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INTER-AMERICAN COURT OF HUMAN RIGHTS

CASE OF THE MEMBERS OF CHICHUPAC VILLAGE AND NEIGHBORING COMMUNITIES OF THE MUNICIPALITY OF RABINAL
JUDGMENT OF NOVEMBER 30, 2016

(Preliminary objections, Merits, Reparations and Costs)

In the case of the *Members of Chichupac Village and Neighboring Communities of the Municipality of Rabinal,*

the Inter-American Court of Human Rights (hereinafter the "Inter-American Court" or "the Court"), composed of the following judges:

Roberto F. Caldas, President;
Eduardo Ferrer Mac-Gregor Poisot, Vice President
Eduardo Vio Grossi, Judge
Humberto Antonio Sierra Porto, Judge
Elizabeth Odio Benito, Judge
Eugenio Raúl Zaffaroni, Judge
L. Patricio Pazmiño Freire, Judge

also present,

Pablo Saavedra Alessandri, Registrar
Emilia Segares Rodríguez, Deputy Registrar,

pursuant to Articles 62(3) and 63(1) of the American Convention on Human Rights (hereinafter "the American Convention" or "the Convention") and Articles 31, 32, 42, 65 and 67 of the Rules of Procedure of the Court (hereinafter "the Rules"), delivers this judgment, which is structured as follows:

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I
INTRODUCTION OF THE CASE AND CAUSE OF ACTION

1. *The case submitted to the Court.* On August 5, 2014, the Inter-American Commission of Human Rights (hereinafter "the Inter-American Commission" or "the Commission") submitted to the jurisdiction of the Inter-American Court the case of the *Members of the village of Chichupac and Neighboring communities of the Municipality of Rabinal against the State of Guatemala* (hereinafter "the State" or "Guatemala") pursuant to Articles 51 and 61 of the American Convention and Article 35 of the Rules of the Court. The case relates to the alleged massacre perpetrated in the village Chichupac on January 8, 1982, as well as to alleged extrajudicial executions, torture, forced disappearances, rapes, failure to render aid and assistance, unlawful arrests, forced displacement and forced labor "committed to the detriment of the Maya Achí indigenous people of Chichupac village and neighboring communities […] of the municipality of Rabinal, during the period between 1981 and 1986." According to the Commission, these facts "were not isolated events within Guatemala's internal armed conflict, but rather part of a State policy, framed within the so-called national security doctrine and the notion of an 'enemy within'. The goal of the policy was to eliminate the supposed social base of the insurgent groups at the time." In addition, the case addresses the alleged failure to clarify the facts, punish all those responsible and provide reparations to the alleged victims, as well as the alleged genocide against the Maya indigenous people in Guatemala.

2. *Proceeding before the Commission.* The following proceedings took place before the Commission:

a) *Petition.* On December 13, 2007, the *Asociación Bufete Jurídico Popular* submitted the initial petition to the Commission.

b) *Admissibility Report. On* November 1, 2010, the Commission adopted Admissibility Report No. 144/10.[1]

c) *Report on the Merits.* On April 2, 2014, the Commission approved Merits Report No. 6/14[2] pursuant to Article 50 of the Convention (hereinafter "the Merits Report"), in which it reached a series of conclusions and made various recommendations to the State:

Conclusions. The Commission concluded that the Guatemalan State was responsible for the violation of the rights protected under Articles 3, 4, 5, 7, 8, 11, 12, 16, 17, 19, 21, 22, 23, 24 and 25 of the American Convention, read in conjunction with the obligations established in Article 1(1) thereof; Article I of the Inter-American Convention on Forced Disappearance of Persons, and Article 7 of the Inter-American Convention for the Prevention, Punishment and Eradication of Violence against Women, to the detriment of the alleged victims.

Recommendations. Consequently, the Commission made the following recommendations to the State:

1. Make adequate reparations for the individual and collective human rights violations stated in this report taking into account the material, moral and cultural aspects, including fair reparations, the establishment and dissemination of the true historic facts, the revival of the memory of the deceased and missing victims, the implementation of a psychosocial program that pays attention to the particular needs of the survivors and those of the families of the deceased and missing victims. The collective reparations must be implemented with the consent of the survivors of Chichupac village and its neighboring communities with the aim of reestablishing their community life as members of the Maya Achi indigenous people, and in particular, their special bond with their lands.

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[1] *Cf.* Admissibility Report No. 144/10, Case of the Residents of the Village of Chichupac and the Hamlet of Xeabaj, Municipality of Rabinal v. Guatemala, of November 1, 2010 (evidence file, folios 3087 to 3105).

[2] *Cf.* Merits Report No. 6/14, Case of Residents of the Village of Chichupac and Neighboring Communities, Municipality of Rabinal v. Guatemala, of April 2, 2014 (merits file, folios 6 to 88).

2. Establish a mechanism to identify as many of the victims executed in the present case 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 restore 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 to which they are entitled.

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.

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 were involved 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.

d) *Notification to the State.* On May 5, 2014, the Commission notified the Merits Report to the State, granting it two months to report on compliance with the recommendations. Guatemala submitted a report in which it "indicated in general terms the existence of the National Reparations Program and the functioning of the National Institute of Forensic Sciences, without specifying the exact mechanisms implemented to provide redress to the victims, survivors and next of kin in the instant case, and to identify the mortal remains […]. It stated that the [investigations] would continue and invoked the National Reconciliation Law, pointing out that the State cannot ignore the domestic legal framework. According to the Commission, the State did not request an "extension to comply with the recommendations."

e) *Submission to the Court.* On August 5, 2014, the Commission submitted the case to the Inter-American Court "in light of the need to obtain justice […] given the State's failure to comply with the recommendations." Commissioner James Cavallaro and the then Executive Secretary, Emilio Álvarez Icaza L[3] were appointed as delegates. Elizabeth Abi-Mershed, Deputy Executive Secretary, and Silvia Serrano Guzmán and Erick Acuña Pereda, lawyers of the Executive Secretariat, were appointed as legal advisers.

II
PROCEEDINGS BEFORE THE COURT

3. *Notification to the State and the representatives.* The submission of the case was notified to the State on October 17, 2014, and to the representatives of the alleged victims[4] (hereinafter "the representatives") on October 30, 2014.

4. *Brief with pleadings, motions and evidence.* On January 5, 2015, the representatives filed

[3] Paulo Abrão is the current Executive Secretary of the Inter-American Commission (IACHR), a position he assumed on August 16, 2016.

[4] The *Asociación Bufete Jurídico Popular* represented the alleged victims during the processing of this case before the Court, initially through their then legal representative Conrado Aj Piox and the attorney María Dolores Itzep Manuel. In a brief of April 20, 2016, the Association reported that Mr. Aj Piox no longer acts as its legal representative, and that his role was assumed by Paulina Ixpatá Alvarado de Osorio.

their brief with pleadings, motions and evidence (hereinafter "pleadings and motions brief"), pursuant to Articles 25 and 40 of the Court's Rules of Procedure. In said brief they alleged the violation of Articles 3, 4, 5, 6, 7, 8, 11, 12, 16, 19, 21, 22, 24 and 25 of the Convention, in conjunction with Article 1(1) thereof, and of Article I of the Inter-American Convention on Forced Disappearance of Persons and Article 7 of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women. In addition, they requested "the inclusion of the list of 97 families," which was attached.

5. *Answering brief*. On April 23, 2015, the State submitted to the Court a brief containing preliminary objections, its answer to the submission of the case by the Commission and observations to the pleadings and motions brief (hereinafter "answering brief"). In this brief it presented four preliminary objections. On October 23, 2015, the State appointed as its agents for this case Rodrigo José Villagrán Sandoval and Steffany Rebeca Vásquez Barillas. Subsequently, on April 13, 2016, the State appointed Carlos Rafael Asturias Ruiz and Steffany Rebeca Vásquez Barillas as agents.

6. *Observations on the preliminary objections*. On June 25, 2015, the representatives and the Inter-American Commission forwarded their observations on the preliminary objections filed by the State.

7. *Other briefs submitted by the parties and the Commission.* On July 30, 2015, the State submitted a brief entitled "Position of the State of Guatemala in relation to the inclusion of new victims in the case […]." Through a note of August 4, 2015, the Secretariat of the Court asked the representatives and the Commission to submit any observations deemed pertinent to the aforementioned brief of the State. On August 30, 2015, the representatives forwarded the observations requested. On August 31, 2015 the Commission submitted the observations requested together with the final list of declarants offered for the public hearing. Finally, on April 19, 2016, the representatives forwarded a total of 212 birth, death and marriage certificates of alleged victims who had suffered forced displacement, persecution and banishment.

8. *Public hearing.* In an order dated March 28, 2016,[5] the President of the Court called the parties and the Commission to a public hearing which was held on April 28, 2016, during the Court's 114th regular session at the seat of the Court.[6] During the hearing, the Court received the statements of the alleged victims Juana García Depaz and Napoleón García de Paz (or Napoleón García Depaz), and the expert witness Luis Raúl Francisco Salvadó Cardoza, proposed by the representatives, as well as the expert witness Cristián Alejandro Correa Montt, proposed by the Commission. It also received the observations and final oral arguments of the Commission, the representatives and the State, respectively. The President's order also requested the statements rendered by affidavit of an alleged victim and two expert witnesses proposed by the representatives, an expert witness proposed by the Commission and three expert witnesses proposed by the State. In a communication dated April 11, 2016, the State withdrew the offer of testimonial and expert evidence.

9. *Amici curiae.* The Court received *amici curiae* briefs from: i) Alejandro Valencia Villa on May 3, 2016, on the National Reconciliation Law, amnesties and political crimes in Guatemala; ii) Impunity Watch on May 11, 2016, on the Court's alleged jurisdiction to rule on an alleged violation of the Convention on the Prevention and Punishment of the Crime of Genocide and other treaties protecting the rights of indigenous peoples, the Court's alleged lack of jurisdiction to decree the invalidity of the National Reconciliation Law, as well as individual and collective

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[5] Available at: http://www.corteidh.or.cr/docs/asuntos/chichupac_28_03_16.pdf.

[6] The hearing was attended by the following: for the Inter-American Commission, Enrique Gil Botero, Commissioner, and Silvia Serrano Guzmán, Erick Acuña Pereda and Jorge Meza Flores, lawyers of the Executive Secretariat of the Commission; for the representatives of the alleged victims, María Dolores Itzep Manuel, attorney, Carlos Enrique de Paz Alvarado, Abelina Osorio Sis, attorney, and Paulina Ixpatá Alvarado de Osorio, President of the Management Board and Legal Representative of the *Asociación Bufete Jurídico Popular*; and for the State of Guatemala, Víctor Hugo Godoy, Head of the Presidential Commission for Coordination of the Executive's Human Rights Policies (COPREDEH).

reparations in the present case; iii) the *Due Process of Law Foundation* on May 12, 2016, on the "special gravity" and "prolonged nature" of forced displacement; iv) Ms. Léa Réus on May 12, 2016, on eventual comprehensive reparations in the present case; v) the Professors of the Department of Sociopolitical and Legal Studies and of the Faculty of Constitutional Law and Human Rights, as well as advanced law degree students of the *Instituto Tecnológico y Estudios Superiores de Occidente* (ITESO) on May 13, 2016, on potential comprehensive reparations in the present case, and vi) Santiago Medina Villarreal and the Corporation for the Defense and Promotion of Human Rights "REINICIAR" on May 13, 2016, on the alleged preliminary objection *ratione temporis* filed by the State of Guatemala, the use of criminal categories to determine human rights violations and the alleged acts of genocide against the Maya Achí people.

10. *Final written arguments and observations.* The Court received the final written arguments and observations of the representatives, the State and the Commission, respectively, on May 30, 2016. In its brief, the State forwarded a "Proposal for a Settlement Agreement." In addition, on May 31 and 2 June 2016 the representatives forwarded documents requested as helpful evidence, together with a general list of victims and certificates that would establish their identity.

11. *Observations of the representatives, the State and the Commission.* On June 20, 2016, the representatives submitted two briefs in which they indicated that they had no observations to make on the annexes submitted by the State together with its final written arguments and that they did not accept the proposed settlement. The Commission submitted its observations on the proposed settlement agreement on June 28, 2016, extemporaneously.

12. *Deliberation of the instant case.* The Court began deliberation of this judgement on November 25, 2016.

III
JURISDICTION

13. The Inter-American Court has jurisdiction to hear this case, pursuant to Article 62(3) of the American Convention, given that Guatemala has been a State Party to this instrument since May 25, 1978, and accepted the Court's contentious jurisdiction on March 9, 1987.[7]

IV
PRELIMINARY OBJECTIONS

14. In its answering brief the State filed the following preliminary objections: A) lack of jurisdiction *ratione temporis*; B) lack of jurisdiction *ratione materiae*; C) failure to exhaust domestic remedies, and D) "lack of authority to file another claim against the State of Guatemala for the same facts."

A. Objection regarding lack of jurisdiction ratione temporis

A.1. Arguments of the Commission and the parties

15. The State filed an objection regarding lack of jurisdiction *ratione temporis*. It argued that on March 9, 1987 "it filed a reservation by which it limited the Court's jurisdiction […to examine] matters after the date on which said declaration [was] filed." It indicated that the Court "cannot

[7] On March 9, 1987 the State presented before the General Secretariat of the Organization of American States (OAS) Governmental decision No. 123-87 of February 20, 1987, recognizing the jurisdiction of the Court with the following limitation: "(Article 2) the acceptance of the jurisdiction of the Inter-American Court of Human Rights is for an indefinite term, of a general character, under conditions of reciprocity and with the reservation that the cases in which the jurisdiction is recognized are exclusively those that occurred after the date on which this declaration is submitted to the Secretary of the Organization of American States." Available at: http://www.oas.org/dil/esp/tratados_B-32_Convencion_Americana_sobre_Rights_Humanos.htm. This point will be analyzed in Chapter IV on Preliminary Objections.

extend its temporal jurisdiction […] by alleging [a] continuing or permanent conduct […], using it as a basis for an objection to the principle of non-retroactivity of treaties." It explained the difference between a continuing crime and a permanent crime in its domestic legislation, and pointed out that forced disappearance is a permanent crime, since it is executed instantaneously but its effects persist over time. Therefore, "Guatemala does not accept" that the facts of the case should be considered as forced disappearances, since it would be modifying "the classification of said conduct retroactively […]." Finally, the State argued that "at no time [does it intend] to deny the facts, or to deny the victims the reparations to which they may be entitled as victims of the armed conflict." In this regard, it stated that it "is aware of [its] obligations with respect to the events that occurred during the armed conflict [and for this reason created the] National Reparations Program," the purpose of which is to provide reparations "to the victims of human rights violations committed by the State [and] by the insurgency." However, this does not mean that it is withdrawing its "reservation so that the Court can hear these facts."

16. In its brief submitting the case, the ***Commission*** indicated that it "submits to the jurisdiction of the Court the actions and omissions that occurred, or continued to occur, after March 9, 1987, the date on which the State accepted the contentious jurisdiction of the Court […]." This, "without prejudice to […] Guatemala accepting the jurisdiction of the Court to hear the present case in its entirety, in accordance with the provisions of Article 62(2) of the Convention." However, in its brief of observations on the preliminary objections, the Commission alleged that the acknowledgement of responsibility made by the State before it, and reiterated in its answering brief to the Court, implies a waiver of the temporal limitation of jurisdiction made by Guatemala, "thus granting its consent for the Court to examine the facts that occurred and to rule on the violations that may arise in this regard." During the public hearing, the Commission also pointed out "violations which began to occur prior to the [State's] acceptance of the Court's jurisdiction [but] continued to occur after that date." It further argued that the internal investigations were initiated after the acknowledgement of the Court's jurisdiction. Finally, it pointed out that what the State filed was not a "reservation."

17. In their pleadings and motions brief, the ***representatives*** stated that "the Court may examine acts or facts that have taken place after [March 9, 1987…] and that have generated violations […] of immediate and continuous or permanent execution", and those "of a continuous or permanent nature even if the first act of execution has taken place before the date of acknowledgement." However, in their observations on the preliminary objections, they pointed out that the State's acknowledgement of responsibility before the Commission, which was reiterated in its answer before the Court, implies a waiver of the temporal limitation of jurisdiction.

A.2. Considerations of the Court

18. The Court observes that the State seeks to prevent the Court from hearing the facts of the case that occurred prior to March 9, 1987, the date on which Guatemala accepted the Court's contentious jurisdiction, as well as those facts of a continuous or permanent nature whose first act of execution took place before that date. The foregoing, on the grounds that it had allegedly filed a "reservation" that limited the Court's temporal jurisdiction.

19. In order to determine whether or not it has jurisdiction to hear a case or an aspect thereof, the Court must take into consideration the date of recognition of its jurisdiction by the State, the terms on which such recognition was given, and the principle of non-retroactivity, provided for in Article 28 of the 1969 Vienna Convention on the Law of Treaties.[8] In this case, it is clear that the Court may examine acts or facts that have taken place after the date of such recognition.

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[8] Even though the State is obliged to respect and guarantee the rights protected in the American Convention from the date on which it ratified it, the competence of the Court to declare a violation of its provisions is governed by the State's acknowledgement.

20. On the other hand, the Court also has jurisdiction to hear human rights violations of a continuous or permanent nature, even if the first act of execution took place before the date of recognition of the Court's contentious jurisdiction, if such violations persist after such recognition, since they continue to be committed.[9] Thus, the State is reminded that within the sphere of its jurisdiction, it is incumbent upon the Inter-American Court to assess the actions or omissions of State agents in the cases before it, according to the evidence presented by the parties, and to assess these in accordance with the American Convention and other inter-American treaties that grant it jurisdiction, in order to determine whether the State has incurred international responsibility.

21. Finally, the Commission and the representatives argued that in this case the Court would also have jurisdiction to hear the facts of immediate execution that occurred prior to the date of recognition of the Court's contentious jurisdiction, on the grounds that the acknowledgment of responsibility in the instant case made by the State before the Commission and reiterated in its answer before the Court would imply a waiver of the temporal limitation of jurisdiction.

22. In the instant case, Guatemala recognized its international responsibility in the proceeding before the Commission. However, prior to the issuance of the Commission's Merits Report, Guatemala also declared that it does "not recognize the jurisdiction *ratione temporis* of the Inter-American Court […] to hear the case […]."[10] Thus, in submitting the case before the Court, the Commission only brought to the Court's attention "the State's actions and omissions that occurred or continued to occur after March 9, 1987, the date on which it accepted the contentious jurisdiction of the Inter-American Court […]," and "without prejudice to […] Guatemala's acceptance of the Court's jurisdiction to hear this case in its entirety." Now, in the proceedings before this Court - that is, in the answering brief, at the public hearing and in its final written arguments - Guatemala adopted a position consistent with the acknowledgement of responsibility made before the Commission, in the sense that it did not deny the facts of the case. Likewise, during the public hearing, it recognized its international responsibility under Articles 8 and 25 of the Convention, in relation to the investigations initiated in this case since 1993 (*infra* para. 51). However, at all times, it expressly refused to grant its consent to the Court to examine the facts that occurred prior to the date on which it accepted its jurisdiction.

23. In this regard, the Court considers that a State may waive a temporal limitation to the exercise of its jurisdiction expressly or tacitly, for example, through an acknowledgement of international responsibility. However, the willingness of the State to be tried must be made clear from its procedural conduct.[11] In previous cases in which the Court has examined all or part of

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[9] *Cf. Case of Blake v. Guatemala. Preliminary objections.* Judgment of July 22, 1996. Series C No. 27, paras. 39 and 40, and *Case of Argüelles et al. v. Argentina. Preliminary objections, merits, reparations and costs.* Judgment of November 20, 2014. Series C No. 288, para. 25.

[10] Briefs submitted on December 11, and July 17, 2013 (evidence file, folios 3368 and 3454).

[11] See, *Certain Questions of Mutual Assistance in Criminal Matters (Djibouti* v. *France), Judgment, I.C.J. Reports 2008*, p. 177. Available at: http://www.icj-cij.org/docket/files/136/14550.pdf. "The consent allowing for the Court to assume jurisdiction must be certain. […] As the Court has recently explained, whatever the basis of consent, the attitude of the respondent State must "be capable of being regarded as 'an unequivocal indication' of the desire of that State to accept the Court's jurisdiction in a 'voluntary and indisputable' manner" […] For the Court to exercise jurisdiction on the basis of *forum prorogatum*, the element of consent must be either explicit or clearly to be deduced from the relevant conduct of a State." Likewise, *Anglo-Iranian Oil Co. (United Kingdom v. Iran)*, Judgement (Preliminary Objections), July 22, 1952, I.C.J. Reports 1952, p. 114. Available at: http://www.icj-cij.org/docket/files/16/1997.pdf. "The principle of *forum prorogatum*, if it could be applied to the present case, would have to be based on some conduct or statement of the Government of Iran which involves an element of consent regarding the jurisdiction of the Court. But that Government has consistently denied the jurisdiction of the Court. Having filed a Preliminary Objection for the purpose of disputing the jurisdiction, it has throughout the proceedings maintained that Objection. It is true that it has submitted other Objections which have no direct bearing on the question of jurisdiction. But they are clearly designed as measures of defense which it would be necessary to examine only if Iran's Objection to the jurisdiction were rejected. No element of consent can be deduced from such conduct on the part of the Government of Iran. […] Accordingly, the Court has arrived at the conclusion that it has no jurisdiction to deal with the case submitted to it […]."

the facts that occurred prior to the recognition of its jurisdiction and has ruled on the violations that occurred in that regard, the States concerned expressly or tacitly granted the Court their consent to do so.[12]

24. Consequently, the Court considers that in the instant case it does not have jurisdiction *ratione temporis* to declare violations of the American Convention for the arbitrary detentions, torture, extrajudicial executions, rape and other forms of sexual violence, forced labor and destruction and theft of property allegedly committed between 1981 and 1986 to the detriment of the Maya Achí indigenous populations of Chichupac village and neighboring communities, on which the State is correct. However, the State is not correct in relation to the continuous or permanent consequences of these acts, whether they are instantaneous or permanent crimes under domestic criminal law. Regardless of the domestic criminal definition, what *is* continuous is the violation of the Convention that continues to be committed to this day, since the infraction before this Court is one of current international law, given that it does not criminally prosecute officials, but rather the State for violations of the Convention.[13] In that sense, the State is mistaken in challenging the Court's jurisdiction with respect to the alleged forced disappearance and the alleged failure of the State to implement guarantees of return or voluntary resettlement in favor of those persons who remained displaced after March 9, 1987, the date on which the State recognized the Court's jurisdiction, as well as with respect to its alleged failure to investigate serious human rights violations, and therefore, also with respect to reparations for the facts. In view of the foregoing, this Court partially accepts the preliminary objection of lack of jurisdiction *ratione temporis.*

B. Objection regarding lack of jurisdiction ratione materiae

25. The State filed an objection regarding lack of jurisdiction *ratione materiae* based on four arguments: 1) the Court's alleged lack of jurisdiction to hear alleged violations of the Inter-American Convention on Forced Disappearance of Persons (ICFDP) and the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women ("Convention of Belém do Pará"); 2) the Court's alleged lack of jurisdiction to determine the commission of crimes; 3) the Court's alleged lack of criminal jurisdiction to rule on whether or not genocide occurred, as well as to rule on a violation of the Convention on the Prevention and Punishment of the Crime of Genocide; and 4) the Court's alleged lack of jurisdiction to decree the invalidity of the amnesty. The Court will now analyze the arguments presented by the State. Argument 3) will be analyzed, as appropriate, together with arguments 1) and 2).

B.1. Alleged lack of jurisdiction of the Court to hear alleged violations of the ICFDP, the Convention of Belém do Pará and the Convention on the Prevention and Punishment of the Crime of Genocide

B.1.1. Arguments of the Commission and of the parties

26. The ***State*** indicated that "the Court lacks jurisdiction to examine alleged violations of the [ICFDP], and of the Convention of Belém do Pará, since Guatemala has not recognized its

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[12] *Cf. Case of Ticona Estrada et al. v. Bolivia*. *Preliminary objections, merits, reparations and costs.* Judgment of November 27, 2008. Series C No. 191, para. 30; *Case of Ibsen Cárdenas and Ibsen Peña v. Bolivia. Merits, reparations and costs.* Judgment of September 1, 2010. Series C No. 217, para. 22; *Case of Gudiel Álvarez et al. ("Diario Militar") v. Guatemala. Merits, reparations and costs.* Judgment of November 20, 2012. Series C No. 253, para. 32 and *Case of García and Family v. Guatemala. Preliminary objections, merits, reparations and costs*. Judgment of November 29, 2012. Series C No. 258, para. 27. See also, *Case of Massacres of El Mozote and Nearby Places v. El Salvador. Merits, reparations and costs.* Judgment of October 25, 2012. Series C No. 252, para. 30, and *Case of González Medina and Family v. Dominican Republic. Preliminary objections, merits, reparations and costs.* Judgment of February 27, 2012. Series C No. 240, para. 192.

[13] *Cf. Case of Velásquez Rodríguez v. Honduras. Merits.* Judgment of July 29, 1988. Series C No. 4, para. 134, and *Case of Garrido and Baigorria v. Argentina. Reparations and costs.* Judgment of August 27, 1998. Series C No. 39, para. 44.

jurisdiction to examine violations of those conventions." It also held that forced disappearance was not classified as a crime in Guatemala at the time of the facts of this case, and that it must apply its domestic legislation according to the principle that 'without law there is no crime, process or punishment'. Finally, it held that neither the Court nor the Commission "can rule on the violation of the Convention on the Prevention and Punishment of the Crime of Genocide."

27. The ***Commission*** argued that the Court has repeatedly applied Article 7 of the Convention of Belém do Pará. It also pointed out that the Court has consistently reiterated that Article XIII of the ICFDP, in relation to Article 62 of the American Convention, establishes the power of the Court to hear matters related to compliance with the commitments assumed by the States Parties to that instrument. It also held that the determination of whether or not a forced disappearance exists is a matter of substance, and therefore it is not appropriate to make a preliminary ruling in this regard.

28. The ***representatives*** indicated that the Court is competent to hear the violation of Article I of the CIDFP, as well as Article 7 of the Convention of Belém do Pará, because Guatemala ratified the former on February 25, 2000 and the latter on April 4, 1995. On the other hand, they argued that the prohibition of genocide should be interpreted as an extension of the right to life recognized in the American Convention, taking into account "the rule of interpretation 29(c)" of said treaty, as well as the fact that Guatemala has ratified the Convention on the Prevention and Punishment of the Crime of Genocide.

B.1.2. Considerations of the Court

29. First, Guatemala deposited its instrument of ratification of the Inter-American Convention on Forced Disappearance of Persons (ICFDP) with the OAS General Secretariat on February 25, 2000, without any limitation on the Court's jurisdiction or reservations in force.[14] This Court has repeatedly stated[15] that Article XIII of the ICFDP[16] establishes the Court's authority to hear matters related to compliance with the commitments assumed by the States Parties through said instrument. In addition, the evaluation of whether certain facts constitute forced disappearance in accordance with the American Convention and the ICFDP is a matter of substance, on which it is not appropriate to make a preliminary ruling. Therefore, the Court dismisses the preliminary objection of lack of jurisdiction of the Court to hear alleged violations of the ICFDP.

30. Second, the State ratified the Convention of Belém do Pará on January 4, 1995, without reservations or limitations. As the Court has indicated in the cases of *González et al. ("Cotton Field") v. Mexico*, *Veliz Franco et al. v. Guatemala, Espinoza González v. Peru, and Claudina Velásquez Paiz et al. v. Guatemala,* "the literal meaning of Article 12 of the Convention of Belém do Pará grants jurisdiction to the Court, since it does not exempt from its application any of the procedural rules and requirements for individual communications."[17]It should be noted that in

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[14] *Cf.* Instrument of ratification of the American Convention by Guatemala. Available at: http://www.oas.org/juridico/spanish/firmas/a-60.html

[15] *Cf. Case of Gómez Palomino v. Peru. Merits, reparations and costs.* Judgment of November 22, 2005. Series C No. 136, para. 110; *Case of Radilla Pacheco v. Mexico. Preliminary objections, merits, reparations and costs.* Judgment of November 23, 2009. Series C No. 209, para. 303; *Case of Osorio Rivera and Family v. Peru. Preliminary objections, merits, reparations and costs.* Judgment of November 26, 2013. Series C No. 274, para. 29; *Case of Rodríguez Vera et al. (Disappeared of the Palace of Justice) v. Colombia. Preliminary objections, merits, reparations and costs.* Judgment of November 14, 2014. Series C No. 287, para. 43 and *Case of Tenorio Roca et al. v. Peru. Preliminary objections, merits, reparations and costs.* Judgment of June 22, 2016. Series C No. 314, para. 30.

[16] Article XIII establishes: "For the purposes of this Convention, the processing of the petitions or communications presented before the Inter-American Commission in which the forced disappearance of persons was alleged shall be subject to the procedures established in the American Convention on Human Rights, and in the Statutes and Rules of Procedure of the Commission and of the Inter-American Court of Human Rights […]".

[17] Article 12 of the treaty establishes the possibility of submitting "petitions" to the Commission, containing "denunciations or complaints of violations of Article 7", and that "the Commission shall consider such claims in accordance with the norms and procedures established by the American Convention on Human Rights and the Statutes and Regulations of the Inter-American Commission on Human Rights for lodging and considering petitions." In this reRules

other contentious cases against Guatemala,[18] the Court declared the State's responsibility for the violation of Article 7 of the Convention of Belém do Pará and does not find elements to justify a departure from its case law. Therefore, the Court dismisses the preliminary objection of the Court's lack of jurisdiction to analyze Article 7 of the Convention of Belém do Pará.

31. Third, the Court notes that neither the Commission nor the representatives have asked the Court to declare a violation of the Convention on the Prevention and Punishment of the Crime of Genocide (CPPCG). Consequently, the preliminary objection of lack of jurisdiction of the Court to declare violations of the CPPCG is without merit, and is therefore dismissed. Nevertheless, as in other cases, including against Guatemala, the Court considers it useful and appropriate to interpret the American Convention, taking into account other treaties of international humanitarian law[19] and international criminal law,[20] in view of their relevance to this matter.[21]

B.2. Alleged lack of jurisdiction to determine the commission of crimes

B.2.1. Arguments of the Commission and the parties

32. The ***State*** argued that "neither the Court nor the Commission can assert that crimes were committed in the instant case [,] since they are not a criminal court and do not have such jurisdiction." Thus, it asked the Court "not to accuse the State for the commission of crimes." By way of example, it pointed out that the Commission improperly referred to "homicides, murders, extrajudicial executions, war crimes, crimes against humanity, or genocide […]."

33. The ***Commission*** held that "both the [Commission] and the Court have been consistent in indicating that their jurisdiction is not of a criminal nature, but rather involves the monitoring of compliance with the obligations freely assumed by the States Parties." In addition, it held that the State's argument does not constitute a preliminary objection inasmuch as it does not seek to challenge the Court's jurisdiction to hear the case.

34. The ***representatives*** argued that "forced disappearance is a violation of human rights […] that falls within the jurisdiction of the Court […] because it constitutes a multiple and continuing violation of numerous rights recognized in the Convention […] and because the acts constituting forced disappearance are permanent in nature as long as the whereabouts of the victim are unknown or his or her remains are not found." They also asked the Court to declare that

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of Procedure of the Commission." In this regard, the Court has pointed out that the wording of Article 12 of the Convention of Belém of Pará "does not exclude any provision of the American Convention; thus, it must be concluded that the Commission will act in petitions on Article 7 of the Convention Belém do Pará pursuant to the provisions of Articles 44 to 51 of the Convention, as established in Article 41 thereof. Article 51 of the Convention […] expressly refers to of cases before the Court". *Cf. Case of González et al. ("Cotton Field") v. Mexico*, *Preliminary objection, merits, reparations and costs.* Judgment of November 16, 2009. Series C No. 205, para. 41. In similar vein, see *Case of Veliz Franco et al. v. Guatemala. Preliminary objections, merits, reparations and costs.* Judgment of May 19, 2014. Series C No. 277, footnote 22; *Case of Espinoza Gonzáles v. Peru. Preliminary objections, merits, reparations and costs.* Judgment of November 20, 2014. Series C No. 289, footnote 5 and *Velásquez Paiz et al. v. Guatemala. Preliminary objections, merits, reparations and costs.* Judgment of November 19, 2015. Series C No. 307, para. 19.

[18] *Cf. Case of the Río Negro Massacres v. Guatemala. Preliminary objection, merits, reparations and costs.* Judgment of September 4, 2012. Series C No. 250, para. 17; *Case of Gudiel Álvarez et al. ("Diario Militar") v. Guatemala. Merits, reparations and costs.* Judgment of November 20, 2012. Series C No. 253, para. 17; *Case of Veliz Franco et al. v. Guatemala,* para. 36, and *Case of Velásquez Paiz et al. v. Guatemala*, para. 19.

[19] See, for example, *Case of the Displaced Afrodescendant Communities of the Cacarica River Basin (Operation Genesis) v. Colombia. Preliminary objections, merits, reparations and costs.* Judgment of November 20, 2013. Series C No. 270, para. 221, and *Santo Domingo Massacre v. Colombia*, *Preliminary objections, merits and reparations.* Judgment of November 30, 2012. Series C No. 259 para. 187.

[20] See also, *Case of the Dos Erres Massacre v. Guatemala*. *Preliminary objection, merits, reparations and costs.* Judgment of November 24, 2009. Series C No. 211, para. 140; *Case of Almonacid Arellano et al. v. Chile. Preliminary objections, merits, reparations and costs.* Judgment of September 26, 2006. Series C No. 154, para. 93 *et seq.; Case of Gelman v. Uruguay. Merits and reparations.* Judgment of February 24, 2011. Series C No. 221, para. 99, footnote 113, *Case of Contreras et al. v. El Salvador. Merits, reparations and costs*. Judgment of August 31, 2011. Series C No. 232, para. 82, footnote 102.

[21] *See, Article* 64 of the American Convention.

Guatemala applied a policy of genocide against the Maya Achí people of Rabinal that there is an aggravated international responsibility for the State that must be taken into account when establishing reparations, because the "prohibition of genocide must be an extension of the right to life […]."

B.2.2. Considerations of the Court

35. This Court has already made clear that within the scope of its jurisdiction, it is incumbent upon it to evaluate the actions or omissions of State agents in the cases before it and to classify these in accordance with the American Convention and other inter-American treaties that grant it jurisdiction. For this exercise, it may also take into account other international instruments, given their specificity on the matter. Moreover, it is not up to the Court to analyze or determine individual responsibilities; that task is the responsibility of the domestic and international criminal courts (*supra* para. 20). Thus, the preliminary objection raised by the State regarding the Court's lack of jurisdiction to rule on crimes is groundless, and is therefore dismissed.

B.3. Alleged lack of jurisdiction to decree the invalidity of the amnesty

B.3.1. Arguments of the Commission and the parties

36. The ***State*** indicated that the Court lacks "jurisdiction to decree the invalidity of the amnesty" because: i) this was enacted by means of the National Reconciliation Law in order to achieve a negotiated settlement to the internal armed conflict; ii) the amnesty was negotiated with the participation of most sectors of Guatemalan society, and took into account "elements of the truth," the creation of reparation measures for the victims and measures of non-repetition, as well as the foundations for the incorporation of insurgent groups into national life; and iii) the amnesty in Guatemala is not a "self-amnesty" and does not exclude the most serious crimes of international importance. Thus, the amnesty enacted in the case of Guatemala would meet the requirements stipulated by the Court to be in force.[22]

37. The ***Commission*** emphasized that "according to the terms of Articles 1 and 2 of the American Convention, it is precisely an essential component of the Court's jurisdiction to analyze the extent to which a State has incorporated the guarantees of said treaty in its regulations, policies and practices."

38. The ***representatives*** argued that "the application of the amnesty provisions of the National Reconciliation Law would contravene obligations arising from the American Convention […] and other international instruments and would impede the investigation and punishment of those responsible for serious human rights violations."

B.3.2. Considerations of the Court

39. The Court recalls that preliminary objections are actions of the State that seek, in a prior manner, to prevent analysis of the merits of a case. Consequently, if these arguments cannot be considered without first analyzing the merits of a case, they cannot be analyzed by means of a preliminary objection. In this regard, the analysis of the validity of a law is a matter of substance. Moreover, neither the Commission nor the representatives have asked the Court to declare the invalidity of the National Reconciliation Law as such, but rather to question its possible application in the present case. For these reasons, the preliminary objection raised by the State regarding the Court's alleged lack of jurisdiction to rule on the invalidity of the National Reconciliation Law is dismissed.

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[22] In this regard, it cited the *Case of Massacres of El Mozote and Nearby Places v. El Salvador* and Concurring Opinion of Judge Diego García Sayán.

C. Objection regarding the failure to exhaust domestic remedies

C.1. Arguments of the Commission and the parties

40. The ***State*** filed the objection of failure to exhaust domestic remedies, arguing that the alleged victims did not file *habeas corpus* petitions in any of the cases of disappearances or illegal detentions, nor did they have recourse to the National Compensation Program (PNR), as an administrative remedy created to provide individual and/or collective compensation to civilian victims of human rights violations that occurred during the internal armed conflict, which includes material and psychological support to the victims and their next of kin.

41. The ***Commission*** argued that the present preliminary objection is time-barred, since "at the admissibility stage, the State did not allege that the two remedies mentioned in its written response should have been exhausted […]." In the admissibility stage before the Commission, Guatemala only alleged that "criminal proceedings [were] pending," and once "in the merits stage, the State alleged that a group of victims had received compensation from the PNR." After the issuance of the Merits Report, Guatemala "did not specify […] the amounts that the victims' families would have received and their connection with the facts and violations declared […]." Consequently, it held that the State's arguments on this point do not constitute a preliminary objection and should be taken into account by the Court when determining the corresponding reparations."

42. The ***representatives*** indicated that this preliminary objection should be declared "inadmissible […] because the State's obligation to investigate *ex officio* is separate from whether a complaint is being filed […]." They pointed out that the relatives of the alleged victims are the ones who initiated the investigations; however, the authorities have not clarified the facts or determined the whereabouts of the disappeared persons. In addition, they pointed out that the objection of failure to exhaust domestic remedies should be raised at the admissibility stage before the Commission.

C.2. Considerations of the Court

43. Article 46(1)(a) of the American Convention states that in order to determine the admissibility of a petition or communication submitted to the Inter-American Commission, pursuant to Articles 44 or 45 of the Convention, it is necessary that the remedies under domestic jurisdiction have been pursued and exhausted, in accordance with generally recognized principles of international law. In this regard, the Court has held that an objection to the exercise of its jurisdiction based on the alleged failure to exhaust domestic remedies must be presented at the proper procedural moment, that is, during the admissibility proceeding before the Commission. When alleging failure to exhaust domestic remedies, it is incumbent upon the State to specify which remedies have not yet been exhausted, and to demonstrate that these were available, adequate, suitable and effective.[23] In this regard, the Court has stated that it is not up to the Court or the Commission to identify *ex officio* which domestic remedies have yet to be exhausted. Thus, it does not fall to these international bodies to rectify the lack of precision in the State's arguments.[24]

44. In its answering brief, the State submitted to the Court the preliminary objection of failure to exhaust domestic remedies based on two arguments: i) the existence of and failure to exhaust the remedies of habeas corpus, and ii) the existence of and failure to exhaust the administrative

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[23] *Cf. Case of Velásquez Rodríguez v. Honduras. Preliminary objections.* Judgment of June 26, 1987. Series C No. 1, para. 88, *Case of Herrera Espinoza et al. v. Ecuador. Preliminary objections, merits, reparations and costs*. Judgment of September 1, 2016. Series C No. 316, para. 25.

[24] *Cf. Case of Reverón Trujillo v. Venezuela. Preliminary objection, merits, reparations and costs.* Judgment of June 30, 2009. Series C No. 197, para. 23, and *Case of Flor Freire v. Ecuador. Preliminary objection, merits, reparations and costs*. Judgment of August 31, 2016. Series C No. 315, para. 24.

remedy known as the "National Reparations Program" (PNR).

45. In this regard, the Court observes that the initial petition before the Commission was lodged on December 13, 2007, and forwarded to the State on July 14, 2008. The State's response was received on September 10, 2008. At that time, the State indicated that "the administrative and judicial remedies available in the domestic system have not been exhausted […]."[25] It explained that the criminal inquiries were in the investigative phase and that it would continue to investigate "the causes that led to the delay in the proceedings already indicated,"[26] and stated that there were other administrative remedies available, such as the PNR, which had not been exhausted. Thus, the Court notes that the State did not mention the availability of the remedy of habeas corpus in its brief, nor at any time during the admissibility stage before the Commission. Therefore, this argument of the State is time-barred.

46. As to the second argument, the Court has already established in the previous paragraph that it was presented at the appropriate procedural opportunity. However, the State did not explain to the Court the reasons why the National Reparations Program would be an adequate, suitable and effective remedy to redress the specific violations alleged in the instant case over which this Court has jurisdiction (*supra* para. 24), beyond stating that it was created as an administrative remedy "to provide individual and/or collective reparations to civilian victims of human rights violations that occurred during the internal armed conflict, which includes material and psychological support for the families of deceased victims and surviving victims."[27] In any case, the Court considers that, in cases such as this, in which serious human rights violations are alleged, the filing of a criminal complaint is sufficient to satisfy the requirements of Article 46(1)(a) of the Convention. [28]

47. In view of the foregoing, the Court dismisses the preliminary objection of failure to exhaust domestic remedies.

D. Objection regarding the lack of authority to file another claim for the same facts

D.1. Arguments of the Commission and of the parties

48. The ***State*** asked the Court to refrain from hearing the instant case, "since most of the alleged victims have already been compensated [through the National Reparations Program] and also because they signed a settlement agreement in which they agreed not to file any other claim against the State in the future."

49. The ***Commission*** did not refer specifically to this point. The ***representatives*** argued that "Guatemala has not provided fair, decent and comprehensive reparation for the consequences of all the human rights violations committed against the [alleged] victims [and] survivors […] because the [PNR] does not meet accepted international standards of reparation."

D.2. Considerations of the Court

50. By virtue of the principle of complementarity,[29] as long as domestic bodies have adequately

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[25] Brief of the State of September 10, 2008 (evidence file, folio 2954).

[26] Brief of the State of September 10, 2008 (evidence file, folio 2954).

[27] Answering brief of the State (merits file, folio 1042), and brief of the State of April 28, 2010 (evidence file, folio 3220 and 3221).

[28] See, *Case of the Río Negro Massacres v. Guatemala*, para. 194, and *Case of Massacres of El Mozote and nearby places v. El Salvador,* paras. 242 to 244.

[29] The Court has held that under the Convention, State responsibility can only be determined at international level after the State has had the opportunity to declare the violation and repair the harm caused by its own means. This is based on the principle of complementarity (or subsidiarity), that transversely informs the inter-American system of human rights, which is, as stated in the preamble to the Convention, "reinforcing or complementing the protection offered by the domestic law of the American States." *Cf. Case of Tarazona Arrieta, Preliminary objection, merits,*

fulfilled their duty to investigate and make reparations to the alleged victims, it may not be necessary for the Court to analyze the violation of substantive rights. However, having alleged a failure to observe those obligations, the Court considers that, as in other cases,[30] the State's arguments should be analyzed in the Chapter on Reparations *infra*. Therefore, the Court dismisses this preliminary objection.

V
PARTIAL ACKNOWLEDGEMENT OF RESPONSIBILITY

A. Partial acknowledgement of responsibility by the State and observations of the Commission and the representatives

51. At the public hearing, the ***State*** proposed a friendly settlement agreement and indicated that this "should be interpreted as an acknowledgement of State responsibility for not complying with Articles 8 on judicial guarantees and 25 on judicial protection under the Convention." "Given that the investigation into the facts of the instant case has so far not produced positive results, it invit[ed] the parties to create a commission to oversee and evaluate the pending proceedings […]."On the other hand, in its response, Guatemala maintained that "at no time [did] it intend to deny that the facts […]occurred or deny that the State is responsible if there has been malice, negligence or institutional fault or that of public officials or employees; nor […] that the State is evading its obligation to compensate the victims." However, it requested that the Court refrain from ruling on this matter since it lacks jurisdiction to examine such facts.

52. At the public hearing and in their final written arguments, the ***representatives*** rejected the proposal for a friendly settlement and requested that legal effect be given to "the State's acceptance of international responsibility dated July 2[9], 2011"[31] before the Commission and to the acknowledgement of international responsibility made at the public hearing. They stated that, "although […] it was not expressly indicated," it can be interpreted that the State recognized its international responsibility in relation to the violations alleged and substantiated by the petitioners and that "the acknowledgement […] covers all the facts of this case." They also requested that the Court consider what was indicated in the State's answering brief.

53. The ***Commission*** did not specifically refer to the State's acknowledgement of responsibility under Articles 8 and 25 of the Convention at the public hearing. However, it referred to the acknowledgement of responsibility made by the State before the Commission and to the alleged reiteration of said acknowledgement in the answering brief, in the context of the preliminary objection *ratione temporis* filed by Guatemala (*supra* para. 15).

B. Considerations of the Court

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reparations and costs. Judgment of October 15, 2014. Series C No. 286. para. 137.

[30] *Cf. Case of the Rio Negro Massacres v. Guatemala,* para. 296*; Case of the Displaced Afrodescendant Communities of the Cacarica River Basin (Operation Genesis) v. Colombia*, paras. 469 to 476*, and Case of Rodríguez Vera et al. (Disappeared of the Palace of Justice) v. Colombia,* para. 548.

[31] In a brief dated July 29, 2011, submitted in the proceeding before the Commission, Guatemala stated that, "considering that the President of the Republic […] has apologized on behalf of the State to the families of some victims for the anguish and pain caused during the internal armed conflict, […]in the present case it accepts its international responsibility for the violations alleged and substantiated by the petitioners, from the execution of the facts up to the present date, with respect to the victims fully identified, and whose rights have been violated as proven through the files opened before the national justice institutions, and with respect to the individualized victims documented in the Report of the Commission for Historical Clarification." (evidence file, folio 3159).

54. Pursuant to Articles 62[32] and 64[33] of the Rules of Procedure, and in exercise of its powers of international judicial protection of human rights, a matter of international public order that transcends the will of the parties, it is incumbent upon the Court to ensure that acts of acquiescence are acceptable for the purposes sought by the inter-American system. To this end, the Court analyzes the situation in each specific case.

55. During the public hearing in this case, the State acknowledged its responsibility for the violation of the rights to judicial guarantees and judicial protection, established in Articles 8 and 25 of the Convention, since "the investigation […] has so far not produced positive results." It did not specify to whose detriment it recognized this violation.

56. Accordingly, the Court decides to accept the partial acknowledgment of responsibility made by the State, in the sense that it violated Articles 8 and 25 of the American Convention. Nevertheless, the Court notes that a dispute persists regarding the scope of these violations, and regarding which persons were harmed by them. The dispute also continues regarding the violations of the rights established in Articles 3, 4, 5, 6, 7, 11, 12, 16, 17, 19, 21, 22, 23 and 24 of the American Convention, in relation to Article 1(1) thereof; of Article I of the Inter-American Convention on Forced Disappearance of Persons; and of Article 7 of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women, as alleged by the Commission and/or the representatives.

57. Furthermore, the Court considers that, before the Inter-American Commission, the State acknowledged those facts as proven "through the files opened before the national justice institutions" which are also documented in the Report of the Commission for Historical Clarification (CEH). Likewise, in its answering brief, the State did not deny the facts of this case, or its obligation to "compensate the victims;" however, it raised a preliminary objection *ratione temporis,* arguing that the Court lacks jurisdiction to examine these facts.

58. Under Article 41(3) of the Rules of Procedure,[34] and by virtue of the principle of *estoppel,*[35] the Court considers the facts of the case to be accepted and will hold them to be true until the contrary appears from the record or results from judicial conviction (*infra* Chapter VIII). However, it will analyze such facts in accordance with the provisions of Chapter IV of this judgment.

VI
PRIOR CONSIDERATION

A. Arguments of the Commission and the parties

59. In their pleadings and motions brief, the ***representatives*** invoked Article 35(2) of the Rules of Procedure in order to request the inclusion as alleged victims, in addition to the persons indicated in the Merits Report, Juan Pérez Sic, who is said to have disappeared, 18 relatives of

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[32] Article 62. Acquiescence. "If the respondent informs the Court of its acceptance of the facts or its total or partial acquiescence to the claims stated in the presentation of the case or the brief submitted by the alleged victims or their representatives, the Court shall decide, having heard the opinions of all those participating in the proceedings and at the appropriate procedural moment, whether to accept that acquiescence, and shall rule upon its juridical effects."

[33] Article 64. Continuation of a Case. "Bearing in mind its responsibility to protect human rights, the Court may decide to continue the consideration of a case notwithstanding the existence of the conditions indicated in the preceding Articles."

[34] Article 41(3): "The Court may consider those facts that have not been expressly denied and those claims that have not been expressly controverted as accepted."

[35] According to international practice, when a party to a dispute has adopted a certain attitude which is to its own detriment or to the benefit of another party, it cannot then, by virtue of the principle of estoppel, assume another conduct that is contradictory to the first. *Cf. Case of Huilca Tecse v. Peru. Merits, reparations and costs*. Judgment of March 3, 2005. Series C No. 121, para. 56, and *Case of the Peasant Community of Santa Bárbara v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of September 1, 2015. Series C No. 299, para. 27.

the alleged direct victims in the case, as well as 97 *(sic)* families that they included in a list attached to their brief. In this regard, they argued that the "negative effects of the persecution, forced displacement, the prevailing fear [and] the time elapsed, are factors that made it difficult to submit to the Commission […] the list of survivors of the massacres."

60. In their brief of observations to the preliminary objections, submitted on June 26, 2015, the representatives requested that all members and families of the village of Chichupac and neighboring communities of Rabinal be classified as victims. They attached a new list of 39 families that they requested be included as alleged victims of forced displacement. Subsequently, in a communication of April 19, 2016, the representatives submitted 212 birth, marriage and death certificates of alleged victims who had suffered persecution, forced displacement and being uprooted. In their final written arguments, and together with the helpful evidence submitted to the Court, the representatives presented a general list that "encompasses the largest number" of alleged victims and their next of kin, as well as a list of alleged victims of forced displacement who returned to their communities after March 9, 1987, or who still remain in a situation of displacement. They also asked that "the possibility of future identifications of victims [...] be left open and that an effective mechanism for identifying victims of displacement […] be created."

61. At the public hearing and in its final written arguments, the ***Commission*** emphasized the importance of applying Article 35(2) of the Court's Rules of Procedure, allowing the inclusion of one or more alleged victims not expressly named in the Merits Report.

62. In its answering brief and final written arguments, the ***State*** argued that the addition of victims by the representatives is time-barred and groundless, and therefore asked the Court not to admit them.[36]

B. Considerations of the Court

63. Article 35(1) of the Rules of Procedure establishes that a case shall be submitted to the Court through the presentation of the Merits Report of the Commission, which shall contain "the identification of the alleged victims." In accordance with this rule, it is the Commission's responsibility, and not this Court's, to identify the alleged victims in a case before the Court with precision and at the proper procedural opportunity. Legal certainty requires, as a general rule, that all the alleged victims be duly identified in the Merits Report, and it is not possible to add new alleged victims after the Report, except in the exceptional circumstance contemplated in Article 35(2) of the Court's Rules of Procedure.

64. According to the aforementioned Article 35(2) of the Rules of Procedure, "[w]hen it has not been possible to identify one or more of the alleged victims of the facts of the case because it concerns massive or collective violations, the Court shall decide in due course whether to consider them as victims." In its case law on this matter, the Court has considered the application of Article 35(2) of the Rules of Procedure based on the particular characteristics of each case,[37]

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[36] In its briefs of July 30, and September 14, 2015, the State reiterated its objection to the inclusion of new alleged victims. The State's presentation of the brief of July 30, 2015, entitled "Position of the State of Guatemala regarding the inclusion of new victims in the case […],"is not provided for in the Rules of Procedure of the Court. Therefore, the arguments set forth in said brief are time-barred and will not be taken into account. Likewise, in order to guarantee the possibility of adversarial proceedings, in a note from the Secretariat dated August 4, 2015, the representatives and the Commission were asked to submit any observations they deemed pertinent to the State's brief. However, since said brief is not part of the proceeding, the Court will not take into account the observations of the representatives and the Commission on this point, submitted in their briefs of August 30 and 31, 2015, respectively. Furthermore, in its brief of observations to the final lists of declarants of the Commission and the representatives, submitted on September 14, 2015, the State again presented arguments regarding the inclusion of other alleged victims. These arguments will not be considered by the Court either, because this was not the appropriate procedural moment to do so.

[37] It should be noted that the Court has applied Article 35(2) of its Rules in the following cases: *Case of the Río Negro Massacres v. Guatemala*, paras. 48 to 51; *Case of Nadege Dorzema et al. v. Dominican Republic. Merits, reparations and costs.* Judgment of October 24, 2012. Series C No. 251, paras. 29 to 37; *Case of the Massacres of El Mozote and Nearby Places v. El Salvador,* paras. 49 to 57*; Case of the Displaced Afrodescendant Communities of the*

and has emphasized that its purpose is not to obstruct the progress of the proceedings with formalisms but, on the contrary, to bring the definition given in the judgment closer to the demand for justice. Thus, the Court has applied Article 35(2) in massive or collective cases where there are difficulties in identifying or contacting all the alleged victims, for example, due to armed conflict, displacement or the burning or destruction of the bodies of the alleged victims, or in cases in which entire families have been disappeared, so that there would be no one who could speak for them. The Court has also taken into account the difficulty of accessing the area where the events occurred, the lack of records regarding the inhabitants of the place and the passage of time, as well as the particular characteristics of the alleged victims in the case, for example, when they have formed family clans with similar names and surnames, or in the case of migrants. It has also considered the conduct of the State, for example, when it is alleged that the failure to investigate contributed to the incomplete identification of the alleged victims.

65. The instant case is of a collective nature, is framed within the context of Guatemala's armed conflict and involves, in principle, approximately 477 alleged victims listed in the "Single Annex" to the Merits Report. Moreover, this case involves alleged arbitrary detentions, multiple extrajudicial executions, forced disappearances, rape and other forms of sexual violence, torture, the burning of houses and property, and the displacement and persecution of the inhabitants of Chichupac village and neighboring communities, as well as a lack of access to justice, all this in an alleged context of serious and massive human rights violations, in which the Maya people have been particularly affected. For some families, this displacement continues to this day. In addition, the facts of this case took place between 28 and 33 years prior to the presentation of the Merits Report to this Court on August 5, 2014. In this context, the Court finds it reasonable that it would have been difficult to identify all the alleged victims in the case. On the other hand, the State did not object in particular to the status of alleged victim of any of the persons individualized by the representatives in the pleadings and motions brief, or in the briefs of June 26, 2015 and May 30 and June 2, 2016, alleging only and in a generic manner, that the identification of said persons was time-barred. Therefore, in accordance with Article 35(2) of the Rules of Procedure, this Court will consider as alleged victims those persons identified and individualized by the Commission in the Merits Report, as well as by the representatives in the "General List of Victims" and in the list of "individualized and displaced persons," submitted on June 2, 2016, since, according to them, said lists "show and encompass the largest number of victims in this case." This, provided that the Court has the necessary evidence to verify the identity of each of those persons, who are identified in Annexes I and II of this judgment.

