

OEA/Ser.L/V/II.171
Doc. 19
12 February 2019
Original: Spanish

REPORT No. 16/19

CASE 12.991

REPORT ON MERITS

MASSACRE OF LOS JOSEFINOS VILLAGE
GUATEMALA

Adopted by the Commission at its session No. 2147 held on February 12, 2019
171st Special Period of Sessions

Cite as: IACHR, Report No. 16/19, Merits.

REPORT No. 16/19
CASE 12.991
MERITS
MASSACRE OF LOS JOSEFINOS VILLAGE
GUATEMALA
FEBRUARY 12, 2019

INDEX

I.	INTRODUCTION.....	2
II.	SUBMISSIONS OF THE PARTIES.....	2
	A. The petitioners.....	2
	B. The State	4
III.	FINDINGS OF FACT	4
	A. Context.....	4
	B. The alleged victims.....	7
	C. Facts in the case.....	8
	D. Domestic proceedings.....	12
	E. Reparations awarded	15
IV.	LEGAL ANALYSIS	16
	A. The alleged extrajudicial executions and violence that occurred during the massacre and the persons whose whereabouts are unknown since that event. Right to life, right to humane treatment, and rights of the child	16
	B. The alleged forced disappearances initiated during the massacre. Rights to juridical personality, life, humane treatment, and personal liberty	19
	C. The ensuing violations connected with the events of the massacre.....	20
	1. Right to humane treatment, rights of the family, and rights of the child	21
	2. Freedom of movement and residence.....	22
	3. Right to humane treatment, right to family life and privacy, right to property, and rights of the child.....	24
	D. Rights to a fair trial and judicial protection	25
V.	CONCLUSIONS AND RECOMMENDATIONS.....	29

I. INTRODUCTION

1. On October 27, 2004, the Inter-American Commission on Human Rights (hereinafter the “Inter-American Commission,” “Commission,” or “IACHR”) received a petition lodged by the Association of Family Members of the Detained-Disappeared of Guatemala (FAMDEGUA) and the Center for Justice and International Law (CEJIL) (both hereinafter “the petitioners”) claiming that the Republic of Guatemala (hereinafter “the Guatemalan State,” “the State,” or “Guatemala”) bore international responsibility for violations of the rights of the inhabitants of the village of Los Josefinos that were victims of a massacre within the context of the armed conflict, the survivors of that massacre, and their relatives. The international responsibility of the State was alleged as a consequence of the massacre itself, forced displacement, the impunity that surrounds the deeds, and other violations of the victims’ rights.

2. In response to the petitioners’ allegations, on June 14, 2005, Guatemala recognized its “international responsibility in relation to the events that occurred and the absence of due process in terms of the lack of investigation,” [Tr: free translation] and it expressed its will to begin talks with the petitioners with a view to reaching a friendly settlement.¹ The Commission adopted Report on Admissibility No. 17/15 on March 24, 2015.² On May 6, 2015, the commission notified the parties of that report and gave them the regulatory deadlines to present additional observations as to the merits. The petitioners submitted their observations on December 16, 2015.³ The State did not submit any observations during the merits stage. All information received was duly relayed between the parties.

II. SUBMISSIONS OF THE PARTIES

A. The petitioners

3. Regarding the facts, the petitioners allege that the massacre at the village of Los Josefinos was not an isolated event, but part of the context of the non-international armed conflict that took place from 1962 to 1996 in Guatemala. In the course of the conflict, the State adopted the “National Security Doctrine,” which increased military intervention against the subversion of the “enemy within”, which included the civilian population situated in areas with a guerrilla presence, such as Petén, where Los Josefinos was located. Due to the fact that the Army believed that the peasant and indigenous populations supported the guerrillas, “scorched-earth” operations were conducted to sack and destroy entire villages and slaughter their inhabitants with the aim of eliminating the community and wiping out their basic means of subsistence. In order to “control” the enemy within, the armed forces also implemented a counterinsurgency strategy that included Civil Self-Defense Patrols (*Patrullas de Autodefensa Civil* – PAC), which were a compulsory complementary paramilitary force. In March 1982, the State also began implementing the “National Plan for Security and Development,” which facilitated the execution of large-scale military operations, including killings and mass displacements of the civilian population. A string of massacres in Petén followed.

4. At the time of the massacre, the village or hamlet of Los Josefinos, which consisted of a small urban center of approximately 82 homesteads, was largely inhabited by non-indigenous population and organized by the Army under the PAC system. On the morning of April 29, 1982, armed guerrillas entered Los Josefinos and captured the military commissioner Manuel Galdámez and Juan Carlos Calderón. After a meeting with the village residents, two gunshots were heard and the dead bodies of Galdámez and Calderón were later found dumped on the western side of the community. That afternoon, the guerrillas and the Army clashed at a nearby location, where the Army suffered several casualties. At around 7:00 p.m., the inhabitants began to hear the

¹ Note from the Presidential Commission on Human Rights (COPREDEH), Appended to the brief of the State of Guatemala of June 14, 2005, Ref. P-707-05 FLR/EM/ygar, received on June 21, 2005 (hereinafter “Acknowledgment of Responsibility by Guatemala”), p. 1. On December 18, 2007, the petitioners signed a friendly settlement agreement with the State, in which the latter pledged to adopt a series of measures to provide economic reparation, symbolic reparation, and guarantees of non-repetition. There was an addendum to the agreement, which the parties signed on April 14, 2008. Owing to the failure of the Guatemalan State to implement the agreement in full, on October 24, 2012, the petitioners requested the Commission to terminate the friendly settlement process and continue processing the case.

² IACHR, Report No. 17/15, Petition 1139-04 (Case 12.991), Admissibility, *Massacre of Los Josefinos Village*, Guatemala, March 24, 2015 (hereinafter “IACHR, *Los Josefinos* Admissibility Report”).

³ Petitioners’ Additional Observations on Merits. *Massacre of Los Josefinos Village*. Case 12.991. Guatemala. December 16, 2015 (hereinafter “Merits Observations Petitioners. December 16, 2015”).

sound of armored personnel carriers and trucks surrounding the village. Around midnight, Army personnel stormed Los Josefinos on foot, firing at the patrol members who were on guard at the village entrance and killing at least five of them. They then proceeded indiscriminately to execute anyone they found in the roadway and set fire to homes. They went from house to house, shooting, cutting people's throats, and beating men, women and children.

5. While there is no absolute certainty on the number of people executed in the massacre, based on information obtained by FAMDEGUA, it is estimated that at least 28 adults and 14 children were killed. Those who managed to escape, fled into the nearby bush. In their haste to get away some were separated from their relatives, and their fate is unknown. At least three individuals were captured by the Army and there has been no word of them ever since; therefore, it is alleged that they were victims of forced disappearance. In addition, another eight individuals who survived the massacre, including two children, are still unaccounted for. Some of the survivors died during the escape, succumbing to their wounds or the harsh conditions. Those who returned to Los Josefinos the following day found corpses charred or strewn around the village, and their homes, livestock, and property, stolen, burnt, or destroyed. The Army assigned a number people to dig a mass grave where the corpses of some of the victims, collected with a tractor, were buried without identification, ceremony, or the participation of family members, after which the Army ordered everyone present to abandon the village. The survivors were subjected to threats and harassment, forcing them to flee and settle in other parts of the country or abroad.

6. The State of Guatemala did not undertake an ex officio investigation of the events. Although the survivors identified soldiers belonging to the Army of Guatemala as those responsible for the deeds, they say that they did not dare to report them right away for fear of reprisals. It was only after the peace negotiations began on January 15, 1996, that FAMDEGUA requested the exhumation of the corpses buried in the mass grave with a view to gathering evidence in advance of judicial proceedings and accompanying it with notarized declarations. Between March 1996 and March 1997, the Guatemalan Forensic Anthropology Team (EAFG) exhumed the remains buried in the mass grave and an investigation was formally opened. Following a number of investigative procedures, the case remained inactive until May 2005, when the Supreme Court requested a certification of the process to forward to the IACHR. That resulted in the partial reactivation of the investigation, which remains open and unfinished to this day.

7. As to the law, the petitioners argue that the State of Guatemala is responsible for violation of the rights to life and humane treatment, together with the attendant procedural obligations, in accordance with Articles 4 (1) and 5 of the American Convention on Human Rights (hereinafter the "American Convention", or the "Convention"), taken in conjunction with Article 1 (1) thereof, as a result of the extrajudicial execution of at least 42 people, the disappearance of 8 others, and its failure of its duty to ensure rights by reason of the lack of a diligent and effective investigation and prosecution of those responsible, in relation not only to the deeds committed by the Army, but also those committed by the guerrillas. The petitioners also allege that Guatemala is responsible for the forced disappearance of at least three people, in violation of the rights recognized in Articles 3, 4 (1), 5 (1), 5 (2), and 7 of the Convention, taken in conjunction with Article 1 (1) thereof, as well as in Articles I.a and I.b of the Inter-American Convention on Forced Disappearance of Persons (IACFDP). Guatemala is also alleged to have violated the right to non-interference in private life and the family and the right not to be forcibly displaced, in breach Articles 11 (2), 21 (1) and (2), and 22 (1-5) of the Convention. The State also allegedly failed to protect the families that were broken up as a result of the massacre, in violation of the right recognized in Article 17 of the Convention.

8. It is also alleged that Guatemala did not conduct a meaningful, independent, diligent, and effective investigation within a reasonable time, violating the rights of the surviving victims and families of the deceased to a fair trial, judicial protection, and the right to the truth, in accordance with its obligations under Articles 8 (1) and 25 (1) of the Convention. Furthermore, the State is alleged to be responsible for violating the right of access to information recognized at Article 13 of the Convention, taken in conjunction with Article 1 (1) thereof. In addition, the State is said to have violated the right to humane treatment of the surviving victims and their relatives, in breach of Article 5 of the Convention, by reason of the mental suffering and fear caused by what happened, the circumstances with which they had to contend as a result of the massacre, and the frustration and impotence that the fruitless investigation of the events and the resulting impunity caused them. Finally,

the petitioners argue that the State violated its international obligations with respect to the rights of the child, in violation of Article 19 of the Convention, to the detriment of the children who were extrajudicially executed, those whose whereabouts are unknown, and those survived, given the circumstances with which they were confronted both during and after the massacre.

B. The State

9. The State did not submit any observations during the merits stage. However, the briefs that the State presented during the processing of this case include a recognition of international responsibility and information about progress in the area of reparations in the framework of the friendly settlement process. Indeed, as a result of its acceptance of responsibility, the State agreed with the petitioners and their representatives to award economic compensation to the surviving victims for consequential and material losses (per family group), and to the families of deceased victims, for consequential losses, loss of earnings, and moral injury.

10. According to the information provided by the State, those economic reparations were made to 251 family groups, out of a total of 258, in the amount of Q. 14,407,360.00. With respect to the seven families that have not yet been awarded compensation, Guatemala says that they have not accredited their status as victims or as relatives of victims. Guatemala notes that upon receiving payment, the 251 family groups expressly and voluntarily pledged not to bring any future monetary claims in connection with the massacre of Los Josefinos and issued the State a full release and discharge. Furthermore, the State did not impose the economic compensation on the petitioners, nor did said compensation arise from a national process of reparation, but from proceedings at the international level; also, it did not originate from mechanisms for reparation granted at the domestic level, since the amounts paid were significantly higher.

11. The State also asserts that it effectively fulfilled several commitments for restoration of moral dignity, in keeping with the petitioners' wishes and requests, including: (i) an act of public recognition of responsibility; (ii) the broadcast of a radio program; (iii) the reimbursement of procedural expenses to FAMDEGUA; and, (iv) the construction of a monument where the victims' remains were deposited and on which a plaque was put up to their memory. Accordingly, it requests that the economic reparation awarded to the 251 family groups that benefited from compensation be declared adequate and effective, and that the measures for restoration of moral dignity be recognized as effective and adequate, given that they were agreed upon and carried out in a manner that gave particular attention to the requests and wishes of the petitioners.

12. As regards the effectiveness and promptness of the domestic proceedings, Guatemala says that the investigation has been meaningful, impartial, and diligent but that "it has not yet been legally and materially possible to conclude the investigation, making it possible to bring an indictment and commit to trial those who might be potentially responsible." Although various steps have been taken to throw light on the events, for the time being, "attempts to establish responsibilities in relation to the events connected with the massacre at Los Josefinos have not succeeded." Referring to the complexity of the case, the State said, in addition, that "those events [only] came to the knowledge of the State ... 14 years after they took place." As to the conduct of the judicial authorities, the State requested the Commission to appraise the steps and procedures carried out in the investigation as a whole, which would demonstrate that they were not fruitless. Finally, the State broadly invokes Guatemala's Criminal Code and a series of the country's special criminal laws and procedural standards that, it says, guarantee the rights of victims in cases of this nature.

III. FINDINGS OF FACT

A. Context

13. As the Commission and the Inter-American Court of Human Rights (hereinafter "Inter-American Court" or "Court") have consistently stated based on reports from the Commission for Historical Clarification

(CEH)⁴ and the Human Rights Office of the Archdiocese of Guatemala (ODHAG),⁵ it is a proven fact that there was an internal armed conflict in Guatemala from 1962 to 1996, which had enormous human, material, institutional, and moral costs and resulted in the murder and disappearance of over 200,000 people.⁶

14. Both organs of the system have consistently found that during the internal armed conflict, the state applied the so-called "National Security Doctrine," which increased the involvement of military forces in confronting "subversion."⁷ In pursuit of that doctrine, State forces and related paramilitary groups were responsible for 93% of the human rights violations recorded during the armed conflict, including 92% of arbitrary executions and 91% of forced disappearances.⁸ Furthermore, in April 1982, the Governing Military Junta, which was presided over by José Efraín Ríos Montt and had been in power since March 23, 1982, unveiled the "National Plan for Security and Development", establishing national objectives in military, administrative, legal, social, economic, and political terms, as well as identifying the main areas of conflict.⁹ In practice, the enemy within to be combated was any person or organization that represented any sort of opposition to the State.¹⁰ Although that concept initially referred to guerrilla organizations, it gradually expanded to include all "those who, for whatever reason, were not in favor of the established regime,"¹¹ including "anyone, who genuinely or allegedly supported the fight to change the established order."¹²

15. Particularly during the most violent period of the conflict, from 1978 to 1983, when 91 percent of the violations documented by the CEH were committed¹³ and, moreover, when the events in this case and other massacres in Petén occurred,¹⁴ the counterinsurgency policy implemented in Guatemala was characterized by "military actions aimed to exterminate groups and communities, as well as to forcibly displace them when it was thought that they could be aiding the guerrillas. Such military actions, executed on the orders of the very highest state authorities or with their knowledge, mainly consisted of killings of defenseless populations, so-called massacres, and scorched-earth operations."¹⁵ At least 626 massacres were committed by Government

⁴ Report of the CEH, Guatemala: Memory of Silence (hereinafter "CEH, *Guatemala: Memory of Silence*"). Available (in Spanish) at <http://www.centrodehistoriahistorica.gov.co/descargas/guatemala-memoria-silencio/guatemala-memoria-del-silencio.pdf>

⁵ ODHAG, "Guatemala Nunca Más" [Guatemala, Never Again], Report of the Interdiocesan Project "Recovery of Historical Memory," Available (in Spanish) at <http://www.fundacionpdh.org/lesahumanidad/informes/guatemala/informeREMHI-Tomo1.htm>.

