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INTER-AMERICAN COURT OF HUMAN RIGHTS

CASE OF THE RÍO NEGRO MASSACRES *v.* GUATEMALA

JUDGMENT OF SEPTEMBER 4, 2012
(Preliminary objection, merits, reparations and costs)

In the case of the *Río Negro Massacres*,

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

Diego García-Sayán, President
Manuel E. Ventura Robles, Vice President
Leonardo A. Franco, Judge
Margarette May Macaulay, Judge
Rhadys Abreu Blondet, Judge
Alberto Pérez Pérez, Judge, and
Eduardo Vio Grossi, Judge;

also present,

Pablo Saavedra Alessandri, Secretary, and
Emilia Segares Rodríguez, Deputy Secretary,

in accordance with Articles 62(3) and 63(1) of the American Convention on Human Rights (hereinafter "the American Convention" or "the Convention") and with Articles 31, 32, 41, 42, 65 and 67 of the Rules of Procedure of the Court[1] (hereinafter also "the Rules of Procedure"), delivers this Judgment.

[1] The Court's Rules of Procedure approved by the Court at its eighty-fifth regular session held from November 16 to 28, 2009.

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I
INTRODUCTION OF THE CASE AND PURPOSE OF THE DISPUTE

1. On November 30, 2010, in keeping with the provisions of Articles 51 and 61 of the American Convention and Article 35 of the Court's Rules of Procedure, the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission" or "the Commission") submitted to the jurisdiction of the Court the case of the Río Negro Massacres with regard to the Republic of Guatemala (hereinafter "the State" or "Guatemala"). This case originated in the petition lodged by the *Asociación para el Desarrollo Integral de las Víctimas de la Violencia en las Verapaces* (hereinafter "ADIVIMA") on July 19, 2005. The Inter-American Commission approved Admissibility Report No. 13/08 on March 5, 2008, and, under Article 50 of the Convention, issued Merits Report No. 86/10 on July 14, 2010, with a series of recommendations to the State.[2] The Merits Report was notified to Guatemala on July 30, 2010, and the State was granted two months to report on compliance with the recommendations. On October 4, 2010, the State requested a one-month extension to submit information on compliance with the recommendations made by the Commission. This extension was granted on October 30, 2010, and the Commission ordered the State to submit information by November 20, 2010, at the latest. However, the State did not submit the necessary information and, consequently, the Commission submitted the case to the Court "owing to the State's failure to comply with the recommendations and the resulting need to obtain justice in the case." The Commission appointed Commissioner Dinah Shelton and the then Executive Secretary, Santiago A. Canton, as delegates, and Deputy Executive Secretary Elizabeth Abi-Mershed, and Karla I. Quintana Osuna and Isabel Madariaga Cuneo, lawyers of the Executive Secretariat, as legal advisors.

2. According to the Inter-American Commission, this case deals with "the destruction of the Mayan community of Río Negro by means of a series of massacres perpetrated by the Guatemalan Army and members of the Civil Self-defense Patrols in 1980 and 1982; the persecution and elimination of its members and the subsequent violations directed against the survivors, including the failure to investigate the said events. In particular, the Commission submits this case due to the denial of justice ever since the acts were perpetrated, and the consequent impunity that persists to this day." In addition, the Commission indicated that "the facts reported to the Court include, among others, those relating to the forced disappearances, forced displacement, and violations of the personal integrity of the next of kin and survivors, the destruction of the community's social fabric, the failure to identify the persons executed and disappeared […], the consequent failure to bury them in keeping with Mayan traditions, the impossibility of the survivors returning to their lands, the lack of protection for children, accusations of being 'guerrillas, the social base of the guerrillas, internal enemies and subversives,' discrimination, as well as the [alleged] failure to conduct an impartial and effective investigation into the multiple violations that occurred during and after the massacres." The Commission also alleged that the facts of this case "[…] fit within a more general context of massacres in Guatemala that were planned by State agents as part of a 'scorched earth' policy aimed by the Guatemalan

[2] In Admissibility Report No. 86/10, the Commission concluded that the State was responsible for the violation of Articles 3, 4, 5, 6, 7, 8, 11, 12, 16, 17, 19, 21, 22, 24 and 25 of the American Convention on Human Rights; as well as for failure to comply with the obligations established in Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture, Article 7(b) of the Convention of Belém do Pará, and Article I of the Inter-American Convention on Forced Disappearance of Persons, to the detriment of the presumed victims indicated in the said Report.

State against the Mayan people, who were characterized as the 'internal enemy,' in a context of discrimination and racism […]."

3. Based on the above, the Inter-American Commission asked the Court to declare the international responsibility of the State of Guatemala for the alleged violation of the rights recognized in the following articles of the American Convention: 3 (Right to Juridical Personality), 4 (Right to Life), 5 (Right to Humane Treatment), 6 (Freedom from Slavery), 7 (Right to Personal Liberty), 8 (Right to a Fair Trial), 11 (Right to Privacy), 12 (Freedom of Conscience and Religion), 16 (Freedom of Association), 17 (Rights of the Family), 19 (Rights of the Child), 21 (Right to Property), 22 (Freedom of Movement and Residence), 24 (Right to Equal Protection) and 25 (Right to Judicial Protection), in relation to the general obligation to respect and ensure human rights established in Article 1(1) of this instrument, to the detriment of the members of the Río Negro community. In addition, it asked the Court to declare that the State had failed to comply with the obligations established in Articles I of the Convention on Forced Disappearance of Persons (hereinafter "Convention on Forced Disappearance"); 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture (hereinafter "Convention against Torture"), and 7(b) of the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women "Convention of Belem do Pará." In addition, the Inter-American Commission asked the Court to order the State to provide specific measures of reparation**.**

II
PROCEEDING BEFORE THE COURT

4. The State and the representatives of the presumed victims were notified of the submission of the case by the Inter-American Commission on March 29, 2011. On June 6, 2011, ADIVIMA, representing the presumed victims, submitted its brief with pleadings, motions and evidence (hereinafter "pleadings and motions brief"), in the terms of Article 25 and 40 of the Rules of Procedure. In general, the representatives concurred with the violations alleged by the Inter-American Commission. Nevertheless, the representatives did not allege failure to comply with the obligations established in Articles I of the Convention on Forced Disappearance, and 1, 6 and 7 of the Convention against Torture. However, in addition to the Commission's allegations, the representatives considered that the right recognized in Article 18 (Right to a Name) of the American Convention and Article 4 (Right to Life) of the Convention had been violated; the latter right in relation to the alleged conditions in which the surviving members of the Río Negro community who were relocated to the Pacux settlement are living. Lastly, they asked the Court to order the State to provide various measures of reparation.

5. On November 22, 2011, the State submitted a brief answering the submission of the case and with observations on the pleadings and motions brief (hereinafter "the answering brief"). In that brief, Guatemala contested the Court's jurisdiction to examine the violations that took place before the State had recognized the Court's contentious jurisdiction, because "they are not continuing in nature […]." Nevertheless, the State recognized its international responsibility for some of the violations alleged by the Commission and the representatives and accepted some of their claims for reparation. In addition, it submitted to the Court a list of victims who had presumably already received compensation under the National Reparations Program. The State appointed María Elena de Jesús Rodríguez López as its Agent and Enma Estela Hernández Tuy de Iboy as its Deputy Agent.

6. On March 14 and 17, 2012, the Inter-American Commission and the representatives, respectively, presented their observations on the State's objection to the Court's temporal jurisdiction and on its partial acknowledgement of responsibility (*supra* para 5).

7. Following the presentation of the main briefs (*supra* paras. 1 to 5), in an Order of May 31, 2012, the President of the Court required that the statements of four presumed victims, the testimony of one witness, and the opinions of three expert witnesses proposed by the Inter-American Commission, the State and the representatives, respectively, be received by affidavit. The parties and the Commission had the opportunity to formulate observations and questions for the presumed victims and expert witnesses. In addition, the President convened the Inter-American Commission, the representatives, and the State to a public hearing to receive the statements of two presumed victims and the opinions of two expert witnesses offered by the representatives and the Inter-American Commission, respectively, as well as the final oral arguments of the representatives and the State, and the final oral observations of the Commission on the preliminary objection, merits, reparations and costs.[3]

8. On June 12, 2012, the President of the Court asked the Inter-American Commission to forward the list of presumed victims, organized by family units.

9. The public hearing was held on June 19 and 20, 2012, during the Court's ninety-fifth regular session. During the hearing, the Court asked the parties and the Inter-American Commission to provide certain clarifications, additional information, and helpful evidence when presenting their final written arguments and observations.[4]

10. After two extensions, on July 3, 2012, the Commission presented the list of presumed victims, organized by family units.

11. On July 5 and 6, 2012, respectively, the "Strategic and Structural Litigation Unit" of the Human Rights Clinic of the *Pontificia Universidad Javeriana,* Cali, and the Human Rights Program of the *Universidad Veracruzana* submitted *amicus curiae* briefs in this case.

12. On July 20, 2012, the representatives, the State, and the Inter-American Commission submitted their respective final written arguments and observations electronically. Together with their briefs, the Commission, the representatives and the State forwarded most of the clarifications and documents requested during the public hearing (*supra* para. 9). On July 23, 2012, the State submitted more of the documents requested by the Court. On July 27, 2012, the representatives forwarded the original of their final written

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[3] *Cf. Case of the Río Negro Massacres v. Guatemala.* Summons to a Public Hearing. Order of the President of the Inter-American Court of Human Rights of May 31, 2012. This Order is available at: http://www.corteidh.or.cr/docs/asuntos/rio_01_06_12.pdf. Following this summons, on June 18, 2012, the State desisted from its offer of the testimony of Manuel Giovanni Vásquez.

[4] At this public hearing there appeared: for the Inter-American Commission on Human Rights: Rosa María Ortíz, Commissioner, and Karla I. Quintana Osuna, specialist of the Executive Secretariat; for the representatives: Edgar Fernando Pérez Archila, Juan de Dios García Xajil, Tomás Marcelino Alonzo Teletor, Jorge Alfredo Xitumul Sucup, María Hortencia Lajuj Sánchez, María Eustaquia Uscap Ivoy, María Osorio Chen, Bruna Pérez Osorio, Jose Osorio Sic, José Osorio Osorio, Cruz Pérez Osorio, Juana Chen Osorio, Juan Chen Osorio, Carmen Sánchez Chen, Tomasa Osorio Chen, Edgar Alfredo Ortega Franco, José Rodolfo González Sierra, Ana Elisa Virginia de la Asunción Samayoa Guzmán, Silvia Weber, María Purvis, Denis Becker and Scott Sic; for the Republic of Guatemala: Antonio Arenales Forno, Minister for Peace; Larry Mark Robles Guibert, Attorney General; Raúl Morales Moscoso, Vice Minister for Foreign Affairs; Jorge Humberto Herrera Castillo, President of the National Reparations Program; María Elena de Jesús Rodríguez López, Agent for the State, and Diego Roberto Estrada Tobar, Legal Adviser of the Department for Monitoring International Human Rights Cases of the Presidential Committee for Coordination of the Executive's Human Rights Policies.

arguments to which they added a list of corrigenda. The clarifications and helpful evidence were forwarded to the Inter-American Commission and the parties so that they could make any observations they considered pertinent.

13. On August 13, 2012, the Inter-American Commission, the representatives, and the State forwarded their observations on the clarifications and helpful evidence submitted with the final written arguments and observations (*supra* para. 12). In addition, the State presented a copy of the case file of the investigation in response to a request made by the Court during the public hearing.

14. On August 27, 2012, the representatives and the Commission presented their observations on the copy of the investigation case file submitted by the State (*supra* para. 13).

III
COMPETENCE

15. Guatemala has been a State Party to the American Convention since May 25, 1978, and accepted the contentious jurisdiction of the Court on March 9, 1987. In the instrument accepting the Court's competence, the State indicated that this acceptance was applicable to "cases that occurred after the date [on] which this declaration is presented to the Secretary of the Organization of American States," which took place on March 9, 1987 (*infra* paras. 35 to 39). In these terms, and in accordance with Article 62(3) of the American Convention, the Court is competent to hear any alleged facts and violations in this case, as indicated in Chapters IV and V of this Judgment (*infra* paras. 17 to 39).

16. In addition, the Court is also competent to examine any facts and presumed human rights violations relating to non-compliance with some provisions of the Inter-American Convention to Prevent and Punish Torture, ratified by Guatemala on January 29, 1987; the Inter-American Convention on the Prevention, Punishment, and Eradication Of Violence against Women, ratified by the State on April 4, 1995, and the Inter-American Convention on Forced Disappearance of Persons, ratified by Guatemala on February 25, 2000, under the terms of the acknowledgement of responsibility made by the State (*infra* Chapter IV).

IV
PARTIAL ACKNOWLEDGMENT OF RESPONSIBILITY

17. In its answering brief, the State partially acknowledged its international responsibility with regard to some of the violations alleged in this case, as follows:

a) The violation of Articles 3 (Right to Juridical Personality), 4 (Right to Life), 5 (Right to Humane Treatment) and 7 (Right to Personal Liberty) of the American Convention, in relation to Article 1(1) thereof (Obligation to Respect Rights), as well as the failure to comply with the obligation established in Article I of the Convention on Forced Disappearance, to the detriment of Ramona Lajuj and Manuel Chen Sánchez. The State expressed its "full acquiescence," because both these persons were "victims of forced disappearance." Regarding Manuel Chen, the State also acknowledged the violation of Article 19 (Rights of the Child) of the Convention, to his detriment;

b) The violation of Articles 5 (Right to Humane Treatment) and 11 (Right to Privacy) of the Convention, to the detriment of María Eustaquia Uscap Ivoy. The State

indicated its "partial acquiescence," because "the physical and emotional effects of the violations suffered by [Ms. Uscap Ivoy, who is a surviving victim] may have transcended and persisted until the time over which the Court has competence to examine violations by the State";

c) The violation of Article 5 (Right to Humane Treatment) of the Convention, in relation to Article 1(1) thereof (Obligation to Respect Rights), to the detriment of the members of the Río Negro community who survived the massacres, as well as to the detriment of the next of kin of the members of the community. The State indicated its "partial acquiescence," because "the said violation could transcend and persist until the time when the Court had competence to examine [the] violations";

d) The violation of Articles 6 (Freedom from Slavery) and 17 (Rights of the Family) of the Convention, in relation to Article 1(1) thereof, to the detriment of the following 17 children: Agustín Chen Osorio, Celestina Uscap Ivoy, Cruz Pérez Osorio, Froilan Uscap Ivoy, Jesús Tecú Osorio, José Osorio Osorio, Juan Chen Chen, Juan Chen Osorio, Juan Pérez Osorio, Juan Uscap Ivoy, Juana Chen Osorio, María Eustaquia Uscap Ivoy, Pedro Sic Sánchez, Silveria Lajuj Tum, Tomasa Osorio Chen, Florinda Uscap Ivoy and Juan Burrero. The State indicated its partial acquiescence, "because the said human rights violations could transcend and persist until the Court had competence to examine the violations by the State";

e) The violation of Article 19 (Rights of the Child) of the American Convention to the detriment of "those children who were under 18 years of age when the Court's competence was ratified";

f) The violation of Articles 12 (Freedom of Conscience and Religion) and 16 (Freedom of Association) of the Convention, in relation to Article 1(1) thereof, to the detriment of the members of the Río Negro community. The State indicated its "partial acquiescence," considering that "the said violations could continue over time and fall within the temporal competence" of the Court;

g) The violation of Article 22 (Freedom of Movement and Residence) of the American Convention, in relation to Article 1(1) thereof. In this regard, the State "partially" acquiesced specifically to the violation of the right to freedom of residence, because "the members of the Río Negro community were relocated to the Pacux settlement" after 1987, the year in which it accepted the Court's jurisdiction;

h) The violation of Articles 8 (Right to a Fair Trial) and 25 (Right to Judicial Protection) of the American Convention, in relation to Article 1(1) of the Convention and to Articles 1, 6 and 8 of the Convention against Torture, and to Article 7(b) of the Convention of Belem do Pará, to the detriment of the survivors and next of kin of those who were tortured and extrajudicially executed during the different massacres. The State indicated its "partial acquiescence," considering that it "had not guaranteed fully the effectiveness of [those] rights […] as regards the investigation of the facts and punishment of those responsible for them, following its acceptance of the competence" of the Court, despite the fact that several investigations had been carried out and some individuals had been sentenced and convicted for the massacres;

i) The violation of Articles 8 (Right to a Fair Trial) and 25 (Right to Judicial Protection) of the American Convention, in relation to Article 1(1) thereof and to Article I of the Convention on Forced Disappearance, to the detriment of Ramona Lajuj

and Manuel Chen Sánchez. The State indicated its "full acquiescence," because both these persons were the only victims of forced disappearance identified by the Inter-American Commission;

18. Nevertheless, the State's answering brief explicitly opposed its international responsibility being declared for the following human rights violations:

a) The violation of Articles 4 (Right to Life), 5 (Right to Humane Treatment), 7 (Right to Personal Liberty) and 19 (Rights of the Child) of the American Convention, in relation to Article 1(1) thereof (Obligation to Respect Rights), "to the detriment of the adult and child members of the Río Negro community extrajudicially executed";

b) The violation of Articles 5 (Right to Humane Treatment) and 11 (Right to Privacy) of the American Convention, in relation to Article 1(1) of this treaty, to the detriment of J.O.S., V.C., M.T. and, additionally, of Article 19 (Rights of the Child) of the Convention to the detriment of J.O.S., because, according to the Commission's Merits Report, the alleged rape to which they were subjected took place before the date on which it accepted the Court's contentious jurisdiction;

c) The violation of Article 11(1) (respect for honor and dignity) of the American Convention, in relation to Article 1(1) thereof (Obligation to Respect Rights), "because the said violations could have occurred between 1980 and 1982 when the massacres were perpetrated, at which time the State had not accepted the Court's jurisdiction";

d) The violation of Article 21 (Right to Property) of the Convention, in relation to Article 1(1) thereof (Obligation to Respect Rights), because "the alleged facts took place before the State had accepted the Court's jurisdiction," and, as indicated by the representatives, "the victims were relocated to the Pacux settlement, the site of their current residence";

e) The violation of Article 24 (Right to Equal Protection) of the Convention, in relation to Article 1(1) thereof (Obligation to Respect Rights), "because the fact that they belonged to the Achí Maya group was not a factor that prevented them from being treated equally under Guatemalan law" and, moreover, the representatives "did not found this violation on factual situations";

f) The violation of Article 22 (Freedom of Movement and Residence) of the American Convention, in relation to Article 1(1) thereof. In this regard, the State specifically rejected the violation of freedom of movement, because "this phenomenon could not have continued after March 9, 1987," the date on which Guatemala recognized the temporal competence of the Court";

g) The violation of Articles 8(1) (judicial guarantees) and 25 (Right to Judicial Protection) of the American Convention, with regard to Articles 1(1) (Obligation to Respect Rights) and 2 (Domestic Legal Effects) thereof, because the Inter-American Commission did not specify to whose detriment the alleged violations were committed;

h) The violation of Article 18 (Right to a Name) of the American Convention, because the representatives "did not relate any facts to the possible violation of the right contained in this provision," and these supposed violations occurred before the State accepted the Court's jurisdiction, and

i) The violation of Article 19 (Rights of the Child) of the American Convention to the detriment of María Eustaquia Uscap Ivoy, because she was of age when the contentious jurisdiction of the Court was recognized.

19. In its answering brief, the State also acknowledged some of the "victims in this case," and provided a list of names. In addition, it presented a list of victims who have presumably already received compensation under the National Reparations Program, and accepted some of the claims for reparation put forward by the representatives.

20. Regarding the "total acquiescence" to the violations indicated in subparagraphs (a) and (i) of paragraph 17, the Commission considered that there is no longer any dispute "regarding the factual framework that substantiates the said violations, or the legal consequences claimed." Regarding the remaining violations, the Inter-American Commission indicated that it understood that "the partial acknowledgement of responsibility […] has a broad scope consistent with the terms of acknowledgement and taking into account the case law of the inter-American system concerning continuing violations, as well as the facts that occurred within the Court's temporal competence." Nevertheless, although it assessed this partial acknowledgement positively, it indicated that "there are still some violations regarding which the State has not accepted responsibility, and that remain in dispute." Therefore, the Commission asked the Court: (a) to grant full legal effects to the State's acknowledgement of responsibility; (b) to present a detailed description of the facts and the violations that occurred; (c) to make a thorough analysis of the violations that were partially acknowledged and those that were contested, and (d) to proceed to declare the international responsibility of the State with regard to them.

21. In general, the representatives indicated that the State's answering brief contained a series of inconsistencies because, on the one hand, it contested the Court's temporal competence while, on the other hand, it offered an acknowledgement of international responsibility. In this regard, the representatives considered that Guatemala had breached the principle of *estoppel*, citing diverse case law of the Inter-American Court according to which "a State that has adopted a specific position, which produces legal effects […] cannot […] adopt another position that is contradictory to the former." Therefore, the representatives considered that the State's position was incompatible with "the nature and gravity of the alleged violations, the requirements and interests of justice, [and] the particular circumstances of the case […]."

22. In accordance with Articles 62 and 64 of the Rules of Procedure, and in exercise of its powers of international judicial protection of human rights, an issue of international public order that transcends the will of the parties, the Court must ensure that acts of acknowledgement of responsibility are acceptable for the objectives sought by the inter-American system. In this task, the Court is not limited to merely verifying, recording or taking note of the acknowledgment made by the State, or to verifying the formal conditions of the said decisions; rather, it must relate them to the nature and seriousness of the alleged violations, the demands and interests of justice, the particular circumstances of the specific case, and the attitude and position of the parties,[5] in such a way that it is able to elucidate, insofar as possible and in the exercise of its competence, the truth of what happened.[6] Furthermore, the evolution of the human rights protection system now allows

[5] *Cf. Case of Kimel v. Argentina. Merits, reparations and costs.* Judgment of May 2, 2008. Series C No. 177, para. 24, and *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador. Merits and reparations*. Judgment of June 27, 2012. Series C No. 245, para. 26.

[6] *Cf. Case of Manuel Cepeda Vargas v. Colombia. Preliminary objections, merits, reparations and costs.* Judgment of May 26, 2010. Series C No. 213, para. 17, and *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador, supra*, para. 26.

the presumed victims or their next of kin to submit autonomously their brief with pleadings, motions and evidence and put forward claims that may or may not coincide with those of the Commission. Consequently, when the State submits an acknowledgment of responsibility, it must indicate clearly whether it also accepts the claims made by the presumed victims or their next of kin.[7]

23. The Court observes that the State's acknowledgment of responsibility involves acquiescence to some of the legal arguments made by both the Inter-American Commission and the representatives. However, the State explicitly opposed the Court examining the other human rights violations they had alleged. Moreover, the State acknowledged only some of the presumed victims in the case. Lastly, the State argued that it had already provided compensation to several of the presumed victims in the instant case, and although it accepted some of the claims for reparation requested by the representatives, it opposed others.

24. In addition to the foregoing, the Court observes that, during the public hearing, when referring to the acknowledgment of responsibility made in the answering brief, the State did not reiterate its acknowledgement of the violation of the rights recognized in Articles 3, 4, 5 and 7 of the American Convention, in relation to Article 1(1) thereof, or its failure to comply with the obligation established in Article I of the Convention on Forced Disappearance to the detriment of Ramona Lajuj and Manuel Chen Sánchez, presumed victims of forced disappearance. On this point, in its final written arguments, the Inter-American Commission indicated that the State had infringed the principle of estoppel, and therefore asked the Court to "understand that the position of the Guatemalan State indicated in its [answering] brief is the valid one," and grant it full legal effects. In this regard, the Court observes that, in its final written arguments, the State once again reiterated its acknowledgment of responsibility for the forced disappearance of Ramona Lajuj and Manuel Chen Sánchez in the terms of paragraph 17(a) of this Judgment. Therefore, since there is no longer a dispute on this matter, the Court will take into account the said acknowledgment of responsibility.

25. In addition, as already stated in this Judgment, in its answering brief, the State acknowledged the violation of the right to freedom of residence recognized in Article 22 of the American Convention (*supra* para. 17(g)), and explicitly contested the allegation of a violation of the right to freedom of movement, also established in the said provision (*supra* para. 18(f)); a position it maintained during the public hearing. Nevertheless, in its final written arguments, the State indicated the exact opposite; in other words, it acknowledged the violation of the right to freedom of movement but contested the violation of the right to freedom of residence. Regarding the latter, it asked the Court to take into account the reparations that supposedly have already been made through the National Electricity Institute (INDE). In this regard, the Court recalls that, according to international practice, when a party to a litigation has adopted a specific position to its own benefit or to the detriment of the other party, under the *estoppel* principle it cannot later take a different position that contradicts the first one and changes the situation used by the other party as a reference point.[8] In this case, at the first procedural opportunity, the State acquiesced to the violation of the right to freedom of residence and it was in those terms that the Inter-

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[7] *Cf. Case of Myrna Mack Chang v. Guatemala. Merits, reparations and costs.* Judgment of November 25, 2003. Series C No. 101, para. 107, and *Case of Torres Millacura v. Argentina. Merits, reparations and costs.* Judgment of August 26, 2011. Series C No. 229, para. 34.

[8] *Cf. Case of Neira Alegría et al. v. Peru. Preliminary objections.* Judgment of December 11, 1991. Series C No. 13, para. 29, and *Case of Chocrón Chocrón v. Venezuela. Preliminary objection, merits, reparations and costs.* Judgment of July 1, 2011. Series C No. 227, para. 36.

American Commission and the representatives have submitted their arguments and claims throughout the process. In this regard, the final written arguments are not the appropriate procedural moment for submitting an argument of this nature. Therefore, the Court will not give legal effect to the State's refusal to acknowledge the violation of the right to freedom of residence.

26. Furthermore, since the violation of the right to freedom of movement was alleged by the Commission and the representatives in their briefs submitting the case and with pleadings and motions, respectively (*supra* para. 4), and in light of the particular seriousness of the facts and violations alleged in this case, the Court admits the acquiescence to the violation of the right to freedom of movement made by the State in its final written arguments, as it has in other cases in which the States have indicated their acknowledgment of responsibility at different procedural stages prior to the delivery of the respective judgment.[9]

27. In view of the fact that the proceedings before this Court refer to the protection of human rights, an issue of international public order that transcends the will of the parties, the Court must ensure that acts of acquiescence are acceptable to the objectives sought by the inter-American system. In this task, it is not limited to merely verifying the formal conditions of the said decisions; rather, it must relate them to the nature and seriousness of the alleged violations, the demands and interests of justice, the particular circumstances of the specific case, and the attitude and position of the parties.

28. The Court assesses positively the State's willingness to acknowledge partially its international responsibility, owing to its significance within the framework of the inter-American system for the protection of human rights. It makes a positive contribution to the development of these proceedings, to respect for the principles that inspire the Convention[10] and, in part, to satisfaction of the needs for reparation of the victims of human rights violations.[11] Therefore, the Court accepts the State's acknowledgment of responsibility for the violations indicated in paragraph 17 of this Judgment. Nevertheless, the dispute remains with regard to the alleged violations indicated in paragraph 18, regarding the determination of the presumed victims and some of the representatives' claims for reparation. In addition, considering the gravity of the alleged facts and of the violations, the Court will proceed to make an extensive and detailed determination of the facts that took place relating to the human rights violations acknowledged by the State, because this contributes to making reparation to the victims, preventing the repetition of similar facts and, in brief, satisfying the objectives of the inter-American human rights jurisdiction.[12] Consequently, the Court will make the corresponding rulings in Chapters V and VII to XIV of this Judgment.

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[9] *Cf. Case of Acevedo Jaramillo et al. v. Peru. Preliminary objection, merits, reparations and costs.* Judgment of February 7, 2006. Series C No. 144, paras. 176 to 180; *Case of Manuel Cepeda Vargas v. Colombia, supra, para. 14; Case of Fernández Ortega et al. v. Mexico. Preliminary objection, merits, reparations and costs.* Judgment of August 30, 2010 Series C No. 215, para. 16; *Case of Rosendo Cantú et al. v. Mexico. Preliminary objection, merits, reparations and costs.* Judgment of August 31, 2010. Series C No. 216, para. 16; *Case of Pacheco Teruel et al. v. Honduras. Merits, reparations and costs.* Judgment of April 27, 2012. Series C No. 241, para. 19, and *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador, supra,* para. 23.

[10] *Cf. Case of El Caracazo v. Venezuela. Merits.* Judgment of November 11, 1999. Series C No. 58, para. 43, *and Case of the Kichwa Indigenous People of Sarayaku v. Ecuador, supra,* para. 29.

[11] *Cf. Case of Manuel Cepeda Vargas v. Colombia, supra,* para. 18, and *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador, supra,* para. 29.

[12] *Cf. Case of Tiu Tojín v. Guatemala. Merits, reparations and costs*. Judgment of November 26, 2008. Series C No. 190, para. 26, and *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador, supra*, para. 30.

V
PRELIMINARY OBJECTION OF LACK OF COMPETENCE *RATIONE TEMPORIS*

A. Arguments of the parties and of the Inter-American Commission

29. Without explicitly indicating that it was a "preliminary objection," the State argued that the Inter-American Court lacks temporal jurisdiction to rule on "all" the human rights violations alleged in this case, because the said violations occurred from 1980 to 1982; in other words, before Guatemala had accepted the Court's contentious jurisdiction, and because the violations do not persist to this day and are not of a continuing nature. The State recalled that it had ratified the American Convention on Human Rights on May 25, 1978, but had accepted the contentious jurisdiction of the Court on March 9, 1987. In addition, it indicated that the Court's jurisdiction cannot be retroactive because, in the instrument accepting the Court's jurisdiction, the State indicated that its acceptance was applicable to "cases that took place after the date [on] which this declaration is presented to the Secretary of the Organization of American States," which was on March 9, 1987 (*supra* para. 15). The State repeated this objection during the public hearing (*supra* para. 9). However, the State also partially acknowledged its international responsibility with regard to some of the violations alleged by the Commission and the representatives (*supra* Chapter IV).

30. The Inter-American Commission stated, first and in general, that it had informed the Court of the "conducts of a continuing nature that persist after [March 9, 1987,] and the actions that constitute independent facts and that constitute specific and autonomous violations that took place after the acceptance of the Court's jurisdiction." Therefore, in the Commission's opinion, the Court has competence, "among other matters," with regard to the following facts: the forced disappearances, the forced displacement, the violations of the personal integrity of the next of kin and survivors, the destruction of the community's social fabric, the failure to identify the persons executed and disappeared, the consequent failure to bury them in keeping with Mayan traditions, the impossibility for the survivors to return to their lands, the lack of protection for the children, the accusation of being guerrillas, the social base of the guerrilla, internal enemies and subversives, discrimination, and the failure to conduct an impartial and effective investigation into the multiple violations that occurred during and after the massacres.

31. The Commission also indicated a second group of specific facts regarding which it considers that the Court has competence; namely, those referring to the "denial of justice in light of the procedural obligation derived from the obligation of guarantee, because the said violations fall within the Court's temporal competence." In this regard, it indicated that the Court has jurisdiction over: "the arbitrary detention, torture, rape, and extrajudicial execution […] of members of the Río Negro Community, the subsequent concealment of the bodies, and the subjection to slavery of some of the surviving children." Therefore, in its observations on the preliminary objection filed by the State, the Commission asked the Court to rule, on the one hand, on "Articles 4, 5, 7, 9 and 19 of the American Convention, in relation to Article 1(1) thereof, to the detriment of the victims of the massacres" and, on the other hand, on "Articles 5 and 11 of the American Convention, in relation to Article 1(1) thereof, to the detriment of the victims of rape: J.O.S., V.C., M.T. and María Eustaquia Uscap Ivoy, and also on Article 19 of the Convention, in relation to Article 1(1), to the detriment of J.O.S. and María Eustaquia Uscap Ivoy."

32. Third, the Commission indicated that the lack of an investigation "made it impossible to enjoy the continuous exercise" of the rights recognized in "Articles 11(1), 21 and 24 of the American Convention, in relation to Article 1(1) thereof, to the detriment of the members of the Río Negro community"; consequently, it considered that the Court should examine those violations. Lastly, the Commission reiterated that the "facts on which the violations related to the effects on the respective families are based, such as the lack of access to information, the denial of justice, the absence of an effective investigation and the consequent impunity," fall within the Court's temporal competence. Therefore, the Commission considered that "there is no legal basis for filing the preliminary objection" and, consequently, asked the Court to reject it.

33. The representatives indicated that, since the State had not expressly indicated that its allegation corresponded to a "preliminary objection" and because it should have filed it in accordance with the requirements established in the Rules of Procedure, in their opinion the State had implicitly waived the said defense. Nevertheless, if the Court should decide "to examine the apparent preliminary objection," they argued that "the act of extermination committed against the Río Negro community is outside the temporal competence" of the Court, as indicated by the State, but that the State failed to refer to the context in which this assertion was made. In addition, they indicated that "the failure to comply with the procedural obligations deriving from the obligation of guarantee is a fact that persists" and that, in addition, "the effects of several of the violations continue to this day." Therefore, the representatives indicated that it was not their intention that the Court declare "the State's international responsibility […] for the obvious and manifest violation of the general obligation of respect rights based on the events prior to the acceptance of the Court's contentious jurisdiction," but rather for the "failure to comply with the general obligation of guarantee." In that regard, they argued that there is no dispute that the Court's jurisdiction does not extend to events that took place before March 9, 1987; thus, they considered that the State's objection to the Court's temporal jurisdiction "completely lacks any basis in fact, law or jurisprudence and, therefore, is clearly inadmissible."

B. Considerations of the Court

34. First, the Court considers it pertinent to indicate that although the American Convention and the Rules of Procedure do not develop the concept of "preliminary objection," in its case law, the Court has repeatedly stated that this is the mechanism to contest the admissibility of an application or the Court's competence to hear a particular case or any aspect of it, based on the person, the subject matter, the time or the place.[13] The purpose of a preliminary objection is to obtain a decision that prevents or impedes the analysis of the merits of the aspect in question or the case as a whole. Therefore, in its content and purpose, the objection must meet the essential legal criteria that grant it the nature of a "preliminary objection."[14] On this basis, the Court finds that, even though the State did not expressly refer to the series of arguments based on which it is contesting the Court's temporal competence to examine some of the human rights violations alleged in this case as a "preliminary objection," these arguments meet the essential legal criteria corresponding to a preliminary objection of *ratione temporis*, because they are based on a

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[13] *Cf. Case of Las Palmeras v. Colombia. Preliminary objections.* Judgment of February 4, 2000. Series C No. 67*,* para. 34, and *Case of Gomes Lund et al. (Guerrilha do Araguaia) v. Brazil. Preliminary objections, merits, reparations and costs.* Judgment of November 24, 2010. Series C No. 219*,* para. 11.

[14] *Cf. Case of Castañeda Gutman v. Mexico. Preliminary objections, merits, reparations and costs.* Judgment of August 6, 2008. Series C No. 184*,* para. 39, and *Case of Gomes Lund et al. (Guerrilha do Araguaia) v. Brazil, supra,* para. 11.

temporal situation; namely, the date on which the Court's contentious jurisdiction was accepted, in order to exclude such violations from this case. Consequently, the Court will now analyze the corresponding arguments under this heading.

35. The Court observes that the State seeks to prevent the Court from examining the human rights violations that took place prior to March 9, 1987 (the date on which Guatemala accepted the Court's contentious jurisdiction), that are not continuing or permanent in nature and that do not persist to this day. Nevertheless, the State did not specify the violations to which it was referring. The Court reiterates that, like any organ with jurisdictional functions, it has the powers inherent in its attributes to determine the scope of its own competence (*compétence de la compétence/Kompetenz-Kompetenz*). The instruments of acceptance of the optional clause on the compulsory jurisdiction (Article 62(1) of the Convention) assume that the States submitting them accept the Court's right to decide any dispute regarding its competence.[15]

36. In order to determine whether or not it has competence to hear a case or any aspect of it, in accordance with Article 62(1) of the American Convention, the Court must take into consideration the date on which the State accepted its jurisdiction, the terms of that acceptance, and the principle of non-retroactivity established in Article 28 of the 1969 Vienna Convention on the Law of Treaties. Even though the State is obliged to respect and to ensure the rights protected in the American Convention from the date on which it ratified the Convention, the Court's competence to declare a violation of its provisions is regulated by the said acceptance by the State.

37. Guatemala accepted the Court's contentious jurisdiction on March 9, 1987, and in its declaration indicated that the Court would have competence for the "cases following" the said acceptance (*supra* para. 15). Based on this and on the principle of non-retroactivity, the Court can examine acts or facts that have taken place after the date of the said acceptance[16] and that have generated instantaneous and continuing or permanent human rights violations. Furthermore, the Court has competence to examine human rights violations that are continuing or permanent even though the initial act violating them took place before the date on which the Court's contentious jurisdiction was accepted, if the said violations persist after the date of acceptance, because they continue to be committed; thus, the principle of non-retroactivity is not violated.[17]

38. Based on the foregoing, the Court has competence to examine the facts and the presumed human rights violations relating to the forced disappearances (*infra* Chapter IX); the absence of an impartial and effective investigation into the facts of this case (*infra* Chapter XII); the adverse effects on the personal integrity of the next of kin and survivors in relation to investigation of the facts (*infra* Chapter XIII); the failure to identify those who were executed and disappeared (*infra* Chapter XII); the "destruction of the community's social fabric" (*infra* Chapter X and XI), and the forced displacement (*infra* Chapter XI).

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[15] *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, paras. 16 and 17, and *Case of González Medina and family members v. Dominican Republic. Preliminary objections, merits, reparations and costs.* Judgment of February 27, 2012. Series C No. 240, para. 45.

[16] *Cf. Case of Blake v. Guatemala. Preliminary objections.* Judgment of July 2, 1996. Series C No. 27, paras. 39 and 40, and C*ase of González Medina and family members v. Dominican Republic, supra,* para. 48.

[17] *Cf. Case of the Serrano Cruz Sisters v. El Salvador. Preliminary objections.* Judgment of November 23, 2004. Series C No. 118, paras. 65 and 66, and *Case of González Medina and family members v. Dominican Republic, supra,* para. 48.

39. However, the Court considers that it does not have competence to rule on the alleged accusation of the members of the Río Negro community as being "guerrillas, the social basis of the guerrilla, internal enemies and subversives," and on the alleged "discrimination" against them because, accord to the Merits Report presented by the Commission, those violations took place prior to March 9, 1987. Lastly, regarding to facts relating to the "denial of justice in light of the procedural obligation arising from the obligation of guarantee," the Court considers it pertinent to indicate that, even though it has maintained that it has competence to analyze facts that refer to the presumed denial of justice in light of the procedural obligation arising from the obligation of guarantee that arises from some articles of the American Convention that recognize substantive rights, such as Articles 4 and 5, which refer to the right to life and the right to personal integrity, respectively, in relation to Article 1(1) of the Convention, those facts must fall within the Court's temporal competence.[18] In this case, the Commission and the representatives included facts relating to the presumed arbitrary detention, torture, rape and extrajudicial execution of several members of the Río Negro Community. However, these facts took place prior to March 9, 1987; consequently, owing to the objection based on temporal competence filed by the State, the Court cannot rule on them. Nevertheless, the Court will analyze the arguments concerning the supposed denial of justice in the light of the alleged violation of the rights recognized in Articles 8 and 25 of the American Convention, regarding which the Court does have competence. In these terms, the Court accepts the State's argument on lack of competence *ratione temporis*.

VI
EVIDENCE

40. Based on the provisions of Articles 46, 50, 57 and 58 of the Rules of Procedure, as well as its case law concerning evidence and its assessment, the Court will examine and assess the documentary probative elements submitted on different procedural occasions, as the statements of the presumed victims, and the opinions of the expert witnesses provided by affidavit and during the public hearing before the Court. To this end, the Court will abide by the principles of sound judicial discretion, within the applicable legal framework.[19]

A. Documentary, testimonial and expert evidence

41. The Court received different documents presented as evidence by the Inter-American Commission, the representatives, and the State, and also the statements and opinions provided by affidavit of the following individuals: María Eustaquia Uscap Iboy, Antonia Osorio Sánchez, Bruna Perez Osorio, María Osorio Chen, Juan Méndez, Fredy Armando Peccerelli Monterroso and Alfredo Itzep Manuel. In addition, during the public hearing, the Court received the testimony of Jesús Tecu Osorio and Carlos Chen Osorio, and the expert opinions of Rosalina Tuyuc Velásquez and Michael Paul Hermann Mörth.[20]

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[18] *Cf. Case of the Dos Erres Massacre v. Guatemala. Preliminary objection, merits, reparations and costs.* Judgment of November 24, 2009. Series C No. 211, para. 48.

[19] *Cf. Case of the "White Van" (Paniagua Morales et al.) v. Guatemala. Merits.* Judgment of March 8, 1998. Series C No. 37, para. 76, and *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador, supra,* para. 31.

[20] The purposes of the testimony and expert opinions can be consulted in the Order summoning a public hearing of May 31, 2012, *supra,* first and fifth operative paragraphs.

B. Admission of the evidence

42. In this case, as in others, the Court admits those documents submitted by the parties at the appropriate procedural opportunity that were not contested or opposed, and the authenticity of which was not questioned, exclusively insofar as they are pertinent and useful to determine the facts and eventual legal consequences.[21] The State submitted the documentary evidence offered in its answering brief extemporaneously,[22] two documents requested by the Court during the public hearing as useful evidence,[23] and another document that had not been requested but was mentioned by the State in its final written arguments.[24] However, in application of Article 58(a) of the Rules of Procedure, the Court decides to admit these documents considering them useful for deciding the instant case. In addition, when submitting the original of its final written arguments, in a "corrigenda" the representatives added a section on "Explanations regarding the list of victims submitted with this brief," which had not been included when the said arguments were submitted electronically (*supra* para. 12). Since this refers to clarifications requested by the Court during the public hearing in relation to the identification and individualization of the presumed victims, the Court admits these explanations because they are useful to this end.

43. In addition, the Court finds that the statements of the presumed victims and the opinions of the expert witnesses provided by affidavit and during the public hearing are pertinent, only insofar as they are in keeping with the purpose defined by the President of the Court in the Order requiring them (*supra* para. 7). They will be assessed together with the other elements of the body of evidence. Furthermore, in accordance with this Court's case law, the statements provided by the presumed victims cannot be assessed in isolation, but rather together with all the evidence in the proceedings, because they are useful to the extent that they can provide further information on the presumed violations and their consequences.[25]

VII
PRELIMINARY CONSIDERATIONS

A. Determination of the presumed victims:

44. During the public hearing, the Court called the attention of the Inter-American Commission and the representatives to the fact that there are differences in their lists of

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[21] *Cf. Case of Velásquez Rodríguez v. Honduras. Merits.* Judgment of July 29, 1988. Series C No. 4, para. 140, and Case *of the Kichwa Indigenous People of Sarayaku v. Ecuador, supra,* para. 35.

[22] These documents are: certified copy of the judgment of May 28, 2008, delivered in case 28-2003 by the Sentencing Court for Crime, Drug-trafficking and Offenses against the Environment of the department of Baja Verapaz; copy of the administrative files of the victims of the Community of Río Negro who have received reparation under the National Reparations Program; copy of the executive report of the Human Resettlement Program for those affected by the reservoir of the Chixoy hydroelectric plant, prepared by the National Electricity Institute (INDE), September 2004; list of "victims accepted by the State in the instant case," and list of "victims who have received reparation under the National Reparations Program."

[23] Criminal case file 01076-2011-00009 and Criminal case file 001-98-1ro.

[24] Document entitled "*Informe Final de la Comisión Técnica de Apoyo al Representante del INDE ante la Instancia de Negociación que refiere el Acuerdo Político suscrito entre COCAHICH and el Gobierno de la República de Guatemala*" [Final report of the Technical Committee to support the INDE representative before the Negotiating Body referred to in the Political Agreement signed between COCAHICH and the Government of the Republic of Guatemala].

[25] *Cf. Case of Loayza Tamayo v. Peru. Merits.* Judgment of September 17, 1997. Series C No. 33, para. 43, and *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador, supra*, para. 43.

presumed victims supposedly executed during the Xococ, Pacoxom, Los Encuentros and Agua Fría massacres (*infra* paras. 70 to 81). In particular, the Commission's lists include more people than those of the representatives. Furthermore, during the public hearing, the Court noted that the Commission had presented a list of 17 individuals who were children in 1982 and who were presumably subjected to slavery. These individuals were recognized as victims by the State in its answering brief. The list submitted by the Commission includes the name of Juan Burrero; however, this individual does not appear on the list of children supposedly subjected to slavery submitted by the representatives. The Commission did not present evidence on the identity or possible existence of Juan Burrero. Meanwhile, the representatives' list of children supposedly subjected to acts of slavery contains two names, Juan Osorio Alvarado and Bernarda Lajuj Osorio, that do not appear on the Commission's respective list and, consequently, they were not recognized as victims by the State. In this regard, the Court asked the Commission and the representatives, when submitting their final written observations and arguments, respectively, to clarify these situations and, as appropriate, to present the corresponding evidence that would allow verification of the identity of the presumed victims.

45. Following the public hearing in this case, as already mentioned in this Judgment (*supra* paras. 8 and 10), at the request of the President of the Court, the Inter-American Commission again submitted the list of presumed victims organized by family unit. In this regard, in its final written arguments, the State referred to a series of supposed inconsistencies between the list of February 22, 2011, and the list of presumed victims organized by family unit. In general, the State alleged that the total number of presumed victims was not the same on the two lists; that there were differences in the names of some of the presumed victims; that some of them were identified as executed but, at the same time, as survivors, or vice versa; that the surnames of some of the presumed victims do not match the surnames of their supposed next of kin, or that the family relationship is not indicated, and that individuals with the same names appear in several family units, with no indication of whether they are duplications or different persons, which could lead to double reparation.

46. Also, in their final written arguments, the representatives introduced a series of corrections in the list of presumed victims they had submitted with their pleadings and motions brief. Basically, the representatives corrected the names of three presumed victims; withdrew twelve presumed victims because, following efforts to confirm their identity, "it was determined that there was no document or person who could substantiate and prove [their] existence," and added three presumed victims of whom they were previously unaware. The representatives also clarified that "Juan Burrero" is "Juan Osorio Alvarado," and that, in the community, he was known more by the former name owing to his father's surname; thus, this is one and the same person. In addition, they clarified that Bernarda Lajuj Osorio is a "survivor" of the alleged Los Encuentros massacre perpetrated on May 14, 1982 (*supra* para. 80). Lastly, the representatives forwarded a final list of presumed victims. They indicated that these individuals had been identified by birth and death certificates and by the testimony of family members, acquaintances or individuals who were able to confirm their existence, all before notary public. In this regard, the State asked the Court to declare its acknowledgement of international responsibility null and void for the violation of the rights established in Articles 6 and 17 of the American Convention (*supra* para. 17(d)) to the detriment of "the presumed victims Juan Burrero and, as applicable, to Juan Osorio Alvarado," because the latter was not a minor at the time of the facts. In addition, the State expressed its "profound concern owing to the numerous inconsistencies in the identification of the presumed victims, next of kin, and survivors in this case," so that "it was inadmissible that an attempt had been made to include new presumed victims without having full certainty about the names included on the different lists provided." In

this regard, the State "contest[ed] the effects of any acknowledgment of responsibility in relation to the presumed victims, next of kin, and survivors regarding whom [the Court] finds there has been an error or a mistake in their identification."

47. Furthermore, taking into account the final list of presumed victims of the representatives and the corrections, the Court observes that the total number of presumed victims submitted by the Inter-American Commission in the table of family units does not coincide with the total number of presumed victims identified and individualized by the representatives. Nevertheless, most of those individuals are found on the two lists.