VII
EVIDENCE

A. Documentary, testimonial and expert evidence

66. This Court received various documents presented as evidence by the Commission and the parties, attached to their main briefs (*supra* paras. 1, 4 and 5). Likewise, the Court received from the representatives certain documents requested as helpful evidence, in accordance with Article 58 of the Rules of Procedure (*supra* para. 10). In addition, the Court received the

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Cacarica River Basin (Operation Genesis) v. Colombia, paras. 33 to 36*, and Case of the Peasant Community of Santa Bárbara v. Peru,* paras. 54 to 57. Likewise, it has rejected their application in the following cases: *Barbani Duarte et al. v. Uruguay. Merits, reparations and costs*. Judgment of October 13, 2011. Series C No. 234, para. 43; *Case of the Human Rights Defender et al. v. Guatemala. Preliminary objections, merits, reparations and costs.* Judgment of August 28, 2014. Series C No. 283, para. 47; *Case of García and Family v. Guatemala. Merits, reparations and costs.* Judgment of November 29, 2012. Series C No. 258, paras. 34 to 37; *Case of Suárez Peralta v. Ecuador. Preliminary objections, merits, reparations and costs.* Judgment of May 21, 2013. Series C No. 261, paras. 26 a 28; *Case of J. v. Peru. Preliminary objection, merits, reparations and costs.* Judgment of November 27, 2013. Series C No. 275, paras. 23 to 25; *Case of Rochac Hernández et al. v. El Salvador. Merits, reparations and costs.* Judgment of October 14, 2014. Series C No. 285, para. 34, and *Case of Argüelles et al. v. Argentina. Preliminary objections, merits, reparations and costs.* Judgment of November 20, 2014. Series C No. 288, para. 236.

statements rendered by affidavit of the expert witnesses Alejandro Rodríguez Barillas[38] and Ramón Cadena Rámila,[39] and the alleged victim Miguel Sic Osorio,[40] all proposed by the representatives. As for the evidence given at the public hearing, the Court heard the statements of the alleged victims Napoleón García de Paz and Juana García Depaz, as well as the expert witness Luis Raúl Francisco Salvadó Cardoza, all proposed by the representatives, as well as the expert testimony of Cristián Alejandro Correa Montt, proposed by the Commission.[41] Furthermore, in a brief dated June 25, 2015, the Court received from the representatives, 62 attached documents consisting of birth, marriage and death certificates, issued by the National Registry of Persons, belonging to alleged victims from the village of Chichupac and other communities of the municipality of Rabinal, Department of Baja Verapaz. Also in a brief dated April 19, 2016, the representatives forwarded birth, marriage and death certificates issued by the National Registry of Persons of the Republic of Guatemala, as well as 26 notarial affidavits of alleged victims from the village Chichupac and neighboring communities of the municipality of Rabinal who allegedly suffered persecution, forced displacement and were uprooted from their ancestral communities. Finally, on May 30, 2016, the Court received from the representatives an annex entitled "Individualized and Displaced Persons," as well as a "General list of certificates" and "General list of victims" on June 2, 2016.

B. Admission of the evidence

B.1. Admission of the documentary evidence

67. The Court admits the documents submitted at the proper procedural opportunity by the parties and the Commission, the admissibility of which was not challenged or disputed,[42] as well as documents obtained and included *ex officio* by the Court.[43] With respect to some documents submitted by the parties and the Commission by means of electronic links, this Court has established that if a party provides at least the direct electronic link to the document it cites as evidence, and it is possible to access it, neither legal certainty nor procedural balance is affected, because it can be immediately located by the Court and by the other parties.[44]

68. With regard to the procedural opportunity for the presentation of documentary evidence, in accordance with Article 57(2) of the Rules of Procedure, this must be submitted, in general, together with the briefs submitting the case, of pleadings and motions, or the answering brief,

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[38] Statement of Alejandro Rodríguez Barillas rendered by affidavit (evidence file, folios 11504 to 11591).

[39] Statement of Ramón Cadena Rámila rendered by affidavit (evidence file, folios 11600 to 11654).

[40] Statement of Miguel Sic Osorio rendered by affidavit (evidence file, folios 11592 to 11599).

[41] In a brief of April 4, 2016 the Commission withdrew the expert opinion of Antonio Delgado. In a communication dated April 11, 2016, the State communicated its decision to withdraw the presentation, by affidavit and during the hearing, of the three experts and two witnesses summoned in the Order of March 28, 2016.

[42] *Cf. Case of Velásquez Rodríguez v. Honduras. Merits,* para. 140, and *Case of Herrera Espinoza et al. v. Ecuador*, para. 44.

[43] The documents obtained *ex officio* by the Court as helpful evidence are the following: Guide number 10346061, of *El Correo*, March 20, 2015 (evidence file, folio 11734); Official letter dated March 19, 2015 signed by Jose Luis Linares Gutiérrez, Assistant Prosecutor of the Public Prosecution Service (evidence file, folios 11735 to 11745); Description of photographic album of the Evidence Collection Unit, Criminal Investigations Directorate of the Public Prosecutor's Office. Report No. ECA248-999-2015-118 Reference No. MP248-2006-441 (evidence file, folio 11746); Photographs No. 1 and No. 2, reference MP 248-2006-441 (evidence file, folio 11747); Photographs No. 3 and No. 4, reference MP248-2006-441 (evidence file, folio 11748); Photographs No. 5 and No. 6, Ref. MP248-2006-441 (evidence file, folio 11749); Photographs No. 7 and No. 8, reference MP248-2006-441 (evidence file, folio 11750); Photographs No. 9 and No. 10, reference MP248-2006-441 (evidence file, folio 11751); Photographs No. 11 and No. 12, reference MP248-2006-441 (evidence file, folio 11752); Information of the Sub-directorate of Migratory Control, of March 26, 2015 (evidence file, folios 11753 to 11756); Urgent request for preliminary evidence in File MP248-2006-441, of July 16, 2013 (evidence file, folios 11757 to 11760); Expert opinion MP248-441-2006, hamlet of Guachipilín, of January 31, 2008, file No. MP248-2006-441 (evidence file, folios 11761 to 11776 bis 14); Annex MP247-2003-1142 Execution (evidence file, folios 11777 to 11903), and Annex response to the communication of May 12, 2016, and Annex MP248/2010/263 Elías Milián González, Part of File No. 248-2006-441 of the Public Prosecution Service (evidence file, folios 11904 to 11907).

[44] *Cf. Case of Escué Zapata v. Colombia*. *Merits, reparations and costs*. Judgment of July 4, 2007. Series C No. 165, para. 26, and *Case of Herrera Espinoza et al. v. Ecuador,* para. 45.

as the case may be. Evidence submitted outside the proper procedural opportunities is not admissible, except in the circumstances set forth in Article 57(2) of the Rules, namely, force majeure, serious impediment or if it concerns a fact that occurred after the aforementioned procedural moments.

69. In this regard, the Court notes that the representatives provided individualized lists of alleged victims, as well as their birth, marriage and death certificates and those of their next of kin through briefs of June 25, 2015 and April 19, May 30 and June 2, 2016. The Court notes that these documents were forwarded in order to verify the identity of the persons named as alleged victims in the case. In Chapter VI of this judgment, the Court has already stated that it will consider as alleged victims those persons identified and individualized by the representatives, provided that the Court has the necessary evidence to verify the identity of each one. Therefore, in application of Article 58(a) of the Rules of Procedure,[45] the Court admits the aforementioned documents as useful and necessary for the identification of the alleged victims in this case.

B.2. Admission of the testimonial and expert evidence

70. The Court deems it pertinent to admit the statements of the alleged victims and the expert opinions provided at the public hearing and by affidavit, insofar as they are in keeping with the purpose defined by the President in the order that required them and the purpose of this case.

C. Assessment of the evidence

71. Under the provisions of Articles 46, 47, 48, 50, 51, 57 and 58 of the Rules of Procedure, and in accordance with its consistent case law regarding evidence and its assessment, the Court will examine and assess the documentary evidence submitted by the parties and the Commission, the statements, testimonies and expert opinions, as well as the helpful evidence requested by this Court to establish the facts and rule on the merits of this case. To this end, it will adhere to the principles of sound judgment, within the applicable legal framework, taking into account the body of evidence and the claims made.[46] Likewise, according to the case law of the Inter-American Court, the statement made by the alleged victim cannot be assessed in isolation, but rather within the body of evidence in the proceeding, inasmuch as it can provide further information on the alleged violations and their consequences.

72. That said, the State has objected to the use of the Report of the Historical Clarification Commission (CEH) as evidence in the proceedings, arguing that in the agreement on its establishment it was stipulated that "[t]he works, recommendations and reports of the Commission will not individualize responsibilities, nor will they have judicial purposes or effects." It explained that throughout the negotiation process of the Esquipulas II Accord, signed in 1987 by the Central American Presidents, in the discussions with the insurgent groups, and with the support of friendly countries and the mediation of the United Nations, it was stipulated that the aforementioned document would not have such effects, and therefore the Court cannot annul said Agreement.

73. The Court recalls that in previous cases it has placed particular emphasis on the evidentiary value of the reports prepared by Truth or Historical Clarification Commissions as relevant evidence in the determination of the facts and the international responsibility of States.[47] In this

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[45] Where pertinent, Article 58(a) of the Rules of Procedure establishes that: "The Court may, at any stage of the proceedings: a. Obtain, on its own motion, any evidence it considers helpful and necessary […]."

[46] *Cf. Case of the "White Van" (Paniagua Morales et al.) v. Guatemala. Merits*. Judgment of March 8, 1998. Series C No. 37, para. 69 to 76, and *Case of Flor Freire v. Ecuador*, para. 52.

[47] For example, the Court has referred to the following documents: Final Report of the Historical Clarification Commission of Guatemala; Final Report of the Truth and Reconciliation Commission of Peru; Report of the Truth Commission for El Salvador; Report of the National Commission for Truth and Reconciliation, Report on the Classification of Victims of Human Rights Violations and Political Violence of the National Corporation for Reparation and Reconciliation,

regard, it has pointed out that, depending on the object, procedure, structure and purpose of their mandate, such commissions can contribute to the construction and preservation of the historical memory, the clarification of the facts and the determination of institutional, social and political responsibilities in certain historical periods of a society.[48]

74. The Report of the Historical Clarification Commission (CEH) is an important reference in the documentation of the internal armed conflict and has been used repeatedly by this Court as evidence in at least ten cases involving Guatemala, from 2000 to 2015, with no objection from the State.[49] It is only in this case that Guatemala presented an objection for the first time**.** On this point, the Court notes that even the Historical Clarification Commission itself, when setting up its operation, made the following two points regarding the use of its Report. First, it understood "that the non-individualization of responsibilities for human rights violations or acts of violence which it was called upon to clarify is a characteristic that derives from its own purpose, which is not of a criminal procedural nature but rather of historical clarification." Second, that "in and of themselves, [its] recommendations and reports have no legal character or purpose, since the CEH is not a judicial body." In this sense, "[w]hile the Agreement states that neither its work nor the Report has judicial effects, there is nothing to prevent the institutions of the State, particularly the entities of the justice administration system, from relying on elements contained in the CEH Report."[50] In view of the foregoing, the Court will evaluate the CEH Report together with the rest of the evidence, according to the rules of sound judgment and based on experience, without being subject to the rules of weighted evidence.

VIII
FACTS

75. The Court will now refer to: A) the background to the case; B) the events that took place in Chichupac village and neighboring communities, and C) the facts relating to the investigations opened. In this regard, the Court accepts those facts that were not expressly denied by the State, provided that the contrary has not appeared in the case file (*supra* paras. 54 to 58, and 71 to 74), and if so, has presented the facts in a manner consistent with the evidence provided by the Commission, the representatives and the State, making the corresponding citation. Likewise, it has cited evidence that serves to clarify or specify the statements of the parties and the Commission.[51] Also, where relevant, it has cited the cases in which this Court has previously referred to the political and historical context contemporary to the facts. It should be noted that the events that occurred prior to the date of Guatemala's recognition of the Court's jurisdiction, that is, March 9, 1987, serve only as background to contextualize the facts and the alleged human rights violations that are within its temporal jurisdiction. The determination of the State's possible international responsibility for the alleged human rights violations will be determined in Chapter IX of the judgment.

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and Report of the National Commission on Political Imprisonment and Torture, all of Chile; and, Report of the Colombian Truth Commission on the events at the Palace of Justice.

[48] *Cf. Case of Myrna Mack Chang v. Guatemala. Merits, reparations and costs.* Judgment of November 25, 2003. Series C No. 101, paras. 131 and 134, and *Case of Rodríguez Vera et al. (Disappeared of the Palace of Justice) v. Colombia) v. Colombia*, para. 88.

[49] *Cf.* Cases of: *Bámaca Velásquez, Myrna Mack Chang, Maritza Urrutia, Plan de Sánchez Massacre, Tiu Tojín, Dos Erres Massacre, Chitay Nech et al., Río Negro Massacres, Gudiel Álvarez et al., García and Family Members, Veliz Franco et al., Human Rights Defender et al., and Velásquez Paiz et al.*

[50] *Cf.* CEH Report "*Guatemala, Memory of Silence,*" June 1999, Mandate and working procedure, para. 68.

[51] The following evidentiary elements have been used in this Chapter: a) CEH Report *"Guatemala, Memory of Silence"*, prepared in 1999, United Nations Office for Project Services /UNOPS.; b) Report of the Inter-Diocesan Project for the Recovery of Historical Memory -REMHI Report- *"Guatemala: Nunca Más"*, prepared in 1998 by the Human Rights Office of the Archbishopric of Guatemala (ODHAG). Available at: http://www.fundacionpdh.org/lesahumanidad/informes/guatemala/informe REMHI-Tomo1.htm; c) Report of the Human Rights Ombudsman of Guatemala of September 2, 1996 (evidence file, folio 1869); d) some parts of the criminal files related to complaints submitted regarding the facts of this case, and e) testimonies of some of the survivors in this case.

A. Background

76. The State of Guatemala experienced an internal armed conflict between 1962 and 1996 that caused great human, material, institutional and moral costs.[52] A peace process began in 1990 and culminated in December 1996, when the Government of the Republic of Guatemala and the *Unidad Revolucionaria Nacional Guatemalteca* (URNG), with the participation of civil society, signed the Agreement on a Firm and Lasting Peace, with the aim of ending the armed conflict. This Agreement gives validity to the twelve agreements signed during previous negotiations, among them, one for the creation of the Commission for Historical Clarification (*Comisión para el Esclarecimiento Histórico*, hereinafter "CEH") "of the human rights violations and the acts of violence that have caused suffering to the Guatemalan population." The Commission began its work on July 31, 1997, and published its Report *"Guatemala, Memoria del Silencio"* ("Guatemala, Memory of Silence") on February 25, 1999.[53]

77. In the context of the internal armed conflict in Guatemala, the State applied the so-called "National Security Doctrine," a central tenet of which was the notion of an "enemy within." Initially, this included the guerilla organizations but was later expanded to include "all those persons who identified with the communist ideology or who belonged to any organization – trade union, social, religious, student - or those that for any reason were not in favor of the established regime."[54] In application of this doctrine, 91% of the reported violations occurred under the dictatorships of Generals Romeo Lucas García (1978-1982) and José Efraín Ríos Montt (1982-1983).[55] Based on this doctrine, the Guatemalan army identified members of the Maya indigenous people as the "enemy within," considering that they constituted, or could constitute, the social base of the guerrillas.[56] According to the CEH, in ethnic terms, "83.3% of the victims of human rights violations and acts of violence recorded by [it] belonged to a Mayan ethnic group, 16.5% belonged to the *Ladino* group and 0.2% to other groups."[57] In this regard, it explained that "in most cases, the identification between the Maya communities and the insurgency was intentionally exaggerated by the State which, relying on traditional racist prejudices, used this identification to eliminate any present and future possibilities for the population to provide assistance or join any insurgent initiative." Thus, "the undeniable reality of racism as a doctrine of superiority permanently expressed by the State was a fundamental factor in explaining the particularly brutal and indiscriminate nature of the military operations carried out against hundreds of Maya communities […], particularly between 1981 and 1983."[58]

78. In April 1982, the governing Military Junta presided by José Efraín Ríos Montt launched the "National Security and Development Plan," which established national objectives in military, administrative, legal, social, economic and political terms. This Plan identified the main conflict areas in the different departments of the country.[59] The Military Junta and the Military High

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[52] *Cf. Case of the Plan de Sánchez Massacre v. Guatemala. Merits.* Judgment of April 29, 2004. Series C No. 105**,** para. 42.1, and *Case of García and Family Members v. Guatemala. Merits, reparations and costs.* Judgment of November 29, 2012. Series C No. 258, para. 51.

[53] *Cf. Case of Myrna Mack Chang v. Guatemala. Merits, reparations and costs.* Judgment of November 25, 2003. Series C No. 101, para. 134.9, and *Case of García and Family Members v. Guatemala,* para. 55.

[54] *Cf. Case of Gudiel Álvarez et al. v. Guatemala. Merits, reparations and costs*. Judgment of November 20, 2012. Series C No. 253, para. 5*4, and Case of García and Family Members v. Guatemala,* para. 51.

[55] *Cf. Case of the Plan de Sánchez Massacre v. Guatemala. Merits,* paras. 42.3 and 42.4, and *Case of the Río Negro Massacres v. Guatemala. Preliminary objection, merits, reparations and costs.* Judgment of September 4, 2012. Series C No. 250, para. 57.

[56] *Cf. Case of the Plan de Sánchez Massacre v. Guatemala. Merits,* para. 42.7, and *Case of the Río Negro Massacres v. Guatemala*, para. 58.

[57] *Cf. Case of Tiu Tojín v. Guatemala. Merits, reparations and costs.* Judgment of November 26, 2008. Series C No. 190*,* para. 48, and *Case of Chitay Nech et al. v. Guatemala*. *Preliminary objections, merits, reparations and costs*. Judgment of May 25, 2010. Series C No. 212, para. 66.

[58] *Cf.* Report of the CEH "*Guatemala, Memory of Silence*", Chapter 4, paras. 31 and 33.

[59] *Cf. Case of Chitay Nech et al. v. Guatemala,* para. 65, and *Case of the Plan de Sánchez Massacre. Merits,* paras. 42.3 to 42.4.

Command also designed and ordered the implementation of a military campaign codenamed "Victoria 82," in which they used new strategic definitions within the counterinsurgency framework and the objectives of the "National Security and Development Plan."[60] The CEH stated that "[t]his program carried out scorched earth operations as a way of putting an end to the social base of the insurgent movement."[61] The massacres or "scorched earth operations" were concentrated in the regions of Quiché, Huehuetenango, Chimaltenango, Alta and Baja Verapaz, the country's southern coast and Guatemala City.[62] According to the CEH, around 626 massacres attributable to the Guatemalan Army and State security forces were carried out, with acts of extreme cruelty aimed at eliminating individuals or groups of people "defined as enemies" and at "terrorizing the population."[63] The terror provoked by the massacres and the devastation of entire villages between 1981 and 1983 triggered a mass exodus of a diverse population, the majority of which was made up of Maya communities, but which also included a significant number of *ladino* families. The CEH estimated the number of displaced people at between 500,000 and 1.5 million people during that period.[64]

79. At the time of the internal armed conflict, the forced disappearance of persons in Guatemala was also a State practice carried out mainly by agents of its security forces.[65] The purpose of this practice was to dismantle movements or organizations that the State identified as sympathetic to the "insurgency" and to spread terror among the population.[66] Likewise, the CEH concluded that "rape was a generalized and systematic practice carried out by State agents in the context of the counter-insurgency strategy" in which the percentage of female victims reached 99% of recorded cases, and was used as a weapon of war. Cases of individual or selective rape occurred in the context of the detention of victims and were often followed by their death or disappearance.[67] In addition, during and prior to the aforementioned massacres or "scorched earth operations," members of the State security forces perpetrated massive or indiscriminate public rapes, sometimes accompanied by killings of pregnant women and the induction of abortions. This practice was aimed at destroying women's dignity at the cultural, social, family and individual levels.[68] Furthermore, during this period there was a practice of

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[60] *Cf. Case of the Plan de Sánchez Massacre v. Guatemala. Merits,* para. 42.4.

[61] *Cf.* CEH, "*Guatemala, Memory of Silence*", Chapter 2, para. 2973.

[62] *Cf. Case of the Río Negro Massacres v. Guatemala*, para. 57, and *Case of the Plan de Sánchez Massacre v. Guatemala. Merits,* para. 42.5.

[63] *Cf. Case of the Plan de Sánchez Massacre v. Guatemala. Merits*, para. 42.6; *Case of the Río Negro Massacres v. Guatemala,* para. 57, and Report "*Guatemala, Memory of Silence*", Chapter 2, paras. 3077, 3086, 3105, 3128 and 3177. The State security forces included the Army, the Civil Defense Patrols (hereinafter the "PAC"), the Military Commissioners, the Treasury Guard, the Military Police, the National Police, the Judicial Police (known as "judiciales") and the "death squads." *Cf. Case of Molina Theissen v. Guatemala*. *Merits*. Judgment of May 4, 2004. Series C No. 106, para. 40.3. The PACs emerged in the early 1980s as groups of civilians coercively formed by the armed forces. In April 1983, Governmental Agreement 222-83 granted them legal recognition through the creation of the National Directorate of Coordination and Control of Civil Self-Defense. Their main objectives were to organize the civilian population against the guerilla movements and to achieve control over them, for which purpose they had an institutional relationship with the Army, carried out activities to support the functions of the armed forces, received funding, weapons, training and direct orders from the Army, and operated under their supervision. In short, the civil patrols acted as agents of the State during the time of the armed conflict. These patrols were legally disbanded in 1996. *Cf. Case of Blake v. Guatemala. Merits.* Judgment of January 24, 1998. Series C No. 36, para. 76, and *Case of Plan de Sánchez Massacre v. Guatemala. Merits*, para. 42.28**.** The Judicial Police was a branch of the National Police responsible for "the investigation, persecution and capture of criminals and the prevention of crimes." Its members were popularly known as "judiciales." Towards the mid-1960s, the intervention and control of the Army in the police began to manifest itself. *Cf.* CEH, "*Guatemala, Memory of Silence*", Chapter 2, paras. 1159 and 1164.

[64] *Cf. Case of Chitay Nech et al. v. Guatemala,* para. 123, and CEH, "*Guatemala, Memory of Silence*", Chapter 4, para. 66.

[65] *Cf. Case of Bámaca Velásquez v. Guatemala. Merits. Judgment of November 25, 2000*. Series C No. 70, para. 132, and *Case of García and Family Members v. Guatemala*, para. 54.

[66] *Cf.* Case of *Molina Theissen v. Guatemala*. *Merits*, para. 40.1, and *Case of García and Family Members v. Guatemala,* para. 120.

[67] *Cf.* CEH, "*Guatemala, Memory of Silence*", Chapter 2, paras. 2351, 2352, 2376 and 2464.

[68] *Cf. Case of the Plan de Sánchez Massacre*. *Reparations and Costs*. Judgment of November 19, 2004. Series C No. 116, para. 49.19, and *Case of the Río Negro Massacres v. Guatemala*, para. 60.

separating children from their families after the massacres, and their illegal abduction and retention, all perpetrated by the military forces and illegal armed groups. In many cases, this practice involved changing their names and denying them their identity.[69] The separation of children from their families led, in some cases, to the illegal adoption or sale of the children, who were also denied the right to know their culture.[70]In other cases, the children were subjected to conditions of servitude by members of the State security forces.[71]

80. All these events had – and still have- significant cultural effects on the Maya peoples. The human rights violations that occurred during the internal armed conflict in Guatemala also meant the loss of their cultural and religious values and practices, as well as their social, economic and political institutions.[72] In particular, forced disappearances, the use of torture and arbitrary executions[73] affected the indigenous structures of authority and leadership, destroying the social fabric and traditional social relationships within the communities.[74] Of special relevance was the violence perpetrated against the elders, regarded as the ancestral authorities and "backbone of the culture of the Maya peoples," who were among the first targets of the persecution.[75] In this regard, the CEH indicated that with the disappearance of these people "the technical-modern and traditional knowledge accumulated over the years was also lost, together with the possibility of transmitting it naturally to the new generations; [thus] it is possible to understand the magnitude of the long-term impact."[76]

81. The Court will analyze the facts alleged in this case, not in isolation, but taking into account the existence of a systematic context of gross and massive human rights violations in Guatemala, in order to facilitate an understanding of the evidence and the timely determination of the facts and their legal effects. Likewise, this context will also be taken into consideration, where appropriate, when ordering reparation measures, and specifically the obligation to investigate and the guarantees of non-repetition.

B. Chichupac village and neighboring communities of the Municipality of Rabinal

82. During the proceedings before the Court it was argued that acts occurred to the detriment of the Maya Achí indigenous inhabitants of the village of Chichupac and neighboring communities of Xeabaj, Chijom, Coyojá, El Tablón, Toloxcoc, Chirrum, El Chol and El Apazote, in the municipality of Rabinal, Department of Baja Verapaz, Guatemala. These acts include, *inter alia*, alleged massacres, extrajudicial executions and forced disappearances. It is also alleged that a large number of the alleged victims were accused of belonging to the guerrillas and were tortured prior to their disappearance or execution. It is important to clarify that, according to the evidence, during the period in which these violations allegedly occurred and in the places mentioned, additional acts attributed to State security agents also occurred to the detriment of various persons, which were not brought to the Court's attention in the instant case. The Court will proceed to establish strictly the facts of the case that have been submitted to it in order to fully understand them. In addition, the Court emphasizes that the information on the alleged victims contained in the evidence sometimes varies with respect to their names, ages and the dates of their death or disappearance, for which reason it has proceeded to point out those data

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[69] *Cf. Case of the Dos Erres Massacre v. Guatemala,* paras. 177, 178, 170 and 199, and *Case of the Río Negro Massacres v. Guatemala,* para. 60.
[70] *Cf. Case of the Río Negro Massacres v. Guatemala*, para. 60.
[71] *Cf. Case of the Dos Erres Massacre v. Guatemala,* para. 171, and *Case of the Río Negro Massacres v. Guatemala,* para. 60.
[72] *Cf. Case of the Plan de Sánchez Massacre v. Guatemala. Merits,* para. 42.7, and *Case of the Río Negro Massacres v. Guatemala*, para. 61.
[73] *Cf. Case of Chitay Nech et al. v. Guatemala,* paras. 66 to 67, and 69, and *Case of the Río Negro Massacres v. Guatemala,* para. 61.
[74] *Cf. Case of the Río Negro Massacres v. Guatemala*, para. 61.
[75] *Cf. Case of the Río Negro Massacres v. Guatemala*, para. 61, and footnote 57.
[76] *Cf. Case of the Río Negro Massacres v. Guatemala*, para. 61.

that are consistent with the evidence, and with the information provided by the representatives and the Commission that was not disputed by the State, without prejudice to any new evidence that may arise in this regard.

83. Rabinal is one of eight municipalities of the Department of Baja Verapaz and is located in the central region of Guatemala. This municipality is comprised of the municipal seat or urban area, fourteen villages and sixty hamlets. In 1981 the area was predominantly inhabited by members of the Maya indigenous people belonging to the Achí linguistic community.[77]

84. During the internal armed conflict, high levels of violence were recorded in the municipality of Rabinal.[78] In this regard, the CEH determined that, although Rabinal was not a combat area, the region was used as a staging point for logistical supplies, recruitment of personnel or rearguard, and that due to its geographical location, the Army considered the entire area as strategic. Therefore, it "had to be subjected to full control" and "the population of the region was identified as an internal enemy." Between 1981 and 1983, military or paramilitary groups killed at least 20% of the population in the municipality; 99.8% of the victims recorded by the CEH were members of the Maya Achí people, a non-combatant, civilian population.[79]

B.1. Execution of Juan Alvarado Grave, Mateo Grave and Pedro Depaz Ciprián, and disappearance of Pedro Siana between August 23 and 24, 1981

85. On August 23, 1981, Juan Alvarado Grave was executed by a group of judicial officers known as "judiciales." Upon learning of this event, his brother Mateo Grave and Pedro Depaz Ciprián (or Pedro de Paz Cipriano or Pedro de Paz Cipriáno) and Pedro Siana, from the village of Xeabaj, went to the Salamá Hospital in Baja Verapaz in order to locate the body of Juan Alvarado. On the way, the three men were stopped by a group of ten "judiciales" between the hilltop of Rabinal and the municipality of San Miguel Chicaj. The lifeless bodies of Mateo Grave and Pedro Depaz Ciprián were taken to the Salamá Hospital.[80] To date, the whereabouts of Pedro Siana's body is unknown.

86. According to statements made by Juana García Depaz, her husband Mateo Grave died on August 24, 1981, from "gunshot wounds" and his body was buried in the cemetery of San Salamá in Baja Verapaz, by order of the Justice of the Peace of the municipality of San Miguel Chicaj. She stated that upon noticing her husband's absence, she went to the Justice of the Peace, the National Police and the post office in the municipality of Rabinal. Later, upon learning that her husband was in the Salamá Hospital, identified as "XXX", she went to the hospital and when she arrived she "was threatened and pursued by three *judiciales* who were in a state of drunkenness."

B.2. Execution of three members of the Alvarado family and three members of the Reyes family on January 1, 1982

87. On January 1, 1982, members of the Army and of the Civil Self-Defense Patrols (hereinafter "the PAC") in the village Xeabaj entered the home of Víctor Alvarado Valey and killed him and his two sons, Ceferino (or Seferino) and Fidel, the latter aged 17, both Alvarado Sucup (or Sucúp). That same day, members of the National Army and the PAC entered the home of Domingo Reyes Juárez (or Domingo Juárez Reyes) in the hamlet of Toloxcoc and killed him and his two sons, Andrés and Santiago, the latter 15 years old, both with the surnames Reyes Román.

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[77] *Cf. Case of the Plan de Sánchez Massacre v. Guatemala. Merits*, para. 42.10, and CEH, "*Guatemala, Memory of Silence*", Chapter 4, para. 3362.

[78] *Cf. Case of the Río Negro Massacres v. Guatemala,* para. 64, and *Case of the Plan de Sánchez Massacre*. *Merits,* para. 42.8.

[79] *Cf.* CEH, "*Guatemala, Memory of Silence"*, Chapter 4, paras. 3364 to 3368.

[80] *Cf.* Statements rendered by affidavit by Juana García Depaz (wife of Mateo Grave) and Olivia Siana Ixtecoc de Bolaj (daughter of Pedro Siana) on November 2, 009 and December 18, 2014 (evidence file, folios 1330, 1331 and 5841), and Statement of Juana García Depaz at the public hearing held on April 28, 2016.

Their bodies were found 300 meters from their home with gunshot wounds to their heads, "with their intestines hanging out" and "with their hands tied behind their backs." The bodies of the six men were buried by relatives and neighbors in a grave located on Cumatzá mountain, in the village of Xeabaj.[81] In 2002, members of the Guatemalan Forensic Anthropology Foundation (hereinafter "the FAFG") identified the grave, which was part of a clandestine cemetery, and after a judicial examination carried out in 2003, their remains were identified by their families.[82]

B.3. Detention of Ciriaco Galiego López and disappearance of Lorenzo Depaz Siprian on January 8, 1982

88. On January 8, 1982, at approximately 1:00 a.m., Ciriaco Galiego López and his son-in-law Lorenzo Depaz Siprian (or Lorenzo Depaz Ciprian or Florencio Depaz Cipriano) left their home located in Chichupac village and went to the seat of the municipality of Rabinal in order to sell a bull. On the way they were intercepted by members of the National Army and the PAC, who seized the animal and took them to the jail located in the municipal town hall. Ciriaco Galiego was released at night, but the whereabouts of Lorenzo Depaz are still unknown.[83]

B.4. Massacre at the clinic of Chichupac village on January 8, 1982

89. On January 8, 1982, the people of Chichupac village and neighboring communities were summoned to attend a meeting at the village clinic. They were informed that there they would receive gifts. That day, members of the Guatemalan Army assigned to the Rabinal military post, *judiciales* and military commissioners gathered the community together. PAC members decorated the road leading to the clinic and marimbas played to create a festive atmosphere. After handing out toys to the children, the soldiers ordered the women to go home and take their children with them.

90. The soldiers then called out the names of 32 men from the village, using a list, and once separated from the group, locked them in the village clinic. Subsequently, members of the Army tied their hands and forced the 32 villagers to walk to a hilltop near the clinic. Some died from strangulation and others from gunshot wounds. Their bodies were buried in two mass graves. The following day, male members of the community, forced to participate in the PAC, were ordered by the military to clean up the clinic, which was full of blood and pieces of flesh, including ears, noses and tongues.[84] Days later, relatives and neighbors found the two mass graves, and seeing that these were not deep enough, they dug a third grave in which they buried the bodies.[85]

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[81] *Cf.* Statements rendered before the Assistant Prosecutor by Rosario Román Tum (wife of Domingo Reyes Juárez) and Víctor Cástulo Alvarado Sucup (son of Víctor Alvarado Valey) on August 11, 1995 and May 9, 2000, and statements rendered by affidavit by Víctor Cástulo Alvarado Sucup (son of Víctor Alvarado Valey) and Juana Reyes Román (daughter of Domingo Reyes Juárez) on December 16, 18 and 31, 2014 (evidence file, folios 1883, 1885, 1890, 1888, 5831 and 5846), and FAFG Report on the Forensic Anthropological Investigation of December 18, 2002 (evidence file, folios 1965, 1961, 1966, 1969 and 1971).

[82] *Cf.* Record of exhumation of bodies on April 9, 2002 (evidence file, folios 1938 to 1941); FAFG Report on the Forensic Anthropological Investigation of July 24, 2002 (evidence file, folios 2037), and Legal Identification Record of human skeletal remains of the Guatemalan Judiciary of February 27, 2003 (merits file, folios 1952 to 1954).

[83] The CEH Report indicates that "[o]n January 9, 1982, in the municipal seat of Rabinal, Department of Baja Verapaz, Lorenzo de Paz Cipriano, who was the auxiliary mayor of Chihom (*sic*), was summoned to the mayor's office by the judicial police and military commissioners. Since then, nothing has been heard of the victim". *Cf.* CEH, *"Guatemala, Memory of Silence,"* Cases submitted, Annex II, p. 163.

[84] *Cf.* Statements from male members of the community who were forced to clean the clinic, received in the context of the criminal investigation by the assigned assistant prosecutor on April 27, 1999, October 25, 2000, July 12 and 27, 2005 and August 16, 2005, and rendered by affidavit on December 20, 22 and 26, 2014 (evidence file, folios 435, 448, 452, 611, 638, 735, 736, 758 to 759, 1009, 1212, 1218, 5908, 5935 and 5964), and statement of Miguel Sic Osorio presented before the Inter-American Court by affidavit on April 20, 2016.

[85] *Cf.* Statements from community members who prepared another grave to bury the bodies properly, as well as from other people of the community who indicated that they knew about this event, received in the context of the criminal investigation by the assigned assistant prosecutor on April 14, 1993, April 27, 1999, October 25, 2000 and July 12 and 27, 2005, and rendered by affidavit on December 19 and 30, 2014 (evidence file, folios 435, 472, 607, 611, 638, 719 to 720, 735 to 736, 759, 1009, 1205, 1212, 5896, 6125 and 5964), and statement of Miguel Sic Osorio made before the

91. In 1993, the Guatemalan Forensic Anthropology Team (hereinafter "EAFG") identified three gravesites where skeletal remains, clothing, personal items and firearm bullet casings were exhumed. According to the forensic analysis carried out, the remains of at least 30 individuals were found. Of these, at least 20 were buried in sites I and III, and in site II, 10 complete skeletons were found. The following six people were identified: Domingo Cahuec Sic, Víctor Juárez Pangán, Cruz Sic Cuxum, Patrocinio Chen Galiego, Agustín Juárez Ixpancoc and Pedro Galiego López. In its conclusions, the EAFG stated that: "laboratory analyses indicate that the victims died violent deaths, as evidenced by the ropes still tied around their necks, hands tied behind their backs, shots fired to 'finish them off', fractures in different parts of the body, etc., found on some of the skeletal remains", and that "[t]he evidence suggests that site II was dug several days after sites I and III, and in it were deposited corpses with signs of having been partially exposed on the surface, and for this reason, in some cases it was possible to observe marks caused by animal teeth."[86] In conclusion, the findings of the EAFG in 1993 are consistent with the account of the facts.

92. The 32 alleged victims of this massacre were:[87] Víctor Juárez Pangán or Víctor Juárez Pancán; Clemente Juárez lxpancoc; Cruz Sic Cuxum or Cruz Sic Cuxún; Pedro Sic Jerónimo; Gregorio Garniga Valey or Gregorio Valey; Timoteo Sic Cujá or Mateo Sic Cujá; Roberto Galiego Chen; Antonio Alvarado González; Alfonso Cruz Juárez; Domingo Cahuec Sic or Domingo Cahuec Sic; Santiago Alvarado Xitumul; Agustín Juárez lxpancoc; Teodoro González Xitumul; Eulogio Morales Alvarado; Luciano González or Luciano González Sis; Apolinario Juárez Pérez; Alberto Juárez Pérez; Evaristo Depaz Siana or Evaristo Siana; Pedro Tum or Pedro Pérez Ampérez; Emigdio Siana lxtecoc or Emilio Siana lxtecoc; Pedro Galiego López; Demetrio Chen Alvarado; Pedro Galiego Mendoza; Camilo Juárez Valey; Julián Garniga or Julián Garniga López; Benito Juárez lxpancoc; Francisco Depaz; Maximiliano Sis Valey or Maximiliano Sis Valin; Vicente Sic Osorio; Patrocinio Galiego or Patrocinio Chen Galiego or Patrocinio Chen Coaliego; Félix Alvarado Xitumul, and Demetrio Cahuec or Demetrio Cahuec Jerónimo or José Demetrio Cahuec Jerónimo.

B.5. Rape of Máxima Emiliana García Valey on January 8, 1982

93. On January 8, 1982, while the meeting was taking place at the Chichupac village clinic, Máxima Emiliana García Valey, aged 19, returned to her home to bring food and water to her husband and mother-in-law. When she arrived at the house, she found a group of soldiers who violently grabbed her and asked her where certain people lived whose names they had written down on their hands; among these, was the name of "[her] stepfather[,] a son of [her] stepfather and a son-in-law." She replied that she did not know because "she was not was from there." Subsequently, one of the soldiers forced her to take off her clothes and "many soldiers" raped her, one after another, leaving her so battered that she "could not walk" because her "whole body ached." When she returned to the clinic she did not say anything because she was left speechless after what happened to her. At the time of these events, Máxima García was between six and eight months pregnant. In the following months her son was born; he suffered from health problems and convulsions from birth and died before he was four years old.[88]

Inter-American Court by affidavit of April 20, 2016.

[86] *Cf.* Record of exhumation of bodies, May 1993 (evidence file, folios 666 to 685); EAFG Report presented in July 1993 (evidence file, folios 511, 540 and 541), and official letters from the National Police of Salamá, Baja Verapaz dated May 15 and 19, 1993 (evidence file, folios 690 to 692, 940 and 941).

[87] According to the evidence and the arguments of the Commission and the representatives, not disputed by the State, Félix Alvarado, included in the group of 32 men, did not survive the torture to which he was subjected and died on the road. *Cf.* Statements of community members indicating that they knew about this event, and a further statement of a person indicated having seen Félix Alvarado fall on the road, received in the context of the criminal investigation by the assistant prosecutor assigned on April 27 and June 28, 1999, and August 16, 2005 (evidence file, folios 638, 1024 and 1218).

[88] *Cf.* Statements of Máxima Emiliana García Valey received in the context of the criminal investigation by the assistant prosecutor assigned on October 25, 2000, July 26, 2001 and July 12, 2005, and rendered by affidavit on December 12, 2014 (evidence file, folios 463 to 469, 750 to 751, 796 and 5714).

B.6. Prevailing violence in the area, displacement of the population, destruction of communities and the 'model village' or 'colony' in Chichupac

94. On January 8, 1982, the day on which the massacre at the clinic of Chichupac took place (*supra* paras. 89 to 92), members of the Army also seized animals from the community.[89] Owing to the fear that these events created among the population, residents of Chichupac village and neighboring communities, particularly men, fled to the mountains. At the same time, the military continued to arrive in the villages and communities of Chichupac, Xeabaj, Chijom, Coyojá, El Chol, El Apazote, Chirrum, El Tablón and Toloxcoc to intimidate the people by shooting. They searched for and killed the men of the community, killed the women when they could not find any men and threatened to kill the population that remained in the communities to force them to abandon their homes.[90] During these incursions into the communities, the soldiers raped women, even in their own homes.[91]

95. As a consequence of the prevailing violence in the area, there was a mass exodus of inhabitants from the villages and communities. These people sought refuge alone or with their families in the mountains, in other villages, municipalities, departments and cities, and even outside the country. Those who fled to the mountains remained hidden for long periods, ranging from a few months to three years, where they endured hunger, thirst and cold. Due to the unhealthy and precarious living conditions, some people, particularly children, became ill or even died.[92] For their part, the soldiers continued to pursue the villagers in the mountains, as well as those who returned to the communities, shooting at them, machine-gunning the hills, throwing grenades frequently and carrying out searches in the area, so that the people were constantly forced to hide in the mountains.[93] Whenever the soldiers found people, they would capture, arrest, interrogate, torture and/or execute them, and the women would be raped.[94]

96. The destruction of the communities took place parallel to and after the displacements. Thus, members of the National Army and the PAC carried out the following acts: a) burning of houses with all their belongings; b) burning and destruction of crops and harvests (including corn, coffee, granadilla and sugar cane); c) theft and slaughter of cattle, horses, chickens, pigs and domestic animals; d) theft of food, basic grains and provisions; e) theft of personal items, clothing and valuables, and f) theft of household utensils and tools.

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[89] *Cf.* CEH, "*Guatemala, Memory of Silence*", Chapter 2, para. 3391 and footnotes 1090 and 1095.

[90] *Cf.* Statements from community members who suffered or witnessed the situation of violence and persecution in the area and from family members, received in the context of the criminal investigation on April 27, 1999, October 25, 2000, and July 12 and 27 and August 16, 2005 and rendered by affidavit on August 14, 18, 21 and 22, September 1, 24, 27 and October 28, November 24 and December 1, 4, 8 to 20, 22, 23, and 26 to 31, 2014 (evidence file, folios 445 to 6165), and statement of Juana García Depaz at the public hearing held on April 28, 2016.

[91] *Cf.* Statements from women who claimed to have been raped and from persons who indicated that these acts occurred against their relatives, received in the context of the criminal investigation on April 27, 1999, October 25, 2000, November 15, 2002, July 12 and 27 and August 16, 2005 and rendered before the assistant prosecutor on August 16, 2005 and by affidavit on December 1, 8, 9, 11, 13, 15, 16, 22, 26, 28 and 30, 2014 (evidence file, folios 428 to 6096), and statement of Miguel Sic Osorio rendered by affidavit and presented to the Inter-American Court on April 20, 2016.

[92] *Cf.* Statements from community members who had to flee and remain hidden to the mountains, received in the context of the criminal investigation on October 25, 2000, July 12, and August 16, 2005 and rendered by affidavit on August 14, 18 and 21, September 1, October 27, November 27 and December 1, 4, 9, 11, 13, 14, 15, 17, 18, 19, 22, 23, and 26 to 31, 2014 (evidence file, folios 435 to 6155), and statement of Juana García Depaz at the public hearing held on April 28, 2016.

[93] *Cf.* Statements from community members who lived through the military persecution and had to flee to the mountains, received in the context of the criminal investigation on October 25, 2000, 12 of July and August 16, 2005 and rendered by affidavit on August 14, 18 and 21, November 24, and December 1, 9, 11, 14, 15, 18, 19, 22, 23, 26, 28 and 31, 2014 (evidence file, folios 445 to 6161).

[94] *Cf.* Statements from community members who had fled and were captured by the military and from family members, received in the context of the criminal investigation on October 25, 2000, July 12 and 27 and August 16, 2005 and rendered by affidavit on September 1, October 27, and December 9, 11, 13, 18, 19, 22, 23, 27 to 31, 2014 (evidence file, folios 456 to 6156).

97. Approximately in 1983, members of the National Army built the model village or colony in Chichupac, which was inhabited by those captured during the persecution in the mountains, by civilians who entered voluntarily once they were offered an "amnesty" and by people who were forced to return under threat of having their land confiscated if they did not do so.[95] In this colony, people lived in precarious conditions with other families, under strong military control. They had to ask for permission to work their land and the soldiers did not allow them any freedom. They were also forced to work to support the military, for example, by planting vegetables. The women, in particular, were forced to prepare the soldiers' food and wash their clothes, while the men were forced to patrol the area.[96] In addition, some women were raped. Between 1986 and 1987, members of the National Army abandoned the colony. For its part, the Family Integration Center (hereinafter "CIF"),[97] through the Promotion and Human Development Program, provided materials to the residents so that they could rebuild their homes. Thus, some people were able to resettle in the area.[98] The CIF also implemented coffee production projects for these families and provided some animals.[99]

98. However, in 1999, some people still maintained that the surviving population continued to live in fear and receive threats, and that those responsible for the massacre continued "stealing and raping the women of the communities."[100] Even today, several people claim that they have not been able to return to their lands and reconnect with their community and their culture due to the fear, violence, suffering and persecution they experienced in the communities, the loss of all their belongings and the fact that they have nowhere to live, so they have been forced to remain displaced. Moreover, since the military stole their documents proving land ownership, or else these were destroyed when the soldiers burnt their houses down, some residents said that they had not been able to recover their land because other people live on it and that the original owners cannot claim the land without documents and in the absence of help from the State.[101]

B.7. Disappearance and identification of Hugo García Depaz, Abraham Alvarado, Manuel de Jesús Alarcón Morente and Edmundo Alarcón Morente, disappearance of Adrián García Manuel and Leonardo Cahuec González, and arrest of Miguel Chen Tahuico on January 18, 1982

99. After being recruited as members of the PAC, on January 18, 1982, Adrián García Manuel, his son Hugo García Depaz and his nephew Abraham Alvarado Tecú (or Agapito Alvarado Depáz) left their home in the village of Chichupac in order to carry out a patrol. However, they were intercepted by members of the National Army who detained them and locked up in the village school of Chirrum. When Juana García Depaz, daughter of Adrián García, found out that her

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[95] *Cf.* Statements from community members who lived in the model village of Chichupac, and from other local residents who stated that they knew that members of the National Army built that colony, received in the context of the criminal investigation on October 25, 2000, July 2, 12 and 27 and August 16, 2005, and rendered by affidavit on October 28, and December 1, 11, 12, 15 to 19, 22, 23, 26, 27, and 29 to 31, 2014 (evidence file, folios 439 to 6164).

[96] *Cf.* Statements from community members who lived in the model village of Chichupac, received in the context of the criminal investigation on July 27 and August 16, 2005 and rendered by affidavit on December 11, 16, 18, 19, 22, 23 and 26 to 31, 2014 (evidence file, folios 1195 to 6151), and statement of Juana García Depaz at the public hearing held on April 28, 2016.

[97] At that time it was a non-profit private law entity that did not belong to the public administration and was not part of the State structure.

[98] *Cf.* Statements from community members who received help from the CIF, rendered by affidavit on December 27 and 29 to 31, 2014 (evidence file, folios 6016, 6025, 6081, 6126, 6136, 6141 and 6151), and affidavit of Miguel Chen Tahuico of May 30, 2016 (evidence file, folios 11905 to 11907).

[99] *Cf.* Statement of Miguel Chen Tahuico of May 30, 2016 rendered by affidavit (evidence file, folios 11905 to 11907).

[100] *Cf.* Statements from community members indicating that the persecutions continued, received in the context of the criminal investigation by the assistant prosecutor on April 27, 1999 (evidence file, folios 608, 612 and 614).

[101] *Cf.* Statements from community members who have not been able to return to their lands, rendered by affidavit on August 14, 21 and 22, September 1, October 24, November 24, and December 8, 10, 19, 22, 23 and 30, 2014 (evidence file, folios 5532 to 6130), and statement rendered by affidavit (affidavit) of Miguel Sic Osorio presented before the Inter-American Court on April 20, 2016.

relatives were being held at the school, she sent her daughter to take them some food. The soldiers did not allow her to deliver the food, telling her that "they [would] soon be released and [were] going home." Subsequently, the three men were transferred to the military post in the village of Guachipilín, and since then there has been no information on their whereabouts. That same day, the brothers Manuel de Jesús and Edmundo (or Raymundo), both Alarcón Morente, who had also been recruited as members of the PAC, were seen for the last time. In the morning, a group of soldiers had arrived at the home of the Alarcón Morente family, located between the villages of Chirrum and Chuateguá, asking for the two brothers, without their relatives giving any news of them. According to the family's account, Manuel de Jesús Alarcón Morente went out to cut cane and did not return, and his brother Edmundo Alarcón Morente was seen for the last time accompanied by soldiers who tied him up and took him away.[102]

100. In 2006, at the request of Juana García Depaz, the FAFG carried out excavation and exhumation work on a plot of land located in the village of Guachipilín, in the municipality of Rabinal.[103] In 2008, based on the final report of the forensic anthropological analysis conducted by the FAFG, it was concluded that four skeletal remains were exhumed from the grave and that these belonged to Hugo García de Paz, Manuel de Jesús Alarcón Morente, Edmundo Alarcón Morente and Agapito Alvarado Depáz. The report also indicated that three of the four cadavers "had their arms pulled backwards and the wrists together as if they had been bound," and that "[a]t the time of burial the bodies were not placed but thrown." In addition, based on the traumatic injuries observed in the skeletal remains corresponding to Agapito Alvarado Depáz, it was concluded that "the cause of death is compatible with the slitting of the throat."[104] As reported by the representatives, and not disputed, the four skeletal remains were delivered to their relatives who buried them. To date, the whereabouts of Adrián García Manuel is unknown.

101. Also, on January 18, 1982, while returning to their home in the village of Chichupac after having baptized one of their daughters at a Catholic church in Rabinal, Leonardo Cahuec González and his wife Albertina Sic Cuxúm were intercepted by a car, from which two people dressed in civilian clothes got out. They asked Leonardo Cahuec for his identification documents, tied his hands and led him away on foot to the jail in the center of the municipality of Rabinal. Albertina Sic went with them to the jail and two men who were guarding the entrance told her that her husband was a guerrilla, that "all the men in the village of Chichupac [were] guerrillas," and that "he was sent to the barracks to do military service and that he would be back home at any moment." Finally, they threatened to beat her if she did not leave. To date, the whereabouts of Leonardo Cahuec are unknown.

102. In addition, on January 18, 1982, 1983 or 1984, Miguel Chen Tahuico, who fled from the village of Chichupac after the massacre at the clinic on January 8, 1982, and took refuge in the mountains, was detained by soldiers along with a group of four to six of his relatives. The soldiers accused him of belonging to the guerrillas, hung him from a tree by his neck, burned his chest with a cigarette and tried to burn his tongue with a charred stick. When he was on the ground, they trampled all over him and jumped on his stomach. Then they tied him by the head, waist, hands and feet, leaving him out in the open all night guarded by soldiers. The next day, he was

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[102] *Cf.* Statements of Marcelina Alarcón Morente and Clotilde Felipa Alarcón Morente (sisters of Manuel de Jesús and Edmundo Alarcón Morente) rendered by affidavit on December 13, 2014 (evidence file, folios 5742 to 5744 and 5748). It should be noted that in its Merits Report the Commission pointed out that "in the statements there is a discrepancy in the date on which the detention and death of Raymundo Alarcón and Manuel Alarcón would have occurred." Thus, the Court has proceeded to point out the account that is consistent with the evidence, without prejudice to any new evidence that may arise in this regard.

[103] *Cf.* Record of the Assistant Prosecutor of the Municipal Prosecutor's Office of Rabinal, Baja Verapaz, of October 9, 2006 (evidence file, folios 1414 to 1416); Record of the Assistant Prosecutor of the Municipal Prosecutor's Office of Rabinal, Baja Verapaz, of October 10, 2006 (evidence file, folios 1417 to 1419), and official letter from the deputy inspector of the P.N.C. in charge of Sub-station 52-21 of the National Civil Police of October 19, 2006 (evidence file, folios 1421 to 1422).

[104] *Cf.* FAFG Report of January 31, 2008 presented before the Assistant Prosecutor of the District Prosecutor's Office of Salamá (evidence file, folios 11776 bis 3, 11776 bis 13 and 11776 bis 14).

taken to the model village or colony in Chichupac which was under military control. There he was interrogated and threatened, and later he was informed that he would live there and go on patrol with the soldiers for whom he also cooked food.[105]

B.8. Disappearance of Juan Mendoza Alvarado and José Cruz Mendoza Sucup since January 31, 1982

103. On January 31,1982, members of the National Army and of the PAC went to the village of El Apazote, entered the house where Juan Mendoza Alvarado and his father José Cruz Mendoza Sucup were staying, dragged them outside and beat them. Since then their whereabouts are unknown.

B.9. Disappearance of María Concepción Chen Sic and Casimiro Siana since February 12, 1982

104. On February 12, 1982, members of the National Army and the PAC entered the home of María Conception Chen Sic in the village of Chichupac, accused her of preparing food for the guerrillas and demanded that she hand over her husband, Silvestre Sic Xitumul, who had left the house with their two children. That day, the soldiers also detained Casimiro Siana, who was the auxiliary mayor of the community, while he was watering his crops near his house, and accused him of supporting the guerrillas. María Concepción Chen and Casimiro Siana were forced to walk with several women who had been captured, until they reached a point where they were separated from the group and led away in a different direction. To date, the whereabouts of both are unknown.[106]

B.10. Execution of Andrea Osorio Galeano on February 19, 1982

105. On February 19, 1982, a group of soldiers removed Andrea Osorio Galeano from her home in the village of Chichupac. The following day, her son found her lifeless body buried about one kilometer from her home, and she was then buried.[107] Andrea Osorio's remains were exhumed, analyzed and identified in 1993 by the EAFG in a fourth grave, located in the place where three graves were found containing the remains of the men executed on January 8, 1982. (*supra* para. 91). The EAFG's findings documented the presence of fractures on the body and in several vertebrae.[108]

B.11. Execution of Elías Milián González and Amelia Milián Morales on March 23 and April 20, 1982

106. On March 22, 1982, Elías Milián González was detained by a group of soldiers while he was on his way to the center of the municipality of Rabinal. The following day, he was taken to the clinic of Xeabaj and strangled in the village of Chijom. His body was found days later in a *panela* (cane sugar) oven by his relatives, who proceeded to bury him in the same place. On April 20, 1982, a group of soldiers arrived at the village of Toloxcoc and entered the house of Amelia Milián Morales, daughter of Elías Milián. The soldiers arrested her and took her away. Her body was found that same day in a *panela* oven in the village by one of her sisters, who proceeded to

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[105] *Cf.* Statements of Miguel Chen Tahuico before the assistant prosecutor on July 27, 2005 and another undated, and statement made by affidavit on December 13, 2014 (evidence file, folios 459 to 462, 1196 and 5735).

