

REPORT No. 6/14
CASE 12,788
MERITS
RESIDENTS OF THE VILLAGE OF CHICHUPAC AND NEIGHBORING COMMUNITIES,
MUNICIPALITY OF RABINAL
GUATEMALA

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April 2nd, 2014

I. SUMMARY

1. On December 13, 2007 the Inter-American Commission on Human Rights (hereinafter the "Inter-American Commission", "Commission" or "IACHR") received a petition filed by the *Asociación Bufete Jurídico Popular* (hereinafter "the petitioners") in which it alleged that the Republic of Guatemala (hereinafter "the State", the "Guatemalan State" or "Guatemala") is internationally responsible for the human rights violations committed in a series of events between 1981 and 1986 against Maya Achí indigenous persons of the village of Chichupac and neighboring communities (Xeabaj, Chijom, Coyojá, El Tablón, Toloxcoc and El Apazote), in the municipality of Rabinal.

2. According to the petitioners, in furtherance of a specific policy of the State, the Guatemalan Army and its collaborators perpetrated a massacre in the village of Chichupac on January 8, 1982, in which 32 persons were tortured and murdered. In the period between August 1981 and 1986, they committed other deeds involving extrajudicial executions, torture, forced disappearances, rapes, failures to render aid and assistance, unlawful arrests and forced labor, to the detriment of 54 villagers of Chichupac and neighboring communities.

3. The State did not contest the petitioners' allegations. In its early communications, it argued that because the complaint involved multiple cases, it should not be addressed as a single case. Later, the State acknowledged its international responsibility "for the violations alleged and substantiated by the petitioners, for the period between the time the violations were committed and up to the present day and with respect to those victims who have been fully identified and the violation of whose rights has been proven in cases brought before the institutions of national justice, and with respect to the identified victims documented in the Report of the Commission for Historical Clarification."

4. After examining the available information, the Commission concludes that the State is responsible for violation of the rights protected under articles 3, 4, 5, 6, 7, 8, 11, 12, 16, 17, 19, 21, 22, 23, 24 and 25 of the American Convention, read in conjunction with the obligations set forth in Article 1(1) thereof, and Article I of the Inter-American Convention on Forced Disappearance of Persons, and Article 7 of the Convention of Belém do Pará, to the detriment of the persons listed in each section of this report.

II. PROCESSING WITH THE COMMISSION SUBSEQUENT TO APPROVAL OF ADMISSIBILITY REPORT No. 144/10

5. The petition was received on December 13, 2007. A detailed account of the processing of the petition up to the date of the admissibility decision appears in the admissibility report issued by

the IACHR on November 1, 2010.¹ In that report, the Commission declared that the petition was admissible and indicated that the facts alleged could tend to establish violations of the rights recognized in articles 4, 5, 6, 7, 8, 11, 12, 13, 16, 17, 21, 22, 24 and 25 of the American Convention, read in conjunction with Article 1(1) thereof, and Article I of the Inter-American Convention on Forced Disappearance of Persons. Furthermore, in application of the principle of *jura novit curia*, the Commission concluded that the petition was admissible for a possible violation of the rights established in Articles 3 and 23 of the American Convention, both read in conjunction with Article 1(1) thereof.

6. On November 29, 2010, the IACHR sent a communication to the parties advising them that the admissibility report had been approved and placing itself at their disposal with a view to reaching a friendly settlement. Also, in keeping with the Rules of Procedure then in force, the Commission invited the petitioners to submit, within two months, any additional observations they might have concerning the merits. On February 28, 2011, the petitioners submitted their additional observations on the merits. The State presented observations on March 22, June 17 and July 29, 2011.

7. Thereafter, the petitioners submitted observations on September 24, November 1 and 7 and December 19, 2011; March 22, June 29 and October 19, 2012; September 13 and December 11, 2013; and March 10, 19 and 20, 2014. For its part, the State submitted observations on January 25, March 16, June 28 and October 26, 2012; and July 24, September 24 and December 11, 2013.

8. All briefs were duly forwarded to the other parties.

III. THE PARTIES' POSITIONS

A. The petitioners

9. The petitioners described the massacre that occurred in the village of Chichupac on January 8, 1982, where 32 persons were tortured and murdered. They also recounted violent acts committed between August 1981 and December 1986, which included extrajudicial executions, torture, forced disappearances, rapes, failures to provide aid and assistance, unlawful detentions and forced labor, all to the detriment of the members of the village of Chichupac and neighboring communities.

10. According to the petitioners, all the acts were committed as part of a national policy of persecution and extermination being waged by the Guatemalan State and carried out by the National Army at the direction of various military governments against the members of the mayan indigenous peoples. They emphasized that the *modus operandi* of the members of the National Army and their collaborators was the same one used during the commission of other massacres elsewhere in the country. The practice was to assemble the victims in a confined space, then torture and murder them with machetes or by cutting their throats or shooting them. Women were raped and then forced to cook for the soldiers. Finally, the petitioners observed that the policy was also to pillage the communities, burn them down, then set up "model villages" where members of the communities could be kept under the State's control.

¹ IACHR, Report No. 144/10, Petition 1579-07, Admissibility, Residents of the Village of Chichupac and the Hamlet of Xebabaj, Guatemala.

11. The petitioners pointed out that the policy was replicated against the Maya Achí population of the municipality of Rabinal, Department of Baja Verapaz, who were accused of collaborating with or belonging to the guerrilla movement.

12. The specifics of the facts and domestic inquiries will be addressed in the Commission's examination of the facts and are based on the information supplied by both parties. This section is a summation of the main legal arguments put forward by the petitioners.

13. The petitioners acknowledged the State's acceptance of international responsibility. With regard to the January 8, 1982 massacre, they alleged that the State violated the right to life of the alleged victims who were murdered. The petitioners argued that by being arbitrarily deprived of their lives, the alleged victims' right to honor and dignity was also violated. The petitioners further maintained that the alleged victims' right to humane treatment was violated because they were subjected to torture while inside the Chichupac community health center, where they had been assembled. The petitioners also pointed out that the alleged victims endured terrible pain and suffering because they were tortured before being murdered. Their contention was that the State violated the alleged victims' right to personal liberty by unlawfully and arbitrarily detaining them inside the health center for at least six hours.

14. The petitioners also argued that the right to life was also violated in the case of the victims whom they allege were executed and disappeared in events that transpired between 1981 and 1986. They added that the State also violated the right to humane treatment in the case of the victims alleged to have been tortured, disappeared and/or raped.

15. As for the right to freedom of conscience and religion, the petitioners argued that the facts alleged destroyed the social fabric of the village of Chichupac and the neighboring communities. They underscored that the alleged victims and their next of kin were unable to practice their religion and beliefs, either individually or collectively, owing to persecution and fear. They also noted that because they lived under military control at the model village of "La Colonia," which the military set up in 1984, the Maya Achí were unable to practice their Mayan spiritualism and beliefs. The petitioners' contention was that the alleged victims lost their cultural identity and community dynamics as a result.

16. As for freedom of association, the petitioners maintained that starting in late 1981, the members of the village of Chichupac and the hamlet of Xeabaj were forced to take part in the civil self-defense patrols (hereinafter the "PAC") and stressed the fact that if they refused to join the patrol, they were persecuted, executed or disappeared and accused of being members of the guerrilla movement.

17. As for the rights of the family, the petitioners argued that the State failed to comply with its duty to protect the families in the villages. They maintained that quite the contrary, the lives of the communities' inhabitants were not respected.

18. As for the right to privacy, the petitioners maintained that the State robbed the alleged victims of their property when it burned down their homes, cut down and destroyed their crops and stole their livestock and other animals. As for the right to equal protection, the petitioners argued that the facts alleged presuppose discrimination against indigenous persons.

19. The petitioners also alleged that the State violated the rights to judicial guarantees and to judicial protection. They claimed that although complaints were filed concerning the facts alleged in

the petition, which involved giving depositions and filing applications with the Rabinal Municipal Civil Registrar for copies of birth and death certificates, no evidence of any activity on those complaints is apparent. The petitioners also pointed out that little has been done to establish what happened and identify the intellectual and material authors, even though information is reportedly available.

20. The petitioners maintained that the denial of justice has continued to this day, which means that as yet no one has been made to answer for these alleged violations. They noted that the delay in the proceedings is a continuing violation and takes a severe toll on the alleged victims and their next of kin.

21. The petitioners reported that the alleged victims and their next of kin live in poverty and continue to suffer psychological aftereffects, as they are still being threatened and intimidated by former "*judiciales*" and former members of the PAC, who still live in the same communities within the municipality of Rabinal.

22. The petitioners maintained that the financial payments made under the National Reparations Program (hereinafter "the PNR") are not decent, just and full reparations, compensation or restitution for i) the pecuniary damages caused to the communities; ii) the psychological and moral pain and suffering that the victims' next of kin continue to endure; and iii) the non-pecuniary damages to the spirituality and culture caused by their being severed from their Maya Achi culture. The petitioners maintained that the procedure involved for the PNR is slow and irregular.

23. The petitioners stated that of all the alleged victims, only eight relatives had reportedly applied for compensation from the PNR and that the amounts received do not adequately compensate for all the violations committed; furthermore, not every victim entitled to compensation is receiving it. They added that the way in which the PNR is compensating people is causing further division and anguish among family members and within the communities. Here, they pointed out that in a number of cases, consanguineous siblings are precluded from any economic compensation for violations committed against their parents. They also noted that the PNR excludes some alleged victims whose names appear in the databases of the former PAC. They observed that family members of such persons have also been denied compensation by the Ex-PAC Assistance Office.

24. Lastly, they noted that the State refused to rebuild the more than one hundred housing units destroyed in Chichupac, Xebaj and neighboring communities. They asserted that the State built only 31 units, ten of which belong to family members of alleged victims; this has caused tension in the communities between those whose homes were rebuilt and those who got nothing.

B. The State

25. The State did not refute the facts alleged by the petitioners. To the contrary, the State acknowledged its international responsibility in the present case in the terms indicated below.

26. Nevertheless, it maintained that judicial inquiries were being conducted to ascertain the facts and determine the corresponding responsibilities. As for the time that the investigations have taken, it maintained that "the causes of the delay in the proceedings will continue to be investigated." As for the alleged forced disappearances, the State underscored the fact that at the time the events occurred, forced disappearance was not criminalized in Guatemalan law. It argued, therefore, that for

the episodes of forced disappearance alleged by the petitioners, under the Guatemalan Constitution no one could be brought to trial charged with a crime of forced disappearance.

27. It added that the alleged victims and their next of kin could apply for the National Reparations Program, whose “mission is to bring dignity to the civilian victims of the internal armed conflict, in a manner that respects their cultural identity, and thereby contribute to society’s reconciliation.” It stressed the fact that the alleged victims’ next of kin could apply for the PNR since the facts denounced are mainly based on the Report of the Recovery of the Historical Memory Project. It maintained that the PNR has 14 regional offices, one of which is in the municipality of Rabinal, in which the village of Chichupac and neighboring communities are located. It added that Chichupac villagers have filed 52 applications with the PNR. It also pointed out that the alleged victims’ family members who have already received a sum of money under the PNR are not eligible for any further compensation since “two payments cannot be made for the same reason.”

28. It also observed that former members of the PAC are not eligible to receive any type of compensation under the PNR since, “they served (...) as collaborators of the National Army during the armed conflict, in the sense that within the communities they enforced the control being exercised over the civilian population.” It indicated that compensation has been paid under a payments program for former members of the Civil Self-Defense Patrols.

29. The State also pledged “to make all the necessary inquiries to determine whether skeletal remains have been recovered or identified at the sites indicated by the petitioners.”

30. In its last two briefs, the State presented arguments apropos of the case’s eventual referral to the Inter-American Court, and specifically argued: i) the Court’s lack of contentious jurisdiction to take up the present case; and ii) the Court’s lack of competence in the instant case to interpret and apply the Inter-American Convention on Forced Disappearance of Persons.

IV. THE MERITS

A. The Guatemalan State’s acknowledgement of responsibility

31. On July 28, 2011, the State of Guatemala acknowledged its international responsibility in the following terms:

The Guatemalan State hereby declares that it acknowledges its international responsibility for the violations alleged and substantiated by the petitioners in the present case, for the period between the time the violations were committed and up to the present day and with respect to the victims who have been fully identified and the violation of whose rights has been proven in cases brought before the institutions of national justice, and with respect to the identified victims documented in the Report of the Commission for Historical Clarification

32. The Commission appreciates the Guatemalan State’s acknowledgement of responsibility. After examining the Commission for Historical Clarification (CEH) report and piecing together the facts of this case, the Commission observes that the State’s acknowledgement of responsibility is with reference to at least the following:

- The massacre in the village of Chichupac on January 8, 1982 (*infra*, paragraphs 72-82);

- The detention and disappearance of Depaz Siprian (or Florencio Depaz Cipriano) and the detention of Ciriaco Galiego López on January 8 and 9, 1982 (*infra*, paragraphs 103-104);
- The disappearance of Leonardo Cahuec González on January 18, 1982 (*infra*, paragraphs 110-111);
- The detention and execution of Gorgonio González González, Gabino Román Yvoy and Eustaquio Ixtecoc on November 26, 1982 (*infra*, paragraphs 125-127), and
- The execution of Rosa González Tecú, Enriqueta Tecú, Luciano Alvarado Xitumul, Héctor Rolando Alvarado García, Adela Florentina Alvarado García, Luciana Xitumul Ixpancoc, María Concepción Xitumul Xitumul and a baby girl, name unknown, on March 2, 1983 (*infra* paragraph 128).

33. From the wording of the acknowledgement of responsibility, the Commission observes that it also includes those cases for which cases have been opened with the “institutions of national justice.” In addition to the names listed in the preceding paragraph, the Commission would submit the following account of the facts pertaining to the cases for which complaints have been filed and a case file has been opened, so that they, too, might be included in the acknowledgement of responsibility.

34. Based on the foregoing, the Commission accords legal effects to the State’s acknowledgement of responsibility.

35. Bearing in mind the need to help reconstruct the truth and the reparative effect that clarification of the facts has for the next of kin, the Commission will now proceed to describe the context, the facts of the case and their legal consequences in light of the American Convention. In ascertaining the facts, the Commission will take the available evidence into account and give particular consideration to the State’s acknowledgement of responsibility.

B. Established facts

1. Background and context

1.1. Armed conflict in Guatemala: causes and State policy

36. An armed conflict gripped Guatemala between 1962 and 1996. Among the underlying causes of that conflict identified by the CEH in its report titled “*Guatemala: Memory of Silence*” (hereinafter the “CEH Report” or “Memory of Silence”) were a prevailing structural injustice, racism and the exclusionary practices of institutions with respect to large cross-sections of Guatemalan society.²

37. The armed conflict in Guatemala exacted an enormous human, material, institutional and moral toll. During this period, estimates are that over two hundred thousand people were victims of arbitrary executions and forced disappearance.³ Furthermore, 91% of the violations recorded by the CEH occurred between 1978 and 1983, under the dictatorships of generals Romeo Lucas García (1978-

² Annex 1. CEH, *Memory of Silence*, Volume V, Conclusions and Recommendations, paragraph 12.

³ In its documentation work, the CEH recorded 42,275 victims of arbitrary executions and forced disappearance. A total of 23,671 were the victims of arbitrary executions, and 6,159 were victims of forced disappearance. Annex 1. CEH, *Memory of Silence*, Volume V, Conclusions and Recommendations, paragraph 1.

1982) and Efraín Ríos Montt (1982-1983). This became the most violent period of the armed conflict.⁴ In ethnic terms, the members of the Mayan indigenous people accounted for 83% of the conflict's victims.⁵

38. During the period of internal armed conflict, the so-called National Security Doctrine⁶ was applied, which was adopted by the governments and armed forces of various countries in the Americas back in the 1960s as a response to the actions and rhetoric of insurgent movements. During the period of the armed conflict in Guatemala, the notion of an “enemy within”, a central tenet of that doctrine, was used more and more. In its investigation, the CEH concluded that in application of the National Security Doctrine, the forces of the State and their collaborators -civil self-defense patrols- were responsible for 93% of the human rights violations documented during the armed conflict.⁷

39. Here it is important to note that in March 1982, as a result of a *coup d'état*, a military governing junta was installed, headed by José Efraín Ríos Montt and formed by General Horacio Maldonado Schaad and Colonel Francisco Luis Gordillo Martínez. That military junta was the highest authority in the Republic of Guatemala until June 8 of that year, when Ríos Montt⁸ assumed the offices of President of the Republic and Minister of National Defense. Ríos Montt remained as *de facto* president until August 31, 1983.⁹

40. The Military Junta and High Command devised and ordered implementation of a military campaign plan called “Victoria 82”, using new strategic definitions couched within the framework of the counterinsurgency and objectives of the National Security and Development Plan.¹⁰

41. In 1982, the Army implemented the National Security and Development Plan and the Military Plan *Victoria 82*; both were especially targeted at the guerrillas in the northwestern and northern regions of Guatemala. Appendix H of the National Security and Development Plan spells out the need to deny subversives access to the population that is their social and political base and singles out the following tactics to be used against the guerrilla movement: deceive them, discover them, attack them and annihilate them. The CEH concluded that ‘the mission is to annihilate the guerrilla movement

⁴ I/A Court H.R., *Case of the Dos Erres Massacre v. Guatemala*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 24, 2009. Series C No. 211, paragraph 71; IACHR, Annual Report 1983-1984, Chapter IV, September 28, 1984. Available at: <http://www.IACHR.org/annualrep/83.84.eng/toc.htm>.

⁵ Annex 1. CEH, *Memory of Silence*, Volume V, Conclusions and Recommendations, paragraph 1. See also, I/A Court H.R., *Case of Tiu Tojin v. Guatemala*. Merits, Reparations and Costs. Judgment of November 26, 2008. Series C No. 190, paragraph 48.

⁶ The CEH observed that the National Security Doctrine was a practical way to deal, either externally or internally, with the possible or real Communist threat within the context of the Cold War and the new relations between the United States and Latin America. In Guatemala, this concept meant that all structures of the State and all resources of power had to be put in the hands of the Army to combat and defeat the guerrilla movement, understood broadly as the enemy within. Annex 1. CEH, *Memory of Silence*, Volume V, Conclusions and Recommendations, paragraphs 14-15, 83-84.

⁷ Annex 1. CEH, *Memory of Silence*, Volume V, Conclusions and Recommendations, par. 82.

⁸ José Efraín Ríos Montt assumed the executive and legislative functions of the State as President of the Republic and Commander General of the Army, with the authorities functions and pre-eminence that Decree Law 24-83 conferred upon the Military Governing Junta by virtue of Decree Law 36-82.

⁹ See, *inter alia*, IACHR, *Report on the situation of human rights in Guatemala*, OEA/Ser.L/V/II.61 doc 47, approved on October 3, 1983, Introduction “The *coup d'état* of March 23, 1982”. Available at: <http://www.IACHR.org/countryrep/Guatemala83eng/intro.htm>.

¹⁰ Annex 1. CEH, *Memory of Silence*, Volume V, Conclusions and Recommendations, par. 119.

and parallel organizations.’¹¹ Thus, *Victoria 82* ordered the annihilation of those considered to be “subversives” or the “enemy within.”¹²

42. The policy of counterinsurgency in Guatemala, especially during the most violent period of the conflict, was characterized by military actions aimed at destroying groups and communities as such, through the slaughter of defenseless populations, the so-called massacres¹³ and the scorched-earth operations.¹⁴ The CEH registered 626 massacres committed by State forces during the armed conflict,¹⁵ with the support of patrol groups like the military commissioners,¹⁶ the *Judiciales*¹⁷ and the Civil Self-Defense Patrols (PAC).¹⁸

43. Concerning the PAC, it is important to point out that in late 1981, the *de facto* military regime of General Ríos Montt devised a counterinsurgency strategy that sought to actively enlist the civilian population, especially the Mayan communities. This was how the PAC emerged as groups of civilian men that the Army organized, through the use of coercion, to operate as a parallel paramilitary force, for the ultimate purpose of causing social disintegration.¹⁹ In its 1985 Special Report, the IACHR documented the fact that the PAC “operate in their villages, mainly, performing patrol, defense and control functions and are regulated by various laws, regulations and higher military orders.”²⁰

1.2. Impact of the armed conflict on the Mayan indigenous peoples

1.2.1. Identification as an “enemy within”

44. Based on the National Security Doctrine, the Army singled out the Mayan indigenous population as the “enemy within”, as it believed that they were or could be the guerrilla movement’s support base.²¹ The CEH concluded that this policy was based on an undeniable racism against the

¹¹ Annex 2. CEH, *Memory of Silence*, Volume VI, *Illustrative Cases*, p. 356.

¹² Annex 1. CEH, *Memory of Silence*, Volume V, *Conclusions and Recommendations*, par. 15.

¹³ Annex 1. CEH, *Memory of Silence*, Volume V, *Conclusions and Recommendations*, paragraphs 85-88.

¹⁴ Annex 1. CEH, *Memory of Silence*, Volume V, *Conclusions and Recommendations*, paragraphs 65-67.

¹⁵ Annex 1. CEH, *Memory of Silence*, Volume V, *Conclusions and Recommendations*, par. 86.

¹⁶ From the start of the armed conflict, the military commissioners were the Army’s representatives within each community. Annex 1. CEH, *Memory of Silence*, Volume V, *Conclusions and Recommendations*, par. 80.

¹⁷ The *judiciales* were an investigative body of the National Police; during the armed conflict, especially during the most violent years, they largely took their orders from and were controlled by the Army. Annex 1. CEH, *Memory of Silence*, Volume V, *Conclusions and Recommendations*, par. 43.

¹⁸ The PAC were created in late 1981 by the *de facto* military regime of General Ríos Montt, as part of a policy to exterminate the guerrilla movement by relocating the indigenous population and wiping out any suspicious persons, using means that constituted violations of human rights. The PAC began in the department of El Quiché, and expanded into other departments. IACHR, *Fourth Report on the Situation of Human Rights in Guatemala*, OEA/Ser.L/V/II.83 doc. 16 rev., June 1, 1993. Available at: <http://www.IACHR.oas.org/countryrep/Guatemala93sp/indice.htm>.

¹⁹ Annex 1. CEH, *Memory of Silence*, Volume V, *Conclusions and Recommendations*, par. 50.

²⁰ IACHR, *Third Report on the Situation of Human Rights in the Republic of Guatemala*, OEA/Ser.L/V/II.66, approved on October 3, 1985], Chapter III, paragraphs 24 *et seq.* Available [only in Spanish] at: <http://www.IACHR.org/countryrep/Guatemala93eng/chapter.6.htm>

²¹ Annex 1. CEH, *Memory of Silence*, Volume V, *Conclusions and Recommendations*, par. 15.

Mayan indigenous people expressed as a doctrine of superiority and made manifest in the Guatemalan State's actions.²²

45. The CEH also documented the fact that:

In the years when the confrontation deepened (1978-1983), as the guerrilla support base and area of action expanded, Mayans as a group in several different parts of the country were identified by the Army as guerrilla allies. Occasionally this was the result of the effective existence of support for the insurgent groups and of pre-insurrectional conditions in the country's interior. However, the CEH has ascertained that, in the majority of cases, the identification of Mayan communities with the insurgency was intentionally exaggerated by the State, which, based on traditional racist prejudices, used this identification to eliminate any present or future possibilities of the people providing help for, or joining, an insurgent project.²³

46. Specifically, the *Victoria 82* Plan provided that:

[...] The great indigenous masses on the Guatemalan Altiplano have embraced the claims made by the subversive movement, because their main issues are the scarcity of land and enormous poverty; because of the years of brainwashing they have received, they view the Army as an invading enemy (only some areas have been brought under control), a problem compounded by the considerable number of mistakes that the troops have made, such as vandalism, rapes, robberies and destruction of harvests, which national and international subversive elements have ably exploited.²⁴

1.2.2. Scorched-earth operations

47. The massacres and scorched-earth operations decimated entire Mayan communities. As a consequence of the State's policy:

[the] indiscriminate massacres were accompanied by the razing of villages. [...] In the north of Huehuetenango, in Rabinal and Zacualpa, whole villages were burned, properties destroyed and the collectively worked fields and harvests were also burned, leaving the communities without food.²⁵

48. The CEH also documented the effect on Mayan identity and culture as follows:

The Army destroyed ceremonial centers, sacred places and cultural symbols. Language and dress, as well as other elements of cultural identification, were targets of repression. Through the militarization of the community, the establishment of the PAC and the military commissioners, the legitimate authority structure of the communities was broken, the use of their own norms and procedures to regulate social life and resolve conflicts was prevented; the exercise of Mayan spirituality and the Catholic religion was obstructed, prevented or repressed; the maintenance and development of the indigenous peoples' way of life and their system of

²² Annex 1. CEH, *Memory of Silence*. Volume V, Conclusions and Recommendations, par. 33.

²³ Annex 1. CEH, *Memory of Silence*, Volume V, Conclusions and Recommendations, par. 31.

²⁴ Annex 1. CEH, *Memory of Silence*, Volume III, Human Rights Violations and Acts of Violence, par. 2985.

²⁵ Annex 1. CEH, *Memory of Silence*, Volume V, Conclusions and Recommendations, par. 116.

social organization was upset. Displacement and refuge exacerbated the difficulties of practicing their own culture.²⁶

1.2.3. Massacres against communities

49. The massacres committed during the armed conflict in Guatemala were characterized by excessive cruelty and brutality calculated to wipe out the persons or groups previously identified as the target of military operations.²⁷ Specifically, the massacres were a mechanism used against the Mayan people for the mere fact that they were Mayan.²⁸ The massacres exterminated, as enemies, as many members of the group as possible, after which the properties and homes in the communities were destroyed and burned.²⁹

50. In the IACHR's second special report on Guatemala, published in 1983 and titled "*The Situation of Human Rights in Guatemala*," reference was made to the indiscriminate attacks that the rural population endured, where no distinction was made between civilians and insurgents or between adults and children; all were attacked indiscriminately.³⁰

51. As for the strategies that the Army used when executing the massacres, the CEH found that:

The CEH has noted particularly serious cruelty in many acts committed by agents of the State, especially members of the Army, in their operations against Mayan communities. The counterinsurgency strategy not only led to violations of basic human rights, but also to the fact that these crimes were committed with particular cruelty, with massacres representing their archetypal form. In the majority of massacres there is evidence of multiple acts of savagery, which preceded, accompanied or occurred after the deaths of the victims. Acts such as the killing of defenseless children, often by beating them against walls or throwing them alive into pits where the corpses of adults were later thrown; the amputation of limbs; the impaling of victims; the killing of persons by covering them in petrol and burning them alive; the extraction, in the presence of others, of the viscera of victims who were still alive; the confinement of people who had been mortally tortured, in agony for days; the opening of the wombs of pregnant women, and other similarly atrocious acts, were not only actions of extreme cruelty against the victims, but also morally degraded the perpetrators and those who inspired, ordered or tolerated these actions.³¹

²⁶ Annex 1. CEH, *Memory of Silence*, Volume V, Conclusions and Recommendations, par. 88.

²⁷ 95% of the massacres were perpetrated between 1978 and 1984; during this period, 90% were executed in areas inhabited mainly by the Mayan people, such as the departments of Quiché, Huehuetenango, Chimaltenango, Alta and Baja Verapaz. CEH, *Memory of Silence*, Chapter III, paragraphs 443, 460, and Chapter II, par. 42.

²⁸ Annex 1. CEH, *Memory of Silence*, Volume V, Conclusions and Recommendations, paragraphs 85-88.

²⁹ Annex 1. CEH, *Memory of Silence*, Volume V, Conclusions and Recommendations, paragraphs 85-88.

³⁰ IACHR, *Report on the Situation of Human Rights in Guatemala*. OEA/Ser.L/V/II.66, doc.47, October 5, 1983. Available at: <http://www.cidh.org/countryrep/Guatemala83eng/TOC.htm>.

³¹ Annex 1. CEH, *Memory of Silence*, Volume V, Conclusions and Recommendations, par. 87.

52. For its part, the Archdiocese of Guatemala's Recovery of Historical Memory Project (hereinafter "REMHI")³² documented the following:

Although these massacres will never be fully explained [...], the Army offensive, the progression of massacres, and their internal structure obey a certain logic [...]. They were not merely spontaneous reactions by soldiers or officers. In order to isolate the guerrillas, the Army launched a series of large-scale indiscriminate massacres against their civilian support base. The Army routed these civilians out of their hiding places in the hills and forests; it terrorized them; it laid siege to them to starve them out, after having burned their homes and stored crops, destroyed their household utensils, and stole their belongings. In this way, people were forced to surrender and subsequently clustered into "special camps". This practice of massacres, pursuit, burning and siege is known as the scorched-earth policy.³³

53. 1982 was a year of transition from selective to indiscriminate repression.³⁴ As documented by the CEH, the perpetrators committed slaughters targeting all members of a community, without making any distinction between those who participated directly in the hostilities and those who had no link or contact with the guerrilla movement at all.³⁵

54. Furthermore, the survivors of the massacres were subjected to harsh conditions in the process of forced displacement, which included being pursued by the perpetrators.³⁶ In its second special report from 1983, titled "*The Situation of Human Rights in Guatemala*", the IACHR documented the massive displacement triggered in Guatemala as a result of the large-scale repression in 1981 and 1982.³⁷ The CEH, for its part, wrote that:

The magnitude of the institutional violence to which Guatemala's civilian population was subjected during the armed conflict is amply demonstrated by the phenomenon of forced displacement. Estimates are that between 500 thousand and one and a half million Guatemalans were forced to flee as a direct consequence of the repression, particularly during the 1980s.³⁸

1.2.4. Forced disappearance of persons

55. The practice of forcibly disappearing persons during Guatemala's armed conflict was part of the counterinsurgent strategy, targeted at apprehending and exterminating masses of people, without leaving any evidence of their fate or whereabouts. The case law of the Inter-American Court found that forced disappearance was a Guatemalan State practice perpetrated mainly by agents of the

³² Annex 4. Project headed by the Human Rights Office of the Archdiocese of Guatemala (ODHAG). The Report of the REMHI Project was published in 1998, under the title "*Guatemala: Never Again!*" Available [in Spanish] at: <http://www.derechoshumanos.net/lesahumanidad/informes/guatemala/informeREMHI.htm>.

