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Session: Hundred Thirty-First Regular Session (3 – 14 March 2008)
Title/Style of Cause: Community of Rio Negro of the Maya Indigenous People and its Members v. Guatemala
Doc. Type: Decision
Decided by: Chairman: Paolo Carozza;
First Vice-Chairwoman: Luz Patricia Mejia Guerrero;
Second Vice-Chairman: Felipe Gonzalez;
Commissioners: Sir Clare K. Roberts, Paulo Sergio Pinheiro, Florentin Melendez, Victor E. Abramovich.
Dated: 5 March 2008
Citation: Maya Indigenous People v. Guatemala, Petition 844-05, Inter-Am. C.H.R., Report No. 13/08, OEA/Ser.L/V/II.134, doc. 5 rev. 1 (2008)
Represented by: APPLICANT: the Asociacion para el Desarrollo Integral de las Víctimas de la Violencia en las Verapaces, Maya Achi
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I. SUMMARY

1. On July 19, 2005, the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission,” “the Commission,” or “the IACHR”) received a complaint submitted by the Asociación para el Desarrollo Integral de las Víctimas de la Violencia en las Verapaces, Maya Achí (hereinafter “ADIVIMA” or “the petitioners”)[FN1] on behalf of the survivors of the indigenous Community of Río Negro (hereinafter “Indigenous Community of Río Negro” or “the village of Río Negro”) against the Republic of Guatemala (hereinafter the “Guatemalan State,” “Guatemala,” or the “State”). The petition alleges the destruction, persecution, and elimination of the members of the Indigenous Community of Río Negro through several massacres carried out by the Guatemalan Army and the Civil Defense Patrols (hereinafter the “PAC” - Patrullas de la Autodefensa Civil).

[FN1] The initial petition was received in Guatemala City on July 19, 2005, during the 125th special session of the IACHR.

2. The petitioners allege that the Guatemalan State has violated Articles 4 (right to life), 5 (humane treatment), 11(1) (protection of honor and dignity), 19 (rights of the child), 24 (equality before the law), 8 (a fair trial), and 25 (judicial protection), in conjunction with Article 1(1) (obligation to respect the rights) all of the American Convention on Human Rights (hereinafter

“the Convention” or “the American Convention”), to the detriment of the Indigenous Community of Río Negro and its members. In addition, they allege that it violated Article 27(1) and (2) (suspension of guarantees) of the Convention in relation to Articles 3 (right to juridical personality), 4 (right to life), 5 (right to humane treatment), 6 (prohibition on slavery and servitude), 12 (freedom of conscience and religion), 17 (protection of the family), 18 (right to a name), and 20 (right to nationality). They also note that the State breached the Universal Declaration of Human Rights (hereinafter “the Universal Declaration”) at Articles 1 to 10, to the detriment of the Indigenous Community of Río Negro and its members.

3. With respect to admissibility, the petitioners allege that their petition is admissible, applying the exceptions to the exhaustion of domestic remedies requirement and the time for submitting the petition provided for at Article 46(2)(c) of the Convention.

4. The State does not controvert the facts alleged by the petitioners; nonetheless, it argues that domestic remedies have not been exhausted. The State requests that the inadmissibility of the petition be declared, because it does not meet the requirements of Article 46 of the Convention and Articles 31 and 32 of the Commission’s Rules of Procedure.

5. After analyzing the petition, and in keeping with the provisions at Articles 46 and 47 of the American Convention, as well as Articles 30, 37, and others of its Rules of Procedure, the IACHR concludes that it is competent to examine the complaint submitted by the petitioners, for the alleged violation, to the detriment of the Indigenous Community of Río Negro of the Maya People and its members, of Articles 3, 4, 5, 6, 8, 11(1), 12, 17, 18, 19, 24 and 25 of the American Convention, in conjunction with its Article 1(1). In addition, applying the principle of *iura novit curia*, the Commission concludes that the petition is admissible in respect to the alleged violation of Articles 2, 16, 21, and 22 of the Convention, and for the alleged violation of Article I of the Inter-American Convention on Forced Disappearance of Persons, all in relation to Article 1(1) of the Convention. The Commission decides to find this petition inadmissible insofar as it refers to alleged violations of Articles 20, 27(1), and 27(2) of the American Convention. Finally, the Commission decides to notify the parties, make this report on admissibility public, and publish it in its Annual Report.

II. PROCESSING BEFORE THE COMMISSION

A. Processing of the petition

6. The Commission received the petition on July 19, 2005, and assigned it number 844-05. On May 4, 2006, the IACHR transmitted a copy of the pertinent parts to the State, asking it to submit its answer within two months, in keeping with Article 30(2) of the Rules of Procedure of the Inter-American Commission on Human Rights (hereinafter “the Rule of Procedure”).

7. On July 10, 2006, the State presented its answer to the complaint, which was forwarded to the petitioners on July 13, 2006; they were given one month to submit observations. On August 24, 2006, the petitioners informed the Commission that the information sent had been received in incomplete form, and asked that it be sent again. On August 28, 2006, the IACHR forwarded the State’s answer to the petitioners, and gave them one month to submit observations.

8. On September 14, 2006, the petitioners asked the IACHR for a working meeting during the 126th regular period of sessions. The request was rejected due to the large number of meetings already scheduled.

9. In a note dated September 14, 2006, received on September 29, 2006, the petitioners submitted their observations, and on October 5, 2006, these were forwarded to the State, which was asked to submit its observations within one month.

10. In a note dated November 8, 2006, received the next day, the State requested a 10-day extension for submitting its observations; which was granted in a note of November 22, 2006. In a note dated November 30, 2006, received on December 5, 2006, the State submitted its observations, and on December 8, 2006, the IACHR transmitted the pertinent parts of the information submitted by the State to the petitioners, and asked that they submit their observations within one month.

11. The petitioners submitted their observations in a note dated December 26, 2006, received on January 9, 2007.

12. On January 5, 2007, the petitioners asked the IACHR for a working meeting during the 127th regular period of sessions. The request was rejected due to the large number of meetings already scheduled.

13. On January 12, 2007, the IACHR forwarded to the State the latest response from the petitioners, and asked that it submit its observations within one month. On February 21, 2007, the State requested an extension, and on March 1, 2007, the IACHR granted it a 15-day extension.

14. On February 28, 2007, the State submitted its observations, which were forwarded to the petitioners on March 15, 2007. On April 2, 2007, the State submitted additional information, which was forwarded to the petitioners on April 9, 2007; they were given one month to send in observations.

15. In a note dated April 11, 2007, received on April 13, 2007, the petitioners requested an extension for submitting their observations, and on April 19, 2007, the IACHR granted the petitioners a 15-day extension.

16. In notes dated April 16, 2007, and May 6, 2007, received on May 7 and 9, 2007, respectively, the petitioners submitted additional information that was forwarded to the State on May 25, 2007; the IACHR asked the State to submit its observations within one month. In a note of May 16, 2007, the petitioners sent in information on the legal standing and representation of ADIVIMA. On August 14, 2007, the State submitted its observations on the information sent to it on May 25, 2007.

17. On December 5, 2007, the petitioners provided additional information individually identifying the alleged victims, which was forwarded to the State on December 7, 2007.

II. THE PARTIES' POSITIONS

A. The petitioners' position

18. The petitioners allege that the Guatemalan State intended to totally destroy the Community of Río Negro and its inhabitants during the years of military repression in Guatemala. They state with respect to this that the Commission for Historical Clarification (Comisión de Esclarecimiento Histórico) stated that "some communities, such as Río Negro, were victims of systematic persecution, aimed at their total elimination." [FN2]

[FN2] See petitioners' brief of July 19, 2005, p. 5.

19. Based on the facts alleged, the petitioners argue that the petition is admissible pursuant to Article 46(2)(c) of the Convention and that the State is responsible for the violation of Articles 4, 5, 11(1), 19, 24, 8 and 25, in relation to Article 1(1) of the Convention, to the detriment of the Indigenous Community of Río Negro and its members. In addition, they allege that the State is responsible for violating Article 27(1) and 27(2) of the Convention, in relation to Articles 3, 4, 5, 6, 12, 17, 18, and 20 of the same instrument.

20. The petitioners report that the Community of Río Negro, situated in the Río Negro basin, municipality of Rabinal, department of Baja Verapaz [FN3], had a population of approximately 600 in 1982, most of them members of the Achí linguistic community of the Maya indigenous people. According to the petitioners, there were 150 families with eight to 12 members each, and with four micro-groups of families with the last names Pa Chen, Pa Sánchez, Pa Osorio, and Pa Iboy.

[FN3] According to the petitioners, the distance between the community of Río Negro and the municipality of Rabinal is approximately 40 kilometers, and it is approximately 200 kilometers from Guatemala City. To reach Río Negro one travels by boat, if approaching by water, or by vehicle overland. See petitioners' brief of July 19, 2005, p. 2.

21. The petitioners explain that in the Community of Río Negro, the families were united and the land was communal. They cultivated corn, beans, peanuts, squash, and toles, and the products used for consumption by the community, commerce, and barter (system of exchange) among members of the same community or with members of other communities such as Xococ. They also note that the members of the community harvested their products in the mountain once a year, taking advantage of the rainy season, and throughout the year crops were planted along the banks of the Río Negro, taking advantage of the availability of water year-round. In addition, they indicate that some members of the community migrated to the department of Alta Verapaz and to the southern coastal region on a seasonal basis to work on the sugarcane, cotton, and coffee plantations.

22. In 1976, the construction of the Chixoy hydroelectric dam project began, which meant, according to the petitioners, a radical change in the peaceful and tranquil approach to life among the members of the community of Río Negro. In this respect, they explain that in the mid-1970s the Guatemalan State began to negotiate with the communities that would be affected by the Chixoy dam, promising reparations for the damages that would be caused, which were never delivered. They add that in the late 1970s and early 1980s, many communities that lived in the Río Negro basin were brutally ousted.

23. The petitioners note that the Community of Río Negro was one of the communities affected by the construction of the Chixoy Hydroelectric Dam, and the one that put up the most resistance to being ousted from their ancestral lands. They state that as a consequence of that resistance, the Community of Río Negro was the one that suffered the most repression and persecution by the Guatemalan State, which, “taking advantage of the context of internal armed conflict at the time, accused its inhabitants of being the social base of the insurgency, considering them its enemies, and as a result their community was considered a red area for the Guatemalan Army.”

24. The petitioners allege that the persecution of the Community of Río Negro began in 1980 with the disappearance of the seven persons who represented the Community in the negotiations with the National Electrification Institute (Instituto Nacional de Electrificación, hereinafter “INDE”). At the time of their disappearance, they had the book of minutes that recorded the information on the decision made by the Community in the negotiations that the INDE was proposing.