⁶ See, *inter alia*, IACHR, Report No. 86/10, Case 12.649, Merits, *Community of Río Negro of the Maya Indigenous People and Its Members*, Guatemala, July 14, 2010 (hereinafter "IACHR, Río Negro Merits Report"), par. 50; IACHR, Report No. 6/14, Case 12.788, Merits, *Members of the Village of Chichupac and Neighboring Communities of the Municipality of Rabinal*, Guatemala, April 2, 2014 (hereinafter "IACHR, Chichupac Merits Report"), par. 36-37; I/A Court H.R., *Case of the "Las Dos Erres" Massacre v. Guatemala*, Preliminary Objection, Merits, Reparations and Costs, Judgment of Tuesday, November 24, 2009, Series C No. 211 (hereinafter "I/A Court H.R., Las Dos Erres Massacre Judgment"), par. 70; 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 (hereinafter "I/A Court H.R., Río Negro Massacres Judgment"), par. 56; I/A Court H.R., *Case of the Plan de Sánchez Massacre v. Guatemala*, Merits, Judgment of April 29, 2004, Series C. No. 105 (hereinafter "I/A Court H.R., Plan de Sánchez Massacre Judgment"), par. 42.1; I/A Court H.R., *Case of Tiu Tojín v. Guatemala*, Merits, Reparations and Costs, Judgment of November 26, 2008, Series C. No. 190 (hereinafter "I/A Court H.R., Tiu Tojín Judgment"), par. 48; 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 (hereinafter "I/A Court H.R., Chitay Nech Judgment"), par. 64; and I/A Court H.R., *Case of García and Family v. Guatemala*, Merits, Reparations and Costs, Judgment of November 29, 2012, Series C No. 258 (hereinafter "I/A Court H.R., García and Family Judgment"), par. 51.

⁷ IACHR, Río Negro Merits Report, par. 52; IACHR, Cichupac Merits Report, par. 38; I/A Court H.R., Las Dos Erres Massacre Judgment, par. 71; I/A Court H.R., Río Negro Massacres Judgment, par. 57; I/A Court H.R., Plan de Sánchez Massacre Judgment, par. 42.2; I/A Court H.R., Chitay Nech Judgment, par. 64.

⁸ IACHR, Río Negro Merits Report, par. 52; IACHR, Cichupac Merits Report, par. 38; I/A Court H.R., Río Negro Massacres Judgment, par. 56; I/A Court H.R., Plan de Sánchez Massacre Judgment, par. 42.4; and I/A Court H.R., Chitay Nech Judgment, par. 64.

⁹ IACHR, Río Negro Merits Report, par. 55-56; IACHR, Cichupac Merits Report, par. 40-41; I/A Court H.R., Las Dos Erres Massacre Judgment, par. 72; I/A Court H.R., Río Negro Massacres Judgment, Footnote 38; and I/A Court H.R., Plan de Sánchez Massacre Judgment, par. 42.2.

¹⁰ IACHR, Río Negro Merits Report, par. 52; IACHR, Cichupac Merits Report, par. 38; I/A Court H.R., Las Dos Erres Massacre Judgment, par. 71; I/A Court H.R., Río Negro Massacres Judgment, par. 57; I/A Court H.R., Plan de Sánchez Massacre Judgment, par. 42.2; I/A Court H.R., Chitay Nech Judgment, par. 64.

¹¹ I/A Court H.R., García and Family Judgment, par. 51.

¹² I/A Court H.R., *Case of Molina Theissen v. Guatemala*, Merits, Judgment of May 4, 2004, Series C. No. 106 (hereinafter "I/A Court H.R., Molina Theissen Judgment"), par. 40.2.

¹³ IACHR, Río Negro Merits Report, par. 53; IACHR, Cichupac Merits Report, par. 37; I/A Court H.R., Las Dos Erres Massacre Judgment, par. 71; I/A Court H.R., Río Negro Massacres Judgment, par. 57; and I/A Court H.R., Chitay Nech Judgment, par. 65.

¹⁴ For example, the Las Dos Erres massacre. See I/A Court H.R., Las Dos Erres Massacre Judgment, par. 74.

¹⁵ IACHR, Río Negro Merits Report, par. 57. See also IACHR, Cichupac Merits Report, par. 42; I/A Court H.R., Las Dos Erres Massacre Judgment, par. 73; I/A Court H.R., Río Negro Massacres Judgment, par. 57; and I/A Court H.R., Plan de Sánchez Massacre Judgment, par. 42.5-42.6.

forces during the armed conflict,¹⁶ primarily by the Army, supported by paramilitary structures such as the PACs, and Military and Judicial Commissioners.¹⁷ The Commission also takes into account that, as indicated by the Public Prosecution Service of Guatemala, Articles 1-2 and 5-7 of Government Act 4-73, published in *Diario de Centro América* on March 6, 1973, provided that military commissioners had the obligation to collaborate directly and indirectly with the Guatemalan Army, and therefore were subordinate to the latter under the respective chain of command.¹⁸

16. As the Court has determined, during the internal armed conflict there was a State policy of military massacres and scorched-earth operations,¹⁹ the purpose of which was to wipe out entire families and destroy communities.²⁰ As the Court also stated in relation to the Las Dos Erres Massacre, there was a “systematic context of massive human rights violations in Guatemala, in which multiple massacres occurred ... [within a] generalized context of violence exerted by the State.”²¹

17. According to the CEH, those operations were also intended to terrorize and punish communities regarded as having ties to the guerrillas in order to inhibit any attempt to support the insurgency.²² Such punishments not only targeted the civilian population, but were also directed to persons linked to the PACs and military commissioners when they failed to provide effective and timely cooperation in the counterinsurgency struggle, as was the case in the massacre of Los Josefinos.²³

18. Forced displacement was the natural corollary of such massacres and scorched-earth operations: “Hence, those communities had two options: a quick death, by machete or bullet, or a very possible slow death, by hunger or disease.”²⁴ Families and communities not only experienced the complete destruction of their homes, livestock, crops, and other means of survival,²⁵ but were also victims of systematic persecution. Indeed, as the Court described, those who managed to escape and take refuge in the mountains lived for years “stripped of all their belongings, sleeping exposed to the elements and moving continuously in order to flee the soldiers and patrollers who pursued them even after the massacres.”²⁶

19. In addition, in the context of the armed conflict and the State’s policy of destroying families and communities, the Court also determined that “during this period, there was a pattern of separating children from their families after the massacres, and taking and retaining them illegally, all perpetrated by the military forces and illegal armed groups.”²⁷ In similar fashion, during the most violent period of the conflict, boys and girls “were subjected to many human rights violations, and were direct victims of forced disappearance, arbitrary execution, torture, abduction, rape, and other acts that violated their fundamental rights.”²⁸

20. Finally, the Court has consistently held that forced disappearance in Guatemala constituted a practice of the State during the time of the internal armed conflict.²⁹ Such forced disappearances were carried out

¹⁶ Of which 13 were in the Department of Petén. See CEH, *Guatemala: Memory of Silence*, Conclusions and Recommendations, Commission for Historical Clarification, First edition, June 1999 (hereinafter “CEH, *Guatemala: Memory of Silence*, Conclusions and Recommendations”), p. 100.

¹⁷ IACHR, Río Negro Merits Report, par. 57; IACHR, Cichupac Merits Report, par. 42; I/A Court H.R., Las Dos Erres Massacre Judgment, par. 73; I/A Court H.R., Río Negro Massacres Judgment, par. 57; I/A Court H.R., Plan de Sánchez Massacre Judgment, par. 42.6; and I/A Court H.R., Tiu Tojín Judgment, footnote 35.

¹⁸ Document seen by the Public Prosecution Service upon issuing its report on the Case of Plan Sánchez v. Guatemala. See Petitioners’ Observations on Merits, December 16, 2015, Annex 1, par. 160.

¹⁹ The IACHR has long understood “scorched-earth operations” to mean the forced displacement of the civilian population as a result of the repression brought to bear against them in the form of murders and the systematic destruction of harvests and properties. IACHR, Río Negro Merits Report, Footnote 22.

²⁰ I/A Court H.R., Las Dos Erres Massacre Judgment, par. 207; I/A Court H.R., Río Negro Massacres Judgment, par. 244.

²¹ I/A Court H.R., Las Dos Erres Massacre Judgment, par. 152.

²² CEH, *Guatemala: Memory of Silence*, pp. 358-359, pars. 808-811.

²³ CEH, *Guatemala: Memory of Silence*, p. 359, par. 811.

²⁴ I/A Court H.R., Río Negro Massacres Judgment, par. 58.

²⁵ I/A Court H.R., Plan de Sánchez Massacre Judgment, par. 42.7.

²⁶ I/A Court H.R., Río Negro Massacres Judgment, par. 82.

²⁷ I/A Court H.R., Río Negro Massacres Judgment, par. 60. See also I/A Court H.R., Las Dos Erres Massacre Judgment, par. 170-177.

²⁸ I/A Court H.R., Molina Theissen Judgment, par. 40.6.

²⁹ I/A Court H.R., Tiu Tojín Judgment, par. 49; I/A Court H.R., Chitay Nech Judgment, par. 67; I/A Court H.R., Río Negro Massacres Judgment, par. 117 and footnote 56; I/A Court H.R., García and Family Judgment, par. 54; I/A Court H.R., Molina Theissen Judgment, par. 40.1.

mainly by agents of the security forces: “[M]embers of insurgent movements or people identified as inclined to insurgency were captured and held secretly without informing a competent, independent, and impartial legal authority, and they were physically and psychologically tortured in order to obtain information and, possibly, even murdered.”³⁰ The purpose was to dismantle movements or organizations that the State deemed inclined toward insurgency and to spread terror throughout the population.³¹

21. In light of the foregoing and of all the evidence that it has seen in this particular case, the Commission considers that the Guatemalan Army’s raid on the village of Los Josefinos in Petén Department on April 29 and 30, 1982, was carried out in the context of the internal armed conflict, in which there was a State policy of perpetrating massacres, scorched-earth operations, and forced disappearances with the aim of wiping out entire families and destroying the community. That context constituted a generalized and systematic attack, with massive human rights violations on the part of the State against the civilian population.

B. The alleged victims

22. The Commission notes that in their concluding observations on merits, the petitioners referred to serious difficulties in identifying all the victims—not only the deceased, but also their surviving and displaced relatives. Among those difficulties, the petitioners mentioned the violence used by the Army during the massacre and subsequent displacement, as well as the fact that, because the majority of the homesteads and houses in the village were set on fire, many people burnt to death, making it impossible later to identify their remains. Furthermore, in spite of the analysis of the 19 skeletons recovered from the mass grave, owing to the lack of direct information from close relatives and the eroded states of the bone remains, even with DNA tests it was only possible to accurately identify one of the victims of the massacre. It is also necessary to take into account the rural context in which life at Los Josefinos went on at the time of the events, with high rates of illiteracy and a lack of official birth and death records. That would explain why relatives do not have documentation on the deceased, either because individuals are registered in a slightly different way or because there are no official records certifying the identities of everyone living in Los Josefinos at the time of the massacre.

23. In addition to the foregoing, various acts and omissions on the part of the State have created added obstacles that prevent identification of all the victims. Notably, the fact that it took 14 years before the investigation began and the remains were exhumed; the lack of sufficient efforts to identify the victims, despite numerous statements by survivors; the large number of irregularities in the chain of custody and conservation of evidence recovered; and the well-founded fear on the part of some survivors of identifying their relatives, given the disturbing pattern of persecution and impunity in Guatemala.

24. The Commission acknowledges that it is incumbent upon it to identify precisely the alleged victims in a case when pronouncing on its merits.³² However, there are certain circumstances in which, “taking into account [the] magnitude [of the case], the nature of the facts, and the time that has passed ... it [is] reasonable that the identification and individualization of each presumed victims [Tr: *sic*] is complex,” although there must always be “a minimum level of certainty regarding the existence of said individuals.”³³ In addition, the Court has stated that the identification of alleged victims “[does] not necessarily have to be through birth or death certificates, and that there could be other elements or documents that, in the context, could be reasonable and acceptable.”³⁴

25. Taking into account the full recognition of international responsibility on the part of the State in relation to the events and, moreover, that the State did not object to the evidence put forward by the petitioners,

³⁰ I/A Court H.R., Tiu Tojín Judgment, par. 49. See also I/A Court H.R., Chitay Nech Judgment, par. 67; I/A Court H.R., Río Negro Massacres Judgment, par. 117 and footnote 56; I/A Court H.R., García and Family Judgment, par. 54.

³¹ CEH, *Guatemala: Memory of Silence*, Conclusions and Recommendations, p. 44.

³² I/A Court H.R., *Case of the Ituango Massacres v. Colombia*, Judgment of November 29, 2006, Series C No. 148 (hereinafter “I/A Court H.R., Ituango Massacres Judgment”), par. 98. See also I/A Court H.R., Río Negro Massacres Judgment, par. 20; I/A Court H.R., Tiu Tojín Judgment, par. 58.

³³ I/A Court H.R., Río Negro Massacres Judgment, par. 51.

³⁴ I/A Court H.R., Río Negro Massacres Judgment, par. 49.

the Commission considers that evidence sufficient to prove the existence and identity of the alleged victims in this case. The foregoing notwithstanding, bearing in mind other evidence in the record, such as the reparation payments made, the Commission considers it necessary to add two children not included by the petitioners to the list of direct victims of the massacre.³⁵ Moreover, the Commission underscores that in a case such as this, in which the obstacles and difficulties in fully identifying the victims are attributable to the State itself, such a circumstance, which Guatemala has not remedied by means of a complete clarification of the facts, should not adversely affect the victims in the international proceeding. In light of the above, and taking into account the particular characteristics of this case, the Commission is of the view that it would be appropriate to allow a degree of flexibility in the identification of the victims of the different groups of violations, as indicated in the Consolidated Annex on victim identification attached to this report. The IACHR also deems it pertinent to include in its recommendations the need for the State to ensure a mechanism for full identification of the victims in this case in the terms detailed herein below.

C. Facts in the case

26. Since at least the mid-1970s—and in the time immediately prior to the events—guerrillas or rebel armed forces had been active in Petén,³⁶ frequently entering Los Josefinos and clashing with the Army in the area, with the result that the population lived in constant fear.³⁷ Indeed, according to CEH reports, there had been a climate of increasing tension in Petén Department since 1981.³⁸ Specifically in Los Josefinos, the Guatemalan Army carried out a number of assassinations and detentions of people suspected of collaborating with the guerrillas in the period immediately before the events;³⁹ guerrillas also assassinated two men in February 1982,⁴⁰ and the village mayor himself was murdered by unknown individuals in September 1981.⁴¹ It is clear from those facts that the population of Los Josefinos lived in an atmosphere of permanent tension and fear.

27. On the morning of April 29, 1982,⁴² guerrillas entered the village and summoned the community to assemble on the soccer field.⁴³ According to the report of the CEH, the rebels then carried out an “execution.”⁴⁴ They brought Juan Carlos Calderón from his house and accused him of working with the Army; they also brought out the Military Commissioner, Manuel Galdámez. They killed both men and dumped their bodies on the west side of the community.⁴⁵ Later that day, in the afternoon, there was gunfire lasting three or four hours in El Silencio. Afterwards, the army surrounded the village of Los Josefinos to prevent any of its inhabitants from leaving.⁴⁶

³⁵ Specifically, they are Rigoberto Hernández Arevalo and Leily Eleany Batres Cordero.

³⁶ **Annex 01.** Notarized declaration of César Armando Palencia Muralles given in the presence of Edgar Fernando Pérez Archila, Notary Public, on July 9, 2003 (hereinafter “Notarized declaration of César Armando Palencia Muralles”), pp. 1-2. See also: **Annex 02.** Notarized declaration of Antonio Ajanel Ortiz given in the presence of Edgar Fernando Pérez Archila, Notary Public, on July 9, 2003 (hereinafter “Notarized declaration of Antonio Ajanel Ortiz”), p. 1; **Annex 03.** Declaration given by Francisco Gámez Ávila in January 1996 (hereinafter “Declaration of Francisco Gámez Ávila”), p. 2.