48. The Court recalls that, under Article 35(2) of the Rules of Procedure, "[w]hen [on submission of the case] it has not been possible to identify one or more of the alleged victims affected by the facts of the case, because it concerns mass or collective violations, the Court shall decide whether to consider those individuals as victims." In this way, the Court observes that, in the submission of the case, during the public hearing, and in its final written observations, the Inter-American Commission referred to the impossibility of identifying all the presumed victims in the instant case, because of its exceptional nature owing to its gravity and dimensions, as well as to "the specific characteristics of the indigenous people." The Commission indicated that the lack of evidence regarding the existence and identity of the presumed victims it had presented was due, among other matters, to the fact that the events in the instant case took place in the context of an armed conflict; "that entire families were disappeared and […] there is no one who can speak for [them…];" to the migration and forced displacement of witnesses; to the fact that the community of Río Negro is composed of five family clans whose members share the same names and surnames, and also to the fact "that the community of Río Negro was located at many hours walk from the nearest population center where they could have registered" births and deaths. The Commission also underscored that the community of Río Negro has an oral tradition and a collective memory of the victims of the massacre but, despite this, the witnesses "have not necessarily […] testified at the domestic level," because the State "has not provided sufficient judicial guarantees and judicial protection in this case." Based on all the above, the Commission requested that Article 35(2) of the Rules of Procedure be applied in this case and that the Court accord "full value" to the list of names provided by the representatives. The Commission did not make the same request with regard to its own lists. For their part, during the public hearing and in their final written arguments, the representatives presented arguments similar to those of the Commission and asked the Court to determine the identity of the victims "based on sound judicial discretion." During the public hearing, the State indicated that it ha[d] no problem with accepting a certain amplitude in the case [*sic*], with the exception [mentioned] in [its] preliminary objection […] and [its] concerns."

49. Given the inconsistencies between the lists presented by the Commission and the representatives, during the public hearing the Court indicated that, before it delivered the Judgment, it was necessary to achieve "the greatest possible consistency as regards identifications and the elements proving that these individuals existed." The Court specified that this did not necessarily have to be through birth or death certificates, and that there could be other elements or documents that, in the context, could be reasonable and acceptable, because the Court could only include those individuals who had been reasonably identified on the list of victim for all relevant effects. The Court also stated that "the request for lists [was] not a formalism that would prevent justice"; rather the purpose was specifically "to be able to bring justice to those individuals who may eventually be considered victims, and for a person to be considered a victim and granted reparations, that person must be identified." Hence, the Court's intention "is not to obstruct the development of the proceedings with formalisms, but rather, to the contrary, to adjust the definition provided in

the Judgment to the rightful need for justice of the inhabitants of the five places where [the] facts occurred" in the instant case. In this regard, the Court noted that the representatives presented evidence concerning the identity of the persons they indicated as presumed victims in this case; in particular, providing birth and death certificates, and testimony given by third parties before notary public. In the case file, the Court also has testimony given before prosecutors and court authorities during the domestic criminal proceedings in which the names of presumed victims indicated by the representatives are also mentioned. Given that the State did not contest this evidence, the Court finds that it is sufficient to prove the existence and identity of the presumed victims named by the representatives, most of whom were also presented by the Commission.

50. The Court also observes that, following the presentation of its final written arguments, the State withdrew its acknowledgment of international responsibility for the violation of the rights recognized in Articles 6 and 17 of the American Convention to the detriment of "Juan Burrero," since this individual's correct name is "Juan Osorio Alvarado," who, according to the State, at the time of the facts was not a minor. However, the evidence in the case file shows that Juan Osorio Alvarado was a minor at that time and also when the State accepted the Court's contentious jurisdiction.[26] The Court also observes that, on at least three procedural occasion, namely in its answer to the submission, during the public hearing, and in its final written arguments, the State reiterated its acknowledgment of responsibility for the violation of the said rights to the detriment of "Juan Burrero." In other words, the State could have verified the identity and name of Juan Burrero and, yet, did not raise an objection until after the representatives had corrected this person's name, indicating that his correct name is Juan Osorio Alvarado. In this regard, since it is the same person, the State's argument for not recognizing Juan Osorio Alvarado as an alleged victim is inadmissible.

51. Lastly, based on the provisions of Article 35(2) of the Court's Rules of Procedure, since this case deals with five massacres, and taking into account its magnitude, the nature of the facts, and the time that has passed, the Court finds it reasonable that the identification and individualization of each presumed victims is complex. Nevertheless, as already mentioned, in order to decide this case, the Court must have a minimum level of certainty regarding the existence of the said individuals. Based on the foregoing, and considering that the State does not oppose including other individuals as presumed victims, provided that this is in keeping with the preliminary objection filed, and "no error or ambiguity in their identification is determined," owing to the special characteristics of this case, the Court will consider as presumed victims those persons identified and individualized by the representatives who have suffered any human rights violation that is included within the sphere of the Court's temporal competence and the State's partial acknowledgment of responsibility, as decided in Chapters IV and V of this Judgment, since the Court has the necessary evidence to confirm the identity of each of those persons.[27]

B. Other facts and human rights violations alleged by the representatives

52. The representatives alleged the presumed forced disappearance of 32 persons, which occurred after the five massacres that are the subject of the instant case. However, the Court notes that the Commission did not mention the facts alleged by the representatives in

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[26] Birth certificate of Juan Osorio Alvarado (file of attachments to the pleadings and motions brief, folio 16995). According to this document, Juan Osorio Alvarado was born on August 19, 1976.

[27] The only person for whom the Court has no evidence is Regina Sic Siana, mentioned by the representatives in their final written arguments and their corrigenda (merits file, tome III, folio 1572).

its Merits Report (*supra* paras. 1 to 3); therefore, they constitute new facts that are not part of the factual framework of the case. In this regard, the Court has maintained repeatedly that the submission of the case constitutes the factual framework for the proceedings before it; thus, alleging new facts that are different from those contained in the submission brief is inadmissible, without prejudice to submitting those that are supervening or that explain, clarify or reject the facts in the submission brief, or that relate to the claims of the plaintiff.[28] Consequently, the Court will not rule on these allegations.

53. Among the claims presented in their pleadings and motions brief, the representatives asked the Court to declare the international responsibility of the State for the violation of Article 18 of the American Convention regarding the "right to a name." Nevertheless, in that brief, the representatives did not indicate the factual and legal arguments on which this violation was founded or identify the victims of the said violation. Therefore, the Court will not rule on this point.

54. Additionally, in their final written arguments, the representatives invoked for the first time the violation of Articles 8(1) and 25(1) of the American Convention, in relation to Articles 1(1) and 2 of the Convention, based on the argument that the domestic judges failed to supervise conformity with the Convention in the judgments handed down with regard to the facts of this case. The Court observes that this argument was not submitted at the appropriate procedural moment; that is, in the pleadings and motions brief. Because it is time-barred, the Court will not rule in this regard.

VIII
FACTS

55. First, the Court finds it necessary to clarify that, according to its case law, the principle of non-retroactivity and the optional clause accepting this Court's contentious jurisdiction do not mean that an act that occurred prior to this acceptance must be excluded from any consideration when it could be relevant for determining facts and human rights violations that are within its temporal jurisdiction. In this regard, the Court observes that, in order to decide the different cases submitted to its consideration, it has needed to take into account the context and other facts that exceed its jurisdiction, because the political and historical context is decisive for establishing the legal consequences of the case, including both the nature of the violations of the Convention and the corresponding reparations.[29] Consequently, the analysis of the facts and human rights violations over which the Court has competence, as decided in Chapters IV and V, cannot be isolated from consideration of the background and context in which those facts supposedly occurred. Furthermore, it is not possible to determine the respective legal consequences in the vacuum inherent in decontextualization, since it has been argued that, in Guatemala, the facts of this case are not isolated acts. In this Chapter, the Court will refer to the general context as well as to the specific facts of the five massacres submitted to its consideration. This does not mean that the Court must derive specific legal consequences from them.[30] Added to this, the

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[28] *Cf. Case of Five Pensioners v. Peru. Merits, reparations and costs.* Judgment of February 28, 2003. Series C No. 98, para. 153, and *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador, supra,* para. 27, footnote 28.

[29] *Cf. Case of Goiburú et al. v. Paraguay. Merits, reparations and costs.* Judgment of September 22, 2006. Series C No. 153, paras. 53 and 63, and *Case of Radilla Pacheco v. Mexico. Preliminary objections, merits, reparations and costs.* Judgment of November 23, 2009. Series C No. 209, para. 116.

[30] *Cf. Case of Almonacid Arellano et al. v. Chile. Preliminary objections, merits, reparations and costs.* Judgment of September 26, 2006. Series C No. 154, para. 82, and *Case of Manuel Cepeda Vargas v. Colombia, supra*, para. 46.

Court finds it pertinent to indicate that this is not the first case against Guatemala in which human rights violations are alleged that took place during the internal armed conflict. This Court has already had numerous opportunities to rule on the general context of this conflict.[31] Hence, in this section, the Court will only refer to the facts that are the most relevant for this case.

A) General context

56. Both the Inter-American Court[32] and reports from domestic agencies in Guatemala[33] have established that, from 1962 to 1996, an internal armed conflict took place in Guatemala that resulted in enormous human, material, institutional and moral costs.[34] The Historical Clarification Commission (hereinafter "CEH") estimated that "more than 200,000 persons died or disappeared during the internal armed conflict,"[35] and that the State's armed forces together with paramilitary groups were responsible for 93% of the human rights violations committed, including 92% of the forced disappearances.[36]

57. During this conflict, the State applied the so-called "National Security Doctrine," increasing the intervention of military forces to confront the "subversion, a concept that included every individual or organization that represented any type of opposition to the State; thus, this concept was equal to that of "internal enemy."[37] The CEH concluded that, in application of this doctrine, 91% of recorded violations occurred from 1978 to 1983 under the dictatorships of Generals Romeo Lucas García (1978-1982) and José Efraín Ríos Montt (1982-1983).[38] During those years, military operations consisting mainly in the slaughter of

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[31] *Cf. Case of the Plan de Sánchez Massacre v. Guatemala. Merits.* Judgment of April 29, 2004. Series C No. 105; *Case of Tiu Tojín v. Guatemala, supra; Case of the Dos Erres Massacre v. Guatemala, supra,* and *Case of Chitay Nech et al. v. Guatemala. Preliminary objections, merits, reparations and costs.* Judgment of May 25, 2010. Series C No. 212.

[32] *Cf. Case of the Plan de Sánchez Massacre v. Guatemala, Merits, supra,* paras. 42.1 to 42.11; *Case of Tiu Tojín v. Guatemala, supra,* paras. 48 to 51; *Case of the Dos Erres Massacre v. Guatemala, supra, paras. 70 to 73, and Case of Chitay Nech v. Guatemala, supra,* paras. 64 to 69.

[33] Report of the Historical Clarification Commission, *"Guatemala, Memoria del Silencio,"* Guatemala, United Nations Office for Project Services, 1999. Available at: http://shr.aaas.org/guatemala/ceh/gmds_pdf/ (last visit: August 4, 2012), and Human Rights Office of the Archdiocese of Guatemala (ODHAG), "*Guatemala Nunca Más"*, Report of the Inter-diocese Project "Recovery of the Historical Memory." Available at: http://www.fundacionpdh.org/lesahumanidad/Reports/guatemala/ReportREMHI-Tome1.htm (last visit: August 4, 2012).

[34] *Cf.* Report "Guat*emala, Memoria del Silencio," supra*; Report "*Guatemala Nunca Más," supra; Case of Tiu Tojín v. Guatemala, supra,* para. 48; *Case of the Plan de Sánchez Massacre v. Guatemala, Merits, supra,* para. 42.1*; Case of the Dos Erres Massacre v. Guatemala, supra,* para. 70*, and Case of Chitay Nech et al. v. Guatemala, supra*, para. 64.

[35] *Case of the Dos Erres Massacre v. Guatemala, supra*, para. 70; Report "*Guatemala, Memoria del Silencio*", *supra,* second chapter, volume II, para. 1729.

[36] *Cf.* Report *"Guatemala, Memoria del Silencio"*, *supra*, second chapter, volume II, paras. 1754, and 2053 to 2057.

[37] *Cf. Case of the Plan de Sánchez Massacre v. Guatemala, Merits, supra,* para. 42.2*; Case of Chitay Nech et al. v. Guatemala, supra,* para. 64, and Report *"Guatemala, Memoria del Silencio", supra,* first chapter, volume I, para. 357.

[38] On March 23, 1982, as a result of a coup d'état, a Military Government Junta was installed in Guatemala presided by José Efraín Ríos Montt and also composed of Horacio Egberto Maldonado Schaad and Francisco Luis Gordillo Martínez. On June 8, 1982, José Efraín Ríos Montt assumed the functions of President of the Republic and Commander-in-Chief of the Army, remaining as President until August 31, 1983. In April 1982, the Military Government Junta issued the "National Security and Development Plan," which established national military, administrative, legal, social, economic and political objectives. The Plan identified the main areas of conflict. *Cf.*

the population, known as massacres or "scorched-earth operations,"[39] were concentrated in the regions of Quiché, Huehuetenango, Chimaltenango, Alta and Baja Verapaz, the southern coast, and Guatemala City.[40] According to the CEH Report, around 626 massacres were perpetrated with "acts of extreme cruelty" intended to eliminate individuals or groups of individuals "defined as enemies," and "to terrorize the population."[41]

58. Based on the said National Security Doctrine, the Guatemalan Army identified the members of the Mayan indigenous people in the category of "internal enemy," considering that they formed or could form part of the guerrillas' social support network.[42] According to the CEH, the Mayan people were the ethnic group most affected by the human rights violations committed during the armed conflict,[43] suffering forced displacement[44] and the destruction of their communities, homes, livestock, harvests and other elements necessary for survival. In this regard, "[t]he intentional destruction of homes, farming tools, harvests and domestic animals, undoubtedly resulted in cold, hunger and disease. The slaughter and the destruction of property were carried out simultaneously or successively against the same communities, because both actions formed part of a common pattern of action against the group." That is to say, the individuals who had been able to flee to save themselves from the massacres "did not have anything left to subsist on. Hence, those communities had two options: a quick death, by machete or bullet, or a very possible slow death, by hunger or disease."[45]

59. This Court has also established that during the armed conflict women, in particular, were selected as victims of rape. Thus, during and prior to the said massacres or "scorched earth operations," members of the State security forces committed mass or indiscriminate and public rape, at times accompanied by the death of pregnant women or the induction of abortions. This practice was intended to destroy a woman's dignity at the cultural, social, family and individual levels.[46] In addition, it should be indicated that, according to the CEH, when perpetrated against Mayan communities "the mass rapes had a symbolic effect,

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Case of the Plan de Sánchez Massacre v. Guatemala, Merits, supra, paras. 42.3 and 42.4 and *Case of Chitay Nech et al. v. Guatemala, supra,* para. 65.

[39] *Cf. Case of the Plan de Sánchez Massacre v. Guatemala, Merits, supra*, para. 42.6, and *Case of the Dos Erres Massacre v. Guatemala, supra,* para. 73.

[40] *Cf. Case of the Plan de Sánchez Massacre v. Guatemala, Merits, supra,* para. 42.5.

[41] *Cf. Case of the Plan de Sánchez Massacre v. Guatemala, Merits, supra*, para. 42.6; *Case of the Dos Erres Massacre, supra*, para. 73, and Report "*Guatemala, Memoria del Silencio*," supra, second chapter, volume III, paras. 3086, 3105, 3128 and 3177.

[42] *Cf. Case of the Plan de Sánchez Massacre v. Guatemala, Merits*, *supra,* para. 42.7.

[43] According to the Report *"Guatemala, Memoria del Silencio,"* in ethnic terms, "83.3% of the victims of the human rights violations and acts of violence recorded by [the Commission] belonged to the Mayan ethnic group […]." Report "*Guatemala, Memoria del Silencio*", second chapter, volume II, para. 1745; also, *Case of Tiu Tojín v. Guatemala, supra,* para. 48, and *Case of Chitay Nech et al. v. Guatemala, supra,* para. 66.

[44] *Cf. Case of the Plan de Sánchez Massacre v. Guatemala*. *Merits, supra,* para. 42.5; Report *"Guatemala, Memoria del Silencio,"* second chapter, volume III, para. 2951. According to the expert opinion provided by Rosalina Tuyuk during the public hearing, the persons displaced to sites far from their community lost the possibility of taking part in the community's activities, rites, spirituality, and learning cycle, and of speaking their own language, wearing their traditional dress and carrying out their traditional tasks.

[45] Report *"Guatemala, Memoria del Silencio", supra,* second chapter, volume III, para. 3392.

[46] *Cf. Case of the Plan de Sánchez Massacre v. Guatemala. Reparations and costs.* Judgment of November 19, 2004. Series C No. 116, para. 49.19; *Case of the Dos Erres Massacre v. Guatemala, supra,* para. 139, and Report *"Guatemala, Memoria del Silencio", supra,* second chapter, volume II, para. 1363.

because Mayan women are responsible for the social reproduction of the group [… and] personify the values to be reproduced in the community."[47]

60. In addition, the children of the indigenous communities were exposed to numerous violations of their human rights, being direct victims of forced disappearance, arbitrary execution, torture, kidnapping, rape, and other acts in violation of their fundamental rights. Torture and threats against children were also used as a way of torturing their families.[48] Similarly, during this period, there was a pattern of separating children from their families after the massacres, and taking and retaining them illegally, all perpetrated by the military forces and illegal armed groups. In many cases, this practice meant that the children's names were changed and they were denied their identity.[49] In some case, the separation of children from their families resulted in their sale or illegal adoption, denying them the right to learn about their culture.[50] The CEH report also indicates that "[a]fter the massacres or scorched earth operations, many of the children who could take care of themselves were taken by the soldiers, officers or members of armed groups and subjected to servitude in their own homes or in those of other families. Some of those children were subjected to exploitation and systematic abuse."[51] The CEH found that "the children had to perform domestic work or other tasks that they were given in the homes where they were living. They suffered all kinds of physical and mental ill-treatment. Together with the violation of their right to individual liberty, these children suffered the violation of all their human rights because, owing to the conditions of servitude to which they were subjected, their physical and mental integrity was also affected, and they were kept in a situation of economic exploitation, abuse and permanent fear."[52] In addition, the report *Guatemala Nunca Más (Guatemala Never Again*) prepared by the Recovery of the Historical Memory Project of the Human Rights Office of the Diocese of Guatemala (hereinafter "the REMHI Report") indicates that "[i]n some cases, children who were separated from their families or communities, were abducted, and adopted fraudulently by some of those who had victimized their families. This practice has condemned them to live with their families' murderers."[53] This report cites declarations by General Héctor Gramajo published in the April 6, 1989, edition of the Guatemalan newspaper *Prensa Libre*, according to which "at certain times, it became fashionable in the ranks of the Army to take charge of the little ones aged three or four years old […]."[54]

61. In addition, all these facts had and still have an important cultural impact on the Mayan communities. The human rights violations that took place during the internal armed conflict in Guatemala also meant a loss of the cultural and religious values and practices of the Mayan communities, as well as of their social, economic and political institutions.[55] In particular, between 1980 and 1983, the forced disappearances, the use of torture and the

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[47] Report *"Guatemala, Memoria del Silencio"*, *supra*, second chapter, volume III, paras. 3348 and 3418. Also, during the public hearing, expert witness Rosalina Tuyuk stated that the rape of the Mayan women had, in many cases, prevented people from procreating, owing to the psychological consequences of the abuse. In addition, she indicated that many of the women who were raped have kept this experience secret, because talking about it "would somehow mean dishonor, criticism, stigmatization and shame [… for them] within the family […]."

[48] *Cf. Case of Molina Theissen v. Guatemala. Merits.* Judgment of May 4, 2004. Series C No. 106, para. 40.6

[49] *Cf. Case of the Dos Erres Massacre v. Guatemala, supra*, paras. 177, 170 and 199.

[50] *Cf.* Expert opinion provided by Rosalina Tuyuc Velásquez during the public hearing.

[51] *Case of the Dos Erres Massacre v. Guatemala, supra,* para. 171.

[52] Report *"Guatemala, Memoria del Silencio", supra,* second chapter, volume III, para. 2520.

[53] Report *"Guatemala Nunca Más"*, *supra,* volume I, second chapter.

[54] Report *"Guatemala Nunca Más"*, *supra,* volume I, second chapter.

[55] *Cf. Case of the Plan de Sánchez Massacre v. Guatemala. Merits, supra*, para. 42.7.

arbitrary executions,[56] among other violations, affected the structures of indigenous authority and leadership, destroying the social fabric and the traditional social relationships within the Mayan communities.[57] According to expert witness Rosalina Tuyuc, one of the most representative effects is "the lack of continuity, especially to be able to hold the councils; but also, mainly, the whole meaning of the Mayan calendar, the meaning of the cycles for planting, for the harvest, and also the role of women and men in [the Mayan] culture." According to the expert witness, for many years it was not possible to talk about this, as the elderly, who were the ancestral authorities, were the first targets of the persecution. Expert witness Tuyuc explained that "the backbone of the culture of the Mayan peoples is located in the elderly, but also in the role of the parents," thus, the death of the elderly "has meant an enormous loss of identity." The impact on the cultural life of the Mayan peoples is irreparable, "because there is no possibility of recovering [so many] lost years in order to learn the Mayan cosmovision."[58] In this regard, the CEH Report indicates that, with the disappearance of the individuals, "the modern technical and accumulated traditional knowledge accumulated over the years was also lost, as well as the possibility of transmitting it naturally to the new generations, [and this] begins to illustrate the magnitude of the long term impact."[59]

62. The CEH Report also records that "the immediate impoverishment of the families that suffered from the measures taken under the scorched-earth policy and had to displace was increased by the significant difficulty of recovery owing to the total loss of the family wealth, sometimes built up over years and even generations." In this regard, in many cases those who were killed, disappeared or displaced during the armed conflict were "a major, if not the only source of support for their families. Their loss signified the immediate impoverishment of the family."[60]

63. Based on all the foregoing, the Court notes that the massacres of the community of Río Negro took places in a systematic context of grave and massive human rights violations in Guatemala. According to the CEH, "[i]n general, the human rights violations and the violations of international humanitarian law committed give rise to the unavoidable responsibility of the State of Guatemala."[61]

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[56] As it has been established in other cases concerning Guatemala heard by this Court, the forced disappearance of persons in this country constituted a State practice at the time of the internal armed conflict; it was carried out mainly by agents of its security forces. The disappeared persons were retained clandestinely without informing a competent, independent and impartial judicial authority; they were tortured physically and mentally to obtain information and, in most cases, they were even killed. In addition, forced disappearance was used to punish not only the victims, but also their political or social group and their family. In this regard, the Report *Guatemala, Nunca Más* indicated that "[t]he selective murder of leaders often had a dimension of persecution of their family also, either before or after the acts of violence […]. The persecution of the civilian population by the military forces had a community dimension in many parts of the country. The accusations of participation in or support for the guerrilla involved many whole communities that were branded as 'guerrillas.'" *Cf. Case of Chitay Nech et al. v. Guatemala, supra* paras. 66 to 67 and 69

[57] Expert witness Rosalina Tuyuk indicated during the public hearing that the violence resulted in the destruction of the social tissue, *inter alia*, because the death of children and the elderly led to the absence of coexistence and the rupture of family ties. In addition, she indicated that the search for the disappeared and the lack of State support for the exhumations in clandestine cemeteries had entailed an emotional burden for the Mayan peoples. According to the expert witness, the fact of being unable to find their family members "among either the living or the dead," of being unable to give them a decent burial and carry out their farewell rituals, has kept open the mourning process suffered by these peoples.

[58] Expert opinion provided by Rosalina Tuyuk Velázquez during the public hearing.

[59] Report *"Guatemala, Memoria del Silencio"*, *supra*, third chapter, para. 4447

[60] Report *"Guatemala, Memoria del Silencio"*, *supra*, third chapter, para. 4447.

[61] *Cf. Case of the Plan de Sánchez Massacre v. Guatemala. Merits, supra,* para. 42.8, and *Case of the Dos Erres Massacre v. Guatemala, supra*, para. 83.

64. Subsequently, in 1990, a peace process was initiated in Guatemala that culminated in 1996. Over that period, 12 agreements were signed, including one for the establishment of the Historical Clarification Commission, which began its work in 1997.[62] This Commission examined numerous massacres, including those of the municipality of Rabinal, department of Baja Verapaz, Guatemala,[63] where the facts of this case took place.

B) Background to the massacres of the community of Río Negro

65. They Mayan communities have inhabited the Río Chixoy or Río Negro basin since the Mayan pre-classic period, and the Achí people settled there at the beginning of the 19th century.[64] During the 1970s, the Maya Achí community of Río Negro settled on the banks of the river in the municipality of Rabinal had a population of approximately 800 individuals based on a communal organization, who passed down their cosmovision[65] and history from generation to generation through an oral and written tradition. They made a living from agriculture, fishing and the exchange of produce with the neighboring community of Xococ, among others.[66]

66. In 1975, the Guatemalan National Electricity Institute (INDE) presented a project to construct the "Pueblo Viejo-Quixal" hydroelectric dam in the Chixoy river basin.[67] According to the CEH, "the plan included the flooding of more than 50 kilometers along the river and some tributaries, which would affect around 3,445 people […]," who would have to displace and resettle elsewhere. In 1977, work began on changing the course of the river, the containment wall and the tunnel[68] and, in June 1978, the Government declared a national

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[62] *Cf. Case of the Plan de Sánchez Massacre v. Guatemala. Merits, supra,* para. 42.8, and *Case of the Dos Erres Massacre v. Guatemala, supra,* para. 83.

[63] Cf. Case of the Plan de Sánchez Massacre v. Guatemala. Merits, supra, para. 42.8.

[64] *Cf.* expert opinion provided by affidavit by Alfredo Itzep Manuel (merits file, tome II, folios 1034, 1035 and 1037); Report "*Guatemala, Memoria del Silencio", supra*, volume VI, annex I, Illustrative Case No. 10 "Massacre and Elimination of the Community of Río Negro," and Burgos, Walter, "*Tesoros Mayas: Las sociedades prehispánicas de la cuenca del Río Chixoy,"* Guatemala, National Museum of Archeology and Ethnology (MUNAE) of the General Directorate for National and Cultural Patrimony of the Ministry of Culture and Sports of Guatemala, 2009 (file of attachments to the pleadings and motions brief, tome XXI, folios 12670 and 12692).

[65] According to expert witness Alfredo Itzep Manuel, for the Maya Achí, the Mayan cosmovision "is based on the harmonious relationship between all the elements of the universe, in which the human being is just one more element, the earth is the mother that gives life, and corn is a sacred element, the focal point of the culture […]. Water has transcendental importance for the people […]. It is connected to their cultural structure, as an element that generates life for men and women. […] For the Maya Achí of the Community of Río Negro, the construction of the hydroelectric project meant the closing or shutting down of the water, which signifies the closing down of life itself of the human beings." *Cf.* Expert opinion provided by affidavit by Alfredo Itzep Manuel (merits file, tome II, folios 1069 to 1071).

[66] *Cf.* expert opinion provided by affidavit by Alfredo Itzep Manuel (merits file, tome II, folios 1037 to 1044); Report *"Guatemala, Memoria del Silencio"*, *supra*, volume VI, annex I, Illustrative Case No. 10 "Massacre and Elimination of the Community of Río Negro."

[67] *Cf.* Report *"Guatemala, Memoria del Silencio"*, *supra*, volume VI, annex I, Illustrative Case No. 10 "Massacre and Elimination of the Community of Río Negro"; Johnston, Barbara Rose, *Estudio de los Elementos del Legado de la Represa Chixoy*, volume one, Guatemala, Center for Political Ecology, 2005 (file of attachments to the pleadings and motions brief, tome XXI, folio 12746); FLACSO-Guatemala, Report *"Generación de insumos para la verificación and identificación de daños and perjuicios por construcción de la hidroeléctrica de Chixoy,"* Guatemala, *Facultad Latinoamericana de Ciencias Sociales*-Guatemala, 2009, (file of attachments to the pleadings and motions brief, tome XXI, folios 13029 to 13030).

[68] *Cf. Estudio de los Elementos del Legado de la Represa Chixoy, supra,* volume two (file of attachments to the pleadings and motions brief, tome XXI, folio 12821).

emergency in the area.[69] Consequently, "INDE made a commitment to find, and to hand over to those who were displaced, land that was the same as or better than the land that was going to be flooded." However, "[t]he authorities attempted to settle the inhabitants of Río Negro in Pacux, an arid place, and in houses that were not in keeping with their culture."[70] Consequently, the community refused the State's proposals and resisted leaving its land. For its part, the Guatemalan Army declared that the community's refusal was due to subversive influences.[71] In January 1983, "the sluice gates of the dam were closed and the reservoir began to fill."[72] Consequently, most of the land occupied by the community of Río Negro was flooded. Another of the places flooded was Los Encuentros, an archaeological site and sacred place for the Mayans of the area.[73]

67. The Court will now refer to the alleged massacres in the instant case. According to the CEH, "the killings in the form of massacres were accompanied by the destruction and burning of property. In the north of Rabinal, the region near the Chixoy dam was completely devastated." The community of Río Negro, among others, was located in this area.[74] The CEH also referred to the massacres of Río Negro, Los Encuentros and Agua Fría, to which the Court will refer below, as three of the four massacres in which "the paramilitary forces acted […] with the greatest degree of cruelty."[75]

C. Massacre of March 4, 1980, in the chapel of the community of Río Negro and extrajudicial executions of July 8, 1980

68. On March 4, 1980, two members of the Guatemalan Army and an agent of the Military Foot Patrol Police (hereinafter "PMA") came to the village of Río Negro in search of several individuals they accused of having stolen provisions from the INDE workers who were building the Río Chixoy dam.[76] The members of the Río Negro community assembled in front of the village chapel, and following this an argument broke out and apparently the

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[69] Cf. Report "Guatemala, Memoria del Silencio," supra, volume VI, annex I, Illustrative Case No. 10 "Massacre and Elimination of the Community of Río Negro," and Report "*Generación de insumos para la verificación and identificación de daños and perjuicios por construcción de la hidroeléctrica de Chixoy," supra* (file of attachments to the pleadings and motions brief, tome XXI, folio 12975).

[70] Report "*Guatemala, Memoria del Silencio," supra*, volume VI, annex I, Illustrative Case No. 10 "Massacre and Elimination of the Community of Río Negro."

[71] The construction of the Project concluded in 1983. *Cf.* Report "*Guatemala, Memoria del Silencio"*, *supra*, volume VI, annex I, Illustrative Case No. 10 "Massacre and Elimination of the Community of Río Negro"; *Estudio de los Elementos del Legado de la Represa Chixoy*, *supra* (file of attachments to the pleadings and motions brief, tome XXI, folios 12747 and 12748), and Report "*Generación de insumos para la verificación and identificación de daños and perjuicios por construcción de la hidroeléctrica de Chixoy"*, *supra* (file of attachments to the pleadings and motions brief, tome XXI, folio 13051).

[72] *Estudio de los Elementos del Legado de la Represa Chixoy, supra,* volume two (file of attachments to the pleadings and motions brief, tome XXI, folio 12851).

[73] *Cf.* Report "*Guatemala, Memoria del Silencio," supra*, volume VI, annex I, Illustrative Case No. 10 "Massacre and Elimination of the Community of Río Negro".

[74] *Cf.* Report "*Guatemala, Memoria del Silencio," supra*, second chapter, volume III, para. 3390.

[75] Report "*Guatemala, Memoria del Silencio," supra*, second chapter, volume III, para. 3411.

[76] *Cf.* Report "*Guatemala, Memoria del Silencio," supra*, volume VI, annex I, Illustrative Case No. 10 "Massacre and Elimination of the Community of Río Negro"; testimony given by Antonia Osorio Sánchez on June 24, 2009 (file of annexes to the submission of the case, tome I, folio 481); testimony given by Jerónimo Osorio Chen on July 6, 2009 (file of annexes to the submission of the case, tome I, folios 495 to 496), and testimony given by Francisco Chen Osorio on July 1, 2009 (file of annexes to the submission of the case, tome I, folios 553 to 554).

PMA agent was hit.[77] The evidence in the case file is not clear as to whether it was the said agent or his companions who then fired on the people gathered there, resulting in the deaths of six of them,[78] while another person was wounded and taken to the hospital in Cobán, Alta Verapaz, where he subsequently died.[79] The seven persons executed were community leaders and representatives.[80]

69. Following this massacre, Valeriano Osorio Chen and Evaristo Osorio, two leaders of the Río Negro community committee that was negotiating the resettlement with INDE, were summoned to a meeting to be held on July 8, 1980, at the offices of the said State entity in "Chinatzul, […] between Santa Cruz and San Cristóbal Verapaz." They were instructed to bring with them the books containing the agreements signed and the commitments made by INDE.[81] The two community leaders left that day to go to the INDE meeting. However,

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[77] The testimonies in the case file differ as to whether the members of the Río Negro community assembled in front of the chapel on their own initiative or whether they were summoned by the said State agents. *Cf.* Report *"Guatemala, Memoria del Silencio," supra,* volume VI, annex I, Illustrative Case No. 10 "Massacre and Elimination of the Community of Río Negro"; testimony given by Antonia Osorio Sánchez on June 24, 2009 (file of annexes to the submission of the case, tome I, folio 481); testimony given by Jerónimo Osorio Chen on July 6, 2009 (file of annexes to the submission of the case, tome I, folio 495), and testimony given by Francisco Chen Osorio on July 1, 2009 (file of annexes to the submission of the case, tome I, folio 554).

[78] The people who died in this attack were: Calixto Chen. *Cf.* birth certificate (file of attachments to the pleadings and motions brief, tome XXV, folio 15133) and death certificate (file of attachments to the pleadings and motions brief, tome XXV, folio 15132). See also, the testimony of Antonia Osorio Sánchez (file of annexes to the submission of the case, tome I, folios 481 to 490) and the testimony of Jerónimo Osorio Chen (file of annexes to the submission of the case, tome I, folios 491 to 505); Francisco Tum Uscap. *Cf.* birth certificate (file of attachments to the pleadings and motions brief, tome XXV, folio 15135) and death certificate (file of attachments to the pleadings and motions brief, tome XXV, folio 15134). See also, the testimony of Antonia Osorio Sánchez (file of annexes to the submission of the case, tome I, folios 481 to 490) and the testimony of Jerónimo Osorio Chen (file of annexes to the submission of the case, tome I, folios 491 to 505); Máxima Chen. Cf. birth certificate (file of attachments to the pleadings and motions brief, tome XXV, folio 15140) and death certificate (file of attachments to the pleadings and motions brief, tome XXV, folio 15138). See also, the testimony of Antonia Osorio Sánchez (file of annexes to the submission of the case, tome I, folios 481 to 490) and the testimony of Jerónimo Osorio Chen (file of annexes to the submission of the case, tome I, folios 491 to 505); Santos Oswaldo López Ixpatá. *Cf.* birth certificate (file of attachments to the pleadings and motions brief, tome XXV, folio 15143) and death certificate (file of attachments to the pleadings and motions brief, tome XXV, folio 15142). See also, the testimony of Antonia Osorio Sánchez (file of annexes to the submission of the case, tome I, folios 481 to 490) and the testimony of Jerónimo Osorio Chen (file of annexes to the submission of the case, tome I, folios 491 to 505); Jesús Alvarado Ixpatá. *Cf.* birth certificate (file of attachments to the pleadings and motions brief, tome XXV, folio 15146) and death certificate (file of attachments to the pleadings and motions brief, tome XXV, folio 15145). See also, the testimony of Antonia Osorio Sánchez (file of annexes to the submission of the case, tome I, folios 481 to 490) and the testimony of Jerónimo Osorio Chen (file of annexes to the submission of the case, tome I, folios 491 to 505); Mateo Ixpatá Jerónimo. *Cf.* birth certificate (file of attachments to the pleadings and motions brief, tome XXV, folio 15149) and death certificate (file of attachments to the pleadings and motions brief, tome XXV, folio 15148). See also, the testimony of Antonia Osorio Sánchez (file of annexes to the submission of the case, tome I, folios 481 to 490) and the testimony of Jerónimo Osorio Chen (file of annexes to the submission of the case, tome I, folios 491 to 505).

[79] This person was Mateo Uscap Chen. *Cf.* birth certificate (file of attachments to the pleadings and motions brief, tome XXV, folio 15137) and death certificate (file of attachments to the pleadings and motions brief, tome XXV, folio 15136). See also, the testimony provided by affidavit by María Eustaquia Uscap Ivoy (merits file, tome II, folio 1006); the testimony of Antonia Osorio Sánchez (file of annexes to the submission of the case, tome I, folios 481 to 490) and the testimony of Jerónimo Osorio Chen (file of annexes to the submission of the case, tome I, folios 491 to 505).

[80] *Cf.* Report *"Guatemala, Memoria del Silencio," supra*, volume VI, annex I, Illustrative Case No. 10 "Massacre and Elimination of the Community of Río Negro"; testimony given by Antonia Osorio Sánchez on June 24, 2009 (file of annexes to the submission of the case, tome I, folios 481 to 482); testimony given by Jerónimo Osorio Chen on July 6, 2009 (file of annexes to the submission of the case, tome I, folios 496 to 497), and testimony given by Francisco Chen Osorio on July 1, 2009 (file of annexes to the submission of the case, tome I, folio 554).

[81] *Cf.* Testimony given by Jerónimo Osorio Chen on July 6, 2009 (file of annexes to the submission of the case, tome I, folio 499), and Testimony given by Antonia Osorio Sánchez on June 24, 2009 (file of annexes to the submission of the case, tome I, folio 482).

they did not return, and their naked bodies were found several days later in Purulha, Baja Verapaz, with gunshot wounds.[82]

D. Massacre of February 13, 1982, in the village of Xococ

70. At the beginning of February 1982, a group of armed men set fire to the market in the village of Xococ and killed five people. The Guatemalan Army attributed these facts to the guerrilla and the community of Río Negro; consequently, the Xococ community declared itself an enemy of the latter and broke off trading ties. The Army armed, trained and organized the Xococ villagers into civil self-defense patrols that came into confrontation with the community of Río Negro.[83]

71. On February 6 or 7, 1982,[84] on behalf of the Guatemalan Army, the Xococ patrollers summoned several members of the community of Río Negro to come to their village. When those who had been summoned arrived in Xococ, they were subjected to abuse and accusations by the Xococ patrollers, who accused them of being guerrillas and of having set fire to the market. The patrollers retained the identity cards of these people from Río Negro and ordered them to return the following Saturday to recover the cards.[85]

72. On February 13, 1982, several members of the Río Negro community returned to Xococ to collect their identity cards.[86] There, the "members of the Xococ Civil Self-Defense

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[82] *Cf.* testimony given by Jerónimo Osorio Chen on July 6, 2009 (file of annexes to the submission of the case, tome I, folio 500); testimony given by Antonia Osorio Sánchez on June 24, 2009 (file of annexes to the submission of the case, tome I, folio 482), and testimony given by Francisco Chen Osorio on July 1, 2009 (file of annexes to the submission of the case, tome I, folio 556). The Court's case file reveals that Valeriano Osorio Chen died from a gunshot wound in the abdominal thorax, acute internal hemorrhage, lung and liver injuries. *Cf.* death certificate (file of attachments to the pleadings and motions brief, tome XXVII, folio 16530). It can also be observed from the case file that Evaristo Osorio died as the result of a gunshot wound to the head, rendering him brain dead. *Cf.* death certificate (file of attachments to the pleadings and motions brief, tome XXVII, folio 16466).

[83] *Cf.* Report *"Guatemala, Memoria del Silencio," supra*, volume VI, annex I, Illustrative Case No. 10 "Massacre and Elimination of the Community of Río Negro", and testimony given by Jerónimo Osorio Chen on July 6, 2009 (file of annexes to the submission of the case, tome I, folio 502 and 503). See also, Tecú Osorio, Jesús. *Memoria de las Masacres de Río Negro: Recuerdo de mis padres and memoria para mis hijos*, Guatemala, 2002 (file of annexes to the submission of the case, tome XX, folios 12385 and 12386).

[84] The probative documents in the case file differ as to whether the members of the Río Negro community were summoned on Saturday 6 or Sunday 7 February, 1982. *Cf.* testimony of Jerónimo Osorio Chen (file of annexes to the submission of the case, tome I, folios 502 to 503); testimony of José Osorio Sic (file of annexes to the submission of the case, tome I, folio 536); testimony of Francisco Chen Osorio (file of annexes to the submission of the case, tome I, folio 556); testimony of Fabián Chen Ivoy (file of annexes to the submission of the case, tome I, folio 550), and Report *"Guatemala, Memoria del Silencio," supra*, volume VI, annex I, Illustrative Case No. 10 "Massacre and Elimination of the Community of Río Negro." See also, Forensic anthropology appraisal carried out in the village of Xococ," attached to the petitioners' brief received on March 1, 2010 (file of annexes to the submission of the case, tome III, folio 1787), and *Memoria de las Masacres de Río Negro: Recuerdo de mis padres and memoria para mis hijos, supra* (file of annexes to the submission of the case, tome XX, folio 12386).

[85] *Cf.* testimony of Jerónimo Osorio Chen (file of annexes to the submission of the case, tome I, folios 502 to 503); testimony of José Osorio Sic (file of annexes to the submission of the case, tome I, folios 536 to 537); testimony of Francisco Chen Osorio (file of annexes to the submission of the case, tome I, folios 556 to 557); testimony of Fabián Chen Ivoy (file of annexes to the submission of the case, tome I, folio 550); testimony of Carmen Sánchez Chen (file of annexes to the submission of the case, tome I, folio 525); Report *"Guatemala, Memoria del Silencio," supra*, volume VI, annex I, Illustrative Case No. 10 "Massacre and Elimination of the Community of Río Negro." See also, "Statement made by Denese Joy Burck on March 19, 2001, at the office of the Special Prosecutor of the Public Prosecution Service of Guatemala City, attached to the petitioners' brief received on May 7, 2007" (file of annexes to the submission of the case, tome III, folio 1772), and *Memoria de las Masacres de Río Negro: Recuerdo de mis padres and memoria para mis hijos, supra* (file of annexes to the submission of the case, tome XX, folios 12386 to 12387).

[86] *Cf.* testimony of Antonia Osorio Sánchez (file of annexes to the submission of the case, tome I, folio 483); testimony of Jerónimo Osorio Chen (file of annexes to the submission of the case, tome I, folio 503); testimony of Cornelio Osorio Sánchez (file of annexes to the submission of the case, tome I, folio 508); testimony of Teodora Chen (file of annexes to the submission of the case, tome I, folio 518); testimony of Carmen Sánchez Chen (file of

Patrol [and] soldiers" were waiting for them, armed with "clubs, poles, ropes and machetes […]."[87] They surrounded the inhabitants of Río Negro, took money […] from them, and then allowed them to do their shopping in the market.[88] Towards midday, the Xococ patrollers formed the Río Negro villagers into lines and separated the men from the women and children.[89] According to the testimony of Teodora Chen, a member of the Río Negro community who survive these events, the men were taken away "into a hollow" and, after hearing "an echoing sound," she understood that they had been killed.[90]

73. Then, the Xococ patrollers assembled the remaining Río Negro villagers in front of a church, tied up some of them up and/or attacked them "with clubs [and] machetes." They then shut them up in a building without water or food, and some of them remained there in these conditions for two days.[91]

74. The testimony in the case file indicates that the group of members of the Río Negro community that went to Xococ consisted of approximately 70 persons, most of them adult

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annexes to the submission of the case, tome I, folio 525), and testimony of Fabián Chen Ivoy (file of annexes to the submission of the case, tome I, folio 550). See also, *Memoria de las Masacres de Río Negro: Recuerdo de mis padres and memoria para mis hijos, supra* (file of annexes to the submission of the case, tome XX, folio 12392).

[87] Testimony of Teodora Chen (file of annexes to the submission of the case, tome I, folio 51). See also, "Forensic anthropology appraisal carried out in the village of Xococ," attached to the petitioners' brief received on March 1, 2010 (file of annexes to the submission of the case, tome III, folio 1787)

[88] *Cf.* Testimony of Teodora Chen (file of annexes to the submission of the case, tome I, folio 519). See also, "Forensic anthropology appraisal carried out in the village of Xococ," attached to the petitioners' brief received on March 1, 2010 (file of annexes to the submission of the case, tome III, folio 1788)

[89] *Cf.* Testimony of Teodora Chen (file of annexes to the submission of the case, tome I, folio 519).

[90] Testimony of Teodora Chen (file of annexes to the submission of the case, tome I, folios 519 to 522).

[91] *Cf.* Testimony of Teodora Chen (file of annexes to the submission of the case, tome I, folio 520). See also, testimony of Antonia Osorio Sánchez (file of annexes to the submission of the case, tome I, folios 483 to 484).

men, but also children and women,[92] some of them pregnant.[93] However, only two people returned to Río Negro.[94]

75. Finally, on the afternoon of Sunday, February 14, 1982, Teodora Chen escaped from her captors and walked all night to Río Negro, arriving the following morning to report what had happened in Xococ. She suggested that the members of the community should hide; accordingly, several of them left their homes and went to live in the surrounding hills.[95] That day, soldiers and the Xococ patrollers came to Río Negro asking in each house for the men, who they accused of having joined the guerrillas. According to the testimony of Francisco Chen Osorio in the case file, "the patrollers and soldiers told the women [that] if the men [did] not appear, within a month [they would be eliminated]."[96]

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[92] The Inter-American Commission alleged that 93 members of the Río Negro community were murdered on February 13, 1982, in the village of Xococ. However, they only individualized 91 of them, 6 of whom were presumably minors at the time. *Cf.* brief submitting the case (merits file, tome I, folios 30 and 61). The Court observes that the representatives sent a list of 80 persons, 12 of them minors, presumably massacred in Xococ. *Cf.* "Annex i. List of victims of the Xococ massacre" (file of attachments to the pleadings and motions brief, tome XXIII, folio 13747), and "List of persons massacred on February 13, 1982" (file of attachments to the representatives' final arguments, folios 26134 to 26144). At the same time, the Court observes that, according to the CEH Report, 74 members of the Río Negro community (55 men and 19 women) were murdered in Xococ. *Cf.* Report *"Guatemala, Memoria del Silencio," supra*, volume VI, annex I, Illustrative Case No. 10 "Massacre and Elimination of the Community of Río Negro." In addition, Teodora Chen, a witness of the events in Xococ indicated that, on February 13, 1982, 70 to 80 people Río Negro went to the said village. *Cf.* testimony of Teodora Chen (file of annexes to the submission of the case, tome I, folios 518 to 519). This is consistent with the testimony given by Carmen Sánchez Chen, Denese Joy Burck and Jesús Tecú Osorio, who stated, respectively, that approximately 73 people had gone to Xococ on that occasion. Ms. Burck indicated that "most [of these people] were men," and Mr. Tecú Osorio indicated that there were 55 men and 18 women. *Cf.* testimony of Carmen Sánchez Chen (file of annexes to the submission of the case, tome I, folios 525 to 526); "Statement made by Denese Joy Burck on March 19, 2001, at the office of the Special Prosecutor of the Public Prosecution Service of Guatemala City, attached to the petitioners' brief received on May 7, 2007" (file of annexes to the submission of the case, tome III, folio 1772), and "testimony of Jesús Tecú Osorio of February 1995. Criminal Proceedings 001-98-1. Attached to the petitioners' brief received on May 7, 2007" (file of annexes to the submission of the case, tome I, folio 571). In addition, the Court observes that, as part of the investigations in to the facts of this case, the Guatemalan Forensic Anthropology Foundation (FAFG) established, based on testimony it collected, that 73 people, including seven women had been victims of the events of February 13, 1982, in Xococ. The FAFG individualized 68 of these people. *Cf.* "Forensic anthropology appraisal carried out in the village of Xococ, attached to the petitioners' brief received on March 1, 2010" (file of annexes to the submission of the case, tome III, folios 1788 to 1790).

[93] *Cf.* testimony of Teodora Chen (file of annexes to the submission of the case, tome I, folio 521), and testimony of Antonia Osorio Sánchez (file of annexes to the submission of the case, tome I, folio 483).

[94] *Cf.* testimony of Teodora Chen (file of annexes to the submission of the case, tome I, folios 518 to 524); testimony of Antonia Osorio Sánchez (file of annexes to the submission of the case, tome I, folio 484); testimony of Jerónimo Osorio Chen (file of annexes to the submission of the case, tome I, folio 504); testimony of Carmen Sánchez Chen (file of annexes to the submission of the case, tome I, folio 526); testimony of Francisco Chen Osorio (file of annexes to the submission of the case, tome I, folio 558), and testimony provided by affidavit by María Osorio Chen (merits file, tome II, folios 996 to 1001). See also, "Statement made by Denese Joy Burck on March 19, 2001, at the office of the Special Prosecutor of the Public Prosecution Service of Guatemala City, attached to the petitioners' brief received on May 7, 2007" (file of annexes to the submission of the case, tome III, folio 1772); "Forensic anthropology appraisal carried out in the village of Xococ," attached to the petitioners' brief received on March 1, 2010" (file of annexes to the submission of the case, tome III, folio 1788), and *Memoria de las Masacres de Río Negro: Recuerdo de mis padres and memoria para mis hijos, supra* (file of annexes to the submission of the case, tome XX, folio 12392).