³³ Annex 4. REMHI. *Guatemala: Never Again! The Report of the Recovery of Historical Memory Project*. Volume II, The Methodology of Horror.

³⁴ Annex 4. REMHI. REMHI. *Guatemala: Never Again! The Report of the Recovery of Historical Memory Project*. Volume II, *The Methodology of Horror*.

³⁵ Annex 1. CEH, *Memory of Silence*, Volume V, Conclusions and Recommendations, par. 131.

³⁶ Annex 1. CEH, *Memory of Silence*, Volume V, Conclusions and Recommendations, paragraphs 65-67

³⁷ IACHR, *Third Report on the Situation of Human Rights in the Republic of Guatemala*, OEA/Ser.L/V/II.66, approved on October 3, 1985 [available only in Spanish].

³⁸ Annex 3. CEH, *Memory of Silence*, Volume III, Human Rights Violations and Acts of Violence, par. 2951.

State's security forces, namely the Army, the civil self-defense patrols, the military commissioners, the Treasury Police, the military foot-police, the national police, the judicial police and the "death squadrons."³⁹

56. On the occasion of its on-site visit to Guatemala in May 1985, the IACHR also documented the following:

[...] in addition to direct testimony taken from relatives of hundreds of disappeared persons, the Commission also heard from eye witnesses to some of the abductions and captures; it met with members of the Mutual Support Group (GAM) and received additional new complaints. It also learned of abductions and disappearances that took place precisely during the Commission's on-site visit in Guatemala; it directly investigated the agencies accused of participating in these events and spoke with all manner of officials and any public and private persons who might be able to provide valuable information about these problems. It also took personal measures of all kinds to establish the whereabouts of anyone who might still be alive; to eradicate this abhorrent practice, to have the authors of these crimes investigated and to get the country's highest-ranking authorities to devote special attention to the grave situation of the disappeared.⁴⁰

57. The Commission underscored the point that because of the State's strategy, it was virtually impossible to learn any news of the whereabouts of a disappeared person, despite the tireless searches made by family members and friends, at morgues, at hospitals, at military posts and at police stations. Here the CEH maintained that "one of the many effects of the government's decision to use forced disappearance as a repressive measure was the definitive failure of any petitions of *habeas corpus*."⁴¹

1.2.5. Violence against children

58. As for the situation of children amid the armed conflict in Guatemala, the CEH wrote the following:

[...] The CEH has confirmed with particular concern that a large number of children were also among the direct victims of arbitrary execution, forced disappearance, torture, rape and other violations of their fundamental rights. Moreover, the armed confrontation left a large number of children orphaned and abandoned, especially among the Mayan population, who saw their families destroyed and the possibility of living a normal childhood within the norms of their culture, lost.⁴²

³⁹ I/A Court H.R., *Case of Molina Theissen v. Guatemala*. Judgment of May 4, 2004. Merits. Series C No. 106, par. 40. See also, I/A Court H.R., *Case of Tiu Tojín v. Guatemala*. Merits, Reparations and Costs. Judgment of November 26, 2008. Series C No. 190, par. 49; I/A Court H.R., *Case of the Plan de Sánchez Massacre v. Guatemala*. Merits. Judgment of April 29, 2004. Series C No. 105; I/A Court H.R., *Case of the Plan de Sánchez Massacre v. Guatemala*. Reparations and Costs. Judgment of November 19, 2004. Series C No. 116.

⁴⁰ IACHR, *Third Report on the Situation of Human Rights in the Republic of Guatemala*, OEA/Ser.L/V/II.66, approved on October 3, 1985, Chapter II, paragraph 7, in Spanish only.

⁴¹ Annex 3. CEH, *Memory of Silence*, Volume III, Human Rights Violations and Acts of Violence, paragraph 2819.

⁴² Annex 1. CEH, *Memory of Silence*, Volume V, Conclusions and Recommendations, par. 28.

59. The Commission, too, believed that children were more vulnerable to violations because they did not understand the danger and the mechanics of violence and were deeply affected by the loss of security, trust and the care that they needed for normal growth and development.⁴³

60. For its part, in 2000 the Archdiocese of Guatemala's Human Rights Office (hereinafter "the ODHAG") published a study on children who disappeared during the internal armed conflict, in which it estimated that more than 400 children had been forcibly disappeared.⁴⁴

61. Some children survived the massacres when members of patrols, soldiers or military commissioners decided to take them to their own homes. As the CEH documented:

[...] in the wake of the massacres or scorched-earth operations, many children who were by then able to take care of themselves were taken by military personnel, military commissioners or patrollers to serve as servants in their own homes or in the homes of other families. Some of these children were systematically exploited and abused. Others were taken into homes where they grew up. Still others were unaware that they were not members of the family with which they lived or still live.⁴⁵

1.2.6. Violence against women

62. The CEH concluded that women accounted for roughly one fourth of the immediate victims of the human rights violations committed during the conflict.⁴⁶ Likewise, the report of the Archdiocese of Guatemala's Recovery of Historical Memory Project and the CEH's own report document the way in which women were insulted and dehumanized, terrorized and tortured, raped, forcibly disappeared and massacred by agents of the State, almost always soldiers and civil self-defense patrol members.⁴⁷

63. The CEH concluded that sexual violence against women was a widespread and systematic practice within the Army's counterinsurgency strategy and one of the more specific manifestations of gender violence committed during the internal armed conflict in Guatemala.⁴⁸ Thus, for example, in 99% of the 1465 cases of rape registered by the CEH, the victim was a woman.⁴⁹ Likewise, the women who survived had to cope with the physical and psychological aftereffects, including the stigma associated with rape.⁵⁰

⁴³ IACHR, *Fifth Report on the Situation of Human Rights in Guatemala*, OEA/Ser.L/V/II.111, approved on April 6, 2001, par. 27. Available at: <http://www.cidh.org/countryrep/Guate01eng/chap.12.htm>.

⁴⁴ Annex 5. ODHAG. *Hasta Encontrarte: Niñez Desaparecida por el Conflicto Armado Interno en Guatemala [Until You're Found: Children Disappeared by the Internal Armed Conflict in Guatemala]*. Guatemala: ODHAG, 2000, p. 35. Available [in Spanish] at: <http://www.odhag.org.gt/pdf/Hasta%20encontrarte.pdf>

⁴⁵ Annex 3. CEH, *Memory of Silence*, Volume III, Human Rights Violations and Acts of Violence, par. 2519.

⁴⁶ Annex 1. CEH, *Memory of Silence*, Volume V, Conclusions and Recommendations, par. 29.

⁴⁷ IACHR, *Fifth Report on the Situation of Human Rights in Guatemala*, OEA/Ser.L/V/II.111, approved on April 6, 2001, par. 42.

⁴⁸ Annex 3. CEH, *Memory of Silence*, Volume III, Human Rights Violations and Acts of Violence, paragraphs 2350-2351.

⁴⁹ Annex 3. CEH, *Memory of Silence*, Volume III, Human Rights Violations and Acts of Violence, par. 2376.

⁵⁰ Annex 1. CEH, *Memory of Silence*, Volume V, Conclusions and Recommendations, par. 91.

64. The CEH found that rape was part of a pattern of behavior in massacres; women were raped before being killed. The CEH concluded that:

[i]n general, individual or selective rapes occurred when the victims were detained and were often followed by the victim's death or disappearance. The massive or indiscriminate and public rapes occurred in areas with a large indigenous population, and became common practice once military outposts and the PAC moved in, occurring as a preliminary to a massacre or as part of scorched-earth operations. Pregnant women were also killed and their fetuses destroyed.⁵¹

1.2.7. Genocide

65. Given the context described above, the CEH concluded that in the counterinsurgency operations conducted between 1981 and 1983, agents of the Guatemalan State committed acts of genocide against groups among the Mayan people, including the Maya-Achí in the municipality of Rabinal. In this connection the CEH found that:

In 1981 and 1982, there were reports of Army specialists who were natives of Sacapulas and other municipalities in Quiché and who had access to the command personnel at military base number 20 in Santa Cruz del Quiché (...) concerning an order that the first and second commanders had issued to kill all indigenous persons. Some pilots and members of the commanding officers' security details took their families out of Quiché to protect them, since the order was real.⁵²

66. The CEH's finding was based on evidence that, under the provisions of Article II of the Convention on the Prevention and Punishment of the Crime of Genocide, showed that i) members of Mayan groups had been killed; ii) serious bodily or mental harm had been done to members of the groups, and iii) living conditions had been deliberately inflicted on the group calculated to bring about their physical destruction in whole or in part. The CEH's conclusion is also based on the evidence that all these acts were committed "with intent to destroy, in whole or in part" groups identified by their common ethnicity, by reason thereof, whatever the cause, motive or final objective of these acts may have been."⁵³

2. Situation of the village of Chichupac and neighboring communities during the armed conflict

67. The village of Chichupac is in the municipality of Rabinal, 14 kilometers from its municipal seat.⁵⁴ The municipality of Rabinal is one of the eight municipalities in the department of Baja Verapaz, located in the central sector of the Guatemalan State.⁵⁵ Rabinal consists of an urban center or

⁵¹ Annex 3. CEH, *Memory of Silence*, Volume III, Human Rights Violations and Acts of Violence, par. 2352.

⁵² Annex 3. CEH, *Memory of Silence*, Volume III, Human Rights Violations and Acts of Violence, preamble to Chapter XXI.

⁵³ Annex 1. CEH, *Memory of Silence*, Volume V, Conclusions and Recommendations, paragraphs 108-123.

⁵⁴ Annex 6. Communication from the petitioners dated December 13, 2007.

⁵⁵ Annex 3. CEH, *Memory of Silence*, Volume III, Human Rights Violations and Acts of Violence, par. 3362.

municipal seat, 14 villages and sixty hamlets,⁵⁶ including the village of Chichupac and the neighboring communities (Xeabaj, Chijom, Coyojá, El Tablón, Toloxcoc and El Apazote).

68. In 1981, the municipality of Rabinal had 22,730 inhabitants, 82% of whom were Maya-Achí.⁵⁷ Their subsistence activities included farming and planting. The indigenous people in that area speak the Achí language and have their own vision of the cosmos and spirituality, which is reflected through customs having to do with dress, dance, music and the rites practice to honor their dead.⁵⁸

69. In the 1970s, the municipality of Rabinal was not a combat area. The CEH recorded that there was some guerrilla propaganda activity and that the region was used as a staging point for logistical supplies, recruitment of personnel or as a rearguard.⁵⁹ The CEH concluded that because of Rabinal's strategic location, the State believed that "it needed to be placed under complete control."⁶⁰

70. According to the CEH's sources, this explains why the level of violence was so high in the municipality of Rabinal during the armed conflict.⁶¹ The CEH found that "a military outpost was operating" within the Rabinal region; its commanders "were behind almost all the human rights violations attributable to State agents."⁶² Furthermore according to the testimony of people who had lived in the region since 1981, the military forced the residents of the village of Chichupac and the neighboring communities to participate in the PAC.⁶³

71. The CEH registered 20 massacres within the Rabinal region. Nevertheless, one witness claimed that "not one village escaped the massacres."⁶⁴ The CEH also documented the fact that in the period between 1981 and 1983, 4,411 persons from the municipality of Rabinal were murdered; all were civilians, and 99.8% were members of the Maya-Achí.⁶⁵ The CEH concluded that "the savagery with which the area was attacked supports the thesis that the Army regarded it as a strategic area and, at the time of the conflict, identified the region's population as 'the enemy within'."⁶⁶

2.1.1. The massacre of January 8, 1982

⁵⁶ Annex 3. CEH, *Memory of Silence*, Volume III, Human Rights Violations and Acts of Violence, par. 3362.

⁵⁷ Annex 3. CEH, *Memory of Silence*, Volume III, Human Rights Violations and Acts of Violence, par. 3362.

⁵⁸ Annex 6. Communication from the petitioners dated December 13, 2007.

⁵⁹ Annex 3. CEH, *Memory of Silence*, Volume III, Human Rights Violations and Acts of Violence, par. 3365.

⁶⁰ Annex 3. CEH, *Memory of Silence*, Volume III, Human Rights Violations and Acts of Violence, par. 3365.

⁶¹ Annex 3. CEH, *Memory of Silence*, Volume III, Human Rights Violations and Acts of Violence, par. 3363.

⁶² Annex 3. CEH, *Memory of Silence*, Volume III, Human Rights Violations and Acts of Violence, par. 3363.

⁶³ Annex 7. Statement made by Miguel Sic Osorio to the Public Prosecution Service, dated October 25, 2000. Certification of Case File No. 001-2005-95839, pp. 109-110. Annex 1 to the petitioners' communication of December 13, 2007; Annex 7. Statement made by Sebastian Chen on October 25, 2000. Certification of Case File No. 001-2005-95839, pp. 123-124. Annex 1 to the petitioners' communication of December 13, 2007.

⁶⁴ Annex 3. CEH, *Memory of Silence*, Volume III, Human Rights Violations and Acts of Violence, par. 3364

⁶⁵ Annex 3. CEH, *Memory of Silence*, Volume III, Human Rights Violations and Acts of Violence, paragraphs 3367-3368.

⁶⁶ Annex 3. CEH, *Memory of Silence*, Volume III, Human Rights Violations and Acts of Violence, par. 3367.

72. According to the information reported by family members of the alleged victims, on January 8, 1982 members of the Guatemalan Army assembled the residents of the village of Chichupac for a meeting at the community health center, supposedly for the purpose of distributing medicine and gifts.⁶⁷ One witness maintained that the order was that “no one should stay home.”⁶⁸

73. The military commissioners ordered the members of the PAC to decorate the entrance to the community and to “create a festive atmosphere.”⁶⁹ The people of the village who were at home were taken to the health center by Army personnel. In this way, they managed to assemble around 300 villagers inside the health center.⁷⁰

74. At around 9:00 a.m., about a hundred National Army soldiers arrived aboard a truck, dressed in camouflage green uniforms and carrying rifles.⁷¹ The soldiers were accompanied by a group of “*judiciales*”.⁷² When they entered the health center, they began distributing toys to the children.⁷³ One witness testified that they were given plastic balls, a plastic car and doll parts.⁷⁴

75. Then, the officer in command of the troop ordered the women to return home.⁷⁵ According to the REMHI, the soldiers then ordered the men to line up and show their identification cards.⁷⁶ The names of 32 men were selected from a list that the “*judiciales*” had in their possession;⁷⁷

⁶⁷ Annex 7. Statement by María Teresa Sic given in the presence of the Public Prosecution Service, October 25, 2000. Certification of Case File No. 001-2005-95839, pp. 101-102. Annex 1 of the petitioners’ communication of December 13, 2007; statement by Miguel Sic Osorio, July 12, 2005. Certification of Case File No. 001-2005-95839, pp. 300-302. Annex 1 of the petitioners’ communication of December 13, 2007; Annex 7. Statement by Domingo Chén Tahuico, July 12, 2005. Certification of Case File No. 001-2005-95839, pp. 305-306. Annex 1 of the petitioners’ communication of December 13, 2007.

⁶⁸ Annex 7. Statement by Vicenta Mendoza Alvarado, given in the presence of the Public Prosecution Service, November 15, 2002. Certification of Case File No. 001-2005-95839, pp. 27-28. Annex 1 of the petitioners’ communication of December 13, 2007.

⁶⁹ Annex 7. Statement by Miguel Sic Osorio, given in the presence of the Public Prosecution Service, October 25, 2000. Certification of Case File No. 001-2005-95839, pp. 109-110. Annex 1 of the petitioners’ communication of December 13, 2007.

⁷⁰ Annex 6. The petitioners’ communication of December 13, 2007.

⁷¹ Annex 7. Statement by Pedro Chen Sic, given in the presence of the Public Prosecution Service, October 25, 2000. Certification of Case File No. 001-2005-95839, pp. 112-114. Annex 1 of the petitioners’ communication of December 13, 2007.

⁷² Annex 7. Statement by Ana Calate Sic, given in the Office of the Third Criminal Court of Guatemala, April 19, 1993. Certification of Case File No. 001-2005-95839, pp. 268-271. Annex 1 of the petitioners’ communication of December 13, 2007.

⁷³ Annex 6. The petitioners’ communication of December 13, 2007.

⁷⁴ Annex 8. “The Chichupac case”. Annex 20 to the petitioners’ communication of December 13, 2007; statement by Ana Calate Sic, July 27, 2005. Judicial case No. 255-93, pp. 317-318. Annex 2 of the petitioners’ communication of December 13, 2007.

⁷⁵ Annex 7. Statement by Teresa Cacaj Cahuec, given in the presence of the Public Prosecution Service, April 27, 1999. Certification of Case File No. 001-2005-95839, pp. 168-170. Annex 1 of the petitioners’ communication of December 13, 2007; Annex 9. Statement by Fabiana Chen, given in the presence of the Public Prosecution Service, April 27, 1999. Judicial case No. 255-93, p. 172. Annex 2 of the petitioners’ communication of December 13, 2007.

⁷⁶ Annex 4. REMHI. *Guatemala: Never Again! Report of the Recovery of the Historical Memory Project*. Volume II, The Methodology of Violence. Case 7446, Chichupac, Baja Verapaz, 1982.

⁷⁷ Annex 9. Statement by Susana Pancan in the presence of the Public Prosecution Service, June 28, 1999. Judicial case No. 255-93, p. 176. Annex 2 of the petitioners’ communication of December 13, 2007.

the 32 included catechists, health promoters and community leaders from the villages of Chichupac, Xeabaj, Coyojá, El Tablón and Chijom.⁷⁸

76. The soldiers ordered the other men to go back to their homes. They were told “not to stick their noses in anything” or they might meet the same fate as the group of men selected.⁷⁹ Two witnesses said that the military ordered them “not to get mixed up in anything; otherwise their asses would get broken just as the men who were left inside [the health center].”⁸⁰ They also reported that the Chichupac PAC members were ordered to go home and pick up their “jackets and sticks” and get back to the business of “patrolling the perimeter of the health center, an order they had to obey.”⁸¹ According to the REHMI, the soldiers had a tank in position in case someone tried to escape.⁸²

77. The men who remained behind in the health center were accused of being members of the guerrilla movement and were tortured for a number of hours.⁸³ One witness said that “the Chichupac men were tortured in the health center (...) we heard them screaming.”⁸⁴ At around 4:00 p.m., the PAC from the village of Chichupac saw the National Army soldiers leave with the alleged victims, whose hands were tied.⁸⁵

78. The Army soldiers ordered the alleged victims to walk in the direction of the village’s highest point.⁸⁶ One individual, Félix Alvarado Xitumul, fainted as he was walking and died.⁸⁷ Once they reached the highest point in the village, all the men were murdered. Some were strangled, while others were shot.⁸⁸

⁷⁸ Annex 9. Statement by Miguel Chen Tahuico, July 27, 2005. Judicial case No. 255-93, pp. 311-313. Annex 2 of the petitioners’ communication of December 13, 2007.

⁷⁹ Annex 7. Statement by Francisco Sic Chen, July 12, 2005. Certification of Case File No. 001-2005-95839, pp. 282-286. Annex 1 of the petitioners’ communication of December 13, 2007.

⁸⁰ Annex 7. Brief by Fabiana Chen and Teresa Cacaj, December 5, 1997. Certification of Case File No. 001-2005-95839, pp. 186-195. Annex 1 of the petitioners’ communication of December 13, 2007.

⁸¹ Annex 1. Brief by Fabiana Chen and Teresa Cacaj, December 5, 1997. Certification of Case File No. 001-2005-95839, pp. 186-195. Annex 1 of the petitioners’ communication of December 13, 2007.

⁸² Annex 4. REMHI. *Guatemala: Never Again! Report of the Recovery of the Historical Memory Project*. Volume II, The Methodology of Violence. Case 7446, Chichupac, Baja Verapaz, 1982.

⁸³ Annex 7. Statement by Alberto Juarez, given in the presence of the Public Prosecution Service, October 25, 2000. Certification of Case File No. 001-2005-95839, pp. 119-120. Annex 1 of the petitioners’ communication of December 13, 2007.

⁸⁴ Annex 6. Communication from the petitioners dated December 13, 2007.

⁸⁵ Annex 7. Brief by Fabiana Chen and Teresa Cacaj, December 5, 1997. Certification of Case File No. 001-2005-95839, pp. 186-195. Annex 1 of the petitioners’ communication of December 13, 2007.

⁸⁶ Annex 7. Statement by Máxima García Valey, July 12, 2005. Statement by Francisco Sic Chen, July 12, 2005. Certification of Case File No. 001-2005-95839, pp. 294-297. Annex 1 of the petitioners’ communication of December 13, 2007.

⁸⁷ Annex 7. Statement by Máxima García Valey, July 12, 2005. Statement by Francisco Sic Chen, dated July 12, 2005. Certification of Case File No. 001-2005-95839, pp. 294-297. Annex 1 of the petitioners’ communication of December 13, 2007.

⁸⁸ Annex 9. Statement by Pedro Chen Sic, June 28, 1999. Judicial case No. 255-93, p. 179. Annex 2 of the petitioners’ communication of December 13, 2007.

79. The soldiers dug two graves where they buried the bodies. Because the graves were so shallow, some human remains were visible on the surface.⁸⁹

80. These events were documented by the CEH, which maintained that “it can be said with certainty that the persons killed in the [...] massacre[...] committed on[...] January 8, 1982 in the community of Chichupac [...] did not die fighting; instead, the forensic evidence shows that they were cruelly exterminated and given no chance to defend themselves.”⁹⁰ The CEH documented what happened as “the Chichupac massacre.”⁹¹ REMHI also classified the events on January 8, 1982 as a massacre in which the National Army and its collaborators participated.⁹²

81. The names of the victims who died are as follows: 1) Víctor Juárez Pangan (or Víctor Juárez Pancan), 2) Clemente Juárez Ixpancoc, 3) Cruz Sic Cuxum (or Cruz Sic Cuxún), 4) Pedro Sic Jerónimo, 5) Gregorio Valey, 6) Timoteo Sic Cujá, 7) Roberto Galiego Chén, 8) Antonio Alvarado González, 9) Alfonso Cruz Juárez, 10) Domingo Cahuec Sic, 11) Santiago Alvarado Xitumul, 12) Agustín Juárez Ixpancoc, 13) Teodoro González Xitumul, 14) Eulogio Morales Alvarado, 15) Luciano González (or Luciano Gonzalez Sis or Lucio Gonzalez Sis), 16) Apolinario Juárez Pérez, 17) Alberto Juarez Perez, 18) Evaristo Siana, 19) Pedro Tum (or Pedro Pérez Ampérez), 20) Emigdio Siana Ixtecoc, 21) Pedro Galiego López, 22) Demetrio Chen Alvarado, 23) Pedro Galiego Mendoza, 24) Camilo Juárez Valey, 25) Julián Garniga López, 26) Benito Juárez Ixpancoc, 27) Francisco Depaz, 28) Maximiliano Sis Valey, 29) Vicente Sic Osorio, 30) Patrocinio Galiego, 31) Félix Alvarado Xitumul, and 32) José Demetrio Cahuec Jerónimo.

82. The day after the massacre, the Army soldiers forced the PAC to clean up the health center, which was covered with blood and human remains.⁹³ The men from the village of Chichupac also climbed to the summit, where they found the graves. They proceeded to dig a third grave where they buried those remains that had been exposed to the elements.⁹⁴ One witness said that he saw “a large pile of sticks and (...) evidence that they were not shot to death but strangled with a tourniquet.”⁹⁵ Another witness maintained that “one could see their hands and sides.”⁹⁶ According to the petitioners, the families were afraid to do anything; they were afraid to have the kind of burial that would ensure that loved ones were “properly laid to rest.”⁹⁷

2.1.2 The situation of the Chichupac villagers subsequent to the massacre

⁸⁹ Annex 9. Statement by Miguel Sic Isorio given in the presence of the Public Prosecution Service, April 27, 1999. Judicial case No. 255-93, p. 171. Annex 2 of the petitioners’ communication of December 13, 2007.

⁹⁰ Annex 3. CEH, *Memory of Silence*, Volume III, Human Rights Violations and Acts of Violence, par. 3381.

⁹¹ Annex 3. CEH, *Memory of Silence*, Volume III, Human Rights Violations and Acts of Violence, par. 3377; Annex 2. CEH, *Memory of Silence*, Volume VIII, Cases Presented, Case No. 9094.

⁹² Annex 4. REMHI. *Guatemala: Never Again! Report of the Recovery of the Historical Memory Project*. Volume II, The Methodology of Violence. .

⁹³ Annex 9. Statement by Miguel Sic Isorio given in the presence of the Public Prosecution Service, April 27, 1999. Judicial case No. 255-93, p. 171. Annex 2 of the petitioners’ communication of December 13, 2007.

⁹⁴ Annex 6. Attached file No. 001-2005-95839. Case No. 255-39. Reference in the petitioners’ communication of December 13, 2007.

⁹⁵ Annex 8. “The Chichupac case.” Annex 20 to the petitioners’ communication of December 13, 2007.

⁹⁶ Annex 8. “The Chichupac case.” Annex 20 to the petitioners’ communication of December 13, 2007.

⁹⁷ Annex 8. “The Chichupac case.” Annex 20 to the petitioners’ communication of December 13, 2007.

83. Witnesses state that subsequent to the massacre, the Army soldiers went to the village of Chichupac almost every day to chase and rape women and kill villagers.⁹⁸ The statements tell of how the Army soldiers burned homes, destroyed crops and stole domestic animals and objects of value. The REMHI documented survivors' statements:

They took our things, our hens, our cattle. Eight days after leaving, they pillaged our property and set it on fire. They stole coffee, candy, a bed, furnishings, animals; they didn't leave a thing standing. The daughter they had killed no longer had any clothes. They stole twelve newly calved cows; they destroyed my cooking pot and my sugarcane press; they set fire to three houses. They began carrying of our new clothing, hens and cattle; they ate it near the clinic. They stole one of my fattened cows; they skinned the cow and the soldiers and civil self-defense patrollers ate it. They cut down our cornfield, bananas and sugar cane; they stole fabric, sashes, clothing, hoes and machetes⁹⁹.

84. The CEH also found that in the wake of the Chichupac massacre, "the Army returned to continue the destruction." It reported that one member of the PAC asserted that:

My second assignment was to throw away the corn and cane crops of the people who went to the mountains, Chichupac (...). The Army said to take everything; that it was for them; some took advantage, but others said: "poor people". If they found people, they left them there dead.¹⁰⁰

85. Some survivors from the village had to flee to the mountains for safe haven. Others moved to different cities.¹⁰¹ One woman from the village said that "the village was virtually destroyed and the people who left Chichupac didn't want to abandon their homes and land but left all the same (...) during the period of violence everything was destroyed, even their houses."¹⁰²

86. The petitioners said that in 1984, the National Army set up a model village in Chichupac, which they called "La Colonia". Their contention was that the people were forced to live there, and that the place was under heavy military control, with around 300 soldiers posted there. Testimony indicates that the women in the model village were forced to cook for the soldiers.¹⁰³

87. The file for this case contains September 2008 communications in which the then Constitutional President of the Republic, Álvaro Colom Caballeros, stated that "on behalf of the Guatemalan State (...) we beg pardon for the anguish and pain caused during the internal armed

⁹⁸ Annex 6. The petitioners' communication of December 13, 2007; Annex 7. Brief by Fabiana Chen and Teresa Cacaj, December 5, 1997. Certification of Case File No. 001-2005-95839, pp. 186-195. Annex 1 of the petitioners' communication of December 13, 2007.

⁹⁹ Annex 4. REMHI. *Guatemala: Never Again! Report of the Recovery of Historical Memory Project*. Volume II, The Methodology of Violence. Case 7463, Chichupac, Rabinal, Baja Verapaz, 1982-83.

¹⁰⁰ Annex 3. CEH, *Memory of Silence*, Volume III, Human Rights Violations and Acts of Violence, par. 3391.

¹⁰¹ Annex 6. The petitioners' communication of December 13, 2007.

¹⁰² Annex 6. The petitioners' communication of December 13, 2007.

¹⁰³ Annex 10. Statement by Juana García Depaz, June 9, 1995. Case No. 802-95. Annex 7 of the petitioners' communication of December 13, 2007; Annex 9. Statement by Juana García Depaz, July 26, 2001. Judicial case No. 255-93, pp. 14-15. Annex 2 of the petitioners' communication of December 13, 2007.

conflict.”¹⁰⁴ The Commission observes that the communication was addressed to Elena Valey, Juan Juarez Ixpatá and Iginia Chen Valey, relatives of some of the alleged victims of the events that occurred on January 8, 1982.

88. The Commission also notes that one of the petitioners’ communications came with an attachment containing a document dated May 5, 2010, prepared by a psychologist specialized in mental health and human rights, Nieves Gómez. The document was titled “Report on the harm done to the mental (moral) health of the inhabitants of the Maya Achí indigenous communities of Chichupac, Xeabaj and other nearby communities in the municipality of Rabinal, department of Baja Verapaz.”¹⁰⁵ The specialist discussed the aftereffects caused by the events of January 8, 1982 and other events alleged by the petitioners and that are part of the established facts.¹⁰⁶ She wrote that as a member of the Team for Community Studies and Psycho-Social Action – ECAP, interviews and meetings had been held with various persons from the village of Chichupac and other communities since 2004.¹⁰⁷

89. She maintained that the community of Chichupac “was totally destroyed.” As a result, the inhabitants were compelled to move to the mountains and other municipalities and were only able to return and rebuild their community in 1985.¹⁰⁸

90. The specialist also indicated that it was not until 1985 that people began to return to the community. With the help of the Family Integration Center, Father Melchor of the Rabinal church, and some male community leaders who managed to survive the massacre, the people [were] able to rebuild their community.¹⁰⁹ She also maintained that the communities of Xeabaj, Toloxcoc and Chirrum “never managed to attract their leaders back to rebuild their production plans, as they live elsewhere now.”¹¹⁰

91. The specialist maintained that cultural practices were severely affected “by the exclusion of and stigma attached to the Maya-Achí” in the years that followed the events in the present

¹⁰⁴ Annex 11. Communications from the Constitutional President of the Republic, Álvaro Colam Caballeros, September 2008. Annex to the petitioners’ communication of March 19, 2010.