³⁷ **Annex 02.** Notarized declaration of Antonio Ajanel Ortiz given in the presence of Edgar Fernando Pérez Archila, Notary Public, on July 9, 2003 (hereinafter “Notarized declaration of Antonio Ajanel Ortiz”), p. 1.

³⁸ CEH, *Guatemala: Memory of Silence*, pp. 2142-2143.

³⁹ CEH, *Guatemala: Memory of Silence*, p. 3193.

⁴⁰ CEH, *Guatemala: Memory of Silence*, pp. 3142, 3164, 3174 and 3175.

⁴¹ CEH, *Guatemala: Memory of Silence*, p. 3186.

⁴² **Annex 04.** Minute No. 11-2003 of the meeting of the Committee of Internally Displaced Persons of Los Josefinos of August 9, 2003, a copy of which was legalized by a notary public on August 22, 2003 (hereinafter “Minutes of Los Josefinos Displaced Persons Committee”), p. 1. See also **Annex 01.** Notarized declaration of César Armando Palencia Muralles, p. 1, which say(s) that the events occurred on April 29, 1982; **Annex 02.** Notarized declaration of Antonio Ajanel Ortiz, p. 1, which says that the events occurred on April 28, but clarified that it was a Thursday, which corresponds to April 29, 1982.

⁴³ **Annex 04.** Minutes of Los Josefinos Displaced Persons Committee, p. 1. See also Declaration given by Victor Samuel Verduo Lopez in the presence of the District Prosecutor of Petén, on October 12, 2006. **Annex 05.** Criminal case file C-805-96, p. 354; Declaration given by Maria Luisa Mejía in the presence of the Assistant Prosecutor, on January 25, 2007, p. 2. **Annex 05.** Criminal case file C-805-96, p. 357; Declaration given by Antonio Ajanel Ortiz Mejía in the presence of the Assistant Prosecutor, on January 25, 2007, p. 1. **Annex 05.** Criminal case file C-805-96, p. 359; Declaration given by Otilio García Sarameño Mejía in the presence of the Assistant Prosecutor, on January 25, 2007 (hereinafter “Declaration of Otilio García Sarameño”), p. 1. **Annex 05.** Criminal case file C-805-96, p. 369.

⁴⁴ CEH, *Guatemala: Memory of Silence*, p. 1307, par. 3693.

⁴⁵ **Annex 04.** Minutes of Los Josefinos Displaced Persons Committee, p. 1.

⁴⁶ **Annex 01.** Notarized declaration of César Armando Palencia Muralles, p. 2. See also **Annex 06.** Declaration given by Roberto Estrada Marroquín in January 1996 (hereinafter “Declaration of Roberto Estrada Marroquín”), p. 2.

28. At around 1:00 a.m. a barrage of gunfire erupted in Los Josefinos and lasted approximately one hour; from a distance one could hear the gunshots and see the flames of the burning houses.⁴⁷ Those who were in the village described how the soldiers entered the hamlet at around 12:30 a.m. on April 13, 1982, first killing the members of the patrol who were on the street,⁴⁸ including, at least, Santiago Colón Carau, Faustino López López, Rigoberto Hernández de la Cruz, Pedro Tumux Tiño and another patrol member known as “Beto”; only one of the patrol members managed to escape.⁴⁹ As the CEH mentioned, the massacre at Los Josefinos was framed within a context of actions intended, not only to instill terror, but also to punish any communities perceived as supporting the guerrillas and any PACs or military commissioners who failed to provide “effective and timely collaboration in the counterinsurgency struggle.”⁵⁰

29. Guatemalan army personnel burned the homesteads and used their firearms to execute anyone who was in the homes.⁵¹ Men, women, and children were cut down by gunfire from army personnel⁵² or burned to death.⁵³ Witnesses to the events described how the soldiers wearing camouflage fatigues went into the homes to make certain there were no survivors and shot to death whole families who were defenseless and unarmed.⁵⁴ For example, César Palencia described how his father, Francisco Catalán, was shot while holding another of his sons in his arms, after pleading with the soldiers for mercy, saying, “Sirs, don’t kill us for no reason[;] we haven’t done anything[;] don’t be so unfair.”⁵⁵ The throats of some of the victims’ corpses were later cut with bayonets.⁵⁶

30. Based on information supplied by the petitioners and the State, the Commission finds it to be demonstrated that, aside from the 2 individuals murdered by the guerrillas and the 5 patrol members murdered by the army upon entering the village, at least 38 other villagers of Los Josefinos, among them men, women, and children, died as a result of the massacre. Concretely, as regards adults, to date, it has been possible to identify the following 4 women: Elvira Ramos Moran, Isabel Hernández Pineda, Teodora Hernández Medina, and María Inés Muralles Pineda; and the following 18 men: Emilio Alfaro Alvizures, Jorge Antonio Baldizón, Ricardo Batres Flores, Damián Crisóstomo Pérez, José Galdámez Alemán, Cristóbal Rey González González, Sarvelio Linares Navarrijo, César Humberto Nacho Marroquín, Francisco Catalán, Abel Regalado Guerra, Pablo Eugenio Méndez Batz, Faustino Osorio, Alfonso Hernández de la Cruz, José Dolores López, Henry Armando Alfaro González, Luis Emilio Alfaro González, Angel Valiente, and Patrocinio Camey. In addition, to date, it has been possible to identify the following 14 children who were also executed during the massacre: Víctor David

⁴⁷ Testimony of Samuel Bracamonte, former Deputy Mayor of Los Josefinos, to the District Prosecutor of the Public Prosecution Service on July 29, 1996 (hereinafter “Testimony of Samuel Bracamonte”). See **Annex 05**, Criminal case file C-805-96, p. 36, lines 16-22. See also: **Annex 04**, Minutes of Los Josefinos Displaced Persons Committee.

⁴⁸ **Annex 01**. Notarized declaration of César Armando Palencia Muralles, p. 2; **Annex 02**. Notarized declaration of Antonio Ajanel Ortiz, p. 1; **Annex 06**. Declaration of Roberto Estrada Marroquín, p. 2.

⁴⁹ **Annex 01**. Notarized declaration of César Armando Palencia Muralles, p. 2; Testimony of Raymundo López, **Annex 05**, Criminal case file C-805-96, p. 351.

⁵⁰ CEH, *Guatemala: Memory of Silence*, p. 3152.

⁵¹ **Annex 04**. Minutes of Los Josefinos Displaced Persons Committee, p. 2; **Annex 01**. Notarized declaration of César Armando Palencia Muralles, p. 2; CEH, *Guatemala: Memory of Silence*, pp. 358-359, pars. 808-811.

⁵² Information provided by Samuel Bracamonte, former Deputy Mayor of Los Josefinos, to Raúl Armando Ramírez Hernández, Justice of the Peace, on March 15, 1996, during the exhumation requested by FAMDEGUA at the village of Los Josefinos (hereinafter “Information from Samuel Bracamonte”). See **Annex 05**, Criminal case file C-805-96, p. 9, lines 19-21. See also Forensic Report, Guatemalan Forensic Anthropology Team, March 25, 1996. See **Annex 05**, Criminal case file C-805-96, pp. 26-27, and **Annex 07**, Forensic Anthropology Report, Guatemalan Forensic Anthropology Team, June 1996, (hereinafter “Forensic Report, June 1996”), p. 9, which records the various projectiles found in the exhumation of the remains and their location on the different skeletons recovered; **Annex 01**. Notarized declaration of César Armando Palencia Muralles, p. 3.

⁵³ Declaration of Otilio García Sarmeño, p. 2. **Annex 05**, Criminal case file C-805-96, p. 369; Declaration given by Raimundo López Gualip in the presence of the Assistant Prosecutor, on January 25, 2007, p. 2. **Annex 05**, Criminal case file C-805-96, p. 372.

⁵⁴ **Annex 08**. Declaration given by César Armando Catalán (Palencia) Muralles in January 1996 (hereinafter “Declaration of César Armando Catalán (Palencia) Muralles”), p. 2, and **Annex 01**. Notarized declaration of César Armando Palencia Muralles, pp. 2-3, who described in detail how his father, Francisco Catalán; mother, María Inés Muralles; and siblings, Edwin Rolando, Rony Amilcar, and Olga Marina Catalán Muralles were murdered by Army personnel. **Annex 02**. Notarized declaration of Antonio Ajanel Ortiz, pp. 1-2, who described how soldiers set fire to his house and then shot to death his wife, Elvira Ramos, and four of their children, Josefina, Juana, Emilia, and Carlos Antonio Ajanel Ramos, who were between the ages of 11 years old and 11 months old.

⁵⁵ **Annex 01**. Notarized declaration of César Armando Palencia Muralles, pp. 2-3.

⁵⁶ **Annex 08**. Declaration of César Armando Catalán (Palencia) Muralles, p. 2, and **Annex 01**. Notarized declaration of César Armando Palencia Muralles, pp. 3-4. See also CEH, *Guatemala: Memory of Silence*, p. 359, par. 811.

Berdúo Mauricio, who was only 6 hours old; Norma Morales Alonzo, who was just 2 days old; Carlos Antonio Ajanel Ramos, 10 months old; Roni (Rony) Amilcar Catalán Muralles, 2 years old; Emilia Ajanel Ramos, 3 years old; Edgar Alfaro González, 6 years old; Juana Ajanel Ramos, 8 years old; Edie Alfaro González, 8 years old; Josefina Ajanel Ramos, 10 years old; Olga Marina Catalán Muralles, 10 years old; Dominga Patrocina Puluc Saban, 13 years old; Esvin Rolando Palencia Muralles, 14 years old; David del Cid Patzan, 15 years old; and Eleuterio Puluc Saban, 17 years old.

31. The Commission also finds it proven that the following very young children died from a lack of food during the escape: Rigoberto Hernández Arévalo, 15 months old; and Leiliy (Leily) Eleany Batres Cordero, 4 months old. The story of the two was recounted by the petitioners in their concluding observations;⁵⁷ however, their names were not included in the list of persons executed in the massacre. In that connection, the IACHR notes that the CEH said that “in the course of their displacement, villagers were subjected to conditions that caused their deaths, since they were very weak and lacked food, which made them easy prey to disease or starvation.”⁵⁸ The Commission takes into account that the State clearly indicated that it would only pay (and indeed only paid) economic reparation in connection with this case to those who were killed during the massacre, not to those who died as a result of the armed conflict either before or after the massacre at Los Josefinos,⁵⁹ since, with respect to the victims who did not die “directly in the massacre of April 29, [their] case is being handled by the National Compensation Program.”⁶⁰ However, bearing in mind that the State did compensate the families for the death of both children in the context of this case,⁶¹ the IACHR has included them as direct victims of the massacre.

32. In addition, at least two people were directly removed from their homes by National Army personnel during the massacre. They were: José Álvaro López Mejía⁶² and Fabio González.⁶³ A third individual, Florencio Quej Bin, who had gone to Las Cruces on April 28, was captured by elements of the army as he was returning to his home in los Josefinos on the day of the massacre.⁶⁴ There has been no information on the whereabouts of any of them to date. It is worth mentioning that the State of Guatemala compensated the families of José Álvaro López Mejía and Fabio González for their “death” during the massacre.⁶⁵

33. The survivors of the massacre at first fled into the bush,⁶⁶ some leaving dead relatives behind, others not knowing whether or not they were still alive.⁶⁷ Some children spent the night next to the bodies of their dead parents and siblings.⁶⁸ Many children were left helpless and alone following the murder or flight of their relatives, while others became separated from their families in the confusion of the moment. Elvira Arévalos Sandoval, lost her husband in the massacre but managed to escape with her nine children. While fleeing, she lost four of them and only found out seven years later that one of them, Rigoberto (1 year old), had died in the bush, while the other three, Ernestina (14 years old), Chuz/Romelia (13 years old), and Rolando (two years old) had taken refuge in Mexico, where they remained, separated from their mother and thinking that she was

⁵⁷ See: Petitioners’ Observations on Merits, December 16, 2015, pp. 96-97.

⁵⁸ CEH, *Guatemala: Memory of Silence*, p. 1220, par. 3395.

⁵⁹ Proposal of the State of Guatemala in relation to economic reparation in Case P-1139/04, Massacre of Los Josefinos Village, August 13, 2007.

⁶⁰ Report of the State of Guatemala on Case P-1139/04, Los Josefinos Massacre, October 27, 2010, p. 5.

⁶¹ Observations of the State of Guatemala on information provided by the petitioners on October 24, 2012, P-1139/04 Los Josefinos Massacre, January 21, 2013, Annex 2, pp. 2-3.

⁶² Petitioners’ Observations on Merits, December 16, 2015, Annex 4, File on the **López Mejía Family**, in particular, a notarized declaration of June 30, 2007, signed by María del Carmen Mejía Pérez, and a victim general datasheet (FAMDEGUA) with information presented by Alba Maritza López Mejía, dated August 9, 2003.

⁶³ Petitioners’ Observations on Merits, December 16, 2015, Annex 4, File on the **González Medina Family**, in particular the death certificate of Fabio González, declared deceased on April 29, 1982, at Los Josefinos, stating the cause of death as “armed conflict”; a notarized declaration of June 30, 2007, signed by Gloria Odilia González Medida, and a victim general datasheet (FAMDEGUA) with information presented by Gloria Odilia González Medina, dated August 9, 2003.

⁶⁴ Petitioners’ Observations on Merits, December 16, 2015, Annex 4, File on the **Quej Bin Family**, in particular, a notarized declaration of February 13, 2008, signed by Francisco Quej Xitumul, and a victim general datasheet (FAMDEGUA) with information presented by Francisco Quej Xitumul.

⁶⁵ Observations of the State of Guatemala on information provided by the petitioners on October 24, 2012, P-1139/04 Los Josefinos Massacre, January 21, 2013, Annex 2, pp. 4 and 7.

⁶⁶ **Annex 06.** Declaration of Roberto Estrada Marroquín, p. 2.

⁶⁷ **Annex 02.** Notarized declaration of Antonio Ajanel Ortiz, p. 2.

⁶⁸ **Annex 01.** Notarized declaration of César Armando Palencia Muralles, pp. 4-5.

dead. Following the reunion, Rolando never recognized her as his mother.⁶⁹ Likewise, Carmelino Ajanel Ramos was separated from his father for 20 years because the latter thought that he had been killed in the massacre at just five years old.⁷⁰

34. There are other children whose whereabouts since the night of the massacre are not known. They include Victoriano Salvatierra Morales, who was 12 years old at the time of the massacre,⁷¹ and Antonio Santos Serech, who was 15 years old when the massacre took place.⁷² Furthermore, Cristina Alonso was only able to save one of her children and had to leave behind her months old baby girl, Norma, in their blazing home; to this day, she does not know if her daughter died or managed to survive.⁷³ Added to these cases are those of several adults of whom their relatives have had no news since the night of the massacre. They include Félix Lux, Felix Salvatierra Morales, Andrea Castellanos Ceballos, Braulia Sarceño Cardona, Edelmira Girón Galbez, and Paula Morales.⁷⁴ It is worth noting that Guatemala also provided compensation to the families of Victoriano Salvatierra Morales, Antonio Santos Serech, Felix Lux y Felix Salvatierra Morales for their “death” during the massacre.⁷⁵

35. During the morning of April 30, 1982, the bodies of 19 individuals, mostly women and children,⁷⁶ were buried at the request of the deputy mayor of los Josefinos, whose intention was that they be buried in separate graves. However, on the orders of an army officer,⁷⁷ they were buried in a mass grave⁷⁸ with the aid of a tractor at Los Josefinos village cemetery.⁷⁹ All of them had been victims of a violent death.⁸⁰

⁶⁹ Declaration of Elvira Arévalos Sandoval. Initial petition of September 29, 2004. Annex 17, Oral Declaration.