[95] *Cf.* testimony of Teodora Chen (file of annexes to the submission of the case, tome I, folios 521 and 522; testimony of Carmen Sánchez Chen (file of annexes to the submission of the case, tome I, folio 526); testimony of José Osorio Sic (file of annexes to the submission of the case, tome I, folio 537), and testimony of Francisco Chen Osorio (file of annexes to the submission of the case, tome I, folios 558 and 559). See also, the "Statement made by Denese Joy Burck on March 19, 2001, at the office of the Special Prosecutor of the Public Prosecution Service of Guatemala City, attached to the petitioners' brief received on May 7, 2007" (file of annexes to the submission of the case, tome III, folio 1773), and "Testimony of Jesús Tecú Osorio of February 1995. Criminal Proceedings 001-98-1. Attached to the petitioners' brief received on May 7, 2007" (file of annexes to the submission of the case, tome I, folio 572).

[96] Testimony of Francisco Chen Osorio (file of annexes to the submission of the case, tome I, folios 558 and 559), and testimony of Carmen Sánchez Chen (file of annexes to the submission of the case, tome I, folio 526).

E. Massacre of March 13, 1982, on Cerro Pacoxom

76. A month later, around 6 a.m. of March 13, 1982, members of the Guatemalan Army and patrollers from the village of Xococ came to the village of Río Negro[97] carrying weapons, spades, pickaxes, ropes, wire and machetes. They went from house to house asking for the men, but most of them were not there because they spent the nights in the hills for safety. Amid accusations that the absence of the men was an indication that they were guerrillas, they demanded that the women, including those who were pregnant, the elderly and the children leave their houses, supposedly to take part in a meeting. They then sacked the village.[98]

77. The patrollers and soldiers then forced the villagers, mainly women, some of them tied by the neck or the hands, to walk uphill for approximately three kilometers without water or food to a place known as "Cerro Pacoxom." On the way, the soldiers and patrollers insulted, pushed, struck and flogged them (even the pregnant women) with branches and clubs, killing some who were unable to continue. They also forced the women to dance, according to them, as they would with the guerrillas. Some of the girls and women were separated from the group and raped; the case file indicates that at least one of them was pregnant.[99] María Eustaquia Uscap Ivoy, a minor at the time of the incident, was one of the

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[97] The CEH Report indicated that "12 members of the Army [came to] the village of Xococ accompanied by 15 patrollers." *Cf.* Report *"Guatemala, Memoria del Silencio"*, *supra*, volume VI, annex I, Illustrative Case No. 10 "Massacre and Elimination of the Community of Río Negro*".* See also, "Testimony of Jesús Tecú Osorio of February 1995. Criminal proceedings 001-98-1. Attached to the petitioners' brief received on May 7, 2007" (file of annexes to the submission of the case, tome I, folio 573). In his testimony, Mr. Tecú Osorio indicated that "around 25 armed men in total [came]; about 15 patrollers (with M-1 weapons that the Army used in the 1970s) and 10 soldiers (with Galil machine guns)."

[98] *Cf.* affidavit provided by Bruna Pérez Osorio (merits file, tome II, folio 992); affidavit provided by Bruna María Osorio Chen (merits file, tome II, folio 996); Judgment of November 30, 1998, Criminal proceedings No. 001-98-1, (file of annexes to the submission of the case, tome I, folios 587 and 588); Judgment of May 28, 2008, Cases No. 28-2003-OF (file of annexes to the submission of the case, tome II, folios 739 to 743, 761 to 767, 775 to 778, 785 to 789, 800 to 805, 813 to 817, 831 to 836, 839 to 842, 852 to 857, 859 to 861, 869 to 871, 875 to 878, 882 to 884, 893 to 894, 906 to 907 and 930 to 933); testimony of Antonia Osorio Sánchez (file of annexes to the submission of the case, tome I, folios 484 to 485); testimony of Jerónimo Osorio Chen (file of annexes to the submission of the case, tome I, folio 504); testimony of Teodora Chen (file of annexes to the submission of the case, tome I, folio 522); testimony of Juana Chen Osorio (file of annexes to the submission of the case, tome I, folio 531); testimony of José Osorio Sic (file of annexes to the submission of the case, tome I, folios 537 to 538); testimony of Francisco Chen Osorio (file of annexes to the submission of the case, tome I, folio 559), and Report *"Guatemala, Memoria del Silencio," supra*, volume VI, annex I, Illustrative Case No. 10 "Massacre and Elimination of the Community of Río Negro." See also, "Statement made by Denese Joy Burck on March 19, 2001, at the office of the Special Prosecutor of the Public Prosecution Service of Guatemala City, attached to the petitioners' brief received on May 7, 2007" (file of annexes to the submission of the case, tome III, folio 1773); "Testimony of Jesús Tecú Osorio of February 1995. Criminal proceedings 001-98-1. Attachment to the petitioners' brief received on May 7, 2007" (file of annexes to the submission of the case, tome I, folio 573), and *Memoria de las Masacres de Río Negro: Recuerdo de mis padres y memoria para mis hijos, supra* (file of annexes to the submission of the case, tome XX, folios 12398 to 12400).

[99] *Cf.* testimony provided by affidavit by María Eustaquia Uscap Ivoy (merits file, tome II, folio 1007); testimony provided by affidavit by Bruna Pérez Osorio (merits file, tome II, folio 1014); Judgment of November 30, 1998, Criminal proceedings No. 001-98-1 (file of annexes to the submission of the case, tome I, folios 587 and 588; Judgment of May 28, 2008, Case No. 28-2003-OF (file of annexes to the submission of the case, tome II, folios 739 to 743, 761 to 767, 775 to 778, 785 to 789, 800 to 805, 813 to 817, 831 to 836, 839 to 842, 852 to 857, 859 to 861, 869 to 871, 875 to 878, 882 to 884, 893 to 894, 906 to 907, and 930 to 933); testimony of Antonia Osorio Sánchez (file of annexes to the submission of the case, tome I, folio 484); testimony of Teodora Chen (file of annexes to the submission of the case, tome I, folios 522 to 523); testimony of Juana Chen Osorio (file of annexes to the submission of the case, tome I, folio 532); testimony of Francisco Chen Osorio (file of annexes to the submission of the case, tome I, folio 559), and Report *"Guatemala, Memoria del Silencio," supra*, volume VI, annex I, Illustrative Case No. 10 "Massacre and Elimination of the Community of Río Negro." See also, la "Statement made by Denese Joy Burck on March 19, 2001, at the office of the Special Prosecutor of the Public Prosecution Service of Guatemala City, attached to the petitioners' brief received on May 7, 2007" (file of annexes

people taken to Cerro Pacoxom. On arriving there, a soldier took her brother, who she had been carrying on her back, from her. She was then taken to a hillock where she was raped by two soldiers and two patrollers. On returning, she found that her grandmother, who had been taken to Cerro Pacoxom with her, had been murdered. After this, she was taken to Xococ, where she was again raped by a patroller in the market there.[100]

78. On reaching Cerro Pacoxom, the patrollers and soldiers dug a mass grave and proceeded to kill the Río Negro people present. They strangled or hung several using poles or rope, and they killed the others with machetes or shot them. They killed the babies and the children with machetes, grabbing them by the feet or the hair and throwing them against rocks or trees until they died; they also assembled them in small groups to shoot them all together. The bodies from the massacre were thrown into a nearby ravine or into a mass grave that the patrollers and soldiers had dug, which they subsequently covered with rocks and branches.[101]

79. In addition, during the massacre, the patrollers and soldiers selected 17 children from the Río Negro community to take back to the village of Xococ.[102] According to the State's acknowledgement of responsibility and clarifications made by the representatives (*supra* paras. 17(d) and 12), those children were: Agustín Chen Osorio, Celestina Uscap Ivoy, Cruz Pérez Osorio, Froilan Uscap Ivoy, Jesús Tecú Osorio, José Osorio Osorio, Juan Chen Chen, Juan Chen Osorio, Juan Pérez Osorio, Juan Uscap Ivoy, Juana Chen Osorio, María Eustaquia Uscap Ivoy, Pedro Sic Sánchez, Silveria Lajuj Tum, Tomasa Osorio Chen,

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to the submission of the case, tome III, folio 1774); "Testimony of Jesús Tecú Osorio of February 1995. Criminal proceedings 001-98-1. Attached to the petitioners' brief received on May 7, 2007" (file of annexes to the submission of the case, tome I, folio 573); testimony of Carmen Sánchez Chen (file of annexes to the submission of the case, tome I, folios 527 and 528), and testimony of José Osorio Sic (file of annexes to the submission of the case, tome I, folio 538).

[100] *Cf.* Judgment of May 28, 2008, Case No. 28-2003-OF (file of annexes to the submission of the case, tome II, Annex 16, folio 616). This judgment cites the testimony of María Eustaquia Uscap Ivoy. See also the testimony of María Eustaquia Uscap Ivoy provided by affidavit (merits file, tome II, folio 1007).

[101] *Cf.* testimony provided by affidavit by María Eustaquia Uscap Ivoy (merits file, tome II, folios 1006 and 1007); testimony provided by affidavit by Bruna Pérez Osorio (merits file, tome II, folios 1014 and 1015); Judgment of November 30, 1998, Criminal proceedings No. 001-98-1 (file of annexes to the submission of the case, tome I, folios 587 to 588 and 607 to 608); Judgment of May 28, 2008, Case No. 28-2003-OF (file of annexes to the submission of the case, tome II, folios 739 to 743, 761 to 767, 775 to 778, 785 to 789, 800 to 805, 813 to 817, 831 to 836, 839 to 842, 852 to 857, 859 to 861, 869 to 871, 875 to 878, 882 to 884, 893 to 894, 899, 906 to 907 and 930 to 933); testimony of Antonia Osorio Sánchez (file of annexes to the submission of the case, tome I, folios 484 and 485); testimony of Teodora Chen (file of annexes to the submission of the case, tome I, folios 522 to 523); testimony of Juana Chen Osorio (file of annexes to the submission of the case, tome I, folio 532); testimony of Francisco Chen Osorio (file of annexes to the submission of the case, tome I, folios 559 and 560), and Report *"Guatemala, Memoria del Silencio," supra*, volume VI, annex I, Illustrative Case No. 10 "Massacre and Elimination of the Community of Río Negro." See also, "Testimony of Jesús Tecú Osorio of February 1995. Criminal proceedings 001-98-1. Attached to the petitioners' brief received on May 7, 2007" (file of annexes to the submission of the case, tome I, folios 572 to 575); "Statement made by Denese Joy Burck on March 19, 2001, at the office of the Special Prosecutor of the Public Prosecution Service of Guatemala City, attached to the petitioners' brief received on May 7, 2007" (file of annexes to the submission of the case, tome III, folio 1774); testimony of Carmen Sánchez Chen (file of annexes to the submission of the case, tome I, folios 527 and 528), and testimony of José Osorio Sic (file of annexes to the submission of the case, tome I, folio 538).

[102] Jesús Tecú Osorio, who was 10 years old on the day of the events, stated that he was chosen by one of the patrollers to return to Xococ to live with him; he was therefore separated from the children who were massacred. However, when the slaughter had ended, the patroller realized that Jesús Tecú Osorio had his brother Jaime Tecú Osorio, aged 3 years at the time, with him. Even though Jesús tried to apologize and negotiate for his brother's life, the said patroller pulled his brother from his arms, placed a noose around the child's neck, dragged him kicking to a stream, and battered his head against the stones. *Cf.* Testimony given during the public hearing by Jesús Tecú Osorio. See also the judgment of May 28, 2008, Case No. 28-2003-OF (file of annexes to the submission of the case, tome II, folios 765 to 766), and *Memoria de las Masacres de Río Negro: Recuerdo de mis padres and memoria para mis hijos, supra* (file of annexes to the submission of the case, tome XX, folios 12403 and 12404).

Florinda Uscap Ivoy and Juan Osorio Alvarado. Some of the children offered themselves or were offered by their mothers to be taken by the patrollers to avoid being killed. After the massacres, the children were forced to walk, hungry and thirsty, to Xococ, where some were taken by the soldiers or the patrollers, while others were led to the village church to be turned over to members of the Xococ community. The Río Negro children were obliged to live with these individuals, some for two to four years, approximately,[103] and were forced to work. The case file indicates that some of the children were threatened and mistreated,[104] and they were prevented from contacting next of kin who had survived the massacres. Some children were given a new identity until they were recovered by their next of kin owing to measures taken before the municipal authorities.[105] Apart from these 17 children,

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[103] *Cf.* Judgment of May 28, 2008, Case No. 28-2003-OF (file of annexes to the submission of the case, tome II, Annex 16, folios 576, 756, 760, 784, 811, 839 and 847).

[104] For example, Jesús Tecú Osorio was beaten and choked until he lost consciousness. *Cf.* testimony given by Jesús Tecú Osorio during the public hearing. See also, "Testimony of Jesús Tecú Osorio of February 1995. Criminal proceedings 001-98-1. Attached to the petitioners' brief received on May 7, 2007" (file of annexes to the submission of the case, tome I, folios 575 and 576); *Memoria de las Masacres de Río Negro: Recuerdo de mis padres and memoria para mis hijos, supra* (file of annexes to the submission of the case, tome XX, folios 12408 to 12414). Furthermore, according to the testimony of Juana Chen Osorio in the case file, the individuals who selected her and her younger brother, Juan, changed their names, forced them to work and hit them with "whips." According to Ms. Chen Osorio, "I was in despair; Juan told me 'I am going to leave and I am going to kill myself,' […] and the woman heard, and she went to fetch Juan, and […] there was a hole [*sic*] in the fire and she burned Juan's feet; I began to tend to Juan, who was screaming; that was just a small taste of what's to come, she told him. You two have to work. Where will the money for your clothes come from?" *Cf.* testimony of Juana Chen Osorio (file of annexes to the submission of the case, tome I, folio 533). In her affidavit, María Eustaquia Uscap Ivoy indicated that: "[….] Doña Paula's mother mistreated my sister and perhaps because of this [my sister] became ill and then died. Florinda was very little, but she hit her and made her wash the clothes. When I left my sister, we cried and cried […]." (merits file, tome II, folio 1008).

[105] *Cf.* Report *"Guatemala, Memoria del Silencio," supra*, volume VI, annex I, Illustrative Case No. 10 "Massacre and Elimination of the Community of Río Negro", second chapter, volume III, para. 2526; testimony provided by affidavit by María Eustaquia Uscap Ivoy (merits file, tome II, folios 1008 and 1009); Judgment of November 30, 1998, Criminal proceedings No. 001-98-1 (file of annexes to the submission of the case, tome I, folios 588 to 589); Judgment of May 28, 2008, Case No. 28-2003-OF (file of annexes to the submission of the case, tome II, folios 723, 742 to 743, 759 to 760, 765 to 766, 781 to 783, 787, 796 to 798, 803 to 804, 807 to 812, 816 to 817, 824 to 835, 841, 845 to 848, 855 to 859, 897 to 899 and 933); testimony of Juana Chen Osorio (file of annexes to the submission of the case, tome I, folios 532 to 535); Testimony given during the public hearing by Jesús Tecú Osorio; "Testimony of Jesús Tecú Osorio of February 1995. Criminal proceedings 001-98-1. Attached to the petitioners' brief received on May 7, 2007" (file of annexes to the submission of the case, tome I, folios 574 to 576); testimony of José Osorio Sic (file of annexes to the submission of the case, tome I, folios 547 to 549), and *Memoria de las Masacres de Río Negro: Recuerdo de mis padres and memoria para mis hijos, supra* (file of annexes to the submission of the case, tome XX, folios 12408 to 12416).

few people survived the massacre.[106] The case file indicates that at least 70 women and 107 children were murdered.[107]

F. Massacre of May 14, 1982, in Los Encuentros

80. Some of the survivors of the massacre that took place on Pacoxom took refuge in a sacred place known as "Los Encuentros." There, on May 14, 1982, at approximately 1 p.m., a group of soldiers and patrollers attacked the community, firing at them and throwing grenades. They raped several women, set fire to houses, and tied up and hung a number of people from trees, forcing them to stand on an iron sheet heated by a fire until they died. In this way, the patrollers and soldiers killed at least 79 people.[108] Also, on at least three occasions, an army helicopter came to the community and at least 15 people were forced to board it and were never heard from again. Several of the survivors fled to the mountains, where they took refuge from the persecution by the army and the patrollers.[109]

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[106] The case file reveals that at least 17 children selected by the patrollers and soldiers to be taken to Xococ survived the massacre: Antonia Osorio Sánchez, Laura Tecú Osorio, Felisa Gonzalez Coloch, Bruna Pérez Osorio and Dominga Sic Ruiz (Denese Joy Burck). *Cf.* testimony of Antonia Osorio Sánchez (file of annexes to the submission of the case, tome I, folios 484 to 485); Testimony provided by affidavit by Bruna Pérez Osorio (merits file, tome II, folios 992 to 995); Testimony given during the public hearing by Jesús Tecú Osorio; Judgment of November 30, 1998, Criminal proceedings No. 001-98-1 (file of annexes to the submission of the case, tome I, folios 588 to 589); Judgment of May 28, 2008, Case No. 28-2003-OF (file of annexes to the submission of the case, tome II, folios 740, 765 to 778, 834 and 871 to 884), and "Statement made by Denese Joy Burck on March 19, 2001, at the office of the Special Prosecutor of the Public Prosecution Service of Guatemala City, attached to the petitioners' brief received on May 7, 2007" (file of annexes to the submission of the case, tome III, folios 1772 to 1774). The Inter-American Commission identified one survivor as "Felisa Coloch Gonzáles." However, the Court has verified that this is Felisa González Coloch. *Cf.* identity document and birth certificate of Felisa González Coloch (file of attachments to the pleadings and motions brief, tome XXVIII, folios 16849 to 16852). In addition, this Court notes that the Inter-American Commission listed Dominga Sic Ruiz as a survivor of the Pacoxom massacre. However, this person is now known in the United States of America as Denese Joy Burck. *Cf.* "Statement made by Denese Joy Burck on March 19, 2001, at the office of the Special Prosecutor of the Public Prosecution Service of Guatemala City, attached to the petitioners' brief received on May 7, 2007" (file of annexes to the submission of the case, tome III, folio 1772).

[107] The Inter-American Commission alleged that 203 members of the community of Río Negro were murdered on March 13, 1982. It indicated that, of these, 77 were minors and 50 were adults; however, it was unaware of the age of the other 76 persons. *Cf.* brief submitting the case (merits file, tome I, folios 34 and 35). In addition, the Court observes that the representatives forwarded a list of 175 persons, 98 of them minors, presumably massacred on March 13, 1982. However, with their final written arguments, the representatives forwarded a list of 167 persons, 98 of them minors, presumably massacred on that date. *Cf.* "Annex J. List of victims of the Pakoxom massacre" (file of attachments to the pleadings and motions brief, tome XXIII, folios 13751 and 13759), and "List of persons massacred on March 13, 1982" (file of attachments to the representatives' final arguments, folios 26145 to 26170). At the same time, the Court observes that, according the CEH Report, 177 members of the community of Río Negro (70 women and 107 children) were murdered on that occasion. *Cf.* Report *"Guatemala, Memoria del Silencio," supra*, volume VI, annex I, Illustrative Case No. 10 "Massacre and Elimination of the Community of Río Negro." In addition, the judgment delivered on May 28, 2008, Case No. 28-2003-OF, established, based on the investigations conducted by the FAFG that, on March 13, 1982, "at least" 143 persons from Río Negro died (file of annexes to the submission of the case, tome II, folio 942).

[108] *Cf.* Report *"Guatemala, Memoria del Silencio," supra*, volume VI, annex I, Illustrative Case No. 10 "Massacre and Elimination of the Community of Río Negro." The Inter-American Commission presented a list of 81 persons who were presumably murdered on May 14, 1982, in Los Encuentros. *Cf.* brief submitting the case (merits file, tome I, folio 39). Meanwhile, the representatives presented a list of 45 persons presumably massacred in Los Encuentros on that occasion. However, with their final written arguments, the representatives forwarded a list of 61 persons, 33 of them minors, presumably massacred in Los Encuentros. *Cf.* "Annex K: List of victims of the massacre at "Los Encuentros" (file of attachments to the pleadings and motions brief, tome XXIII, folios 13760 to 13762), and "List of persons of the village of Río Negro, massacred on May 14, 1982, in the community of Los Encuentros" (file of attachments to the representatives' final arguments, folios 26172 to 26180).

[109] *Cf.* Report *"Guatemala, Memoria del Silencio," supra*, volume VI, annex I, Illustrative Case No. 10 "Massacre and Elimination of the Community of Río Negro"; testimony provided by affidavit by Antonia Osorio Sánchez (merits file, tome II, folio 1002); testimony of Antonia Osorio Sánchez (file of annexes to the submission of the case, tome I, folios 484 to 487); testimony of Jerónimo Osorio Chen (file of annexes to the submission of the case, tome I, folio 504); testimony of Carmen Sánchez Chen (file of annexes to the submission of the case, tome I,

G. Massacre of September 14, 1982, in Agua Fría

81. A group of survivors of the Pacoxom and Los Encuentros massacres fled to a village known as "Agua Fría," in the department of Quiché, Guatemala. On September 14, 1982, a group of soldiers and patrollers came to that area and assembled the people in a building.[110] They fired on them from outside and later set fire to the building[111] killing at least 92 people.[112] The case file indicates that at least one person, Timotea Lajuj López, survived the massacre owing to the intervention of her brother, who was serving in the Army.[113]

H. Life in the mountains and the resettlement of the members of the Community of Río Negro in the Pacux settlement

82. According to the CEH report, "[s]ome communities, such as Río Negro, were victims of systematic persecution, aimed at their total elimination."[114] Some individuals who were able to escape the different massacres perpetrated against the Río Negro community took refuge in the mountains, some of them for years, stripped of all their belongings, sleeping exposed to the elements and moving continuously in order to flee the soldiers and patrollers who pursued them even after the massacres. Some of them were shot to death during those pursuits. Additionally, the members of the Río Negro community experienced severe problems finding food, and several children and adults died of hunger because the army and patrollers would destroy any fields they were able to cultivate. Some women gave birth in

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folios 528 and 529); testimony of José Osorio Sic (file of annexes to the submission of the case, tome I, folios 540 and 541); testimony of Fabián Chen Ivoy (file of annexes to the submission of the case, tome I, folios 551 and 552) and testimony of Francisco Chen Osorio (file of annexes to the submission of the case, tome I, folio 561).

110 The CEH indicated that: "[o]n September 14, 1982, soldiers and patrollers from Xococ arrived in this community and proceeded to assemble everyone in one of the houses […]"; while testimony given at the domestic level indicated that it was a school. Then, Francisco Chen Osorio indicated that "they burned everyone in one place and set fire to the houses." *Cf.* Report "*Guatemala, Memoria del Silencio," supra*, volume VI, annex I, Illustrative Case No. 10 "Massacre and Elimination of the Community of Río Negro," and testimony of Francisco Chen Osorio (file of annexes to the submission of the case, tome I, folio 562).

111 *Cf.* Report "*Guatemala, Memoria del Silencio," supra*, volume VI, annex I, Illustrative Case No. 10 "Massacre and Elimination of the Community of Río Negro." Testimony of Francisco Chen Osorio (file of annexes to the submission of the case, tome I, folios 561 to 562); Judgment of November 30, 1998, Criminal proceedings No. 001-98-1 (file of annexes to the submission of the case, tome I, folio 590), and testimony of Antonia Osorio Sánchez (file of annexes to the submission of the case, tome I, folio 489).

112 The CEH indicated that in Agua Fría "92 people died, including the elderly, children and women." *Cf.* Report "*Guatemala, Memoria del Silencio," supra*, volume VI, annex I, Illustrative Case No. 10 "Massacre and Elimination of the Community of Río Negro." Meanwhile, Francisco Chen Osorio indicated that between 90 and 100 people died that day. *Cf.* testimony of Francisco Chen Osorio (file of annexes to the submission of the case, tome I, folio 562). The Inter-American Commission alleged that 128 people died in this massacre. *Cf.* brief submitting the case (merits file, tome I, folio 41). The representatives forwarded a list of 96 persons presumably massacred in Agua Fría on September 14, 1982. However, with their final written arguments, the representatives forwarded a list of 89 persons, 43 of them minors, presumably massacred on that date. *Cf.* "Annex L. List of victims of the Agua Fría massacre" (file of attachments to the pleadings and motions brief, tome XXIII, folios 13763 to 13766), and "List of persons massacred on September 14, 1982, in the village of Agua Fría" (file of attachments to the representatives' final arguments, folios 26181 to 26201).

113 *Cf.* Testimony of Francisco Chen Osorio (file of annexes to the submission of the case, tome I, folio 562), and testimony of Antonia Osorio Sánchez (file of annexes to the submission of the case, tome I, folio 489).

114 Report "*Guatemala, Memoria del Silencio," supra*, second chapter, volume III, para. 3383.

the mountains and were only able to register their children later, with false dates[115] and places of birth in order to protect them.

83. When the amnesty law entered into force in 1983, some survivors of the massacres came down from the mountains and were resettled by the government in the Pacux settlement, located behind the Rabinal military garrison. However, the violence against members of the Río Negro community continued there. In this regard, the case file shows that some of the people who tried to live there were interrogated, detained for days without food,[116] threatened, obliged to do forced labor, tortured,[117] disappeared[118] and murdered, and some women were raped.[119]

84. The case file indicates that at least 289 survivors of the Río Negro massacres identified by the representatives still reside in the semi-urban settlement of Pacux. In this regard, according to the INDE "Final Report of the Technical Support Commission," issued in January 2008 and provided by the State with its final written arguments, in 2006 a "Political Agreement" was signed between the Government of Guatemala and the Coordinator of Communities affected by the Construction of the Chixoy Hydroelectric Dam (COCAHICH), among them that of Río Negro, for the "identification, verification and, as appropriate, reparation plan for the harm caused to the said communities owing to the construction of the Chixoy River Dam and Reservoir." Based on this agreement, the State of Guatemala built 150 houses and 4 public buildings in Pacux, including a "Catholic church, school, health post and community center," and provided the community with a "nixtamal mill, […] water

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[115] *Cf.* Report *"Guatemala, Memoria del Silencio," supra*, volume VI, annex I, Illustrative Case No. 10 "Massacre and Elimination of the Community of Río Negro"; testimony provided by affidavit by María Osorio Chen (merits file, tome II, folios 996 to 1001); testimony of Teodora Chen (file of annexes to the submission of the case, tome I, folios 523 and 524); testimony of Antonia Osorio Sánchez (file of annexes to the submission of the case, tome I, folios 487 to 490); testimony of Carmen Sánchez Chen (file of annexes to the submission of the case, tome I, folio 529 and 530); testimony of José Osorio Sic (file of annexes to the submission of the case, tome I, folios 541 and 542); testimony of Francisco Chen Osorio (file of annexes to the submission of the case, tome I, folio 567). The Commission presented a list of 63 persons presumably deceased owing to circumstances related to the persecution to which they were subjected. For their part, the representatives presented a list of 32 persons presumably deceased during the persecution that followed these massacres. *Cf.* "Annex W. List of victims of the persecution that followed the massacre" (file of attachments to the pleadings and motions brief, tome XXV, folios 14912 to 14914).

[116] According to the testimony of Francisco Chen Osorio, "we were punished there, without any food […,] we were so hungry, we appeared to be drunk." *Cf.* testimony of Francisco Chen Osorio (file of annexes to the submission of the case, tome I, folio 566).

[117] For example, according to the testimony of Francisco Chen Osorio, José Osorio Ivoy was "tortured with a knife and cigar embers; sometimes he fainted; they gave him food and then they hit him again; they made him vomit everything he had eaten." *Cf.* testimony of Francisco Chen Osorio (file of annexes to the submission of the case, tome I, folio 564). Furthermore, Antonia Osorio Sánchez testified that "they punished [her] brothers, Cristobal Osorio Sanchez, Luis Osorio Sanchez; they dragged them through muddy pools, we could hear cries, screams and people agonizing, because they were torturing them in the garrison. When we were in Pacux, the soldiers also came to rape the women, and when we went to the market, we had to do so in groups of women, and we were escorted by a military squad." *Cf.* testimony of Antonia Osorio Sánchez (file of annexes to the submission of the case, tome I, folio 488).

[118] José Osorio Sic indicated that "some of [his] companions […] were tortured for eight days […], Cristobal Osorio, Luis Osorio Sánchez, Sebastián Ivoy Osorio, Francisco Chen Osorio, Margarita Siana and Jesusa Osorio Sanchez, and José Ivoy Osorio died while being tortured, and Juan Osorio Chen, Simeón Chen López and Pedro Chen López were taken by helicopter to the military zone of Cobán, Alta Verapaz, and I think they died there, because they have never reappeared, and only Juan Osorio Chen returned one month later [*sic*]." *Cf.* testimony of José Osorio Sic (file of annexes to the submission of the case, tome I, folio 543).

[119] *Cf.* Report *"Guatemala, Memoria del Silencio," supra*, volume VI, annex I, Illustrative Case No. 10 "Massacre and Elimination of the Community of Río Negro"; testimony of Francisco Chen Osorio (file of annexes to the submission of the case, tome I, folios 562 to 568); testimony of Antonia Osorio Sánchez (file of annexes to the submission of the case, tome I, folio 488), and testimony of José Osorio Sic (file of annexes to the submission of the case, tome I, folio 543 to 546).

with a pump and elevated cistern system. In addition, […] 150 *medias pajas* [*sic*] of water [taps]" were purchased and "electricity, drainage and access roads were provided." Furthermore, "six communal farms were provided for crops, three *manzanas* per family," as well as primary school teachers, a nurse's assistant, cultural promoters, and training in loom weaving, construction of Lorena stoves and livestock aspects [*sic*]." However, according to the said 2008 report, at the date it was issued, the necessary resources to complete the agreed reparations stage had still not been processed and obtained. Four years later, the State failed to advise the Court whether the reparation had been provided as agreed.

85. However, and despite the State's efforts, according to the CEH, "[t]he living conditions in Pacux are precarious and the land is inadequate for subsistence agriculture."[120] In this regard, according to the affidavit prepared by Bruna Pérez Osorio:

> "In Pacux [the members of the community] do not have land for farming; [… they] have to buy everything. [… In Río Negro] there was enough to meet [their] needs. In contrast, in Pacux there isn't. There are only problems. [… They] no longer have access to the river; […] in Pacux, there's only one river but it is polluted; you can't go to wash or bathe there."[121]

86. Similarly, during the public hearing held in this case, Carlos Chen Osorio indicated that:

> "In Pacux, there is extreme poverty because it is not the same as in Río Negro. […] Nowadays, we can't do anything in Pacux because all the land is 15x30; we can no longer visit Los Encuentros, the archaeological sites […]. In Pacux […] the women [and] the men […] sometimes get a day's work and at other times […] they don't, so what [they earn] that day is for consumption that day; if no work is found tomorrow, there is nothing. We don't have potable water in Pacux; we have a health center without medicine and without a nurse; we have a school […] that is very poor […]. Unlike in Río Negro, here we can't do much; now we are in a very delicate situation because the community is growing and there is no land from which to make a living, there is no source of work […] before we had wood, we had all the resources we needed […] our livestock was stolen so now people are poor […]."[122]

87. In addition, with regard to the cultural life of the Río Negro community in the Pacux settlement, expert witness Alfredo Itzep Manuel indicated that "the loss of this community's natural living conditions affected every element of the Maya Achí culture." It signified the loss of "the relationship that it had with nature," of "the celebration of traditional festivals related to agriculture and water," of the "contact with [its] most important sacred places and cemeteries, which were cultural reference points for their ancestors and for the history

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[120] Report *"Guatemala, Memoria del Silencio," supra*, volume VI, annex I, Illustrative Case No. 10 "Massacre and Elimination of the Community of Río Negro."

[121] Testimony provided by affidavit by Bruna Pérez Osorio (merits file, tome II, folios 1015 and 1016), and expert opinion provided by affidavit by Alfredo Itzep Manuel (merits file, tome II; folios 1034 to 1053).

[122] Regarding the quality of the food in the said community, Antonia Osorio Sánchez indicated that "[…] before, we had real hens, now we get ill because we only eat chemicals; […] at the moment, in Pacux, we can't have hens because they get ill after about three months; […] we have water, but we have to pay for it and it isn't clean, it has chemicals and we cannot drink it because we get ill owing to the dirt it contains." She also indicated that "[f]rom the community of Río Negro to the community of Pacux, there have been great changes in our life. In the community of Pacux our life is difficult; we are there younger than the ones we lost; we have to leave and look for work, because there we can't do anything for lack of space. Now, for example, with the wood, in Pacux, we have to buy it, before in Río Negro we could go and gather it nearby. In Pacux everything has to be bought; we have harvest on private land and the owners have threatened us because of this; […] in Pacux we only have one lot for each family, it is not the same type of soil and we can't sow the same crops […]; when the INDE was in Río Negro it promised many things; they told us that we would have trucks to go to Río Negro and get wood and that we would have free electricity. We have light, but we have to pay for it." Testimony of Antonia Osorio Sánchez given before notary public (merits file, tome II, folios 1003 and 1004).

of their people," as well as the material elements for artistic and musical production.[123] The community also suffered the "destruction of [its] social structure […]," because "its relationships with other individuals [were] forcibly redefined, a situation that mainly affected those who were children at the time, thereby having an impact on the way in which the culture was passed from generation to generation." According to the expert witness, the Río Negro Community also lost its "spiritual guides, midwives and community leaders who ensured that the culture's principles were followed […].[124] Consequently, the community has not been able "to perform its spiritual rites […and] processes of family disintegration can be observed," as well as the "gradual loss of the Maya Achí language."[125]

I. Investigation, prosecution and punishment of those responsible for the massacres

a. Massacres committed in the Río Negro chapel and at Los Encuentros

88. The Inter-American Commission and the representatives allege that there has never been any investigation into these massacres, and the State has not contested the facts.

b. Massacre committed in Xococ

89. The corresponding proceedings were initiated based on the statement made by Denese Joy Burck, whose Guatemalan name is Dominga Sic Ruiz, before the Special Prosecutor of the Public Prosecution Service in Guatemala City on March 19, 2001, regarding the facts that took place in the Xococ community on February 13, 1982, and on Cerro Pacoxom on March 13, 1982. Ms. Burck is a survivor of the Pacoxom massacre.[126]

90. Following an order issued by the Departmental First Instance Judge of Baja Verapaz, the Guatemala Forensic Anthropology Foundation exhumed some remains found in the village of Xococ between September 4 and 17, 2001. The stage of processing, analyzing the information, and preparing the expert report took place from March 1 to 8, 2002.[127] The report indicated that 44 skeletons were recovered. In addition, it was possible to identify the victims Tereso Osorio Chen and Crispín Tum Iboy.[128] The expert report was sent to the Public Prosecution Service and to the Justice of the Peace of Baja Verapaz, as well as to the

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[123] According to the expert witness, "elements of the clothing were lost, mainly of the men; the food and music also changed." *Cf.* expert report provided by affidavit by Alfredo Itzep Manuel (merits file, tome II; folio 1050).

[124] Testimony provided by affidavit by Alfredo Itzep Manuel (merits file, tome II; folio 1069).

[125] Testimony provided by affidavit by Alfredo Itzep Manuel (merits file, tome II; folio 1071). Similarly, Ms. Pérez Osorio indicated that the cultural traditions and ceremonies "are no longer practiced," except "in commemoration of those who died, but it is not the same." According to this survivor, "[n]ow […] only two people practice natural medicine […], the young people no longer learn these customs. […Now the typical costume] is only bought second hand and the ribbon in the hair is no longer used. […] The Achí language is hardly used at all. In the school, the lessons are only given in Spanish […]." Testimony provided by affidavit by Bruna Pérez Osorio (merits file, tome II, folios 992 and 1015).

[126] *Cf.* Statement made by Denese Joy Burck on March 19, 2001, before the Special Prosecutor of the Public Prosecution Service of Guatemala City (file of annexes to the submission of the case, tome III, folio 1771).

[127] *Cf.* forensic anthropology appraisal made by the FAFG in the village of Xococ (file of annexes to the submission of the case, tome III, folio 1783).

[128] *Cf.* forensic anthropology appraisal made by the FAFG in the village of Xococ (file of annexes to the submission of the case, tome IV, folio 1902).

First Instance Judge for Crime, Drug-trafficking and Offenses against the Environment of Rabinal, Baja Verapaz.[129]

91. In addition, on March 27, 2003, Carlos Chen Osorio, a survivor of the Xococ massacre, appeared before the District Prosecutor of Salamá, Baja Verapaz, to testify on the facts that took place in this community.[130] The Court has no information on subsequent actions in the context of this investigation.

c. Massacres of Río Negro (Pacoxom) and Agua Fría

c.1. Principal measures taken

92. On August 11, 1993, Jesús Tecú Osorio and Francisco Chen Osorio filed a request before the First Instance Court of Salamá, Baja Verapaz (hereinafter "First Instance Court"), for an exhumation to be performed in the village of Río Negro (Pacoxom).[131] They ratified this request on August 13, 1993, and, consequently, that same day the said Court opened the preliminary investigation and notified the Public Prosecution Service, requesting information on the former patrollers indicted, Carlos Chen, Pedro González, Tomás Gómez Gónzalez and Pedro González Gómez.[132]

93. On May 25, 1994, the Departmental Assistant Ombudsman of Guatemala (hereinafter "the Departmental Assistant Ombudsman") filed before the First Instance Judge a "complaint concerning a clandestine cemetery" in Agua Fría and asked, *inter alia*, that the Public Prosecution Office be notified, that an order be issued to exhume the mortal remains there, to investigate the facts, and that a warrant be issued for the capture of those responsible.[133] This led, in turn, to a complaint filed before the Departmental Assistant Ombudsman by Victor Mendoza Sic on May 20, 1994, concerning the existence of the said clandestine cemetery.[134] This complaint was subsequently ratified by Mr. Mendoza Sic before the First Instance Court on June 10, 1994.[135] The Departmental Assistant Ombudsman's complaint was admitted by the First Instance Judge on May 26, 1994, who therefore ordered, among other matters, the notification of the Public Prosecution Service, and the judicial inspection of the place where the clandestine cemetery was located.[136]

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[129] *Cf.* communications of March 11, 2002, addressed to the Public Prosecution Service of Baja Verapaz and the Justice of Peace of Baja Verapaz by the FAFG (file of annexes to the submission of the case, tome III, folios 1777 and 1778).

[130] *Cf.* Statement made by Carlos Chen Osorio on March 27, 2003, in the District Prosecutor's Office of Salamá, Baja Verapaz (file of annexes to the submission of the case, tome IV, folio 1954).

[131] *Cf.* brief filed by Jesús Tecú Osorio and Francisco Chen Osorio before the First Instance Court on August 11, 1993 (file of attachments to the final written arguments of the State, folios 28669 to 28670).

[132] *Cf.* record of the ratification by Jesús Tecú Osorio and Francisco Chen Osorio before the First Instance Judge on August 13, 1993, and decision of the First Instance Judge of August 13, 1993 (file of annexes to the submission of the case, folios 28671 to 28678).

[133] *Cf.* complaint filed by the Departmental Assistant Ombudsman of Guatemala on May 25, 1994 (file of attachments to the final written arguments of the State, folios 28978 to 28981).

[134] *Cf.* complaint filed by the Departmental Assistant Ombudsman of Guatemala on May 25, 1994 (file of attachments to the final written arguments of the State, folio 28978).

[135] *Cf.* ratification of the complaint filed by Víctor Mendoza Sic ante the First Instance Court of June 10, 1994 (file of attachments to the final written arguments of the State, folios 28986 to 28990).

[136] *Cf.* decision of the First Instance Judge of May 26, 1994 (file of attachments to the final written arguments of the State, folio 28983).

94. On June 14, 1994, the First Instance Court ordered the arrest of Carlos Chen Gómez, Tomas Gómez González, Pedro González Gómez and Fermín Lajuj Xitumul for the crime of murder based on the acts perpetrated during the Pacoxom massacre.[137] The said individuals, with the exception of Tomas Gómez González, appeared voluntarily before the said Court on July 25, 1994,[138] following which they were formally arrested.[139]

95. On October 19, 1994, during the criminal proceedings relating to the Agua Fría massacre, the Departmental Assistant Ombudsman asked the Special Prosecutor of the Public Prosecution Service of the department of Baja Verapaz to investigate former patrollers Pedro Gónzalez Gómez, Carlos Chen and Fermín Lajuj Xitumul, indicted in the file of the Pacoxom massacre (*supra* para. 94), for their presumed responsibility also in the Agua Fría massacre.[140]

96. On February 17, 1995, the Public Prosecution Service asked the First Instance Court to joinder the cases of the Río Negro and Agua Fría massacres,[141] and the request was granted on February 20, 1995.[142] On March 6, 1995, the First Instance Court for Crime, Drug-trafficking and Offenses against the Environment of Baja Verapaz (hereinafter "the Baja Verapaz First Instance Criminal Court") issued the order to indict the three above-mentioned accused.[143] Approximately one year later, on March 20, 1996, the Public Prosecution Service filed the indictment for the crime of murder, among others, for the acts that took place during both massacres, and asked the Baja Verapaz First Instance Criminal Court to begin the trial.[144] The said Court decreed the opening of the trial on May 9, 1996.[145]

97. On November 30, 1998, the Sentencing Court for Crime, Drug-trafficking and Offenses against the Environment of Baja Verapaz (hereinafter "the Baja Verapaz Sentencing Court") delivered judgment convicting Fermín Lajuj Xitumul, Carlos Chen and Pedro Gónzalez Gómez, and declared them responsible for the crime of murder committed against Martha Julia Chen Osorio, Margarita Chen Uscap and Demetria Osorio Lajuj, victims of the Cerro Pacoxom massacre. However, it absolved them of responsibility for participating in the Agua Fría massacre, since it had been impossible to identify the remains

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137 *Cf.* decision of the First Instance Court of June 14, 1994 (file of attachments to the final written arguments of the State, folio 28758).

138 Cf. record of the First Instance Court of July 25, 1994 (file of attachments to the final written arguments of the State, folio 28763).

139 *Cf.* communication of the First Instance Court of July 25, 1994 (file of attachments to the final written arguments of the State, folio 28790).

140 *Cf.* request of the Departmental Assistant Ombudsman of October 19, 1993 (file of attachments to the final written arguments of the State, folios 1075 and 1076).

141 *Cf.* brief of the Public Prosecution Service addressed to the First Instance Court of February 17, 1995 (file of annexes to the submission of the case, tome III, folios 1169 to 1174).

142 *Cf.* decision of the First Instance Court for Crime, Drug-trafficking and Offenses against the Environment of Baja Verapaz of February 20, 1995 (file of annexes to the submission of the case, tome III, folios 1175 to 1178).

143 *Cf.* indictment decision issued by the First Instance Court for Crime, Drug-trafficking and Offenses against the Environment of Baja Verapaz on March 7, 1995 (file of attachments to the final written arguments of the State, folio 29063 to 29065).

144 *Cf.* brief of the Public Prosecution Service addressed to the First Instance Court on March 20, 1996 (file of attachments to the final written arguments of the State, folios 29353 to 29361).

145 *Cf.* decision of the First Instance Court for Crime, Drug-trafficking and Offenses against the Environment of Baja Verapaz of May 9, 1996 (file of attachments to the final written arguments of the State, folios 29390 to 29394).

of individuals presumably belonging to members of the Río Negro community who died during the said massacre.[146] On December 7, 1998, the said judgment was expanded.[147]

98. The defense counsel of the three convicted men filed a special appeal on December 15, 1998, asking that the judgment of November 30, 1998, be annulled.[148] On February 25, 1999, the Fourteenth Chamber of the Court of Appeal for Crime, Drug-trafficking and Offenses against the Environment of Alta Verapaz annulled the said judgment and ordered that "a court composed of judges other than those who delivered the ruling that had been annulled" deliver a new judgment.[149] Consequently, on October 7, 1999, the Sentencing Court for Crime, Drug-trafficking and Offenses against the Environment of the department of Baja Verapaz handed down a new judgment ruling that the three defendants were responsible for the murder of Marta Julian Chen Osorio and Demetria Osorio Lajuj.[150] On October 27, 1999, the defense counsel for Fermín Lajuj Xitumul, Carlos Chen and Pedro Gónzalez Gómez again filed a special appeal against this judgment.[151]

99. On February 1, 2000, the Fourteenth Court of Appeal of Cobán, Alta Verapaz, found the defendants guilty as perpetrators of the crime of murder for the death of Marta Julia Chen Osorio and Demetria Osorio Lajuj, and handed down a sentence of 50 years' imprisonment, non-commutable.[152] Subsequently, Carlos Chen filed a cassation remedy against the judgment, which was rejected by the Criminal Chamber of the Supreme Court of Justice on March 15, 2000, for lack of merit.[153] Despite this, Carlos Chen filed an appeal for review that was declared inadmissible by the said Criminal Chamber on April 25, 2000.[154]

100. On October 24, 2002, the Public Prosecution Service asked the First Instance Court for Crime, Drug-trafficking and Offenses against the Environment of the department of Baja Verapaz to issue a warrant for the arrest of Miguel Alvarado Sic, Tomás Vino Alvarado, Francisco Alvarado Lajuj, Serapio Lajuj Cuxum, Pablo Ruíz Alvarado, Bonifacio Cuxum López, Macario Alvarado Toj, Lucas Lajuj Alvarado and Víctor González López for the crime of the

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146 *Cf.* judgment of the First Instance Court for Crime, Drug-trafficking and Offenses against the Environment of Baja Verapaz of November 30, 1998 (file of attachments to the final written arguments of the State, folios 29965 to 30001).

147 *Cf.* expansion of the Judgment of the First Instance Court for Crime, Drug-trafficking and Offenses against the Environment of Baja Verapaz of December 7, 1998 (file of attachments to the final written arguments of the State, folios 30117 to 30119).

148 *Cf.* special appeal filed by the defense counsel of Fermín Lajuj Xitumul, Carlos Chen and Pedro Gónzalez Gómez of December 15, 1998 (file of attachments to the final written arguments of the State, folios 30121 to 30163).

149 *Cf.* judgment of the Fourteenth Chamber of the Court of Appeal for Crime, Drug-trafficking and Offenses against the Environment of Alta Verapaz de 25 of February 1999 (file of attachments to the final written arguments of the State, folios 30179 to 30187).

150 *Cf.* judgment of the Sentencing Court for Crime, Drug-trafficking and Offenses against the Environment of the Department of Baja Verapaz of October 7, 1999 (file of attachments to the final written arguments of the State, folios 30596 to 30672).

151 *Cf.* special appeal filed by the defense counsel of Fermín Lajuj Xitumul, Carlos Chen and Pedro Gónzalez Gómez of October 27, 1999 (file of attachments to the final written arguments of the State, folios 30924 to 30981).

152 *Cf.* judgment of the Fourteenth Chamber of the Court of Appeal of Cobán of February 1, 2000 (file of attachments to the final written arguments of the State, folios 30993 to 31005).

153 *Cf.* judgment of the Criminal Chamber of the Supreme Court of Justice of March 15, 2000 (file of attachments to the final written arguments of the State, folios 31017 to 31020).