25. They add that on March 4, 1980[FN4], at the Catholic chapel of the Community of Río Negro, the following members of the community were executed by agents of the Ambulatory Military Police (Policía Militar Ambulante, PMA):[FN5] Máxima Chen, Francisco Tun Uscap, Mateo Uscaps Chen[FN6], Calixto Chen Sánchez, Santos López Ixpatá, Justo Alvarado, and Mateo Ixpatá.

[FN4] According to the petitioners, in the report on Guatemala “Memorias del silencio,” Illustrative Case No. 10, “Massacre and elimination of the Community of Río Negro, and Illustrative Case No. 14, “Forced transfer of child survivors of the massacre of the community of Río Negro,” this event is narrated as if it had occurred on March 5, 1980. Nonetheless, according to eyewitness statements and the death certificates, it occurred on March 4, 1980. See petitioners’ brief of April 16, 2007, page 4.

[FN5] According to the petitioners, the Ambulatory Military Police provided security services to the INDE. See petitioners’ brief of July 19, 2005, p. 4. See also petitioners’ brief of April 16, 2007, p. 3.

[FN6] The petitioners report that Mateo Uscaps Chen died at the hospital as the result of wounds inflicted to the abdomen with a firearm. See petitioners’ brief of April 16, 2007, p. 3.

26. The petitioners state that the repression and intimidation against the Community continued in the following years and grew worse in late 1981 and early 1982.

27. According to the petitioners, on February 7, 1982, the Guatemalan Army and members of the PACs called the men from the Community of Río Negro to a meeting in the Community of Xococ, where they were accused of belonging to the guerrillas. At that time their identity papers were taken; they were ordered to return one week later to retrieve them.

28. The petitioners indicate that on February 13, 1982, approximately 70[FN7] persons – most of them men and approximately eight women and nine children – from the Community of Río Negro, went to the community of Xococ to look for the identity papers that had been taken from them. Once there, members of the Guatemalan Army and the PAC brutally assassinated them[FN8] and buried them in a common grave at a place called Chitón.[FN9] According to the information provided by the petitioners, the children were tortured and the women were raped. One of the women was pregnant and as a result of the acts of violence labor was brought on; “despite her condition, they forced her to walk to Chitón, where they hung her; when she was dead they placed the baby on her chest and buried them both, even while the baby was alive.”[FN10] Two persons, according to the petitioners, were able to survive this massacre; one of them, Teodora Chen Tecú, said that she had heard that the Army and the PAC were going to finish massacring the entire population, so she advised the men to hide in the mountains.

[FN7] It can be observed that the number of victims of the events of February 13, 1982, in the information provided by the petitioners, varies from 70 to 91 persons.

[FN8] “That day, the 70 persons massacred went in front of the Catholic church, where they were to be given their identity papers, but that’s not what happened; instead, they were forced to go to a private home the property of Mr. Francisco Paz, where they were beaten with the butts of firearms, they were cut on the feet, nose, ears, and cheeks, most of those persons died from the torture to which they were subjected.” In this respect see: Jesús Tecú Osorio, *Memorias de las Masacres de Río Negro*, first edition, p. 81. Cited by the petitioners in their brief of April 16, 2007, p. 4.

According to the petitioners the brutal way these persons were assassinated was revealed by the forensic anthropology report that was submitted as part of the anthropological investigation. See petitioners’ brief of July 19, 2005, p. 4.

[FN9] According to the petitioners, the persons massacred were buried at a place called Chitón, located in the village of Xococ, municipality of Rabinal, department of Baja Verapaz. Petitioners’ brief of April 16, 2007, p. 5.

[FN10] Petitioners’ brief of April 16, 2007, p. 5.

29. One month later, on March 13, 1982, the petitioners reported that members of the Guatemalan Army and the PACs entered the community of Río Negro and assassinated approximately 177[FN11] persons (107 children and 70 women).[FN12] The petitioners say that at about six o’clock in the morning the soldiers and the PAC, uniformed and armed, reached the community of Río Negro and took all the people from their houses – most of them women and children. According to the petitioners, the patrol members had breakfast and then pillaged the

village, several women were taken from the group to be raped. Subsequently, they forced the persons to walk about three kilometers up the mountain, where they were assassinated them, at a place known alternatively as Portozuelo and Pcoxom.[FN13] According to the petitioners, the following persons survived this massacre: Feliza González Coloch, Juan Tum Sanchez, Bruna Pérez Osorio, and Santiago Lajuj Jerónimo.

[FN11] It is observed that the number of alleged victims of the events of March 13, 1982, in the information submitted by the petitioners, varies from 177 to 190 persons.

[FN12] According to the petitioners, many of the children were from 3 months to 2 years of age; their remains were eroded due to the fragility of their bones. The exhumation of corpses performed 12 years later established the existence, in three graves, of 143 skeletal remains, 85 of which were of children, and the other 58 of women. In petitioners' briefs of July 19 2005, p. 5 and April 16, 2007, p. 6.

[FN13] The information provided indicates that the members of the community of Río Negro were forced to walk to a place called Pcoxom, which is also known as Portozuelo.

30. In addition, the petitioners allege that 17[FN14] children from the community of Río Negro were distributed among the patrol members, and were forced to live and work for almost two years as slaves for their victimizers.

[FN14] It is noted that the number of alleged victims, in the information submitted by the petitioners, varies from 17 to 20 children.

31. On May 14, 1982, members of the Guatemalan Army and a group from the PAC entered the village of "Los Encuentros," in the municipality of Salamá, department of Baja Verapaz, where the survivors of the community of Río Negro had taken refuge. On that occasion, 12[FN15] persons were massacred, the women were raped, and some persons were tortured and died as a result of the torture. Approximately 48 persons, mostly women, were captured and transported in three transfers made by helicopter; to this day their whereabouts are unknown.[FN16] According to the petitioners, the following persons survived this massacre: Bernarda Lajuj Osorio[FN17], Carmen Sanchez Chen, Osorio Sanchez, Osorio Lajuj, Antonio Osorio Lajuj, Paulina Chen Osorio, and Felipa Osorio Tahuico.

[FN15] The petitioners, in their brief of May 6, 2007, clarify that in all, on this date 12 persons were assassinated and 48 were disappeared. See petitioners' brief of May 7, 2007, p. 10. See also the reference to these facts in petitioners' brief of July 9, 2005.

[FN16] It is observed that the number of alleged victims of the events of May 14, 1982, in the information provided by the petitioners, varies from 57 to 60 persons.

[FN17] According to the petitioners, she was subjected to slavery by a member of the PAC, in the village of Xococ, Rabinal Baja Verapaz. See additional information provided by the petitioners on September 5, 2007.

32. The petitioners report that another small group of survivors from the village of Río Negro took refuge in the “Community of Agua Fría,” situated in the municipality of Uspantan, department of Quiché, where the community was once again persecuted.[FN18] They state that on September 14, 1982, at approximately 5 a.m., a patrol from the Guatemalan Army and patrol members of the Civil Defense Patrols surrounded the village of Agua Fría and forced all its members to meet in a house, accusing them of belonging to the guerrilla forces. They indicate that approximately 90[FN19] persons were locked in that house, which was doused with gasoline and set afire. They indicate as well that the officer who commanded the operation threw a grenade in the house, and as a result the victims burned. Subsequently, according to the petitioners, the members of the Army and the PAC proceeded to sack and burn the 14 houses in the community. The petitioners note that this massacre was directed by an officer with the last names Sánchez Ochoa.[FN20] According to the petitioners, Dorotea Lajuj López, Julián Sic López, and Eusebio Sic survived this massacre.

[FN18] See petitioners’ brief of July 19, 2005, p. 6.

[FN19] One observes that the number of alleged victims of the facts of September 14, 1982, in the information provided by the petitioners, varies from 92 to 117.

[FN20] Petitioners’ brief of April 16, 2007, pp. 10 and 11.

33. The petitioners allege that these atrocious acts committed against the community and population of Río Negro detail the undeniable way in which much of its population was persecuted and eliminated, “which cannot be seen as anything other than the harshest thing a defenseless human being can experience against all the power deposited in the authorities of the government in place and which the Guatemalan State, for over 25 years, has kept quiet and tried to cover up with a veil of impunity.”[FN21]

[FN21] In the communication of April 16, 2007, the petitioners attached a list of 53 alleged victims massacred on different dates as a result of persecution against the Community of Río Negro.

34. The petitioners report that much of the territory where the community of Río Negro was located was flooded by the construction of the Chixoy dam. They explain that at this time very few inhabitants remain in the community, due to the repression and persecution they suffered; approximately seven families live in the area of the community, while other members of the community live in the community of Pacux.[FN22]

[FN22] The petitioners indicate that they refer to the community of Pacux “situated on the edge of the municipality of Rabinal, where victims and victimizers of the armed conflict live together,

and where two or three families per house live in overcrowded conditions on a plot of 15 meters by 30 meters.” See petitioners’ brief of July 19, 2005, p. 7.

35. As regards the exhaustion of domestic remedies, the petitioners indicate that in 1993, a complaint was lodged regarding the massacre alleged to have occurred on March 13, 1982, before the Criminal Court for Drug-trafficking and Environmental Crimes of First Instance of the department of Baja Verapaz, which was recorded as case No. 722-93. According to the petitioners, in the wake of this complaint there was a conviction of Messrs. Carlos Chen, Pedro González, and Fermín Lajuj Xitumul, chiefs of the former Civil Defense Patrols, for the deaths of two women identified among the more than 143 skeletal remains of human beings that have been exhumed from the massacre of persons from the community of Río Negro, carried out on March 13, 1982, at the cerro Pocoxom. According to the petitioners, the judgment against the three persons mentioned became firm in 2000. In addition, they indicate that the investigation into Col. José Antonio Solares and 10 former patrol members of the Civil Defense Patrols remained open.

36. According to the petitioners, in the investigation process, after fully identifying Mr. José Antonio Solares and having heard a witness who is a former patrol member of the Civil Defense groups, the Public Ministry, in April 2003, requested the apprehension of Col. José Antonio Solares for the crime of assassination.[FN23] With respect to the 10 patrol members, the petitioners indicate that six are currently in prison and four are fugitives.[FN24]

[FN23] Criminal proceeding identified by number 28-2003. See petitioners’ brief of April 16, 2007, p. 12.