[106] *Cf.* Statement made by affidavit by Margarita Siana Cruz (daughter of Casimiro Siana) on December 16, 2014 (evidence file, folios 5821 to 5822).

[107] *Cf.* Statements of Miguel Sic Osorio (son of Andrea Osorio Galeano), Fabiana Chen Galiego and Teresa Cacaj Cahuec (community members) before the assistant prosecutor of April 27, 1999 and August 16, 2005 (evidence file, folios 611 to 615, 636 and 641, 1214 and 1215), and statement of Miguel Sic Osorio presented before the Inter-American Court by affidavit the April 20, 2016.

[108] *Cf.* Record of exhumation of bodies, May 1993 (evidence file, folios 666 to 685); EAFG Report of July 1993 (evidence file, folios 539 and 541), and official letters of the National Police of Salamá in Baja Verapaz dated May 15 and 19, 1993 (evidence file, folios 690 to 692, 940 and 941).

bury her.[109]

107. In 2007, exhumations were carried out in Toloxcoc in order to locate, among others, the remains of Amelia Milián Morales. An expert analysis by the FAFG in 2008 reported the discovery of the skeletal remains, clothing and personal effects of three individuals: "an adult female, a male of indeterminate age, and an individual of unknown sex and age group." However, it was not possible to identify them or determine the cause of death, although according to the forensic report, it cannot be ruled out that "these correspond to the individuals sought." The three skeletons were given in custody to Tarcila Milián Morales. [110] Subsequently, in 2010, an exhumation of remains was carried out in Chijom, followed by a forensic anthropological analysis. The forensic report prepared in 2011 by the FAFG concluded that the remains belonged to Elías Milián González, and that the individual "received at least one blunt trauma to [the] jaw." On April 18, 2012, the assistant prosecutor of the Municipal Prosecutor's Office of Rabinal handed over the remains of Mr. Milián to his daughter Tarcila Milián.[111]

B.12. Rape and execution of Gregoria Valey Ixtecoc on November 22, 1982

108. On the morning of November 22, 1982, a group of soldiers and members of the PAC arrived in the village of Chichupac and entered the home of Gregoria Valey Ixtecoc, who was between four and eight months pregnant. After inquiring about her husband, who was not at home, the soldiers left. At around midday the group of soldiers returned to Mrs. Valey's home, raped her and then suspended her from the roof of her house with a noose and hanged her. After that they burned the house down. That same day her remains were buried nearby by her relatives. In 2002, members of the FAFG identified the grave, which was part of a clandestine cemetery where the remains of Gregoria Valey, among others, were exhumed and identified.[112]

B.13. Disappearance of Juan Pérez Sic on November 15, 1981

109. On November 15, 1981, at approximately 6:00 p.m., a group of "*judiciales*" arrived at the home of Manuela Toj Pérez and Juan Pérez Sic. The latter went out to speak to them while some of the men entered the house to search it and then left. That was the last time Manuela Toj saw Juan Pérez alive, since from that date his whereabouts are unknown.[113]

B.14. Disappearance of eight persons on November 26, 1982 and arrest of Napoleón García de Paz

110. On the afternoon of November 26, 1982, a group of soldiers and members of the PAC arrived in the villages of Xeabaj and Chijom, where they detained and removed the following nine persons from their homes: Gorgonio González; Gabino Román Yvoy (or Iboy or Ivoy); Cruz

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[109] *Cf.* Statements of Tarcila Milián Morales (daughter of Elías Milián González and sister of Amelia Milián Morales) before the assistant prosecutor of March 22, 1985, July 27, 2001 and September 24, 2003, and by affidavit on December 22, 2014, and the statement made by Angélica María Torres Milián (relative of Elías and Amelia Milián) by affidavit on December 22, 2014 (evidence file, folios 799, 800, 1900, 1901, 5918, 5924 and 5925, 11783 and 11784), and FAFG Report of June 28, 2011 (evidence file, folio 11915).

[110] *Cf.* FAFG report of February 27, 2008, presented before the assistant prosecutor of the District Prosecutor of the Salamá Public Prosecution Service(evidence file, folios 11897 to 11899), and Record of the Public Prosecution Service of October 16, 2008 (evidence file, folio 11845).

[111] *Cf.* FAFG report of June 2011 (evidence file, folio 11930), and record of delivery of the remains by the assistant prosecutor of the Municipal Prosecutor's Office of Rabinal. (evidence file, folios 11949 and 11950).

[112] *Cf.* Record of exhumation of bodies of April 9, 2002 (evidence file, folios 1938 to 1941), and Report on the Forensic Anthropological Investigation by the FAFG of December 18, 2002 (evidence file, folio 2037).

[113] *Cf.* Statements of Manuela Toj Pérez (companion of Juan Pérez Sic) by affidavit on December 29, 2014 (evidence file, folios 6070 and 6071). In a footnote to its Merits Report, the Commission explained that, in their initial communications, the petitioners indicated that Juan Pérez Sic had been forcibly disappeared on November 26, 1982 and subsequently died in during the violent events of October 1, 1982. The Commission stated that it did not have further evidence to determine the circumstances of his death. In the proceedings before the Court, the representatives stated that this person has been disappeared since November 15, 1981. The Court points out that the account of the facts and the date are consistent with the evidence, without prejudice to any new evidence that may come to light in this regard.

Pérez Ampérez; Eustaquio Ixtecoc González (or Eustaquio Yxtecoc González); Jorge Galeano Román; Rafael Depaz Tecú; Enrique Mendoza Sis; Dionisio Vachán (or Bachan), and Napoleón García de Paz (or Napoleón García Depaz or Napoleón García de Paz). These nine individuals had their hands tied and were then taken to the San Francisco cemetery in the village of Xeabaj. Napoleón García de Paz told the Court that he was forced to lie face down on the ground with his hands tied and was beaten on his back. At approximately 1:00 a.m., he managed to untie his hands and was the only one who managed to escape.[114]

111. In 2004, members of the FAFG carried out excavations in the municipal cemetery of Xeabaj, but were unable to locate the skeletal remains they were looking for. The FAFG report explained that "the work area was very small because it was in the middle of the niches built in this place and the witnesses did not know the exact location of the burial site, so [they] were unable to find any skeletal remains."[115] On December 22, 2014, the FAFG submitted to the Public Prosecutor's Office an expert opinion on the forensic anthropological investigation carried out in the San Francisco Cemetery, Chuateguá village, on March 7, 2012 and March 20, 2013, without finding the remains sought.[116] To date, the whereabouts of the eight men are unknown.

B.15. Execution of eight persons on March 2, 1983

112. On March 2, 1983, at around 5:00 a.m., a group of approximately 18 people who had fled to the mountains seeking refuge from the violence in the area, were surprised by members of the National Army while they were sleeping in a hut that served as a shelter. Upon seeing them, the soldiers started to shoot and some people managed to escape, among them Napoleón García de Paz, his wife and children. As they fled, Napoleón García was shot twice in the finger and foot. The following eight people from the village of Xeabaj were either shot dead or killed with machetes: five children, Rosa González Tecú aged 10, María Concepción Xitumul (or Maria Ixtococ Chitimul) aged 5, Héctor Rolando Alvarado García aged 4, Adela Florentina Alvarado García (or Delia Alvarado García) just one year old and a baby girl of unknown name between 0 and 3 months old; two women, Enriqueta Tecú (or Enriqueta Tecú Chiquito) and Lucía Xitumul Ixpancoc (or Luciana Xitumul Ixpancoc); and a man, Luciano Alvarado Xitumul (or Luciano Alvarado Chitimul). Their bodies were buried in a clandestine grave in the village of Xeabaj by neighbors and relatives.[117]

113. In 2004, members of the FAFG excavated a mass grave and exhumed human remains, clothing, personal items and ballistic residues. After the respective analyses, it was concluded that six skeletal remains were recovered which were identified and coincide with six of the persons indicated above. The remains of Héctor Rolando Alvarado García and María Concepción Xitumul were not identified.[118] The forensic report indicated that some skeletons showed "*circummortem* trauma, as a result of violence inflicted on the individual at a time close to death, compatible with a gunshot wound to the head and blunt injuries to the thorax." Finally, "[t]he mode of burial in the grave suggests that this was carried out by family members and/or neighbors, since the burial site had offerings associated with the bones and they were covered with ponchos to protect the deceased, and were laid at the bottom of the grave and not thrown into the grave."[119]

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[114] *Cf.* Statement of Napoleón García de Paz at the public hearing held on April 28, 2016.
[115] *Cf.* Report of the FAFG Forensic Anthropological Investigation of October 6, 2004 (evidence file, folios 1601 and 1606).
[116] *Cf.* Report of the FAFG of June 5, 2014 (evidence file, folios 9247 to 9276).
[117] *Cf.* Statement of Daniel Xitumul Cuxúm (husband of Lucía Xitumul Ixpancoc or Luciana Xitumul Ixpancoc, and father of María Concepción Xitumul Xitumul and of the baby girl of unknown name aged 0 to 3 months old) by affidavit on September 1, 2014 (evidence file, folio 5563); CEH, *"Guatemala, Memory of Silence"*, Cases submitted, Annex II, p. 156, and statement of Napoleón García de Paz at the public hearing held on April 28, 2016.
[118] *Cf.* Report of the FAFG Forensic Anthropological Investigation of October 6, 2004 (evidence file, folios 1601, 1606, 1609, 1640 and 1641).
[119] *Cf.* FAFG Report on the Forensic Anthropological Investigation of October 6, 2004 (evidence file, folios 1601, 1606, 1609, 1640 and 1641).

B.16. Death of the child Antonio Chen Mendoza in March 1983

114. Miguel Chen Tahuico and Vicenta Mendoza Alvarado and their four children left their home in the village of Chichupac and fled to the mountains due to persecution by the Army. Owing to exposure to the climate, one of their children, Antonio Chen Mendoza, aged six, "began to suffer from diarrhea, fever and sores appeared on his little body; as a result of this illness […] he died." His body was buried in the mountains, but the date of his death is uncertain because, as his father pointed out, "in the mountains you lose track of time."

B.17. Execution of the siblings Eusebia and José León Grave García on October 22, 1983

115. On October 22, 1983, a group of soldiers and PAC members executed the siblings Eusebia and José León Grave García (aged 18 and 17, respectively), children of Juana García Depaz. Eusebia Grave was bathing in a stream and José León Grave was having breakfast. The latter's genitals, ear and nose were cut off, and his body was "cut open" prior to his death. Their bodies were buried by family members and neighbors in a grave located in the Cumatzá mountain, in the village of Xeabaj. In 2002, members of the FAFG identified the grave, which was part of a clandestine cemetery, and in 2003 the remains of Eusebia and José León Grave García were identified by their mother in a judicial identification procedure.[120]

B.18. Situation of Juana García Depaz from October 22, 1983 and forced labor

116. On the morning of October 22, 1983, a group of "judiciales" and approximately two hundred soldiers detained Juana García Depaz together with a group of women, girls and children, they gathered the local residents and burned their clothes and food. Next, they took a group of people, including Juana García, to a military post located in the municipal seat of Rabinal, where they were held "without food" and "without water." At night, the group was locked in a room and for three nights the women were beaten and raped by soldiers and "*judiciales*." During that time Juana García received death threats, was hung by the neck with a noose and was interrogated about the guerrillas. After three days, and after the soldiers had taken the children "to the sanatorium of the Sisters of Charity," they transferred the group of people to the Pacux colony in Rabinal, where they were held. Between December 31, 1983 and January 1, 1984, a group of men and women, including Juana García, were taken by soldiers to the village of Chichupac, where they lived in overcrowded huts. There, the women were starved, forced to cook for three or four hundred soldiers of the detachment and were victims of rape. The rapes carried out by soldiers in October 1982 and June 1985 against Juana García resulted in two pregnancies, from which her children Edgar and Sandra Maribel García were born.[121]

B.19. Execution of Medardo Juárez García on August 31, 1983 or 1984

117. On August 31, 1983 or 1984, a group of soldiers and members of the PAC arrived in the village of Chichupac, entered the courtyard of the home of María Concepción García Depaz, her husband and her five children and fired shots. At that moment her son Medardo Juárez García, aged between 14 and 16, became frightened and ran out into the street. In response, one of the soldiers shot him and he fell down dead. That same day, the soldiers burned down the family's house and stole all their belongings, along with property from other houses in the village. Medardo Juárez's relatives buried his body in a grave dug near his home.[122] In 2002, members

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[120] *Cf.* Record of exhumation of bodies of April 9, 2002 (evidence file, folios 1938 to 1941); Report of Forensic Anthropological Investigation of the FAFG of December 18, 2002 (evidence file, folios 2037), and Record of identification of human remains of the Guatemalan Judiciary of February 27, 2003 (evidence file, folios 1953 and 1954).

[121] *Cf.* Statement of Juana García Depaz before the assistant prosecutor on July 26, 2001 and statement of Juana García Depaz rendered by affidavit on November 2, 2009 (evidence file, folios 790, 1333 to 1336), and statement of Juana García Depaz at the public hearing held on April 28, 2016.

[122] *Cf.* Criminal complaint of María García Depaz of January 17, 1997 (evidence file, folio 1862); statement of María Concepción García Depaz before the assistant prosecutor on July 27, 2001 (evidence file, folios 801 and 1902), and

of the FAFG identified the grave, which was part of a clandestine cemetery where the human remains of Medardo Juárez and others were exhumed and identified. [123]

B.20. Disappearance of Marcelo Sic Chen in December 1984

118. Between December 13 and 15, Marcelo Sic Chen arrived at the colony of Chichupac in order to seek "amnesty and turn himself in." There, he was received by a military commissioner who handed him over to members of the National Army. He was then taken to the military post in Rabinal and to date his whereabouts are unknown.

B.21. Execution of Silvestre Sic and Raymunda Corazón on December 20, 1984

119. On the morning of December 20, 1984, a group of soldiers and members of the PAC entered a house in the village of Chichupac where Silvestre Sic (or Silvestre Sic Xutumul), father of Marcelo Sic Chen (*supra* para. 118), and Raymunda Corazón (or Raymunda Sical Corazón)were staying, and executed them with firearms. Their mutilated bodies were found the following day by neighbors who proceeded to bury them in a latrine near their home.[124] In 2002, members of the FAFG identified the grave, which was part of a clandestine cemetery. During the exhumation process, one of the corpses was identified as Raymunda Corazón by Francisco Sic Chen; however, the forensic anthropological report states that it was not identified by the expert analysis. On the other hand, the remains of Silvestre Sic were exhumed and identified by means of the expert analysis.[125]

B.22. Execution of Efraín García de Paz on August 17, 1986

120. Efraín García de Paz, brother of Juana García Depaz, was away from the area for approximately three years. When he returned, on August 17, 1986, on the way from his home in Chichupac to the municipal seat of Rabinal, he was intercepted and executed. According to Juana García Depaz, the person who killed her brother was a civilian patrolman, although she has also indicated that it was a "G2" of the Army. However, the Inter-American Commission concluded in its Merits Report that it was a "judicial officer." According to Juana García, she and her relatives collected Efraín García's body and buried him in the cemetery located in Rabinal.[126]

C. Investigations

121. The evidence shows that two case files were opened related to the investigation of the events of the massacre of January 8, 1982: i) Case File No. 001-2005-95839 before the Special Cases and Human Rights Violations Unit of the Public Prosecutor's Office,[127] which was opened

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statement rendered by María Concepción García Depaz by affidavit on December 11, 2014 (evidence file, folios 5694 and 5695).

[123] *Cf.* Record of exhumation of bodies of April 9, 2002 (evidence file, folios 1938 to 1941), and Report of the Forensic Anthropological Investigation of the FAFG of December 18, 2002 (evidence file, folios 2037).

[124] *Cf.* Statement of Pedro Corazón Osorio (nephew of Raymunda Sical Corazón), who was accompanied by Francisco Sic Chen (son of Silvestre Sic Xutumul), rendered by affidavit on December 16, 2014(evidence file, folio 5814), and statement of Francisco Sic Chen before the assistant prosecutor on July 26, 2001 (evidence file, folio 792).

[125] *Cf.* Record of exhumation of bodies of April 9, 2002(evidence file, folios 1938 to 1941), and Report of Forensic Anthropological Investigation of the FAFG of December 18, 2002 (evidence file, folio 2037).

[126] *Cf.* Complaint filed by Juana García Depaz before the departmental assistant of the Human Rights Ombudsman on May 9, 1995 (evidence file, folios 1290 and 1291), and Statement of Juana García Depaz of March 28, 2007 (evidence file, folio 1423).

[127] As the petitioners explained in a brief submitted during the proceedings before the Commission, from the time of a complaint filed in 1993 until 2005, the investigation was conducted by the District Prosecutor's Office of the Public Prosecutor's Office of the Department of Baja Verapaz under File 1083-95 M.P. and File M.P. 247/1999/492, with Case No. 255-93 Of. 4 before the Criminal Court of First Instance for Drug-related Activity and Environmental Crimes of Baja Verapaz. File M.P. 247/1999/492 was added to Case No. 255-93 Of. 4 on September 1, 2005, according to an official letter from the assistant prosecutor of the District Prosecutor's Office of Baja Verapaz, addressed to the judge of the Criminal Court of First Instance for Drug-related Activity and Environmental Crimes of Baja Verapaz (evidence file, folio 8772). Case No. 001-2005-95839 was apparently processed before the Special Cases and Human Rights Violations Unit of the Public Prosecution Service in Guatemala City since 2005. *Cf.* Brief of December 13, 2007 submitted by the

following a complaint filed in March 1993[128] and which is still under investigation, and ii) a case filed with the Human Rights Ombudsman of Guatemala, who issued a decision on September 2, 1996 regarding the clandestine cemeteries located in the village of Chichupac.[129]

122. In addition, nine files were opened related to the facts committed before and after the massacre of January 8, 1982: seven before the District Prosecutor of the Public Prosecutor's Office of Salamá and two before the Municipal Prosecutor's Office of the Public Prosecutor's Office of Rabinal. In these files, between 1995 and 2010, disappearances, executions, forced displacement, sexual violence and rape, acts of torture and forced labor, among others, were denounced. There is no evidence of any efforts or actions aimed at determining those responsible in seven of these nine files. On the contrary, the actions in five of these case files[130] were limited to the exhumation of remains and, in some cases, their delivery to the next of kin. In the other two case files[131] there is no record of any investigative activity whatsoever. Finally, in Case File No. 802-95-Of. 6 and M.P. 247-2006-441 there are some actions aimed at determining responsibilities, but these were minimal. This, despite the fact that members of the Army and/or the PAC were held responsible for the facts and that on several occasions the complainants even provided the names of said persons and the places where they could be located,[132] as well as the names of possible witnesses.

123. Although the State argued that, as of 2011, "various events that occurred in that region" are under investigation in File MP001-2012-364, allegedly processed by the Special Cases Unit of the Internal Armed Conflict of the Human Rights Section of the Prosecutor's Office, Guatemala did not provide documentation to support this claim or to allow the Court to evaluate the proceedings in that file, even though this was requested by the Court.[133]

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representatives (formerly petitioners) to the Commission (evidence file, folios 378 to 379). There is no record in file No. 001-2005-95839 of a resolution in which the Special Cases Unit takes cognizance of the case, nor are there any further actions by the Special Cases Unit. Therefore, there is no record of whether both File 1083-95 M.P. and File M.P. 247/1999/492 with Case No. 255-93 Of. 4 before the Criminal Court of First Instance for Drug-related Activity and Environmental Crimes of Baja Verapaz became part of File No. 001-2005-95839 before the Special Cases and Human Rights Violations Unit of the Public Prosecutor's Office, but it is understood that this was the case. The Commission indicated that Annex 7 to the Merits Report corresponds to File No. 001-2005-95839. This was not disputed by the State. Within this annex there are documents without case numbers or with different case numbers, such as cases No. 916-97 Of. 4, No. 492-99 Of. 7, No. 255-93 Of. 4, and MP-36-00-7. Most of the file relates to Case No. 255-93 Of. 4, which is also found in Annex 9 to the Merits Report. In Annex 9 there are documents missing from Annex 7 and vice versa.

[128] *Cf.* Complaint filed by Ana Calate Sic on March 29, 1993 (evidence file, folios 729 and 730).

[129] *Cf.* Resolution of the Human Rights Ombudsman of September 2, 1996 on the files related to the clandestine cemeteries located at Plan de Sánchez, Raxtuj, Chichupac and Río Negro, Rabinal, Baja Verapaz (evidence file, folios 1869 to 1879).

[130] These files are: i) No. 87-97 before the District Prosecutor's Office of the Public Prosecution Service; ii) Case No. 255-93 Of. 4 (File 1083-95 M.P.) before the District Prosecutor's Office of Salamá; iii) Case No. 247-2003-1142 before the District Prosecutor's Office of Salamá; iv) Case No. 248-2010-263 before the Municipal Prosecutor's Office of the Public Prosecution Service of Rabinal, and v) File No. M.P. 247-1997-1378 before the District Prosecutor's Office of Salamá.

[131] These files are: i) No. 811-95 Of. 1 before the District Prosecutor's Office of the Public Prosecution Service of Salamá and ii) No. 248-2006-169 before the Municipal Prosecutor's Office of the Public Prosecution Service of Rabinal.

[132] Complaint filed by Máxima Emiliana García Valey and Francisco Sic Chen on May 9, 1995 (evidence file, folio 1577), and Statement of Juana García Depaz of February 8, 2010 (evidence file, folios 9003 to 9005).

[133] During the public hearing, Judge Eduardo Ferrer asked the State to clarify "how many criminal proceedings are open, how many have been joined and what stage they are at." Through a note of the Secretariat dated May 12, 2016, the State was requested to answer the questions posed by the Judges of the Court in said hearing and to submit "the relevant supporting documentation."

IX
MERITS

IX.I
RIGHTS TO PERSONAL LIBERTY,[134] PERSONAL INTEGRITY,[135] LIFE[136] AND RECOGNITION OF THE JURIDICAL PERSONALITY[137] OF THE VICTIMS OF FORCED DISAPPEARANCE, AS WELL AS THE RIGHTS TO PERSONAL INTEGRITY AND PROTECTION OF THE FAMILY[138] OF THEIR NEXT OF KIN

A. Arguments of the Commission and the parties

124. In its Merits Report, the ***Commission*** established that eight persons were disappeared on August 24, 1981; January 8, 18 and 31 and February 12, 1982; and December 13, 1984, and that all these persons were last seen in the custody of State agents and, to date, their whereabouts are unknown. The eight forced disappearances allegedly occurred in the context of the violence and persecution perpetrated against the Maya population suspected of being linked to the insurgency. Therefore, it concluded the violation of the rights of said persons to recognition of their juridical personality, to life, to personal integrity and to personal liberty, established in Articles 3, 4, 5 and 7 of the American Convention, in relation to Article 1(1) of the same instrument, as well as the violation of Article 1 of the ICFDP. In its final arguments, it considered that some of the facts that it had classified as extrajudicial executions in its Merits Report could instead be classified as forced disappearances and, consequently, the Court has temporal competence to rule on such facts. In this regard, it stated that the victims of forced disappearance are those persons who were thrown into clandestine graves and who, as of March 9, 1987, had not been exhumed, and whose remains had not been identified or handed over to their relatives. The foregoing, because the State engaged in actions to conceal what happened and prevent the identification of the remains. On this point, it referred to the similarities between this case and the *Case of the Peasant Community of Santa Bárbara v. Peru*, in which the Court classified the facts as forced disappearance despite clear evidence of the victims' deaths.

125. Furthermore, the Commission held that the relatives of the disappeared are, in turn, victims of a violation of their personal integrity. It established that the persecution, the extreme violence, the situation of great vulnerability and the intention to destroy the family and social foundations that prompted the violence in the context of the facts, allow it to consider an autonomous violation of the right to the protection of the family. It also noted that in the instant case there has been no proper investigation of the facts, or any effective judicial process.

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[134] Article 7 of the Convention states: "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."

[135] Article 5 of the Convention establishes that: "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."

[136] Article 4(1) of the Convention states: "1. Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of Concepción. No one shall be arbitrarily deprived of his life."

[137] Article 3 of the Convention states: "Every person has the right to recognition as a person before the law."

[138] Article 17 of the Convention establishes: "1. The family is the natural and fundamental group unit of society and is entitled to protection by society and the state."

Consequently, it concluded that the State violated the right to psychological and moral integrity and the right to protection of the family, enshrined in Articles 5(1) and 17 of the American Convention in relation to the duty to respect rights established in Article 1(1) thereof, to the detriment of the next of kin of the victims in this case.

126. In their pleadings and motions brief, the ***representatives*** maintained that the State is responsible for the forced disappearance of eighteen individuals who lived in the village of Chichupac and the neighboring communities. In their final arguments they indicated that, based on the judgment in the case of the *Peasant Community of Santa Bárbara v. Peru,* it is necessary to modify the legal classification of what happened to the victims - who were presented before the Commission as victims of extrajudicial execution – to the category of forced disappearance, because there are insufficient elements to establish their death. In this regard, they requested that the eight persons identified by the Commission in its Merits Report be declared victims of forced disappearance. They also requested the change of legal definition of what happened to a list of 68 alleged victims provided at the public hearing and a list of 42 alleged victims provided in their final written arguments, from extrajudicial execution to forced disappearance. They noted that to date the whereabouts of many of the people who appear on these lists remains unknown, their identities have not been determined with certainty and their remains have not been found or delivered to their relatives for burial. Furthermore, although in some cases exhumations have already begun, the remains have not been identified through tests or analyses that prove their identity, the manner and cause of death and the existence of possible injuries or signs of torture.

127. On the other hand, the representatives pointed out that an important aspect of the systematic practice of forced disappearance is the psychological and moral effects on the families of the victims, which results from the profound suffering caused by the failure to locate the mortal remains of their loved ones, as well as the failure to investigate the circumstances under which the crime occurred. Therefore, they argued a violation of Article 5 of the American Convention, in relation with Article 1(1) thereof.

128. The ***State*** argued that it cannot be held responsible for the disappearances that occurred at the time of the armed conflict, since this crime was not classified under domestic criminal law nor did it exist in the inter-American sphere itself. It argued that neither the Court nor the Commission distinguished between "continuing crimes" and "permanent crimes" when analyzing the legal nature of the crime of forced disappearance. It explained the difference between such crimes under Guatemalan criminal law, and indicated that forced disappearance, which in Guatemala constitutes a crime as of May 22, 1996, is a permanent crime because it is committed at a specific time and, although the effects remain, it cannot be re-classified based on subsequent events in accordance with the principle of legality and non-retroactivity of the law. Consequently, the facts that occurred prior to the criminalization and entry into force of the crimes of forced disappearance and torture, could be considered as crimes of kidnapping, unlawful detention or serious injuries.

129. The State added that only a judge with criminal jurisdiction can establish the existence of a forced disappearance. Moreover, it pointed out that "the State cannot be held responsible for having committed such disappearances without any reliable evidence." In this regard, it held that, in order to establish forced disappearance, both the Commission and the Court relied solely on the systematic pattern prevalent at the time of the internal armed conflict. It also argued that when there is a change of government, although State responsibility can be extended for the acts of officials of previous governments, those acts cannot be characterized as a continuous conduct by the State and consequently the Court's jurisdiction cannot be extended to acts prior to the date on which the State recognized its jurisdiction. Likewise, it held that the ICFDP cannot be applied retroactively to acts that occurred before it entered into force for the State, nor to acts that began to be executed prior to the ratification of said Convention on February 25, 2000.

130. Similarly, the State argued that it cannot be held responsible for the violations of the rights

to life, personal integrity, personal liberty and recognition of juridical personality, since the Court cannot hear facts prior to the date on which Guatemala recognized its jurisdiction. On the other hand, it cited the *Case of Efraín Bámaca Velásquez* to argue that "the arbitrary deprivation of life suppresses the human person and, therefore, it is not appropriate, in this circumstance, to invoke the alleged violation of the right to juridical personality or of other rights enshrined in the Convention." Finally, it objected to the addition of new names of persons who had allegedly been "extrajudicially executed," according to the Commission's Admissibility and Merits Reports, to the list of persons presumed to have been forcibly disappeared.

B. Considerations of the Court

131. In the instant case, the State has been emphatic in pointing out that it does not seek to deny the events that caused the human rights violations, or its responsibility if there has been willful misconduct, negligence or institutional fault on its part or that of public officials or employees (*supra* paras. 15 and 51). However, it challenged the analysis made by the Court on forced disappearance in its case law, and on this basis argued that international responsibility cannot be attributed to it for the facts of this case. The Court will proceed to respond to the State's arguments.

132. First, the State argued that it cannot be held internationally responsible for the disappearances that occurred during the internal armed conflict, because the crime of forced disappearance is a permanent crime that was not defined in its domestic criminal law nor did it exist in the inter-American sphere itself, and it cannot be classified as such in accordance with the principles of legality and non-retroactivity of the law. In any case, according to the State, the crime could be classified as kidnapping, unlawful detention or serious injury.

133. In its consistent case law since 1988,[139] the Court has established that forced disappearance of persons is a violation of human rights constituted by three concurrent elements: a) deprivation of liberty; b) direct intervention of State agents or their acquiescence, and c) the refusal to acknowledge the detention and to reveal the fate or whereabouts of the person concerned. In this regard, the Court has also established the pluri-offensive nature of forced disappearance, as well as its permanent or continuing nature, in which the execution of the disappearance begins with the deprivation of the person's liberty and the subsequent lack of information about his or her fate, and continues until the whereabouts of the disappeared person are known or his or her remains are found, so as to determine with certainty his or her identity.[140] As long as the disappearance continues, States have the correlative duty to investigate it and, eventually, to punish those responsible, in accordance with the obligations derived from the American Convention and, in particular, from the Inter-American Convention on Forced Disappearance of Persons (ICFDP).[141]

134. This Court has jurisdiction to characterize the facts of the instant case as forced disappearance given the permanent or continuous nature of its constituent acts, and the fact that it is a "multi offensive" crime, which violates several rights recognized in the American Convention as long as the whereabouts of the victim are not known or his remains are not found. The Court recalls that forced disappearance encompasses multiple acts which, combined for a single purpose, permanently violate, for as long as they subsist, different legal rights protected

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[139] *Cf. Case of Velásquez Rodríguez v. Honduras. Merits*. Judgment of July 29, 1988. Series C No. 4, para. 155, and *Case of Tenorio Roca et al. v. Peru. Preliminary objections, merits, reparations and costs.* Judgment of June 22, 2016. Series C No. 314, para. 141.

[140] *Cf. Inter alia*, *Case of Velásquez Rodríguez v. Honduras. Merits,* paras. 155 to 157, and *Case of Osorio Rivera and Family Members v. Peru. Preliminary objections, merits, reparations and costs.* Judgment of November 26, 2013. Series C No. 274, para. 31.

[141] *Cf. Case of Radilla Pacheco v. Mexico. Preliminary objections, merits, reparations and costs.* Judgment of November 23, 2009. Series C No. 209, para. 145, and *Case of Osorio Rivera and Family Members v. Peru*, para. 115.

by the Convention.[142] Consequently, the examination of a possible forced disappearance should not be approached in an isolated, divided and fragmented manner, considering merely the detention, or the possible torture, or the risk of loss of life.[143] Rather, the analysis should encompass all the facts submitted to the consideration of the Court. Only in this way is the legal analysis of forced disappearance consistent with the complex human rights violation that it entails.[144]

135. These considerations do not contravene the principles of legality and non-retroactivity, since, unlike extrajudicial executions, the forced disappearance of persons is characterized as a continuous or permanent violation. This allows the Court to rule on an alleged forced disappearance, even if it commenced prior to the date on which the State accepted the Court's jurisdiction, provided that said violation is maintained or continues after that date.[145] Nevertheless, the Court recalls that although it must analyze the alleged forced disappearance from an integral perspective, it can declare a violation of the American Convention or other treaties as of the date on which the respondent State accepted its jurisdiction,[146] namely, on March 9, 1987.

136. Finally, regarding the arguments concerning the manner in which the acts of forced disappearance should be prosecuted at the domestic level, the Court notes that in its case law it has considered cases in which the initial failure to define the autonomous crime of forced disappearance of persons at the time the facts occurred and when the criminal proceedings began at the domestic level did not hinder their progress; it has been of fundamental importance that the eventual application of criminal definitions be consistent with the serious nature of the facts and the complexity of the alleged human rights violations. Thus, in the *Case of Ticona Estrada et al. v. Bolivia*, the trial judge in the criminal case issued a judgment on January 8, 2008, in which he convicted two former members of the army for the crimes of murder, deprivation of liberty, threats and abduction, as well as two former State agents for the crime of complicity in murder. The Court considered that "it [was] not proven that the lack of a legal definition of the autonomous crime of forced disappearance has hindered the effective development of the criminal proceedings."[147] In the *Case of Goiburú et al. v. Paraguay*, the defendants in some cases were convicted of criminal offenses such as abduction, unlawful deprivation of liberty, abuse of authority, association or conspiracy to commit a crime, injuries, coercion or threats, and homicide, established in the Criminal Code of 1914 and 1998 when this was more beneficial to the accused. The Court recognized that "the illegal and arbitrary detention, torture and forced disappearance of the victims have not remained in total impunity through the application of other categories of crime."[148] In the *Case of Castillo Páez v. Peru,* a different situation arose: although the accused were initially prosecuted for the crime of abduction, on March 16, 2006, four people were convicted of the crime of forced disappearance. The Supreme Court of Justice of Peru confirmed this position in a ruling on December 18, 2007, establishing that, "since it is a permanent crime, it will be understood to have been perpetrated under the new Criminal Code and its provisions shall be applied." The Inter-American Court

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[142] *Cf. Case of Radilla Pacheco v. Mexico,* para. 138, and *Case of the Peasant Community of Santa Bárbara v. Peru*. *Preliminary objections, merits, reparations and costs*. Judgment of September 1, 2015. Series C No. 299, para. 166.

[143] *Cf. Case of Heliodoro Portugal v. Panama. Preliminary objections, merits, reparations and costs.* Judgment of August 12, 2008. Series C No. 186, para. 112, and *Case of the Peasant Community of Santa Bárbara v. Peru*, para. 166.

[144] *Cf. Case of Heliodoro Portugal v. Panama,* para. 112, and *Case of Osorio Rivera and Family Members v. Peru*, para. 116.

[145] This has been the Court's constant case law in cases of forced disappearance of persons. *Cf. Case of Heliodoro Portugal v. Panama*, para. 34; *Case of Ticona Estrada et al. v. Bolivia. Merits, reparations and costs.* Judgment of November 27, 2008. Series C No. 191, para. 28 and sbsq; *Case of Radilla Pacheco v. Mexico*, para. 24; *Case of González Medina and Family v. Dominican Republic. Preliminary objections, merits, reparations and costs.* Judgment of February 27, 2012. Series C No. 240, para. 48; *Case of Tenorio Roca et al. v. Peru*, para. 31.

[146] *Cf. Case of González Medina and Family v. Dominican Republic*, para. 53.

[147] *Cf. Case of Ticona Estrada et al. v. Bolivia*, paras. 75, 76, 103 and 104.

[148] *Cf. Case of Goiburú et al. v. Paraguay. Merits, reparations and costs.* Judgment of September 22, 2006. Series C No. 153, paras. 91 and 92.

considered that the decisions adopted constituted "important precedents for Latin American justice in matters of human rights."[149]

137. Second, the State argued that the existence of a forced disappearance can only be determined by the domestic criminal courts and through the use of appropriate evidence, and that this Court cannot attribute responsibility for having committed those disappearances without reliable evidence.

138. The Court recalls that international human rights jurisdiction should not be confused with criminal jurisdiction, since the States do not appear before the Court as defendants in a criminal action. The purpose of international human rights law is not to punish those individuals who are guilty of human rights violations, but rather to protect the victims and to provide for the reparation of the harm resulting from the acts of the States responsible.[150] In order to establish that a violation of the rights enshrined in the Convention has occurred, it is not necessary to prove the responsibility of the State beyond all reasonable doubt or to identify individually the agents to whom the violations are attributed; rather, it is sufficient to demonstrate that there have been actions or omissions that have allowed the perpetration of those violations or that the State has failed to discharge its obligations.[151] This requires the Court to apply a standard of proof that considers the seriousness of the charge and is capable of establishing the truth of the allegations in a convincing manner.[152] Finally, this Court considers it pertinent to recall that in order to support a judgment, circumstantial or presumptive evidence is especially important in allegations of forced disappearance, because this type of violation is characterized by an attempt to suppress any information that would make it possible to verify the detention, whereabouts and fate of the victims.[153]

B.1. Determination of the occurrence of the alleged forced disappearances and their continuation over time

139. The Court will now analyze the forced disappearances alleged in the instant case. In this regard, the Commission identified eight persons as victims of forced disappearance. In addition, the representatives identified 10 persons as victims of forced disappearance in their pleadings and motions brief, 68 persons during the public hearing and 42 persons in its final written arguments. The Court has made a comparison of all the lists mentioned and, as a result, it notes that some names are repeated in all the lists, other names only appear in two lists and some others were only included in one list. Thus, based on this comparison of all the names, it is possible to conclude that a total of 81 persons[154] have been alleged as victims of forced

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[149] *Cf. Case of Castillo Páez v. Peru*. Order of the Inter-American Court of Human Rights of April 3, 2009. Monitoring Compliance with Judgment, considering paragraphs 8 and 15.

[150] *Cf. Case of Velásquez Rodríguez v. Honduras. Merits*, para. 134.

[151] *Cf. Case of Velásquez Rodríguez v. Honduras. Merits,* paras. 172 and 173, and *Case of Gonzáles Medina and Family v. Dominican Republic*, para. 133.

[152] *Cf. Case of Velásquez Rodríguez v. Honduras. Merits,* para. 129, and *Case of González Medina and Family v. Dominican Republic*, para. 132.

[153] *Cf. Case of Velásquez Rodríguez v. Honduras. Merits,* para. 131, and *Case of Rodríguez Vera et al. (Disappeared of the Palace of Justice) v. Colombia,* para. 230.

[154] The 81 persons are: 1. Víctor Juárez Pangán; 2. Clemente Juárez Ixpancoc; 3. Cruz Sic Cuxum; 4. Pedro Sic Jerónimo; 5. Gregorio Valey; 6. Timoteo Sic Cujá; 7. Roberto Galiego Chen; 8. Antonio Alvarado González; 9. Alfonso Cruz Juárez; 10. Domingo Cahuec Sic; 11. Santiago Alvarado Xitumul; 12. Agustín Juárez Ixpancoc; 13. Teodoro González; 14. Eulogio Morales Alvarado; 15. Luciano González; 16. Apolinario Juárez Pérez, 17. Alberto Juárez Pérez; 18. Evaristo Siana; 19. Pedro Tum; 20. Egmidio Siana; 21. Pedro Galiego López; 22. Demetrio Chen Alvarado; 23. Pedro Galiego Mendoza; 24. Camilo Juárez Valey; 25. Julián Garniga; 26. Benito Juárez Ixpancoc; 27. Francisco Depaz; 28. Maximiliano Sis Valey; 29. Vicente Sic Osorio; 30. Patrocinio Galiego; 31. Félix Alvarado Xitumul; 32. José Demetrio Cahuec Jerónimo; 33. Andrea Osorio Galeano; 34. Silvestre Sic Xitumul; 35. Raymunda Sical Corazón; 36. Adrián García Manuel; 37. Hugo García Depaz; 38. Agapito Alvarado Depaz; 39. Edmundo Alarcón Morente; 40. Manuel of Jesús Alarcón Morente; 41. Juan Pérez Sic; 42. Gorgonio Gonzalez Gonzalez; 43. Gabino Román Ivoy; 44. Cruz Pérez Amperez; 45. Eustaquio Ixtecoc González; 46. Jorge Galeano Román; 47. Rafael Depaz Tecú; 48. Enrique Mendoza Sis; 49. Dionisio Bachán; 50. Elías Milián González, 51. Amelia Milián Morales; 52. Eusebia Grave García; 53. José León Grave García,

disappearance by the Commission and the representatives. It should be noted, also, that the names of these 81 persons appear in the Merits Report as alleged victims of forced disappearance, extrajudicial execution and/or other alleged human rights violations. It is for this Court to determine, within the sphere of its jurisdiction and in accordance with the American Convention and other inter-American treaties that grant it jurisdiction, whether the 81 persons indicated were victims of forced disappearance.

140. According to the definition contained in the ICFDP and the jurisprudence of this Court, "one of the characteristics of forced disappearance, unlike extrajudicial execution, is the State's refusal to acknowledge that the victim is under its control and to provide information about it, with the aim of creating uncertainty regarding his or her whereabouts, life or death, and to provoke intimidation and suppression of rights."[155] This Court has recognized that the practice of forced disappearance has often included the execution of detainees, in secret and without trial, followed by the concealment of the body to erase all material traces of the crime and to procure impunity of those who committed it.[156] In this regard, the Court has heard cases in which the existence of more or less evidence of the death of the victims did not change the classification of forced disappearance.[157] It was precisely what the State agents did after the victims were killed, that is, the adoption of measures aimed at hiding what had really happened or erasing all traces of the bodies to prevent their identification or to prevent their fate and whereabouts from being established, that allowed the Court to conclude the forced disappearance of the victims.[158]

141. As noted previously, it is in this sense that the acts constituting forced disappearance are permanent in nature as long as the whereabouts of the victim are not known or his remains are not found (*supra* para. 134). However - and particularly in relation to the latter aspect- the Court has repeatedly indicated that it is not merely a matter of finding the remains of a specific person but that this, logically, must be accompanied by tests or analyses that make it possible to prove that the remains do indeed correspond to that person.[159] As long as the remains are not duly located and identified, the forced disappearance continues to be perpetrated.[160] In this regard, the Court recalls that criminal investigation and prosecution is not incompatible with the adoption of different adequate and effective mechanisms to establish the whereabouts of disappeared persons or locate their remains in order to determine their identity with certainty, so that both

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54. Mateo Grave; 55. Juan Alvarado Grave; 56. Pedro Depaz Ciprián; 57. Víctor Alvarado Valey; 58. Ceferino Alvarado Sucup; 59. Enriqueta Tecú Chiquito; 60. Rosa González Tecú; 61. Luciano Alvarado Xitumul; 62. Héctor Rolando Alvarado García; 63. Adela Florentina Alvarado García; 64. Luciana Xitumul Ixpancoc; 65. María Concepción Xitumul; 66. a girl of unknown name; 67. Medardo Juárez García; 68. Efraín García Depaz; 69. Fidel Alvarado Sucup; 70. Domingo Reyes; 71. Andres Reyes; 72. Santiago Reyes; 73. Antonio Chen Mendoza; 74. Pedro Siana; 75. Lorenzo Depaz Ciprián; 76. Leonardo Cahuec; 77. Juan Mendoza Sucup; 78. José Cruz Mendoza; 79. María Concepción Chen; 80. Casimiro Siana, and 81. Marcelo Sic Chen.

[155] *Cf. Case of Anzualdo Castro v. Peru. Preliminary objections, merits, reparations and costs.* Judgment of September 22, 2009. Series C No. 202, para. 91, and *Case of the Peasant Community of Santa Bárbara v. Peru*, para. 163.

[156] *Cf. Case of Velásquez Rodríguez v. Honduras. Merits*, para. 157, and *Case of Tenorio Roca et al. v. Peru***,** para. 159.

[157] In this regard, see *Case of Gudiel Álvarez et al. ("Diario Militar") v. Guatemala,* paras. 199, 206 and 214, and *Case of the Río Negro Massacres v. Guatemala*, paras. 123 and 125.

[158] *Cf. Case of the Peasant Community of Santa Bárbara v. Peru*, para. 164. In this regard, the United Nations Working Group on Enforced and Involuntary Disappearances has stated that "a detention followed by an extrajudicial execution constitutes an enforced disappearance in the real sense, provided that such detention or deprivation of liberty was carried out by government agents, of any sector or at any level, or by organized or private groups acting on behalf of or with the direct or indirect support, consent or acquiescence of the Government and who, subsequent to the arrest, or even after the execution has been carried out, refuse to disclose the fate or whereabouts of such persons or to acknowledge that the act was committed at all." Enforced or Involuntary Disappearances, Information Leaflet No. 6/REV.3, Office of the United Nations High Commissioner for Human Rights, 2009, p. 14, and Report of the Working Group on Enforced and Involuntary Disappearances, *General Comment on the definition of enforced disappearances,* A/HRC/7/2, January 10, 2008, p. 14, para. 10. The foregoing, "even though [the detention] is of short duration." Report of the Working Group on Enforced and Involuntary Disappearance, A/HRC/7/2, January 10, 2008, p. 95, para. 427.

[159] *Cf. Case of Ibsen Cárdenas and Ibsen Peña v. Bolivia. Merits, reparations and costs.* Judgment of September 1, 2010. Series C No. 217, para. 82**,** and *Case of the Peasant Community of Santa Bárbara v. Peru***,** para. 165.

[160] *Cf. Case of La Cantuta v. Peru. Merits, reparations and costs.* Judgment of November 29, 20056. Series C No. 162, para. 114, and *Case of the Peasant Community of Santa Bárbara v. Peru,* para. 165.

measures can complement each other.[161]

142. Now, the Court recalls that in the *Case of the Peasant Community of Santa Bárbara v. Peru,* it concluded the forced disappearance of 15 people who were deprived of their liberty by State agents and remained under State custody while they were transported and forced into the interior of a mine where they were shot with rifles and almost immediately their bodies were immolated by detonating dynamite charges. In this case, there was evidence of subsequent actions by the authorities and State agents that "had the purpose of eliminating all evidence of what had happened and concealing what really had occurred or erasing all trace of the bodies to prevent their identification or to prevent their fate and whereabouts from being established." Said evidence consisted of: a) the refusal of the military authorities to acknowledge the detention of the victims in the initial days after the events occurred; b) the *modus operandi* used in the destruction of evidence in the first days after the events; c) the loss of the evidence collected on July 18, 1991; d) the registration of death certificates in 1991 and 1992 with false ages, and e) that the forensic investigation in the search, recovery, analysis and eventual identification of human remains was characterized by a clear lack of thoroughness and due diligence, especially serious. Finally, the evidence of subsequent actions by state agents who sought to eliminate the evidence and to conceal what actually happened was fundamental to the Court's conclusion.[162]

143. In the instant case, taking into account the arguments of the parties and the Commission, the Court will analyze the actions carried out by the State security forces after allegedly killing the alleged victims and, based on this, will evaluate whether the facts should be classified as forced disappearances. The Court will also rule on the consequences of not initiating, continuing and/or completing the forensic investigations associated with the search, recovery, analysis and eventual identification of the remains in the instant case.

144. First of all, the facts show that, of the 81 persons identified as victims of forced disappearance, 21 were murdered[163] by State security forces and their bodies were abandoned in the open between August 1981 and August 1986. Their remains were found by relatives and neighbors, who buried them in clandestine graves. Subsequently, in 1993, 2002, 2003 and 2004, forensic work was carried out in order to exhume and identify the skeletal remains of at least 18 of the aforementioned persons, which were eventually handed over to their next of kin (*supra* paras. 87, 105, 112, 113, 115, 117, 119 and 120). In other words, from the time of their deaths and thereafter, the relatives of these 21 persons have had clear knowledge that the victims were executed, and knew the place where they themselves had buried their remains. Therefore, the Court considers that it is not reasonable to conclude that these 21 individuals were victims of forced disappearance, since it does not appear from the account of the facts that there was any attempt by State agents to conceal their deaths or to erase all trace of their bodies in order to prevent identification or to prevent their fate and whereabouts from being established, or to eliminate evidence of the events that occurred.

145. Second, it is on record that of the 81 persons indicated as alleged victims of forced disappearance, 34[164] were killed by members of the State security forces, who immediately

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[161] See *Case of Gómez Palomino v. Peru.* Monitoring Compliance with Judgment. Resolution of the Inter-American Court of Human Rights of July 15, 2011, Considering paragraph 15.

[162] *Cf. Case of the Peasant Community of Santa Bárbara v. Peru*, paras. 186 and 289.

[163] The persons mentioned are: 1. Víctor Alvarado Valey; 2. Ceferino Alvarado Sucup; 3. Fidel Alvarado Sucup; 4. Santiago Reyes Román; 5. Andrés Reyes Román; 6. Domingo Reyes Juárez; 7. Andrea Osorio Galeano; 8. Eusebia Grave Garcia; 9. José León Grave García; 10. Medardo Juárez Garcia; 11. Silvestre Sic Xutumul; 12. Raymunda Corazón or Raymunda Sical Corazón; 13. Rosa González Tecu; 14. María Concepción Xitumul; 15. Héctor Rolando Alvarado García; 16. Adela Florentina Alvarado Garcia; 17. Enriqueta Tecu; 18. Luciana or Lucía Xitumul Ixpancoc; 19. Luciano Alvarado Xitumul; 20. Girl of unknown name aged 0-3 months, and 21. Efraín García de Paz.

[164] The persons mentioned are: 1. Elías Milián González; 2. Amelia Milián Morales; 3. Domingo Cahuec Sic; 4. Víctor Juárez Pangan; 5. Cruz Sic Cuxum; 6. Patrocinio Chen Galiego; 7. Agustín Juarez Ixpancoc; 8. Pedro Galiego López; 9. Clemente Juárez Ixpancoc; 10. Pedro Sic Jerónimo; 11. Gregorio Valey; 12. Timoteo Sic Cujá; 13. Roberto Galiego Chén;

proceeded to bury the bodies, a task that was not completed, since the remains were found partially exposed in the open by relatives and neighbors, who proceeded to bury them more deeply in clandestine graves. In 1993, 2007, 2008, 2010, 2011 and 2012 forensic work was carried out in which skeletal remains were exhumed and seven of the aforementioned persons were identified (*supra* paras. 91 and 107). Finally, although there was an initial attempt to hide the lifeless bodies of these 34 individuals, which was not successful, it was the neighbors and the families themselves who subsequently completed the burial of the bodies and had knowledge of the place where they were buried. Therefore, this Court considers that it is not appropriate to conclude that these 34 persons were victims of forced disappearance.

146. Third, it is on record that Antonio Chen Mendoza, 6 years old, was also named as a victim of forced disappearance; however, it has been determined that he stayed with his family in the mountains, and that due to exposure to the ravages of the climate he became ill and died. His body was buried in the mountains by his own family (*supra* para. 114). Likewise, Juan Alvarado Grave was identified as a victim of forced disappearance, although the account of the facts shows that he was executed by a group of "judicial officers" and his body was found in the Salamá Hospital, where his brother Mateo Grave, accompanied by two people, went to locate and identify his body (*supra* para. 85). In turn, Mateo Grave and Pedro Depaz Ciprián were reported as victims of forced disappearance; however, it has been determined that they were executed by a group of "judicial officers" and their bodies were also taken to the Salamá Hospital. With respect to Mateo Grave, it has also been established that his body was buried in the San Salamá cemetery by order of the Justice of the Peace of San Miguel Chicaj (*supra* paras. 85 and 86). Therefore, since this Court does not have sufficient information or evidence to reach a different conclusion, it considers that it is not appropriate to conclude that the four abovementioned persons were victims of forced disappearance.

147. In short, the Court finds that it is not appropriate to conclude the forced disappearance of a total of 59 persons who were reported as victims of said violation (*supra* paras. 144 to 146). Nevertheless, the Court notes that due to the State's investigative negligence and based on the information provided to this Court, which has not been refuted, it has still not been possible to exhume and/or identify the remains of 31 persons[165] who were buried by relatives and neighbors in clandestine cemeteries at the time of the internal armed conflict in Guatemala. Indeed, in some cases it appears that although the place of burial is known and/or the remains were exhumed and/or recovered, it is not known whether the forensic work of search, exhumation, recovery, analysis and eventual identification of remains has been completed. This situation will be taken into account by this Court in an eventual analysis of the alleged lack of due diligence and impunity in this case, and when deciding on the applicable reparations, in Chapters IX.III and X of this judgment.

148. In addition, it remains to be determined what happened to 22 persons who have also been named as victims of forced disappearance and regarding whom it was established that:

a) Pedro Siana was detained along with two other persons on the road to Rabinal by a

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14. Antonio Alvarado González; 15. Alfonso Cruz Juárez; 16. Santiago Alvarado Xitumul; 17. Teodoro González; 18. Eulogio Morales Alvarado; 19. Luciano González; 20. Apolinario Juárez Pérez; 21. Alberto Juárez Pérez; 22. Evaristo Siana; 23. Pedro Tum; 24. Egmidio Siana; 25. Demetrio Chen Alvarado; 26. Pedro Galiego Mendoza; 27. Camilo Juárez Valey; 28. Julián Garniga; 29. Benito Juárez Ixpancoc; 30. Francisco Depaz; 31. Maximiliano Sis Valey; 32. Vicente Sic Osorio; 33. Félix Alvarado Xitumul, and 34. José Demetrio Cahuéc Jerónimo.

