriment of the members of the community of Río Negro who were extrajudicially executed.

b) Article 19 of the American Convention, in relation to Article 1(1) thereof, to the detriment of the children of the community of Río Negro who were extrajudicially executed.

c) Articles 3, 4, 5 and 7 of the American Convention, in relation to Article 1(1) thereof and Article I of the Inter-American Convention on Forced Disappearance of Persons, to the detriment of Ramona Lajuj and Manuel Chen Sánchez, and in relation to Article 19 of the Convention, to the detriment of Manuel Chen Sánchez;

d) Articles 5 and 11 of the American Convention, in relation to Article 1(1) thereof, to the detriment of J.O.S., V.C., M.T. and María Eustaquia Uscap Ivoy, and in relation to Article 19 of the Convention in the case of J.O.S. and María Eustaquia Uscap Ivoy.

e) Article 5 of the American Convention, in relation to Article 1(1) thereof, to the detriment of the members of the community of Río Negro who survived the massacres, and to the detriment of the next of kin of the members of the community of Río Negro.

f) Articles 6, 17 and 19 of the American Convention, in relation to Article 1(1) thereof, to the detriment of Agustín Chen Osorio; Celestina Uscap Ivoy; Cruz Pérez Osorio; Froilan Uscap Ivoy; Jesús Tecú Osorio; José Osorio Osorio; Juan Chen Chen; Juan Chen Osorio; Juan Pérez Osorio; Juan Uscap Ivoy; Juana Chen Osorio; María Eustaquia Uscap Ivoy; Pedro Sic Sánchez; Silveria Lajuj Tum; Tomasa Osorio Chen; Florinda Uscap Ivoy; and Juan Burrero.

g) Articles 11(1), 12, 16, 21 and 24 of the American Convention, in relation to Article 1(1) thereof, to the detriment of the members of the community of Río Negro.

h) Article 22 of the American Convention, in relation to Article 1(1) thereof, to the detriment of the survivors of the community of Río Negro.

i) Articles 8 and 25 of the American Convention, in relation to Article 1(1) thereof, to the detriment of the next of kin of the victims who were disappeared and executed in the various massacres, and in relation to the disappeared victims.

## **VII. RECOMMENDATIONS**

452. Based on the analysis in this report and the conclusions drawn,

### **THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS RECOMMENDS TO THE GUATEMALAN STATE THAT IT:**

10. Make adequate reparations for the human rights violations proven in the present report, both in the form of pecuniary and non-pecuniary damages, including just compensation, establishment and publication of the historical truth of the events, rehabilitation of the memory of the victims who were killed or were disappeared, implementation of a proper psychosocial treatment program for survivors and the next of kin of the victims who were killed and disappeared, and communal reparations determined by agreement with the survivors of the Río Negro community.

11. Establish a mechanism to identify as many of the victims of the Río Negro massacres as possible and provide whatever is needed to continue the identification process and return the victims' mortal remains.

12. Establish a mechanism to determine who the disappeared persons in the massacres were and the survivors.

13. Locate the disappeared victims' mortal remains and restore them to their next of kin.

14. Establish a mechanism to facilitate full identification of the next of kin of the victims who were executed and disappeared, so that they may claim the reparations they are due.

15. Conduct, conclude and re-open, as the case may be, the domestic proceedings into the human rights violations declared in the present report and conduct an impartial and effective investigation, within a reasonable time, to clarify all the facts, identify the intellectual and material authors and impose the penalties prescribed by law. Specifically, the State must complete the internal proceedings into the Río Negro massacres, reopening it so that it delivers justice for all

victims of the massacres. Furthermore, the State must conduct investigations into the events that occurred in the chapel of Río Negro and at Los Encuentros.

16. Strengthen the capacity of the judicial branch to investigate the facts and punish those responsible, including the materials and techniques needed to ensure that the proceedings unfold properly.

17. Order the appropriate administrative, disciplinary or criminal measures for the actions or omissions committed by state officials that have been instrumental in denying justice and enabling those responsible for the events of the case to go unpunished, or who intervened in measures to obstruct the proceedings being conducted to identify and punish the responsible parties.

18. Adopt the measures necessary to avoid a recurrence of similar events, in furtherance of the obligation to prevent and guarantee the human rights recognized in the American Convention. In particular, implement permanent programs in human rights and international humanitarian law in the armed forces' training schools.

### **VIII. NOTIFICATION**

The Commission decides to forward this report to the Guatemalan State and to give it two months to comply with the recommendations made herein. That two-month period will begin as of the date on which the present report is forwarded to the State, which is not authorized to publish it. The Commission will also notify the petitioners that a report has been adopted under Article 50 of the Convention.

Done and signed in the city of Washington, D.C., on the 14th day of the month of July, 2010. (Signed): Felipe González, President; Paulo Sérgio Pinheiro, First Vice-President; Dinah Shelton, Second Vice-President; María Silvia Guillén, José de Jesús Orozco Henríquez, Rodrigo Escobar Gil, and Luz Patricia Mejía Guerrero, members of the Commission.

The undersigned, Mario López-Garelli, by authorization of the Executive Secretary of the Inter-American Commission on Human Rights, in keeping with Article 47 of the Commission's Rules of Procedure, certifies that it is a true copy of the original deposited in the files of the Secretariat of the IACHR.