[FN24] According to the petitioners, the names of the persons apprehended are as follows: Macario Alvarado Toj, Francisco Alvarado Lajuj, Tomas Vino Alvarado, Bonifacio Cuxum López, Lucas Lajuj Alvarado. See petitioners’ brief of May 7, 2007, pp. 12 and 13.-----

37. As for the arrest of Mr. José Antonio Solares, the petitioners consider that the State does not have the political will to enforce the arrest warrant; to the contrary, they consider that he is being protected by the Guatemalan State. In this respect they adduce that Mr. Solares receives a monthly retirement pension that the State itself deposits into his bank account, through the Ministry of Defense. In addition, they note that Mr. Solares must annually present his Notarial certificate of survival to the Instituto de Previsión Militar (Military Social Security Institute) in order for his pension to be deposited to his account.[FN25]

[FN25] In this respect, the petitioners indicate that they attach the following documents: (a) Notarial act of survival of December 15, 2004; (b) Notarial act of survival of December 26, 2005; (c) Photocopy of the activity of savings account No. 7611001684 in the name of José Antonio Solares, January 2005 to January 2006; (d) Official note of June 4, 2004, signed by the third officer of the Civilian National Police, Alfredo Rolando Caballeros, which, according to the petitioners, indicates that Mr. José Antonio Solares is hiding in his residence. According to the

petitioners, this shows the lack of political will on the part of the Guatemalan State to enforce the arrest warrant.

38. The petitioners note that on October 27, 2004, the Criminal Court for Drug-trafficking and Crimes against the Environment of the Department of Baja Verapaz, in case number 28-2003, opened the case, and began the proceeding, which was suspended due to the filing of some motions. Specifically, the petitioners allege that on October 28, 2004, the oral and public debate was suspended by the filing of an amparo action, which was found inadmissible and subsequently confirmed on appeal.

39. Nonetheless, the petitioners note that the defense counsel of the accused filed a constitutional motion, arguing that Article 234 of the Code of Criminal Procedure is partially unconstitutional. The petitioners indicate that one year and seven months later, there has been no ruling on that motion.

40. As regards the exhumation of the bodies buried at clandestine cemeteries, the petitioners report that in 1994, at the initiative of the survivors, the courts ordered the exhumation of remains of the victims of the March 13, 1982 massacre. According to the forensic anthropology report, the human remains found were of at least 143 persons, including women and children, who were killed violently; it was only possible to identify three persons. The petitioners state that of this large number of persons, some more remains have yet to be recovered, and that they may have been carried away by the water current that formed in the place where the victims were left, others due to erosion (mainly babies and small children) were lost after more than 10 years of having been exposed to the elements.[FN26]

[FN26] See petitioners' brief of July 19, 2005, p. 7.

41. Finally, the petitioners note, as a way to explain the continuation of the conflicts, that in 2004 the community of Pacux, one of the communities resettled from the Community of Río Negro, after suffering more than four months without electricity and without drinking water, decided to convene the communities affected by the construction of the Chixoy hydroelectric dam to demonstrate peacefully. They allege that as a result of the demonstration held September 7, 2004, nine persons as representatives of that community, were accused of crimes such as "attack on the internal security of the nation and the security of the Public Services, alleging that the intention of the demonstration was to destroy the dam; they also accuse them of the crime of unlawful entry; the State forgets that the land is still registered in the name of the communities." [FN27] They indicate that at present nine persons who participated in that demonstration are facing criminal charges.[FN28]

[FN27] See petitioners' brief of July 19, 2005, p. 7.

[FN28] See petitioners' brief of July 19, 2005, p. 8.

B. The State's position

42. The State, in answering the complaint, noted as follows as regards the events in the community of Río Negro on March 13, 1982:

“Based on the information from the Public Ministry, it was established that: ‘on March 13, 1982, at approximately six o’clock in the morning, Messrs. Macario Alvarado Toj, Francisco Alvarado Lajuj, Tomas Vino Alvarado, Pablo Ruiz Alvarado, Bonifacio Cuxun López, Lucas Lajuj Alvarado, Pedro González Gómez, Fermín Lajuj Xitumul, Miguel Alvarado Sic, and Víctor González, accompanied by First Captain of the National Army José Antonio Solares González, along with other residents of the village of Xococ, who it has not been possible to individually identify, went to village of Xococ [sic village of Río Negro] of the municipality of Rabinal, department of Baja Verapaz bearing machetes, rope, sticks, and firearms for the purpose of executing the residents of that village, to which end they ousted them from their homes, gathered them together, and violently along a mountainous road took them to the place known as Pokoson situated in Cerro Portozuelo, which is located approximately two kilometers from the village of Río Negro where, as of 11 a.m., they began to interrogate them for the purpose of finding out where the guerrillas were and subsequently they executed the women and children using the sticks and rope as tourniquets around the victims’ throats, strangling them and crashing the children against the rocks and trees, beating the women’s faces with sticks until they died, as occurred when Macario Alvarado Toj shot Juana Tum Sánchez, who did not die from the impact of the bullet rather the accused Alvarado Toj and other companions beat her with sticks to the head until they killed her, and they kept the victim’s daughter, the minor Silverio Lajuj Tum. After killing all the residents of the village as described, they tossed all of the bodies into a brook near the place already mentioned. In addition, it was established that all the persons mentioned as accused participated actively in each of the executions and in the facts already described above, and that minor Jesús Tecú Osorio was taken from the place and lived with Pedro González Gomes, minor Maria Eustaquia Uscap Ivoy lived with Pablo Ruiz Alvarado and minor Pedro Sic Sánchez lived with Fermín Lajuj Xitumui.”[FN29]

Based on illustrative report No. 10 of the report of the Commission for Historical Clarification (Comisión de Esclarecimiento Histórico), it was established that: “On August 23, 1993, four members of the community, with the assistance of the Grupo de Apoyo Mutuo (GAM), reported the facts to the Justice system. On July 25, 1994, three members of the Civil Defense Patrols who participated in the massacre of March 13 were detained and indicted. The exhumation was done on October 7, 1994, On May 27, 1996, oral argument was suspended because the defense requested the application of the amnesty decree, 32/88, which was denied in all instances.”[FN30]

[FN29] See State’s brief of July 10, 2006.

[FN30] See State’s brief of July 10, 2006.

43. With respect to the procedural posture of the case, the State, in its response to the complaint, noted that the oral trial began on November 9, 1998; it concluded with a conviction, handed down November 30 by the Court of Rabinal (Tribunal de Sentencia de Rabinal), in which the death sentence was imposed by the trial court against Pedro González Gómez, Fermín Lajuj Xitumul, and Miguel Alvarado, accused of being the material perpetrators of the Río Negro massacre. This judgment, according to the State, was voided on appeal and remanded. The State adduces that the accused were subsequently convicted and sentenced to “50 years of prison for the assassination of two persons found at the clandestine cemetery of Pocoxom.” [FN31] According to the State, the judgment was upheld in 2000.

[FN31] See State’s brief of July 10, 2006.

44. In addition, the State indicated that criminal proceedings were initiated against Messrs. Macario Alvarado Toj, Francisco Alvarado Lajuj, Tomas Vino Alvarado, Pablo Ruiz Alvarado, Bonifacio Cuxum López, and Lucas Lajuj Alvarado; and that the file was forwarded to the Criminal Court for Drug-trafficking and Crimes against the Environment, on July 14, 2003.

45. The State also indicated that in keeping with the Report from the Public Ministry, it was established that the Army officer mentioned in the incident attributed to the accused who are named, is the now Colonel José Antonio Solares González. The State indicates that an arrest warrant was issued for Colonel José Antonio Solares on April 15, 2003, for the crime of murder (asesinato). The State adduces that as part of the investigation, and to secure Mr. Solares González’s arrest, searches and checks have been carried out, with negative results; he adds that information has been requested from different institutions to determine his whereabouts.

46. The State indicates that in the instant case, the petitioners accuse the State of violating the victims’ rights for not having executed the order to apprehend Colonel José Antonio Solares. In this respect, it notes, according to the information received from the judicial entities and the Public Ministry, the arrest warrant is pending execution.

47. Based on what has been indicated by the State, on several occasions efforts have been made to execute the arrest warrant, but it has been impossible due to the fact that Mr. Solares González has not been found at the time and place the operation is carried out.

48. The State asks the Commission to find the case inadmissible for the time being, considering that according to information received by the judicial bodies in charge of imparting justice, the arrest warrant for Mr. Solares is still pending execution, and the proceeding is still open.

49. The State, in its communication of December 5, 2006, once again indicated that as part of the measures adopted to secure the arrest of José Antonio Solares, searches and checks have been carried out, without any positive results thus far. It adds that the Public Ministry reported that requests continue to be made of various departments to determine José Antonio Solares’s whereabouts. It also notes that on August 1 and September 25, 2006, the arrest warrant was

reiterated to the corresponding department of the Public Ministry. The State further reports that the Presidential Commission on Human Rights has ordered that the instant case be made known to the Comité de Impulso (Impetus Committee), which handles the cases before the Inter-American Commission on Human Rights.

50. With respect to the petitioners' position to the effect that the State is protecting Mr. José Antonio Solares, the State argued that according to the Constitution of Guatemala, the Public Ministry has autonomous functions, the main purposes of which are to see to the strict enforcement of the laws. In this context it notes that due to the form of government in Guatemala, in which the legislative, executive, and judicial branches are independent in the performance of their functions, and in which subordination among them is prohibited, it is not possible for the State to protect Mr. José Antonio Solares González.

51. In a communication of March 30, 2007, the State indicated the following with respect to the constitutional motion filed by the defense attorney for the accused:

- (a) The judgment in the case was handed down on March 21, 2006.
- (b) As of this date signatures are being collected in the judgment on the merits.
- (c) When the judgment becomes firm, the record will be referred by means of the corresponding document containing the final judgment to the Criminal Court for Drug-trafficking and Crimes against the Environment of Salamá, department of Baja Verapaz, for the matter to continue to be processed in that judicial body.[FN32]

[FN32] See State's brief of March 30, 2007.

52. The State, in the communications sent to the Commission, has indicated that the petition should be found inadmissible based on the provisions at Article 46 of the American Convention and Articles 31 and 32 of the Commission's Rules of Procedure.

53. The observations submitted by the State on August 14, 2007, indicate that the information provided by the petitioners on May 7, 2007, consists of a correction and addition to the complaint sent to the Guatemalan State on May 4, 2006. In this regard, the State in its observations brief concludes that "it considers itself informed of the petitioners' additional submission related to the massacre carried out in the community of Río Negro on March 13, 1982."

54. With respect to the corrections and additions related to the massacres that occurred in other villages or communities, the State takes the following position:

That notwithstanding the existence of the legitimate right of the victims of the massacres that occurred in the communities of Los Encuentros and the village of Agua Fría, which is recognized by the State, to lodge a complaint regarding the massacres before the inter-American system, it is the position of the State that these and other massacres should be presented through separate and individual petitions, and not as an amendment to the initial petition in the instant case.

Considering the foregoing, and based on the initial petition, the State considers that in the instant case only the facts derived from the massacre of March 13, 1982, should be added, and that the only petitions and observations that should be taken into account are those related to the criminal proceeding initiated in the wake of the massacre described above and that is currently pending. Specifically, in the human rights enshrined in the Convention, which the petitioners allege were violated due to the events of March 13, 1982, and which were described in the initial petition and that are geared to showing the delay that has occurred in criminal proceeding 28-2003 of the Criminal Court for Drug-trafficking and Crimes against the Environment of Salamá, Baja Verapaz, progress on which is reported in this report.[FN33]

[FN33] See State's brief of August 14, 2007, pp. 3 and 4.

