

**REPORT No. 144/10**  
PETITION 1579-07  
ADMISSIBILITY  
RESIDENTS OF THE VILLAGE OF CHICHUPAC AND THE HAMLET OF XEABAJ,  
MUNICIPALITY OF RABINAL  
GUATEMALA  
November 1, 2010

**I. SUMMARY**

1. On December 13, 2007 the Inter-American Commission on Human Rights (hereinafter the "Inter-American Commission", "Commission" or "IACHR") received a claim filed by the Asociación Bufete Jurídico Popular (hereinafter "the petitioners"), on behalf of the residents of the village of Chichupac and the hamlet of Xeabaj in the municipality of Rabinal, against the Republic of Guatemala (hereinafter the "Guatemalan State," "Guatemala," or the "State"). The petition argues that 82<sup>1</sup> members of the Maya Achi indigenous communities of Chichupac, Toloxcoc, Xeabaj, El Apazote, Chijom, and El Tablón, in the municipality of Rabinal (hereinafter the "alleged victims"), were victims of massacres, rape, failure to lend assistance, extrajudicial executions, torture, forced disappearance, illegal detentions, and/or forced labor, carried out by the Guatemalan Army and its collaborators, as the result of a policy aimed at persecuting and exterminating Mayan communities.

2. The petitioners argue that the Guatemalan State violated Articles 4 (right to life), 5 (right to humane treatment), 6 (freedom from slavery), 7 (right to personal liberty), 8 (right to a fair trial), 11(1) (right to privacy), 12 (freedom of conscience and religion), 13 (freedom of thought and expression), 15 (right of assembly), 16 (freedom of association), 17 (rights of the family), 21 (right to property), 22 (freedom of movement and residence), 24 (right to equal protection), and 25 (right to judicial protection) enshrined in the American Convention on Human Rights (hereinafter the "Convention" or the "American Convention"), to the detriment of the alleged victims. Furthermore, they argue that the State is responsible for the violation of Articles I, II, V, VI, VII, VIII, IX, XI, XVIII, XXI, XXII, XXIV, XXV and XXVI of the American Declaration of the Rights and Duties of Man (hereinafter, the "American Declaration"); Articles I, II, III, IV, V, VII, VIII, IX, X, XIII, XIV and XV of the Inter-American Convention on Forced Disappearance of Persons (hereinafter the "Convention on Forced Disappearance"); Articles 1, 2, 3, 4, 5, 6, 8, 9, 10, 12 and 16 of the Inter-American Convention to Prevent and Punish Torture (hereinafter the "Convention on Torture"); and Articles 1, 2, 3, 4, 7, 8, 9, 12, 13, 18, 20, 25 and 26 of the Universal Declaration on Human Rights (hereinafter, the "Universal Declaration"). With regard to the admissibility requirements, they note that in this case the exceptions to the requirement to exhaust domestic remedies referred to in Article 46(2)(b) and (c) of the Convention both apply.

3. The State does not dispute the facts alleged by the petitioners. However, it notes that the complaint covers multiple cases of various kinds, which occurred in different places, times and circumstances that have resulted in the investigation of various judicial cases, which would be inappropriate to process together; thus, the State requested a breakdown of the petition and its processing into separate cases. Regarding the admissibility of the claim, the State argues that domestic remedies have not been exhausted.

4. After analyzing the petition, in accordance with the provisions of Articles 46 and 47 of the American Convention, as well as Articles 30 and 36, among others, of its rules, the IACHR concludes that

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<sup>1</sup> On March 19, 2010, the petitioners submitted a list naming 86 alleged victims: (i) with respect to four of them they did not provide information on the acts of violence committed to their detriment – Manuel de Jesús Alarcón Morente, Patricio González Xitumul, Pedro Pérez Amperez, and María Concepción Xitumul Xitumul; (ii) with respect to the other 82 alleged victims, 32 are described as victims of torture and extrajudicial executions consummated in a massacre, 39 as victims of extrajudicial executions, eight victims of forced disappearance, one victim of rape, one victim – a 5-year-old boy – who died due to lack of medical care as it was impossible for his next-of-kin to seek assistance given the pattern of persecution to their detriment, and one victim of an illegal detention.

it is competent to hear the claim filed by the petitioners, for the alleged violation - to the detriment of the alleged victims - of Articles 4, 5, 6, 7, 8, 11.1, 12, 13, 16, 17, 21, 22, 24 and 25 of the American Convention in conjunction with Article 1(1) of that Convention and Article I of the Inter-American Convention on Forced Disappearance of Persons. Furthermore, in application of the principle of *iura novit curia*, the Commission concludes that the petition is admissible for the alleged violation of Articles 3 and 23 of the Convention in conjunction with Article 1(1) of the same instrument. The Commission decided to declare the petition inadmissible in relation to the alleged violation of Article 15 of the American Convention and in relation to the provisions of the American Declaration and the Convention on Torture that have been invoked. Finally, the IACHR decides to notify the parties, publish this admissibility report and include it in its Annual Report to the General Assembly of the OAS.

## **II. PROCEDURES BEFORE THE COMMISSION**

5. The petition was received on December 13, 2007 and registered as P-1579-07. On July 14, 2008 the State was notified, and was given two months to submit its observations. Guatemala's response was received by the IACHR on September 10, 2008.

6. In addition, the Commission received information from the petitioners on the following dates: December 29, 2008; January 29, July 16, September 15, November 5, and November 20<sup>2</sup>, 2009; and March 19, 2010. These communications were duly forwarded to the State.

7. Moreover, the IACHR received information from the State on March 23 and August 21, 2009; and January 11 and May 4, 2010. These communications were duly transmitted to the petitioners.

8. In addition, on May 6, 2010, the petitioners submitted the expert report "Informe sobre el daño a la salud mental (moral) de los habitantes de las comunidades indígenas maya achí de Chichupac, Xeabaj y otras comunidades circunvecinas a éstas del municipio de Rabinal, Departamento de Baja Verapaz, Guatemala, Centroamérica; derivado de la masacre de Chichupac ocurrido el 8 de enero de 1982 y otros hechos de violencia conexos con la masacre, ocurridos con anterioridad y posterioridad a la misma" (Report on the harm to the mental (moral) health of the inhabitants of the Maya Achí indigenous communities of Chichupac, Xeabaj, and other neighboring communities in the municipality of Rabinal, department of Baja Verapaz, Guatemala, Central America, arising from the Chichupac massacre of January 8, 1982 and other related acts of violence before and after it"). The document was forwarded to the State on June 10, 2010.

## **III. POSITION OF THE PARTIES**

### **A. The petitioners**

9. The petitioners argue that between 1981 and 1986, the Guatemalan State adopted a policy of persecution, torture and extermination against the Maya Achí population of Rabinal municipality, department of Baja Verapaz. They argue that the State's policy of genocide was put into effect through several criminal acts: massacres, arbitrary executions, forced disappearances, tortures, rapes and destruction of entire communities. They add that the victims were mostly poor indigenous people belonging to Maya Achí people, accused of belonging to guerrillas and who could not exercise their right to defend themselves. They argue that the claim relates to alleged violations of human rights as enshrined in the American Convention, whose material responsibility involves the Guatemalan State because it was the result of an extermination policy implemented by the National Army under the leadership of various military governments; in connection in time and space.