154 *Cf.* judgment of the Criminal Chamber of the Supreme Court of Justice of April 25, 2000 (file of attachments to the final written arguments of the State, folios 31021 to 31023).

murder of Marta Julia Chen Osorio and Demetria Osorio Lajuj.[155] On March 4 and May 16, 2003, the First Instance Criminal Judge of Baja Verapaz delivered an order for the pre-trial detention and prosecution of Francisco Alvarado Lajuj and Macario Alvarado Toj, and of Lucas Lajuj Alvarado, Bonifacio Cuxum López, Pablo Ruiz Alvarado and Tomás Vino Alvarado, respectively, for the crime of murder.[156] On June 13, 2003, the Public Prosecution Service requested the opening of proceedings, indicting Macario Alvarado Toj, Francisco Alvarado Lajuj, Tomas Vino Alvarado, Pablo Ruiz Alvarado, Bonifacio Cuxum López and Lucas Lajuj Alvarado.[157]

101. On July 10, 2003, the Criminal Sentencing Court of Baja Verapaz declared the opening of the trial.[158] On October 28, 2004, a public hearing was held for oral proceedings.[159] Finally, on May 28, 2008, the Criminal Sentencing Court of Baja Verapaz convicted Macario Alvarado Toj, Francisco Alvarado Lajuj, Tomás Vino Alvarado, Pablo Ruiz Alvarado and Lucas Lajuj Alvarado and sentenced them to 30 years' imprisonment for the crime of murder against 26 persons during the Pacoxom massacre, including Marta Julia Chen Osorio and Demetria Osorio Lajuj.[160] It also ordered the certification of the decision of the Public Prosecution Service to open "the pertinent investigations to determine the responsibility of the overall, senior and subordinate commanders of the National Army in the events that gave rise to the […] proceedings" and "in order to determine the responsibility of José Antonio Solares González in the events that are the subject of the […] proceedings."[161]

c.2. Exhumations

102. On October 7, 1993, an exhumation was performed in the village of Río Negro (Pacoxom).[162] On May 4, 1994, the Departmental Forensic Physician presented a "report on the exhumation procedures in Río Negro to the First Instance Judge of the department of Baja Verapaz." According to the report, the clandestine cemetery was divided into three mass graves in which 143 people were buried, including children, women and the elderly.[163]

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155 *Cf.* brief of the Assistant Prosecutor of the Public Prosecution Service of October 4, 2002 (file of attachments to the final written arguments of the State, folios 28171 to 28176).

156 *Cf.* communication of the Sentencing Court for Crime, Drug-trafficking and Offenses against the Environment of the Department of Baja Verapaz of July 15, 2003, and decision of the Sentencing Court for Crime, Drug-trafficking and Offenses against the Environment of the department of Baja Verapaz of May 16, 1993 (file of attachments to the final written arguments of the State, folios 28312 to 28319 and 28457).

157 *Cf.* brief of the District Prosecutor of the Public Prosecution Service of June 12, 1993 (file of annexes to the submission of the case, tome III, folios 1660 to 1665).

158 *Cf.* application for *amparo* filed by Macario Alvarado Toj, Francisco Alvarado Lajuj, Tomás Vino Alvarado, Pablo Ruiz Alvarado, Bonifacio Cuxum López and Lucas Lajuj Alvarado before the Fourteenth Chamber of the Court of Appeal on July 21, 2003 (file of attachments to the final written arguments of the State, folio 28463).

159 *Cf.* judgment of the Regional Combined Chamber of the Court of Appeal de Cobán, constituted in Constitutional Court of *Amparo* of May 9, 2005 (file of annexes to the submission of the case, tome III, folio 1737).

160 *Cf.* judgment of the Sentencing Court for Crime, Drug-trafficking and Offenses against the Environment of the department of Baja Verapaz of May 28, 2008 (file of attachments to the final written arguments of the State, folios 27803 to 28167).

161 Judgment of the Sentencing Court for Crime, Drug-trafficking and Offenses against the Environment of the department of Baja Verapaz of May 28, 2008 (file of attachments to the final written arguments of the State, folio 28166).

162 *Cf.* communication of the Chief of Police to the First Instance Court for Crime, Drug-trafficking and Offenses against the Environment of Baja Verapaz of November 2, 1993, and communication of the Justice of Peace of Baja Verapaz of October 4, 1993 (file of annexes to the submission of the case, tome II, folios 993 and 1118).

163 *Cf.* judgment of the First Instance Court for Crime, Drug-trafficking and Offenses against the Environment of Baja Verapaz of November 30, 1998 (file of attachments to the final written arguments of the State folio 29989).

It was possible to establish the identity of three of the skeletons: Marta Julia Chen Osorio, Demetrio Osorio Lajuj and Margarita Chen Uscap.[164]

103. Furthermore, on February 19, 20 and 21, 1996, in a clandestine cemetery, the exhumation was carried out of the remains of members of the Río Negro community who died during the Agua Fría massacre,[165] On March 18, 1996, the Guatemalan Forensic Anthropology Foundation, which took part in the exhumation, issued an anthropological report indicating that, the best preserved samples it had obtained revealed that a minimum of 14 people had been killed and that it could not exclude "the possibility that there were more, but never less." The report also indicated that, despite the condition of the osseous remains, it had been able to determine that the victims' death had been violent[166] and that, "recently," the cemetery had been partially sacked, "with no information on the quantity or quality of the evidence lost."[167]

104. On April 8, 9 and 11, 1997, an exhumation was carried out in a place known as "*Monte Redondo*," in the village of Chitucán, municipality of Rabinal, during which the bodies of Juana Osorio, Mateo Pérez Siana, and Estefanía and Gregoria Pérez Vargas were exhumed.[168] Nevertheless, these persons are not among the victims in this case.[169]

105. The Court has no further information on the status of the exhumations or if any new steps have been taken within the framework of the investigation into the Pacoxom and Agua Fría massacres.

c.3. Request for information from State authorities and measures taken to capture former Colonel José Antonio González Solares

106. On November 8, 1993, the First Instance Criminal Court of Baja Verapaz asked the Commander of the Departmental Military Reserve Forces for information on Carlos Chen Gómez, Tomás Gómez Gonzáles and Pedro Gonzáles Gómez in order to determine whether they were members of the PAC on March 13, 1982.[170] The request was repeated on January

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164 *Cf.* note of May 3, 1994, in Criminal Proceedings 001-98-1, and Order of the First Instance Court of Salamá, Baja Verapaz, of December 9, 1993 (file of annexes to the submission of the case, tome II, folios 1015-1018 and 1124-1138)

165 *Cf.* communication of the Prosecutor of the Public Prosecution Service of March 4, 1996, and record of exhumation of February 19, 1996 (file of attachments to the final written arguments of the State, folios 29248 to 29251 and 29316).

166 *Cf.* Report of Forensic Anthropology Investigations in the village of de Agua Fría presented by the Guatemalan Forensic Anthropology Foundation (file of attachments to the final written arguments of the State, folio 29344).

167 Report of Forensic Anthropology Investigations in the village of Agua Fría presented by the Guatemalan Forensic Anthropology Foundation (file of attachments to the final written arguments of the State, folio 29346).

168 *Cf.* record of exhumation of corpses performed on April 8, 9 and 11, 1997 (file of attachments to the final written arguments of the State, folios 29565 to 29568).

169 The Court also has information on several people named "Juana Osorio" with another surname; thus it is not possible to verify whether the supposed remains of "Juana Osorio" found during the excavation in Monte Redondo belong to one of them.

170 *Cf.* communication of the First Instance Court for Crime, Drug-trafficking and Offenses against the Environment of Baja Verapaz of January 25, 1994 (file of attachments to the final written arguments of the State, folio 28718).

25, 1994.[171] On February 6, 1994, the Commander of the Departmental Military Reserve Forces advised the judge that he should address his request to the Commander of No. 4 Military Zone, because the functions of the area under his command did not include "the supervision of the Voluntary Civil Defense Committees" and their organization.[172] Therefore, on February 14, 1994, the judge addressed his request for information to the Commander of the said Military Zone who, on March 9, 1994, responded that the Military Zone had been created on May 23, 1983, and, consequently, there were no records or archives of members of the PAC prior to that date.[173]

107. According to the information and documentation presented by the parties and by the Inter-American Commission, an arrest warrant was issued for former Colonel José Antonion Solares González as the "mastermind of the crime of murder," ten years later, on April 15, 2003.[174] In this regard, three searches have been carried out and orders to find him have been sent to, *inter alia*, the Traffic Department of the National Civil Police, the National Immigration Directorate, the Ministry of National Defense, the Military Social Security Institute, and the banks of the Guatemala National Mortgage Loan system.[175]

108. On May 14, 2003, the Public Prosecution Service requested the support of the Prosecutor General in order to conclude the investigation in the proceedings. The Public Prosecution Service indicated that it was "necessary to execute the arrest warrant so that the mastermind of the incident [can be] prosecuted together with the perpetrators […] in order to demolish the wall of impunity that exists in similar cases."[176] In addition, it advised that Mr. Solares González had filed "an application for *habeas corpus* before the Fourth Chamber of Appeal, the result of which is still unknown."[177] On March 12, 2009, the Public Prosecution Service asked the First Instance Criminal Court of Baja Verapaz to declare Mr. Solares González in contempt of court and to reiterate the arrest warrants and travel restrictions against him, and others,[178] which the said Court put into effect the following day.[179] To date, José Antonio Solares González has not been arrested.

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171 *Cf.* communication of the First Instance Court for Crime, Drug-trafficking and Offenses against the Environment of Baja Verapaz of January 25, 1994 (file of attachments to the final written arguments of the State, folio 28718).

172 *Cf.* communication of the Commander of the Departmental Military Reserve Forces of February 6, 1994 (file of attachments to the final written arguments of the State, folio 28721).

173 *Cf.* communication of the Commander of No. 4 Military Zone of March 9, 1994 (file of annexes to the submission of the case, tome II, folio 1146).

174 Communication of the First Instance Court for Crime, Drug-trafficking and Offenses against the Environment of Baja Verapaz of April 25, 2003 (file of attachments to the final written arguments of the State, folio 27431).

175 *Cf.* the different communications can be found in file C-01076-2011-00009-Of.4º forwarded by the State with its final written arguments (file of attachments to the final written arguments of the State, folios 27310 to 27802).

176 Communication of the District Prosecutor addressed to the Prosecutor General on May 14, 2003 (file of annexes to the submission of the case, tome III, folio 1656).

177 Communication of the District Prosecutor addressed to the Prosecutor General on May 14, 2003 (file of annexes to the submission of the case, tome III, folio 1656).

178 *Cf.* communication of the Prosecutor addressed to the First Instance Court for Crime, Drug-trafficking and Offenses against the Environment of Baja Verapaz on March 12, 2009 (file of attachments to the final written arguments of the State, folio 27689).

179 *Cf.* decision of the First Instance Court for Crime, Drug-trafficking and Offenses against the Environment of Baja Verapaz of March 13, 2009 (file of attachments to the final written arguments of the State, folio 27691).

IX
RIGHTS TO PERSONAL LIBERTY AND INTEGRITY, TO LIFE AND TO JURIDICAL PERSONALITY OF THE MEMBERS OF THE RÍO NEGRO COMMUNITY WHO WERE FORCIBLY DISAPPEARED, AND THE RIGHTS OF THE CHILDREN OF RÍO NEGRO WHO WERE FORCIBLY DISAPPEARED, IN RELATION TO THE OBLIGATION TO RESPECT AND GUARANTEE RIGHTS

A. Arguments of the parties and of the Inter-American Commission

109. The Commission alleged that during the massacre of May 14, 1982, in Los Encuentros (*supra* para. 80), members of the Guatemalan Army and of the Civil Self-defense Patrols "disappeared around 15 people, of which [the Commission was able] to identify, at least, Ramona Lajuj and [the minor] Manuel Chen Sánchez." According to the Commission, the forced disappearance of these individuals constitutes a multiple and continuing violation, aggravated by the fact that it took place in the context of systematic persecution against the Río Negro community. Thus, it argued that, because they were "forced into helicopters, in the absence of any provision established [… by law]," Ramona Lajuj and Manuel Chen Sanchez suffered "unlawful and arbitrary detention that in itself place[d] [them...] in a situation of vulnerability creating a real risk that other rights could be violated […]." In this way, it indicated that it was evident that these individuals felt great fear and anguish "on finding themselves […] approached by soldiers and patrollers." The Commission also indicated that the fact that they have remained missing for several years in a context of violence is sufficient to conclude that they were deprived of their life. Lastly, the Commission argued that the disappearance of Ramona Lajuj and Manuel Chen Sánchez led to their exclusion from the State's legal and institutional system with the purpose of creating a legal vacuum and preventing them from exercising their rights. Based on this, the Commission argued that the Guatemalan State had violated, to the detriment of Ramona Lajuj and Manuel Chen Sánchez, Articles 3, 4, 5 and 7 of the American Convention, in relation to Article 1(1) thereof, and had failed to comply with the obligations established in Article I of the Convention on Forced Disappearance. With regard to the child Manuel Chen Sánchez, the Commission argued that the State had also violated Article 19 of the American Convention.

110. The representatives endorsed the Commission's arguments and forwarded the Court a list identifying, in addition to Ramona Lajuj and Manuel Chen Sanchez, another 15 of those who were supposedly forced to board a helicopter and were then disappeared by the Army on May 14, 1982, during the Los Encuentros massacre (*supra* para. 80). In this regard, they argued that the forced disappearance of these people gave rise to the violation of Articles 3, 4(1), 5(1), 5(2) and 7(1) of the American Convention, in relation to Article 1(1) of this instrument, to their detriment.

111. For its part, the State indicated its "total acknowledgement" of responsibility for the violations alleged by the Commission to the detriment of Ramona Lajuj and Manuel Chen Sánchez (*supra* para. 17(a)). However, it made no observations with regard to the other individuals mentioned by the Commission and the representatives.

B. Forced disappearance as a multiple and continuing violation of human rights

112. In its consistent case law since 1988,[180] the Court has established the permanent or continuing nature of the forced disappearance of persons, which has been recognized repeatedly by international human rights law. The Court classified the series of multiple and continuing violations of various rights protected by the Convention as forced disappearance of persons based on the development that, at the time, had taken place in the sphere of international human rights law.[181] This Court's case law has been a pioneer in the consolidation of a comprehensive perspective on the multiple violation of the rights affected and the continuing or permanent nature of the forced disappearance of persons,[182] in which the act of disappearance and its execution start with the deprivation of the liberty of the person and the subsequent absence of information on his or her fate, and remains while the whereabouts of the disappeared person remain unknown or until his or her remains have been identified with certainty.[183] This Court developed this characterization of forced disappearance even before the definition contained in Article II of the Inter-American Convention on Forced Disappearance of Persons.

113. As already indicated, the acts that constitute forced disappearance are of a permanent nature while the victim's whereabouts are unknown or until his or her remains have been found. However, particularly with regard to the latter aspect, this does not refer merely to the act of finding the remains of a certain person; but rather, logically, must be accompanied by collecting evidence or making analyses that prove that the remains really correspond to that person. Therefore, in cases of alleged forced disappearance in which there are indications that the alleged victim has died, the determination of whether forced disappearance did occur and that it has ceased, in cases when the remains have been found,

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[180] *Cf. Case of Velásquez Rodríguez v. Honduras. Merits, supra,* para. 155, and *Case of González Medina and family members v. Dominican Republic, supra,* para. 50.

[181] In the sphere of international human rights law, the United Nations Working Group on Enforced or Involuntary Disappearances developed an operational definition of the phenomenon in the 1980s. The conceptual elements established by this Working Group were subsequently reiterated in the definitions included in diverse international instruments. *Cf. Case of Chitay Nech et al. v. Guatemala, supra,* para. 82, and *Case of González Medina and family members v. Dominican Republic, supra,* para. 50. See also, the Report of the Working Group on Enforced or Involuntary Disappearances, Commission on Human Rights, thirty-seventh session, U.N. Doc. E/CN.4/1435, of 22 January 1981, para. 4; Report of the Working Group on Enforced or Involuntary Disappearances, Commission on Human Rights, thirty-ninth session, U.N. Doc. E/CN.4/1983/14, of 21 January 1983, paras. 130 to 132, and Report of the Working Group on Enforced or Involuntary Disappearances, Commission on Human Rights, Report on the visit to Sri Lanka by three members of the Working Group, 7 to 18 October 1991, E/CN.4/1992/18/Add.1 of 5 January 1992.

[182] *Cf. Case of Velásquez Rodríguez v. Honduras. Merits, supra,* paras. 155 to 157; *Case of Godínez Cruz v. Honduras. Merits.* Judgment of January 20, 1989. Series C No. 5, paras. 163 to 166; *Case of Fairén Garbi and Solís Corrales v. Honduras. Merits.* Judgment of March 15, 1989. Series C No. 6, para. 147; *Case of Blake v. Guatemala. Merits.* Judgment of January 24, 1998. Series C No. 36, para. 65; *Case of Gómez Palomino v. Peru. Merits, reparations and costs.* Judgment of November 22, 2005. Series C No. 136, para. 92; *Case of Goiburú et al. v. Paraguay, supra,* para. 82; *Case of Heliodoro Portugal v. Panama. Preliminary objections, merits, reparations and costs.* Judgment of August 12, 2008. Series C No. 186, paras. 52 and 112; *Case of Tiu Tojín v. Guatemala, supra,* para. 52; *Case of Ticona Estrada et al. v. Bolivia. Merits, reparations and costs.* Judgment of November 27, 2008. Series C No. 191, para. 54; *Case of Anzualdo Castro v. Peru. Preliminary objection, merits, reparations and costs.* Judgment of September 22, 2009. Series C No. 202, para. 59; *Case of Radilla Pacheco v. Mexico, supra,* paras. 139 and 140; *Case of Chitay Nech et al. v. Guatemala, supra,* para. 81; *Case of Ibsen Cárdenas and Ibsen Peña v. Bolivia. Merits, reparations and costs.* Judgment of September 1, 2010. Series C No. 217, paras. 59 and 60; *Case of Gomes Lund et al. (Guerrilha do Araguaia) v. Brazil, supra,* para. 103; *Case of Gelman v. Uruguay. Merits and reparations.* Judgment of February 24, 2011. Series C No. 221, para. 74; *Case of Torres Millacura et al. v. Argentina, supra,* para. 91; *Case of Contreras et al. v. El Salvador. Merits, reparations and costs. Judgment of August 31, 2011. Series C No. 232,* para. 82, *and Case of González Medina and family members v. Dominican Republic, supra,* para. 50. The European Court of Human Rights also considered the continuing or permanent nature of the forced disappearance of persons in the *Case of Cyprus v. Turkey [GC],* No. 25781/94, paras. 136, 150 and 158, 2001-IV.

[183] *Cf. inter alia, Case of Velásquez Rodríguez v. Honduras. Merits, supra,* paras. 155 to 157, and *Case of González Medina and family members v. Dominican Republic, supra*, para. 50.

necessarily entails establishing the identity of the individual to whom the said remains belong. In this regard, the corresponding authority must proceed to exhume the remains promptly so that they can be examined by a competent professional.[184] The forced disappearance continues in effect until the remains have been identified.

114. The phenomenon of forced disappearance of persons must be analyzed from an integral perspective owing to the multiple conducts that, combined for a single purpose, violate permanently, while they persist, rights protected by the Convention.[185] The Court has verified the international consensus on the analysis of this conduct, which constitutes a grave violation of human rights given the particular significance of the offenses that comprise it and the nature of the rights harmed, which involve a total rejection of the essential principles on which the inter-American system is based,[186] and its prohibition has achieved the status of *jus cogens*.[187]

115. This Court's case law has indicated the following as concurring elements that constitute forced disappearance: (a) the deprivation of liberty; (b) the direct involvement of State agents or their acquiescence, and (c) the refusal to acknowledge the detention and to reveal the fate or whereabouts of the individual concerned.[188] This characterization is consistent with other definitions contained in different international instruments,[189] the case law of the European human rights system,[190] decisions of the Human Rights Committee of the International Covenant on Civil and Political Rights,[191] and decisions of high domestic courts.[192]

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[184] *Cf. Case of Ibsen Cárdenas and Ibsen Peña v. Bolivia, supra,* para. 82.

[185] *Cf. Case of Radilla Pacheco v. Mexico, supra*, para. 138, and *Case of González Medina and family members v. Dominican Republic, supra,* para. 129.

[186] *Cf. Case of Velásquez Rodríguez v. Honduras. Merits, supra,* para. 158, and Case *of González Medina and family members v. Dominican Republic, supra,* para. 130.

[187] *Cf. Case of Goiburú et al. v. Paraguay, supra,* para. 84, and *Case of González Medina and family members v. Dominican Republic, supra,* para. 130.

[188] *Cf. Case of Gómez Palomino v. Peru, supra,* para. 97, and *Case of González Medina and family members v. Dominican Republic, supra,* para. 128.

[189] *Cf.* Article 2 of the International Convention for the Protection of All Persons from Enforced Disappearance, U.N. Doc. A/RES/61/177, of 20 December 2006; article 7(2), subparagraph (i) of the Rome Statute of the International Criminal Court, U.N. Doc. A/CONF.183/9, of 17 July 1998, and preamble to the Declaration on the Protection of All Persons from Enforced Disappearance, U.N. Doc. A/RES/47/133 of 12 February 1993.

[190] In this regard, the following cases of enforced disappearance of persons can be consulted: European Court of Human Rights (hereinafter "ECHR"), *Case of Cyprus v. Turkey* [GC] (No. 25781/94), Judgment of 10 May 2001, paras. 132 to 134 and 147 to 148, and ECHR, *Case of Varnava and others v. Turkey* (Nos. 16064/90, 16065/90, 16066/90, 16068/90, 16069/90, 16070/90, 16071/90, 16072/90 and 16073/90), Judgment of 10 January 2008, paras. 111 to 113, 117 and 118, 133, 138 and 145.

[191] In this regard, see, *Messaouda Grioua and Mohamed Grioua v. Algeria*, CCPR/C/90/D/1327/2004 (2007), Communication No. 1327/2004, 16 August 2007; *Yasoda Sharma and Surya Prasad Sharma v. Nepal*, CCPR/C/97/D/1469/2006 (2008), Communication No. 1469/2006, 6 November 2008; *Zohra Madoui and Menouar Madoui v. Algeria*, CCPR/C/94/D/1495/2006 (2008), Communication No. 1495/2006, 1 December 2008, and *Nydia Erika Bautista de Arellana v. Colombia*, CCPR/C/55/D/563/1993, Communication No. 563/1993, 13 November 1995.

[192] *Cf.* Supreme Court of Justice of the Bolivarian Republic of Venezuela, *Case of Marco Antonio Monasterios Pérez*, Judgment of August 10, 2007 (declaring the permanent nature and multiple offenses involved in the crime of forced disappearance); Supreme Court of Justice of the Nation of Mexico, Case: P./J. 87/2004, "Forced disappearance of persons. The time frame for calculating its prescription begins only when the victim appears or his or her fate has been established" (affirming that forced disappearances are permanent crimes and that prescription should begin to be calculated when they have ceased); Plenary of the Supreme Court of Chile, *Case of the withdrawal of impunity from Pinochet*, Judgment of August 8, 2000; Court of Appeal of Santiago de Chile, *Case of Sandoval*, Judgment of January 5, 2004 (all declaring that the crime of forced disappearance is continuing, a crime against humanity, cannot prescribe, and cannot be subject to amnesty); National Federal Criminal and Correctional

116. In this regard, this Court has indicated that "the deprivation of liberty with which a forced disappearance begins, whatever the form it takes, is contrary to Article 7 of the American Convention."[193] Also, owing to the very nature of forced disappearance, the Court has found that the State places the individual in a grave situation of vulnerability and at risk of suffering irreparable damage to his or her personal integrity and life.[194] Thus, forced disappearance violates the right to personal integrity because "the mere fact of prolonged isolation and forced lack of communication represents cruel and inhuman treatment, […] contrary to paragraphs 1 and 2 of [Article 5 of the Convention]."[195]

117. Similarly, the Court has recognized that placing detainees in the custody of repressive official agencies, State agents, or private individuals acting with the State's acquiescence or tolerance who commit torture and murder with impunity represents, in itself, an infringement of the obligation to prevent violations of the right to personal integrity and to life, even if the acts giving rise to the violation cannot be proven in the specific case.[196] In this case, the Court finds that it has been proved that, in Guatemala, a practice of forced disappearances, extrajudicial executions and cruel treatment or torture at the hands of security agencies existed at the time of the facts (*supra* paras. 56 to 64).

118. Furthermore, the Court has considered that, in cases of forced disappearance, owing to the multiple and complex nature of this grave violation of human rights, its perpetration may entail the specific violation of the right to juridical personality, because the consequence of the refusal to acknowledge the deprivation of liberty or the whereabouts of the person is, together with the other elements of the disappearance, the "removal from the protection of the law," or the violation of personal security and legal certainty of the individual, which directly prevents recognition of juridical personality.[197]

119. In this regard, the Court has considered that the content of the right to juridical personality is, precisely, that a person is recognized everywhere as a subject of rights and obligations, and may enjoy fundamental civil rights, which involves the capacity to be the holder of rights (capacity and enjoyment) and obligations. The violation of this acknowledgment presumes absolute disavowal of the possibility of being a holder of civil and fundamental rights and obligations.[198] Above and beyond the fact that the disappeared person is unable to continue enjoying and exercising other and, eventually, all the rights to

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Appeals Chamber of the Capital of Argentina, *Case of Videla et al.*, Judgment of September 9, 1999 (declaring that forced disappearances are continuing crimes and crimes against humanity, and that they cannot prescribe); Constitutional Court of Bolivia, *Case of José Carlos Trujillo*, Judgment of November 12, 2001 (declaring that crimes of forced disappearance are continuing crimes and that the time frame for their prescription only begins once they have ceased), and Constitutional Court of Peru, *Case of Castillo Páez*, Judgment of March 18, 2004 (declaring, based on the provisions of the judgment of the Inter-American Court in the same case, that forced disappearance is a permanent crime until the whereabouts of the victim has been established, and referring to the multiple crimes involved).

193 *Case of Heliodoro Portugal v. Panama, supra,* para. 112, and *Case of González Medina and family members v. Dominican Republic, supra*, para. 179.

194 *Cf. Case of Radilla Pacheco v. Mexico, supra,* para. 152, and Case *of Torres Millacura et al. v. Argentina, supra,* para. 103.

195 *Case of Velásquez Rodríguez v. Honduras. Merits, supra,* para. 187, and *Case of González Medina and family members v. Dominican Republic, supra,* para. 180.

196 *Cf. Case of Velásquez Rodríguez v. Honduras. Merits, supra,* para. 175, and *Case of González Medina and family members v. Dominican Republic, supra,* para. 181.

197 *Cf. Case of Anzualdo Castro v. Peru, supra,* paras. 90 to 101, and *Case of González Medina and family members v. Dominican Republic, supra,* para. 186.

198 *Cf. Case of Bámaca Velásquez v. Guatemala. Merits.* Judgment of November 25, 2000. Series C No. 70, para. 179, and *Case of González Medina and family members v. Dominican Republic, supra,* para. 187.

which he or she is entitled, the disappearance seeks, not only one of the most serious ways of removing a person from the sphere of the law, but is a denial of his or her very existence, leaving the victim in a sort of limbo or a situation of legal uncertainty before society and the State.[199]

120. Regarding the rights of the child protected by the Convention, the Court has established that children have special rights that entail corresponding and specific obligations for the family, society and the State. Their condition demands special protection from the latter and must be understood as a right that is additional and complementary to the other rights that the Convention recognizes for all people.[200] The primacy of the best interest of the child must be understood as the need to observe all the rights of children, which are binding for the State and have an impact on the interpretation of all the other rights of the Convention when a case relates to minors.[201] The State must pay special attention to the needs and the rights of children based on their special condition of vulnerability.[202]

121. Based on the above, as well as on the State's acknowledgment of responsibility and the evidence provided to the Court in this case, the Court will analyze the arguments of the parties regarding the forced disappearance of the 15 people, at least, taken away in a helicopter during the massacre perpetrated on May 14, 1982, in the community of Los Encuentros (*supra* para. 80), whose whereabouts remain unknown, and also of Ramona Lajuj and the minor at the time, Manuel Chen Sánchez, who have already been acknowledged as victims of forced disappearance by the State.

C. The forced disappearance of 17 people taken away by helicopter during the massacre perpetrated in Los Encuentros on May 14, 1982

122. Regarding the facts of the massacre of May 14, 1982, in Los Encuentros (*supra* para. 80), the Court observes, first, that the State has acknowledged the forced disappearance of Ramona Lajuj[203] and the minor Manuel Chen Sánchez (*supra* para. 17(a)), who, according to the case file, formed part of the group of people who were forced to board a helicopter in Los Encuentros.[204] Thus, Manuel Chen Sanchez was about two years old when he was disappeared, and seven when the State accepted the contentious jurisdiction of the Court.[205]

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199 *Cf. Case of Anzualdo Castro v. Peru, supra,* para. 90, and *Case of González Medina and family members v. Dominican Republic, supra,* para. 188.

200 *Cf. Juridical Status and Human Rights of the Child*. Advisory Opinion OC-17/02 of August 28, 2002. Series A No. 27, paras. 53, 54 and 60, and *Case of the Dos Erres Massacre v. Guatemala, supra,* para. 184.

201 *Cf. Juridical Status and Human Rights of the Child.* Advisory Opinion OC-17/02, supra, paras. 56, 57 and 60, and Case *of the Xákmok Kásek Indigenous Community. v. Paraguay. Merits, reparations and costs*. Judgment of August 24, 2010 Series C No. 214, para. 257.

202 *Cf. Case of the Dos Erres Massacre v. Guatemala, supra,* para. 184, and *Case of the Xákmok Kásek Indigenous Community. v. Paraguay, supra,* para. 257.

203 *Cf.* birth certificate de Ramona Lajuj (file of attachments to the pleadings and motions brief, tome XXVII, folio 16417).

204 *Cf.* testimony of Carmen Sánchez Chen (file of annexes to the submission of the case, tome I, folios 526, 527 and 529). The Court also observes that the death certificates of Ramona Lajuj and Manuel Chen Sánchez mention "presumed death" as cause of death. *Cf.* death certificate of Ramona Lajuj (file of attachments to the pleadings and motions brief, tome XXVII, folio 16415), and death certificate of Manuel Chen Sánchez (file of attachments to the pleadings and motions brief, tome XXVII, folio 16356).

205 *Cf.* birth certificate of Manuel Chen Sánchez (file of attachments to the pleadings and motions brief, tome XXVII, folio 16358).

123. In addition, this Court observes that, although the Commission did not identify other individuals presumably disappeared during the Los Encuentros massacre (*supra* para. 109) even though the incident is mentioned in the Merits Report in this case, the representatives submitted a list to the Court with the names of another 15 people who were allegedly forced onto a helicopter that day (*supra* para. 110) and whose whereabouts are still unknown.[206] Those individuals are: Aurelia Alvarado Ivoy, Cornelio Osorio Lajúj, Demetria Osorio Tahuico, Fermin Tum Chén, Francisco Chen Osorio, Francísco Sánchez Sic, Héctor López Osorio, Jerónimo Osorio Chen, Luciano Osorio Chen, Pablo Osorio Tahuico, Pedro Chén Rojas, Pedro López Osorio, Pedro Osorio Chén, Sebastiana Osorio Tahuico and Soterio Pérez Tum. The State did not refer to this list, even though it had the opportunity to do so (*supra* paras. 5 and 111). The representatives also presented death certificates as evidence of the identity of those individuals; eight of these indicate their "presumed death" or that the cause of death "is unknown."[207] As previously mentioned, Francisco Chen Osorio is among these persons. In addition to his death certificate, which indicates that he is "presumed dead," his name was mentioned by José Osorio Sic before the judicial authorities as one of the individuals who was forced on board a helicopter on May 14, 1982.[208]

124. In this regard the Court observes that, according to the information provided by the representatives and the State (*supra* para. 12), when the said death certificates were issued, Guatemalan law, in particular Decree 75-97 "Temporary Special Act for Personal Documentation" resulting from the Peace Accords (*supra* para. 64) and, subsequently, Decree 09-2006, "Temporary Special Act for Personal Documentation" permitted the registration of a "presumed death" in the corresponding death registry if the person who was presumably deceased had "disappeared owing to detention, arrest or deprivation of liberty; disappeared during an armed confrontation in which he or she had taken part, or was in an area of generalized violence, [after at least five years had passed following the disappearance,] or when the death had occurred when the deceased was a refugee, displaced abroad and his or her documentation is not available."

125. According to the clarifications provided by the representatives (*supra* para. 12), the purpose of Decree 09-2006, as well as of Decree 75-97, was, among other matters, to permit the registration of the deaths of victims of the internal armed conflict, without the need to appear before a judge (since the procedure can be carried out merely before the registrar), in order to try and resolve problems such as inheritance formalities. For the Court, in the context of this case, the fact that a death certificate does not indicate a precise cause of death is not relevant for determining that a person has been forcibly disappeared. To the contrary, the fact is that, to this day, the whereabouts of the 17 people who were forced to board a helicopter on May 14, 1982, during the Los Encuentros massacre remain unknown.

126. Thus, as indicated previously (*supra* para. 51), in application of Article 35(2) of the Rules of Procedure, and since the State has not contested it (*supra* para. 48), taking into

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[206] *Cf.* "Annex K. List of victims of the 'Los Encuentros' massacre" (file of attachments to the pleadings and motions brief, tome XXIII, folios 13760 to 13762).

[207] The death certificates of the following persons are in the file of attachments to the pleadings and motions brief, tome XXVII: (1) Aurelia Alvarado Ivoy, cause of death "unknown", folio 16253; (2) Demetria Osorio Tahuico, "presumed dead", folio 16275; (3) Francisco Chen Osorio, "presumed dead", folio 16287; (4) Francísco Sánchez Sic, "unknown", folio 16291; (5) Pablo Osorio Tahuico, "presumed dead", folio 16376; (6) Pedro López Osorio, cause of death "unknown", folio 16399; (7) Sebastiana Osorio Tahuico, "presumed dead", folio 16437, and (8) Soterio Pérez Tum, cause of death "unknown", folio 16441. The death certificates of the following are also in the file of attachments to the pleadings and motions brief, tome XXVII: (1) Cornelio Osorio Lajúj, folio 16263; (2) Fermin Tum Chén, folio 16283; (3) Héctor López Osorio, folio 16300; (4) Jerónimo Osorio Chen, folio 16304; (5) Luciano Osorio Chen, folio 16332; (6) Pedro Chén Rojas, folio 16391, and (7) Pedro Osorio Chén, folio 16403.

[208] *Cf.* testimony of José Osorio Sic (file of annexes to the submission of the case, tome I, folio 540).

account the context and the circumstances of the instant case, according to which the forced disappearance of persons was a practice carried out in Guatemala during the internal armed conflict, and the fact that, up until this time, after having been forced to board a helicopter, there is no news of their whereabouts, the Court considers that the 17 people indicated by the representatives remain victims of forced disappearance to date.

127. Based on the above, the Court finds that the State has violated the rights recognized in Articles 3, 4(1), 5(1), 5(2) and 7(1) of the American Convention, in relation to Article 1(1) thereof, all in relation to the obligations established in Article I(a) of the Convention on Forced Disappearance, to the detriment of Ramona Lajuj, Manuel Chen Sánchez, Aurelia Alvarado Ivoy, Cornelio Osorio Lajúj, Demetria Osorio Tahuico, Fermin Tum Chén, Francisco Chen Osorio, Francísco Sánchez Sic, Héctor López Osorio, Jerónimo Osorio Chen, Luciano Osorio Chen, Pablo Osorio Tahuico, Pedro Chén Rojas, Pedro López Osorio, Pedro Osorio Chén, Sebastiana Osorio Tahuico and Soterio Pérez Tum. The Court also finds that the State violated Article 19 of the American Convention, in relation to Article 1(1) thereof, to the detriment of Manuel Chen Osorio, a minor at the time of the facts.

X
RIGHT TO PERSONAL INTEGRITY IN RELATION TO THE RIGHT TO HONOR AND DIGNITY, THE PROHIBITION OF SLAVERY AND SERVITUDE, THE OBLIGATION TO RESPECT AND GUARANTEE THE RIGHTS OF THE CHILD, THE RIGHTS OF THE FAMILY, FREEDOM OF CONSCIENCE AND RELIGION, AND THE GENERAL OBLIGATION TO RESPECT AND GUARANTEE RIGHTS

128. In this Chapter, taking into account the acknowledgment of responsibility made by the State (*supra* para. 17), the Court will analyze the presumed violations of personal integrity in relation to: (a) the consequences of the rape suffered by María Eustaquia Uscap Ivoy; (b) the consequences on the 17 children taken from the Río Negro community, who were submitted to conditions of slavery and servitude, and (c) the survivors of the Río Negro massacres, owing to the violations of their freedom of conscience and religion and the consequences on the integrity of the survivors of the Río Negro massacres due to the effects on their culture and the social fabric of the community.

A. Violations of the rights to personal integrity and to honor and dignity of María Eustaquia Uscap Ivoy, owing to the consequences of the rape she suffered

A.1. Arguments of the parties and of the Inter-American Commission

129. The Commission and the representatives indicated that the rape committed by members of the State's security forces affected the physical, mental and moral integrity of the victims, destroyed their dignity, and invaded one of the most intimate realms of their life, that of their physical and sexual space, divesting them of their ability to make decisions about their body. In addition, they argued that the acts of rape committed against the women of the community of Río Negro constituted acts of torture, because they were perpetrated by State agents, resulted in severe mental and physical suffering for the victims, and were intended to humiliate them and exterminate the community. Thus, they argued that the rape of the women constituted a "weapon of terror" for the destruction of the Mayan population, since it "[destroyed] marital and social ties, generate[d] social isolation, and stigmatized them within the community, cause[d] abortions and filicide, and prevent[ed] marriages and births" within the group. Among these cases, the Commission and the representatives mentioned that of María Eustaquia Uscap Ivoy.

130. The State indicated "its partial acknowledgement" of the violations of Articles 5 and 11 of the American Convention to the detriment of María Eustaquia Uscap Ivoy, given that, "since she was a surviving victim, the physical and emotional effects of the rape she suffered could transcend and persist in the temporal space over which the Court has jurisdiction."

A.2. Considerations of the Court

131. Based on the State's acknowledgement of international responsibility (*supra* para. 17(b)), the Court will rule below on the effects on Mrs. Uscap Ivoy's right to personal integrity and to privacy as a result of the rape she suffered.

132. With regard to Article 5 of the Convention, the Court has considered that rape is an extremely traumatic experience that has severe consequences and causes great physical and mental harm that leaves the victim "physically and emotionally humiliated," a situation that is difficult to overcome with the passing of time, contrary to other traumatic experiences.[209] Therefore, it can be understood that the severe suffering of the victim is inherent in rape, even when there is no evidence of physical injury or disease. Indeed, not all cases of rape result in body injury or disease. Women who are victims of rape also experience severe psychological and even social harm and aftereffects.[210] The Court has also established that, in certain circumstances, rape can also constitute a form of torture of the victim.[211]

133. In addition, the Court has indicated that Article 11 of the American Convention, entitled "Right to Privacy" includes the protection of honor and dignity;[212] and, furthermore, the concept of privacy includes, among other protected areas, a person's sexual life.[213]

134. In this regard, the body of evidence includes a judgment issued on May 28, 2008, by the Sentencing Court for Crime, Drug-trafficking and Offenses against the Environment of the department of Baja Verapaz, Salamá, which grants probative value to an oral statement made by Mrs. Uscap Ivoy. Among other matters, Mrs. Uscap Ivoy indicated on that occasion that she had been raped during the massacre that occurred in Pacoxom.[214] Thus, from the facts of the present case, it can be concluded that Mrs. Uscap Ivoy was the victim of rape by patrollers and soldiers on several occasions, while still a minor (*supra* para. 77). In addition, in an affidavit prepared for this Court, Mrs. Uscap Ivoy stated that "[w]hat they did to [her] is not a lie; it hurt, and that was why [she] became involved in seeking justice in

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209 *Cf. Case of the Miguel Castro Castro Prison v. Peru*. *Merits, reparations and costs.* Judgment of November 25, 2006. Series C No. 160, para. 311, and *Case of Rosendo Cantú et al. v. Mexico, supra,* para. 114. ECHR, *Case of Aydin v. Turkey* (No. 57/1996/676/866), Judgment of 25 September 1997, para. 83.

210 *Cf. Case of Fernández Ortega et al. v. Mexico, supra,* para. 124, and *Case of Rosendo Cantú et al. v. Mexico, supra,* para. 114.

211 *Cf. Case of Fernández Ortega et al. v. Mexico, supra,* para. 128, and *Case of Rosendo Cantú et al. v. Mexico, supra*, para. 118.

212 *Cf. Case of the Ituango Massacres v. Colombia. Preliminary objection, merits, reparations and costs.* Judgment of July 1, 2006 Series C No. 148, para. 193, and *Case of Atala Riffo and daughters v. Chile. Merits, reparations and costs.* Judgment of February 24, 2012. Series C No. 239, para. 162.

213 *Cf.* ECHR, *Case of Dudgeon v. the United Kingdom*, Judgment of 22 October 1981, App. No. 7525/76, para. 41, and ECHR, *Case of X and Y v. the Netherlands*, Judgment of 26 March 1985, App. No. 8978/80, para. 22.

214 *Cf.* judgment delivered by the Sentencing Court for Crime, Drug-trafficking and Offenses against the Environment of the department of Baja Verapaz, Salamá, case No. 28-2003-OF-1 of May 28, 2008 (file of annexes to the submission of the case, tome II, folios 718, 723 and 724).

Guatemala."[215] In this regard, the Court observes that expert witness Rosalina Tuyuc indicated during the public hearing that, for a Mayan woman "rape means dishonor, stigmatization, blame, and the disgrace it somehow causes within the family, [and …] the neighborhood."

135. Based on the above, and on the acknowledgment of responsibility made by Guatemala for the consequences of the rape suffered by María Eustaquia Uscap Ivoy, the Court finds that the State violated the rights recognized in Articles 5(1), 11(1) and 11(2) of the American Convention, in relation to Article 1(1) thereof, to her detriment.

B. Violation of the right to personal integrity, in relation to the prohibition of slavery and servitude, and the obligations to respect and guarantee the rights of the child and the rights of the family, to the detriment of 17 children taken from the Río Negro Community

B.1. Arguments of the parties and of the Inter-American Commission

136. The Commission indicated that 17 children belonging to the community of Río Negro who survived the massacres were taken away and forced, under threat,[216] to live with their aggressors for several years in order to perform forced labor inappropriate for their age. According to the Commission, these children "were used as servants in the home, […] mistreated, beaten and force to work too hard." The Commission emphasized that the children were subjected to forced labor with the acquiescence of Army personnel, and that their aggressors had forbidden them, under threat of death, from speaking with family members who might still be alive, should they pass them on the street. Based on all the foregoing, the Commission argued that Guatemala had violated Articles 6(2), 17 and 19 of the American Convention, in relation to Article 1(1) thereof, to the detriment of Agustín Chen Osorio, Celestina Uscap Ivoy, Cruz Pérez Osorio, Froilan Uscap Ivoy, Jesús Tecú Osorio, José Osorio Osorio, Juan Chen Chen, Juan Chen Osorio, Juan Pérez Osorio, Juan Uscap Ivoy, Juana Chen Osorio, María Eustaquia Uscap Ivoy, Pedro Sic Sánchez, Silveria Lajuj Tum, Tomasa Osorio Chen, Florinda Uscap Ivoy and Juan Osorio Alvarado.

137. The representatives argued that the rights to dignity, personal freedom, and physical and mental integrity of 18 children who survived the massacre of Río Negro were violated, "because the only reason they were not murdered was so that they could be taken to Xococ to the homes of the members of the Civil Self-Defense Patrols (PAC) to be enslaved by those who had victimized their families, friends and acquaintances."[217] The also argued that "the fact that these children were subjected to a situation of slavery increased the destruction of their immediate family, and this added to the atrocities of which [the Río Negro] community was a victim." Thus, "the State not only failed to ensure the full exercise of their rights, but also failed to provide the special protection to which every child is entitled." On these grounds, the representatives indicated that the State had violated Articles 6, 17 and 19 of the American Convention, to the detriment of: Agustín Chen Osorio,

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[215] Testimony given by María Eustaquia Uscap Ivoy before notary public on June 15, 2012 (merits file, tome II, folios 1007 and 1009).

[216] The Commission argued that during the forced labor, the children were threatened directly and implicitly with abuse or death or, in some cases, with violence against or the death of their surviving families, and had no option but to perform the tasks imposed on them.

[217] They stated that "[the] children were selected as a workforce, servants in the homes of the members of the Civil Self-Defense Patrols, and were taught to perform all kinds of work, without receiving any remuneration and even without having decent living conditions."

Celestina Uscap Ivoy, Cruz Pérez Osorio, Froilan Uscap Ivoy, Jesús Tecú Osorio, José Osorio Osorio, Juan Chen Chen, Juan Chen Osorio, Juan Pérez Osorio, Juan Uscap Ivoy, Juana Chen Osorio, María Eustaquia Uscap Ivoy, Pedro Sic Sánchez, Silveria Lajuj Tum, Tomasa Osorio Chen, Florinda Uscap Ivoy, Juan Osorio Alvarado and Bernarda Lajuj Osorio

138. The State "express[ed] its partial acknowledgment of the violations of the human rights protected in Articles 6 and 17 of the [Convention]," to the detriment of Agustín Chen Osorio, Celestina Uscap Ivoy, Cruz Pérez Osorio, Froilan Uscap Ivoy, Jesús Tecú Osorio, José Osorio Osorio, Juan Chen Chen, Juan Chen Osorio, Juan Pérez Osorio, Juan Uscap Ivoy, Juana Chen Osorio, María Eustaquia Uscap Ivoy, Pedro Sic Sánchez, Silveria Lajuj Tum, Tomasa Osorio Chen, Florinda Uscap Ivoy and Juan Burrero: that is, Juan Osorio Alvarado (*supra* para. 17(d)). The foregoing, "because the said human rights violations could transcend and persist during the time over which the Court has competence to hear violations against the State […]." With regard to Article 19 of the Convention, the State "acknowledge[d] its responsibility regarding those children who were under 18 years of age when the Court's competence was ratified […]. Regarding the victim Maria Eustaquia Uscap Ivoy, the State […] denie[d] the violation of this right," because she was already of age when it accepted the Court's contentious jurisdiction (*supra* paras. 17(e) and 18(i)).

B.2. Considerations of the Court

139. In its answer to the submission of the case, the State acknowledged "partial" responsibility for the violation of the rights recognized in Articles 6 and 17 of the Convention, to the detriment of Agustín Chen Osorio, Celestina Uscap Ivoy, Cruz Pérez Osorio, Froilan Uscap Ivoy, Jesús Tecú Osorio, José Osorio Osorio, Juan Chen Chen, Juan Chen Osorio, Juan Pérez Osorio, Juan Uscap Ivoy, Juana Chen Osorio, María Eustaquia Uscap Ivoy, Pedro Sic Sánchez, Silveria Lajuj Tum, Tomasa Osorio Chen, Florinda Uscap Ivoy and Juan Burrero (the latter also known as Juan Osorio Alvarado), because "the said human rights violations could transcend and persist during the time when the Court has competence." In addition, the State acknowledged its responsibility for the violation of Article 19 of the Convention to the detriment of all the persons mentioned who were under 18 years of age when it accepted the Court's contentious jurisdiction on March 9, 1987. In this regard, the State specifically rejected the declaration of the violation of Article 19 of the Convention to the detriment of María Eustaquia Uscap Ivoy.

140. In view of the State's acknowledgment, the Court will analyze the violations of the right to personal integrity of the persons mentioned in the preceding paragraph that persist to date. To this end, the Court will include some general considerations on the prohibition of slavery and servitude established in Article 6 of the Convention, as well as on the rights of the child and the family recognized in Articles 19 and 17 of this treaty. The Court will not refer in this section to Bernarda Lajuj Osorio, who, according to the information provided by the representatives, is a survivor of the Los Encuentros massacre (*supra* paras. 12 and 46).

141. According to Article 6 of the Convention, "[n]o one shall be subject to slavery or to involuntary servitude, which are prohibited in all their forms, as are the slave trade and traffic in women." In its well-known *obiter dictum* in the judgment issued in the case of the *Barcelona Traction, Light and Power Company, Limited,* the International Court of Justice stipulated that, under contemporary international law, protection from slavery and racial

discrimination is an international obligation *erga omnes,* derived "from the principles and rules concerning the basic rights of the human person" and, therefore, is binding on all the States.[218]

142. Furthermore, Article 19 of the American Convention establishes that "[e]very minor child has the right to the measures of protection required by his condition as a minor on the part of his family, society, and the State." In the Court's opinion, "this provision must be understood as an additional, complementary right that the treaty establishes for individuals who, based on their physical and emotional development, require special protection."[219] Therefore, the State must assume a special position of guarantor with greater care and responsibility, and must take special measures based on the principle of the best interest of the child.[220] This principle is founded "on the very dignity of the human being, on the inherent characteristics of children, and on the need to promote their development taking full advantage of their potential."[221] Hence, the State must pay special attention to the needs and rights of children, based on their special condition of vulnerability.[222] In addition, the Court has repeatedly stated that "both the American Convention and the Convention on the Rights of the Child are part of a very comprehensive international *corpus juris* for the protection of children that must be used […] to establish the content and scope of the general provision defined in Article 19 of the American Convention."[223]

143. Thus, the Court considers it important to indicate that the special measures of protection that the States must adopt in favor of indigenous children include the promotion and protection of their right to live according to their own culture, their own religion and their own language,[224] an additional and complementary obligation defined in Article 30[225] of

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[218] *Cf.* International Court of Justice, *Case of the Barcelona Traction, Light and Power Company, Limited*. Judgment of 5 February 1970, p. 32, paras. 33-34. See also, Human Rights Committee, *General Comment 24,* para. 8, and the Concurring opinion of Judge A. Cancado Trindade, *Juridical Status and Rights of Undocumented Migrants*. Advisory Opinion OC-18/03 of September 17, 2003. Series A No. 18, para. 75.