55. With respect to criminal proceeding No. 28-2003 of the Criminal Court for Drug-trafficking and Crimes against the Environment of Salamá, Baja Verapaz, the State indicates that the Constitutional Court was asked to provide information on the procedural posture of Case No. 2319-05, related to the appeal of a constitutional motion. In this respect, the State notes that on March 21, 2007, a resolution was issued in Case No. 2319-2005 that affirms the operative part of an order appealed, "that is to say, the appeal was rejected,"[FN34] and on March 19, 2007, according to the State, the record was returned to the competent judicial organ and the parties were notified of the resolution. In addition, the State argues that "it appears from the information provided by the Constitutional Court and by the petitioners that in effect, within the criminal proceeding initiated by the petitioners, speedy process has not been favored." [FN35]

[FN34] See State's brief of August 14, 2007, p. 2.

[FN35] See State's brief of August 14, 2007, pp. 2 and 3.

56. With respect to the persons not yet apprehended in criminal proceeding No. 28-2003 before the Criminal Court for Drug-trafficking and Crimes against the Environment, the State indicates that six of the ten named accused have been apprehended.

IV. ANALYSIS OF ADMISSIBILITY

A. Competence *ratione personae*, *ratione temporis*, *ratione loci* and *ratione materiae* of the Inter-American Commission

57. The petitioners are authorized by Article 44 of the American Convention to submit complaints to the IACHR.

58. The petitioners individually identify the alleged victims as follows[FN36]:

· Persons from the Community of Río Negro massacred on February 13, 1982, in the village of Xococ, municipality of Rabinal, department of Baja Verapaz

(1) Abelino Sanchez Chen; (2) Agustín Osorio Chen; (3) Agustín Osorio; (4) Agustín Osorio Sanchez; (5) Alberto Lajuj Tum; (6) Andrés Chen Osorio; (7) Andrés Tun Sánchez; (8) Alejandro Sanchez Chen; (9) Andrés Sanchez Ixpatá; (10) Antonio Chen; (11) Antonia Ismalej Cuxum; (12) Balvino Uscap Ivoy; (13) Bernardino Uscap Chen; (14) Camila Chen Chen; (15) Candelaria Mendoza; (16) Cayetano Osorio Chen; (17) Ciriaca Chen Chen; (18) Ciriaco López Chen; (19) Ciriaco Sánchez Osorio; (20) Clemente Sanchez Osorio; (21) Crispín Tun Ivoy; (22) Damacio Osorio Ixpatá; (23) Jesusa Ivoy Sanchez; (24) Dominga Ivoy Chen; (25) Doroteo Osorio; (26) Domingo Osorio Sic; (27) Esteban Chen Tecú; (28) Esteban Osorio Burrero; (29) Evaristo Alvarado; (30) Evaristo López Ixpatá; (31) Feliciano Chen Osorio; (32) Feliciano Chen; (33) Felipe Sanchez Osorio; (34) Felisa Osorio Chen; (35) Félix Chen; (36) Félix Osorio; (37) Fernando Lajuj Toj; (38) Gregorio Osorio; (39) Guillermo Osorio Lajuj; (40) Guillermo Sanchez; (41) Gustavo Osorio Sic; (42) Ignacio Chen Osorio; (43) Jesús Osorio; (44) José Chen Uscap; (45) José Ivoy Osorio; (46) Juan Cuxum Sic; (47) Justa Osorio Sic; (48) Juan Pablo Osorio; (49) Juana Cuxum Ismalej; (50) Laureano Teca; (51) Lorenzo Osorio; (52) Lorenzo Osorio Chen; (53) Lorenzo Osorio Sic; (54) Lucas Osorio Chen; (55) Luciana Ivoy Osorio; (56) Luis Iboy Sánchez; (57) Luis Osorio Chen; (58) Magdalena Osorio Sanchez; (59) Marcela Chen; (60) Martín López Osorio; (61) Martina Osorio Chen; (62) Mateo Osorio; (63) Matías Tecú Chen; (64) Nicolás Chen; (65) Pablo Chen; (66) Pablo Osorio Chen; (67) Pablo Tun Chen; (68) Pascual Sanchez Osorio; (69) Patricia Chen Chen; (70) Pedro Ivoy Chen; (71) Pedro Ivoy Osorio; (72) Raymundo Osorio Ixpatá; (73) Rosendo Sic; (74) Rufino Chen Chen; (75) Ruperto Ivoy Chen; (76) Santiago Lajuj Jerónimo; (77) Santiago Sanchez Chen; (78) Secundino Uscap Chen; (79) Soterio Sanchez Chen; (80) Tereso Osorio Chen; (81) Timoteo Chen Sanchez; (82) Tomas Lajuj Chen; (83) Toribio Lajuj Chen; (84) Valentín Pérez Gonzalez; (85) Venancio Sánchez; (86) Vicente Chen Teca; (87) Víctor Lajuj Chen; (88) Victoriano Cahuec López; and (89) Virgilio Sucup Sucup.

· Persons from the Community of Río Negro massacred on March 13, 1982, in the Community of Río Negro, municipality of Rabinal, department of Baja Verapaz

(1) Adela Lajuj Osorio; (2) Adelia Osorio Ivoy; (3) Alberta Ivoy Sanchez; (4) Alejandra Osorio Chen; (5) Ana María Chen Osorio; (6) Anastacia Chen Sanchez; (7) Anastacia Osorio Ivoy; (8) Anastacia Tecú Sánchez; (9) Anastacio Tecú Osorio; (10) Andres Ivoy; (11) Angela Sanchez Chen; (12) Anibal Tum Osorio; (13) Antonio Chen Ivoy; (14) Arcadio Sanchez González; (15) Arcadio Chen Osorio; (16) Arnulfo Osorio Chen; (17) Bacilio Osorio Sanchez; (18) Benedicto Osorio Chen; (19) Bernarda Chen Osorio; (20) Bonifacio López Osorio; (21) Candelaria Pérez Osorio; (22) Carmela Osorio Chen; (23) Carmelina Cuxum Lajuj; (24) Catarina Ivoy Sanchez; (25) Catarino Chen eca; (26) Celestina Sanchez González; (27) Cesario Osorio Ivoy; (28) Ciriaca Chen Chen; (29) Ciriaca Chen eca; (30) Ciriaca Osorio Osorio; (31) Clementina Osorio; (32) Cleotilde Osorio Chen; (33) Cristina Sanchez González; (34) Cristina eca Sanchez; (35) Delfina Chen Osorio; (36) Demetrio Osorio Ivoy; (37) Demétria Osorio Lajuj; (38) Dominga Chen; (39) Dominga Ivoy Chen; (40) Dominga Sanchez Chen; (41) Dominga eca Osorio; (42) Dorotea Sanchez Osorio; (43) Elena Osorio Chen; (44) Eligia Chen Osorio; (45) Eligia Osorio; (46) Emiliana Osorio Alvarado; (47) Emiliano Pérez Osorio; (48) Emilio Sic Chen; (49) Enriqueta

Chen Ivoy; (50) Esperanza Ivoy; (51) Estéfana Tecú León; (52) Eugenia Ivoy Osorio; (53) Eugenia Osorio Chen; (54) Eugenia Teletor Pérez; (55) Eulalia Chen Osorio; (56) Eusebia Osorio; (57) Eusebio Chen López; (58) Felipa Osorio Chen; (59) Felipe Iboy Chen; (60) Felisa Tum Osorio; (61) Félix Osorio; (62) Floridalma Elvira Sanchez Chen; (62) Florinda Sánchez Chen; (63) Francisca Sanchez Chen; (64) Francisca Sanchez Chen; (65) Francisco Ivoy Sic; (66) Francisco Sanchez López; (67) Francisco Sic Chen; (68) Gabina Chen Osorio; (69) Gabina Sic Siana; (70) Gabriel Tum Osorio; (71) Gilberto Osorio Chen; (72) Gregoria Alvarado González; (73) Guillerma Osorio Chen; (74) Héctor López Osorio; (75) Herlinda Lajuj Ivoy; (76) Higinia Chen Ixpata; (77) Hilaria Chen Chen; (78) Hortensia Uscap Teletor; (79) Irma Cahuec Osorio; (80) Irma Osorio Ivoy; (81) Isabel Osorio Chen; (82) Isabel Osorio; (83) Isabel Sanchez Chen; (84) Israel Ivoy Sánchez; (85) Jaime Tecú Osorio; (86) Javier Chen Uscap; (87) Jesús Iboy Sanchez; (88) Jesús Tecú León; (89) Jesusa Sanchez Pérez; (90) José Chen Uscap; (91) José Iboy Sanchez; (92) Juan Chen Teca; (93) Juan Ivoy Sánchez; (94) Juan Osorio Alvarado; (95) Juana Osorio Chén; (96) Juana Osorio Sanchez; (97) Juana Chen Osorio; (98) Juana Ivoy Sánchez; (99) Juana Nicha Sanchez Pérez; (100) Juana Pérez Hernández; (101) Juana Pérez; (102) Juana Tecú Osorio; (103) Juana Tum Sanchez; (104) Julia Osorio; (105) Julia Sanchez Chen; (106) Juliana Ivoy Sanchez; (107) Juliana Uscap Chen; (108) Justa Osorio Sic; (109) Leocadio Tum Sánchez; (110) Lorenzo Osorio Chen; (111) Lucía Osorio Mendoza; (112) Lucía Sanchez; (113) Luis Osorio Chen; (114) Magdalena Lajuj Ruiz; (115) Magdalena Osorio Chen; (116) Magdalena Osorio Sanchez; (117) Manuel Osorio Chen; (118) Manuel Osorio Manuel; (119) Manuela Chen Osorio; (120) Marcela Ivoy Osorio; (121) Marcela Osorio Chen; (122) Marcelo Tecú Osorio; (123) Margarita Chen Chen; (124) Margarita Chen Osorio; (125) Margarita Chen Uscap; (126) Margarita Sanchez; (127) María Chen Sanchez; (128) María del Rosario Osorio Chen; (129) María Dolores Chen Osorio; (130) María Juliana Chen; (131) María Luisa Osorio Sanchez; (132) María Pedrina González Tecú; (133) María Tum Osorio; (134) Mario Sanchez Sic; (135) Marta Elvira Sanchez Osorio; (136) Martha Julia Chen Osorio; (137) Martín Lajuj Sánchez; (138) Matilde Osorio Chen; (139) Micaela Osorio Osorio; (140) Miguel Angel Pérez Osorio; (141) Miguel Osorio Chen; (142) Narcisa Chen Osorio; (143) Narcisa Chen; (144) Narcisa Osorio López; (145) Natividad Ixpatá Alvarado; (146) Nazaria Sanchez; (147) Nicolás Osorio Sanchez; (148) Pablo Chen Ismalej; (149) Pablo Osorio Sanchez; (150) Pablo Sánchez; (151) Pablo Tun Chen; (152) Patrocinio Tecu León; (153) Paula Chen; (154) Paula Pérez; (155) Paulina Ivoy Osorio; (156) Pedrina Osorio Pérez; (157) Petronila Cahuec Osorio; (158) Petronila Chen; (159) Petronila Osorio Ivoy; (160) Raymunda Sanchez Sanchez; (161) Reginaldo Sanchez González; (162) Ricardo Chen Osorio; (163) Rosa Sanchez Osorio; (164) Sabina Tecú Osorio; (165) Santa Eduardo Chen Chen; (166) Santa Ines Sanchez Pérez; (167) Santiago Chen Osorio; (168) Santos Joaquina Osorio Mendoza; (169) Santos Sánchez López; (170) Silveria Alvarado; (171) Silveria Osorio Ivoy; (172) Silveria Sic Sánchez; (173) Silveria Ivoy Sic; (174) Silveria Osorio Chen; (175) Timotea Osorio Chen; (176) Tomasa López Ixpatá; (177) Tomasa Osorio Chen; (178) Tomasa Tecú Osorio; (179) Toribia Cuxum Osorio; (180) Tranquilina Osorio Chen; (181) Ubaldo Ivoy Sánchez; (182) Valeria Sic Pérez; (183) Venancia Alvarado Ivoy; (184) Vicenta Chen Osorio; (185) Ventura Pérez Alvarado; (186) Vicenta Ivoy Chen; (187) Vicenta Lajuj Chen; (Vicenta Tecú Sanchez; (188) Víctor Osorio Chen; and (190) Victoriana Osorio Sic.