10. They refer to multiple violent acts that took place from August 24, 1981 to August 17, 1986, allegedly planned by the Military High Command and implemented by the National Army, military

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<sup>2</sup> On that occasion the petitioners partially withdrew their briefs of July 15 and November 3, 2009, received by the Executive Secretariat of the IACHR on July 16 and November 5 respectively.

commissioners, *judiciales*, and the civil self-defense patrols (hereinafter, "PAC" for their initials in Spanish)<sup>3</sup>, against the Maya Achí population located in Rabinal municipality, department of Baja Verapaz. In this context, the petitioners identify a number of alleged victims of extrajudicial executions, torture, forced disappearances, rapes, illegal detentions, failure to lend assistance and forced labor, and enclose, for each case, information on: (1) date, place and cause of the act of violence, and in some cases identify the alleged perpetrators of acts of violence; (2) copies of the claims filed and cases processed; (3) copies of forensic reports; (4) birth and death certificates of the alleged victims; (5) identification of their relatives; (6) letters signed by the President of the Republic of Guatemala, Álvaro Colom, in which he apologizes, on behalf of the Guatemalan State, to the next-of-kin of some of the alleged victims named in this petition, for the anguish and pain caused during the internal armed conflict. Specifically, the allegations refer to:

**a. Massacre in the village of Chichupac (January 8, 1982)**

11. They report that on the morning of January 8, 1982 the residents of the village of Chichupac were summoned by the Army, military commissioners and *judiciales* to a meeting at the community health center and, after about 300 people were gathered, the soldiers distributed toys to the children and ordered the women to leave and go home. The military agents then allegedly ordered the men to line up, carrying their identity cards in hand. They note that based on a list of names held by the *judiciales*, 32 men - including catechists, health promoters and community leaders of Chichupac, Xeabaj, Coyojá, El Tablón and Chijom - were separated from the rest of the group, accused of belonging to the guerrillas and forced to enter the health center. The other men were forced to return home, under the caveat that they should not get into "anything" to avoid meeting the same fate as the previous group.

12. They argue that inside the health center the 32 men were cruelly tortured<sup>4</sup> and forced to walk to the highest point of the village, where they were extrajudicially executed and their bodies dumped in mass graves. They note that one of the alleged victims, Félix Alvarado Xitumul, died as a result of the torture inflicted on him shortly after starting the walk from the health center.

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

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<sup>3</sup> The military commissioners emerged in 1939 as an auxiliary figure to support and assist the National Army formed by civilians linked to security forces. During the armed conflict their numbers increased significantly, they became spies for the security forces in villages of Guatemala, and were the direct implementers of illegal procedures ordered by the authorities of the Army. Guatemala, Memory of Silence. Report of the Commission for Historical Clarification (*Guatemala, Memoria del Silencio. Informe de la Comisión para el Esclarecimiento Histórico*). Volume I, Chapter I, Title IV, paragraphs 443 ff.

The *judiciales* were members of the investigations department of the National Police dedicated to political persecution (REMHI Report, Recuperation of Historical Memory (*Informe REMHI, Recuperación de la Memoria Histórica*, Volume II, Chapter I, Title I) and during the internal armed conflict came to be the ones to implement irregular practices institutionalized by the Government. (*Guatemala, Memory of Silence. Report of the Commission for Historical Clarification [Guatemala, Memoria del Silencio. Informe de la Comisión para el Esclarecimiento Histórico]*). Volume II, Chapter II, Title IV, paragraphs 1168 ff.).

The PACs were created in late 1981 by the *de facto* military regime of General Ríos Montt, as part of a policy to exterminate the guerrilla movement by relocating the indigenous population and eradicating "any person or community of persons under suspicion, through procedures that violated human rights." IACHR, *Fourth Report on the Situation of Human Rights in Guatemala*, OEA/Ser.LV/II.83. June 1, 1993, para. 55.

<sup>4</sup> In this regard, they pointed out that from the houses they could hear the screams of pain and that the patrollers who were forced to clean the health center on the following day found blood as well as remains of human flesh.

14. The petitioners argue that the next day, members of the community approached the highest point of the village, where they found two mass graves and proceeded to dig a third grave to bury those human remains that had been left unburied. According to the petitioners, the survivors of the massacre sought refuge in the mountains to protect their lives and their families, where they remained for three years, experiencing persecution by the Army and its associates. Moreover, they argue that family life and the exercise of religious practices were affected by the massacre and that they suffered partial and/or total loss their material possessions, such as their crops, animals and homes.

15. In terms of judicial actions, they reported that on March 25, 1993, Ana Calate Sic reported before the Court of First Instance of the city of Salamá, the existence of a clandestine cemetery in the village of Chichupac. They add that from May 6 to 19, 1993, an exhumation was conducted and the existence of a clandestine cemetery made up of three mass graves was confirmed, where at least 30 people who died violently were buried.

16. Furthermore, they note that on December 2, 1997 Miguel Sic Osorio, Fabiana Chen Galiego, and Teresa Cacaj Cahuec filed a complaint before the Court of First Instance for Drugs and Environmental Crimes of Baja Verapaz for the Chichupac massacre and asked to be admitted as additional complainants. They report that since 2005 the case is being investigated by the Special Cases and Human Rights Violations Unit of the Office of the Prosecutor with the Human Rights Section of the Guatemala City Public Prosecutor's Office. They argue that since the claim was filed in 1993, the courts have only taken statements from some of the relatives of the alleged victims, without conducting any proceedings aimed at investigating, prosecuting, and convicting the alleged perpetrators of the massacre, and that the case has come to a standstill.

**2. Extrajudicial executions, torture, forced disappearances, failure to lend assistance, rape, illegal detentions and/or forced labor of the residents of the villages of Chichupac, Toloxcoc, Xeabaj, El Apazote, Chijom and El Tablón, Baja Verapaz, from August 24 , 1981 to August 17, 1986**

17. The petitioners point out that the massacre of January 8, 1982 in Chichupac was not the only act of violence committed against the Maya Achí people. In this sense, they identify other alleged victims of violent acts carried out from August 24, 1981 to August 17, 1986, as part of an alleged plan of genocide driven by the governments of that period and perpetrated by security forces. All alleged victims would have been Mayan indigenous from the villages of Chichupac, Toloxcoc, Xeabaj, El Apazote, Chijom, and El Tablón.

18. Specifically, the petitioners allege 39 extrajudicial executions. They note that in all cases the alleged victims were accused of having links with the guerrillas, that the majority of bodies evidenced torture, and that one of the alleged victims, before being executed, was raped. They name the following 39 alleged victims: (1) Gregoria Valey Ixtecoc (or Gregoria Valey or Gregoria Valey Yxtecoc), raped and extrajudicially executed on November 22, 1982 in her home in the village of Chichupac; (2) Silvestre Sic (or Silvestre Sic Xitumul), extrajudicially executed on December 20, 1984 in his home in the village of Chichupac; (3) Raymunda Corazón (or Raymunda Sican Corazón or Raymunda Sical), from the village of Chichupac, extrajudicially executed on December 20, 1984 in her home; (4) Víctor Alvarado Valey, originally from the Toloxcoc Village of Rabinal – four kilometers from the village of Chichupac – extrajudicially executed on January 1, 1982 in his community; (5) Ceferino Alvarado Sucup (or Seferino Alvarado Sucup, son of Víctor Alvarado Valey) originally from the village of Toloxcoc, extrajudicially executed on January 1, 1982 in his community; (6) Fidel Alvarado Sucup (son of Víctor Alvarado Valey), originally from the village of Toloxcoc, extrajudicially executed on January 1, 1982 in his community; (7) Domingo Reyes Juárez, originally from the village of Toloxcoc, extrajudicially executed on January 1, 1982 in his community; (8) Andrés Reyes Román (son of Domingo Reyes Juárez), originally from the village of Toloxcoc, extrajudicially executed on January 1, 1982 in his community; (9) Santiago Reyes Román (son of Domingo Reyes Juárez), originally from the village of Toloxcoc, extrajudicially executed on January 1, 1982 in his community; (10) Elías Milián González, originally from the village of Toloxcoc, extrajudicially executed on March 22, 1982 in a health center located in Xeabaj; (11) Amelia Milían