⁷⁰ Declaration of Antonio Ajanel Ortiz. See: **Annex 05**. Criminal case file C-805-96, p. 397 (verso).

⁷¹ Petitioners’ Observations on Merits, December 16, 2015, Annex 4, File on the **Salvatierra Morales Family**, in particular, a notarized declaration of June 30, 2007, signed by Otilia Salvatierra Morales, and a victim general datasheet (FAMDEGUA) with information presented by Otilia Salvatierra Morales.

⁷² Testimony of Raymundo López Guliap to the Assistant Prosecutor of the Public Prosecution Service on October 12, 2006 (hereinafter “Testimony of Raymundo López”). **Annex 05**, Criminal case file C-805-96, p. 351.

⁷³ Declaration given by Cristina Alonso Pérez in the presence of the Assistant Prosecutor on March 26, 2012. **Annex 05**. Criminal case file C-805-96, p. 397 (verso).

⁷⁴ Petitioners’ Observations on Merits, December 16, 2015, p. 30 and Annex 4, File on the **Berdúo Lux Family**, in particular, a notarized declaration of June 30, 2007, signed by Vicenta Marina Berdúo López, and a record of human and material losses (FAMDEGUA) with information presented by Vicenta Marina Berdúo López, dated August 5, 2002; File on the **Salvatierra Morales Family**, in particular, a notarized declaration of June 30, 2007, signed by Otilia Salvatierra Morales, and a victim general datasheet (FAMDEGUA) with information presented by Otilia Salvatierra Morales.

⁷⁵ Observations of the State of Guatemala on information provided by the petitioners on October 24, 2012, P-1139/04 Los Josefinos Massacre, January 21, 2013, Annex 2, pp. 1, 6 and 8.

⁷⁶ According to a series of exhibits, including: (i) A certificate issued by Raúl Armando Ramírez Hernández, Justice of the Peace, during the exhumation at los Josefinos in March 1996, in relation to the disinterred skeletons. See **Annex 05**, Criminal case file C-805-96, pp. 9-12, which states that the remains of 19 people were found (though only 18 are described), concretely: **a child of undetermined sex**, p. 9 (verso), line 31; **two infants of undetermined sex**, p. 9 (verso), line 34, and p. 10, lines 4-5; **a male infant**, p. 9 (verso), lines 38-39; **two female children**, p. 9 (verso), lines 42-43 and 47-48; **an adolescent female**, p. 10, line 17; **three adult females**, p. 10, line 10 and p. 10 (verso), lines 29 and 43; **an adolescent male**, p. 10, lines 22-23; and **seven adult males**, p. 10 (verso), lines 35-36, p. 11, lines 1, 8, 13-14, and 21-22, and p. 11 (verso), lines 30 and 36; (ii) Forensic Report, Guatemalan Forensic Anthropology Team, March 25, 1996. See **Annex 05**, Criminal case file C-805-96, pp. 19-27, which states that the remains of 19 people were found, concretely: **a child of undetermined sex**, p. 21 (JP-I-9); **two infants of undetermined sex**, p. 21 (JP-I-10) and p. 22 (JP-I-18); **a male infant**, p. 21 (JP-I-11); **two female children**, p. 21 (JP-I-12 and JP-I-17); **an adolescent female**, p. 22 (JP-I-7); **three adult females**, p. 22 (JP-I-6) and p. 23 (JP-I-8 and JP-I-1); **an adolescent male**, p. 22 (JP-I-13); and **eight adult males**, p. 22 (JP-I-4), p. 23 (JP-I-5, JP-I-2, and JP-I-19) and p. 24 (JP-I-3, JP-I-14, JP-I-15, and JP-I-16). See also **Annex 07**, Forensic Report, June 1996, pp. 10-27, which states that following an osteological analysis of each set of remains, it was determined that 19 of the skeletons recovered were female, four were male, and 11 were of undetermined sex. Five of them belonged to children between the ages of one month and 11 years old, one was of an adolescent male between 12 and 18 years old, and 12 belonged to adults over 18 years old; **Annex 03**. Declaration of Francisco Gámez Ávila (p. 2), who said that children and adults were buried in the mass grave and that among the buried corpses he recognized Santiago Colón, Eugenio Cuac, and Mrs. Inés, whose surname he did not recall.

⁷⁷ Information from Samuel Bracamonte, **Annex 05**, Criminal case file C-805-96, p. 9, lines 21-23.

⁷⁸ Testimony of Samuel Bracamonte, **Annex 05**, Criminal case file C-805-96, p. 36 (verso), lines 32-34. **Annex 03**. Declaration of Francisco Gámez Ávila, p. 2.

⁷⁹ Certificate issued by Raúl Armando Ramírez Hernández, Justice of the Peace, during the exhumation at los Josefinos on March 15, 1996, **Annex 05**, Criminal case file C-805-96, p. 9, lines 23-25; Forensic Report, Guatemalan Forensic Anthropology Team, March 25, 1996, **Annex 05**, Criminal case file C-805-96, p. 20; **Annex 03**. Declaration of Francisco Gámez Ávila, p. 2.

⁸⁰ **Annex 07**, Forensic Report, June 1996, p. 27.

36. Once the bodies were buried, all the residents left in Los Josefinos also fled into the bush because the community was terrified⁸¹ and the Army had told them that they should abandon the village.⁸² Even after fleeing, the survivors lived in constant dread and dared not report what had happened or recognize the victims for fear of possible reprisals from the Army.⁸³ Their fear was well-founded, as was demonstrated by one of the cases documented by the CEH: “In early May 1982, a few days after the massacre in the village of Los Josefinos ... Guatemalan Army personnel executed 22-year-old Marcos Socop Guamuch, who was in the forest along with others fleeing the military offensive.”⁸⁴ Likewise, those who provided assistance to the survivors were also threatened by the Army.⁸⁵ Many victims did not dare to return and resettle in Los Josefinos but had to find refuge in other parts of the country or abroad.⁸⁶

D. Domestic proceedings

37. On January 16, 1996, FAMDEGUA appeared before Petén Department Court of First Instance to request the exhumation of the corpses buried in the mass grave at Los Josefinos, with a view to gathering evidence in advance of judicial proceedings.⁸⁷ The procedure was carried out by the EAFG from March 15 to 24, 1996, in the presence of the Justice of the Peace of Sayaxche, Petén, and in it a total of 19 skeletons were recovered.⁸⁸ On March 27, 1996, the Petén Department Court of First Instance ruled that the procedures carried out suggested that a crime had been committed and decided immediately to refer the case to the Public Prosecution Service.⁸⁹ On April 18, 1996, the Public Prosecution Service ordered that the necessary steps be taken to investigate the facts; however, it only ordered that the former Deputy Mayor of Los Josefinos be summoned to provide a declaration.⁹⁰ On June 18, 1996, the Public Prosecution Service requested information from the National Police regarding possible reports of disappeared persons in Los Josefinos in April 1982,⁹¹ and also from the Ministry of Defense, regarding the identity of the military commanders of the Petén Military Zone and the military detachment in the village of Las Cruces, La Libertad, Petén Department and about its knowledge of the massacre.⁹²

38. On July 29, 1996, Samuel Bracamonte, the former Deputy Mayor of Los Josefinos, gave a witness declaration to the Public Prosecution Service.⁹³ On July 24 of that year, the EAFG submitted its forensic report to the prosecutor's office, saying that it had not been possible to identify the 19 skeletons recovered, although their sex and approximate age had been determined. It also reported the recovery of 27 bullet fragments and the conclusion that all of the deaths had been violent.⁹⁴ On July 29, 1996, the remains were laid out at the village of Las Cruces in order to hold a wake for them and identify the victims based on their clothing and personal items; however, the procedure did not yield favorable results.⁹⁵

39. From the limited inquiries carried out between 1996 and 2005, it was determined that at the time of the events the commander of Military Zone No. 23, Petén, was Infantry Colonel Eliú Cabrera Padilla.⁹⁶ Upon

⁸¹ Testimony of Samuel Bracamonte, **Annex 05**, Criminal case file C-805-96, p. 36 (verso), lines 38-42.

⁸² **Annex 04**, Minutes of Los Josefinos Displaced Persons Committee, p. 2; **Annex 03**, Declaration of Francisco Gámez Ávila, p. 2.

⁸³ **Annex 01**, Notarized declaration of César Armando Palencia Murallas, pp. 5-7.

⁸⁴ CEH, *Guatemala: Memory of Silence*, p. 3141.

⁸⁵ **Annex 09**, Declaration given by Eleodora Grijalva Solís de López in January 1996 (hereinafter “Declaration of Eleodora Solís de López”), p. 2.

⁸⁶ **Annex 02**, Notarized declaration of Antonio Ajanel Ortiz, p. 2, who describes how he had hide because he had a bullet wound in one arm and feared that he would be taken for a guerrilla fighter because of the wound; also how he did not see his surviving son—who was five years old at the time of the events—until he was 25 years old because he had taken refuge in Mexico.

⁸⁷ **Annex 05**, Criminal case file C-805-96, pp. 1-2.

⁸⁸ **Annex 05**, Criminal case file C-805-96, pp. 7-12.

⁸⁹ **Annex 05**, Criminal case file C-805-96, p. 13.

⁹⁰ **Annex 05**, Criminal case file C-805-96, p. 31.

⁹¹ **Annex 05**, Criminal case file C-805-96, p. 34.

⁹² **Annex 05**, Criminal case file C-805-96, p. 35.

⁹³ **Annex 05**, Criminal case file C-805-96, pp. 36-37.

⁹⁴ **Annex 05**, Criminal case file C-805-96, pp. 38-41.

⁹⁵ **Annex 05**, Criminal case file C-805-96, pp. 43-44.

⁹⁶ Official letter 01-0263 of October 29, 1996, from the Commander of Military Zone No. 23 to the Assistant Prosecutor of the Public Prosecution Service for San Benito, Petén, in response to official letter C-1, 249-96 of October 23, 1996. See **Annex 05**, Criminal case file C-805-96, p. 48.

being summoned to testify in the criminal proceeding, on February 25, 1997, he confirmed that on the date of the events he had indeed been the commander of the Petén Military Zone.⁹⁷ However, he denied any knowledge of the massacre.⁹⁸ Despite saying that he did not recall precisely which military detachment had jurisdiction over Los Josefinos, he mentioned that it could be the Santa Cruz (Las Cruces) or the Los Chorros detachment.⁹⁹ When asked about the person in charge of directing military operations, he said that “the detachment commander was given autonomy to that effect, so that he could make his decisions in accordance with the security needs of the detachment.”¹⁰⁰ In spite of the fact that his home address was known and he was accessible to the bodies in charge of the investigation and trial in Guatemala for many years, by the time he died 10 years later, Eliú Cabrera Padilla was not questioned further, no proceedings of any kind were instituted against him in order to determine his possible command responsibility for the events that occurred in Los Josefinos, and no one else who might have disputed the veracity of his statements was questioned.

40. Following the declaration of Eliú Cabrera, as of 2005—that is, in the eight intervening years—only a visual inspection was done, on March 12, 1997, of the place where the exhumations had been carried out at Los Josefinos cemetery, which failed to yield any additional information.¹⁰¹ There is nothing in the record to show that any other investigative procedure or deposition of witnesses was done after that date, and the last decision, of July 12, 2001, only contains a request for copies of the record.¹⁰² On March 15, 2005, the Office of the President of the Republic of Guatemala confirmed that, indeed, no additional steps had been taken in the proceeding, noting that “[a]n examination of the record shows that no one has been put under investigation in the proceeding; therefore the Public Prosecution Service is not constrained by any time limit to conclude the investigation.”¹⁰³

41. The case remained inactive until May 6, 2005, when the Supreme Court requested a certification of the process to forward to the Commission.¹⁰⁴ That had the effect of reactivating the proceeding, and in the months of October 2006 and January and November 2007 the Public Prosecution Service gathered testimony from different survivors and witnesses to the massacre, as well as carrying out a new inspection of Los Josefinos cemetery.¹⁰⁵ Furthermore, on October 9 and 10, 2006, the prosecutor’s office asked the Ministry of Defense for additional information relating to the personnel file and certificates of Colonel Eliú Cabrera,¹⁰⁶ as well as applying for authorization from San Benito Criminal Court of First Instance to request general information from said Colonel to other state entities.¹⁰⁷ On October 23, 2006, the Ministry of Defense turned down the request for information for lack of judicial authorization and said that the proceeding for which that information was being sought had not been indicated.¹⁰⁸ On November 30, 2006, the record was transmitted to the Prosecution Unit for Special Cases and Human Rights Violations.¹⁰⁹ In January 23, 2007, the Unit applied for judicial authorization to request a variety of information from the Ministry of Defense regarding the zone, military detachments, troops, commanders, officers, and chain of command for the months of March to May 1982,¹¹⁰ which was authorized four days later by the San Benito Court of First Instance.¹¹¹

42. On April 17, 2007, by which time several deadlines and extensions granted had expired, the Ministry of Defense filed a series of petitions against the court ruling ordering it to release information, arguing that the information was confidential and concerned military matters classified as secret.¹¹² After the petitions and

⁹⁷ Declaration of Eliú Cabrera Padilla to the Assistant Prosecutor of the Metropolitan District Prosecutor’s Office of the Public Prosecution Service, dated February 25, 1997 (hereinafter “Declaration of Eliú Cabrera Padilla”). See **Annex 05**, Criminal case file C-805-96, p. 76.

⁹⁸ Declaration of Eliú Cabrera Padilla, **Annex 05**, Criminal case file C-805-96, pp. 77-78.

⁹⁹ Declaration of Eliú Cabrera Padilla, **Annex 05**, Criminal case file C-805-96, p. 78.

¹⁰⁰ Declaration of Eliú Cabrera Padilla, **Annex 05**, Criminal case file C-805-96, p. 78.

¹⁰¹ **Annex 05**, Criminal case file C-805-96, pp. 74-75 (verso).

¹⁰² **Annex 05**, Criminal case file C-805-96, pp. 1-90.

¹⁰³ **Annex 10**, Letter of March 15, 2005.

¹⁰⁴ **Annex 05**, Criminal case file C-805-96, p. 91.

¹⁰⁵ **Annex 05**, Criminal case file C-805-96, pp. 224-236, 334-410.

¹⁰⁶ **Annex 05**, Criminal case file C-805-96, p. 98.

¹⁰⁷ **Annex 05**, Criminal case file C-805-96, p. 100.

¹⁰⁸ **Annex 05**, Criminal case file C-805-96, p. 111.

¹⁰⁹ **Annex 05**, Criminal case file C-805-96, p. 102.

¹¹⁰ **Annex 05**, Criminal case file C-805-96, pp. 108-110.

¹¹¹ **Annex 05**, Criminal case file C-805-96, pp. 113-115 (verso).