· Persons from the Community of Río Negro massacred on May 14, 1982, in the Community of Los Encuentros, municipality of Rabinal, department of Baja Verapaz

(1) Alberto Lajuj Tum; (2) Alberto L.; (3) Andrés Sanchez Sic; (4) Angela Sanchez Sic; (5) Antonio morales Lajuj; (6) Aurelia Alvarado Ivoy; (7) Basilio Lajuj Sánchez; (8) Benita Osorio Osorio; (9) Berta Gregoria Lajuj Toj; (10) Carlos Chen Osorio; (11) Cornelio Osorio Lajuj; (12) Cristina Lajuj Osorio; (13) Daniel Chen Osorio; (14) Emilio Osorio Tahuico; (15) Esteban Morales Lajuj; (16) Eulalia Pérez Tum; (17) Francisco Chen Osorio; (18) Francisco Sanchez Sic; (19) Gregoria Chen Osorio; (20) Héctor López Osorio; (21) Jerónimo Osorio Iboy; (22) José Osorio Valey; (23) Juan Osorio Chen; (24) Juan Osorio Iboy; (25) Juan Osorio Lajuj; (26) Juana Chen Osorio; (27) Magdalena Chen; (28) María Margarita Tum Iboy; (29) Maria Dolores Sic Siana; (30) Maria Isabel López; (31) María Margarita Tum Iboy; (32) Maria Morales Tahuico; (33) Mariano Alvarado Ivoy; (34) Martina Chen Osorio; (35) Martina Rojas; (36) Narcisa Chen Osorio; (37) Paula Osorio Chen; (38) Paulina Iboy Osorio; (39) Pedrina Lajuj Iboy; (40) Pedro Chen; (41) Pedro Chen Rojas; (42) Pedro López Osorio; (43) Pedro Osorio Chen; (44) Pedro Román; (45) Petrona Chen; (46) Ramona Lajuj; (47) Roberto Osorio Chen; (48) Rosa Alvarado Ivoy; (49) Sandra Sánchez Osorio; (50) Santo Timoteo Lajuj Tum; (51) Sebastiana Iboy Sic; (52) Silverio Alvarado Ivoy; (53) Soterio Pérez Tum; (54) Tomas Lajuj Chen; (55) Tomas Osorio Tahuico; (56) Victoriana Ivoy Osorio; and (57) Vilma Osorio Chen.

· Persons from the Community of Río Negro massacred on September 14, 1982, in the village of Agua Fría, municipality of Rabinal, department of Baja Verapaz

(1) Alberta Cuxum Sanchez; (2) Alejandro Sic Lajuj; (3) Ana Sanchez Sic; (4) Anastacia Cuxum Lajuj; (5) Angela Enriquez Mendoza; (6) Antonia Sic Alvarado; (7) Antonio Sic Sis; (8) Benito Sic Alvarado; (9) Bruna Sic Sanchez; (10) Carmelina Cuxum Lajuj; (11) Calixtro Sic Sic; (12) Catalina Rafael López; (13) Celestina Sic Lajuj; (14) Ciriaca Pérez Osorio; (15) Cristina Sic Alvarado; (16) Cruz Alvarado Sic; (17) Cruz Sanchez Chen; (18) Cruz Sic Lajuj; (19) Cruz Sic Sic; (20) Delfina Rafael Cuxum; (21) Demecia Hernández; (22) Demetrio Sic Alvarado; (23) Eduardo Cuxum Sánchez; (24) Santos Elena Sic Lajuj; (25) Emiliana Sic Cuxum; (26) María Herlinda Sic Enríquez; (27) Eusebia Sic; (28) Eusebia Sic Ismalej; (29) Eusebio Sic Lajuj; (30) Eusebio de Jesús Cuxum Sánchez; (31) Feliza Alvarado; (32) Fermin Sic Sis; (33) Fermina Alvarado Gonzalez; (34) Francisca Cuxum Sánchez; (35) Francisca Enriquez; (36) Francisca Sic Osorio; (37) Francisco Rafael Cuxum; (38) Francisca Sánchez Iboy; (39) Francisca Sic; (40) Francisca Sic Alvarado; (41) Francisco Sic Ismalej; (42) Gregoria Sic Alvarado; (43) Higinia Sic Sis; (44) Inocente Sánchez Sic; (45) Isabela Sic Sic; (46) Ismael Sic Cuxum; (47) Josefa Enríquez López; (48) Jesús Sic Osorio; (49) Jesusa Sic Sic; (50) Jorge Sic Hernández; (51) José Sic López; (52) José Sic; (53) Juan Osorio Chen; (54) Juan Sic Sic; (55) Juana Cuxum Lajuj; (56) Juana Mendoza Sic; (57) Juana Sanchez Osorio; (58) Juana Sic Enríquez; (59) Juana Sis Sic; (60) Juana Tum Sánchez; (61) Juliana Chen Alvarado; (62) Juliana Osorio Chen; (63) Juliana Sánchez Chen; (64) Juliana Sanchez Osorio; (65) Julio Enríquez López; (66) Leonarda Sic López; (67) Leonarda Sic Hernández; (68) Leonardo Sic Sic; (69) Leona Sic Sic; (70) Lucas Rafael; (71) Lucía Sanchez; (72) Lucía Sic Sanchez; (73) Lucía Sic Sic; (74) Luisa Sanchez Chen; (75) Marcelo Isquien; (76) María Felipa Sic Sic; (77) María Cuxun Sanchez; (78) María Cruz Lujuj Alvarado; (79) Maria Mercedes Cuxum Sánchez; (80) Maria Salomé Cuxum Sánchez; (81) Margarita Sánchez Iboy; (82) María Sic Cahuec; (83) Matilde Sic Lajuj; (84) Nemecia Hernández López; (85) Nolberto Sánchez Iboy; (86) Notuer Rafael Ivoy; (87) Pablo Sic Sic; (88) Pascual Sic Lajuj; (89) Pedro Sic Sanchez; (90) Petronila Sanchez Osorio; (91) Rafaela

Ivoy Uscap; (92) Rosa Cuxum Alvarado; (93) Regina Sic Sic; (94) Rosa Rafael; (95) Román Sic Alvarado; (96) Santiago Sanchez; (97) Santiago Sánchez Tum; (98) Santiago Sic Rafael; (99) Santos Iberta Cuxum Sánchez; (100) Santos Rafael; (101) Saturnino Sic Sic; (102) Sebastián Sic Alvarado; (103) Serapia Sic Sic; (104) Simeón Sic Alvarado; (105) Simeón Sic López; (106) Simona Sic Sic; (107) Tereso Sic Cuxum; (108) Tereso Sic Alvarado; (109) Tereso Sic Enríquez; (110) Timotea Lajuj López; (111) Tomás Cuxum Lajuj; (112) Tomasa Rafael Lajuj; (113) Valeriano Sic Isquien; (114) Vicenta Sanchez Ivoy; (115) Víctor Sic Sic; and (116) Zenon Sic Hernández.

· Persons from the Community of Río Negro assassinated on different dates by systematic persecution

(1) Alejandro Sánchez Chen; (2) Andrés Tum Sánchez; (3) Antonio Sánchez Tum; (4) Antonio Tum Sánchez; (5) Baleriano Osorio Chen; (6) Bernardino Uscap Chen; (7) Calixto Chen Sánchez; (8) Carlos Alvarado Ivoy; (9) Damacia Chen Sánchez; (10) Dominga Sánchez; (11) Esperanza Pérez Tum; (12) Evaristo Osorio Sánchez; (13) Felipe Iboy Chen; (14) Fermín Tum; (15) Francisco Cuxum Chen; (16) Fernando Chen; (17) Fernando Tecú Chen; (18) Francisco Sánchez Chen; (19) Francisco Sánchez Osorio; (20) Francisco Tum Uscap; (21) Fulgencia Chen Tolon; (22) José Iboy Osorio; (23) Juan Chen Tum; (24) Julio Chen Iboy; (25) Julio Sánchez Chen; (26) Justo Chen; (27) Justo Tecú Chen; (28) Mateo Sánchez Chen; (29) Mateo Uscap Chen; (30) Mateo Uscap Chen; (31) Miguel Angel Pérez Osorio; (32) Pablo Cahuec Chen; (33) Pablo Osorio Chen; (34) Pablo Osorio López; (35) Pablo Osorio Sánchez; (36) Pablo Uscap Tecú; (37) Pablo Uscap Tum; (38) Patrocinio Chen Sánchez; (39) Patrocinio Sánchez Chén; (40) Pedrina Osorio Pérez; (41) Pedro Chen López; (42) Pedro Chen Rojas; (43) Raimunda Sánchez Sánchez; (44) Raymunda Sánchez Sánchez; (45) Simeón Chen López; (46) Santos Oswaldo López Ixpatá; (47) Siriaco Sánchez Osorio; (48) Toribio Lajuj Chen; (49) Transito Chen Sánchez; (50) Valeriano Osorio Chen; and (51) Venancio Sánchez.