Morales (daughter of Elías Milián González), originally from the village of Toloxcoc, executed on April 20, 1982 in the village where she lived; (12) Medardo Juárez García, executed on August 31, 1984 in the village of Chichupac, where he was originally from; (13) Eusebia Grave García, originally from the village of Chichupac, extrajudicially executed on October 22, 1983, while in hiding in Chichupac area; (14) José León Grave García (brother of Eusebia Grave García), originally from the village of Chichupac, extrajudicially executed on October 22, 1983 while in hiding in Chichupac area; (15) Mateo Grave, originally from the village of Chichupac, extrajudicially executed on August 24, 1981 in Salamá, Baja Verapaz<sup>5</sup>; (16) Pedro de Paz Ciprián, originally from the village of Chijom, extrajudicially executed on August 24, 1981, in Salamá, Baja Verapaz; (17) Juan Alvarado Grave, from the village of Chichupac, extrajudicially executed on August 23, 1981, in the municipal seat of Rabinal; (18) Efraín García de Paz (or Efraín García Depaz), originally from the village of Chichupac, extrajudicially executed on August 17, 1986 in the main town of the municipality of Rabinal; (19) Adrián García Manuel, originally from the village of Chichupac, extrajudicially executed on January 18, 1982 at the military post located in the village of Guachipilín, Rabinal; (20) Hugo García Depaz (son of Adrián García Manuel), originally from the village of Chichupac, extrajudicially executed on January 18, 1982 at the military post located in the village of Guachipilín, Rabinal; (21) Abraham Alvarado Tecú (or Abraham Alvarado de Paz or Habran Alvarado de Paz, nephew of Adrián García Manuel), originally from the village of Chichupac, extrajudicially executed on January 18, 1982 at the military post located in the village of Guachipilín, Rabinal; (22) Raymundo Alarcón (or Edmundo Alarcón Morete, as apparently registered in its identification papers), extrajudicially executed at the military post located in the village of Guachipilín, Rabinal; (23) Gorgonio González González, originally from Xeabaj and Chijom, kidnapped November 26, 1982 in his community, and extrajudicially executed<sup>6</sup>; (24) Gabino Román Iboy, from Xeabaj and Chijom, kidnapped November 26, 1982 in his community and extrajudicially executed; (25) Cruz Amperes Sis (or Cruz Pérez Ampérez), from Xeabaj and Chijom, kidnapped on November 26, 1982, in his community and extrajudicially executed; (26) Eustaquio Ixtecoc, from Xeabaj and Chijom, kidnapped November 26, 1982, in his community and extrajudicially executed; (27) Francisco de Paz, from Xeabaj and Chijom, kidnapped November 26, 1982 in his community and extrajudicially executed; (28) Jorge Galeano Román (or Jorge Geleano Román), from the village of Xeabaj, kidnapped November 26, 1982, in his community and extrajudicially executed; (29) Rafael Depáz Tecú, from the village of Xeabaj, kidnapped November 26, 1982 in his community and extrajudicially executed; (30) Enrique Mendoza Sis, from the village of Xeabaj, kidnapped November 26, 1982 in his community and extrajudicially executed; (31) Juan Pérez Sic, from the village of Xeabaj, kidnapped November 26, 1982, in his community and extrajudicially executed; (32) Dionicio Bachan, kidnapped November 26, 1982, in the village of Xeabaj and extrajudicially executed; (33) Rosa Gonzáles Tecú, extrajudicially executed on March 2, 1983 near the village of Xeabaj; (34) Enriqueta Tecú (or Enriqueta Tecú Chiquito, mother of Rosa González Tecú), extrajudicially executed on March 2, 1983 near the village of Xeabaj; (35) Luciano Alvarado, extrajudicially executed on March 2, 1983, near the village of Xeabaj; (36) Héctor Rolando Alvarado García, extrajudicially executed on March 2, 1983 near the village of Xeabaj; (37) Adela Florentina Alvarado García, extrajudicially executed on March 2, 1983 near the village of Xeabaj; (38) Lucía Xitumul Ixpancoc (or Luciana Xitumul Ixpancoc), extrajudicially executed on March 2, 1983 near the village of Xeabaj; and (39) Andrea Osorio Galeano, extrajudicially executed on January 8, 1982 in the village of Chichupac, where she was originally from.

19. Furthermore, the petitioners allege eight cases of forced disappearances carried out by members of the Army or its allied forces: (1) Juan Cruz Mendoza Alvarado, originally from the village of El Apazote, Santa Cruz El Chol, Baja Verapaz, kidnapped from his home by members of the security forces on January 31, 1982 and allegedly assassinated – his remains have not been found; (2) José Cruz Mendoza Sucup (father of Juan Cruz Mendoza Alvarado), originally from the village of El Apazote, kidnapped from his home by members of the security forces on January 31, 1982 and allegedly assassinated – his remains have not been found; (3) Lorenzo Depaz Ciprian (and/or Lorenzo de Paz

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<sup>5</sup> This person was arrested on August 23, 1984 when he was on his way from San Miguel Chicaj (Salamá) to Rabinal. He died the next day from multiple gunshot wounds and multiple fractures to the head.

<sup>6</sup> With respect to the extrajudicial executions said to have taken place on November 26, 1982, in the village of Xeabaj, the petitions note that the forensic anthropology report presented by the Public Prosecutor's Office by the Fundación de Antropología Forense de Guatemala indicates that they occurred on November 29, 1981.

Siprian and/or Florencio Depaz Ciprian), originally from the village of Chichupac, arrested on January 8, 1982 by members of the PAC and the National Army on his way to the main town in the municipality of Rabinal – his whereabouts are still unknown; (4) Leonardo Cahuec González, originally from the village of Chichupac, kidnapped on January 18, 1982 in Rabinal by two people in civilian clothes “who looked like *judiciales*” who forced him to get in a car after threatening him with firearms – his whereabouts remain unknown; (5) María Concepción Chen Sic, originally from the village of Chichupac, kidnapped from her home on February 12, 1982 by members of the National Army and the PAC and taken away in a pick-up truck with unknown destination – her whereabouts are still unknown; (6) Casimiro Siana, auxiliary mayor of the village of Chichupac, kidnapped February 12, 1982 by members of the Army and the PAC and taken to a place unknown in a pick-up truck – his whereabouts remain unknown to this day; (7) Marcelo Sic Chen, originally from the village of El Apazote, who on December 13, 1984 went to the model village La Colonia de Chichupac to meet with members of the National Army to request amnesty; who then brought him to the military post of Rabinal, where they allegedly extrajudicially executed him five days later – yet, the petitioners note that his remains have yet to be found; and (8) Pedro Siana Us (or Pedro Siana), originally from Xeabaj, arrested by the security forces on August 23, 1981 on his way from San Miguel Chicaj (Salamá) to Rabinal – his whereabouts are still unknown.

20. The petitioners also alleged that Juana García Depaz, originally from the village of Chichupac, was arrested on October 22, 1983, and transferred to the military post of Rabinal, Baja Verapaz, where she was repeatedly raped by members of the National Army during the four days she was held captive. Furthermore, she is said to have been raped by an Army soldier in October, 1982 and raped a third time in July, 1985 by a *judicial* in the model village know as “La Colonia.” As a result of the last two rapes mentioned, Juana García Depaz became pregnant.