[219] *Juridical Status and Human Rights of the Child.* Advisory Opinion OC-17/02, *supra*, paras. 53, 54 and 60, and *Case of Chitay Nech et al. v. Guatemala, supra,* para. 164.

[220] *Cf. Juridical Status and Human Rights of the Child.* Advisory Opinion OC-17/02, *supra*, para. 164.

[221] *Cf. Juridical Status and Human Rights of the Child.* Advisory Opinion OC-17/02, supra, para. 56, and *Case of Atala Riffo and daughters v. Chile, supra*, para. 108.

[222] *Cf. Case of the Dos Erres Massacre v. Guatemala, supra,* para. 184, and *Case of Rosendo Cantú et al. v. Mexico, supra*, para. 201.

[223] *Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Merits.* Judgment of November 19, 1999. Series C No. 63, para. 194, and *Case of Fornerón and daughter v. Argentina. Merits, reparations and costs*. Judgment of April 27, 2012. Series C No. 242, para. 137.

[224] In addition to article 30, the Convention on the Rights of the Child contains several provisions that underscore the importance of the cultural life of indigenous children for their formation and development. Thus, the Preamble declares that: "[t]he States Parties [have signed] this Convention […t]aking due account of the importance of the traditions and cultural values of each people for the protection and harmonious development of the child." Article 2(1) establishes the obligation of the States to ensure the rights set forth in the Convention without discrimination based on the "ethnic […] origin" of the child. Similarly, article 17(d) establishes that: "the States Parties shall [… e]ncourage the mass media to have particular regard to the linguistic needs of the child who belongs to a minority group or who is indigenous." Article 20(3) determines that, in the case of a child deprived of his or her family environment, the State must provide special measures and, when considering them, "[…] due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background." Similarly, article 29(1) subparagraphs (c) and (d), indicate that "States Parties agree that the education of the child shall be directed to [… t]he development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own; [and also t]he preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin." Finally, article 31 determines that "States Parties recognize the right of the child […] to participate freely in cultural life and the arts. […] States Parties shall respect and promote the right of the child to participate fully in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural,

the Convention on the Rights of the Child,[226] to which Guatemala has been a party since June 6, 1990, and which gives content to Article 19 of the American Convention. Also, in General Comment No. 11, the Committee on the Rights of the Child considered that "empowerment of indigenous children and the effective exercise of their rights to culture, religion and language provide an essential foundation of a culturally diverse State,"[227] and that this right "is an important recognition of the collective traditions and values in indigenous cultures."[228]

144. In previous cases, this Court has held that the development of the child is a holistic concept that includes the physical, mental, spiritual, moral, psychological and social development.[229] For the full and harmonious development of their personality, indigenous children, in keeping with their cosmovision, need to grow and develop preferably within their own natural and cultural environment, because they possess a distinctive identity that connects them to their land, culture, religion, and language.[230]

145. In addition, Article 17 of the American Convention recognizes that the family is the natural and fundamental group of society and is entitled to protection by society and the State.[231] Given the importance of the right to protection of the family, the Court has established that the State is obliged to encourage the development and strength of the family unit and that the separation of children from their family constitutes, in certain circumstances, a violation of their right to a family. Thus, children have the right to live with their family, which is required to satisfy their material, affective and psychological needs.[232] The right of every person to receive protection against arbitrary and illegal interference in their family is an implicit part of the right to the protection of the family and of the child.[233]

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artistic, recreational and leisure activity." *Cf. Case of Chitay Nech et al. v. Guatemala, supra,* para. 167, and *Case of the Xákmok Kásek Indigenous Community. v. Paraguay, supra,* para. 261.

[225] Article 30 establishes that "[i]n those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language." The background for this provision can be found in Article 27 of the International Covenant on Civil and Political Rights adopted by the General Assembly by Resolution 2200 A (XXI), 16 December 1966, which recognizes this right to minority groups, without mentioning indigenous peoples explicitly. Article 27 stipulates: "[i]n those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language."

[226] Convention on the Rights of the Child, General Assembly Resolution 44/25, annex, 44 U.N. GAOR Supp. (No. 49), p. 167, U.N. Doc. A/44/49 (1989), entry into force 2 September 1990.

[227] U.N.. Committee on the Rights of the Child. General Comment No. 11. Indigenous children and their rights under the Convention, 12 February 2009, para. 82.

[228] *Cf.* U.N.. Committee on the Rights of the Child. General Comment No. 11. Indigenous children and their rights under the Convention, 12 February 2009, para. 16. See also, *Case of Chitay Nech et al. v. Guatemala*, para. 168.

[229] *Cf.* U.N.. Committee on the Rights of the Child. General Comment No. 5. General measures of implementation of the Convention on the Rights of the Child, 27 November 2003, para. 12. The concept of holistic development can be found in previous case law of the Court. *Cf. Case of the "Children's Rehabilitation Institute" v. Paraguay*. *Preliminary objections, merits, reparations and costs.* Judgment of September 2, 2004. Series C No. 112, para. 161, and *Case of Chitay Nech et al. v. Guatemala, supra,* para. 169.

[230] *Cf. Case of Chitay Nech et al. v. Guatemala, supra*, para. 169.

[231] *Cf. Juridical Status and Human Rights of the Child*. Advisory Opinion OC-17/02, *supra,* para. 66, and *Case of Chitay Nech et al. v. Guatemala, supra*, para. 156.

[232] *Cf. Advisory Opinion. Juridical Status and Human Rights of the Child.* Advisory Opinion OC-17/02, supra, para. 71, and *Case of Fornerón and daughter v. Argentina, supra*, para. 46.

[233] *Juridical Status and Human Rights of the Child.* Advisory Opinion OC-17/02, *supra,* para. 71, and *Case of Atala Riffo and daughters v. Chile, supra,* para. 170. In this regard, in Advisory Opinion No. 17 on the *Juridical*

146. Nevertheless, evidence in the case file before the Court reveals that, based on the judgment issued on May 28, 2008, by the Sentencing Court on Crime, Drug-trafficking and Offenses against the Environment of the department of Baja Verapaz (*supra* para. 101), at least 10 of the individuals removed from the Community of Río Negro during the massacre that occurred in Pacoxom gave testimony[234] and, according to this court, all recounted "the tragic experiences they had lived through in order to survive in an environment that was foreign and hostile for them"[235] when, as children, they were "forced to live with families that were not their own and in a community that was foreign to them."[236] Also, when assessing the testimony of one of these individuals, Pedro Sic Sánchez, the said court referred to "the ill-treatment that, evidently, left physical and emotional scars on the victims such as this witness, [who had been] taken from his village" to live with those who had victimized him.[237]

147. In this regard, Juan Uscap Ivoy testified that he "underwent suffering with [the people who had taken him] for approximately […] two and a half years; we suffered; they did what they wanted […], which is a violation of childhood […] and now we have the anguish […]."[238] In addition, before domestic courts[239] and during the public hearing held before this Court, Jesús Tecú Osorio recounted how the patroller who had killed his brother, who was about one year old during the Pacoxom massacre, forced him to work and abused him, even, on one occasion, choking him until he fainted. In another statement made at the domestic level in 1995, Tecú Osorio said that: "[w]hen I remember […] what happened, […] this sadness, I want to take revenge on those who did this. […] But, after a while, I tell myself no, it would be better not to take revenge on them, because that would make me a murderer like them."[240]

Status and Human Rights of the Child, the Court recognized that the mutual enjoyment of coexistence between parents and children constitutes a fundamental element of family life, and observed that the European Court had established that article 8 of the European Convention on Human Rights is not only designed to protect the individual against arbitrary interference by public authorities, but also supposes positive State obligations to promote effective respect for family life.

[234] Namely: María Eustaquia Uscap Ivoy, Froilan Uscap Ivoy, Pedro Sic Sánchez, Jesús Tecú Osorio, José Osorio Osorio, Juan Chen Chen, Juan Chen Osorio, Juan Uscap Ivoy, Tomasa Osorio Chen and Silveria Lajuj Tum. Judgment handed down by the Sentencing Court for Crime, Drug-trafficking and Offenses against the Environment of the department of Baja Verapaz, Salamá, on May 28, 2008, Case No. 28-2003-Of.-1 (file of annexes to the submission of the case, tome II, folios 714, 718 to 719, 723, 728, 729, 731 to 736, 752 to 756, 759 to 760, 765 to 766, 782, 784, and 787 to 789, 790, 793 to 799, 803 to 804, 807, 809 to 813, 815 to 817, 824 to 831, 835, 838, 839, 841, 845 to 847, and 855 to 856, 857 to 859, and 861).

[235] Judgment handed down by the Sentencing Court for Crime, Drug-trafficking and Offenses against the Environment of the department of Baja Verapaz, Salamá, on May 28, 2008, case No. 28-2003-OF 1º (file of annexes to the submission of the case, tome II, folios 816 to 817).

[236] Judgment handed down by the Sentencing Court for Crime, Drug-trafficking and Offenses against the Environment of the department of Baja Verapaz, Salamá, on May 28, 2008, case No. 28-2003-Of. 1º (file of annexes to the submission of the case, tome II, folio 723).

[237] *Cf.* Judgment handed down by the Sentencing Court for Crime, Drug-trafficking and Offenses against the Environment of the department of Baja Verapaz, Salamá, on May 28, 2008, case No. 28-2003-Of. 1º (file of annexes to the submission of the case, tome II, folios 742 to 743).

[238] Judgment handed down by the Sentencing Court for Crime, Drug-trafficking and Offenses against the Environment of the department of Baja Verapaz, Salamá, on May 28, 2008, case No. 28-2003-Of. 1º (file of annexes to the submission of the case, tome II, folio 847).

[239] *Cf.* Judgment handed down by the Sentencing Court for Crime, Drug-trafficking and Offenses against the Environment of the department of Baja Verapaz, Salamá, on May 28, 2008, Case No. 28-2003-Of. 1º (file of annexes to the submission of the case, tome II, folios 752 to 756, 759 to 760, and 765 to 766), and testimony of Jesús Tecú Osorio of February 1995, Criminal proceedings 001-98-1 (file of annexes to the submission of the case, tome I, folios 574 to 576).

[240] Testimony of Jesús Tecú Osorio of February 1995, Criminal proceedings 001-98-1 (file of annexes to the submission of the case, tome I, folio 576).

148. Furthermore, in a statement made on June 24, 2009, at the domestic level, Juana Chen Osorio recounted the abuse she and her younger brother suffered at the home of the patroller who took them from their village:

> "[…] I would hide and cry […] they changed our name, […] they hit us […] because we could not work […].I was in despair; Juan told me 'I am going to leave and I am going to kill myself,' […] and the woman heard, and she went to fetch Juan, and […] there was a hole [*sic*] in the fire and she burned Juan's feet; I began to tend to Juan, who was screaming; that was just a small taste of what's to come, she told him. You two have to work. Where will the money for your clothes come from?"[241]

149. For his part, Juan Chen Osorio testified that he is "now an orphan, […] since [he] was five years old [his] life has been filled with sadness, pain, [he] feel[s he has] been harmed […;] that's why [he is] here, to testify to the truth; […] hopefully things like this will not happen again, […] what [he] suffered was very difficult […] and one will never forget."[242]

150. From the testimony given before domestic courts and before this Court, it is clear that those who were taken from the community of Río Negro during the Pacoxom massacre and who were forced to work in the homes of members of the Civil Self-defense Patrols suffered an increased impact on their mental integrity, the consequences of which remain until today. Therefore, taking into consideration the State's acknowledgment of responsibility, the Court considers that Guatemala is responsible for the violation of the rights recognized in Article 5(1) of the American Convention, in relation to Articles 6, 17 and 1(1) thereof, to the detriment of María Eustaquia Uscap Ivoy. The State is also responsible for the violation of Article 5(1) of the Convention, in relation to Articles 6, 17, 19 and 1(1) thereof, to the detriment of Agustín Chen Osorio, Celestina Uscap Ivoy, Cruz Pérez Osorio, Froilan Uscap Ivoy, Jesús Tecú Osorio, José Osorio Osorio, Juan Chen Chen, Juan Chen Osorio, Juan Pérez Osorio, Juan Uscap Ivoy, Juana Chen Osorio, Pedro Sic Sánchez, Silveria Lajuj Tum, Tomasa Osorio Chen, Florinda Uscap Ivoy and Juan Osorio Alvarado.

C. Violation of the right to personal integrity, in relation to freedom of conscience and religion, and the right to their own culture of the survivors of the Río Negro massacres

C.1. Arguments of the parties and of the Inter-American Commission

151. The Commission and the representatives maintained that, as a result of the massacres, the collective life of the community of Río Negro "suffered fissures until it was left without leaders, separated and, to all intents and purposes, annihilated," and that the events that occurred changed the community's customs and promoted the isolation of its members, which led to the destruction of the said community's social fabric. Owing to the militarization of the area, which was maintained for several years, "the survivors were afraid to reconstruct their social fabric." In addition, they indicated that the way in which the soldiers and patrollers buried or destroyed the mortal remains of the people who had been executed during the five massacres meant that they were not buried in accordance with the cultural, religious and spiritual beliefs of the community of Río Negro, which accord particular importance to the ties that unite the living and the dead. Based on the above,

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[241] Testimony of Juana Chen Osorio of June 24, 2009 (file of annexes to the submission of the case, tome I, folios 531 to 533.

[242] Judgment handed down by the Sentencing Court for Crime, Drug-trafficking and Offenses against the Environment of the department of Baja Verapaz, Salamá, on May 28, 2008, Case No. 28-2003-Of. 1º (file of annexes to the submission of the case, tome II, folios 790 and 792).

they considered that the State had violated Articles 12 and 16 of the American Convention, in relation to Article 1(1) thereof, to the detriment of the members of the community of Río Negro.

152. As indicated previously in this Judgment (*supra* para. 17(f)), the State "indicated its partial acknowledgement" of the violation of the rights recognized in Articles 12 and 16 of the American Convention, in relation to Article 1(1) thereof, to the detriment of the members of the community of Río Negro. This was because, according to the State, "the said violations could transcend over time and include the temporal space under [the Court's] jurisdiction."

C.2. Considerations of the Court

153. Owing to the "partial" acknowledgment of international responsibility made by the State, the Court will now analyze the alleged violations of the personal integrity of the members of the community of Río Negro, derived from the deterioration in their cultural and spiritual life resulting from the impossibility of burying their deceased in accordance with their beliefs, and from the loss of spiritual guides and sacred places, as well as from the destruction of their social and family structures.

154. In this regard, the Court recalls that, in its Article 12, the American Convention establishes the right to freedom of conscience and religion, which, according to this Court's case law, allows people to maintain, change, profess or disseminate their religion or beliefs. This right is one of the pillars of a democratic society. In its religious dimension, it constitutes a transcendental element for the protection of the convictions of believers and for their way of life.[243]

155. The American Convention does not explicitly establish the right to "bury the dead." The Inter-American Court has addressed this issue not as a substantive right, but in the context of the reparations in cases of forced disappearances; mainly, as a result of the violation of another right that is established in the Convention. Thus, for example, the Court has ordered that, if the remains of a disappeared person are found, they must be returned to his or her next of kin, and the State must cover the funeral or burial costs.[244] Also, in other cases, the Court has referred to the impossibility of burying the dead as a fact that increases the suffering and anguish of the next of kin, which can be considered in the reparations when determining an amount for the non-pecuniary compensation in their favor.[245]

156. However, in the instant case, during the public hearing, expert witness Rosalina Tuyuk referred to the importance of the farewell rites for the dead in the Mayan culture:

> […] there is always a rite of farewell, preparation, appreciation of the people that pass on to the other dimension of life, and this is the part that could not be performed with most of those who were violently murdered, those who were massacred […] and those who were disappeared. In other words, this part is […] like a debt we have […] to give our deceased an honorable burial.

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[243] *Cf. Case of "The Last Temptation of Christ" (Olmedo Bustos et al.) v. Chile. Merits, reparations and costs.* Judgment of February 5, 2001. Series C No. 73, para. 79.

[244] *Cf. Case of La Cantuta v. Peru. Merits, reparations and costs.* Judgment of November 29, 2006. Series C No. 162, supra, para. 232, and *Case of González Medina and family members v. Dominican Republic, supra, para. 291.*

[245] *Cf. Case of the Plan de Sánchez Massacre v. Guatemala. Reparations and costs,* supra, para. 87(a), and *Case of the Dos Erres Massacre v. Guatemala, supra*, paras. 226 and 292.

> Many of the next of kin, regardless of the number of years that have gone by, […] continue to look for their deceased victims in the clandestine cemeteries and […] this does not give […] peace of mind, [or…] happiness, and therefore [they…] need to close this mourning process. In other words, for many of them, it is still an open wound; it continues to be an active grieving process as a result of not having been able to perform that rite with our deceased in order to give them an honorable burial […]. Since the exhumations started in the clandestine cemeteries, it has been the victims who have assumed most of them, rather than the State, because the State has never considered them a priority or offered support for […] these exhumations. This has placed […] a considerable emotional burden on the family life because, with each cemetery that is exhumed and with each cemetery that is closed again, the search cycle is closed again. In other words, when the family [of the] victims of […] the massacres find a loved one and bury him or her, the cycle of searching and grief ends […].

157. In this case, even though there have been some exhumations of remains that presumably belong to members of the community of Río Negro, only a very few people have been identified (*infra* para. 220). In addition, in this Judgment, it has been established that 17 individuals were forcibly disappeared (*supra* para. 127). Therefore, it is evident that the next of kin of these people have not been able to bury them or perform the funeral rites according to their religious beliefs.

158. Furthermore, during the public hearing, expert witness Rosalina Tuyuc also indicated that the Mayan cemeteries are considered sacred ground. Thus, she stated that:

> […] the remains of all the family, friends and acquaintances are deposited there […]. [H]owever, many of the victims of the armed conflict do not have this; in other words, they were left on the streets or they were buried elsewhere; thus the need to find those who have disappeared, those who were massacred and who are in clandestine cemeteries, so that they can be taken to that sacred place where the victims […] can take flowers, food, celebrate rites […]. [F]or many years that has not been possible for the families who are searching for their loved ones who have disappeared.

159. In addition, expert witness, Alfredo Itzep Manuel emphasized that "the actual Maya Achí people of Río Negro have more ties with the sites of Los Encuentros, Pachelaj, Los Mojones and Cerro Choquián […]."[246] However, for them, the construction of the Chixoy hydroelectric plant "signified the closing or blocking off of the water, which means the closure of life itself."[247] In this regard, he indicated that the members of the community of Río Negro who survived the massacres lost contact with their sacred grounds, because many of these sacred sites for the actual Maya Achí, including Los Encuentros, were flooded owing to the construction of the Chixoy hydroelectric plant. This is one of the places they went to celebrate their rituals.[248]

52. Therefore, on the one hand, the Court observes that, nowadays, the members of the community of Río Negro cannot celebrate their funeral rites because the State has not found or identified most of the remains of those supposedly executed during the massacres, and that 17 people remain forcibly disappeared. But, on the other hand, they cannot perform any other type of rites, because the sacred locations they used to visit have been flooded owing to the construction of the Chixoy hydroelectric plant. This Court has already indicated that the special relationship of the indigenous peoples with their ancestral lands is not merely because they constitute their main means of subsistence, but also because they are an integral part of their cosmovision, religious beliefs and, consequently, their cultural

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[246] Expert opinion provided by Alfredo Itzep Manuel by affidavit (merits file, tome II, folio 1036).

[247] Expert opinion provided by Alfredo Itzep Manuel by affidavit (merits file, tome II, folio 1044).

[248] *Cf.* Expert opinion provided by Alfredo Itzep Manuel by affidavit (merits file, tome II, folios 1040, 1048, 1049 and 1052).

identity[249] or integrity, which is a fundamental and collect right of the indigenous communities that must be respected in a multicultural, pluralist, and democratic society,[250] such as that of Guatemala.

161. In this regard, Bruna Pérez Osorio testified before notary public that:

> "Two years after having taken refuge, we went to Pacux. At that time our life changed […]. Regarding our culture, it has also changed a great deal, because it is no longer practiced, unless it is to commemorate those who died, but it's not the same. It is different from what they did, because it is only in commemoration."[251]

162. Furthermore, among the facts of the instant case, it was established that the massacres that occurred during the internal armed conflict in Guatemala, added to the displacement of the members of the community of Río Negro and their resettlement in the Pacux settlement, in precarious conditions, led to the destruction of their social structure, the disintegration of the families, and the loss of their cultural and traditional practices, and the Maya Achí language (*supra* paras. 61 and 87). All this has had an impact on the collective life of the members of the community of Río Negro who, today, still live in Pacux. In this regard, Bruna Pérez Osorio testified that, "in the community, only two people practice natural medicine now, because they were already grown up when the massacres occurred; the little ones did not learn these customs."[252] Also, Antonia Osorio Sánchez testified by affidavit that:

> "Now there is almost nothing left of our ceremonies, candles. Before, the tradition in Río Negro was really nice because the community would get together on the day of Santa Cruz; we would provide animals, the grandparents, who are very important, participated, and also the parents; we had a great belief in our traditions […]. We no longer do the four dances like before […]. The grandparents don't participate anymore […] only the children […].[253]

163. For his part, during the public hearing held before this Court, Carlos Chen Osorio stated that "[a]ll the previous customs […], everything was lost […]." Similarly, the Court observes that, according to expert witness Itzep Manuel, the members of the community of Río Negro who live in Pacux have suffered "major psychological and cultural harm, by being unable to exercise their Maya Achí culture freely and creatively."[254]

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[249] *Cf. Case of the Yakye Axa Indigenous Community v. Paraguay. Merits reparations and costs*. Judgment of June 17, 2005. Series C No. 125, para. 135, and *Case of the Xákmok Kásek Indigenous Community. v. Paraguay, supra*, para. 261. In the *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador, supra,* para. 213*,* the Court recalled that the recognition of the right to cultural identity is a cross-cutting element and means of interpretation to conceive, respect and ensure the enjoyment and exercise of the human rights of the indigenous peoples and communities protected by the Convention and, according to Article 29(b) of the Convention, also of domestic law. Furthermore, ILO Convention 169 recognizes the aspirations of the indigenous peoples "to exercise control over their own institutions, ways of life and economic development and to maintain and develop their identities, languages and religions, within the framework of the States in which they live." *Cf. ILO Convention concerning Indigenous and Tribal People in Independent Countries, 1989 (No. 169), fifth considering preambular paragraph.*

[250] *Cf. Case of the Kichwa Indigenous People of Sarayaku v. Ecuador, supra,* para. 217. The 2007 United Nations Declaration on the Rights of Indigenous Peoples, widely accepted by having been adopted with the signature of 143 States (including Guatemala), establishes the right of these peoples to freely determine their political status and freely pursue their economic, social and cultural development, to participate in decision-making in matters which would affect them, and to participate fully, if they so choose, in the political, economic, social and cultural life of the State (Articles 3, 4, 5, 18, 19, 20, 23 , 32, 33 and 34).

[251] Testimony provided by affidavit by Bruna Pérez Osorio on June 15, 2012 (merits file, tome II, folio 1015).

[252] Testimony provided by affidavit by Bruna Pérez Osorio on June 15, 2012 (merits file, tome II, folio 992).

[253] Testimony provided by affidavit by Antonia Osorio Sánchez on June 15, 2012 (merits file, tome II, folio 1024).

[254] Expert opinion provided by Alfredo Itzep Manuel by affidavit (merits file, tome II, folio 1050).

164. Lastly, the Court has determined that the inadequate living conditions of the members of a community and their general state of abandonment cause suffering that necessarily affects the mental and moral integrity of the members of the said community.[255] This is the case of the surviving victims of the massacres who now live in the Pacux settlement.[256]

165. Consequently, the Court considers that Guatemala has violated Article 5(1) of the American Convention, in relation to Articles 12(1) and 1(1) thereof, to the detriment of the members of the community of Río Negro who live in Pacux. The names of these persons are included in Annex VII of this Judgment.

C.3. Alleged violation of Article 16 of the American Convention.

166. The Court observes that both the Commission and the representatives also argued that Guatemala had violated Article 16 of the American Convention. For its part, the State acknowledged its international responsibility to the extent that the said violation "c[ould] have transcended in time" up until the moment at which Guatemala accepted the Court's contentious jurisdiction (*supra* para. 17(f)).

167. Article 16(1) of the American Convention establishes that everyone under the jurisdiction of the States Parties has the right and freedom to associate freely with other persons, without any interference from the public authorities that may limit or hinder the exercise of the said right. Thus, this is the right to associate in order to seek the common achievement of a legal objective, without pressures or interferences that could alter or impair this objective.[257] Furthermore, Article 16(2) of this treaty establishes 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."

168. In the instant case, the Court considers that the community of Río Negro cannot be implicitly equated to an "association" in the terms of Article 16 of the American Convention. Thus, the Court underscores that neither the Inter-American Commission nor the representatives indicated the reasons why the community of Río Negro, which is indigenous in nature, is covered by the right recognized in Article 16 of the Convention. Therefore, even though the State acknowledged its responsibility for the violation of this right, the Court considers that the said provision is not applicable to the facts of this case.

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[255] Expert opinion provided by Alfredo Itzep Manuel by affidavit (merits file, tome II, folio 1050).

[256] *Cf.* testimony provided during the public hearing by Jesús Tecú Osorio and Carlos Chen Osorio. Also, testimony provided by affidavit on June 15, 2012, by Bruna Pérez Osorio (merits file, tome II, folio 994); María Osorio Chen (merits file, tome II, folio 1000), and Antonia Osorio Sánchez (merits file, tome II, folio 1004); the expert opinion provided by Rosalina Tuyuc Velásquez during the public hearing, and expert opinion provided by Alfredo Itzep Manuel by affidavit (merits file, tome II folio 1050).

[257] *Cf. Case of Baena Ricardo et al. v. Panama. Preliminary objections*. Judgment of November 18, 1999. Series C No. 61 para. 156, and *Case of Fleury et al. v. Haiti. Merits and reparations.* Judgment of November 23, 2011. Series C No. 236, para. 99.

XI
RIGHT TO FREEDOM OF MOVEMENT AND RESIDENCE OF THE MEMBERS OF THE RÍO NEGRO COMMUNITY IN RELATION TO THE OBLIGATION TO RESPECT RIGHTS

A. Arguments of the parties and of the Inter-American Commission

169. The Commission argued that the State had violated Article 22(1) of the Convention, in relation to Article 1(1) thereof, to the detriment of the members of the Río Negro community who survived the massacres perpetrated against the community. In this regard, it maintained that the said individuals "were forced to abandon their village, leaving their […] lands destroyed or forsaken, and to move, first, to neighboring communities or to the mountains […]," where "they lived for several months or even years, fighting to survive the threats and persecution, hunger [and] lack of access to health and education services." In addition, it indicated that, starting in 1983, the Río Negro community members who survived the massacres were resettled in the village of Pacux, "in precarious living conditions [and] on land that was inadequate for agriculture […]." The Commission also stressed that the great majority of the survivors of the massacres had not returned to the village of Río Negro "not only [because of] the threats and persecution to which they were subjected and the failure to investigate the facts," but also because the Chixoy dam flooded most of their land. According to the Commission, these facts took place within a general context of forced displacement in Guatemala that mainly affected the indigenous population and that was a direct consequence of the internal armed conflict.

170. The representatives endorsed the Commission's arguments and also alleged that "the consequences of the persecution and forced displacement experienced [by the survivors of the massacres perpetrated against the population of Río Negro …] go beyond the violent expulsion from their land and the plundering of this land, [… but also have] psychological, cultural, social and even religious dimensions." In addition, they indicated that, "[t]o this day, the survivors of the community of Río Negro live in [the Pacux settlement] in overcrowded conditions, on lots on which it is physically impossible to carry out their traditional activities such as fishing and agriculture […]." According to the representatives, the community's voluntary return to its traditional lands is impossible, on the one hand, because "most of the fertile land of the survivors […] and their ceremonial and religious centers were totally flooded" by the Chixoy dam. And, added to this, "the only access to the territories where [the Río Negro community] was located […] is guarded by State security" forces, and a "prior administrative formality" is required to obtain INDE authorization. This "has greatly limited the movement of those originally from Río Negro […]," in particular because of the financial cost of that formality. Moreover, they indicated that it was impossible to reach the said land without hiring boats or canoes, the cost of which "most of the survivors of the Río Negro massacres are unable to afford."

171. As indicated previously (*supra* paras. 17(g) and 25), the State "partially acknowledged" the violation of the right to freedom of movement and residence established in Article 22 of the Convention, because the members of the Río Negro community were relocated in the Pacux settlement after the date on which the State accepted the Court's jurisdiction.

B. Considerations of the Court

172. Article 22(1) of the Convention recognizes the right to freedom of movement and residence. In this regard, the Court has established in other cases that this article also protects the right not to be forcibly displaced within a State Party.[258]

173. In this regard, the Court has considered that the United Nations Guiding Principles on Internal Displacement[259] are particularly relevant to determine the content and scope of Article 22 of the American Convention.[260] The principles state that "internally displaced persons are 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 [or] violations of human rights […] and who have not crossed an internationally recognized State border.[261]

174. This Court has established that, given the complexity of the phenomenon of internal displacement and the broad range of human rights that it effects or that are put at risk, and based on the circumstances of special vulnerability and defenselessness in which the displaced generally find themselves, their situation can be understood as a *de facto* condition of lack of protection.[262] In keeping with the American Convention, this situation obliges the States to adopt positive measures to reverse the effects of the said condition of weakness, vulnerability and defenselessness, including *vis-à-vis* the actions and practices of private individuals.[263]

175. Thus, this Court has indicated that the right to freedom of movement and residence can be violated by *de facto* restrictions, if the State has not established the conditions or provided the means to allow that right to be exercised;[264] for example, when a person is a

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258 *Cf. Case of the Mapiripán Massacre v. Colombia. Merits, reparations and costs.* Judgment of September 15, 2005. Series C No. 134, para. 188, and *Case of Chitay Nech et al. v. Guatemala, supra*, para. 139.

259 *Cf.* Commission on Human Rights, United Nations Guiding Principles on Internal Displacement, E/CN.4/1998/53/Add.2 of 11 February 1998, p. 5. Annex. Introduction: scope and purpose. (No. 2). *Available at:* http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G98/104/93/PDF/G9810493.pdf?OpenElement. These principles have been recognized by the international community. See also, United Nations, General Assembly, Protection of and assistance to internally displaced persons A/RES/64/162, of 17 March 2010, p.1. *Available at:* http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/64/162. See also, Council of Europe, Committee of Ministers, Recommendation Rec (2006)6 to member states on internally displaced persons, 5 April 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), 23 October 2009, article 1, K). Available at: http://www.unhcr.org/4ae9bede9.html; Human Rights Council, Report presented 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://www2.ohchr.org/english/bodies/hrcouncil/docs/13session/A-HRC-13-21-Add.3.pdf.

260 *Cf. Case of the Moiwana Community v. Suriname Preliminary objections, merits, reparations and costs*. Judgment of June 15, 2005. Series C No. 124, para. 111*, and Case of Chitay Nech et al. v. Guatemala, supra,* para. 140.

261 United Nations Guiding Principles on Internal Displacement, *supra,* para. 2. In this regard, the General Assembly of the Organization of American States has recommended that the States use the Guiding Principles as a basis for developing their policies, and even that they incorporate them into their domestic law, in order to promote implementation. *Cf.* AG/RES. 2508 (XXXIX-O/09) "Internally Displaced Persons," approved at the fourth plenary session held on June 4, 2009, operative paragraph 2 (Available at: www.oas.org/dil/esp/AG-RES_2508-2009.doc).

262 *Cf. Case of the Mapiripán Massacre v. Colombia, supra*, para. 177, and *Case of Chitay Nech et al. v. Guatemala,* para. 141.

263 *Cf. Case of the Mapiripán Massacre v. Colombia, supra,* para. 179, and *Case of Chitay Nech et al. v. Guatemala, supra,* para. 141.

264 *Cf. Case of the Moiwana Community v. Suriname, supra,* paras. 119 and 120, and *Case of Chitay Nech et al. v. Guatemala, supra,* para. 142.

victim of threats or harassment and the State does not provide the necessary guarantees to enable that person to move about and reside freely in the territory in question, even when the threats and harassment come from non-State actors.[265]

176. In addition, the Court observes that the said Guiding Principles establish obligations for the States regarding the return, resettlement and reintegration of internally displaced peoples, *inter alia*:

> Principle 28(1). Competent authorities have the primary duty and responsibility to establish conditions, as well as provide the means, which allow internally displaced persons to return voluntarily, in safety and with dignity, to their homes or places of habitual residence, or to resettle voluntarily in another part of the country. […]
>
> Principle 28(2). Special efforts should be made to ensure the full participation of internally displaced persons in the planning and management of their return or resettlement and reintegration. […]
>
> Principle 29(2). Competent authorities have the duty and responsibility to assist returned and/or resettled internally displaced persons to recover, to the extent possible, their property and possessions which they left behind or were dispossessed of upon their displacement. When recovery of such property and possessions is not possible, competent authorities shall provide or assist these persons in obtaining appropriate compensation or another form of just reparation.

177. Also, in keeping with its consistent case law on indigenous matters, in which it has recognized that the relationship of the indigenous peoples with the land is essential for maintaining their cultural structures and for their ethnic and material survival,[266] the Court considers that the forced displacement of indigenous peoples outside their community or way from its members, can place them in a situation of special vulnerability, which "owing to its destructive effects on the ethnic and cultural fabric […], generates a clear risk of the cultural or physical extinction of the indigenous peoples."[267] Hence, it is essential that the States adopt specific measures of protection[268] considering the particular characteristics of the indigenous peoples, as well as their customary law, values, practices and customs[269] to prevent and reverse the effects of that situation.

B.1. The continuing displacement of the community of Río Negro

178. As previously established (*supra* para. 82), the members of the Río Negro community were forced to flee their ancestral lands after the massacres perpetrated against them in 1980 and 1982. In addition, the Court has accredited that most of the individuals who survived the said massacres and the subsequent persecution by the State were resettled by the Government, as the State itself has recognized (*supra* para. 17(g)), in the

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[265] *Cf. Case of Valle Jaramillo et al. v. Colombia. Merits, reparations and costs. Judgment of November 27, 2008. Series C No. 192, para. 139, and Case of Chitay Nech et al. v. Guatemala, supra*, para. 142.

[266] The Court has determined that the culture of the members of the indigenous communities corresponds to a specific way of being, seeing and acting in the world, constituted on the basis of their close relationship with their traditional lands and natural resources, not only because these are their main means of subsistence, but also because they constitute an integral component of their cosmovision, religious beliefs and, consequently, their cultural identity. *Cf. Case of the Yakye Axa Indigenous Community v. Paraguay, supra,* para. 135, and *Case of Chitay Nech et al. v. Guatemala, supra,* para. 147.

[267] Ruling 004/009 issued on January 26, 2009, Constitutional Court of Colombia, part 4, p. 11. *Available at:* http://www.acnur.org/biblioteca/pdf/6981.pdf.

[268] *Cf.* Guiding principles on internally displaced persons, *supra,* Principle 9.

[269] *Cf. Case of the Yakye Axa Indigenous Community v. Paraguay, supra,* para. 63, and *Case of Chitay Nech et al. v. Guatemala, supra,* para. 147.

Pacux settlement, where they currently reside.[270] Consequently, the Court can exercise its competence over the presumed continuing displacement of the community, which, even though it began before the recognition of the Court's contentious jurisdiction, constitutes a situation that presumably persists to this day.[271] The Court will analyze this point next and will also determine whether the State has complied with its obligations regarding the return, resettlement and reintegration of the internally displaced people, taking into account the ethnic identity of the Río Negro community.

B.2. Impossibility of the community of Río Negro returning to its ancestral lands

179. This Court has established that, following the massacres perpetrated against the community of Río Negro in 1980 and 1982, the survivors took refuge in the nearby mountains, in precarious conditions, in order to flee the systematic persecution of State agents aimed at their total elimination (*supra* para. 82). Moreover, given this situation, after 1983, some of these survivors were resettled in the Pacux settlement, where they were subjected to threats, torture, forced labor and other human rights violations (*supra* para. 83). The resettlement of the members of the Río Negro community continued after 1987, when the State recognized the Court's contentious jurisdiction.

180. In this regard, the Court observes that the peace process that ended the internal armed conflict in Guatemala began in 1996 (*supra* para. 64); that is, almost 10 years after the recognition of the Court's contentious jurisdiction and approximately 13 years after the resettlement of the members of the Río Negro community in Pacux started. In view of the violent events they survived and the extreme deprivation they suffered in the mountains, as well as the context of violence that persisted in Guatemala during those years, the Court considers that the members of the Río Negro community were unable to return to their ancestral lands during this period owing to the well-founded fear of being subjected to violations of their rights to life and personal integrity, among others.

181. Furthermore, the Court has established that the construction of the Chixoy dam on the ancestral land of the Río Negro community began in 1977, and that the reservoir began to be filled with water in January 1983 (*supra* para. 66). This made the return of the Río Negro community to part of their ancestral lands physically and permanently impossible. Therefore, the Court finds that, in this case, the freedom of movement and residence of the members of the Río Negro community resettled in Pacux has been limited to date by a *de facto* restriction.

182. Also, in relation to the arguments of the representatives regarding the prior administrative formalities that the members of the Río Negro community must apparently carry out in order to receive INDE authorization to enter their ancestral lands, as well as the arguments relating to the supposed difficulties they face to obtain transportation to these lands, the Court observes that these presumed facts were not alleged when the Commission submitted the case and, therefore, they are outside the factual framework of the case. Consequently, the Court will not refer to them.

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[270] Of 383 survivors of the massacres, according to information provided by the representatives, 289 still live in the Pacux settlement.

[271] *Cf. Case of the Moiwana Community v. Suriname, supra,* para. 108.

B.3. Measures adopted by the State to revert the effects of the displacement

183. This Court has verified that the living conditions in Pacux have not allowed its inhabitants to return to their traditional economic activities. Instead, they have had to participate in economic activities that have not provided them with a stable income, and this has also contributed to the disintegration of the social structure and the cultural and spiritual life of the community. In addition, the facts of the case have proved that the inhabitants of Pacux live in very precarious conditions, and that their basic needs in the areas of health, education, electricity and water are not being fully met (*supra* paras. 85 and 86). Therefore, although Guatemala has made efforts to resettle the survivors of the massacres of the Río Negro community, it has not created the conditions or provided the means that are essential for repairing or mitigating the effects of its displacement, which was caused by the State itself.

B.4. Conclusion

184. Consequently, the Court finds that the State of Guatemala is responsible for the violation of Article 22(1) of the American Convention, in relation to Article 1(1) thereof, to the detriment of the survivors of the Río Negro massacres who live in the Pacux settlement. The names of these individuals are found in Annex VII of this Judgment.

XII
JUDICIAL GUARANTEES AND JUDICIAL PROTECTION UNDER THE AMERICAN CONVENTION, IN RELATION TO ARTICLE 1(1) THEREOF AND TO ARTICLES I OF THE INTER-AMERICAN CONVENTION ON FORCED DISAPPEARANCE OF PERSONS, 1, 6 AND 8 OF THE INTER-AMERICAN CONVENTION TO PREVENT AND PUNISH TORTURE, AND 7(B) OF THE INTER-AMERICAN CONVENTION ON THE PREVENTION, PUNISHMENT AND ERADICATION OF VIOLENCE AGAINST WOMEN

A. Arguments of the parties and of the Inter-American Commission

185. The Commission and the representatives emphasized that impunity constituted one of the main components of the system of extreme violence and persecution in the context of which the grave human rights violations in this case were committed. In this regard, they indicated that approximately 28 years after the facts took place, 16 years after having initiated judicial proceedings regarding the Río Negro (Cerro Pacoxom) and Agua Fría massacres, and eight years after having started the proceedings regarding the Xococ massacre, only a few of the actual perpetrators have been prosecuted, while "the mastermind continues collecting his pension as a retired soldier, despite the existence of a warrant for his arrest […]." Furthermore, despite the existence of proceedings regarding the Agua Fría massacre, they argued that no one had been convicted owing to the failure to identify the remains exhumed, so that the facts remain in complete impunity. With regard to the investigation into the facts of the Pacoxom and Agua Fría massacres, the Commission argued that the defendants have made indiscriminate use of legal remedies in order to delay the proceedings, and this has been tolerated by the authorities. Finally, the Commission indicated that "the failure to comply with the increased obligation to investigate and prosecute the acts of genocide and racism perpetrated against the Río Negro community perpetuates the effects of racial discrimination to which the members of the Maya Achí people were subjected." In this regard, it argued that "a diligent investigation and trial with regard to what happened are the only appropriate measures to end the racial discrimination and its effects, by repairing the rights of the surviving victims."

186. In addition, the Commission and the representatives stressed that the violations perpetrated in the instant case constitute crimes against humanity and genocide, and that, in themselves, they are grave human rights violations. Consequently, they indicated that it was necessary to activate the means, instruments and mechanisms for the prosecution and punishment of the authors, and therefore asked the Court to classify the facts as "crimes against humanity" and "genocide."

187. Based on the above, the Commission and the representatives argued that the impunity that reigns in this case has resulted in the violation of Articles 8 and 25 of the American Convention, in relation to Article 1(1) thereof, and to Articles 1, 6 and 8 of the Convention against Torture, and Article 7(b) of the Convention of Belem do Pará, to the detriment of the survivors and the next of kin of those tortured and extrajudicially executed during the different massacres. Furthermore, the Commission alleged the violation of Articles 8 and 25 of the American Convention, in relation to Article 1(1) thereof, and to Article I of the Convention on Forced Disappearance of Persons, to the detriment of those who disappeared and their next of kin.

188. As previously indicated in this Judgment (*supra* para. 17(h), the State expressed its "partial acknowledgement" of the violation of Articles 8 and 25 of the American Convention, in relation to Article 1(1) thereof and to Articles 1, 6 and 8 of the Convention against Torture, and Article 7(b) of the Convention of Belem do Para, to the detriment of the survivors and next of kin of those who were tortured and extrajudicially executed in the different massacres, because "it ha[d] failed to comply fully with its obligations to investigate the facts and to punish those responsible." In this regard, the State reiterated its commitment to begin the necessary proceedings and advance those that are pending. In addition, Guatemala expressed its "total acknowledgement" with regard to the violation of Articles 8 and 25 of the American Convention, in relation to Article 1(1) thereof, and Article I of the Convention on Forced Disappearance to the detriment of Ramona Lajuj and Manuel Chen Sánchez, as they were the only victims of forced disappearance identified by the Commission. Finally, the State declared that it would "not refer" to the alleged violation of Articles 8(1) and 25 of the American Convention, in relation to Articles 1(1) and 2 thereof, because the Commission had not identified to whose detriment the said violations had been committed.

B. Considerations of the Court

189. The State has expressed its acknowledgment of responsibility for the failure to investigate the facts. However, the Court takes into account that this case relates to multiple grave, massive and systematic human rights violations that took place in the context of the internal armed conflict in Guatemala. Therefore, the Court will now refer to case law concerning the obligation to investigate, prosecute and, as appropriate, punish those responsible for such violations when they are committed within a context such as that of the instant case.

190. The obligation to investigate human rights violations is one of the positive measures that States must adopt in order to guarantee the rights recognized in the Convention.[272] Since its first judgment, this Court has underscored the importance of the State's obligation

[272] *Cf. Case of Velásquez Rodríguez v. Honduras, Merits, supra,* paras. 166 and 167, and *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador, supra,* para. 265.

to investigate and punish human rights violations,[273] an obligation that acquires particular importance given the seriousness of the crimes committed and the nature of the rights harmed.[274] Accordingly, in this case, which relates to grave human rights violations committed in a context of massive and systematic violations, the obligation to investigate cannot be ignored or made conditional on domestic legal provisions or decisions actions of any kind.[275]

191. The Court recalls that, owing to the protection granted by Articles 8 and 25 of the Convention, the States are obliged to provide effective judicial remedies to the victims of human rights violations, which must be established in keeping with the rules of due process of law.[276] In addition, the Court has indicated that the right of access to justice must ensure, within a reasonable time, the right of the presumed victims or their next of kin to know the truth about what happened and that those eventually found responsible are punished.[277]

192. Even though the Court has established that the obligation to investigate is one of means, rather than results, this does not mean that the investigation can be undertaken as "a simple formality predestined to be unsuccessful."[278] In this regard, the Court has established that "every State decision that is part of the investigative process, as well as the investigation as a whole, must be directed at a specific goal, the determination of the truth and the investigation, pursuit, capture, prosecution and, as appropriate, punishment of those responsible for the facts."[279] The investigation must be conducted using all available legal means and must include the responsibility of both the perpetrators and the masterminds, especially when State agents are or could be involved.[280]

193. In addition, this Court recalls that, in keeping with the right recognized in Article 8(1) of the American Convention, in relation to Article 1(1) thereof, the States have the obligation to ensure the right of the victims or their next of kin to take part at all stages of the respective proceedings, so that they can make proposals, receive information, provide evidence, submit arguments and, in brief, assert their rights.[281] This participation must be designed to ensure access to justice, knowledge of the truth of what happened, and the award of fair reparations.[282] However, the effective search for the truth is the responsibility

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[273] *Cf. Case of Velásquez Rodríguez, Merits, supra,* para. 166, and *Case of Contreras et al. v. El Salvador, supra,* para. 127.

[274] *Cf. Case of La Cantuta v. Peru, supra,* para. 157, and *Case of Contreras et al. v. El Salvador, supra,* para. 127.

[275] *Cf. Case of Contreras et al. v. El Salvador, supra,* para. 127.

[276] *Cf. Case of Velásquez Rodríguez v. Honduras, Merits, supra*, para. 91, and *Case of González Medina and family members v. Dominican Republic, supra*, *para. 207.*

[277] *Cf. Case of Bulacio v. Argentina. Merits, reparations and costs*. Judgment of September 18, 2003. Series C No. 100, para. 113, and *Case of González Medina and family members v. Dominican Republic*, *supra*, para. 255.

[278] *Case of Velásquez Rodríguez*, *Merits, supra,* para. 177, and *Case of Pacheco Teruel et al. v. Honduras, supra*, para. 129.

[279] *Case of Cantoral Huamaní and García Santa Cruz v. Peru. Preliminary objection, merits, reparations and costs.* Judgment of July 10, 2007. Series C No. 167, para. 131, and *Case of Ibsen Cárdenas and Ibsen Peña v. Bolivia, supra*, para. 153.

[280] *Cf. Case of the Pueblo Bello Massacre v. Colombia.* Judgment of January 31, 2006. Series C No. 140, para. 143, and *Case of González Medina and family members v. Dominican Republic, supra*, para. 204.

[281] *Cf. Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Merits, supra,* para. 246, and *Case of González Medina and family members v. Dominican Republic, supra,* para. 251.