· Children of the Community of Río Negro who survived the massacre of March 13, 1982, subjected to slavery by members of the Civil Defense Patrols

(1) Agustín Chen Osorio; (2) Celestina Uscap Ivoy; (3) Cruz Pérez Osorio; (4) Froilan Uscap Ivoy; (5) Jesús Tecú Osorio; (6) José Osorio Osorio; (7) Juan Chen Chen; (8) Juan Chen Osorio; (9) Juan Pérez Osorio; (10) Juan Uscap Ivoy; (11) Juana Chen Osorio; (12) Maria Eustaquia Uscap Ivoy; (13) Pedro Sic Sánchez; (14) Silveria Lajuj Tum; (15) Tomasa Osorio Chen; (16) Florinda Uscap Ivoy; and (17) Juan Burrero.

· Survivors of the different massacres

(1) Teodora Chen Tecú; (2) Feliza González Coloch; (3) Juan Tum Sanchez; (4) Bruna Pérez Osorio; (5) Santiago Lajuj Jerónimo; (6) Bernarda Lajuj Osorio[FN37]; (7) Carmen Sanchez Chen; (8) Osorio Sanchez; (9) Osorio Lajuj; (10) Antonio Osorio Lajuj; (11) Paulina Chen Osorio; (12) Felipa Osorio Tahuico; (13) Dorotea Lajuj López; (14) Julián Sic López; and (15) Eusebio Sic, among others.

[FN36] On May 7 and 9, 2007, they submitted lists of alleged victims, which were forwarded to the State for its observations on May 25, 2007. On December 5, 2007, the petitioners sent updated lists of alleged victims that differ in some names with respect to those submitted on May 7 and 9, 2007. On December 7, 2007, the additional information produced by the petitioners was sent to the State.

The numbers of alleged victims in the record, according to the information sent by the petitioners on December 5, 2007, are as follows:

- (1) 89 persons from the village of Río Negro, massacred on February 13, 1982, in the village of Xococ, municipality of Rabinal, Baja Verapaz;
- (2) 190 persons from the village of Río Negro, massacred on March 13, 1982, municipality of Rabinal, Baja Verapaz;
- (3) 17 child survivors of the massacre of March 13, 1982, in the village of Río Negro, enslaved by their victimizers in the village of Xococ, Rabinal, Baja Verapaz;
- (4) 57 persons from the village of Río Negro, massacred and disappeared on May 14, 1982, in the hamlet of Los Encuentros, Rabinal, Baja Verapaz;
- (5) 116 persons from the village of Río Negro, massacred on September 14, 1982, in the hamlet of Agua Fría, municipality of Chicaman, department of El Quiché; and,
- (6) 51 persons from the village of Río Negro, massacred on different dates, as a result of systematic persecution, Rabinal, Baja Verapaz.

[FN37] According to the petitioners, survivor of the massacre of May 14, 1982, in Los Encuentros, and enslaved by a member of the PAC.

59. The petition notes as alleged victims, individual persons with respect to whom the Guatemalan State undertook to respect and ensure the rights enshrined in the American Convention.

60. Bearing in mind that the number of alleged victims of the different facts stated in the petition varies, and, observing the complexity of the situation, the IACHR will consider analyzing this during the merits stage. Based on the foregoing, the persons identified by the petitioners are listed for purposes of admissibility and may be expanded to include other alleged victims of the events described in this petition.

61. As regards the State, the Commission notes that Guatemala has been a state party to the American Convention since May 25, 1978, the date on which it deposited the respective instrument of ratification. Therefore, the Commission is competent *ratione personae* to examine the petition.

62. The Commission is competent *ratione loci* to take cognizance of the petition, for it alleges violations of rights protected in the American Convention said to have taken place in the territory of Guatemala, a state party to that treaty. The Commission is competent *ratione temporis* insofar as the obligation to respect and ensure the rights protected in the American Convention was already in force for the State as of the date the facts alleged in the petition are said to have occurred. Finally, the Commission is competent *ratione materiae*, because the petition sets forth possible violations of human rights protected by the American Convention.

63. The Commission is competent *ratione materiae* because the petitioners allege violations of rights protected by the American Convention on Human Rights. In addition, the Commission is competent to take cognizance of this complaint pursuant to Article XIII of the Inter-American Convention on Forced Disappearance of Persons, ratified by the Guatemalan State on February 25, 2000, which establishes that the crime of forced disappearance shall be considered continuing or permanent so long as the victim's fate or whereabouts have not been determined.

64. The Guatemalan State, in its note of August 14, 2007, referring to the information provided by the petitioners on May 7, 2007, said that notwithstanding the existence of the legitimate right of the victims of the massacres that occurred in the communities of Los Encuentros and the village of Agua Fría, it was the position of the State that these and other massacres should be submitted by separate and individual petitions, not as an amendment to the initial petition in the instant case.

65. As regards the position put forth by the State, the IACHR observes that according to the facts alleged by the petitioners, the massacres in the communities of Los Encuentros and Agua Fría are directly related to the events in the Community of Río Negro, and the State has had the procedural opportunity to introduce its information or arguments in this respect, thus it considers the information provided by the petitioners on May 7, 2007, to form part of the record in this petition.

B. Admissibility requirements

1. Exhaustion of domestic remedies

66. Article 46(1)(a) of the American Convention provides that for a complaint submitted to the Inter-American Commission to be admissible pursuant to Article 44 of the Convention, one must have first pursued and exhausted domestic remedies, in keeping with generally recognized principles of international law. The purpose of this requirement is to afford the national authorities the opportunity to take stock of the alleged violation of a protected right, and, if appropriate, resolve it before it is heard by an international body.

67. Article 46(2) of the Convention provides that the requirement of prior exhaustion of domestic remedies is not applicable when: (a) the domestic legislation of the state concerned does not afford due process of law for the protection of the right or rights that have allegedly been violated; (b) the party alleging violation of his rights has been denied access to the remedies under domestic law or has been prevented from exhausting them; or (c) there has been unwarranted delay in rendering a final judgment under the aforementioned remedies.

68. As the Inter-American Court has established, whenever a State alleges failure to exhaust domestic remedies, it bears the burden of showing that the domestic remedies not exhausted are "suitable" to cure the violation alleged; in other words, that the operation of those remedies is suitable for protecting the legal situation that has been infringed.[FN38]

[FN38] I/A Court H.R., Velásquez Rodríguez Case, Judgment of July 29, 1988, para. 64.

69. In the instant case, the State alleges that the petition does not satisfy the requirement of prior exhaustion of domestic remedies, provided for at Article 46 of the American Convention and Article 32 of the Commission's Rules of Procedure, given that there is a criminal proceeding pending into the facts that are the subject matter of the claim.[FN39]

[FN39] In its response to the complaint the State noted as follows: "Considering that to date the injured persons have not been notified of any final decision exhausting domestic remedies, the government of the Republic of Guatemala asks the Inter-American Commission on Human Rights to allow it to continue with the steps to apprehend Col. José Antonio Solares, with the aim of continuing with the trials and reaching a conviction if found guilty, as a result of the efforts that are being made by the competent authorities to carry out the arrest warrant." See State's brief of July 10, 2006, conclusions, page 7.

70. The petitioners allege that in the instant case there has been unwarranted delay, due to the fact that the survivors of the Community of Río Negro have been waiting for approximately 13 years for the conclusion of the investigations into the massacres in which members of the Community of Río Negro were victims.

71. In relation to the facts alleged, according to the information provided by the parties and the documents that appear in the record, several complaints were filed with the Guatemalan judicial authorities, giving rise to a series of investigations that led to trials of some of the alleged direct perpetrators.

72. It appears in the record that on July 6, 1993, a formal complaint was lodged alleging the existence of a clandestine cemetery in the community of Río Negro containing the remains of the victims of the March 13, 1982 massacre.[FN40] On July 13, 1993, the complaint was ratified and amended before the Criminal Court of First Instance of Salamá, Baja Verapaz, and on August 13, 1993, an investigation was formally launched[FN41] in case 722-93.[FN42]

[FN40] In 1994 the courts ordered the exhumation of the remains found in the community of Río Negro and the forensic anthropology report established that the human remains found were of at least 143 persons.

[FN41] See in: Criminal Court of First Instance of Salamá, Baja Verapaz. Resolution of August 13, 1993. Criminal Case No. No. 722-93. Document in the record.

[FN42] Case 722-93 was joined with Case 471-94, in which the events in the community of Agua Fría were being investigated.

73. On October 13, 1994, at the headquarters of the Office of the Procurator General (Procuraduría General de la Nación), Mr. Víctor Mendoza Sic came forward to denounce the massacre that occurred in the community of Agua Fría on September 14, 1982[FN43], and on

October 19, 1994, the Secretary General of the Office of the Procurator General asked the Attorney General and Chief of the Public Ministry to send instructions to initiate the respective investigation, based on Articles 289 and 298 of the Code of Criminal Procedure, and case 471-94 was opened.[FN44] On February 16, 1995, the Public Ministry asked the Criminal Judge of First Instance of Baja Verapaz to request that case 722-93 and case 471-94, before the Criminal Court of First Instance for Drug-trafficking and Crimes against the Environment of Baja Verapaz, be joined, as they are crimes of public action that should be heard by a single court.[FN45] On February 20, 1995, the Court declared the joinder of cases 722-93 and 471-94[FN46], so that in due course, should the Public Ministry consider it advisable to do so, it might issue a single indictment against the accused[FN47], Carlos Chen, Pedro González Gómez, and Fermín Lajuj Xitumul, who were already being tried for the crimes that occurred in the Community of Río Negro (Criminal Case No. 722-93).

[FN43] Office of the Attorney General of the Republic and the Public Ministry, complaint submitted by Mr. Víctor Mendoza Sic, in relation to the massacres that took place on September 13 and 14 at the Agua Fría farm. Document is in the record. In his complaint, Mr. Mendoza states as follows: "FIRST: On May 20 of the current year, he filed a complaint with the Office of Human Rights (Auxiliatura de Derechos Humanos) of Salamá, Baja Verapaz; on the massacres that occurred the 13th and 14th of September, 1982, Agua Fría farm, Río Negro, Rabinal, Baja Verapaz, in which approximately 80 persons died." Document is in the record.

[FN44] Procuraduría General de la Nación, official note No. 072/94SG-PGN. REF.GACT/bace. October 6, 1994. Document is in the record.

[FN45] Office of the Attorney General of the Republic, Public Ministry, Case No. 722-93. Of. 3o. Brought by Public Ministry Prosecutor Mynor Eliseo Elías Ogáldez. Document in the record.

[FN46] Criminal Court of First Instance for Drug-trafficking and Crimes against the Environment of Baja Verapaz, Salamá. Resolution of February 20, 1995. Signed by Judge Heberto Antonio Rodas De León. Document in the record.