21. Moreover, they report the death of Antonio Chen Mendoza, a resident of the village of Chichupac, who died on November 12, 1982, when he was five years old. They note that the State is responsible for his death because it instituted a policy of persecution and repression against the Maya Achí of Rabinal, which kept his family from seeking medical assistance.

22. They also allege that on the morning of January 8, 1982, Ciriaco Galiego López, originally from the village of Chichupac, was detained by members of the PAC and the National Army on his way to the main town of Rabinal. They allege that he had been transferred to the municipal jail, where he was deprived of liberty until 7 p.m. that day.

23. Moreover, they claim that in this context of persecution and extermination, a policy of forced displacement of Maya Achí indigenous persons was implemented. In this regard, they reported that in late 1984 the Army established, in Chichupac, a model village called “La Colonia,” where people were allegedly forced to live under military control and seek amnesty, and where the women were forced to cook daily for approximately 300 soldiers.

24. They also refer to many other acts of violence, presumably consummated to the detriment of other members of the communities of Chichupac, Xeabaj, Chijom, El Tablón, and Toloxcoc and allegedly perpetrated by members of the National Army and its allied forces. They assert that that information should be considered as an indicator of the magnitude of the collective harm consummated against the Maya Achí communities.

25. Regarding the exhaustion of domestic remedies, the petitioners argue that the facts were duly reported to the pertinent authorities from March 1995 to July 2001. Regarding the failure to lend assistance that resulted in the death of a child, they say it was reported on April 7, 2006. They also argue that in none of the cases have the facts reported been investigated, and that the State’s obligation to promptly administer justice was breached, because in all cases there is unwarranted delay in issuing legal decisions. Consequently, they note that no significant results have been obtained, there has been

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<sup>7</sup> The alleged victim was said to have been detained along with Lorenzo Depaz Ciprian, alleged victim of forced disappearance.

no significant progress in the investigations, nor have any verdicts been issued identifying and convicting those responsible. They state that in the instant case there is a confluence of denial of justice, lack of access to the justice system, the impossibility of exhausting domestic remedies, and unwarranted delay in the administration of justice, such as to warrant the application of the exceptions to the exhaustion of domestic remedies established at Article 46(2)(b) and (c) of the Convention.

26. For the aforementioned reasons, the petitioners argue that the State is responsible for the violation of Articles 4, 5, 6, 7, 8, 11(1), 12, 13, 15, 16, 17, 21, 22, 24 and 25 of the American Convention, to the detriment of the alleged victims. Furthermore, they argue that the State is responsible for the violation of Articles I, II, V, VI, VII, VIII, IX, XI, XVIII, XXI, XXII, XXIV, XXV and XVI of the American Declaration; Articles I, II, III, IV, V, VII, VIII, IX, X, XIII, XIV and XV of the Convention on Forced Disappearance; Articles 1, 2, 3, 4, 5, 6, 8, 9, 10, 12 and 16 of the Convention on Torture; and Articles 1, 2, 3, 4, 7, 8, 9, 12, 13, 18, 20, 25 and 26 of the Universal Declaration.

27. They report that while some families have been compensated under the National Compensation Program (hereinafter "PNR" for its initials in Spanish) for the events that took place in the village of Chichupac, this was a slow and irregular case where amounts of compensation could only be characterized as symbolic payments since they do not constitute integral reparation of the material and moral damages suffered by the victims and their next-of-kin. Furthermore, they pointed out that this procedure is not a remedy that must be exhausted, since the nature of the facts alleged presupposes that the suitable remedy – and therefore the one that must be exhausted in the domestic administration of justice -- is the investigation, criminal prosecution, and punishment of the perpetrators and masterminds.<sup>8</sup>

28. Finally, they asked the IACHR to oversee implementation of the measures that Guatemala adopts to protect the life and physical integrity of the witnesses from the village of Chichupac and the communities of Xeabaj, Chijom, and El Tablón on reactivating the action and the criminal prosecution of the massacre of January 8, 1982 by the Public Prosecutor's Office.

## **B. The State**

29. In its response, the State notes that the complaint filed with the IACHR includes many cases of different kinds, which occurred in different places, times, and circumstances that have resulted in the investigation of various judicial cases, which would be inappropriate to process together because there is no correlation between the alleged victims and the violations alleged in each case. Additionally, the State noted that it was wrong, inappropriate, and even likely to cause confusion, to hear such diverse facts within a single case. Given these observations, the Guatemalan State sought a breakdown of the petition and its processing under separate cases.

30. With respect to the massacre said to have occurred on January 8, 1982, the State does not deny the facts alleged. It reports that criminal proceeding 255-93 is going forward before the Court of First Instance for Criminal, Drug, and Environmental Crimes of the department of Baja Verapaz, under the charge of the Fourth officer, which is investigating the massacre of 32 persons in the village of Chichupac.<sup>9</sup> It indicates that this proceeding is in the investigative stage before the Public Prosecutor's Office, and that it appears in the record that many investigative steps have been taken, of which it identifies the exhumations of May 6, 1993, through which a clandestine cemetery and different bony

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<sup>8</sup> Petitioners' brief of July 16, 2009, numeral III. Reiterated in note of May 19, 2010.

<sup>9</sup> The State notes that the alleged victims in the proceeding are: Víctor Juárez Pangan, Clemente Juárez Ixpancoc, Cruz Sic Cuxum, Pedro Sic Jerónimo, Gregorio Valey, Timoteo Sic Cujá, Roberto Gallego Chen, Alfonso Supuc Juárez, Domingo Cahuec Sic, Santiago Alvarado Xitumul, Agustín Juárez Ixpancoc, Teodoro González Xitumul, Eulogio Morales Alvarado, Luciano González, Apolinario Juárez Pérez, Alberto Juarez Perez, Evaristo Siana, Pedro Tum, Emiliano Siana, Pedro Galiego López, Demetrio Chen Alvarado, Pedro Gallego Mendoza, Camilo Juárez Valey, Julian Garnica, Benito Juarez Ixpancoc, Francisco Depaz, Maximiliano Sic Valey, Vicente Sic Osorio, Patrocinio Chen Galiego, Félix Alvarado Xitumul, Pedro Mendoza, and Pedro Tum Amperes. The IACHR observes that comparing the lists presented by the parties, the names of 22 alleged victims coincide, eight were written differently but one can presume that they refer to the same person, and two persons identified in one of the lists do not coincide with the remaining two persons in the other one.

remains were discovered.<sup>10</sup> In addition, it notes that in order to achieve progress in the investigation, new lines of investigation have been proposed, both short and long term, and that on September 1, 2005, a copy of the 260 folios in case M001/2005/95839, before Agency No. 4 of the Special Cases and Human Rights Violations Unit of the Office of the Prosecutor with the Human Rights Section of the Guatemala City Public Prosecutor's Office, has been included in the record of Case 255-93.

31. Moreover, it indicates that in Case No. 247/1995/802 – to which was attached criminal case 247/1995/1085--, opened based on a complaint filed May 30, 1995, by Ms. Juana García de Paz before the Human Rights Ombudsman's Office (Procuraduría de Derechos Humanos), and in the course of which several amended submissions were filed, multiple extrajudicial executions, forced disappearances, and the existence of clandestine cemeteries were alleged. It indicates that many of the persons with respect to whom said case is being brought are victims in this petition: (1) José Grave García; (2) Eusebia Grave García; (3) Mateo Grave; (4) Juan Alvarado Grave; (5) Efraín García Valle; (6) Gregorio Valey; (7) Silvestre Sic Xitumul; (8) Adrián García Manuel; (9) Hugo García de Paz; and (10) Habrán Alvarado de Paz.