[282] *Cf. Case of Valle Jaramillo et al. v. Colombia, supra,* para. 233, and *Case of González Medina and family members v. Dominican Republic, supra,* para. 251.

of the State and does not depend on the procedural initiative of the victim or their next of kin, or on their provision of probative elements.[283]

194. This Court has also indicated that, in a democratic society, the true facts of grave human rights violations must be known. This is a reasonable expectation that the State must satisfy,[284] on the one hand, by the obligation to investigate human rights violations *ex officio* and, on the other, by publicizing the results of the investigative and criminal proceedings.[285] This requires the State to determine by means of legal proceedings the patterns of joint actions, and all those who, in different ways, took part in the said violations and their corresponding responsibilities,[286] and to provide reparations to the victims in the case. Consequently, on previous occasions, the Court has considered that the authorities in charge of the investigation have the duty to ensure that, during its course, they assess the systematic patterns that allowed grave human rights violations such as those that occurred in this case to be committed.[287] In order to guarantee its effectiveness, the investigation must be conducted taking into account the complexity of this type of facts and of the structure in which those probably involved were incorporated, based on the context in which the facts took place, thus avoiding omissions in the collection of evidence and in following up on logical lines of investigation.[288] Consequently, the State authorities are obliged to collaborate in the collection of evidence to achieve the goals of the investigation, and to abstain from taking measures that would obstruct the progress of the investigative procedure.[289]

B.1. Failure to investigate the massacres that occurred in the Río Negro chapel and at Los Encuentros

195. In this Judgment, it has been established that the State has not investigated the acts that occurred during the massacres committed in the Río Negro chapel and at Los Encuentros (*supra* para. 88). In this regard, the Court considers it pertinent to indicate that, during the criminal proceedings opened in 1993 to investigate the massacres committed on Cerro Pacoxom and in Agua Fría (*infra* paras. 197 to 210), approximately 11 and 13 years after the events occurred, testimony was taken from a number of surviving victims who recounted the facts relating to the massacres in the Río Negro chapel and at Los Encuentros. In addition, the facts have been extensively addressed and documented by State entities, such as the Guatemalan Historical Clarification Commission, which, in its

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[283] *Cf. Case of Velásquez Rodríguez v. Honduras, Merits, supra,* para. 177, and *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador, supra,* para. 265.

[284] *Cf. Case of Velásquez Rodríguez, Merits, supra,* para. 181, and *Case of Contreras et al. v. El Salvador, supra,* para. 170.

[285] *Cf. Case of Las Palmeras v. Colombia. Reparations and costs*. Judgment of November 26, 2002. Series C No. 96, and *Case of Contreras et al. v. El Salvador, supra*, para. 170.

[286] *Cf. Case of the La Rochela Massacre v. Colombia. Merits, reparations and costs*. Judgment of May 11, 2007. Series C No. 163, para. 195, and *Case of Gelman v. Uruguay, supra,* para. 192.

[287] *Cf. Case of the La Rochela Massacre v. Colombia, supra,* para. 156, and *Case of Contreras et al. v. El Salvador, supra,* para. 146.

[288] *Cf. Case of the Serrano Cruz Sisters v. El Salvador. Merits, reparations and costs.* Judgment of March 1, 2005. Series C No. 120, para. 166, and *Case of Contreras et al. v. El Salvador, supra*, para. 146.

[289] *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 Contreras et al. v. El Salvador, supra*, para. 171.

report *Memoria del Silencio*, dedicated a section to the specific analysis of the "Case of Río Negro."[290]

196. Thus, different State authorities have been aware of these facts and, despite this, no investigation has ever been opened, even though this is an obligation that the State must comply with *ex officio*. Therefore, after more than 30 years, these facts remain in total impunity, which has been defined by the Court as "the complete lack of investigation, pursuit, capture, prosecution and sentencing of those responsible for violations of the rights protected by the American Convention."[291] In these terms, it is clear that the State has failed to comply with its obligation to conduct an investigation *ex officio* into what happened during the massacres in the Río Negro chapel and at Los Encuentros." Consequently, 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 (*infra* para. 237).

B.2. Investigation of the massacres that occurred on Cerro Pacoxom and in Agua Fría

B.2.1. Procedural initiative of the victims

197. The investigation conducted into the facts that occurred on March 13, 1982, on Cerro Pacoxom and on September 14, 1982, in Agua Fría were opened following criminal complaints filed in 1993 and 1994, respectively, by victims of the massacres (*supra* paras. 92 and 93). According to testimony given by Jesús Tecú Osorio during the domestic proceedings, one of these complaints, the one related to the Pacoxom massacre, was filed despite threats. During the public hearing, Mr. Tecú Osorio also indicated that:

> "[…] When the exhumations were being performed in Río Negro, the commander of the Rabinal garrison called all the Río Negro survivors to a meeting at the garrison and […] they began threatening everyone, [saying that] if they got involved with the people who were promoting the exhumations they [would] kill them just as [what happened] to all those people in [the] clandestine cemeteries."

198. Therefore, the Court observes that the investigation into the massacres referred to in this section began approximately 10 years after the facts occurred, and only after the victims themselves had filed complaints, rather than on the State's initiative. In this regard, Jesús Tecú Osorio stated during the public hearing that they "have been re-victimized because [they,] the survivors, took the initiative, brought the evidence before the Public Prosecutor so that those responsible are punished […]." Thus, the Court considers that, although the State has made certain efforts to investigate the facts, most of the evidence has been provided by the victims,[292] who have promoted certain measures, such as the exhumations that were performed, to which the Court will refer below (*infra* para. 218), as well as the identification and individualization of those presumably responsible. To a great extent, the momentum for the investigation has been left to the victims themselves. Consequently, the State is responsible for violating the rights recognized in Article 8(1) and 25(1) of the American Convention, in relation to Article 1(1) thereof (*infra* para. 237).

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290 *Cf.* Report *"Guatemala, Memoria del Silencio," supra*, volume VI, annex I, Illustrative Case No. 10 "Massacre and Elimination of the Community of Río Negro."

291 *Case of the "White Van" (Paniagua Morales et al.) v. Guatemala. Merits, supra,* para. 97, and *Case of Contreras v. El Salvador*, *supra,* para. 128, footnote 193.

292 For example, the testimony provided by the victims themselves and by the accused.

B.2.2. Responsible parties and criminal offense applied

199. As already mentioned in this Judgment (*supra* para. 97), on November 30, 1998, the Sentencing Court for Crime, Drug-trafficking and Offenses against the Environment of Baja Verapaz handed down a judgment convicting three people for the crime of "murder" with regard to Martha Julia Chen Osorio, Margarita Chen Uscap and Demetria Osorio Lajuj, victims of the massacre that took place on Cerro Pacoxom. However, the said court did not find anyone guilty of the Agua Fría massacre because none of those exhumed there had been identified, which meant that those presumably responsible could not be accused of the crime of murder. Subsequently, on October 7, 1999, the Sentencing Court for Crime, Drug-trafficking and Offenses against the Environment, with new judges, convicted the three said defendants, but only for the murder of Martha Julia Chen Osorio and Demetria Osorio Lajuj, because their "violent death" had been proved. On February 1, 2000, the Fourteenth Chamber of the Court of Appeal of Cobán, Alta Verapaz, upheld this judgment, merely amending the sentence.

200. In addition, despite the fact that the remains of approximately 148 members of the Río Negro community who were supposedly executed during the Pacoxom massacre were found, the judgment of October 7, 1999, only handed down a sentence for the "murder" of two victims, because they were the only ones identified and whose "violent death" could be proved. According to this judgment, the other facts could not be attributed to the accused because it had not been possible to identify the other remains. Therefore, the State justified its decision on its own failure to comply with the obligation to identify the remains. In this regard, during the public hearing, expert witness Michael Paul Hermann Mörth stated that, according to the said judgment, "in order to convict someone for murder, the victim must be duly identified and individualized. [However, in] the Agua Fría massacre, [this] paradigm resulted in the most absurd consequence ever, [since those responsible] were acquitted because the victims could not be identified. [Thus,] in [his opinion,] critical reasoning and the corresponding criteria have been sacrificed on the altar of completely exaggerated and useless formalities." He also mentioned that it had not been taken into account that the bodies "were left spread out on the ground, exposed to animals […], that these human remains were hidden in a clandestine cemetery that was hidden for years […], thus leaving the skeletal remains exposed to the elements, to animals, and to anything else that, given this situation, obviously had an impact on the condition of the corpses, the remains, the bones, the skeletons."

201. In addition, only three of the individuals identified as responsible were tried and punished. Nevertheless, on several occasions during the proceedings, the victims had indicated the names of other persons, particularly of members of the Civil Self-defense Patrols, who are also presumably responsible. The State did not find those individuals at the time; however, there is no indication that the necessary measures to find them were taken immediately. It was not until three years later; in other words, October 28, 2002 , that the public prosecutor asked the judge in charge of the case to issue arrest warrants for seven more individuals (*supra* para. 100).

202. On May 28, 2008, the Sentencing Court for Crime, Drug-trafficking and Offenses against the Environment found another five persons guilty of the crime of "murder" with regard to 26 members of the Río Negro community who were victims of the Pacoxom massacre (*supra* para. 101). However, other individuals who are presumably responsible have still not been located, including the army colonel who, since 1993, was named as one of those responsible. It should be underlined that, on January 28, 2003, during the criminal proceedings, Jesús Tecú Osorio, a victim in this case, indicated that approximately 10 soldiers from the military garrison of Rabinal, Baja Verapaz, were responsible for the facts

of these massacres, together with approximately 45 members of the Civil Self-defense Patrol from the village of Xococ. Mr. Tecú Osorio even provided the names of most of them.[293] Nevertheless, neither the investigation nor the judgment reveal that any of the persons indicated as responsible, other than the ones who have already been convicted, were investigated.

203. Since facts such as those of the instant case involve massive, systematic and grave human rights violations, the State must use and apply legal mechanisms that are appropriate for the analysis of the case, the criminal categories corresponding to the acts investigated, and a satisfactory investigation[294] capable of truly guaranteeing the human rights involved. In this regard, the Court must recall that the categorization of criminal offense falls to the competent domestic authorities. However, in this case, the Court observes that the crime of "murder" for which eight people were convicted in judgments dated November 8, 1998, and May 28, 2009, does not reflect the gravity, multiplicity or magnitude of the acts that occurred during the Pacoxom and Agua Fría massacres. As can be noted from the testimony given by several victims before the domestic courts, as well as in this Judgment, in this case, acts have occurred that are not limited to the "murder" of members of the Río Negro community. Yet, those facts have not been investigated.

204. In addition, the Court wishes to emphasize that an arrest warrant was only issued on April 15, 2003, for the army colonel accused of having given the order for the total elimination of the Río Negro community (*supra* para. 107), despite the fact that he had been accused of being one of those allegedly responsible since 1993. The said colonel is currently retired and receives a monthly retirement pension, as the State indicated during the public hearing and in its final written arguments. Guatemala indicated that it had taken various measures to try and find him, including searches, and that it had also submitted search requests to several entities and institutions (*supra* para. 107). Nevertheless, to date, the colonel has still not been located or arrested. The Court observes that these measures have been limited to sending official notes and that no other type of investigative measure has been taken that would be more in keeping with the situation. In this regard, during the public hearing, expert witness Hermann Mörth stated that it was "inconceivable that a person could be sought with an arrest warrant, while calmly continuing to receive a pension, without the military institution itself or the [Military Social Security Institute] sharing this information voluntarily."

205. The Court notes that the judgment of October 7, 1999, indicates that "the murder was accompanied by aggravating circumstances, including […] the assistance of armed individuals, because the act was executed with the help of a large group of armed and uniformed soldiers who provided security for the act and possibly even ensured its impunity […]."[295] As already mentioned (*supra* para. 194), due diligence in the investigations means taking into account the patterns of action of the complex structure of individuals involved in the perpetration of acts that violate human rights. Therefore, although the context of this case, which is widely known in Guatemala, and the above-mentioned judgment of October 7, 1999, as well as the testimony given by presumed victims before the domestic courts and before this Court indicate that both patrollers and soldiers participated in the Pacoxom and

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[293] *Cf.* brief filed by Jesús Tecú Osorio before the First Instance Court for Crime, Drug-trafficking and Offenses against the Environment of Baja Verapaz on January 28, 2003 (file of attachments to the final written arguments of the State, folios 27361 to 27369).

[294] *Cf. Case of Gelman v. Uruguay, supra,* para. 234.

[295] Judgment of the Sentencing Court for Crime, Drug-trafficking and Offenses against the Environment of the Department of Baja Verapaz of October 7, 1999 (file of attachments to the final written arguments of the State, folio 30665).

Agua Fría massacres, it is evident that the corresponding investigations have focused on determining the responsibility of the former. Thus, the only soldier investigated, nine years after his arrest had been requested, has still not been brought to justice. In this regard, during the public hearing, expert witness Hermann Mörth stated that "in [the] five [Río Negro] cases, there has been no additional investigation of the soldiers who were responsible." In the instant case, the victims have expressed their frustration about this. Thus, for example, Bruna Pérez Osorio, a surviving victim, stated that "[a]t the present time, about eight patrollers have been convicted, but in reality there are more. What about the senior commanders who […] have not been arrested? They were the ones who killed us."[296] In addition, during the public hearing, Carlos Chen Osorio, also a surviving victim, stated that "the judgment will always be delivered against the peasants, in their cloth hats and sandals, […] but never against the masterminds […]." In testimony given by affidavit, María Eustaquia Uscap Ivoy stated that she hoped that "justice [would be done] because [they want] the truth to be known about everything that happened; […] how the patrollers and the soldiers were the ones who came to kill the people; they also know who gave them the order to do so; […] only when everyone realizes that justice can be done, will acts like this never happen again […]."[297]

206. Based on the foregoing, the Court finds that the State 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) of this instrument (*infra* para. 237).

B.2.3. Failure of the military authorities to cooperate by providing information that would assist in the capture of other responsible parties

207. The Inter-American Commission indicated that, in the instant case, the military authorities have allegedly failed to cooperate by providing information about the military garrisons and the civil self-defense patrols in the area, as well as about the former colonel accused of having given the order to perpetrate the massacres. In this regard, the case file reveals that within the framework of the investigations into the massacres, the Public Prosecution Service has asked various military authorities for information on the said former colonel, and on the composition of the military garrison and the civil self-defense patrols operating in the area. As already mentioned in this Judgment (*supra* paras. 106 and 107) on several occasions, the First Instance Criminal Court of Baja Verapaz had asked military entities for information related to the events. Evidence of these facts is on record in the case file.

208. Nevertheless, the Commission also argued a series of facts to the effect that, on October 5, 2005, the prosecutor in charge of the case had asked the Ministry of Defense for information on the "general orders of the Guatemalan Army for the different officers holding high-ranking and mid-level posts throughout national territory from 1981 to 1983." On November 16, 2005, the Ministry of Defense responded that the individuals regarding whom the information was requested must be identified, because, owing to the volume of orders and the number of officers, the prosecution must assume the cost of copying these orders. In addition, the Inter-American Commission indicated that, on December 14, 2005, the Public Prosecution Service had asked the Ministry of Defense to provide information on the individuals who served as commanders of the Honor Guard Military Brigade from 1980 to 1984. On March 8, 2006, the Ministry of Defense responded that the Army's archives were

[296] Testimony provided by affidavit by Bruna Pérez Osorio on June 15, 2012 (merits file, tome II, folio 994).

[297] Testimony provided by affidavit by María Eustaquia Uscap Ivoy on June 15, 2012 (merits file, tome II, folios 1009 and 1010).

being reviewed in order to answer the request. In this regard, the Court observes that, as evidence of these facts, the Commission submitted an annex that supposedly formed part of a brief that the State had submitted to it on February 22, 2007. However, although the Inter-America Commission submitted this brief to the Court, the annex does not form part of the case file that was submitted. Thus, the Court is unable to consider the facts alleged by the Commission as proved.

209. Nevertheless, the Court considers it pertinent to indicate that State authorities are obliged to collaborate in obtaining evidence to achieve the objectives of the investigation and to abstain from taking steps that obstruct the progress of the investigation.[298] In this case, the State acknowledged its responsibility, considering that it "had not guaranteed the full effectiveness of [the] rights [established in Articles 8(1) and 25 of the Convention] as regards investigating the facts and punishing those responsible" for the massacres "following the date on which it accepted the jurisdiction" of the Court. Added to this, during the public hearing, expert witness Hermann Mörth stated that "what we see today [is] a permanent pattern […] of failure to cooperate and, at times, of an effort to conceal or not to cooperate and provide information; this is a pattern that has existed for years […]."

210. Based on the foregoing, the Court concludes that, in the instant case, the military authorities failed to provide information duly and promptly that would be pertinent for elucidating the facts. On this point, it should be reiterated that the obligation to investigate, prosecute and punish, as appropriate, those responsible is an obligation that corresponds to the State as a whole. This means that all State authorities, within their sphere of competence, must cooperate, support or assist in the due investigation of the facts. Therefore, the State is responsible for the violation of the human rights recognized in Articles 8(1) and 25(1) of the American Convention, in relation to Article 1(1) thereof (*infra* para. 237).

B.3. Investigation of the Xococ massacre

211. In this Judgment, it has already been established that the investigation into the facts of the massacre committed in Xococ in February 1982 was opened based on the testimony given by a surviving victim, Denese Joy Burck on March 19, 2001 (*supra* para. 89). By order of the Departmental First Instance Judge of Baja Verapaz, the Guatemalan Forensic Anthropology Foundation performed an exhumation in the village of Xococ from September 4 to 17, 2001. The forensic anthropology report presented by the Foundation indicates that 44 skeletons were recovered, although it did not reject the possibility that more human remains were still buried. During the said procedure, it was only possible to identify Teresa Osorio Chen and Crispín Tum Iboy.

212. Meanwhile, on March 27, 2003, Carlos Chen Osorio, a victim in the instant case and a survivor of the Xococ massacre, appeared before the District Prosecutor of Salamá, Baja Verapaz, to testify on the events that occurred in the community of the Xococ. However, the Court has no further information on this investigation.

213. In its Merits Report, the Commission indicated that the State had not provided any additional information on the investigations carried out into the Xococ massacre and, furthermore, that it did not have access to the judicial case file. For their part, in the pleadings and motions brief, the representatives indicated that they did not have any

[298] *Cf. Case of García Prieto et al. v. El Salvador, supra,* para. 112, and *Case of Contreras et al. v. El Salvador, supra*, para. 171.

information regarding the progress of that investigation either. During the public hearing, expert witness Michael Paul Hermann Mörth indicated that "there is an investigation in the Xococ case […] an investigation that began with the exhumation […] with a result of 44 victims […]. Some statements were taken and, to [his] knowledge, no further action was taken in the investigation."

214. During the public hearing, the Court asked the State to submit a copy of the case file of the investigation into the Xococ massacre with its final written arguments. However, the State did not provide this file.[299]

215. In other cases, the Court has established that the State's refusal to forward certain documents cannot be detrimental to the victims. Therefore, the Court may consider proved the facts presented by the Inter-American Commission and complemented by the representatives, when it is only possible to disprove them by evidence that the State must submit and it has failed or refused to do so.[300]

216. In the instant case, the State did not provide relevant information that would allow the Court to know the current situation of the investigation; in other words, the Court does not have information indicating whether the investigation is open; whether the search for the victims and the exhumation and, where appropriate, the identification of their remains has continued, and whether the corresponding individual responsibilities have been determined. In this regard, in accordance with the extensive acknowledgment of responsibility made by the State for the violation of Articles 8 and 25 of the American Convention (*supra* para. 17(h)), the Court finds that it has been established, as alleged by the Commission and the representatives, that following the exhumations performed in 2001 – in other words, 11 years ago – there has been no further activity in the investigation. Therefore, since the facts of the Xococ massacre remain in impunity, the 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) of this instrument (*infra* para. 237)

B.4. Exhumations of osseous remains

217. In cases of grave human rights violations, such as the ones in this case, the exhumation and identification of the deceased victims forms part of the State's obligation to investigate. Thus, this is an obligation 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, as appropriate, the whereabouts of his or her remains."[301] Hence, the State must satisfy these reasonable expectations using the measures available to it.

218. According to the case file some exhumations have been performed at the request of the victims, such as Jesús Tecú Osorio, Francisco Chen Osorio and Víctor Mendoza (*supra* paras. 92 and 93). First, an exhumation was performed in which the remains of 44 individuals presumably executed during the Xococ massacre were recovered. Of these, only two have been identified: Tereso Osorio Chen and Crispin Tum Iboy (*supra* para. 90). In addition, in another exhumation performed in the context of the investigation into the

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[299] In response to the Court's request, the State presented the file of the investigation into the Pacoxom and Agua Fría massacres.

[300] *Cf. Case of Radilla Pacheco v. Mexico, supra,* para. 92, and *Case of Torres Millacura v. Argentina, supra*, para. 41.

[301] *Case of Velásquez Rodríguez v. Honduras. Merits, supra,* para. 181, and *Case of Contreras et al. v. El Salvador, supra*, para. 129.

Pacoxom massacre, the remains of 143 people were located, of which only three were identified: Demetria Osorio Lajuj, Marta Julia Chen Osorio and Margarita Chen Uscap; although the latter was identified "tentatively" (*supra* para. 102).

219. From this it can be concluded that the exhumations that have been performed were carried out based on requests and complaints filed by surviving victims of the massacres in the instant case, and that the initiative taken by the State to search for and identify victims has been minimal, even though the facts in question are well-known and documented in Guatemala, as previously noted in this Judgment (*supra* para. 195). In this regard, during the public hearing, expert witness Rosalina Tuyuc stated that "since the exhumations in the clandestine cemeteries began, most of them have been at the request of the victims, not the State, because the State has never made it a priority or provided support for these exhumations […]."I

220. Based on the above, the Court finds that although some exhumations of remains presumably belonging to members of the Río Negro community have been performed, the State has not continued those exhumations or the investigations that would permit the identification of all the remains. In the Court's opinion, this continues to increase the uncertainty of the next of kin as regards the whereabouts of the victims, which affects their right to know what happened to the victims. Thus, the State 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 (*infra* para. 237).

B.5. Failure to investigate other facts

221. Owing to the scale and nature of the acts that occurred during the five massacres in this case, added to the context in which they were committed, this Court has already established that the obligation to investigate, prosecute and eventually punish those responsible corresponds, *ex officio*, to the competent authorities. In this regard, the facts that occurred during the internal armed conflict in Guatemala are neither new nor recent. To the contrary, they have been widely addressed and documented at the domestic level. The five massacres alleged in this case have even been the subject of specific analysis by the Historical Clarification Commission.

222. In this regard, the Court finds it pertinent to indicate that the obligation to investigate, prosecute and, as appropriate, punish those responsible for human rights violations does not derive solely from the American Convention. Under certain circumstances and depending on the nature of the facts, this obligation also derives from other relevant inter-American instruments that establish an obligation for States Parties to investigate conduct that is prohibited by those treaties. These instruments include the Inter-American Convention to Prevent and Punish Torture, and the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women ("Convention of Belém do Pará.") This Court has thus established that States have "the obligation to guarantee the right of access to justice […] in keeping with the specific obligations imposed by the specialized Conventions […] concerning the prevention and punishment of torture and violence against women. [T]hose provisions […] stipulate and complement State obligations with regard to compliance with the rights established in the American Convention," and "the international body of law on the protection of personal integrity."[302]

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[302] *Case of the Miguel Castro Castro Prison v. Peru, supra,* paras. 276, 377 and 379, and *Case of the Dos Erres Massacre v. Guatemala, supra,* para. 137.

223. In addition, Article 1(b) of the Inter-American Convention on Forced Disappearance of Persons imposes on States the obligation "[t]o punish within their jurisdictions, those persons who commit or attempt to commit the crime of forced disappearance of persons and their accomplices and accessories." Therefore, in keeping with this Court's case law, in the case of a forced disappearance, States have the duty to launch an investigation *ex officio*. Thus, "whenever there is sufficient reason to suspect that a person has been subjected to a forced disappearance, an investigation must be opened. This obligation is irrespective of whether a complaint has been file because, in cases of forced disappearance, international law and the general obligation of guarantee impose the obligation to investigate the case *ex officio*, without delay, and in a serious, impartial and effective manner. This is a fundamental and decisive element for the protection of the rights affected by these situations, such as personal liberty, personal integrity and life. Furthermore, any State authority, public official or private individual who has heard of actions aimed at the forced disappearance of persons must report this immediately."[303] Consequently, the investigation must be conducted using all legal means available in order to determine the truth, as well as to pursue, capture, prosecute and eventually punish all the masterminds and the perpetrators of the facts, especially when State agents are or could be involved.[304]

224. In addition, in cases of forced disappearance, the investigation will have certain specific connotations that arise from the very nature and complexity of the phenomenon under investigation; in other words, the investigation must also include taking all necessary measures to determine the fate of the victim and his or her whereabouts.[305] The Court has already clarified that the obligation to investigate facts of this nature persists as long as the uncertainty about the final fate of the disappeared person remains, because the right of the victim's next of kin to know his or her fate and, as appropriate, where the victim's remains are, represents a reasonable expectation that the State must satisfy using all the means at its disposal.[306]

225. In addition, since protection from slavery and involuntary servitude is an international obligation *erga omnes*, derived "from the principles and rules relating to the basic rights of the human person" (*supra* para. 141), when States become aware of an act constituting slavery or involuntary servitude, in the terms of Article 6 of the American Convention, they must open the pertinent investigation *ex officio*, in order to establish the corresponding individual responsibilities.

226. In this case, the Court observes that multiple testimonies given domestically by victims who survived the massacres reveal that during the massacres, acts that presumably constitute forced disappearance and torture of members of the Río Negro community were committed, as were alleged acts of rape against the girls and women of that community. Some of this testimony was given after March 9, 1987, the date as of which this Court has jurisdiction over human rights violations recognized in the American Convention; after January 29, 1987, the date on which Guatemala ratified the Convention to Prevent and Punish Torture; after April 4, 1995, the date on which the State ratified the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women, and

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[303] *Case of Anzualdo Castro v. Peru, supra,* para. 65, and *Case of Ibsen Cárdenas and Ibsen Peña v. Bolivia, supra,* para. 65.

[304] *Cf. Case of Velásquez Rodríguez v. Honduras. Merits, supra,* para. 177, and *Case of Contreras v. El Salvador, supra,* para. 128.

[305] *Cf. Case of Anzualdo Castro v. Peru, supra,* para. 65, and *Case of Contreras v. El Salvador, supra*, para. 129.

[306] *Cf. Case of Velásquez Rodríguez v. Honduras. Merits, supra,* para. 181, and *Case of Contreras v. El Salvador, supra,* para. 129.

after February 25, 2000, the date on which Guatemala ratified the Inter-American Convention on Forced Disappearance of Persons (*supra* paras. 15 and 16). However, the investigations and convictions handed down in this case have focused on the crime of "murder," which, as has been established (*supra* para. 203), does not cover all dimensions of the acts that took place during the massacres.

227. Thus, the Court finds that the lack of investigation of the allegations of torture, forced disappearance, rape, and slavery and involuntary servitude in the context of the internal armed conflict in Guatemala represents a failure to comply with the State's obligations regarding grave human rights violations, and contravenes non-derogable norms (*jus cogens*)[307] under which Guatemala has a duty to investigate and punish those practices, pursuant to the American Convention and, additionally in this case, in light of the Convention against Torture, the Convention of Belém do Pará, and the Convention on Forced Disappearance.

228. Based on the foregoing, the State must open, *ex officio* and without delay, a serious, impartial and effective investigation into all the facts of the massacre, not only those relating to the violation of the right to life. Thus, the Court finds that the State has violated the rights recognized in Articles 8(1) and 25(1) of the American Convention, in relation to Article 1(1) thereof, and that it failed to comply with the obligation to investigate set forth in Articles 1, 6 and 8 of the Convention against Torture, 7(b) of the Convention of Belem do Pará, and I(b) of the Convention on Forced Disappearance of Persons *(infra* para. 237).

B.6. Reasonable time for the investigation

229. Regarding the overall duration of the proceedings, this Court has indicated that the "reasonable time" to which Article 8(1) of the Convention refers must be assessed in relation to the total duration of the proceedings until the final judgment is handed down.[308] The right of access to justice means that the dispute must be settled within a reasonable time,[309] because an extended delay may in itself constitute a violation of judicial guarantees.[310] The lack of State response is a decisive element when assessing whether Articles 8(1) and 25(1) of the American Convention have been violated.[311]

230. In this regard, the Court has usually considered the following elements in order to determine the reasonableness of the time: (a) complexity of the matter; (b) procedural activity of the interested party; (c) conduct of judicial authorities, and (d) effects on the legal situation on the person involved in the proceedings. However, the Court observes that approximately 32 years have passed since the massacre in the Río Negro chapel took place, and 30 years since the Xococ, Pacoxom, Los Encuentros and Agua Fría massacres. As already indicated in this Judgment, the grave human rights violations that were committed during these massacres must be investigated *ex officio*. Guatemala has been a State Party

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[307] *Cf. Case of Goiburú et al. v. Paraguay, supra,* para. 128, and *Case of the Dos Erres Massacre v. Guatemala, supra*, para. 140.

[308] *Cf. Case of Suárez Rosero v. Ecuador. Merits.* Judgment of November 12, 1997. Series C No. 35, para. 71, and *Case of the Dos Erres Massacre v. Guatemala, supra,* para. 132.

[309] *Cf. Case of Suárez Rosero v. Ecuador, Merits, supra,* para. 71, and *Case of the Dos Erres Massacre v. Guatemala, supra,* para. 132.

[310] *Cf. Case of Hilaire, Constantine and Benjamin et al. v. Trinidad and Tobago, supra,* para. 145, and *Case of the Dos Erres Massacre v. Guatemala, supra*, para. 132.

[311] *Cf. Case of García Pietro et al. v. El Salvador, supra,* para. 115, and *Case of the Dos Erres Massacre v. Guatemala, supra,* para. 132.

to the American Convention since May 25, 1978 (*supra* para. 15); therefore, the obligation to investigate the facts has been in force from the moment the massacres took place, even though they can only be submitted to this Court's consideration after the State accepted its contentious jurisdiction (*supra* para. 15). However, the first investigations were only launched in 1993 after some of the presumed victims filed complaints before the domestic authorities. Thus, the investigations were begun six years after the State's recognition of this Court's contentious jurisdiction. Even though, in this case, some of those responsible for at least one of the massacres have already been convicted, the facts remain in impunity more than 30 years after they occurred. Consequently, the Court finds that it is not necessary to analyze the above-mentioned criteria given that it is obvious that the investigations into the five massacres have exceeded any standard of reasonable duration. Therefore, the Court concludes that, since the investigations were not conducted within a reasonable time, the State 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) of this instrument (i*nfra* para. 237).

B.7. Alleged discrimination due to the failure to investigate the facts of this case

231. The Commission indicated that "the failure to comply with [the] increased obligation to investigate and prosecute the acts of genocide and racism perpetrated against the community of Río Negro perpetuates the effects of the racial discrimination to which the members of the Maya Achí people were subjected." In this regard, the Commission cited the judgment handed down by the Court in the case of *Tiu Tojín v. Guatemala* to argue that, in keeping with the principle of non-discrimination, access to justice for the members of indigenous peoples means that the States must "grant effective protection that takes into account their inherent particularities and their economic and social characteristics, together with their special situation of vulnerability, their customary law, values, practices and customs." Therefore, it considered that, in this case, the State had violated the right recognized in Article 24 of the American Convention, in relation to Article 1(1) thereof.

232. In this regard, the Court emphasizes that in the said case of *Tiu Tojín*, specific acts of discrimination were alleged and proved that prevented the next of kin of the disappeared victims from being able to access justice because they belonged to the Maya indigenous peoples. In the instant case, first, the Court has determined that it does not have competence to rule on the supposed acts of discrimination alleged by the Commission and the representatives (*supra* para. 39). Second, regarding the investigation, the Commission made a general allegation, in other words, the mere absence of a diligent investigation, rather than specific facts in the context of the said investigation from which supposed acts of discrimination could be derived, as in the *Tiu Tojín* case. Thus, the Court does not have sufficient elements to rule on this violation.

B.8. Request of the representatives and the Commission that the facts be classified as "genocide" and "crimes against humanity"

233. The Commission and the representatives argued that the violations perpetrated in this case constitute crimes against humanity and genocide, which are, inherently, grave human rights violations. Thus, they asked the Court to classify the acts that occurred as "crimes against humanity" and "genocide." In this regard, in its answer, as well as during the public hearing and in its final written arguments, the State was emphatic in maintaining its opposition to the Court classifying specific facts as genocide or crimes against humanity,

on the basis that it was not incumbent on a human rights court, such as this one, to make a determination of this type.

234. The Court has established in this Judgment that it does not have competence to rule on many of the facts and human rights violations alleged by the Commission and the representatives in this case (*supra* Chapters IV and V). Thus, the Court does not have the pertinent factual and legal elements to make a determination such as the one requested by the Commission and the representatives, should it be admissible.

B.9. Conclusions

235. This Court finds that, under the American Convention, in force at the time of the massacres, the State had the obligation to investigate all the facts with due diligence, an obligation that was still pending when it recognized the Court's contentious jurisdiction on March 9, 1987. The said obligation was reaffirmed by the State by its ratification of the Convention against Torture, the Convention of Belém do Pará, and the Convention on Forced Disappearance (*supra* paras. 16). Consequently, the State should have ensured compliance with them as of their ratification.

236. This Court finds that the investigation into the facts of the massacres committed against the Río Negro Community has not been assumed by the State as its inherent obligation, and has not been directed at the investigation, pursuit, capture, prosecution and eventual punishment of those responsible, including both perpetrators and masterminds, in a way that ensured the full and exhaustive examination of the multiple violations perpetrated against the members of the Río Negro community within the specific context in which the facts of the instant case occurred. Furthermore, the investigation has not been designed to locate all the disappeared victims, or to find and to identify the remains that have been found in the various exhumations performed. In sum, the facts of this case remain in impunity. In this regard, this Court has indicated that its case law regarding the merits of cases and monitoring compliance with the judgments that are delivered "reveals that Guatemala has a grave problem with regard to the impunity that prevails in the country, specifically in relation to the systematic human rights violations that took place during the armed conflict."[312]

237. Based on the foregoing considerations, as well as on the body of evidence in the instant case and the State's partial acknowledgement of international responsibility, 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, and also for non-compliance with the obligations established in Articles 1, 6, and 8 of the Convention Against Torture; Article I(b) of the Inter-American Convention on the Forced Disappearance of Personas, and Article 7(b) of the Convention of Belém do Pará, to the detriment of the victims of this case, in their respective circumstances.

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[312] *Case of Bámaca Velásquez v. Guatemala*. Monitoring compliance with judgment. Order of the Inter-American Court of Human Rights of January 27, 2009, para. 25; *Case of Molina Theissen v. Guatemala*. Monitoring compliance with judgment. Order of the Inter-American Court of Human Rights of November 16, 2009, para. 16. The Court referred to the situation of impunity that prevails in the cases of *Myrna Mack Chang, Tiu Tojín, Carpio Nicolle et al., Bámaca Velásquez, Molina Theissen,* and *the "Street Children" (Villagrán Morales et al.)*, all against Guatemala.

XIII
RIGHT TO PERSONAL INTEGRITY OF THE SURVIVORS OF THE RÍO NEGRO MASSACRES, IN RELATION TO THE INVESTIGATION AND THE OBLIGATION TO RESPECT AND GUARANTEE RIGHTS

A. Arguments of the parties and of the Inter-American Commission

238. The Inter-American Commission and the representatives argued that the State had violated the right recognized in Article 5 of the American Convention (personal integrity), in relation with Article 1(1) thereof, on the one hand, to the detriment of the survivors of the massacres and, on the other hand, to the detriment of the survivors, but in their capacity as next of kin of other victims of the massacres. Regarding the latter, they stated that the survivors also witnessed the way in which their family members were tortured and extrajudicially executed, which translates into cruel, inhuman and degrading treatment. They underscored that some of the survivors were children and that, therefore, "the impact of this type of experiences" was greater. They also indicated that some of the surviving women had been raped and that many of the survivors were forced to hide for years "in the mountains, fleeing from the systematic persecution of which they were victims [and] living in infrahuman conditions." Regarding the next of kin of the victims, the Commission and the representatives argued that, in cases of massacres and forced disappearances, the pain and anguish suffered by the family members is evident. Lastly, they emphasized that that lack of effective remedies to obtain access to justice and the absence of an investigation into the facts by the State constituted additional sources of suffering for the survivors of the massacres.

239. The State expressed "its partial acknowledgement" of the violation of Article 5 of the Convention, in relation to Article 1(1) thereof, to the detriment of the survivors of the massacres, as well as to the detriment of the next of kin of the community members "given that the said violation could transcend and persist into the time over which the Court has competence to examine the violations filed against the State […]" (*supra* para. 17(c)).

B. Considerations of the Court

240. In its most recent case law in cases concerning massacres,[313] the Court has reiterated that the next of kin of the victims of grave violations of human rights, such as those of the instant case, may, in turn, be victims of violations of their personal integrity. Thus, in this type of case, the Court has considered that the right to mental and moral integrity of the next of kin of the victims has been violated owing to the additional suffering and anguish they have experienced as a result of the subsequent acts or omissions of the State authorities in relation to the investigation of the facts[314] and to the absence of effective remedies.[315] The Court has considered that "conducting an effective investigation is a fundamental and determinant element for the protection of certain rights that are affected or annulled by these situations."[316]

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[313] *Cf. Case of the Mapiripán Massacre v. Colombia, supra,* para. 146; and *Case of the Dos Erres Massacre v. Guatemala, supra,* para. 206.

[314] *Cf. Case of Blake v. Guatemala. Merits, supra,* paras. 114 to 116, and *Case of the Dos Erres Massacre v. Guatemala, supra,* para. 206.

[315] *Cf. Case of the Serrano Cruz Sisters v. El Salvador. Merits, supra,* paras. 113 to 115, and *Case of the Dos Erres Massacre v. Guatemala, supra*, para. 206.

[316] *Case of the Pueblo Bello Massacre v. Colombia, supra*, para. 145, and *Case of the Dos Erres Massacre v. Guatemala, supra,* para. 206.

241. The State partially acknowledged the violation of Article 5 of the Convention to the detriment of the survivors of the Río Negro Community; in other words, only with regard to acts that occurred after the recognition of the Court's jurisdiction. It has been established in this Judgment that, even though the State has carried out some investigations and has prosecuted and punished some of those responsible for the facts of the instant case, the facts continue in impunity, particularly as regards the massacres in the chapel and at Los Encuentros, and the forced disappearance of 17 individuals at the last site, regarding whom no investigation whatsoever has been conducted (*supra* para. 88).

242. In this regard, this Court observes that the surviving victims of the massacres of Río Negro have expressed their anguish owing to the impunity of these acts. Thus, María Osorio Chen declared that:

> "The people who ordered the slaughter are still free; for example, Colonel Solares has not been captured […]. Those who are now suffering are the peasants, and those who are really responsible for the massacre have not been brought before the courts; in the State of Guatemala there is no support to ensure that justice is done.
>
> I want justice to be done, for the Colonel to be captured, and not only him, but also the people from the Army. No one from the Army has been captured for the massacres; they are free, only the peasants are captured; [I dream] that this man will one day be in prison and that he will pay for all the harm that […] he caused to the people who have lost their family members."[317]

243. In addition, as already mentioned in this Judgment (*supra* para. 205), María Eustaquia Uscap Ivoy testified that she hoped that justice is done, so that the whole truth about what happened is known and because, when people realize that there is justice, acts such as these will not happen again.

244. Thus, it is clear that the surviving victims of the massacres of Río Negro experience profound suffering and anguish as a result of the impunity of the facts, which occurred in the context of a State "scorched earth" policy aimed at the total destruction of the said community (*supra* para. 57). Therefore, the Court considers that the State violated Article 5(1) of the American Convention, in relation to Article 1(1) of this instrument, to the detriment of the survivors of the Río Negro massacres. The names of these persons can be found in Annex VI of this Judgment.

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

245. Based on the provisions of Article 63(1) of the Convention, the Court has established that any violation of an international obligation that has caused damage entails the obligation to repair it adequately,[318] and that this provision reflects a customary norm that constitutes one of the fundamental principles of contemporary international law on the State responsibility.[319]

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[317] Testimony provided by affidavit by María Osorio Chen on June 15, 2012 (merits file, tome II, folio 1000).

[318] *Cf. Case of Velásquez Rodríguez v. Honduras. Reparations and costs.* Judgment of July 21, 1989. Series C No. 7, para. 25, and *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador, supra,* para. 279.

[319] *Cf. Case of Garrido and Baigorria v. Argentina. Reparations and costs.* Judgment of August 27, 1998. Series C No. 39, para. 40, and *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador, supra,* para. 279.

246. Based on the violations of the American Convention, the Convention on Forced Disappearance, the Convention against Torture, and the Convention of Belém do Pará declared in this Judgment, the Court will proceed to analyze the claims submitted by the Commission and by the representatives, and also the State's arguments, in light of the criteria established in the Court's case law as regards the nature and scope of the obligation to repair, in order to establish measures designed to repair the harm caused to the victims.[320]

247. This Court has established that the reparations must have a causal nexus with the facts of the case, the violations declared, the damage proved, and the measures requested to repair the respective damage. Therefore, the Court must observe the said concurrence in order to rule appropriately and in keeping with the law.[321]

248. Reparation of the damage caused by the violation of an international obligation requires, whenever possible, full restitution (*restitutio in integrum*), which consists in the re-establishment of the previous situation. If this is not feasible, as in most cases of human rights violations, the Court will determine measures to guarantee the rights that have been violated and to repair the consequences of such violations.[322] Thus, the Court has considered the need to grant diverse measures of reparation in order to redress the damage comprehensively, so that, in addition to pecuniary compensations, measures of restitution and satisfaction, together with guarantees of non-repetition have special relevance for the damage caused.[323] In the instant case, the Court will take into consideration the grave and massive human rights violations committed by the State in the context of the internal armed conflict, the lack of due diligence in the investigation of the facts, and also the consequences of the latter.

A. Injured Party

249. The Court reiterates that, in the terms of Article 63(1) of the Convention, the injured party is considered to be the person who has been declared the victim of the violation of any right recognized in the Convention. Therefore, the Court considers as "injured parties" those persons mentioned in paragraphs 127, 135, 150 and 237 and Annexes VI and VII of this Judgment, who, as victims of the violations declared herein, will be considered beneficiaries of the reparations ordered by the Court.

250. In addition, the Commission asked the Court to order the State "[t]o establish a mechanism that will facilitate the complete identification of the next of kin of the executed and disappeared victims, so they may be beneficiaries of reparations." In addition, it requested that the State be ordered to "[e]stablish a mechanism to determine the identity of the persons who disappeared during the massacre and of the survivors." Neither the representatives nor the State referred to these requests.

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[320] *Cf. Case of Velásquez Rodríguez v. Honduras. Reparations and costs, supra,* paras. 25 and 26, and *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador, supra,* para. 283.

[321] *Cf. Case of Ticona Estrada et al. v. Bolivia, supra,* para. 110, and *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador, supra,* para. 281.

[322] *Cf. Case of Velásquez Rodríguez v. Honduras. Reparations and costs, supra,* para. 26 and *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador, supra,* para. 280.

[323] *Cf. Case of Cantoral Benavides v. Peru. Reparations and costs.* Judgment of December 3, 2001. Series C No. 88, paras. 77 to 81, and *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador, supra,* para. 280.

251. The Court observes that, owing to the specific characteristics of the case, and for the reasons previously mentioned in this Judgment (*supra* paras. 44 to 51), it has not been possible to identify and individualize all the victims. Therefore, the Court considers that, in the instant case, application of the exception established in Article 35(2) of the Court's Rules of Procedure is rationally justified in order to include other persons as victims even though they have not been previously identified and individualized by the Inter-American Commission. To this end, the Court considers pertinent that, within six months of notification of the Judgment, through the competent instances, the State must establish an appropriate mechanism so that other members of the community of Río Negro can subsequently be considered victims of any violation of human rights declared in this Judgment and receive individual and collective reparations such as those ordered below. Once this mechanism has been established, the said persons must appear within one year before the pertinent State instance in order to request and receive the corresponding reparations, after providing pertinent evidence to identify themselves.[324]

252. The Court also considers that, owing to the lack of active representation of these people before this Court (*supra* para. 251), the State must ensure the right to reparation of these victims in good faith. The State must inform the Court of the people who request reparations under the said mechanism. To this end, the Court will make the pertinent assessment when exercising its authority to monitor compliance with this Judgment.[325]

253. The contents of the preceding paragraphs (supra paras. 251 and 152) do not preclude the right of those members of the community of Río Negro who were not presented as victims by the representatives or by the Commission from waiving the reparations ordered in this Judgment and claiming the corresponding measures of reparation in their favor under domestic law.[326]

B. Obligation to investigate the facts and identify, prosecute, and eventually, punish those responsible

B.1. Full investigation, determination, prosecution and eventual punishment of all the masterminds and perpetrators

B.1.1. Arguments of the parties and of the Inter-American Commission

254. The Commission asked the Court to order the State to "[c]onduct, conclude and re-open, as appropriate, the domestic proceedings into the human rights violations declared in th[e merits] 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."[327] It also asked that the State be required to "[o]rder the appropriate administrative, disciplinary or criminal measures to respond to the acts or omissions of State officials who have contributed to the denial of justice and the impunity of the facts of the case or who have taken part in actions to obstruct the proceedings designed to identify and punish those responsible." To this end, it asked that

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[324] *Cf. Case of Pacheco Teruel et al. v. Honduras, supra*, paras. 87 to 88.

[325] *Cf. Case of Pacheco Teruel et al. v. Honduras, supra*, para. 90.

[326] *Cf. Case of Pacheco Teruel et al. v. Honduras, supra,* para. 89.

[327] The Commission specified that the State must re-open the domestic proceedings relating to the Río Negro (Pacoxom) and Agua Fría massacres in relation to all the victims of these massacres. Furthermore, the State must conduct investigations into the events in the Río Negro chapel and in Los Encuentros.

the State be ordered "[t]o strengthen the capacity of the judicial branch to investigate the facts adequately and efficiently and to punish those responsible, [providing] the necessary materials and technical resources to ensure that the proceedings are conducted properly."

255. The representatives asked the Court to order the investigation, prosecution and eventual punishment of the masterminds and perpetrators of the human rights violations committed during the Río Negro massacres, and of the execution of Evaristo Osorio Sánchez and Valeriano Osorio Chen. In addition, they described some criteria for these investigations,[328] and asked the Court to order that the arrest warrant against retired colonel José Antonio Solares González be executed.

256. In this regard, the State undertook "to continue facilitating the criminal investigation in this case […]" and "to expedite the capture" of retired colonel José Antonio Solares González. It also undertook "to initiate the investigations into the facts that remain to be investigated," and "to make arrangements with the Witness Protection Program of the Public Prosecutors' Office in order to ensure the personal integrity of those involved in the criminal investigation in this case" who accept the protection offered by the said program, and "to publish in the *Diario Oficial de Centroamérica* [the official gazette] the results of the criminal proceedings that are held […]." In addition, the State declared that it had "taken specific measures to strengthen the system of justice" through the National Justice Commission.

B.1.2. Considerations of the Court

257. The Court appreciates the State's willingness to facilitate the criminal investigation in the instant case. However, taking into account the conclusions indicated in Chapter XII of this Judgment, the Court stipulates that the State must remove all obstacles, *de facto* and *de jure*, that maintain impunity in this case,[329] and initiate, continue, facilitate, or re-open the necessary investigations to determine and, as appropriate, punish all those responsible for the human rights violations perpetrated during and after the five massacres that are the purpose of this case. The State must expedite, re-open, direct, continue and conclude, within a reasonable time, the pertinent investigations and proceedings to establish the truth of the facts, taking into account that approximately 30 years have elapsed since these five massacres occurred. In particular, the State must ensure that the following criteria are observed:[330]

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[328] Among other matters, the representatives indicated that the State must: (a) initiate all the investigations together, taking into account the systematic pattern of human rights violations that existed at the time, and endeavor to joinder the proceedings; (b) avoid the application of amnesty laws or similar provisions that benefit the perpetrators; (c) ensure that the competent authorities have and use the necessary logistic and scientific resources to collect and process the evidence and that they have the authority to access the pertinent documentation to investigate the facts denounced; (d) ensure full access and legal standing to the next of kin of the victims at all stages of the investigation; (e) ensure due guarantees of safety for all those who take part in the investigations; (f) guarantee that the authorities abstain from taking measures that entail the obstruction of the investigations, and open disciplinary, administrative or criminal actions, in accordance with domestic law, against those responsible for the different procedural and investigative irregularities, and (g) ensure that the results of the proceedings are publicized.

[329] *Cf. Case of Myrna Mack Chang v. Guatemala, supra,* para. 277, and *Case of Contreras et al. v. El Salvador, supra,* para. 128.