¹⁰⁵ Annex 12. Report on the harm done to the mental (moral) health of the inhabitants of the Maya Achí indigenous communities of Chichupac, Xeabaj and other nearby communities in the municipality of Rabinal, department of Baja Verapaz, prepared by Nieves Gómez, dated May 5, 2010. Attachment to the petitioners’ communication of May 6, 2010.

¹⁰⁶ Annex 12. Report on the harm done to the mental (moral) health of the inhabitants of the Maya Achí indigenous communities of Chichupac, Xeabaj and other nearby communities in the municipality of Rabinal, department of Baja Verapaz, prepared by Nieves Gómez, dated May 5, 2010. Attachment to the petitioners’ communication of May 6, 2010.

¹⁰⁷ Annex 12. Report on the harm done to the mental (moral) health of the inhabitants of the Maya Achí indigenous communities of Chichupac, Xeabaj and other nearby communities in the municipality of Rabinal, department of Baja Verapaz, prepared by Nieves Gómez, dated May 5, 2010. Attachment to the petitioners’ communication of May 6, 2010.

¹⁰⁸ Annex 12. Report on the harm done to the mental (moral) health of the inhabitants of the Maya Achí indigenous communities of Chichupac, Xeabaj and other nearby communities in the municipality of Rabinal, department of Baja Verapaz, prepared by Nieves Gómez, dated May 5, 2010. Attachment to the petitioners’ communication of May 6, 2010.

¹⁰⁹ Annex 12. Report on the harm done to the mental (moral) health of the inhabitants of the Maya Achí indigenous communities of Chichupac, Xeabaj and other nearby communities in the municipality of Rabinal, department of Baja Verapaz, prepared by Nieves Gómez, dated May 5, 2010. Attachment to the petitioners’ communication of May 6, 2010.

¹¹⁰ Annex 12. Report on the harm done to the mental (moral) health of the inhabitants of the Maya Achí indigenous communities of Chichupac, Xeabaj and other nearby communities in the municipality of Rabinal, department of Baja Verapaz, prepared by Nieves Gómez, dated May 5, 2010. Attachment to the petitioners’ communication of May 6, 2010.

case.¹¹¹ She stated that during those years, “the people abandoned their prayers for the earth, rain, the harvest, health, or for the dead and their communion with their ancestors.”¹¹² She added that “cultural practices are also being abandoned among those who were permanently uprooted to other municipalities and among young people, who grew up away from their ancestral lands and embraced new identities.”¹¹³

92. The specialist reported that the people “lived in an ever-present climate of fear, insecurity and tension from the day of the January 8, 1982 massacre until 1985, when the situation began to calm down.”¹¹⁴ She pointed out that the exhumation and burial of their loved ones was done “in a climate of mistrust and fear.”¹¹⁵

93. She observed that “the mental and physical health of the people was severely harmed (...) between the time of the massacre and up to the present, health has been almost entirely neglected (...) because of the events that individuals survived, such as physical torture, sexual torture, forced displacement to the mountains and psychosomatic illnesses.”¹¹⁶

94. She concluded that “the absence of any State response over all these years has re-victimized the victims and their family members, who suffer exclusion, discrimination, stigmatization, and labeling. To make matters worse, they have had to invest their time in demonstrating the truth about what happened, with the result that the burden of proof has been reversed and has fallen upon the victims, preventing them from embarking upon a new life plan. Their family and community life has suffered as a result.”¹¹⁷

2.2. Other events that occurred in the village of Chichupac and neighboring communities between 1981 and 1986

¹¹¹ Annex 12. Report on the harm done to the mental (moral) health of the inhabitants of the Maya Achí indigenous communities of Chichupac, Xeabaj and other nearby communities in the municipality of Rabinal, department of Baja Verapaz, prepared by Nieves Gómez, dated May 5, 2010. Attachment to the petitioners’ communication of May 6, 2010.

¹¹² Annex 12. Report on the harm done to the mental (moral) health of the inhabitants of the Maya Achí indigenous communities of Chichupac, Xeabaj and other nearby communities in the municipality of Rabinal, department of Baja Verapaz, prepared by Nieves Gómez, dated May 5, 2010. Attachment to the petitioners’ communication of May 6, 2010.

¹¹³ Annex 12. Report on the harm done to the mental (moral) health of the inhabitants of the Maya Achí indigenous communities of Chichupac, Xeabaj and other nearby communities in the municipality of Rabinal, department of Baja Verapaz, prepared by Nieves Gómez, dated May 5, 2010. Attachment to the petitioners’ communication of May 6, 2010.

¹¹⁴ Annex 12. Report on the harm done to the mental (moral) health of the inhabitants of the Maya Achí indigenous communities of Chichupac, Xeabaj and other nearby communities in the municipality of Rabinal, department of Baja Verapaz, prepared by Nieves Gómez, dated May 5, 2010. Attachment to the petitioners’ communication of May 6, 2010.

¹¹⁵ Annex 12. Report on the harm done to the mental (moral) health of the inhabitants of the Maya Achí indigenous communities of Chichupac, Xeabaj and other nearby communities in the municipality of Rabinal, department of Baja Verapaz, prepared by Nieves Gómez, dated May 5, 2010. Attachment to the petitioners’ communication of May 6, 2010.

¹¹⁶ Annex 12. Report on the harm done to the mental (moral) health of the inhabitants of the Maya Achí indigenous communities of Chichupac, Xeabaj and other nearby communities in the municipality of Rabinal, department of Baja Verapaz, prepared by Nieves Gómez, dated May 5, 2010. Attachment to the petitioners’ communication of May 6, 2010.

¹¹⁷ Annex 12. Report on the harm done to the mental (moral) health of the inhabitants of the Maya Achí indigenous communities of Chichupac, Xeabaj and other nearby communities in the municipality of Rabinal, department of Baja Verapaz, prepared by Nieves Gómez, dated May 5, 2010. Attachment to the petitioners’ communication of May 6, 2010.

2.2.1. The execution of Mateo Grave, Juan Alvarado Grave and Pedro Depáz Ciprian (or Pedro de Paz Cipriano), and the disappearance of Pedro Siana between August 23 and 24, 1981

95. The case file includes testimony recounting three executions and one disappearance that occurred between August 23 and 24, 1981.

96. On August 23, 1981, Mr. Mateo Grave learned that his brother, Juan Alvarado Grave, was murdered by a group of *judiciales* that same day.¹¹⁸ He decided to head to the hospital at Salamá, Baja Verapaz, to locate his brother's body. Along the way, Mr. Mateo Grave was detained by a group of ten *judiciales*, somewhere between the summit of Rabinal and the municipality of San Miguel Chicaj.¹¹⁹

97. On August 24, 1981, Mr. Grave died from "bullet wounds to the skull, neck, thorax, cerebral hemorrhage and attrition, multiple fractures to the head."¹²⁰ Mr. Pedro Depáz Ciprian (or Pedro de Paz Cipriano) was killed together with Mr. Grave.¹²¹ Mr. Pedro Siana was also taken into custody by soldiers and his whereabouts is still unknown.¹²² According to the statement given by Juana García Depaz, when she noticed the absence of her husband, Mateo Grave, she went to the justice of the peace and the National Police in Rabinal, the municipal seat. Thereafter, she learned that her husband's body was at the Hospital Nacional de Salamá, identified as 'XXX'.¹²³

98. Mrs. Juana García Depaz stated that when she arrived at the hospital, "she was threatened and harassed by three drunken *judiciales*." She added that by order of the justice of the peace of the municipality of San Miguel Chicaj, Baja Verapaz, Mr. Grave's body was buried in the cemetery of San Salamá, Baja Verapaz.¹²⁴

2.2.2. The execution of members of the Alvarado and Reyes families on January 1, 1982

99. The case file contains testimony concerning the January 1, 1982 execution of six persons from two different families.

100. According to the statements, members of the National Army, accompanied by the Civil Self-Defense Patrols, came to the village of Toloxcoc in the municipality of Rabinal. There, they killed

¹¹⁸ Annex 13. Sworn statement of Juana Garcia Depaz, November 2, 2009. Attachment to the petitioners' communication of November 3, 2009.

¹¹⁹ Annex 13. Sworn statement of Juana Garcia Depaz, November 2, 2009. Attachment to the petitioners' communication of November 3, 2009.

¹²⁰ Annex 13. Sworn statement of Juana Garcia Depaz, November 2, 2009. Attachment to the petitioners' communication of November 3, 2009.

¹²¹ Annex 6. The petitioners' communication of December 13, 2007.

¹²² Annex 6. The petitioners' communication of December 13, 2007.

¹²³ Annex 13. Sworn statement of Juana Garcia Depaz, November 2, 2009. Attachment to the petitioners' communication of November 3, 2009.

¹²⁴ Annex 13. Sworn statement of Juana Garcia Depaz, November 2, 2009. Attachment to the petitioners' communication of November 3, 2009.

Mr. Víctor Alvarado Valey and his sons Ceferino Alvarado Sucup and Fidel Alvarado Sucup, age 16.¹²⁵ They then buried the bodies in a clandestine grave.¹²⁶

101. At 9:00 p.m. that day, members of the National Army and the Civil Self-Defense Patrols entered a home in the village of Toloxcoc and dragged out Domingo Reyes (or Domingo Juárez Reyes) and his sons Andrés Reyes Román and Santiago Reyes Román. Santiago was just 14 years old. The three alleged victims were accused of being guerrillas.¹²⁷ Their bodies were found 300 meters from their home; they had been shot in the head and “disemboweled and their hands were tied behind their back.”¹²⁸

2.2.3. January 8, 1982

102. The events described below took place before and/or at the same time as the various events described above in connection with the Chichupac massacre.

a. Concerning the detention and disappearance of Depaz Siprian (or Florencio Depaz Cipriano) and the detention of Ciriaco Galiego López

103. The testimony indicates that at around 1:00 a.m. on January 8, 1982, Mr. Lorenzo Depaz Siprian (or Florencio Depaz Cipriano) and his father-in-law Ciriaco Galiego López, left their home in the village of Chichupac and headed for the municipal seat with the idea of selling a bull.¹²⁹ Along the way, they were stopped by members of the National Army and Civil Self-Defense Patrols, who took the bull from them. They were also taken into custody and taken to the jail located in the municipal seat.¹³⁰

104. Mr. Ciriaco Galiego was released at around 7:00 p.m. For his part, Mr. Depaz was dragged and tortured, as he was accused of being a guerrilla. Mr. Depaz’ wife, Alejandra Galiego Mendoza, learned of what happened at around 4:00 a.m. on January 9, 1982, when Ciriaco Galiego returned to Chichupac.¹³¹ Mrs. Galiego, accompanied by her sister-in-law, went to the municipal seat to establish her husband’s whereabouts. When she arrived at the municipal jail, she was given no information as to the whereabouts of Mr. Depaz. His whereabouts is still unknown.¹³²

¹²⁵ Annex 9. Statement by Victor Castulo Alvarado Sucup, August 11, 1995. Judicial case No. 255-93, p. 2. Annex 2 of the petitioners’ communication of December 13, 2007.

¹²⁶ Annex 9. Statement by Victor Castulo Alvarado Sucup, August 11, 1995. Judicial case No. 255-93, p. 5. Annex 2 of the petitioners’ communication of December 13, 2007.

¹²⁷ Annex 9. Statement by Rosario Roman Tum, August 11, 1995. Judicial case No. 255-93, p. 3. Annex 2 of the petitioners’ communication of December 13, 2007; Annex 9. Statement by Rosario Roman Tum, May 9, 2000. Judicial case No. 255-93, p. 4. Annex 2 of the petitioners’ communication of December 13, 2007.

¹²⁸ Annex 9. Statement by Rosario Roman Tum, August 11, 1995. Judicial case No. 255-93, p. 3. Annex 2 of the petitioners’ communication of December 13, 2007.

¹²⁹ Annex 6. The petitioners’ communication of December 13, 2007.

¹³⁰ Annex 14. Amplification of a complaint concerning a person who disappeared in the Municipality of Rabinal, filed July 12, 1995. Case file No. 811-95. Annex 10 of the petitioners’ communication of December 13, 2007.

¹³¹ Annex 14. Amplification of a complaint concerning a person who disappeared in the Municipality of Rabinal, filed July 12, 1995. Case file No. 811-95. Annex 10 of the petitioners’ communication of December 13, 2007.

¹³² Annex 6. The petitioners’ communication of December 13, 2007; Annex 2. CEH, *Memory of Silence*, Volume VIII, Cases Presented, Case No. 9166.

b. Concerning the rape of Máxima Emiliana García Valey

105. According to the victim's own statement, while the meeting at the Chichupac health center was in progress, Máxima Emiliana García Valey, age 19, returned home to bring water back to her husband and mother-in-law.¹³³ When she arrived home, she spotted a group of soldiers. The soldiers "grabbed her at gunpoint, and ordered her to tell them where the guerrillas lived."¹³⁴ She stated that they had the names of certain people in hand and ordered her "to tell them where they lived; I saw the names of my stepfather and one of his sons and a son-in-law on the list."¹³⁵

106. Then one of the Army soldiers "ordered her to disrobe; they raped her, one after another, leaving her beaten to the point that she was unable to stand."¹³⁶ In her statement, Mrs. García maintained that "they told (her) to take off (the) sash (...) and then they all raped (her)." She added: "I don't recall how many there were, but there were quite a few." She stressed the fact that she was six months pregnant at the time.¹³⁷

2.2.4. January 18, 1982

a. Concerning the detention, torture and execution of Adrián García Manuel, Hugo García de Paz, and Abraham Alvarado Tecú (or Agapito Alvarado Depáz); and the detention and execution of Raymundo Alarcón (or Edmundo Alarcón Morente), and Manuel de Jesús Alarcón Morente

107. Mr. Adrián García Manuel, his son Hugo García de Paz and his nephew Abraham Alvarado Tecú (or Agapito Alvarado Depáz), age 15, were recruited into the Civil Self-Defense Patrols.¹³⁸ On January 18, 1982, they left their home in the village of Chichupac to go on patrol.¹³⁹ However, they were stopped by members of the National Army, who accused them of being guerrillas.¹⁴⁰

¹³³ Annex 7. Statement by Máxima Emiliana García Valey, July 12, 2005. Certification of Case File No. 001-2005-95839, pp. 294-297. Annex 1 of the petitioners' communication of December 13, 2007.

¹³⁴ Annex 7. Statement by Máxima Emiliana García Valey, July 12, 2005. Certification of Case File No. 001-2005-95839, pp. 294-297. Annex 1 of the petitioners' communication of December 13, 2007.

¹³⁵ Annex 7. Statement by Máxima Emiliana García Valey, July 12, 2005. Certification of Case File No. 001-2005-95839, pp. 294-297. Annex 1 of the petitioners' communication of December 13, 2007.

¹³⁶ Annex 15. Undated statement given by Francisco Chen to the National Reparations Program. Attachment to the petitioners' communication of December 11, 2013.

¹³⁷ Annex 15. Undated statement given by Francisco Chen to the National Reparations Program. Attachment to the petitioners' communication of December 11, 2013.

¹³⁸ Annex 16. Complaint filed with the Public Prosecution Service, dated June 13, 2006. Complaint MP 247/2006/648. Annex 9 of the petitioners' communication of December 13, 2007; statement by Juana García de Paz, February 8, 2006. Case File No. 802-95. Annex 7 to the petitioners' communication of December 13, 2007.

¹³⁹ Annex 16. Complaint filed with the Public Prosecution Service, dated June 13, 2006. Complaint MP 247/2006/648. Annex 9 of the petitioners' communication of December 13, 2007.

¹⁴⁰ Annex 16. Statement given by Juana García de Paz in the presence of the Rabinal Municipal Prosecutor's Office, September 26, 2006. Complaint MP 247/2006/648. Annex 9 of the petitioners' communication of December 13, 2007.

108. The three alleged victims were detained and locked up in the Chirrum village schoolhouse.¹⁴¹ Mr. Adrián García's daughter, Juana García Depaz, said that she learned of the events and told her daughter to go to the schoolhouse to bring them food.¹⁴² She maintained that the soldiers "did not allow them to provide food because (...) they said they would be releasing them soon and that they would be on their way home."¹⁴³

109. She maintained, however, that the alleged victims were taken instead to the military post in the village Guachipilín within the municipality of Rabinal, where members of the National Army and the Civil Self-Defense Patrols tortured them.¹⁴⁴ Juana García Depaz said that her father Adrián García was "crucified on an apple tree."¹⁴⁵ The others were killed, together with Mr. Raymundo Alarcón and Manuel de Jesús Alarcón Morente, who were detained at the crossroads to the villages of Chirrum and Chuateguá¹⁴⁶ on January 18, 1982 or November 30, 1981.¹⁴⁷ They were subsequently buried in a clandestine gravesite in the village of Guachipilín.¹⁴⁸

b. Concerning the disappearance of Leonardo Cahuec González

110. According to the testimony in the case file, on January 18, 1982, Mr. Leonardo Cahuec González and his wife Albertina Sic Cuxum were in the municipal seat of Rabinal, after the baptism of their daughter the previous day.¹⁴⁹ When they were about to return to their village, they were stopped by a car from which two men in civilian dress emerged.¹⁵⁰ These two individuals asked Mr. Cahuec to produce his identification documents and, after taking them, tied his hands and walked him off to the Rabinal jail.¹⁵¹

111. Mrs. Albertina Sic Cuxum went with them to the jail; the men guarding the entrance told her that her husband was a guerrilla and that "everyone in her village was going to disappear for the

¹⁴¹ Annex 16. Statement given by Juana García de Paz in the presence of the Rabinal Municipal Prosecutor's Office, September 26, 2006. Complaint MP 247/2006/648. Annex 9 of the petitioners' communication of December 13, 2007.

¹⁴² Annex 16. Statement given by Juana García de Paz in the presence of the Rabinal Municipal Prosecutor's Office, September 26, 2006. Complaint MP 247/2006/648. Annex 9 of the petitioners' communication of December 13, 2007.

¹⁴³ Annex 16. Statement given by Juana García de Paz in the presence of the Rabinal Municipal Prosecutor's Office, September 26, 2006. Complaint MP 247/2006/648. Annex 9 of the petitioners' communication of December 13, 2007.

¹⁴⁴ Annex 16. Statement given by Juana García de Paz in the presence of the Rabinal Municipal Prosecutor's Office, September 26, 2006. Complaint MP 247/2006/648. Annex 9 of the petitioners' communication of December 13, 2007.

¹⁴⁵ Annex 16. Statement given by Juana García de Paz in the presence of the Rabinal Municipal Prosecutor's Office, September 26, 2006. Complaint MP 247/2006/648. Annex 9 of the petitioners' communication of December 13, 2007.

¹⁴⁶ Annex 6. The petitioners' communication of December 13, 2007.

¹⁴⁷ The Commission observes a discrepancy in the statements as to the date on which the detention and death of Raymundo Alarcón and Manuel Alarcón occurred.

¹⁴⁸ Annex 16. Statement by Juana García de Paz, given in the Rabinal Municipal Prosecutor's Office, September 26, 2006. Complaint MP 247/2006/648. Annex 9 to the petitioners' communication of December 13, 2007.

¹⁴⁹ Annex 6. The petitioners' communication of December 13, 2007.

¹⁵⁰ Annex 14. Amplification of a complaint concerning a person who disappeared in the Municipality of Rabinal, filed July 12, 1995. Case file No. 811-95. Annex 10 of the petitioners' communication of December 13, 2007.

¹⁵¹ Annex 14. Amplification of a complaint concerning a person who disappeared in the Municipality of Rabinal, filed July 12, 1995. Case file No. 811-95. Annex 10 of the petitioners' communication of December 13, 2007; Annex 2. CEH, *Memory of Silence*, Volume VIII, Cases Presented, Case No. 9163.

same reason.”¹⁵² They also threatened to beat her if she refused to leave and told her that her husband would back in three or five years, “since they were going to send him to headquarters”.¹⁵³ The whereabouts of Mr. Leonardo Cahuec González is still unknown.

c. Concerning the detention and torture of Miguel Chen Tahuico

112. According to the petitioners, on January 18, 1982, Mr. Miguel Chen Tahuico, father of another alleged victim (see *infra* paragraphs 121-122) who fled the village of Chichupac after the January 8 massacre that year, was arrested by members of the National Army, along with three other people.¹⁵⁴ After being accused of belonging to the guerrilla movement, Mr. Chen was hung from a tree; a cigarette was used to burn his chest. They also tried to burn his tongue with a charred stick. Once they took him down and had him on the ground, the soldiers jumped on him. Then they retied him to a tree, where he remained all night. The next day he was taken to the model village of “La Colonia,” which was under military control.¹⁵⁵

2.2.5. The disappearance of Juan Mendoza Alvarado and José Cruz Mendoza, missing since January 31, 1982

113. The documentation available discloses two disappearances on January 31, 1982.

114. On January 31, 1982, members of the National Army and the Civil Self-Defense Patrols went to the village of El Apazote and entered the home of Juan Mendoza Alvarado and his father José Cruz Mendoza.¹⁵⁶ Both men were tortured¹⁵⁷ and their whereabouts is still unknown.¹⁵⁸

2.2.6. The February 12, 1982 disappearance of María Concepción Chen Sic and Casimiro Siana

115. The available documentation indicates that on February 12, 1982, members of the National Army and Civil Self-Defense Patrols entered the home of María Concepción Chen Sic in the village of Chichupac.¹⁵⁹ These soldiers and patrollers accused her of preparing food for the guerrillas and demanded that she hand over her husband, Silvestre Sic Xitumul. It was then that Mr. Silvestre Sic Xitumul left the house, along with his children.

¹⁵² Annex 6. The petitioners’ communication of December 13, 2007.

¹⁵³ Annex 6. The petitioners’ communication of December 13, 2007.

¹⁵⁴ Annex 17. The petitioners’ communication of November 1, 2011.

¹⁵⁵ Annex 17. The petitioners’ communication of November 1, 2011.

¹⁵⁶ Annex 6. The petitioners’ communication of December 13, 2007.

¹⁵⁷ Annex 14. Amplification of a complaint concerning a person who disappeared in the Municipality of Rabinal, filed July 12, 1995. Case file No. 811-95. Annex 10 of the petitioners’ communication of December 13, 2007.

¹⁵⁸ Annex 18. Record from the Municipality of Rabinal, dated November 25, 2005. Annex 18 of the petitioners’ communication of December 13, 2007.

¹⁵⁹ Annex 6. The petitioners’ communication of December 13, 2007.

116. The soldiers tied up Mrs. Chen Sic and put her in a car, along with Mr. Casimiro Siana, the community's deputy mayor. The soldiers then set fire to the house.¹⁶⁰ The whereabouts of María Concepción Chen Sic and Casimiro Siana are still unknown.

2.2.7. The execution of Andrea Osorio Galeano on February 19, 1982

117. The available testimony indicates that on February 19, 1982, Andrea Osorio Galeano was killed by members of the National Army one kilometer from her home in the village of Chichupac.¹⁶¹ Her remains were discovered in one of the graves containing the remains of the persons killed in the January 8, 1982 massacre.¹⁶²

2.2.8. The detention, torture and execution of two members of the Milián family on March 22 and 23 and April 20, 1982

118. The Commission has statements indicating that two persons from the same family were detained, tortured and executed on the dates indicated above.

119. On March 22, 1982, Mr. Elías Milián González was detained by a group of Army soldiers as he was on his way to the Rabinal municipal center.¹⁶³ The following day, he was taken to the Xeabaj clinic, where he was tortured and strangled; "they then put his body in an oven used to make *panela*."¹⁶⁴

120. Then, on April 20, 1982, some 100 Army soldiers arrived at the village of Toloxcoc and entered the home of Mr. Milián González where they found his daughter Amelia Milián Morales, detained her and took her to parts unknown. The sister, Tarcila Milián Morales, discovered her body in the village, inside an oven used to make *panela*.¹⁶⁵

2.2.9. The death of young Antonio Chen Mendoza on November 12, 1982 or March 1983

121. Mr. Miguel Chen stated that because of the Army's persecution, Mr. Chen, his wife and four children –one of whom was Antonio Chen Mendoza, age 5- fled the village of Chichupac¹⁶⁶ and went into the mountains. Mr. Chen said that his son, Antonio Chen Mendoza, "began to have diarrhea

¹⁶⁰ Annex 6. The petitioners' communication of December 13, 2007.

¹⁶¹ Annex 7. Statement by Miguel Sic, Fabiana Chen and Teresa Cacaj, dated December 2, 1997. Certification of Case File No. 001-2005-95839, pp. 186-194. Annex 1 of the petitioners' communication of December 13, 2007.

¹⁶² Annex 7. Report on the documentation of the victims of the Chichupac massacre, Municipality of Rabinal. Certification of Case File No. 001-2005-95839, p. 34. Annex 1 of the petitioners' communication of December 13, 2007.

¹⁶³ Annex 9. Complaint filed by Tarcila Milián Morales with the Public Prosecution Service, dated December 12, 2000. Judicial case No. 255-93, pp. 32-33. Annex 2 of the petitioners' communication of December 13, 2007.

¹⁶⁴ Annex 9. Statement by Tarcila Milián Morales, July 27, 2001. Judicial case No. 255-93, p. 21. Annex 2 of the petitioners' communication of December 13, 2007.

¹⁶⁵ Annex 9. Complaint filed by Tarcila Milián Morales with the Public Prosecution Service, dated December 12, 2000. Judicial case No. 255-93, pp. 32-33. Annex 2 of the petitioners' communication of December 13, 2007.

¹⁶⁶ Annex 19. Complaint that Miguel Chen Tahuico filed with the Municipal Attorney's Office of the Rabinal Public Prosecution Service, department of Baja Verapaz, dated April 6, 2006. Case File No. 248-2006-169. Annex 13 of the petitioners' communication of December 13, 2007.

and a fever and he broke out in a rash over his small body; as a result of this sickness, (...) he died.”¹⁶⁷ Mr. Chen said that his son’s body was buried on the mountain.¹⁶⁸

122. The original petition stated that Antonio Chen Mendoza died on November 12, 1992. In the complaint filed, his reported date of death is March 1983. His father, Miguel Chen, said that he did not recall the precise date of his son’s death, since “one loses track of time in the mountains.”¹⁶⁹

2.2.10. The rape and execution of Gregoria Valey Yxtecoc on November 22, 1982¹⁷⁰

123. The statements on record indicate that at around 10:00 a.m. on November 22, 1982, a group of Army soldiers arrived in the village of Chichupac and entered the home of Mrs. Gregoria Valey Yxtecoc, who was four months pregnant at the time.¹⁷¹ After asking for her husband, Timoteo García Rojas, who was not at home, the soldiers left.¹⁷²

124. At midday, the Army soldiers returned to the home of Mrs. Gregoria Valey, who was raped and then hung by a rope from the ceiling of her home.¹⁷³ The soldiers then set fire to the house. Family members of Mrs. Valey Yxtecoc found her body that same day.¹⁷⁴

2.2.11. Detention of nine persons and torture and execution of eight on November 26, 1982; and execution of eight persons on March 2, 1983

125. On the afternoon of November 26, 1982, a group of Army soldiers and Civil Self-Defense patrollers from the municipal seat and from the village of Xococ, arrived in the villages of Xebabaj and Chijom.¹⁷⁵ According to information provided by the petitioners, they stopped there and took nine persons from their homes, including the following: i) Gorgonio González González; ii) Gabino Román

¹⁶⁷ Annex 19. Complaint that Miguel Chen Tahuico filed with the Municipal Attorney’s Office of the Rabinal Public Prosecution Service, department of Baja Verapaz, dated April 6, 2006. Case File No. 248-2006-169. Annex 13 of the petitioners’ communication of December 13, 2007.

¹⁶⁸ Annex 19. Amplification of the statement made by Miguel Chen Tahuico, June 6, 2006. Case File No. 248-2006-169. Annex 13 of the petitioners’ communication of December 13, 2007.

¹⁶⁹ Annex 19. Amplification of the statement made by Miguel Chen Tahuico, June 6, 2006. Case File No. 248-2006-169. Annex 13 of the petitioners’ communication of December 13, 2007.

¹⁷⁰ The Commission observes a discrepancy as to the date on which the rape and execution of Gregoria Valey Ixtecoc allegedly occurred.

¹⁷¹ Annex 9. Statement by Maxima Emiliana Garcia Valey, July 26, 2001. Judicial case No. 255-93, p. 19. Annex 2 of the petitioners’ communication of December 13, 2007.

¹⁷² Annex 9. Statement by Maxima Emiliana Garcia Valey, July 26, 2001. Judicial case No. 255-93, p. 19. Annex 2 of the petitioners’ communication of December 13, 2007.

¹⁷³ Annex 9. Statement by Maxima Emiliana Garcia Valey, July 26, 2001. Judicial case No. 255-93, p. 19. Annex 2 of the petitioners’ communication of December 13, 2007; Annex 20. Complaint filed by Maxima Emiliana Garcia Valey, June 20, 1995. Case File No. 802-95. Annex 8 of the petitioners’ communication of December 13, 2007.

¹⁷⁴ Annex 20. Complaint filed by Maxima Emiliana Garcia Valey, June 20, 1995. Case File No. 802-95. Annex 8 of the petitioners’ communication of December 13, 2007.