[165] The bodies of the following persons have not been identified: 1. Héctor Rolando Alvarado García; 2. María Concepción Xitumul; 3. Raymunda Sical Corazón, and 4. Amelia Milián Morales. Nor have the bodies of: 5. Clemente Juárez Ixpancoc; 6. Pedro Sic Jerónimo; 7. Gregorio Valey; 8. Timoteo Sic Cujá; 9. Roberto Galiego Chén; 10. Antonio Alvarado González; 11. Alfonso Cruz Juárez; 12. Santiago Alvarado Xitumul; 13. Teodoro González; 14. Eulogio Morales Alvarado; 15. Luciano González; 16. Apolinario Juárez Pérez; 17. Alberto Juárez Pérez; 18. Evaristo Siana; 19. Pedro Tum; 20. Egmidio Siana; 21. Demetrio Chen Alvarado; 22. Pedro Galiego Mendoza; 23. Camilo Juárez Valey; 24. Julián Garniga; 25. Benito Juárez Ixpancoc; 26. Francisco Depaz; 27. Maximiliano Sis Valey; 28. Vicente Sic Osorio; 29. Félix Alvarado Xitumul; 30. José Demetrio Cahuec Jerónimo, and 31. Antonio Chen Mendoza.

group of "judicial officers" and his whereabouts are unknown since August 24, 1981 (*supra* paras. 85 and 86);

b) Juan Pérez Sic, after going outside to attend to a group of "judicial agents" who came to his house and searched it, was last seen there by his companion Manuela Toj Pérez on November 15, 1981, and his whereabouts are unknown to this day (*supra* para. 109);

c) Lorenzo Depaz Siprian (or Lorenzo Depaz Ciprian or Florencio Depaz Cipriano) was arrested on the road to Rabinal by members of the National Army and the PAC. He was taken to the jail located in the municipal town hall, and was last seen there by his father-in-law, Ciriaco Galiego López. Since January 8, 1982, his whereabouts are unknown (*supra* para. 88);

d) Leonardo Cahuec Gonzales was detained on the road to Rabinal by "judicial officers" and taken to the jail in the center of the municipality of Rabinal. He was last seen there by his wife Albertina Sic Cuxúm, and his whereabouts are unknown since January 18, 1982 (*supra* para. 101);

e) Juan Mendoza Alvarado and his father José Cruz Mendoza Sucup were taken from their home by members of the National Army and the PAC, who beat them and took them away. Since January 31, 1982, the whereabouts of both men are unknown (*supra* para. 103);

f) María Concepción Chen Sic was taken from her home and detained by members of the National Army and the PAC, while Casimiro Siana was arrested near his home by members of the National Army and the PAC. Both were last seen alive in the company of agents of the State security forces, who separated them from the group of women that were also being detained and led them away in a different direction. Since February 12, 1982 their whereabouts are unknown (*supra* para. 104);

g) Cruz Pérez Ampérez, Gorgonio González, Jorge Galeano Román, Eustaquio Ixtecoc González (or Eustaquio Yxtecoc González), Rafael Depaz Tecú, Enrique Mendoza Sis, Gabino Román Yvoy (or Iboy or Ivoy) and Dionicio or Dionisio Vachan or Bachán, were taken from their homes on November 26, 1982, by members of the National Army and the PAC and forced to walk with their hands tied to the San Francisco cemetery in the village of Xeabaj, where they were last seen alive by Napoleón García De Paz. To date, their whereabouts are unknown and despite the forensic work carried out, their remains have not been located (*supra* para. 110 and 111);

h) Marcelo Sic Chen, whose whereabouts have been unknown since December 1984, was previously detained and held under military control in the colony Chichupac. (*supra* para. 118).

i) Adrián García Manuel, his son Hugo García Depaz and his nephew Abraham Alvarado Tecú (or Agapito Alvarado Depáz) were arrested by members of the National Army, taken to the school in the village of Chirrum and later to the military post in the village of Guachipelín. Their families were notified that they would be released; however, their whereabouts are unknown since January 18, 1982 (*supra* paras. 99 and 100); and

j) Manuel de Jesús Alarcón Morente went out to cut sugar cane and did not return, and his brother Edmundo or Raymundo Alarcón Morente was last seen accompanied by soldiers who had tied him up. His whereabouts are unknown since January 18, 1982, the day on which a group of soldiers came to the house of the Alarcón Morente family and asked for the two brothers (*supra* paras. 99 and 100).

149. The final report of the forensic anthropological investigation conducted by the FAFG on January 31, 2008 concluded that four sets of bones exhumed in 2006 from a grave located on a plot of land in the village of Guachipilín, in the municipality of Rabinal, belonged to Hugo García

Depaz, Abraham Alvarado Tecú (or Agapito Alvarado Depáz), Manuel de Jesús Alarcón Morente and Edmundo or Raymundo Alarcón Morente. Said report was presented to the assistant prosecutor of the Public Prosecutor's Office of Rabinal and the remains were handed over to the victims' next of kin (*supra* para. 100). It is after the issuance of this report that the whereabouts of the four persons mentioned became known definitively.

150. In conclusion, the Court considers it proven that the 22 alleged victims were deprived of their liberty by members of the State security forces, i.e. soldiers, patrolmen and "judicial" personnel.[166]

151. Almost ten years after these events, and in the context of the investigations carried out in relation to the instant case, the authorities denied that the area where the facts took place was under military control in 1982, which is the period in which most of the 22 alleged victims were deprived of their liberty. Thus, in a letter dated May 9, 1993, the Commander of Military Reserves informed the judge of the Criminal Court of First Instance of Baja Verapaz that "there were no military commissioners in that village (Chichupac) in 1982 because the area ha[d] been taken over as a base for terrorist operations […] therefore no one held the position of military commissioner, and also no commission could be appointed on January 8, 1982."[167] Thus, the presence and participation of military personnel in the area was denied. This shows that the Army authorities withheld information about what happened to the victims, which, if that is the case, is consistent with the denial of information that is part of an enforced disappearance.

152. These facts were also brought to the attention of the State authorities in various ways and at various times. First, through several complaints filed by family members and neighbors with the Office of Guatemala's Human Rights Ombudsman and the Public Prosecutor's Office.[168] Second, in the CEH Report published in 1999.[169] Third, through the reports that the FAFG presented to the Public Prosecutor's Office in the context of the investigations and forensic

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[166] As indicated, these persons were detained in the following ways: a) in or near their homes and remained in State custody while being transferred to an unknown place; b) on the road to Rabinal and were taken to the jail in the Municipality of Rabinal, where they remained in state custody and where they were last seen alive by their family members; c) on the road to Rabinal and they were then taken to the school in the hamlet of Chirrum, where they were held in State custody and were last seen alive by their relatives; d) in their homes and remained in state custody while they were taken to a cemetery, where they were last seen alive by a person who managed to escape; e) on the road to Rabinal, with no information on their whereabouts, and f) in the colony of Chichupac with no information on their whereabouts.

[167] *Cf.* Official letter from the Departmental Commander of Military Reserves of May 9, 1993 (evidence file, folio 711).

[168] *Cf.* Complaint filed by Máxima Emiliana García Valey and Francisco Sic Chen of June 20, 1995, on the forced disappearance of Marcelo Sic Chen and María Concepción Chen Sic (evidence file, folios 1576 to 1577). Likewise, on October 25, 2000, Aurelio Juárez López denounced before the Public Prosecution Service of Rabinal, Department of Baja Verapaz, the disappearance of Pedro Siana (evidence file, folios 447 to 449). In addition, in a letter dated July 12, 1995, the departmental assistant of the Human Rights Ombudsman's Office of Guatemala in Salamá informed the District Prosecutor's Office of Salamá of the complaints filed for the disappearance of Juan Mendoza Alvarado, José Cruz Mendoza, Leonardo Cahuec Gonzales and Lorenzo Depaz Ciprián (evidence file, folios 1351 to 1353). In a letter dated August 6, 1997, the Office of the Human Rights Ombudsman of Guatemala informed the District Prosecutor's Office of Salamá of the complaint filed by Francisca González Tecú regarding the disappearance of her father Gorgonio Gonzalez Gonzalez. On May 8, 2003, Francisca González Tecú appeared before said prosecutor's office and reiterated the facts of her initial complaint. *Cf.* Letter of August 6, 1997m of the Office of the Human Rights Ombudsman of Guatemala (evidence file, folio 9141), and statement of Francisca González Tecú and Clementina Bachan Cahuec of May 8, 2003 before the Assistant Prosecutor of the District Prosecutor of the Salamá Public Prosecution Service (evidence file, folios 9142 and 9143). In a statement before the assistant prosecutor of the Special Prosecutor's Office of the Public Prosecution Service in Guatemala City, Vicenta Alvarado Mendoza reported the disappearance of her father José Cruz Mendoza Sucup and her brother Juan Mendoza Alvarado. *Cf.* Statement of Vicenta Mendoza Alvarado of November 15, 2002 (evidence file, folios 475 to 478). On May 9, 1995 Juana García Depaz reported the detention and disappearance of Adrián García Manuel, Hugo García Depaz and Abraham Alvarado Depaz before the Office of the Human Rights Ombudsman of Guatemala (evidence file, folios 1290 to 1291).

[169] This report refers to the disappearance of Lorenzo Depaz Cipriano, and the execution of Leonardo Cahuec González, Gorgonio Gonzalez Gonzalez and Eustaquio Ixtoc (*sic*). *Cf.* CEH, *"Guatemala, Memory of Silence"*, Cases submitted, Annex II, pages 155, 162, 163.

anthropological analyses carried out.[170] Fourth, the case was presented to the Inter-American Commission on December 13, 2007, which issued its Merits Report on April 2, 2014.[171] Thus, for almost seven years the state authorities were repeatedly alerted by said body about the occurrence of the facts. However, the steps taken to ascertain the whereabouts of the victims were almost non-existent (*infra* para. 220, 221, 227, 235, 237 and 238), which is an additional indication of what happened to them.

153. Certainly, the disappearance of the 22 alleged victims was not an isolated act, but part of a practice of forced disappearance of persons carried out mainly by agents of the State security forces during the period of the internal armed conflict (*supra* para. 79).

154. In view of the foregoing, the Court concludes that the 22 alleged victims were deprived of their liberty by members of the State security forces in the context of the internal armed conflict, and that the last that was heard of them was that they were under State custody; thereafter, their whereabouts are unknown. The Court finds that the subsequent actions by the authorities and State agents show a refusal to acknowledge the aforementioned deprivations of liberty, and to provide information on the fate or whereabouts of said persons, with the aim of generating uncertainty about their life or death. The context of the facts of the case support this conclusion.

155. Therefore, the Court considers that the State is responsible for the forced disappearance of: 1. Hugo García Depaz, 2. Abraham Alvarado Tecú (or Agapito Alvarado Depáz), 3. Manuel de Jesús Alarcón Morente, and 4. Edmundo or Raymundo Alarcón Morente. Their disappearance continued until 2008, when they were identified by means of a forensic anthropological report, and after the issuance of said report, the whereabouts of the four persons became definitively known (*supra* paras. 99 and 100). In this sense, it is possible to conclude that their disappearance lasted for approximately 26 years.

156. In addition, the State is responsible for the forced disappearance of: 5. Pedro Siana; 6. Juan Pérez Sic; 7. Lorenzo Depaz Siprian (or Lorenzo Depaz Ciprian or Florencio Depaz Cipriano); 8. Leonardo Cahuec Gonzalés; 9. Juan Mendoza Alvarado; 10. José Cruz Mendoza Sucup; 11. María Conception Chen Sic; 12. Casimiro Siana; 13. Cruz Pérez Ampérez; 14. Gorgonio González; 15. Jorge Galeano Román; 16. Eustaquio lxtecoc González (or Eustaquio Yxtecoc González); 17. Rafael Depaz Tecú; 18. Enrique Mendoza Sis; 19. Gabino Román Yvoy (or Iboy or Ivoy); 20. Dionicio or Dionisio Vachan or Bachán; 21. Marcelo Sic Chen, and 22. Adrián García Manuel. In this regard, the whereabouts of all these individuals still remain unknown, more than 32 to 35 years after the disappearances began, despite the various complaints that have been brought to the attention of the State at different times.

157. Therefore, the Court concludes that in the instant case a total of 22 persons were victims of forced disappearance. In 2008, the whereabouts of four of these victims were established, but to date, the whereabouts of 18 victims remain unknown. However, it is not appropriate to conclude the forced disappearance of a total of 59 persons who were alleged as victims of said violation, considering that the work of exhumation and identification of the remains of 31 persons has yet to be completed (*supra* para. 147).

B.2. Violations of Articles 7, 5(1), 5(2), 4(1) and 3 of the American Convention

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[170] On October 21, 2004 the FAFG submitted to the District Prosecutor of the Salamá Public Prosecution Service of Baja Verapaz, the final report of the Forensic Anthropological Investigation carried out in Xeabaj. Also, on December 22, 2014, the FAFG submitted to the Public Prosecution Service an Expert Report of the Forensic Anthropological Investigation carried out in the San Francisco Cemetery, in the hamlet of Chuateguá. The victims included the following individuals: Cruz Amperez Sis (*sic*), Gorgonio Gonzalez Gonzalez (*sic*), Gabino Román Iboy, Eustaquio Ixtecoc and Rafael Depaz. *Cf.* FAFG Report of the Forensic Anthropological Investigation of October 6, 2004 (evidence file, folios 1601 and 1606), and FAFG Report of June 5, 2014 (evidence file, folios 9247 to 9276).

[171] Among the victims mentioned in the Merits Report were Juan Pérez Sic, Casimiro Siana, Jorge Galeano Román, Enrique Mendoza Sis, Manuel Alarcón Morente and Raymundo Alarcón Morente.

158. In the instant case, the 22 victims of forced disappearance were illegally detained by State agents, and to date there is no information about the fate or whereabouts of 18 of them. In was not until 2008 that the location of four of the victims was established (*supra* para. 100). The initial detention was a prior step to their disappearance and clearly contravened their right to personal liberty, in violation of Article 7 of the American Convention. Their disappearance was part of a pattern of forced disappearance of persons, which suggests that the victims were placed in a situation of special vulnerability and serious risk of suffering irreparable harm to their personal integrity and their lives. The Court has established that it is evident that the victims of this practice find all aspects of their personal integrity violated,[172] and that subjecting a person to official, repressive bodies that practice torture and assassination with impunity is itself a breach of the duty to prevent violations of a person's right to life and physical integrity, even if those acts of torture or deprivation of life cannot be proven in the specific case.[173] The Court has also stated that forced disappearance violates the right to humane treatment because the mere subjection of an individual to prolonged isolation and incommunicado detention constitutes cruel and inhuman treatment.[174] Furthermore, the Court has indicated that the fact that a person is missing for an extended period of time and in a context of violence is sufficient to conclude that the person was deprived of his or her life.[175] All this, is in contravention of Articles 4(1), 5(1) and 5(2) of the American Convention.

159. The Court also recalls that since the case of *Anzualdo Castro v. Peru* of September 22, 2009, it has considered that the practice of forced disappearance may entail a specific violation of Article 3 of the American Convention, since it not only seeks one of the most serious forms of removal of a person from the legal system, but also seeks to deny his very existence and leave him in a sort of limbo or situation of legal uncertainty in the eyes of society, the State and even the international community. Similarly, "in cases of forced disappearance of persons, the victim is placed in a situation of legal uncertainty that prevents, impedes or eliminates the possibility of the individual to be entitled to or effectively exercise his or her rights in general, in one of the most serious forms of non-compliance with the State's duties to respect and guarantee human rights."[176] The Court has reiterated this position in its subsequent rulings.[177] In the instant case, the Court considers that the 22 victims were placed in a situation of legal uncertainty that prevented them from having or effectively exercising their rights in general, which resulted in a violation of the right to recognition of their juridical personality.

160. For all the forgoing reasons, the Court concludes that Guatemala is internationally responsible for the forced disappearance of the 22 victims indicated (*supra* paras. 155 and 156), and that it is responsible for the violation of Articles 7, 5(1) and 5(2), 4(1) and 3 of the American Convention, in relation to Article 1(1) thereof, and in relation to Article I.a) of the Inter-American

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[172] *Cf. Case of the Peasant Community of Santa Bárbara v. Peru*, para. 166.

[173] *Cf. Case of Velásquez Rodríguez v. Honduras. Merits*, para. 175; and *Case of Anzualdo Castro v. Peru. Preliminary objections, merits, reparations and costs.* Judgment of September 22, 2009. Series C No. 202, para. 85.

[174] *Cf. Case of Velásquez Rodríguez v. Honduras. Merits,* paras. 156 and 187; and *Case of Anzualdo Castro v. Peru*, para. 85.

[175] *Cf. Case of Velásquez Rodríguez v. Honduras. Merits,* para. 188, and *Case of Osorio Rivera and Family Members v. Peru*, para. 160

[176] *Cf. Case of Anzualdo Castro v. Peru,* paras. 90 and 101. In that case, the Court recognized that up to that time, in most cases of forced disappearance of persons, it had considered that it was not appropriate to analyze the violation of Article 3 of the Convention, since there were no facts that so warranted it, citing, among others, the case of *Bámaca Velásquez v. Guatemala.* However, given the multiple and complex nature of this serious human rights violation, the Court reconsidered its previous position deemed it possible that, in cases of this nature, the forced disappearance could entail a specific violation of the aforementioned.

[177] *Cf. Case of Radilla Pacheco v. Mexico, Case of Chitay Nech et al. v. Guatemala, Case of Ibsen Cárdenas and Ibsen Peña v. Bolivia, Case of Gomes Lund et al. v. Brazil, Case of Gelman v. Uruguay, Case of Torres Millacura et al. v. Argentina, Case of Contreras et al. v. El Salvador, Case of González Medina and Family v. Dominican Republic, Case of the Río Negro Massacres v. Guatemala, Case of Gudiel Álvarez et al. ("Diario Militar") v. Guatemala, Case of Osorio Rivera and Family Members v. Peru, Case of the Peasant Community of Santa Bárbara v. Peru, and Case of Tenorio Roca et al. v. Peru***.**

Convention on Forced Disappearance of Persons,[178] to the detriment of those persons.

B.3. Right to personal integrity and protection of the family to the detriment of the relatives of the victims of forced disappearance

161. The Court has repeatedly affirmed that the next of kin of the victims of human rights violations may, in turn, be victims. Likewise, the Court has considered that in cases involving the forced disappearance of persons, it is possible to understand that the violation of the right to psychological and moral integrity of the victim's next of kin is a direct consequence of this situation. This causes them severe suffering due to the act itself, which is increased, among other factors, by the constant refusal of the State authorities to provide information about the whereabouts of the victim or to carry out an effective investigation to clarify what happened. These effects lead to the presumption of harm to the psychological and moral integrity of the next of kin in cases of forced disappearance. In previous cases, the Court has established that a presumption *iuris tantum* is applied with respect to mothers and fathers, sons and daughters, spouses, permanent partners, as well as brothers and sisters of the disappeared victims, unless proven otherwise by the specific circumstances of the case.[179]

162. The Court has declared the international responsibility of Guatemala for the forced disappearance of 22 victims in this case. The State, beyond the arguments presented (*supra* paras. 128 to 130), did not provide evidence to refute the presumption *iuris tantum* regarding the severe suffering of the next of kin in the particular circumstances of this case, nor did it refute the fact that they were the relatives of the disappeared victims. Therefore, the Court considers that the presumption of harm to their psychological and moral integrity is sufficiently well-founded.

163. The Court considers that the next of kin of the 22 persons that have been victims of forced disappearance are victims of the violation of their personal integrity due to the suffering caused by not knowing what happened to their loved ones, the ongoing bereavement, the refusal of the State authorities to provide information on the fate or whereabouts of the victims, which would allow their relatives to determine with certainty their life or death, and the investigative negligence of the part of the State authorities to respond to the complaints and investigate what happened.

164. In view of the foregoing, the Court concludes that the State violated the right to mental and moral integrity established in Article 5(1) of the American Convention, in relation to Article 1(1) of the same instrument, to the detriment of the next of kin of the 22 victims of forced disappearance. The names of these persons are found in Annex I of this judgment.

165. With regard to the alleged violation of the right to protection of the family, the Court notes, first, that in the instant case some victims of forced disappearance had close family ties with each other, that is, they were fathers, mothers, children, brothers and nephews, so that the families of these victims had to endure the pain of forced disappearance of several of their members, thus increasing the impact of what they had experienced.[180] Second, in a great majority of the cases, family members witnessed the detention of the victims in or near their own homes, by State security agents, and that was the last time they saw them alive. Consequently, the manner in which these arrests were carried out caused a clear perception of defenselessness in the families

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[178] Where pertinent, Article I.a) of the ICFDP states 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, exception or suspension of individual guarantees."

[179] *Cf. Case of Radilla Pacheco v. Mexico,* para. 162, and *Case of Peasant Community of Santa Bárbara v. Peru*, para. 274.

[180] This is the case of: José Cruz Mendoza Sucup and his son Juan Mendoza Alvarado; María Concepción Chen Sic and her son Marcelo Sic Chen; Adrián García Manuel, his son Hugo García Depaz and his nephew Abraham Alvarado Tecú (or Agapito Alvarado Depáz); and Manuel de Jesús Alarcón Morente and his brother Edmundo or Raymundo Alarcón Morente.

that persisted over time.[181] Third, the lack of a burial in accordance with the traditions of the Maya Achí culture severed the relations of reciprocity and harmony between the living and the dead, affecting the union of the families with their ancestors.[182] Fourth, the forced disappearance and displacement caused the separation and/or disintegration of families, as discussed in the next chapter *infra*.

166. For these reasons, the Court considers that in this case Guatemala also violated Article 17(1) of the American Convention, in relation to Article 1(1) of the same instrument, to the detriment of the next of kin of the 22 victims of forced disappearance.

IX.II
RIGHT TO MOVEMENT AND RESIDENCE[183]

A. Arguments of the Commission and the parties

167. The ***Commission*** alleged that the residents of Chichupac and neighboring communities were forced to abandon their villages, leaving their belongings, homes and land destroyed or abandoned, and were initially displaced to nearby communities or to the mountains. It emphasized that, in this context of fear and insecurity due to persecution by the State, these people spent several months and even years struggling to survive threats and persecution, hunger and lack of access to health services and education. It held that from the end of 1983, the survivors of Chichupac village were resettled in the model village established by the National Army, in precarious living conditions and subject to permanent military control. It also noted that the facts of the case were part of a generalized situation of forced internal displacement that particularly affected the indigenous populations, caused by the acts of terror to which they were subjected during the armed conflict. Therefore, it concluded that Guatemala is responsible for the violation of Article 22(1) of the Convention, in relation to Article 1(1) of said treaty, to the detriment of the survivors of the village of Chichupac and neighboring communities.

168. In its final observations, the Commission noted that the forced displacements continued for many years and are acts of a continuous or ongoing nature. It argued that in addition to forced displacement, other related violations occurred in the instant case that have continued and whose effects have persisted over time owing to the prolonged failure of the State to offer an adequate response in terms of reparation. In this regard, it pointed out that the ongoing destruction of the social structure, the disengagement with community leaders and the loss of cultural and traditional practices, as well as of the Achi Mayan language, continue to destroy and annihilate the Mayan culture, to the detriment of the survivors and neighboring communities. Regarding this last point, it alleged the violation of freedom of conscience and religion and freedom of association, established in Articles 12 and 16 of the Convention.

169. The ***representatives*** agreed with the Commission that the State violated the rights to movement and residence of the alleged victims, who suffered massive and collective forced

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[181] This is the case of: Juan Pérez Sic, Lorenzo Depaz Siprian, Leonardo Cahuec Gonzalés, Juan Mendoza Alvarado and his father José Cruz Mendoza Sucup, María Concepción Chen Sic, Casimiro Siana, Cruz Pérez Ampérez, Gorgonio Gonzalez Gonzalez, Jorge Galeano Román, Eustaquio lxtecoc Gonzalez, Rafael Depaz Tecú, Enrique Mendoza Sis, Gabino Román Yvoy, Dionicio Vachan.

[182] In this regard, the psychologist Nieves Gómez Dupuis explained that "[i]n the Achi Maya culture there is a special relationship between the living and the dead. The living are in charge of watching over, giving dignified burial to the dead and visiting them on the days designated for this purpose. The burials are carried out by the family and the community with rituals to accompany the passage between life and death. In turn, the deceased and the ancestors, in a reciprocal relationship, are in charge of protecting the living, giving them warnings and advice for their daily lives. The relations of reciprocity and harmony are also present between nature, the cosmos and human beings." *Cf.* Report on the harm to mental (moral) health prepared by the psychologist Nieves Gómez Dupuis on May 5, 2010, and presented to the Inter-American Commission(evidence file, folios 1313 and 1321).

[183] Where pertinent, Article 22(1) of the Convention establishes that: "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."

displacement and expulsion at the hands of the State's repressive forces, and had to leave their ancestral communities and territories, seeking refuge in other places. They pointed out that the State made it impossible for these people to return by destroying their homes, property, harvests and livestock. Thus, they faced the loss of their ancestral lands, the lack of guarantees of non-repetition of these events and fear. Finally, they alleged that the State has not provided suitable conditions for the return of all members of the community, for which reason the effects stemming from forced displacement persist over time and continue to this date. Consequently, they considered that Guatemala violated Article 22 of the Convention, as well as Article 1(1) thereof, to the detriment of the persons they identified as victims and survivors of Chichupac village and neighboring communities of the municipality of Rabinal who returned after March 9, 1987 and/or who remain in a situation of displacement.

170. In their final arguments, the representatives argued that many families continue to suffer displacement from their lands and their culture. They also pointed out that, apart from the intense moral damage caused by the scorched earth policy and by the acts of genocide, the surviving victims have suffered irreparable cultural, social and collective harm due to the destruction of the social fabric of their communities. They argued that forced displacement has meant a drastic change in the life project of the families. Many were violently uprooted and forced to live in urban or semi-urban settings, after living their entire lives in the country's rural areas, and went from being farmers to working as laborers or assistants, in factories and workshops or in other jobs. Many of them live in marginal areas of Guatemala City, in the urban area of Rabinal, in other departments of the country or even outside Guatemala.

171. The ***State*** indicated that its domestic legislation recognizes and guarantees the right to reside and remain in the national territory, as well as the right to freedom of movement. It also objected to the Court examining these facts, since they would have occurred before the date on which the Court had jurisdiction.

B. Considerations of the Court

172. Article 22(1) of the Convention recognizes the right of movement and residence.[184] The Court has established in other cases that this article also protects the right not to be forcibly displaced within a State Party,[185] and that the United Nations Guiding Principles on Internal Displacement[186] are particularly relevant in determining their content and scope.[187] They define "internally displaced persons [as] persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of

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[184] Article 22(1) of the Convention establishes: "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."

[185] *Cf. Case of the Ituango Massacres v. Colombia.* Judgment of July 1, 2006. Series C No. 148, para. 207, and *Case of the Displaced Afrodescendant Communities of the Cacarica River Basin (Operation Genesis) v. Colombia*, para. 219.

[186] *Cf.* Commission on Human Rights, United Nations Guiding Principles on Internal Displacement, E/CN.4/1998/53/Add.2 of February 11, 1998, p. 5. Annex. Introduction: scope and purpose. No. 2. Available at: http://www.hchr.org.co/documentoseinformes/documentos/html/informes/onu/resdi/E-CN-4-1998-53-ADD-2.html. These principles have been recognized by the international community. *See also*: United Nations, General Assembly, Protection and assistance for the internally displaced, A/RES/64/162, of March 17, 2010, p.1. Available at: https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805d8265; Council of Europe, Committee of Ministers, Recommendation Rec (2006) to member states on internally displaced persons, April 5, 2006. Available at: https://wcd.coe.int/ViewDoc.jsp?id=987573&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75; African Union, *Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention),* October 23, 2009, article 1, K). Available at: http://www.unhcr.org/4ae9bede9.html; Human Rights Council, Report submitted by the representative of the Secretary General on the human rights of internally displaced persons, Walter Kalin. A/HRC/13/21/Add.3, p. 4. II.4. Available at: http://www.acnur.es/PDF/8151_20120416132838.pdf.

[187] *Cf. Case of the Moiwana Community v. Suriname. Preliminary objections, merits, reparations and costs*. Judgment 15 June 2005. Series C No. 124, para. 111, and *Case of the Río Negro Massacres v. Guatemala,* para. 173.

human rights […], and who have not crossed an internationally recognized State border."[188]

173. This Court has established that, given the complexity of the phenomenon of internal displacement and the wide range of human rights that are affected or put at risk, and in view of the circumstances of special vulnerability and defenselessness in which displaced persons generally find themselves, their situation can be understood as a *de facto* condition of lack of protection. This situation, in accordance with the American Convention, obliges States to adopt positive measures to reverse the effects of their situation of weakness, vulnerability and defenselessness, including with respect to the actions and practices of private third parties.[189]

174. In this sense, the Court has stated that the right of movement and residence can be violated by *de facto* restrictions if the State has not established the conditions or provided the means to exercise it, for example when a person is a victim of threats or harassment and the State does not provide the necessary guarantees so that he or she can live and move around freely in the territory in question, even when the threats and harassment come from non-State actors. Likewise, the Court has indicated that the lack of an effective investigation of violent acts can propitiate or perpetuate exile or forced displacement.[190]

175. The Court recalls that the obligation to guarantee the right to movement and residence must also take into in consideration the actions taken by the State to ensure that displaced populations can return to their places of origin without the risk of their rights being violated. In this sense, the Court reaffirms that the State's obligation to protect the rights of displaced persons entails not only the duty to adopt preventive measures but also to provide the necessary conditions for a dignified and safe return to their places of habitual residence or their voluntary resettlement in another part of the country. To this end, their full participation in the planning and management of their return or reintegration must be guaranteed.[191]

176. Furthermore, in accordance with its constant case law on indigenous matters, in which it has recognized that the relationship between indigenous peoples and their territory is vital to maintain their cultural structures and their ethnic and material survival,[192] the Court has considered that the forced displacement of indigenous peoples, or of their members, from their communities can place them in a situation of particular vulnerability. This situation has destructive effects on the ethnic and cultural fabric, which generates a clear risk of cultural or physical extinction of indigenous peoples, for which it is essential that States adopt specific protection measures, considering their particular characteristics, as well as their customary law, values, traditions and customs, in order to prevent and reverse the effects of this situation.

177. As was established (*supra* paras. 94 to 98), the Maya Achí people of the village of

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188 *Cf.* Commission on Human Rights, United Nations Guiding Principles on Internal Displacement, *supra*, para. 2. In this regard, the OAS General Assembly has recommended that States use these Guiding Principles as the basis for developing their policies and integrating these into their domestic legislation to promote their implementation. *Cf.* AG/RES. 2508 (XXXIX-O/09) "Internally Displaced Persons." Adopted at the fourth plenary session held on June 4, 2009, second operative paragraph. Available at: www.oas.org/dil/esp/AG-RES_2508-2009.doc.

189 *Cf. Case of the Mapiripán Massacre v. Colombia.* Judgment of September 15, 2005. Series C No. 134, para. 179, and *Case of Displaced Afrodescendant Communities of the Cacarica River Basin (Operation Genesis) v. Colombia,* para. 315.

190 *Cf. Case of the Moiwana Community v. Suriname,* paras. 119 and 120, and *Case of Human Rights Defender et al. v. Guatemala. Preliminary objections, merits, reparations and costs.* Judgment of August 28, 2014. Series C No. 283, para. 166.

191 *Cf. Case of Chitay Nech et al. v. Guatemala. Preliminary objections, merits, reparations and costs.* Judgment of May 25, 2010. Series C No. 212, para. 149, and *Case of the Displaced Afrodescendant Communities of the Cacarica River Basin (Operation Genesis) v. Colombia*, para. 220.

192 The Court has determined that the culture of members of the indigenous communities corresponds to a particular way of life, of being, seeing and acting in the world, based on their close relationship with their traditional lands and natural resources, not only because these are their main means of subsistence, but also because they are a component of their worldview, their religious beliefs and, consequently, their cultural identity. *Cf. Case of Chitay Nech et al. v. Guatemala,* para. 147, and *Case of the Kaliña and Lokono Peoples v. Suriname. Merits, reparations and costs.* Judgment of November 25, 2015. Series C No. 309, para. 130.

Chichupac and neighboring communities of Rabinal were forced to flee their territories after the massacre of January 8, 1982, to escape the prevailing violence in the area carried out by the State security forces, which included massacres, executions, disappearances, rapes and persecutions. Consequently, there was a mass exodus of these populations who sought refuge in the mountains, in other places in the area and, later, in other municipalities, departments, cities and even outside the country. The Army continued to pursue them in the mountains, and also persecuted those who returned to the communities. At the same time, State security forces burned homes, stole belongings and provisions, destroyed crops and harvests, and stole or killed livestock. Thus, they destroyed livelihoods, caused the population's displacement to continue and prevented their return. Beginning in 1983, members of the National Army built the model village or colony of Chichupac. The people who lived there experienced precarious conditions, under strong military control, without any freedom and were forced to work to feed and support the military. The men were forced to patrol the area again and some women were raped. Finally, between 1986 and 1987 the military abandoned the colony.

178. The evidence presented in this case shows that some communities remained completely empty for a long time and that this situation continued after March 9, 1987, the date on which Guatemala recognized the jurisdiction of this Court, and that many residents of Chichupac village and neighboring communities of the municipality of Rabinal remain displaced to this day.[193] The Court will now determine whether these persons were unable to return to their lands after that date. Thus, as it has done on previous occasions,[194] the Court will analyze the State's alleged failure to implement the necessary measures to ensure a dignified and safe return for those who remained displaced after March 9, 1987, or to guarantee their voluntary resettlement.

B.1. Impossibility of return for the members of Chichupac village and neighboring communities of the municipality of Rabinal

179. The Court recalls that the peace process that put an end to the internal armed conflict in Guatemala began in 1996, that is, nearly 10 years after the State recognized the contentious jurisdiction of this Court. That same year, the civil patrols were legally disbanded and the Historical Clarification Commission (CEH) was created. Given the violent events that they survived and the ongoing context of violence in Guatemala during those 10 years in which the armed conflict continued, the members of Chichupac village and neighboring communities found it impossible to return to their territories during that period, due to a well-founded fear of being subjected to violations of their rights to life and personal integrity.

180. With respect to the period after the internal armed conflict, the evidence shows that there was fear and insecurity among the surviving population due to the continued presence of those responsible for the violence in the area of Rabinal. In this regard, the expert witness Luis Raúl Francisco Salvadó Cardoza explained that, at present, the people who are willing to return to the lands they used to occupy or where they lived, and who have tried to return to the communities, "have frequently seen [in the village] the perpetrators of the crimes, the informers, their torturers, the former patrol members who collaborated in the repression," "or those who entered the village to destroy the crops." In addition, "former military commissioners and their local allies exploit their land," which "causes them insecurity and fear." Thus, "the desire to return […] is affected by […] the presence of the people and organizations that prompted the exodus and

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[193] In this regard, the community of Chijom, which had 50 homes, was deserted for a long time and is now populated by approximately seven families. The community of Xeabaj, which prior to the impact of the internal armed conflict had a population distributed in 80 or 90 houses in which large families lived, today only has five or six houses that are inhabited. *Cf.* Expert opinion of Luis Raúl Francisco Salvadó Cardoza presented to the Inter-American Court during the public hearing on April 28, 2016. Likewise, the residents of the communities of Xeabaj, Toloxcoc and Chirrum "were unable to recover their leaders and their production projects." *Cf.* Report on damage to mental (moral) health prepared by the psychologist Nieves Gómez Dupuis on May 5, 2010 (evidence file, folios 1323 and 1324).

[194] *Cf. Case of the Moiwana Community v. Suriname,* para. 108, and *Case of the Río Negro Massacres v. Guatemala,* para. 180.

other human rights violations."[195] Likewise, the psychologist Nieves Gómez Dupuis in her report of May 5, 2010, stated that "[t]he victims and family members point out that certain people in the municipal environment are responsible; however, they do not feel confident enough to identify the perpetrators who live in the surrounding communities and who also participated in the betrayal and destruction of the community. The denunciation of these people is shrouded in silence, however, what they do insist on is that they are forced to confront them in collective municipal spaces."[196]

181. The Court also notes that the plots belonging to members of Chichupac village and neighboring communities have been occupied without the consent of their previous occupants and original owners, or were sold out of necessity. Moreover, in some cases the documents proving possession of their lands and material goods were stolen or destroyed when their homes were burned down, preventing them from claiming their property.[197]

182. In view of the foregoing, the Court understands that at present, community members who wish to return to their lands find it materially impossible to do so, which is why they been forced to continue in a situation of displacement. Therefore, the freedom of movement and residence of members of Chichupac village and neighboring communities of the municipality of Rabinal who were displaced is still limited by *de facto* restrictions.

B.2. Absence of measures adopted by the State to reverse the effects of displacement

183. First of all, the Court notes that at least on January 17, 1997, October 25, 2000, November 15, 2002, July 12 and 27 and August 16, 2005, and April 7 and June 6, 2006,[198] the persecution suffered by the communities and the displacement of their inhabitants to the mountains and other places in the area in order to save their lives, was reported to the Public Prosecutor's Office. Some of these complaints provided the names of the persons who allegedly collaborated with the National Army at that time, and reported that they were still living in the neighboring communities of Rabinal (*supra* paras. 94 and 95 and *infra* para. 222, 227, 228, 234 and 254). Likewise, on April 27 and June 28, 1999, the Public Prosecutor's Office was informed that former members of the State security forces who had allegedly participated in the events of January 8, 1982, were still stealing, raping women, killing people in the area and threatening the inhabitants of Chichupac village, and the names of these individuals were provided (*infra* para. 222). However, there is no evidence that Guatemala has implemented an effective investigation of the violence and displacement suffered by members of Chichupac village and neighboring communities, especially with regard to the allegation that those responsible for the violence continue to live in the neighboring communities of Rabinal. Nor was there any investigation into allegations that in 1999, some of the alleged perpetrators continued to steal,

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[195] *Cf.* Written report of the expert witness Luis Raúl Francisco Salvadó Cardoza presented during the public hearing held on April 28, 2016 (evidence file, folios 11674 to 11676), and expert opinion of Luis Raúl Francisco Salvadó Cardoza presented before the Inter-American Court during the public hearing on April 28, 2016.

[196] *Cf.* Report on the harm to mental (moral) health prepared by the psychologist Nieves Gómez Dupuis on May 5, 2010, and presented to the Inter-American Commission (evidence file, folios 1319 and 1322).

[197] In this regard, the expert witness Salvadó Cardoza indicated that, "his previous plot had been occupied by other persons of the same community", including by "people who in bad faith took advantage and are occupying their land" or "their crop fields are being used […] by close relatives". Thus, "many of them visit or have visited the village or hamlet that they were forced to leave, but no longer occupy their old parcel because local people have taken possession of it or because a close relative is using it and they are in agreement with it." Likewise, some "who needed money [have] sold their land […] for whatever they were offered." *Cf.* Report of the expert witness Luis Raúl Francisco Salvadó Cardoza presented during the public hearing held on April 28, 2016 (evidence file, folios 11674 to 11676), and expert opinion of Luis Raúl Francisco Salvadó Cardoza presented to the Inter-American Court during the public hearing on April 28, 2016. The expert witness Dupuis also stated that "the women were forced to abandon their lands or sell them at very low prices in order to obtain some income to support their families. *Cf.* Report on the damage to mental (moral) health prepared by the psychologist Nieves Gómez Dupuis on May 5, 2010 and presented to the Inter-American Commission(evidence file, folios 1319 and 1322).

[198] *Cf.* Complaint of June 6, 2006, filed by Miguel Chen Tahuico before the Municipal Prosecutor's Office of Rabinal, Baja Verapaz. (evidence file, folios 1564 and 1565)

rape women, kill people in the area and threaten the inhabitants of the village of Chichupac (*infra* paras. 222 and 223).

184. Second, with regard to members of Chichupac village and neighboring communities who lost the documentation proving their ownership of their lands and property as a result of the events of this case, there is no evidence that the State has established methods for them to obtain such documents or prove their ownership by alternative means (*supra* para. 98).

185. Third, during the public hearing, the representatives reported that up until the end of March of 2016 there was a municipal office in Rabinal of the National Reparations Program (PNR), which was closed. The State did not dispute the truth of this information. However, in its final arguments it stated that in order to reverse the situation of displacement, in 2008 it prepared a survey of the community of Chichupac in order to gather basic information for the PNR's attention. This study provided an assessment of the population's economic, social and cultural situation, and served as the basis for preparing a comprehensive reparation plan. It added that in 2008, 80 houses were built of wood and sheet metal with cement boarding.

186. In this regard, the psychologist Nieves Gómez Dupuis in her report of May 5, 2010, indicated that, "[i]n 2009, the [PNR] prioritized the community of Chichupac in order to implement a process of integral reparation." To this end, in November 2009, it asked the Community Studies and Psychosocial Action Team (ECAP) "to prepare a diagnosis and proposal for comprehensive reparation for this community." However, "there has been no agreement with the victims on a clear and robust response in terms of reparations that address all [their] needs, [but rather] isolated actions are carried out such as the construction of houses or the provision of financial compensation, without accompanying measures of health, education, justice or historical memory." Thus, although the PNR was "in the process of granting housing [,] the people [did] not agree with the type of housing that was to be provided, and regarding the lack of comprehensive reparations." In addition, "the people who are currently displaced as a result of the massacre are not being considered for reparation measures such as, for example, the construction of housing."[199]

187. The Court has no information as to whether the PNR contemplates specific measures for a possible return or voluntary resettlement and reintegration of the persons who were displaced from the village of Chichupac and neighboring communities of the municipality of Rabinal, which would eventually include their full participation in planning and management. Nor does it have information on whether - if such measures had been contemplated - they would have eventually been implemented. Although it is on record that in 2009 and at the request of the PNR, the Community Studies and Psychosocial Action Team (ECAP) prepared an assessment of the community of Chichupac, there is no information on any follow-up to this assessment. Furthermore, the PNR's municipal office in Rabinal was closed in the last days of March 2016, and it is not known whether it was closed temporarily or permanently.

188. Although the State has reportedly built housing and provided some financial compensation, this Court does not have clear and precise information on the criteria followed to implement these actions, or whether these homes been delivered to the original owners of the territories or to the people who form part of the new settlements. Also, it is not clear whether they are part of a return strategy to reverse the situation of displacement affecting members of the communities, or whether they are aimed at persons who live in the communities, or at people who have been displaced from them.

189. Based on the foregoing, the Court concludes that the State did not adopt sufficient and effective measures to guarantee the displaced people of Chichupac and neighboring communities

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[199] *Cf.* Report on the damage to mental (moral) health prepared by the psychologist Nieves Gómez Dupuis on May 5, 2010 and presented before the Inter-American Commission(evidence file, folios 1307 and 1321 to 1323).

a dignified and safe return to their places of habitual residence or voluntary resettlement in another part of the country, or, as the case may be, adequate compensation. Nor did the State establish the conditions or provide the indispensable means to repair or mitigate the effects of the displacement of members of the communities that were resettled after March 9, 1987. Consequently, the State did not guarantee the freedom of movement and residence of the members of the village of Chichupac and neighboring communities of the municipality of Rabinal who were displaced from their communities, in violation of Article 22(1) of the American Convention, in relation to Article 1(1) thereof.

B.3. Effects of displacement and failure to guarantee measures of return for members of Chichupac village and neighboring communities of Rabinal

190. From the evidence submitted to the Court, it is clear that the displacement and absence of measures to guarantee return or resettlement had serious effects on the life projects and family relationships of members of the Maya Achí community of the village of Chichupac and neighboring communities. In this regard, the expert witness Luis Raúl Francisco Salvadó Cardoza and the psychologist Nieves Gómez Dupuis explained that, as a direct consequence of the displacement process and within the context of survival strategies, there were abrupt role changes and a "brutal" change in people's life projects. For example: "[the] women […] hiding in different cities had to 'wash other people's clothes', make tortillas or tamales to sell from house to house, or work as domestic servants, etc., while in their previous community they were housewives in rural family units;" "children […] became heads of family [and took] charge of their younger siblings after the murder of their parents, until they found their grandparents." Others "went from being smallholders or tenants of agricultural plots" to being "assembly line workers," "bricklayers", "'baggage carriers' in different municipal markets of the country," or "working as farm laborers in different regions" and as "domestic workers."[200]

191. For the Court it is evident that the displacement of members of Chichupac village and neighboring communities seriously impacted the relationship of the Maya Achi people with their territory, as well as the community's traditional, cultural and ancestral ties within the group as such. In this regard, the expert witness Salvadó Cardoza indicated that "[t]he displacement brutally severed the historical ties that the affected population had with their territory, with the land and with the social practices that governed their daily lives." Among the effects on the community, he described "the disarticulation of the community fabric," which "led to the rupture of social relationships that had been established in each community to organize coexistence, the sudden loss of traditional channels for the transmission of knowledge [between generations], the cultural logic of production and land use practices", as well as "the identity markers were gradually broken down." The "community's cohesion was reduced," "mistrust was generated among the people" and "people were isolated from each other." Furthermore, "community organizations were severely weakened by the disappearance of the previously existing leadership." Cultural aspects of the Maya Achí population were also impacted, since in the "new lateral survival strategies, the identity markers are hidden." In the case of the women, "in their flight [they had] to get rid of their traditional costumes, the clothes they had worn since they were born […], and change them for what they call 'factory clothes', "in a very painful process of 'mimicry' that makes survival in the new environment possible." At the same time, the Achí language that was used in social, community and family relationships was affected, because when they left the communities, their members had to face the world in Spanish, which is not their first language.[201]

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[200] *Cf.* Report of the expert witness Luis Raúl Francisco Salvadó Cardoza presented at the public hearing held on April 28, 2016 (evidence file, folios 11673 and 11676). Also, the report on the damage to mental (moral) health prepared by psychologist Nieves Gómez Dupuis on May 5, 2010 and presented before the Inter-American Commission(evidence file, folios 1316 and 1325).

[201] *Cf.* Written report of the expert witness Luis Raúl Francisco Salvadó Cardoza presented during the public hearing held on April 28, 2016 (evidence file, folios 11676 to 11678), and expert opinion of Luis Raúl Francisco Salvadó Cardoza presented before the Inter-American Court during the public hearing on April 28, 2016.

192. Similarly, the psychologist Gómez Dupuis explained that "daily life, celebrations and rituals revolved around the land, its production cycles and the community's social organization" and that "displacement caused the rupture of support networks, the rupture with the land and the ancestral culture." She emphasized that "cultural practices were seriously damaged by the exclusion and stigmatization of the Maya Achí population."

193. The Court considers that the testimony given by Napoleón García de Paz at the public hearing is consistent with these expert reports. Mr. García told the Court that after surviving the events of November 26, 1982, in which eight persons were victims of forced disappearance, he left his community to take refuge in the mountains. There, together with his wife and children, he also survived the events of March 2, 1983, in which eight people were executed (*supra* paras. 110 to 112). He explained that he subsequently went to Guatemala City and currently lives in Rabinal, without having returned to his village. Regarding the events he experienced and the displacement, he said that he feels "pain […] because one is a native of the village of Xeabaj […], I have this feeling because things are no longer the same in the village, no people, no family - all my family, my brothers were killed, I'm the only one left […], it's very painful for the Maya race that it is finished; those in the Army want to eliminate us, because they say we're Indians, the say we're worthless because we can't speak Spanish. That's why I have this feeling that our beloved communities passed away […]. I haven't even gone to my village because […] I'm afraid, any little rocket over there makes me think that the Army is coming here, but no. Why? Because your mind is traumatized."

194. The Court likewise notes that forced displacement also affected the religious life of the members of Chichupac village and neighboring communities. According to psychologist Gómez Dupuis, "[d]uring those years the people stopped performing their devotions to the earth, rain, harvest, health, or for the dead and their communion with their ancestors. With the passage of time, people in the community have gradually recovered their cultural practices, and several community elders who managed to survive the massacre preserve the ancestral knowledge. However, several families converted to new religions such as the charismatic and evangelical churches. […] Cultural practices have also been lost among those who were permanently uprooted to other municipalities, particularly the young people who grew up away from their ancestral lands and embraced new identities," "far removed from their family, their traditions, their traditional dress and their language."[202]

195. The expert witness Salvadó Cardoza also referred to "the difficulty of carrying out certain cultural practices in the new environment," and to the "apparently sudden changes in traditional spirituality, including the appearance of new evangelical churches looking for followers." He also referred to the impact on religious practices, since people could no longer go to the traditional sacred sites of Rabinal, which meant "a very hard blow to the community and caused the rupture of community life."[203]

196. The Court notes that this situation is consistent with what happened in the cases of the *Río Negro Massacres and Plan de Sánchez Massacre*, whose victims were mostly members of the Maya Achí people, including children, women and men who lived in the villages and communities of the municipality of Rabinal, Department of Baja Verapaz, who were forced to leave their communities and take refuge in the mountains, as well as in other places, due to the persecution, violence and destruction of their homes and communities in the context of Guatemala's internal armed conflict. In these cases, the Court also found that the persons who suffered forced displacement to areas far from their community lost the opportunity to participate in the

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[202] *Cf.* Report on the damage to mental health (moral) prepared by the psychologist Nieves Gómez Dupuis on May 5, 2010, and presented before the Inter-American Commission(evidence file, folios 1313 to 1315, 1319 and 1324).

[203] *Cf.* Written report of the expert witness Luis Raúl Francisco Salvadó Cardoza presented during the public hearing held on April 28, 2016 (evidence file, folios 11676 to 11677), and expert opinion of Luis Raúl Francisco Salvadó Cardoza presented before the Inter-American Court during the public hearing on April 28, 2016.

activities, rituals, spiritual practices and learning processes of their community, to speak their language and to wear their traditional costumes, as well as to practice their traditional occupations.[204]

197. In short, the Court considers that the lack of guarantees for the return of members of Chichupac village and neighboring communities of the municipality of Rabinal after March 9, 1987, has had a particularly adverse effect on the traditional community-based, cultural and religious practices, the family and social structure, and on the identity markers and language of the Maya Achí people of said village and communities. This is due to the disruption of the ancestral culture and the historical links with the territory and social practices, the destruction of the community's social fabric and its sense of cohesion. All this has resulted in a loss of part of the Mayan culture that has not yet been fully evaluated. In this regard, the Court highlights the differentiated impact that the acts of violence and displacement have had on the ethnic and cultural identity of members of the village of Chichupac and neighboring communities of the municipality of Rabinal, which has left them in a situation of exceptional vulnerability.

198. At the same time, the Court highlights the clear indications of the differentiated impact that forced displacement and the failure to guarantee return or resettlement measures has had on the women of the village of Chichupac and neighboring communities of Rabinal at the cultural, social, family and individual levels. These women have had to take charge of their families and, together with their children, endure the pain of the violence they survived, which placed them at particular risk of suffering other forms of violence. These factors, which are described below, give an idea of the horror they experienced and of the individual, family and collective suffering of women displaced during the internal armed conflict.

199. First, the expert witness Alejandro Rodríguez Barilla found that "in the instant case, the allegations suggest that at least 18 women suffered sexual violence and essentially mass rapes by members of the Army and paramilitary groups" and that some of these attacks were perpetrated against displaced women who were relocated in the "model village" or La Colonia. In turn, at least five of the women mentioned by the expert witness were victims of rapes that resulted in pregnancies and the birth of their children. [205] Second, the CEH Report states that "because of the *modus operandi,* the 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 some women to abortion and infanticide, and were an impediment to marriages and births within the group." Furthermore, "[t]he stigma attached to Maya women who are victims of rape provokes the horror of rejection by their families or the community. Some survivors of sexual violence have even moved to another community precisely to avoid the shame of being labeled as a 'raped woman.' These women have had to endure the fear of 'being found out' and the panic that others will blame them."[206]

200. Third, the Court takes note of the life testimony of Juana García Depaz, who suffered the loss of the men in her family, that is, the death of her husband, brother and son, the disappearance of her father, brother and nephew, as well as the death of her daughter, between August 1981 and August 1986.[207] She was captured on October 22, 1983, by the State security forces and taken to the military post in the municipality of Rabinal, where she was beaten, raped by soldiers, threatened with death, hung by the neck with a rope and interrogated about the guerrillas. She was then transferred to the Pacux colony of Rabinal, and later to the colony of Chichupac, where she lived under tight military control, was forced to work to feed the soldiers

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[204] *Cf. Case of the Río Negro Massacres v. Guatemala,* para.58, footnote 44, and *Case of Plan de Sánchez Massacre v. Guatemala. Merits.* Judgment of April 29, 2004. Series C No. 105, para. 42.5.

[205] *Cf.* Expert witness Alejandro Rodríguez Barilla (evidence file, folios 11568 and 11569).

[206] *Cf.* CEH, *"Guatemala, Memory of Silence"*, Chapter 2, paras. 2353 and 2384.

[207] The names of the family members of Juana García Depaz are: Mateo Grave, Adrián García Manuel, Hugo García de Paz, Agapito Alvarado Depáz, Eusebia Grave García, José León Grave García and Efraín García de Paz (*supra* paras. 86, 99, 115 and 148)

and was raped. The rapes carried out in October 1982 and June 1985 resulted in two pregnancies from which her children Edgar and Sandra Maribel García were born (*supra* para. 116). After March 9, 1987, Juana García was forcibly displaced with her daughter and son aged 3 years and 1 year, approximately, which lasted until the present time. In this regard, during the public hearing, Juana García told this Court: "we were left without clothes, without anything, without a home, like a bird flying […]. We were left without husbands, without spouses […]. I lost my children, not only the two who died [,] [but also] the older ones, the [family] disintegrated, they left […], I lost my sons for nine years […]. I saw the death of my children and of all the neighbors. I suffered a lot, we all suffered greatly […]. We ended up wandering from place to place […].To this day, we are still a disintegrated family." However, despite these circumstances, Juana García began the search for her loved ones who ended up in clandestine cemeteries and those who were victims of forced disappearance. She denounced the events that had occurred to her next of kin, was involved in the criminal investigations that followed from those denunciations, and participated in the exhumation and identification procedures of her relatives in 2000, 2002 and 2006. She also told this Court that she is still searching for her father, Adrián García Manuel, and for her granddaughter, the daughter of Eusebia Grave García, who was taken away by the military when she was seven months old and who is now reported to be in Sweden.[208]

201. Fourth, the REMHI Report noted that "women of all ages and ethnicities, from diverse social backgrounds and different geographical locations, […] had to dedicate themselves to searching for the disappeared and preserving the lives of those who remained, in order to guarantee their personal and family survival. And all this was added to the great emotional toll caused by the impact of violence and its effects on women, such as loneliness, overload and low self-esteem."[209]

202. Finally, the Court understands that the forced displacement included a large number of children, who in addition to the impact of surviving the acts of violence, found that their father and mother - or one of them - had died, and were forced to live in a culture that was not theirs, which caused them to lose their identity and cultural roots, and in some cases they were forced to take charge of their younger brothers and sisters. The Court emphasizes the differentiated impact that acts of violence and displacement had on those who were children at that time, and which placed them in a situation of special vulnerability. Likewise, the Court is aware of the circumstances of the early years of life of children born from the rape of their mothers in the context of the internal armed conflict, and who were themselves victims of the violence of the time, and who have been especially vulnerable due to the possibility of facing stigmatization, discrimination, abandonment, infanticide or other forms of violence.[210]

B.4. Conclusion

203. Consequently, the Court considers that the State of Guatemala is responsible for the violation of the rights recognized in Article 22(1) of the American Convention, in relation to Article 1(1) thereof. In this judgment, the Court described the problems encountered in the identification of all the alleged victims in this case, which, in turn, makes it difficult to determine how many persons were displaced. On June 2, 2016, the representatives presented a list of "Individualized and displaced persons," indicating the names of those who would have remained in a situation of displacement after March 9, 1987, without the State challenging their status as displaced victims (*supra* paras. 10, 65 and 69). In application of the principle of good faith and procedural loyalty of the parties in this case, the Court considers that these persons, who are

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[208] *Cf.* Statement of Juana García Depaz at the public hearing held on April 28, 2016.

[209] *Cf.* REMHI Report "*Guatemala: Nunca Más"*, Tome I, Chapter 5, Title 5. The resistance of the women.