¹¹² **Annex 05**, Criminal case file C-805-96, pp. 144-147 (verso).

their reiterations were refused,¹¹³ on October 2, 2007, the Ministry of Defense sent an official letter to the prosecutor's office, saying that there were no records of the troops and officers assigned to Military Zone No. 23 in 1982. However, it enclosed the service certificates of several servicemen stationed in that zone between March and May that year and provided information about the military ranks in the chain of command at the time.¹¹⁴ In addition, on that same date the Ministry of Defense requested the Petén Court of First Instance for a hearing at the Santa Elena First Infantry Brigade in order to enable the judge to see the related information, so that he might determine whether or not the documents were of use to the investigation, while at the same time protecting their confidentiality, given that the records on posts occupied by the chain of command were classified as "secret."¹¹⁵ The hearing was held on December 20, 2007, at the location requested by the Ministry of Defense, and no one from the Public Prosecution Service or the Public Defender's Office was allowed to attend.¹¹⁶ On January 23, 2008, the San Benito Criminal Court decided not to include the record of the hearing in the proceeding, as it considered that it did not contain elements relevant to the investigation.¹¹⁷ However, the court ordered the Ministry of Defense to convey the requested information on January 23, 2007, to the Public Prosecution Service, except for the servicemen's personnel records and the names of the places where the operational units and military detachments were located in the Department of Petén, other than those near the village of Los Josefinos.¹¹⁸

43. The Ministry of Defense forwarded a range of information on May 8, 2008,¹¹⁹ and August 4, 2008.¹²⁰ Between June 23 and 25, 2009, a second exhumation of the remains of the 19 people originally buried in the mass grave was carried out to obtain DNA samples and compare them with the genetic samples provided by the victims' relatives.¹²¹ The results of the DNA tests, presented on December 6, 2010, only identified one of the victims with a high degree of certainty.¹²² Finally, in 2007 and 2008,¹²³ the prosecutor's office collected a series of certificates, including certificates of residence, birth, and death both for victims and survivors of the massacre, and for Colonel Eliú Cabrera Padilla, who by then had died.¹²⁴

44. On November 18, 2010, the petitioners informed the Commission of the serious risk to the prosecutors in charge of the investigation in the case and the failure of the State to provide adequate protection, despite the involvement of those prosecutors in this and other emblematic cases of gross human rights violations committed during the armed conflict in Guatemala.¹²⁵

45. Between the transfer of the case to the High Risk Court on December 15, 2010,¹²⁶ and March 2011, a series of measures were requested, including a social history expert's opinion and a military expert's opinion. In addition, death certificates, birth certificates, and identity documents of the persons killed in the massacre were collected, as were declarations from witnesses.¹²⁷ The criminal case file was transferred by the San Benito Criminal Court on February 2011, and the record of the hearing of December 20, 2007, was finally made public and forwarded in November 2011.¹²⁸ In March 2012, the Public Prosecution Service again took declarations from a number of survivors of the massacre,¹²⁹ and in December 2012 and August 2013 new certificates were

¹¹³ **Annex 05**, Criminal case file C-805-96, pp. 153, 165-165 (verso).

¹¹⁴ **Annex 05**, Criminal case file C-805-96, pp. 272-279.

¹¹⁵ **Annex 05**, Criminal case file C-805-96, p. 183.

¹¹⁶ **Annex 05**, Criminal case file C-805-96, p. 205.

¹¹⁷ **Annex 05**, Criminal case file C-805-96, pp. 208-210 (verso).

¹¹⁸ **Annex 05**, Criminal case file C-805-96, pp. 210-210 (verso).

¹¹⁹ **Annex 05**, Criminal case file C-805-96, Volume II, pp. 577-581.

¹²⁰ **Annex 05**, Criminal case file, Volume II, C-805-96, p. 582.

¹²¹ **Annex 05**, Criminal case file C-805-96, pp. 283-303.

¹²² **Annex 11**, Forensic Anthropology Foundation of Guatemala, Anthropological investigation report, December 6, 2010.

¹²³ **Annex 05**, Criminal case file C-805-96, pp. 237, 238.

¹²⁴ **Annex 05**, Criminal case file C-805-96, Volume II, pp. 432-534 (verso).

¹²⁵ **Annex 12**, Center for Justice and International Law, Information on the risk to the prosecutors in charge of the investigations into the massacre of Los Josefinos Village (No. 1139-04), November 18, 2010.

¹²⁶ **Annex 05**, Criminal case file C-805-96, pp. 316-317.

¹²⁷ **Annex 05**, Criminal case file C-805-96, pp. 318-321.

¹²⁸ **Annex 05**, Criminal case file C-805-96, pp. 324-331 (verso).

¹²⁹ **Annex 05**, Criminal case file C-805-96, pp. 1006-1048.

obtained for a series of people.¹³⁰ On December 26, 2012, the death was finally registered of Cristóbal Rey González González, the only victim identified by means of the DNA tests carried out in 2009.¹³¹

46. In July 2013, the prosecutor's office requested additional information from different state bodies.¹³² On April 3, 2013, FAMDEGUA requested the interment of the victims exhumed in 2009.¹³³ On April 29, 2013, the remains were turned over to the daughter of the only identified victim and a survivor of the massacre. In the course of the procedure, agents of the prosecutor's office proceeded to carry out a field investigation, taking photographs and videos, as well as making a planimetric diagram of the scene, the report for which was presented on May 23, 2013.¹³⁴ In November 2013, a former army soldier gave a statement from the detention center where he was being held; however, there is no record of that statement in the case file.¹³⁵

47. On September 8, 2014, the Human Rights Prosecutor's Office, Agency One of the Internal Armed Conflict Special Cases Unit, forwarded information on the case pending before Criminal Court of First Instance B for High-Risk Cases in and for Guatemala Department, for crimes of murder and crimes against humanity to the detriment of the residents of the village of Los Josefinos on April 29, 1982.¹³⁶ That document describes the following investigative procedures conducted in the case: the work of the Forensic Anthropology Foundation of Guatemala, the presentation of the skeletons to the victims' relatives, and the "identification of possible witnesses to these events, who is [sic] being located with a view to being interviewed."¹³⁷

48. After 23 years since the investigation began and almost 37 years since the massacre itself, the information available suggests that the Guatemalan authorities have not concluded the investigation.

E. Reparations awarded

49. As was mentioned above, in this case there was a friendly settlement procedure, in the context of which the State implemented a number of reparation measures. In this section, the IACHR places on record the measures that have been effectively implemented, to the extent that such information is relevant for the purposes of formulating recommendations to the State and monitoring their implementation. However, the Commission wishes to clarify that this has nothing to do with approving the friendly settlement agreement, since the petitioners expressed their desire not to continue with that procedure and requested the adoption of this report on the merits.

50. Having said that, the IACHR observes that following the signing of the friendly settlement agreement and a series of exchanges between the parties, including meetings before the IACHR, on July 26, 2012, Guatemala reported that 252 family groups had received the agreed compensation and it detailed the information and documentation pending in connection with six specific cases. Specifically, those cases concerned: Matías Alonzo López, Virgilio Quixán Jimón, Cristóbal de Jesús Jocop Pineda, Jesús Galdames Sanabria, Luis Francisco Valiente, and Rogelio Regalado Guerra. The total amount of the payments made was mentioned in the section on the position of the State. Later, in a communication of January 21, 2013, the State said that it had provided compensation to 251 family groups and that seven of them had not been accredited. This last information was reiterated in the State's brief of September 3, 2014.

51. As for other reparation measures included in the friendly settlement agreement, in their most recent briefs in that regard, both parties mentioned that the Guatemalan State had complied with holding an act of

¹³⁰ **Annex 05**, Criminal case file C-805-96, pp. 411-430.

¹³¹ **Annex 05**, Criminal case file C-805-96, pp. 1072-1072 (verso).

¹³² **Annex 05**, Criminal case file C-805-96, p. 100.

¹³³ **Annex 05**, Criminal case file C-805-96, pp. 1049-1054.

¹³⁴ **Annex 05**, Criminal case file C-805-96, pp. 1065-1092.

¹³⁵ **Annex 05**, Criminal case file C-805-96, p. 1074.

¹³⁶ Letter of September 8, 2014, from the Human Rights Prosecutor's Office, Agency One of the Internal Armed Conflict Special Cases Unit to the Secretariat for Private and Strategic Matters of the Public Prosecution Service, appended to the observations of the State of Guatemala in relation to the information provided by the petitioners in a brief dated September 5, 2013, and Position of the State regarding the Observations on Admissibility, P-1139-04, Los Josefinos Massacre, September 3, 2014 (hereinafter "Letter of September 8, 2014, Human Rights Prosecutor's Office").

¹³⁷ Letter of September 8, 2014, Human Rights Prosecutor's Office.

public recognition of responsibility; the broadcast of a radio program; the reimbursement of procedural expenses to FAMDEGUA; and the construction of a monument where the skeletons of the victims were deposited and on which a plaque was put up to the victims' memory.

IV. LEGAL ANALYSIS

52. On account of the fact that this case involves multiple victims of violations of different sorts, the Commission's legal analysis addresses the facts in the following order: (i) The alleged extrajudicial executions and violence that occurred during the massacre and the persons whose whereabouts are unknown since that event; (ii) The alleged forced disappearances; (iii) The ensuing violations connected with these facts; and (iv) The investigations opened at the domestic level. The applicable provisions of the relevant inter-American instruments are referred to in each section.

A. The alleged extrajudicial executions and violence that occurred during the massacre and the persons whose whereabouts are unknown since that event. Right to life,¹³⁸ right to humane treatment,¹³⁹ and rights of the child¹⁴⁰

53. With respect to the right to life, it is important to highlight the consistent case law of the Court in the sense that it "is a fundamental human right, and the exercise of this right is essential for the exercise of all other human rights. If it is not respected, all rights lack meaning."¹⁴¹ Observance of Article 4 of the American Convention, in conjunction with Article 1(1) thereof, "not only presupposes that no person may be arbitrarily deprived of his life (negative duty) but also requires, pursuant to the obligation to guarantee the full and free exercise of human rights, that the States adopt any and all necessary measures to protect and preserve the right to life (positive duty) of the individuals under their jurisdiction."¹⁴² Indeed, it is incumbent upon States to:

adopt all necessary measures to create a legal framework that deters any possible threat to the right to life; establish an effective legal system to investigate, punish, and redress deprivation of life by State officials or private individuals; and guarantee the right to unimpeded access to conditions for a dignified life. Especially, States must see that their security forces, which are entitled to use legitimate force, respect the right to life of the individuals under their jurisdiction.¹⁴³

54. Such active protection of the right to life on the part of the state involves all state institutions and includes the duty to "take such steps as may be necessary, not only to prevent and punish those responsible for the deprivation of life as a consequence of criminal acts, but also to prevent arbitrary executions by their own security forces."¹⁴⁴ In effect, "when there is a pattern of human rights violations, including extrajudicial executions, promoted or tolerated by the State, contrary to *jus cogens*, this gives rise to a climate that is

¹³⁸ Article 4 (1) of the American Convention provides: "Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life."

¹³⁹ The pertinent portions of Article 5 (1) and (2) of the American Convention provide: "1. Every person has the right to have his physical, mental, and moral integrity respected. 2. No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment."

¹⁴⁰ Article 19 of the American Convention provides: "Article 19. Rights of the Child. Every 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."

¹⁴¹ I/A Court H.R., *The "Street Children" Case (Villagrán Morales et al.) v. Guatemala*, Merits, Judgment of November 19, 1999, Series C. No. 63 (hereinafter "I/A Court H.R., Street Children Judgment"), par. 144.

¹⁴² See, *inter alia*, 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 (hereinafter "I/A Court H.R., Zambrano-Vélez et al. Judgment"), par. 80. I/A Court H.R., *Case of Montero Aranguren et al. (Detention Center of Catia) v. Venezuela*, Preliminary Objection, Merits, Reparations and Costs, Judgment of July 5, 2006, Series C. No. 150 (hereinafter "I/A Court H.R., Montero Aranguren Judgment"), par. 65. See also I/A Court H.R., *Case of the Pueblo Bello Massacre v. Colombia*, Merits, Reparations and Costs, Judgment of January 31, 2006, Series C. No. 140 (hereinafter "I/A Court H.R., Pueblo Bello Massacre Judgment"), par. 120.

¹⁴³ See, *inter alia*, I/A Court H.R., *Zambrano-Vélez et al. Judgment*, par. 81; I/A Court H.R., *Montero Aranguren Judgment*, par. 66.

¹⁴⁴ 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 (hereinafter "I/A Court H.R., Miguel Castro-Castro Prison Judgment"), par. 238; 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 (hereinafter "I/A Court H.R., Mapiripán Massacre Judgment"), par. 232; and I/A Court H.R., *Case of Huilca Tecse v. Peru*, Merits, Reparations and Costs, Judgment March 3, 2005, Series C. No. 121 (hereinafter "I/A Court H.R., Huilca Tecse Judgment"), par. 66.

incompatible with the effective protection of the right to life.”¹⁴⁵ In conjunction with the foregoing, the State must also adopt the necessary measures “to prevent and protect individuals from the criminal acts of other individuals and to investigate these situations effectively.”¹⁴⁶

55. As regards violations of the right to humane treatment, the Court has indicated that it “is a type of violation which has a varying connotation ... whose physical and psychological consequences may have different degrees of intensity according to the extrinsic and intrinsic factors which should be proved in each specific situation.”¹⁴⁷ The Court has held that the mere threat of a conduct prohibited by the provisions of Article 5 of the American Convention, when this is sufficiently real and imminent, may in itself be in conflict with the right to personal integrity.¹⁴⁸ In addition, “creating a threatening situation or threatening to kill an individual may constitute, at the very least, inhuman treatment in some circumstances.”¹⁴⁹

56. The Court has stated that both the American Convention and the Convention on the Rights of the Child¹⁵⁰ “form part of a very comprehensive international *corpus juris* for the protection of the child.”¹⁵¹ As the court has also highlighted with respect to Article 19 of the Convention, children have an added, complementary right, “which the Convention establishes for those who, because of their physical and emotional development, require special protection.”¹⁵² Thus, children have the same human rights that all persons enjoy, as well as special rights by virtue of their status as children,¹⁵³ considering their particularly vulnerable condition.¹⁵⁴ To safeguard those rights special protection measures must be adopted,¹⁵⁵ based on the principle of the best interests of the child,¹⁵⁶ which should be determined based on the needs of the child as “a true legal person, and not just as an object of protection.”¹⁵⁷

57. According to the established facts in the case, on the morning of April 29, 1982, armed guerrillas entered Los Josefinos and captured and murdered two individuals: one because of his supposed links to the Army, the other for being a military commissioner. After a clash with the guerrillas in the afternoon of that day, the Guatemalan Army surrounded the village to prevent any of its inhabitants from leaving and then proceeded to enter it after midnight on April 30, 1982. First they killed at least five patrol members who were on the street. Then, the soldiers started setting fire to homes and extrajudicially executing anyone they found inside them;

¹⁴⁵ I/A Court H.R., Huilca Tecse Judgment, par. 65.

¹⁴⁶ I/A Court H.R., Pueblo Bello Massacre Judgment, par. 120.

¹⁴⁷ I/A Court H.R., *Case of the Massacres of El Mozote and surrounding areas v. El Salvador*, Merits, Reparations and Costs, Judgment of October 25, 2012, Series C. No. 252 (hereinafter “I/A Court H.R., El Mozote Massacres Judgment”), par. 147.

¹⁴⁸ 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 (hereinafter “I/A Court H.R., Barrios Family Judgment”), par. 82; I/A Court H.R., *Case of the Afro-descendant communities displaced from the Cacarica River Basin (Operation Genesis) v. Colombia*, Preliminary Objections, Merits, Reparations, and Costs, Judgment of November 20, 2013, Series C. No. 270 (hereinafter “I/A Court H.R., Operation Genesis Judgment”), par. 218; I/A Court H.R., *Case of the Massacre of Santo Domingo v. Colombia*, Preliminary Objections, Merits and Reparations, Judgment of November 30, 2012, Series C. No. 259 (hereinafter “I/A Court H.R., Massacre of Santo Domingo Judgment”), par. 191. See also I/A Court H.R., Street Children Judgment, par. 165; I/A Court H.R., El Mozote Massacres Judgment, par. 147.