[FN47] Criminal Court of First Instance for Drug-trafficking and Crimes against the Environment of Baja Verapaz, Salamá. Resolution of February 20, 1995. Signed by Judge Heberto Antonio Rodas De León. Document in the record.

74. In addition, it appears from the information provided by the parties that on October 7, 1999, the Criminal Court of First Instance for Drug-trafficking and Crimes against the Environment of Salamá, Baja Verapaz, handed down a judgment against Messrs. Carlos Chen, Pedro González Gómez, and Fermín Lajuj Xitumul, for the murder, on March 13, 1982, of Martha Julia Chen Osorio and Demetria Osorio. In addition:

It absolves defendants Carlos Chen (only last name), Pedro González Gómez, and Fermín Lajuj Xitumul of the crime of murder of which they are accused to have committed against Messrs. Santiago Sic Rafael, ... and Martha Cuxum[FN48], from the village of Agua Fría, municipality of Xicaman ...[FN49]

That the defendants Carlos Chen (only last name), Pedro González Gómez, and Fermín Lajuj Xitumul are liable in the degree of perpetrators [autores] for the crimes of murder committed against the life and physical integrity of Martha Julia Chen Osorio and Demetria Osorio.[FN50]

[FN48] The list of persons set forth in the Judgment of October 7, 1999, in the part that refers to the facts imputed to the accused, begins with Santiago Sic Rafael and ends with Martha Cuxum. See: Criminal Court for Drug-trafficking and Crimes against the Environment of Salamá, Baja Verapaz, Judgment of October 7, 1999.

[FN49] Criminal Court for Drug-trafficking and Crimes against the Environment of Salamá, Baja Verapaz, Judgment of October 7, 1999. Signed by Judge (Juez Vocal) Gloria Esperanza López Aquino, operative point No. III of the Judgment. Document in the record.

[FN50] Criminal Court for Drug-trafficking and Crimes against the Environment of Salamá, Baja Verapaz, Judgment of October 7, 1999. Signed by Judge (Juez Vocal) Gloria Esperanza López Aquino, operative point No. V of the Judgment. Document in the record.

75. According to the judgment of October 7, 1999, the proceeding was opened “into the crimes of two murders, against the Officer of the National Army of the Republic of Guatemala Mr. Antonio González Solares [sic José Antonio Solares González] and all other members of that institution who turn out to be involved in the deaths of Martha Julia Chen Osorio and Demetria Osorio Lajuj.”[FN51]

[FN51] Criminal Court for Drug-trafficking and Crimes against the Environment of Salamá, Baja Verapaz, Judgment of October 7, 1999. Signed by Judge (Juez Vocal) Gloria Esperanza López Aquino. Operative point No. XII of the Judgment indicates that the procedure is left open, for the crimes of two assassinations, against Messrs. Pablo Ruiz Alvarado, Macario Alvarado Toj, Simeón Enrique Gómez, Ambrosio Pérez Lajuj, Cristóbal Mendoza, Pablo Jesús Alvarado, Gabriel Cuxum Alvarado, Francisco Cuxum Alvarado, Marcelo Lajuj Osorio, Tomas Alvarado Toj, Lucas Lajuj Alvarado, Francisco Alvarado Lajuj, Victoriano Lajuj, Tomas Vino Alvarado, Víctor González López, Miguel Alvarado Sic, Serapio Lajuj Cuxum, and Bonifacio Cuxum. Document in the record.

76. The judgment of October 7, 1999, was appealed, and in February 2000 it became firm, modifying operative point VI of the judgment, so as to sentence Messrs. Carlos Chen, Pedro González Gómez, and Fermín Lajuj Xitumul to 50 years, not subject to commutation, in prison.[FN52] Subsequently, the accused Carlos Chen, only last name, filed a motion for cassation, which became firm on April 25, 2000.[FN53]

[FN52] Fourteenth Chamber of the Court of Appeals of Cobán, Alta Verapaz, Judgment of February 2000. Case No. 67-99-of.3o. Case No. 01-98-Of.1º.

[FN53] See Supreme Court of Justice, Cassation No. 27-2000. Criminal Chamber. Judgment of Cassation of March 15, 2000. See also Motion for Reconsideration within the Motion for Cassation, declared unfounded on April 25, 2000. Document in the record.

77. According to the petitioners, “during this process the victims contributed significantly, providing all the information, locating the graves, giving testimony before the court, despite the constant threats and persecution by groups sympathetic to the accused.”[FN54]

[FN54] See also the reference to these facts in the petitioners’ brief of April 16, 2007.

78. It appears in the record that on March 19, 2001, Ms. Denese Joy Burck (her name as a Guatemalan is Dominga Sic Ruiz, survivor and daughter of persons assassinated in the village of Xococ) gave testimony before the Office of the Special Prosecutor of the Public Ministry in Guatemala City. She testified as to the events alleged to have occurred in the community of Xococ, and on the events of March 13, 1982, in the community of Río Negro. As regards the events of February 13, 1982, in the community of Xococ, she testified that one week before February 12, 1982, her father’s identity card had been taken and held “by the people of Xococ” and they told him that he had to return one week later to pick it up. Specifically, in the statement it is indicated that on February 13, 1982, a total of 73 persons were assassinated, including men, women, and children, among them the declarant’s father, Mr. Rosendo Sic Iboy.[FN55]

[FN55] Statement given by Denese Joy Burck, on March 19, 2001, at the main office of the Office of the Special Prosecutor of the Public Ministry of Guatemala City. Document in the record.

79. In addition, it appears in the record that on March 26, 2003, at the Office of the District Prosecutor of Salamá, Baja Verapaz, Mr. Carlos Chen Osorio came forward and gave testimony on the facts that occurred in the community of Xococ, where several members of the Community of Río Negro went to the military zone of Cobán to speak with Colonel de la Cruz on the harassment to which they had been subjected by the members of the Army and the PACs from Xococ. The complaint indicates that upon returning from this meeting they were detained and ordered to return on Saturday with rope, a chicken, fish, and eggs to feed the soldiers “and my companions did so but they never returned, I didn’t go because I knew something bad was going to happen. All the men who went to Xococ died.” [FN56]

[FN56] Statement given by Mr. Carlos Chen Osorio, March 26, 2003, in the Office of the District Prosecutor of Salamá, Baja Verapaz. Document in the record.

80. In 2003, an investigation was initiated (case 28-2003) against the persons against whom a proceeding had been opened in cases 722-93 and 471-94. The Public Ministry asked that Messrs. Macario Alvarado Toj, Francisco Alvarado Lajuj, Tomas Vino Alvarado, Pablo Ruiz Alvarado, Bonifacio Cuxun López, Lucas Lajuj Alvarado, Serapio Lajuj Cuxun, Victor González, and Miguel Alvarado Sic be arrested, all of them members of the PACs, along with Colonel José Antonio Solares González. The arrest warrants were effective with respect to the first six mentioned.

81. In addition, it appears in the file that the Criminal Court for Drug-trafficking and Crimes against the Environment of Baja Verapaz, on July 14, 2004, in case 28-2003 against Macario Alvarado Toj, Francisco Alvarado Lajuj, Tomas Vino Alvarado, Bonifacio Cuxun López, and Lucas Lajuj Alvarado for their alleged participation in the events of Río Negro, scheduled October 5, 2004, as the date for holding the oral and public debate.[FN57] One objection was raised regarding the hearing date, and October 27, 2004, was set as the new date; at that hearing testimony was taken from the accused. On October 28, 2004, the expert forensic anthropology report was to be received, yet the session was suspended in the wake of a writ of amparo filed by the defense counsel for the accused. The writ of amparo was rejected as unfounded, by resolution of May 9, 2005. Subsequently, the defense counsel filed an interlocutory constitutional motion that suspended the hearing because the motion filed attacked the validity of the report on which the forensic anthropology expert was to render an opinion. The constitutional motion, according to the information provided by the parties, was resolved on March 21, 2007. According to the petitioners, the oral and public trial is still pending.

[FN57] Criminal Court for Drug-trafficking and Crimes against the Environment of Salamá, Baja Verapaz, resolution of July 14, 2004. Document in the record.

82. Having reviewed the information on the judicial investigations and proceedings that have been initiated, the Commission also observes that the State has not controverted the facts alleged by the petitioners[FN58], however, it argues that domestic remedies have not been exhausted. The State asks that the petition be found inadmissible, because it does not meet the requirements established in Article 46 of the Convention and Articles 31 and 32 of the Commission's Rules of Procedure.

[FN58] In this regard, one should note that the Commission for Historical Clarification, in its report called "Memory of Silence," accepted by the State as a result of the Peace Accords, verified the following facts: (a) the massacre that occurred in the community of Xococ, on February 7, 1982, in which according to the Report 74 persons were assassinated (55 men and 19 women); (b) the massacre in the village of Río Negro on March 13, 1982, in which, according to this Report, 12 years later it was established that there were three mass graves with a total of 143 skeletal remains (85 of them corresponding to boys and girls, and the rest to women); (c) the massacre that took place in the community of Los Encuentros on May 14, 1982, which according to the report was attacked with grenades and 79 peasant men and 15 women were disappeared; (d) the massacre in the community of Agua Fría on September 14, 1982, in which, according to

the report, 92 people died. The report also describes the death of seven members of the community of Río Negro by members of the Ambulatory Military Police. Guatemala Memorias del Silencio. Report of the Commission for Historical Clarification Volume VI illustrative cases. Annex I, pages 47 to 51.

The Commission for Historical Clarification was established by the Oslo Agreement of June 23, 1994, signed by the Government of the Republic of Guatemala and the Unidad Revolucionaria Nacional Guatemalteca (URNG), for the purpose of objectively, fairly, and impartially clearing up the facts regarding human rights violations and the acts of violence associated with the armed confrontation during the period from the beginning of the armed confrontation (1962) and the signing of the Agreement for a Firm and Lasting Peace (1996).

83. In this connection, the information presented to the Commission indicates that the domestic remedies duly invoked have not cleared up the many facts alleged, including the whereabouts of the persons^[FN59] allegedly disappeared.^[FN60] In addition, the domestic remedies invoked have succeeded in establishing the criminal liability of only some of the persons who are alleged to have participated in the facts set forth in the petition, notwithstanding the passage of time since the events and even since the signing of the Peace Accords in 1996; to this date, several investigations are pending before the Guatemalan courts.

[FN59] Including the disappearance of seven representatives of the Community of Río Negro in 1980.

[FN60] The crime of forced disappearance is continuing or permanent until there is a determination as to the fate or whereabouts of the victim. Inter-American Convention on Forced Disappearance of Persons.

84. Based on the foregoing considerations, and mindful of the characteristics of the many facts alleged, the Commission concludes that the exception provided for in Articles 46(2)(b) and (c) applies, because there has been an unjustified delay in the decision regarding domestic remedies.