[210] With regard to sexual violence in armed conflict, the International Committee of the Red Cross has noted that "[b]oth children born as a result of rape and their mothers are also extremely vulnerable and may face an increased risk of exclusion from the community. These children may even be victims of infanticide or other forms of violence". Available at: https://www.icrc.org/spa/resources/documents/faq/sexual-violence-questions-and-answers.htm. See, also: REMHI Report "*Guatemala: Nunca Más"*, Volume I, Chapter 2, Titles: 1. Violence against children and 4. Children of violence.

identified in Annex II of this judgment, are victims of displacement.

204. Furthermore, the Court notes that the alleged violation of Article 12 of the American Convention has been duly considered in the arguments put forward in this chapter, without the need to issue a separate ruling on this point.

205. Finally, the Court notes that the Commission also alleged that Guatemala violated Article 16 of the American Convention. Article 16(1) of the American Convention establishes that those who are under the jurisdiction of the States Parties have the right to associate freely with other persons, without any intervention by the public authorities that may limit or hinder the exercise of that right. This matter, therefore, is about the basic right to form a group for the pursuit of a lawful goal, without pressure or interference that could alter or distort that purpose.[211] Likewise, Article 16(2) of said treaty states that the exercise of the right to associate freely "shall be subject only to such restrictions established by law as may be necessary in a democratic society, in the interest of national security, public safety or public order, or to protect public health or morals or the rights and freedoms of others." In the instant case, as it did in the *Case of the Río Negro Massacres v. Guatemala,* [212]the Court considers that the village of Chichupac and neighboring communities of the municipality of Rabinal cannot necessarily be classified as an "association" in the terms of Article 16 of the American Convention. In this regard, the Court notes that the Commission did not explain the reasons why these communities, which are of an indigenous nature, would be entitled to the right recognized in Article 16 of the Convention. Therefore, the Court considers that this provision is not applicable to the facts of this case.

IX.III
JUDICIAL GUARANTEES AND JUDICIAL PROTECTION[213] UNDER THE AMERICAN CONVENTION, FAILURE TO COMPLY WITH ARTICLES I.B OF THE INTER-AMERICAN CONVENTION ON FORCED DISAPPEARANCE OF PERSONS,[214] ARTICLES 1, 6 AND 8 OF THE INTER-AMERICAN CONVENTION TO PREVENT AND PUNISH TORTURE,[215] AND ARTICLE 7.B OF THE INTER-AMERICAN CONVENTION ON THE PREVENTION, PUNISHMENT AND ERADICATION OF VIOLENCE AGAINST WOMEN[216]

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[211] *Cf. Case of Baena Ricardo et al. v. Panama. Merits, reparations and costs.* Judgment of February 2, 2001. Series C No. 61, para. 156, and *Case of García and Family Members v. Guatemala,* para. 116.

[212] *Mutatis mutandi*, *Case of the Río Negro Massacres v. Guatemala. Preliminary objection, merits, reparations and costs.* Judgment of September 4, 2012. Series C No. 250, paras. 167 to 168.

[213] Article 8(1) of the American Convention states: "Every person has the right to a hearing, with due guarantees and within 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." Article 25(1) of the Convention establishes: "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."

[214] Article I.b of the ICFDP establishes: "The States Parties to this Convention 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."

[215] Article 1 of the ICPPT establishes: "The State Parties undertake to prevent and punish torture in accordance with the terms of this Convention." Article 6 of the ICPPT establishes: "In accordance with the terms of Article 1, the States Parties shall take effective measures to prevent and punish torture within their jurisdiction. 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 of the ICPPT states: "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."

[216] Article 7(b) of the Convention of Belém do Pará establishes: "The States Parties condemn all forms of violence

A. Arguments of the Commission and the parties

206. The ***Commission*** alleged that the facts of the case are part of a situation in which high levels of impunity prevail. It pointed out that more than 32 years have passed since the events took place and 21 years since the complaint was filed; nevertheless, the facts remain in total impunity. It argued that this delay is unreasonable, highlighted various deficiencies and obstacles in the investigation, and argued that Guatemala has not carried out an exhaustive identification of the exhumed remains nor has it adopted measures aimed at locating the whereabouts of the missing persons. It also pointed out that the failure to properly characterize the facts of forced disappearance constitutes an additional element of impunity. On this point, it emphasized that the application of the criminal offense of forced disappearance does not violate the principle of legality in those cases in which the whereabouts of the disappeared person have not been determined once the offense has come into force. Therefore, it concluded that the State violated Articles 8(1) and 25 of the American Convention, in relation to Article 1(1) thereof, as well as Article I.b) of the ICFDP, to the detriment of the disappeared persons and the next of kin of the victims listed in the "Single Annex" to the Merits Report. The Commission also considered that the facts of the case fall within the category of genocide and that "confirmation of a pattern of racial discrimination in the form of the stigmatization and persecution of members of the Maya people as sympathizers of the insurgency, required Guatemala to act with special diligence in the investigation and prosecution of the perpetrators." By failing to do so, the Guatemalan courts violated Article 24 of the Convention, in relation to Article 1(1) thereof, to the detriment of the members of Chichupac village and neighboring communities.

207. The ***representatives*** alleged that in a context of ongoing impunity, multiple complaints have been filed with the Public Prosecutor's Office since 1993. However, none of the criminal proceedings related to the facts have gone beyond the investigative phase, despite the existence of clear lines of investigation that could determine the culprits. They also pointed out that the time that has elapsed is unreasonable. They highlighted various obstacles in the investigation, emphasized the deep pain and anguish that this causes to the victims and concluded that Guatemala violated the victims' rights to judicial guarantees and judicial protection. They added that knowledge of the victims' whereabouts is part of the right to know the truth, one to which not only their relatives are entitled, but also the entire Guatemalan population. They further alleged that there are contextual elements that show that the acts committed by State agents were "intended to totally or partially destroy" the ethnic group of the Maya community of the village of Chichupac and neighboring communities, and pointed out that the failure to investigate the facts is directly and profoundly related to the current situation of racial discrimination in Guatemala.

208. In its answering brief, the ***State*** argued that, in accordance with its capacity, it has made every effort to comply with its obligation to investigate and that the authorities in charge have acted diligently. It reported on the opening of several case files and described the procedures carried out within them,[217] including the identification of 30 victims. Regarding the duty to investigate within a reasonable period of time, Guatemala referred to the complexity of the facts, the "notable inactivity" of the victims in the last decade and "the various" investigative measures carried out. Furthermore, it argued "the legality and appropriateness of the Amnesty enacted" through the National Reconciliation Law (LRN). With regard to the crimes to which the amnesty is not applicable under the LRN, it argued that the crime of genocide could not be applied to the facts of the case, given that the Guatemalan conflict did not originate as an inter-ethnic conflict, and that the crimes of forced disappearance and torture can only be charged with respect to

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against women and agree to pursue, by all appropriate means and without delay, policies to prevent, punish and eradicate such violence and undertake to: […] b) apply due diligence to prevent, investigate and impose penalties for violence against women."

[217] In particular, it affirmed that beginning in 2011, "various events that occurred in that region" were investigated under File MP001-2012-364, allegedly processed by the Unit for Special Cases of the Internal Armed Conflict of the Prosecutor's Office of the Human Rights Section.

events that occurred after their legal classification and entry into force in 1996. As for the crime of forced disappearance, it reiterated that it is permanent, but not continuous (supra paras. 15 and 128). Thus, it indicated that "although it is not possible to prosecute acts that occurred within the framework of the internal armed conflict […] the State of Guatemala accepts [the] responsibility and obligation to investigate the historical truth and to make reparations or compensate the victims at the domestic level." Finally, it stated that the conflict was not a form of discrimination against the Maya people, but rather a conflict that originated to overthrow the government; therefore, it asked the Court to declare that it did not violate the right to equality.

209. As already noted, at the public hearing the State acknowledged its international responsibility for the violation of Articles 8 and 25 of the Convention (*supra* para. 51, 55 and 56).

B. Considerations of the Court

210. The State has acknowledged its responsibility for the violation of Articles 8 and 25 of the Convention. However, as has been pointed out, the State has not specified the facts that led to those violations or against whom they were committed. Given that this case involves a number of serious human rights violations that occurred in the context of the internal armed conflict in Guatemala, the Court will now refer to its case law regarding the duty to investigate, prosecute and, where appropriate, punish those responsible for such violations when they are committed within a context such as that of the instant case, and will describe the factors that constitute a failure by the State to comply with those obligations.

211. The Court recalls that, by virtue of the protection granted by Articles 8 and 25 of the American Convention, States must provide effective judicial remedies to victims of human rights violations, which must be substantiated in accordance with the rules of due process of law.[218]

212. Likewise, this Court has pointed out that in a democratic society, the truth must be known about serious human rights violations. This is a reasonable expectation that the State must satisfy,[219] on the one hand, through the obligation to investigate human rights violations *ex officio* and, on the other, by disclosing the results of the criminal and investigative proceedings.[220] This requires the State to procedurally determine the patterns of joint action and all the persons who in various ways participated in said violations and their corresponding responsibilities, and to make reparations to the victims in the case.[221] For this reason, on previous occasions the Court has considered that the authorities in charge of the investigations have the duty to ensure that in the course of the investigations the systematic patterns that allowed the commission of serious human rights violations, such as those that occurred in the instant case, are assessed.[222] In order to ensure its effectiveness, the investigation must take into account the complexity of the facts and the structures within which those involved operated, particularly in contexts of massive and systematic or generalized attacks against some sector of the population,[223] so as to avoid omissions in the collection of evidence and in the follow-up of logical lines of investigation.[224]

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[218] *Cf. Case of Velásquez Rodríguez v. Honduras. Preliminary objections.* Judgment of June 26, 1987. Series C No. 1, para. 91, and *Case of Maldonado Ordoñez v. Guatemala. Preliminary objection, merits, reparations and costs.* Judgment of May 3, 2016. Series C No. 311. para. 71.

[219] *Cf. Case of Velásquez Rodríguez v. Honduras. Merits*, para. 181, and *Case of the Río Negro Massacres v. Guatemala*, para. 194.

[220] *Cf. Case of Anzualdo Castro v. Peru*, para. 119, and *Case of the Río Negro Massacres v. Guatemala*, para. 194.

[221] *Cf. Case of La Rochela Massacre v. Colombia. Merits, reparations and costs*. Judgment of May 11, 2007. Series C No. 163, para. 195, and *Case of the Río Negro Massacres v. Guatemala*, para. 194.

[222] *Cf. Case of La Rochela Massacre v. Colombia,* para. 156, and *Case of the Río Negro Massacres v. Guatemala*, para. 194.

[223] *Cf. Case of Almonacid Arellano et al. v. Chile. Preliminary objections, merits, reparations and costs.* Judgment of September 26, 2006. Series C No. 154, paras. 94 to 96 and 98 to 99, and *Case of Manuel Cepeda Vargas v. Colombia. Preliminary objections, merits, reparations and costs.* Judgment of May 26, 2010. Series C No. 213, para. 42.

[224] *Cf. Case of the Serrano Cruz Sisters v. El Salvador. Merits, reparations and costs.* Judgment of March 1, 2005. Series C No. 120, paras. 88 and 105, and *Case of Tenorio Roca et al. v. Peru. Preliminary objections, merits, reparations and costs.* Judgment of June 22, 2016. Series C No. 314, para. 177.

Therefore, State authorities are obliged to collaborate in the collection of evidence to achieve the objectives of the investigation and refrain from acts that imply obstructions to the progress of the investigative process.[225]

213. Given its importance, the obligation to investigate in the present case must be carried out in accordance with the international standards and jurisprudence that govern the investigation of serious human rights violations, which implies, in the first place, the creation of an adequate domestic regulatory framework and/or the organization of the system of administration of justice in such a way that it ensures that investigations are carried out *ex officio,* without delay and in a serious and effective manner.[226]

214. Likewise, this duty entails the removal of any *de jure and de facto* obstacle that impedes the investigation and prosecution of the facts and, if applicable, the punishment of all those responsible for the violations declared, as well as the search for the truth. For this reason, in the instant case, which deals with serious human rights violations committed in a context of massive and systematic violations, the obligation to investigate cannot be dismissed or conditioned by domestic acts or regulations of any kind.[227]

215. The Court also considers it pertinent to point out that the obligation to investigate, prosecute and, if appropriate, punish those responsible for human rights violations does not derive solely from the American Convention. In certain circumstances, and depending on the nature of the facts, this obligation also derives from other inter-American instruments that establish the duty of the States Parties to investigate conduct prohibited by such treaties.[228] In this regard, the Court notes that, in this case, the obligation of the State to investigate, assumed upon ratification of the American Convention and still in force today, was reaffirmed by Guatemala when it deposited the instrument of ratification of: i) the Inter-American Convention to Prevent and Punish Torture on January 29, 1987; ii) the Convention of Belém do Pará on April 4, 1995, and iii) the Inter-American Convention on Forced Disappearance of Persons (ICFDP) on February 25, 2000. Thus, the State should have ensured its compliance from that moment on,[229] even though said instruments had not been adopted by Guatemala at the time of the events of this case.

216. Furthermore, since in the instant case some persons were forced to work against their will (*supra* paras. 97 and 116), the Court recalls the imprescriptible nature of the crime of slavery and similar conditions in international law, given their nature as crimes under international law, whose prohibition has attained the status of *jus cogens.*[230] For these reasons, when the States become aware of an act that could constitute slavery or servitude in the terms of Article 6 of the American Convention, they must initiate *ex officio* the pertinent investigation for the purpose of establishing the corresponding individual responsibilities.[231]

217. As noted previously (*supra* paras. 121 and 122), the body of evidence shows that in this case an investigation was opened before the Unit for Special Cases and Human Rights Violations of the Public Prosecutor's Office and another before the Human Rights Ombudsman in relation to

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[225] *Cf. Case of García Prieto et al. v. El Salvador. Preliminary objections, merits, reparations and costs*. Judgment of November 20, 2007. Series C No. 168, para. 112, and *Case of the Peasant Community of Santa Bárbara v. Peru*, para. 237.

[226] *Cf. Case of Anzualdo Castro v. Peru*, para. 65, and *Case of the Massacres of El Mozote and Nearby Places v. El Salvador,* para. 247.

[227] *Cf. Case of Contreras et al. v. El Salvador. Merits, reparations and costs.* Judgment of August 31, 2011. Series C No. 232, para. 127, and *Case of García Lucero et al. v. Chile. Preliminary objection, merits and reparations.* Judgment of August 28, 2013. Series C No. 267, para. 149.

[228] *Cf. Case of the Rio Negro Massacres v. Guatemala*, para. 222.

[229] *Cf. Case of the Miguel Castro Castro Prison v. Peru*. *Merits, reparations and costs.* Judgment of November 25, 2006. Series C No. 160, para. 377, and *Case of Massacres of El Mozote and nearby places v. El Salvador*, para. 246.

[230] *Cf. Case of the Hacienda Brasil Verde Workers v. Brazil. Preliminary objections, merits, reparations and costs.* Judgment of October 20, 2016. Series C No. 318, para. 454.

[231] *Cf. Case of the Rio Negro Massacres v. Guatemala*, para. 225.

the massacre of January 8, 1982. Furthermore, nine files were opened in relation to certain facts committed before and after said massacre. The Court will now consider the pertinent aspects of these investigations, in light of the standards set forth above.

B.1. Lack of due diligence and obstruction

B.1.1. File No. 001-2005-95839, opened in relation to the massacre of January 8, 1982

218. Based on an evaluation of Case File No. 001-2005-95839 before the Unit for Special Cases and Human Rights Violations of the Public Prosecutor's Office, opened in 1993 as a result of a complaint filed regarding the massacre of January 8, 1982,[232] the Court confirmed the following.

B.1.1.1. Lack of diligent and timely investigations

219. Although there was some investigative activity by the relevant authorities, not all the measures that should have been taken to clarify the facts and identify the possible perpetrators were exhausted, and several of the steps taken were due to the procedural initiative of the victims' next of kin. Likewise, the Court found that on several occasions the investigative activity ceased for long periods or there were delays in carrying out the procedures.

220. In this regard, the Court notes, first of all, that on August 10, 1993, the Departmental Medical Examiner delivered to the Criminal Court of First Instance, Drug Trafficking and Environmental Crimes of Salamá, a box containing objects associated with the skeletal remains exhumed that year.[233] However, there is no record of any follow-up activity until February 5, 1998, when the Judge of First Instance asked the Justice of the Peace of Rabinal, who had been commissioned to perform the exhumation, to report on the actions taken.[234] After approximately four and a half years, this last action was carried out as a result of the procedural initiative of the victims' next of kin, who requested in December 1997 that the investigation be continued[235] and in January 1998 requested that the Justice of the Peace be asked to provide the file in which the exhumation was recorded.[236]

221. Second, the Court notes that only seven people were identified out of at least 31 individuals whose remains were exhumed in May 1993 (*supra* paras. 91 and 105).[237] The file does not show any subsequent activity aimed at identifying the other victims. On this point, the Court has stated that, in cases of serious human rights violations, such as the ones in this case, the exhumation and identification of deceased victims is part of the State's obligation to investigate. Therefore, it is a duty that must be fulfilled *ex officio*, because "the obligation to investigate includes the right of the victim's next of kin to know the victim's fate and, if applicable, where his or her remains are located."[238] To that extent, it is incumbent upon the State to satisfy these reasonable expectations with the means at its disposal.

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[232] *Cf.* Complaint of Ana Calate Sic filed on March 29, 1993 (evidence file, folios 729 and 730) and Ratification of the complaint of Ana Calate Sic filed on April 19, 1993 (evidence file, folios 718 to 721).

[233] Among them, three "military registration documents", a "credential of military reservists" and several rusted bullet casings "possibly of a caliber 22 pistol". *Cf.* Report of the Departmental Forensic Medical Examiner of August 10, 1993 (evidence file, folios 655 to 658).

[234] *Cf.* Official letter from the Judge of First Instance to the Justice of the Peace of Rabinal (evidence file, folio 628).

[235] *Cf.* Brief presented by Miguel Sic, Fabiana Chen and Teresa Cacaj on December 5, 1997 to become joint plaintiffs (evidence file, folios 636 to 645).

[236] *Cf.* Brief of Miguel Sic, Fabiana Chen and Teresa Cacaj submitted on January 29, 1998 (evidence file, folios 632 and 633).

[237] *Cf.* Report of the Anthropological Forensic Investigation in the hamlet of Chichupac, presented by the EAFG in July 1993 (evidence file, folios 511, 540 and 541); Record of exhumation of bodies of the Justice of the Peace of Rabinal during the period from May 6 to 19, 1993 (evidence file, folios 665 to 688); Official letter No. 830/jixt sent by the Police Commissioner of Salamá on May 17, 1993 (evidence file, folios 689 to 692), and Official letter No. 856/jgc sent by the Police Commissioner of Salamá on May 20, 1993 (evidence file, folios 663 to 664).

[238] *Cf. Case of Velásquez Rodríguez v. Honduras. Merits,* para. 181, and *Case of the Rio Negro Massacres v. Guatemala,* para. 217.

222. Third, in December 1997,[239]and in April[240] and June 1999,[241] the Public Prosecutor's Office of Salamá received, through the statements of at least three persons, the names of at least 18 people allegedly responsible for the massacre. The declarants requested their arrest in April and June of 1999, and reported that they continued to steal, rape women and threaten the population (*supra* paras. 98 and 183). They also provided the addresses where these individuals could be located. Although in June 2000, that is, one year later, the assistant prosecutor requested from the Chief of the Department of Neighborhood Identity Cards of Rabinal the identity cards of 14 of the individuals mentioned,[242] he only received 13 since one was not found[243] and no further action is recorded regarding these persons. Subsequently, in July[244] and August[245] 2005, the "Special Prosecutor of the Public Prosecutor's Office" received fifteen statements describing the events of January 8, 1982, as well as other events that occurred before and after that date, including the death of family members, forced displacement, forced labor, rape, the hardships and persecution they suffered, the burning of houses and crops, and the theft of livestock, as well as the identification of some of the alleged perpetrators.[246] However, there is no record of any other action taken to clarify their responsibility for the massacre. For example, there is no record that any of the persons mentioned by the declarants were called to testify. This point will also be addressed in section B.2 below.

223. Fourth, there is no record that any steps have been taken to investigate the robberies, rapes and threats that, according to the aforementioned statements of April and June 1999, the alleged perpetrators of the massacre continued to commit. The Court also notes that in statements made on September 14, 2005, before the assistant prosecutor of the Public Prosecutor's Office of Salamá, both Máxima Emiliana García Valey[247] and Fabiana Chen Galiego[248] retracted their

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[239] They requested, *inter alia*, the arrest of the accused and an order of pre-trial detention p. *Cf.* Brief filed by Miguel Sic, Fabiana Chen and Teresa Cacaj on December 5, 1997 to become joint plaintiffs (evidence file, folios 636 to 645).

[240] *Cf.* Statement of Miguel Sic Osorio of April 27, 1999 (evidence file, folios 610 to 612); Statement of Fabiana Chen Galiego of April 27, 1999 (evidence file, folios 613 to 615), and Statement of Teresa Cacaj Cahuec of April 27, 1999 (evidence file, folios 606 to 609).

[241] *Cf.* Statement of Miguel Sic Osorio and Teresa Cacaj Cahuec of June 28, 1999 (evidence file, folios 1013 to 1015); Statement of Susana Pancan of June 28, 1999 (evidence file, folios 1016 to 1017), and statement of Pedro Chen Sic of June 28, 1999 (evidence file, folios 1022 and 1023).

[242] *Cf.* Official letter of the assistant prosecutor of the District Prosecutor's Office of Salamá of June 21, 2000 (evidence file, folios 1099 and 8633).

[243] *Cf.* Official letter of the District Registrar of Rabinal of July 3, 2000 (evidence file, folio 8628).

[244] *Cf.* Statement of Pedro Chen Sic of July 12, 2005 (evidence file, folios 733 to 740); statement of Máxima Emiliana García Valey of July 12, 2005 (evidence file, folios 748 to 754); statement of Miguel Chen Tahuico of July 27, 2005 (evidence file, folios 8727 to 8731); statement of Ana Calate Sic of July 27, 2005 (evidence file, folios 8737 to 8740); statement of Domingo Chen Tahuico of July 27, 2005 (evidence file, folios 8741 to 8743); statement of Francisca Calate Sic of July 27, 2005 (evidence file, folios 8743 to 8744); statement of Félix Valey Galiego of July 27, 2005 (evidence file, folios 8745 to 8747), and statement of Pedro Sic Gonzalez of July 27, 2005 (evidence file, folios 8748 to 8749).

[245] *Cf.* Statement of Miguel Sic Osorio of August 16, 2005 (evidence file, folios 8750 and 8751); statement of Pedro Chen Sic of August 16, 2005 (evidence file, folios 8754 and 8755); statement of Sebastián Chen Tahuico of August 16, 2005 (evidence file, folios 8760 to 8762); statement of Teresa Cacaj Cahuec of August 16, 2005 (evidence file, folios 8752 and 8753); statement of Susana Pancan of August 16, 2005 (evidence file, folios 8756 and 8757); statement of Fabiana Chen Galiego of August 16, 2005 (evidence file, folios 8758 and 8759), and statement of María Teresa Sic Osorio of August 16, 2005 (evidence file, folios 8763 and 8766).

[246] Two of these individuals also testified on July 12, 2005, before the Internal Affairs Unit attached to the Office of the Prosecutor for Administrative Offenses. *Cf.* Statement of Miguel Sic Osorio of July 12, 2005(evidence file evidence, folios 757 to 761), and statement of Domingo Chen Tahuico of July 12, 2005 (evidence file, folios 765 to 767). It is not clear to the Court why the Internal Affairs Unit attached to the Office of the Prosecutor for Administrative Offenses was approached, or at what point the case file was passed to the Special Cases and Human Rights Violations Unit of the Public Prosecutor's Office.

[247] Máxima Emiliana García Valey appeared before the Assistant Prosecutor of the District Prosecutor's Office of Salamá to expand her previous statement, indicating that "by mistake and confusion" she had mentioned the name of a person who was allegedly responsible for the massacre at the clinic but that "he was not there" and that she mentioned him because "a few days before the massacre" this person had raped her mother, Gregoria Valey Ixtecoc. *Cf.* Statement of Máxima Emiliana García Valey of September 14, 2005 (evidence file, folios 8773 and 8774).

[248] Fabiana Chen Galiego expanded her statement of April 27, 1999, explaining that she had mentioned the name of several people allegedly responsible, but that she had mentioned one of them by "reference of other persons but that he had nothing to do with [the] case and the massacre in the clinic." *Cf.* Statement of Fabiana Chen Galiego of September

statements regarding the participation of certain persons whom they had previously accused of being responsible for the massacre of January 8, 1982.

224. In this regard, the Court recalls that, in order to guarantee due process, the State must facilitate all necessary means to protect justice operators, investigators, witnesses and the victims' next of kin from harassment and threats aimed at hindering the proceedings, preventing the clarification of the facts and covering up for the perpetrators; otherwise, this would have a chilling and intimidating effect on investigators and potential witnesses, seriously affecting the effectiveness of the investigation. Indeed, the threats and intimidation suffered by witnesses in the domestic proceedings cannot be seen in isolation, but must be considered within the context of obstructions to the investigation of the case, since such acts become another means to perpetuate impunity and prevent the truth of what happened from being known.[249]

225. Fifth, on December 5, 1997, and January 21 and May 12, 2000, Miguel Sic Osorio, Fabiana Chen Galiego and Teresa Cacaj Cahuec requested the judge of the Criminal Court of First Instance of Salamá and the District Prosecutor's Office of Baja Verapaz, respectively, to order an expert analysis of the ballistic material found in a clandestine cemetery during the exhumation of May 1993.[250] The assistant prosecutor of the District Prosecutor's Office sent the collected evidence to the Technical Scientific Sub-Directorate of the Public Prosecutor's Office for the corresponding expert analysis only on June 21, 2000,[251] that is, seven years after these items were found and two and a half years after the initial request was made by the aforementioned relatives. In addition, there is no record of any follow-up in relation to the export report prepared by the criminal investigations technician of the Ballistics Section of the Public Prosecutor's Office and sent to the District Prosecutor's Office of Salamá on July 5, 2000.[252]

226. Sixth, in June 1999, January and May 2000, and December 2005, these individuals asked the District Prosecutor's Office of Baja Verapaz to ask the Ministry of National Defense for a report with the names of the Minister of National Defense, the Chief of the General Staff and other military authorities assigned to the Baja Verapaz region in 1982;[253] however, there is no record of any response to these four requests filed over the course of six years.

227. Seventh, the Court notes that on September 9, 2002, the assistant prosecutor of the Special Prosecutor's Office of the Public Prosecutor's Office requested from the Civil Registry of the Municipality of Rabinal, certifications of the death certificates of 34 persons "whose bones were found in Chichupac during the exhumations carried out from June 6 to July 7, 1993 by […the FAFG]."[254] In this regard, the Court notes that: i) the exhumation began on May 6, 1993, and not on June 6, as indicated in the request;[255] ii) the list of persons submitted by the assistant prosecutor to the Civil Registry contains the names of 34 persons, even though the skeletons of only 31 persons were recovered in the aforementioned exhumation, and only seven were identified (*supra* paras. 91 and 105), and iii) some of the names included in the list submitted by the assistant prosecutor to the Civil Registry do not appear in the statements gathered in these

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14, 2005 (evidence file, folios 8775 and 8776).

[249] *Cf. Case of the Dos Erres Massacre v. Guatemala*, para. 145, and *Case of Quispialaya Vilcapoma v. Peru. Preliminary objections, merits, reparations and costs.* Judgment of November 23, 2015. Series C No. 308, para. 195.

[250] *Cf.* Briefs submitted on December 5, 1997, January 21 and May 12, 2000 by Miguel Sic, Fabiana Chen and Teresa Cacaj to become joint plaintiffs (evidence file, folios 589 to 590, 595 to 596 and 636 to 645).

[251] *Cf.* Official letter of the assistant prosecutor of the District Prosecutor's Office of Salamá of June 21, 2000 (evidence file, folios 1075 to 1079). In an order of May 15, 2000, the Criminal Judge of First Instance ordered the evidence to be forwarded to the Public Prosecution Service to conduct the corresponding expert assessments (evidence file, folio 582). This information was submitted in official letter No.C-255-93 of.40 (evidence file, folios 1076 to 1078).

[252] *Cf.* Expert opinion No.BAL-00-0404-mxx of the Criminal Investigations Technician of the Technical Scientific Department of the Public Prosecution Service on July 5, 2000 (evidence file, folios 578 to 580).

[253] *Cf.* Briefs of Miguel Sic Osorio, Fabiana Chen Galiego and Teresa Cacaj Cahuec (evidence file, folios 597 to 605 and 8797 to 8799).

[254] *Cf.* Official letter from the assistant prosecutor of the Special Prosecutor's Office of the Public Prosecution Service of September 9, 2002 (evidence file, folio 506).

[255] *Cf.* Report of Anthropological Forensic Investigation (evidence file, folios 508 to 574).

proceedings[256] and it is not clear to the Court why they were included. Also, on November 11, 2002, the Civil Registrar sent the certifications of the death certificates requested, indicating that "most of them were not found in the respective books."[257] However, there is no record of any subsequent action in this regard. All this demonstrates a lack of rigor in the investigation.

228. Eighth, in the months of October 2000,[258] November 2002,[259] and July and August 2005,[260] at least 18 persons testified during the proceedings. These persons denounced, *inter alia*, the death and disappearance of family members, forced displacement, forced labor, violence and rape, the hardships and persecution they suffered, torture, the burning of houses and crops, and the theft of livestock. There is no record of any investigative process in relation to these facts. This point will be addressed in section B.2 below.

229. Finally, and as a ninth point, there is no record of any investigative activity after September 2005,[261] the date on which several statements were received, and until March 2011, the date on which various statements were received as preliminary evidence.[262] Nor is there any evidence of any follow-up of the information gathered on those occasions.

B.1.1.2. Non-compliance with the duty to guarantee the participation of the next of kin

230. The Court recalls that, in accordance with the right recognized in Article 8(1) of the American Convention, in relation to Article 1(1) thereof, States Parties have the obligation to guarantee the right of victims or their next of kin to participate in all stages of the respective proceedings, so that they can make submissions, receive information, offer evidence, formulate arguments and, in short, assert their rights. The purpose of such participation must be to have access to justice, to know the truth about what happened, and to obtain fair compensation.[263] On this point, the

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[256] For example, there is no statement regarding the death Andrea Sical, whose name appears on the list mentioned.

[257] *Cf.* Official letter of the Civil Registrar of the municipality of Rabinal of November 11, 2002 (evidence file, folio 479).

[258] *Cf.* Statement of María Teresa Sic Osorio of October 25, 2000 (evidence file, folios 428 to 431); statement of Miguel Sic Osorio of October 25, 2000 (evidence file, folios 432 to 436); statement of Pedro Chen Sic of October 25, 2000 (evidence file, folios 437 to 442); statement of Alberto Juarez Valey of October 25, 2000 (evidence file, folios 443 to 446); statement of Aurelio Juárez López of October 25, 2000 (evidence file, folios 447 to 450); statement of Sebastián Chen Tahuico of October 25, 2000 (evidence file, folios 451 to 453); statement of Domingo Chen Tahuico of October 25, 2000 (evidence file, folios 454 to 458); statement of Miguel Chen Tahuico of October 25, 2000 (evidence file, folios 459 to 462); statement of Máxima Emiliana García Valey of October 25, 2000 (evidence file, folios 463 to 469); statement of Máxima Sic González of October 25, 2000 (evidence file, folios 471 to 474). All these statements refer to File No, MP-36-00-7 before two assistant prosecutors of the Public Prosecution Service in the village of Chichupac, but not to File No. 255-93-Of.; however, they are included in the certification of File No. 001-2005-95839. The statements of Domingo Chen Tahuico and Miguel Chen Tahuico have no file number or date but are filed among the statements of October 25, 2000.

[259] *Cf.* Statement of Vicenta Mendoza Alvarado of November 15, 2002 (evidence file, folios 475 to 478).

[260] *Cf.* Statement of Pedro Chen Sic of July 12, 2005 (evidence file, folios 733 to 740); statement of Máxima Emiliana García Valey of July 12, 2005 (evidence file, folios 748 to 754); Statement of Miguel Chen Tahuico of July 27, 2005 (evidence file, folios 8727 to 8731); statement of Ana Calate Sic of July 27, 2005 (evidence file, folios 8737 to 8740); statement of Domingo Chen Tahuico of July 27, 2005 (evidence file, folios 8741 to 8742); statement of Francisca Calate Sic of July 27, 2005 (evidence file, folios 8743 to 8744); statement of Félix Valey Galiego of July 27, 2005 (evidence file, folios 8745 to 8747); statement of Pedro Sic Gonzalez of July 27, 2005 (evidence file, folios 8748 to 8749); statement of Miguel Sic Osorio of August 16, 2005 (evidence file, folios 8750 and 8751); statement of Pedro Chen Sic of August 16, 2005 (evidence file, folios 8754 and 8755); statement of Sebastián Chen Tahuico of August 16, 2005 (evidence file, folios 8760 to 8762); statement of Teresa Cacaj Cahuec of August 16, 2005 (evidence file, folios 8752 and 8753); statement of Susana Pancan of August 16, 2005 (evidence file, folios 8756 and 8757); statement of Fabiana Chen Galiego of August 16, 2005 (evidence file, folios 8758 and 8759); statement of María Teresa Sic Osorio of August 16, 2005 (evidence file, folios 8763 and 8766); statement of Miguel Sic Osorio of July 12, 2005 (evidence file, folios 757 to 761), and statement of Domingo Chen Tahuico of July 12, 2005 (evidence file, folios 757 to 761).

[261] *Cf.* Statement of Máxima Emiliana García Valey of September 14, 2005 (evidence file, folios 8773 and 8774), and statement of Fabiana Chen Galiego of September 14, 2005 (evidence file, folios 8775 and 8776).

[262] *Cf.* Records of witness statements of March 10, May 24, and August 5, 2011 of Pedro Chen Sic, Félix Valey Galiego, Pedro Sic Gonzalez, María Teresa Sic Osorio and Susana Pancan (evidence file, folios 9910 to 9918). Although these records state that the statements and interrogations were "duly recorded on audio," the respective recordings were not attached.

[263] *Cf. Case of Valle Jaramillo et al. v. Colombia. Merits, reparations and costs.* Judgment of November 27, 2008. Series C No. 192, para. 233, and *Case of Tenorio Roca et al. v. Peru*, para. 269.

Court notes that on December 5, 1997,[264] and January 29, 1998,[265] Miguel Sic Osorio, Fabiana Chen Galiego and Teresa Cacaj Cahuec made a request to the Court of First Instance to join the proceedings as plaintiffs. However, it was not until March 1999, that is, more than one year after the initial request that this matter was resolved, due to the fact that File No. 255-93, related to the exhumation of 1993, had been lost.[266] In this regard, the Court considers that the delay of more than one year in resolving the request to join the proceedings violated the right of the next of kin to participate in the proceedings. This Court also considers that the "misplacement" of File No. 255-93 Of. 4 denotes *per se* a lack of due diligence in the investigation.

B.1.1.3. Obstruction

231. Finally, this Court has pointed out that the State authorities are obliged to collaborate in obtaining evidence to achieve the objectives of an investigation and refrain from acts that obstruct its progress.[267] In this regard, the Court found that, in response to the request of the judge of the Criminal Court of First Instance of May 7, 1993[268] for the names of the persons who served as military commissioners and assistant commissioners in the municipality of Rabinal in 1982, as well as information on whether they had been assigned to any mission on January 8 of that year, the Commander of Military Reserves replied on May 9, 1993, that "there were no military commissioners in that village in 1982 because the area had been taken over as a base for terrorist operations [,…] thus […]no commission could have been appointed on January 8, 1982."[269] As noted previously, according to the CEH, the Army regarded the municipality of Rabinal as a strategic area during the internal armed conflict, and between 1981 and 1983 the military or paramilitary groups killed at least 20% of the local population (*supra* para. 84). In addition, it was members of the Guatemalan Army assigned to the Rabinal military post, judicial police and military commissioners who perpetrated the massacre at the clinic in the village of Chichupac on January 8, 1982 (*supra* paras. 89 and 90). Thus, the denial of the existence of military commissioners in the area in 1982, and of the presence and participation of military personnel in operations, was a clear attempt to conceal the names of the persons possibly responsible for the massacre.

B.1.1.4. Conclusion regarding File No. 001-2005-95839

232. From the foregoing it is clear that in the context of the investigation of the massacre of January 8, 1982, the State committed a series of failures of due diligence and at least one obstruction, which prevented the effective investigation, prosecution and eventual punishment of those responsible.

B.1.2. Files opened in relation to events that occurred before and after the massacre of January 8, 1982

233. Based on an evaluation of the nine files opened in relation to the events that occurred before and after the massacre of January 8, 1982, the Court has verified the following.

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[264] *Cf.* Brief filed on December 5, 1997, by Miguel Sic, Fabiana Chen and Teresa Cacaj to join the proceedings as plaintiffs (evidence file, folios 636 to 645). From this point, the documents indicate that it is File No. 916-97 Of. 4, but all is included within the certification of File No. 001-2005-95839. Thereafter, it appears File 255-93 Of. 4, the case was again identified with this number.

[265] *Cf.* Brief filed by Miguel Sic, Fabiana Chen and Teresa Cacaj on January 29, 1998 (evidence file, folios 632 and 633).

[266] *Cf.* Ruling of the Judge of First Instance for Drug-related Activity and Environmental Crimes of Baja Verapaz of March 30, 1999 and Certification of File No. 001-2005-95839 (evidence file, folios 619 and 620), and official letter of the Judge of First Instance dated June 18, 1998 (evidence file, folio 627).

[267] *Cf. Case of García Prieto et al. v. El Salvador. Preliminary objections, merits, reparations and costs.* Judgment of November 20, 2007. Series C No. 168, para. 112, and *Case of the Rio Negro Massacres v. Guatemala*, para. 209.

[268] *Cf.* Official letter from the Judge of First Instance of May 7, 1993 (evidence file, folio 712).

[269] *Cf.* Official letter of the Commander of the Departmental Military Reserves May 9, 1993 (evidence file, folio 711).

234. First of all, in seven of the files there are no actions aimed at identifying those responsible for the facts. In two of these files – File No. 811-95 Of.1 before the District Prosecutor's Office of Salamá, in which the disappearance of relatives of María Teresa Sic Osorio, Albertina Sic Cuxum and Alejandra Galiego Mendoza,[270] among others, was reported, and File No. 248-2006-169 before the Municipal Prosecutor's Office of Rabinal, in which the forced displacement of Mr. Chen Tahuico's family and the death of his son[271] were reported - no investigative activity is recorded. This Court has indicated that the effective search for the truth is the responsibility of the State and does not depend on the procedural initiative of the victim or his next of kin, or on the private offer of evidence.[272] Therefore, the Court considers it particularly problematic that on August 15, 1995, the District Prosecutor of Salamá ordered that File No. 811-95 Of.1 be closed because "the accused was not identified."[273] The case was closed only one month after the complaint was filed on July 12, 1995, without an investigation being ordered to determine those responsible or locate the missing persons, among them Lorenzo Depaz Siprian, Leonardo Cahuec González, Juan Mendoza Alvarado and José Cruz Mendoza Sucup. In five other cases,[274] the actions were limited to the exhumation and, in some cases, the delivery of remains to their next of kin, despite the fact that the families requested other investigative measures.[275] It does not escape the Court's attention that between 1995 and 2010, executions, torture, rape, forced displacement, forced labor and disappearances were denounced in these five case files.[276] The Court will refer to this point in section B.2 below.

235. Secondly, this Court has noted delays of five to ten years in carrying out the exhumations in clandestine cemeteries requested by the victims' relatives.[277] This, despite the fact that the

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[270] María Teresa Sic Osorio reported the disappearance of her husband, Juan Mendoza Alvarado, and her father-in-law, José Cruz Mendoza, to the Guatemalan Human Rights Ombudsman's Office in Salamá; in addition, Albertina Sic Cuxum denounced the disappearance of her husband, Leonardo Cahuec Gonzales, and Galiego Mendoza reported the disappearance of her husband, Lorenzo of Paz Ciprián. On July 12, 1995 the aforementioned Office notified the District Prosecutor of the Salamá Public Prosecution Service of the complaints filed. *Cf.* Extension of the complaint of the Departmental Assistant of the Human Rights Ombudsman before the District Prosecutor of the Salamá Public Prosecution Service of July 12, 1995 (evidence file, folios 1351 to 1353).

[271] *Cf. Case of Velásquez Rodríguez v. Honduras. Merits.* Judgment of July 29, 1988. Series C No. 4, para. 177, and *Case of Tenorio Roca et al. v. Peru,* para. 176.

[272] *Cf. Case of Velásquez Rodríguez v. Honduras. Merits.* Judgment of July 29, 1988. Series C No. 4, para. 177, and *Case of Tenorio Roca et al. v. Perú,* para. 176.

[273] *Cf.* Order of the District Prosecutor's Office of Salamá of August 15, 1995 (evidence file, folio 1398).

[274] The files are: i) No. 87-97 before the District Prosecutor's Office of Salamá; ii) Case No. 255-93 Of. 4 (File 1083-95 M.P.) before the District Prosecutor's Office of Salamá; iii) Case No. 247-2003-1142 before the District Prosecutor's Office of Salamá; iv) Case No. 248-2010-263 before the Office of the Municipal Attorney of Rabinal, and v) File No. M.P. 247-1997-1378 before the District Prosecutor's Office of Salamá.

[275] In January 1997, María Concepción García Depaz asked the District Prosecutor of the Public Prosecution Service to "request [a] report from the Ministry of Defense and/or the corresponding military base on the names of the soldiers, officers and civil patrol members of [El] Chol", Baja Verapaz. *Cf.* Complaint of María García Depaz of January 17, 1997 (evidence file, folios 1862 and 1863). There isno record of any response to this request.

[276] *Cf.* Complaint of Víctor Castulo Alvarado Sucup and Rosario Roman Tum of July 27, 1995 (evidence file, folios 1881 and 1882); statement of Víctor Castulo Alvarado Sucup of August 11, 1995 (evidence file, folios 1883 and 1884); statement of Rosario Román Tum of August 11, 1995 (evidence file, folios 1885 and 1886); complaint filed by María Concepción García Depaz on January 17, 1997 (evidence file, folios 1862 and 1863); complaint filed by Francisca González Tecú on July 28, 1997 (evidence file, folios 9138 and 9139); statement of Juana García Depaz of July 26, 2001 (evidence file, folios 1893 to 1895); statement of Francisco Sic Chen of July 26, 2001 (evidence file, folios 1896 and 1897); statement of Máxima Emiliana García Valey of July 26, 2001 (evidence file, folios 1898 and 1899); statement of Tarcila Milián Morales of July 27, 2001 (evidence file, folios 1900 and 1901); statement of María Concepción García Depaz of July 27, 2001 (evidence file, folios 1902 and 1903); complaint filed by Tarcila Milián Morales on May 21, 2003 (evidence file, folios 11779 and 11780); statement of Francisca González Tecú and Clementina Bachan Cahuec of May 8, 2003 before the assistant prosecutor of the District Prosecutor's Office of Salamá (evidence file, folios 9142 and 9143), and complaint filed by Carlos Chen Osorio of April 16, 2010 (evidence file, folios 11933 to 11935).

[277] In the months of May and June 1995, Juana García Depaz, Máxima Emiliana García Valey and Francisco Sic Chen went to the Departmental Office of the Human Rights Ombudsman of Guatemala to denounce the existence of clandestine cemeteries located in the village of Chichupac and requested the exhumation of the bodies. In addition, Mr. Sic Chen mentioned the name of a civil patrolman whom he held responsible for this act. The Ombudsman's Office informed the District Prosecutor's Office of the Public Prosecution Service of Salamá of the complaint regarding the clandestine cemeteries. *Cf.* Complaint submitted by the Departmental Assistant of the Human Rights Ombudsman of Guatemala (evidence file, folios 1574 to 1577), and complaint filed by Juana García Depaz of May 9, 1995 (evidence file, folios 1290 and 1291). Likewise, in June 1995 Juana García Depaz reported to the District Prosecutor of the Salamá Public

next of kin indicated the places where these persons were buried. Likewise, the remains of Elías Milián González were handed over to his daughter, Tarcila Milián, by the assistant prosecutor of the Municipal Prosecutor's Office of Rabinal on April 18, 2012,[278] 10 months after they had already been exhumed and identified,[279] without the reason for the delay being apparent from the case file. Moreover, despite the fact that in April 2006 Miguel Chen Tahuico told the Public Prosecutor's Office of Rabinal that he could not bury his son in a legal cemetery due to the "intense persecution" he suffered, and that he also indicated where he buried him and requested his exhumation, there is no record that this request has been attended to.[280] Based on all the above, it is clear that the exhumations were carried out in response to the requests and complaints made by relatives of the victims, and that the State's initiative in the search and identification of victims has been minimal.

236. In this regard, the Court recalls that the passage of time has a directly proportionate relationship to the limitation – and, in some cases, the impossibility – of obtaining evidence or

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Prosecution Service the existence of clandestine cemeteries, requested the exhumation of the bodies and mentioned the names of the persons allegedly responsible. *Cf.* Statement of Juana García Depaz of June 9, 1995 (evidence file, folios 1263 and 1264).

These complaints were reiterated six years later before the District Prosecutor's Office of Salamá, in July of 2001, when the exhumation of the bodies was again requested. *Cf.* Statement of Juana García Depaz of July 26, 2001 (evidence file, folios 1893 to 1895); statement of Francisco Sic Chen of July 26, 2001 (evidence file, folios 1896 and 1897), and statement of Máxima Emiliana García Valey of July 26, 2001 (evidence file, folios 1898 and 1899).

Similarly, in August 1995, Víctor Castulo Alvarado Sucup and Rosario Román Tum requested the Departmental Prosecutor's Office of Salamáto order the exhumation of the bodies buried in clandestine graves located in Xeabaj. *Cf.* Statement of Víctor Castulo Alvarado Sucup of August 11, 1995 (evidence file, folios 1883 and 1884), and statement of Rosario Román Tum of August 11, 1995 (evidence file, folios 1885 and 1886).

However, they also had to reiterate this request in May 2000 and February 2002, i.e. five and seven years later, before the District Prosecutor's Office of the Public Prosecution Service of Salamá. On this last occasion they also requested that the Prosecutor's Office appoint experts for the analysis of the bodies and to request the National Police to provide custody during the exhumation. *Cf.* Statement of Víctor Castulo Alvarado Sucup of May 9, 2000 (evidence file, folio 1890); Statement of Rosario Román Tum of May 9, 2000 (evidence file, folio 1888), and written statement submitted by Víctor Castulo Alvarado Sucup and Rosario Román Tum to the Public Prosecutor of the District Prosecutor's Office of Baja Verapaz on February 14, 2002 (evidence file, folios 1913 to 1915).

In January 1997 and July 2001, María Concepción García Depaz requested the exhumation of her son, indicating the place where he was buried. *Cf.* Complaint filed by María Concepción García Depaz on January 17, 1997 (evidence file, folios 1862 and 1863); statement of María Concepción García Depaz of July 27, 2001 (evidence file, folios 1902 and 1903). Likewise, in July 2001 and September 2003, Tarcila Milián Morales pointed out the place where her father and sister were buried, and requested their exhumation. *Cf.* Statement of Tarcila Milián Morales of July 27, 2001 (evidence file, folios 1900 and 1901), and statement of Tarcila Milián Morales of September 24, 2003 (evidence file, folios 11783 and 11784). However, an exhumation to search for the relatives of María Concepción García Depaz and Tarcila Milián Morales was not ordered until February of 2007. *Cf.* Order of the Criminal Court of First Instance for Drug-related Activity and Environmental Crimes of Baja Verapaz of February 22, 2007 (evidence file, folios 11827 and 11828). The father of Mrs. Milián was identified in 2011 (*supra* para. 107). *Cf.* FAFG Report of June 27, 2011 (evidence file, folios 11910 to 11931).

Finally, it was verified that in July 1997 and May 2003, Francisca González Tecú requested the exhumation of her relatives in a clandestine cemetery in the hamlet of Xeabaj; however, this exhumation did not take place until June 2004. *Cf.* Complaint filed by Francisca González Tecú on July 28, 1997 (evidence file, folios 9138 and 9139); statement of Francisca González Tecú and Clementina Bachan Cahuec of May 8, 2003, before the assistant prosecutor of the Public Prosecutor's Office of Salamá (evidence file, folios 9142 and 9143), and FAFG Report of October 6, 2004 (evidence file, folios 1594, 1640 and 1641).

[278] *Cf.* Record of delivery of the remains by the assistant prosecutor of the Municipal Prosecutor's Office of Rabinal (evidence file, folios 11949 and 11950).

[279] *Cf.* Report of the FAFG of June 27, 2011 (evidence file, folios 11910 to 11931).

[280] He stated that from January 8, 1982, the Army "began an intense persecution against the civilian population of the community of Chichupac," so he was forced to leave the village and flee to the mountains to live there "with [his] wife and [their] four young sons." He stated that in March 1983 "[his] son Antonio Chen Mendoza died of fever, diarrhea and hunger" and they had to "bury him on [their] own property since the persecution by the Army was constant, [and] they could not bury him in a legal cemetery." Therefore, he requested an investigation of the facts and the exhumation of the remains of his son. *Cf.* Complaint filed by Miguel Chen Tahuico of April 7, 2006 (evidence file, folios 1555 to 1556).

testimonies, that help to clarify the facts under investigation, and even invalidates the practice of procedures for taking evidence in order to shed light on the facts of the investigation, identify the possible perpetrators and participants and determine the possible criminal responsibilities. However, this does not exonerate the State authorities from making the necessary efforts to comply with this obligation.[281]

237. Third, the Court notes that in February 2003, the thirteen skeletal remains[282] recovered in the exhumation of April 2002[283] were handed over to Francisco Sic and Máxima Emiliana García Valey, despite the fact that only two of these remains corresponded to their next of kin.[284] The Court recalls that receiving the body of a deceased person is of the utmost importance for their next of kin, since it allows them to bury the body according to their beliefs, as well as to close the mourning process.[285] Although Francisco Sic and Máxima Emiliana García Valey "undertook to deliver the remains to other family members,"[286] the Court considers that this was an obligation of the State that could not be delegated to third parties.[287]

238. Fourth, there is no record in the case file before this Court that any additional procedures were carried out to identify the five persons whose skeletal remains were exhumed in April 2002,[288] May 2007[289] and March 2013,[290] but who were not identified on those occasions. There is also no record of actions subsequent to said exhumation of March 2013, carried out within the framework of File No. M.P. 247-1997-1378 before the District Prosecutor's Office of the Public Prosecution Service of Salamá, aimed at finding Gregorio (or Gorgonio) Gonzales Gonzales, Gabino Román, Cruz Pérez Amperez, Eustaquio Ixtecoc and Rafael Depaz. Moreover, in the "Expert Report of the Anthropological Forensic Investigation carried out in the San Francisco Cemetery, in the village of Chuateguá," presented by the FAFG to the Public Prosecutor's Office in December 2014 within said process, there is no mention of any efforts to find Dionicio Bachán in the exhumations of March 2012 or March 2013, even though his disappearance was also

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[281] *Cf. Case of Anzualdo Castro v. Peru*, para. 135, and *Case of Contreras et al. v. El Salvador,* para. 145**.**

[282] *Cf.* Report of FAFG of December 18, 2002 (evidence file, folios 2035 to 2037).

[283] *Cf.* Record of exhumation of bodies in clandestine cemeteries issued by the Justice of the Peace of Rabinal on April 9 to 13, 2002 (evidence file, folios 1938 to 1941).

[284] *Cf.* Report of FAFG of June 2011 (evidence file, folios 2035 to 2037), and decision of the assistant prosecutor of the Public Prosecution Service of Salamá of February 27, 2003 (evidence file, folios 1950 and 1951).

[285] *Cf. Case of the Dos Erres Massacre v. Guatemala,* para. 245, and *Case of Tenorio Roca et al. v. Peru*, para. 274.

[286] *Cf.* Decision of the assistant prosecutor of the Public Prosecution Service of Salamá of February 27, 2002 (evidence file, folios 1950 and 1951).

[287] The Court also confirmed that three unidentified skeletal remains were delivered to Tarcila Milián Morales "in deposit." *Cf.* Decision of the assistant prosecutor of the Salamá Public Prosecution Service of October 16, 2008 (evidence file, folio 11845). In addition, the remains of Adela Florentina Alvarado García and Luciano Alvarado Xitumul were delivered to Francisca González Tecú, and the remains of Lucia Xitumul Ixpancoc and of the newborn baby aged 0 to 3 months were handed over to William Misael Ixtecoc Xitumul. *Cf.* Record of September 22, 2005 (evidence file, folio 1583). The Court does not have information as to whether the persons identified were family members of the persons who received their remains.

[288] On December 19, 2002, the FAFG submitted its report of the Anthropological Forensic Analysis to the assistant prosecutor of the Public Prosecution Service of Salamá. In this report, the FAFG indicated that, according to the statements in the case file and the interviews conducted, the exhumation should account for 12 victims. After the corresponding analyses, the FAFG determined that thirteen incomplete skeletons were found, of which only four persons were identified. On February 27, 2003, the formal judicial identification of human remains was carried out before the Justice of the Peace of Rabinal through the identification of remnants of the victims' clothing and belongings by their relatives. In this act, the remains of eight other persons were identified. Although the FAFG report also mentions Raymunda Sical Corazón as one of the missing victims, since she was allegedly executed along with Silvestre Sic Xitumul, she was not identified by the FAFG or by family members. *Cf.* FAFG Report presented on December 19, 2002 (evidence file, folios 1968 and 2035 a 2037), and Record of Legal Identification of Human Remains before the Justice of the Peace of Rabinal of February 27, 2003 (evidence file, folios 1952 to 1955).

[289] *Cf.* FAFG Report of February 27, 2008 (evidence file, folios 11861 to 11903), and official letter of the FAFG, October 16, 2008 (evidence file, folio 11843).

[290] File No. M.P. 247-1997-1378 before the District Prosecutor's Office of the Public Prosecution Service of Salamá states that on December 22, 2014 the Public Prosecution Service received from the FAFG, the "Expert Opinion of the Forensic Anthropological Investigation carried out in the San Francisco Cemetery, in Chuateguá village", indicating that "the investigation was conducted in two stages, the first […] on March 7, 2012 with a negative result and the second on March 20, 2013, with positive results," since a human skeleton was found that was not identified. *Cf.* FAFG Report of June 5, 2014 (evidence file, folios 9247, 9250, 9252, 9270 and 9276).

reported on May 8, 2003, in File No. M.P. 247-1997-1378.[291] Furthermore, the Court has no information on the actions taken to find Pedro Siana, Casimiro Siana, Juan Pérez Sic, María Concepción Chen Sic, Marcelo Sic Chen, Jorge Galeano Román and Enrique Mendoza Sis, all victims of forced disappearance (*supra* paras. 148, 156 and 160). The Court considers that this continues to increase the uncertainty of the next of kin regarding the whereabouts of the victims, which affects their right to know what happened to them.