¹⁴⁹ I/A Court H.R., Barrios Family Judgment, par. 82.

¹⁵⁰ I/A Court H.R., Street Children Judgment, par. 194. See also: I/A Court H.R., Las Dos Erres Massacre Judgment, par. 184; 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 (hereinafter “I/A Court H.R., Advisory Opinion, Juridical Condition and Human Rights of the Child”), par. 24.

¹⁵¹ Ratified by the State of Guatemala on June 6, 1990. Relevant for the purposes of this section are Articles 6 and 37.a, the pertinent portions of which provide as follows: “article 6.1. States Parties recognize that every child has the inherent right to life. 2. States Parties shall ensure to the maximum extent possible the survival and development of the child”; “Article 37. States Parties shall ensure that: (a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. [...]”.

¹⁵² See, *inter alia*, I/A Court H.R., Mapiripán Massacre Judgment, par. 152; I/A Court H.R., Ituango Massacres Judgment, par. 244; I/A Court H.R., *Case of the “Juvenile Reeducation Institute” v. Paraguay*, Preliminary Objections, Merits, Reparations, and Costs, Judgment of September 2, 2004, Series C. No. 112 (hereinafter “I/A Court H.R., Juvenile Reeducation Institute Judgment”), par. 147; I/A Court H.R., *Case of Servellón García et al. v. Honduras*. Judgment of September 21, 2006, Series C. No. 152. par. 113.

¹⁵³ I/A Court H.R., Las Dos Erres Massacre Judgment, par. 184.

¹⁵⁴ I/A Court H.R., Advisory Opinion, Juridical Condition and Human Rights of the Child, par. 54.

¹⁵⁵ I/A Court H.R., Advisory Opinion, Juridical Condition and Human Rights of the Child, par. 62; I/A Court H.R., Juvenile Reeducation Institute Judgment, par. 147; I/A Court H.R., Ituango Massacres Judgment, par. 244; I/A Court H.R., Mapiripán Massacre Judgment, par. 152; I/A Court H.R., Las Dos Erres Massacre Judgment, par. 184.

¹⁵⁶ I/A Court H.R., Ituango Massacres Judgment, par. 244; I/A Court H.R., Mapiripán Massacre Judgment, par. 154.

¹⁵⁷ I/A Court H.R., Advisory Opinion, Juridical Condition and Human Rights of the Child, par. 28.

the victims were all defenseless civilians. Of the victims, so far it has been possible to identify 4 women, 18 men, and 14 children.

58. In addition, the Commission reiterates that two very young children died during the escape for lack of food; for the reasons given above, the IACHR considers them also to be victims of the massacre. Furthermore, according to the established facts, since the date of the massacre the whereabouts of at least eight people, including two minors, are unknown. With respect to the latter group, bearing in mind that they were all in the village at the time of the massacre, that they are still unaccounted for, the time that has elapsed, and that the State included several of them in its compensation arrangements for victims killed in the massacre, the IACHR presumes that they too are all deceased.

59. Likewise, it has been demonstrated that before being extrajudicially executed the victims were subjected to acts that harmed their physical and mental integrity. This conclusion is consistent with the findings of the CEH, 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.”¹⁵⁸ By the same token, the various declarations contained in the judicial case file and in the record in the possession of the IACHR, as well as the expert findings of the Forensic Anthropology Foundation of Guatemala, attest to the brutality with which the residents of the village of Los Josefinos were extrajudicially executed.

60. The Commission considers it necessary also to set down for the record that this is particularly egregious case, not just because the victims were utterly defenseless when the Army soldiers executed them in barbaric acts, but also because the massacre, executions and disappearances of these people were not isolated events within Guatemala’s internal armed conflict, but rather part of a State policy based on the so-called “National Security Doctrine” and the notion of an enemy within, whose aim was to eliminate the supposed social base of insurgent groups at the time.¹⁵⁹ Thus, the massacre in this case was framed by a context of special operations planned and carried out by state agents within a framework of systematic persecution of anyone perceived as being opposed to the established order.

61. Indeed, the massacre of los Josefinos occurred in a context of approximately 626 massacres of civilians committed by State forces during the internal armed conflict. As was mentioned in the section on context, those massacres were carried out as part of a State counterinsurgency policy designed to eradicate the enemy within, who included anyone actually or presumed to be opposed to the government. Accordingly, the acts were consistent with gross violations of Article 3 common to the four Geneva Conventions,¹⁶⁰ since they were committed in the context of an armed conflict not of an international character against persons taking no active part in the hostilities. The State of Guatemala breached its duty to provide minimum protection under international humanitarian law, particularly by ignoring the principle of distinction. At the same time, those acts were committed as part of a generalized and systematic attack on the civilian population, knowingly, and in keeping with a State policy of committing attacks of that nature. Therefore, without undertaking an analysis of individual criminal responsibility that lies outside its competence, there are sufficient elements to conclude that the violations of human rights recognized in the Convention that were committed during the massacre are peculiarly egregious inasmuch as they simultaneously constitute war crimes and crimes against humanity.

¹⁵⁸ CEH, *Memory of Silence*, par. 3057.

¹⁵⁹ CEH, *Memory of Silence*, pars. 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.”

¹⁶⁰ The pertinent portions of Article 3 common to the four Geneva Conventions of August 12, 1949, establish as follows: “Article 3. Conflicts Not of an International Nature. 1. In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions: (1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria. To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons: (a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture.” Guatemala ratified the 1949 Geneva Conventions on May 14, 1952.

62. It is necessary to note for the record that, while two of the extrajudicial executions are attributable not to agents of the state, but to guerillas, they were committed against civilians whom the Army had put in a situation of real and present risk by making them cooperate with it as part of its counterinsurgency strategy. That real and present risk existed at the moment of the massacre; therefore, those killings are also attributable to the State.

63. By virtue of the foregoing, the Commission concludes that the State of Guatemala violated the right to life, the right to humane treatment, and its duty to provide special protection to children. The foregoing is in accordance with Articles 4 (1), 5 (1), 5 (2), and 19 of the American Convention, in conjunction with Article 1 (1) thereof, to the detriment of the persons indicated in the Consolidated Annex on victims to this report on merits.

B. The alleged forced disappearances initiated during the massacre. Rights to juridical personality,¹⁶¹ life, humane treatment, and personal liberty¹⁶²

64. The case law of the Court is consistent in finding that forced disappearance of persons:

constitutes an illegal act that gives rise to a multiple and continuing violation of several rights protected by the American Convention and places the victim in a state of complete defenselessness, giving rise to other related crimes. The State's international responsibility is increased when the disappearance forms part of a systematic pattern or practice applied or tolerated by the State. In brief, it is a crime against humanity involving a gross rejection of the essential principles on which the inter-American system is based.¹⁶³

65. Forced disappearance of persons comprises the following concurrent, basic elements: (1) deprivation of liberty; (2) direct involvement of governmental officials or acquiescence thereof; and (3) refusal to acknowledge the deprivation of liberty or to disclose the fate and whereabouts of the person concerned.¹⁶⁴ Those requirements are also recognized under the inter-American system in the IACFDP, which Guatemala ratified on July 27, 1999.¹⁶⁵ Bearing in mind those concurrent elements, when examining an alleged forced disappearance "the deprivation of liberty of the individual must be understood merely as the beginning of the

¹⁶¹ The pertinent portions of Article 7 of the American Convention provide: "Article 7. Right to personal liberty 1. Every person has the right to personal liberty and security. 2. No one shall be deprived of his physical liberty except for the reasons and under the conditions established beforehand by the constitution of the State Party concerned or by a law established pursuant thereto. 3. No one shall be subject to arbitrary arrest or imprisonment. 4. Anyone who is detained shall be informed of the reasons for his detention and shall be promptly notified of the charge or charges against him. 5. Any person detained shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to be released without prejudice to the continuation of the proceedings. His release may be subject to guarantees to assure his appearance for trial. 6. Anyone who is deprived of his liberty shall be entitled to recourse to a competent court, in order that the court may decide without delay on the lawfulness of his arrest or detention and order his release if the arrest or detention is unlawful. In States Parties whose laws provide that anyone who believes himself to be threatened with deprivation of his liberty is entitled to recourse to a competent court in order that it may decide on the lawfulness of such threat, this remedy may not be restricted or abolished. The interested party or another person in his behalf is entitled to seek these remedies."

¹⁶² Article 3 of the American Convention provides: "Article 3. Right to Juridical Personality. Every person has the right to recognition as a person before the law."

¹⁶³ *I/A Court H.R., Case of Goiburú et al. v. Paraguay*, Merits, Reparations and Costs, Judgment of September 22, 2006, Series C. No. 153 (hereinafter "I/A Court H.R., Goiburú et al. Judgment"), par. 82. See also, *inter alia*, *I/A Court H.R., Case of Velásquez Rodríguez v. Honduras*, Merits, Judgment of July 29, 1988, Series C. No. 4 (hereinafter "I/A Court H.R., Velásquez Rodríguez Judgment"), pars. 149-158; *I/A Court H.R., Case of Blake v. Guatemala*, Merits, Judgment of January 24, 1998, Series C. No. 36 (hereinafter "I/A Court H.R., Blake Judgment"), par. 65; *I/A Court H.R., Case of Rochac Hernández et al. v. El Salvador*, Merits, Reparations and Costs, Judgment of October 14, 2014, Series C. No. 285 (hereinafter "I/A Court H.R., Rochac Hernández et al. Judgment"), par. 94; *I/A Court H.R., Case of Gómez Palomino v. Peru*, Merits, Reparations and Costs, Judgment of November 22, 2005, Series C. No. 136 (hereinafter "I/A Court H.R., Gómez Palomino Judgment"), par. 92; *I/A Court H.R., Case of the Serrano-Cruz Sisters v. El Salvador*, Preliminary Objections, Judgment of November 23, 2004, Series C. No. 118, pars. 100-105.

¹⁶⁴ See, *inter alia*, *I/A Court H.R., Rochac Hernández et al. Judgment*, par. 95; and *I/A Court H.R., Gómez Palomino Judgment*, par. 92.

¹⁶⁵ On this point, it should be mentioned that the Court has held that the characteristics of forced disappearance may be inferred from the definition contained in Article III of IACFDP, its *travaux préparatoires* and its preamble and standards. 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 (hereinafter "I/A Court H.R., Radilla Pacheco Judgment"), par. 140.

constitution of a complex violation that is prolonged over time until the fate and whereabouts of the victim are established.”¹⁶⁶

66. As the Court has stated, “faced with the particular gravity of such offenses and the nature of the rights harmed, the prohibition of the forced disappearance of persons and the corresponding obligation to investigate and punish those responsible has attained the status of *jus cogens*.”¹⁶⁷

67. 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. Indeed, the Court has found that “forced disappearance violates the right to humane treatment since ‘the mere subjection of an individual to prolonged isolation and deprivation of communication is in itself cruel and inhuman treatment.’”¹⁶⁸ The Court has also written that subjecting a person to repressive State bodies, 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.¹⁶⁹

68. The Court has also found that in cases of forced disappearance of persons, given the multiple and complex nature of this grave violation of human rights, its execution can include the specific infringement of the right to the acknowledgment of juridical personality.¹⁷⁰ This is because, apart from the fact that the disappeared person can no longer exercise and enjoy other rights, their disappearance seeks “not only one of the most serious forms of removing a person from every sphere of the legal system, but also to deny their very existence and leave them in a type of limbo or indeterminate legal situation in the eyes of society, the State, and even the international community.”¹⁷¹

69. As the established facts show, at least three people were disappeared between April 29 and 30, 1982, in Los Josefinos. According to the testimony that exists, they were all last seen in the custody of State security agents and to this day the State has still not determined their whereabouts. The universe of evidence in the record shows that those forced disappearances were framed by a context of violence and persecution of the population considered inclined toward subversion. Such actions are especially serious, bearing in mind that, as the Court has held, forced disappearance in Guatemala constituted a practice of the State during the time of the internal armed conflict.¹⁷²

70. In light of the foregoing, the Commission concludes that the State violated the rights to juridical personality, life, humane treatment, and personal liberty recognized at Articles 3, 4 (1), 5 (1), 5 (2), and 7 of the American Convention, taken in conjunction with Article 1 (1) thereof, to the detriment of the three disappeared persons who were last seen in the custody of the State. The Commission also finds that the State violated Article I of the IAFDP, to the detriment of that same group of victims.

C. The ensuing violations connected with the events of the massacre

71. The established facts show that the individuals who managed to survive the massacre suffered a series of consequences that adversely affected their lives and continue to do so to this day. What follows is an analysis of the rights recognized in the Convention that were violated to the detriment of the survivors of the massacre.

¹⁶⁶ I/A Court H.R., Chitay Nech Judgment, par. 89.

¹⁶⁷ I/A Court H.R., Goiburú et al. Judgment, par. 84.

¹⁶⁸ 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 (hereinafter “I/A Court H.R., Anzualdo Castro Judgment”), par. 85; I/A Court H.R., Velásquez Rodríguez Judgment, par. 156.

¹⁶⁹ I/A Court H.R., *Case of Ticona Estrada and others v. Bolivia*. Merits, Reparations, and Costs. Judgment of November 27, 2008. Series C No. 191 (hereinafter “I/A Court H.R., Ticona Estrada Judgment”), par. 59; I/A Court H.R., Anzualdo Castro Judgment, par. 85; I/A Court H.R., Radilla Pacheco Judgment, par. 153.

¹⁷⁰ I/A Court H.R., Anzualdo Castro Judgment, pars. 91-92, 101; I/A Court H.R., Radilla Pacheco Judgment, par. 157.

¹⁷¹ I/A Court H.R., Anzualdo Castro Judgment, par. 90.

¹⁷² I/A Court H.R., Tiu Tojín Judgment, par. 49; I/A Court H.R., Chitay Nech Judgment, par. 67; I/A Court H.R., Río Negro Massacres Judgment, par. 117 and footnote 56; I/A Court H.R., García and Family Judgment, par. 54; I/A Court H.R., Molina Theissen Judgment, par. 40.1.

1. Right to humane treatment, rights of the family,¹⁷³ and rights of the child

72. The organs of the inter-American system have consistently held that the relatives of victims of certain gross human rights violations may, in turn, be victims of violations of their personal integrity.¹⁷⁴ Moreover, in cases concerning massacres, the Court has found that no evidence is needed to prove the severe effects on the mental and emotional integrity of the next of kin of victims who have been executed.¹⁷⁵ Specifically in relation to the suffering of the relatives of victims of forced disappearance, the Court has determined:

[T]he violation of [the] 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.¹⁷⁶

73. By the same token, the Court has determined on multiple occasions that the right to mental and moral integrity of the victims' next of kin should be considered "violated, due to the additional suffering and pain that they have endured because of the subsequent acts or omissions of state authorities regarding the facts, and due to the lack of effective remedies."¹⁷⁷ Indeed, "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."¹⁷⁸ In this case, as can be seen in detail in the analysis below of the violation of Articles 8 and 25 of the American Convention, no meaningful and impartial investigation of the facts was initiated ex officio and without delay, nor has there been a thorough investigation to uncover the truth of what happened or an effective judicial proceeding to identify and punish those responsible.