[330] *Cf. Case of Anzualdo Castro v. Peru, supra,* para. 181, and *Case of González Medina and family members v. Dominican Republic, supra,* para. 285.

a) Based on the gravity of the facts, it may not apply amnesty laws or argue prescription, the non-retroactivity of criminal laws, *res judicata*, or the *non bis in idem* principle, or any other similar mechanism that excludes responsibility, in order to waive its obligation to investigate and prosecute those responsible;[331]

b) It must investigate the facts of this case *ex officio* and effectively, taking into account the systematic pattern of grave and massive human rights violations that existed at the time they occurred. In addition to the violation of the right to life, the State must consider other possible grave violations of the right to personal integrity and to personal liberty, in particular the presumed acts of forced disappearance, torture, extrajudicial execution, rape, slavery and involuntary servitude, taking into account also the differentiated impact of the alleged violations on the children and women of the community of Río Negro.[332] The State must also execute the pending arrest warrants for those presumably responsible and issue any that are pertinent in order to prosecute all those responsible for the facts of this case;

c) It must determine the identity of all the alleged masterminds and perpetrators of the massacres and the subsequent persecution of the members of the community of Río Negro; consequently, is must conclude the criminal proceedings opened against them, and proceed to investigate the presumed authors who have not yet been identified. Due diligence in the investigation means that all the State authorities are obliged to collaborate in the gathering of evidence; thus they must provide the judge of the case with all the information that he requests and abstain from acts that obstruct the investigative process;

d) It must open the disciplinary, administrative or criminal actions, under its domestic legislation, against those State authorities who have possibly obstructed or prevented the due investigation of the facts, as well as those responsible for the different procedural irregularities that have contributed to prolonging the impunity of the massacres, and

e) It must ensure that the different organs of the justice system involved in the case have the necessary human and material resources to perform their tasks adequately, independently and impartially, and that those who participate in the investigation, including the victims or their representatives, witnesses, and justice officials, are granted adequate guarantees as regards their safety.

258. In accordance with its consistent case law,[333] the Court considers that the State must ensure full access and legal standing to the victims or their next of kin at all the stages of the investigation and prosecution of those responsible, in keeping with domestic law and the provisions of the American Convention. In addition, the results of the

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[331] *Cf. Case of Barrios Altos v. Peru. Merits.* Judgment of March 14, 2001. Series C No. 75, para. 41, and *Case of González Medina and family members v. Dominican Republic, supra*, para. 285(e).

[332] *Cf. Case of the Dos Erres Massacre v. Guatemala, supra,* para. 233(b). In its General Recommendation No. 19: "Violence against women," the Committee for the Elimination of Discrimination against Women established that States are required to adopt protective and punitive measures. It also recommended that laws against violence respect the integrity and dignity of all women, and that States provide protection for victims, as well as encourage research on the causes and effects of violence and on the effectiveness of measures to prevent and deal with violence, and provide effective procedures for reparation, including compensation.

[333] *Cf. Case of El Caracazo v. Venezuela. Reparations and costs.* Judgment of August 29, 2002. Series C No. 95, para. 118, and *Case of Pacheco Teruel et al. v. Honduras, supra,* para. 130.

corresponding proceedings must be publicized so the Guatemalan society may know the facts that are the purpose of the instant case, as well as those responsible for them.[334]

259. As it has in other cases,[335] the Court assesses positively the publication of the report of the CEH, *Guatemala: Memoria del Silencio*, which includes the case of the Río Negro massacres, as an effort that has contributed to the search for and determination of the truth concerning an historical period in Guatemala. Despite this, the Court considers it pertinent to clarify that the "historical truth" included in that report does not fulfill or substitute for the State's obligation to establish the truth and ensure the judicial determination of individual or State responsibilities through the pertinent proceedings.[336]

260. In addition, regarding the State's observation during the public hearing that Rosalina Tuyuc, expert witness in this case, has not wanted to hand over documentation regarding the presumed rape of several women of the Río Negro community, so that the National Reparation Program can be activated, the Court finds it pertinent to indicate that the monitoring, denunciation and educational activities carried out by human rights defenders make an essential contribution to the observance of human rights, since they act as guarantors against impunity.[337] However, the Court reiterates, as it has already in this Judgment (supra paras. 193, 194, 196, 228 and 236), that the investigation into the facts that occurred during the five massacres of the instant case is an obligation that must be complied with *ex officio* by the State, and that the said investigation should not depend on the procedural actions of private individuals and, especially, merely on the evidence that the can provide.

261. 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 resulting from Article 1(1) of the American Convention. To comply with this obligation, the State must combat this impunity by all legal means available, because impunity "encourages the chronic repetition of the human rights violations and the complete defenselessness of the victims and their next of kin."[338] 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."[339]

262. 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 on the Forced Disappearance of Persons, the Inter-American Convention to Prevent and Punish Torture, and the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women, the said treaties are

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[334] *Cf. Case of El Caracazo v. Venezuela. Reparations and costs, supra,* para. 118, and *Case of González Medina and family members v. Dominican Republic, supra,* para. 286.

[335] *Cf. Case of the Dos Erres Massacre v. Guatemala, supra,* para. 232, and *Case of Chitay Nech et al. v. Guatemala, supra,* para. 234.

[336] *Cf. Case of Almonacid Arellano et al. v. Chile, supra,* para. 150, and *Case of Chitay Nech et al. v. Guatemala, supra,* para. 234.

[337] *Cf. Case of Valle Jaramillo et al. v. Colombia, supra,* para. 88, and *Case of Fleury et al. v. Haiti, supra,* para. 80.

[338] *Case of the "White Van" (Paniagua Morales et al.) v. Guatemala. Merits, supra,* para. 173, and *Case of Chitay Nech et al. v. Guatemala, supra,* para. 236.

[339] *Case of Velásquez Rodríguez v. Honduras. Merits, supra,* para. 166, and *Case of Torres Millacura et al. v. Argentina, supra*, para. 98.

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 monitor *ex officio* that domestic law is in accordance with the human rights treaties to which the State is a Party, evidently within the framework of their respective competences 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.[340]

B.2. Search for, identification, determination of cause of death, and return of the remains of those found and identified to the next of kin

263. The Commission asked the Court to order the State to establish "a mechanism" that would permit the complete determination of the victims executed and disappeared during the Río Negro massacres, as well as "to continue the identification process and return of the victims' mortal remains" to their next of kin. For their part, the representatives asked that the determination of the whereabouts of the victims and their identification be carried out using DNA tests and that the return of the mortal remains to the deceased's next of kin should not entail any cost whatsoever for the latter.

264. The State undertook "to continue with the process of searching for the remains of the victims who have not yet been found" and, to that end, to coordinate "with the jurisdictional bodies in charge of the criminal investigation and [with] the National Institute of Forensic Science […]."

265. As has been established in this Judgment, the exhumation and identification of the deceased victims is part of the obligation to investigate. However, additionally, it has been indicated that this obligation must be fulfilled by the State *ex officio* (*supra* para. 217). In this regard, irrespective of the investigations and judicial proceedings that have been opened or that the State may carry out in the future, the obligation persists for the State to conduct *ex officio* an effective search for the whereabouts of the victims of this case who were forcibly disappeared or presumably executed, because the right of their next of kin to know their whereabouts constitutes a measure of reparation and, therefore, an expectation that the State itself must fulfill.[341] The discovery and identification of the victims reveals an historical truth that contributes to closing the mourning process of the Maya Achí community of Río Negro; contributes to the reconstruction of their cultural integrity; enhances the dignity of those who disappeared or who were presumably executed and that of their family members, who have struggled for decades to find their loved ones, and establishes a precedent to ensure that grave, massive and systematic violations such as those that occurred in this case never happen again.

266. Moreover, the Court emphasizes that the remains of the deceased are evidence of what happened to them and offer details of the treatment received, the way in which they died, and the *modus operandi* of the perpetrators of their death. In addition, the place where the remains were found can provide valuable information to the authorities in

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[340] *Cf. Case of Almonacid Arellano et al. v. Chile, supra,* para. 124, and *Case of Atala Riffo and daughters v. Chile, supra,* paras. 281 to 282.

[341] *Cf. Case of Velásquez Rodríguez v. Honduras. Merits, supra,* para. 181, and *Case of González Medina and family members v. Dominican Republic, supra,* para. 209.

charge of the investigation into those responsible and the institution to which the latter belonged,[342] particularly in the case of State agents.

267. This Court assesses positively the measures taken by the State from 1993 to 2002, to recover the remains of the people who were executed, some of whom were buried in communal graves or clandestine cemeteries. Despite these efforts, approximately 30 years after the grave acts of the Río Negro massacres were perpetrated, the State has not taken further measures to search for, individualize and identify other victims who died or disappeared during the massacres, and has not identified several skeletons that have already been found. In addition, as already mentioned in this Judgment, the exhumations were performed, above all, based on the requests and criminal complaints made by the surviving victims of the massacres rather than at the State's initiative *(supra* para. 219).

268. Consequently, the Court considers that the State, in addition to the investigations and criminal proceedings that are currently underway, must immediately prepare a meticulous plan to search for the members of the Río Negro community who were forcibly disappeared, as well as to find, exhume and identify the persons who were presumably executed, and to determine the cause of death and possible prior injuries. In this plan, the State must include the maximum use of its human, scientific and technical resources that are appropriate for these purposes. In this regard, the State must:

a) Present to the Court, within six months of notification of this Judgment, a timetable with specific short and medium-term goals, including an estimate of the required administrative and budgetary resources, and indicating the State authorities or instances that will intervene in the search, exhumation and identification of those who disappeared and those presumably executed, as appropriate, the competence of each of them, and which authorities or instances will coordinate activities;

b) Employ or use the required relevant national and/or international scientific and technical standards;[343]

c) Ensure that the State officials and any other persons who intervene in or supports the work of searching, exhumation and identification, as applicable, have due guarantees of safety, and initiate the necessary investigations should any threats to or violence against these persons arise;

d) Incorporate, e*x officio*, the determination of the causes of death and injuries, as appropriate, into the investigations that are underway or those that are opened into the massacres in this case, for the pertinent effects;

e) Inform the representatives of the victims, in writing, about the progress of the search, location, identification, and determination of the cause of death and prior injuries, of the persons disappeared and presumably executed and, as appropriate, return the remains of the said persons to their next of kin (infra para. 270). The copies of the said communications and the responses of the

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[342] *Cf. Case of the Dos Erres Massacre v. Guatemala, supra*, para. 245.

[343] For example, those established in the United Nations Manual on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions and its model autopsy protocol. This protocol proposes guidelines and procedures for: (1) Scene investigation; (2) Laboratory analysis of skeletal remains; (3) Final Report, and (4) Repository for evidence. *Cf. Case of the Mapiripán Massacre v. Colombia, supra,* para. 305, and *Case of Gelman v. Uruguay, supra,* para. 259.

representatives must be presented to the Court to be considered within the procedure of monitoring compliance with this Judgment.

269. Furthermore, in light of the gravity of the facts of the instant case, the Court finds it necessary, as it has in another case relating to Guatemala,[344] that the State implement, through the institutions that it considers suitable for this purpose, within one year, a genetic information bank to safeguard the information, on the one hand, of the osseous remains that are found and exhumed and, on the other, of the next of kin of the persons who were presumably executed or disappeared during the acts perpetrated in the context of the massacres of the community of Río Negro. The purpose of this measure is that the samples and information collected can be compared in order to identify who the remains belong to. In this regard, the Court finds it necessary to stipulate that, to this end, the prior and informed consent of the members of the community of Río Negro who wish to provide samples of genetic material for this purpose is required. The State must assign the human, financial, logistic and other resources required to ensure that the design, implementation and functioning of the genetic information bank are carried out adequately and comply with the purpose for which they are ordered by this Court.

270. The mortal remains of the victims in this case must be returned to their next of kin, following reliable authentication of their identity and relationship, if possible, through DNA testing, as soon as possible, and without any cost to the next of kin. In addition, the State must cover the funeral costs, in agreement with the next of kin of the deceased person,[345] respecting their beliefs.[346]

271. The State must conclude all the exhumations within four years from notification of this Judgment. If the remains of any victim in this case are not claimed by their next of kin within two years, calculated from the date on which the representatives, or the next of kin directly, are informed of their location, individualization and identification, the State must bury those remains individually in a place agreed with the representatives and put on record that they are unclaimed remains of those who died as a result of the facts of the instant case. The State must keep a record with details of the date and place where the remains were found, how they were identified, the possible cause of death, and the location of the subsequent burial.

C. Integral measures of reparation: satisfaction, rehabilitation, and guarantees of non-repetition

272. The denial of justice to victims of grave and massive human rights violations, such as those that occurred during the massacres, gives rise to numerous adverse effects not only in the individual sphere of the victims, but also in their collective sphere.[347] Thus, it is evident that the victims of prolonged impunity will suffer different effects not only of a pecuniary nature owing to the search for justice, but also other sufferings and harm of a

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[344] *Cf. Case of Molina Theissen v. Guatemala. Reparations and costs.* Judgment of July 3, 2004. Series C No. 108, eighth operative paragraph.

[345] *Cf. Case of Anzualdo Castro v. Peru, supra,* para. 185, and *Case of González Medina and family members v. Dominican Republic, supra,* para. 291.

[346] *Cf. Case of Bámaca Velásquez v. Guatemala. Reparations and costs.* Judgment of February 22, 2002. Series C No. 91, paras. 79 to 82, and *Case of González Medina and family members v. Dominican Republic, supra,* para. 289.

[347] *Cf. Case of the Ituango Massacres v. Colombia, supra,* para. 396, and *Case of the Dos Erres Massacre v. Guatemala, supra,* para. 226.

psychological and physical nature and on their life project, as well as other possible changes in their social relationships and in their family and community dynamics,[348] particularly in the case of an indigenous community. This Court has established that this type of harm is increased by the lack of support from State authorities in the search for and identification of the remains of deceased victims, and the impossibility for the next of kin to honor their loved ones appropriately.[349] Accordingly, the Court has considered the need to grant diverse measures of reparation in order to redress the harm comprehensively; thus, in addition to the pecuniary compensations, measures of satisfaction, restitution, and rehabilitation and guarantees of non-repetition are especially relevant owing to the gravity of the effects and the collective nature of the harm caused[350] in this case.

C.1. Measures of satisfaction

C.1.1. Publication and dissemination of the Judgment

273. The Commission asked, in general, that the State be ordered to "[m]ake adequate reparation for the human rights violations declared in the [merits] report, [… for] non-pecuniary damage, including […] publication of the historical truth of the events." For their part, the representatives requested the publication of the relevant parts of the judgment in the State's official gazette and in another newspaper with widespread circulation, once, and within one year. They also requested the publication of the judgment, in Spanish and in the Maya Achí language, on the official websites of the Executive, Legislative, and Judicial branches of the State, as well as on the official webpage of the Presidential Commission for Coordination of the Executive's Human Rights Policies (COPREDEH), for at least one year. In addition, they also the Court to establish, in equity, an amount for reproducing the judgment in the Maya Achí language and distributing it among the communities that inhabit the department of Baja Verapaz. In this regard, they asked that the said amount be sufficient to execute the project for three years, "in order to guarantee full dissemination." The State undertook to "arrange with the Academy of Mayan Languages for the translation of the judgment" into the Maya Achí language, and to organize the reproduction and distribution requested by the representatives. It also undertook "to arrange with the three branches of State [… for the publication of the judgment] in Spanish and Achí for at least one year."

274. The Court assesses positively and accepts the offer made by the State. Thus, and as ordered on other occasions,[351] the State must publish once, in the Spanish and Maya Achí languages, in the official gazette and in another daily newspaper with national circulation, the official summary of this Judgment. In addition, as the Court has ordered on previous occasions, [352] this Judgment must be published in its entirety, in both languages, for at least one year, on an official website of the State. The translation of the Judgment must be approved by the representatives before being published. The publications in the newspapers

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[348] *Cf. Case of the Pueblo Bello Massacre v. Colombia, supra,* para. 256, and *Case of the Dos Erres Massacre v. Guatemala, supra,* para. 226.

[349] *Cf. Case of the Pueblo Bello Massacre v. Colombia, supra,* para. 256, and *Case of the Dos Erres Massacre v. Guatemala, supra,* para. 226.

[350] *Cf. Case of the Mapiripán Massacre v. Colombia, supra,* para. 294, and *Case of the Dos Erres Massacre v. Guatemala, supra,* para. 226.

[351] *Cf. Case of Cantoral Benavides v. Peru. Reparations and costs, supra,* para. 79, and *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador, supra,* para. 307.

[352] *Cf. Case of the Serrano Cruz Sisters v. El Salvador. Merits, reparations and costs, supra,* para. 195, and *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador, supra*, para. 307.

and on the Internet must be made within three and six months, respectively, of notification of this Judgment.

275. Furthermore, based on the State's offer (*supra* para. 273), the Court establishes that the State must reproduce the official summary of this Judgment in Spanish and in the Maya Achí language, and distribute it, in coordination with the representatives, in the communities in the department of Baja Verapaz. The distribution must be carried out within one year term, with a print run of at least 1,500 copies.

C.1.2. Public act of acknowledgment of responsibility

276. The Commission asked, in a general, for the recovery of the memory of the deceased and disappeared victims. For their part, the representatives asked the Court to order the organization of a "public act of acknowledgment of international responsibility and of public apology to make amends to the victims and in memory of those executed during the Río Negro massacres." They asked that this act be carried out in Pacux; that it be headed by the President of the Republic, and that the President of the Supreme Court of Justice be present. They also asked that the act be broadcast "by television and radio." The State expressed its "willingness to carry out this act in accordance with the work agendas of the said authorities" and in keeping with "the budget allocated in the near future to cover" these reparations.

277. The Court assesses positively the State's willingness to implement this measure of reparation. Consequently, the Court stipulates that the public act of acknowledgment of responsibility must be held in Pacux, in Spanish and in the Maya Achí language, within one year of notification of this Judgment. During the act, reference must be made to the five massacres that occurred in the instant case, to the grave and massive human rights violations perpetrated by the State, and to its international responsibility. The act must be broadcast by television and/or radio. Also, owing to the specific characteristics of this case, and in order to create awareness of the consequences of the facts of this case, senior officials of the Guatemalan Executive and Judiciary Branches must attend the act of acknowledgment.[353]

278. The realization and details of the said public ceremony must be agreed with the victims and their representatives within six months of notification of this Judgment. The act of acknowledgment must be implemented no more than one year after notification of the Judgment. Since the representatives have indicated that not all the victims live in the Pacux settlement, which the State has not contested, the latter must guarantee the presence of the victims who do not live in Pacux and who wish to attend the public act of acknowledgment of responsibility and, to this end, it must cover the necessary transportation costs within Guatemala.

C.1.3. Creation of a museum in honor of the victims of the internal armed conflict

279. The Commission asked, in general, that the State recover the memory of the victims who died and disappeared. The representatives asked that, "in order to dignify the victims and conserve the historical memory," "a commemorative museum be created in honor of the memory of the numerous victims of the internal armed conflict," with a special section

[353] *Cf. Case of Cantoral Benavides v. Peru. Reparations and costs, supra,* para. 81, and *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador, supra,* para. 305.

dedicated to the civilians who died during the 36 years it lasted, and that "special mention be made of the numerous massacres perpetrated against the civilian population during those years." In addition, they asked that the museum be built on a lot selected by the victims of the massacres, and that the construction costs of the said museum "be taken from the annual budgetary allocation of the Guatemalan Ministry of Defense. The State "undert[ook] to arrange with the National Reparations Program, the Ministry of Culture and Sports, and the National Fund for Peace (FONAPAZ), for the construction of the museum requested by the victims." It indicated that it would be constructed "in accordance with the budget" allocated to these institutions for "this type of construction project and in keeping with [their] institutional mandates."

280. The Court appreciates the State's willingness to implement this measure of reparation which is designed to recover the memory of the victims of this case, and takes note of the undertakings it has made.

C.1.4. Improvement of infrastructure and implementation of basic services and social programs in Pacux

281. The Commission asked the Court to order the State to implement communal reparations established by mutual agreement with the survivors of the community of Río Negro. The Commission did not specify what these measures could be. The representatives asked that the Court order "improvements in the provision of basic services in the Pacux settlement," including[354] the supply of free electricity, and the "provision of resources for the reconstruction of the social fabric and the Maya Achí culture."[355] They also asked that administration of the resources destined to the preservation and rescue of the Maya Achí culture include "the active and preferential participation" of the victims.

282. The State undertook to arrange improvements to the Pacux health center with the Ministry of Public Health and Social Assistance and to "supply it with medicines [and with] permanent qualified human resources in the area of physical, psychological and dental health care." In addition, it indicated that it would arrange with the corresponding entities

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[354] Among other matters, the representatives asked the Court to order measures designed to: (a) improve the Pacux health center by providing medicines, permanent human resources qualified in attention to physical, mental and dental health, equipped ambulances, and sufficient resources to create programs for the victims of human rights violations; (b) provide "resources for the design of food security and nutrition programs for the surviving families, through the Food Security Secretariat, and with the participation of ADIVIMA, because the inhabitants of the Pacux settlement do not have an appropriate place to work the land or to be able to raise animals that could be useful to feed themselves as well as to sell […] to procure sufficient income for their […] food and subsistence […]," and (c) "improve the infrastructure" of the Pacux settlement in order to guarantee the basic needs of the inhabitants. Specifically, they requested improvements in the roads and avenues in the settlement, "measures to ensure all the needs for water of the inhabitants of Pacux" and the installation of "systems of sanitation, drainage, treatment plants, rain water and boiled water [*sic*]" in the settlement, as well as the provision of free electricity. Lastly, they asked that the State be ordered "[t]o rebuild, improve and equip the primary schools in the Pacux settlement […]" and introduce "a bilingual (Spanish and Achí) high school program for the continuation of the education service that exists in this community."

[355] In addition to other elements, the representatives requested the following measures "in order to preserve the collective memory, the cultural sustainability and all expressions of the cultural practices of the community: (a) "implementation of programs to make the new generations aware of the culture, values, principles and philosophies of the Achí people, emphasizing the experience undergone by the community of Río Negro […]"; (b) "the creation of programs to locate and access existing documentation on the culture and history of the Maya Achí people […]"; (c) "implementation of programs to rescue the traditional *modus vivendi* of the people […]"; (d) "[t]he improvement and promotion of the 'Rabinal Achí Community Museum' so that it exhibits fundamental elements of the Maya Achí culture […] that are no longer practiced by the victims of the community of Río Negro who live in the Pacux settlement," and (e) "[t]he creation of spaces to encourage the reproduction of the art and culture of the Maya Achí peoples […]."

for the provision of equipped ambulances, the design of food security and nutrition programs for the families of the victims, "potable water services" and "education services," all of them requested by the representatives. Nevertheless, the State indicated that "it was unable to undertake" to provide free electricity to the Pacux settlement. However, it "offered to arrange with the Ministry of Culture and Sports and the National Reparations Program" for the reconstruction of the social fabric and the Maya Achí culture, "in keeping with their institutional mandates." Despite the foregoing, during the public hearing and in its final written arguments, the State asked the Court to consider that some of the victims in the instant case had received reparation "under different measures of reparation granted by the National Electricity Institute."

283. The Court will now analyze the relevant aspects of these arguments. However, first, the Court emphasizes that, in accordance with Article 41(1) of the Rules of Procedure, the appropriate procedural moment for the State to present its observations on the reparations requested by the Commission and the representatives is in its answer to the submission of the case. In the said brief, the State did not refer to the supposed measures of reparation granted through the National Electricity Institute to some of the victims in the instant case. Thus, the requests made by Guatemala during the public hearing and in its final written arguments regarding the said measures are time-barred and will therefore not be analyzed by the Court.

C.1.4.1. Infrastructure and basic services

284. The Court takes note of the State's willingness to facilitate several measures addressed at improving the living conditions of the members of the community of Río Negro who live in the Pacux settlement (*supra* para. 282). In view of the precarious living conditions of the victims of this case who were displaced and subsequently resettled by the State in the Pacux settlement (*supra* para. 183), the Court establishes that Guatemala must implement, in the said place, following consultation with the victims or their representatives, and irrespective of the other public works included in the national budget for the Pacux settlement or for the region where it is located, the following measures: (a) the improvement of the Pacux health center by the provision of permanent human resources qualified to provide physical, psychological and dental health care, medicines and equipped ambulances; (b) the design and implementation of food security and nutrition programs; (c) the improvement of the streets and avenues in the settlement; (d) the implementation of a drainage system, treatment of sewage or residual waters, and supply of potable water, and (e) the reconstruction or improvement of the elementary schools in Pacux and the establishment of a bilingual, Spanish and Maya Achí, high school education program. The State must implement the said programs within five years of notification of this Judgment.[356] Lastly, within one year of notification of this Judgment, the State must guarantee the supply of electricity to the inhabitants of the Pacux settlement at an accessible cost.

C.1.4.2. Project to rescue the Maya Achí culture

285. In this Judgment (*supra* paras. 160 to 162), the Court has established that the living conditions in the settlement of Pacux have harmed the cultural integrity of the Río Negro community, making a negative impact on the Maya Achí cosmovision and culture, and the

[356] *Cf. Case of the Plan de Sánchez Massacre v. Guatemala. Reparations and costs, supra*, paras. 110 and 111.

possibilities of its residents carrying out their traditional work activities and spiritual practices. Consequently, the Court orders the State to design and implement, within one year of notification of this Judgment, a program for the rescue of the Maya Achí culture. To this end, within three months, the State, in consultation with the victims and their representatives, must draw up a timetable with short- and medium-term goals to comply fully with this measure within the established time frame. The purpose of this program will be the rescue, promotion, dissemination and conservation of the ancestral customs and practices, based on the values, principles and philosophies of the Maya Achí people and, in particular of the community of Río Negro. This program should create a space for the promotion of the community's artistic, linguistic, and cultural expressions. The program must be designed and executed with the active participation of the members of the Río Negro community and their representatives. The State must provide reasonable logistic and budgetary resources through legal, administrative or any other mechanism to guarantee the viability and continuity of the program.

C.2. Rehabilitation measures

286. The Commission asked the Court to order "the implementation of an adequate program to provide psychosocial care to the survivors and families of the victims who were executed or disappeared […]." For their part, the representatives asked the Court to order the State to provide free psychological care "to the victims of the Río Negro massacres," "accompanied [by] the medicines required for [their] effective treatment and eventual recovery […]." During the public hearing, the representatives clarified that the said care must be "culturally appropriate", [and that] there [was] no need to make large investments in order to provide this care, [because] there are many resources in [the] community [of Río Negro …]; the elderly, the midwives, the traditional healers […]." The State "offer[ed] to facilitate the improvement of psychological assistance in order to provide the services required by the Guatemalan population [*sic*] through the Ministry of Public Health and Social Assistance," and "to make the necessary arrangements with this public institution, so that the next of kin of the victims receive the said care for as long as necessary."

287 The Court finds, as it has in other cases,[357] that it is necessary to order a measure of reparation that provides adequate care for the psychological and physical ailments suffered the victims as a result of the violations established in this Judgment.

288. In this regard, during the public hearing of this case, expert witness Rosalina Tuyuk stated that:

> "The psychosocial care must have a specific identity; in other words, the Mayan peoples never go to psychologists, instead [their] psychology is cared for with the sacred fire [and …] with medicinal plants. […] The State's policy does not include the ancestral practices of [their] people; therefore, […this] is an occasion for the State to recognize all these practices […] so that […] this process of psychosocial care may truly support all those who were victims of rape and other types […] of violation."

289. Therefore, in order to contribute to the reparation of this harm, the Court orders that the State provide, free of charge and immediately, to the victims who so wish, and following their informed consent, medical and psychological treatment for as long as necessary, including the supply of medicines, also free of charge. The medical and psychological treatment must be provided by State institutions and personnel. Based on the

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[357] *Cf. Case of Cantoral Benavides v. Peru. Reparations and costs, supra,* para. 51(e), and *Case of Pacheco Teruel et al. v. Honduras, supra*, paras. 116 to 118.

representatives' request, this medical and psychological care may be provided by the healers of the Maya Achí community, in keeping with their own health practices and using traditional medicines;[358] accordingly, the State must reach an agreement with the representatives on the way in which this reparation will be executed.

C.3. Guarantees of non-repetition

C.3.1. Training for prosecutors, judges and members of the military forces

290. The Commission asked the Court to order the State "to implement permanent programs on human rights and international humanitarian law in the training establishments of the armed forces." The representatives asked the Court to order the State "to train judges and prosecutors on human rights issues and [on] the significance of the violations of these rights for the appropriate processing of court cases involving serious human rights violations." The State "undert[ook]" to continue offering training sessions for judges and prosecutors through institutions such as "the Educational Department of the Presidential Commission for Coordination of the Executive's Human Rights Policies," "the National Commission for Monitoring and Supporting the Strengthening of the Justice System," and the jurisdictional instances.

291. The Court assesses positively the State's willingness to execute the said program. Nevertheless, this Court has also noted the impunity of the facts of the instant case (*supra* para. 236); therefore, it is important to enhance the State's institutional capacities by training judges, prosecutors and members of the Armed Forces in order to avoid a repetition of facts such as those analyzed in this case.[359] In this regard, the Court recalls that, in the judgment delivered in the case of *Myrna Mack Chang v. Guatemala,* the State was ordered "to include in the training courses for members of the armed forces, the police, and its security agencies, training on human rights and international humanitarian law."[360] Furthermore, in the judgment handed down in the case of the *Dos Erres Massacre v. Guatemala,* it also stipulated that the State must "implement training courses on human rights for different State authorities."[361]

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[358] See, the United Nations Declaration on the Rights of the Indigenous Peoples, Article 24: 1. Indigenous peoples have the right to their traditional medicines and to maintain their health practices, including the conservation of their vital medicinal plants, animals and minerals. Indigenous individuals also have the right to access, without any discrimination, all social and health services. 2. Indigenous individuals have an equal right to the enjoyment of the highest attainable standard of physical and mental health. States shall take the necessary steps with a view to achieving progressively the full realization of this right.

See also, ILO Convention concerning Indigenous and Tribal People in Independent Countries, 1989 (No. 169): Article 25: 1. Governments shall ensure that adequate health services are made available to the peoples concerned, or shall provide them with resources to allow them to design and deliver such services under their own responsibility and control, so that they may enjoy the highest attainable standard of physical and mental health. 2. Health services shall, to the extent possible, be community-based. These services shall be planned and administered in co-operation with the peoples concerned and take into account their economic, geographic, social and cultural conditions as well as their traditional preventive care, healing practices and medicines. […]

In the publication *Convention No. 169 on indigenous and tribal peoples* 1989 (*No.169*): *A manual* (2003), p. 60, the ILO establishes guidelines for health programs. Among other matters, the said programs must: (i) be community-based; (ii) be complementary to traditional healing practices and should include them; (iii) have the active involvement of the community; (iv) train local people to work to provide health care, and (v) Governments should provide the resources for these health care services, as they do for all citizens.

[359] *Cf. Case of El Caracazo v. Venezuela. Reparations and costs, supra,* para. 127, and *Case of Contreras et al. v. El Salvador, supra,* para. 186(b).

[360] *Case of Myrna Mack Chang v. Guatemala, supra,* para. 282.

[361] *Case of the Dos Erres Massacre v. Guatemala, supra,* twelfth operative paragraph.

292. Consequently, based on the measures ordered in the judgments indicated *supra*, which all refer to the implementation of a training program for prosecutors, judges and members of the armed forces and which have general effects that transcend the specific cases, the Court does not consider it pertinent to order the said measures of reparation again. Compliance with these measures will continue to be evaluated at the stage of monitoring compliance with the respective judgments.

C.4. Other measures requested by the representatives

293. The representatives also requested the "inclusion of modules on the grave human rights violations that occurred during the internal armed conflict in the Basic National Curriculum"; the restitution of the right to visit their cemeteries and sacred places; measures to avoid the installation of a new military garrison in the area near the settlement of Pacux; the restitution of the use and enjoyment of the Canchún Chitucán property, and the creation of a germplasm bank for the conservation of fruits and medicinal plants that are important for the Maya Achí culture.

294. For its part, the State expressed its willingness to arrange the requested changes in the Basic National Curriculum and the restitution of the right of the members of the Río Negro community to visit their cemeteries and sacred places, and to take measures to avoid the installation of a new military garrison in the area near Pacux.[362] However, it indicated that it did not have budgetary capacity to create a germplasm bank, and therefore offered "to organize advisory services and support for the management of the species of fruits and medicine plants" that it is hoped to conserve through other State institutions, such as "the Agricultural Science and Technology Institute, the Ministry of Agriculture, Livestock and Food," and "a technological laboratory at the Universidad de San Carlos." However, the State did not indicate its position regarding the restitution of the use and enjoyment of the Canchún Chitucán property.

295. The Court appreciates the State's willingness to facilitate the implementation of some of the measures of reparation requested by the representatives, and takes note of the undertaking it has made. Nevertheless, the Court cannot grant the restitution of the Canchún Chitucán property as a measure of reparation, because it was determined in this Judgment that the Court did not have competence to rule on the alleged violation of the right to property to which this measure of reparation has a causal nexus.

D. Compensations for pecuniary and non-pecuniary damage

296. The Court has developed the concept of pecuniary[363] and non-pecuniary[364] damage

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[362] The State "undert[ook] to facilitate coordination between the Ministry of Education and ADIVIMA" in order "to include the impact" of the internal armed conflict on the human rights violations committed to the detriment of the victims. The State also indicated that it was willing to arrange "with the corresponding authorities or current owners of the land" where the cemeteries and sacred places are located, so that the next of kin of the victims may visit them without problems. Also, it proposed "to incorporate into the Sacred Places Commission a committee to oversee the case" in order to promote "the approval of bill 3835 'Law on the sacred places of the indigenous peoples.'" The State also "assume[d] the responsibility" of arranging with the pertinent institutions to avoid the establishment of a military garrison in Pacux. It also undertook to request the National Civil Police to protect the perimeter of the area where this settlement is located.

[363] *Cf. Case of Bámaca Velásquez v. Guatemala. Reparations and costs, supra,* para. 43, and *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador, supra*, para.309.

and the assumptions based on which it must be compensated. Thus, the Court will determine the pertinence of awarding pecuniary reparations and the respective amounts due in this case. Before this, since a dispute still exist on alleged compensation already granted under the National Reparations Program (hereinafter "PNR"), the Court will now rule on this matter.

D.1. Compensation granted under the National Reparations Program

297. The State asked that some of the victims who had been provided with reparation under the National Reparations Program be considered "duly compensated." The State also indicated its willingness to "provide financial redress" to the victims of this case who had not been compensated previously. During the public hearing the State reiterated its willingness to provide reparation to the victims who had not been compensated; however, it indicated that it would do so "includ[ing them] under the reparations items of the National Reparations Program."

298. The Commission asked the Court to order the State to "[m]ake adequate reparation for the human rights violations declared in the [merits] report both in the form of pecuniary and non-pecuniary damage, including just compensation." In addition, it appreciated the measures taken by the State to implement the National Reparations Program (*supra* para. 300), under which compensation had been granted to some of the victims in the instant case. However, according to the Commission, "this program does not guarantees that [… the victims of human rights violations] will receive reparation in a manner consistent with inter-American standards." Thus, it requested that, "once the receipt of certain compensatory amounts by some of the victims [under the PNR] has been proved, [the Court] take them into account when ordering compensation so that they can be subtracted from the final amount ordered […] for the victims who are in the same situation."

299. Regarding the list forwarded by the State of 102 persons or family units to whom reparations have presumably been awarded already under the PNR (*infra* para. 300), the representatives indicated that: (a) some of the individuals mentioned are not victims of the Río Negro massacres and were not individualized as presumed victims in this case; (b) others are victims and have already received a certain amount as compensation, and (c) others are victims but have not received any compensation as yet. The representatives also indicated that the National Reparations Program only awards reparations to some categories of victims; for example, it does not offer reparations to victims of violations of the rights to judicial protection and guarantees; and the program stipulates "that the maximum amount granted to each family unit will be of Q44,000.00, irrespective of the number of victims in the family, and this amount must therefore be divided among the different beneficiaries […]." They also stated that reparations "of an individual and financial nature" could not be considered "integral" reparation.

300. The Court observes, first, that the State has expressed its willingness to provide financial reparations to the victims of this case in keeping with the reparation items of the National Reparations Program. In addition, the State had forwarded with its answering brief a list of 102 people or family units who have apparently received financial reparations under the PNR and a copy of the pertinent administrative case files. For their part, the representatives recognized that some of the individuals on this list are victims in the instant

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[364] *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 the Kichwa Indigenous People of Sarayaku v. Ecuador, supra,* para. 318.

case and have already received compensation under the said program.

301. In this regard, the Court recalls that under Article 63(1) of the American Convention, it must ensure that the consequences of the human rights violations declared in this Judgment are repaired, and must order the payment of just compensation to the injured party, in accordance with international standards and its consistent case law on this matter.

302. The Court observes that the said National Reparations Program establishes:

> "A maximum amount of financial reparation 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, there are also another or other fatal victims in the same family unit."[365]

303. The foregoing reveals that the differences between the parties stem from the standards or criteria used by the National Reparations Program to calculate or allocate the compensatory amounts to the victims. The Court takes note that the State has a program of reparations under which it has already proceeded to compensate some of the victims of the massacres in this case.

304. Based on the provisions of Article 63(1) of the American Convention, the Court will now order the measures required to repair the pecuniary and non-pecuniary damage arising from the violations declared in the preceding chapters. Nevertheless, the amounts that have already been awarded to the victims in this case at the domestic level under the PNR must be recognized as part of the reparation due to them and subtracted from the amounts established by the Court in this Judgment for compensation (*infra* para. 309). At the stage of monitoring compliance, the State must provide proof of the effective delivery of the amounts ordered under the said program.

D.2. Pecuniary and non-pecuniary damage

D.2.1. Arguments of the parties

305. The representatives indicated that the victims in this case were forced to abandon their lands, losing almost all their possessions and means of subsistence. Thus, since it is impossible to quantify the exact pecuniary damage caused, owing to the characteristics of the case, they asked that, "taking into account criteria such as the cost of living in […] Guatemala over the last 16 years, [the Court] establish in equity the amount of US$25,000.00 for […] pecuniary damage." The representatives did not clarify for whom this amount was requested. However, they asked the Court to recognize the "twofold victimization"[366] of the mortal victims of the massacres, of the survivors of the massacres, and of "the children subjected to conditions of slavery." Regarding non-pecuniary damage, the representatives asked the Court to take into account: (a) "the twofold victimization" of the survivors of the massacres, who witnessed the grave violations against their next of kin

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[365] Opinion-PNR-BVRB-03-2011 of April 27, 2011, of the PNR, in relation to the file corresponding to Celestina Osorio Ixpatá and María Osorio Chen (file of annexes to the submission of the case, tome XXXVI, folio 24596).

[366] The representatives asked the Court to "recognize the twofold victimization of the persons individualized in annexes H, I, J, K, L, M, and N of the list of the victims of the massacres, children subjected to slavery and survivors in general […], and, therefore, to apply the criteria set out previously in order to calculate the loss of earnings as an essential part of the total determination of the compensation."

and, subsequently, were forced "to support infrahuman living conditions"; (b) that the children who were abducted from their communities in order to be used as slaves were deprived of their childhood; (c) that the members of the Río Negro community were deprived of their customs, religion and family life, and (d) that the grave human rights violations committed in this case remain unpunished. Based on the foregoing, the representatives asked the Court to establish, in equity, for non-pecuniary damage, the amount of US$30,000.00 for the survivors of the massacres.

306. The State considered that the amounts requested by the representatives "are too high, taking into account the country's economic situation." It affirmed that, in other cases of a collective nature, the Court had established the amounts to be paid by family unit and not by victim, and considered that the same should apply in this case, but it did not explain why this would be applicable. Also, the State asked the Court to "assess the possibility" that it make an "actuarial study" in order to provide the Court with "other criteria when determining the eventual compensation" to be paid.

D.2.2. Considerations of the Court

307. This Court has established that pecuniary damage supposes loss of or detriment to the victims' income, 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.[367] Meanwhile, non-pecuniary damage "may include both the suffering and grief caused to the direct victim and his next of kin, the harm to values that have great significance for the persons, as well as the changes of a non-pecuniary nature, in the living conditions of the victim or his family."[368] Furthermore, the Court has held "that it is inherent in human nature that any person who suffers a violation to their human rights experiences suffering; consequently, the non-pecuniary damage is evident.[369]

308. This Court observes that the representatives did not indicate for whom it requested the amount of US$25,000.00 as compensation for pecuniary damage. The Court does not have elements to prove the loss of income and earnings suffered by the victims in this case as a result of the facts that fall within the Court's competence. However, Court finds it logical that, in cases such as this, the collection of evidence to prove this type of pecuniary loss and its presentation to the Court is a complex task. In addition, it is evident that the human rights violations declared in the instant case necessarily entail grave pecuniary consequences.

309. Based on the criteria established in the Court's consistent case law, the circumstances of this case, the importance, nature, and seriousness of the violations committed, the damage generated by the impunity, and the physical, moral and mental sufferings caused to the victims,[370] the Court finds it pertinent to establish, in equity, for pecuniary and non-pecuniary damage, the amounts indicated below or the equivalent in Guatemalan currency, which must be paid within the corresponding time frame established

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[367] *Cf. Case of Bámaca Velásquez v. Guatemala. Reparations and costs, supra,* para. 43, and *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador, supra,* para. 309.

[368] *Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Reparations and costs, supra,* para. 84, *and Case of the Kichwa Indigenous People of Sarayaku v. Ecuador, supra,* para. 318.

[369] *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 Chocrón Chocrón v. Venezuela, supra*, para. 190.

[370] *Cf. Case of Ticona Estrada et al. v. Bolivia, supra,* para. 109, and *Case of Chitay Nech et al. v. Guatemala, supra,* para. 278.

by the Court (*infra* para. 318):

a) US$30,000.00 (thirty thousand United States dollars) for each victim of forced disappearance (*supra* para. 127);

b) US$15,000.00 (fifteen thousand United States dollars) for each surviving victim of the massacres indicated in Annex IV to this Judgment;

c) An additional US$10,000.00 (ten thousand United States dollars) for each survivor of the massacres who is a member of the family of the victims of forced disappearance declared in this Judgment (*supra* para. 127 and *infra* para. 310);

d) An additional US$10,000.00 (ten thousand United States dollars) for each survivor of the massacres who was a victim of acts of slavery and involuntary servitude (*supra* para. 150);

e) US$15,000.00 (fifteen thousand United States dollars) for María Eustaquia Uscap Ivoy, in addition to the US$10,000.00 (ten thousand United States dollars) that correspond to her as a survivor of the massacres, because she was a victim of rape and also of acts of slavery and involuntary servitude.

310. The amounts ordered in favor of those who were forcibly disappeared (*supra* para. 309(a)) must be paid according to the following criteria:

a) Fifty per cent (50%) of the compensation will be divided, in equal parts, among the victim's children. If one or more of the children are already deceased, the part that corresponded to them will be added to the part of the other children of that same victim;

b) Fifty per cent (50%) of the compensation must be delivered to the victim's spouse or permanent companion at the time of their death;

c) If there are no family members in one of the categories defined in the above subparagraphs, the amount that would have corresponded to the next of kin in that category will increase the part that corresponds to the other category;

d) If the victim should not have children or spouse or permanent companion, the compensation for the pecuniary damages will be delivered to his or her parents; and

e) If there are no next of kin in any of the categories defined in the above subparagraphs, the compensation must be paid to the heirs in keeping with the domestic inheritance laws.

311. Lastly, regarding the State's request to forward to the Court an "actuarial study," the Court recalls that, under Article 41(1) of the Court's Rules of Procedure, the opportune procedural moment for the State to submit observations on the claims for reparation made by the Commission and the representatives, and to forward evidence in this regard, is with the answering brief.

D.3. Costs and expenses

D.3.1. Arguments of the parties

312. The representatives asked the Court to establish, in equity, an amount that it considered appropriate for costs and expenses, taking into consideration the expenses incurred by the victims' representatives during the national and international litigation. They clarified that, due to the passage of time, they do not have all the documents that authenticate the expenses incurred during the processing of the case, which include: airplane tickets, accommodation, fees, telephone calls, computer, internet and fax services, and remittances by courier from Rabinal, Guatemala, to Washington, D.C., and San José. In addition, in their final written arguments, the representatives asked the Court to order an amount of US$12,040.99 for the expenses incurred during the visit to Costa Rica for the public hearing held in this case. They also asked the Court to take into account that other people have assisted in the litigation of the instant case.

313. The State indicated that the representatives had not presented documentation to authenticate their claims for costs and expenses. It also affirmed that, since May 12, 2008, and on repeated occasions, it had expressed its willingness to reach a friendly settlement, but the petitioners had not accepted this offer. Therefore, it asked the Court not to establish an amount for costs and expenses in favor of the victims in this case.

D.3.2. Considerations of the Court

314. As the Court has indicated, costs and expenses form part of the concept of reparation,[371] because the activity deployed by the victims in order to obtain justice, at both the national and the international level, entails expenses that must be compensated when the State's international responsibility has been declared by a guilty verdict. Regarding their reimbursement, the Court must make a prudent assessment of their scope, which includes the expenses incurred before the authorities of the domestic jurisdiction, and also those generated during the proceedings before this Court, taking into account the circumstances of the specific case and the nature of the international jurisdiction for the protection of human rights. This assessment can be made based on the principle of equity and taking into consideration the expenses indicated by the parties, provided that their *quantum* is reasonable.

315. First, the Court considers it pertinent to clarify that the friendly settlement agreements mentioned in Articles 48(1)(f), 49, and 50(1) of the American Convention are optional procedural mechanisms, and the petitioner before the inter-American system has no obligation to accept an agreement offered by the State. This is revealed clearly by the conditional tense used in the said Articles 49 and 50 of the Convention.[372]

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[371] *Cf. Case of Garrido and Baigorria v. Argentina. Reparations and costs, supra,* paras. 79 to 83, and *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador, supra*, para. 328.

[372] Article 49 of the Convention establishes: "[i]f a friendly settlement has been reached in accordance with paragraph 1.f of Article 48, the Commission shall draw up a report, which shall be transmitted to the petitioner and to the States Parties to this Convention, and shall then be communicated to the Secretary General of the Organization of American States for publication. This report shall contain a brief statement of the facts and of the solution reached. If any party in the case so requests, the fullest possible information shall be provided to it."

Article 50(1) of the Convention stipulates: "[i]f a settlement is not reached, the Commission shall, within the time limit established by its Statute, draw up a report setting forth the facts and stating its conclusions. If the report, in whole or in part, does not represent the unanimous agreement of the members of the Commission, any member may

316. Second, the appropriate procedural moment for the representatives to submit their claims for reparations for the victims is the pleadings and motions brief. Therefore, the Court will not take into account the request made by the representatives to include the expenses incurred by other persons when determining the amount for costs and expenses (*supra* para. 312). Also, the Court observes that the representatives did not forward vouchers for expenses incurred during the processing of the case before the Guatemalan jurisdiction or before the Inter-American Commission. However, in their final written arguments, the representatives updated the amount requested with the expenses incurred to attend the public hearing convened by the Court in this case, which is completely admissible. To this end, the representatives presented details of the expenses incurred and attached invoices and receipts to prove them. These expenses amount to approximately US$12,017.47.[373] Nevertheless, the Court notes that the vouchers forwarded by the representatives correspond to expenses incurred during the transfer and stay in Costa Rica of 21 persons: four people from the ADIVIMA legal assistance team, the representatives in this case, two presumed victims deponents, expert witness Michael Paul Hermann Mörth, the Mayan leader Juan de Dios Garcia Xajil, and 13 others. In this regard, since it has not been able to prove the strict need for the presence of the last 13 people before the Court for the litigation of this case, the cost of their trip to Costa Rica will not be considered as part of the expenses requested by the representatives.

317. The Court also observes that the processing of this case at the domestic and international level has taken approximately 20 years and the victims and their representatives have been contributing their labor during this time. The Court considers it reasonable that, during this time, they have incurred litigation, communication, transportation and supply expenses, among others. Therefore, the Court finds, in equity, that the State must pay, for costs and expenses, the sum of US$50,000.00 (fifty thousand United States dollars). This amount must be delivered directly to the representatives of the victims. The Court also notes that, during the procedure for monitoring compliance with this Judgment it may order the reimbursement to the victims or their representatives, by the State, of the reasonable expenses they incur during that procedural stage.

D.4 Method of compliance with the payments ordered

318. The payment of the compensation for pecuniary and non-pecuniary damage established in this Judgment shall be delivered directly to the persons indicated herein, within two years of notification of this Judgment. Fifty per cent of the payment may be delivered during the first year to each victim, while the remaining sum may be delivered during the second year, based on the provisions of paragraphs 309 and 310 of this Judgment. In case of the death of any of the victims before the payment of the respective amounts, these will be paid to their heirs, in keeping with the applicable domestic laws.