239. Fifth, the preliminary procedures aimed at identifying those responsible in relation to File No. 802-95 Of. 6 before the District Prosecutor of the Public Prosecution Service of Salamá took place in February 2010, that is, 15 years after the filing of the complaints of executions, disappearances, arbitrary detention, forced labor, as well as rape that appear in the case file.[292] Likewise, the ten persons investigated by the Public Prosecutor's Office as of that date belonged to the PAC, and there is no record that any member of the Guatemalan Army has been investigated,[293] despite the fact that the complaints also indicated their participation.[294] In addition, the statement of only one of the persons investigated was taken,[295] two of them died and there is no record of additional inquiries aimed at locating the others.[296] On July 17 and October 4, 2013, the assistant prosecutor of the District Prosecutor's Office informed COPREDEH that the proceedings "were in the investigation phase."[297] There is no record in the evidence before this Court of any subsequent action. This point will also be addressed in section B.2 below.

240. Sixth, the Court observes that in File M.P. 247-2006-441, in which the disappearance of the relatives of Juana García Depaz was reported[298] on July 18, 2013, the assistant prosecutor asked the judge of the Criminal Court of First Instance to take her statement as preliminary evidence, and that it be considered "as a final statement which [possibly] could not be repeated in the proceedings due to the advanced age" of Mrs. García.[299] However, there is no record in the case file as to whether the judge complied with this request. Also, in March 2015, that is, almost two years later, the assistant prosecutor sent an official letter to the Director of the Migratory Control

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[291] *Cf*. Statement of Clementina Bachan Cahuec of May 8, 2003 (evidence file, folios 9142 and 9143).

[292] On May 9, 1995, Juana García Depaz filed a complaint before the Departmental Assistant of the Human Rights Ombudsman regarding the existence of clandestine cemeteries located in the village of Chichupac. On May 31, 1995, the Departmental Assistant of the Human Rights Ombudsman brought the complaint to the attention of the District Prosecutor of the Public Prosecutor's Office of Salamá. In addition, on June 9, 1995, Mrs. Garcia gave a statement to the District Prosecutor's Office. On June 20, 1995, Máxima Emiliana García Valey and Francisco Sic Chen filed a new complaint before the Departmental Assistant of the Human Rights Ombudsman regarding the existence of clandestine cemeteries in the aforementioned village. On July 12, 1995, the Departmental Assistant brought the complaint to the attention of the District Prosecutor's Office. *Cf.* Complaint of Juana García Depaz filed on May 9, 1995 (evidence file, folios 1290 and 1291); statement of Juana García Depaz of June 9, 1995 (evidence file, folios 1263 and 1264), and complaints regarding clandestine cemeteries filed by the Departmental Assistant to the Human Rights Ombudsman of May 31 and July 12, 1995 (evidence file, folios 1574 to 1577, and 1259 to 1261).

[293] In response to a request dated January 20, 2010, on February 16, 2010, the assistant prosecutor of the District Prosecutor's Office of the Public Prosecution Service of Salamá sent COPREDEH a report on the content and progress of case numbers 247/1995/802 (or 802-95 Of. 6), 247/1995/1995, and 247/1995/1085 processed before it. That same day, the assistant prosecutor requested the Chief of the National Civil Police to order "the investigators in his charge [to initiate...] the corresponding investigation in order to identify" ten alleged members of the PAC who were responsible "for having committed violent acts at that time." *Cf.* Official letter of COPREDEH of January 21, 2010 (evidence file, folio 9011), and official letter of the assistant prosecutor of the Public Prosecution Service of Salamá dated February 16, 2010 (evidence file, folios 8969 to 8970 and 8981 to 8987).

[294] *Cf.* Complaint of Juana García Depaz of May 9, 1995 (evidence file, folios 1290 and 1291); Complaint of Máxima Emiliana García Valey and Francisco Sic Chen filed on June 20, 1995 (evidence file, folio 1574 to 1577); statement of Juana García Depaz of June 9, 1995 (evidence file, folios 1263 and 1264), and statement of Juana García Depaz of February 8, 2010 (evidence file, folios 9003 to 9005).

[295] *Cf.* Statement of March 8, 2010 (evidence file, folios 8988 to 8992).

[296] *Cf.* Official letter of the Deputy Inspector of the PNC, Head of the Investigation Team of Office 52 of Salamá, of December 22, 2014 (evidence file, folios 8976 to 8977).

[297] *Cf.* Official letter of the assistant prosecutor of the District Prosecutor's Office of Salamá of December 22, 2014 (evidence file, folios 9126 and 9127), and official letter of the assistant prosecutor of the Public Prosecution Service of Salamá, dated December 22, 2014, (evidence file, folios 9132 to 9135).

[298] *Cf.* Complaint MP247/2006/648 of Juana García Depaz of June 13, 2006, (evidence file, folios 1404 and 1405).

[299] *Cf.* Brief of the assistant prosecutor of the Municipal Prosecutor's Office of Rabinal of July 18, 2013 (evidence file, folios 11757 to 11760).

Office and to the General Directorate of the Penitentiary System, asking whether Adrián García Manuel, Hugo García Depaz and the child Abraham (or Agapito) Alvarado Depaz had left the country or had been detained between 1980 and 1990.[300] Given that in 2008 the remains of Hugo García Depaz and Abraham Alvarado Depaz were identified, it is not clear why this information was requested (supra paras. 100, 149 and 155). On the other hand, there is no record in the case file of subsequent actions aimed at finding the remains of Adrián García Manuel or determining his whereabouts.

241. Seventh, in File No. M.P. 247-1997-1378 before the District Prosecutor's Office of the Public Prosecution Service of Salamá, there are records of one to five years without any investigative activity whatsoever.[301] Furthermore, there is no record of any investigation of the complaint made by Francisca González Tecú, who stated that in January 2010, someone had offered her money in exchange for withdrawing her complaint against a person whom she had identified as being responsible for the death of her father.[302]

242. Regarding these points, the Court recalls that it is not its responsibility to substitute the domestic jurisdiction by establishing the specific procedures for the investigation and prosecution of a specific case to obtain a better or more effective result, but rather to verify whether, in the course of the measures taken in the domestic sphere, the State violated its international obligations arising from Articles 8 and 25 of the American Convention.[303] However, in the instant case, it is clear that the investigations in relation to the events that occurred before and after the massacre of January 8, 1982 were late and incomplete, showing a lack of due diligence in the investigation of the facts.

B.2. Failure to investigate serious human rights violations

243. The Court emphasizes that the facts of this case concern forced disappearances and forced displacement (*supra* paras. 160 and 203), as well as alleged executions, acts of torture, violence, rape, and forced labor, among others (*supra* paras. 222, 228, 234 and 239), all within a context of serious, massive and systematic human rights violations in Guatemala (*supra* paras. 76 to 81). These facts have been brought to the attention of the State on several occasions since 1993;

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[300] *Cf.* Official letters of the assistant prosecutor of the Public Prosecutor's Office of Rabinal of March 20 and 26, 2015 (evidence file, folios 11735 and 11737). On March 26, 2015, the Sub-directorate of Migratory Control of the General Directorate of Immigration indicated that none of the three persons appear to have migratory movements. *Cf.* Official letter of the Sub-directorate of Migratory Control of the General Directorate of Immigration addressed to the assistant prosecutor of the Public Prosecution Service of Rabinal, Baja Verapaz of March 26, 2015 (evidence file, folios 11753 to 11756).

[301] These periods occurred between: i) September 2005 and January 2010; ii) October 2010 and October 2011; iii) October 2011 and December 2012, and iv) March 2012 and March 2013. On September 22, 2005, the FAFG delivered to the assistant prosecutor five caskets containing six incomplete skeletons, and that same day the remains were handed over to Francisca González Tecú and William Misael Ixtecoc Xitumul. On January 11, June 14 and October 26, 2010, Mrs. González Tecú again testified before the assistant prosecutor. On December 8, 2012, the judge of the Criminal Court of First Instance authorized the exhumation of the body of Gorgonio Gonzalez as requested by the assistant prosecutor on October 26, 2011. On March 12, 2012 Mrs. González Tecú informed the assistant prosecutor that "nothing was found" in the exhumation carried out on March 7, 2012, and asked that he again request the respective judge for authorization to excavate in three points within the same area and thus find her father's body. On December 22, 2014, the Public Prosecution Service received from the FAFG the "Expert opinion of the Forensic Anthropological Investigation conducted in the Cemetery of San Francisco, Hamlet Chuateguá". *Cf.* Official letter of the FAFG of September 22, 2005 (evidence file, folio 1581); statement of Francisca González Tecú of October 26, 2010 (evidence file, folio 9232); statement of Francisca González Tecú of January 11, 2010 (evidence file, folios 9243 and 9244); statement of Francisca González Tecú of December 22, 2014 (evidence file, folio 9245); brief of the assistant prosecutor of the District Prosecutor's Office of Salamá of October 26, 2012 (evidence file, folios 9130 and 9231); statement of Francisca González Tecú of March 12, 2012 (evidence file, folio 9204), and FAFG Report of June 5, 2014 (evidence file, folios 9247, 9250, 9252, 9270 and 9276).

[302] *Cf.* Statement of Francisca González Tecú of January 11, 2010 (evidence file, folios 9243 and 9244).

[303] *Cf. Case of Nogueira de Carvalho et al. v. Brazil***.** *Preliminary objections and Merits***.** Judgment of November 28, 2006. Series C No. 161, para. 80, and *Case of Velásquez Paiz et al. v. Guatemala. Preliminary objections, merits, reparations and costs.* Judgment of November 19, 2015. Series C No. 307, para. 169.

however, as already noted, they have not been properly investigated and, in some cases, no investigation has even been carried out (*supra* paras. 218 to 241).

244. The Court considers that the failure to investigate forced disappearances, extrajudicial executions, forced labor, torture and sexual violence in armed conflicts and/or within systematic patterns, such as those that occurred and were denounced in the instant case, constitutes a breach of the State's obligations in relation to serious human rights violations, and contravenes non-derogable norms and generates obligations for the States,[304] such as the obligation to investigate and punish such practices, in accordance with the American Convention and, in this case, in light of the ICFDP, the ICPPT and the Convention of Belém do Pará.

245. Similarly, the Court recalls that Guatemala's National Reconciliation Law (LRN) itself establishes in article 8[305] that "[t]he extinction of criminal liability [for certain crimes committed during the internal armed conflict] referred to in this law shall not apply to the crimes of genocide, torture and forced disappearance, as well as those crimes that are not subject to statutes of limitations or that do not admit extinction of criminal responsibility, in accordance with domestic law or international treaties ratified by Guatemala."

246. On this point, there is no evidence that the LRN has been applied in the proceedings initiated in the instant case. However, the State argued that, in the investigation and prosecution related to the facts of this case, the criminal definitions of forced disappearance and torture would not be applicable, since these offenses were not criminalized in its legislation at the time when the events took place.

247. In this regard, according to its extensive and consistent case law on the obligation to investigate, prosecute and, where appropriate, punish, the Court has established that amnesty provisions, statutes of limitations, and other purported exclusions of responsibility that in reality are a pretext to prevent the investigation of serious human rights violations, are inadmissible.[306]

248. In particular, this Court has indicated that in its jurisprudence it has heard cases in which the initial failure to define the autonomous crime of forced disappearance of persons did not hinder the progress of criminal proceedings at the domestic level, and therefore did not result *per se* in a violation of the State's treaty obligations (*supra* para. 136). This does not prevent the State from carrying out investigations based on the crime of forced disappearance in those cases in which the whereabouts of the disappeared person have not been determined or their remains identified by the date on which the criminalization of said crime entered into force in 1996. In such cases, the criminal conduct continues and, therefore, the criminal offense is applicable. The Court has already established that the application of the criminal definition of forced disappearance under the aforementioned assumptions does not violate the principle of legality, nor does it imply a retroactive application of the criminal law.[307]

249. On the other hand, the representatives and the Commission alleged that the facts of the present case constitute acts of genocide, while Guatemala argued that said crime would not be applicable to the facts of the case, "given that the Guatemalan conflict did not originate as an inter-ethnic conflict."

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[304] *Cf. Case of Goiburú et al. v. Paraguay,* para. 131.

[305] Available at: http://old.congreso.gob.gt/archivos/decretos/1996/gtdcx145-1996.pdf

[306] *Cf. 12 Guatemalan Cases. Monitoring Compliance with Judgment.* Order of the Inter-American Court of Human Rights of November 24, 2015, considering paragraph 145, and *Case of the Workers of Hacienda Brasil Verde v. Brazil*, paras. 454 and 455.

[307] *Cf. Case of Chitay Nech et al. v. Guatemala. Monitoring Compliance with Judgment*. Order of the Inter-American Court of Human Rights of August 22, 2013, considering paragraph 11, and *12 Guatemalan Cases. Monitoring Compliance with Judgment*. Order of the Inter-American Court of Human Rights of November 24, 2015, considering paragraph 149.

250. In this judgment, the Court has already established that it does not have temporal jurisdiction to rule on a large part of the facts and human rights violations alleged by the Commission and the representatives (*supra* paras. 24). Therefore, the Court does not have the evidence to make such a determination as requested by the Commission and the representatives, in the event that this would be appropriate.[308] Nevertheless, the Court recalls that Guatemala ratified the Convention on the Prevention and Punishment of the Crime of Genocide (CPPCG) on January 13, 1950, that is, prior to the facts of the instant case, and Article I of said treaty requires the contracting parties to punish this crime.[309]

251. Likewise, in this case it has already been established that, under the "National Security Doctrine" (1978-1983), the Army identified members of the Maya indigenous people, *inter alia*, as the "enemy within," considering that they were, or could become, the social base of the guerrillas (*supra* paras. 77 and 84). As mentioned previously, in its Final Report of June 1999, the CEH explained that the identification made between the Maya communities and the insurgency, and the brutal and indiscriminate nature of the "military operations [carried out] against hundreds of Mayan communities in the west and northwest of the country, particularly between 1981 and 1983," was based on traditional racist prejudices. In addition, taking into account the massacres perpetrated in the villages of Plan de Sánchez, Río Negro and Chichupac, among others, the CEH stated that:

> "the set of human rights violations perpetrated by the State against the Maya-Achí population between 1980-1983 allows us to conclude that acts of genocide were committed inspired by a strategic determination that also had a genocidal character, since the objective of the military campaign carried out in the area of Rabinal was the partial destruction of the Maya-Achí people, as a necessary requirement to maintain absolute control over a militarily strategic area and separate the guerrillas from their supposed social base. […] This perception of equivalence of identity between the Maya-Achí population of Rabinal and the guerrillas led, at one point during the conflict, to a campaign aimed at the partial annihilation of the Maya-Achí people of Rabinal, who were in a state of total defenselessness."[310]

252. The Court recalls that the cases of the *Plan de Sánchez Massacre* and *the Río Negro Massacres,* both heard by this Court, also involved massacres, executions, rape and torture, which took place in the first half of the 1980s in the context of Guatemala's internal armed conflict, all against members of the Maya Achí people, including children, women and men who lived in the villages and communities of the municipality of Rabinal, and attributed to members of the State security forces. In the case of the *Plan de Sánchez Massacre*, the commission of various crimes, including genocide, was denounced in June 1997.[311]

253. In this context, on September 2, 1996, the Human Rights Ombudsman issued a resolution concerning the clandestine cemeteries located in the villages of Plan de Sánchez, Río Negro and Chichupac, among others, in which he indicated that the massacres committed in those places were not isolated and constituted crimes against humanity. He stated that those directly responsible were "the civilian and military authorities who, at the time the acts were committed, exercised jurisdiction over the places where the events took place," as well as "the governments of the Republic at the time of the events and the Ministers of National Defense and the Interior under those governments." He also recommended to the Attorney General of the Nation, "a severe, swift and continuing investigation and prosecution of these extremely grave events, until those responsible are punished." [312]

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[308] In this regard, the Court clarifies that, in the case of the *Plan de Sánchez Massacre* and the *Rio Negro Massacres*, it did not reject *per se* the possibility of applying the legal definition of genocide in the context of its contentious jurisdiction to declare violations of the American Convention, but limited itself to a legal analysis of the specific circumstances of each case. *Cf. Case of Plan de Sánchez Massacre v. Guatemala. Merits.* Judgment of April 29, 2004. Series C No. 105, para. 51, and *Case of the Río Negro Massacres v. Guatemala*, para. 234.

[309] Article I of the CPPCG states: "The Contracting Parties confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and to punish."

[310] CEH, Memory of Silence, Chapter XXI, pages 375 and 376.

[311] *Cf. Case of Plan de Sánchez Massacre v. Guatemala. Merits*, para. 42.42.

[312] Resolution of the Human Rights Ombudsman of September 2, 1996 (evidence file, folios 1869 to 1879).

254. On October 25, 2000 and July 12, 2005, Miguel Sic Osorio appeared before the Internal Affairs Unit of the Prosecutor's Office for Administrative Crimes[313] and declared that "due to discrimination, the patrolmen and the military commissioners […] wanted to get rid of us because they said that they wanted to do away with the Indians." He also stated that, "before the massacre, there were people who practiced the Mayan religion, but in the massacre all the Maya priests were killed."[314] The Court also notes that on July 18, 2013, the assistant prosecutor of the Municipal Prosecution Service of Rabinal indicated to the judge of the Criminal Court of First Instance for Drug-related Activity and Environmental Crimes that the facts denounced by Juana García Depaz included "crimes against humanity."[315] Similarly, File M.P. 247/1999/492 of Case 255-93 Of. 4, contains an official letter from the assistant prosecutor of the Public Prosecutor's Office of Baja Verapaz addressed to the Prosecutor's Office of the Unit for Special Cases and Human Rights Violations, dated June 14, 2006, in which in which the file "referring to the genocide committed in the Village of Chichupac, [M]unicipality of Rabinal [...]" is forwarded […]."[316]

255. From the foregoing it is clear that, at least since 1996, the State had knowledge of the existence of possible crimes against humanity in the municipality of Rabinal, and at least since June 1999, when the CEH published its Final Report, it had knowledge that the acts committed in this case were possibly motivated by racist ideas and/or constituted acts of genocide. Therefore, the State had the obligation to investigate the facts taking into account these allegations. However, there is no evidence that this was done, despite the fact that the Court requested such information from the State. Thus, Guatemala cannot allege that "the crime of genocide would not be applicable to the facts of the case" without there being evidence that an investigation has been carried out in this regard in order to clarify the facts and determine the corresponding responsibilities.

256. Finally, with regard to the failure to investigate the rapes committed by State security agents in the instant case, the Court considers that whenever there is evidence of sexual violence in the context of an internal armed conflict, it should not be treated as a collateral crime, but rather its investigation should form part of each stage of the overall strategy for investigating possible torture, crimes against humanity, war crimes or acts of genocide that may have been committed.[317] The investigation of sexual violence should be carried out with respect for the

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[313] It is not clear to the Court why the Internal Affairs Unit attached to the Office of the Prosecutor for Administrative Crimes was approached or at what point the file was passed to the Special Cases and Human Rights Violations Unit of the Public Prosecutor's Office.

[314] Statement of Miguel Sic Osorio before the Internal Affairs Unit attached to the Prosecutor's Office for Administrative Crimes the July 12, 2005(evidence file, folios 757 to 761), and statement of Miguel Sic Osorio of October 25, 2000 (evidence file, folios 432 to 436).

[315] *Cf.* Brief of the assistant prosecutor of the Municipal Prosecutor's Office of Rabinal of July 18, 2013 (evidence file, folio 11758). Said brief contains reference No. MP248-2006-441. There is inconsistency with respect to the number of this file. It is recorded in the evidentiary record that the disappearance of Juana García Depaz's relatives was denounced within Case File M.P. 247-2006-441, through Complaint MP247/2006/648 filed by Juana García Depaz on June 13, 2006 (evidence file, folios 1404 and 1405). The pleadings and motions brief states that Case 648-2006/441 of the Rabinal Municipal Prosecutor's Office concerns the "disappearance of Adrián Garcia Manuel, Hugo Garcia de Paz and Abraham Alvarado Tecú." However, no further information is provided in this regard. The FAFG report mentions that this case is registered under File 247-2006-44 M.P.

[316] *Cf.* Official letter of the assistant prosecutor of the Public Prosecution Service of Baja Verapaz of June 14, 2006 (evidence file, folio 8806).

[317] This Court has repeatedly stated that sexual violence perpetrated by State agents can constitute torture. *Cf. Case of Fernández Ortega et al. v. Mexico. Preliminary objection, merits, reparations and costs*. Judgment of August 30, 2010. Series C No. 215**,** para. 128*, Case of Rosendo Cantú et al. v. Mexico. Preliminary objection, merits, reparations and costs*. Judgment of August 31, 2010. Series C No. 216*,* para. 118 and *Case of Espinoza Gonzáles v. Peru. Preliminary objections, merits, reparations and costs.* Judgment of November 20, 2014. Series C No. 289*,* paras. 195 and 196. Moreover, sexual violence can, in certain circumstances, constitute a war crime, a crime against humanity or an act of genocide. *Cf.* Article 3 common to the four Geneva Conventions, ratified by Guatemala on May 14, 1952; Article 4.2.e of the Additional Protocol II to the 1949 Geneva Conventions Relating to the Protection of Victims of Non-international Armed Conflicts, signed by Guatemala on December 12, 1977 and ratified on October 19, 1987; Article 7(1)(g) of the Statute of the International Criminal Court; Article 5 of the Statute of the International Criminal Tribuof the International Criminal Tribunal for the former Yugoslavia (ICTY); Article 3 of the Statute of the ICTR (International Criminal Tribunal for

cultural characteristics of the victims. Furthermore, possible links between those directly responsible for the sexual violence and their hierarchical superiors should be investigated, as well as any elements that would demonstrate discriminatory intent and/or the intent to commit genocide.[318]

257. Therefore, the Court considers that the State failed to fulfill its obligation to investigate the serious human rights violations that occurred and/or were alleged in the instant case, including, alleged acts of violence, rape, forced labor, torture, crimes against humanity, war crimes and acts of genocide.

258. The Commission also alleged that the State violated Article 24 of the American Convention by failing to investigate the pattern of racial discrimination that allowed the persecution of the Maya indigenous people. In this regard, in previous cases, the Court has established violations of Article 24 of the Convention when it found a violation of access to justice based on discriminatory criteria.[319] However, in this case, the Commission did not allege specific acts of discrimination in the context of the investigations that prevented the victims' next of kin from having access to justice because they belonged to the Maya indigenous people. Thus, the Court does not have sufficient evidence to rule on this alleged violation.

B.3. Right to know the truth and reasonable time

259. With respect to the length of the proceedings in general, this Court has indicated that the "reasonable time" referred to in Article 8(1) of the Convention must be assessed in relation to the total duration of the proceedings until the final judgment is delivered. The right of access to justice implies that the dispute must be resolved within a reasonable time, since a prolonged delay may, in itself, constitute a violation of judicial guarantees.[320] In this regard, the Court has usually considered the following elements to determine the reasonableness of the time: a) the complexity of the matter; b) the procedural activity of the interested party; c) the conduct of the judicial authorities, and d) the effects on the legal situation of the person involved in the proceedings. However, in this case approximately 34 years have passed since the massacre at

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Rwanda); *ICTR, Trial Ch I. Prosecutor v. Akayesu, Jean-Paul. Judgment, Sep. 2, 1998. paras. 505-509 and 516; Trial Ch I. Prosecutor v. Musema, Alfred. Judgment, En. 27, 2000. paras. 908 and 933 (884-936); ICTY, Trial Ch. Prosecutor v. Radovan Karadžić and Ratko Mladić. Review of the indictments pursuant to rule 61 of the rules of procedures and evidence, Jul. 11, 1996. par. 93; ICTY, Trial Ch. Prosecutor v. Radislav Krstić.* Judgment, Aug. 2, 2001. par. 509*;* United Nations General Assembly, Resolution 50/192, *Rape and Abuse of Women in the Areas of Armed Conflict in the Former Yugoslavia. A/RES/50/192,* December 22, 1995, p.3; United Nations Security Council, Women and Peace and Security. Doc S/PRST/2007/5, March 7, 2007, p.2.; Report of the Secretary General according to Security Council Resolution 1820 of July 15, 2009. para. 22., and ICRC, Rule 93.

[318] In this regard, see: *Cf.* CPI, *Situation in the Central African Republic in the case of the Prosecutor v. Jean-Pierre Bemba Gombo*, March 21, 2016, Section VI, (B) and (F), paras. 634 to 638 and 693 to 741; CPI Policy Paper on Sexual and gender-based crimes, June of 2014, pp. 17, 25, 26 and 43. Available at: https://www.icc-cpi.int/CourtRecords/CR2016_02238.PDF and https://www.icc-cpi.int/iccdocs/otp/OTP-Policy-Paper-on-Sexual-and-Gender-Based-Crimes--June-2014.pdf; ICTR, Prosecution of Sexual Violence. Lessons Learned from the Office of the Prosecutor for the International Criminal Court for Rwanda, January 30, 2014, pp 8 a 24, 28 to 32 and 37. Available at: http://w.unictr.org/sites/unictr.org/files/legal-library/140130_prosecution_of_sexual_violence.pdf

[319] For example, in the cases of *Fernández Ortega and Rosendo Cantú,* both against Mexico, the Court concluded that the lack of an interpreter that would enable the victims to participate fully in their own cases constituted discrimination in access to justice. In the Case of *Tiu Tojín v. Guatemala, the* Court considered that in order to guarantee access to justice for the victims - as members of the Mayan indigenous people - without discrimination, the State had to ensure that they could understand and be understood in the legal proceedings, by providing them with interpreters or other effective means to that end. Likewise, in the cases of *Espinoza Gonzáles v. Peru, and Veliz Franco et al., and Velásquez Paiz v.* Guatemala, the Court found that the failure to investigate the violence suffered by the victims in those cases was due to the use, on the part of the justice operators, of discriminatory stereotypes. *Cf. Case of Fernández Ortega et al. v. Mexico*, para. 201; *Case of Rosendo Cantú et al. v. Mexico*, para. 185; *Case of Tiu Tojín v. Guatemala. Merits, reparations and costs*. Judgment of November 26, 2008. Series C No. 190, para. 100; *Case of Espinoza Gonzáles v. Peru*, paras. 272 and 278; *Case of Veliz Franco et al. v. Guatemala. Preliminary objections, merits, reparations and costs*. Judgment of May 19, 2014. Series C No. 277, paras. 212 and 213, and *Case of Velásquez Paiz et al. v. Guatemala*, paras. 177, 183, 186 to 189**.**

[320] *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, and *Case of Tenorio Roca et al. v. Peru,* para. 237.

the clinic in the village of Chichupac occurred, approximately 30 to 35 years since the other events of this case took place, and more than two decades since the first complaints were received, yet none of the investigations analyzed in this chapter have gone beyond the investigative stage. In other words, the case remains in total impunity and, therefore, the Court considers it evident that the investigation has not taken place within a reasonable time.

260. In addition, this Court has determined that everyone, including the next of kin of the victims of serious human rights violations, has the right to know the truth. Consequently, the victims' families and society must be informed of everything that happened in relation to said violations.[321] Although the right to know the truth has been fundamentally framed within the right of access to justice,[322] it has a broad nature and its violation may affect different rights enshrined in the American Convention, [323] depending on the particular context and circumstances of the case.

261. The Court has considered the content of the right to know the truth in its jurisprudence, particularly in cases of forced disappearance, since the right to know the whereabouts of the disappeared victims constitutes an essential component of the right to know the truth. However, in this case, the whereabouts of the disappeared persons remain unknown and, as noted, some remains recovered during the exhumations have not yet been identified (*supra* para. 147). Based on the foregoing considerations, the Court declares the violation of the right to know the truth, to the detriment of the next of kin of the victims of forced disappearance. In this case, as in others, said violation is framed within the right of access to justice.

B.4. Conclusions

262. The Court considers that, in accordance with the American Convention in force at the time of the massacres, the State had the obligation to investigate with due diligence all the facts of the instant case, an obligation that was pending at the time of its recognition of the Court's contentious jurisdiction on March 9, 1987. The State reaffirmed this obligation when it deposited the instrument of ratification of the Inter-American Convention to Prevent and Punish Torture, the Convention of Belém do Pará, the Inter-American Convention on Forced Disappearance of Persons and the Convention on the Prevention and Punishment of the Crime of Genocide (*supra* paras. 215 and 250). Therefore, the State should have ensured compliance therewith from the moment of ratification.

263. More than 30 years after the events occurred and 23 years after the first complaints were filed (*supra* para. 259), the investigations opened into the facts of this case are still in the investigation stage. There are long delays and omissions in the collection of evidence, and in most of the files examined there are no actions aimed at determining those responsible for the events, or else, only inquiries regarding members of the PAC were carried out, without any member of the Guatemalan army having been investigated. This, despite the fact that on repeated occasions

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[321] *Cf. Case of Trujillo Oroza v. Bolivia. Reparations and costs.* Judgment of February 27, 2002. Series C No. 92, para. 100, and *Case of Tenorio Roca et al. v. Peru,* para. 243

[322] *Cf.* See *inter alia*, *Case of Velásquez Rodríguez v. Honduras. Merits*, para. 181; *Case of Bámaca Velásquez v. Guatemala. Merits.* Judgment of November 25, 2000. Series C No. 70, para. 201; *Case of Barrios Altos v. Peru. Merits*. Judgment of March 14, 2001. Series C No. 75**,** para. 48; *Case of Almonacid Arellano et al. v. Chile,* para. 148; *Case of La Cantuta v. Peru. Merits, reparations and costs.* Judgment of November 29, 20056. Series C No. 162, para. 222; *Case of Heliodoro Portugal v. Panama. Preliminary objections, merits, reparations and costs.* Judgment of August 12, 2008. Series C No. 186, paras. 243 and 244, and *Case of Kawas Fernández v. Honduras. Merits, reparations and costs*. Judgment of April 3, 2009. Series C No. 196**,** para. 117.

[323] In its study on the right to know the truth, the United Nations High Commissioner for Human Rights noted that various international declarations and instruments have recognized the right to know the truth in relation to the right to obtain and request information, the right to justice, the duty to combat impunity in relation to human rights violations, the right to an effective judicial remedy and the right to private and family life. Furthermore, in relation to the victims' next of kin, it has been linked to the right to integrity (mental health) of the victims' family members, the right to obtain reparation in cases of serious human rights violations, the right not to be subject to torture or mistreatment and, in certain circumstances, the right of children to receive special protection. *Cf.* Report of the Office of the United Nations High Commissioner for Human Rights. *Study on the right to the truth*, U.N. Doc. E/CN.4/2006/91 of January 9, 2006.

the participation of the latter in the facts was denounced and that the accusers provided the names of the alleged perpetrators and the places where they could be found. Thus, the Court considers that the investigation, arrest, prosecution, trial and eventual punishment of those responsible for the violations committed against members of the village of Chichupac and neighboring communities of the municipality of Rabinal, including the perpetrators and the masterminds, has not been conducted effectively, with due diligence and within a reasonable time, so as to fully and exhaustively examine the multiplicity of serious human rights violations caused or alleged, within the specific context in which they occurred. Furthermore, the investigations have not been aimed at locating all the disappeared victims, nor have all the remains found in the various exhumations been properly and opportunely identified, even with the procedural initiative of the victims' next of kin. All this has violated, in particular, the right to know the truth of the next of kin of the disappeared victims.

264. This Court has indicated that "Guatemala has a serious problem with respect to the impunity that prevails in the country, specifically in relation to the systematic violations of human rights that occurred during the armed conflict."[324] The Court considers that the State's actions in the investigation of the facts of this case demonstrate a clear desire on the part of the authorities to ensure that these remain in the most absolute impunity, which results in an aggravated responsibility for the failure to comply with its duty to investigate serious human rights violations.

265. Taking into account the above considerations, as well as the body of evidence in the instant case and the State's partial acknowledgment of international responsibility (*supra* paras. 55 to 58), this Court finds that Guatemala is responsible for the violation of the rights recognized in Articles 8(1) and 25(1) of the American Convention, in relation to Article 1(1) thereof, as well as for the failure to comply with the obligations established in Article I. b) of the Inter-American Convention on Forced Disappearance of Persons, Article 7.b of the Convention of Belém do Pará, and in application of the principle *iura novit curia*, also in relation to Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture, to the detriment of the victims in the instant case or their next of kin, in their respective circumstances. The names of such persons are listed in Annex I of this judgment, which includes, in application of the principle of good faith and procedural loyalty, the names that appear in the "Single Annex" to the Merits Report of the Commission and in the "General List of Victims" provided by the representatives on June 2, 2016, as verified.

X
REPARATIONS
(Application of Article 63(1) of the American Convention)

266. Based on the provisions of Article 63(1) of the American Convention,[325] the Court has indicated that any violation of an international obligation that has produced harm entails the obligation to make adequate reparation, and that this provision reflects a customary norm that constitutes one of the fundamental principles of contemporary international law on State responsibility.[326]

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[324] *12 Guatemalan Cases. Monitoring compliance with judgment*. Order of the Inter-American Court of Human Rights of November 24, 2015, considering paragraph 125.

[325] Article 63(1) of the Convention states: "If the Court finds that there has been a violation of a right or freedom protected by this Convention, the Court shall rule that the injured party be ensured the enjoyment of his right or freedom that was violated. It shall also rule, if appropriate, that the consequences of the measure or situation that constituted the breach of such right or freedom be remedied and that fair compensation be paid to the injured party."

[326] *Cf. Case of Velásquez Rodríguez v. Honduras. Reparations and costs*. Judgment of July 21, 1989. Series C No. 7, para. 25, and *Case of Herrera Espinoza et al. v. Ecuador. Preliminary objections, merits, reparations and costs*. Judgment of September 1, 2016. Series C No. 316, para. 210.

267. The Court has established that reparations must have a causal nexus with the facts of the case, the violations declared, the damage proven, as well as the measures requested to repair the respective harm.[327]

268. In consideration of the violations of the Convention declared in the preceding chapters, the Court will analyze the claims presented by the Commission and the representatives, as well as the arguments of the State, in light of the criteria established in its case law regarding the nature and scope of the obligation to make reparations, for the purpose of ordering measures aimed at repairing the damage caused to the victims.[328]

269. The Court finds it pertinent to reiterate that the denial of justice to the detriment of the victims of serious human rights violations, such as those in the instant case, results in a variety of effects in both the individual and the collective sphere. Thus, it is evident that the victims of prolonged impunity suffer different adverse effects owing to their search for justice, not only of a pecuniary nature, but also suffering and damage of a psychological and physical nature, and to their life project, as well as other possible changes in their social relationships and their families and community dynamics. This Court has indicated that such suffering is increased by the absence of support from the State authorities in the effective search for and identification of the remains, and the impossibility of honoring their loved ones appropriately. Accordingly, the Court has considered the need to grant different measures of reparation, in order to redress the damage fully; thus, in addition to pecuniary compensation, measures of satisfaction, restitution and rehabilitation, and guarantees of non-repetition, have special relevance owing to the severity of the effects and the collective nature of the damage caused.[329]

A. Injured party

270. In the instant case, the ***Commission*** asked the Court to order the State to establish mechanisms for: i) "the full identification of the victims executed"; ii) "the determination of the persons who disappeared in the massacres" and "the survivors" thereof; and iii) "the full identification of the next of kin of the victims who were executed and disappeared, so that they may claim the reparations to which they are entitled." The ***representatives*** requested the creation of "a mechanism to identify all the surviving victims of the massacres [, as well as] their next of kin [,] and that the Court leave open the possibility that those surviving victims [who] are identified by the State be included as victims and, consequently, as beneficiaries of the reparations."

271. The ***State*** referred to the efforts it is making to locate, exhume and identify the remains of the victims in the municipality of Rabinal (*infra* para. 291). It also referred to the criteria applied to qualify as a beneficiary of the National Reparations Program (PNR), the easing of requirements for the registration of the population in the civil registries and the creation of the National Registry of Persons (RENAP), whose purpose is to organize and maintain a single identification registry of natural persons. Thus, it affirmed that it has "a mechanism that facilitates the identification of persons so that they may subsequently be beneficiaries of the reparations."

272. The ***Court*** reiterates that, according to Article 63(1) of the Convention, the injured party is the party that has been declared a victim of the violation of any right recognized in the Convention.[330] Therefore, the Court considers as "injured party" those persons referred to in

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[327] *Cf. Case of Ticona Estrada et al. v. Bolivia. Merits, reparations and costs*. Judgment of November 27, 2008. Series C No. 191, para. 110, and *Case of Herrera Espinoza et al. v. Ecuador*, para. 211.

[328] *Cf. Case of Velásquez Rodríguez v. Honduras. Reparations and costs*, paras. 25 to 27, and *Case of Herrera Espinoza et al. v. Ecuador*, para. 213.

[329] *Cf. Case of the Dos Erres Massacre v. Guatemala,* para. 226, and *Case of Massacres of El Mozote and Nearby Places v. El Salvador*, para. 305.

[330] *Cf. Case of La Rochela Massacre v. Colombia*. *Merits, reparations and costs.* Judgment of May 11, 2007. Series C No. 163, para. 233, and *Case of Herrera Espinoza et al. v. Ecuador*, para. 212.

Annexes I and II of this judgment who, as victims of the violations declared in paragraphs 155, 156, 160, 164, 203, 265, shall be the beneficiaries of the reparations ordered by the Court. Regarding said persons, the Court found, within the body of evidence, the necessary proof to confirm their identity (*supra* para. 65).

273. However, it was not possible to find in the body of evidence the documentation necessary to confirm the identity of the persons listed in Annex III of this judgment. Likewise, Annex IV of this judgment includes the names of persons allegedly displaced, but regarding whom the representatives did not specify whether they remained displaced after March 9, 1987, the date on which Guatemala recognized the contentious jurisdiction of this Court.

274. Since the Court has already established that in this case the application of the exception provided for in Article 35(2) of the Rules of Procedure is reasonably justified, the Court considers it appropriate that, within six months of notification of this judgment, the representatives provide the Court with documentation that proves the identity of the persons listed in Annex III of this judgment, and that they also specify whether the persons mentioned in Annex IV remained in a situation of displacement after March 9, 1987. The purpose of this is to ensure that such persons may be considered as victims in the instant case until they are duly identified or it is proven that they remained displaced after said date. To this end, the Court will assess this matter in exercise of its powers of supervision of this judgment.

275. The provisions of this sub-section do not exclude the right of those members of Chichupac village or the neighboring communities of Xeabaj, Chijom, Coyojá, El Tablón, Toloxcoc, Chirrum, El Chol and El Apazote who were not presented as victims by the representatives or the Commission, or who appear in Annexes III or IV of this judgment and are not incorporated as victims within the 6-month period established *supra,* to claim, in accordance with domestic law, the corresponding compensatory measures in their favor.

B. National Reparations Program

276. In its answering brief, the ***State*** indicated that it already has a public reparations policy aimed at compensating victims of human rights violations suffered during the internal armed conflict, through the National Reparations Program (PNR). It pointed out that this policy was created as a result of the peace negotiations, and contemplates individual and collective reparation measures in the material, moral and cultural aspects. It explained that said Program has been subject to improvements in terms of the procedures established to qualify as beneficiaries, as well as the definition of the forms and amounts of the compensation. It pointed out that the PNR provides measures of material restitution, financial compensation, psychosocial assistance, rehabilitation and "measures to dignify the victims (moral and community redress)," and has an office in the municipality of Rabinal, as well as personnel capable of attending to the victims and their families in the Maya Achí language. It questioned that the Court "should act as a parallel body of reparation for some of the victims of the armed conflict [...], with different procedures to determine the beneficiaries and to define the forms and amounts of reparations which, in addition to exceeding the financial capacities of the State, hinder the proper functioning of the Program." Furthermore, it maintained that "the majority" of the victims have already been compensated through the PNR and have signed a settlement in which they agreed not to file any other claims against the State in future for the facts of this case. It also presented a list of the 67 persons that "have already received compensation from that program."

277. The ***representatives*** argued that, from a formal point of view, the PNR "is not questionable" in terms of its objectives; however, "the letter" differs "enormously" from reality. They highlighted various problems with the implementation of the program,[331] and argued that the financial

[331] They argued that the amounts of the compensation "do not constitute fair and decent reparation for the moral harm" caused to their communities; that the payment process is slow; that there is confusion among families as to who receives

compensation granted by the PNR "does not constitute fair and decent compensation for the moral damage" caused to their communities. In their observations on the preliminary objections, they stated that: i) "the program has set a maximum amount to compensate victims, regardless of the number of victims that a family has lost and reported", and ii) the program "does not compensate all victims for each of the violations contemplated in Article 3 of Governmental Agreement 43-2005 43-2005. Violations such as forced displacement and deaths from disease, hunger and the subhuman conditions endured during the forced displacement in the mountains and elsewhere are also not compensated." Thus, they asked the Court to determine that the PRN "does not meet accepted international standards of reparation." In the public hearing they alleged that the PNR "has not been effective and has not provided comprehensive, transformative and satisfactory reparations to the victims and the communities." They also pointed out that at the end of March 2016 the PRN office in the municipality of Rabinal closed and they "do not know why."

278. The ***Commission*** indicated that it did not have specific information regarding the reparations granted by the PRN and the totality of the facts and violations declared in the present case. In its final written arguments, it recognized and appreciated the administrative reparation programs established by the States for serious human rights violations. However, it argued that they cannot replace the reparations to be ordered by the Court in the framework of an individual case, due to the fact that: i) the victims in the case have gone through domestic judicial proceedings to reach the inter-American system and are currently awaiting a decision, also judicial, in which the Court establishes the violations committed to their detriment and directly decides on the reparations due to them, without the need for further proceedings to prove their status as victims before the State authorities; ii) the reparations ordered by the Court in the international sphere have specific content and scope that are determined by the Court according to the specific circumstances of the case; iii) by virtue of the independent nature of international reparations, it is not up to the bodies of the inter-American system to subject such reparations for a victim of a violation of his or her conventional rights to the State's domestic instruments, which may suffer from defects, imperfections or insufficiencies; and iv) the PRN has serious shortcomings in its implementation.

279. The ***Court*** appreciates and recognizes the actions undertaken by the State through the National Reparations Program (PNR) to redress the human rights violations perpetrated in the context of the internal armed conflict in Guatemala. However, in the instant case, it does not appear from the evidence provided by the State that the persons compensated through the PNR have "agreed not to file any other claim against the State in the future" for the facts of the case, as alleged by Guatemala. On the contrary, the agreements and settlements on "Payment of Financial Compensation" expressly indicate that the persons compensated retain the right to be beneficiaries of other measures granted by the PNR "that complete the integral compensation"[332] and/or "to appear before the competent jurisdictional bodies to pursue the legal proceedings arising from the human rights violations suffered by the aforementioned victim."[333]

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payment and who does not, which generates internal conflict among family groups; that sons and daughters whose fathers or mothers suffered violations are excluded as beneficiaries; that the fact that PAC members received payment for their services –often of a criminal nature – before the victims were compensated, caused annoyance, "wounds and divisions" in the affected communities; that victims of serious human rights violations were excluded from the program for having belonged to the PAC, despite the fact that in many cases membership in the PAC was mandatory; that the "improved houses" that began to be built in 2010 are not culturally appropriate; that the materials for their construction were delivered on the road closest to the communities, which entailed transportation costs, and that some families have the material, already deteriorated, without having built their homes because these households are comprised of women and elderly people.

[332] Agreements and settlements on "Payment of financial compensation" (evidence file folios 10194 and 10198, etc.). These settlements state that the persons receiving payments release the PNR and the State from all liability for any claims that may be brought by other persons with equal or greater right to be beneficiaries, which is not equivalent to releasing the State from all liability for the facts of the case.

[333] Agreements and settlements of "Payment of financial compensation" (evidence file folios, 10224 and 10588, etc.).

280. On the other hand, the information provided by the State only proves the payment of some compensation[334] to a partial universe of victims for acts that are, for the most part, outside the Court's temporal jurisdiction, such as "massacres", executions, torture and sexual violence.[335] Therefore, it is not clear how these payments are related to the human rights violations established in this judgment. Likewise, the aforementioned settlements do not indicate the criteria used by the National Compensation Commission when establishing the amounts of the indemnities in favor of the victims.[336]In view of the foregoing, the Court considers that the State has not proven that the victims in the instant case have been fully compensated for the damage resulting from the human rights violations established in this judgment. However, the Court notes that the State did not dispute the representatives' assertion that the PNR "has established a maximum amount to compensate the victims, regardless of the number of victims that a family has lost or reported."[337] Nor did it dispute the statement made at the hearing by the representatives regarding the closure of the PNR office in the municipality of Rabinal. Therefore, there is uncertainty about the continuity of the Program in this area.

281. The Court recalls that, under Article 63(1) of the American Convention, it is incumbent upon it to ensure that the consequences of the human rights violations declared in this judgment are redressed, and to provide the appropriate reparations for the injured party, in accordance with international standards and its constant case law on the matter (*supra* paras. 266, 268 and 272). Consequently, the Court will order the necessary measures for this purpose. Notwithstanding the foregoing, the reparation measures that have already been granted to the victims in this case at the domestic level through the PNR for the violations declared in this judgment, where applicable, must be recognized as part of the reparation due to them and will be taken into account.

C. Obligation to investigate the facts and identify, prosecute and, where appropriate, punish those responsible, as well as to determine the whereabouts of the disappeared victims, and to recover and identify the persons buried in clandestine graves

C.1. Full investigation, identification, prosecution and eventual punishment of the perpetrators and the masterminds

282. The ***Commission*** requested that the Court order the State to carry out, conclude or reopen, as appropriate, the domestic proceedings related to the human rights violations declared in the Merits Report and to conduct the investigations impartially, effectively and within a reasonable time in order to fully clarify the facts, identify the intellectual and material authors and impose the corresponding sanctions. It also requested that the State order the appropriate administrative, disciplinary or criminal measures with respect to the actions or omissions of State officials who have contributed to the denial of justice and impunity surrounding the facts of this case and those who participated in measures to obstruct the processes aimed at identifying and punishing those responsible.

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[334] With the exception of the houses provided to Juana García Depaz and Rosa García de Paz, respectively, as well as the ruling to provide six houses in favor of the beneficiaries of the following persons: Clemente Juárez Ixpancoc, Gregorio Valey, Eusebio Tahuico Timoteo Sic Cujá, Roberto Galileo Chén, Susana Valey Osorio and Gabino Román (evidence file, folios 9903 to 9907, 10596 to 10605).

[335] *Cf.* Copies of the records of payments made to residents of the village of Chichupac by the National Reparations Program (evidence file, folios 10193 to 10804).

[336] The Court notes that the Manual of Basic Criteria for the Application of Reparation Measures granted by the PNR was only approved on January 7, 2015, that is, after the date on which the settlements were issued (evidence file, folios 9952 to 9954).

[337] In this regard, in the case of the Río Negro Massacres *v. Guatemala*, the Court observed that the PNR program established "a maximum amount of financial compensation of forty-four thousand quetzales in cases in which the family unit has more than one fatal victim of extrajudicial execution, forced disappearance, or death during a massacre; this amount shall also be granted to the survivors of torture or rape when, in addition to themselves they have another or other fatal victims within the same family." *Cf. Case of the Río Negro Massacres v. Guatemala,* para. 302.

283. The ***representatives*** asked the Court to order the State to conduct the necessary and thorough investigations into the facts under examination, based on logical lines of investigation and the criteria established in the Court's jurisprudence in relation to serious human rights violations, including forced disappearances, extrajudicial executions and torture. At the public hearing they requested, in particular, the "prosecution" of the crimes of forced disappearance and alleged torture, rape, genocide, crimes against humanity and war crimes.

284. The ***State*** pointed out that at no time has it refused to continue with the investigation of the facts. It argued that this should be understood in light of the fact that the Army and the guerrillas agreed that there would be no criminal prosecution for either of the two sides involved, for the acts committed during the internal armed conflict, with the aim of achieving the signing of peace in Guatemala in 1996. According to the State, the Public Prosecutor's Office continues to investigate the facts, but if it is determined that any of these fall within the assumptions contemplated in the National Reconciliation Law, the members of the guerrilla or the Army could not be criminally prosecuted. It also welcomed the recommendations made, stressing that these could serve to guide the judges in the interpretation and application of the law, but clarified that it should not disregard the application and enforcement of national laws, which contain considerations related to procedural guarantees and causes for extinction of criminal liability, the modification or repeal of which corresponds exclusively to the Congress of the Republic of Guatemala. Finally, the State insisted that it has administrative, disciplinary and criminal measures for the investigation and punishment of public employees and civil servants in the performance of their duties; however, it added that it "cannot subject any employee or official to disciplinary measures in the absence of a direct and concrete accusation."

285. The ***Court*** appreciates the State's willingness to proceed with the criminal investigations in the instant case. However, taking into account the conclusions set forth in Chapter IX.III of this judgment, the Court orders the State to remove all obstacles, *de facto* and of *jure*, that maintain impunity in this case, and to initiate, continue, promote, and/or reopen the investigations that are necessary to identify, prosecute and, if appropriate, punish those responsible for the human rights violations perpetrated in this case. The State must expedite, reopen, direct, continue and conclude, within a reasonable time, the pertinent investigations and proceedings to establish the truth of the facts, bearing in mind that between 30 and 35 years have elapsed since these events took place. In particular, the State must ensure that the following criteria are observed:

a) considering the serious nature of the facts, the State may not apply amnesty laws or statutes of limitations, or use supposed exemptions from responsibility, which in reality are a pretext to impede the investigation;

b) it must effectively investigate *ex officio* all the facts of this case taking into account the systematic pattern of serious and massive human rights violations that took place at the time of the events. In particular, it must fully investigate the alleged crimes of forced disappearance and forced displacement, torture, extrajudicial executions, rape and forced labor, as well as reports of crimes against humanity, war crimes and/or genocide;

c) it must determine the identity of the alleged perpetrators and masterminds of the acts. Due diligence in the investigation implies that all State authorities are obliged to collaborate in the collection of evidence, and therefore must provide the judge hearing the case with all the information required and refrain from acts that obstruct the investigative process, and

d) it must ensure that the different organs of the justice system involved in the case have the human, material, technical and scientific resources necessary to carry out their tasks in an adequate, independent and impartial manner, and that the persons participating

in the investigation, including the victims or their representatives, witnesses and justice operators, have the necessary guarantees of security.[338]

286. In accordance with its consistent case law,[339] the Court considers that the State must ensure full access and capacity to act for the victims or their next of kin at all stages of the investigation and trial of those responsible, in conformity with domestic law and the provisions of the American Convention. In addition, the results of the corresponding proceedings must be publicly disclosed so that Guatemalan society is aware of the facts of this case, as well as those responsible.

287. As it has done in other cases,[340] the Court appreciates the publication of the CEH report, *Guatemala: Memoria del Silencio* (Guatemala: Memory of Silence) which covers part of the events that occurred in this case, as an effort that has contributed to the search for and determination of the truth of a historical period of Guatemala. Nevertheless, the Court considers it pertinent to emphasize that the elements of "historical truth" contained in that report do not complete or replace the State's obligation to establish the truth of what happened and ensure the judicial determination of individual or State responsibilities through the relevant proceedings.

288. The investigation of the facts is a legal obligation that corresponds to the State, so that each procedural measure that it takes must reflect the commitment assumed by Guatemala in order to eradicate the impunity for the facts, an obligation of guarantee that arises from Article 1(1) of the American Convention. To comply with his obligation, the State must combat impunity by all legal means available, because impunity fosters "the chronic repetition of human rights violations and the complete defenselessness of the victims and their families."[341] The State must also "organize the entire government apparatus and, in general, all the structures through which the exercise of public power is expressed so that they are able to legally ensure the free and full exercise of human rights."[342]

289. Furthermore, this Court has established in its case law that when a State is a party to international treaties such as the American Convention on Human Rights, the Inter-American Convention to Prevent and Punish Torture, the Inter-American Convention on the Forced Disappearance of Persons, and the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women, the said treaties are binding for all their organs, including the judiciary, whose members must ensure that the effects of the provisions of these treaties are not impaired by the application of norms or interpretations contrary to their object and purpose. The judges and organs related to the administration of justice at all levels are obliged to exercise *ex officio* a "control of conventionality" between domestic law and the human rights treaties to which the State is a Party, evidently within the framework of their respective jurisdictions and the corresponding procedural regulations. In this task, the judges and organs related to the administration of justice, such as the Public Prosecution Service, must take into account not only the American Convention and other inter-American instruments, but also the interpretation of them made by the Inter-American Court.[343]

C.2. Determination of the whereabouts of the disappeared victims, and recovery and

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[338] *Cf. 12 Guatemalan Cases. Order on Monitoring Compliance with Judgment,* considering paragraph 167; *Case of the Dos Erres Massacre v. Guatemala,* para. 233; *Case of the Río Negro Massacres v. Guatemala,* para. 257; *Case of Gudiel Álvarez et al. ("Diario Militar") v. Guatemala*, para. 327; *Case of García and Family Members v. Guatemala*, para. 196, and *Case of Human Rights Defender et al. v. Guatemala*, para. 252.

[339] *Cf. Case of El Caracazo v. Venezuela. Reparations and costs.* Judgment of August 29, 2002. Series C No. 95, para. 118, and *Case of Tenorio Roca et al. v. Peru*, para. 269.

[340] *Cf. Case of the Dos Erres Massacre v. Guatemala*, para. 232, and *Case of the Rio Negro Massacres v. Guatemala*, para. 259.

[341] *Cf. Case of the "White Van" (Paniagua Morales et al.) v. Guatemala. Merits*. Judgment of March 8, 1998. Series C No. 37, para. 173, and *Case of the Río Negro Massacres v. Guatemala*, para. 261.

[342] *Cf. Case of Velásquez Rodríguez v. Honduras. Merits*, para. 166, and *Case of the Río Negro Massacres v. Guatemala*, para. 261.

[343] *Cf. Case of Almonacid Arellano et al. v. Chile,* para. 124, and *Case of Río Negro Massacres v. Guatemala*, para. 262.

identification of their remains and those of persons buried in clandestine graves

290. The ***Commission*** asked the Court to order the State to locate and deliver to the families the mortal remains of the disappeared victims, and to provide the necessary means to continue the process of identification and return of the executed victims' mortal remains. The ***representatives*** did not refer to this point in their pleadings and motions brief.[344]

291. The ***State*** argued that on July 19, 2007, the National Institute of Forensic Sciences of Guatemala (INACIF), an auxiliary institution of the administration of justice whose main purpose is to provide an independent scientific investigation services and issue technical scientific opinions that provide the judicial authorities with valid and reliable evidence in legal proceedings, began its operations. It pointed out that on December 11, 2012, a cooperation agreement was signed between INACIF and the Guatemalan Forensic Anthropology Foundation (FAFG) for a period of five years.[345] In addition, it explained the objective of Law 3590, "Law of the Commission for the Search for Victims of Forced Disappearance and other Forms of Disappearance" is to design, evaluate and execute search plans for victims of disappearance, through the study, documentation, systematization, analysis, registration and follow-up of cases of forced disappearance and other forms of disappearance. According to the State, this bill is in the process of being approved by the Guatemalan Congress and obtained the favorable opinions of the Finance and Currency Committee and the Legislation and Constitutional Commission on August 29, 2007 and March 22, 2011, respectively. Finally, it stressed the difficulties faced "in the tasks of locating, identifying and handing over the victims," particularly in relation to DNA analysis.