32. Along similar lines, it reports that in Case 247/1995/1083<sup>11</sup>, pursued as of a complaint filed on July 27, 1995 before the Human Rights Ombudsman's Office due to the existence of a clandestine cemetery, acts of violence perpetrated against the alleged victims were also being investigated. In that regard, the State identifies: (1) Víctor Alvarado Sucup; (2) Ceferino Alvarado Sucup; (3) Fidel Alvarado Sucup; (4) Domingo Reyes Juárez; (5) Andrés Reyes Román; (6) Santiago Reyes Román; (7) Eusebia Grave García; (8) José León Grave García; (9) Silvestre Sic Xitumul; (10) Gregoria Valey Ixtecoc; (11) Elías Milián González; (12) Amelia Milián González; and (13) Medardo Juárez García. It indicates that during this proceeding, corpses were exhumed on April 9, 2002, and that on February 27, 2003, the bony remains recovered were inspected and 13 of them were handed over to the aggrieved family members.

33. With regard to the admissibility of the petition, the State recognized that the Commission is competent *ratione personae*, *ratione loci*, *ratione temporis* and *ratione materiae* to take cognizance of the complaint lodged. However, invoked the objection of non-exhaustion of domestic remedies, given the existence of judicial and administrative remedies available in the national jurisdiction.

34. In this regard, the State observes that criminal proceedings are under way currently in the investigative phase. It also notes that without prejudice to the decision reached by the IACHR on the merits of this petition, the causes that led to the procedural delays that affected Case 255-93 will be investigated.

35. Moreover, it contends that there are administrative remedies that have not been exhausted. In this regard, it invokes the PNR, noting that despite being an administrative mechanism it is an adequate and effective remedy that allows Guatemala to investigate and make reparation for human rights violations committed during the internal conflict which the petitioners are entitled to access because the facts claimed are based on the Report for the Recuperation of Historical Memory. It also states that 31 people from the village of Chichupac have received financial compensation under this program<sup>12</sup>, as

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<sup>10</sup> In addition the State mentions, among others, the ballistic expert review conducted on the evidence found in the clandestine graves; issuing a listing of civilian patrols to the Secretariat for Technical Assistance in order to determine which were acting in Rabinal, information requests to several institutions on patrol identified by witnesses, and another exhumation on April 9, 2002, at the "Los Naranjales" farm. In addition, it reports that on September 3, 2009, the Public Prosecutor's Office sought authorization from the judge to require the Ministry of Defense to submit information in a prudential term, and that the request was granted.

<sup>11</sup> The State explains that this proceeding was also joined to proceeding 247/1995/802, as they refer to the same facts and the same complainants.

<sup>12</sup> Note from the State of March 23, 2009.

well as another 41 beneficiaries, mostly from the area of Rabinal.<sup>13</sup> The State notes that as a result the petitioners should review the list of alleged victims so as to exclude those who have already been compensated, and thus avoid double compensation.

#### IV. ANALYSIS ON COMPETENCE AND ADMISSIBILITY

##### A. Competence

36. The petitioners are entitled under Article 44 of the American Convention to file claims before the IACHR. The petition names as the alleged victims 82 natural persons (individually named in paragraphs 13, 18, 19, 20, 21 and 22 of this report) with respect to whom the Guatemalan State undertook to respect and ensure the rights enshrined in the American Convention. As regards the State, the Commission indicates that Guatemala has been a state party to the American Convention since May 25, 1978, the date on which it deposited the instrument of ratification. Therefore, the Commission is competent *ratione personae* to examine the petition.

37. The Commission is competent *ratione loci* to hear the petition insofar as it alleges violations of rights protected under the American Convention said to have occurred within the territory of Guatemala, a state party to that Convention. The Commission is competent *ratione temporis* because the obligation to respect and ensure the rights protected under the American Convention was already in force for the Guatemalan State as of the date of the facts alleged in the petition. Finally, the Commission is competent *ratione materiae* because the petition alleges possible violations of human rights protected by the American Convention.

38. The Commission reiterates that once the Convention entered into force in a State, it and not the Declaration became the primary source of law applicable by the Commission, as long as the petition refers to the alleged violation of substantially identical rights set forth in both instruments and a continuing violation is not involved.<sup>14</sup> Therefore, the Commission shall refer only to the provisions of the Convention.

39. In addition, the Commission is competent to hear this claim under Article XIII of the Convention on Forced Disappearance, ratified by the State on February 25, 2000, given that the crime of forced disappearance is deemed continuous or permanent as long as the fate or whereabouts of the victim have not been determined.<sup>15</sup>

40. Moreover, the IACHR is not competent to decide on violations of rights enshrined in the Convention on Torture, as the acts of torture are alleged to have occurred prior to January 29, 1987, date on which Guatemala deposited the instrument of ratification of the above-mentioned instrument. However, this is not an impediment for those claims to be analyzed as alleged violations of rights under the American Convention. Nor is it competent to hear alleged violations of the Universal Declaration, as it is not an instrument adopted regionally in the sphere of the inter-American system without prejudice to it being used as a source of interpretation.<sup>16</sup>

41. As for the State's request for the claims to be separated out and the petition processed as separate cases, the IACHR observes that the petitioners, to make clear the persecution and even

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<sup>13</sup> Note from the State of August 24, 2009. On that occasion, the State also reported the existence of another six cases involving persons from Rabinal in which there is no final verdict as yet, and five cases that were excluded on the grounds that the alleged victims were registered in the PAC databases.

<sup>14</sup> IACHR, Report No. 03/01 (Admissibility), Case 11,670, *Amilcar Menéndez, Juan Manuel Caride and others (Welfare System)* (Argentina), January 19, 2001, paras. 41 ff.

<sup>15</sup> As per Article III of the Inter-American Convention on Forced Disappearance of Persons.

<sup>16</sup> IACHR, Report No. 38/09 (admissibility and merits), Case 12,670, *National Association of Ex-Employees of the Peruvian Social Security Institute et al.* (Peru), March 27, 2009, paragraph 70.

genocide of which the indigenous peoples of Rabinal were allegedly victims at the time of the facts alleged, made reference to multiple and diverse manifestations of violence which – independent of the individual or collective nature of the victims who suffered them – were necessarily interrelated inasmuch as they are said to have been part of a pattern of institutionalized violence that had a single purpose.<sup>17</sup>

42. In this regard, the Commission notes that (1) the facts alleged occurred from 1981 to 1986 during the armed conflict in Guatemala; (2) the alleged perpetrators of the various human rights violations claimed are said to have been members of the Guatemalan Army, the PAC and/or military commissioners; (3) the *modus operandi* in each of the facts claimed could correspond to a systematic pattern supposedly planned against the Maya indigenous people; (4) the alleged victims are members of the Maya indigenous people, specifically of the Achí linguistic community; and (5) the alleged victims lived in villages located in the department of Baja Verapaz, specifically in the area of Rabinal. Accordingly, having considered the foregoing, and the nature of the operations by the Army, the PAC and the military commissioners in the time frame of the different facts alleged<sup>18</sup>, the Commission rejects the request to separate the claims into different cases made by the Guatemalan State and considers it appropriate to analyze all the facts alleged in the petition together.

## **B. Exhaustion of domestic remedies**

43. Article 46(1)(a) of the American Convention states that, in order for a complaint filed before the Inter-American Commission to be admissible under Article 44 of the Convention, domestic remedies must have been pursued and exhausted in keeping with generally recognized principles of international law. The purpose of this requirement is to afford national authorities the opportunity to address the alleged violation of a protected right, and where appropriate resolve it, before the matter is brought to the attention of an international body.