¹⁷⁵ Annex 21. Communication from the Guatemalan Forensic Anthropology Foundation, dated October 6, 2004. Case File No. 1378-97. Annex 14 of the petitioners’ communication of December 13, 2007; Annex 22. Complaint filed by Francisca Gonzales Tecu with the Human Rights Ombudsman, dated July 28, 1997. Annex 11 of the petitioners’ communication of December 13, 2007.

Yvoy; iii) Cruz Pérez Ampérez; iv) Eustaquio Ixtecoc; v) Jorge Galeano Román; vi) Rafael Depaz Tecú; vii) Enrique Mendoza Sis; viii) Dionisio Vachán and ix) Napoleón García De Paz¹⁷⁶.

126. According to the statements, the persons detained had their hands tied and were taken to the San Francisco cemetery in the village of Xeabaj, where they were tortured.¹⁷⁷ Mr. Gorgonio González González was hung from a tree; and later when he was on the ground face down, the soldiers walked on him. These people were later murdered and buried.¹⁷⁸ Napoleón García De Paz was able to escape¹⁷⁹.

127. Although there is a discrepancy between the date shown on the death certificates and the date indicated in the forensic report, the Commission notes that the CEH recorded this event as occurring on November 26, 1982,¹⁸⁰ which is consistent with the date given in the account of complainant Francisca González.

128. Furthermore, the evidence in the case file indicates that Rosa González Tecú, age 10, her mother Enriqueta Tecú, Luciano Alvarado Xitumul, Héctor Rolando Alvarado García, age two, Adela Florentina Alvarado García, a one-year old, Luciana Xitumul Ixpancoc,¹⁸¹ María Concepción Xitumul Xitumul, age five, and a baby girl between 0 and 3 months old, name unknown, left the village of Xeabaj because of the “violence” and took refuge in a nearby shack used for cutting and pressing cane and making *panela*.¹⁸² At around 5:00 a.m. on March 2, 1983, Army soldiers located the alleged victims in the shack and proceeded to kill them with guns and machetes.¹⁸³ The bodies of the alleged victims were buried in a clandestine grave.¹⁸⁴

2.2.12. The execution of the Grave García brothers on October 22, 1983 and the subsequent situation of Juana García de Paz

¹⁷⁶ Annex 23. The petitioners’ communication of July 15, 2009. In their early communications, the petitioners included in this group of victims the names of Francisco De Paz and Juan Pérez Sic. During the merits phase, the petitioners clarified that Mr. Francisco de Paz is a victim of the Chichupac massacre that occurred on January 8, 1982. Regarding Mr. Juan Pérez Sic, the petitioners clarified that he died in the course of the violent acts perpetrated on October 1, 1982. The Commission has no additional information with which to establish the circumstances of this person’s death.

¹⁷⁷ Annex 22. Complaint filed by Francisca Gonzales Tecu with the Human Rights Ombudsman, dated July 28, 1997. Annex 11 of the petitioners’ communication of December 13, 2007.

¹⁷⁸ Annex 22. Complaint filed by Francisca Gonzales Tecu with the Human Rights Ombudsman, dated July 28, 1997. Annex 11 of the petitioners’ communication of December 13, 2007.

¹⁷⁹ Annex 23. The petitioners’ communication of July 15, 2009.

¹⁸⁰ Annex 2. CEH, *Memory of Silence*, Volume VIII, Cases Presented, Case No. 13001.

¹⁸¹ The six alleged victims were identified in the following: Annex 21. A communication from the Guatemalan Forensic Anthropology Foundation, dated October 6, 2004. Case File No. 1378-97. Annex 14 of the petitioners’ communication of December 13, 2007.

¹⁸² Annex 22. Complaint filed by Francisca Gonzales Tecu with the Human Rights Ombudsman, dated July 28, 1997. Annex 11 of the petitioners’ communication of December 13, 2007.

¹⁸³ Annex 22. Complaint filed by Francisca Gonzales Tecu with the Human Rights Ombudsman, dated July 28, 1997. Annex 11 of the petitioners’ communication of December 13, 2007; Annex 21. Communication from the Guatemalan Forensic Anthropology Foundation, dated October 6, 2004. Case File No. 1378-97. Annex 14 of the petitioners’ communication of December 13, 2007; Annex 2. CEH, *Memory of Silence*, Volume VIII, Cases Presented, Case No. 13002.

¹⁸⁴ Annex 22. Complaint filed by Francisca Gonzales Tecu with the Human Rights Ombudsman, dated July 28, 1997. Annex 11 of the petitioners’ communication of December 13, 2007.

129. According to the testimony, at around 5:00 a.m. on October 22, 1983, close to two hundred Army soldiers arrived at Mount Cumatzá de Alvarado, located between the communities of Chichupac and Xeabaj in the municipality of Rabinal.¹⁸⁵

130. Army soldiers and Civil Self-Defense patrollers discovered Eusebia Grave García, age 19, as she was bathing in a stream in the village of Chichupac.¹⁸⁶ Her brother, José León Grave García, age 17, was eating breakfast at the time and attempted to flee but was shot and wounded.¹⁸⁷ Both were tortured and killed. Their mother, Juana García Depaz, said that in the case of José León, “they cut off his penis, his ear, his nose and disemboweled him.”¹⁸⁸

131. Juana García Depaz also stated that the National Army assembled the people living in the area and proceeded to burn clothing and food.¹⁸⁹ She also maintained that the soldiers told them they had to go to the “military post located in the municipal seat of Rabinal (...) where they would want for nothing.” Mrs. Depaz maintained that at the post “they endured hardship and torture, with nothing to eat or drink (...) the *judiciales* (...) told them that they were going to die at any moment because the grave was already dug.” She said that all the women were enclosed in the same room and once they arrived at the post “they were kicked and raped by the soldiers and *judiciales*; that treatment continued for the next two days.” She added that they asked for the names of the guerrillas from their village.¹⁹⁰

132. Juana García Depaz also stated that at the post, a *judicial* by the name of Everardo García told her that “her burial was already prepared, that there would be a rendering of accounts that night; his blood itched and he was hot.”¹⁹¹ She said that “he put a rope around her neck, strung her up and questioned her about the guerrillas.” Mrs. García Depaz said that after three or four days at the military post, she was taken to Colonia Pacux in Rabinal, “where she was kept under military surveillance” and where she remained for three and a half months. She maintained that “they lived

¹⁸⁵ Annex 10. Statement by Juana García Depaz, June 9, 1995. Case File No. 802-95. Annex 7 of the petitioners’ communication of December 13, 2007.

¹⁸⁶ Annex 10. Statement by Juana García Depaz, June 9, 1995. Case File No. 802-95. Annex 7 of the petitioners’ communication of December 13, 2007.

¹⁸⁷ Annex 10. Statement by Juana García Depaz, June 9, 1995. Case File No. 802-95. Annex 7 of the petitioners’ communication of December 13, 2007.

¹⁸⁸ Annex 13. Sworn statement given by Juana Garcia Depaz, November 2, 2009. Annex 9 of the petitioners’ communication of November 3, 2009.

¹⁸⁹ Annex 10. Statement by Juana García Depaz, June 9, 1995. Case File No. 802-95. Annex 7 of the petitioners’ communication of December 13, 2007; Statement by Juana García Depaz, July 26, 2001. Judicial case No. 255-93, pp. 14-15. Annex 2 of the petitioners’ communication of December 13, 2007.

¹⁹⁰ Annex 10. Statement by Juana García Depaz, June 9, 1995. Case File No. 802-95. Annex 7 of the petitioners’ communication of December 13, 2007; Statement by Juana García Depaz, July 26, 2001. Judicial case No. 255-93, pp. 14-15. Annex 2 of the petitioners’ communication of December 13, 2007.

¹⁹¹ Annex 10. Statement by Juana García Depaz, June 9, 1995. Case File No. 802-95. Annex 7 of the petitioners’ communication of December 13, 2007; Statement by Juana García Depaz, July 26, 2001. Judicial case No. 255-93, pp. 14-15. Annex 2 of the petitioners’ communication of December 13, 2007.

because of the charity of others (...) [and that] the officer assembled them every eight days and threatened to kill them if they continued to be mixed up in these things.”¹⁹²

133. Mrs. García Depaz said that on December 31, 1983 or January 1, 1984, they sent her as one of a group of 20 persons “to build the Colonia in the village of Chichupac de Rabinal.” She said that they lived together in galleys and were forced to cook for the soldiers.¹⁹³

134. She maintained that a *judicial* raped her on June 30, 1985, in the *colonia* of Chichupac; she was left pregnant and gave birth to a baby girl. She also stated that in October 1982 she was raped by a soldier and was left pregnant as a result; she gave birth to her son Edgar García Depaz on July 11, 1983.¹⁹⁴

2.2.13. The execution of Medardo Juárez García on August 31, 1984

135. According to the testimony, on August 31, 1984, a group of Army soldiers and Civil Self-Defense patrollers came to the village of Chichupac.¹⁹⁵ Medardo Juárez García, age 18, was at home and became frightened when he saw the soldiers and went running toward the street. One of the soldiers shot him dead.¹⁹⁶ The mother of Medardo Juárez García, María García de Paz, said that on the same day, the Army soldiers and Civil Self-Defense patrollers burned down her home and stole all her belongings. She added that the same thing was done to the “neighboring homes”.¹⁹⁷

2.2.14. The disappearance of Marcelo Sic Chen, missing since December 13, 1984

136. According to the statements made, on December 13, 1984 Marcelo Sic Chen, son of Silvestre Sic Xitumul who was killed on December 20, 1984 (see *infra* paragraphs 137), arrived in the *colonia* of Chichupac to “apply for amnesty and turn himself in.” There, he was received by a military commissioner who handed him over to Army soldiers.¹⁹⁸ He was then taken to the military post at Rabinal, where he was tortured for five days.¹⁹⁹ The whereabouts of Marcelo Sic Chen are still unknown.

¹⁹² Annex 10. Statement by Juana García Depaz, June 9, 1995. Case File No. 802-95. Annex 7 of the petitioners’ communication of December 13, 2007; Statement by Juana García Depaz, July 26, 2001. Judicial case No. 255-93, pp. 14-15. Annex 2 of the petitioners’ communication of December 13, 2007.

¹⁹³ Annex 10. Statement by Juana García Depaz, June 9, 1995. Case File No. 802-95. Annex 7 of the petitioners’ communication of December 13, 2007; Statement by Juana García Depaz, July 26, 2001. Judicial case No. 255-93, pp. 14-15. Annex 2 of the petitioners’ communication of December 13, 2007.

¹⁹⁴ Annex 10. Statement by Juana García Depaz, June 9, 1995. Case File No. 802-95. Annex 7 of the petitioners’ communication of December 13, 2007; Statement by Juana García Depaz, July 26, 2001. Judicial case No. 255-93, pp. 14-15. Annex 2 of the petitioners’ communication of December 13, 2007.

¹⁹⁵ Annex 24. Complaint No. 8797, filed by Maria Garcia de Paz on January 3, 1997. Case File No. 8797. Annex 12 of the petitioners’ communication of December 13, 2007.

¹⁹⁶ Annex 24. Complaint No. 8797, filed by Maria Garcia de Paz on January 3, 1997. Case File No. 8797. Annex 12 of the petitioners’ communication of December 13, 2007.

¹⁹⁷ Annex 24. Complaint No. 8797, filed by Maria Garcia de Paz on January 3, 1997. Case File No. 8797. Annex 12 of the petitioners’ communication of December 13, 2007.

¹⁹⁸ Annex 20. Complaint filed by Maxima Emiliana Garcia Valey and Francisco Sic Chen, June 20, 1995. Case File No. 802-95. Annex 8 of the petitioners’ communication of December 13, 2007.

¹⁹⁹ Annex 20. Complaint filed by Maxima Emiliana Garcia Valey and Francisco Sic Chen, June 20, 1995. Case File No. 802-95. Annex 8 of the petitioners’ communication of December 13, 2007.

2.2.15. The execution of Silvestre Sic Xitumul and Raymunda Sical Corazón on December 20, 1984

137. According to the testimony, at around 6:00 p.m. on December 20, 1984, Silvestre Sic Xitumul and Raymunda Sical Corazón were in a home in the village of Chichupac when Army soldiers entered.²⁰⁰ The two were struck with machetes and shot to death.²⁰¹ Their bodies were later discovered in a nearby latrine.²⁰²

2.2.16. The execution of Efraín García de Paz on August 17, 1986

138. According to the statements made, on August 17, 1986 Efraín García de Paz, brother-in-law of Mateo Grave who was killed on August 24, 1981 (see *supra* paragraphs 95-98), left his home in the village of Chichupac headed for Rabinal, the municipal seat. On the way, he was stopped and murdered by a *judicial* who was an Army collaborator.²⁰³

2.3. Criminal proceedings

2.3.1. In connection with the January 8, 1982 massacre – Case File No. 001-2005-95839

139. The complaint concerning the events in this case was filed on March 29, 1993 and confirmed on April 14 of that same year by Ana Calate Sic.²⁰⁴ The complaint stated that “numerous persons were aware of this fact but afraid to report it” and requested that the bodies be exhumed. The Baja Verapaz Criminal Court Judge of First Instance agreed to the request on April 29, 1993.²⁰⁵

140. On May 6, 1993, the Guatemalan Forensic Anthropology Team began an exhumation of clandestine gravesites in the village of Chichupac; “originally, three gravesites (...) were dug up in what was a forest.”²⁰⁶ Present for the exhumation was the Rabinal justice of the peace and the Baja Verapaz

²⁰⁰ Annex 20. Complaint filed by Maxima Emiliana Garcia Valey and Francisco Sic Chen, June 20, 1995. Case File No. 802-95. Annex 8 of the petitioners’ communication of December 13, 2007.

²⁰¹ Annex 20. Complaint filed by Maxima Emiliana Garcia Valey and Francisco Sic Chen, June 20, 1995. Case File No. 802-95. Annex 8 of the petitioners’ communication of December 13, 2007.

²⁰² Annex 20. Complaint filed by Maxima Emiliana Garcia Valey and Francisco Sic Chen, June 20, 1995. Case File No. 802-95. Annex 8 of the petitioners’ communication of December 13, 2007.

²⁰³ Annex 10. Complaint of a new clandestine grave, filed by Juana García de Paz on May 30, 1995. Case File No. 802-95. Annex 7 of the petitioners’ communication of December 13, 2007.

²⁰⁴ Annex 7. Confirmation of a complaint filed by Ana Calate Sic with the Court of First Instance of Salama, April 14, 1993. Certification of Case File No. 001-2005-95839, pp. 268-271. Annex 1 of the petitioners’ communication of December 13, 2007.

²⁰⁵ Annex 9. Order from the Criminal Court Judge of First Instance of Baja Verapaz, dated April 29, 1993. Judicial case No. 255-93, p. 88. Annex 2 of the petitioners’ communication of December 13, 2007.

²⁰⁶ Annex 7. Report on the Forensic Anthropological Investigations, Chichupac Village, presented by the Guatemalan Forensic Anthropology Team, July 1993. Certification of case File No. 001-2005-95839, pp. 58-91. Annex 1 of the petitioners’ communication of December 13, 2007.

forensic physician.²⁰⁷ The exhumation report, presented on July 7, 1993, stated that the task of gathering and examining the skeletal remains was very difficult, since “most of the bones were detached (and) no *ante mortem* data were available for a number of the individuals.” The report stated that seven persons were identified: Patrocinio Chen; Agustín Juárez; Pedro Gallego; Domingo Cahuec; Victor Juárez; Cruz Sic and Andrea Osorio.²⁰⁸ They added that at least 31 individuals were buried in the clandestine graves. The evidence found suggested that “the victims died violent deaths, as shown by the ropes still tied to their necks, their hands tied behind backs, shots fired to finish victims off, fractures in different parts of the body (...) in some of the skeletal remains.”²⁰⁹

141. On May 7, 1993, the Criminal Court of First Instance for Drug-related Activity and Crimes against the Environment asked the commander of the Military Reserves for the names of the persons serving as military commissioners and their assistants in the municipality of Rabinal in 1982 and whether they had been detailed to any mission on January 8 of that year.²¹⁰ In his reply, the commander said that “there were no military commissioners in that village in 1982 because that area had been taken over as a base of terrorist operations (...) thus (...) he could not provide the name of any commission in operation as of January 8, 1982.”²¹¹

142. On June 3, 1993, the Criminal Court of First Instance indicated that the case file “has not been located” and therefore asked the Office of the President of the Judicial Branch to “kindly order that a person be sent to the general archives of the courts to assist in locating the case file.”²¹²

143. On August 10, 1993, the Criminal Court of First instance received from the departmental coroner various objects associated with the skeletal remains found in the graves.²¹³ It is worth noting here that three military registrations and one credential of military reservists were also found.

144. On September 2, 1996, the Human Rights Ombudsman presented a report on the events that occurred in the village of Chichupac, and on the events that occurred in the village of Río Negro on March 13, 1982, and at the place known as Plan de Sánchez on July 18, 1982.²¹⁴ He maintained that:

²⁰⁷ Annex 9. Record by the Office of the Rabinal Justice of the Peace on the exhumation of bodies in a clandestine gravesite. Judicial case No. 255-93, pp. 96-107. Annex 2 of the petitioners’ communication of December 13, 2007.

²⁰⁸ Annex 7. Report on the Documentation of the Victims of the Chichupac Massacre, Municipality of Rabinal, department of Baja Verapaz. Certification of Case File No. 001-2005-95839, p. 34. Annex 1 of the petitioners’ communication of December 13, 2007.

²⁰⁹ Annex 7. Report on the Documentation of the Victims of the Chichupac Massacre, Municipality of Rabinal, department of Baja Verapaz. Certification of Case File No. 001-2005-95839, p. 34. Annex 1 of the petitioners’ communication of December 13, 2007.

²¹⁰ Annex 7. Order from the Judge of First Instance, dated May 10, 1993. Certification of Case File No. 001-2005-95839, p. 262. Annex 1 of the petitioners’ communication of December 13, 2007.

²¹¹ Annex 7. Memorandum No. G2-34-93/hng from the Commandant of the José Barrera Departmental Military Reserves, dated May 9, 1993. Certification of Case File No. 001-2005-95839, p. 261. Annex 1 of the petitioners’ communication of December 13, 2007.

²¹² Annex 7. Order from the Criminal Court of First Instance for Drug-related Activity and Crimes against the Environment, June 3, 1993. Certification of Case File No. 001-2005-95839. Annex 1 of the petitioners’ communication of December 13, 2007.

²¹³ Annex 7. Memorandum from the departmental coroner, René Sánchez, dated August 10, 1993. Certification of Case File No. 001-2005-95839, pp. 147-150. Annex 1 of the petitioners’ communication of December 13, 2007.

A. The investigation conducted by the staff of this institution, the interviews conducted, statements of witnesses, statements by victims' family members, and reports in the media or published by other institutions have established that members of the Guatemalan army, military commissioners and members of the Volunteer Civil Defense Committees or civil self-defense patrols were materially involved in the commission of the acts.

B. That (...) the conduct of the agents who perpetrated these acts (...) presupposes a willingness to commit them and to cover up the identity of those responsible.

C. That the manner of death was violent and involved the use of weapons that not only ensured that the agent perpetrators would be able to carry the violence off without cost to themselves but also gave them the upper hand.

D. That (...) the victims were buried with no form of identification; (...) clandestine gravesites were created. The idea was to conceal the identity of the perpetrators, the evidence, and the victims, thereby endeavoring to ensure that those responsible would not face justice. (...)

F. That the gravity of the events and the circumstances under which they occurred preclude any examination of isolated episodes and acts committed by groups operating independently of the authorities charged with providing security to the public.²¹⁵

145. The Human Rights Ombudsman stressed that "from the number of victims and the manner in which the events occurred, it can be established beyond a shadow of a doubt that the material authors of these acts had orders to carry them out, orders that plainly came from Army officers or superiors." He added that "it is entirely reasonable to assume that the planning, ordering and execution of these heinous deeds were willful acts on the part of the material and intellectual authors alike." He further maintained that "these human rights violations not only caused the deaths of individuals in those communities, but also caused serious physical and mental injuries and property damage to those who survived." He argued that "the human rights violations, which were intentionally committed, inflicted upon the communities and their inhabitants, both individually and collectively, living conditions that transformed the survivors into internally displaced persons, with terrible consequences both for the survivors as persons and for their rights."²¹⁶

146. The Human Rights Ombudsman concluded that these events "constitute archetypal crimes against humanity." Among the responsible parties, he also named "the governments of the Republic at the time of the events and the ministers of national defense and the interior under those governments." He recommended to the Attorney General of the Nation, "a severe, swift and continuing investigation and prosecution of these very grave events, until those responsible are punished."²¹⁷

²¹⁴ Annex 25. Memorandum from the Human Rights Ombudsman, dated September 2, 1996. Annex 15 of the petitioners' communication of December 13, 2007.

²¹⁵ Annex 25. Memorandum from the Human Rights Ombudsman, dated September 2, 1996. Annex 15 to the petitioners' communication of December 13, 2007.

²¹⁶ Annex 25. Memorandum from the Human Rights Ombudsman, dated September 2, 1996. Annex 15 to the petitioners' communication of December 13, 2007.

²¹⁷ Annex 25. Memorandum from the Human Rights Ombudsman, dated September 2, 1996. Annex 15 to the petitioners' communication of December 13, 2007.

147. On December 2, 1997, Miguel Sic Osorio, Fabiana Chen Galiego and Teresa Cacaj Cahuec filed a brief with the Criminal Court of First Instance in which they recounted the events that transpired on January 8, 1982 and named some of the soldiers who had allegedly participated in those events.²¹⁸ They also asked to be named as plaintiffs in the case.²¹⁹

148. They filed their request a second time on December 5, 1997.²²⁰ Processing of the case was suspended “until the Public Prosecution Service transmitted the file on the investigation.”²²¹ On January 29, 1998, the three family members sent a brief to the Criminal Judge of First Instance for Drug-Related Activity and Crimes against the Environment, and reported that the case file would be with the Rabinal Justice of the Peace; they requested that the file be ordered so that the investigation might continue; they also asked to be named as associated plaintiffs.²²²

149. On February 17, 1998, the District Attorney asked the Rabinal Justice of the Peace to provide “the file containing the investigative measures and any evidence he might have in his possession in connection with the massacre in the village of Chichupac.”²²³ In reply, the Justice of the Peace indicated that the file was referred to the Court of First Instance on June 14, 1993.”²²⁴

150. On March 30, 1999, the Criminal Court of First Instance for Drug-related Activity and Crimes against the Environment accepted the request filed, thus agreeing to provisionally designate them as associated plaintiffs; it also explained that the delay in the court’s decision was due to the fact that “the case file was misplaced.”²²⁵ On April 27, 1999, the three family members confirmed their request to be named plaintiffs in the case.²²⁶

151. On June 11, 1999, the three family members petitioned the District Attorney’s Office, requesting that it ask the Ministry of National Defense to provide the names of the commanding officers

²¹⁸ Annex 7. Statement by Miguel Sic, Fabiana Chen and Teresa Cacaj, dated December 2, 1997. Certification of Case File No. 001-2005-95839, pp. 186-194. Annex 1 of the petitioners’ communication of December 13, 2007.

²¹⁹ Annex 7. Statement by Miguel Sic, Fabiana Chen and Teresa Cacaj, dated December 2, 1997. Certification of Case File No. 001-2005-95839, pp. 186-194. Annex 1 of the petitioners’ communication of December 13, 2007.

²²⁰ Annex 7. Memorandum from attorney Fernando López, dated July 12, 2001. Certification of Case File No. 001-2005-95839, pp. 125-127. Annex 1 of the petitioners’ communication of December 13, 2007.

²²¹ Annex 7. Brief addressed to the Court, dated January 29, 1998. Certification of Case File No. 001-2005-95839. Annex 1 of the petitioners’ communication of December 13, 2007.

²²² Annex 7. Brief addressed to the Court, dated January 29, 1998. Certification of Case File No. 001-2005-95839. Annex 1 of the petitioners’ communication of December 13, 2007.

²²³ Annex 9. Memorandum from District Attorney José Castro, dated February 17, 1998. Judicial case No. 255-93, p. 187. Annex 2 of the petitioners’ communication of December 13, 2007.

²²⁴ Annex 9. Memorandum from the Acting Justice of the Peace, dated February 19, 1998. Judicial case No. 255-93, p. 188. Annex 2 of the petitioners’ communication of December 13, 2007.

²²⁵ Annex 9. Order from the Criminal Court of First Instance for Drug-related Activity and Crimes against the Environment, dated March 30, 1999. Judicial case No. 255-93, pp. 169-170. Annex 2 of the petitioners’ communication of December 13, 2007.

²²⁶ Annex 9. Statement by Teresa Cacaj Cahuec to the Public Prosecution Service, dated April 27, 1999. Judicial case No. 255-93, pp. 168-170. Annex 2 of the petitioners’ communication of December 13, 2007; Annex 9. Statement by Miguel Sic Isorio to the Public Prosecution Service, dated April 27, 1999. Judicial case No. 255-93, p. 171. Annex 2 of the petitioners’ communication of December 13, 2007; Annex 9. Statement by Fabiana Chen to the Public Prosecution Service, dated April 27, 1999. Judicial case No. 255-93, p. 172. Annex 2 of the petitioners’ communication of December 13, 2007.

and heads of posts in the area in 1982.²²⁷ In January and May 2000, the plaintiffs requested the following of the Criminal Judge of First Instance: i) examine the ballistics material found in the graves;²²⁸ and ii) order the Ministry of National Defense to provide the names of, *inter alia*, the commanding officers in the military zone of the department of Baja Verapaz, and those of the officers in command of the troops that went to the village of Chichupac on January 8, 1982.²²⁹

152. On June 21, 2000, the District Attorney's Office requested that the bullet shells found in the graves be analyzed to determine the caliber of the bullet and whether the weapon that fired the bullet "was or is an issue weapon for Guatemalan Army."²³⁰ On July 4, 2000, the Technical Scientific Department of the Public Prosecution Service reported that the weapons allegedly used "included pistols, revolvers and 22-caliber rifles", irrespective of their brands or countries of manufacture."²³¹

153. On August 9, 2005, Miguel Sic Osorio, Fabiana Chen Galiego and Teresa Cacaj Cahuec petitioned the Baja Verapaz Criminal Judge of First Instance for Drug-related Activity and Crimes against the Environment to allow them to replace their attorney "to better serve (their) interests."²³² That request was denied the following day on the grounds that the three individuals "are not named as associated plaintiffs."²³³

154. The petition was filed again on September 14, 2005.²³⁴ On September 20, 2005, the Court of First Instance agreed to hear the plaintiffs' request.²³⁵

155. The Commission has no information of any further progress made in this process.

2.3.2. Concerning eleven extrajudicial executions and one forced disappearance – Joined in Case No. 255-93

²²⁷ Annex 9. Brief to the Office of the District Attorney of the Salamá Public Prosecution Service, Baja Verapaz, dated June 11, 1999. Judicial case No. 255-93, pp. 182-183. Annex 2 of the petitioners' communication of December 13, 2007.

²²⁸ Annex 7. Memorandum from attorney Edgar Pérez, dated January 19, 2000. Certification of Case File No. 001-2005-95839, pp. 137-138. Annex 1 of the petitioners' communication of December 13, 2007.

²²⁹ Annex 7. Memorandum from attorney Edgar Pérez, dated May 12, 2000. Certification of Case File No. 001-2005-95839, pp. 139-141. Annex 1 of the petitioners' communication of December 13, 2007.

²³⁰ Annex 9. Memorandum from Deputy District Attorney Juan Pérez, dated June 21, 2000. Judicial case No. 255-93, p. 214. Annex 2 of the petitioners' communication of December 13, 2007.

²³¹ Annex 7. Investigative Report Ref. BAL-00-0404-mxx from the Technical Scientific Department of the Public Prosecution Service, dated July 4, 2000. Certification of Case File No. 001-2005-95839, pp. 223-224. Annex 1 of the petitioners' communication of December 13, 2007.

²³² Annex 9. Brief dated August 9, 2005. Judicial case No. 255-93, p. 63. Annex 2 of the petitioners' communication of December 13, 2007.

²³³ Annex 9. Order of the Baja Verapaz Criminal Court of First Instance for Drug-related Activity and Crimes against the Environment, dated August 10, 2005. Judicial case No. 255-93, p. 64. Annex 2 of the petitioners' communication of December 13, 2007.

²³⁴ Annex 9. Brief dated September 14, 2005. Judicial case No. 255-93, p. 339. Annex 2 of the petitioners' communication of December 13, 2007.

²³⁵ Annex 9. Order of the Baja Verapaz Criminal Court of First Instance for Drug-related Activity and Crimes against the Environment, dated September 20, 2005. Judicial case No. 255-93, p. 340. Annex 2 of the petitioners' communication of December 13, 2007.

a. Complaints

i) Concerning the events of January 1, 1982

156. On July 11, 1995, Victor Castulo Alvarado Sucup and Rosario Roman Tum filed a complaint with the Human Rights Ombudsman concerning the six executions that occurred on January 1, 1982.²³⁶ On July 27, 1995, the Ombudsman forwarded the complaint to the District Attorney's Office of the Public Prosecution Service.²³⁷

ii) Concerning the events that occurred on November 22, 1982

157. On June 20, 1995, Maxima Emiliana Garcia Valey filed a complaint with the Baja Verapaz Human Rights Ombudsman concerning the events that transpired on November 22, 1982.²³⁸ On July 12, 1995, the complaint was forwarded to the Sama Public Prosecution Service's District Attorney's Office, department of Baja Verapaz.²³⁹

158. On July 26, 2001, Mrs. Garcia Valey submitted a new statement in which she named one of those responsible and who had raped and murdered her mother. She asked that "the body of my dear mother be exhumed (...) in order to give her a Christian burial."²⁴⁰

iii) Concerning the events of October 22, 1983

159. On May 9, 1995, Mrs. Juana García de Paz filed a complaint with the Human Rights Ombudsman concern the events that occurred on October 22, 1983.²⁴¹ She identified at least two of the persons responsible for what transpired.²⁴² On May 30, 1995, the Human Rights Ombudsman forwarded that complaint to the Public Prosecution Service's Office of the District Attorney.²⁴³ Mrs. Juana García Depaz amplified her statement on June 9, 1995. Thereafter, on July 26, 2001, Juana García Depaz made a new statement and requested that her sons' bodies be exhumed in order "to give them a

²³⁶ Annex 9. New complaint, dated July 27, 1995. Judicial case No. 255-93, p. 1. Annex 2 of the petitioners' communication of December 13, 2007.