292. The ***Court*** considers that the next of kin of victims of forced disappearance have a just expectation that the whereabouts of their loved ones be identified or their remains be found so that their identity can be determined with certainty. This constitutes a measure of reparation and, therefore, generates a correlative duty for the State to satisfy it.[346] In turn, it allows the next of kin to alleviate the anguish and suffering caused by such uncertainty.[347] The recovery and identification of the remains of the persons who died and were buried in clandestine graves as a result of the facts of the case is also a just expectation of the next of kin. Receiving the body of a forcibly disappeared or executed person is of the utmost importance for their next of kin, since it allows them to bury them according to their beliefs, as well as to close the mourning process. The Court also considers that the remains are evidence of what happened and, together with the place where they are found, can provide valuable information about the perpetrators of the violations or the institution to which they belonged.[348]

293. The Court appreciates the willingness expressed by the State to undertake the work of searching for, recovering and handing over the remains of the disappeared or executed victims to their relatives. However, the Court notes that in the instant case, the investigations initiated have not been aimed at locating all the disappeared victims, nor have all the remains found in

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[344] Extemporaneously, during the public hearing they asked the Court to establish the State's obligation to search for, identify and determine the manner of death and to deliver to the families of the victims of forced disappearance the remains that are located and identified. In their final written final arguments, they requested that the State be ordered to conduct a serious investigation to determine the whereabouts of the disappeared persons and to find the mortal remains of the executed victims, as well as to proceed with their proper and accurate identification and delivery to their next of kin.

[345] According to the State, the agreement aims to "establish general guidelines for cooperation between both institutions; maintain communication through different channels in order to coordinate actions aimed at optimizing expert assessments taking advantage of the complementarity of knowledge, experiences and mutual advice on new technologies, methods and international standards; as well as the development of projects of common interest."

[346] *Cf. Case of Neira Alegría et al. v. Peru. Reparations and Costs*. Judgment of September 19, 1996. Series C No. 29, para. 69, and *Case of the Peasant Community of Santa Bárbara v. Peru*, para. 295.

[347] *Cf. Case of Ticona Estrada et al. v. Bolivia*, para. 155, and *Case of the Peasant Community of Santa Bárbara v. Peru*, para. 295.

[348] *Cf. Case of the Dos Erres Massacre v. Guatemala*, para. 245, and *Case of the Peasant Community of Santa Bárbara v. Peru*, para. 295.

the various exhumations carried out at the procedural initiative of the next of kin been duly identified(*supra* para. 263).

294. Consequently, the Court considers that the State must carry out or continue, in a systematic, rigorous manner and with the adequate human and financial resources, the actions necessary both to determine the whereabouts of members the village of Chichupac and neighboring communities who were forcibly disappeared, and to locate, exhume and identify those who died and were buried in clandestine graves as a result of the facts of this case. To this end, the State shall employ all necessary technical and scientific means, taking into account the relevant national or international standards on the matter,[349] and endeavor to complete all the required exhumations within two years from notification of this judgment.

295. Should the remains be identified, they shall be delivered to the next of kin, after genetic verification of blood relationship, as soon as possible and at no cost. In addition, the State shall cover funeral expenses, if applicable, by mutual agreement with the next of kin.[350] Regarding the problems pointed out by the State in carrying out the DNA analyses (*supra* para. 291), the Court recalls that international standards require that the delivery of remains occur when the victim is clearly identified, that is, once a positive identification has been obtained.[351] On this point, the Minnesota Protocol of 1991 establishes that "the body must be identified by reliable witnesses and other objective methods."[352] The Court recognizes that, due to the specific circumstances of a case, it is possible that the identification and delivery of mortal remains cannot be supported by at least one scientific method[353] and that the only practical option in such cases is identification through the recognition of the remains by relatives or acquaintances of the missing person, as well as a comparison of data from their biological profile (sex, age, height), their individual characteristics (old injuries, congenital defects, tattoos and dental features), and their personal items and documents. In this regard, the International Committee of the Red Cross has considered that visual methods "should be used as the sole means of identification only when the bodies are not decomposed or mutilated, and when there is a well-founded idea of the victim's identity, such as when the killing and burial of an individual has been witnessed."[354]

296. In order to make the eventual location, exhumation, identification and delivery of the remains to the next of kin effective and viable, this Court orders the State to establish a communication strategy with the relatives and to agree on a framework for coordinated action to ensure their participation, knowledge and presence.

297. Finally, as regards the creation of the aforementioned "Commission to Search for Persons Victims of Forced Disappearance and Other Forms of Disappearance," the Court acknowledges

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[349] As established in the United Nations Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions.

[350] *Cf. Case of Anzualdo Castro v. Peru*, para. 185, and *Case of the Peasant Community of Santa Bárbara v. Peru*, para. 297.

[351] *Cf. Case of González et al. ("Cotton Field") v. Mexico*, para. 318, and *Case of the Peasant Community of Santa Bárbara v. Peru*, para. 297.

[352] United Nations Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions (Minnesota Protocol). DOC E/ST/CSDHA/.12 (1991).

[353] The International Committee of the Red Cross has recognized the following as scientific or objective means: a) matching post-mortem and ante-mortem dental radiographs; b) matching post-mortem and ante-mortem fingerprints; c) matching DNA samples from human remains with reference samples, and d) matching other unique identifiers, such as unique physical or medical traits, including skeletal radiographs, and numbered surgical implants or prostheses. It has also stated that these means "which are part of ante-mortem and postmortem data collection, can conclude an identification with a high degree of confidence that would be considered beyond reasonable doubt in most legal contexts." *Cf.* ICRC. Missing People: DNA Analysis and Identification of Human Remains: A guide to best practice in armed conflicts and other situations of armed violence. (2nd Ed.), 2009, p. 12. Available at: http://www.icrc.org/spa/assets/files/other/icrc_003_4010.pdf

[354] *Cf. Case of Gómez Palomino v. Peru*. Monitoring Compliance with Judgment of February 13, 2013, considering para. 10, and *Case of the Peasant Community of Santa Bárbara v. Peru*, para. 297. Citing: ICRC. Missing People: DNA Analysis and Identification of Human Remains: A guide to best practice in armed conflicts and other situations of armed violence. (2nd Ed.), 2009, p. 10.

and appreciates the progress made by the State on this matter. Thus, the Court urges the State to continue adopting all legislative, administrative or other measures necessary for the creation of the aforementioned Commission. The Court considers that such an entity will contribute positively to the search for and identification of the victims in the instant case and, in general, of the victims of forced disappearance in Guatemala.[355]

D. Measures of restitution, rehabilitation, satisfaction and guarantees of non-repetition

D.1. Restitution measure: Guarantee the return of victims who are still displaced to their places of origin

298. The ***Commission*** did not request a specific measure in this regard, but in general terms called for adequate individual and collective reparations for the human rights violations, and stipulated that the collective reparations should be fully agreed upon with the survivors of Chichupac village and neighboring communities in order to reestablish their community life as members of the Maya Achí indigenous people, and their special ties with their lands. For their part, the ***representatives*** did not request reparations aimed at guaranteeing dignified conditions for the return of the victims to their places of origin at the appropriate procedural moment.[356] With this in mind, the ***Court*** orders the State to implement the necessary measures to guarantee, in coordination with the representatives in the instant case, adequate conditions for the remaining displaced persons to return to their communities of origin, if they so wish. With respect to security conditions in said villages, and due to the particularities of this case, the Court will not monitor compliance with this point.

D.2. Measures of rehabilitation: Medical, psychological or psychiatric care for victims

299. The ***Commission*** asked the Court to order the State to "implement a program of culturally appropriate psychosocial care for the survivors and next of kin of the executed and disappeared victims."

300. The ***representatives*** requested "measures that allow for the rehabilitation of the victims of the violations denounced in this case and their next of kin." In their final arguments they requested, in particular, free medical, psychological and dental treatment. Thus, they asked the Court to order the State to provide "immediate medical and psychological treatment for as long as necessary, including the provision of free medication, to the victims who so wish and with their prior informed consent. The medical and psychological treatment must be provided by State personnel and institutions [, and…] such medical and psychological care may also be provided by healers of the Maya Achí community, in accordance with their own health practices and through the use of traditional medicine."

301. The ***State*** explained that the PNR grants surviving victims and their families the measure of psychosocial reparation, which consists of providing professional care to victims of human rights violations during the armed conflict, both at the individual, family and community level, with attention directed to women, children and youth, and with absolute respect for the ethnic and cultural identity of each one. For the implementation of these measures, the PNR coordinates actions with the National Mental Health Program of the Ministry of Public Health and Social

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[355] *Cf. Case of Gudiel Álvarez et al. ("Diario Militar") v. Guatemala*, para. 335, and *Case of García and Family Members v. Guatemala*, para. 221.

[356] In their final written arguments, i.e. extemporaneously, the representatives requested, in favor of the community of Chichupac and neighboring communities, the improvement of infrastructure and implementation of basic services and social programs. They also requested production projects and, in the area of education, study scholarships for high school and university students. They also requested the construction of around 250 houses in the village of Chichupac and neighboring communities, and that the State resolve cases involving the appropriation of lands that occurred during and after the internal armed conflict of the victims Gregoria Valey Yxtecoc, Demetrio Cahuec Jerónimo, Teodoro González Xitumul (husband of Tomasa Alvarado Xitumul), and other victims, and that it provide solutions for the descendants of these victims.

Assistance. This component includes training with a multicultural and community approach for professionals. The State considered "very appropriate" the representatives' suggestion that the psychological care provided to the victims should be with their prior consent, because in communities such as the village of Plan de Sánchez and Concúl, in the municipality of Rabinal, the victims do not come to receive psychological therapy, but they cannot be forced to receive it for the sole purpose of complying with an international obligation. Therefore, the State agrees that the psychological and medical therapies should be optional and not obligatory, and that a list of persons who are to receive these treatments should be issued."

302. In Chapters IX.I and IX.II of this judgment, the ***Court*** concluded that the forced disappearance of 22 victims also violated the psychological and moral integrity of their next of kin, and that the failure to guarantee return or resettlement measures for the displaced victims had differentiated effects and impacts on their life projects, relationships and family structure, and on their ethnic and cultural identity, as well as on the women and children who were victims (*supra* paras. 164, 190, 197, 198 and 202). In this regard, during the public hearing, the expert witness Luis Raúl Salvadó Cardoza pointed out the importance of psychological assistance to the displaced population, highlighting the need for "social psychology" actions. Furthermore, although Governmental Agreement 539-2013 of the President of the Republic provides for "Psychosocial Reparation and Rehabilitation"[357] under the PRN, the State has not proven that it has offered such a measure to the victims in the present case. In addition, as indicated above, the State has not disputed that the PRN office in the municipality of Rabinal was closed. (*supra* para. 280).

303. Therefore, as it has done in other cases,[358] the Court considers it necessary to order a measure of reparation that provides appropriate treatment for the psychological and physical suffering of the victims arising from the violations established in this judgment. In order to contribute to the reparation of the harm caused, the Court establishes the obligation of the State to provide free of charge, through its specialized health institutions, and in an immediate, adequate, comprehensive and effective manner, medical and psychological or psychiatric treatment to the victims who so request it, with their prior informed consent, including the free supply of any medications that may be required, taking into consideration their individual ailments. This means that, as victims of human rights violations, they should receive preferential treatment in the procedures required to obtain assistance in public institutions. Likewise, the respective treatment must be provided, as far as possible, at the health centers nearest to their places of residence for as long as necessary. In providing psychological or psychiatric treatment, the particular circumstances and needs of each victim must also be considered, so that they are offered collective, family and individual treatment, according to what is agreed with each of them and after an individual evaluation. The victims who request this measure of reparation, or their legal representatives, have six months from notification of this judgment to inform COPREDEH of their intention to receive medical, psychological or psychiatric care.

304. In response to the representatives' request (*supra* para. 300), the medical and psychological care may be provided by the healers of the Maya Achí community, in accordance with their own health practices and using traditional medicines,[359] for which purpose the State must, through the State institution responsible for providing health care to the indigenous peoples of Guatemala, agree with the representatives on the manner in which this reparation will be implemented.

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[357] Article 2 bis. Governmental Agreement 539-2013 (evidence file, folio 9927).

[358] *Cf. Case of the Dos Erres Massacre v. Guatemala*, para. 270 and *Case of Tenorio Roca et al. v. Peru*, para. 284.

[359] *Cf. Case of the Río Negro Massacres v. Guatemala*, para. 289. See, United Nations Declaration on the Rights of Indigenous Peoples, Article 24; ILO Convention on Indigenous and Tribal Peoples in independent countries, 1989 (No. 169): Article 25; in the publication *Convention No. 169 on Indigenous and Tribal Peoples: A Manual* (2003), p. 66, see the ILO guidelines for the implementation of health programs. These programs should be: i) community-based; ii) complementary to traditional healing practices, and should include these; iii) promote the active participation of the communities; iv) local people should be trained to provide health care services, and v) governments should provide the resources for these health care services, as they do for all citizens.

D.3. Measures of satisfaction

D.3.1. Public act of acknowledgement of responsibility

305. The ***Commission*** requested the recovery of the memory of the deceased and disappeared victims. The ***representatives*** did not refer to this point in their pleadings and motions brief.[360] The ***State*** pointed out in its answering brief that the PNR has an office in the municipality of Rabinal and provides "measures to dignify the victims (moral and community redress)."

306. As it has done in other cases against Guatemala,[361] the ***Court*** orders the State to carry out a public act of acknowledgment of responsibility in which reference is made to the facts of the case, to the context of serious and massive human rights violations perpetrated by the State, and to the international responsibility declared in the terms of this judgment. The act shall take place in the village of Chichupac, in Spanish and in the Maya Achí language, and shall be broadcast on television and/or radio, within one year from notification of this judgment. In addition, given the specific characteristics of this case, and in order to create awareness of the consequences of the facts of this case, high-level State officials must be present at this event. The organization and details of the public ceremony shall be agreed upon with the victims and their representatives. In addition, the State shall cover the necessary transportation costs so that the victims who are in Guatemala can attend the ceremony of acknowledgment of responsibility.

D.3.2. Publication of the judgment

307. The ***Commission*** asked the Court to order the State to establish and disseminate the historical truth of the facts. The ***representatives*** asked the Court to order the State to publish the official summary of the judgment in a newspaper with wide circulation and in the Official Gazette, as well as the full version of the judgment with the names of the victims, for a period of one year, on an official Guatemalan website.

308. The ***State*** held that the representatives "[were] going too far by requesting the publication of the judgment as a measure of reparation, since the Court still [had] to analyze the preliminary objections presented […]. Therefore, the State [made] no comment on this request." In its final written arguments, the State asked the Court to consider the country's economic situation when requiring the said publications in a newspaper of major circulation and in the Official Gazette.

309. As it has done in other cases against Guatemala,[362] the ***Court*** orders the State to publish in a legible and adequate font size, in the Spanish and Maya Achí languages, and within six months of notification of this judgment: a) the official summary of this judgment prepared by the Court, once, in the Official Gazette and in a national newspaper with wide circulation, and b) this judgment in its entirety, together with its annexes, available for at least one year, on an official website of the State. The State shall provide a translation of the official summary and the judgment, which shall be endorsed by the representatives before being published.[363] The State shall immediately inform this Court once it proceeds to issue each of the publications ordered, regardless of the one-year term to submit its first report as ordered in operative paragraph 28 of this judgment.

D.4. Guarantees of non-repetition

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[360] In their final written arguments, that is, extemporaneously, the representatives requested that the State be ordered to hold a public act of acknowledgment of responsibility.

[361] The State has complied with this measure of reparation, for example, in the *Case of Bámaca Velásquez v. Guatemala.* Monitoring Compliance with Judgment, Order of July 10, 2007, considering paragraph 7, and the *Case of the Dos Erres Massacre v. Guatemala.* Monitoring Compliance with Judgment, Order of September 4, 2012, considering paragraph 16.

[362] The State has complied with this measure of reparation, for example, in the *Case of the Dos Erres Massacre v. Guatemala.* Monitoring Compliance with Judgment, Order of July 6, 2011, first operative paragraph, and *Case of Veliz Franco et al. v. Guatemala.* Monitoring Compliance with Judgment, Order of May 3, 2016, first operative paragraph.

[363] *Cf. Case of the Río Negro Massacres v. Guatemala*, para. 274.

D.4.1. Training for members of the Guatemalan Army

310. The ***Commission*** asked the Court to order the State to implement permanent programs on human rights and international humanitarian law in the training schools of the Armed Forces. The ***representatives*** did not refer to this point in their pleadings and motions brief.[364]

311. The ***State*** pointed out that the Ministry of National Defense of Guatemala is member of the Conference of Central American Armed Forces (CFAC), created in 1997 by a Presidential Agreement of the Presidents of Guatemala, El Salvador, Honduras and Nicaragua, as an international military organization. CFAC participates in the Graduate School on Human Rights and International Humanitarian Law (EGDHDIH), which is a dependency of the Secretariat of State of the Armed Forces of the Dominican Republic and imparts courses on these subjects. In turn, the Ministry of National Defense of Guatemala, as a member of the CFAC, participates in this School. It also mentioned the participation of "members of the Advanced Warfare Course of the Guatemalan Army," of the Polytechnic School of the Guatemalan Army and of senior officers of the High Command of Army Education, in courses on human rights and humanitarian law. In its final written arguments, it also indicated that "personnel of the Committee of the Red Cross, in coordination with the General Directorate of Human Rights and International Humanitarian Law of the Ministry of National Defense," implement a workshop for commanding officers in the Army.

312. In this case, the serious human rights violations established by the Court were perpetrated by the Guatemalan Army and other members of the State security forces (*supra* paras. 148 and 160). In this regard, the ***Court*** considers it pertinent to recall that it is crucial that human rights education programs are implemented effectively within the security forces and have an impact in order to create guarantees of non-repetition of events such as those of the instant case. Such programs must be reflected in preventive actions and results that demonstrate their effectiveness, and should be evaluated using appropriate indicators.[365]

313. In the instant case, the State reported on the courses imparted to members of the Guatemalan Army; however, it did not provide documents to support this information, to establish the duration of the courses or to indicate how many members of its armed forces receive such training. Therefore, the Court orders the State to include training in human rights and international humanitarian law on a permanent basis in the curricula of the different centers for vocational and professional training of all branches of the Guatemalan Army. This training must be implemented within one year and be directed at all ranks of the Guatemalan Army, with the requirement to eradicate racial and ethnic discrimination, racial and ethnic stereotypes, and violence against indigenous peoples, in light of international standards on the matter and the Court's jurisprudence on serious human rights violations, particularly in Guatemalan cases.

D.4.2. Strengthening the capacity of the judiciary and the Public Prosecutor's Office to investigate the facts and punish those responsible

314. The ***Commission*** asked the Court to order the State to strengthen the capacity of the judiciary to adequately and efficiently investigate the facts and punish those responsible, including the material and technical resources necessary to ensure the proper conduct of the proceedings. The ***representatives*** did not refer to this point in their pleadings and motions brief.[366]

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[364] In their final written arguments, the representatives extemporaneously requested that the Court order the State to strengthen its institutional capacities through the training of members of the armed forces.

[365] *Cf. Case of Goiburú et al. v. Paraguay.* Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of November 19, 2009, Considering paragraph 49, and *Case of Massacres of El Mozote and Nearby Places v. El Salvador*, para. 368.

[366] In their final written arguments, the representatives extemporaneously requested that the Court order the State strengthen its institutional capacities through the training of judges and prosecutors.

315. The ***State*** explained that the National Institute of Public Administration (INAP) exists to provide education, training and refresher courses for public servants. The State also indicated that it has the Training Unit of the Public Prosecutor's Office (UNICAP) and the School of Judicial Studies specifically for the purpose of capacity building in the judicial system. It described the various courses imparted by UNICAP between 2010 and 2014, particularly on racial, ethnic and gender discrimination, as well as litigation strategies in cases of internal armed conflict and introduction to human rights, among others. It also referred to the different levels of training offered within the School of Judicial Studies, including diploma courses on femicide and other forms of violence against women.

316. In the instant case, the ***Court*** identified various failures of due diligence and effectiveness in the investigation of the facts that have allowed these crimes to remain unpunished, within a context of generalized impunity for serious human rights violations committed during the internal armed conflict (*supra* paras. 262 to 265). The Court appreciates the measures described by the State to train members of the Public Prosecutor's Office and the judiciary; however, it notes that the State did not provide documentation to establish the scope, suitability and duration of the training courses and programs indicated, in order to strengthen the investigation of serious human rights violations, particularly those committed during the armed conflict.[367] In particular, the Court notes that the State did not mention any such training for members of the judiciary.

317. In its Order on Monitoring Compliance with Judgment regarding 12 Guatemalan Cases, of November 24, 2015,[368] the Court noted that a report of the Public Prosecutor's Office of May 2014 stated that the Unit for Special Cases of the Internal Armed Conflict "does not have a special budget allocation for hiring sufficient personnel or other resources to carry out the work that […] represents the more than 3,500 cases under its responsibility, which also include multiple victims and are particularly complex." The report also identified various "structural problems" in the fulfillment of the obligation to investigate, prosecute and, where applicable, punish those responsible for the serious human rights violations that occurred in Guatemala, in relation to the cases analyzed in said Order. It also stated that "it provided its officials with training in human rights, including courses on international human rights instruments, international humanitarian law, as well as the study of the judgments handed down by the Inter-American Court of Human Rights against [...] Guatemala and many others that were considered important. All of this has been incorporated into the permanent training curriculum of the prosecutorial career."

318. This Court has already ordered the State to ensure that the different organs of the justice system involved in the case must have the necessary human resources to perform their tasks adequately, independently and impartially (*supra* para. 285. d). Therefore, in light of the foregoing, the Court considers it necessary that the training institutions for members of the judiciary and the Public Prosecutor's Office design and implement, in the permanent curricula of the judicial and prosecutorial careers, respectively, education programs on human rights and international humanitarian law, if they do not already exist. These programs must include the requirement to eradicate racial and ethnic discrimination, racial and ethnic stereotypes, and violence against indigenous peoples, in accordance with international standards on the matter and the Court's jurisprudence on serious human rights violations and access to justice for the victims, particularly in Guatemalan cases, and must be implemented within one year of notification of this judgment.

D.4.3. Education program on non-discrimination

319. The ***Commission*** made a general request that the Court take the necessary measures to prevent similar facts from occurring in the future and to protect and guarantee the human rights

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[367] The Court notes that the link to the website "training.mp.gob.gt", cited by the State, is not enabled. Moreover, the State did not submit the document "Work Report OJ 2012-2013" that was also cited.

[368] *12 Guatemalan cases,* Monitoring Compliance with Judgment*,* considering paragraphs 32, 168 and footnote 183.

recognized in the American Convention. Thus, as a guarantee of non-repetition, the Court considers it necessary to order the State to incorporate into the curriculum of the National Education System, at all levels and within a reasonable time, an education program that reflects the multicultural and multilingual nature of Guatemalan society, and promotes respect for and knowledge of the diverse indigenous cultures, including their worldviews, histories, languages, knowledge, values, cultures, practices and ways of life. This program should emphasize the need to eradicate racial and ethnic discrimination, racial and ethnic stereotypes, and violence against indigenous peoples, in light of international standards[369] on the matter and the jurisprudence of this Court.

D.4.4. Strengthening the mechanisms to combat racial and ethnic discrimination

320. The ***Commission*** asked the Court to adopt the necessary measures to prevent similar acts from occurring in the future, in accordance with the duty to protect and guarantee the human rights recognized in the American Convention. The ***Court*** orders, as a guarantee of non-repetition and given the extremely serious acts against the Maya Achí indigenous people described in this judgment, and in view of the possibility that discriminatory attitudes and feelings persist in society, that within a reasonable period of time, the State should improve and reinforce the fight against all forms of discrimination and, in particular, against racial and ethnic discrimination, strengthening the existing bodies or those that will be created for this purpose. These bodies must ensure the direct participation of persons from vulnerable groups and must also promote the reappraisal of native cultures, disseminating their history and richness. The aim is to ensure that public policies and actions aimed at eradicating acts of racial discrimination are effective and guarantee equality, recognition, respect and promotion of the rights of indigenous peoples, thereby discouraging manifestations of racial and ethnic discrimination in Guatemalan society.

E. Compensation: Pecuniary and non-pecuniary damage

321. The ***Commission*** asked the Court to order the State to provide adequate reparation for the human rights violations, both in the material and moral aspect.

322. The ***representatives*** asked the Court to order the State to pay compensation for pecuniary and non-pecuniary damage, taking into account the seriousness, intensity and lasting effects of the violations committed in this case; the suffering caused to the victims, their next of kin and survivors due to the lack of truth, justice and comprehensive reparation; the impunity of the perpetrators; the persecution and mass displacement; the suffering resulting from forced displacement, including hunger, thirst, cold, heat, disease, destruction of the social fabric, the uprooting from their lands and their culture that still persists; the destruction of their homes, the theft of their animals, the destruction of their crops, harvests and material goods; and the damage caused to the physical, psychological, moral and cultural integrity of these people as a result of

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[369] On September 13, 2007, the UN General Assembly approved the United Nations Declaration on the Rights of Indigenous Peoples, with Guatemala voting in favor. This establishes in Article 15(2): "States shall take effective measures, in consultation and cooperation with the indigenous peoples concerned, to combat prejudice and eliminate discrimination and to promote tolerance, understanding and good relations among indigenous peoples and all other segments of society." Moreover, Article 31 of ILO Convention No. 169 on Indigenous and Tribal Peoples, ratified by Guatemala on June 5, 1996, establishes: "Educational measures shall be taken among all sections of the national community, and particularly among those that are in most direct contact with the peoples concerned, with the object of eliminating prejudices that they may harbour in respect of these peoples. To this end, efforts shall be made to ensure that history textbooks and other educational materials provide a fair, accurate and informative portrayal of the societies and cultures of these peoples." In addition, the American Declaration on the Rights of Indigenous Peoples, adopted at the 46th Regular Session of the General Assembly of the Organization of American States, held on June 13-15, 2016, in the Dominican Republic, establishes in Article XV.5: "States shall promote harmonious intercultural relations, ensuring that the curricula of state educational systems reflect the pluri-cultural and multilingual nature of their societies and encourage respect for, and knowledge of, the different indigenous cultures. States, in conjunction with indigenous peoples, shall promote intercultural education that reflects the worldview, histories, languages, knowledge, values, cultures, practices, and ways of life of those peoples."

the events denounced. In particular, they asked the Court to order the State to pay in equity, for moral damages, a total of USD 5,845,000.00 in favor of "87 victims," and USD 3,360,000.00 in favor of the "families of the communities." Regarding pecuniary damage, they requested that the Court order the State to pay, for loss of earnings, "patrimonial damage" and others, the amounts of USD 13,160,227.00 in favor of "87 victims", and USD 2,138,664.00 in favor of the "families of the communities." Those sums, which were presented in a table, were based on the Actuarial Report of Mr. Roberto A. Molina Cruz.

323. The ***State*** argued that, according to the information provided by the PNR, this program has made payments for economic reparations to "at least 59 victims out of the 84 included in the instant case." In relation to the payment of financial reparations, it considered that "it is necessary to apply and respect the principle of equality before the law and provide the victims of human rights violations during the internal armed conflict with equal treatment, which will also help to improve the functioning of the National Reparations Program." In addition, it indicated that "at no time does it refuse to pay the reparations that may correspond to the victims of human rights violations that occurred during the internal armed conflict; however, it is opposed to paying the amounts established in the table provided by the representatives, since the [PNR] contemplates the amounts to be paid to all those persons whose human rights were violated during the internal armed conflict, which are established in accordance with the State's real possibilities of meeting its obligations under the Peace Accords." Furthermore, it provided a list of 67 persons who have already been compensated through the PRN.

324. The ***Court*** has developed the concept of pecuniary and non-pecuniary damage and the cases in which it must be compensated. Thus, it has established that pecuniary damage encompasses the loss of or detriment to the income of the victims, the expenses incurred owing to the facts, and the consequences of a pecuniary nature that have a causal nexus with the facts of the case.[370] On the other hand, non-pecuniary damage may include both the suffering and affliction caused to the direct victim and his family, the impairment of values of great significance for the individual, and the changes of a non-pecuniary nature in the living conditions of the victim or his family.[371] Likewise, the Court has held that non-pecuniary damage is self-evident, since it is part of human nature itself that any person who suffers a violation of their human rights experiences suffering.[372]

325. In this regard, the Court observes, first, that the representatives submitted as evidence, a report on the "Actuarial valuation of damages"[373] prepared by Roberto A. Molina Cruz, which determined the amounts of compensation for loss of profits, "patrimonial" damages, and "other" material and moral damages in favor of 87 persons whom the representatives identified as victims of extrajudicial execution or forced disappearance, as well as in favor of 96 displaced family groups.[374]In this regard, the Court notes that the report includes in its analysis material damages generated by events that are outside the jurisdiction of the Court, such as the loss of earnings of the persons executed, the destruction of homes, livestock, crops and other property (supra para. 24). (*supra* para. 24). Therefore, such items cannot be taken into account. As for the amounts for "moral damages" specified in said report, allegedly arising from the suffering caused to the victims by the forced disappearances and forced displacement proven in this case, the Court will assess them taking into account the criteria established in its case law for the determination of non-pecuniary damage.

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[370] *Cf. Case of Bámaca Velásquez v. Guatemala. Reparations* and *costs*. Judgment of February 22, 2002. Series C No. 91, para. 43, and *Case of Flor Freire v. Ecuador. Preliminary objection, merits, reparations and costs*. Judgment of August 31, 2016. Series C No. 315, para. 251.

[371] *Cf. Case of the Street Children (Villagrán Morales et al.) v. Guatemala. Reparations and costs.* Judgment of May 26, 2001. Series C No. 77, para. 84, and *Case of Flor Freire v. Ecuador*, para. 256.

[372] *Cf. Case of Reverón Trujillo v. Venezuela. Preliminary objection, merits, reparations and costs.* Judgment of June 30, 2009. Series C No. 197, para. 176, and *Case of Maldonado Ordoñez v. Guatemala. Preliminary objection, merits, reparations and costs*. Judgment of May 3, 2016. Series C No. 311, para. 149.

[373] Actuarial valuation of damages (evidence file, folios 4305 to 4736).

[374] The foregoing, with the exception that no loss of profit was calculated in favor of the missing persons.

326. Second, the Court notes that the State submitted as evidence, copies of the records of payments made in favor of members of Chichupac village within the framework of the PNR.[375] Thus, as it has done in other cases against Guatemala,[376] the Court considers that the amounts that have already been paid to the victims in this case at the domestic level through the PNR for the violations established in this judgment should be recognized as part of the reparation due to them and should be deducted from the amounts set by the Court in this judgment as compensation (*infra* para. 327). Thus, at the stage of monitoring compliance with the judgment in this case, the State must prove that the amounts established through said program have actually been paid.

327. Based on the criteria established in this Court's constant case law, the circumstances of the instant case, the nature and seriousness of the violations committed, the harm caused by impunity, as well as the physical, moral and psychological suffering caused to the victims, [377] the Court deems it appropriate to establish in equity, the amounts indicated below, which must be paid within the time frame established by the Court for such purpose (*infra* para. 335):

a) USD 55,000.00 (fifty-five thousand United States dollars) to each of the victims of forced disappearance, indicated in paragraphs 155 and 156 and in Annex I of this judgment, for pecuniary and non-pecuniary damage;

b) USD 5,000.00 (five thousand United States dollars) to each victim of forced displacement, indicated in Annex II of this judgment, for non-pecuniary damage, and

c) USD 30,000.00 (thirty thousand United States dollars) for the mothers, fathers, sons and daughters, spouses, and permanent partners, and USD 10,000.00 (ten thousand United States dollars) in favor of the brothers and sisters of the victims of forced disappearance, for non-pecuniary damage, in relation to the violations of their rights to personal integrity and protection of the family. These persons are named in Annex I of this judgment.

328. The amounts ordered in favor of forcibly disappeared persons (*supra* para. 327.a) shall be paid according to the following criteria:

a) fifty per cent (50%) of the compensation shall be divided equally among the victim's children. If one or more of the victim's children are deceased, the part that corresponds to them will be given to their children or spouses if they exist, or if they do not exist, the part that corresponds to them will be added to those of the other children of the same victim;

b) fifty per cent (50%) of the compensation shall be paid to the person who was the spouse or permanent companion of the victim at the time when the victim's forced disappearance began;

c) in the event that there are no relatives in any of the categories defined in the preceding paragraphs, the amount that would have corresponded to the relatives in that category shall be added to the part corresponding to the other category;

d) in the event that the victim has no children or spouse or permanent companion, the compensation for pecuniary damage shall be delivered to his or her parents, and

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[375] *Cf.* Copy of the records of the payments made to members of Chichupac village by the National Reparations Program (evidence file, folios 10189 to 10804).

[376] *Cf. Case of Gudiel Álvarez et al. ("Diario Militar") v. Guatemala*, para. 389, and *Case of the Río Negro Massacres v. Guatemala*, para. 304.

[377] *Cf. Case of Ticona Estrada et al. v. Bolivia*, para. 109, and *Case of Río Negro Massacres v. Guatemala,* para. 309.

e) in the event that there are no relatives in any of the categories defined in the preceding paragraphs, the compensation shall be paid to the heirs in accordance with domestic inheritance law.

F. Costs and expenses

329. The ***Commission*** did not present specific arguments in this regard. The ***representatives*** requested the payment of USD 218,322.00 in favor of the *Asociación Bufete Jurídico Popular* for costs, expenses and professional fees incurred in the proceedings before the national and international courts since 2006, as well as the expenses incurred at the public hearing of the case and those eventually incurred at the stage of monitoring compliance with the judgment issued by the Court. They indicated that said amounts are supported by the actuarial report prepared by Roberto A. Molina Cruz.

330. In its answering brief, under the heading "VI. Costs and Expenses," the ***State*** argued that the representatives "should have exhausted [,] in the first instance, the domestic procedures available in the domestic jurisdiction, before going to an international court." Thus, it argued that "they are not entitled to seek reparation at the international level […] because they did not even attempt to exhaust such compensation in domestic proceedings."[378]

331. The ***Court*** reiterates that, in accordance with its case law, costs and expenses form part of the concept of reparation, since the activities carried out by the victims in order to obtain justice, both at the national and international levels, imply expenditures that must be compensated when the State's international responsibility is declared by means of a condemnatory judgment. Regarding the reimbursement of expenses, it is up to the Court to prudently assess their scope, which includes the expenses generated before the authorities of the domestic jurisdiction, as well as those generated in the course of the proceedings before the inter-American system, taking into account the circumstances of the specific case and the nature of the international jurisdiction for the protection of human rights. This assessment may be based on the principle of equity and taking into account the expenses indicated by the parties, provided that their *quantum* is reasonable.[379] As the Court has stated on previous occasions, it is not sufficient to merely forward evidentiary documents; rather, the parties are required to include arguments that relate the evidence to the facts that they represent and, in the case of alleged financial disbursements, clearly specify the items and their justification.[380]

332. The representatives submitted as annexes to their pleadings and motions brief, various documents related to alleged costs and expenses incurred from 2007 to 2014, including invoices from María Dolores Itzep Manuel for professional services rendered to the *Asociación Bufete Jurídico Popular*; invoices for professional services of *Servicios Osorio* and Sandra López; payments for fees to interns; receipts for payment of marriage, birth, death and baptism certificates of persons allegedly related to the case; proof of payment for registration of powers of attorney, copies of judicial proceedings and stamps; invoices for food and transportation services; rental of premises; payment of fuel; settlement of expenses incurred by the *Asociación Bufete Jurídico Popular*, etc. Likewise, the representatives submitted as evidence of their costs and expenses, an "Actuarial valuation of damages", prepared by Roberto A. Molina Cruz in December 2014.[381]

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[378] Regarding the representatives' request for payment of costs and expenses, the State pointed out in its final written arguments that these had been presented "in a discretionary manner, since they were not reliably demonstrated with verifiable documents." It also asked the Court to "take into consideration that the general description given by the representatives bears no relation to reality, and that when issuing a decision, it should also consider the country's economic situation, and that the alleged victims should not be disproportionately enriched."

[379] *Cf. Case of Garrido and Baigorria v. Argentina. Reparations and costs*. Judgment of August 27, 1998. Series C No. 39, paras. 79 and 82, and *Case of Herrera Espinoza et al.*, paras. 248 and 249.

[380] *Cf. Case of Chaparro Álvarez and Lapo Íñiguez. v. Ecuador. Preliminary objections, merits, reparations and costs*. Judgment of November 21, 2007. Series C No. 170, para. 275, and *Case of Herrera Espinoza et al.*, para. 248.

[381] Actuarial valuation of damages (evidence file, folios 5397 to 5437).

333. The Court finds it evident that some of the invoices submitted by the representatives relate to expenditures made in connection with the instant case.[382] These invoices amount to approximately USD 2,422.00 (two thousand four hundred and twenty-two United States dollars). However, other invoices and payments of fees do not show a clear link with the case.[383] The Court also notes that the representatives did not submit information regarding the expenses incurred in connection with the public hearing held at the seat of the Court. Nevertheless, the Court considers it evident that such representation generated, at least, transportation, lodging and food costs. The Court also considers that the actuarial report prepared by Roberto A. Molina Cruz (*supra* para. 332) lacks information and evidentiary support that would allow the Court to understand on what basis the amounts of costs and expenses incurred by the representatives and those that could be incurred in the process of monitoring compliance with the judgment were established.

334. In view of the foregoing, the Court establishes, in equity, the sum of USD 50,000 (fifty thousand United States dollars) for expenses incurred in the proceedings before the inter-American human rights system. Said amount shall be delivered to the *Asociación Bufete Jurídico Popular* within one year of notification of this judgment. During the stage of monitoring compliance with this judgment, the Court may order the State to reimburse the victims or their representatives for subsequent reasonable and duly proven expenses.

G. Method of compliance with the payments ordered

335. Payment of the compensation for pecuniary and non-pecuniary damage established in this judgment shall be made directly to the persons indicated therein, within two years from the date of notification of this judgment. Fifty per cent of the amount shall be paid during the course of the first year to each victim, while the remaining amount may be paid during the second year, as indicated in paragraph 327 of this judgment. In the event of the death of the victims prior to the payment of the respective amounts, as well as in the case of disappeared victims, the amounts shall be paid to their beneficiaries, as established in paragraphs 327 and 328 of this judgment.

336. The reimbursement of costs and expenses established in this judgment shall be made directly to the persons indicated therein, within one year of notification of this judgment, pursuant to paragraph 334.

337. The State shall comply with its monetary obligations through payment in United States dollars, or the equivalent in local currency, using for the respective calculation the exchange rate in effect on the New York Stock Exchange, United States of America, on the day prior to payment.

338. If, for reasons that can be attributed to the beneficiaries of the compensation or their heirs, it is not possible to pay the amounts established within the time frame indicated, the State shall deposit said amounts in their favor, in an account or certificate of deposit in a solvent Guatemalan financial institution, in United States dollars, and on the most favorable financial terms permitted by banking law and practice. If the corresponding compensation is not claimed within ten years, the amounts shall be returned to the State with the accrued interest.

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[382] The documentary evidence submitted by the representatives includes payments for: certifications issued by the municipality of Rabinal; burial containers; the hire of a room to hold an informative talk; food; transportation; photocopies; fuel, and notarial and fiscal stamps, all in relation to the processing of this case between 2007 and 2014.

[383] These include: payment of fees to María Dolores Itzep Manuel, between 2007 and 2014; payments to Sandra López and Reina Isabel Osorio Tecú for technical investigation services provided from 2007 to 2008; payments to Abelina Osorio Sis for technical services as a lawyer between 2007 and 2008, and payments to Carlos Enrique de Paz Alvarado for internship between 2013 and 2014. Likewise, it was not possible to verify the connection with the present case of certain payments for food, transportation, photocopies, printing and internet services, as well as the payment for the registration of a court order, all of which were made in 2011.

339. The amounts allocated in this judgment as compensation for pecuniary and non-pecuniary damage, and for reimbursement of costs and expenses shall be paid in full directly to the beneficiaries, without any deductions arising from possible charges or taxes.

340. If the State should fall into arrears, it shall pay interest on the amount owed corresponding to bank interest on arrears in Guatemala. Default interest shall begin to be calculated after a period of two years from notification of this judgment.

X
OPERATIVE PARAGRAPHS

341. Therefore,

THE COURT

DECIDES,

Unanimously,

1. To partially accept the preliminary objection of lack of jurisdiction *ratione temporis* filed by the State, in the terms of paragraphs 18 to 24 of this judgment.

2. To dismiss the preliminary objection regarding the Court's lack of jurisdiction to examine alleged violations of the Inter-American Convention on Forced Disappearance of Persons, in the terms of paragraph 29 of this judgment.

3. To dismiss the preliminary objection regarding the Court's lack of jurisdiction to examine Article 7 of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, in the terms of paragraph 30 of this judgment.

4. To dismiss the preliminary objection regarding the Court's lack of jurisdiction to declare violations of the Convention on the Prevention and Punishment of the Crime of Genocide, in the terms of paragraph 31 of this judgment.

5. To dismiss the preliminary objection filed by the State regarding the Court's lack of jurisdiction to rule on crimes, in the terms of paragraph 35 of this judgment.

6. To dismiss the preliminary objection filed by the State regarding the Court's alleged lack of jurisdiction to rule on the invalidity of the Guatemalan amnesty, in the terms of paragraph 39 of this judgment.

7. To dismiss the preliminary objection regarding failure to exhaust domestic remedies, in the terms of paragraphs 43 to 47 of this judgment.

8. To dismiss the preliminary objection regarding "the lack of authority to file another claim

for the same facts," in the terms of paragraph 50 of this judgment.

9. To accept the partial acknowledgement of international responsibility made by the State, in the terms of paragraphs 54 to 58 of this judgment.

DECLARES,

Unanimously, that:

10. The State is responsible for the violation of the rights to personal liberty, personal integrity, life and recognition of juridical personality, established in Articles 7, 5(1) and 5(2), 4(1) and 3 of the American Convention, in relation to Article 1(1) thereof, and in relation to the provisions of Article I. a) of the Inter-American Convention on Forced Disappearance of Persons, to the detriment of the 22 victims of forced disappearance identified in Annex I of this judgment, pursuant to paragraphs 131 to 160 thereof.

11. The State is responsible for the violation of the rights to mental and moral integrity and to protection of the family, established in Articles 5(1) and 17(1) of the American Convention, in relation to Article 1(1) thereof, to the detriment of the next of kin of the 22 victims of forced disappearance, identified in Annex I of this judgment, pursuant to paragraphs 161 to 166.

12. The State is responsible for the violation of the right to movement and residence established in Article 22(1) of the American Convention, in relation to Article 1(1) thereof, to the detriment of the persons listed in Annex II of this judgment, pursuant to paragraphs 172 to 203 of this judgment.

13. The State is responsible for the violation of the rights to judicial guarantees and judicial protection recognized in Articles 8(1) and 25(1) of the American Convention, in relation to Article 1(1) thereof, as well as for non-compliance with the obligations set forth in Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture, as well as Article I.b) of the Inter-American Convention on Forced Disappearance of Persons and Article 7.b of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, from the moment they entered into force in Guatemala. All of the above, to the detriment of the victims in this case or their next of kin, in their respective circumstances, pursuant to paragraphs 210 to 265 of this judgment. In addition, the State violated the right of the next of kin of the disappeared victims to know the truth, pursuant to paragraphs 259 and 261 of this judgment.

14. The State is not responsible for the violation of Article 12 of the American Convention, pursuant to paragraph 204 of this judgment.

15. The State is not responsible for the violation of Article 16 of the American Convention, pursuant to paragraph 205 of this judgment.

16. The State is not responsible for the violation of Article 24 of the American Convention, pursuant to paragraph 258 of this judgment.

AND ESTABLISHES,

Unanimously, that:

17. This judgment constitutes *per se* a form of reparation.

18. The State shall remove all obstacles, *de facto* and *de jure*, that maintain impunity in this case, and initiate, continue, promote and reopen the investigations necessary to identify and, if appropriate, punish those responsible for the human rights violations declared in this case. All of this within a reasonable time, in order to establish the truth of what happened, in the terms of paragraphs 285 to 289 of this judgment.

19. The State shall carry out or continue, in a systematic and rigorous manner and with adequate human and economic resources, the actions necessary to determine the whereabouts of the members of the village of Chichupac and neighboring communities who were forcibly disappeared, and to locate, exhume and identify the deceased persons, pursuant to paragraphs 292 to 297 of this judgment.

20. The State shall provide medical, psychological and/or psychiatric treatment to the victims in the instant case, pursuant to paragraphs 302 to 304 of this judgment.

21. The State shall hold a public act of acknowledgement of international responsibility for the facts of this case, in accordance with paragraph 306 of this judgment.

22. The State shall issue the publications indicated in paragraph 309 of this judgment.

23. The State shall include training in human rights and international humanitarian law on a permanent basis in the curriculum of the different professional and vocational training centers of the Guatemalan Army, in accordance with paragraphs 312 and 313 of this judgment.

24. The State shall design and implement in the permanent training curricula of the judicial and prosecutorial careers, respectively, education programs on human rights and international humanitarian law, in the terms of paragraphs 316 to 318 of this judgment.

25. The State shall incorporate into the curriculum of the National Education System, at all levels, an education program whose contents reflect the multicultural and multilingual nature of Guatemalan society and promote respect for and knowledge of the diverse indigenous cultures, including their worldviews, histories, languages, knowledge, values, cultures, practices and ways of life, pursuant to paragraph 319 of this judgment.

26. The State must strengthen the existing institutions, or those it will create for the purpose of eradicating racial and ethnic discrimination, in the terms of paragraph 320 of this judgment.

27. The State shall pay the amounts established in paragraphs 327 and 334 of this judgment, as compensation for pecuniary and non-pecuniary damage, and for reimbursement of costs and

expenses, pursuant to paragraphs 324 to 328, and 331 to 340 of this judgment.

28. The State shall, within one year of notification of this judgment, provide the Court with a report on the measures adopted to comply with it.

29. The Court will monitor full compliance with this judgment, in exercise of its powers and in compliance with its obligations under the American Convention on Human Rights, and will close this case once the State has complied fully with its provisions.

DONE, at San José, Costa Rica, on November 30, 2016, in the Spanish language

I/A Court HR. Case of the Members of Chichupac Village and Neighboring Communities of the Municipality of Rabinal v. Guatemala. Preliminary objections, merits, reparations and costs. Judgment of November 30, 2016.