44. Article 46(2) of the Convention provides that the rule requiring prior exhaustion of domestic remedies does not apply: (a) when the domestic legislation does not afford due process for the protection of the right in question; (b) if the alleged victim did not have access to domestic remedies; and (c) if there was unwarranted delay in rendering a final judgment under those remedies.

45. In the instant case, the State of Guatemala alleges failure to exhaust domestic remedies on the grounds that criminal proceedings are in progress in connection with the massacre perpetrated in the village of Chichupac and the acts of violence directed at some of the victims.<sup>19</sup> It provided no information on the status of the judicial proceedings related to the other facts alleged and filed no objections. Additionally, the State claimed that administrative proceedings were available but had not been exhausted. The petitioners, for their part, argue that access to domestic remedies was denied, the impossibility of exhausting them, and that there has been an unwarranted delay in the administration of justice.

46. According to the information produced by the parties and the documentation included in the record, a series of allegations of acts of violence against the alleged victims have been presented to Guatemalan authorities, based on which still-pending investigations were begun.

47. Regarding the remedies pursued concerning the massacre in the village of Chichupac on January 8, 1982, the file indicates that on March 25, 1993 a complaint was presented before the Court of

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<sup>17</sup> The judicial files supplied by the petitioners reveal a series of complaints concerning acts of violence committed against many groups of persons; only some of these have been named as alleged victims in this case.

<sup>18</sup> IACHR, Report on the Merits 59/01, Cases: 10,626 Remigio Domingo Morales and Rafael Sánchez; 10,627 Pedro Tau Cac; 11,198(A) José María Ixcaya Pixtay and others; 10,799 Catalino Chochoy, José Corino Thesen, and Abelino Baycaj; 10,751 Juan Galicia Hernández, Andrés Abelino Galicia Gutiérrez, and Orlando Adeldo Galicia Gutiérrez; and 10,901 Antulio Delgado, Guatemala, April 7, 2001, para. 2. IACHR, Merits Report No. 39/00, Case 10,586, and others, Extrajudicial Executions, Guatemala, April 13, 2000, para. 2.

<sup>19</sup> They are named in paragraphs 31 and 32 of this report.

First Instance of the City of Salamá –identified as C 255-93 - Of. 4° -- of a clandestine cemetery in the village of Chichupac where the remains of more than 30 inhabitants of the village assassinated during January 1982 are found; that on December 2, 1997, a complaint was filed in Salamá with the Court of First Instance for Criminal, Drug, and Environmental Crimes of Salamá, Baja Verapaz, that reported the massacre committed in the village of Chichupac on January 8, 1982; and that as of July 12, 2005, the Special Cases and Human Rights Violations Unit of the Office of the Prosecutor with the Human Rights Section of the Guatemala City Public Prosecutor's Office took over the investigation into the facts (under File 001-2005-95839).

48. The IACHR observes that during the judicial investigation, only the exhumation of corpses (performed from May 6 to 19, 1993, and during which the body remains of at least 30 persons was found) and an expert ballistics test of the evidence gathered on the occasion were done, and 21 witness statements have been taken. It is noted that these steps have been taken because of the procedural impetus of the complaining witnesses, and that in addition other investigative steps were requested that have not been considered. The IACHR has not received information that indicates that the procedure has ended or that the persons responsible have been duly punished.

49. Regarding the other remedies pursued for the other facts alleged, the following proceedings appear in the record:

**Case 255-93:** It appears in the record of Case 255-93, substantiated by the Court of First Instance for Criminal, Drug, and Environmental Crimes of Baja Verapaz regarding the massacre in the village of Chichupac on January 8, 1982, that the extrajudicial execution of Andrea Osorio was reported on April 27, 1999.<sup>20</sup>

**Proceeding 1,083-95** It appears in File 1,083-95 of the District Office of the Public Prosecutor's Office of Baja Verapaz (incorporated into Case 255-93 mentioned above, and responding to a report regarding the existence of clandestine cemeteries in Xeabaj, Rabinal)<sup>21</sup>, that 13 of the extrajudicial executions claimed in case 1,083-95 are alleged victims in this petition: (i) the extrajudicial execution of Víctor Alvarado Valey, Ceferino Alvarado Sucup, Fidel Alvarado Sucup, Domingo Reyes Juárez, Andrés Reyes Román, Santiago Reyes Román, as claimed before the District Office of the Public Prosecutor's Office of Salamá, Baja Verapaz on July 27, 1995; (ii) the extrajudicial execution of Eusebia Grave García, José León Grave García and Silvestre Sic, and the rape and later extrajudicial execution of Gregoria Valey Ixtecoc, facts claimed on July 26, 2001 before the District Office of the Public Prosecutor's Office of Salamá, Baja Verapaz; and (iii) the extrajudicial execution of Elías Milián González, Amelia Milán Morales, and Medardo Juárez García, as reported on July 27, 2001 before the District Office of the Public Prosecutor's Office of Salamá, Baja Verapaz.

In this respect, it appears in the judicial record that from April 9 to 13, 2002, corpses were exhumed and that as a result of this procedure, 13 bony remains were exhumed, 11 of which correspond to alleged victims of this petition whose execution has been alleged in this proceeding.<sup>22</sup> In addition, the bony remains of Raymunda Sical Corazón, an alleged victim, were identified. The IACHR observes that after incorporating the forensic reports of said exhumation, no further procedures have been undertaken.

**Proceeding 1,378-97:** On July 28, 1997, it was reported to the Departmental Office of the Human Rights Ombudsman in the city of Salamá there were two clandestine cemeteries in the village of Xeabaj. On that occasion it was reported that in one of those clandestine cemeteries one would find the remains

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<sup>20</sup> Her bony remains were found during the exhumation of corpses in the framework of this proceeding.

<sup>21</sup> In this respect, the State indicates that this case is joined to Proceeding 247/1995/802.

<sup>22</sup> To wit: Eusebia Grave García, Fidel Alvarado Sucup, José León Grave García, Andrés Reyes Román, Santiago Reyes Román, Víctor Alvarado Valey, Domingo Reyes Juárez, Ceferino Alvarado Sucup, Medardo Juárez García, Gregoria Valey Ixtecoc and Silvestre Sic. (Report on exhumation of corpses in clandestine cemeteries of April 9, 2002, prepared by the Justice of the Peace of Rabinal; File 1083-95: Report of the Third Official of the National Civilian Police to the honorable Justice of the Peace of Rabinal, April 13, 2002; and Report of Judicial Inspection of Human Bony Remains of February 27, 2003).

of the nine persons who had been tortured and executed by members of the Guatemalan Army and allied forces on November 26, 1982, identifying Eustaquio Ixtecoc and Francisco de Paz<sup>23</sup>; in addition, it was indicated that in the other clandestine cemetery one would find the remains of alleged victims Gorgonio González González, Rosa González Tecú, Enriqueta Tecú, Luciano Alvarado, Héctor Alvarado García, Adela (Delia) Alvarado García, and Lucía Xitumul. On August 6, 1997, the Human Rights Ombudsman filed a complaint with the District Office of the Public Prosecutor's Office of Salamá, Baja Verapaz, alleging the existence of said clandestine cemeteries, indicating that one would likely find the remains of Gorgonio González González, Rosa González Tecú, and Enriqueta Tecú in those cemeteries. The judicial record notes that from July 7 to 11, 2004, due to this and other reports, an exhumation was performed at the place indicated, and six bony remains were found, among which were identified the bony remains of Rosa González Tecú, Enriqueta Tecú, Adela Florentina Alvarado García, Luciano Alvarado Xitumul, and Lucía Xitumul Ixpancoc.<sup>24</sup> It does not appear in the record before the IACHR that any further investigative steps were taken.