²³⁷ Annex 9. New complaint, dated July 27, 1995. Judicial case No. 255-93, p. 1. Annex 2 of the petitioners' communication of December 13, 2007.

²³⁸ Annex 20. Complaint filed by Maxima Emiliana Garcia Valey and Francisco Sic Chen, dated June 20, 1995. Case File No. 802-95. Annex 8 of the petitioners' communication of December 13, 2007.

²³⁹ Annex 10. Amplification of a complaint filed by Maxima Emiliana Garcia Valey and Francisco Sic Chen, dated July 12, 1995. Case File No. 802-95. Annex 7 of the petitioners' communication of December 13, 2007.

²⁴⁰ Annex 9. Statement by Maxima Emiliana Garcia Valey, dated July 26, 2001. Judicial case No. 255-93, p. 19. Annex 2 of the petitioners' communication of December 13, 2007.

²⁴¹ Annex 10. New clandestine gravesite complaint, filed by Juana García de Paz, dated May 30, 1995. Case File No. 802-95. Annex 7 of the petitioners' communication of December 13, 2007.

²⁴² Annex 10. New clandestine gravesite complaint, filed by Juana García de Paz, dated May 30, 1995. Case File No. 802-95. Annex 7 of the petitioners' communication of December 13, 2007.

²⁴³ Annex 10. New clandestine gravesite complaint, filed by Juana García de Paz, dated May 30, 1995. Case File No. 802-95. Annex 7 of the petitioners' communication of December 13, 2007.

Christian burial.”²⁴⁴ She also mentioned the names of some of those who had had a hand in the events.²⁴⁵

iv) Concerning the events of August 31, 1984

160. On January 3, 1997, Maria Garcia de Paz filed a complaint with the District Attorney of the Baja Verapaz Public Prosecution Service about what was done to her son Medardo Juárez on August 31, 1984.²⁴⁶ She emphasized the name of a lieutenant who had participated in the events and asked that an investigation be done to ascertain the names of the soldiers, officers and civil patrollers who participated in the events.²⁴⁷ She asked that her son’s remains be exhumed.²⁴⁸

161. On July 27, 2001, María Concepción García de Paz gave another statement although she indicated that the events occurred on August 31, 1983. She said that her son’s body was buried on a plot of land she owned and requested “exhumation of the body in order to give him a Christian burial.”²⁴⁹

162. In its communication of September 11, 2013, the State pointed out that on May 7, 2009, a complaint was filed with the National Reparations Program. It maintained that the Civil Registrar of the municipality of Rabinal was being asked to issue a death certificate for Mr. Medardo Juárez.

v) December 13 and 20, 1984

163. On June 20 1995, Francisco Sic Chen filed a complaint with the Baja Verapaz Human Rights Ombudsman concerning the events that transpired on December 13 and 20, 1984.²⁵⁰ On July 12, 1995, the complaint was forwarded to the Office of the District Attorney of the Sama Public Prosecution Service, department of Baja Verapaz.²⁵¹ On July 26, 2001 Francisco Sic Chen made a statement on the

²⁴⁴ Annex 9. Statement by Juana García Depaz, dated July 26, 2001. Judicial case No. 255-93, pp. 14-15. Annex 2 of the petitioners’ communication of December 13, 2007.

²⁴⁵ Annex 9. Statement by Juana García Depaz, dated July 26, 2001. Judicial case No. 255-93, pp. 14-15. Annex 2 of the petitioners’ communication of December 13, 2007.

²⁴⁶ Annex 24. Complaint No. 8797 filed by Maria Garcia de Paz, dated January 3, 1997. Case File No. 8797. Annex 12 of the petitioners’ communication of December 13, 2007.

²⁴⁷ Annex 24. Complaint No. 8797 filed by Maria Garcia de Paz, dated January 3, 1997. Case File No. 8797. Annex 12 of the petitioners’ communication of December 13, 2007.

²⁴⁸ Annex 24. Complaint No. 8797 filed by Maria Garcia de Paz, dated January 3, 1997. Case File No. 8797. Annex 12 of the petitioners’ communication of December 13, 2007.

²⁴⁹ Annex 9. Statement by María Concepción García de Paz, dated July 27, 2001. Judicial case No. 255-93, p. 22. Annex 2 of the petitioners’ communication of December 13, 2007.

²⁵⁰ Annex 20. Complaint filed by Maxima Emiliana Garcia Valey and Francisco Sic Chen, dated June 20, 1995. Case File No. 802-95. Annex 8 of the petitioners’ communication of December 13, 2007.

²⁵¹ Annex 10. Amplification of the complaint filed by Maxima Emiliana Garcia Valey and Francisco Sic Chen, dated July 12, 1995. Case File No. 802-95. Annex 7 of the petitioners’ communication of December 13, 2007.

murder of his father, Silvestre Sic Xitmul.²⁵² He indicated that his father's body was buried on another person's property and asked that his body be exhumed from that place.²⁵³

b. Subsequent measures

164. On March 4, 2002, the Public Prosecution Service asked the Criminal Court Judge of First Instance for Drug-related Activity and Crimes against the Environment of the Department of Baja Verapaz to issue an entry, inspection and search warrant for the purpose of conducting exhumations on properties in the village of Chichupac in those cases in which graves were said to have been found containing the remains of the alleged victims.²⁵⁴ The court granted that request on March 11, 2002; with that, the Criminal Court Judge of First Instance for Drug-related Activity and Crimes against the Environment of the Department of Baja Verapaz proceeded to designate two experts to conduct the exhumation.²⁵⁵

165. The exhumation was performed between April 9 and 12, 2002, and identified the skeletal remains of most of the alleged victims.²⁵⁶ On December 18, 2002, the Guatemalan Forensic Anthropology Foundation submitted its report.²⁵⁷ On February 27, 2003, in the city of Rabinal, the Justice of the Peace conducted the court certification of human skeletal remains, in the presence of the alleged victims' relatives, who identified the remains.²⁵⁸

166. The whereabouts of Marcelo Sic Chen, who was disappeared on August 13, 1984, is still unknown.

167. The Commission has no information of any further progress made in this process.

2.3.3. Concerning the events of January 18, 1982, involving Adrián García Manuel, Hugo García de Paz, Abraham Alvarado Tecú (or Agapito Alvarado Depáz); Raymundo Alarcón (or Edmundo Alarcón Morente) and Manuel de Jesús Alarcón Morente - Case MP. 247-2006-648

²⁵² Annex 9. Statement by Francisco Sic Chen, dated July 26, 2001. Judicial case No. 255-93, p. 16. Annex 2 of the petitioners' communication of December 13, 2007.

²⁵³ Annex 9. Statement by Francisco Sic Chen, dated July 26, 2001. Judicial case No. 255-93, p. 16. Annex 2 of the petitioners' communication of December 13, 2007.

²⁵⁴ Annex 9. Memorandum from the Public Prosecution Service, dated March 4, 2002. Judicial case No. 255-93, pp. 43-44. Annex 2 of the petitioners' communication of December 13, 2007.

²⁵⁵ Annex 9. Order from the Criminal Court Judge of First Instance for Drug-related Activity and Crimes against the Environment of the Department of Baja Verapaz, dated March 11, 2002. Judicial case No. 255-93, p. 50. Annex 2 of the petitioners' communication of December 13, 2007.

²⁵⁶ Annex 9. Justice of the Peace's record of the exhumation of bodies in clandestine gravesites between April 9 and 12, 2002. Judicial case No. 255-93, pp. 56-57. Annex 2 of the petitioners' communication of December 13, 2007.

²⁵⁷ Annex 26. Report presented by the Guatemalan Forensic Anthropology Foundation, dated December 18, 2002. Case File No. 1083-95. Annex 6 of the petitioners' communication of December 13, 2007.

²⁵⁸ Annex 26. Record of court certification of human skeletal remains, signed by the Justice of the Peace and dated February 27, 2003. Case File No. 1083-95. Annex 6 of the petitioners' communication of December 13, 2007.

168. On May 9, 1995, Juana García Depaz filed a complaint about the events that occurred between January 17 and 18, 1982.²⁵⁹ That complaint was repeated in statements made to the Rabinal Municipal Attorney's Office on February 8, June 13 and September 26, 2006.²⁶⁰ In those statements, Mrs. García Depaz maintained that she knew the precise location where her family members were buried.²⁶¹

169. Between October 9 and 10, 2006, the Rabinal Municipal Attorney's Office conducted an exhumation with the help of the Guatemalan Forensic Anthropology Foundation.²⁶² Four skeletal remains were discovered.²⁶³ On March 28, 2007, Juana García Depaz filed an amplification of the statement she made to the Rabinal Municipal Attorney's Office.²⁶⁴ She named Jesús Milian Milian, deceased commander of the civil self-defense patrols, as one of those responsible for her family members' deaths. She maintained that his wife was said to have reported the three alleged victims to the commander of the Army forces in the village of Chirrúm.²⁶⁵

170. On November 2, 2009, Juana García Depaz gave a sworn statement where she again made reference to the events that occurred.²⁶⁶ According to the information provided by the State in its communication of September 11, 2013, on June 27, 2012, two ossuaries were handed over to Mrs. Juana García Depaz.

171. The Commission has no information of any further progress made in this process.

2.3.4. Concerning the events of November 26, 1982 and March 2, 1983 – Case File No. 1378-97

²⁵⁹ Annex 10. Statement by Juana García de Paz, February 8, 2006. Case File No. 802-95. Annex 7 of the petitioners' communication of December 13, 2007.

²⁶⁰ Annex 16. Complaint filed with the Public Prosecution Service, dated June 13, 2006. Complaint MP 247/2006/648. Annex 9 of the petitioners' communication of December 13, 2007; Annex 16. Statement by Juana García de Paz in the presence of the Rabinal Municipal Attorney's Office, dated September 26, 2006. Complaint MP 247/2006/648. Annex 9 of the petitioners' communication of December 13, 2007.

²⁶¹ Annex 16. Complaint filed with the Public Prosecution Service, dated June 13, 2006. Complaint MP 247/2006/648. Annex 9 of the petitioners' communication of December 13, 2007; Annex 16. Statement by Juana García de Paz in the presence of the Rabinal Municipal Attorney's Office, dated September 26, 2006. Complaint MP 247/2006/648. Annex 9 of the petitioners' communication of December 13, 2007.

²⁶² Annex 16. Exhumation proceeding conducted by the Office of the Rabinal Municipal Attorney, October 9 and 10, 2006. Annex 9 of the petitioners' communication of December 13, 2007.

²⁶³ Annex 16. Procedural Memorandum No. 1999-2006 of the Civil National Police Force, dated October 10, 2006. Annex 9 of the petitioners' communication of December 13, 2007.

²⁶⁴ Annex 16. Amplification of a statement by Juana García Depaz, dated March 28, 2007. Annex 9 of the petitioners' communication of December 13, 2007.

²⁶⁵ Annex 16. Amplification of a statement by Juana García Depaz, dated March 28, 2007. Annex 9 of the petitioners' communication of December 13, 2007.

²⁶⁶ Annex 17. Sworn statement of Juana García Depaz, dated November 2, 2009. Attached to the petitioners' communication of November 3, 2009.

172. On July 28, 1997, Francisca Gonzales Tecu filed a complaint with the Human Rights Ombudsman concerning the events that occurred on November 26, 1982 and March 2, 1983.²⁶⁷ She maintained that she had identified some of the soldiers and civil patrollers who participated in the events. She also stressed the fact that she knew the location of the bodies of her family members who died in those events - Gorgonio González, Enriqueta Tecú and Rosa González – and asked that the necessary procedures be taken to exhume their remains.²⁶⁸

173. On August 6, 1997, the Human Rights Ombudsman forwarded the complaint to the Municipal Attorney of Salamá, Baja Verapaz.²⁶⁹ On June 2, 2004, the Criminal Court Judge of First Instance of Salamá ordered the Guatemalan Forensic Anthropology Foundation to conduct the exhumation at the clandestine gravesites located in Xeabaj, municipality of Rabinal.²⁷⁰ The exhumation was conducted between June 7 and 11, 2004.²⁷¹

174. The expert report prepared by the Guatemalan Forensic Anthropology Foundation was turned over to the District Attorney's Office on October 21, 2004.²⁷² The report concluded that: i) the pattern of internment at the grave suggests that the burial was done by family members and/or neighbors; ii) one set of remains is that of a boy, while another is that of a baby; iii) a fourth set of skeletal remains shows "evidence of *circum-mortem* trauma, caused by violence inflicted upon the individual sometime proximate to the time of death, and is consistent with a bullet wound in the brain and contusions in the thorax"; and iv) of these four cases, "the cause of death of two was found to be consistent with the effects caused by a bullet fired to the head."²⁷³

175. On September 22, 2005, Francisca Gonzales Tecu received the skeletal remains of Rosa Gonzales Tecú, Adela Florentina Alvarado Garcia, Enriqueta Tecú and Luciano Alvarado Xitumul. William Misael Ixtecoc received the remains of Lucia Xitumul Ixpancoc and of an unidentified person "who was a newborn between zero and three months old."²⁷⁴

176. The Commission has no information of any further progress made in this process.

2.3.5. Concerning the other alleged victims

²⁶⁷ Annex 22. Complaint that Francisca Gonzales Tecu filed with the Human Rights Ombudsman, July 28, 1997. Annex 11 of the petitioners' communication of December 13, 2007.

²⁶⁸ Annex 22. Complaint that Francisca Gonzales Tecu filed with the Human Rights Ombudsman, July 28, 1997. Annex 11 of the petitioners' communication of December 13, 2007.

²⁶⁹ Annex 21. Communication addressed to the Salamá Municipal Attorney's Office, August 6, 1997. Case File No. 1378-97. Annex 14 of the petitioners' communication of December 13, 2007.

²⁷⁰ Annex 21. Communication from the Guatemalan Forensic Anthropology Foundation, dated October 6, 2004. Case File No. 1378-97. Annex 14 of the petitioners' communication of December 13, 2007.

²⁷¹ Annex 21. Communication from the Guatemalan Forensic Anthropology Foundation, dated October 6, 2004. Case File No. 1378-97. Annex 14 of the petitioners' communication of December 13, 2007.

²⁷² Annex 21. Communication from the Guatemalan Forensic Anthropology Foundation, dated October 6, 2004. Case File No. 1378-97. Annex 14 of the petitioners' communication of December 13, 2007.

²⁷³ Annex 21. Communication from the Guatemalan Forensic Anthropology Foundation, dated October 6, 2004. Case File No. 1378-97. Annex 14 of the petitioners' communication of December 13, 2007.

²⁷⁴ Annex 21. Memorandum from the Public Prosecution Service's Office of the District Attorney, dated September 22, 2005. Case File No. 1378-97. Annex 14 of the petitioners' communication of December 13, 2007.

a. Concerning the events of August 23 and 24, 1981 and August 17, 1986

177. On May 9, 1995, Juana García Depaz filed a complaint with the Auxiliary Human Rights Ombudsman for Baja Verapaz concerning the executions that occurred in August 1981 that allegedly claimed the lives of her husband, Mateo Grave, and her brother-in-law, Juan Alvarado, and concerning the August 1986 execution that allegedly claimed the life of her brother Efraín García de Paz.²⁷⁵ She maintained that the remains of her family members were buried in the Rabinal cemetery and asked that they be exhumed.²⁷⁶

178. On November 2, 2009, Juana Garcia Depaz gave a sworn statement in which she made reference to the events that occurred on August 23 and 24, 1981, in connection with her husband, Mateo Grave.²⁷⁷

179. The Commission has no information of any further progress made in this process.

b. Concerning the events of January 8, 18 and 31, 1982

180. Between June 5 and July 11, 1995, family members filed a complaint with the Human Rights Ombudsman concerning the disappearance of Lorenzo Depaz Siprian (o Florencio Depaz Cipriano), Leonardo Cahuec Gonzáles, Juan Mendoza Alvarado and José Cruz Mendoza.²⁷⁸ The complaint was forwarded to the Public Prosecution Service's District Attorney's Office on July 12, 1995.²⁷⁹

181. On November 25, 2005, Maria Teresa Sic told the Rabinal Municipal Attorney's Office that her husband, Juan Mendoza Alvarado, was the victim of a forced disappearance on January 31, 1982, and that "his whereabouts is unknown."²⁸⁰

182. The Commission has no information of any further progress made in this process.

c. Concerning events of February 12, 1982

183. According to information reported by the petitioners, on July 12, 1995 a complaint was filed regarding the disappearance of Maria Concepción Chen Sic and Casimiro Siana.²⁸¹

²⁷⁵ Annex 10. New clandestine gravesite complaint, filed by Juana García de Paz, dated May 30, 1995. Case File No. 802-95. Annex 7 of the petitioners' communication of December 13, 2007.

²⁷⁶ Annex 10. New clandestine gravesite complaint, filed by Juana García de Paz, dated May 30, 1995. Case File No. 802-95. Annex 7 of the petitioners' communication of December 13, 2007.

²⁷⁷ Annex 13. Sworn statement of Juana Garcia Depaz, November 2, 2009. Annex of the petitioners' communication of November 3, 2009.

²⁷⁸ Annex 14. Amplification of the complaint concerning disappeared persons in the Municipality of Rabinal, July 12, 1995. Case File No. 811-95. Annex 10 of the petitioners' communication of December 13, 2007.

²⁷⁹ Annex 14. Amplification of the complaint concerning disappeared persons in the Municipality of Rabinal, July 12, 1995. Case File No. 811-95. Annex 10 of the petitioners' communication of December 13, 2007.

²⁸⁰ Annex 27. Record from the Municipality of Rabinal, dated November 25, 2005. Annex 18 of the petitioners' communication of December 13, 2007.

184. The Commission has no information of any further progress made in this process.

d. Concerning events of March 22 and 23 and April 20, 1982

185. On December 12, 2000, Tarcila Milian Morales filed a complaint concerning the two executions that happened in March and April of 1982.²⁸² She maintained that her two uncles had witnessed what happened. She also said that she had knowledge of the precise places where the clandestine graves of the two persons were located.

186. On July 27, 2001, Tarcila Milian Morales gave a new statement on the events that occurred on March 22 and 23, 1982, involving her father, Elías Milián González.²⁸³ She maintained that he was buried in an “oven used to make *panela*” and owned by someone she knew. She also made reference to what happened to her sister on April 20 of that year, and said that she had found her sister’s remains “in an oven in the same village.” She asked that their remains be exhumed so that she could “give them a Christian burial.”²⁸⁴

187. The Commission has no information of any further progress made in this process.

e. Concerning the events of November 12, 1982 or March 1982 – Case File 248-2006-169

188. On April 6, 2006, Miguel Chen Tahuico filed a complaint with the Office of the Rabinal Municipal Attorney of the Public Prosecution Service, department of Baja Verapaz, in which he alleged that his son, Antonio Chen Mendoza, had died for lack of medical care.²⁸⁵ He requested exhumation of his son’s clandestine grave so that he could “give him a Christian burial.”²⁸⁶

189. On June 6, 2006, Miguel Chen confirmed his complaint with the Office of the Rabinal Municipal Attorney, where he again described what happened.²⁸⁷ He repeated his request that the body be exhumed, which was at the time buried in the mountains.²⁸⁸

²⁸¹ Annex 6. The petitioners’ communication of December 13, 2007.

²⁸² Annex 9. Complaint that Tarcila Milian Morales filed with the Public Prosecution Service, December 12, 2000. Judicial case No. 255-93, pp. 32-33. Annex 2 of the petitioners’ communication of December 13, 2007.

²⁸³ Annex 9. Statement by Tarcila Milian Morales, July 27, 2001. Judicial case No. 255-93, p. 21, Annex 2 of the petitioners’ communication of December 13, 2007.

²⁸⁴ Annex 9. Statement by Tarcila Milian Morales, July 27, 2001. Judicial case No. 255-93, p. 21, Annex 2 of the petitioners’ communication of December 13, 2007.

²⁸⁵ Annex 19. Complaint that Miguel Chen Tahuico filed with the Rabinal Municipal Attorney’s Office of the Public Prosecution Service, department of Baja Verapaz, April 6, 2006. Case File No. 248-2006-169. Annex 13 of the petitioners’ communication of December 13, 2007.

²⁸⁶ Annex 19. Complaint that Miguel Chen Tahuico filed with the Rabinal Municipal Attorney’s Office of the Public Prosecution Service, department of Baja Verapaz, April 6, 2006. Case File No. 248-2006-169. Annex 13 of the petitioners’ communication of December 13, 2007.

²⁸⁷ Annex 19. Amplification of a statement made by Miguel Chen Tahuico, June 6, 2006. Case File No. 248-2006-169. Annex 13 of the petitioners’ communication of December 13, 2007.

²⁸⁸ Annex 19. Amplification of a statement made by Miguel Chen Tahuico, June 6, 2006. Case File No. 248-2006-169. Annex 13 of the petitioners’ communication of December 13, 2007.

190. According to information that the State provided in its communication of September 11, 2013, on March 4, 2009, entries, inspections and searches were conducted in the village of Chichupac. It maintained that the forensic anthropology procedures completed the identification of the skeletal remains of the child Antonio Chen Mendoza. It added that on June 23, 2013, an ossuary was handed over to Mr. Miguel Chen containing his son's skeletal remains.

191. The Commission has no information of any further progress made in this process.

f. Concerning the situation of Juana García Depaz

192. On June 9, 1995, Mrs. Juana García Depaz filed a complaint with the Public Prosecution Service concerning her arrest by members of the National Army in October 1983 and her subsequent three-month stay in the village of Pacux.²⁸⁹ On July 26, 2001, she gave another statement to the Public Prosecution Service in which she made reference to what was done to her.²⁹⁰

193. On November 2, 2009, Juana Garcia Depaz gave a sworn statement in which she made reference to the events that were detrimental to her person.²⁹¹

194. The Commission has no information of any further progress made in this process.

B. THE LAW

1. Preliminary matters

1.1. Concerning the victims' identification

195. Within the Inter-American Commission's petition and case system, all alleged victims in a given case are to be identified to the extent possible. Even so, there are situations in which identification poses challenges. In such situations, various factors have to be considered when analyzing the alleged victims' identification, and certain standards of reasonability and flexibility may be called for.

196. The petitioners pointed out that the names of the alleged victims and their family members as reported in the various documents or accounts at times vary; in some instances, the accounts also differ as to the date and place of death. The petitioners reported that they were working with family members to correct the names shown on the birth and death certificates and pointed out that the differences were attributable to the following: i) the trauma and psychological impact that the genocide and grave human rights violations committed against them had on the survivors and their family members; ii) the extreme poverty of the victims and their family members and the fact that they had had little in the way of schooling; iii) the fact that the events occurred amid a war; iv) the enormous

²⁸⁹ Annex 10. Statement by Juana García Depaz, dated June 9, 1995. Case File No. 802-95. Annex 7 of the petitioners' communication of December 13, 2007.

²⁹⁰ Annex 9. Statement by Juana García Depaz, dated July 26, 2001. Judicial case No. 255-93, pp. 14-15. Annex 2 of the petitioners' communication of December 13, 2007.

²⁹¹ Annex 13. Sworn statement of Juana Garcia Depaz, dated November 2, 2009. Attached to the petitioners' communication of November 3, 2009.

scale of the human slaughter, and v) the fear characteristic of that period and mistakes in the civil records.

197. The Commission would begin by observing that the present case occurred within a context of widespread violence caused by the internal armed conflict that Guatemala endured; furthermore, the facts of this case happened over thirty years ago. Secondly, another important consideration is the *modus operandi* of the executions and forced disappearances perpetrated by the Army and its collaborators, their purpose being to cover up what transpired and to conceal the whereabouts of the disappeared persons.

198. Thirdly, another factor for the IACHR to consider are the differences between the names of the alleged victims in Mayan –the mother tongue of the alleged victims- and the translation of those names into Spanish.²⁹² Furthermore, while many indigenous persons kept their Maya names, when those names are entered into the Civil Register the public authorities render them as close to Spanish as possible, which is why the differences occur.

199. Using the information submitted by the parties, the Commission has made every effort to fully identify every alleged victim, taking into account the name(s) registered on the birth certificates, the death certificates or even in the complaints filed and statements given by family members. The IACHR observes that only one of the 86 alleged victims in this case has supposedly not been fully identified (see *infra* paragraph 128). However, the IACHR must point out that from the facts established, this person has been identified both by family members and in the exhumation report prepared by the Guatemalan Forensic Anthropology Foundation.

200. The Commission observes that the State did not object to this person’s inclusion among the alleged victims. Here, the Court itself has recognized that given “the nature of the facts, and the time that has passed,” it is only “reasonable that the identification and individualization of each presumed victim is complex.”²⁹³ Given these considerations, the Commission is including the person in question in the analysis that follows.

1.2. Concerning the inclusion of six persons who were not included by name in the admissibility report

201. As a result of the facts established, the Commission identified six persons not included by name in the admissibility report. They were: Manuel de Jesús Alarcón Morente, María Concepción Xitumul Xitumul, Máxima Emiliana García Valey, Miguel Chen Tahuico, Napoléon García de Paz, and a baby girl between 0 and 3 months old, whose name is unknown.

202. The Commission will include these individuals in its examination of the law, inasmuch as they were affected by the very same core events included in the admissibility report. The Commission must clarify that the names of Manuel de Jesús Alarcón Morente, and María Concepción Xitumul

²⁹² For example, at the hearings held during the criminal proceedings prosecuted against Ríos Montt and in other proceedings related to the events that transpired during the armed conflict, many indigenous witnesses underscored the difference between their original name in their Mayan language and their name in “cashlan.” For more information, see [in Spanish]: Annex 28. http://www.prensalibre.com/revista_d/APELLIDO_0_872313072.html

²⁹³ I/A Court H.R., *Case of the Río Negro Massacres v. Guatemala*, Preliminary Objection, Merits, Reparations and Costs. Judgment of September 4, 2012. Series C No. 250, par. 51.

Xitumul were included in the original petition but not included in the admissibility report; in the merits phase, however, sufficient information was provided to include them among the list of persons affected by the various events that have been part of the case from the outset.

2. Analysis of the facts through the prism of the American Convention and other applicable inter-American instruments

203. The present case involves multiple events of various kinds that occurred over the course of several years. The Commission's analysis of the law will be done in the following order: 1) massacres, extrajudicial executions and torture; 2) forced disappearances; 3) rapes; 4) children who were victims of the violence; 5) violations related to these events; 6) judicial guarantees and judicial protection, and 7) the right to equal protection and non-discrimination.

2.1 Concerning the massacres, extrajudicial executions and torture (articles 4, 5 and 7 of the American Convention, read in conjunction with Article 1(1) thereof)

204. The Commission recalls that the right to life is the condition *sine qua non* for the enjoyment of all other human rights; failure to respect the right to life renders all other rights meaningless.²⁹⁴ Accordingly, observance of Article 4, read in conjunction with Article 1(1) of the American Convention, not only presupposes that no person shall be arbitrarily deprived of his or her life (negative obligation), but also requires that States take all necessary measures to protect and preserve the right to life (positive obligation), as part of their duty to ensure the free and full exercise of the Convention-protected rights to all persons subject to their jurisdiction.²⁹⁵

205. Important among these measures is the States' obligation to i) create a legal framework that deters any possible threat to the right to life; ii) see that their security forces, which are entitled to use legitimate force, respect the right to life of the individuals under their jurisdiction; iii) establish an effective system of justice capable of investigating, punishing and redressing the deprivation of life by State officials or private individuals; and iv) ensure the right to unimpeded access to the conditions that will guarantee a decent existence.²⁹⁶

206. As for the practice of extrajudicial executions, the Court has written that:

(...) the States must adopt the necessary measures not only to prevent and punish the deprivation of life as a consequence of criminal acts, but also to prevent arbitrary executions by their own police force (...).²⁹⁷

²⁹⁴ I/A Court H.R., *Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala*. Merits. Judgment of November 19, 1999. Series C No. 63, par.144.

²⁹⁵ I/A Court H.R., *Case of Zambrano Vélez et al. v. Ecuador*. Merits, Reparations and Costs. Judgment of July 4, 2007. Series C No. 166, par.80; *Case of the "Street Children" (Villagrán Morales et al.)*. Merits. Judgment of November 19, 1999. Series C No. 63, par.144.

²⁹⁶ I/A Court H.R., *Case of Zambrano Vélez et al. v. Ecuador*. Merits, Reparations and Costs. Judgment of July 4, 2007. Series C No. 166, par.81; *Case of Montero Aranguren et al. (Detention Center of Catia)*. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 5, 2006. Series C No. 150, par.66.

²⁹⁷ I/A Court H.R., *Case of the Miguel Castro Castro Prison v. Peru*. Merits, Reparations and Costs. Judgment of November 25, 2006. Series C No. 160, par.238; *Case of the Mapiripán Massacre v. Colombia*. Merits, Reparations and Costs.