2. Time period for submitting the petition

85. The American Convention establishes that for a petition to be admissible by the Commission it will have to be submitted within six months of the date on which the person allegedly injured has been notified of the final decision. In the claim under analysis, the IACHR has established the applicability of the exceptions to the prior exhaustion requirement under Article 46(2)(c) of the American Convention. In this respect, Article 32 of the Commission's Rules of Procedure establishes that in those cases in which the exceptions to the prior exhaustion of domestic remedies apply, the petition must be submitted within a time which, in the Commission's view, is reasonable. To this end, the Commission must consider the date on which the violation of rights is alleged to have occurred and the circumstances of each case.

86. In relation to the specific circumstances of the facts alleged in the petition, the facts that are the subject of the claim happened during the internal armed conflict in Guatemala (1962-1996), the most violent period of which was 1978 to 1983, under the de facto regimes of General Romeo Lucas García (1978-1982) and General Efraín Ríos Montt (1982-1983). At that time, military operations were concentrated in Quiché, Huehuetenango, Chimaltenango, Alta and Baja Verapaz, the southern coast, and Guatemala City. Approximately 91% of the violations recorded by the Commission for Historical Clarifications happened during those years.[FN61]

[FN61] IACHR, Admissibility Report No. 7/07, Petition 208-05, Florencio Chitay, Nech et al., Guatemala, February 27, 2007, para. 55.

87. The Commission should consider that the internal armed conflict ended with the signing of the Peace Accords, which opened up the possibility of seeking to clear up the facts of the violations perpetrated in the context of the conflict. Nonetheless, as has been observed, the effects in terms of the lack of effectiveness of the domestic remedies extend to the present, because at the time the petition was filed with the Inter-American Commission, several criminal proceedings were continuing in the initial stage.

88. The rule of a reasonable time for filing petitions with the inter-American human rights system must be analyzed in each case, mindful of the activity of the victims' next-of-kin to seek justice, the conduct of the state, and the situation and context in which the alleged violation occurred.

89. Therefore, in view of the context and characteristics of the instant case, as well as the fact that several investigations and judicial proceedings are still pending, the Commission considers that the petition was presented within a reasonable time, and that the admissibility requirement referring to the time for submission has been met.

3. Duplication of international procedures

90. It does not appear from the record that the petition is pending before any other international procedure, nor that it reproduces a petition already examined by this or any other international body. Accordingly, the requirements established at Articles 46(1)(c) and 47(d) of the Convention have been satisfied.

4. Characterization of the facts alleged

91. For the purposes of admissibility, the Commission should decide whether the facts alleged tend to establish a violation of rights, as stipulated in Article 47(b) of the American Convention, or whether the petition is "manifestly groundless" or "obviously out of order" as per Article 47(c). The standard of appreciation of those requirements differs from that used to rule on the merits; the Commission must make a prima facie evaluation to determine whether the petition lays a foundation for the possible or potential violation of a right guaranteed by the

Convention, but not to establish the existence of a violation of rights. This determination constitutes a primary analysis, which does not entail prejudging the merits of the case.

92. In the instant petition, the petitioners allege a series of events that they argue were carried out for the purpose of exterminating the indigenous community of Río Negro. The facts they invoke include the following:

- a) In early 1980, seven representatives of the community had been victims of forced disappearance.
- b) On March 4, 1980, seven members of the community had been extrajudicially executed in the community of Río Negro.
- c) On February 13, 1982, in the community of Xococ, approximately 89 members of the community of Río Negro had been extrajudicially executed. Prior to the execution, the children had been tortured and the women raped.
- d) On March 13, 1982, in the community of Río Negro, approximately 190 members of the community had been extrajudicially executed. Prior to the execution, the children had been tortured and the women raped. The properties and personal belonging of the members of the community had been sacked.
- e) In the wake of the events of March 13, 1982, 17 children from the community had been subjected to conditions of slavery.
- f) On May 14, 1982, in the village of Los Encuentros, where survivors from the community of Río Negro had taken refuge, 57 persons were victims of extrajudicial execution and forced disappearance.
- g) On September 14, 1982, in the community of Agua Fría, where survivors from the community of Río Negro had taken refuge, approximately 116 personas had been extrajudicially executed. The houses had been sacked and burned.
- h) 51 members of the community of Río Negro had been assassinated on different dates, because of the systematic persecution directed against the community.
- i) The exhumation of all the human remains of the persons buried in the clandestine cemeteries has not been possible, due to the extent to which many bodies were burned, because they were exposed to the elements, or because they were buried near water currents that carried them away.
- j) The identification of all the other remains found in the clandestine cemeteries has not been possible, because in many cases whole families were eliminated without survivors who could provide information to identify the remains.
- k) The survivors from the community of Río Negro had to take refuge in the mountains and live in subhuman conditions.
- l) The persecution of the members of the community of Río Negro began in 1980 and continued for several years, preventing the survivors, inter alia, to bury the members of the community who were assassinated legally and in keeping with their rites and customs, organize themselves in keeping with their communal ways, maintain their social, economic, political and cultural structures, live in their ancestral territories, or bring actions before the justice system.
- m) Domestic remedies established the criminal liability of only some of the persons who had participated in the various facts set forth above.

93. With respect to the facts set forth above, The petitioners allege that the State has violated Articles 3, 4, 5, 6, 8, 11(1), 12, 17, 18, 19, 20, 24, 25, and 27, in relation to Article 1(1) of the Convention, to the detriment of the Indigenous Community of Río Negro and its members. The State, for its part, has not offered any observations with regard to this requirement.

94. The Commission observes that the facts alleged tend to establish serious violations of the human rights of the Maya-Achí Indigenous Community of Río Negro.

95. As for the allegations of assassinations, forced disappearance, and torture of the members of the Community of Río Negro and their leaders, the Commission observes that they tend to establish a violation of Articles 4, 5, and 3 of the American Convention. As regards the allegations of rape of the women of the Community of Río Negro, the Commission observes that such allegations tend to establish a violation of Article 5 of the American Convention.

96. As regards the allegations on the subjection to slavery of 17 children from the Community of Río Negro, the Commission observes that it tends to establish a violation of Articles 6 and 19 of the American Convention. In addition, as regards the allegations of impairments of their rights suffered by the survivors of the massacres who were children at the time of the facts, the Commission observes that they tend to establish a violation of Article 18 of the American Convention.

97. In addition, as regards the allegations that they were identified as subversive enemies based on their belonging to the Maya-Achí and the effects of the acts of violence on family and community life, including the exercise of their spiritual rights and ancestral traditions, the Commission observes that they tend to establish a violation of Articles 11, 12, 17, and 24 of the American Convention.

98. As regards the allegations of the impediments to the investigation, prosecution, and punishment of all those responsible for the facts alleged, the Commission observes that they tend to establish a violation of Articles 8 and 25 of the American Convention.

99. In this context, and mindful of the petitioners' arguments and the documents produced by the parties, the Commission considers that the facts alleged by the petitioners tend to establish violations of the rights protected in Articles 3, 4, 5, 6, 8, 11(1), 12, 17, 18, 19, 24 and 25, in relation to Article 1(1), provided for in the American Convention, to the detriment of the Indigenous Community of Río Negro and its members.

100. In addition, the Commission observes that the facts narrated could tend to establish a violation of: (a) Article 16 considering that for years the members of the Maya-Achí indigenous community of the Community of Río Negro had not been able to organize in keeping with their own systems of social organization; (b) Article 21, in relation to the loss of the property, for example, dwellings, personal belongings, animals, and crops, of the members of the Community of Río Negro in relation to their de facto exclusion from their traditional territories, and as a result of the acts of violence of which they were allegedly victims, and; (c) Article 22, in relation to alleged limitations imposed on the members of the Community in terms of the survivors' right to freedom of movement and return.

101. The Commission considers that the facts alleged tend to establish a violation of the commitments assumed by the Guatemalan State in relation to Article I of the Inter-American Convention on Forced Disappearance of Persons, in connection with the allegations of the disappearance of seven leaders of the community of Río Negro in 1980, of 48 persons from the village of Los Encuentros in May 1982, and with respect to the alleged victims whose remains have not been recovered or identified to this day.

102. The IACHR considers that the facts described do not include sufficient grounds to tend to establish a violation of the right to nationality, protected by Article 20 of the American Convention, or with respect to Article 27 of the same instrument.

103. In view of the foregoing, the Commission will analyze, in the merits stage, whether there is a possible violation of Articles 3, 4, 5, 6, 8, 11(1), 12, 17, 18, 19, 24, and 25, in relation to Article 1(1), of the American Convention, to the detriment of the Indigenous Community of Río Negro and its members. In addition, in application of the principle of *iura novit curia*, the Commission will analyze whether there is a possible violation of Articles 2, 16, 21, and 22 of the Convention, and for the alleged violation of Article I of the Inter-American Convention on Forced Disappearance of Persons, all in relation to Article 1(1) of the American Convention.

104. Accordingly, the Commission considers the requirements at Article 47(c) of the American Convention to be satisfied.

V. CONCLUSION

105. The Commission concludes that it is competent to take cognizance of the complaint submitted by the petitioners, that the petition is admissible, in keeping with Articles 46 and 47 of the Convention for the alleged violation of Articles 3, 4, 5, 6, 8, 11(1), 12, 17, 18, 19, 24 and 25 of the American Convention in connection with Article 1(1) of the same Convention. In addition, by application of the principle of *iura novit curia*, in the merits stage the Commission will analyze the possible application of Articles 2, 16, 21, and 22 of the Convention, and the alleged violation of Article I of the Inter-American Convention on Forced Disappearance, all in relation to its Article 1(1).

106. By virtue of the arguments of fact and law set forth above, and without prejudging on the merits,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To find this petition admissible with respect to Articles 3, 4, 5, 6, 8, 11(1), 12, 17, 18, 19, 24, and 25 of the American Convention in connection with Article 1(1) of the same Convention. In addition, by application of the principle *iura novit curia*, the Commission concludes that the petition is admissible with respect to the possible violation of Articles 2, 16, 21, and 22 of the

Convention, and the possible violation of Article I of the Inter-American Convention on Forced Disappearance, all in relation to Article 1(1) of the Convention.

2. To find this petition inadmissible with respect to the alleged violations of the right recognized in Article 20 and 27 of the American Convention.
3. To transmit this report to the petitioners and the State.
4. To continue with its analysis of the merits of the case.
5. To publish this report and include it in the Annual Report of the Commission to the OAS General Assembly.

Done and signed at the headquarters of the Inter-American Commission on Human Rights in the city of Washington, D.C., on the 5th day of March, 2008. (Signed): Paolo G. Carozza, Chairman; Luz Patricia Mejía Guerrero, First Vice-Chairwoman; Felipe González, Second Vice-Chairman; Sir Clare K. Roberts, Paulo Sérgio Pinheiro, Florentín Meléndez, and Víctor E. Abramovich, members of the Commission.