**Proceeding 802-95:** On May 30, 1995, complaint number 802-95 was filed before the District Office of the Public Prosecutor's Office of Salamá, Baja Verapaz, alleging the existence of a clandestine cemetery located in the Rabinal cemetery, in which one would likely find the remains of alleged victims Mateo Grave, Efraín García De Paz, and Juan Alvarado Grave.<sup>25</sup> It appears in the record that an amended complaint was presented alleging that the remains of others would be found in said cemetery. There is no record that the exhumation was done or that the persons responsible were convicted and the proceeding concluded.

**Proceeding MP 247/2006/648:** On June 13, 2006, before the District Office of the Public Prosecutor's Office of Rabinal, a complaint was filed regarding the extrajudicial execution of alleged victims Adrián García Manuel, Hugo García Depaz, and Abraham Alvarado Tecú.<sup>26</sup> It appears in the record that from that from October 10 to 15, 2006, bony remains were exhumed and the bony remains of four persons were found, one set of which were those of Adrián García Manuel (the rest were not identified).<sup>27</sup> Nothing in the case record indicates that the competent authorities took any measures to identify and punish those responsible for the facts.

**Proceeding 811-95:** On July 12, 1995, as an amendment to a complaint filed on May 30, 1995 – and on the basis of which case 811-95 was initiated – the forced disappearances of the alleged victims Juan Mendoza Alvarado, José Cruz Mendoza Sucup, Lorenzo De Paz Ciprian and Leonardo Cahuec González were reported to the District Office of the Office of the Prosecutor of Salamá, Baja Verapaz. According to the record, only three witness statements were incorporated into the procedure, and it was archived for failure to name the person accused.

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<sup>23</sup> In the complaint it is established that in the cemetery of San Francisco of the village of Xeabaj “the objects with which the nine residents who [on November 26, 1982] were taken from the place were tortured were found, among them ... Eustaquio Ixtecoc [and] Francisco de Paz, who to date it is assumed are in that clandestine cemetery.” In keeping with what was indicated by the petitioners and given that the facts are not controverted by the State, it is possible to assume that the other seven persons referred to in the complaint are Jorge Galeano Román, Rafael Depáz Tecú, Enrique Mendoza Sis, Juan Pérez Sic, Gabino Román Iboy, Cruz Amperes Sis, and Dionisio Bachan (alleged victims).

<sup>24</sup> Forensic Anthropology Research Report Xeabaj, Rabinal, Baja Verapaz, presented by the Fundación de Antropología Forense de Guatemala, on October 6, 2004; Report of delivery of bony remains already identified, signed September 22, 2005, in the Exhumations Agency of the municipality of Salamá, Baja Verapaz.

<sup>25</sup> In this proceeding facts were also reported related to other alleged victims and that were heard in judicial proceeding 1,085-95: Eusebia and José León Grave García, Gregoria Valey Ixtecoc, and Silvestre Sic Xitumul.

<sup>26</sup> Previously, on May 9, 1995, a complaint had been lodged with the Office of the Human Rights Ombudsman in Baja Verapaz related to the extrajudicial execution of Adrián García Manuel and the alleged forced disappearances of Hugo García Depaz and Abraham Alvarado Tecú.

<sup>27</sup> Report of the National Civilian Police presented October 19, 2006 before the Office of the Municipal Prosecutor of Rabinal.

**Proceeding 169-2006:** On April 7, 2006 a complaint was filed with the District Office of the Office of the Prosecutor of Rabinal, Baja Verapaz, identified in the Public Prosecutor's Office as Case 248/2006/169, regarding the death of the child Antonio Chen Mendoza, an alleged victim in this petition. No information has been received concerning investigative steps taken.

**Complaint before the Auxiliary Departmental Office of the Human Rights Ombudsman:** On June 20, 1995 a claim was made before the Auxiliary Departmental Office of the Human Rights Ombudsman regarding the forced disappearances of María Concepción Chen Sic and Marcelo Sic Chen.

50. The case-law of the Commission establishes that when a crime is committed that can be prosecuted at the initiative of the prosecutorial authorities, the State is obligated to bring and pursue criminal proceedings and that in such cases this is the best way to clarify the facts, prosecute the persons responsible, and establish the corresponding criminal sanctions, in addition to making it possible to establish other forms of monetary reparation.<sup>28</sup>

51. The events alleged in the petition are said to have occurred from August 1981, to August 1986, and most of them were reported between March 1993 and July 2001.<sup>29</sup> It is duly noted that the victims and/or their next-of-kin are the ones who have given impetus to the investigations by filing reports, complaints, and requests for carrying out various investigative steps. Additionally, it is observed that despite the multiple remedies pursued by the victims and/or their next-of-kin, the Guatemalan judicial system has not taken the measures needed to clarify the facts alleged, determine the whereabouts of those presumably missing, or identify and punish those responsible, notwithstanding the time that has elapsed since the respective complaints were filed. In view of the foregoing, the IACHR is of the view that the exception provided for at Article 46(2)(c) of the Convention applies.

52. Regarding the archiving of Proceeding 811-95, in which numerous forced disappearances were alleged, the Inter-American Court has established that when forced disappearances are alleged, the duty to investigate subsists as long as there is uncertainty about the fate of the victim or the location of the remains.<sup>30</sup> Therefore, the exception provided for at Article 46(2)(b) of the Convention applies to this situation.

53. The same exception would apply to the other six alleged victims in this petition (Pedro de Paz Ciprian, Raymundo Alarcón, Casimiro Siana, Pedro Siana Us, Juana García de Paz, and Ciriaco Galiego López), considering the absence of information from the State regarding these events and bearing in mind the context in which these violations are alleged to have occurred.

54. Based on the aforementioned considerations and mindful of the characteristics of the multiplicity of facts alleged, the Commission concludes that the exceptions provided for at Article 46(2)(b) and (c) of the American Convention applies to this case.

55. Finally, invoking the exceptions to the rule requiring exhaustion of domestic remedies provided in Article 46(2) of the Convention is closely linked to the determination of possible violations of certain Convention-protected rights, such as the guarantees of access to justice. However, Article 46(2) of the Convention, by its nature and purpose, has a content that is independent of and separate from the substantive provisions of the Convention. Therefore, the determination as to whether the exceptions to the domestic remedies rule apply to the case in question must be made prior to and separate from the examination of the merits, since it hinges on a standard of assessment different from the one used to establish the violation of Articles 8 and 25 of the Convention. It should be clarified that the causes and effects that prevented exhaustion of domestic remedies will be examined in the report that the

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<sup>28</sup> IACHR, Report Nº 52/97, Merits, Case 11,218, *Arges Sequeira Mangas*, Nicaragua, February 18, 1998, paras. 96 and 97. See also Report No. 55/04 para. 25; Report No. 16/06, para. 35; and Report No. 32/06, para. 30.

<sup>29</sup> With the exception of the claim related to the death of the child Antonio Chen Mendoza, of April 7, 2006.

<sup>30</sup> I/A Court H.R., *Case of Velásquez Rodríguez v. Honduras*. Judgment of July 29, 1988. Series C No 4. Para. 181.

Commission will adopt on the merits of the case, in order to determine whether they constitute violations of the Convention.