74. In keeping with the foregoing, with regard to the pain and anguish that the relatives of victims of massacres and forced disappearance have suffered and continue to suffer, the Commission considers that they, in their turn, are victims of violation of the right to humane treatment. The adverse effects to the relatives in this case are especially serious since, based on the proven facts, several individuals, including children, not only witnessed how their relatives were extrajudicially executed, which in itself constitutes cruel, inhuman and degrading treatment, but were themselves victims of violations of the right to humane treatment, which is compounded by the fact that all those violations have gone utterly unpunished, causing them additional and continuous suffering and anguish.

75. In relation to the breaches of the obligation to protect the family from acts of this type, the IACHR has stated specifically in relation to Guatemala 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.¹⁷⁹

76. Based on the foregoing, the Commission finds that in this case the persecution, extreme violence, profound defenselessness, and the intent to destroy familial and social foundations that motivated the violence

¹⁷³ The pertinent portions of Article 17 of the American Convention provide: "Article 17. Rights of the Family. 1. The family is the natural and fundamental group unit of society and is entitled to protection by society and the state."

¹⁷⁴ I/A Court H.R., *Las Dos Erres Massacre Judgment*, par. 206.

¹⁷⁵ I/A Court H.R., *Las Dos Erres Massacre Judgment*, par. 206; I/A Court H.R., *Mapiripán Massacre Judgment*, par. 146; I/A Court H.R., *Ituango Massacres Judgment*, par. 262.

¹⁷⁶ I/A Court H.R., *Blake Judgment*, par. 114.

¹⁷⁷ I/A Court H.R., *Las Dos Erres Massacre Judgment*, par. 206;

¹⁷⁸ 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 (hereinafter "I/A Court H.R., *Valle Jaramillo Judgment*"), par. 102. See also I/A Court H.R., *Ituango Massacres Judgment*, par. 261; I/A Court H.R., *Mapiripán Massacre Judgment*, par. 145.

¹⁷⁹ IACHR, *Fifth Report on the Situation of Human Rights in Guatemala*, April 6, 2001, Chapter XIV, par. 2.

in the above-described context, as well as the multiple instances of abrupt separation of children from their families, either because they were executed or because, despite managing to survive, they were separated while fleeing—some for short periods, others for 20 years, while still others were never reunited—show that there was an autonomous violation of the rights of the family.

77. Furthermore, it is important to highlight that children require special protection from any form of physical or mental violence or injury, particularly during armed conflicts.¹⁸⁰ Bearing in mind the myriad suffering experienced by the children who survived the massacre of Los Josefinos, who not only were themselves victims of the violence, but in many cases also witnessed the murder and torment suffered by their parents and siblings as well as the destruction of their homes; spent the night next to the bodies of their parents and siblings; were separated from their families; had to flee alone or while taking on the care of other children; hid in the bush in order not to be murdered; and suffered other innumerable anxieties and privations, the Commission finds that there was a gross violation of the obligation to protect children on the part of the State of Guatemala. Indeed, not only were state agents directly responsible for the torment experienced by the children of Los Josefinos, but also the authorities breached their duty to provide children with special protection, both during and after the massacre, given that the State failed to adopt any special measure to protect them, ensure their protection and care, assist them, or promote their physical and psychological recovery and social reintegration. Such violations are especially serious because they were committed against a group that requires special protection, as mentioned, and because they were part of a systematic practice of violation of children's rights that was a particular feature of the armed conflict in Guatemala.¹⁸¹

78. Consequently, the Commission concludes that the State violated the right to humane treatment, the rights of the family, and the rights of the child enshrined in Articles 5 (1), 5 (2), 17, and 19 of the American Convention, in conjunction with the obligations set forth in Article 1(1) thereof, to the detriment of the survivors and relatives of the victims of the massacre in this case, who are individually identified in the Consolidated Annex on victims to this report on merits.

2. Freedom of movement and residence¹⁸²

79. As regards the right to freedom of movement recognized in Article 22 (1) of the Convention, the Court has ruled that “freedom of movement is an indispensable condition for the free development of each person.”¹⁸³ The caselaw indicates that the provision contemplates “the right of all persons to move freely from one place to another and to establish themselves in the place of their choice,”¹⁸⁴ and protects “the right to leave any country freely, including one’s own country.”¹⁸⁵ It also consists of: “(a) the right of those lawfully in the territory of a State to move about freely in that State and to choose their place of residence; and (b) the right of each person to enter their country and remain in it.”¹⁸⁶

¹⁸⁰ In this regard, it is important to highlight Articles 19.1, 38.1 and 4, and 39 of the Convention on the Rights of the Child, which provide: “Article 19. 1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, ...”; “Article 38. 1. States Parties undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child. [...] 4. In accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts, States Parties shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict.” “Article 39. States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.”

¹⁸¹ I/A Court H.R., Las Dos Erres Massacre Judgment, par. 177; I/A Court H.R., Río Negro Massacres Judgment, par. 60.

¹⁸² Article 22 (1) of the American Convention provides: “1. Every person lawfully in the territory of a State Party has the right to move about in it, and to reside in it subject to the provisions of the law.”

¹⁸³ I/A Court H.R., Mapiripán Massacre Judgment, par. 168, citing I/A Court H.R., *Case of Ricardo Canese v. Paraguay*, Merits, Reparations and Costs, Judgment of August 31, 2004, Series C. No. 111 (hereinafter “I/A Court H.R., Ricardo Canese Judgment”), par. 115.

¹⁸⁴ I/A Court H.R., Ricardo Canese Judgment, par. 115.

¹⁸⁵ I/A Court H.R., Ricardo Canese Judgment, par. 114.

¹⁸⁶ I/A Court H.R., Mapiripán Massacre Judgment, par. 168.

80. An evolutive interpretation of the norm has enabled the Court additionally to consider that the provision also protects “the right not to be forcefully displaced within a State Party to the Convention.”¹⁸⁷ In that connection, the Court has considered that the United Nations Guiding Principles on Internal Displacement are particularly relevant for determining the content and scope of Article 22 of the American Convention.¹⁸⁸ According to those 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, [or] violations of human rights ..., and who have not crossed an internationally recognized State border.”¹⁸⁹

81. Thus, the Court has recognized that:

given the complexity of the issue of internal displacement and the broad array of human rights it affects or jeopardizes, and given the especially vulnerable and defenseless status of most displaced persons, they could be deemed to have, de facto, no protection [...] Under the American Convention, this would oblige States to grant them preferential treatment and take active measures to reverse the effects of their weak, vulnerable, and defenseless status, including vis-à-vis acts and practices of individual third parties.¹⁹⁰

82. In the context of the armed conflict in Guatemala, furthermore, the Commission reiterates that, as the CEH mentioned:

The displacement of the civilian population in Guatemala was notable in the history of the internal armed conflict for its massive character and destructive impact. It was the most immediate and heartbreaking manifestation of the rending of the social fabric. It entailed the dismemberment of families and communities as well as altering the cultural ties that held them together. The unprecedented terror caused by the massacres and the ravaging of entire populations triggered the mass flight of different populations, ... including a significant number of Ladino families ... That population, in the main peasant farmers, fled to a variety of places that appeared to offer refuge from the killing. [Free translation]¹⁹¹

83. The court has also pointed out people may be forced to leave their usual place of residence, because of both the State's acts and its omissions; in other words, “owing to the acts of State agents when perpetrating the massacres that terrorized the population and left the people ... without their homes and without the essential means for their subsistence, as well as because of the lack of State protection suffered by the civilian population in the areas associated with the guerrilla that placed them in a situation of vulnerability in the presence of military operations.”¹⁹²

84. In the instant case, the Commission has taken it as proven that the residents of Los Josefinos were forced to abandon their village and seek refuge, first in the bush, and later elsewhere in the country or abroad. The foregoing occurred as a result of a scorched-earth operation carried out in Los Josefinos and unfolded in a context of fear and insecurity as a result of the State's persecution of the survivors. The displaced survivors of Los Josefinos were unable to return to their homes and lived for several months, or in some cases years, struggling to survive amid threats and persecution, hunger, and a lack of access to basic services.

85. Based on the foregoing, the Commission concludes that the State of Guatemala violated the right to freedom of circulation and residence enshrined in Article 22 (1) of the American Convention, in conjunction with the obligations set forth in Article 1 (1) thereof, to the detriment of the survivors of the village of Los

¹⁸⁷ I/A Court H.R., Mapiripán Massacre Judgment, par. 188.

¹⁸⁸ 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 (hereinafter “I/A Court H.R., Moiwana Community Judgment”), par. 111; I/A Court H.R., Chitay Nech Judgment, par. 140; and I/A Court H.R., Río Negro Massacres Judgment, par. 173.

¹⁸⁹ I/A Court H.R., Chitay Nech Judgment, par. 140; I/A Court H.R., Río Negro Massacres Judgment, par. 173.

¹⁹⁰ I/A Court H.R., Chitay Nech Judgment, par. 141; I/A Court H.R., Río Negro Massacres Judgment, par. 174.

¹⁹¹ CEH, *Guatemala: Memory of Silence*, Annex 3, par. 4193.

¹⁹² I/A Court H.R., El Mozote Massacres Judgment, par. 183.

Josefinos who were forcibly displaced and are individually identified in the Consolidated Annex on victims to this report on merits.

3. **Right to humane treatment, right to family life and privacy,¹⁹³ right to property,¹⁹⁴ and rights of the child**

86. The Commission highlights the findings of the CEH in the sense that, in the context of the armed conflict in Guatemala, 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.”¹⁹⁵ The CEH also noted that:

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.¹⁹⁶

87. Indeed, as noted above, one of the direct consequences of scorched-earth operations like the one carried out in Los Josefinos was the forced displacement of the survivors from the villages concerned. In that regard, the Court has expressly stated that, “since they lost their homes and their possessions, the persons whose houses were destroyed and who were forced to displace endured particularly severe suffering that merits further attention.”¹⁹⁷ Indeed, those who lose all their possessions in circumstances of extreme violence and are forced to displace, not only suffer violation of their right to property, as we shall see below, but also, as the Court has emphatically stated, a violation of their right to humane treatment, on account of the fact that they “lost their homes and were therefore forced to displace.”¹⁹⁸

88. Regarding the right to property, the Court has developed a broad definition that covers, among other things, the use and enjoyment of property and rights that can form part of the personal wealth of a person, including personal possessions and real estate, as well as tangible and intangible elements.¹⁹⁹ The Court has underscored the particular gravity of, among other things, the theft and/or destruction of items necessary for a community’s subsistence and the burning of buildings in the context of an internal armed conflict, especially when they occur as part of acts or threats of violence with the aim of terrorizing the population.²⁰⁰ In such cases, the destruction of homes represents the loss, not only of material possessions, but also of the social frame of reference of the inhabitants and their most basic living conditions, which makes such a violation especially grave.²⁰¹

89. As regards the right to family life and privacy, the Commission notes that the Court has stated that the sphere of privacy is characterized by being exempt from and immune to abusive and arbitrary invasion or attack by third parties or the public authorities, and therefore that an individual’s home and private life are

¹⁹³ The pertinent portions of Article 11 of the American Convention provide: “Article 11. Right to Privacy. [...] 2. No one may be the object of arbitrary or abusive interference with his private life, his family, or his correspondence, or of unlawful attacks on his honor or reputation. 3. Everyone has the right to the protection of the law against such interference or attacks.”

¹⁹⁴ The pertinent portions of Article 21 of the American Convention provide: “Article 21. Right to Property. 1. Everyone has the right to the use and enjoyment of his property. [...] 2. No one shall be deprived of his property except upon payment of just compensation, for reasons of public utility or social interest, and in the cases and according to the forms established by law.”

¹⁹⁵ CEH, *Guatemala: Memory of Silence*, Annex 3, par. 3054.

¹⁹⁶ CEH, *Guatemala: Memory of Silence*, Annex 3, par. 3076.

¹⁹⁷ I/A Court H.R., *Ituango Massacres Judgment*, par. 271.

¹⁹⁸ I/A Court H.R., *Ituango Massacres Judgment*, par. 274.

¹⁹⁹ I/A Court H.R., *Barrios Family Judgment*, par. 148.

²⁰⁰ I/A Court H.R., *Ituango Massacres Judgment*, pars. 178-182; I/A Court H.R., *El Mozote Massacres Judgment*, par. 179.

²⁰¹ I/A Court H.R., *Ituango Massacres Judgment*, par. 182; I/A Court H.R., *El Mozote Massacres Judgment*, par. 180.

intrinsically connected, because the home is the space in which private life can evolve freely.²⁰² Furthermore, recognizing the progress made in this regard in international human rights law, the Court has found that in cases such as this, in which the alleged victims who lost their homes also lost the place where their private and family lives unfolded, the State also violates Article 11 (2) of the Convention.²⁰³

90. In the instant case, the Commission reiterates that it is accredited that Guatemalan Army personnel invaded the village of Los Josefinos, burned the homes, massacred its inhabitants, went into homes to see if there were any survivors, and murdered those whom they found, including men, women, and children, all as part of a scorched-earth operation designed to completely eradicate the village by destroying and burning homes and possessions and slaughtering its population.

91. Therefore, the Commission concludes that the State of Guatemala violated the right to humane treatment, right to family life and privacy, right to property, and rights of the child recognized in Articles 5 (1), 11 (2), 19, and 21 of the American Convention, in connection with the duty to respect rights established in Article 1 (1) thereof, to the detriment of the residents, families, and children of the village of Los Josefinos, whose homes were burned, invaded, and destroyed, and who are individually identified in the Consolidated Annex on victims to this report on merits.

D. Rights to a fair trial²⁰⁴ and judicial protection²⁰⁵

92. As the Court has consistently held:

States Parties are obligated to provide effective judicial remedies to the victims of the human rights violations (Article 25), remedies which should be substantiated in conformity with the rules of due process [Article 8(1)], all of this within the general obligation of the same States, to guarantee the free and full exercise of the rights recognized by the Convention for any person under its jurisdiction [Article 1(1)].

Likewise, ... the right of access to justice must ensure, within a reasonable time, the right of the alleged victims or their next of kin, to have everything necessary done to uncover the truth of the events and to punish those responsible.²⁰⁶

93. Thus, the right to the truth “is subsumed in the right of the victim or his next of kin to obtain clarification of the events that violated human rights and the corresponding responsibilities from the competent organs of the State, through the investigation and prosecution that are established in Articles 8 and 25 of the Convention.”²⁰⁷ While the obligation of the State is one of means, not of results, that “does not mean ... that the investigation can be undertaken as a mere formality condemned in advance to be fruitless.”²⁰⁸

²⁰² I/A Court H.R., Ituango Massacres Judgment, par. 194; I/A Court H.R., El Mozote Massacres Judgment, par. 182.

²⁰³ I/A Court H.R., Ituango Massacres Judgment, par. 197 and 234; I/A Court H.R., El Mozote Massacres Judgment, par. 182.

²⁰⁴ The pertinent portions of Article 8 (1) of the American Convention provide: “Article 8. Right to a Fair Trial. 1. Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.”

²⁰⁵ The pertinent portions of Article 25 (1) of the American Convention provide: “Article 25. Judicial protection. 1. Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.

²⁰⁶ I/A Court H.R., Las Dos Erres Massacre Judgment, pars. 104-105. See also I/A Court H.R., Velásquez Rodríguez Case v. Honduras. Preliminary Objections. Judgment of June 26, 1987, Series C. No. 1. par. 91; I/A Court H.R., *Case of Kawas Fernández v. Honduras*, Merits, Reparations and Costs, Judgment of April 3, 2009, Series C. No. 196 (hereinafter “I/A Court H.R., Kawas Fernández Judgment”), pars. 110 and 112; I/A Court H.R., *Case of Bulacio v. Argentina*. Merits, Reparations and Costs, Judgment of September 18, 2003, Series C. No. 100. par. 114; and I/A Court H.R., *Zambrano-Vélez et al.* Judgment, par. 115.