Roberto F. Caldas
President

Eduardo Ferrer Mac-Gregor Poisot

Eduardo Vio Grossi

Humberto Antonio Sierra Porto

Elizabeth Odio Benito

Eugenio Raúl Zaffaroni

L. Patricio Pazmiño Freire

Pablo Saavedra Alessandri
Registrar

So ordered,

Roberto F. Caldas
President

Pablo Saavedra Alessandri
Registrar

ANNEX I

ANNEX I. GENERAL LIST OF VICTIMS			
N°	**VICTIMS OF FORCED DISAPPEARANCE**	**N°**	**FAMILY GROUP**
1	Hugo García Depaz	1	Adrián García Manuel (Father)
		2	Sabina de Paz Pérez(Mother)
2	Abraham Alvarado Tecú (or Agapito Alvarado Depaz)	3	Ángel Alvarado Tecú(Father)
		4	Victoria de Paz Pérez (Mother)
		5	Lucas Alvarado Depaz (Brother)
		6	Silveria Alvarado Depáz (Sister)
		7	Paula Alvarado DePáz (Sister)
		8	Margarito Alvarado Depáz (Brother)
3	Manuel de Jesús Alarcón Morente	9	Juan Alarcón García(Father)
		10	Graciela Morente (Mother)
		11	Marcelina Alarcón Morente (Sister)
		12	Clotilde Felipa Alarcón Morente (Sister)
		13	Jesus Alarcón Morente (Brother)
		14	Berta Alarcón Morente (Sister)
		15	Victoria Alarcón Morente (Sister)
4	Edmundo or Raymundo Alarcón Morente	16	Faustina Morales Morales (Wife)
		17	Lupita Alarcón Morales (Daughter)
		18	Plácido Alarcón Morales (Son)
5	Pedro Siana	19	Margarita Ixtecoc González (Spouse)
		20	Juana Siana Ixtecoc (Daughter)
		21	Olivia Siana Ixtecoc (Daughter)
		22	Paula Siana Ixtecoc (Daughter)
6	Juan Pérez Sic	23	Manuela Toj Pérez (Spouse)
		24	Ernesto Pérez Toj (Daughter)
7	Lorenzo Depaz Siprian (or Florencio Depaz Cipriano)	25	Alejandra Galiego Mendoza (Daughter)
		26	Ricardo Depaz Galiego (Son)
		27	Apolonio de Paz Galiego (Son)
		28	Odilia de Paz Galiego (Daughter)
		29	Virgilio de Paz Galiego (Son)
8	Leonardo Cahuec González	30	Albertina Sic Cuxúm (Wife)
		31	Valentina Cahuec Sic (Daughter)
		32	Rolando Cahuec (Son)
		33	María Isabel Cahuec Sic (Daughter)
9	Juan Mendoza Alvarado	34	Maria Teresa Sic Osorio (Wife)
		35	Mario Mendoza Sic (Son)
		36	María Asunción Mendoza Sic (Daughter)
		37	Carmela Mendoza Sic (Daughter)
		38	Emilia Mendoza Sic (Daughter)
		39	Julian Mendoza (Son)
10	José Cruz Mendoza Sucup	40	Fabustina Alvarado Manuel (Wife)
		41	Vicenta Mendoza Alvarado (Daughter)
		42	Tomasa Mendoza Alvarado (Daughter)
		43	José Luis Mendoza Alvarado (Son)
		44	Juan Mendoza Alvarado (Son)
11	María Concepción Chen Sic	45	Rosalina Sic Chen (Daughter)
		46	Reyna Margarita Sic Chen (Daughter)
		47	Petronila Sic Chén (Daughter)
		48	Francisco Sic Chén (Son)
		49	Mario Sic Chén (Son)

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		50	Marcelo Síc Chén (Son)
		51	Pedro Síc Hernandez (Son)
12	Casimiro Siana	52	Dominga Sucup Cruz (Wife)
		53	Margarita Siana Crúz (Daughter)
		54	Oscar Siana Sucup (Son)
13	Cruz Pérez Ampérez	55	Pedrina Román Xitumul (Spouse)
		56	Maria Guadalupe Ampérez Román
14	Gorgonio Gonzalez Gonzalez	57	Enriqueta Tecú (Wife)
		58	Rosa Gonzalez Tecú (Daughter)
		59	Pedro González Tecú (Daughter)
		60	Francisca Gonzalez Tecú (Daughter)
15	Jorge Galeano Román	61	Anastasia Xitumul Ixpancoc (Wife)
		62	Carmela Galeano Xitumul (Daughter)
		63	Patrocinia Galeano Xitumul (Daughter)
		64	Cristina Galeano Xitumul(Daughter)
		65	Candelaria Xitumul (Daughter)
16	Eustaquio Ixtecoc	66	Isabel Reina Bolaj (Wife)
		67	Victorino Ixtecoc Bolaj (Son)
		68	Angel Augusto Ixtecoc Bolaj (Son)
		69	Miguel Hector Ixtecóc Bolaj (Son)
17	Rafael Depaz Tecú	70	Francisco Depaz (Father)
		71	Matilde Tecú (Mother)
		72	Balvino Depaz Tecú (Brother)
		73	Juan Alfonzo Depaz Tecú (Brother)
18	Enrique Mendoza Sis	74	Leandra Sucup (Wife)
		75	José Mendoza Sucup (Son)
19	Gabino Román Yvoy (or Iboy or Ivoy)	76	Juana Xitumul López (Wife)
		77	Pedrina Roman Xitumul (Daughter)
		78	Cármen Román Xitumúl (Daughter)
		79	José Manuel Román Xitumul (Son)
		80	Enrique Román Xitumul (Son)
		81	Francisco Román Xitumul (Son)
20	Dionicio or Dionisio Vachan or Bachán	82	Simona Cahuec (Wife)
		83	Clementina Bachán Cahuec (Daughter)
		84	Tranquilina Bachan Cahuec (Daughter)
		85	Catalina Vachán Depáz (Daughter)
		86	Diego Bachan Cahuec (Son)
21	Marcelo Sic Chen	87	Fermina Hernández Mendoza (Wife)
		88	Pedro Sic Hernández (Son)
		89	Hermelinda Sic Hernández (Daughter)
22	Adrián García Manuel	90	Sabina de Paz Pérez (Wife)
		91	Efraín García de Paz (Son)
		92	Hugo García de Paz (Son)
		93	Maria Concepción García Depaz (Daughter)
		94	Juana García Depaz (Daughter)

ANNEX I

OTHER VICTIMS OF VIOLATIONS OF THE RIGHTS TO JUDICIAL GUARANTEES AND JUDICIAL PROTECTION UNDER THE AMERICAN CONVENTION, AND NON-COMPLIANCE WITH ARTICLES I.B OF THE ICFDP, 1, 6 AND 8 OF THE ICPPT, AND 7.B OF THE CONVENTION OF BELÉM DO PARÁ, LISTED BY FAMILY GROUP			
23	Víctor Juárez Pangan (or Víctor Juárez Pancan)	95	Iginia Chen
		96	Napoleón Juárez Chén
		97	Leonardo Juárez Chen
		98	Juan Juárez Chen
		99	Matilde Juárez Chén
		100	Candelaria Juárez Chen
24	Clemente Juárez Ixpancoc	101	Antonia Chén Valey
		102	Venancio Juárez Chen
		103	Urbano Juárez Chen
		104	Rosalina Juárez Chén
25	Cruz Sic Cuxum (or Cruz Sic Cuxún),	105	Carmen Isabel Sic Cruz
		106	Victoria Sic Sic
		107	David Sic Sic
		108	Francisca Sic Sic
		109	Matilde Sic Sic
		110	Herlinda Sic Sic
26	Pedro Sic Jerónimo	111	Eligia Cruz
		112	Carlos Humberto Sic Crúz
		113	Carmen Isabel Sic Cruz
		114	Aminta Síc Crúz
		115	Juan Cruz (o Juan Sic Crúz)
		116	Maria Lucrecia Sic Cruz
		117	Crisanto Sic Cruz
27	Gregorio Valey	118	Modesta Tahuíco
		119	Marcos Valey Tahuico
		120	Macario Valey Tahuico
		121	Abelina Valey Tahuíco
28	Timoteo Sic Cujá	122	Andrea Osorio Galeano
		123	Maria Teresa Sic Osorio
		124	Melesio Sic Osorio
		125	Miguel Sic Osorio
		126	Patricia Sic Osorio
		127	Juana Sic Osorio
		128	Paulina Sic Osorio
		129	Vicente Sic Osorio
		130	Dionicio Sic Osorio
		131	Mario Mendoza Sic
		132	María Asunción Mendoza Sic
		133	Carmela Mendoza Sic
		134	Lucía Sic Sic
		135	Florinda Sic Sic
		136	Pedro Sic Sic
		137	Ana Sic Sic
		138	Hilda Sic Sic
		139	Josefa Sic Sic
		140	Maximiliana Sic Cacaj
		141	Ramón Sic Cacaj
		142	Faustina Sic Cacaj
		143	Ronaldo Sic Cacaj

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		144	Ana Victoria Sic Cacaj
		145	Bernardo Sic Cacaj
		146	Liria Sic Cacaj
29	Roberto Galiego Chén	147	Susana Valey Xitumúl
		148	Eulalia María Galiego Valey
30	Antonio Alvarado González	149	Francisca Juárez Pérez
		150	Sergio Lyonel Alvarado Juárez
		151	Cesar Augusto Alvarado Juárez
		152	Amelía Eugenia Alvarado Juárez
		153	Ana Marilú Alvarado Juárez
		154	Lesvia Nohemy Alvarado Juárez
31	Alfonzo Crúz Juárez	155	Lorenzo Sucup Crúz
		156	Rosa Juárez Yxpancoc
		157	Gregorio Crúz Juárez
		158	Marcelina Sucup Juárez
		159	Filomena Sucup Juárez
		160	Genaro Sucup Juárez
32	Domingo Cahuec Sic	161	Elena Valey
		162	Francisco Cahuec Valey
		163	Irrael Cahuéc Valey
		164	Elsira Cahuec Valey
		165	Maria Magdalena Cahuec Valey
		166	Rosalina Cahuec Valey
		167	Dora Alicia Cahuec Valey
33	Santiago Alvarado Xitumul	168	Juana García Manuel
		169	Matilde Alvarado García
		170	Martina Alvarado García
34	Agustín Juárez Ixpancoc	171	Miguelina García Depáz
		172	Juán Juárez García
		173	Estefana Juárez García
		174	Roberto Juárez García
		175	Bernarda García
35	Teodoro González Xitumul	176	Tomasa Alvarado Xitumul
		177	Hirma Yolanda Gonzalez Alvarado
		178	Blanca Estela González Alvarado
		179	Marvin Giovany González Alvarado
36	Eulogio Morales Alvarado	180	Justina Sucup Mendoza
		181	Florentina Morales Sucup
		182	Miguel Angel Morales Sucup
		183	Maura Morales Sucup
		184	Modesta Morales Sucup
37	Luciano González (or Luciano Gonzalez Sis or Lucio Gonzalez Sis)	185	Ciriaco Gonzales Alvarado
		186	Raymunda Sis Juárez
		187	Pedro González Sis
		188	Benjamin González Román
		189	Catalina González Román
		190	Ofelia del Rosario González Román
		191	José Carlos Alberto Román
38	Apolinario Juárez Pérez	192	Alberta Cho Siana
		193	Matilde Juárez Chó
		194	María Estela Juárez Chó
		195	Carlos René Juárez Chó

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39	Alberto Juárez Pérez	196	Bertha Martínez Izaguirre
		197	Edwin Eduardo Juárez Martinez
		198	Olga Marina Juárez Martinez
		199	Telma Hortencia Juárez Martinez
		200	Roselia Martínez
40	Evaristo Depaz Siana (or Evaristo Siana)	201	María Alvarado Román
		202	Magdaleno Cruz Siana Alvarado
		203	Vicente Siana Alvarado
		204	Benito Siana Alvarado
		205	Candelario Siana Alvarado
		206	Martina Siana Alvarado
41	Pedro Tum (or Pedro Pérez Ampérez)	207	Mateo Pérez Cajbón
		208	Maria Ampérez
		209	Cruz Pérez Ampérez
		210	Maria Guadalupe Ampérez Román
42	Emigdio Siana Ixtecoc	211	Carmen Piox Alvarado
		212	Marta Cristina Siana Piox
		213	Amalia Margarita Siana Piox
		214	Odilia Yescenia Siana Piox
		215	Hugo Baldomero Siana Piox
		216	Aura Estela Siana Piox
43	Pedro Galiego López	217	Bruna Chén Alvarado
		218	Juana Galiego Chén
		219	Roberto Galiego Chén
44	Demetrio Chen Alvarado	220	Maria García de Paz
		221	Marcos Chen García
		222	Raymunda Chén García
		223	Procopio Chen García
45	Pedro Galiego Mendoza	224	Fabiana Chen Galiego
		225	Marta Elena Galiego Chen
		226	Francisca Galiego Chén
		227	Jorge Galiego Chén
		228	Antonia Galiego Chen
		229	Carmela Galiego Chén
		230	José Luis Galiégo Chen
		231	Victoria Chen Galiego
46	Camilo Juárez Valey	232	Maria Lucas Beltrán Gonzalez
		233	Mateo Juárez Beltran
		234	Juan de la Cruz Juárez Beltran
		235	Rosalina Juárez Beltran
47	Julián Garniga López	236	Juliana Xitumul Ixpatá
		237	Juan Garniga Ixpatá
		238	Felipe Garniga Ixpatá
48	Benito Juárez Ixpancoc	239	Pedrina Pérez Iboy
		240	María del Rosario Juárez Pérez
		241	Ubalda Juárez Pérez
		242	Sabina Juárez Pérez
		243	Hilario Juárez Pérez
		244	Enrique Alberto Juárez Pérez
		245	Emiliano Juárez Pérez
49	Francisco Depaz	246	Matilde Tecú
		247	Balvino Depaz Tecú
		248	Juan Alfonzo Depaz Tecú
		249	Rafael Depáz Tecú

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50	Maximiliano Sis Valey	250	María Juárez López
		251	Cristina Sis Juárez
		252	Dora Marciana Sís Juárez
		253	Claudia Elvira Sis Juárez
		254	Wilmer (or Wilmer Elisandro)Sic Sis
		255	José Obdulio Sic Sis
		256	Lilian Cecilia Sic Sis
51	Vicente Sic Osorio	257	Teresa Cacaj Cahuec
		258	Maximiliana Síc Cacaj
		259	Ramón Sic Cacaj
		260	Faustina Sic Cacaj
		261	Liria Sic Cacaj
		262	Ronaldo Sic Cacaj
		263	Ana Victoria Sic Cacaj
		264	Bernardo Sic Cacaj
52	Patrocinio Galiego	265	Ana Calate Sic
		266	Sofia Galiego Calate
		267	Miguelina Galiego Calate
		268	Luisa Galiego Calate
		269	María Cruz Galiego Calate
		270	Edgar Galiego Calate
		271	Irma Galiego Calate
		272	Josefina Galiego Calate
		273	Olegario Galiego Calate
53	Félix Alvarado Xitumul	274	Maria Alvarado Cortez
		275	Alejandra Alvarado Alvarado
		276	Rosalio Alvarado Alvarado
		277	Gloria Luz Alvarado Alvarado
		278	Fidelia Eliza Alvarado Alvarado
		279	Edgar Alvarado Alvarado
		280	Irlubia Magdalena Alvarado Alvarado
		281	Lorena Eugenia Alvarado
54	José Demetrio Cahuec Jerónimo	282	Estéfana Ixtecóc Gonzalez
		283	Pablo Cahuec Ixtecoc
		284	Miguelina Cahuec Ixtecoc
		285	Inocenta Cahuec Ixtecoc
		286	Lazaro Cahuec Ixtecóc
55	Gregoria Valey Ixtecoc (or Yxtecoc)	287	Timoteo García Rojas (husband)
		288	Tomás García Valey
		289	Timoteo García Rojas (son)
		290	Máxima Emiliana García Valey
		291	Reginaldo García Valey
56	Silvestre Sic Xitumul	292	María Concepcion Chen Sic
		293	Rosalina Sic Chen
		294	Reyna Margarita Sic Chen
		295	Petronila Sic Chén
		296	Francisco Sic Chén
		297	Mario Sic Chén
		298	Marcelo Sic Chen
		299	Pedro Sic Hernandez
57	Raymunda Sical Corazón	300	Ramón Valey
		301	Gregoria Corazón
		302	Balbino Corazón
		303	Pedro Corazón Osorio

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58	Domingo Reyes Juárez (or Domingo Juárez Reyes)	304	Rosario Román Túm
		305	Andrés Reyes Román
		306	Santiago Reyes Román
		307	Macario Reyes Román
		308	Juana Reyes Roman
		309	Toribia Reyes Román
59	Elías Milián González	310	Fidelia Morales
		311	Amelia Milián Morales (repeated)
		312	Tarcila Milián Morales
		313	Vitalina Milián Morales
		314	Maria Luisa Milian García
		315	Elvia Yaneth Milian García
		316	Edgar René Milian García
		317	Angélica María Torres Milián (repeated)
		318	Vilma Torres Milián (repeated)
		319	Alonzo Torres Milián (repeated)
60	Amelia Milián Morales	320	Venancio Torres Gonzalez
		321	Angelica María Torres Milián
		322	Vilma Torres Milián
		323	Alonzo Torres Milián
61	Medardo Juárez García	324	Alejandro Juárez Ixpancoc
		325	Maria Concepción García Depaz
		326	Olga Lili Juárez García
62	Eusebia Grave García	327	Juana García Depaz
		328	Dominga Grave 2607
63	Juana García Depaz	329	Mateo Grave
		330	Eusebia Grave García
		331	José León Grave García
		332	Ermelinda Grave García
		333	Marcelino Grave García
		334	Maria Antonia Grave García
		335	Victoriana Grave García
		336	Martín Grave García
		337	Edgar García Depaz
		338	Sandra Maribel García Depaz
64	Víctor Alvarado Valey	339	Dominga Sucup Cahuec
		340	Victor Cástulo Alvarado Sucup
		341	Micaela Alvarado Sucup
		342	Antonia Alvarado Sucup
		343	Roberto Alvarado Sucup
		344	Ceferino Alvarado Sucup
		345	Fidel Alvarado Sucup
65	Juan Alvarado Grave	346	Natalia Siana
		347	Juan Nicolas Alvarado Siana
		348	Flora Alvarado Siana
		349	José Patricio Alvarado Siana
		350	Rosendo Alvarado Siana
		351	Rosalina Alvarado Siana
66	Efraín García (or Efraín García de Paz)	352	Adrián García Manuel
		353	Sabina de Paz Pérez
		354	Juana García Depaz
		355	Hugo García de Paz
		356	Maria Concepción García Depaz

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67	Napoleón García De Paz	357	Isabel Bolaj Ixtecoc García Depaz
		358	Florinda García Bolaj
		359	Carmelina García Bolaj
68	Luciano Alvarado Xitumul	360	María García Manuel
		361	Adela Florentina Alvarado García
		362	Héctor Rolando Alvarado García
		363	Tomasa Alvarado Xitumul
		364	Antonia Alvarado Xitumul
69	Luciana Xitumul Ixpancoc	365	Daniel Xitumul Cuxúm
		366	María Concepción Xitumul Xitumul
70	Ciriaco Galiego Lopez	367	Dominga Mendoza
		368	Pedro Galiego Mendoza
		369	Macario Galiego Mendoza
		370	Julián Galiego Mendoza
		371	Leona Galiego Mendoza
		372	Manuel de Jesus Galiego Mendoza
		373	Alejandra Galiego Mendoza
		374	Marta Elena Chen Galiegp
		375	Francisca Chen Galiego
		376	Jorge Chen Galiego
		377	Antonia Chen Galiego
		378	Carmela chen Galiego
		379	José Luis Chen Galiego
		380	Victoria Chen Galiego
		381	Abelina Mendoza Morán
		382	Telma Mendoza Morán
		383	Jacobo Mendoza Morán
		384	Mauricio Galiego Moran
		385	Eva Mendoza Morán
		386	Florencia Galiego Reyes
		387	Juana Galiego Reyes
		388	Paulina Galiego Reyes
		389	Rosa Galiego Reyes
		390	Feliza Galiego Reyes
		391	José Guillermo Galiego Reyes
		392	Santiago Galiego Reyes
71	Máxima Emiliana García Valey	393	Francisco Sic Chén
72	Miguel Chen Tahuico	394	Vicenta Mendoza Alvarado
		395	Antonio Chen Mendoza
		396	Demetrio Chen Mendoza
		397	Francisca Chen Mendoza
		398	Aníbal Chen Mendoza
73	Macario Galiego Mendoza	399	Lucila Morán
		400	Mauricio Galiego Morán
		401	Eva Mendoza Morán
		402	Jacobo Galiego Morán
		403	Telma Galiego Morán
		404	Abelina Galiego Morán

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74	Alberto Pangán Juárez	405	Marta Elena Galiego Chen
		406	Rosalina Pangán Galiego
		407	Francisco Pangán Galiego
		408	Juana Guadalupe Pangán Galiego
		409	Merdeces Pangán Galiego
		410	Gerónimo Pangán Galiego
75	Brigido Xitumul	411	Francisca Calate Sic
		412	Rosendo Xitumul Calate
		413	Eduardo Xitumul Calate
		414	René Apolinario Xitumul Calate
		415	Jorge Xitumul Calate
		416	Victor Manuel Xitumul Calate
76	Jesús Morales García	417	Jesús González Milián
		418	David Morales González
77	Pablo Xitumul	419	Pablo Xitumul
		420	Tomasa Sic Cuxúm
		421	Angélica Xitumul Síc
		422	Santos Xitumul Síc
		423	Gregorio Xitumul Sic
		424	Trancita Xitumul Síc
		425	José Ernesto Xitumul Sic
		426	Sergio Alfredo Xitumul Sic
78	Jesús Peréz Álvarez	427	Juana Juárez García
		428	Cipriano Juárez
		429	Carlos Enrique Pérez Juárez
79	Jerónimo Ixpatá Xitumul	430	Jerónimo Ixpatá Xitumul
		431	Patricia Sic Osorio
		432	Fernando Ixpatá Sic
		433	Elvira Ixpatá Sic
80	Agustín Juárez López	434	Inocenta Ixtecóc Xitumúl
		435	Ana Maria Juárez Ixtecoc
		436	María Isabel Juárez Ixtecóc
		437	Sandra Lorena Juárez Ixtecoc
		438	César Agusto Juárez Ixtecoc
81	Sebastian Chen Tahuico	439	Vicenta Ixpatá Xitumul
		440	Josefina Chen Ixpatá
		441	Adela Chen Ixpatá
		442	Hector Chen Ixpatá
		443	Elsa Chén Ixpatá
		444	Silvestre Chen Ixpatá
82	Juan Chen Sic	445	María de Jesús Tahuico Sacol
		446	Faustín Chen Tahuíco
83	José Lino Alquejay	447	María Rosario González Milián
		448	Julián Alquejay Gonzalez
		449	Candelaria Alquejay Gonzalez
		450	Thelmo Alquejay González
		451	Amilcar Alquejay González
84	José León Xitumul	452	Alejandra Yxpancoc González
		453	José Leon Xitumul Lopez
		454	Antonia Xitumul Ixpancóc
		455	Marcelina Xitumul Ixpancóc
85	Fidel Manuel Xitumul	456	Eustaquia Cuquej Galiego
		457	Guillermo Manuel Cuquej
		458	Pedrina Manuel Cuquej
		459	Otilia Manuel Cuquej

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		460	Leocadia Manuel Cuquej
86	Marcelino Eugenio Morales Hernández (or Marcelino Eugenio Morales)	461	Angela García Depáz
		462	Carmela Morales García
		463	Isaias Morales García
87	Juan García de Paz	464	Máxima Sic Gonzalez
		465	Nazario García Sic
		466	Santiago García Sic
88	Gaspar Juárez	467	Bernarda Pancán
		468	Juana Juárez Pangán
89	Maximiliano Sic	469	Dominga Cuxúm Tecú
		470	Timotea Sic Cuxúm
90	Pío Chen Alvarado	471	Francisca Valey Galiego
91	Victor Garniga Pérez	472	Paula Pérez
		473	Herlinda Garniga Pérez
92	Nicolas Izaguirre Beltran	474	Nicolas Izaguirre Beltran
		475	Antonia García
		476	Pedro Izaguirre García
		477	Maria Lucrecía Izaguirre García
93	Ruperto Matías Martinez	478	Paula Siana Ixtecoc
94	Alberto Juárez Valey	479	Reyna Margarita Sic Chen
		480	Tomás Juárez Síc
		481	Marta Juárez Síc
		482	Enrique Juárez Síc
		483	Vicente Juárez Síc
		484	Eliria Juárez Síc
		485	Lucrecia Juárez Síc
95	Serapio Pérez Sic	486	Paulina Bachán
		487	Desideria Pérez Bachán
		488	Tráncito Pérez Bachán
		489	Clara Mercedes Pérez Bachan
		490	Buenaventura Pérez Bachán
		491	Agustín Pérez Bachán
		492	Rosa Pérez Bachán
96	Manuel Juárez López	493	Maria Josefa Gonzalez Xitumul
		494	Manuel Juárez López
		495	Inocenta Juárez Gonzalez
		496	Josefina Juárez Gonzalez
97	Agustín Juárez Valey	497	Rigoberta Ixcopal López
		498	Paulina Juárez Ixcopal
		499	Ciriaca Juárez Ixcopal
		500	Zoila Juárez Ixcopal
		501	Clara Juárez Ixcopal
		502	Cristina Juárez Ixcopal
98	Victor Cuquej Morente	503	Toribia Galiego
		504	Victor Cuquej Morente
		505	Tomas Morente Galiego
		506	Maria Morente Galiego
99	Balbino Xitumul	507	Francisca Juárez
		508	Juán Xitumúl Juárez
		509	Eulogio Xitumul Juárez
		510	Luis Manuel Xitumul Juárez
100	Dionicio Juárez Valey	511	Emiliana López Juárez
		512	Juana Juárez López

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101	Catarino Xitumul	513	Candelaria García De Paz
		514	Catarino Xitumul
		515	Ricardo Xitumul García
		516	María Elena Xitumul García
		517	José Ronaldo Xitumul García
102	Justo Manuel Ixpatá	518	Felipa Juárez Lopez de Manuel
		519	Teresa Manuel Juárez
		520	Rosa Manuel Juárez
		521	Pedro Manuel Juárez
		522	Josefina Manuel Juárez
103	Tomas Valey Gonzalez	523	Marta Mendoza Sis
		524	Tomas Valey Gonzalez
		525	Anselma de la Crúz Valey Mendoza
		526	Fausto Eduardo Valey Mendoza
104	Luis Depaz Cipriano	527	Patrocinia Alvarado Camó
		528	Martín Depaz Alvarado
		529	Telma Depaz Alvarado
		530	José Mario Depaz Alvarado
105	Bernardino Alvarado Alvarado	531	Bernardino Alvarado Alvarado
		532	Felisa Matias Ojóm
		533	Alberto Alvarado Matias
		534	Rosa Alvarado Matias
		535	Juan de la Cruz Alvarado Matías
		536	Josefa Gabriela Alvarado Matías
		537	Mario Alvarado Matías
		538	José Alvarado Matías
		539	María Elena Alvarado Matías
106	Francisco Sic Cuxúm	540	Paulina Sic Osorio
		541	Josefa Síc Síc
		542	Ana Síc Síc
		543	Pedro Sic Sic
		544	Lucía Sic Sic
		545	Florinda Sic Sic
107	Félix Valey Galiego	546	Catalina Xitumul Juárez
		547	Felix Valey Galiego
		548	Maria Valey Xitumul
		549	Alfonso Valey Xitumul
		550	Santiago Valey Xitumul
		551	Miguel Angel Valey Xitumul
108	Justo Izaguirre Veltrán	552	Dominga Chinchilla Paredes
109	Toribio Chen Gonzalez	553	Maria Jesus Matias Ojóm
		554	Maximiliano Chen Matias
		555	Herlinda Chen Matias
		556	Francisco Chen Matias
110	Miguel Sic Osorio	557	Antonia Valey Xitumúl
		558	Miguel Sic Osorio
		559	Imelda Sic Valey
		560	Amalia Sic Valey
		561	Dominga Galiego Rodriguez
		562	Piedad Valey Galiego
		563	Juana Valey Galiego
		564	Agustina Valey Galiego

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111	Pedro Valey Galiego	565	Teresa Valey Galiego
		566	Helcilia Valey Galiego
		567	Santos Valey Galiego
		568	Marcelino Valey Galiego
		569	Jesus Valey Galiego
112	Buenaventura Pérez Bachán	570	María Josefa Depaz Xitumul
		571	Buenaventura Pérez Bachán
		572	Ana Carmela Pérez Depaz
		573	Lucia Pérez Depaz
113	Margarito Alvarado Depaz	574	Valeria Leonarda Herrera
		575	Margarito Alvarado Depaz
		576	Israel Donahí Alvarado Herrera
114	Secundino García Gonzalez	577	Valentina Depaz Sarpec
		578	Mario García Depáz
115	Vicente de Paz Pérez	579	Matilde Herrera
		580	Florinda De Paz Herrera
		581	Isaias de Paz Herrera
		582	Moises de Páz Herrera
		583	Mirian Olga de Paz Herrera
116	Juan Sic Cuxum	584	Elena Chen Valey
		585	José Cruz Sic Chen
117	Emiliano Sis Valey	586	Juana Juárez López
		587	Isabela Sis Juárez
		588	Enrique Sis Juárez
118	Manuel de Jesus Galiego Mendoza	589	Marcelina Garniga Pérez
		590	Blanca Estela Galiego Garniga
		591	Rene Antonio Galiego Garniga
		592	Héctor Vinicio Galiego Garniga
119	Tomás García Reyes	593	Gregoria Manuel Xitumul
		594	Cristina García Manuel
120	Domingo Valey Sis	595	Paulina Valey García
121	Mariano Díaz Tolom	596	Cayetana Sucup
		597	Francisco Díaz Sucup
		598	Porfiria Díaz Xitumul
122	Andrés Ixtecoc Xitumul	599	Hercilia Hernández Morales
		600	Benjamin Ixtecoc Hernández
		601	Elisa Ixtecoc Hernández
		602	María Rosario Ixtecoc Hernández
		603	Alfredo Ixtecoc Hernández
123	Zenón Us	604	Eligia Coloch Sucup
		605	Sabina Us Coloch
		606	Diego Us Coloch
		607	Francisca Us Coloch
		608	Narciza Us Coloch
124	Bernardo Roman Ivoy	609	Sebastiana Bachan
		610	Ignacia Roman Bachan
		611	Juana Roman Bachán
		612	José Luis Román Bachan
		613	Rigoberta Román Bachan
		614	Rosalia Román Bachan
125	Alberto Depaz Reyes	615	Rafaela Ciprian Coloch
		616	Marciala Depaz Ciprian De Gonzalez
		617	Antonio Depaz Ciprian
		618	Brígido Depaz Ciprián
		619	Juana Depaz Ciprián

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		620	Jesús Depáz Ciprian
		621	Andres Gilberto Depaz Ciprian
		622	Mario Depaz Ciprian
126	Silverio Chen Valey	623	Marcela Juárez López
		624	Baudilio Chén Juárez
		625	Leandro Chen Juárez
127	Ramon Calat Sic	626	Emilia Chén Valey
		627	Margarito Calat Chen
128	Juan Chen Galiego	628	Juan Chen Galiego
		629	Roberta Juárez López
		630	Buenaventura Chen Juárez
		631	Rosa Chén Juárez
		632	Juan Bautista Chen Juárez
		633	Gloria Chén Juárez
		634	Camilo Chen Juárez
129	Marcos Uscap Xitumul	635	Albina Chén Valey De Uscap
		636	Marcos Uscap Xitumul
		637	Josefina Uscap Chen
		638	Augusto Uscap Chen
130	Nicolás Juárez or Nicolás Juárez	639	Ciriaca López Ixpatá
		640	Pedrina Juárez López
131	Leandro Xitumul	641	Catalina García Manuel
		642	Leandro Xitumul
		643	Ernesto Xitumul García
		644	Santos Genaro Xitumul García
		645	Delmo Xitumul García
		646	Amilcar Xitumul García
132	Guillermo González Román	647	Guillermo González Román
		648	Rosa García Depáz
		649	Elizabeth González García
		650	Oscar Ezequiel González García
		651	Mayra Judith González García
133	Bonifacio Calat	652	Juana Sic Xitumul
		653	Marcelina Calat Sic
		654	Pedrina Calat Sic
134	Delfina Sucup Mendoza	655	Nicolas Mendoza Sis
		656	Delfina Sucup Mendoza
		657	Enma Mendoza Sucup
		658	Rolando Mendoza Sucup
		659	Edgar Mendoza Sucup
		660	Ruben Mendoza Sucup
		661	Flora Mendoza Sucup
		662	José Luis Mendoza Sucup
135	Santiago Pérez	663	Francisca Ivoy
		664	Fermina Pérez Iboy
		665	Dionisio Pérez Ibóy
		666	Vidal Pérez Iboy
136	Francisco Matías Cojom	667	Valentina Pangán Juárez
		668	Felipa Pangán
137	Isabel Alvarado Rojas	669	María Dolores Alvarado De Reyes
		670	Efrain Reyes Rodriguez
		671	Héctor Reyes Alvarado
		672	Floricelda Reyes Alvarado

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		673	Irma Yolanda Reyes Alvarado
		674	Herlinda Reyes Alvarado
		675	Zoila Reyes Alvarado
		676	Norma Esperanza Reyes Alvarado
		677	Berta Cristina Reyes Alvarado
		678	Ana Hortensia Reyes Alvarado
		679	Santos Pascual Reyes Alvarado
138	Julián Galiego Mendoza	680	Lucía Reyes Cuxúm
		681	Florencia Galiego Reyes
		682	Juana Galiego Reyes
		683	Paula Galiego Reyes
		684	Rosenda Galiego Reyes
		685	Felisa Galiego Reyes
		686	Octavio Santiago Galiego Reyes
		687	José Guillermo Galiego Reyes
139	José Sic Cuxúm	688	Marciala Valey Morales
		689	Magdalena Sic Valey
		690	Susana Sic Valey
		691	Emilio Sic Valey
		692	Juana Sic Valey
		693	Jesús Sic Valey
140	Mariano Chen Valey	694	Cesilia Calat Sic
		695	Alejandro Chen Calat
		696	Clara Chen Calat
		697	Hilaría Chen Calat
		698	Agustín Chen Calat
141	Feliciano Sucup Cruz	699	Paula Morales
		700	Feliciano Cruz Sucup
		701	Marco Antonio Cruz Morales
		702	Eugenio Sucup Morales
		703	Fernando Cruz Morales
		704	Isabel Cruz Morales
		705	Luisa Cruz Morales
		706	German Cruz Morales
		707	Lucía sucup Morales
		708	Sebastiana Sucup Morales
142	Pedro Pangán Cujá	709	Felisa Juárez
		710	Valentina Pangán Juárez
		711	Marcelo Pangán Juárez
		712	Florentina Pangan Juárez
		713	Alfredo Pangan Juárez
		714	Tomasa Pangán Juárez
143	Raymundo Juárez López	715	Martina Ixpatá Xitumul
		716	Juan Juárez Ixpatá
		717	Fermina Juárez Ixpatá
144	Pedro Manuel Xitumul	718	Marcela Xitumul López
		719	Rosalínda Manuel Xitumul
		720	Raúl Manuel Xitumul
		721	Waldemar Manuel Xitumul
		722	Florinda Manuel Xitumul
		723	Rosario Manuel Xitumul
		724	Carlos Manuel Xitumul
		725	Clara Manuel Xitumul

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145	Aurelio Juárez López	726	Timotea Rodríguez Morales
		727	Aurelio Juárez Lopez
		728	Juan Diego Juárez Rodríguez
		729	Ramona Juárez Rodríguez
146	Pedro Chen Sic	730	Susana Pancán Cujá
		731	Pedro Chen Sic
		732	Esteban Chen Pancan
		733	Florinda Chen Pancan
147	Felipe Sic Cuxúm	734	Tomasa Mendoza Alvarado
		735	Felipe Sic Cuxúm
		736	Alejandro Sic Mendoza
		737	Lucia Sic Mendoza
		738	Melecia Sic Mendoza
		739	Patrocinia Sic Mendoza
148	Florentin Toj	740	Lucía González
		741	Florentin Toj
		742	Simeón Gonzalez Gonzalez
		743	Dolores Toj González
149	Domingo Chen Tahuico	744	Maximiliana Ixcopal López
		745	Domingo Chen Tahuico
		746	Carmen Chen Ixcopal
		747	Benedicto Chen Ixcopal
		748	Alberto Chen Ixcopal
		749	Santos Chen Ixcopal
		750	Eduviges Chen Ixcopal
		751	Jacinto Chen Ixcopal
150	Julián Pérez Vargas	752	María Roman Galeano
		753	Julián Pérez Vargas
		754	Isaias Pérez Galeano
		755	Bernarda Pérez Román
		756	Zacarías Pérez Roman
		757	Samuel Pérez Román
		758	Fidelino Pérez Roman
		759	Rosalina Pérez Román
		760	María Elena Pérez Román
151	Francisco Bolaj	761	Vicenta Siana Ixtecoc
		762	Pablo Bolaj Siana
		763	Vicente Bolaj Siana
		764	Juliana Bolaj Siana
152	Hilario Calate	765	Eugenia Sic
153	Doroteo Mendoza Rojas	766	Juana Sis
		767	Ovidio Mendoza Sis
154	Agustin Valey (or Baley)	768	Paula Pérez
		769	Agustin Valey (or Baley)
		770	Florencia Valey Pérez
		771	Juan Valey Pérez
		772	Sabina Valey Pérez
		773	Santiago Valey Pérez
		774	Magdalena Valey Pérez
		775	Medardo Valey Pérez

ANNEX I

		776	Matilde Valey Pérez
155	Tomás Valey Pérez	777	Teodora Jerónimo Cojóm
		778	Fernando Valey Jeronimo
156	Catarino Ixpatá Depaz	779	Tomasa Xitumul
		780	Juana Ixpatá Xitumul
157	Pedro Sic González	781	Catalina Depáz Siana
		782	José Angel Síc de Paz
		783	Balvina Sic de paz
		784	Victoria Sic de paz
		785	Orlando Sic de paz
		786	Armando Sic de paz
		787	Mercedes Sic de paz
		788	Paulina Sic Depaz
158	Miguel Xapot Martinez	789	Mercedes Guzmán Torres
		790	Carlos Xapot GuzmAn
		791	Luz Elena Xapot Guzmán
		792	Maria Luisa Xapot Guzmán
159	Efraín Ac Gonzalez	793	Herlinda Garniga Pérez
		794	Efrain Ac Gonzalez
		795	Rosendo Ac Garníga
		796	Thelma Marina Ac Garniga
160	Venancio de Paz	797	Antonia Xitumul Solomán
		798	Rodolfo Depaz Xitumul
		799	Adrian Depaz Xitumul
161	Juan Chen	800	Tránsito Juárez Uz
162	Daniel Galiego López	801	Ceferina Cachuec Jerónimo
		802	Hilario Galiego Cahcuec
		803	Leandra Galiego Cahuec
		804	Julian Galiego Cahuec
163	Santiago Sucup Pérez	805	Inocenta Mendoza Cahuec
		806	Juan Senón Sucup Mendoza
		807	Eulalio Sucup Mendoza
		808	Humberta Sucup Mendoza
		809	José Eleno Sucup Mendoza
		810	José Dolores Sucup Mendoza
164	Francisco Bolaj (or Bolaj López)	811	Sebastiana Ixtecoc Gonzalez
		812	Dominga Bolaj Ixtecoc
		813	Felipe Bolaj Ixtecoc
		814	Jerónimo Bolaj Ixtecoc
165	Manuel Alquejay	815	Juana Sic Osorio
		816	Juana Gregoria Alquejay Sic
		817	José Angel Alquejay Sic
166	Lorenzo Alvarado Manuel	818	Cornelia Alvarado Galeano
		819	Cruz Alvarado Alvarado
167	Matilde Juárez López	820	Maria Carmen Chen Gonzalez
		821	Denia Linday Juárez Chén
		822	Dolores Hermelinda Juárez Chen
		823	Lilian Rosmery Juárez Chén
		824	María Magdalena Juárez Chen
168	Alfonso Manuel Xitumúl	825	Cecilia Chen Valey
		826	Irma Yolanda Manuel Chen
169	Teresa Xitumul López	827	Paulina Xitumul
		828	Rony Rocael Xitumul

ANNEX I

170	" Unnamed girl”	Daughter of Luciana Xitumul Ixpancoc and Daniel Xitumul
171	Pedro de Paz Ciprian (or Pedro de Paz Cipriano)	**THE COURT HAS NO INFORMATION ABOUT THEIR NEXT OF KIN**
172	Juan Chen Ixcopal	
173	Antonio Beltran Izaguirre	
174	Juan Ixtecoc Xitumul	
175	Felipe González Gonzalez	
176	Domingo Gonzalez Gonzalez	
177	Patricio González Xitumul	
178	Tomas Alvarado Pérez	
179	Ciriaco Gonzales Alvarado	
180	Domingo Depaz	
181	Juan Galeano	
182	José Alvarado Reyes	
183	Lorenzo Pérez Sic	

ANNEX II

ANNEX II. DISPLACED PERSONS

1	Venancio Juárez Chen	**56**	Ubalda Juárez Pérez
2	Urbano Juárez Chen	**57**	Sabina Juárez Pérez
3	Carmen Isabel Sic Cruz	**58**	Hilario Juárez Pérez
4	Victoria Sic Sic	**59**	Enrique Alberto Juárez Pérez
5	David Sic Sic	**60**	Emiliano Juárez Pérez
6	Francisca Sic Sic	**61**	Matilde Tecú
7	Matilde Sic Sic	**62**	Balvino Depaz Tecú
8	Herlinda Sic Sic	**63**	Ana Calat Sic
9	Carlos Humberto Sic Crúz	**64**	Sofia Galiego Calat
10	Carmen Isabel Sic Cruz	**65**	Miguelina Galiego Calate
11	Melesio Sic Osorio	**66**	Luisa Galiego Calate
12	Susana Valey Xitumúl	**67**	María Cruz Galiego Calate
13	Eulalia María Galiego Valey	**68**	Edgar Galiego Calate
14	Tomasa Alvarado Xitumul	**69**	Irma Galiego Calate
15	Hirma Yolanda Gonzalez Alvarado	**70**	Josefina Galiego Calate
16	Blanca Esthela González Alvarado	**71**	Olegario Galiego Calate
17	Marvin Giovany González Alvarado	**72**	María Alvarado Cortez
18	Justina Sucup Mendoza	**73**	Alejandra Alvarado Alvarado
19	Florentina Morales Sucup	**74**	Rosalio Alvarado Alvarado
20	Miguel Angel Morales Sucup	**75**	Gloria Luz Alvarado Alvarado
21	Maura Morales Sucup	**76**	Fidelia Eliza Alvarado Alvarado
22	Modesta Morales Sucup	**77**	Edgar Avarado y Alvarado
23	Alberta Cho Siana	**78**	Irlubia Magdalena Alvarado Alvarado
24	Matilde Juárez Chó	**79**	Lorena Eugenia Alvarado
25	María Estela Juárez Chó	**80**	Pablo Cahuec Ixtecoc
26	Carlos René Juárez Chó	**81**	Miguelina Cahuec Ixtecoc
27	Bertha Martínez Izaguirre	**82**	Inocenta Cahuec Ixtecoc
28	Edwin Eduardo Juárez Martinez	**83**	Lazaro Cahuec Ixtecóc
29	Olga Marina Juárez Martinez	**84**	Reginaldo García Valey
30	Telma Hortencia Juárez Martinez	**85**	Francisco Sic Chén
31	Roselia Matínez	**86**	Victor Cástulo Alvarado Sucup
32	María Alvarado Román	**87**	Micaela Alvarado Sucúp
33	Magdaleno Cruz Siana Alvarado	**88**	Antonia Alvarado Sucup
34	Vicente Siana Alvarado	**89**	Roberto Alvarado Sucup
35	Benito Siana Alvarado	**90**	Macario Reyes Román
36	Candelario Siana Alvarado	**91**	Tarcila Milián Morales
37	Martina Siana Alvarado	**92**	Vitalina Milián Morales
38	Maria Guadalupe Ampérez Román	**93**	Maria Luisa Milian García
39	Carmen Piox Alvarado	**94**	Elvia Yaneth Milian García
40	Marta Cristina Siana Piox	**95**	Edgar René Milian García
41	Amalia Margarita Siana Piox	**96**	Angelica María Torres Milián
42	Odilia Yescenia Siana Piox	**97**	Vilma Torres Milián
43	Hugo Baldomero Siana Piox	**98**	Alonzo Torres Milián
44	Aura Estela Siana Piox	**99**	Ermelinda Grave García
45	Fabiana Chen Galiego	**100**	Marcelino Grave García
46	Francisca Galiego Chén	**101**	Maria Antonia Grave García
47	Jorge Galiego Chén	**102**	Victoriana Grave García
48	Antonia Galiego Chen	**103**	Martín Grave García
49	Carmela Galiego Chén	**104**	Edgar García Depaz
50	José Luis Galiégo Chen	**105**	Sandra Maribel García Depaz
51	Juan Garniga Ixpatá	**106**	Juana Siana Ixtecoc
52	Pedrina Pérez Iboy	**107**	Olivia Siana Ixtecoc
53	María del Rosario Juárez Pérez	**108**	Natalia Siana
54	Juan Nicolas Alvarado Siana	**109**	Elvira Ixpatá Sic
55	Flora Alvarado Siana	**110**	Eustaquia Cuquej Galiego

ANNEX II

111	José Patricio Alvarado Siana	**169**	Guillermo Manuel Cuquej
112	Rosendo Antonio Alvarado Siana	**170**	Pedrina Manuel Cuquej
113	Rosalina Alvarado Siana	**171**	Otilia Manuel Cuquej
114	Victoria de Paz Pérez	**172**	Leocadia Manuel Cuquej
115	Lucas Alvarado Depaz	**173**	Angela García Depáz
116	Silveria Alvarado Depáz	**174**	Carmela Morales García
117	Paula Alvarado DePáz	**175**	Isaias Morales García
118	Margarito Alvarado Depáz	**176**	Máxima Sic Gonzalez
119	Marcelina Alarcón Morente	**177**	Nazario García Sic
120	Jesus Alarcón Morente	**178**	Santiago García Sic
121	Berta Alarcón Morente	**179**	Paulina Bachán
122	Victoria Alarcón Morente	**180**	Decideria Pérez Bachán
123	Pedro González Tecú	**181**	Tráncito Pérez Bachán
124	Francisca Gonzalez Tecú	**182**	Clara Mercedes Pérez Bachán
125	Cármen Román Xitumúl	**183**	Rosa Pérez Bachán
126	José Manuel Román Xitumul	**184**	Candelaria García De Paz
127	Enrique Román Xitumul	**185**	Ricardo Xitumul García
128	Francisco Román Xitumul	**186**	María Xitumul García
129	Pedrina Román Xitumul de Piox	**187**	José Ronaldo Xitumul García
130	Maria Guadalupe Ampérez Román	**188**	Rosario Xitumul Lopez
131	Victorino Ixtecoc Bolaj	**189**	Patrocinia Ixtecoc Xitumul
132	Angel Augusto Ixtecoc Bolaj	**190**	Gregorio Ixtecoc Xitumul
133	Miguel Hector Ixtecóc Bolaj	**191**	Justo Manuel Ixpatá
134	Anastasia Xitumul Ixpancoc	**192**	Felipa Juárez Lopez de Manuel
135	Carmela Galeano Xitumul	**193**	Teresa Manuel Juárez
136	Patrocinia Galeano Xitumul	**194**	Rosa Manuel Juárez
137	Cristina Galeano Xitumul	**195**	Pedro Manuel Juárez
138	Candelaria Xitumul	**196**	Josefina Manuel Juárez
139	Leandra Sucup	**197**	Tomas Valey González
140	Jose Mendoza Sucup	**198**	Marta Mendoza Sis
141	Clementina Bachán Cahuec	**199**	Anselma de la Crúz Valey Mendoza
142	Tranquilina Bachan Cahuec	**200**	Fausto Eduardo Valey Mendoza
143	Catalina Bachán Depáz	**201**	Bernardinod Alvarado Alvarado
144	Isabel Bolaj Ixtecoc de García	**202**	Felisa Matias Ojóm
145	Florinda García Bolaj	**203**	Alberto Alvarado Matias
146	Carmelina García Bolaj	**204**	Rosa Alvarado Matias
147	Tomasa Alvarado Xitumul	**205**	Juan de la Cruz Alvarado Matías
148	Antonia Alvarado Xitumul	**206**	Josefa Gabriela Alvarado Matías
149	Daniel Xitumul Cuxúm	**207**	Mario Alvarado Matías
150	Francisco Sic Chén	**208**	Josefa Síc Síc
151	Manuela Toj Pérez	**209**	Ana Síc Síc
152	Ernesto Pérez Toj	**210**	Pedro Sic Sic
153	Lucila Morán	**211**	Lucía Sic Sic
154	Mauricio Galiego Morán	**212**	Florinda Sic Sic
155	Eva Mendoza Morán	**213**	Félix Valey Galiego
156	Jacobo Galiego Morán	**214**	Maria Valey Xitumul
157	Telma Galiego Morán	**215**	Alfonso Valey Xitumul
158	Abelina Galiego Morán	**216**	Santiago Valey Xitumul
159	Brigido Xitumul	**217**	Maximiliano Chen Matias
160	Francisca Calate Sic	**218**	Herlinda Chen Matias
161	Rosendo Xitumul Calate	**219**	Francisco Chen Matias
162	Eduardo Xitumul Calate	**220**	María Josefa Depaz Xitumul
163	René Apolinario Xitumul Calate	**221**	Ana Carmela Pérez Depaz
164	Jorge Xitumul Calate	**222**	Lucia Pérez Depaz
165	Patricia Sic Osorio	**223**	Valeria Leonarda Herrera García
166	Fernando Ixpatá Sic	**224**	Israel Donahí Alvarado Herrera
167	Mario García Depáz	**225**	Rosa García Depaz
168	Florinda De Paz Herrera	**226**	Elizabeth González García

ANNEX II

227	Isaias de Paz Herrera	**282**	María Dolores Alvarado de Reyes
228	Moises de Paz Herrera	**283**	Efraín Reyes Rodríguez
229	Mirian Olga de Paz Herrera	**284**	Lucia Reyes Cuxúm
230	Juan Sic Cuxum	**285**	Florencia Galiego Reyes
231	Elena Chen Valey	**286**	Juana Galiego Reyes
232	Manuel de Jesus Galiego Mendoza	**287**	Paula Galiego Reyes
233	Marcelina Garniga Pérez de Galiego	**288**	Rosenda Galiego Reyes
234	Blanca Estela Galiego Garniga	**289**	Felisa Galiego Reyes
235	René Antonio Galiego Garniga	**290**	Octavio Santiago Galiego Reyes
236	Hector Vinicio Galiego Garniga	**291**	José Guillermo Galiego Reyes
237	Francisco Díaz Sucup	**292**	Cecilia Chen Valey
238	Porfiria Díaz Xitumul	**293**	Irma Yolanda Manuel Chen
239	Hercilia Hernández Morales	**294**	Paula Morales
240	Benjamin Ixtecoc Hernández	**295**	Eugenio Cruz Morales
241	Elisa Ixtecoc Hernández	**296**	Isabel Cruz Morales
242	Maria Rosario Ixtecoc Hernández	**297**	Luisa Cruz Morales
243	Alfredo Ixtecoc Hernández	**298**	German Cruz Morales
244	Sabina Us Coloch	**299**	Mateo Cruz Morales
245	Diego Us Coloch	**300**	Lucía Cruz Morales
246	Francisca Us Coloch	**301**	Sebastiana Cruz Morales
247	Narciza Us Coloch	**302**	Juan Juárez Ixpatá
248	Sebastiana Bachan	**303**	Fermina Juárez Ixpatá
249	Ignacia Roman Bachan	**304**	Felipe Sic Cuxúm
250	Juana Roman Bachan	**305**	Tomasa Mendoza Alvarado
251	José Luis Román Bachan	**306**	Alejandro Sic Mendoza
252	Rigoberta Román Bachan	**307**	Lucía Sic Mendoza
253	Marciala Depaz Ciprian De Gonzalez	**308**	Melesia Sic Mendoza
254	Brigido Depaz Ciprian	**309**	Patrocinia Sic Mendoza
255	Juana Depaz Ciprian	**310**	Lucía González
256	Jesusa Depaz Ciprian	**311**	Dolores Toj González
257	Andres Depaz Ciprian	**312**	Julián Pérez Vargas
258	Silverio Chen Valey	**313**	María Roman Galeano De Pérez
259	Marcela Juárez López	**314**	Isaias Pérez Galeano
260	Baudilio Chén Juárez	**315**	Zacarías Pérez Roman
261	Leandro Chen Juárez	**316**	Samuel Pérez Román
262	Emilia Chén Valey	**317**	Fidelino Pérez Roman
263	Margarito Calat Chen	**318**	Francisco Bolaj
264	Roberta Juárez López	**319**	Pablo Bolaj Siana
265	Buenaventura Chen Juárez	**320**	Vicente Bolaj Siana
266	Rosa Chén Juárez	**321**	Juliana Bolaj Siana
267	Juan Bautista Chen Juárez	**322**	Paula Pérez
268	Gloria Chén Juárez	**323**	Juan Valey Pérez
269	Camilo Chen Juárez	**324**	Sabina Valey Pérez
270	Marcos Uscap Xitumul	**325**	Santiago Valey Pérez
271	Albina Chén Valey De Uscap	**326**	Magdalena Valey Pérez
272	Josefina Uscap Chen	**327**	Medardo Valey Pérez
273	Augusto Uscap Chen	**328**	Matilde Valey Pérez
274	Ciriaca López Ixpatá	**329**	Teodora Jerónimo Cojóm
275	Pedrina Juárez López	**330**	Fernando Valey Jeronimo
276	Catalina García Manuel	**331**	Catalina de paz Siana
277	Ernesto Xitumul García	**332**	José Angel Sic Depaz
278	Santos Genaro Xitumul García	**333**	Balvina Sic de paz
279	Delmo Xitumul García	**334**	Victoria Sic de paz
280	Oscar Ezequiel González García	**335**	María Luisa Chapot Guzmán
281	Fermina Pérez Iboy	**336**	Tránsito Juárez Uz (or Us)

ANNEX II

337	Orlando Sic de paz
338	Armando Sic de paz
339	Mercedes Guzmán Torres
340	Luz Elena Chapot Guzmán
341	Hilario Galiego Cahcuec
342	Leandra Galiego Cahuec
343	Julian Galiego Cahuec
344	Sebastiana Ixtecoc Gonzalez
345	Dominga Bolaj Ixtecoc
346	Felipe Bolaj Ixtecoc
347	Jerónimo Bolaj Ixtecoc
348	Waldemar Manuel Xitumul
349	Florinda Manuel Xitumul
350	Rosario Manuel Xitumul
351	Juana Juárez López
352	Martín Depaz Alvarado
353	Telma Depaz Alvarado
354	José Mario Depaz Alvarado
355	Tomas Morente Galiego
356	Maria Morente Galiego
357	Cristina García Manuel
358	Teresa Xitumul Lopez
359	Paulina Xitumul
360	Juana García Depaz
361	Napoleón García De Paz

ANNEX III

ANNEX III. PERSONS NOT IDENTIFIED IN THE FILE (POSSIBLE VICTIMS)	
1	María Verónica Alarcón Morales
2	Raul Alarcón Morales
3	Fermina Hernández Mendoza
4	Hermelinda Sic Hernández
5	Leonardo Alvarado García
6	Marcos González Román
7	Mauricio González Román
8	Juan Capistrano Juárez Beltrán
9	Camilo Juárez Beltrán
10	Isaías Juárez Beltrán
11	Angel Alvarado Sucup
12	Jaime Jesús García
13	Mario Xitumul Xitumul
14	Leonel Sic García
15	Evaristo Sic García
16	Rosa Estela Sic García
17	José Bonifacio Sic García
18	Cecilio Cruz Sic García
19	Víctor Chen Mendoza
20	Genaro Chen Mendoza
21	Modesta Valey
22	Hilario Calate
23	Juana Calat Sic
24	Silvia García de Paz
25	Bruna Siana
26	Eulalio Sucup Mendoza
27	Pablo Canahuí
28	Florencia Valey Pérez
29	Antonio Sical
30	Bernardino Corazón Raxcacó
31	Mateo Cruz Morales
32	Juana Reyes Roman
33	Toribia Reyes Román
34	Rosa Tahuico Depaz (presumed wife of Pedro de Paz Ciprian)
35	Elvira Depaz Tahuico (presumed daughter of Pedro de Paz Ciprian)

ANNEX IV

ANNEX IV. THE REPRESENTATIVES DID NOT SPECIFY WHETHER THESE PERSONS REMAINED DISPLACED AFTER MARCH 9, 1987.	
1	Antonia Chén Valey
2	Rosalina Juárez Chén
3	Eligia Cruz
4	Aminta Síc Crúz
5	Juan Síc Crúz
6	Maria Lucrecia Sic Cruz
7	Crisanto Sic Cruz
8	Andrea Osorio Galeano
9	Maria Teresa Sic Osorio
10	Miguel Sic Osorio
11	Patricia Sic Osorio
12	Juana Sic Osorio
13	Paulina Sic Osorio
14	Vicente Sic Osorio
15	Dionicio Sic Osorio
16	Mario Mendoza Sic
17	María Mendoza Sic
18	Carmela Mendoza Sic
19	Lucía Sic Sic
20	Florinda Sic
21	Pedro Sic Sic
22	Ana Sic sic
23	Hilda Sic Sic
24	Josefa Sic Sic
25	Maximiliana Sic Cacoj/Cacaj
26	Ramón Sic Cacoj
27	Faustina Sic Cacoj
28	Ronaldo Sic Cacoj
29	Ana Victoria Sic Cacoj
30	Bernardo Sic Cacoj
31	Liria Sic Cacoj
32	Mateo Pérez Cajbón
33	Maria Ampérez
34	Cruz Pérez Ampérez
35	Marta Elena Galiego Chen
36	Victoria Chen Galiego
37	Juliana Xitumul Ixpatá
38	Felipe Garniga Ixpatá
39	Rafael Depáz Tecú
40	Estéfana Ixtecóc Gonzalez
41	Timoteo García Rojas
42	Tomás García Valey
43	Máxima Emiliana García Valey
44	Maria Concepcion Chen Sic
45	Rosalina Sic Chen
46	Reyna Margarita Sic Chen
47	Petronila Sic Chén

ANNEX IV

48	Mario Sic Chén
49	Marcelo Síc Chén
50	Pedro Síc Hernandez
51	Dominga Sucup Cahuec
52	Ceferino Alvarado Sucúp
53	Fidel Alvarado Sucup
54	Rosario Román Túm
55	Andres Reyes Román
56	Santiago Reyes Román
57	Fidelia Morales
58	Amelia Milián Morales
59	Angelica María, Vilma y Alonzo Torres Milián
60	Venancio Torres Gonzalez
61	Mateo Grave
62	Eusebia Grave García
63	José León Grave García
64	Margarita Ixtecoc González
65	Paula Siana Ixtecoc
66	Angel Alvarado Tecú
67	Juan Alarcón García
68	Graciela Morente
69	Clotilde Felipa Alarcón Morente
70	Enriqueta Tecú Chiquito
71	Rosa Gonzalez Tecú
72	Juana Xitumul López
73	Isabel Reina Bolaj
74	Simona Cahuec
75	María García Manuel
76	Adela Florentina Alvarado García
77	Hector Rolando Alvarado García
78	Maria Concepción Xitumul Xitumul
79	Mario Xitumul Xitumul
80	Plácido Alarcón Morales
81	Buenaventura Pérez Bachán
82	Agustín Pérez Bachán
83	José Alvarado Matías
84	María Elena Alvarado Matías
85	Paulina Sic Osorio
86	Catalina Xitumul Juárez
87	Maria Jesus Matias Ojóm
88	Valentina Depaz Sarpec
89	Cayetana Sucup
90	Zenón Us
91	Eligia Coloch Sucup
92	Rosalia Román Bachan
93	Rafaela Ciprian Coloch
94	Antonio Depaz Ciprian
95	Mario Depaz Ciprian
96	Guillermo Gonzalez Román
97	Mayra Judith González García
98	Francisca Iboy
99	Catarino Xitumul

100	Dionicio Pérez Iboy
101	Vidal Pérez Iboy
102	Alfonso Manuel Xitumul (fallecido)
103	Marco Antonio Cruz Morales
104	Fernando Cruz Morales
105	Simeón Gonzalez Gonzalez
106	Bernarda Pérez Román
107	Rosalina Pérez Román
108	María Elena Pérez Román
109	Vicenta Siana Ixtecoc
110	Mercedes Sic de paz
111	Carlos Chapot Guzmán
112	Simeon Juárez Us
113	Ceferina Cachuec Jerónimo
114	Toribio Chen Gonzalez
115	Maria Jesus Matias Ojóm
116	Pedro Manuel Xitumul
117	Marcela Xitumul López
118	Rosalínda Manuel Xitumul
119	Raúl Manuel Xitumul
120	Carlos Manuel Xitumul
121	Clara Manuel Xitumul
122	Emiliana López Juárez
123	Patrocinia Alvarado Camo
124	Toribia Galiego
125	Victor Cuquej Morente
126	Gregoria Manuel Xitumul
127	Macario Galiego Mendoza
128	Jerónimo Ixpatá Xitumul
129	Fidel Manuel Xitumul
130	Marcelino Eugenio Morales
131	Juan García de Páz
132	Serapio Pérez Sic
133	Celestino Ixtecoc
134	Ramon Calat Sic
135	Francisco Sic Cuxum
136	Alberto Depaz Reyes
137	Secundino García Gonzalez
138	Vicente de Paz Pérez
139	Mariano Díaz Tolom
140	Andrés Ixtecoc Xitumul
141	Bernardo Roman Ivoy

142	Tomás García Reyes
143	Bernardino Alvarado Alvarado
144	Juan Chen Galiego
145	Nicolás Juárez
146	Leandro Xitumul
147	Santiago Pérez
148	Isabel Alvarado Rojas
149	Julián Galiego Mendoza
150	Feliciano Sucup Cruz
151	Martina Ixpatá Xitumul
152	Florentin Toj
153	Agustin Valey
154	Tomás Valey Pérez
155	Pedro Sic González
156	Miguel Xapot Martinez
157	Juan Chen
158	Daniel Galiego López
159	Dionicio Juárez Valey
160	Luis Depaz Cipriano
161	Francisco Bolaj López