207. The Commission, for its part, wrote that:

(...) extrajudicial or summary executions are deliberate, unlawful deprivations of freedom by agents of the state, acting on orders or with at least the consent and acquiescence of the authorities. Hence, extrajudicial executions are unlawful acts committed precisely by those vested with the power originally intended to protect and guarantee the safety and life of individuals.²⁹⁸

208. The Commission recalls that the prohibition of torture is absolute and non-derogable, even in the most difficult circumstances, such as war, the threat of war, the fight against terrorism and any other crime, martial law or state of emergency, civil war or commotion, suspension of constitutional guarantees, internal political instability, or any other public disaster or emergency.²⁹⁹ The Inter-American Court has written that an international juridical regime of absolute prohibition of all forms of torture, both physical and psychological, has been developed and is now part of the international *jus cogens*.³⁰⁰

209. According to the facts established, on January 8, 1982, members of the Guatemalan Army and their collaborators perpetrated a massacre in which 32 persons were tortured and extrajudicially executed. Also, in other events that happened between 1981 and 1986, 39 persons were extrajudicially executed in separate events and operations.

210. From the testimony given by family members and the facts documented by the CEH and the REMHI, the Commission notes that these were defenseless civilians and included women, elderly men and women and children of both sexes, all members of the Mayan indigenous community. Similarly, the IACHR has taken as established fact that before being extrajudicially executed, the deceased were not only victims of assaults on their physical and mental integrity but victims of torture as well.

211. This conclusion is consistent with what the Commission for Historical Clarification wrote, which documented the fact that one common characteristic of most massacres, “in addition to executions, is the amassing of serious human rights violations such as torture, cruel treatment (...) and aberrant acts such as mutilation of corpses.”³⁰¹

212. In this same vein, in its 1981 Report on the Situation of Human Right in Guatemala, the Commission made reference to the brutality to which persons in that context were subjected:

Judgment of September 15, 2005. Series C No. 134, par.231; and *Case of Huilca Tecse v. Peru*. Merits, Reparations and Costs. Judgment of March 3, 2005. Series C No. 121, par.66.

²⁹⁸ IACHR, Report No. 25/02, Case 11,763, Plan de Sánchez Massacre, Guatemala, February 28, 2002, par.114.

²⁹⁹ I/A Court H.R., *Case of Maritza Urrutia v. Guatemala*. Merits, Reparations and Costs. Judgment of November 27, 2003. Series C No. 103, par.89; and *Case of Cantoral Benavides v. Peru*. Reparations. Judgment of December 3, 2001, Series C No. 88, par.95.

³⁰⁰ I/A Court H.R., *Case of Maritza Urrutia v. Guatemala*. Merits, Reparations and Costs. Judgment of November 27, 2003. Series C No. 103, par. 92; *Case of Cantoral Benavides v. Peru*. Reparations. Judgment of December 3, 2001, Series C No. 88, paragraphs 102 and 103.

³⁰¹ Annex 3. CEH, *Memory of Silence*, Volume III, *The human rights violations and acts of violence*, par. 3057.

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

As a rule, when the bodies are discovered, they appear brutally disfigured, nude and without documents or signs of identification. In many instances they have been burned, thrown into the ocean or into the mouths or craters of volcanoes. Also, as it has been possible to ascertain in a large number of cases, especially when dealing with members of Indian or rural communities, whose populations have been decimated quite frequently, their bodies have been found already decomposed and rotting, buried together in large common graves. [...] ³⁰²

213. Various statements in the court record and in the record of the case with the IACHR describe the brutality with which the people of the indigenous community of Chichupac and neighboring communities were treated before being extrajudicially executed.

214. In the Commission's view, this is particularly egregious case, not just because the victims were utterly defenseless when the patrollers and Army soldiers extrajudicially executed them through barbaric acts, but also because the massacres and executions perpetrated against these people were not isolated events within Guatemala's internal armed conflict, but rather part of a policy of the State, framed in the so-called national security doctrine and within the notion of an "enemy within". The goal of the policy was to eliminate the supposed social base of insurgent groups at the time. ³⁰³ Thus, the massacres committed in the present case were special operations, planned and carried by agents of the State, as previously noted, involving systematic persecution of a community in order to wipe it out.

215. Based on the foregoing, the Commission concludes that the Guatemalan State violated the rights to life and to personal integrity protected under articles 4(1), 5(1) and 5(2) of the American Convention, read in conjunction with Article 1(1) thereof and to the detriment of i) the 32 persons killed in the January 8, 1982 massacre in the village of Chichupac, and ii) the other 39 people who were extrajudicially executed between 1981 and 1986.

216. Moreover, the Commission regards as established fact that prior to extrajudicially executing the Chichupac villagers on January 8, 1982, the Guatemalan Army held the victims against their will for at least six hours at the community health center. The facts established show that a number of victims were deprived of their liberty just moments before being extrajudicially executed.

217. The Commission is of the view that the very circumstances under which these deprivations of liberty occurred and the clear objective of conducting extrajudicial executions,

³⁰² IACHR, *Report on the Situation of Human Rights in the Republic of Guatemala*, October 13, 1981, Chapter II.B, paragraphs 4 and 5.

³⁰³ Annex 3. CEH, *Memory of Silence*, Volume III, *The human rights violations and acts of violence*, paragraphs 3083-3084: "The figures [626 massacres] reveal the magnitude of the massacre phenomenon in the Army's military operations to annihilate the enemy within. In applying the counterinsurgency strategy, hundreds of communities in different parts of Guatemala became the victims of the scorched-earth policy during the armed conflict. The methods used during these collective executions demonstrate the degree of cruelty unleashed upon the victims, all of whom were defenseless and unarmed. (...) And yet, the impact of the massacres cannot be grasped by just looking at the figures; instead, a qualitative analysis of this merciless violence is needed in order to discover the underlying logic of the military's strategies and tactics and the horror that they meant for the victim populations [...]."

demonstrate their unlawfulness, their arbitrary nature and the violation of all the guarantees recognized in Article 7 of the Convention. The IACHR therefore concludes that the State also violated the right to personal liberty protected under Article 7 of the American Convention, read in conjunction with Article 1(1) thereof, to the detriment of the 32 executed victims who lived in the community of Chichupac, the others persons who were deprived of their liberty prior to being extrajudicially executed; and the survivors Ciriaco Galiego López, Miguel Chen Tahuico, and Napoleón García Paz.

2.2 Concerning the forced disappearances (articles 3, 4, 5 and 7 of the American Convention, read in conjunction with Article 1(1) thereof)

218. The jurisprudence of the inter-American system has been that this phenomenon is an unlawful act generating multiple and continuing violations of various rights protected under the American Convention; it leaves the victim utterly defenseless and involves other related crimes. The State's international responsibility is compounded when a disappearance is part of a systematic pattern or practice applied or tolerated by the State. In short, this is a crime against humanity that implies a gross abandonment of the most essential principles upon which the inter-American system is founded.³⁰⁴

219. Both the Commission and the Court have held that the crime of forced disappearance leaves the victim completely defenseless, and is particularly serious when it is part of a systematic pattern or practice applied or tolerated by the State.³⁰⁵ The Court has repeatedly held that forced disappearance, the prohibition of which is now *jus cogens*, is a continuing or permanent multiple violation of various rights protected by the American Convention.³⁰⁶

220. Thus, forced disappearance involves three concurring and constitutive elements: a) the deprivation of freedom; b) the direct intervention of state agents or their acquiescence, and c) the refusal to acknowledge the arrest and reveal the fate or whereabouts of the interested person.³⁰⁷

³⁰⁴ IACHR. Report No. 101/01. Case 10,247 *et al.* Extrajudicial executions and forced disappearances of persons. Peru. October 10, 2001. Par. 178; I/A Court H.R., *Case of Goiburú et al.* Merits, Reparations and Costs. Judgment of September 22, 2006. Series C No. 153, par.82; *Case of Gómez Palomino*. Judgment of November 22, 2005. Series C No. 136, par.92; *Case of the Serrano Cruz Sisters*. Preliminary Objections. Judgment of November 23, 2004. Series C No. 118, paragraphs 100 to 106; and *Case of Molina Theissen*. Reparations (Art. 63(1) American Convention on Human Rights). Judgment of July 3, 2004, Series C No. 108, par.41.

³⁰⁵ IACHR. Application filed with the Inter-American Court, Case No. 11,324, Narciso González *et al.*, Dominican Republic, May 2, 2010, par.103; Application filed with the Inter-American Court, Case No. 12.517, Gregoria Herminia Contreras *et al.*, El Salvador, June 28, 2010, par. 131. See, also: I/A Court H.R., *Case of Radilla Pacheco v. Mexico*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 23, 2009. Series C No. 209, par. 114; *Case of the Serrano Cruz Sisters v. El Salvador*. Merits, Reparations and Costs. Series C No. 120, paragraphs 100-106; *Case of Heliodoro Portugal v. Panama*. Preliminary Objections, Merits, Reparations and Costs. Series C No. 186, par.118; and *Case of Anzualdo Castro v. Peru*. Preliminary Objection, Merits, Reparations and Costs. Judgment of September 22, 2009. Series C No. 202, par. 59; I/A Court H.R., *Valle Jaramillo et al. v. Colombia*. Merits, Reparations and Costs. Judgment of November 27, 2008. Series C No. 192, par. 76.

³⁰⁶ I/A Court H.R., *Case of Radilla Pacheco v. Mexico*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 23, 2009. Series C No. 209, par. 139; *Case of Goiburú et al. v. Paraguay*. Merits, Reparations and Costs. Judgment of September 22, 2006. Series C No. 153, par. 84; and *Case of Tiu Tojín v. Guatemala*. Merits, Reparations and Costs. Judgment of November 26, 2008. Series C No. 190, par. 91.

³⁰⁷ I/A Court H.R., *Case of Gómez Palomino v. Peru*. Merits, Reparations and Costs. Judgment of November 22, 2005. Series C No. 136, par. 97; *Case of Ticona Estrada v. Bolivia*. Merits, Reparations and Costs. Judgment of November 27, 2008.

Within the inter-American system, this definition appears in the Inter-American Convention on Forced Disappearance of Persons, which Guatemala ratified on July 27, 1999.³⁰⁸ Various international instruments and the case law of international bodies and courts concur on this definition.³⁰⁹

221. Thus, States have an obligation not to practice, permit, or tolerate the forced disappearance of persons, no matter what the circumstance. Also, they must take reasonable measures to prevent the commission of this crime, conduct serious investigations when it happens to identify those responsible, impose the punishments called for, and to ensure adequate reparations for the victim.³¹⁰ These obligations are expressly set forth in articles I(a) and I(b) of the Inter-American Convention on Forced Disappearance of Persons.

222. As for the rights violated, forced disappearance violates the right to personal liberty and places the victim at serious risk of irreparable harm to his or her rights to humane treatment and life. The Court has written that forced disappearance violates the right to humane treatment, as “prolonged isolation and being held incommunicado constitute, in themselves, forms of cruel and inhuman treatment harmful to the mental and moral integrity of the person and to the right of respect for the inherent dignity of the human being.”³¹¹ The Court has also written that subjecting a person to State agents or private parties acting with their acquiescence or tolerance and that practice torture and assassination with impunity is itself a breach of the duty to prevent violations of the rights to life and physical integrity of the person, even if those facts cannot be proven in a given case.³¹²

Series C No. 191, par. 55; and *Case of Anzualdo Castro v. Peru*. Preliminary Objection, Merits, Reparations and Costs. Judgment of September 22, 2009. Series C No. 202, par. 60.

³⁰⁸ It is worth noting that the Court has observed that the characteristics of a forced disappearance are inferred from the definition included in Article III of the Inter-American Convention on Forced Disappearance, its *travaux préparatoires*, its preamble and provisions. See: I/A Court H.R., *Case of Radilla Pacheco v. Mexico*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 23, 2009. Series C No. 209, par. 140, citing the Annual Report of the Inter-American Commission on Human Rights 1987-1988, Chapter V.II. This crime “is permanent since it is not committed instantly but in a permanent and prolonged manner during the totality of the period during which the person remains disappeared.” (OEA/CP-CAJP, Report of the Chair of the Working Group to Analyze the Draft Inter-American Convention on Forced Disappearances of Persons, doc. OEA/Ser.G/CP/CAJP-925/93 rev.1, of January 25, 1994, p. 10).

³⁰⁹ Within the inter-American system, see: I/A Court H.R., *Case of Gómez Palomino v. Peru*. Merits, Reparations and Costs. Judgment of November 22, 2005. Series C No. 136, par. 97; *Case of Ticona Estrada v. Bolivia*. Merits, Reparations and Costs. Judgment of November 27, 2008. Series C No. 191, par. 55; and *Case of Anzualdo Castro v. Peru*. Preliminary Objection, Merits, Reparations and Costs. Judgment of September 22, 2009. Series C No. 202, par. 60. Within the European system, see: ECHR, *Kurt v. Turkey*. Application No. 15/1997/799/1002. Judgment of 25 May 1998, pars. 124-128; *Çakici v. Turkey*, Application no. 23657/94. Judgment of 8 July 1999, paras. 104-106. Among the case law of domestic courts, see: *Case of Marco Antonio Monasterios Pérez*, Supreme Court of the Bolivarian Republic of Venezuela, Judgment of August 10, 2007; *The Case to Strip Pinochet of Immunity*, Supreme Court of Chile, *en banc*, Judgment of August 8, 2000; *Case of Castillo Páez*, Constitutional Court of Peru, Judgment of March 18, 2004, and others.

³¹⁰ I/A Court H.R., *Case of Velásquez Rodríguez v. Honduras*. Merits. Judgment of July 29, 1988. Series C No. 4, par. 174; *Case of Anzualdo Castro v. Peru*. Preliminary Objection, Merits, Reparations and Costs. Judgment of September 22, 2009. Series C No. 202, par. 62; and *Case of Radilla Pacheco v. Mexico*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 23, 2009. Series C No. 209, par. 142.

³¹¹ I/A Court H.R., *Case of Chaparro Álvarez and Lapo Iñiguez v. Ecuador*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 21, 2007. Series C No. 170, par. 171; and *Case of Anzualdo Castro v. Peru*. Preliminary Objection, Merits, Reparations and Costs. Judgment of September 22, 2009. Series C No. 202, par. 85.

³¹² I/A Court H.R., *Case of Ticona Estrada v. Bolivia*. Merits, Reparations and Costs. Judgment of November 27, 2008. Series C No. 191, par. 59; *Case of Anzualdo Castro v. Peru*. Preliminary Objection, Merits, Reparations and Costs. Judgment of

223. The Court has also held that given the multiple and complex nature of forced disappearance, a grave violation of human rights, it may also involve the specific violation of the right to recognition as a person before the law.³¹³ This is because a forcibly disappeared person is no longer able to enjoy and exercise his or her rights; the forced disappearance is one of the most egregious ways of placing a person beyond the protection of the law, and also seeks to deny that person's very existence and leave the person in a kind of limbo or uncertain legal situation vis-à-vis society and the State.³¹⁴

224. As has been established, a total of eight persons were forcibly disappeared on August 24, 1981; January 8, 18 and 31, and February 12, 1982; and December 13, 1984. According to the testimony on record, all these individuals were seen for the last time in the custody of State security agents and their whereabouts are still unknown. All the evidence on file shows that these forced disappearances were committed in the context of the violence and persecution being waged against the Mayan people suspected of having ties to the subversive movement.

225. In keeping with the extreme violence to which detainees were subjected during that period, one of the measures routinely used was to hold the detainees absolutely incommunicado, for the clear purpose of erasing any trail of their subsequent extrajudicial execution, which was so often the fate of detainees. On this subject, the Court has written that "[p]rolonged and coercive isolation is, by nature, cruel and inhuman treatment, harmful to the mental and moral integrity of the person and the right to dignity inherent to the human being."³¹⁵ This isolation from the outside world produces moral and psychological suffering in any person, places him in a particularly vulnerable position, and increases the risk of aggression and arbitrary acts in prison.³¹⁶

226. Based on the above considerations, the Commission concludes that the State violated the right to recognition of one's juridical personality, the right to life, the right to humane treatment and the right to personal liberty, protected under articles 3, 4, 5 and 7 of the American Convention, read in conjunction with Article 1(1) thereof, to the detriment of the eight disappeared persons. The Commission also finds that the State violated Article I of the Inter-American Convention on Forced Disappearance of Persons, to the detriment of this group of victims.

227. Before embarking upon its analysis of the other violations, the Commission believes it is important to underscore the fact that the heinous nature of the acts committed against the members of

September 22, 2009. Series C No. 202, par. 85; and *Case of Radilla Pacheco v. Mexico*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 23, 2009. Series C No. 209, par. 154.

³¹³ I/A Court H.R., *Case of Anzualdo Castro v. Peru*. Preliminary Objection, Merits, Reparations and Costs. Judgment of September 22, 2009. Series C No. 202, paragraphs 91-92; *Case of Radilla Pacheco v. Mexico*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 23, 2009. Series C No. 209, par. 157.

³¹⁴ I/A Court H.R., *Case of Anzualdo Castro v. Peru*. Preliminary Objection, Merits, Reparations and Costs. Judgment of September 22, 2009. Series C No. 202, par. 90.

³¹⁵ I/A Court H.R., *Case of Fairén Garbí and Solís Corrales v. Honduras*. Merits. Judgment of March 15, 1989. Series C No. 6, par.149; *Case of Godínez Cruz v. Honduras*. Merits. Judgment of January 20, 1989. Series C No. 5, paragraphs 164 and 197; and *Case of Velásquez Rodríguez v. Honduras*. Merits. Judgment of July 29, 1988. Series C No. 4, paragraphs 156 and 187.

³¹⁶ I/A Court H.R., *Case of Castillo Petruzzi et al. v. Peru*. Merits, Reparations and Costs. Judgment of May 30, 1999. Series C No. 52, par. 195; and *Case of Suárez Rosero v. Ecuador*. Merits. Judgment of November 12, 1997. Series C No. 35, par. 90.

the village of Chichupac and neighboring communities, the more than 600 massacres committed against the Mayan people during the most violent period of the armed conflict, and the evidence submitted by the parties demonstrate that the various massacres, executions, disappearances, and other acts committed against the village of Chichupac and neighboring communities were part of a State strategy intended to annihilate an ethnic group by means of military operations in which thousands of Mayan indigenous persons were slaughtered, the survivors forced to flee, their subsistence economies destroyed and, lastly, thousands of Mayan indigenous persons were intentionally forced into living conditions that made them dependent on the military structure.

228. According to the Convention on the Prevention and Punishment of the Crime of Genocide, two elements must be present for the acts in question to qualify as genocide: any of the acts listed under Article II of the Convention on the Prevention and Punishment of the Crime of Genocide,³¹⁷ and the intent to destroy the group. Concerning the first element, the Commission deems that in the present case systematic massacres were perpetrated against members of the village of Chichupac and neighboring communities; serious bodily or mental harm was inflicted upon them; and they were deliberately subjected to subhuman living conditions as survivors were forced to seek safe haven in the mountains for years. As for the second element, it is clear that the factor that all the victims had in common –including children, women, the elderly, men and leaders- was that they were members of a given ethnic group (the Mayan community of the village of Chichupac and neighboring communities) and there are multiple contextual factors that demonstrate that the actions were perpetrated with the “intent to destroy, in whole or in part,” that group, which had been identified as a target of attack because it was considered to fall within the concept of an “enemy within”.

229. In conclusion, the Commission finds that the facts of this case fit the crime of genocide, as there is sufficient evidence that the State planned a strategy to eliminate, at least in part, the Mayan people, through systematic massacres and other military operations, salient among them the scorched-earth operations. Based on the criteria established under international law, the Commission concludes that the massacres, killings and forced disappearances committed in the present case are particularly heinous as they fall within the definition of genocide, whose targets in this case were the Mayan people.

2.3. Concerning the rapes (articles 5 and 11 of the American Convention, read in conjunction with Article 1(1) thereof)

230. The IACHR has consistently held that rape committed by members of the security forces of a state against the civilian population constitutes, in any situation, a serious violation of the human

³¹⁷ The pertinent part of Article II of the Convention on the Prevention and Punishment of the Crime of Genocide, provides that “[...] genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

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

rights protected by Articles 5 and 11 of the American Convention.³¹⁸ All acts of rape inflict severe and long-lasting mental and physical suffering, due to the non-consensual and invasive nature of this unlawful act, which affects the victim, her family and community. This is aggravated when the perpetrator is a state agent, because of the physical and psychological power the aggressor can exercise over the victim by reason of his position of authority.³¹⁹

231. The Inter-American Court has held that rape is a form of sexual violence³²⁰ that i) causes severe suffering because it is “an extremely traumatic experience that can have severe consequences and cause significant physical and psychological damage that leaves the victim “physically and emotionally humiliated,” a situation that is difficult to overcome with the passage of time”³²¹; and ii) its objectives include that of “intimidating, degrading, humiliating, punishing, or controlling the person who is raped.”³²² In its recent case law, the Court has concluded that rapes committed by State agents constitute acts of torture and thus violate the right established in Article 5(2) of the American Convention.³²³

232. Likewise, the Court has written that the content of Article 11 of the American Convention includes, *inter alia*, protection of one’s private life.³²⁴ It added that the concept of a private life included, *inter alia*, a person’s sex life.³²⁵ Thus, the Court has held that under these circumstances, rape violates essential aspects and values of the victim’s private life in that it represents an intrusion in that person’s sexual life. The Court writes that rape also annuls the victim’s right to decide freely with

³¹⁸ IACHR. Application to the Inter-American Court of Human Rights in the case of Valentina Rosendo Cantú *et al. v. Mexico*, Case 12,579, August 2, 2009, par.60; Application to the Inter-American Court of Human Rights in the case of Inés Fernández Ortega, Mexico, Case 12,580. May 7, 2009, par.88; Report No. 53/01, Case 11,565, Merits, Ana, Beatriz and Cecilia González Pérez, Mexico, April 4, 2001, par.45.

³¹⁹ IACHR. Application to the Inter-American Court of Human Rights in the case of Valentina Rosendo Cantú *et al. v. Mexico*, Case 12,579, August 2, 2009, par.90; Application to the Inter-American Court of Human Rights in the case of Inés Fernández Ortega, México, Case 12,580. May 7, 2009, par. 117.

³²⁰ I/A Court H.R., *Case of Rosendo Cantú et al. v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of August 31, 2010. Series C No. 216, par. 109.

³²¹ I/A Court H.R., *Case of the Miguel Castro Castro Prison v. Peru*. Merits, Reparations and Costs. Judgment of November 25, 2006. Series C No. 160, par. 311; and *Case of Rosendo Cantú et al. v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of August 31, 2010. Series C No. 216, par. 114.

³²² I/A Court H.R., *Case of Rosendo Cantú et al. v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of August 31, 2010. Series C No. 216, par. 117; and *Case of Fernández Ortega et al. v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of August 30, 2010. Series C No. 215, par. 127.

³²³ I/A Court H.R., *Case of Rosendo Cantú et al. v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of August 31, 2010. Series C No. 216, par. 121; and *Case of Fernández Ortega et al. v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of August 30, 2010. Series C No. 215, par. 131.

³²⁴ I/A Court H.R., *Case of the Ituango Massacres v. Colombia*. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 1, 2006. Series C No. 148, par. 193; and the *Case of the Massacres of El Mozote and Nearby Places v. El Salvador*. Merits, Reparations and Costs. Judgment of October 25, 2012. Series C No. 252, par.166.

³²⁵ I/A Court H.R., *Case of J. v. Peru*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 27, 2013. Series C No. 275, par.367. *Case of Fernández Ortega et al. v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of August 30, 2010. Series C No. 215, par.129; and *Case of Gudiel Álvarez et al. (Diario Militar) v. Guatemala*. Merits, Reparations and Costs. Judgment of November 20, 2012. Series C No. 253, par. 276.

whom to have intimate relations, causing her to lose complete control over this most personal and intimate decision and over her basic bodily functions.”³²⁶

233. The Commission, for its part, has written that a rape not only violates the victim’s physical, mental and moral integrity, but also intrudes into the most intimate areas of her private life, her physical and sexual space, and robs the victim of her ability to make her own independent decisions regarding her body.³²⁷

234. In the case of Guatemala’s armed conflict, the Commission notes that raping indigenous women was used by the Guatemalan Army as another method of destroying and annihilating the Mayan population. The CEH wrote the following concerning the rape of indigenous women:

[...] For the Maya women, the armed violence was compounded by gender violence and ethnic discrimination. [...]

[...] Sexual rape was a widespread and systematic practice by State agents in the framework of the counterinsurgency strategy. Rape became a real *weapon of terror*, a gross violation of human rights and international humanitarian law. The immediate victims were mainly women and children, although men and boys were not spared. The rapes caused suffering and had profound aftereffects on both the immediate victims and their families, spouses and the entire community. It also had serious collective effects on the victims’ ethnic group.

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

[...] Because of the *modus operandi*, rapes led to an exodus of women and scattered entire communities, breaking up marital and social relationships, and thus led to a sense of social isolation and community shame. It also drove women to abortion and infanticide, were an impediment to marriages and births within the group, which hastened the destruction of the indigenous groups. [...].³²⁸

235. In the *cas d’espèce*, it has been established that i) on January 8, 1982, Máxima Emiliana García Valey was raped by members of the Guatemalan Army; ii) on November 22, 1982, Gregoria Valey Ixtecoc was raped by members of the Guatemalan Army, who then murdered her and hung her body inside her home; and iii) Juana García Depaz was the victim of multiple rapes by a number of soldiers between October 1982 and June 1985, which twice left her pregnant. Having examined the entire case

³²⁶ I/A Court H.R., *Case of Rosendo Cantú et al. v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of August 31, 2010. Series C No. 216, par. 119; and *Case of Fernández Ortega et al. v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of August 30, 2010. Series C No. 215, par. 129.

³²⁷ IACHR, Report No. 53/01, Case 11.565, Merits, Ana, Beatriz and Celia González Pérez, Mexico, April 4, 2001, par. 45.

³²⁸ Annex 3. CEH. *Memory of Silence*. Volume III, *The Human Rights Violations and Acts of Violence*, paragraphs 2350-2353.

file in the context described above, the Commission considers that these three women's rapes clearly were part of the Guatemalan State's policy, specifically as regards the use of sexual violence.

236. The Commission therefore concludes that the Guatemalan State is responsible for violation of articles 5(1), 5(2) and 11 of the American Convention, read in conjunction with Article 1(1) and to detriment of Máxima Emiliana García Valey, Gregoria Valey Ixtecoc and Juana García Depaz.

2.4 Concerning the children who were victims of the violence (Article 19 of the American Convention, read in conjunction with Article 1(1) thereof)

237. Article 19 of the American Convention provides 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." As the Court has held, this provision must be construed as an added right which that Convention establishes for those who, because of their physical and emotional development, require special protection.³²⁹ Thus, children have the same human rights that all persons enjoy, as well as special rights by virtue of their status as children.

238. The Court held that "[a]doption of special measures to protect children is a responsibility both of the State and of the family, community, and society to which they belong."³³⁰ Such measures must be based on the principle of the best interests of the child, which takes into consideration i) the special characteristics of the child; ii) the need to allow him or her to develop his or her full potential, and iii) the dignity of the individual.³³¹ The Court has been emphatic in pointing out that these special measures must be determined according to the particular needs of the child as a subject of law.³³²

239. For purposes of establishing the content and scope of the general provision set forth in Article 19 of the American Convention, the Inter-American Court has written that both the American Convention and the Convention on the Rights of the Child form part of a very comprehensive international *corpus juris* for the protection of the child.³³³ Furthermore, the special measures of protection that the States must adopt in favor of indigenous children include the promotion and

³²⁹ I/A Court H.R., *Case of the Ituango Massacres v. Colombia*. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 1, 2006. Series C No. 148, par. 106; *Case of Baldeón García v. Peru*. Merits, Reparations and Costs. Judgment of April 6, 2005. Series C No. 147, par.244; *Case of the Mapiripán Massacre v. Colombia*. Merits, Reparations and Costs. Judgment of September 15, 2005. Series C No. 134, par.152; *Case of the "Juvenile Re-education Institute" v. Paraguay*. Preliminary Objections, Merits, Reparations and Costs. Judgment of September 2, 2004. Series C No. 112, par.147; and *Case of Servellón García et al. v. Honduras*. Merits, Reparations and Costs. Judgment of September 21, 2006, par. 113.

³³⁰ I/A Court H.R., *Juridical Condition and Human Rights of the Child*. Advisory Opinion OC-17/02 of August 28, 2002. Series A No. 17, par.62.

³³¹ I/A Court H.R., *Case of the Ituango Massacres v. Colombia*. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 1, 2006. Series C No. 148, par.244; *Case of the Mapiripán Massacre v. Colombia*. Merits, Reparations and Costs. Judgment of September 15, 2005. Series C No. 134, par.134; *Case of the Girls Yean and Bosico v. Dominican Republic*. Preliminary Objections, Merits, Reparations and Costs. Judgment of September 8, 2005. Series C No. 130, par.134; and *Case of the Yakye Axa Indigenous Community v. Paraguay*. Merits, Reparations and Costs. Judgment of June 17, 2005. Series C No. 125, par.172.

³³² I/A Court H.R., *Case of the Sawhoyamaya Indigenous Community v. Paraguay*. Merits, Reparations and Costs. Judgment of March 29, 2006, par.154.

³³³ Ratified by the Guatemalan State on June 6, 1990.

protection of their right to live according to their own culture, their own religion and their own language.³³⁴

240. From the facts established, the Commission notes that i) Santiago Reyes Román was 14 when he was executed on January 1, 1982; ii) Rosa González Tecú , age 10, Héctor Rolando Alvarado García, age 2, Adela Florentina Alvarado García, one year old, María Concepción Xitumul Xitumul, age 5, and a newborn baby girl between the ages of 0 and 3 months and whose name is unknown, were executed on March 2, 1983; iii) José León Grave García was 16 when he was executed on October 22, 1983; iv) Fidel Alvarado Sucup was 16 when he was executed on January 1, 1982; and v) Abraham Alvarado Tecú (o Agapito Alvarado Depáz) was 15 when he was executed on January 18, 1982.

241. In the case of these boys and girls, the Commission finds that the Guatemalan State not only violated their right to life, in the manner described in this report, but also violated its obligation to provide them with special protection, established in Article 19 of the American Convention.