²⁰⁷ I/A Court H.R., *Barrios Altos Case v. Peru*, Merits, Judgment of March 14, 2001, Series C. No. 75. par. 48.

²⁰⁸ I/A Court H.R., *Kawas Fernández* Judgment, par. 101; I/A Court H.R., *Velásquez Rodríguez* Judgment, par. 177; I/A Court H.R., *Case of Heliodoro Portugal v. Panama*, Preliminary Objections, Merits, Reparations, and Costs, Judgment of August 12, 2008, Series C. No. 186. par. 144; I/A Court H.R., *Valle Jaramillo* Judgment, par. 100.

94. Indeed, that obligation “must ... be assumed by the State as its own legal duty, not as a step taken by private interests that depends upon the initiative of the victim or his family or upon their offer of proof, without an effective search for the truth by the government.”²⁰⁹ Thus, the State should ensure that “[e]ach act of the State that forms part of the investigative process, as well as the investigation as a whole, should have a specific purpose: the determination of the truth, and the investigation, pursuit, capture, prosecution and, if applicable, punishment of those responsible for the facts.”²¹⁰ The case law also clearly states: “In light of this obligation, once the authorities have knowledge of the event, they should initiate a serious, impartial and effective investigation, *ex officio* and without delay. This investigation should be undertaken utilizing all the legal means available and should be oriented toward the determination of the truth.”²¹¹ Accordingly, the failure to carry out a timely investigation and acts of obstruction of justice, hindrances, or problems of non-cooperation with the authorities that have hampered or are hampering clarification of the case constitute a violation of the rights to a fair trial and judicial protection.

95. The IACHR recalls that the the obligation to investigate and punish every act that entails a violation of the rights protected by the Convention requires that not only the direct perpetrators of human rights violations be punished, but also the masterminds.²¹² In addition, it is also necessary to keep in mind that, in relation to cases of forced disappearance of persons, the Court has considered that the right of access to justice includes the obligation that the investigation endeavor to determine the fate or whereabouts of the victim.²¹³

96. Also connected with the right to the truth and, in this particular case, subsumed in the right of access to justice,²¹⁴ is the duty of the State to respect the right of victims to seek and receive information. Is important to note that the case law has consistently held that State authorities cannot resort to mechanisms such as official secret or confidentiality of the information, or reasons of public interest or national security, to refuse to supply the information necessary for investigating human rights violations.²¹⁵ Moreover, that classification cannot depend exclusively on a State body whose members are deemed responsible for committing the illegal act.²¹⁶

97. The Commission finds that the facts in this case occurred in a prevailing context of widespread impunity, a situation itself recognized as one of the most serious human rights violations occurring in Guatemala,²¹⁷ in addition to being one of the most important factors contributing to the persistence of human rights violations, as well as criminal and social violence.²¹⁸ In that sense, as mentioned above, the facts in this case constitute a series of human rights violations that are also international crimes, including, *inter alia*, extrajudicial executions and acts of extreme violence against men women and children, forced disappearance of persons, destruction and burning of people’s homes and means of subsistence, and forced displacement of the residents of the village of Los Josefinos, all committed as part of a policy designed by those in power with the aim of destroying whole communities.

98. Although the State said that it is had adjusted its domestic law “in accordance with universal guarantees in favor of the rights of the victims in cases of this type,” the Commission notes that the laws to which the State broadly refers bear no relation whatsoever to the kind of violations established in this report on merits.

²⁰⁹ I/A Court H.R., Velásquez Rodríguez Judgment, par. 177.

²¹⁰ 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.

²¹¹ I/A Court H.R., 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. 101.

²¹² IACHR, Report on the Situation of Human Rights Defenders in the Americas, March 7, 2006, par. 109; IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas*, December 31, 2011, par. 237.

²¹³ I/A Court H.R., Radilla Pacheco Judgment, par. 143, 191; I/A Court H.R., Velásquez Rodríguez Judgment, par. 181.

²¹⁴ I/A Court H.R., Case of Gelman v. Uruguay, Merits and Reparations, Judgment of February 24, 2011, Series C. No. 221. par. 243 and footnote 301.

²¹⁵ I/A Court H.R., Tiu Tojín Judgment, par. 77; 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 (hereinafter “I/A Court H.R., Myrna Mack Judgment”), par. 180.

²¹⁶ I/A Court H.R., Myrna Mack Judgment, par. 181.

²¹⁷ IACHR, *Fifth Report on the Situation of Human Rights in Guatemala*, April 6, 2001, par. 55.

²¹⁸ 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.”

99. That said, as to whether the State of Guatemala opened and carried out a meaningful, impartial, and effective investigation within a reasonable time, the Commission notes, to begin with, that the massacre at the village of Los Josefinos was committed on April 29 and 30, 1982, and that the State, despite being aware of the events, failed to open an investigation *ex officio*; rather, it was the representatives of the victims who initiated the judicial proceeding by requesting an exhumation of remains for the purpose of gathering evidence in 1996. To date, almost 37 years have passed since the events, and 23 years since the investigation began. In spite of that, the deeds remain in utter impunity since, neither the individuals who planned them, nor their perpetrators have been identified. Furthermore, a thorough identification of the exhumed remains has not been carried out, nor have measures been adopted to establish the whereabouts or remains of the other victims.

100. From the evidence, the IACHR observes that the procedures that have been carried out have basically consisted of compiling declarations and documents, but those efforts have not been steered toward an active search for the truth of what happened. Indeed, there is nothing in the record to suggest a meaningful analysis of the information collected with a view to undertaking further investigative actions or pursuing different lines of inquiry. In addition, the IACHR cannot fail to note—as one of the State's most flagrant breaches of its obligations under Articles 8 and 25—the lack of cooperation with, and active obstruction of, the investigation by the military authorities and even by the judicial authorities, which kept the process inactive for almost 10 years and to some extent allowed its obstruction by the Ministry of Defense. Faced with that obstruction, there is no evidence of any follow-up procedures or activation of coercive mechanisms to ensure timely access to important information for the clarification of the facts. The foregoing not only reflects omissions in the investigation, but demonstrates clear patterns of aiding and abetting that began when the deeds occurred and continue to this day.

101. The IACHR also takes into consideration that in the proceeding, witnesses identified and named possible culprits. Despite that, no effective steps were taken to identify the criminal responsibility of military actors or look in to the participation of upper echelon commanders in the Guatemalan Army or other senior government officials. The State argued that there were still no “compelling grounds” in the proceeding to move forward with an indictment or a dismissal of the case. The Commission finds that if the situation is thus, it can only be precisely because in the 23 years that have elapsed since the investigation began and almost 37 years since the massacre, the investigation of the facts in the domestic jurisdiction in the instant case has been neither meaningful, nor impartial, nor effective.

102. As to the issue of reasonable time, Article 8 (1) of the American Convention establishes as one of the elements of a fair trial that tribunals reach a decision on cases submitted for their consideration within a reasonable time. In that regard, a prolonged delay may constitute, in itself, a violation of the right to a fair trial,²¹⁹ and that, therefore, it is for the State to explain and prove why it has required more time than would be reasonable to deliver a final judgment in a specific case.²²⁰

103. In that connection, reasonableness of time must be analyzed with regard to the total duration of the criminal process.²²¹ Pursuant to Article 8 (1) of the American Convention, the Commission will consider, in light of the specific circumstances of the case, the following four elements: (i) the complexity of the case; (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.²²²

104. As regards complexity, the State argued that “those events [only] came to the knowledge of the State 14 years after they took place,” which is not the case, given that, as was accredited, agents of the State not only

²¹⁹ I/A Court H.R., *Moiwana Community Judgment*, par. 160; 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. 85; 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.

²²⁰ I/A Court H.R., *Ricardo Canese Judgment*, par. 142.

²²¹ 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.

²²² I/A Court H.R., *Massacre of Santo Domingo Judgment*, par. 164.

committed the crimes with which this case is concerned, but actively participated in their concealment and in the persecution of the victims, among others, in order to prevent them from reporting the facts to judicial bodies. The Guatemalan Army and the Ministry of Defense are as much an integral part of the State as its judicial bodies are. The State cannot plead ignorance of the facts when the actions of its own organs impeded or obstructed the efforts of other State bodies responsible for the investigation and trial. In that connection, it should be underscored, once more, that it was incumbent upon the State, not the victims, to move the proceedings forward, as the State had the obligation to open an investigation into the facts *ex officio* as soon as they occurred.

105. While this is a complex case, as the Court has consistently held, even in highly complex cases courts must act with due diligence, since “the complexity of the matter under investigation in the domestic jurisdiction does not, in itself, justify the fact that criminal proceedings are still [so long] after the event.”²²³ Furthermore, the obligation to employ due diligence is particularly important in cases of gross human rights violations, in respect of which “all available means [must be used] to carry out all such steps and inquiries as are necessary to achieve the goal pursued ... [and] all necessary measures must be adopted in order to prevent the systematic patterns that led to the commission of serious human rights violations.”²²⁴ Efforts to investigate promptly should be redoubled in cases of gross violations because “the passage of time has a directly proportionate relationship to the limitations to—and, in some cases, the impossibility of—obtaining evidence and/or testimony, making it difficult and even rendering ineffective or invalid, the probative measures taken in order to elucidate the facts investigated, identify the possible authors and participants, and determine possible criminal responsibilities.”²²⁵

106. As for the participation of interested parties, the Commission observes that the relatives, victims, and witnesses have actively contributed to the case by following up and advancing the investigation.

107. 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’ relatives.

108. Based on the foregoing, the Commission concludes that the State has not assumed the investigation in this case as its own duty and it has not been effectively aimed at the investigation, pursuit, capture, prosecution and, as applicable, punishment of those responsible, in such a way as to thoroughly examine the harm caused to the residents of Los Josefinos. In addition, the investigation has not been aimed at the identification and delivery of the remains of those killed in the massacre. Likewise, the investigation has not been conducted in a reasonable time. All of the foregoing harms the right of the victims and their relatives to know the truth of what happened in a timely way. Bearing in mind that the massacre at Los Josefinos occurred within a systematic framework of widespread human rights violations in Guatemala and given the magnitude of the massacre, the State clearly had a duty to conduct a meaningful investigation of all those allegedly responsible, including the involvement as masterminds by high-ranking officers and government officials, as well as to locate and identify those who were killed and disappeared within a reasonable time.

109. The Commission also considers demonstrated that there was direct obstruction of the investigations by the Army and the Ministry of Defense, which not only refused at first to respond to the request for information, arguing that the information sought was a “state secret,” but also, when it did respond, did so only partially and failed to hand over all the requested information, did not allow the Public Prosecution Service to verify the nonexistence of certain files, and denied the possibility of presenting arguments on the Army’s classification of certain documents as secret. In that regard, furthermore, the judicial authorities failed to act properly to protect the right of the victims to access necessary information to obtain the truth by failing to

²²³ I/A Court H.R., Valle Jaramillo Judgment, par. 156. See also I/A Court H.R., Case of Juan Humberto Sánchez v. Honduras. Preliminary Objection, Merits, Reparations and Costs, Judgment of June 7, 2003, Series C. No. 99. par. 130.

²²⁴ I/A Court H.R., Case of the Rochela Massacre v. Colombia, Merits, Reparations and Costs, Judgment of May 11, 2007, Series C. No. 163. par. 156.

²²⁵ I/A Court H.R., Case of Contreras et al. v. El Salvador, Merits, Reparations and Costs, Judgment of August 31, 2011, Series C. No. 232. par. 145.

clearly state the reasons why the information was considered not relevant. As mentioned above, in this case, this aspect is subsumed in the analysis of the rights to a fair trial and judicial protection.

110. Therefore, the IACHR considers that the State violated the rights to a fair trial and judicial protection recognized at Articles 8 (1) and 25 (1) of the American Convention, in conjunction with the duty to respect rights set down in Article 1 (1) thereof, to the detriment of the relatives of the victims of the massacre, the victims of forced displacement, and all the surviving victims individually identified in the Consolidated Annex to this report on merits. The IACHR also concludes that the State violated Article I (b) of the Inter-American Convention on Forced Disappearance of Persons to the detriment of the victims of forced displacement individually identified in the aforementioned annex and their relatives.

V. CONCLUSIONS AND RECOMMENDATIONS

111. The Commission concludes that the State of Guatemala is responsible for violating the right to life, right to humane treatment, rights of the child, right to juridical personality, right to personal liberty, right to privacy, right to property, rights of the family, freedom of movement and residence, right to a fair trial, and right to judicial protection. The foregoing is in accordance with Articles 3, 4 (1), 5 (1), 5 (2), 7, 8 (1), 11 (2), 17, 19, 21, 22 (1) and 25 (1) of the American Convention, in conjunction with Article 1 (1) thereof. In addition, the State violated the obligations set forth in Article I of the Inter-American Convention on Forced Disappearance of Persons.

112. Based on the foregoing conclusions,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS RECOMMENDS THAT THE STATE OF GUATEMALA,

1. Provide adequate individual and collective reparation for all the human rights violations recognized in the instant report, in both material and immaterial respects, including fair compensation for consequential injuries, loss of income, and moral harm,²²⁶ elucidation and circulation of the historical truth of the events, remembrance of the deceased and disappeared victims, and implementation of a rehabilitation program, including adequate psychological and psychosocial care for survivors and relatives of the executed and disappeared victims. The measures of satisfaction and rehabilitation should be fully agreed upon with the victims.
2. Establish a mechanism that, to the greatest extent possible, enables the complete identification of each and every one of the victims of all the violations established in this case and make the necessary arrangements to ensure that the reparations determined in this report on merits are made to all of said victims.
3. Identify and deliver the remains of all those who died in the massacre and investigate the fate or whereabouts of the three forcibly disappeared persons and of the eight people whose whereabouts it has not been possible to establish since the massacre. If applicable, adopt the necessary measures to identify and deliver their mortal remains to their relatives.
4. Continue the domestic proceedings aimed at the effective investigation, pursuit, capture, prosecution, and punishment, as appropriate of those responsible for the human rights violations found in the instant report and conduct the investigations in an impartial and effective manner within a reasonable time in order to completely clarify the events, identify the masterminds and perpetrators, and impose the appropriate penalties in accordance with the applicable international standards. Bearing in mind, furthermore, that the massacre of Los Josefinos occurred within a systematic framework of widespread violations of human rights in Guatemala, in which most of the violations are also international crimes, the State should seriously investigate all those allegedly responsible, including the participation as masterminds and command responsibility of high-ranking officers and government officials.

²²⁶ In its analysis of compliance with the recommendations contained in this report on merits, the IACHR will appraise the payments made by the State of Guatemala during the processing of the case by the IACHR, as well as their sufficiency in the light of the inter-American standards applicable to gross human rights violations such as those that were committed in this case.

5. Impose appropriate administrative, disciplinary or criminal penalties for the acts or omissions of state officials who contributed to the denial of justice and impunity in relation to the facts in the case, or who participated in measures to obstruct the processes to identify and punish those responsible.

6. Adopt such measures as may be necessary to prevent a recurrence of such events. In particular: (i) implement permanent training programs on human rights, international humanitarian law, and international criminal law at the training schools of the Armed Forces; and (ii) strengthen the capacity of the judiciary to adequately and efficiently investigate the gross human rights violations committed during the armed conflict and punish those responsible, including providing the necessary material and technical resources to ensure that proceedings unfold in the correct manner.