319. The reimbursement of costs and expenses established in this Judgment shall be made directly to the persons indicated herein, within one year of notification of this Judgment, in the terms of paragraph 317 hereof.

320. The State must comply with the pecuniary obligations by payment in United States dollars or the equivalent in national currency, using the exchange rate in force on the New

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attach to it a separate opinion. The written and oral statements made by the parties in accordance with paragraph 1.e of Article 48 shall also be attached to the report."

[373] This amount was calculated based on the receipts forwarded to the Court by the representatives.

York Stock Exchange the day before the payment to make the respective calculation.

321. If, for causes that can be attributed to the beneficiaries of the compensation or their heirs, it is not possible to pay the amounts established within the indicated time frame, the State shall deposit the said amount in their favor in an account or certificate of deposit in a solvent Guatemalan financial institution, in United States dollars, and in the most favorable financial conditions allowed by law and banking practice. If, after ten years, the allocated amount has not been claimed, the sum will be returned to the State with the accrued interest.

322. The amounts allocated in this Judgment for pecuniary and non-pecuniary damage and reimbursement of costs and expenses must be delivered to the beneficiaries integrally, as established in this Judgment, without any reductions arising from eventual taxes or charges.

323. If the State fall into arrears with the payments, it must pay interest on the amount owed corresponding to bank interest on arrears in Guatemala. Interest on arrears shall begin to be calculated following the expiry of the two-year time frame after notification of this Judgment.

XV
OPERATIVE PARAGRAPHS

324. Therefore,

THE COURT

DECIDES,

unanimously,

1. To accept the acknowledgement of international responsibility made by the State, in the terms of paragraphs 17 to 28 of the Judgment.

2. To admit the preliminary objection filed by the State concerning the lack of temporal competence of the Inter-American Court of Human Rights to examine the human rights violations that occurred before the State had recognized the temporal competence of the Court, in the terms of paragraphs 29 to 39 of this Judgment.

DECLARES,

unanimously that,

1. The State is responsible for the violation of the rights recognized in Articles 3, 4(1), 5(1), 5(2) and 7(1) of the American Convention on Human Rights, in relation to Article 1(1) thereof, and for failing to comply with the obligations established in Article I(a) of the Inter-American Convention on Forced Disappearance of Persons, to the detriment of Ramona Lajuj,

Manuel Chen Sánchez, Aurelia Alvarado Ivoy, Cornelio Osorio Lajúj, Demetria Osorio Tahuico, Fermin Tum Chén, Francisco Chen Osorio, Francísco Sánchez Sic, Héctor López Osorio, Jerónimo Osorio Chen, Luciano Osorio Chen, Pablo Osorio Tahuico, Pedro Chén Rojas, Pedro López Osorio, Pedro Osorio Chén, Sebastiana Osorio Tahuico and Soterio Pérez Tum and, in addition to those articles, for the violation of the right established in Article 19 of the American Convention, in relation to Article 1(1) thereof, to the detriment of Manuel Chen Sánchez, as indicated in paragraphs 112 to 127 of this Judgment.

2. The State is responsible for the violation of the rights recognized in Articles 5(1), 11(1) and 11(2) of the American Convention on Human Rights, in relation to Article 1(1). thereof, to the detriment of María Eustaquia Uscap Ivoy, in the terms of paragraphs 131 to 135 of this Judgment.

3. The State is responsible for the violation of the rights recognized in Article 5(1) of the American Convention on Human Rights, in relation to Articles 6, 17 and 1(1) thereof, to the detriment of María Eustaquia Uscap Ivoy, and for the violation of the right recognized in Article 5(1) of the American Convention, in relation to Articles 6, 17, 19 and 1(1) thereof, to the detriment of Agustín Chen Osorio, Celestina Uscap Ivoy, Cruz Pérez Osorio, Froilan Uscap Ivoy, Jesús Tecú Osorio, José Osorio Osorio, Juan Chen Chen, Juan Chen Osorio, Juan Pérez Osorio, Juan Uscap Ivoy, Juana Chen Osorio, Pedro Sic Sánchez, Silveria Lajuj Tum, Tomasa Osorio Chen, Florinda Uscap Ivoy and Juan Osorio Alvarado, as indicated in paragraphs 139 to 150 of the Judgment.

4. The State is responsible for the violation of the right recognized in Article 5(1) of the American Convention on Human Rights, in relation to Articles 12(1) and 1(1) thereof, to the detriment of the members of the community of Río Negro who live in the Pacux settlement, as indicated in paragraphs 153 to 165 of this Judgment.

5. The State is responsible for the violation of the right recognized in Article 22(1) of the American Convention on Human Rights, in relation to Article 1(1) thereof, to the detriment of the survivors of the Río Negro massacres who live in the Pacux settlement, as indicated in paragraphs 172 to 184 of this Judgment.

6. The State is responsible for the violation of the rights recognized in Articles 8(1) and 25(1) of the American Convention on Human Rights, in relation to Article 1(1) thereof, as well as for non-compliance with the obligations established in Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture, Article I(b) of the Inter-American Convention on Forced Disappearance of Persons, and Article 7(b) of the Inter-American Convention for the Prevention, Punishment and Eradication of Violence against Women, to the detriment of the victims in the instant case, in their respective circumstances, as established in paragraphs 189 to 237 of this Judgment.

7. The State is responsible for the violation of the right recognized in Article 5(1) of the American Convention on Human Rights, in relation to Article 1(1) of this instrument, to the detriment of survivors of the Río Negro massacres, as indicated in paragraphs 240 to 244 of this Judgment.

8. The State is not responsible for the violation of the right recognized in Article 16 of the American Convention on Human Rights, as established in paragraphs 167 and 168 of this Judgment.

AND ORDERS,

unanimously that,

1. This Judgment constitutes *per se* a form of reparation.

2. The State must investigate, promptly, seriously and effectively the facts that gave rise to the violations declared in this Judgment, in order to prosecute and, eventually, punish those presumably responsible, in the terms of paragraphs 257 to 262 of this Judgment.

3. The State must conduct an effective search for the whereabouts of the victims who were forcibly disappeared; draw up a meticulous plan to search for the members of the Río Negro community who were forcibly disappeared, and to find, exhume and identify the persons presumably executed, and to determine the cause of death and possible prior injuries, and to create a genetic information bank, as established in paragraphs 265 to 271 of this Judgment.

4. The State must make the publications indicated in paragraphs 274 and 275 of this Judgment.

5. The State must hold a public act of acknowledgement of international responsibility for the facts of this case, as established in paragraphs 277 and 278 of this Judgment.

6. The State must put in place the infrastructure and provide basic services in favor of the members of the community of Río Negro who reside in the Pacux settlement, as established in paragraph 284 of this Judgment.

7. The State must design and implement a project to rescue the Maya Achí culture, as established in paragraph 285 of this Judgment.

8. The State must provide medical and psychological treatment to the victims in the instant case, as indicated in paragraphs 287 to 289 of this Judgment.

9. The State must pay the amounts established in paragraphs 309 and 317 of this Judgment, as compensation for pecuniary and non-pecuniary damage, and as reimbursement of costs and expenses, in the terms of the said paragraphs and of paragraphs 318 to 323 of this Judgment.

10. The State must establish an appropriate mechanism to ensure that other members of the community of Río Negro may subsequently be considered victims of any of the human rights violations declared in this Judgment, and receive individual and collective reparations such as those ordered in this Judgment, in accordance with paragraphs 251 to 253 hereof.

11. The State must, within one year of notification of this Judgment, provide the Inter-American Court of Human Rights with a report on the measures adopted to comply with it.

12. The Court will monitor full compliance with this Judgment, in exercise of its attributes and in compliance with its obligations under the American Convention, and will consider this case concluded when the State has complied fully with all its terms.

Done, at San José, Costa Rica, on September 4, 2012, in the Spanish and English languages, the Spanish version being authentic.

Diego García Sayán
President

Manuel Ventura Robles

Leonardo A. Franco

Rhadys Abreu Blondet

Alberto Pérez Pérez

Eduardo Vio Grossi

Pablo Saavedra Alessandri
Secretary

So ordered,

Diego García Sayán
President

Pablo Saavedra Alessandri
Secretary

ANNEX I. PERSONS PRESUMABLY EXECUTED DURING THE MASSACRE IN THE CHAPEL OF RÍO NEGRO AND DURING THE EXECUTIONS OF JULY 8, 1980[1]

1. Calixto Chen
2. Francisco Túm Uscap
3. Jesus Alvarado Ixpatá
4. Maxima Chén
5. Santos Oswaldo López Ixpatá
6. Mateo Uscap Chén
7. Mateo Ixpatá Jerónimo
8. Valeriano Osorio Chén
9. Evaristo Osorio

ANNEX II. PERSONS PRESUMABLY EXECUTED DURING THE MASSACRE OF XOCOC

1. Avelino Sánchez Chen	2. Juana Ismalej
3. Agustin Osorío	4. Laureano Tecú
5. Agustín Osorio Sánchez	6. Lorenzo Osorio
7. Alberto Lajúj Túm	8. Lorenzo Osorio Chén
9. Alejandro Sanchez Chén	10. Lucas Osorio Chen
11. Andrés Chén Osorio	12. Luciana Iboy Osorio
13. Andres Sanchez Ixpatá	14. Luis Iboy Sánchez
15. Andres Tun Sanchez	16. Luis Osorio Chén[2]
17. Antonio Chen	18. Magdalena Osorio Sánchez
19. Balvino Uscap Ivoy	20. Martin López Osorio
21. Camila Chen Chen	22. Martína Osorio Chen
23. Cayetano Osorio Chen	24. Mateo Osorío
25. Ciriaco Lopez Chen	26. Matias Tecú Chen
27. Ciriaco Sánchez Osorio	28. Nicolas Chén
29. Clemente Sanchez Osorio	30. Pablo Chen
31. Crispín Tún Ivoy	32. Pablo Osorio Chén
33. Damacio Osorio Ixpatá	34. Pablo Tun Chen
35. Domingo Osorio Sic	36. Pascual Sánchez Osorio
37. Doroteo Osorio	38. Patricia Chen Chén
39. Esteban Chen Tecú	40. Patrocinio Osorio Chen
41. Esteban Osorio Burrero	42. Pedro Iboy Chen
43. Evaristo Alvarado	44. Pedro Iboy Osorio
45. Feliciano Chen	46. Pedro Ivóy Osorio

[1] For the identification of the persons with the same name, the dates of birth and/or death are indicated.

The persons mentioned in Annexes I to V were not declared victims in the instant case. The Court includes their names only so that the State may proceed as ordered in paragraphs 268 to 271 of the Judgment.

[2] Born on March 15, 1954, and died on February 13, 1982.

47. Felipe Sanchez Osorio	48. Raymundo Osorio Yxpatá
49. Felisa Osorio Chen	50. Rosendo Sic
51. Felix Chén	52. Rufino Chen Chen
53. Felix Osorio	54. Ruperto Yboy Chen
55. Fernando Lajúj Toj	56. Santiago Lajúj Jerónimo
57. Gregorio Osorio	58. Santiago Sanchez Chen
59. Gregorio Osorio Lajúj	60. Secundíno Uscap Chén
61. Guillermo Osorio Lajúj	62. Soterio Sánchez Chén
63. Guillermo Sanchez	64. Tereso Osorio Chen
65. Gustavo Osorio Sic	66. Timoteo Chen Sanchez
67. Hilaria Sic Sic	68. Tomas Lajuj Chén
69. Ignacio Chen Osorio	70. Toribio Lajuj Chén
71. Jesus Osorio	72. Valentin Perez Gonzalez
73. Jesusa Ivoy Sanches	74. Venancio Sanchez
75. José Virgilio Sucup Sucup	76. Vicente Chén Tecú
77. Juan Chén Ixpatá	78. Victor Lajuj Chen
79. Juan Cuxúm Sic	80. Victoriano Cahuec López
81. Juan Pablo Osorio	

ANNEX III. PERSONS PRESUMABLY EXECUTED DURING THE MASSACRE ON CERRO PACOXOM

1. Adela Lajuj Osorio	2. Juana Ivoy Sánchez
3. Adelia Osorio Ivoy	4. Juana Nicha Sánchez Pérez
5. Alberta Ivoy Sanchez	6. Juana Osorio Chén[3]
7. Alejandra Osorio Chen	8. Juana Osorio Chén[4]
9. Ana Maria Chen Osorio	10. Juana Osorio Sánchez
11. Anastacía Chen Sánchez	12. Juana Perez Hernandez
13. Anastacia Osorio Iboy	14. Juana Tecú Osorio
15. Anastacia Tecú Sánchez	16. Juana Tum Sanchez
17. Anastacio Tecú Osorio	18. Julia Martina Chen Sánchez
19. Andelez Chen Osorio	20. Julia Osorio
21. Andres Iboy	22. Julia Sanchez Chen
23. Angela Sánchez Chén	24. Juliana Chen
25. Aníbal Tum Osorio	26. Juliana Iboy Sánchez
27. Antonia Ismalej Cuxúm	28. Juliana Uscap Chen
29. Antonio Chén Iboy	30. Justa Osorio Sic
31. Arcadio Chen Osorio	32. Leocadio Tum Sánchez
33. Arcadio Sánchez Gonzalez	34. Lorenzo Osorio Sic
35. Arnulfo Osorio Chen	36. Lucia Osorio Mendoza

[3] Born on May 6, 1956, and died on March 13, 1982.

[4] Born on July 31, 1968, and died on March 13, 1982.

37. Basilio Osorio Sánchez	38. Lucia Sánchez Pérez
39. Bernarda Chén Osorio	40. Lucía Sánchez Iboy
41. Bonifacio López Osorio	42. Luis Osorio Chén[5]
43. Candelaria Pérez Osorio	44. Magdalena Lajuj Ruiz
45. Carmelina Cuxum Lajuj	46. Magdalena Osorio Chén
47. Carmen Osorio Chén	48. Manuel Osorio Chen
49. Catarina Ivoy Sánchez	50. Marcela Chen
51. Catarino Chen Tecú	52. Marcela Ivoy Osorio
53. Cesario Osorio Ivoy	54. Marcela Osorio Chen
55. Ciriaca Chen Chen	56. Marcelo Tecú Osorio
57. Ciriaca Osorio Osorio	58. Margarita Chen Chen
59. Clementina Osorio	60. Margarita Chen Uscap
61. Cleotilde Osorio Chen	62. Margarita Sánchez
63. Crispina Chen Sánchez	64. Margarita Sánchez Chén
65. Cristina Sánchez González	66. María del Rosario Osorio Chen
67. Delfina Chen Osorio	68. Maria Dolores Chén Osorio
69. Demetria Osorio Lajúj	70. María Luiza Osorio Sánchez
71. Demetrio Osorio Chen	72. Maria Pedrina Gonzalez Tecú
73. Dominga Chen	74. Martha Julia Chen Osorio
75. Dominga Ivoy Chen	76. Matilde Osorio Chen
77. Dominga Sanchez Chén	78. Micaela Osorio Osorio
79. Dominga Tecú Osorio	80. Miguel Angel Pérez Osorio
81. Dorotea Chen Osorio	82. Miguel Osorio Chen
83. Elena Osorio Chen	84. Narcisa Chén
85. Eligia Chén Osorio	86. Narcisa Chen Osorio
87. Emiliano Pérez Osorio	88. Narcisa Osorio López
89. Emilio Sic Chen	90. Nazaria Sanchez
91. Enriqueta Chen Iboy	92. Nicolas Osorio Sánchez
93. Esperanza Pérez Ivoy	94. Pablo Osorio Sánchez
95. Estefana Tecú León	96. Pablo Sánchez
97. Eugenia Osorio Chen	98. Patrocinio Tecú León
99. Eugenia Teletor Perez	100. Paula Chén
101. Eulalia Chen Osorio	102. Paula Perez
103. Eusebia Osorio	104. Paulina Iboy Osorio
105. Eusebio Chen López	106. Pedrina Osorio Pérez
107. Felipa Osorio Chén	108. Petronila Cahuec Osorio
109. Felipe Chen	110. Petronila Osorio Iboy
111. Felisa Tun Osorio	112. Petronila Sánchez
113. Floridalma Elvira Sanchez Chen	114. Reginaldo Sánchez González
115. Florinda Sánchez Chen	116. Rosa Sánchez Osorio

[5] Born on June 21, 1977, and died on March 13, 1982.

117. Francisco Sánchez López	118. Sabina Tecú Osorio
119. Francisco Síc Chen	120. Santa Eduarda Chen Chen
121. Gabina Sic Siana	122. Santos Ines Sánchez Pérez
123. Gabriel Tun Osorio	124. Santiago Chen Osorio
125. Gilberto Osorio Chén	126. Santos Joaquina Osorio Mendoza
127. Gregoria Alvarado Gonzalez	128. Santos Sánchez López
129. Gregorio Chén Chén	130. Silveria Alvarado Ivoy
131. Guillerma Osorio Chén	132. Silveria Osorio Ivoy
133. Herlinda Lajuj Ivoy	134. Silveria Sic Sánchez
135. Higinia Chén Ixpatá	136. Silveria Osorio Chen
137. Hilaria Chen Chen	138. Timotea Osorio Chen
139. Hortensia Uscap Teletor	140. Tomasa López Ixpatá
141. Irma Osorio Ivoy	142. Tomasa Osorio Chen
143. Isabel Osorio	144. Tomasa Tecú Osorio
145. Isabel Osorio Chen	146. Toribia Cuxúm Osorio
147. Isabel Sanchez Chen	148. Tranquilina Osorio Chen
149. Israel Ivoy Sánchez	150. Ubaldo Ivoy Sánchez
151. Jaime Tecú Osorio	152. Valeria Sic Perez
153. Javier Chen Chen	154. Vicenta Chen Osorio
155. Jesus Tecú León	156. Vicenta Ivoy Chén
157. Jesusa Sánchez Pérez	158. Vicenta Lajuj Chén
159. José Chen Uscap	160. Vicenta Tecú Sánchez
161. Juán Chén Tecú	162. Victor Osorio Chen
163. Juan Ivoy Sánchez	164. Victoriana Osorio Sic
165. Juana Chen Osorio	

ANNEX IV. PERSONS PRESUMABLY EXECUTED DURING THE MASSACRE OF LOS ENCUENTROS

1. Andrea Sánchez Síc	2. Mariano Alvarado Ivoy
3. Angela Sánchez Sic	4. Marina Chen Lajuj
5. Benita Osorio Osorio	6. Marta Elena Chen Ivoy
7. Carlos Chen Osorio	8. Martina Chén Chén
9. Cristina Lajuj Osorio	10. Martina Rojas
11. Daniel Chen Osorio	12. Paula Osorio Chén
13. Eulalia Pérez Túm	14. Paulina Chén Osorio
15. Gregoria Chen Osorio	16. Pedrina Lajuj Ivoy
17. Gregoria Lajuj Toj	18. Pedro Chen
19. Hilaria Chén Iboy	20. Petrona Chen
21. Joaquin Chen Ivoy	22. Petronilo Osorio Tahuico
23. Jose Osorio Valey	24. Pilar Chen Ivoy
25. Juam Osorio Chen	26. Refugia Sic Siana
27. Juan Osorio Lajuj	28. Roberto López Chén
29. Juana Chen Osorio	30. Roman Osorio Chen
31. Juliana Lajúj Túm	32. Rosa Alvarado Ivoy
33. Julio Chén Ivoy	34. Santos Timoteo Lajuj Tum
35. Magdalena Chen	36. Sebastiana Ivoy Sic
37. Marcelo Pérez Tum	38. Tomas Osorio Tahuico
39. María Dolores Sic Siana	40. Vacilio Laju Sanches
41. Maria López López	42. Victoriana Yvoy Osorio
43. Maria Margarita Túm Iboy	44. Vilma López Chen
45. María Rafaela Tahuico Morales	

ANNEX V. PERSONS PRESUMABLY EXECUTED DURING THE MASSACRE OF AGUA FRÍA

1. Alejandro Sic Lajuj	2. Julio Enríquez López
3. Ana Sánchez Sic	4. Leonarda Sic Hernández
5. Anastacia Cuxum Lajuj	6. Leonardo Sic Sic
7. Angela Enriquez Mendoza	8. Lucía Sic Sánchez
9. Antonia Sic Alvarado	10. Lucia Sic Sic
11. Antonio Sic Sis	12. Luisa Sánchez Chen
13. Benito Sic Alvarado	14. Marcelo Sic Ixquem
15. Castulo Sic Sis	16. Margarita Sánchez Ivoy
17. Catalina Rafael Tepáz	18. María Celestina Síc Lajuj
19. Ciriaca Pérez Osorio	20. María Crúz Lajuj Alvarado
21. Cristina Sic Alvarado	22. Maria Felipa Sic Sic
23. Cruz Alvarado Sic	24. María Herlinda Sic Enriquez
25. Cruz Sánchez Chen	26. María Isabel Sic Sic
27. Cruz Sic Lajuj	28. Maria Leonarda Sic Sic (Leona Sic Sic)
29. Cruz Sic Sic	30. María Mercedes Cuxúm Sánchez
31. Demetrio Síc Alvarado	32. María Ramona Síc Síc
33. Eduardo Cuxum Sánchez	34. Maria Sic Cahuec
35. Elena Sic Lajuj	36. Matilde Sic Lajuj
37. Emiliana Sic Cuxum	38. Nemesia Hernández López
39. Eusebia Sic Ysmalej	40. Nolberto Sánchez Ivoy
41. Eusebio de Jesús Cuxúm Sánchez	42. Pablo Síc Síc
43. Eusebio Sic Lajuj	44. Pascual Sic Lajuj
45. Fermín Sic Sis	46. Petronila Sanchez Osorio
47. Fermina Alvarado González	48. Rafaela Ivoy Uscap
49. Francisca Cuxum Sanchez	50. Román Sic Alvarado
51. Francisca Lopez	52. Rosa Cuxúm Alvarado
53. Francisca Sic Alvarado	54. Rosa Rafael
55. Francisca Sic Osorio	56. Santiago Sanchez
57. Francisco Rafael Cuxúm	58. Santiago Sic Rafael
59. Francisco Sic Ismalej	60. Santos Elena Sic Lajuj
61. Gregoria Sic Alvarado	62. Santos Iberta Cuxum Sánchez
63. Higinia Sic Sis	64. Saturnino Sic Sic
65. Inocente Sánchez Sic	66. Sebastian Sic Alvarado
67. Ismael Sic Cuxúm	68. Serapia Rafael Lajuj
69. Jesús Sic Osorio	70. Serapia Sic Sic
71. Jorge Síc Hernández	72. Tereso Sic Alvarado
73. José Sic	74. Tereso Sic Cuxum
75. Juán Osorio Chen	76. Tereso Sic López

77. Juan Sic	78. Tomás Cuxúm Lajuj
79. Juán Sic Sic	80. Tomasa Rafael Lajuj
81. Juana Cuxum Lajuj	82. Valerio Sic Isquém
83. Juana Sic Enriquez	84. Vicenta Sánchez Ivoy
85. Juana Túm Sánchez	86. Victor Sic Sic
87. Juliana Chén Alvarado	88. Zenon Sic Hernández
89. Juliana Osorio Chen	

ANNEX VI. SURVIVORS

1. Abelina Iboy Osorio	2. José Osorio Sic
3. belino Sic Iboy	4. Josefa Ixpatá Chen
5. Abundio Osorio Vargas	6. Juan Chen[6]
7. Adela Osorio Sic	8. Juan Chen Chen[7]
9. Agripina Lajuj Alvarado	10. Juan Chen Chen[8]
11. Agustín Chen Sánchez	12. Juán Chén Osorío
13. Agustín Iboy Osorio	14. Juan Osorio Alvarado
15. Agustina Chen	16. Juan Osorio Chen
17. Agustina Osorio Yxpatá	18. Juan Osorío Ixpatá
19. Alberta Alvarado Sic	20. Juan Osorio Lajuj
21. Alberta Chen	22. Juan Osorio Sánchez
23. Alberta Uscap Chen	24. Juan Sánchez
25. Alberto Chen	26. Juan Sanchez Osorio
27. Alberto Sánchez Chén	28. Juan Uscap Ivoy
29. Alejandra Chén Chén	30. Juana Chen Ixpatá
31. Alejandra Mendoza Sic	32. Juana Chen Osorio
33. Alejandra Uscap Chen	34. Juana Enriquez López
35. Alejandro Chen González	36. Juana Lajuj Osorio
37. Alejandro Lajuj Alvarado	38. Juana Osorio Chen[9]
39. Alejandro Lajuj Chen	40. Juana Osorio Sánchez
41. Alfonso Osorio Osorio	42. Juana Osorio Síc
43. Alfredo Chen Iboy	44. Juana Osorio Vargas
45. Alfredo Chen Uscap	46. Juana Sanchez Chen
47. Alfredo Lajuj Osorio	48. Juana Síc Sís
49. Ambrocia Mendoza Sic	50. Juana Túm Cahuec
51. Ana Iboy Sánchez	52. Juana Tun Chen
53. Anastacia Alvarado Sic	54. Julia Lajúj Chén
55. Anastacio Tun Chen	56. Julia Maria Osorio Chén
57. Anastacio Tun Sánchez	58. Julía Síc
59. Anastasio Osorio Chen	60. Julián Sanchez Chen
61. Andrés Sánchez Chen	62. Julian Sanchez Osorio
63. Angel Chen Pérez	64. Julian Síc López
65. Angela Alvarado Chén	66. Juliana Alvarado González
67. Angela Mendoza Sic	68. Juliana Chen Ismalej
69. Angela Osorio Sánchez	70. Juliana Yxpata
71. Anibal Sánchez Uscap	72. Julio Chen y Chen
73. Anselmo Osorio Lajuj	74. Julio Tecú Chén
75. Antonia Osorio Pérez	76. Justa Lajuj Jerónimo
77. Antonia Osorio Sánchez[10]	78. Justina Chén Chén
79. Antonia Osorio Sanchez[11]	80. Laura Tecú Osorio

[6] Born on March 27, 1927.

[7] Born on December 28, 1957.

[8] Born on March 28, 1971.

[9] Born on March 8, 1975.

[10] Born on February 28, 1954.

81. Antonio Osorio Lajuj	82. Leona López
83. Antonio Sánchez Sánchez	84. Leona Sic Sic
85. Ascención Chen Chen	86. Leonardo Sánchez Sánchez
87. Ascención Chén Iboy	88. Leoncía Sanchez Chen
89. Ascención Osorio Túm	90. Luciano Alvarado Síc
91. Ascención Salvador Chen Chen	92. Luis Enrique Osorio Chen
93. Aurelia Alvarado Sic	94. Luis Osorio Sánchez
95. Bartolomé Chen Tum	96. Luisa Lajuj Osorio
97. Basilia Osorio Osorio	98. Luisa Uscap Chen
99. Baudilio Alvarado Sic	100. Manuel Sánchez Chén
101. Belia Antonia Iboy Alvarado	102. Manuel Sic
103. Benedicto Iboy Sánchez	104. Manuela Chen Osorio
105. Benedicto Román Sánchez	106. Marcelo Osorio Osorio
107. Benita Ismalej Sic	108. Marcial Osorio Ixpatá
109. Benito Osorio Vargas	110. Marcos Osorio Sánchez
111. Benito Pérez Sic	112. Marcos Síc Ismalej
113. Bernarda Chen Ismalej	114. Margarita Osorio
115. Bernarda Lajuj Osorio	116. Margarita Siana
117. Bernardino Lajuj Jerónimo	118. Maria Chén Sanchez
119. Bernardo Chén Chén	120. Maria del Carmen Lajuj Toj
121. Bernardo Osorio Iboy	122. Maria Elena Chen Osorio
123. Bernardo Osorio Sánchez	124. María Elena Osorio Alvarado
125. Berta Sánchez Chen	126. Maria Elena Túm Sánchez
127. Brígido Chén Ivoy	128. María Estela Sánchez Sánchez
129. Bruna Pérez Osorio	130. María Eustaquia Uscap Ivoy
131. Buenaventura Lajuj Túm	132. Maria Gilberta Lajuj Tum
133. Candelaria León Rodríguez	134. Maria Guadalupe Pérez Alvarado
135. Candelaria Sánchez Chen	136. María Hilda Chen
137. Candelaria Sánchez Tum	138. Maria Ixpatá Chén
139. Candelario Sic López	140. Maria Ixpatá López
141. Carlos Chen Osorio	142. María Magdalena Osorio Sanchez
143. Carlos Roberto Cuxúm López	144. Maria Mendoza Sic
145. Carlos Sánchez Mendoza	146. Maria Osorio Chen
147. Carmelina Chen Pérez	148. María Osorio Yxpatá
149. Carmen Alvarado Sic	150. María Pérez Alvarado
151. Carmen Sánchez Chen	152. María Romualda Osorio Chen
153. Catalina Iboy Sánchez	154. Maria Sanchez Osorio
155. Catalina López Osorio	156. María Teresa Osorio Osorio
157. Catarina Chen Osorio	158. María Tum Chén
159. Catarina Osorio Osorio	160. Mariano Sanchez
161. Catarina Sánchez Jerónimo	162. Mariano Sic
163. Celestina Osorio Ixpatá	164. Marina Sánchez Ixpatá
165. Celestina Uscap Ivoy	166. Mario Chén Rojas
167. Celso Cuxum Lajuj	168. Mario Sic Alvarado
169. Cesar Chén	170. Marío Túm Sánchez
171. Cipriano Chén Osorio	172. Marta Ivoy Lajuj
173. Ciriaca Osorio	174. Martina Osorio Chen
175. Ciriaco Osorio Chen	176. Martina Osorio Sánchez
177. Ciriaco Pérez	178. Matea Ivoy Chén

[11] Born on June 7, 1977.

179. Clara Chen Ivoy	180. Matea Toj
181. Clara Osorio Chen	182. Matias Osorio Sic
183. Clemente Lajuj Chen	184. Matilde Tún Chen
185. Clemente Uscap Teletor	186. Maura Chen Gonzalez
187. Cleotilde Sic Alvarado	188. Medardo Chén Túm
189. Cornelio Osorio Sánchez	190. Melecio Chén Osorio
191. Cristina Sánchez Uscap	192. Melecio Túm Sánchez
193. Cristina Tum Chen	194. Melesio Iboy Chén
195. Cristobal Osorio	196. Miliano Rafael Lajuj
197. Cristóbal Osorio Sánchez	198. Modesta Alvarado
199. Cruz Pérez Osorio	200. Modesta Chén
201. Cruz Sic Alvarado	202. Modesta Iboy Osorio
203. Cupertino Iboy Sánchez	204. Modesta Ivoy Sánchez
205. Damían Alvarado Chen	206. Modesto Cahuec Osorio
207. Daniel Ixpatá Alvarado	208. Modesto Osorio Lajuj
209. Daniel Osorio Chen	210. Narcísa Ivoy Osorio
211. David Ixpatá Alvarado	212. Nicolás Chen
213. Dominga Gonzalez Tecú	214. Pablo Chen
215. Dominga Síc Ruiz	216. Pablo Lajuj Chen
217. Domingo Lajúj Chén	218. Pablo Sánchez Chén
219. Dorotea Florentina Chen Chen	220. Pascual Chén Osorio
221. Dorotea Ivoy Sic	222. Patrocinia Sánchez Chén
223. Edgar Perez López	224. Paula Chen Túm
225. Efrain Osorio Chen	226. Paulina Chen Osorio
227. Eleodoro Osorio Sánchez	228. Paulina Ixpatá Chén
229. Emilio Sánchez Chen	230. Pedrina Sánchez Sic
231. Erlin Estuardo Chén Túm	232. Pedrina Vargas Ixpatá
233. Ermín Pérez	234. Pedro Alvarado López
235. Estanislao Ignacio Chen Chen	236. Pedro Osorio López
237. Estanislao Sic Hernández	238. Pedro Sic Sánchez
239. Esteban Mendoza Sic	240. Pedro Sic Sic
241. Eugenia Tum Sánchez	242. Pedro Uscap
243. Eusebia Pérez Osorio	244. Pio Sánchez Chén
245. Eusebio Sic Sic	246. Porfiria Chen Chen
247. Everildo Lajuj Ivoy	248. Prudencio Tum Ivoy
249. Fabian Chén Ivoy	250. Ramón Pérez Tecú
251. Fabiana Osorio Tum	252. Ramona Chen Uscap
253. Fabiana Túm Sanchez	254. Ramona Sanchez Chen
255. Faustino Perez Gonzalez	256. Ramona Uscap Túm
257. Felipa Osorio Tahuico	258. Reginaldo Sánchez Ixpatá
259. Felipa Sánchez Chén	260. Reina Isabel Osorio Tecú
261. Felipa Sic Sic	262. Ricardo Chen Ivoy
263. Felipa Tecú Chén	264. Roberto Chen Osorio
265. Felipe Lajuj Chén	266. Rodolfo Uscap Chén
267. Felipe Osorio Vargas	268. Rodrigo Sanchez Uscap
269. Felipe Uscap Chén	270. Rogelío Chen Rojas
271. Felísa Gonzalez Coloch	272. Rogelío Ivoy Sánchez
273. Felix Alvarado Sic	274. Romualdo Tum Sanchez
275. Fernando Osorio	276. Romualdo Tun Ivoy
277. Fidel Chen Chen	278. Ronaldo Sic Iboy
279. Florentina Sánchez Sánchez	280. Rosa Iboy Osorio

281. Francisca Cahuec Chen	282. Rosa Osorio Sánchez
283. Francisca Chén Ismalej	284. Rosalia Alvarado López
285. Francisca Chen Uscap	286. Rosalio Sánchez Cahuec
287. Francisca Lajuj Toj	288. Rosario Tahuico Osorio
289. Francisco Chén	290. Ruperto Túm Sánchez
291. Francisco Chén Osorio	292. Salvador de Jesus Chen Ivoy
293. Francisco Chen Sánchez	294. Sanfío Chen Tún
295. Francisco Osorio	296. Santiago Lajuj Jerónimo
297. Francisco Osorio Osorio	298. Santo Olegario Chen Siana
299. Francisco Sanchez Sic	300. Santos Eulogio Lajuj Alvarado
301. Froilan Uscap Ivoy	302. Santos Gabriel Uscap Teletor
303. Gabina Osorio Tún	304. Santos Joaquin Osorio Chen
305. Gabriel Sánchez Chén	306. Saturnina Chén Osorio
307. Genaro Sucup Lajuj	308. Saturnino Chen Uscap
309. Gilberta Tún Osorio	310. Sebastian Iboy Osorio
311. Gilberto Lajuj Sánchez	312. Sergio Rolando Chen Osorio
313. Gilberto Osorio Tecú	314. Servando Pérez Chén
315. Gonzalo Chen Uscap	316. Silveria Lajuj Tum
317. Gregoria Tum Ivoy	318. Silvería Uscap Chen
319. Gregorío Lajuj Chén	320. Silvestre Cuxúm Chen
321. Gregorío Sánchez Chen	322. Silvia Lajuj Sanchéz
323. Gregorio Sic Alvarado	324. Simona Sánchez Osorio
325. Guadalupe Salomon Chen Chen	326. Sotero Sic Rafael
327. Herla Bernarda Chen Siana	328. Teodora Chen
329. Herlinda Alvarado Chén	330. Teresa de Jesus López Alvarado
331. Herlinda Alvarado Sic	332. Teresa Pérez Sic
333. Hermelinda Sánchez Sánchez	334. Teresa Sánchez Sánchez
335. Hermenegildo Sánchez Chén	336. Timotea Lajuj López
337. Higinia Lopez Lopez	338. Timoteo Lajuj Túm
339. Hilaría Lajuj Sánchez	340. Tomás Alvarado Sic
341. Hilario Sic Ixquem	342. Tomás González Tecú
343. Hipólita Sánchez Chén	344. Tomasa Chén Tún
345. Ilda Sánchez Sánchez	346. Tomasa Jerónimo Amperez
347. Indalecio Alvarado Chén	348. Tomasa Osorio Chén
349. Isabel Lajuj Toj	350. Tomasa Sic Hernández
351. Isabel Osorio Chen	352. Tomasa Vargas Osorío
353. Isabel Osorio Tum	354. Valentina Mendoza Síc
355. Jaime Sánchez	356. Venancio Sánchez Uscap
357. Jerónimo Osorio Chen	358. Ventura Pérez González
359. Jesus Alvarado Chen	360. Vicente Lajúj Alvarado
361. Jesus Alvarado Síc	362. Victor Chén Uscap
363. Jesus Chén Chén	364. Victor Osorio Ixpatá
365. Jesús Osorio Chen	366. Victor Vicente Lajuj Toj
367. Jesús Tecú León	368. Victoria Cuxum Chen
369. Jesus Tecú Osorio	370. Victoriano Chén Osorio
371. Jesúsa Osorio Sánchez	372. Victoriano López Osorio
373. Joaquin Osorio Galeano	374. Victoriano Osorio Lajuj
375. José Luis Osorio Lajuj	376. Yanuario Sic Hernández
377. José María López Osorio	378. Yolanda Sánchez Uscap
379. José Mauricio Osorio Tecú	380. Ysabel Osorio Burrero
381. José Osorio Chen	382. Zoila Román Sánchez

383. Jose Osorio del Rosario

ANNEX VII. SURVIVORS WHO LIVE IN THE PACUX SETTLEMENT

1. Abelina Iboy Osorio	2. Joaquin Osorio Galeano
3. Abelino Sic Iboy	4. José Mauricio Osorio Tecú
5. Abundio Osorio Vargas	6. José Osorio Chen
7. Adela Osorio Sic	8. Jose Osorio del Rosario
9. Agustín Chen Sánchez	10. José Osorio Sic
11. Agustín Iboy Osorio	12. Josefa Ixpatá Chen
13. Agustina Chen	14. Juan Chen[12]
15. Agustina Osorio Yxpatá	16. Juan Chen Chen[13]
17. Alberta Alvarado Sic	18. Juan Chen Chen[14]
19. Alberta Chen	20. Juan Chén Osorío
21. Alberta Uscap Chen	22. Juan Osorio Alvarado
23. Alberto Chen	24. Juan Osorio Chen
25. Alberto Sánchez Chén	26. Juan Osorío Ixpatá
27. Alejandra Chén Chén	28. Juan Osorio Sánchez
29. Alejandra Uscap Chen	30. Juan Sánchez
31. Alejandro Chen González	32. Juan Sanchez Osorio
33. Alejandro Lajuj Chen	34. Juana Sanchez Chen
35. Alfredo Chen Iboy	36. Juana Chen Ixpatá
37. Alfredo Chen Uscap	38. Juana Lajuj Osorio
39. Ana Iboy Sánchez	40. Juana Osorio Chen[15]
41. Anastacio Tun Chen	42. Juana Osorio Sánchez
43. Anastacio Tun Sánchez	44. Juana Osorio Síc
45. Anastasio Osorio Chen	46. Juana Osorio Vargas
47. Andrés Sánchez Chen	48. Juana Túm Cahuec
49. Angela Alvarado Chén	50. Juana Tun Chen
51. Angela Osorio Sánchez	52. Julia Lajúj Chén
53. Anibal Sánchez Uscap	54. Julia Maria Osorio Chén
55. Anselmo Osorio Lajuj	56. Julía Síc
57. Antonia Osorio Pérez	58. Julian Sanchez Osorio
59. Antonia Osorio Sánchez[16]	60. Julian Síc López
61. Antonia Osorio Sanchez[17]	62. Juliana Chen Ismalej
63. Antonio Osorio Lajuj	64. Juliana Yxpata
65. Antonio Sánchez Sánchez	66. Julio Chen y Chen
67. Ascención Chen Chen	68. Justa Lajuj Jerónimo
69. Ascención Chén Iboy	70. Justina Chén Chén
71. Ascención Osorio Túm	72. Laura Tecú Osorio
73. Ascención Salvador Chen Chen	74. Leonardo Sánchez Sánchez
75. Aurelia Alvarado Sic	76. Leoncía Sanchez Chen
77. Bartolomé Chen Tum	78. Luis Enrique Osorio Chen
79. Basilia Osorio Osorio	80. Luis Osorio Sánchez
81. Baudilio Alvarado Sic	82. Luisa Uscap Chen

[12] Born on March 27, 1927.

[13] Born on December 28, 1957.

[14] Born on March 28, 1971.

[15] Born on March 8, 1975.

[16] Born on February 28, 1954.

[17] Born on June 7, 1977.

83. Belia Antonia Iboy Alvarado	84. Manuel Sánchez Chén
85. Benedicto Iboy Sánchez	86. Manuela Chen Osorio
87. Benedicto Román Sánchez	88. Marcelo Osorio Osorio
89. Benita Ismalej Sic	90. Marcial Osorio Ixpatá
91. Benito Osorio Vargas	92. Marcos Osorio Sánchez
93. Bernarda Chen Ismalej	94. Margarita Osorio
95. Bernarda Lajuj Osorio	96. Margarita Siana
97. Bernardino Lajuj Jerónimo	98. Maria Chén Sanchez
99. Bernardo Chén Chén	100. Maria Elena Chen Osorio
101. Bernardo Osorio Iboy	102. Maria Elena Osorio Alvarado
103. Bernardo Osorio Sánchez	104. Maria Elena Túm Sánchez
105. Berta Sánchez Chen	106. María Estela Sánchez Sánchez
107. Brígido Chén Ivoy	108. María Eustaquia Uscap Ivoy
109. Bruna Pérez Osorio	110. María Hilda Chen
111. Candelaria Sánchez Chen	112. Maria Ixpatá Chén
113. Candelaria Sánchez Tum	114. Maria Ixpatá López
115. Carlos Chen Osorio	116. María Magdalena Osorio Sanchez
117. Carlos Sánchez Mendoza	118. Maria Osorio Chen
119. Carmelina Chen Pérez	120. María Osorio Yxpatá
121. Carmen Alvarado Sic	122. María Pérez Alvarado
123. Carmen Sánchez Chen	124. Maria Sanchez Osorio
125. Catalina Iboy Sánchez	126. María Teresa Osorio Osorio
127. Catalina López Osorio	128. María Tum Chén
129. Catarina Chen Osorio (fallecida)	130. Mariano Sanchez
131. Catarina Osorio Osorio	132. Mariano Sic
133. Catarina Sánchez Jerónimo	134. Marina Sánchez Ixpatá
135. Celestina Osorio Ixpatá	136. Mario Chén Rojas
137. Celso Cuxum Lajuj	138. Marío Túm Sánchez
139. Cesar Chén	140. Marta Ivoy Lajuj
141. Cipriano Chén Osorio	142. Martina Osorio Chen
143. Ciriaca Osorio	144. Matea Ivoy Chén
145. Ciriaco Pérez	146. Matias Osorio Sic
147. Clara Chen Ivoy	148. Matilde Tún Chen
149. Clara Osorio Chen	150. Maura Chen Gonzalez
151. Clemente Uscap Teletor	152. Medardo Chén Túm
153. Cornelio Osorio Sánchez	154. Melecio Chén Osorio
155. Cristina Sánchez Uscap	156. Melesio Iboy Chén
157. Cristina Tum Chen	158. Melecio Túm Sánchez
159. Cristobal Osorio	160. Miliano Rafael Lajuj
161. Cristóbal Osorio Sánchez	162. Modesta Chén
163. Cruz Pérez Osorio	164. Modesta Iboy Osorio
165. Damían Alvarado Chen	166. Modesta Ivoy Sánchez
167. Daniel Ixpatá Alvarado	168. Modesto Cahuec Osorio
169. Daniel Osorio Chen	170. Nicolás Chen
171. David Ixpatá Alvarado	172. Pablo Chen
173. Dominga Gonzalez Tecú	174. Pablo Lajuj Chen
175. Domingo Lajúj Chén	176. Pablo Sánchez Chén
177. Dorotea Florentina Chen Chen	178. Pascual Chén Osorio
179. Dorotea Ivoy Sic	180. Patrocinia Sánchez Chén
181. Efrain Osorio Chen	182. Paula Chen Túm
183. Eleodoro Osorio Sánchez	184. Paulina Chen Osorio

185. Emilio Sánchez Chen	186. Paulina Ixpatá Chén
187. Erlin Estuardo Chén Túm	188. Pedrina Sánchez Sic
189. Ermín Pérez	190. Pedro Sic Sánchez
191. Estanislao Ignacio Chen Chen	192. Pedro Uscap
193. Eugenia Tum Sánchez	194. Pio Sánchez Chén
195. Eusebia Pérez Osorio	196. Porfiria Chen Chen
197. Everildo Lajuj Ivoy	198. Prudencio Tum Ivoy
199. Fabian Chén Ivoy	200. Ramón Pérez Tecú
201. Fabiana Osorio Tum	202. Ramona Chen Uscap
203. Fabiana Túm Sanchez	204. Ramona Sanchez Chen
205. Felipa Sánchez Chén	206. Ramona Uscap Túm
207. Felipa Tecú Chén	208. Reginaldo Sánchez Ixpatá
209. Felipe Lajuj Chén	210. Reina Isabel Osorio Tecú
211. Felipe Osorio Vargas	212. Ricardo Chen Ivoy
213. Felipe Uscap Chén	214. Roberto Chen Osorio
215. Felísa Gonzalez Coloch	216. Rodolfo Uscap Chén
217. Fernando Osorio	218. Rodrigo Sanchez Uscap
219. Fidel Chen Chen	220. Rogelío Ivoy Sánchez
221. Florentina Sánchez Sánchez	222. Romualdo Tum Sanchez
223. Francisca Cahuec Chen	224. Romualdo Tun Ivoy
225. Francisca Chén Ismalej	226. Ronaldo Sic Iboy
227. Francisca Chen Uscap	228. Rosa Iboy Osorio
229. Francisco Chén	230. Rosa Osorio Sánchez
231. Francisco Chén Osorio	232. Rosalio Sánchez Cahuec
233. Francisco Chen Sánchez	234. Rosario Tahuico Osorio
235. Francisco Osorio	236. Ruperto Túm Sánchez
237. Francisco Osorio Osorio	238. Salvador de Jesus Chen Ivoy
239. Francisco Sanchez Sic	240. Sanfío Chen Tún
241. Froilan Uscap Ivoy	242. Santiago Lajuj Jerónimo
243. Gabina Osorio Tún	244. Santo Olegario Chen Siana
245. Gabriel Sánchez Chén	246. Santos Gabriel Uscap Teletor
247. Gilberto Lajuj Sánchez	248. Saturnina Chén Osorio
249. Gilberto Osorio Tecú	250. Saturnino Chen Uscap
251. Gonzalo Chen Uscap	252. Sergio Rolando Chen Osorio
253. Gregoria Tum Ivoy	254. Servando Pérez Chén
255. Gregorío Lajuj Chén	256. Silvería Uscap Chen
257. Gregorío Sánchez Chen	258. Silvestre Cuxúm Chen
259. Guadalupe Salomon Chen Chen	260. Silvia Lajuj Sanchéz
261. Herla Bernarda Chen Siana	262. Simona Sánchez Osorio
263. Herlinda Alvarado Chén	264. Teodora Chen
265. Herlinda Alvarado Sic	266. Teresa Sánchez Sánchez
267. Hermelinda Sánchez Sánchez	268. Timotea Lajuj López
269. Hermenegildo Sánchez Chén	270. Timoteo Lajuj Túm
271. Higinia Lopez Lopez	272. Tomás González Tecú
273. Hipólita Sánchez Chen	274. Tomasa Jerónimo Amperez
275. Ilda Sánchez Sánchez	276. Tomasa Vargas Osorío
277. Indalecio Alvarado Chén	278. Tomasa Chén Tún
279. Isabel Lajuj Toj	280. Tomasa Osorio Chén
281. Ysabel Osorio Burrero	282. Valentina Mendoza Síc
283. Isabel Osorio Chen	284. Venancio Sánchez Uscap
285. Jaime Sánchez	286. Victor Chén Uscap

287. Jesus Alvarado Chen	288. Victor Osorio Ixpatá
289. Jesus Alvarado Síc	290. Victor Vicente Lajuj Toj
291. Jesús Chén Chén	292. Victoria Cuxum Chen
293. Jesús Osorio Chen	294. Victoriano López Osorio
295. Jesus Tecú Osorio	296. Yolanda Sánchez Uscap
297. Jesúsa Osorio Sánchez	298. Zoila Román Sánchez