### **C. Timeless for the petition**

56. Under Article 46(1)(b) of the American Convention, in order to be admitted a petition must be lodged within six months from the date on which the party alleging a violation of rights was notified of the final judgment of the domestic courts. The six-month rule is a guarantee of legal certainty and stability once a decision has been adopted. In the case under analysis, the IACHR has established the application of the exceptions to the exhaustion of domestic remedies requirement in keeping with Article 46(2)(b) and (c) of the American Convention. In this regard, Article 32 of the Commission's Rules of Procedure establishes that in those cases in which the exceptions to the requirement of prior exhaustion of domestic remedies apply, the petition shall be presented within a reasonable period of time, as determined by the Commission. To that end, the Commission should consider the date on which the alleged violation of rights occurred and the circumstances of each case.

57. Related to the specific circumstances of the events alleged, the IACHR observes that they occurred during the internal armed conflict in Guatemala (1962-1996), the most violent period being from 1978 to 1983, under the *de facto* regimes of generals Romeo Lucas García (1978-1982) and Efraín Ríos Montt (1982-1983).<sup>31</sup> In addition, while the Commission considers that with the signing of the Peace Accords the internal armed conflict ended, and it became possible to seek to clarify the violations committed during the conflict, it observes that the effects of the lack of effective domestic remedies continue to this day, considering that when the petition was submitted there were still criminal proceedings that had not concluded.

58. Therefore, given the context and the characteristics of the present case, and bearing in mind the date on which the facts are alleged to have occurred, the failure to conclude the judicial investigations, the actions by the alleged victims' next-of-kin to seek justice, and the conduct of the State, the Commission considers that the petition, filed on December 13, 2007, was presented within a reasonable time period, and that the admissibility requirement regarding time for submitting a petition should be considered satisfied.

### **D. Duplication of proceedings and international *res judicata***

59. In order for a petition to be admissible, Article 46(1)(c) of the American Convention stipulates that the subject of the petition or communication shall not be pending in another international proceeding for settlement; Article 47(d) stipulates that the petition shall be inadmissible if it is substantially the same as one previously studied by the Commission or another international organization. In the instant case, the Commission notes that the parties have not alleged either of these grounds for inadmissibility, nor can they be inferred from the case file. Therefore, the requirements set forth in Articles 46(1)(c) and 47(d) of the Convention are deemed to have been satisfied.

### **E. Colorable claim**

60. For admissibility purposes, the Commission must determine whether the facts alleged, if proved, tend to establish a violation of rights, as stipulated in Article 47(b) of the American Convention or if the petition is "manifestly groundless" or "obviously out of order," as provided in Article 47(c). The standard for evaluating these requirements is different from the standard for deciding the merits of a petition. The IACHR must conduct a *prima facie* evaluation to determine whether the petition establishes grounds for the apparent or potential violation of a right guaranteed by the Convention, but not to establish the existence of a violation. Such an evaluation is a summary analysis and does not imply any prejudgment on the merits.

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<sup>31</sup> IACHR, Report 13/08, Admissibility, Petition 844-05, Community of Río Negro of the Maya Indigenous People and its Members, Guatemala, March 5, 2008, para. 87.

61. The petitioners allege a series of violent acts – massacres, rapes, failure to lend assistance, extrajudicial executions, torture, forced disappearances, illegal detentions, and/or forced labor – perpetrated from August 24, 1981 to August 17, 1986, planned by the government and Military High Command in the framework of a state policy of genocide and carried out by the National Army, military commissioners, *judiciales*, and PAC against the members of the indigenous communities of Chichupac, Toloxcoc, Xeabaj, El Apazote, Chijom, and El Tablón, in the municipality of Rabinal. They argue that those responsible for these crimes have not been identified or punished by the Guatemalan administration of justice. For its part, the State has not controverted the facts alleged by the petitioners.<sup>32</sup>

62. In this respect, the Commission observes that the facts alleged tend to establish violations of rights enshrined in the Convention. In that regard, it considers that the allegations on extrajudicial executions and forced disappearances could tend to establish an alleged violation of Article 4 of the American Convention in relation to Article 1(1) of that instrument, to the detriment of the alleged victims of those acts. In a similar vein, one observes that the multiplicity of events and situations alleged in the processing of this petition could tend to establish alleged violations of the rights protected at Articles 5, 6, 7, 8, 11(1), 12, 13, 16, 17, 21, 22, 24, and 25 of the American Convention, in conjunction with Article 1(1) of that instrument, to the detriment of the alleged victims. In addition, the allegations referring to alleged forced disappearances could tend to establish violations of Article I of the Convention on Forced Disappearance. Moreover, in application of the principle of *iura novit curia*, the Commission will analyze whether there is a possible violation of Article 3 of the American Convention to the detriment of the alleged victims of forced disappearance, and of Article 23 of the Convention to the detriment of the alleged victims, both articles in relation to Article 1(1) of the same international instrument. Therefore, the Commission considers that the requirements established at Article 47(b) and (c) of the Convention have been met.

## V. CONCLUSION

63. The Commission concludes that it is competent to analyze the merits of the complaint filed by the petitioners and that the petition is admissible, under Articles 46 and 47 of the Convention, for the alleged violation of Articles 4, 5, 6, 7, 8, 11(1), 12, 13, 16, 17, 21, 22, 24 and 25 of the American Convention in relation to Article 1(1) of the same Convention and Article I of the Convention on Forced Disappearance. Additionally, by applying the principle of *iura novit curia* the Commission will examine, in the merits phase, the possible violation of Articles 3 and 23 of the Convention in relation to Article 1(1) of the same instrument.

64. The Commission decides to declare this petition inadmissible insofar as it refers to the alleged violations of Article 15 of the American Convention; Articles I, II, V, VI, VII, VIII, IX, XI, XVIII, XXI, XXII, XXIV, XXV and XXVI of the American Declaration; Articles II, III, IV, V, VII, VIII, IX, X, XIII, XIV and XV of the Convention on Forced Disappearance; and Articles 1, 2, 3, 4, 5, 6, 8, 9, 10, 12, and 16 of the Convention on Torture.

65. Based on the arguments of fact and of law set forth above, and without prejudging on the merits of the case,

## THE INTER AMERICAN COMMISSION ON HUMAN RIGHTS,

### DECIDES:

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<sup>32</sup> The Historical Clarification Commission in its Report called “Memory of Silence”[Guatemala, Memoria del Silencio], accepted by the State as a product of the Peace Agreements, verified that “on January 8, 1982, in Chichupac, Rabinal Municipality, Department of Baja Verapaz, members of the Guatemalan Army, assigned to the Rabinal detachment, rural police and military commissioners rounded up the community in the health center. Later, using a list, they executed 32 people, fourteen of whom have been identified”. *Guatemala Memory of Silence*, op. cit. Cases presented, Volume VIII, Attachment II, p.153.

1. To declare this petition admissible with respect to Articles 4, 5, 8 and 25 of the American Convention in conjunction with Article 1(1) of the same convention and Article I of the Convention on Forced Disappearance. Furthermore, to declare this petition admissible with respect to Articles 6, 7, 11(1), 12, 13, 16, 17, 21, 22 and 24 of the American Convention in conjunction with Article 1(1) of the same Convention. In addition, by application of the principle of *iura novit curia*, the Commission concludes that the petition is admissible for the possible violation of Articles 3 and 23 of the Convention in relation to its Article 1(1).

2. To declare this petition inadmissible insofar as it refers to alleged violations of Article 15 of the American Convention; and of the above-referenced articles of the American Declaration, the Convention on Forced Disappearance, and the Convention on Torture.

3. To forward this report to the petitioners and the Guatemalan State.

4. To proceed to 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 General Assembly of the OAS.

Done and signed in the city of Washington, D.C., on the 1st. day of the month of November 2010.  
(Signed): Felipe González, President; Dinah Shelton, Second Vice-President; María Silvia Guillén, José de Jesús Orozco Henríquez, and Rodrigo Escobar Gil, Members of the Commission.