242. The Commission also observes that in November 1982 or March 1983, Antonio Chen Mendoza, age 5, died from a lack of medical care. The IACHR recalls that the CEH concluded that “during their displacement, villagers endured conditions that sometimes killed them, as they were already very weak and short on food; they thus became prone to illness or died of hunger.”³³⁵

243. The Commission deems that the State, by its policy of persecuting and exterminating the indigenous population during the armed conflict, created a situation of insecurity that in some cases, such as this one, caused people to die for lack of access to health services. The death of Antonio Chen Mendoza, in the manner described in the established facts, is an example of this very situation. The IACHR therefore concludes that the State violated the right to life and its special duty of protection, established in articles 4 and 19 of the American Convention, read in conjunction with Article 1(1) thereof, to the detriment of the child Antonio Chen Mendoza.

2.5. Concerning subsequent effects related to these events

244. It has already been established that the massacres and other violations committed against the village of Chichupac and neighboring communities were planned and carried out by the State of Guatemala through the Army and its civilian collaborators for the purpose of exterminating the members of the village of Chichupac and neighboring communities. Nonetheless, the persons who were able to survive suffered a series of consequences that had a profoundly detrimental impact on them for many years. What follows is an analysis of the rights protected by the American Convention that were violated to the detriment of the survivors of the massacres.

2.5.1. Right to humane treatment and the right to a family, in the case of the survivors and the victim’s next-of-kin (articles 5 and 17 of the American Convention, read in conjunction with Article 1(1) thereof)

³³⁴ I/A Court H.R., *Case of the Río Negro Massacres v. Guatemala*. Preliminary Objection, Merits, Reparations and Costs. Judgment of September 4, 2012, Series C No. 250, par. 143.

³³⁵ Annex 3. CEH, *Memory of Silence*, Volume III, *The Human Rights Violations and Acts of Violence*, par. 3395.

245. The organs of the inter-American system have repeatedly insisted that the next of kin of the victims of human rights violations may also be victims. In cases related to massacres and extrajudicial executions, the Court has considered that “no evidence is needed to prove the severe effects on the mental integrity of the next of kin of victims who have been executed.”³³⁶ As regards forced disappearances specifically, the Court has established that:

(...) the violation of those relatives' mental and moral integrity is a direct consequence of [the] forced disappearance. The circumstances of such disappearances generate suffering and anguish, in addition to a sense of insecurity, frustration and impotence in the face of the public authorities' failure to investigate.³³⁷

246. By extension, because of the pain and anguish suffered by the next of kin of the victims of massacres, extrajudicial executions and forced disappearances, the Commission considers that they were, at the same time, victims of a violation of their right to humane treatment.

247. The suffering of the next of kin in this case is especially severe since, according to the facts established in the present report, a number of the members of the community not only witnessed the way in which their family members were tortured and extrajudicially executed, which in itself constitutes cruel, inhuman and degrading treatment, but they themselves were victims of violations of their own personal integrity in the form of assaults, arrests, rapes, and so on.

248. As to the plight of the families affected by events of this type, the IACHR observed that it:

[...] has given close attention to the plight of the population uprooted by the conflict since the early 1980's. [...] It was at that time that the “scorched earth” strategy of massacres and the eradication of whole villages implemented by the Lucas García regime and continued by the Efraín Ríos Montt regime led to massive flows of displaced persons. The separation of families, communities and cultural groups tore the social fabric of the country.³³⁸

249. The Commission believes that in the instant case, the persecution, extreme violence, the utter defenseless of the victim population, and the intention to destroy the bases of family and society, which were the driving forces behind the violence that occurred in the context described earlier, allow one to infer that this was an autonomous violation of the right to protection of the family.

250. Likewise, in cases in which a complete and effective investigation was lacking, the Court has written that:

(...) the absence of a complete and effective investigation into the facts constitutes a source of additional suffering and anguish for victims and their next of kin, who have the right to know the truth of what happened. This right to the truth requires a procedural determination of the most complete historical truth possible, including the determination of patterns of collective action

³³⁶ I/A Court H.R., *Case of the Ituango Massacres v. Colombia*. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 1, 2006. Series C No. 148, par.262. See also I/A Court H.R., *Case of the Mapiripán Massacre v. Colombia*. Merits, Reparations and Costs. Judgment of September 15, 2005. Series C No. 134, par.146.

³³⁷ I/A Court H.R., *Case of Blake v. Guatemala*. Merits. Judgment of January 24, 1998, par.114.

³³⁸ IACHR, *Fifth Report on the Situation of Human Rights in Guatemala*, April 6, 2001, Chapter XIV, par.2.

and of all those who, in different ways, took part in the said violations, as well as their corresponding responsibilities.³³⁹

251. The Commission recalls that the Court has deemed the “absence of effective remedies to be an additional source of suffering and anguish for the alleged victims and their next of kin.”³⁴⁰ In the instant case, the State has not conducted a thorough investigation of the facts or effective judicial proceedings aimed at identifying and punishing those responsible for the massacres, the disappearances, and the other violations that occurred in connection with these events, as will be apparent in the analysis of the violation of articles 8 and 25 of the American Convention.

252. In short, it is obvious to the Commission that the anguish that the victims’ next of kin have suffered, the lack of effective protection and the profound suffering and radical change in their lives have violated their right to humane treatment. The Commission therefore concludes that the State violated the right to mental and moral integrity, and the rights to family, protected in Articles 5(1) and 17 of the American Convention, read in conjunction with the duty to respect rights undertaken in Article 1(1) thereof, to the detriment of the next of kin of the victims in this case and who are listed in the single annex to this report, as well as the survivors Ciriaco Galiego López, Miguel Chen Tahuico, and Napoleón García Paz.

2.5.2. The right not to be subjected to forced labor (Article 6 of the American Convention, read in conjunction with Article 1(1) thereof)

253. On the matter of forced labor, the Court has written that:

according to the ILO Convention (No. 29), the definition of forced or compulsory labour consists of two basic elements. First, the work or service is exacted “under the menace of a penalty.” Second, it is performed involuntarily. Furthermore, the Court finds that, to constitute a violation of Article 6(2) of the American Convention, it is necessary that the alleged violation can be attributed to State agents, either due to their direct participation or to their acquiescence to the facts. [...] ³⁴¹

254. The established facts show that members of the National Army held Mrs. Juana García Depaz in the model village of Chichupac from late 1983 and forced her to cook for the soldiers. The Commission considers that the threat of a penalty was self-evident since, as Mrs. Juana García Depaz recounted, she was threatened multiple times and even beaten and raped. It is equally obvious that

³³⁹ I/A Court H.R., *Case of Valle Jaramillo et al. v. Colombia*. Merits, Reparations and Costs. Judgment of November 27, 2008. Series C No. 192, par.102; *Case of the La Rochela Massacre v. Colombia*. Merits, Reparations and Costs. Judgment of May 11, 2007, Series C No. 163, par.195; *Case of Heliodoro Portugal v. Panama*. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 12, 2008. Series C No. 186, par.146; and *Case of García Prieto et al. v. El Salvador*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 20, 2007. Series C No. 168, par.102.

³⁴⁰ I/A Court H.R., *Case of the Ituango Massacres v. Colombia*. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 1, 2006. Series C No. 148, par.261. See also, I/A Court H.R., *Case of the Mapiripán Massacre v. Colombia*. Merits, Reparations and Costs. Judgment of September 15, 2005. Series C No. 134, par.145; *Case of the Pueblo Bello Massacre v. Colombia*. Merits, Reparations and Costs. Judgment of January 31, 2006. Series C No. 140, par.145; and *Case of the Moiwana Community v. Suriname*. Preliminary Objections, Merits, Reparations and Costs. Judgment of June 15, 2005. Series C No. 124, par.94.

³⁴¹ I/A Court H.R., *Case of the Ituango Massacres v. Colombia*. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 1, 2006. Series C No. 148, par.160.

Mrs. García Depaz had no choice in the matter, as she was forced to work against her will and under threat.

255. The Commission therefore considers that the Guatemalan State is responsible for violation of Article 6(2) of the American Convention, read in conjunction with Article 1(1) thereof, to the detriment of Juana García Depaz.

2.5.3. Freedom of movement and residence (Article 22 of the American Convention, read in conjunction with Article 1(1) thereof)

256. The Inter-American Court has written that Article 22(1) of the Convention “protects the right to not be forcefully displaced within a State Party to the Convention.”³⁴² Here, the Court has held that the United Nations Guiding Principles on Internal Displacement are particularly relevant in determining the content and scope of Article 22 of the American Convention.³⁴³ Those principles state that “[f]or the purposes of these Principles, 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, violations of human rights [...], and who have not crossed an internationally recognized State border.”³⁴⁴

257. Thus, the Court has held that:

[...] given the complexity of the phenomenon of internal displacement and the wide range of human rights that are violated or put at risk, and considering the special vulnerability or defenselessness that is generally the lot of the displaced, their situation can be understood as *de facto* lack of protection. [...] Under the American Convention, this situation requires that States take positive measures to reverse the effects of displaced persons’ weakness, vulnerability and defenselessness, including with respect to the actions and practices of third parties.³⁴⁵

258. As for the forced displacement of indigenous peoples driven from their community, the Court has held that this can make them particularly vulnerable because the destructive consequences for the ethnic and cultural fabric exposes indigenous peoples to the real risk of cultural or physical extinction.³⁴⁶ It is imperative that States take specific measures of protection that take into account the

³⁴² I/A Court H.R., *Case of the Mapiripán Massacre v. Colombia*. Merits, Reparations and Costs. Judgment of September 15, 2005. Series C No. 134, par.188.

³⁴³ I/A Court H.R., *Case of the Moiwana Community v. Suriname*. Preliminary Objections, Merits, Reparations and Costs. Judgment of June 15, 2005. Series C No. 124, par.111; *Case of Chitay Nech et al. v. Guatemala*. Preliminary Objections, Merits, Reparations and Costs. Judgment of May 25, 2010, Series C No. 212, par.140; and *Case of the Río Negro Massacres v. Guatemala*. Preliminary Objection, Merits, Reparations and Costs. Judgment of September 4, 2012. Series C No. 250, par.173.

³⁴⁴ Commission on Human Rights, United Nations Guiding Principles on Internal Displacement, E/CN.4/1998/53/Add.2, February 11, 1998.

³⁴⁵ I/A Court H.R., *Case of Chitay Nech et al. v. Guatemala*. Preliminary Objections, Merits, Reparations and Costs. Judgment of May 25, 2010. Series C No. 212, par.141.

³⁴⁶ I/A Court H.R., *Case of the Río Negro Massacres v. Guatemala*. Preliminary Objection, Merits, Reparations and Costs. Judgment of September 4, 2012. Series C No. 250, par.177.

unique characteristics of each indigenous people, its customary law, values, uses and customs, so as to prevent and reverse the effects of that situation.³⁴⁷

259. In the context of the armed conflict in Guatemala, the CEH observed that:

The displacement of the civilian population in Guatemala stands out [...] because it was done on such a massive scale and was so destructive [...]. [...] Families and entire communities were torn apart and the cultural ties that bound them together were severed. The unprecedented terror [...] unleashed a massive exodus of various peoples, most of whom were from Maya communities [...]. For some families, the displacement was a matter of weeks; for others, however, the displacement went on for years. [...].³⁴⁸

260. In the *cas d'espèce*, the Commission has taken as established fact that the members of the village of Chichupac and neighboring communities were forced to abandon their villages, leaving behind destroyed belongings, their homes and their land; initially, they fled to neighboring communities or the mountains. For months and even years, these people lived in fear and insecurity, induced by the State's persecution, struggling to survive the threats, persecution, and hunger, and without access to health and education services. The Commission recalls that the Court has held that the fear that displaced survivors have for their safety and the failure to conduct a criminal investigation of the events, deprive the displaced survivors of their right to freedom of movement and residence.³⁴⁹

261. It has also been established that starting in late 1983, the survivors of Chichupac village were resettled in the model village set up by the Army, living in precarious conditions and under constant military control. The CEH wrote the following in this regard:

From 1983 onwards, the Army's strategy for the displaced population was designed more to regain control of the displaced population, urging it to return to places under its control: amnesties were offered and those who accepted were resettled in highly militarized communities with a view to long-term pacification of the conflict areas. [...] To gain control over the population in the conflict areas, particularly the displaced who had returned, the Army used different methods, such as forced resettlement in places where it could easily control the population, places like the model villages or the larger villages and hamlets.³⁵⁰

The Army [...] ordered people who were going to be resettled in these places to build their own houses [...thereby trying to undermine] the traditional settlement master plans of the *campesino* indigenous population [...].³⁵¹

³⁴⁷ I/A Court H.R., *Case of the Yakye Axa Indigenous Community v. Paraguay*. Merits, Reparations and Costs. Judgment of June 17, 2005. Series C No. 125, par.63; and *Case of Chitay Nech et al. v. Guatemala*. Preliminary Objections, Merits, Reparations and Costs. Judgment of May 25, 2010. Series C No. 212, par.147.

³⁴⁸ Annex 3. CEH, *Memory of Silence*, Volume III, *The Human Rights Violations and Acts of Violence*, par.4193.

³⁴⁹ I/A Court H.R., *Case of the Moiwana Community v. Suriname*. Preliminary Objections, Merits, Reparations and Costs. Judgment of June 15, 2005. Series C No. 124, paragraphs 107 to 121; see, also, I/A Court H.R., *Case of Ricardo Canese*, Merits, Reparations and Costs. Judgment of August 31, 2004. Series C No. 111, paragraphs 113 to 120.

³⁵⁰ Annex 3. CEH, *Memory of Silence*, Volume III, *The Human Rights Violations and Acts of Violence*, par. 2983

³⁵¹ Annex 3. CEH, *Memory of Silence*, Volume III, *The Human Rights Violations and Acts of Violence*, par. 3026.

262. Given that fact, the Commission observes that the facts of the present case occurred within a generalized context of internal forced displacement in Guatemala, particularly of the indigenous population, and was caused by the internal armed conflict and the terror to which the indigenous population was subjected. The Commission therefore concludes that the State of Guatemala is responsible for violation of Article 22(1) of the American Convention, read in conjunction with Article 1(1) thereof, to the detriment of the survivors of the village of Chichupac and neighboring communities.

2.5.4. Rights to honor and dignity, freedom of conscience and religion, freedom of association, and to participate in government (articles 11, 12, 16 and 23 of the American Convention, read in conjunction with Article 1(1) thereof)

263. The Commission has written that for an ethnic group to be able to preserve its cultural values, it is essential that its members be allowed to enjoy all of the rights set forth in the American Convention on Human Rights, since this guarantees their effective functioning as a group, which includes preservation of their own cultural identity.³⁵² Particularly relevant, among others, are the right to honor and dignity, freedom of conscience and religion, and freedom of association,³⁵³ which will be examined below.

264. The Court has written that Article 11 of the Convention recognizes that everyone has **the right to have his honor respected**, prohibits any unlawful attack on honor and reputation, and imposes on the States the obligation to provide the protection of the law against such attacks.³⁵⁴ The Court has also held that the right to have one's honor respected relates to self-esteem and self-worth, whereas reputation refers to the opinion other persons have about someone.³⁵⁵

265. In the instant case, the Commission has taken as established fact that the Guatemalan State regarded the Maya people as guerrillas, the social base of the guerrilla forces, the enemy within and subversives, all based on the National Security Doctrine and the Victory 82 Plan, thereby damaging the Maya people's reputation and violating their honor. This stigma was one of the main pretexts for the atrocious persecution and annihilation of which they were victims.

266. Here, the CEH wrote that:

[...] in most cases, the identification between the Maya communities and the insurgency was intentionally exaggerated by the State which, drawing on traditional racist stereotypes, used this form of identification to eliminate present and future possibilities of the population providing assistance to or joining any insurgent project.³⁵⁶

³⁵² IACHR, Report No. 86/10, Case 12,649, Merits, Community of Río Negro of the Maya indigenous people and its members, Guatemala, July 14, 2000, par. 319.

³⁵³ IACHR, *Report on the Situation of Human Rights of a Segment of the Nicaraguan Population of Miskito Origin*, November 29, 1983, par.14.

³⁵⁴ I/A Court H.R., *Case of González et al. ("Cotton Field") v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No.205, par. 444.

³⁵⁵ I/A Court H.R., *Case of Tristán Donoso v. Panama*. Preliminary Objection, Merits, Reparations and Costs. Judgment of January 27, 2009. Series C No. 193, par.57.

³⁵⁶ Annex 1. CEH, *Memory of Silence*, Volume V, Conclusions and Recommendations, par. 31.

267. Based on the foregoing, the Commission considers that the Guatemalan State is responsible for violation of Article 11 of the American Convention, read in conjunction with Article 1(1) thereof, to the detriment of the villagers of Chichupac and neighboring communities.

268. The Court has emphasized that the right to **freedom of conscience and religion** means that family members have a right to give the victim's remains a decent burial.³⁵⁷ The Court has also held that caring for a person's mortal remains is a way of observing the right to human dignity, since:

[...] the mortal remains of a person deserve respectful treatment before that person's next of kin, due to the significance they have for them. Respect for those remains, observed in all cultures, acquires a very special significance in the Mayan culture [...] For the Mayan culture [...] funeral ceremonies ensure the possibility of the generations of the living, the deceased person, and the deceased ancestors meeting anew. Thus, the cycle between life and death closes with these funeral ceremonies, allowing them to "express their respect for [the victim], have him near and return him or take him to live with the ancestors", as well as for the new generations to share and learn about his life, something that is traditional in his indigenous culture.³⁵⁸

269. Likewise, in cases of forced disappearance, the Court has observed that:

[...] one of the greatest sources of suffering for the [...] community members is that they do not know what has happened to the remains of their loved ones, and, as a result, they cannot honor and bury them in accordance with fundamental norms of [their] culture [...].³⁵⁹

270. In the context of the armed conflict in Guatemala, the CEH concluded that:

[...] thousands of Guatemalans were unable to observe the rites that normally accompany a person's death and burial, causing a profound pain that persists to this day among the sectors of the population so affected. The climate of fear, the military presence and other circumstances that surrounded the massacres, the flight, and the persecution in the mountains often made burial of the dead impossible. For all the cultures and religions present in Guatemala, it is virtually unthinkable that the dead should not be given a decent burial. It is contrary to everyone's values and dignity. For the Maya, the rituals of death and burial are important because of the active relationship that unites the living and the dead. The lack of a sacred place where this relationship could be nurtured constitutes a profound concern that emerges from the testimonies of many Maya communities.³⁶⁰

271. In the instant case, the Commission has taken as established fact that the victims are Maya indigenous people belonging to the Achí language group. Taking into account the CEH's observation,³⁶¹ the IACHR considers that for indigenous peoples, the right to culture and their ethnic

³⁵⁷ I/A Court H.R., *Case of Bámaca Velásquez v. Guatemala*. Merits. Judgment of November 25, 2000. Series C No. 70, par.230.

³⁵⁸ I/A Court H.R., *Case of Bámaca Velásquez v. Guatemala*. Reparations and Costs. Judgment of February 22, 2002. Series C No. 91, par.81.

³⁵⁹ I/A Court H.R., *Case of the Moiwana Community v. Suriname*. Preliminary Objections, Merits, Reparations and Costs. Judgment of June 15, 2005. Series C No. 124, par.100.

³⁶⁰ Annex 1. CEH, *Memory of Silence*, Volume V, Conclusions and Recommendations, par. 53.

³⁶¹ On the subject of indigenous culture and identity, the CEH wrote that their preservation meant ensuring the cultivation of the characteristics that distinguish an indigenous people, such as their language, religion, way of life and symbols. Annex 3. CEH, *Memory of Silence*, Volume III, The Human Rights Violations and Acts of Violence, par.2872.

identity involve, *inter alia*, the expression and preservation of their beliefs, language, customs, dress, way of life, sacred places and social organization.³⁶²

272. The Commission considers that the Army's counterinsurgency policy sought not only to destroy the social bases of the guerrilla movement, but also to destroy the cultural values that gave the indigenous communities their sense of cohesion and collective endeavor. From the facts established in this case, the victims who were extrajudicially executed did not receive a burial according to the community's traditions. On the contrary, they were buried in clandestine graves.

273. The Commission considers that the way in which the cadavers were destroyed and the way in which the mortal remains of the victims were buried, without respecting the survivors' cultural, spiritual and religious beliefs, is a violation of Article 12 of the Convention, read in conjunction with Article 1(1) thereof, to the detriment of the members of the community of the village of Chichupac and neighboring communities.

274. The Inter-American Court has held that the right to **freedom of association** refers to "the right to join with others in lawful common pursuits, without pressure or interference that may alter or impair the nature of such purpose."³⁶³ In the instant case, the analysis should be done as a function of the role the exercise of that right plays in the community life of indigenous peoples.

275. The IACHR also recalls the fundamental role that observance of **political rights** plays in strengthening a democratic society and the rule of law, which the Court has repeatedly pointed out. Here the Court has written that:

[...] Political rights are human rights of fundamental importance within the inter-American system and they are closely related to other rights embodied in the American Convention, such as freedom of expression, and freedom of association and assembly; together, they make democracy possible. [...]³⁶⁴

276. On the subject of the indigenous peoples' community life, their authorities and the effect of leaving such communities without leaders, the CEH observed that:

[...] The concept of authority in Maya communities has to do with service, wisdom and counsel. The authority figures are persons with experience in serving the community. They are the ones who can build consensus, provide advice and guidance, find arrangements satisfactory to the parties, rehabilitate those who violate community norms and restore harmony to the community [...]

³⁶² IACHR, Report No. 86/10, Case 12,649, Merits, Community of Río Negro of the Maya Indigenous People and Its Members, Guatemala, July 14, 2000, par.334.

³⁶³ I/A Court H.R., *Case of Kawas Fernández v. Honduras*. Merits, Reparations and Costs. Judgment of April 3, 2009. Series C No. 196, par.143; *Case of Baena Ricardo et al.* Merits, Reparations and Costs, Judgment of February 2, 2001. Series C No. 72, par.156. See also *Case of Huilca Tecse v. Peru*. Merits, Reparations and Costs. Judgment of March 3, 2005. Series C No. 121, par.69; and *Case of Cantoral Huamani and García Santa Cruz v. Peru*. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 10, 2007. Series C No. 167, par.144.

³⁶⁴ I/A Court H.R., *Case of Castañeda Gutman v. Mexico*. Merits, Reparations and Costs. Judgment of August 6, 2008. Series C No. 184, par.140; *Case of Yatama v. Nicaragua*. Judgment of June 23, 2005. Series C No. 127, par.191; *The Word "Laws" in Article 30 of the American Convention on Human Rights*. Advisory Opinion OC-6/86 of May 9, 1986. Series A No. 6, para. 34.

[...] During the years of the armed conflict, a number of developments occurred that disrupted the structures of indigenous authority and leadership. Indigenous authorities were killed, persecuted or replaced, and the dismantling of community organizations weakened the community as a whole, both as a group and as a people.

[...] Between 1980 and 1983, the military strategy was intended to destroy the structure of the Maya communities as social groups. It focused on destroying the authority-based order and organization and symbols of cultural identity. At its most extreme, the Army conducted operations to totally annihilate communities, and scorched-earth operations, massacres, executions, torture, and rapes on a massive scale. [...].³⁶⁵

277. In the present case it has been shown that in the January 8, 1982 massacre, agents of the State executed 32 persons, most of whom were representatives of the community and catechists. It has also been shown that on February 12, 1982, Mr. Casimiro Siana, who served as the village's auxiliary mayor, was detained by members of the Army; his whereabouts are still unknown.

278. The Commission recalls that the CEH concluded that "the main targets of the selective repression were community leaders; in Rabinal, catechists, health promoters and auxiliary mayors were executed."³⁶⁶ The CEH wrote that "by making leaders of various sectors of the group the specific targets, their vulnerability increased and the very existence of the group was threatened, since the leaders were in charge of directing and managing affairs and settling disputes within the community."³⁶⁷

279. The Commission recalls that at the time these events occurred, the execution or disappearance of persons in political positions installed terror in others serving in that capacity.

280. The Commission considers that as a consequence of the facts recounted in this report, the collective life of the members of the village of Chichupac and neighboring communities was torn asunder, to the point that it was left with no authority figure, had been broken apart and practically annihilated. The IACHR notes that the testimony in the record of the case reveals the terror that the survivors experienced; the community way of life had been altered, leaving the survivors with a sense of isolation. The Commission observes that the State policy during the armed conflict contributed to the destruction of the social fabric of the community, which had endured thanks to the intense interaction of its members. The climate of terror did not stop with the massacres, since for years thereafter the area was militarized and the survivors were afraid to mend the social fabric.

281. Therefore, the Commission considers that the Guatemalan State is also responsible for the violation of Article 16 of the American Convention, read in conjunction with Article 1(1) thereof, to the detriment of the members of the village of Chichupac and neighboring communities. It also finds that the Guatemalan State is responsible for the violation of Mr. Casimiro Siana's political rights, according to article 23 of the American Convention, who disappeared on February 12, 1982 and has not been seen since.

³⁶⁵ CEH, *Memory of Silence*, Chapter III, Effects and Consequences of the armed confrontation, paragraphs 441, 443 and 459.

³⁶⁶ Annex 3. CEH, *Memory of Silence*, Volume III, The Human Rights Violations and Acts of Violence, par.3370.

³⁶⁷ Annex 3. CEH, *Memory of Silence*, Volume III, The Human Rights Violations and Acts of Violence, par. 3373

2.5.5. Right to property (Article 21 of the American Convention, read in conjunction with Article 1(1) thereof)

282. The case law of the Court has developed a broad concept of property that includes, *inter alia*, the use and enjoyment of property, defined as those material objects that may be appropriated, and also any right that may form part of a person's patrimony.³⁶⁸ The Court has found a violation of the right to private property in cases in which the State was deemed responsible for the destruction of houses and other property.³⁶⁹

283. The CEH found that in most cases, "the massacres involved pillaging of the victims' possessions and the destruction of their homes, crops, animals, cooking utensils, grinding stones, clothing, and anything they had for their material survival, all part of the so-called scorched-earth operations."³⁷⁰ It also made the point that:

Irrespective of the actions, a considerable percentage of massacres recorded by the CEH had other features suggesting that the purpose was to eliminate the communities' basic means of subsistence, cause the communities to break up or destroy them altogether, and to dismantle their organizations and other mechanisms of collective endeavor. The most important elements in this respect were: the physical destruction of the communities, the homes, crops and animals, places of prayer, schools, communal meeting rooms, and other community buildings; the desecration of the churches by using them as places for torture and execution; destruction of material elements like corn and grinding stones, which carry strong symbolism for the culture [.]³⁷¹

284. In the present case, it has been established that members of the Army, after perpetrating the various massacres and executions against the village of Chichupac and neighboring communities, not only stole the personal effects, food and domestic animals belonging to the villagers, but also destroyed the goods and, in some cases, burned down all the homes. According to the petitioners, between 100 and 125 homes were destroyed.³⁷²

285. For the foregoing reasons, the Commission concludes that there are sufficient elements to find that the Guatemalan State violated Article 21 of the American Convention, read in conjunction with Article 1(1) thereof, to the detriment of the members of the village of Chichupac and neighboring communities.

2.6. Rights to a fair trial and to judicial protection (articles 8 and 25 of the American Convention read in conjunction with Article 1(1) thereof)

³⁶⁸ I/A Court H.R., *Case of Ivcher Bronstein v. Peru*. Merits, Reparations and Costs. Judgment of February 6, 2001. Series C No. 74, par.122; *Case of the Barrios Family v. Venezuela*. Merits, Reparations and Costs. Judgment of November 24, 2011. Series C No. 237, par.148.

³⁶⁹ I/A Court H.R., *Case of the Ituango Massacres v. Colombia*. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 1, 2006. Series C No. 148; *Case of the Massacres of El Mozote and Nearby Places v. El Salvador*. Merits, Reparations and Costs. Judgment of October 25, 2012. Series C No. 252, par.168.

³⁷⁰ Annex 3. CEH, *Memory of Silence, Volume III, The Human Rights Violations and Acts of Violence*, par.3054.

³⁷¹ Annex 3. CEH, *Memory of Silence, Volume III, The Human Rights Violations and Acts of Violence*, par.3076.

³⁷² Annex 29. The petitioners' communication of October 19, 2011.

286. Article 8(1) of the American Convention provides that:

“[e]very person has the right to a hearing, with due guarantees and with a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.”

287. For its part, Article 25(1) of the Convention reads as follows:

Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.

288. As the Inter-American Court wrote, the right to judicial guarantees, means that every person whose human rights have been violated has the right “to obtain from the competent State authorities a clarification of the events in which his or her rights were violated and the identification of those responsible through an investigation of the facts and prosecution of those responsible.”³⁷³ In the case of the right to judicial protection, the Court has written that:

(...) Article 25 in relation to Article 1(1) of the American Convention obliges the State to guarantee to every individual access to the administration of justice and, in particular, to a simple and prompt recourse so that, *inter alia*, those responsible for human rights violations may be prosecuted and reparations obtained for the damages suffered. Article 25 is one of the fundamental pillars not only of the American Convention but of the very rule of law in a democratic society (...).³⁷⁴

289. Thus, the State has an obligation to ensure that “each of the state’s actions that make up the investigation process, as well as the investigation in its totality, [is] oriented toward a specific purpose, the determination of the truth and the investigation, pursuit, arrest, prosecution and, if applicable, punishment of those responsible for the events.”³⁷⁵ In cases of forced disappearance, the Court has written that the right of access to justice includes an investigation of the facts that strives to ascertain the fate or whereabouts of the victim and, where called for, the location of the victim’s remains.³⁷⁶ The Court has also written that the right to the truth is subsumed in the right of the victim or his or her next of kin to obtain from the competent organs of the State a clarification of the violations

³⁷³ I/A Court H.R., *Case of Barrios Altos v. Peru*. Merits. Judgment March 14, 2001. Series C No. 75, par.48.

³⁷⁴ I/A Court H.R., *Case of Loayza Tamayo*. Reparations and Costs. Judgment of November 27, 1998. Series C No. 42, par.169; *Case of Fairén Garbí and Solís Corrales*. Preliminary Objections. Judgment of June 26, 1987. Series C No. 2, par.90.

³⁷⁵ I/A Court H.R., *Case of Kawas Fernández v. Honduras*. Merits, Reparations and Costs. Judgment of April 3, 2009. Series C No. 196, par.101.

³⁷⁶ I/A Court H.R., *Case of Radilla Pacheco v. Mexico*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 23, 2009. Series C No. 209, par.192; *Case of Velásquez Rodríguez v. Honduras*. Merits. Judgment of July 29, 1988. Series C No. 4, par.181; *Case of La Cantuta v. Peru*. Merits, Reparations and Costs. Judgment of November 30, 2007. Series C No. 173, par.231; and *Case of Anzualdo Castro v. Peru*. Preliminary Objection, Merits, Reparations and Costs. Judgment of September 22, 2009. Series C No. 202, par.118.

and the corresponding responsibilities, through the investigation and prosecution provided for in articles 8 and 25 of the Convention.³⁷⁷

290. The duty to investigate is one of means, and not results, but must be undertaken by the State as its own legal obligation, and not as a mere formality preordained to be ineffective.³⁷⁸ The investigation must be carried out with the necessary diligence and be an effective, serious and impartial investigation³⁷⁹ conducted within a reasonable period of time.³⁸⁰ Thus, the presence of acts that obstruct justice, procedural hurdles or problems created by a lack of cooperation on the part of the authorities that have thwarted or are thwarting a resolution of the case, are a violation of the right to judicial guarantees. The IACHR recalls that the obligation to investigate and punish any act that involves a violation of Convention-protected rights requires punishment of not just the material authors of the human rights violations, but also their intellectual authors.³⁸¹

291. As for the situation in the wake of the armed conflict in Guatemala, the IACHR recalls that in the Peace Accords signed by the State, the latter asserted the following:

The Guatemalan people are entitled to know the full truth about the human rights violations and acts of violence that occurred in the context of the internal armed conflict. Shedding light objectively and impartially on what happened will contribute to the process of national reconciliation and democratization in the country.³⁸²

292. Accordingly, in following up on the human rights situation after the Peace Accords were signed, the IACHR documented the following:

A key aspect of the accords, identified as a critical failure of the past and a priority challenge for the present and the future, is the requirement that justice be done and be seen to be done. The State acknowledges that the systems for public security and the administration of justice are gravely deficient. Among the problems identified by the State itself are abusive and arbitrary action by the police forces; the lack of institutional capacity to investigate and prosecute crime,

³⁷⁷ I/A Court H.R., *Case of Gómez Palomino v. Peru*. Merits, Reparations and Costs. Judgment of November 22, 2005. Series C No. 136, par.78; *Case of Almonacid Arellano et al. v. Chile*. Preliminary Objections, Merits, Reparations and Costs. Judgment of September 26, 2006. Series C No. 154, par.150; and *Case of the La Rochela Massacre v. Colombia*. Merits, Reparations and Costs. Judgment of May 11, 2007. Series C. No. 163, par.147.

³⁷⁸ I/A Court H.R., *Case of Velásquez Rodríguez v. Honduras*. Merits. Judgment of July 29, 1988. Series C No. 4, par.177; I/A Court H.R., *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, par.131.

³⁷⁹ I/A Court H.R., *Case of García Prieto et al. v. El Salvador*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 20, 2007. Series C No. 168, par.101; *Case of the Gómez Paquiyauri Brothers v. Peru*. Judgment of July 8, 2004. Series C No. 110, par.146; I/A Court H.R., *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, par.130.

³⁸⁰ I/A Court H.R., *Case of Bulacio v. Argentina*. Judgment of September 18, 2003. Series C No. 100, par.114; I/A Court H.R., *Case of the La Rochela Massacre v. Colombia*. Merits, Reparations and Costs. Judgment of May 11, 2007. Series C. No. 163, par.146; I/A Court H.R., *Case of Miguel Castro Castro Prison v. Peru*. Judgment of November 25, 2006. Series C No. 160, par.382.

³⁸¹ IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, March 7, 2006, par.109; *Second Report on the Situation of Human Rights Defenders in the Americas*, December 31, 2011, par.237.

³⁸² Agreement for a Firm and Lasting Peace, Guatemala City, December 29, 1996, point 4.

especially when committed by State agents; and serious deficiencies in due process and the administration of justice.³⁸³

293. The facts of the present case are part of a broader situation in which impunity ran high; this high level of impunity is itself one of the most serious human rights violations occurring in Guatemala.³⁸⁴ Impunity for those responsible for committing human rights violations is one of the most important factors contributing to the persistence of such violations, as well as criminal and social violence.³⁸⁵ The facts of this case occurred against a backdrop of extreme violence and persecution, in which impunity was one of the gears in a system that was the umbrella under which the most unspeakable atrocities were committed. The obligation to combat impunity is premised on an understanding of the fact that “impunity fosters chronic recidivism of human rights violations, and total defenseless of victims and their relatives.”³⁸⁶

294. The facts of the instant case involve a series of serious violations of human rights, among them arbitrary detention, torture, rape, extrajudicial execution and forced disappearance of the villagers of Chichupac and neighboring communities, as part of a policy conceived by those who wielded power, and aimed at wiping out entire communities on a scale that qualifies as genocide.

295. Given the precedents that establish the State’s obligations to investigate cases of this type, the Commission will examine whether, in the instant case, the Guatemalan State conducted a serious and diligent investigation within a reasonable period of time.

2.6.1. Concerning the duty to conduct a serious and diligent investigation of the facts of this case

296. Regarding the massacre in the village of Chichupac on January 8, 1982, the Commission observes that the victims’ next of kin took the risk of formally reporting the facts in March 1993. Over 32 years have passed since the events in this case, and 21 years since a complaint was filed. Nevertheless, the Commission notes that from the documentation supplied by the parties, no one has ever been made to answer for these human rights violations; indeed, neither the intellectual authors nor material authors have even been identified.

297. From the evidence on record, the IACHR observes that the only investigative measures adopted were the testimonies taken from family members and the 1993 exhumation of the victims’ remains. The Commission also observes that the case file was missing for at least six years, which not only prevented any judicial inquiries but also prevented the victims’ family members from becoming plaintiffs in the case.

³⁸³ IACHR, *Fifth Report on the Situation of Human Rights in Guatemala*, April 6, 2001, par. 3.

³⁸⁴ IACHR, *Fifth Report on the Situation of Human Rights in Guatemala*, April 6, 2001, par. 55.

³⁸⁵ IACHR, *Fifth Report on the Situation of Human Rights in Guatemala*, April 6, 2001, par. 57. In the Report, the IACHR made the following appeal to the State: “The Commission exhorts the State to devote priority attention and political will to overcoming the situation of impunity that persists, and reiterates that the State will face responsibility for all violations of human rights that occur until such time as it takes the necessary measures to ensure that justice is administered fairly and effectively.”

³⁸⁶ I/A Court H.R., *Case of Loayza Tamayo v. Peru*. Reparations and Costs. Judgment of November 27, 1998. Series C, No. 42, paragraphs 169-170.

298. Further evidence of the lack of due diligence was the absence of any response from the military authorities. In the course of the investigations into the massacre in the village of Chichupac, the attorney with the Public Prosecution Service requested information from military personnel, concerning the names of the persons who were soldiers in the Army during that period. The reply received was that there was no military post in the area and that they had no such information. The same lack of responsiveness was evident in the lack of information concerning the Guatemalan Army platoons detailed to the area, despite the fact that the testimony received is consistent in pointing out that in addition to patrolmen, soldiers were involved in the facts denounced.

299. The obstruction of state officials' investigations in the course of a criminal case involving human rights seriously impairs the effort to identify and punish those responsible, especially when agents of the State are involved. In response to this obstruction, no evidence exists suggesting any follow-up or that enforcement mechanisms were brought to bear to ensure prompt access to information that would shed light on the facts. The obstruction of justice was not limited to investigative omissions; evidence of a cover-up was also unmistakable, which began when the events occurred and continued throughout the investigations.

300. As for the inquiries into the other events that the present case involves, the Commission notes that apart from the statements taken and exhumations in some cases, nothing was ever done to identify and punish those responsible, with the result that no one has been made to answer for any of these crimes. The IACHR observes that in various cases, the victims' next of kin identified and named members of the Guatemalan Army, state authorities or civilians who participated in the events; even so, the Commission has managed to establish that the State took no legal measure to identify or investigate them.

301. The Commission further considers that the State has not conducted an exhaustive identification of the exhumed remains and has failed to take measures to locate the whereabouts of the remains of the disappeared victims.

302. Although certain family members have given direct information concerning the possible authors of the events, the authorities failed to take any action to determine the criminal culpability of the military personnel involved or to investigate the role played by higher-ranking Army officers or public officials.

303. In conclusion, the Commission considers that, at the domestic level, the investigation into the facts of the present case has been neither complete nor exhaustive. On the contrary, it has been extremely deficient since no efforts were made to follow through with the investigation into what happened and identify and punish all those responsible.

2.6.2. Reasonable time

304. One of the elements of due process required under Article 8(1) of the American Convention is that the courts decide the cases submitted to their jurisdiction within a reasonable time. Hence, a protracted delay can, in itself, constitute a violation of judicial guarantees.³⁸⁷ Thus, it is for the

³⁸⁷ I/A Court H.R., *Case of García Asto and Ramírez Rojas v. Peru*. Merits, Reparations and Costs. Judgment of November 25, 2005. Series C No. 137, par.166; *Case of Gómez Palomino v. Peru*. Merits, Reparations and Costs. Judgment of

State to explain and prove why it has required more time than would be reasonable, in principle, to deliver a final judgment in a specific case.³⁸⁸

305. The reasonability of the time period referred to in Article 8(1) of the Convention must be analyzed as a function of the total duration of the criminal process.³⁸⁹ In keeping with Article 8(1) of the American Convention and with respect to the specific circumstances of this case, the Commission will consider the four factors that the Court has used in its recent case law, which are: (i) the complexity of the matter; (ii) the procedural activity of the interested party; (iii) the conduct of the judicial authorities, and (iv) the general effects on the legal situation of the person involved in the proceeding.³⁹⁰

306. The State alleged that the delay in the case was due to its complexity, since multiple persons were involved in the various events alleged in the case. Nevertheless, the State did not elaborate on just how those factors might have influenced the delay in the case.

307. As the Court wrote, a delay in an investigation cannot be justified by the complexity of the matter when i) possible perpetrators have been identified; ii) it has been verified that there were witnesses to the event, and iii) there are possible lines of investigation.³⁹¹ In any event, for the complexity argument to prosper, the State must show specific information linking the complexity of the case to its delay. In the instant case, the Commission has already mentioned the long periods of inactivity in this case, including the fact that the case file was missing for more than six years, factors that have nothing to do with the complexity alleged by the State.

308. As for the participation of the interested parties in the proceedings in this case, the Commission observes that family members and witnesses came forward to make statements in the case. Furthermore, their legal representatives were named civil parties to the case, and thus followed and helped drive the investigation, filing repeated complaints about the delay in the proceedings and the long periods of procedural inactivity.

309. As for the conduct of the judicial authorities, the Commission has already observed that there was no sustained momentum in the investigations.

November 22, 2005. Series C No. 136, par.85; and *Case of the Moiwana Community v. Suriname*. Merits, Reparations and Costs. Judgment of June 15, 2005. Series C No. 124, par.160.

³⁸⁸ I/A Court H.R., *Case of Ricardo Canese v. Paraguay*. Merits, Reparations and Costs. Judgment of August 31, 2004. Series C No. 111, par.142.

³⁸⁹ I/A Court H.R., *Case of López Álvarez v. Honduras*. Merits, Reparations and Costs. Judgment of February 1, 2006. Series C No. 141, par.129; I/A Court H.R., *Case of Acosta Calderón v. Ecuador*. Merits, Reparations and Costs. Judgment of June 24, 2005. Series C No. 129, par.104; and I/A Court H.R., *Case of Tibi v. Ecuador*. Preliminary Objections, Merits, Reparations and Costs. Judgment of September 7, 2004. Series C No. 114, par.168. See also: IACHR, Report No. 77/02, Case 11,506, Merits, Waldemar Gerónimo Pinheiro and José Víctor dos Santos, Paraguay, December 27, 2002, par. 76.

³⁹⁰ I/A Court H.R., *Case of the Santo Domingo Massacre v. Colombia*. Preliminary Objections, Merits and Reparations. Judgment of November 30, 2012. Series C No. 259, par.164.

³⁹¹ I/A Court H.R., *Case of the Barrios Family v. Venezuela*. Merits, Reparations and Costs. Judgment of November 24, 2011. Series C No. 237, par.275.

310. The Commission recalls that the Court has pointed out a pattern of judicial delay in Guatemala with respect to the investigation of serious violations of human rights.³⁹² The Court noted:

[...] the unwarranted delay in the Guatemalan judicial system,³⁹³ and [...] the violations of the right to due process.³⁹⁴ In its judgments in the cases of Myrna Mack Chang, Maritza Urrutia, the Plan de Sánchez Massacre, Molina Theissen and Tiu Tojín, all of which concerned human rights violations committed during the armed conflict in Guatemala, the Court held that 13, 11, 22, 22 and 17 years after the events, respectively, the State had not yet complied with its obligations to investigate and end the impunity.³⁹⁵

311. Summarizing, the Commission considers that the delay in the administration of domestic justice far exceeds what might be considered a reasonable period of time and therefore constitutes a denial of justice to the detriment of the victims' next of kin.

2.6.3. Legal definition of the crime of forced disappearance

312. With regard to the forced disappearances in this case, the State argued that forced disappearance did not become a criminal offense under Guatemalan law until 1995. It argued that no one could be criminally prosecuted for supposed forced disappearances that occurred between 1981 and 1986, as this would imply a violation of the principle of non-retroactivity of the law, protected under Article 15 of the Guatemalan Constitution.

313. The Court has written that States must establish an adequate legal framework if the investigation of cases of forced disappearance is to be effective.³⁹⁶ As the Court held, this implies legislating the forced disappearance of persons as an autonomous crime in their domestic laws, "since

³⁹² I/A Court H.R., *Case of the Dos Erres Massacre v. Guatemala*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 24, 2009. Series C No. 211, par.134.

³⁹³ "The Guatemalan system for the administration of justice [was] ineffective in guaranteeing compliance [with] the law and protection of the rights of the victims and their next of kin in almost the totality of the violations committed against human rights during that period of time." I/A Court H.R., *Case of Tiu Tojín v. Guatemala*. Merits, Reparations and Costs. Judgment of November 26, 2008. Series C No. 190. par.51.

³⁹⁴ "[E]ven today, the courts in Guatemala have been incapable of effectively investigating, prosecuting, trying, and punishing those responsible for human rights violations.[...] The courts have often subordinated their actions to the executive branch or to military influence, 'applying legal provisions or rules that are contrary to due process or not applying those they should have.'" I/A Court H.R., *Case of Bámaca Velásquez v. Guatemala*. Order of the Inter-American Court, Provisional Measures and Monitoring Compliance with Judgment. January 27, 2009, par. 22; and *Case of Myrna Mack Chang v. Guatemala*. Merits, Reparations and Costs. Judgment of November 25, 2003. Series C No. 101, par.134.13.

³⁹⁵ I/A Court H.R., *Case of Myrna Mack Chang v. Guatemala*. Merits, Reparations and Costs. Judgment of November 25, 2003. Series C No. 101, par.272; *Case of Maritza Urrutia v. Guatemala*. Merits, Reparations and Costs. Judgment of November 27, 2003. Series C No. 103, par.176; *Case of the Plan de Sánchez Massacre v. Guatemala*. Reparations and Costs. Judgment of November 19, 2003. Series C No. 116, par.95; and *Case of Molina Theissen v. Guatemala*. Reparations and Costs. Judgment of July 3, 2004. Series C No. 108, par.79.

³⁹⁶ I/A Court H.R., *Case of Osorio Rivera et al. v. Peru*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 26, 2013. Series C No. 274, par.205; *Case of Anzualdo Castro v. Peru*. Preliminary Objection, Merits, Reparations and Costs. Judgment of September 22, 2009. Series C No. 202, par.165.

criminal prosecution is an adequate instrument for preventing future violations of human rights.”³⁹⁷ It also wrote that the description of the crime should take into account the minimum elements established in the specific international instruments, both universal and inter-American, adopted to protect victims of forced disappearance.³⁹⁸

314. In the present case, although forced disappearance is now a criminal offense under Guatemala’s domestic laws, the Commission observes that no criminal investigations have been conducted in Guatemala into the crime of forced disappearance. The Commission notes that the Court itself underscored the fact that States have an obligation to apply the crime of forced disappearance once it has been introduced into the domestic legal system, even with respect to facts that occurred before forced disappearance was criminalized, since the crime is a continuing offense until such time as the person’s whereabouts have been established.³⁹⁹

315. The failure to properly criminalize acts such as those that occurred in the present case also contributes to the impunity that continues to obstruct the determination of responsibilities, at all levels, within the Guatemalan Army, among its collaborators and among other state officials.

2.6.4. Conclusion

316. From all the foregoing, the Commission concludes that the domestic investigations and proceedings have not been effective remedies in guaranteeing access to justice, determining the truth of what happened, investigating and punishing all those responsible and making reparations for the consequences of the violations. Hence, the Commission finds that the State has violated articles 8(1) and 25 of the American Convention, read in junction with the obligation to respect rights set forth in Article 1(1) thereof, and Article I(b) of the Inter-American Convention on Forced Disappearance of Persons, to the detriment of the disappeared persons and the victims’ next of kin listed in the single annex to this report.

317. Finally, the Commission concludes that the State violated Article 7 of the Convention of Belém do Pará, by its failure to comply with the obligation to investigate the acts of sexual violence described and analyzed in the present report.

2.7. Right to equal protection (Article 24 of the American Convention, read in conjunction with Article 1(1) thereof)

³⁹⁷ I/A Court H.R., *Case of Radilla Pacheco v. Mexico*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 23, 2009. Series C No. 209, par.145; *Case of Gómez Palomino v. Peru*. Merits, Reparations and Costs. Judgment of November 22, 2005. Series C No. 136, paragraphs 96 and 97; *Case of Heliodoro Portugal v. Panama*. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 12, 2008. Series C No. 186, paragraphs 188-189; and *Case of Anzualdo Castro v. Peru*. Preliminary Objection, Merits, Reparations and Costs. Judgment of September 22, 2009. Series C No. 202, par. 66.

³⁹⁸ I/A Court H.R., *Case of Gómez Palomino v. Peru*, Merits, Reparations and Costs. Judgment of November 22, 2005. Series C No. 136, paragraphs 96-97; *Case of Heliodoro Portugal v. Panama*. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 12, 2008. Series C No. 186, paragraphs 188-189, and *Case of Goiburú et al. v. Paraguay*. Merits, Reparations and Costs. Judgment of September 22, 2006. Series C No. 153, par.92.

³⁹⁹ I/A Court H.R., *Case of Osorio Rivera et al. v. Peru*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 26, 2013. Series C No. 274, par.211; *Case of Heliodoro Portugal v. Panama*. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 12, 2008. Series C No. 186, par.199.

318. The Inter-American Court has written that “[n]on-discrimination, together with equality before the law and equal protection of the law, are elements of a general basic principle related to the protection of human rights.”⁴⁰⁰ The Court wrote the following regarding the text of Article 24 of the American Convention:

(...) while Article 1(1) refers to the State’s obligation to respect and guarantee “without discrimination” the rights contained in the American Convention, Article 24 protects the right to “equal protection of the law.”⁴⁰¹ Article 24 of the American Convention prohibits *de jure* and *de facto* discrimination, not just with respect to the rights upheld in that treaty, but also with respect to any law that a State enacts and enforces. In other words, if a State discriminates in its observance of a convention-protected right or in guaranteeing such a right, it is in noncompliance with its obligation under Article 1(1) and the substantive right in question. If, on the other hand, the discrimination concerns unequal protection of the domestic law or its application, it has to be examined in light of Article 24 of the American Convention.⁴⁰²

319. A clear demonstration of the right to equal protection is every person’s right not to be the victim of racial discrimination. The International Convention on the Elimination of All Forms of Racial Discrimination –to which Guatemala is party-⁴⁰³ defines this form of discrimination as follows:

(...) any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.” [Article 1... and stipulates that each States Party, *inter alia*,] undertakes to engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation [Article 2(1)(a)], not to sponsor, defend or support racial discrimination by any persons or organizations [Article 2(1)(b)].

[Furthermore, in Article 5 of this Convention, the States parties undertake] “to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights: (a) The right to equal treatment before the tribunals and all other organs administering justice; (b) The right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution [...]

⁴⁰⁰ I/A Court H.R., *Juridical Condition and Rights of the Undocumented Migrants*. Advisory Opinion OC-18/03 of September 17, 2003, Series A. No. 18, par.83. The Human Rights Committee has made the same observation: “*Non-discrimination, together with equality before the law and equal protection of the law without any discrimination, constitute a basic and general principle relating to the protection of human rights.*” Human Rights Committee, General Comment No. 18: Non-discrimination, November 11, 1989, paragraph 1.

⁴⁰¹ I/A Court H.R., *Case of Barbani Duarte et al. v. Uruguay*. Merits, Reparations and Costs. Judgment of October 13, 2011. Series C No. 234, par.174; and *Case of Atala Riffo and Daughters v. Chile*. Merits, Reparations and Costs. Judgment of February 24, 2012. Series C No. 239, par.82.

⁴⁰² I/A Court H.R., *Case of the Displaced Afro-descendant Communities in the Río Cacarica Basin (Operation Genesis) v. Colombia*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 20 2013. Series C No. 270, par.333.

⁴⁰³ Guatemala signed it on September 8, 1967, and ratified it on January 18, 1983.

320. With regard to indigenous peoples' right to equality and non-discrimination, the United Nations Declaration on the Rights of Indigenous Peoples provides that:

Article 2. Indigenous peoples and individuals are free and equal to all other peoples and individuals and have the right to be free from any kind of discrimination, in the exercise of their rights, in particular that based on their indigenous origin or identity.

Article 9. Indigenous peoples and individuals have the right to belong to an indigenous community or nation, in accordance with the traditions and customs of the community or nation concerned. No discrimination of any kind may arise from the exercise of such a right.

321. Article 3(1) of ILO Convention No. 169 on Indigenous and Tribal Peoples in Independent Countries, which Guatemala ratified in 1996, provides that "[i]ndigenous and tribal peoples shall enjoy the full measure of human rights and fundamental freedoms without hindrance or discrimination." The Committee on the Elimination of Racial Discrimination has called upon the States to "[e]nsure that members of indigenous peoples are free and equal in dignity and rights and free from any discrimination, in particular that based on indigenous origin or identity."⁴⁰⁴

322. The Commission considers that because of the racism and structural exclusion⁴⁰⁵ prevailing at the time of the armed conflict in Guatemala, the Maya people were the most cruelly affected sector of the Guatemalan population. It is the Commission's view that racial discrimination was the basis both of the State policy of stigmatizing and then exterminating the Maya people, and of the "demonization" of the Maya people in order to de-sensitize the aggressors. It also explains the brutality with which the massacres and persecution were conducted, the enslavement of some surviving children and the authorities' subsequent failure to react to these events.⁴⁰⁶

323. Thus, Guatemala's armed conflict led to multiple, egregious violations of the cultural integrity of the Maya people, and systematic, brutal attacks on Maya individuals, families and communities, for the mere fact that they were Maya, all part of a state policy of racism and genocide.⁴⁰⁷

⁴⁰⁴ Committee on the Elimination of Racial Discrimination, General Recommendation No. 23, The Rights of Indigenous Peoples, August 18, 1997, par. 4(b).

⁴⁰⁵ The IACHR has previously noted that "indigenous people in Guatemala have been historically discriminated against due to ethnic reasons." IACHR, *Justice and Social Inclusion: The challenges of democracy in Guatemala*, December 29, 2003, par.210. See, also: IACHR, *Fifth Report on the Situation of Human Rights in Guatemala*, April 6, 2001.

⁴⁰⁶ IACHR, Report No. 86/10, Case 12,649, Merits, Community of Río Negro of the Maya Achí People and Its Members, Guatemala, July 14, 2000, par.357.

⁴⁰⁷ The IACHR has previously described the situation as follows: "The dramatic exclusion and discrimination to which Indigenous populations in Guatemala were subjected, became evident during the armed conflict, when 83% of the victims were Mayans, and against whom acts of genocide were performed. (...) The Commission for Historical Clarification (CEH) said in its report that racism, which materialized in the form of a doctrine of superiority and manifested itself in the Guatemalan State's conduct, was one of the causes of the armed conflict. It "was also a fundamental factor in explaining the particular brand of brutality and indiscriminate with which the military operations were carried out against hundreds of Maya communities in the western and northwestern sectors of the country, especially between 1981 and 1983, when over half the massacres and scorched-earth operations were perpetrated against them." According to the CEH, the response to the guerrilla movement was so disproportionate because the counterinsurgency policy sought not only to destroy the social bases of the guerrilla movement, but also to destroy the cultural values that gave the indigenous communities their sense of cohesion and collective endeavor." IACHR, *Justice and Social Inclusion: the challenges of democracy in Guatemala*, December 29, 2003, paragraphs 216-217.

324. The Commission therefore believes that the discrimination that was the context in which the egregious events described and analyzed in this report occurred and of which the village of Chichupac and neighboring communities were victim, constituted an expression of the racial discrimination practiced against the Maya people during the armed conflict in Guatemala. Therefore, the IACHR considers that the massacres, persecution and extermination of the villagers of Chichupac and neighboring communities, which were planned and orchestrated by the State, were in themselves violations of Articles 24 and 1(1) of the American Convention because they were predicated on discrimination.

325. The Commission also considers that the failure of the State authorities charged with investigating and prosecuting the crimes committed in this case to respond swiftly and effectively to the events, also constituted a violation of those articles. Both the occurrence of acts constituting genocide and confirmation of a pattern of racial discrimination in the form of the stigmatization and persecution of members of the Maya people as sympathizers of the insurgency, demanded special diligence of Guatemala in its investigation and prosecution of the perpetrators. The Commission observes that this degree of special diligence was glaringly absent in the Guatemalan courts' response –as it was explained in detail in the previous section.

326. The IACHR has written the following concerning Guatemala:

impunity for serious violations of human rights committed during the internal armed conflict against the members of the Mayan population, reached levels of such magnitude that the only possible conclusion is that the vestiges of a racist and discriminatory culture continue to permeate large sectors and areas of Guatemalan society, and are particularly apparent in the justice system⁴⁰⁸ [and] the impunity of those responsible for violations of the Mayan people's human rights during the armed conflict [...] and the lack of investigation of acts of discrimination against members of Guatemalan indigenous populations, affect not only the rule of law, but also the dignity of the people.⁴⁰⁹

327. Therefore, by failing to diligently investigate and prosecute the serious crimes and racism of which the members of the village of Chichupac and neighboring communities were victims and thereby perpetuating the cycle of racial discrimination that resulted in the crimes committed in the present case, the Guatemalan courts have violated Article 24 of the Convention, read in conjunction with Article 1(1) thereof.

328. Finally, before proceeding to express its conclusions, the Commission considers it pertinent to refer to what the State has indicated with regard to a group of victims who had resorted to the NPR for reparations related to the facts in the present case. In this regard, the Commission reaffirms that the obligation to provide reparations emerges as a direct consequence of the State's responsibility, derived from a violation of the Convention, and for that reason, it requires integral and adequate reparations as a result of the violations found in this report⁴¹⁰.

⁴⁰⁸ IACHR, *Justice and Social Inclusion: the challenges of democracy in Guatemala*, December 29, 2003, par.241.

⁴⁰⁹ IACHR, *Justice and Social Inclusion: the challenges of democracy in Guatemala*, December 29, 2003, par.247.

⁴¹⁰ I/A Court H.R., *Case of the La Rochela Massacre v. Colombia*. Merits, Reparations and Costs. Judgment of May 11, 2007, Series C No. 163, par. 221.

329. With respect to this group of victims, however, the Commission does not have specific information regarding the relationship of these reparations with the totality of the facts and violations declared in the present case. If these reparations were actually delivered by the NPR, the Commission will examine the link between the established facts and violations of the report, and assess its value, its suitability, and sufficiency in light of the Inter-American reparations standards⁴¹¹.

V. CONCLUSIONS

330. Based on the considerations of fact and of law contained in the present report, the Inter-American Commission on Human Rights concludes that the Guatemalan State is responsible for violation of the rights protected under articles 3, 4, 5, 7, 8, 11, 12, 16, 17, 19, 21, 22, 23, 24 and 25 of the American Convention, read in conjunction with the obligations established in article 1(1) thereof; Article I of the Inter-American Convention on Forced Disappearance of Persons, and Article 7 of the Convention of Belém do Pará.

331. Based on the foregoing conclusions,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS RECOMMENDS THAT THE GUATEMALAN STATE

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

2. Establish a mechanism to identify as many of the victims executed in the present case and provide whatever is needed to continue the identification process and return the victims' mortal remains.

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

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

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

⁴¹¹ The I/A Court H.R. has previously stated that "If the State has paid compensation to the victims [...], it may deduct the amounts that have been paid for the violations established in this Judgment when paying the reparations ordered. At the stage of monitoring compliance with judgment, the State must prove that, under this program". I/A Court H.R., *Case of Gudiel Álvarez et al. (Diario Militar) v. Guatemala*. Merits, Reparations and Costs. Judgment of November 20, 2012. Series C No. 253, par. 389.

6. Conduct, conclude and re-open, as the case may be, the domestic proceedings into the human rights violations declared in the present report and conduct an impartial and effective investigation, within a reasonable time, to clarify all the facts, identify the intellectual and material authors and impose the penalties prescribed by law.

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

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

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